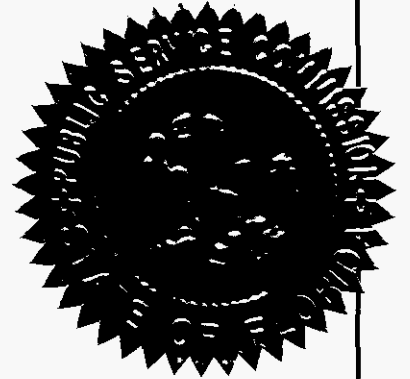


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 080317-EI

PETITION FOR RATE INCREASE BY
TAMPA ELECTRIC COMPANY.



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 17

COMMISSIONERS
PARTICIPATING: CHAIRMAN MATTHEW M. CARTER, II
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER KATRINA J. McMURRIAN
COMMISSIONER NANCY ARGENZIANO
COMMISSIONER NATHAN A. SKOP

DATE: Tuesday, July 14, 2009

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR, CRR
Official FPSC Reporter
(850) 413-6734

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

P R O C E E D I N G S

1
2 **CHAIRMAN CARTER:** And with that, we are
3 prepared now, staff, for Item 17. Let's give staff a
4 moment here, and then we'll get our notes together,
5 Commissioners, and we'll move now to Item 17. Let's
6 take one second and give staff a moment here. Just hold
7 on everybody, just hold on.

8 There's another chair there. Mike, do you
9 want to take that? Okay. Everybody ready?

10 Okay. Staff, you're recognized.

11 **MR. YOUNG:** Thank you. Good morning,
12 Commissioners. Keino Young, legal staff.

13 Item 17 is staff's recommendation regarding
14 the motions for reconsideration in the TECO rate case,
15 Docket No. 080317. Staff recommends that before the
16 Commission vote on each issue that staff be given an
17 opportunity to briefly introduce the item.

18 Issue 1 addresses the request for oral
19 arguments by the Intervenors and TECO on the
20 Intervenors' motion for reconsideration. Staff believes
21 oral arguments on the Intervenors' motion for
22 reconsideration will assist the Commission to resolve
23 the issues raised in the motion and TECO's response to
24 the motion. Therefore, staff recommends that the
25 Commission grant the Intervenors' and TECO requests for

1 oral arguments. Staff recommends that oral arguments be
2 limited to 15 minutes per side.

3 **CHAIRMAN CARTER:** Okay. Commissioners, you
4 want to just take it up item by item? Why don't we just
5 go ahead on and do Item 1, and we'll give 15 minutes a
6 side and we'll take up this first issue.

7 **COMMISSIONER EDGAR:** Mr. Chairman, if you need
8 a motion on Issue 1, I would move that we approve the
9 staff recommendation and hear oral argument.

10 **COMMISSIONER SKOP:** Second.

11 **CHAIRMAN CARTER:** Moved and properly seconded
12 that we accept staff's recommendation on Item, Issue 1.
13 All in favor, let it be known by the sign of aye.

14 (Unanimous affirmative vote.)

15 All those opposed, like sign. Show it done.

16 Okay. It's the Intervenors' motion, so the
17 Intervenors will go first. Fifteen minutes a side?

18 **MR. YOUNG:** Yes, sir.

19 **CHAIRMAN CARTER:** You guys, is that right?

20 **MR. YOUNG:** Yes, sir.

21 **CHAIRMAN CARTER:** You guys have already broken
22 it up on how you're going to do it?

23 **MS. CHRISTENSEN:** Yes, Commissioner.

24 **CHAIRMAN CARTER:** All right, then. Roll with
25 it. Good morning.

1 **MS. CHRISTENSEN:** Okay. Good morning.

2 **MR. YOUNG:** Excuse me, sir.

3 **CHAIRMAN CARTER:** Yes, ma'am. Yes, sir.

4 **MR. YOUNG:** If staff could briefly introduce
5 Issue 2, given the fact that Issue 2 is dealing with the
6 Intervenors' motion for reconsideration.

7 **CHAIRMAN CARTER:** Okay. I'm sorry. You're
8 recognized.

9 **MR. YOUNG:** Thank you, sir.

10 Issue 2 is whether the Commission should grant
11 the Intervenors' motion for reconsideration. Staff
12 recommends that the Intervenor motion -- Intervenors'
13 motion be denied because they have failed to identify a
14 point of law or a fact that was overlooked or which the
15 Commission failed to consider when it approved the step
16 increase deferring recovery of the costs for the CTs and
17 the Rail Facilities.

18 However, staff recommends that the Commission
19 clarify its final order to indicate that the parties
20 will have a point of entry to contest the continuing
21 need of the CTs and the revisions to the revenue
22 requirements for the CTs and the Rail Facilities.

23 Thank you.

24 **CHAIRMAN CARTER:** Okay. We're on Issue 1, 15
25 minutes a side. You're recognized. You may proceed.

1 **MS. CHRISTENSEN:** Good morning, Commissioners.
2 My name is Patty Christensen and I'm with the Office of
3 Public Counsel.

4 We are here today to discuss Intervenors'
5 motion for reconsideration of the Commission's decision
6 in the TECO rate increase, and today we will highlight
7 some of the significant points we raised in our motion.
8 But due to the time constraints, we will be addressing
9 -- we will not be addressing all of the points made. We
10 would like to reserve two minutes for rebuttal.

11 Specifically, we ask that the Commission
12 reconsider its step increase. None of the parties had
13 noticed that a step increase was a potential treatment
14 for the CT units or the Big Bend Rail Facility. Simply
15 put, we, the Intervenors, were not afforded our due
16 process rights with regards to the Commission's decision
17 to give the CT units the step increase treatment.

18 TECO asked to annualize the cost of the five
19 CT units and the Big Bend Rail Facility that it claimed
20 were going into service in 2009. According to the
21 testimony filed, two of the CT units were going into
22 service in May and three were going into service in
23 September 2009. TECO did not ask for or add an issue of
24 whether the CT units or the Big Bend Rail Facility
25 should be granted step increase treatment.

1 At the hearing, TECO's president, Witness
2 Black, testified that the three September CT units might
3 not go into service due to the current economics. This
4 was sworn, unrefuted testimony. The only mention of a
5 step increase was an extraordinary comment made by
6 TECO's Witness Chronister in response to a question by
7 Commissioner Edgar.

8 Commissioner Edgar asked if TECO would come
9 back and if the CT units and the Rail Facility were not
10 included in base rates in whole or in part. And TECO
11 Witness Chronister responded that they would come back
12 in if the -- as the projects went into service, and then
13 he added as an aside that the Commission could do a step
14 increase.

15 Out of the 2,455 pages of hearing transcripts,
16 this was the only mention of the step increase, and
17 there were no follow-up questions, nor did any of the
18 parties ask about a step increase, because it was not an
19 issue in the case.

20 In its posthearing procedures, TECO did not
21 raise the issue before the hearing according to the
22 Commission's own prehearing orders. They did not raise
23 the issue, and without raising that issue before the
24 hearing it is waived without good cause being shown.
25 The Commission did not request that the parties address

1 this potential step increase treatment in the
2 posthearing briefs, nor did TECO raise this as an issue
3 to be addressed in the posthearing, or was such a
4 request granted by the Commission.

5 TECO slipped in a discussion of a step
6 increase under the annualization issues, even though
7 this type of treatment would have been given its own
8 issue had it been raised in a timely manner. TECO also
9 slipped in the comment on the step increase related to
10 the CT units in Late-Filed Exhibit Number 112, where the
11 Commission had only asked for the revenue impacts of
12 removing the September CT units from the 2009 test year.

13 Citizens raised an objection to any
14 information in a late-filed exhibit that was outside the
15 parameters of what was described. Clearly TECO's
16 attempt to add information in this Late-Filed Exhibit
17 112 about the new in-service dates and the step increase
18 is unsworn, unsubstantiated hearsay that went beyond the
19 scope of what was requested in late-filed, which was
20 only a revenue, excuse me, revenue calculation.

21 Citizens still object to the extraneous
22 in-service information and extraneous step increase
23 information contained in Late-Filed Exhibit 112 since
24 it's beyond the scope of what was requested. And it is
25 inappropriate for the staff recommendation to rely on

1 this extraneous information as a basis to say that
2 TECO's requested step increase should have been
3 addressed by Intervenors in a posthearing brief.

4 Since this was not in TECO's petition,
5 testimony, or raised as an issue, none of the other
6 parties addressed the potential step increase, the step
7 increase is not a natural or a logical subcategory of
8 the annualization treatment that was requested by TECO.
9 In fact, staff's recommendation on the final rates did
10 not even address a step increase because it was not an
11 issue in this case. The first time it was addressed was
12 by the staff in a supplemental one-page document that
13 was provided for the first time to the parties on the
14 day of agenda.

15 All of these points are undisputed facts and
16 demonstrate the total lack of due process that was given
17 Intervenors regarding the step increase. Contrary to
18 staff's recommendation, there are numerous grounds for
19 reconsidering the Commission's step increase. And I
20 want to highlight a few of the shortcomings in staff's
21 recommendation.

22 We agree that the annualization was properly
23 before the Commission, but the step increase was not.
24 To allow one party to solely add an issue, discuss an
25 issue without allowing the other parties to address it

1 is a blatant violation of due process. As I said
2 before, it is outside of -- the step increase is outside
3 of the test year and it's not a logical or natural flow
4 from the dispute on whether or not the company provided
5 substantial competent evidence to support recovery for
6 those capital items in the test year, nor is it within a
7 range of options, like choosing an ROE that's between
8 the high and low of a range, assuming that there's
9 competent substantial evidence.

10 Although staff claims that the parties will
11 have a point of entry to protest a step increase based
12 on its clarification, as it was, the process was stated
13 in the final order, it was designed to limit the time
14 and cost to conduct a limited proceeding. And even with
15 the clarification that staff recommends in its
16 recommendation, it is not shown how parties would be
17 granted a point of entry to fully litigate the
18 Commission's future decision on whether to approve the
19 costs associated with the step increase.

20 Further, claiming that the amount recovered
21 may be lessened, the potential increase outlined in the
22 order does not cure the 120 violation. Persons whose
23 substantial rights will be affected by a decision have a
24 right to protest, and under the Commission's language we
25 are given no such right. And staff's recommendation I

1 think misstates the process that was outlined in the
2 final order.

3 Finally, the recommendation asserts that the
4 costs for the units are not speculative. We believe
5 that that is just wrong. If the costs of the CT units
6 were not speculative, there would be no need to evaluate
7 whether the units were going to be actually placed into
8 service January 1st, 2010.

9 The Commission has authority to set rates as
10 defined by the statutes, specifically 366.06 and
11 366.076, which the Commission must follow. Thus, the CT
12 units that are not in service cannot possibly be used
13 and useful in the public service. Allowing recovery of
14 such costs violates Section 366.061, because only actual
15 costs that are used and useful in the public service can
16 be considered by the Commission for cost recovery.

17 There is overwhelming reasons that this
18 Commission should reconsider its decision regarding the
19 step increase. The Commission should implement a
20 statute with an eye for restraint: Restraining the
21 costs to the customers, making the company prove up not
22 only the need for the costs, but that these costs for
23 these items are being used for the public service at the
24 time they are being requested for recovery.

25 Finally, the Commission should not wander into

1 dangerous territory that would create a process that
2 would allow parties' due process rights to be violated
3 and the fairness of the Commission's process to be
4 questioned.

