State of Florida

Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: July 6, 2009

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Slemkewicz, Draper, Maurey)
Office of the General Counsel (Young, Brown, Brubaker, Hartman)

RE: Docket No. 080317-EI – Petition for rate increase by Tampa Electric Company.

AGENDA: 07/14/09 – Regular Agenda - Decisions on Motion for Reconsideration - Oral Argument Requested on Intervenors' Motion – Participation dependent upon Commissioners vote on Issue 1

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Skop

CRITICAL DATES: August 11, 2009 (12 month deadline for final agency action pursuant to Section 366.06(3), F.S.)

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\080317.RCM.DOC

Case Background

On August 11, 2008, Tampa Electric Company (TECO or the Company) filed a petition for a permanent rate increase. TECO requested an increase in its retail rates and charges to generate $228.2 million in additional gross annual revenues. TECO based its request on a projected test year ending December 31, 2009. The Office of Public Counsel (OPC), Office of Attorney General (OAG), AARP, Florida Industrial Power Users Group (FIPUG) and the Florida Retail Federation (FRF) intervened in the proceeding.

The Commission held an administrative hearing on TECO's proposed rate increase on January 20, 21, 27-29, 2009. Thereafter, on April 30, 2009, upon consideration of the

evidentiary record, the post-hearing briefs of the parties, and staff's recommendation, the Commission issued Order No. PSC-09-0283-FOF-EI (Final Order), granting TECO an increase in its retail rates and charges to generate $104.3 million in additional gross annual revenues, with a step increase in rates to generate $33.5 million of additional revenue effective January 1, 2010, for a total $137.8 million. The Final Order indicated that the step increase was designed to address the additional costs TECO would incur to construct five combustion turbines (CTs) and a new rail unloading facility at Big Bend Station (Rail Facility) to be placed in service toward the end of 2009.

On May 15, 2009, the Intervenors in the case jointly filed a Motion for Reconsideration, contesting the Commission's decision to grant the step increase. TECO also filed a Motion for Reconsideration contesting the Commission's adjustments to reconcile capital structure to rate base. TECO questioned the Commission's decision to make the necessary adjustments over only investor sources of capital rather than over all sources of capital as TECO had proposed. TECO filed a response in opposition to the Intervenors' Motion on May 22, 2009. The Intervenors did not file a response to TECO's Motion.

The Intervenors filed a separate Request for Oral Argument on their Motion. TECO filed a Conditional Request for Oral Argument on the Intervenors' Motion, stating that while it did not believe oral argument was necessary, if the Commission did grant oral argument, it requested permission to participate. TECO did not request oral argument on its own Motion.

This recommendation addresses the motions for reconsideration and the requests for oral argument. The Commission has jurisdiction over the matter pursuant to Sections 366.06(2) and (4), and 366.071, Florida Statutes. (F.S.)

Discussion of Issues

Issue 1: Should the Commission grant the Intervenors' Request for Oral Argument and TECO's Conditional Request for Oral Argument?

Recommendation: Yes, the Commission should grant oral argument on the Intervenors' Motion for Reconsideration, with fifteen minutes allotted to each side. (Young, Brown)

Staff Analysis: Rule 25-22.0021(1), Florida Administrative Code (F.A.C.), provides for oral argument before the Commission as follows:

> Oral argument must be sought by separate written request filed concurrently with the motion on which argument is requested, or no later than ten (10) days after exceptions to a recommended order are filed. Failure to timely file a request for oral argument shall constitute waiver thereof. Failure to timely file a response to the request for oral argument waives the opportunity to object to oral argument. The request for oral argument shall state with particularity why oral argument would aid the Commissioners, the Prehearing Officer, or the Commissioner appointed by the Chair to conduct a hearing in understanding and evaluating the issues to be decided, and the amount of time requested for oral argument.

The Intervenors in this case properly filed their request for oral argument concurrently with their motion for reconsideration. TECO also timely filed a response and conditional request for oral argument if the Commission sees fit to grant the Intervenors' request. TECO asked that it be granted the same amount of time to argue its position as the Intervenors collectively. TECO did not request oral argument on its own motion for reconsideration, and the Intervenors did not file a response to TECO's motion. Therefore, oral argument should be heard only on the Intervenors' reconsideration motion.

The Intervenors allege that oral argument will aid the Commission in comprehending and evaluating the facts and policies that, according to the Intervenors, it overlooked or misstated in its Final Order. Specifically, they state that oral argument will help the Commission in evaluating whether their due process rights were violated when the Commission adopted a step rate increase for TECO, whether the Commission overlooked its own rules and statutes in implementing the step increase, and whether the Commission properly applied the "statutory standard" set forth in Chapter 366, F.S., and the Commission's rules.

Staff recommends that the Commission grant oral argument on the Intervenors' motion for reconsideration. The matters raised on reconsideration and in TECO's response are fairly complex, and Staff believes that the Intervenors have adequately demonstrated that oral argument would assist the Commission in resolving them. Staff recommends that fifteen minutes should be allotted per side. Although TECO did not request oral argument on its motion, oral argument maybe heard on the motion at the Commission's discretion.

Issue 2: Should the Commission grant the Intervenors' Motion for Reconsideration?

Recommendation: No. The Intervenors' motion for reconsideration should be denied, however, staff recommends that the Commission correct a scrivener's error and clarify that parties will have a point of entry to contest the continuing need for the CTs and revision of the revenue requirement for the CTs and Rail Facility. Except for the scrivener's error, the Intervenors have not identified a point of fact or law that was overlooked or which the Commission failed to consider when it made its decision in the first instance. (Young, Brown)

Staff Analysis:

INTERVENORS' ARGUMENT

In their joint motion for reconsideration, the Intervenors request that the Commission reconsider certain aspects of the decision memorialized in its Final Order, and issue a revised order denying the step increase in 2010 for the five new Combustion Turbines (CTs) and the Big Bend Rail Facility (Rail Facility). The Intervenors contend the Commission should reject the step increase for the following reasons: (1) granting the step increase was a departure from the essential requirements of law and violated the parties' due process rights; (2) the proposed implementation of the step increase violated the fundamental requirement of the Florida Administrative Procedures Act that parties be given a point of entry and opportunity for a hearing on any decision affecting their substantial interests; (3) the Commission's Order does not reflect the vote sheet from the Agenda Conference; (4) the step increase is not allowed by the applicable statutes; and (5) the step increase is not allowed by the Commission's rules. The Intervenors contend that even if the step increase were on procedurally firm ground, the step increase would result in a substantive mismatch between TECO's costs and sales in the future period (2010) in which the increased rates are to be in effect.

Due Process

The Intervenors assert that the step increase the Commission approved in its Final Order was not requested by TECO in its petition, was not requested by any of TECO's witnesses in direct and rebuttal testimony or on cross-examination, and was not included in TECO's Minimum Filing Requirements (MFRs). They also contend that the step increase was not raised as an issue verbally or in writing in TECO's prehearing statement or at any other point in the prehearing process, and was not added as an issue after hearing. They stated that it was not addressed by the parties in post-hearing briefs. The Intervenors contend that they did not address the issue of the step increase in their testimony because they did not know that it was at issue in the case, or that the Commission was going to consider such treatment. They contend that it was only raised as a passing comment by one of TECO's witnesses during cross-examination by a Commissioner.

The Intervenors argue that the Commission should grant the motion for reconsideration because due process requires that parties to a proceeding be given adequate notice and an opportunity to be heard on this issue. They cite Bresch v. Henderson, 761 So. 2d 449, 451 (2nd Fla. DCA 2000), as precedent for their position. In Bresch, a party facing the allegation of civil contempt did not receive notice prior to the hearing. The court held that a person subject to civil

contempt sanctions is entitled to a proceeding that meets the fundamental fairness requirement of the due process clause of the Fourteenth Amendment to the United States Constitution. Failure to provide any notice whatsoever constituted a lack of due process which would require the court's order to be vacated. The Intervenors contend that since the step increase was not proposed by TECO and was only presented the day the Commission voted on the issues, after the post-hearing briefs of the parties were filed, the Commission not only failed to consider the due process implications of voting to approve the step increase, it also failed to comply with the fundamental fairness required by due process.

Violation of Chapter 120, Florida Statutes

The Intervenors also contend that the Commission's approval of a step increase for the cost of the CTs and the Rail Facility was a violation of Chapter 120, F.S. They submit that Chapter 120, F.S., provides that before any agency may implement a decision that affects the substantial interest of any person, the agency must provide a point of entry giving any substantially affected persons the opportunity to request and have a hearing on the merits of any disputed issues of material fact. The Commission granted staff the authority to approve the step increase upon the staff's determination that the criteria articulated in the Final Order, including whether the CTs are needed for service in 2009 or 2010, have been met. The Intervenors disputed that the September CTs are needed and argued that the Commission's proposed step increase, implemented per the Final Order, would deny them a point of entry to timely litigate that issue before the units are built.