5 Thank you.

6 **CHAIRMAN CARTER:** Okay. You just used eight
7 minutes.

8 **MS. KAUFMAN:** I think I'm next.

9 **CHAIRMAN CARTER:** Okay.

10 **MS. KAUFMAN:** Good morning, Commissioners.
11 I'm Vicki Gordon Kaufman. I am with the law firm of
12 Keefe, Anchors, Gordon & Moyle here in Tallahassee, and
13 I am appearing here on behalf of the Florida Industrial
14 Power Users Group, who, as you know, was a vigorous
15 participant in the rate case.

16 Ms. Christensen has ably provided you with the
17 background and history of the Intervenors' motion for
18 reconsideration here, and we support and endorse her
19 concerns. I'm going to try not to repeat what she said.

20 I just want to focus on one aspect of the
21 recommendation with which we take grave issue and which
22 Ms. Christensen discussed somewhat, and that relates to
23 what we view as a denial of our due process rights as
24 well as our rights under the Administrative Procedure
25 Act to be on notice of and have the opportunity to

1 respond to critical substantive issues in the case. And
2 of course I'm referring to this second step increase.

3 As Ms. Christensen alluded to, the first time
4 the parties had any notice or knowledge that this was to
5 be considered in this case was when we walked into the
6 decision conference and that one-page handout was
7 distributed. And as you're aware, it's your policy and
8 practice that during the decision conference after a
9 hearing the parties are not permitted to participate,
10 and the dialogue was between the Commissioners and the
11 staff. So we had no opportunity to participate at that
12 point.

13 This second step increase is a critical issue
14 in the case of which we had no notice and no opportunity
15 to provide any input. And while your staff tells you in
16 the recommendation that due process is flexible, I think
17 the requirements of notice and an opportunity to respond
18 are sort of the underpinnings of the entire concept of
19 due process.

20 The fact that we were not on notice is clear,
21 because this wasn't an issue in the Prehearing Order.
22 And, again, it's your practice and procedure to require
23 all parties to delineate the issues that are going to be
24 litigated so that everybody will know what's on the
25 table and prepare their case accordingly. This didn't

1 happen in this case in regard to this issue.

2 On Page 10 of the recommendation, it seems to
3 me that staff appears to concede that the step increase
4 was not a noticed issue because they have set out the
5 two issues that related to the CTs and the rail project.
6 And then they go on to suggest that, that any due
7 process concerns that Intervenors might have are taken
8 care of by the fact that the parties could present,
9 quote, possible alternative ways, close quote, to
10 account for the cost.

11 Commissioners, Intervenors would not have any
12 reason to present possible alternative ways to account
13 for the cost. We responded in -- we -- our testimony is
14 directed to TECO's request. We said that their request
15 should be denied. Certainly we're not going to suggest
16 alternative ways to recover costs that we did not think
17 should be recovered.

18 And we weren't -- I don't think due process
19 requires the parties to address an alternative universe
20 of things that the Commission might do in a case.
21 That's why we delineate the issues, so the parties know
22 what's on the table.

23 Ms. Christensen referred to Mr. Chronister's
24 passing reference to the step increase. Of course that
25 occurred when he was on the stand, well after testimony

1 had been filed in the case. Staff suggests that we
2 should have cross-examined him about that, that issue.
3 I don't think, again, the burden is on the parties to
4 cross-examine a witness on every single statement that
5 witness makes because perhaps that might be something
6 that the Commission would consider as an alternative.
7 That wasn't an issue in the case and we had no idea that
8 it would become one, and thus there was no reason for us
9 to cross-examine him on that.

10 And as to Issue 112, as Ms. Christensen said,
11 that went far beyond what was asked for. Again, there
12 was no opportunity to respond.

13 And we think that all of these things taken
14 together and given the significance of this issue make
15 it clear that there has been a violation of our rights,
16 and we think that your remedy in this case is to
17 reconsider this portion of the order and reverse that
18 step increase that you have approved.

19 Thank you.

20 **CHAIRMAN CARTER:** I'm keeping time, because
21 Ms. Christensen wanted to reserve the two minutes for
22 rebuttal. So that's three additional minutes, so now
23 you have -- you've used 11 minutes.

24 You're recognized.

25 **MS. BRADLEY:** Cecilia Bradley, Office of the

1 Attorney General, and I won't take 11 minutes.

2 We are here to support the Office of Public
3 Counsel, and I'll try to be brief. I would note that
4 because of the brevity of the time we have, we won't try
5 to address every issue and will rely, to the extent it's
6 not covered in oral argument here, on our written
7 motion. We don't want to waive anything.

8 The main -- as has already been mentioned, we
9 have concerns about due process: One in regards to the
10 step increase, and secondly in regards to the Exhibit
11 112. There was no notice, as has been mentioned. And
12 due process requires notice and an opportunity to be
13 heard. And here we had no notice. It was not in any of
14 the issues that were -- despite all the meetings we had
15 going through issues and what was going to be addressed.
16 There was no testimony or evidence that was offered in
17 support of a step increase.

18 And, finally, there were no rules that the
19 Commission has adopted to say how that would be
20 enforced. And while it gives, the statute gives the
21 Commission the option of doing step increases, it does
22 require rules if they do that, and there are no rules.

23 Now we mentioned the Exhibit 112. And as
24 noted, that was -- came in over, over objection, at
25 least to the extent it exceeded the required late-filed

1 information. And this extra information was not part of
2 that requested information. It was something that was
3 thrown at the last minute and would be over objection,
4 and I'm not sure that it was ever admitted in as part of
5 the record. And furthermore, it was not any indication
6 that it was going to be relied upon until the response,
7 staff's response to our motion for reconsideration. At
8 that point they said they were relying on the Exhibit
9 112. It's fundamental error to rely on something
10 outside the record and that the parties have not had any
11 opportunity to address.

12 There was no notice of the step increase until
13 the agenda conference. At that time there was not an
14 opportunity for the rest of the parties to object and to
15 cross or have any opportunity to address this additional
16 issue that had been raised at the last second. And
17 because of the lack of notice and the lack of
18 opportunity to address, then we would say there is no
19 due process and it would be reversible error for the
20 Commission to rely on and do that at this time.

21 Thank you.

22 **CHAIRMAN CARTER:** Thank you. Ms. Christensen,
23 that's 13 minutes, and you wanted to reserve two for
24 rebuttal.

25 **MS. CHRISTENSEN:** I think we still do.

1 **CHAIRMAN CARTER:** Okay. Well, okay. You're
2 recognized, so --

3 **MR. LAVIA:** Good morning, Commissioners. I'll
4 take 30 seconds.

5 My name is Jay Lavia. I'm with the law firm
6 of Young van Assenderp. I'm appearing on behalf of the
7 Florida Retail Federation.

8 In essence we agree with -- because of the
9 time constraints, we agree with and adopt the comments
10 of the other Intervenors.

11 Thank you.

12 **CHAIRMAN CARTER:** Mr. Twomey.

13 **MR. TWOMEY:** I'll wait and take the minute and
14 a half or minute and 45 seconds that's for rebuttal.

15 **CHAIRMAN CARTER:** For rebuttal?

16 **MR. TWOMEY:** Yes, sir.

17 **CHAIRMAN CARTER:** Okay. Thank you.

18 **MR. TWOMEY:** Thank you.

19 **CHAIRMAN CARTER:** We'll give you two minutes,
20 Mr. Twomey. How about that?

21 **MR. TWOMEY:** Generosity is welcome.

22 **CHAIRMAN CARTER:** See? It's a great day. I
23 told you guys it was going to be a great day.

24 Mr. Willis.

25 **MR. WILLIS:** I am Lee Willis representing

1 Tampa Electric Company.

2 Tampa Electric supports staff's recommendation
3 that this Commission affirm your decision to grant the
4 step increase approved in your April 30th order.
5 Intervenors have advanced several points which center
6 around and essentially repackage a central theme that
7 they were denied due process of law and that the
8 Commission lacks the authority to approve a step
9 increase. All of these points are without merit, as
10 your staff points out in its well-reasoned analysis.

11 There has been no departure from the essential
12 requirements of law. There has been no lack of notice.
13 There has been no lack of opportunity to litigate. The
14 fact is that the Commission reached a fair compromise
15 between two hotly contested litigation positions that
16 were extensively discussed in the record of this case.
17 One of the central focuses of the hearing in this case
18 was -- revolved around Tampa Electric's five combustion
19 turbines that were going into service in 2009 and its
20 rail loading facility. The appropriate ratemaking
21 treatment of these assets was identified in specific
22 issues in the Prehearing Order.

23 In these issues, Tampa Electric proposed an
24 immediate recovery of all of the costs of that -- of
25 each of these facilities when the new rates went into

1 effect. Intervenors, on the other hand, urged that a
2 significant portion of that investment be totally
3 ignored for ratemaking purposes.

4 In our opening statements, we specifically
5 discussed the ratemaking treatment of these assets. In
6 there we pointed out, and I quote, failure to recognize
7 these investments will cause an immediate and severe
8 drop in the company's earned return, which essentially
9 will build in a need for a rate proceeding in 2010.
10 Such a severe consequence should be avoided by
11 meaningfully recognizing these facilities in this case.

12 Now there was extensive cross-examination in
13 the case of witnesses Black, Hornick, and Chronister by
14 Intervenors, by the staff and the Commission as well.
15 The entire essence of and the most important part of
16 this was when this investment should be recognized. And
17 after a considerable discussion of alternatives, Tampa
18 Electric's preferred, Tampa Electric's preferred
19 approach, Charles Black, Tampa Electric's president,
20 testified, after a lengthy cross-examination, that to
21 the extent that these assets are recognized for
22 ratemaking purposes when they're placed in service, the
23 company would be agreeable to such a treatment. And
24 that was at transcript 178.

25 Now Jeff Chronister also testified in support

1 of the requested annualization and noted the significant
2 size that this investment, if ignored, would require a
3 request for an additional rate increase when the assets
4 went into service. He also pointed out that in lieu of
5 a costly additional proceeding, the Commission has the
6 alternative, as an alternative the ability to authorize
7 a step change coinciding with when the facilities go in
8 service. Witness Chronister made these statements, and
9 then Intervenors were given an opportunity to
10 cross-examine him after he made those statements and
11 they chose not to do so.

12 Staff's original recommendation in this case
13 recognized the severe impact that failure to recognize
14 the full investment could have, saying, this impact
15 could drive TECO's achieved ROE to a level below the
16 bottom of its authorized range within a year of
17 establishing rates in this proceeding.

18 We also pointed out in our brief that the
19 Commission had the alternative of a step increase, and
20 suggested that you recognize the investment if you don't
21 allow immediate recovery as we requested.

22 Now the bottom line here is that the step
23 increase approved by the Commission constitutes
24 significantly less relief than requested by the company,
25 which sought immediate relief. The Commission granted

1 lesser relief by delaying the effective date of the full
2 consideration of these assets from May until January of
3 next year.

4 Now it's important for you to keep your eye on
5 the essential issue here, which is the request of Tampa
6 Electric for the recognition of its substantial
7 investment and when that investment should be
8 recognized.

9 In virtually every decision before this
10 Commission you weigh the evidence that is presented to
11 you. A good example of this is the Commission's
12 consideration of rate case expense. Tampa Electric
13 requested that the amortization of rate case expense be
14 over three years. Intervenors urged that it be made
15 over five years. This Commission decided that the
16 amortization would be over four years, even though no
17 party specifically advocated that particular treatment.