The Intervenors also assert that their motion for reconsideration should be granted because the final order does not reflect the Commission's vote. They argue that the Commission voted for the following language from staff's handout at the Agenda Conference "the decision to complete any or all of these projects by year end, considering changed circumstances such as, but not limited to, decrease electricity consumption, is subject to Commission review and rate adjustment." The final order stated that the decision "shall be subject to our staff's review and approval." The Intervenors contend that the subtle change in the wording creates a significant change in the meaning and implementation of the step increase review. Moreover, under the original language, the substantial decision making remained with the Commission subject to a further vote. The change in the language was not voted on or discussed, and places the substantial decision making on final rates with Commission staff. Thus, the Final Order's language fails to reflect the actual vote that was made, and it creates an unlawful delegation of the Commission's authority to defer substantial decisions to staff.

Violation of Statutes and Commission Rules

The Intervenors contend that their motion for reconsideration should be granted because the step increase pro forma adjustments are based upon speculative projected costs for the portion of 2009 when the projects are not used and useful in the public service. The Intervenors argue that rates should be based upon the actual and legitimate cost of the utility's property that is actually used and useful in the public service, in accordance with Section 366.06(1), F.S. They contend that the fact that the step increase treatment approved by the Commission provides for additional Commission staff review and adjustment based upon potentially changing

circumstances, underlines the speculative nature of the CTs and Rail Facility costs, and violates Section 366.06, F.S.

The Intervenors contend that the approval of the step increase violated Commission rules, because it does not conform to the 13 monthly average requirement. The Intervenors contend that in its test-year notification letter TECO chose to use a projected test-year ending December 31, 2009, based upon a historic base year ended December 31, 2007, and the projected test-year utilized the average 13 monthly balances for the projected 2009 test-year. However, in contravention of Rule 25-6.043(h), F.A.C., and without any request for variance from the rule, the step increase attempts to use a year-end balance as of December 31, 2009. The Intervenors contend that the step increase selectively applies a year-end balance for only the three plant accounts relevant to the CTs and Rail Facility, while applying Rule 25-6.043(h), F.A.C., 13 monthly average balances for all other plant accounts. This variation from required procedure was unfair because notice was not given to the Intervenors.

The Intervenors also argue that because there are no meaningful rules that have been promulgated by the Commission to allow for such subsequent adjustment under a "limited proceeding," the step increase would create a facial violation of Section 120.54, F.S. The Intervenors contend that the statute regarding a limited proceeding under Section 366.076(2), F.S., provides that "the commission may adopt rules which rules provide for adjustments of rates based on revenues and costs during the period new rates are to be in effect." According to the Intervenors, the Commission never promulgated meaningful rules to implement this section of the statute. Rule 25-6.0425, F.A.C., merely restates the language of the statute, and provides no guidance as to how this statutory provision would be implemented. Therefore, the Commission should grant their motion for reconsideration because the step increase violated the requirements governing the Commission's conduct of rate cases.

The Proposed Step Increase Would Result in a Substantive Mismatch of Revenues and Sales

Finally, the Intervenors contend their motion for reconsideration should be granted because the proposed step increase would result in a substantive mismatch of revenues and sales.[1] They assert that by approving the step increase, the Commission has proposed to allow TECO to raise its rates in January 2010, based upon the company's 2009 sales (billing determinants). They argue that this is fundamentally wrong as a matter of regulatory practice. If not corrected, the Intervenors say the resulting rates will be unfair, unjust, and unreasonable because the rates will have been calculated for a projected year using that projected year revenue requirements divided by a previous year's sales.

TECO'S RESPONSE

In its response, TECO contends that the Intervenors' motion is but a reargument, in several variations, of their general opposition expressed throughout this proceeding to the base

[1] While the Intervenors variously use the terms "revenues and sales" and "cost and sales" in its Motion, staff understands the argumemt to address a mismatch between 2010 revenue requirements and 2009 billing determinants.

rate recognition of the benefits TECO's customers will derive from the company's significant investment in CTs and the Rail Facility. According to TECO, the Intervenors' motion exceeds the allowed purpose of a motion for reconsideration and should be denied.

TECO asserts that there was no departure from the essential requirements of law, because the step increase was an implicit form of base rate relief within the relief originally requested by the company. By approving the step increase, the Commission recognized TECO's significant investment in the CTs and rail facility, but deferred the recovery of these investments from May 7, 2009 to January 1, 2010, in order to resolve the matching concerns raised by the Intervenors with respect to these investments. TECO contends that the Commission's approval of the step increase was procedurally sound and is supported by the record. According to TECO, the Commission could have approved the annualization of CTs and Rail Facility as requested. However, the Commission elected to defer the recovery of the cost for the CTs and Rail Facility, and granted less than the base relief which would have resulted. Thus, the Commission acted within its broad scope of authority to set rates. TECO cites several cases in which the court held that the Commission has considerable discretion and latitude in the ratemaking process.

TECO contends that the Commission has the power to approve prospective rate increases and routinely does so. TECO notes that the Commission's authority to approve prospective rate increases has been expressly recognized by the Florida Supreme Court in Floridians United for Safe Energy, Inc. v. Public Service Commission, 475 So. 2d 241 (Fla. 1985). In Floridians United, the Commission granted Florida Power & Light Company a rate increase for 1984 and a subsequent rate increase in 1985. Floridians United challenged the Commission's authority to grant the subsequent year increase based on the newly created Section 366.076, F.S. The Supreme Court found that the Commission had authority, and had always had authority, to grant subsequent year rate increases.

TECO argues that the fact that it specifically requested annualization of the CTs and the Rail Facility over the lesser form of rate relief that the Commission ultimately adopted (the step increase), does not remove the latter from the Commission's range of alternatives or create error in the Commission's selection of the step increase alternative. TECO argues that in virtually every rate decision, the Commission weighs competing evidence and uses its judgment to achieve a result within the range of alternatives supported by record evidence. It cites as an example the Commission's decision regarding the amortization of rate case expense. TECO's witness proposed amortizing rate case expense over a three year period. OPC's witness contended that was too short a period of time and recommended a five year amortization. The Commission ultimately approved a four year amortization. However, the fact that neither witness addressing the subject supported a four year amortization does not invalidate the judgment call the Commission made within the range of alternatives supported in the record.

TECO asserts that there were no surprises and no lack of notice in connection with the step increase. TECO states that the record of the proceeding includes testimony supportive of the step increase approved by the Commission, and TECO discussed the subsequent year adjustment for the CTs and Rail Facility in its brief.

No Violation of Due Process Rights

TECO contends that there was no violation of the Intervenors' due process rights. TECO asserts that there is no due process violation in not being allowed to respond to a staff recommendation or any revision to a staff recommendation. The step increase was a lesser included component of the rate relief that would have been granted had the Commission approved the annualization sought by TECO. Moreover, according to TECO, any party to the proceeding knew from the outset that the rate impact of the annualization, or any lesser relief the Commission saw fit to authorize, were potential outcomes, given the breadth of ratemaking discretion the Commission is vested with.

No Violation of Chapter 120, Florida Statutes

TECO contends that the Intervenors' Chapter 120 "point of entry" argument is no more than a weak variation of their general re-argument in opposition to any base rate recognition of the five CTs and Rail Facility. TECO asserts that the Commission did not authorize its staff "to approve the step increase." The Final Order itself approves the step increase and only charges staff with the ministerial duty to ensure that the clearly articulated conditions in the Final Order are met prior to implementation of the step increase. Thus, TECO argues that the Intervenors Chapter 120 "point of entry" argument is based on a mischaracterization of the nature of the relief granted in the Final Order.

No Inconsistency between the Order and the Commission's Vote

Moreover, TECO contends that the Commission's order is consistent with the Commission's vote. The Final Order only authorizes the staff to police TECO's compliance with the step increase conditions contained in the Final Order. If the conditions are not met, staff no doubt would inform the Commission, which could then take whatever action it deems appropriate.

No Violation of Statutes or Commission Rules

TECO contends that there is no violation of Commission rules or statutes. It asserts that the Intervenors' argument that costs for ratemaking purposes must be current and not speculative in nature ignores the fact that the costs associated with the CTs and Rail Facility are presently being incurred and will be fully incurred before the step increase becomes effective. Moreover, the Intervenors' argument is an assault against the use of a projected test year and the Commission's judicially recognized authority to approve prospective rate increases. TECO argues that the Intervenors have failed to demonstrate anything the Commission overlooked or failed to consider in providing for such rate relief.

TECO also contends that there was no violation of the requirements governing the conduct of rate cases. TECO asserts that in approving the step increase, the Commission granted only a portion of the rate relief it requested, something the Commission was clearly entitled to do. TECO discounts the Intervenors' argument regarding the limited proceeding statute, Section

366.076, F.S., and the Commission rules implementing it. TECO asserts that the Commission has authority to approve prospective increases as stated in Floridians United, supra.

The Proposed Step Increase will not Result in a Substantive Mismatch of Revenues and Sales

TECO asserts that the Intervenors have shifted their position on matching, and now attempt to suggest some mismatch in sales and revenues stemming from the Commission's decision to defer any base rate increase for the CTs and Rail Facility to 2010. TECO contends that there is no mismatch of revenues and sales, and the Commission has overlooked nothing in deciding to defer the increase.

STAFF'S ANALYSIS

Standard of Review

The standard of review in a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Final Order. Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3d DCA 1959), citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). For the convenience of the Commission, this recommendation follows the sequence of the Intervenors' arguments in their motion for reconsideration.

Discussion

No Violation of Due Process Rights

Due Process requires that parties to a proceeding be given adequate notice and an opportunity to be heard on the issue. Bresch v. Henderson, 761 So. 2d 449, 451 (Fla. 2nd DCA 2000). However, the concept of due process in an administrative proceeding is less stringent than in a judicial proceeding, although it nonetheless applies. Hadley v. Department of Administration, 411 So. 2d 184, 187 (Fla. 1982) As stated in Hadley, "the extent of procedural due process protections varies with the character of the interest and nature of the proceeding involved." Thus, "due process is flexible and calls for such procedural protections as the particular situation demands." Id. at 187, citing Mathew v. Eldridge, 424 U.S. 319, 334 (U.S. 1976). Due process envisions a law that proceeds upon inquiry, and renders judgment only after proper consideration of the issues advanced by adversarial parties. Scull v. State, 569 So. 2d 1251, 1252 (Fla. 1990). Due process is satisfied if the parties are provided notice of the hearing and an opportunity to be heard. Jennings v. Dade County, 589 So. 2d 1337, 1340 (Fla. 3rd DCA 1991).

Here, the Intervenors were provided notice of the hearing and given an opportunity to be heard on the two issues about which they alleged their due process rights were violated. First, the issues regarding whether the cost for the CTs and the Rail Facility should have been included

in the company's test year were included in the Prehearing Order and fully litigated at the hearing.[2] The issues litigated at the hearing were:

> Is the pro forma adjustment related to the annualization of five simple cycle combustion turbine units to be placed in service in 2009 appropriate?
>
> Is the pro forma adjustment related to the annualization of the Big Bend Rail Project to be placed into service in December 2009 appropriate?

Both sides presented witnesses' testimony and exhibits they believed the Commission should consider when making its decisions whether pro-forma adjustments related to the annualization to the CTs and Rail Facility were appropriate for the 2009 test year. The Intervenors were given an opportunity to argue why pro forma adjustments for the CTs and Rail Facility in 2009 were not appropriate and present the Commission with possible alternative ways to account for the cost of the CTs and Rail Facility.

Second, during the hearing, TECO's witness Chronister recommended a step increase as an alternative the Commission could use to account for the expenses the company would incur to place the CTs and Rail Facility in service. Witness Chronister stated:

> If not included in this particular proceeding . . . . then we would come back because they are significant projects and ask for recovery of them, you now, as they went in service. So, you know, I know everybody -- we have been talking about rate case expense and no one wants to come back in for rates. You know, there is an interim step that you can do, too, where you can have a step increase, you know, when a facility goes in after a rate case, and that is an option available, as well.

TR 1555.

Moments after this statement, the Chairman gave each Intervenor's counsel an opportunity to cross-examine witness Chronister. Each Intervenors' counsel failed to cross-examine witness Chronister about the step increase he recommended as an alternative account for the expenses the company would incur to place the CTs and Rail Facility in service. Thus, the Intervenors were given an opportunity to challenge any alternative treatment for the CTs and Rail Facility.

Moreover, TECO requested in Exhibit 112, filed February 5, 2009, that the Commission use a step increase as an alternative to account for the expenses the company would incur to place the CTs and Rail Facility in service if it determined that pro forma adjustments were not appropriate for the 2009 test year.[3] The Intervenors did not object to this exhibit being admitted into the record, nor did they address it in their post-hearing briefs.

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[2] Order No. PSC-09-0033-PHO-EI, issued January 16, 2009, in Docket No. 080317-EI, In re: Petition for rate increase by Tampa Electric Company, at 17-18.

[3] Late-filed Exhibit No. 112: "Tampa Electric continues to support the appropriateness of an annualized adjustment for the CTs and Rail Facility with in-service dates that occur subsequent to the implementation of new rates in May.

Third, the Intervenors were given an opportunity to argue against a step increase deferring recovery of the cost for the remainig portion of the CTs and the cost for the Rail Facility in their post-hearing briefs. The Intervenors failed to take advantage of this opportunity, but TECO argued in its brief for a step increase. In its brief, TECO stated:

> Should the Commission determine that one or more of the September 2009 CTs should not be annualized, Tampa Electric would urge that a subsequent year adjustment to base revenues be ordered effective January 1, 2010. This adjustment would allow the company an opportunity to earn a fair return on this significant investment while delaying the associated base rate increase until after the units are placed in service. It would also help avoid the effort and expense of having an additional base rate proceeding to recover the significant costs attributable to the addition of these CTs.

TECO BR 27-28. TECO made a similar argument for the rail facility. Id. at 30.

Fourth, the step increase was not a departure from the essential requirements of law and not a violation of the Intervenors' due process rights because it was within the range of alternatives the Commission could consider when setting rates for TECO. Section 366.041, F.S., provides:

> In fixing the just, reasonable, and compensatory rates, charges....for service within the state by any and all public utilities under its jurisdiction, the commission is authorized to give consideration, among other things, to the . . . . cost of providing such service and the value of such service to the public; the ability of the utility to improve such service and facilities.

The Commission has discretion in fixing rates and charges for public utilities. The Commission's discretion in the ratemaking process is well documented in decisions by the Florida Supreme Court. For example, in Gulf Power Co. v. Bevis, 296 So. 2d 482, 487 (Fla. 1974), the Court held that "as pointed out by the Commission, it has considerable discretion and latitude in the rate fixing process;" in Storey v. Mayo, 217 So. 2d 304, 307 (Fla. 1968), the Court held that "the regulatory powers of the Commission ... are exclusive and, therefore, necessarily broad and comprehensive;" and in City of Miami v. Florida Public Service Commission, 208 So. 2d 249, 253 (Fla. 1968), the Court held that "it is quite apparent that these statutes repose considerable discretion in the Commission in the ratemaking process." It is presumed that the Legislature is aware of the judicial constructions of a law. Essex Ins. Co. v. Zota, 985 So. 2d 1036 (Fla. 2008). The Legislature is presumed to have adopted prior judicial constructions of a law unless a contrary intention is expressed in the statute. ContratPoint Florida Park, LLC v. State, 958 So. 2d 1035 (Fla. 1st DCA 2007). The Legislature has not amended Section 366.041, F.S., since these decisions were issued.

However, it also recognize that concerns raised by various parties and, as was suggested by company witnesses during the hearing it could also support a "step increase" in base rates after the assets are placed in service."

Staff agrees with TECO that the step increase approved by the Commission is within its broad ratemaking authority. The step increase was within a range of alternatives the Commission considered when deciding whether a pro forma adjustment relating to the annualization of the cost for the CTs and Rail Facility was appropriate for 2009. After extensive testimony at the hearing about the annualizing and considerable discussion at its Agenda Conference, the Commission decided to defer the recovery of the cost for the CTs and Rail Facility instead of annualizing the cost for the entire 2009 test year. By doing so, the Commission acted within its discretion and sought to balance the public interest, ensuring ratepayers were not paying for the CTs and Rail Facility that were not in service, with the company's interest, recognizing the significant capital expenditures the company will be undertaking to place the CTs and Rail Facility into service.

The Commission's ability to choose a reasonable alternative is well documented in Gulf Power Company v. Florida Public Service Commission, 453 So. 2d 799, (Fla. 1984). In Gulf Power Company v. Florida Public Service Commission, the Court held that:

> The PSC was confronted with competing testimony from Gulf and the commission staff regarding what is to be a reasonable coal inventory. It is the PSC's prerogative to evaluate the testimony of competing experts and accord whatever weight to the conflicting opinions it deems necessary. United Telephone Co. v. Mayo, 345 So. 2d 648, 654 (Fla. 1977). Although the PSC rejected both Gulf's 60-day nameplate policy and the staff's 90-day projected burn level as necessarily proper, it was presented with sufficient evidence to enable it to choose a reasonable alternative. Inasmuch as the PSC was not convinced that Gulf's position was supported by substantial competent evidence, it was left with three possible alternatives; to allow Gulf's fuel inventory proposal without competent substantial evidence, to allow Gulf no coal inventory at all or, to make some other reasonable determination. The PSC properly recognized its responsibility of not only setting fair and reasonable rates but also of "promoting the convenience and welfare of the public and securing adequate service or facilities to those reasonably entitled thereto." Section 366.05(1), F.S. Cognizant of the fact that Gulf needs coal to fire its base-load facilities, the PSC was precluded by statute and common sense from totally disallowing all funds for coal inventory.

Id. at 805.