18 Likewise, you reached a position in between
19 the litigation positions of the parties with respect to
20 return on equity, with respect to the storm damage
21 accrual, and any number of other issues.

22 Now the point is that the Commission has wide
23 latitude to fashion relief based on the evidence before
24 you. The Commission is not limited to the precise
25 positions of the -- on the issues by the parties. The

1 fact is that these assets are going into service in
2 2009, and the customers now and will continue to benefit
3 from these assets. In fact, four of the CTs are already
4 in service and the fifth will go into service by mid
5 month next -- by mid-August of this year. The benefits
6 of these units have been reflected in the midcourse
7 correction to the fuel adjustment, and substantial work
8 has been done on the Rail Facility, which will be
9 completed this year and begin receiving coal.

10 The Commission chose to delay the recovery
11 from May to January 2010. The Commission could have
12 approved Tampa Electric's request to provide an
13 immediate increase rather than a deferral. You could
14 allow the recovery to start immediately, you could have
15 allowed the recovery to start in a series of step
16 increases as each one of these assets went into service,
17 and instead you selected a compromise which provides for
18 the rate increase when all of these facilities have gone
19 into service.

20 Now Jeff Chronister, arguing for an immediate
21 recovery, cited the Commission's orders which approved
22 annualization adjustments to recognize it as being
23 placed into service during a projected test year because
24 it's representative of the future. In fact, the
25 Commission, in a string of decisions, the latest of

1 which was the Florida Public Utility case decided in May
2 of this year, approved a recovery of the full annual
3 effect of an asset which went into service during the
4 projected test year, saying that that was representative
5 of the future. That decision was rendered just a few
6 months before Tampa Electric filed its case, its
7 petition in this case.

8 Now Intervenors' multifaceted attack merely
9 recycles the same arguments, all of which have no merit.
10 The Intervenors contend that the costs must be current
11 and not speculative. That's really an attack on a
12 projected test year. It is clear that there's no used
13 and useful issue here, and particularly if the rate
14 increase is not in effect until after the assets are in
15 service. As staff correctly points out in the Florida
16 Supreme Court, that the Florida Supreme Court
17 specifically affirmed the Commission's authority to
18 approve step increases in the *Floridians United for Safe*
19 *Energy vs. PSC*, where it said that it rejected the
20 contention that the step increase granted to FP&L was
21 beyond the Commission's authority, and held that the
22 Commission's authority had always had the authority to
23 grant such a subsequent year test year -- subsequent
24 year increase. Likewise, the other arguments are simply
25 without merit.

1 The parties have had notice and hearing on the
2 issue of the ratemaking treatments of these CTs and the
3 Rail Facilities, extensive discussion was had on the
4 issues on the record, and any party to this proceeding
5 knew from the outset that the rate impact of the
6 annualization or any lesser relief were potential
7 outcomes, given the breadth of this Commission's
8 discretion. Claims of surprise and lack of notice are
9 wholly without merit and should be rejected.

10 The fact is, Commissioners, you reached a fair
11 compromise in between the positions of the parties at
12 the hearing, and you have clear authority to do that.
13 We urge that you approve the staff recommendation.

14 **MS. CHRISTENSEN:** Commissioners, may I
15 interject? I didn't want to interrupt him during his
16 presentation, but I would like to --

17 **CHAIRMAN CARTER:** Wait. Now this is your two
18 minutes. Is that what you --

19 **MS. CHRISTENSEN:** I'm making an objection for
20 the record to Mr. Willis's testimony regarding the
21 current status of the CTs and ask that they be stricken
22 from the record.

23 **CHAIRMAN CARTER:** Well, you can make it during
24 your two -- you have to do it during your two minutes.
25 That's it. You knew coming in both parties had 15

1 minutes. So you've got two minutes left. If you want
2 to do it then, you go right ahead.

3 **MR. TWOMEY:** You just did.

4 **MS. CHRISTENSEN:** I just did.

5 **CHAIRMAN CARTER:** Okay.

6 **MR. TWOMEY:** Okay. Thank you, Mr. Chairman.
7 Mike Twomey on behalf of AARP. I'll be brief, as I
8 must.

9 The, this Commission, as you're well aware,
10 and as pointed out by the staff and TECO, has got broad
11 discretion granted to it by the Florida Supreme Court
12 on, in a great many fields in terms of interpreting the
13 law in utility regulation and giving this broad
14 discretion and deference by the court there.

15 The one thing you cannot do, however, is, is
16 ignore the essential requirements of law. And one of
17 the most fundamental essential requirements of law, both
18 by U.S. and State Constitution and the *Florida Statutes*,
19 is for parties to have notice, notice of what hearings
20 are going to be about.

21 And without going into the business of whether
22 the Commission has got rules and what the statute
23 requires and that kind of thing, I think fundamentally
24 you need to consider our view that the Constitution is
25 ignored by the lack of notice here.

1 Now I want to contrast the, the treatment that
2 Mr. Willis talked about in the FP&L case, which involved
3 St. Lucie 2, to what happened here.

4 The step increase historically is a somewhat
5 unique grant of relief, sufficiently unique that it's
6 always to my knowledge in the past been identified as an
7 issue. It's been specifically pled, testimony has been
8 given to it specifically in the prefiled process and the
9 like. In the *Floridians for Safe Energy* or whatever it
10 was that Mr. Willis cited, that case involved a step
11 increase for Florida Power & Light to put into rates its
12 expenses and revenue requirements associated with the
13 commercial entry into service of St. Lucie 2.

14 As noted by your staff, there was a statute
15 specifically pled. In fact, my recollection is, and you
16 can look at the dates and stuff, that FP&L got that
17 statute passed to make sure they that they could have
18 that unit come in. In that case, if you'll look at the
19 order, the company pled the statute that authorized the
20 step increase specifically. There was a great deal of
21 testimony associated with that. The Commission decided
22 the issue straight up and it was brought into service.

23 That wasn't done here. The -- there was no
24 mention of any step increase. Specifically it wasn't
25 pled, it wasn't identified as an issue, there was no

1 testimony to it because Chronister's testimony doesn't
2 really count as an answer to a question.

3 And my time is up, so I would say to you that
4 the denial of due process of notice and of point of
5 entry should be considered fundamental, and that we
6 would urge you to go ahead and grant the
7 reconsideration. Thank you.

8 **CHAIRMAN CARTER:** Thank you, Mr. Twomey, for
9 your punctuality. Right on the money.

10 Commissioners, staff has asked that we go
11 issue by issue. We've heard from the parties, and I
12 think that's probably the better way to deal with this,
13 if we have staff to introduce the issues and we can go
14 and have our discussion and proceed from there.

15 **MR. WILLIS:** Mr. Chairman?

16 **CHAIRMAN CARTER:** Mr. Willis.

17 **MR. WILLIS:** When you get to Issue Number 6,
18 we request that you give us an opportunity to briefly
19 address that issue. We understand that staff -- and I
20 guess you voted -- that we would not present on Issue 3,
21 and we understand that. But with respect to Issue 6, we
22 would request that you give us that, a short opportunity
23 to do that.

24 **CHAIRMAN CARTER:** Okay. Let me do this,
25 Commissioners. All of the parties are here, and if any

1 Commissioner has any question for any of the parties, we
2 can do that. We can ask them if we have any questions
3 at that point in time.

4 Okay. With that, let's proceed. Staff, would
5 you introduce Issue 2, please?

6 **MR. YOUNG:** Issue 2. Issue 2 is whether the
7 Commission should grant the Intervenors' motion for
8 reconsideration. Staff recommends that the motion be
9 denied because the Intervenors have failed to identify a
10 point of law or fact that was overlooked or which the
11 Commission failed to consider when it approved the step
12 increase deferring the recovery of the costs for the CTs
13 and the Rail Facility.

14 However, staff recommends that the Commission
15 clarify its final order to indicate that the parties
16 will have a point of entry to contest the continuing
17 need for the CTs and the revisions of the, and the
18 revisions of the revenue requirements for the CTs and
19 the Rail Facilities. Thank you.

20 **CHAIRMAN CARTER:** Thank you.

21 Commissioners? Commissioner Edgar, you're
22 recognized.

23 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

24 Just generally, I guess, to get us started.
25 If staff could respond briefly to the points raised by

1 both sides, specifically as to due process and reliance
2 upon material that is, is in or is not in the record.
3 Could staff speak on those points specifically in light
4 of the staff recommendation?

5 **MR. YOUNG:** Yes.

6 **COMMISSIONER EDGAR:** Thank you.

7 **MR. YOUNG:** Commissioners, staff believes it
8 is not a violation of due process because, one, the step
9 increase was in the range of alternatives the Commission
10 could consider when deciding whether a pro forma
11 adjustment to annualize the cost of the CTs and Rail
12 Facilities was appropriate for the 2009 test year.

13 After weighing the evidence, the Commission
14 decided that to -- the Commission decided to defer the
15 recovery of the cost for the CTs and Rail Facilities
16 until January 1, 2010, instead of annualizing that cost,
17 provided that certain conditions are met. Which in
18 staff's recommendation staff points to a case called
19 *Gulf Power Company v. Florida Public Service Commission*,
20 357 So.2d, 799, which was issued by the Florida Supreme
21 Court.

22 In that case, the court held that when the
23 Commission is confronted with competing testimony, it's
24 the Commission's prerogative to evaluate the testimony
25 of the experts and accord what weight or conflicting

1 opinions is deemed necessary. And here you did that.
2 You evaluated Witness Chronister's testimony, you
3 evaluated Mr. Larkin's testimony, and you decided that
4 the more appropriate recovery and not to -- the more
5 appropriate recovery is to defer the recovery of the
6 cost for the CTs that is not annualized, because you
7 could have annualized that, as Mr. Willis pointed out.

8 The second point as relates to the due process
9 in terms of the objection, it is my understanding that
10 they said they -- I guess they said that they objected
11 to the exhibit. I've asked staff to look into that, and
12 there's no objection in the record as to Exhibit 112.
13 So it's entered into the record, and thus they did not
14 object to that. They had an opportunity to object and
15 they did not object. And they can correct me if I'm
16 wrong to that, but I think I'm pretty sound on that.
17 Thus, it is -- excuse me. It was entered into the
18 record and it can be used. The Commission can give it
19 what weight it deserves.

20 **MS. CHRISTENSEN:** Commissioner, may --

21 **COMMISSIONER EDGAR:** If I may, just a
22 follow-up to our staff again. Could you also speak
23 specifically to the point raised by the Intervenors as
24 to their due process rights not being met due to lack of
25 notice about the possibility of a step increase being

1 within the range of options?

2 **MR. YOUNG:** It's -- I think that's without
3 merit, to say they didn't have notice. They knew that
4 the issues were going to be litigated, they knew that
5 the Commission could consider a range of alternatives,
6 and the Commission did consider the range of
7 alternatives.

8 This is similar to what Mr. Willis pointed
9 out, which is in staff's recommendation, the
10 annualization of the -- excuse me -- the amortization of
11 the rate case expense. The increasing of the Storm
12 Damage Reserves from 4 million to 8 million. 8 million
13 was not litigated. 4 million was litigated. The
14 Commission sought to consider -- the Commission sought
15 to move from the 4 million that was requested by the
16 parties to -- I think Tampa Electric requested
17 16 million. The commission sought 8 million as the
18 appropriate number.

19 It's similar to also, it's similar to the
20 Intervenors arguing that the CTs were not needed.
21 It's -- if you look at the prehearing statement and
22 their prehearing positions, the Intervenors did not,
23 never argued about the need for the CTs. The
24 Intervenors argued about the need for the CTs in their
25 posthearing brief. So to me, if you can argue -- if you

1 had an opportunity to argue the need for the CTs in your
2 posthearing brief is similar to you can argue whether
3 the alternative treatment for the CTs and the Rail
4 Facilities that the Commission considered, argue against
5 that. Excuse me.

6 **COMMISSIONER EDGAR:** Thank you.

7 **MS. CHRISTENSEN:** Commissioners, may I briefly
8 respond?

9 **CHAIRMAN CARTER:** Ms. Christensen, you're
10 recognized.

11 **MS. CHRISTENSEN:** Thank you.

12 Staff made a statement that there was no
13 objection in the record to extra information being
14 placed in the late-filed exhibits. And I would draw the
15 Commission's attention to transcript Page 2454, and to
16 the best of our ability, given that we hadn't seen the
17 late-filed exhibit, I made this objection, which is just
18 one notation on the late-filed exhibits. "I have no
19 objection to them coming into the record, assuming that
20 they are what was described here today. But if there's,
21 but if there's something were to be in them that was
22 outside of that, outside the parameters of that," and
23 then the Commissioner, "Your objection will be
24 preserved." And I may have fumbled the last little bit.

25 But to the best of our ability, given that we

1 hadn't seen the late-filed exhibits and they had been
2 admitted on the previous page, we sought to preserve our
3 objection to anything beyond the scope of what was
4 requested as part of the late-filed exhibit. And that's
5 the reason that we object to the entry of any of the
6 extra extraneous information that was contained in 112
7 that is not a revenue calculation.

8 **CHAIRMAN CARTER:** Thank you.

9 Commissioner McMurrin.

10 **COMMISSIONER McMURRIAN:** I guess I've got
11 another question now because of what Ms. Christensen
12 just said of staff.

13 What would be a party's way of dealing with an
14 objection to a late-filed exhibit, that they preserve
15 the objection but then the document comes in? What
16 would a party do to make sure the Commission knew that
17 they had an objection to that specific information in
18 the exhibit? I know we would have briefs coming
19 afterwards. Would that be the only, would that be the
20 only way, or --

21 **MR. YOUNG:** No, ma'am. They could file an
22 objection in the record stating that they objected to
23 Exhibit 112. Any, as Ms. Christensen said, any
24 contemporaneous information that was not intended to be
25 in the objection -- in the exhibit. They failed to do

1 that. The Intervenors failed to object to the
2 referencing of the alternative treatment in Exhibit 112,
3 which states that, however, it also recognizes -- and
4 this is TECO speaking. However, it also recognized the
5 concerns raised by the various parties, and we suggest
6 that the company witness during -- as was suggested by
7 the company's witness during hearing. It could also
8 support a step increase in base rates after the assets
9 are provided -- after the assets are placed in service,
10 and it goes further on. They could have objected to
11 that point, to that part of the exhibit, saying that it
12 was not -- that's not what the exhibit intended, and
13 they moved -- it was evidence outside of that exhibit --
14 statements outside of the intent. Excuse me.

15 **COMMISSIONER McMURRIAN:** Okay. Thank you.

16 And the question I actually intended to ask to begin
17 with was the, about Ms. Christensen's statement about
18 the point of entry in what would be coming up, I guess,
19 in 2010. And we talked a little bit about that
20 yesterday, I know, and about whether or not it might be
21 a tariff filing and the point of entry for protesting a
22 tariff and that sort of thing. So could you all share
23 that with me again, because I'm a little rusty? I'm
24 trying to remember how -- what we talked about. Because
25 I think it's good that we all talk about it now.

1 **MR. DEVLIN:** I think the ball has been passed
2 on to me, Commissioner McMurrrian.

3 **COMMISSIONER McMURRIAN:** Okay.

4 **MR. DEVLIN:** Tim Devlin, Commission staff.

5 Yes, we did talk about what we expect could
6 happen in the aftermath of this, you know, what happens
7 today. And there probably will be a tariff filing by
8 TECO that reflects the Commission order as it becomes
9 final, sometime probably in November I'm guessing. At
10 the same time the Commission staff will do its due
11 diligence and ensure that the conditions of the step
12 increase are complied with.

13 And there's basically two that we would be
14 looking at. First, the continuing need of these CTs.
15 And then, second, we'd be looking at the revenue
16 requirement because at this juncture we're dealing with
17 projections -- and to the extent the revenue requirement
18 changes, it would be annualized in that as well --
19 through perhaps an audit.

20 We would be reporting back to the Commission
21 on those two conditions and what we have found in our
22 investigations, along with the tariff proposal of TECO,
23 probably around December 1st. Probably the December 1st
24 agenda.

25 **COMMISSIONER McMURRIAN:** Okay. And what

1 all -- as a follow-up, Chairman. What all would be --
2 what kinds of things could parties do to participate in
3 that process, both during that review that you'd be
4 doing, and as far as an Agenda Conference where we
5 consider that and possible protest of any decision?

6 **MR. YOUNG:** At the -- Commissioner, Keino
7 Young. At the Agenda Conference, they can ask, they can
8 ask to participate in terms of the tariff filings, and
9 if they have -- and they can voice their concerns if
10 they have an objection to any, any information in the
11 tariffs.

12 Also, after, after the tariff, the order comes
13 out, they can protest the order and seek a hearing on
14 the staff recommendation on the tariff filing.

15 **COMMISSIONER McMURRIAN:** Okay. And I guess
16 the only other part of that I, that I think I asked
17 about would be during staff's review, or Mr. Devlin
18 mentioned perhaps even an audit looking at the revenue
19 requirements, would there be an opportunity for parties
20 during any of that review to weigh in in any way?

21 **MR. YOUNG:** Yes, ma'am. They can, they can
22 weigh in. They can request a meeting or staff can hold
23 informal meetings as relates to all the parties and give
24 all the parties an opportunity to have an opportunity to
25 weigh in in terms of the information.

1 **COMMISSIONER McMURRIAN:** Okay. And I guess,
2 Mr. Chairman, one other question to Ms. Christensen or
3 anyone else on the Intervenors' side. And I suppose if
4 the company wants to weigh in too, but I'm more
5 concerned about Ms. Christensen.

6 Is that your understanding of what the process
7 would be going forward?

8 **MS. CHRISTENSEN:** My understanding from the
9 final order was that there were conditions that were set
10 out, and the original language that came out of the
11 final order was that the Commission staff was going to
12 do its review and then the step increase was going to go
13 into effect or not, and there was no Agenda Conference
14 even. That language has been clarified to say that the
15 Commission will review it. So I'm assuming some sort of
16 agenda process would be involved.

17 It's still unclear from the final order what
18 type of issues we could have raised regarding any type
19 of tariff filing, because what you have here is you have
20 enumerated conditions that were set forth for the step
21 increase to be approved, issues that essentially were
22 decided in the final order that these are the things
23 that, if you meet these conditions, it will go in.

24 So the way the final order was drafted, and I
25 think the intent from the language of the final order

1 that said we want to avoid the time and the cost
2 associated with a limited proceeding, which would be
3 what would end up happening if we were to protest a
4 tariff sheet, the question is whether or not we would be
5 able to argue all of the issues that we might otherwise
6 have been able to argue had it been raised as an issue
7 in a timely manner in the hearing.

8 And I would suggest that as a tariff filing we
9 would be limited in the arguments that we might be able
10 to raise and that we should have been able to raise in
11 the rate case if it had been raised appropriately and in
12 accordance with the Commission's orders, which requires
13 that, that parties, if they're seeking some sort of
14 alternative treatment or relief, raise that as an issue
15 prior to the Prehearing Order. And that if it could not
16 have been raised prior to the Prehearing Order, that the
17 Commission make a finding of good cause shown, and that
18 was not done at the end of the hearing.

19 So essentially I would respectfully disagree
20 with staff's analysis that we would be able to address
21 all of the issues and how it would impact all of the
22 rates and all of the revenue requirements, and it would
23 be different than what we would have been afforded had
24 it been addressed in the rate case.

25 **MR. WILLIS:** Commissioner, what I understood

1 that you did was that you simply decided to defer an
2 increase that could have been granted in the April 30th
3 order to be effective on May the 8th to December 1st.

4 Now you added two conditions, that the
5 facilities be in service and that they're needed. And
6 it would seem to me that that's the scope of what you're
7 reviewing at that time. You've already approved the
8 rate increase, but subject to those conditions. I think
9 that's clear in the order.

10 **CHAIRMAN CARTER:** Commissioner McMurrin and
11 then Commissioner Skop.

12 **COMMISSIONER McMURRIAN:** Thank you. So are
13 you -- do you disagree with how staff has laid out how
14 they see the review going forward with respect to the --
15 looking at the need and the revenue requirements?

16 **MR. WILLIS:** Well, it seems to me that the
17 revenue requirement was decided in the, in the case. We
18 can conform to whatever you decide that we should do.
19 But it seemed to me that what you actually did was to
20 approve the rate increase, but just postpone its
21 effectiveness subject to those two conditions.

22 **COMMISSIONER McMURRIAN:** Okay. I may want to
23 come back to that later.

24 **MR. DEVLIN:** Mr. Chairman, could I have one,
25 one opportunity for input?

1 **CHAIRMAN CARTER:** Mr. Devlin.

2 **MR. DEVLIN:** I would take exception to what
3 Mr. Willis said. As I recall from the discussion,
4 looking at my handout that I presented at the March 17th
5 agenda, I believe the, I believe the Commission voted to
6 a maximum, a maximum amount to be recovered, and we
7 would look at the revenue requirement during this
8 intervening period and report back in December and
9 perhaps recommend an adjustment if the revenue
10 requirement comes in less than what was projected.
11 That's my recollection. I wanted to correct that.

12 **CHAIRMAN CARTER:** Commissioner McMurrian, I'll
13 come back to you. I'm going to go to Commissioner Skop
14 and then I'll come back to you.

15 Commissioner Skop, you're recognized, sir.

16 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

17 Just a few questions, I guess starting with
18 Mr. Devlin. To understand staff correctly, staff
19 believes that the proposed tariff filing will provide a
20 sufficient point of entry for the Intervenors to voice
21 or litigate their objections; is that correct?

22 **MR. DEVLIN:** My understanding, Commissioner
23 Skop, is that the Intervenors would have opportunity to
24 delve into the two areas that we'll be looking into --
25 actually three areas. One, whether the units were

1 finished on time. Two, whether there's a continuing
2 need for those units. And three, the revenue
3 requirement, if it comes in at a different level than
4 what was in the projections today. Those would be the
5 three areas that the Intervenors would have opportunity
6 to investigate and to report on.

7 **COMMISSIONER SKOP:** All right. Thank you.

8 And to Ms. Christensen now. I want to go back
9 to your comment with respect to the objection on Exhibit
10 112, and I'd also like to explore the staff discussion
11 and get some feedback with respect to some of the
12 concerns I heard you raise.

13 But with respect to the objection, if I heard
14 you correctly, I think that you referenced a statement
15 that the, that you made to the Commission, which was
16 acknowledged by the Chairman, to the extent that if
17 anything was outside the scope of what you thought the
18 exhibits would show, that that objection would be
19 preserved. Is that a correct understanding of what I
20 previously heard?