This exercise of discretion to approve the step increase is similar to the Commission exercising its discretion to increase TECO's storm damage reserves from $4 million to $8 million, its decision to approve a higher return on equity than that requested by the Intervenors, or amortize rate case expense over four years, instead of TECO's proposed three years or the Intervenors' proposed five years. Final Order, pp. 18, 48, and 65-67. Thus, staff believes the step increase was an appropriate rate-making mechanism, and within the Commission's discretion to use when setting rates for the test year and future years.

The Step Increase is not a Violation of Chapter 120, Florida Statutes

The step increase deferring the recovery of the cost for the CTs and Rail Facility was not a violation of Chapter 120, F.S. Section 120.569(2)(b), F.S., provides that before any agency implements a decision that affects the substantial interest of any person, the agency must provide a point of entry giving any substantially affected persons the opportunity to request and have a hearing on the merits of any disputed issues of material fact. Here, the Intervenors were given a meaningful, fair, reasonable, and timely point of entry to dispute whether the September CTs were needed and whether those CTs should be annualized over the 2009 test year, and they took full advantage of their opportunities to argue those points.

The Intervenors disputed the need for the September CTs on cross-examination of TECO's witnesses, on direct examination of their respective witnesses, and in their briefs. For example, TECO's witnesses were cross examined during the hearing on whether the September CTs were needed.[4] The Intervenors argued in their briefs that the September CTs were not needed.[5] The Commission weighed the evidence and the parties' arguments and decided that the September CTs were needed. The Commission included part of the cost to complete the September CTs in TECO's revenue requirement for the 2009 test year and deferred the recovery of the remaining unannualized cost to complete the September CTs cost until January 1, 2010, conditioned upon a continuing need for the CTs. Final Order, pp. 6 and 134. Also at the Agenda Conference, when responding to a Commissioner's question, staff stated that "a part of the cost to construct the September CTs was included in the recommended revenue requirement for 2009." Agenda Conference TR 51.

The Final Order did not grant staff the authority to approve the step increase. The Order itself approved the step increase. The Final Order states:

> To avoid a significant cost to the consumers and significant length of time to conduct a limited proceeding, we have decided to grant TECO a step increase in rates, effective January 1, 2010, for the cost of the five CT units. We authorize an increase in base rates to a maximum of $28.3 million for the five CT units in a manner consistent with the cost allocation methodology we have approved in this Order with the condition that these investments are completed and in commercial operation by December 31, 2009. TECO shall submit a revision of the revenue requirement impact for these projects. This step increase is based upon the condition that the units must be needed for load generation.

Final Order, p. 6. The Final Order stated certain conditions TECO must meet to recover the deferred cost for the September CTs. Staff's role is to continue its assessment of the continuing need for the September CTs, based upon the conditions discussed at the Agenda Conference and reflected in the Final Order. Before TECO recovers the costs for the CTs through base rates, staff will recommend to the Commission for its approval, consistent with the Final Order, whether the company has met the requirements to complete the CTs. Staff will evaluate whether there continues to be a load generation need for the CTs, including whether there has been a

[4] TR 106-107.
[5] OPC BR 6; FRF BR 14; FIPUG BR 7-8; AG adopted OPC's position; and AARP adopted OPC's position.

change in circumstances to warrant the company not completing the CTs. Also, staff will evaluate a revision to the revenue requirement associated with the projects. Parties who are substantially affected by the Commission's decision will be allowed a point of entry to protest that decision. Staff's recommendation will be limited to whether the conditions established in the Final Order have been met.

Based upon the analysis above, staff does not believe that the step increase approved by the Commission was a violation of Chapter 120, F. S.

The Commission Order Does Not Reflect the Commission's Vote

Staff believes the Commission's approval of the step increase is within the Commission's discretion. However, staff believes the Intervenors' argument that the Commission's Final Order does not reflect the Commission's vote at the Agenda Conference is correct and should be clarified. The Final Order states:

> the decision to complete any or all of these projects by year end, considering changed circumstance such as, but not limited to, decrease electricity consumption, shall be subject to our staff's review and approval.

Final Order, p. 6. The language that the company's decision "shall be subject to our staff's review and approval" was a scrivener's error. The Final Order should have stated ". . . . subject to Commission review and rate adjustment," as voted on at the Agenda Conference. Agenda Conference TR 68. Staff therefore recommends that the Final Order be modified to correct this error.

The Step Increase was not a Violation of the Used and Useful Requirement

The Commission's approval of the step increase deferring the recovery of the remaining portion of the cost to complete the CTs and the cost of the Rail Facility was not a violation of the used and useful requirement prescribed by Section 366.06(1), F.S. When approving the step increase to defer the recovery of the cost for the CTs and Rail Facility, the Commission weighed the evidence and determined that the costs were legitimate. It included part of the cost in TECO's revenue requirement for the 2009 test year. The Commission then deferred recovery of $26.5 million for the CTs and $7 million for the Rail Facility until January 1, 2010, predicated on TECO meeting specific requirements. The Commission found the projected costs for the CTs and Rail Facility to be reasonable and appropriate and not speculative. In fact, TECO is currently incurring the costs to complete the CTs and Rail Facility. Thus, the Commission's approval of the step increase deferring the recovery of the remaining portion of the cost to complete the CTs and the cost of the Rail Facility until they are placed in service is not a violation of the used and useful requirement prescribed by Section 366.06(1), F.S, but a decision made in compliance with it. The Intervenors' motion should be denied on this ground.

The Step Increase was not a Violation of the Requirements Governing the Conduct of Rate Cases

The Commission's approval of a step increase deferring the recovery of the remaining portion of the cost to complete the CTs and the cost of the Rail Facility was not a violation of the requirements governing the conduct of rate cases. Staff agrees with TECO that the Commission could have approved the pro forma adjustment for the entire 2009 test year. Balancing the consumers' and TECO's interests, the Commission chose to grant a portion of the relief requested by TECO, and defer cost recovery of the remaining portion based upon a showing of continuing need.

The Intervenors' argument regarding the Commission's failure to promulgate so-called "meaningful rules" to implement Section 366.076(2), F.S., to allow for a subsequent adjustment under a limited proceeding, is without merit. The Florida Supreme Court has recognized the Commission's broad authority when setting rates. In Floridians United, supra, the Court held that the Commission's authority to grant subsequent year increases has always existed, even prior to the enactment of Section 366.076, F.S. Here, the Commission acted within its authority to approve the step increase deferring the recovery of the remaining portion of the cost for the CTs and the cost Rail Facility until January 1, 2010, conditioned upon the need for the CTs, and both projects being completed and in commercial service by December 31, 2009.

The Step Increase will not result in a Substantive Mismatch of Revenues and Sales

Finally, the Intervenors' argument that the step increase would result in a substantive mismatch of the 2010 revenue requirement and 2009 billing determinants was considered by the Commission when it approved the step increase. The Commissioners addressed the probability of a substantive mismatch of revenue and sales. For example, at the Agenda Conference, staff stated:

> If there's a precipitous increase in revenue, because we did have some testimony that if the economy turns right at the end of the year and we've got a lot of homes down in the Tampa area that are ready . . . there could be a spike in revenue . . . This provision would be there to at least protect the ratepayers from an undue windfall, if you will, in revenue.

Agenda Conference TR 20.

The Commission ultimately decided to approve the step increase without the third condition that if TECO exceeds its newly authorized midpoint Return on Equity (ROE) based on the Commission's Earning Surveillance Report for the 12 month period ending May 31, 2010, TECO shall refund, or credit rate base, an amount necessary to bring its ROE down to its midpoint.[6] The Commission stated it was doubtful that the economy would rebound

[6] Staff's Handout 3 (Staff's alternative recommendation describing the third condition): TECO should not gain a windfall in revenues because a step increase is authorized now rather than conducting a limited proceeding at a later date. If TECO exceeds its newly anthorized midpoint Return on Equity (ROE) based on the Commission's Earning Surveillance Report for the 12 month period ending May 31, 2010, TECO shall refund, or credit rate base, an amount necessary to bring its ROE down to its midpoint. Unlike a limited proceeding, the Commission will not be

substantially and earnings would increase. Id. at 23. Moreover, if TECO was earning over and above 100 basis points of its authorized midpoint return on equity, staff could recommend that an overearning investigations be opened. Id. at 23. The Commission also addressed the need to match revenue and expenses. Id. at 36-37. Thus, the Commission analyzed whether the step increase would result in a substantive mismatch of revenues and sales. Staff recommends that the Commission deny the Intervenors' motion for reconsideration on this ground.