21 **MS. CHRISTENSEN:** Yes, Commissioner.

22 **COMMISSIONER SKOP:** Okay. So basically you
23 invoked a broad blanket objection; correct?

24 **MS. CHRISTENSEN:** Given that we had not seen
25 the late-filed exhibits and that they were admitted

1 wholesale without anybody looking at them before they
2 were admitted, I think we evoked the appropriate
3 objection that could be made at the time, which is as
4 long as they were within what was described as what was
5 requested by the Commission, there was no objection to
6 it. But if they -- if any of the parties attempted to
7 put in information that was beyond the scope of what was
8 requested, then there was an objection to any
9 information that was beyond the scope.

10 And I think we had preserved that objection,
11 and I don't believe that we were under any obligation to
12 make any further objection, as has been suggested by
13 staff, in a written form to say, hey, this information
14 is beyond what the scope is. Because we were -- I think
15 we can assume that the Commission would not rely on
16 extraneous information that was beyond the scope, and we
17 did not have any notice that the Commission was relying
18 on any of the information contained in Exhibit 112 until
19 staff filed its recommendation here today saying, hey,
20 they were put on notice because of this extra
21 information that was contained in Exhibit 112. And
22 that's why we're here today again renewing our objection
23 that's saying that that information is beyond the scope
24 and you cannot rely on it.

25 **COMMISSIONER SKOP:** Okay. And I understood

1 that. I just wanted to make sure I understood what I
2 thought I heard correctly.

3 But going to staff's point, I think what
4 Mr. Young was trying to convey is that to the extent
5 that objection was preserved, why, why in the context of
6 diligence was not a specific objection raised to a
7 specific document in a timely manner?

8 **MS. CHRISTENSEN:** I would, I think,
9 respectfully disagree that a timely objection was not
10 raised. I think a timely objection was raised at the
11 time that the evidence was admitted into the record at
12 the end of the hearing before the record was closed,
13 which it was closed at the end of the record. And, as
14 you're aware, the Agenda Conference where the Commission
15 considers its final decision is closed to discussion
16 from any of the parties.

17 And this is the first opportunity that
18 Intervenors have had to bring before the Commission our
19 objections to the step increase treatment, and, in
20 addition, our objection to the extra or extraneous
21 information that was contained in 112.

22 So I guess I respectfully disagree with
23 Commission staff's statement that we're under any
24 obligation or were under any obligation to file any sort
25 of written objection. I believe our objection was

1 preserved. And I think until we're put on notice that
2 the Commission is going to rely on the extraneous
3 information, we have no further obligation to renew that
4 objection, and we have done so appropriately here today.

5 **COMMISSIONER SKOP:** Okay. Let's go to the
6 topic again to -- beginning on Page 9 in the staff
7 recommendation and concluding on Page 12. But I'd like
8 to briefly address some of the points that staff made in
9 rebuttal, starting with the issues that were included in
10 the Prehearing Order, and specifically with respect to
11 annualization.

12 In your, from your perspective, is it not
13 reasonable to think that another alternative, i.e., a
14 step increase, might be inherent within the range of
15 alternatives embodied in that issue?

16 **MS. CHRISTENSEN:** Respectfully, Commissioner,
17 no, I don't believe it would be. I think all of the
18 examples that have been cited by Tampa Electric and by
19 staff have actually been examples where you're talking a
20 range of numbers, 4 million versus 8 million, and the
21 Commission picks 6 million.

22 The range of numbers have been discussed.
23 Whether or not you get recovery for the range of numbers
24 was discussed. Whether or not you actually get recovery
25 for a storm accrual was discussed. There's no question

1 about the issue of whether or not the storm accrual is
2 appropriately before the Commission.

3 Here the question is not whether or not, how
4 much they recover. That was appropriately before the
5 Commission. The form, the actual accounting treatment
6 is what's at issue. And we're respectfully suggesting
7 that step increase treatment is a completely different
8 type of accounting treatment than what the company
9 requested in annualization.

10 The, the issue that was before the Commission
11 was whether or not Tampa Electric's accounting treatment
12 of annualization should be approved and, if not, what
13 amount should be approved. And the scope or the range
14 of the argument was whether or not annualization at all
15 should be approved, and, if not, what is used and useful
16 in the public interest and what amount should be
17 recovered in the test year? And I think that probably
18 goes more to a substantive argument about, you know,
19 what's within the test year. But we must remember that
20 Tampa Electric is the one that chooses the test year.
21 Intervenors are responding to the choice of test year,
22 and the company, you know, has that choice.

23 **COMMISSIONER SKOP:** I understand. I've read,
24 thoroughly read all the pleadings, so I'm well versed on
25 the issues.

1 But if I understand you correctly, that you
2 would construe an issue so narrowly that all that could
3 be offered would be a yes or no answer, and that that
4 would preclude the Commission from considering any
5 alternatives absent a yes or no definitive answer to the
6 question presented or considering issues of fairness or
7 judicial efficiency.

8 **MS. CHRISTENSEN:** Respectfully, no, I disagree
9 that the Commission doesn't have some discretion to
10 address the issue, but it has to address the issue
11 that's before it. And what we are suggesting is the
12 issue before the Commission was annualization treatment
13 of the CT units, not a step increase, which would have
14 been, and I think we've made it in our comments, would
15 have been delineated as a separate issue had it been
16 raised in a timely manner. And I don't know that
17 anybody has disputed that it would have been raised as a
18 separate issue. They're not similar type treatments,
19 they're very divergent type treatments, and that's why
20 it's not a subcategory or subsumed in there.

21 And while the Commission does have some
22 latitude, I think due process requires that all parties
23 be on notice of what types of treatments that the
24 Commission is going to consider. And it's not akin to a
25 range of numbers, a high or a low of a particular type

1 of treatment. This is something completely different.
2 This is a whole different type of treatment. And
3 respectfully I would say that the Commission would have
4 to afford due process before it considered a different
5 type of treatment.

6 **COMMISSIONER SKOP:** Okay. And let's move on
7 to the, I guess the second and the fourth staff point.

8 With respect to Witness Chronister, when he
9 mentioned that in passing, I mean, we had quite a few
10 Intervenors present. And when the issue of a step
11 increase was raised even in passing, why was that not
12 cross-examined?

13 **MS. CHRISTENSEN:** Well, maybe if I can briefly
14 respond, and it looks like Ms. Kaufman would also like
15 to.

16 **COMMISSIONER SKOP:** Briefly.

17 **MS. CHRISTENSEN:** My recollection of the
18 transcript is I think OPC had already done questioning.
19 But in reviewing the specific question, the step
20 increase was not in response to a specific question.
21 The question was whether or not -- what TECO would do
22 if, if the CTs were not given, afforded the full
23 treatment.

24 And in response he said, well, we would
25 probably come in to request rate relief as they came

1 into service, and he added as an aside regarding the
2 step treatment. There was no follow-up question by the
3 Commissioner or -- my recollection was by any of the
4 Commissioners or anyone because it was not an issue in
5 the case. And it was not even really a huge issue that
6 was raised in response to the question. I mean, it
7 wasn't as if there were a 30-minute discussion. It was
8 two sentences in 2,400 pages' worth of transcript.

9 So I guess I would respectfully disagree that
10 that's sufficient to put anybody on notice that that was
11 going to be considered as an alternative treatment.

12 **COMMISSIONER SKOP:** Fair enough.

13 Moving to the, I guess the fourth point that
14 staff raised, the, in terms of not discussing it in a
15 brief or arguing why it should be strictly limited to
16 the issue presented, was there no consideration of that
17 in the brief? I mean, I've read the brief. I did not
18 see it raised, as staff has correctly pointed out.

19 **MS. CHRISTENSEN:** Well, we didn't raise it
20 because it wasn't an issue. I mean, I don't know,
21 unless Ms. Kaufman wants to address it any further, but
22 there was no specific issue in which to address it. As
23 I said, it was a passing comment made at hearing. It
24 was not raised at the end of the hearing. Sometimes the
25 Commission has in the past, if an issue comes up during

1 the middle of the hearing that was not made a specific
2 issue that the Commission feels is necessary to be
3 addressed, at the end of hearing it will request that
4 the parties brief and address that issue. That was not
5 done in this case.

6 Other alternatives that the Commission has
7 done in the past is when an issue has come up that the
8 Commission feels warrants a discussion by the parties or
9 where no testimony has been provided on the issue and
10 the Commission wants to consider it, they will reopen
11 the hearing and allow parties to resubmit transcripts
12 and testimony on that issue. That was not done in this
13 case.

14 So, I think, you know, merely because Tampa
15 Electric chose to insert a discussion of a possible step
16 increase treatment under the actual issue of the
17 annualization is not sufficient to put the parties on
18 notice, specifically when all the briefs are filed at
19 the same time. It's not as if we get to respond to what
20 was put in their brief. We all filed them on the same
21 day.

22 So, you know, I don't believe that that's even
23 sufficient, and I think there were significant things
24 that could have been done at the end of hearing that
25 would have put all the parties on notice that the

1 Commission wanted that information addressed, which were
2 not done in this case.

3 **COMMISSIONER SKOP:** Thank you.

4 Mr. Chair, just two more brief questions and
5 then I'll yield.

6 Ms. Christensen, going back to the fourth
7 point that staff raised, how would you rebut the staff
8 assertion that the step increase was not a departure
9 from the central requirements of law and not a violation
10 of due process rights in light of, specifically in
11 light, and I'd ask you to tailor it specifically in
12 light of these two criteria, in light of the broad
13 ratemaking authority found in *Florida Statutes* that's
14 vested to the Commission and also under the holding in
15 *Mayo* that staff has referenced?

16 **MS. CHRISTENSEN:** Well, I think while you have
17 broad discretion, it's not unfettered, and that it is
18 constrained by due process requirements. And the due
19 process requirements are that parties are put on notice
20 of the issues that are going to be litigated before the
21 Commission.

22 In fact, the Commission's own rules and own
23 orders and the order that was actually issued in this
24 case require that any issue be raised prior to the
25 prehearing. It was not done in this case. I mean,

1 merely because the Commission has broad latitude to
2 decide issues that may come before it does not mean that
3 you are not required to do those within the confines of
4 the statute. And the statute requires that you consider
5 in a ratemaking -- for ratemaking purposes actual
6 legitimate (phonetic) costs that are used and useful in
7 the public service.

8 **COMMISSIONER SKOP:** Thank you. And just one
9 final question and I'll yield.

10 Let's talk briefly about the limited
11 proceeding alternative that, I believe that OPC has
12 given a lot of discussion of. And, yes, we could have
13 brought TECO back in or TECO could have come back in for
14 a limited proceeding. Assuming that's true, how would
15 the end result be different after completing that
16 process, noting that these are well-known type capital
17 projects? I mean, we could have additional vetting.
18 But what would change?

19 And more importantly, how does this differ in
20 terms of, from a broad perspective, how is this any
21 different in terms of the step increase than what's
22 typically done under settlement agreements or such
23 where, when capital assets are placed in service,
24 they're pretty much, cost recovery is allowed? And it's
25 almost as if in this case there was a much more thorough

1 review or thorough criteria before such recovery would
2 be allowed. So I'd like to understand that interplay a
3 little bit better.

4 **MS. CHRISTENSEN:** Well, certainly. As the
5 Commission is aware -- excuse me. Certainly. As the
6 Commission is aware, you can do a lot of things in a
7 settlement that the Commission cannot do by statute.
8 One example of that would be the phone SGPAs (phonetic),
9 the service guarantee plans, which allowed for recovery
10 to customers. Under *Florida Statute*, the Commission has
11 no inherent authority to refund directly to customers.
12 Any refunds would go to general revenue. So there's a
13 panoply of things that can be done in settlements that
14 aren't necessarily permissible for the Commission to do
15 under the statutes.

16 As far as how it might be different in a
17 limited proceeding, I think, first of all, we'd have to
18 make the assumption that a limited proceeding would
19 happen immediately. There's no information that an
20 immediate -- that a limited proceeding would have
21 immediately happened in 2010. Particularly we have no
22 evidence that Tampa Electric's awarded ROE would have
23 dropped had these plants come into service, as they
24 suggested. I mean, there's no evidence in the record.
25 They may or may not have because the Commission granted

1 some recovery in the test year.

2 So they may or may not have even been entitled
3 to come in and request limited recovery, because as long
4 as they're earning inside that authorized range of
5 return, they're not, they should not be granted recovery
6 or additional recovery for the CTs. And that
7 examination of ROE was specifically eliminated in the
8 discussion in the final order. So that's an issue that
9 we would have addressed as part of the rate case, which
10 would not be afforded in a limited proceeding.

11 And, as I said, you may not even -- there may
12 not even be a need for a limited proceeding. I think --
13 and then certainly there's a question as to whether or
14 not there would have been an intermediate limited
15 proceeding, because the company's own witness had
16 testified at the hearing that some, if not all, of those
17 September CTs might not have come online, depending on
18 the economics at the time. I know Mr. Willis has added
19 some additional testimony here today, but that's not
20 what was in the record. And I think there was a real
21 significant evidence in the record to put into doubt
22 whether or not all of those September CTs would have
23 come online on time or even in the test year.

24 And so, trying to limit myself to the
25 questions that you raised, those are the problems that I

1 see with a limited proceeding.

2 And as far as the concern that this would
3 increase unnecessarily rate expense, as I said before,
4 the company has control of the timing. If the
5 Commission felt that they had not wisely chosen their
6 test year and were unnecessarily coming in for a
7 subsequent rate increase because they had not chosen
8 wisely their test year, then the Commission certainly
9 has within its remedies to not grant the full amount of
10 rate case expense, or, if it were warranted, to grant
11 the full amount of rate case expense.

12 So the Commission does have other ways of
13 addressing unnecessary rate case expense other than just
14 allowing a cost to come in to avoid some speculative
15 rate case expense in the future.

16 **COMMISSIONER SKOP:** Okay. And just one, one
17 specific question. I guess you were responsive to the
18 limited proceeding. But I did not really get a response
19 to the question as to other step increases per the
20 settlement, so I'm going to try and definitize my
21 question very succinctly.

22 How is this, let me see, how is this an
23 essential departure from what is already tacitly
24 endorsed within settlement agreements? And in the
25 instant case there were additional safeguards to address

1 the very issues that you raised about if the certain
2 turbines did not come in. Again, those were the things
3 that were built into reviewing this before any step
4 increase would have taken into effect. So if you could
5 briefly respond to that.

6 **MS. CHRISTENSEN:** Without reiterating my
7 previous argument that you can do a lot of things in
8 settlements that you can't do pursuant to statute, I
9 think that may go substantively to the argument
10 regarding a step increase, which is -- and it's a notice
11 and a due process issue, which is in the Office of
12 Public Counsel's purview.

13 The statute which allows the Commission to
14 review and potentially implement step increases
15 subsequent to a rate increase require that the
16 Commission adopt some rules to tell everybody what is
17 going to be considered as far as -- or what the
18 Commission considers important and that will be
19 considered for a step increase. And then everybody is
20 on notice as to what types of things are going to be
21 considered, what safeguards are going to be put in place
22 up-front.

23 And there are no such rules implementing it.
24 In fact, the rule that implements Section 366.06076
25 (phonetic) actually just merely reiterates the statute

1 language.

2 So there's no specific language that talks
3 about how you would implement a step increase. The
4 Commission has no rules on it essentially. And the only
5 rules that I could find that were in place regarding a
6 base rate increase talk about a test year, a projected
7 or historical test year, not years, which the step
8 increase would be implementing an increase outside of
9 the test year concept, and that what the Commission says
10 that it would consider in its rules regarding MFRs are
11 the 13-month average balances.

12 So there was no request for waiver from those
13 rules. So assuming that we're all abiding by what the
14 Commission's rules are that are in place, it's costs
15 that are an annual cost based on a 13-month average.

16 **COMMISSIONER SKOP:** Thank you.

17 **CHAIRMAN CARTER:** Thank you.

18 **MS. KAUFMAN:** Chairman Carter, could I respond
19 to a point of Commissioner Skop's?

20 **CHAIRMAN CARTER:** Hang on one second. Hang on
21 one second. Okay?

22 **MS. KAUFMAN:** Yes, sir.

23 **CHAIRMAN CARTER:** Let's hear from our legal
24 staff. Ms. Brubaker?

25 **MS. BRUBAKER:** Thank you, Mr. Chairman.

1 Jennifer Brubaker for legal staff.

2 I just wanted to speak briefly regarding some
3 of Ms. Christensen's comments. She kept referencing
4 that the step increase should have been an issue, the
5 step increase should have been an issue. We had issues
6 in the case regarding the pro forma adjustments which
7 really address the cost recovery for those items.
8 There's exhaustive testimony and cross-examination on
9 those witnesses.

10 And ultimately the Commission was presented
11 with a range of amounts and it had to make a decision on
12 what amount should be allowed, and it did that. And the
13 step increase affected the timing of that recovery.

14 In my mind, did it have to be raised as an
15 issue? No, because it is within that broad range of
16 discretion about how the Commission wants to implement
17 that increase. And so it did that, and it put into
18 place this process, this additional process, which in my
19 mind the step increase affords actually additional
20 protection to TECO's customers as well as additional
21 process to the Intervenors.

22 I just wanted to take a little bit of
23 exception to the idea that this would have to be an
24 issue. I think that, again, we've talked about it
25 before, but just to reemphasize, I think that is within

1 the timing of that increase. It was within the
2 Commission's discretion.

3 **CHAIRMAN CARTER:** Thank you. Stand by.

4 Ms. Kaufman.

5 **MS. KAUFMAN:** Thank you, Mr. Chairman.

6 Commissioner Skop, I just wanted to make a
7 brief point about your question to Ms. Christensen about
8 the settlement and how are settlements different where
9 there have been step increases in those.

10 And what I would say about that is when you're
11 in a settlement posture, there's a lot of give and take
12 between the parties. The parties may agree to something
13 because they have received something in return. And
14 without going into any discussion about what occurred in
15 those settlements, I think that a settlement situation
16 is very different from when you fully litigate a case.
17 And so I would think that that would totally distinguish
18 stipulations from what we have here, which is where the
19 parties are concerned that they were not on notice of
20 action that the Commission was preparing to take.

21 Thank you, Mr. Chairman.

22 **CHAIRMAN CARTER:** Thank you. Commissioner
23 Argenziano, I'm going to -- I'll wait until after you've
24 completed before I ask any of my questions.

25 **COMMISSIONER ARGENZIANO:** I'm just listening

1 right now. I'm going to wait to make my comments at the
2 end.

3 **CHAIRMAN CARTER:** Thank you.

4 Just, I had just one question. First of
5 all -- well, actually that one led me to another
6 question.

7 Staff, on Exhibit 112, did the exhibit comply
8 with what it was purported to be?

9 **MR. YOUNG:** Yes, sir, it did.

10 **CHAIRMAN CARTER:** And, I mean, was there
11 anything when the exhibit was presented that was
12 introduced, in the context of being introduced is there
13 anything that was in the exhibit that would have given
14 any party to this process a reason to think that what
15 was presented in the exhibit was not what it was
16 purported to be?

17 **MR. YOUNG:** Mr. Chairman, I don't have the
18 exhibit list with me. If you can table that question,
19 I'll get back to you. I'll go grab the exhibit list and
20 the identified exhibit and be able to answer your
21 question at that time.

22 **CHAIRMAN CARTER:** Okay.

23 **MR. YOUNG:** Okay.

24 **CHAIRMAN CARTER:** Ms. Christensen, just a
25 question here. On Page 10, it seemed like an

1 insignificant point, but it actually goes to the
2 perspective of what you were saying about the step
3 increase, about Mr. Chronister's testimony, and he did
4 mention that. And it says that afterwards the Chairman
5 gave the Intervenors' counsels opportunity to
6 cross-examine the witness. Are you saying that staff
7 made this up, or is that not factual?

8 **MS. CHRISTENSEN:** I would say that was a very
9 broad interpretation of how the proceeding unfolded. I
10 think my review of the transcript was that -- and I want
11 to say this, step, tread very lightly because I don't
12 have the transcript in front of me. My recollection was
13 that Mr. Rehwinkel had conducted his cross-examination.
14 This was in response to some questioning by Commissioner
15 Edgar. As I said, the question that was asked was about
16 how Tampa Electric would treat -- or what Tampa Electric
17 would do in response to not receiving whole or partial
18 recovery of the CTs. And he did respond to that
19 question and then added the additional information of
20 the step increase. So --

21 **CHAIRMAN CARTER:** So you're saying that staff
22 is wrong. You're saying that staff mischaracterized
23 what actually happened; is that you're saying?

24 **MS. CHRISTENSEN:** I would say there was no
25 break in the record saying, would anybody like to ask

1 questions regarding the step increase? There was no
2 point in the record that suggested that the Commission
3 wanted parties to address the staff -- the step
4 increase. And I will leave the characterization to the
5 Commissioners to decide.

6 But I'm not sure that the record fully
7 supports that we were afforded an opportunity right at
8 that moment to discuss the step increase, or even
9 subsequent to that.

10 And I could address, as far as regarding the
11 issue, Exhibit 112 --

12 **CHAIRMAN CARTER:** I'll come back to you for
13 that.

14 **MS. CHRISTENSEN:** Okay.

15 **CHAIRMAN CARTER:** Mr. Young.

16 **MR. YOUNG:** All right. Just to clarify, Mr.
17 Chairman. On Page 156 of the transcript, after Witness
18 Chronister made a statement in terms of the alternative
19 treatment, of the timing, you asked, you said, "Anything
20 further from the bench? I did tell Mr. Rehwinkel I'd
21 give him an opportunity to look at his notes."

22 "I'm fine." This is Mr. Rehwinkel speaking.

23 "I'm fine. Thank you."

24 "Now, Mr. Kelly, it's back. If you have -- if
25 you -- I want to make a good impression on my bosses

1 back here." That's what you're saying.

2 "Thank you, Mr. Chairman. I was afforded an
3 opportunity and I appreciate it." That was
4 Mr. Rehwinkel's statement after Mr. Chronister, Witness
5 Chronister made the statement about the step increase.

6 After you, after that statement was made, each
7 Intervenor's counsel was given an opportunity to
8 cross-examine Witness Chronister about the step
9 increase. It is similar to Witness Black's statement
10 where Witness Black said that the company is, the
11 company is in discussions whether to push off the CTs,
12 to defer some of the CTs.

13 After that, Ms. Christensen questioned
14 Mr. Black on that statement in terms of the company
15 deciding to defer, whether the company will defer to
16 construct the CTs. This is a similar statement. This
17 is a similar issue. And for -- and I think I'm going
18 through my court phase now. Excuse me. Instead of --
19 and since they were given the opportunity, it's similar.
20 I will leave it as that.