Conclusion

For the reasons stated above, staff recommends that the Intervenors' motion for reconsideration be denied. As discussed above, the Intervenors have failed to identify a point of law or fact that the Commission overlooked or failed to consider when it approved the step increase deferring the recovery of the cost for the CTs and Rail Facility. The approval of the step increase was within the range of alternatives the Commission could consider when setting rates. Rather than annualize the costs for the CTs and Rail Facility, as requested by TECO, the Commission decided that a better approach was to defer the recovery of the cost for both the CTs and Rail Facility. The step increase was not a violation of the Intervenors' due process rights or Chapter 120, F.S., was not a violation of Commission rules and statutes, and will not result in a substantive mismatch of the 2010 revenue requirements and 2009 billing determinants. The Commission will review whether there is a continuing need for the CTs and whether the CTs and Rail Facility are completed and in commercial service by December 31, 2009, prior to ratepayers paying for the CTs and Rail Facility. It will be TECO's burden to show that the conditions have been met in order to recover the cost for the remaining portion of the CTs and the cost for the Rail Facility.

evaluating updated revenue and cost information before implementation of the step increase. In the event of an upturn in the economy, TECO's electric sales and ROE may increase significantly. Many homes are vacant with meters in place so growth in sales is not dependant on construction of new homes. If growth increases beyond what is projected in the test year data, the need for a rate increase is reduced. The second condition is consistent with the notion that rates are set to achieve the midpoint ROE for the first year of new rates.

Issue 3: Should the Commission grant TECO's Motion for Reconsideration requesting recalculation of TECO's weighted average cost of capital?

Recommendation: Yes. The appropriate weighted average cost of capital for TECO should be revised from 8.11 percent to 8.29 percent. (Maurey)

Staff Analysis:

TECO'S ARGUMENT

In its Motion for Reconsideration, TECO requests the Commission reconsider that portion of Order No. PSC-09-0283-FOF-EI (Final Order)[7] which reconciles the rate base to capital structure to determine the weighted average cost of capital. In its motion, TECO's primary concern relates to whether the adjustments necessary to reconcile rate base and capital structure should be made over all sources of capital as proposed by the Company or over only investor sources of capital as the Commission decided in the Final Order. TECO states that the Commission's calculation of the weighted average cost of capital is incorrect because 1) it is inconsistent with Order No. PSC-02-0787-FOF-EI (Gulf Order),[8] and 2) it may violate the normalization rules under former Section 167(1) and Section 168(i)(9)(B) of the Internal Revenue Code (IRC) and Sections 1.167(1)-1(a) and 1.167(a)-11(b)(6) of the Income Tax Regulations. [9]

In determining the appropriate weighted average cost of capital for TECO's 2009 projected test year, the Commission approved an adjustment to reverse the Company's initial pro rata adjustment over all sources of capital and replaced it with an adjustment over only investor sources of capital. In doing so, the Commission stated that this treatment was consistent with prior Commission precedent and cited the order involving Gulf Power Company (Gulf). TECO asserts that this statement from the Final Order is incorrect. The Company notes that on page 24

[7] Order No. PSC-09-0283-FOF-EI, issued April 30, 2009, in Docket No. 080317-EI, In re: Petition for rate increase by Tampa Electric Company.

[8] Order No. PSC-02-0787-FOF-EI, issued June 10, 2002, in Docket No. 010949-EI, In re: Request for rate increase by Gulf Power.

[9] Normalization requirements are outlined in Section 168 of the Internal Revenue Code (IRC). In pertinent part, Section 168 permits the use of accelerated depreciation methods. However, accelerated depreciation is permitted with respect to public utility property only if the taxpayer uses a normalization method of accounting for ratemaking purposes. Under a normalization method of accounting, a utility calculates its ratemaking tax expense using depreciation that is no more accelerated than its ratemaking depreciation (typically straight-line). In the early years of an asset's life, this results in ratemaking tax expense that is greater than actual tax expense. The difference between the ratemaking tax expense and the actual tax expense is added to a reserve (the accumulated deferred income tax reserve, or ADIT). The difference between ratemaking tax expense and actual tax expense is not permanent and reverses in the later years of the asset's life when the ratemaking depreciation method provides larger depreciation deductions and lower tax expense than the accelerated method used in computing actual tax expense. This accounting treatment prevents the immediate flowthrough to utility ratepayers of the reduction in current taxes resulting from the use of accelerated depreciation. Instead, the reduction is treated as a deferred tax expense that is collected from current ratepayers through utility rates, and thus is available to utilities as cost-free investment capital. When the accelerated method provides lower depreciation deductions in later years, only the ratemaking tax expense is collected from ratepayers and the difference between the actual tax expense and ratemaking tax expense is charged to ADIT, depleting the utility's stock of cost-free capital. (http://edocket.access.gpo.gov/2003/03-4885.htm)

of the Gulf Order, the Commission stated that because Gulf's per books capital structure included accumulated deferred income taxes (ADITs) and investment tax credits (ITCs) that were being recovered through cost recovery clauses, it was appropriate for Gulf to make a pro rata adjustment over all sources of capital so as not to double count the lower cost of capital items in both rate base and in the recovery clauses.

TECO asserts that the pro rata adjustment in its initial filing is consistent with the treatment discussed in the Gulf Order. The Company states that, because no ADITs or ITCs were removed with the Commission's adjustment over investor sources of capital only, the amounts being excluded are now inconsistent with the amounts being recovered through cost recovery clauses. The Company asserts that this is not only an effective disallowance of the Company's full cost of capital, but that it appears to be a violation of normalization under the IRC.

The normalization rules imposed by the IRC employ an accounting and ratemaking concept, normalization, to ensure that the capital subsidies associated with accelerated depreciation and ITCs provide an investment incentive for regulated utilities. Normalization is a comprehensive system of control over the reflection of the benefits of accelerated depreciation in ratemaking. As part of these rules, any ratemaking adjustment with respect to a utility's tax expense, depreciation expense, or reserve for deferred taxes must also be consistently applied with respect to the other two items and with respect to rate base. The consequence of a normalization violation is that the taxpayer loses the ability to use accelerated tax methods of depreciation with respect to all of its jurisdictional assets.

The Company states that, per the Final Order, the same ADITs are included in the calculation of the overall cost of capital in both base rates and cost recovery clause rates. Thus, TECO contends that ADIT benefits are being passed through to consumers twice. The Company asserts that the Commission's overlapping inclusion of the same ADITs in both base rates and cost recovery clause rates appears to violate normalization rules.

TECO notes that while removing Construction Work in Progress (CWIP) from rate base without adjusting the balance of ADITs is not likely a violation of normalization, CWIP should also be removed pro rata over all sources of capital. The Company argues for this treatment because 1) it is consistent with the Gulf Order in that a significant portion of Gulf's pro rata adjustment was to remove CWIP earning Allowance for Funds Used During Construction (AFUDC), 2) historical regulatory treatment of CWIP, and 3) the AFUDC rate which capitalizes the cost of capital associated with CWIP for future recovery includes all sources of capital, including ADITs and ITCs.

INTERVENORS' RESPONSE

The Intervenors did not file a response to TECO's Motion for Reconsideration. The Intervenors did not address the rate base/capital structure reconciliation issue in their Motion for Reconsideration, either.

STAFF'S ANALYSIS

While TECO accurately quoted the language on page 24 of the Gulf Order, what was not addressed in the Company's pleading was competing language from elsewhere in this same Order. On page 37 of the Gulf Order, the Commission stated, "Finally, a pro-rata adjustment was made over investor sources to reconcile capital structure to rate base." In addition, on page 103 of the Gulf Order (Attachment 2), it is clear that the Commission-ordered incremental adjustments to rate base were removed from the capital structure on a pro rata basis over investor sources of capital only. Staff has identified seven additional orders in which the incremental adjustment to rate base was made through a pro rata adjustment over investor sources of capital only.[10] One of these orders, Order No. PSC-03-0038-FOF-GU, is an order for TECO's sister company, Peoples Gas System. With these orders, staff believes there is sufficient precedent for the Commission to make the pro rata adjustment over investor sources of capital only.

Although there is ample precedent for the Commission to make the pro rata adjustment over only investor sources of capital, staff believes that TECO's argument in the instant case with respect to assets being removed from rate base for recovery through cost recovery clauses is persuasive. Removing plant from rate base for recovery through cost recovery clauses without removing the associated ADITs and ITCs may lead to a normalization violation. Therefore, staff agrees with the Company that plant removed from rate base for recovery through cost recovery clauses should be removed from the capital structure through a pro rata adjustment over all sources of capital.

While staff agrees with the Company with respect to the treatment of amounts associated with plant investment to be recovered through cost recovery clauses, staff does not believe this same argument should necessarily apply to all rate base adjustments. For example, since there is no depreciation expense associated with CWIP, there are no deferred taxes associated with CWIP. TECO conceded in its pleading that removing CWIP from rate base without adjusting ADITs in the capital structure is not likely a violation of normalization. In addition, staff believes the Company has overstated the significance of CWIP in Gulf's pro rata adjustment in the Gulf Order. The pro rata adjustment in the Gulf case was comprised primarily of investment to be recovered through cost recovery clauses (approximately 84 percent of the total). CWIP represented only 13 percent of the pro rata adjustment and other items represented the remaining 3 percent.

That said, staff is concerned that the issue regarding the removal of CWIP may not have been adequately vetted in the record. The Commission decisions cited earlier as precedent dealt

[10] Order No. PSC-09-0375-PAA-EI, issued May 27, 2009, in Docket No. 080366-EI, In re: Petition for rate increase by Florida Public Utilities Company; Order No. PSC-08-0436-PAA-GU, issued July 8, 2008, in Docket No. 070592-GU, In re: Petition for rate increase by St. Joe Natural Gas Company, Inc.; Order No. PSC-04-1110-PAA-GU, issued November 8, 2004, in Docket No. 040216-GU, In re: Application for rate increase by Florida Public Utilities Company; Order No. PSC-04-0128-PAA-GU, issued February 9, 2004, in Docket No. 030569-GU, In re: Application for rate increase by City Gas Company of Florida; Order No. PSC-03-0038-FOF-GU, issued January 6, 2003, in Docket No. 020384-GU, In re: Petition for rate increase by Peoples Gas System.; Order No. PSC-01-1274-PAA-GU, issued June 8, 2001, in Docket No. 001447-GU, In re: Request for rate increase by St. Joe Natural Gas Company, Inc.; and Order No. PSC-01-0316-PAA-GU, issued February 5, 2001, in Docket No. 000768-GU, In re: Request for rate increase by City Gas Company of Florida.

with Commission-ordered incremental adjustments to rate base, not all adjustments to rate base. In the instant case, the initial staff recommendation regarding the reconciliation of rate base and capital structure that was approved in the Final Order not only reconciled the incremental adjustments to rate base pro rata over investor sources of capital consistent with past Commission practice, but also reversed the Company's proposed pro rata adjustment over all sources of capital and replaced it with a pro rata adjustment over investor sources of capital only. The Company was only made aware of staff's intent to apply the Commission-approved methodology for incremental adjustments to all adjustments in the reconciliation of rate base and capital structure when the staff recommendation was filed. As a result, staff does not believe the record is sufficient to reverse TECO's proposed treatment of CWIP in the instant case. Therefore, CWIP should be removed from the capital structure through a pro rata adjustment over all sources of capital. Staff's recommendation on this point is specific to the record in this case and should not be considered precedent regarding staff's position on this or similar issues in future proceedings.

Finally, staff disagrees with the Company's proposed adjustment to remove non-plant related items from the capital structure through a pro rata adjustment over all sources. If an adjustment does not involve plant, then it is likely that the account in question did not give rise to deferred taxes or ITCs. To remove non-plant related adjustments pro rata over all sources of capital could violate normalization by reducing the balances of ADITs and ITCs by the amount of adjustments that had nothing to do with the initial creation of the ADITs and ITCs. For this reason, absent a showing that specifically identifies ADITs and ITCs associated with a non-plant related adjustment, all adjustments for amounts unrelated to plant should continue to be removed from the capital structure through a pro rata adjustment over investor sources of capital only.

CONCLUSION

For purposes of this recommendation, staff removed the various plant amounts, CWIP, and the amount to be recovered through cost recovery clauses from rate base and capital structure in the same manner these investments were reflected in the Company's initial filing. With respect to the Commission-ordered adjustment to remove the amount of over-projected plant in service, staff removed this amount through a pro rata adjustment over all sources of capital except ITCs. This treatment is consistent with how the Company included the investment in other projected plant accounts, e.g., the Combustion Turbine annualization and the Big Bend Rail Facility annualization, in its filing. Finally, all other adjustments to rate base that do not relate to plant accounts were removed from the capital structure through a pro rata adjustment over investor sources of capital only.

The net effect of this recommendation is an increase in the overall weighted average cost of capital from the 8.11 percent approved in the Final Order to the 8.29 percent reflected on Schedule 2 attached herein. This incremental change in the overall cost of capital represents an increase in the annual revenue requirement of approximately $9.3 million for the 2009 test year and an additional increase in the annual revenue requirement of approximately $516 thousand for the 2010 step increase. The determination of the impact on revenue requirement is addressed in Issue 4 and is shown on Schedules 5 and 6.

Issue 4: Should the annual base rate revenue increase and the step increase granted in Order No. PSC-09-0283-FOF-EI be revised to reflect the revised weighted average cost of capital?

Recommendation: Yes. Staff recommends that the approved annual base rate revenue increase should be increased from $104,268,536 to $113,604,121, a $9,335,585 increase, to reflect the revised weighted average cost of capital. In addition, the approved 2010 step increase should be increased from $33,561,370 to $34,077,079, a $515,709 increase. (Slemkewicz)

Staff Analysis: Per Order No. PSC-09-0283-FOF-EI, TECO was granted an annual base rate revenue increase of $104,268,536, effective May 7, 2009. TECO was also granted a step increase of $33,561,370, effective January 1, 2010. The calculation of these revenue requirements was based on an overall rate of return of 8.11 percent. Based on staff's analysis of the methodology for reconciling the rate base with the capital structure in Issue 3, the recommended overall rate of return is 8.29 percent. As a result, the revenue requirements calculations need to be revised to reflect the 8.29 percent overall rate of return. The calculation of these revenue requirements is shown on Schedules 1 through 6. A summary of those calculations is as follows:

Line No.		As Approved	Staff Adjusted	Difference
1.	Rate Base	$3,437,610,836	$3,437,610,836	
2.	Overall Rate of Return	8.11%	8.29%	
3.	Required Net Operating Income (1)x(2)	278,790,239	284,977,938	
4.	Achieved Net Operating Income	215,013,533	215,491,046	
5.	Net Operating Income Deficiency (3)-(4)	63,776,706	69,486,893	
6.	Net Operating Income Multiplier	1.63490	1.63490	
7.	Operating Revenue Increase (5)x(6)	$104,268,536	$113,604,121	$9,335,585
8.	Step Increase	$33,561,370	$34,077,079	$515,709
9.	Total (7)+(8)	$137,829,906	$147,681,200	$9,851,294

Schedule 1 shows the calculation of the 2009 projected test year rate base. No adjustments have been made to this schedule as a result of the recommendation to recalculate the weighted average cost of capital in Issue 3.

Schedule 2 is a recalculation of the 2009 projected test year weighted average cost of capital based on the recommendation discussed in Issue 3. The weighted average cost of capital increased from 8.11 percent to 8.29 percent.

Schedule 3 recalculates the 2009 projected test year net operating income (NOI). As a result of the revisions of the dollar amount of the capital structure components for long-term debt, short-term debt and customer deposits, the interest synchronization adjustment to income

taxes decreased from $984,709 to $507,196. Therefore, the amount of NOI increased from $215,013,533 to $215,491,046.

Schedule 4 is the calculation of the NOI multiplier. The 1.63490 NOI multiplier was not affected by the recommendation to recalculate the weighted average cost of capital in Issue 3.

Schedule 5 shows the revenue requirements calculation for the 2009 projected test year. Based on the revised overall rate of return of 8.29 percent (Schedule 2) and the revised NOI of $215,491,046 (Schedule 3), the revenue requirements increased from $104,268,536 to $113,604,121, an increase of $9,335,585.

Schedule 6 calculates the 2010 step increase revenue requirements. Based on the revised overall rate of return of 8.29 percent (Schedule 2), the step increase revenue requirements of $33,561,370 increased to $34,077,079, a $515,709 increase.

Issue 5: How should the revised annual base revenue increase be distributed among the rate classes?

Recommendation: If the Commission approves a revised annual base revenue increase in Issue 4, the increase should be allocated to each rate class consistent with the cost of service methodology approved in the Final Order to retain the relative class relationships. (Draper)

Staff Analysis: If the Commission approves the revised annual base revenue increase discussed in Issue 4, base rates will need to be revised. The current rates approved in the Final Order have been in effect since May 7, 2009. The revised annual base revenue increase approved in Issue 4 should be allocated to each rate class, consistent with the cost of service methodology approved in the Final Order to retain the relative class relationships. Once the dollar increase per class is established, the base rate energy and demand charge should be increased by the percentage increase in class revenues. If the Commission does not approve a revision to the base rate increase approved in the Final Order, this issue is moot.

The methodology for distributing the step increase has been approved in the Final Order. The step increase has been approved to become effective January 1, 2010, provided that the investments in the five CTs and the Rail Facility are in service by December 31, 2009.

Issue 6: What is the appropriate effective date for TECO's revised rates and charges?

Recommendation: If the Commission approves the revised annual base rate revenues recommended increase in Issue 4, the revised rates and charges should become effective for meter readings on or after 30 days following the date of the Commission vote. TECO should file revised tariffs to reflect the revised annual base rate increase approved in Issue 4 for administrative approval. Pursuant to Rule 25-22.0406(8), F.A.C., customers should be notified of the revised rates in their first bill containing the new rates. A copy of the notice should be submitted to staff for approval prior to its use. (Draper, Young)

Staff Analysis: All new rates and charges should become effective for meter readings on or after 30 days from the date of the Commission vote approving them. This will ensure that customers are aware of the new rates before they are billed for usage under the new rates.