21 **CHAIRMAN CARTER:** Thank you.

22 Ms. Christensen.

23 **MS. CHRISTENSEN:** Just briefly in response. I
24 think when Witness Black was responding about whether or
25 not the CTs would come in, that was actually in response

1 to questioning that I was doing at the time.

2 Mr. Chronister's question was in response to
3 something that Witness -- or, excuse me, Commissioner
4 Edgar was questioning, and the follow-up question by
5 Commissioner Edgar was unrelated to the step increase.

6 So I would just say the events unfolded as
7 they did, and I think that staff is, is engaging in a
8 very, very broad interpretation of our opportunity to
9 cross-examine on the step increase.

10 Again, I would say it was not raised as a
11 specific issue in the case, and I think that's where
12 this boils down to.

13 **CHAIRMAN CARTER:** Ms. Brubaker?

14 **MS. BRUBAKER:** Thank you, Mr. Chairman. I
15 just wanted to make sure we fully addressed your
16 question regarding Exhibit 112.

17 The exhibit was actually requested by Mr.
18 Wright on behalf of FRF. He said he would like the
19 witness or the company to prepare a late-filed exhibit
20 that would show the revenue requirement impact if those
21 three combustion turbines were taken out of rate base
22 for the test year altogether. Your response, "That
23 would be Number 112."

24 Is the information included in that exhibit,
25 does that exceed the scope of what was requested?

1 Honestly, I'm not sure. You could argue it either way.

2 What I would say, sir, is that if any party
3 had an objection to that -- and Ms. Christensen is
4 correct, she did raise a general objection to the extent
5 there's information that exceeds the scope, she would
6 like to reserve the ability to object. The truth of it
7 is she didn't object. The parties had an opportunity to
8 review that exhibit. They could have filed an
9 objection, they could have discussed it in their brief,
10 and that didn't happen for whatever reason. So I just
11 want to make sure we're all clear about Exhibit 112.

12 **CHAIRMAN CARTER:** Thank you.

13 I did say, I did say I'd come back to you on
14 Exhibit 112, Ms. Christensen.

15 **MS. CHRISTENSEN:** And I clearly just wanted to
16 point out the actual question was a revenue calculation
17 that was to be made. Any information beyond what the
18 revenue calculation was is extraneous information that's
19 beyond the scope of what was included. And my
20 objection, which was preserved by the Chairman, was to
21 any information that was beyond the parameters of what
22 was requested or what was described.

23 **COMMISSIONER ARGENZIANO:** Mr. Chair?

24 **MS. CHRISTENSEN:** So anything beyond the
25 calculation, I think we preserved our objection at the

1 end of the record as best we could, given that these are
2 late-filed exhibits. And I don't think it required us
3 to do, take any additional further steps.

4 **COMMISSIONER ARGENZIANO:** Mr. Chair?

5 **CHAIRMAN CARTER:** Commissioner Argenziano.

6 **COMMISSIONER ARGENZIANO:** Yes. Looking over
7 my notes and my recollection, I have to say I disagree
8 with staff entirely. I think there was extraneous
9 material in that exhibit that didn't go to the request,
10 which was the purpose of the exhibit. So I, I
11 respectfully disagree. I believe there was extraneous
12 material in that, and I think it was quite obvious.

13 **MR. WILLIS:** Mr. Chairman?

14 **CHAIRMAN CARTER:** Mr. Willis.

15 **MR. WILLIS:** Mr. Chairman, we believe that it
16 was not only within the scope of what was asked, but
17 intervenors walked by that exhibit two times, once after
18 it was filed and again with respect to their brief.
19 They had two opportunities to, to address it and they
20 failed to do it and they, they waived it with respect to
21 that.

22 Secondly, I think that the discussion about
23 the exhibit is somewhat of a red herring. I don't think
24 the exhibit is necessary, I don't think Mr. Chronister's
25 testimony is necessary, or anything else with respect to

1 this because I think it was within your discretion to
2 decide a timing issue. This is a timing issue, timing
3 of allowing recovery when the rates went into effect on
4 May the 8th or to postpone it, and that's clearly within
5 your scope of authority.

6 **CHAIRMAN CARTER:** Thank you.

7 Commissioners, I know that we had some
8 questions earlier and you had a chance to look over your
9 notes and all like that. Why don't we do -- we only got
10 one court reporter today, Commissioners. Let's give
11 Linda a break and we'll come back at 15 after. We're on
12 recess.

13 (Recess taken.)

14 Okay. We're back on the record. And when we
15 had last stopped we had just finished a series of
16 questions on Issue 2.

17 Commissioners, any further questions on Issue
18 2? Comments?

19 Commissioner Edgar, you're recognized.

20 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.
21 And I know we've gone, gone over this, but just to, to
22 go over it one more time, I guess.

23 There has been some discussion about a
24 late-filed exhibit, and the Intervenors have raised that
25 a potential objection -- my words, my description --

1 potential objection was raised at the time that it was
2 requested and approved for an exhibit to be late-filed
3 on that, the point that was under discussion at the
4 time.

5 So here is my first question -- and I know
6 we've gone over it, but just to chop it down for my
7 benefit -- is there an opportunity for opposing parties
8 to review a late-filed exhibit and file an objection to
9 that exhibit being admitted after the close of a
10 hearing?

11 **MR. YOUNG:** Yes, ma'am. Specifically in this
12 point, the late-filed exhibit that -- Exhibit 112 was
13 filed on February 5th, 2009. I'm trying to find my
14 briefs. I think briefs were filed February 17th, 2009.
15 Thus they had roughly more than two weeks to, to file a
16 written objection, a specific objection to the
17 information in Exhibit 112.

18 **COMMISSIONER EDGAR:** Okay. And I raised that,
19 Commissioners, or re-asked that question because I'm
20 concerned about some of the discussion that I've heard
21 here that the Intervenors would not have had an
22 objection -- or an opportunity, excuse me, an
23 opportunity to object to that exhibit or any late-filed
24 exhibit being entered after the hearing, which is just
25 not my understanding.

1 My understanding is that there would be an
2 obligation for every party to review a late-filed
3 exhibit and then take advantage of the opportunity to
4 object.

5 But I'm also concerned and I want to point out
6 that I am -- that point is not necessarily overly
7 determinative in my mind because, as with any exhibit
8 that's entered, whether it be late-filed or during
9 hearing, the Commission -- and I know each Commissioner
10 retains the independent ability to use their own
11 judgment to give that piece of evidence or that part of
12 the record whatever weight they each independently
13 determine that it values. So I, I think it's important
14 to point out that the opportunity is there to object to
15 a late-filed exhibit, but I also don't want to give that
16 particular exhibit more weight than I think it in my own
17 mind was given in my decision-making.

18 I have a concern that -- well, I have many
19 concerns. One is I of course believe strongly, strongly
20 in due process and in the rules and the procedures and
21 the processes that this Commission and every forum, but
22 this Commission in particular, utilizes to try to make
23 good decisions and give ample and open opportunity to
24 all points and relevant information. But I have a very
25 strong concern also that the position put forth here

1 today on this point about due process could be perceived
2 as an effort to limit the Commission's decision-making
3 ability to only those very specific articulated opposing
4 positions during hearing.

5 And I believe that it is not just our ability
6 but our obligation to do our own, as five independently
7 appointed Commissioners, with the resources of our
8 staff, to do our own independent analysis and evaluation
9 as we try to reach a consensus and a decision. And in
10 this case, as has been pointed out, there is over 2,000
11 pages of record. And my opinion and my vote on this
12 particular issue was based upon, upon in my mind a
13 logical compromise between the opposing positions that
14 were put forth based on logic, based on the record, and
15 with additional conditions put upon to provide
16 protection for this Commission to have review as to the
17 costs and the need for the capacity.

18 So, so I just wanted to share some of, kind
19 of, as I've been listening and thinking it through, any
20 point raised about lack of due process concerns me
21 greatly. But it also concerns me to have it be put
22 forth that our options are limited potentially to
23 strictly opposing positions, which is what I think part
24 of this boils down to, you know.

25 And that's all at this time, Mr. Chairman.

1 **CHAIRMAN CARTER:** Commissioners, any further
2 comments?

3 **COMMISSIONER ARGENZIANO:** Yes, Mr. Chairman.

4 **CHAIRMAN CARTER:** Commissioner Argenziano,
5 you're recognized.

6 **COMMISSIONER ARGENZIANO:** You know, I find it
7 hard to understand why someone would have to file a
8 late -- have a late-filed amendment if it was
9 extraneous, if it was outside the scope or if it was
10 superfluous to the exhibit. Why object to something
11 that was superfluous?

12 And I do find in my independent research that
13 lack of due process is very troublesome, and I think
14 that's what has occurred here. So I don't understand
15 the argument I guess in my comments as to why it has to
16 be all based on why there was not a late-filed
17 amendment. If I didn't have any reason to think it was
18 an issue or thought it was outside of the scope of what
19 we were talking about, the main issue or issues that we
20 were talking about, I'd have no understanding as to how
21 that could even be an argument. So I think that's a
22 weak argument, and in this independent Commissioner's
23 review I don't think it's a good one. And I am very
24 concerned with lack of due process in this instance.

25 **CHAIRMAN CARTER:** Thank you, Commissioner.

1 Commissioners, any further comments?

2 Commissioner Skop. Commissioner Skop, you're
3 recognized.

4 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.
5 I guess I just wanted to provide some perspective on how
6 I looked at this. Again, certainly, the Commission has
7 broad ratemaking authority under Florida Statute. And
8 under the Florida Supreme Court holding of *Mayo*, the
9 Commission certainly has the ability to consider
10 reasonable alternatives.

11 Notwithstanding the concerns raised by the
12 Intervenors, which I'm still considering in my mind,
13 what was important to me -- again, this was a fairness
14 issue. And what was important to me was being able to
15 have the discretion to balance the interests of the
16 ratepayers while recognizing the need to provide for the
17 recovery of prudently incurred costs associated with
18 capital projects that are placed in service for the
19 benefit of the ratepayers.

20 And, again, this was a -- I guess from my
21 perspective it was like grappling with the fairness
22 issue and associated with timing. And, again, a limited
23 proceeding certainly would have been a mechanism for the
24 Commission to have addressed the issue. We could have
25 done it in that manner. However, we -- at least from

1 our perspective -- or at least my perspective, there
2 were safeguards put into place with respect to
3 well-known pieces of capital equipment, namely
4 combustion turbines. These things are commercially
5 available, off-the-shelf type pieces of equipment. The
6 costs for those are pretty well defined. So those are
7 things that are placed in service every day. The rail
8 project, again, there were some concerns raised there.
9 Proper safeguards were put in place.

10 I guess I'm struggling because, again, the
11 Commission is being, I won't say criticized, but
12 certainly objection has been taken to the decision that
13 the Commission has made. But, again, I do feel that it
14 was a reasonable alternative, looking at issues of
15 fairness, looking at issues of judicial efficiencies.
16 We have a very full docket with -- we'll conduct three
17 major rate cases this year, if not four.

18 So, again, trying to do things in a manner
19 that upholds the public trust and confidence, those
20 things are equally important to me. And I think
21 Commissioner Argenziano as well as Commissioner Edgar
22 raised the point about due process. That's something as
23 an attorney I take very, very strongly. It's a very
24 important, basic legal concept.