TECO should file revised tariffs to reflect the revised annual base rate revenue increase approved in Issue 4 for administrative approval. Pursuant to Rule 25-22.0406(8), F.A.C., customers should be notified of the revised rates in their first bill containing the new rates. A copy of the notice should be submitted to staff for approval prior to its use.

Staff believes this adjustment should be collected from TECO's customers on a prospective basis. TECO did not request a surcharge going back to the effective date of the Final Order, which was May 15, 2009. Moreover, if the Commission approves the adjustment recommended by staff in Issue 3, the rate adjustment resulting from this decision will become final within the 12-month clock established by Section 366.06(3), F.S. The file and suspend law requires the Commission to take final action "and enter its final order within 12 months of the commencement date for final agency action." In reaching this conclusion, staff reviewed GTE Florida Inc. v. Clark, 668 So. 2d 971 (Fla. 1996), where the Court mandated "that GTE be allowed to recover its erroneously disallowed expenses through the use of a surcharge." GTE is not applicable here because (1) TECO did not request a surcharge, as GTE did; and (2) the Commission's corrected order will be entered within the 12-month clock established by statute, whereas there was a two-year lag between the Commission's erroneous order and the time GTE began collecting the erroneously disallowed expenses from its ratepayers.

Issue 7: Should this docket be closed?

Recommendation: Yes. This docket should be closed upon the expiration of the time for appeal. (Young, Brown)

Staff Analysis: This docket should be closed upon the expiration of the time for appeal.

TAMPA ELECTRIC COMPANY
DOCKET NO. 080317-EI
13-MONTH AVERAGE RATE BASE
DECEMBER 2009 TEST YEAR
As Approved in Order No. PSC-09-0283-FOF-EI

SCHEDULE 1

Issue No.		Plant in Service	Accumulated Depreciation	Net Plant in Service	CWIP	Plant Held for Future Use	Net Plant	Working Capital	Total Rate Base
	Adjusted per Company	5,483,474,000	(1,934,489,000)	3,548,985,000	101,071,000	37,330,000	3,687,386,000	(30,586,000)	3,656,800,000
	Commission Adjusiments:								
4	Non-Utility Activities	0	0	0	0	0	0	0	0
5	Combustion Turbine Annualization	(134,439,000)	3,750,000	(130,689,000)	0	0	(130,689,000)	0	(130,689,000)
6	CSX Credit - Big Bend Rail Project	0	0	0	0	0	0	0	0
7	Big Bend Rail Project Annualization	(45,206,000)	452,000	(44,754,000)	0	0	(44,754,000)	0	(44,754,000)
8	Plant in Service Amount	(35,671,000)	1,248,485	(34,422,515)	0	0	(34,422,515)	0	(34,422,515)
9	Customer Information System	0	0	0	0	0	0	0	0
10	Total Plant in Service	0	0	0	0	0	0	0	0
11	Total Accumulated Depreciation	0	0	0	0	0	0	0	0
12	ECRC Costs	0	0	0	0	0	0	0	0
13	Total CWIP	0	0	0	0	0	0	0	0
14	Total PHFFU	0	0	0	0	0	0	0	0
15	Deferred Dredging Costs	0	0	0	0	0	0	(1,346,649)	(1,346,649)
16	Storm Damage Reserve	0	0	0	0	0	0	6,000,000	6,000,000
17	Prepaid Pension Expense	0	0	0	0	0	0	0	0
18	Other Accounts Receivable (143)	0	0	0	0	0	0	(10,959,000)	(10,959,000)
19	Accts Rec. Associated Cos. (146)	0	0	0	0	0	0	(390,000)	(390,000)
20	OPEB Liability	0	0	0	0	0	0	0	0
21	Coal Inventory	0	0	0	0	0	0	0	0
22	Residual Oil Inventory	0	0	0	0	0	0	0	0
23	Distillate Oil Inventory	0	0	0	0	0	0	0	0
24	Natural Gas & Propane Inventories	0	0	0	0	0	0	0	0
25-S	Clause Over/Under Recoveries	0	0	0	0	0	0	0	0
26	Rate Case Expense	0	0	0	0	0	0	(2,628,000)	(2,628,000)
27	Total Working Capital	0	0	0	0	0	0	0	0
32	Imputed Equity Infusion	0	0	0	0	0	0	0	0
				0			0		0
				0			0		0
				0			0		0
				0			0		0
				0			0		0
---	Total Commission Adjustments	(215,316,000)	5,450,485	(209,865,515)	0	0	(209,865,515)	(9,323,649)	(219,189,164)
28	Commission Adjusted Rate Base	5,268,158,000	(1,929,038,515)	3,339,119,485	101,071,000	37,330,000	3,477,520,485	(39,909,649)	3,437,610,836

TAMPA ELECTRIC COMPANY
DOCKET NO. 080317-EI
13-MONTH AVERAGE CAPITAL STRUCTURE
DECEMBER 2009 TEST YEAR
RECONCILIATION OF RATE BASE AND CAPITAL STRUCTURE
STAFF ADJUSTED FOR RECONSIDERATION OF THE WEIGHTED AVERAGE COST OF CAPITAL

SCHEDULE 2

Staff Adjusted	($) TECO Adjusted Amount	Equity Infusion Not Made	Imputed Equity	2 CTs May 2009	3 CTs September 2009	BB Rail Project	Rate Case Expense	Dredging O&M	Storm Damage Reserve	Staff Total Specific Adjustments	Adjusted Total
Common Equity	1,835,985,000	(50,000,000)	(38,340,000)	(19,430,142)	(50,592,280)	(23,161,474)	(874,000)	(447,257)	1,994,250	(180,850,903)	1,655,134,097
Long-term Debt	1,397,565,000	50,000,000	29,428,000	(15,308,917)	(39,861,080)	(18,248,521)	(688,000)	(352,636)	1,571,250	6,540,096	1,404,105,096
Short-term Debt	8,002,000	0	169,000	(32,746)	(86,682)	(39,489)	(1,000)	(975)	3,750	11,858	8,013,858
Preferred Stock	0	0	0	0	0	0	0	0	0	0	0
Customer Deposits	103,724,000	0	2,184,000	(1,136,491)	(2,958,736)	(1,354,168)	(51,000)	(26,338)	116,250	(3,226,483)	100,497,517
Deferred Income Taxes	302,744,000	0	6,375,000	(216,704)	(1,065,222)	(1,950,348)	(1,014,000)	(519,443)	2,314,500	3,923,783	306,667,783
Tax Credits - Zero Cost	0	0		0	0	0	0	0	0	0	0
Tax Credits - Weighted Cost	8,780,000	0	184,000	0	0	0	0	0	0	184,000	8,964,000
Total	3,656,800,000	0	0	(36,125,000)	(94,564,000)	(44,754,000)	(2,628,000)	(1,346,649)	6,000,000	(173,417,649)	3,483,382,351
Equity Ratio	56.64%										53.96%

	Adjusted Total	Ratio	Projected Level of Plant in Service	Other Accounts Receivable (143)	Accounts Receivable Associated Cos.	Staff Total Pro Rata Adjustments	($) Staff Adjusted	Ratio	Cost Rate	Weighted Cost
Common Equity	1,655,134,097	47.52%	(16,398,105)	(5,913,635)	(210,450)	(22,522,190)	1,632,611,907	47.49%	11.25%	5.34%
Long-term Debt	1,404,105,096	40.31%	(13,911,056)	(5,016,732)	(178,531)	(19,106,320)	1,384,998,776	40.29%	6.80%	2.74%
Short-term Debt	8,013,858	0.23%	(79,397)	(28,633)	(1,019)	(109,048)	7,904,810	0.23%	2.75%	0.01%
Preferred Stock	0	0.00%	0	0	0	0	0	0.00%	0.00%	0.00%
Customer Deposits	100,497,517	2.89%	(995,671)	0	0	(995,671)	99,501,846	2.89%	6.07%	0.18%
Deferred Income Taxes	306,667,783	8.80%	(3,038,286)	0	0	(3,038,286)	303,629,497	8.83%	0.00%	0.00%
Tax Credits - Zero Cost	0	0.00%	0	0	0	0	0	0.00%	0.00%	0.00%
Tax Credits - Weighted Cost	8,964,000	0.26%	0	0	0	0	8,964,000	0.26%	9.19%	0.02%
Total	3,483,382,351	100.00%	(34,422,515)	(10,959,000)	(390,000)	(45,771,515)	3,437,610,836	100.00%		8.29%
Equity Ratio	53.96%						53.96%			

Interest Synchronization	($) Adjustment Amount	Cost Rate	($) Effect on Interest Exp.	Tax Rate	($) Effect on Income Tax
Dollar Amount Change					
Long-term Debt	(12,566,224)	6.80%	(854,503)	38.575%	329,625
Short-term Debt	(97,190)	4.63%	(4,500)	38.575%	1,736
Customer Deposits	(4,222,154)	6.07%	(256,285)	38.575%	98,862
					430,222
Cost Rate Change					
Short-term Debt	8,002,000	-1.88%	(150,438)	38.575%	58,031
Tax Credits - Weighted Cost	8,780,000	-0.56%	(49,106)	38.575%	18,943
					76,974
TOTAL					507,196

Docket No. 080317-EI
Date: July 6, 2009

TAMPA ELECTRIC COMPANY
DOCKET NO. 080317-EI
NET OPERATING INCOME
DECEMBER 2009 TEST YEAR

SCHEDULE 3

STAFF ADJUSTED FOR RECONSIDERATION OF THE WEIGHTED AVERAGE COST OF CAPITAL

		Operating Revenues	O&M - Fuel & Purchased Power	O&M Other	Depreciation and Amortization	Taxes Other Than Income	Total Income Taxes	(Gain)/Loss on Disposal of Plant	Total Operating Expenses	Net Operating Income
	Adjusted per Company	865,359,000	7,614,000	370,934,000	194,608,000	62,275,000	48,492,000	(1,534,000)	682,389,000	182,970,000
	Staff Adjustments:									
2	Revenue Forecast	0	0	0	0	0	0	0	0	0
8	Plant in Service Amount	0	0	0	(1,248,485)	0	481,603	0	(766,882)	766,882
39	Total Operating Revenues	0	0	0	0	0	0	0	0	0
40-S	Inflation Factors	0	0	0	0	0	0	0	0	0
41	Total O&M Expense	0	0	0	0	0	0	0	0	0
42-S	FAC Revenues and Expenses	0	0	0	0	0	0	0	0	0
43-S	ECCR Revenues and Expenses	0	0	0	0	0	0	0	0	0
44-S	CCRC Revenues and Expenses	0	0	0	0	0	0	0	0	0
45-S	ECRC Revenues and Expenses	0	0	0	0	0	0	0	0	0
46	Advertising Expenses	0	0	0	0	0	0	0	0	0
47	Lobbying Expenses	0	0	0	0	0	0	0	0	0
48	Salaries and Employee Benefits	0	0	(5,195,129)	0	0	2,004,021	0	(3,191,108)	3,191,108
49	OPEB Expenses	0	0	0	0	0	0	0	0	0
50	Vacant Positions	0	0	0	0	0	0	0	0	0
51	Service reliability Initiatives	0	0	0	0	0	0	0	0	0
52	Incentive Compensation Plan	0	0	(540,000)	0	0	208,305	0	(331,695)	331,695
53	Generating Units - CSAs	0	0	0	0	0	0	0	0	0
54	Generation Maintenance Expense	0	0	(2,850,000)	0	0	1,099,388	0	(1,750,613)	1,750,613
55	Preventive Maintenance Expense	0	0	0	0	0	0	0	0	0
56	Dredging Expense	0	0	(650,056)	0	0	250,759	0	(399,297)	399,297
57	Economic Development Expense	0	0	0	0	0	0	0	0	0
58	Pension Expense	0	0	0	0	0	0	0	0	0
59	Storm Damage Accrual	0	0	(12,000,000)	0	0	4,629,000	0	(7,371,000)	7,371,000
60	Injuries & Damages Accrual	0	0	0	0	0	0	0	0	0
61	Executives' Liability Insurance	0	0	0	0	0	0	0	0	0
62	Meter & Meter Reading Expenses	0	0	0	0	0	0	0	0	0
63	Rate Case Expense Amortization	0	0	(557,750)	0	0	215,152	0	(342,598)	342,598
64	Bad Debt Expense	0	0	0	0	0	0	0	0	0
65	Office Supplies	0	0	0	0	0	0	0	0	0
66	Tree Trimming Expense	0	0	(1,314,000)	0	0	506,876	0	(807,125)	807,125
67	Pole Inspections	0	0	0	0	0	0	0	0	0
68	Transmission Inspection Expense	0	0	0	0	0	0	0	0	0
69	Outage Normalization	0	0	0	0	0	0	0	0	0
70	CIS Expenses	0	0	0	0	0	0	0	0	0
71	Combustion Turbine Annualization	0	0	(870,000)	(5,425,000)	(5,453,000)	4,531,791	0	(7,216,209)	7,216,209
72	Big Bend Rail Project Annualization	0	0	0	(906,000)	(1,039,000)	750,284	0	(1,194,716)	1,194,716
73	Depreciation Study	0	0	0	0	0	0	0	0	0
74	Total Depreciation Expense	0	0	0	0	0	0	0	0	0
75	Taxes Other Than Income	0	0	0	0	0	0	0	0	0
76	Parent Debt Adjustment	0	0	0	0	0	(9,657,000)	0	(9,657,000)	9,657,000
77	Income Tax Expense	0	0	0	0	0	0	0	0	0
	Interest Synchronization	0	0	0	0	0	507,196	0	507,196	(507,196)
	Total Staff Adjustments	0	0	(23,976,935)	(7,579,485)	(6,492,000)	5,527,374	0	(32,521,046)	32,521,046
78	Fall Out - Staff Adjusted NOI	865,359,000	7,614,000	346,957,065	187,028,515	55,783,000	54,019,374	(1,534,000)	649,867,954	215,491,046

SCHEDULE 4

TAMPA ELECTRIC COMPANY
DOCKET NO. 080317-EI
DECEMBER 2009 PROJECTED TEST YEAR
NET OPERATING INCOME MULTIPLIER
As Approved in Order No. PSC-09-0283-FOF-EI

Line No.		(%) As Filed	(%) Commission Approved
1	Revenue Requirement	100.000	100.000
2	Gross Receipts Tax	0.000	0.000
3	Regulatory Assessment Fee	(0.072)	(0.072)
4	Bad Debt Rate	(0.349)	(0.349)
5	Net Before Income Taxes	99.579	99.579
6	Income Taxes (Line 5 x 38.575%)	(38.413)	(38.413)
7	Revenue Expansion Factor	61.166	61.166
8	Net Operating Income Multiplier (100%/Line 7)	1.63490	1.63490

SCHEDULE 5

TAMPA ELECTRIC COMPANY
DOCKET NO. 080317-EI
DECEMBER 2009 PROJECTED TEST YEAR
REVENUE REQUIREMENTS CALCULATION
ADJUSTED FOR RECONSIDERATION OF THE WEIGHTED AVERAGE COST OF CAPITAL

Line No.		Commission As Approved	Staff Adjusted
1.	Rate Base	$3,437,610,836	$3,437,610,836
2.	Overall Rate of Return	8.11%	8.29%
3.	Required Net Operating Income (1)x(2)	278,790,239	284,977,938
4.	Achieved Net Operating Income	215,013,533	215,491,046
5.	Net Operating Income Deficiency (3)-(4)	63,776,706	69,486,893
6.	Net Operating Income Multiplier	1.63490	1.63490
7.	Operating Revenue Increase (5)x(6)	$104,268,536	$113,604,121
	DIFFERENCE		**$9,335,585**

SCHEDULE 6

TAMPA ELECTRIC COMPANY
DOCKET NO. 080317-EI
CALCULATION OF JANUARY 1, 2010 STEP INCREASE
STAFF ADJUSTED FOR RECONSIDERATION OF THE WEIGHTED AVERAGE COST OF CAPITAL

Step Increase Revenue Requirement

	REVISED	APPROVED	DIFFERENCE
Big Bend Rail Facility	7,138,274	7,006,720	**131,554**
May 2009 CTs	8,030,533	7,924,344	**106,189**
September 2009 CTs	18,908,273	18,630,306	**277,967**
Total Step Increase	34,077,079	33,561,370	**515,709**

Line No.		Big Bend Rail Facility	May CTs (2 Units)	September CTs (3 Units	Total CTs (5 Units)
1	Net Plant in Service	44,754,000	36,125,000	94,563,000	130,688,000
2	Rate Of Return*	8.29%	8.29%	8.29%	8.29%
3	Required Return (2x3)	3,710,107	2,994,763	7,839,273	10,834,035
4	O&M Expenses	0	212,000	658,000	870,000
5	Depreciation	906,000	1,391,000	4,034,000	5,425,000
6	Taxes Other Than Income	1,039,000	2,226,000	3,227,000	5,453,000
7	Income Taxes (4+5+6)x-.38575	(750,284)	(1,477,037)	(3,054,754)	(4,531,791)
8	Income Tax Effect of Interest* [(1) x 3.12% x -.38575]	(538,639)	(434,784)	(1,138,118)	(1,572,903)
9	Total NOI Requirement (3+4+5+6+7+8)	4,366,184	4,911,941	11,565,400	16,477,342
10	NOI Multiplier*	1.6349	1.6349	1.6349	1.6349
11	Revenue Requirement (9x10)	7,138,274	8,030,533	18,908,273	26,938,806

	Amount	Ratio	Cost Rate	Weighted Cost
Common Equity*	1,632,611,907	53.96%	N/A	N/A
Long Term Debt*	1,384,998,776	45.78%	6.80%	3.11%
Short Term Debt*	7,904,810	0.26%	2.75%	0.01%
Total	3,025,515,493	100.00%		3.12%

*Based on Staff's Recommendation