25 So, again, I'm still pondering where I'm at

1 with respect to the Intervenor's position as to what
2 would be the best way, whether to deny the motion for
3 reconsideration. I think staff has raised some
4 excellent points. I think the Intervenor has equally
5 raised some points. But, again, what is very important
6 to me and what I struggle to do in terms of the decision
7 that I made was, again, balancing the interests of
8 ratepayers while trying to recognize the need to provide
9 for recovery of prudently incurred costs associated with
10 the capital projects that were placed in service, and
11 those projects would be placed in service for the
12 benefit of the ratepayers.

13 So, again, is it, is it -- and as stated at
14 the bottom of staff's analysis on Page 12, when they,
15 when they discussed the *Mayo* case, you know, last
16 sentence, "disallowing all funds for coal inventory,"
17 again, that was kind of like a similar analogous
18 situation in this instance. If you completely ignore
19 recovery, you know, that seems to be in direct conflict
20 with the central holdings of *Bluefield* and *Hope*, that,
21 you know, you allow for prudent recovery of costs for
22 projects that are placed in service for the public good.

23 So, again, I think it boils down to, at least
24 for me, to timing and fairness issues. There's many
25 ways that one can go about addressing certain

1 circumstances. There are a host of competing reasonable
2 alternatives. I don't always agree with staff. I like,
3 as a Commissioner, as the ultimate decision-maker, as my
4 colleagues, we're each five independent decision-makers
5 and we like to exercise our own discretion, but to do so
6 in a manner that fully comports with *Florida Statute*,
7 controlling law, following the central requirements of
8 the law and in the good spirit of upholding the public
9 trust.

10 So, again, I want to just listen to some
11 additional discussion, but I just wanted to articulate,
12 you know, my thoughts on what led me to decide the
13 previous case in the manner I did.

14 Thank you.

15 **CHAIRMAN CARTER:** Thank you.

16 **COMMISSIONER ARGENZIANO:** Mr. Chair?

17 **CHAIRMAN CARTER:** Commissioner Argenziano,
18 then Commissioner McMurrian.

19 **COMMISSIONER ARGENZIANO:** Yes. Are you asking
20 for final comments of the day or on just this issue?

21 **CHAIRMAN CARTER:** On this issue.

22 **COMMISSIONER ARGENZIANO:** Okay. Then just to
23 this issue, and then I will have some final comments
24 later on I guess on other issues.

25 It appears to me that the discussion that

1 we're having appears to be more concerned with the
2 aggrandizement of power within the Commission than it
3 does with the due process to be afforded the parties,
4 and I'm very concerned with that.

5 And that will be my final comment on Issue 2.
6 Thank you.

7 **CHAIRMAN CARTER:** Commissioner McMurrin.

8 **COMMISSIONER McMURRIAN:** Thank you, Chairman.
9 And I won't repeat much of what's been said. I agree
10 with most, if not all, of the comments of Commissioner
11 Edgar and Commissioner Skop. And I will share a lot of
12 what Commissioner Skop said about what he was weighing
13 whenever we made the decision, I share those concerns.
14 I feel like it was a good outcome, and I do believe it
15 was within the Commission's jurisdiction to do.

16 I listened intently to the concerns of the
17 intervenors in this case, and I'm always, as other
18 Commissioners have said, concerned about due process
19 arguments.

20 I will add that to me Exhibit 112, the
21 concerns about that particular exhibit aren't, and I
22 think Commissioner Edgar said, overly determinative of
23 where she came down, and I agree with that. And I
24 believe the Commission's decision was a good and fair
25 one.

1 I do -- I will also say though that I've
2 learned a lot of things from this case, and I think a
3 lot of lessons that I will take with me as a Prehearing
4 Officer in other cases. I think it shows how important
5 the wording of the issues can be at the beginning of the
6 case. Obviously that's been a huge concern here and
7 it's happened in other cases as well. And we see a lot
8 of times at the end of the case that perhaps if we had
9 spent a little more time making the issues a little more
10 precise or maybe more broad sometimes, that we would
11 have been better off in the end. So I wanted to add
12 that, that's something that I will definitely take, take
13 with me.

14 But, again, I do agree with the staff
15 recommendation in this case. And, but again, I do have
16 some concerns.

17 And I did want to raise one other thing in the
18 recommendation, that to the extent the analysis is used
19 in the order ultimately, and I know that depends on what
20 we ultimately decide here, but at the bottom of Page 14
21 there was a concern, and I think it's similar to the
22 concern Ms. Christensen raised about something that
23 Mr. Willis had brought up.

24 There's a sentence, I believe it's about two
25 or three sentences up, and it says, "In fact, TECO is

1 currently incurring the cost to complete the CTs and
2 Rail Facility."

3 And I think it's fine that staff shares that
4 information with us. I don't think we're prohibited
5 from that. I just don't think that it's determinative
6 in how we deal with the issue before us about
7 reconsideration. To me I think that's something we'll
8 look at. To the extent this goes forward and the
9 Commission's past decision stands, the fact of what
10 costs they've incurred and that sort of thing is part of
11 what we will be looking at in the future.

12 So in my mind, if some of this analysis stands
13 with the Commission's decision, I would prefer that that
14 kind of language come out. I just wanted to share that.

15 **CHAIRMAN CARTER:** Thank you, Commissioners.

16 Commissioner Skop.

17 **COMMISSIONER SKOP:** Thank you, Mr. Chair.

18 And then on that same page, just above that,
19 the last sentence before the last paragraph, "Staff
20 recommends that final order be modified to correct the
21 error." There was a scrivener's error, and I think it
22 didn't get discussed thoroughly, but if staff could just
23 speak to that briefly. I think that was an important
24 distinction in terms of getting that wording corrected.

25 **CHAIRMAN CARTER:** Staff, you're recognized.

1 **MR. YOUNG:** Commissioner Skop, I think you're
2 talking about Page 6 of the final order where it said
3 that -- the language, the language that the company --
4 "that subject to our staff review and approval" was the
5 scrivener's error. It should have been "the
6 Commission's review and approval." Thus, that's why
7 staff is clarifying it, that a recommendation will be
8 coming back before the Commission before the customers
9 are -- if there is a continuing need, the Commission
10 finds there is a continuing need, and the revenue
11 revisions, looking at the 2009 revenue requirements
12 versus the 2000 -- I mean, 2010 revenue requirements,
13 excuse me, versus the 2009 building determinants, before
14 the ratepayers are being charged for the CTs and the
15 Rail Facilities.

16 **COMMISSIONER SKOP:** Okay. So that would
17 remedy the Intervenors' assertion that there was an
18 impermissible delegation of authority?

19 **MR. YOUNG:** Yes, ma'am -- yes, sir.

20 **COMMISSIONER SKOP:** Thank you.

21 **CHAIRMAN CARTER:** Thank you.

22 Commissioners, any further comments on
23 Issue 2?

24 Commissioner Skop, you're recognized.

25 **COMMISSIONER SKOP:** Thank you, Mr. Chair.

1 Just to Ms. Christensen, I guess I'm still
2 trying to struggle what benefit, if any, would be
3 accomplished by going through the process of having a
4 limited proceeding, if one should be necessary, as
5 opposed to following through with what the Commission
6 has previously approved with the appropriate safeguards.

7 Again, you know, I see a substantial
8 difference between, you know, a very large baseload
9 generating facility, let's say a coal plant or a nuclear
10 facility, versus a combustion turbine. I think there's
11 a very distinct difference between those two because the
12 costs are so much more known, constrained and well
13 defined for a CT than they are for other large capital
14 projects.

15 So, again, I'm trying to understand whether a
16 limited proceeding would address your concerns. But,
17 again, for me it comes down into an interest of
18 fairness, interest of timing and an interest of judicial
19 efficiency to the extent that if the costs are, are well
20 defined and well known and they are representations of,
21 you know, investments that the company has placed in
22 service for its ratepayers, then, you know, how is the
23 Commission's decision not an appropriate mechanism to
24 address that method for recovery?

25 Without, without having to go through a

1 full-blown -- I mean, I guess I'm struggling to
2 understand what there would be to litigate under
3 projects that are very, very concise, well known, almost
4 like prepackaged. I mean, you could almost go contract
5 on a fixed price cost to install on a CT.

6 **MS. CHRISTENSEN:** Bottom line, customers may
7 end up paying more. You have granted --

8 **COMMISSIONER ARGENZIANO:** I can't hear you.

9 **MS. CHRISTENSEN:** Is this -- okay. Bottom
10 line, the customers may end up paying more than they
11 would otherwise.

12 **COMMISSIONER SKOP:** Well, let me stop you on
13 that point. With respect to them paying more than they
14 would otherwise, the Commission, to my understanding --
15 and, staff, correct me if I'm wrong -- the Commission
16 has never given up prudence review by allowing cost
17 recovery. We would scrutinize those costs. Is that
18 correct, staff?

19 **MR. DEVLIN:** That's correct.

20 **COMMISSIONER SKOP:** Okay. So we would check
21 those against bids. We'd look at competitive bidding,
22 whatever mechanisms we would need to ensure those costs
23 for those combustion turbines were reasonably and
24 prudently incurred, and fair, just, and reasonable?

25 **MR. DEVLIN:** Yes, sir. We're planning on

1 doing an audit, and we would be looking at the
2 reasonableness of the costs in that audit and report
3 back to you.

4 **COMMISSIONER SKOP:** A brief response, Ms.
5 Christensen?

6 **MS. CHRISTENSEN:** Well, to a certain extent
7 the cost of those CTs are already in rates, from May
8 through the end of the year and September through the
9 end of the year. What's left is the \$33 million
10 remaining that they asked for subject to the review.

11 **COMMISSIONER SKOP:** For -- well, let me, let
12 me clarify that. The two were placed in service because
13 it was reasonably likely that they would come in service
14 and be in service during the year that the test year was
15 in. And the three were withheld, and that was the
16 subject of the step increase, to the extent that they
17 were less certain.

18 And I'm pretty sure that proper controls and
19 procedures were put in place to ensure that those three
20 were necessary and prudent, and all the other protective
21 language that was put in there. So, I mean, correct me
22 if I'm wrong, but I'm trying to understand your concern.

23 **MS. CHRISTENSEN:** Well, and, again, my
24 argument goes back to whether or not a limited
25 proceeding would even be necessary. As long as the

1 company is earning within their authorized range, it is
2 assumed that they are earning a profit on the capital
3 investment that they have put into place. They don't
4 necessarily come in for cost recovery every time a
5 capital item is placed into service because they may in
6 fact already be able to recover those costs.

7 And the only way to tell that is whether or
8 not they're earning inside their authorized range. And
9 we won't know that until the plant comes online and we
10 see whether or not in fact it would take them outside
11 the authorized range.

12 And my understanding is from the final order
13 that that consideration was taken off the table. That,
14 in fact, the Commission specifically voted not to
15 include a review of whether or not they were earning
16 within, within that authorized range. And then you may
17 also have a mismatch of revenues, customer growth and
18 those types of issues.

19 So there are a lot of issues that we would
20 review in a base rate case or even potentially in a
21 fully litigated limited proceeding. So that may or may
22 not even be on the table, considering what was ordered
23 in the final order. But even aside from that, you may
24 not even get into a limited proceeding.

25 There's an assumption that you would need to

1 have a limited proceeding to recover those costs, and
2 I'm saying there is no demonstration that they would
3 need to come in for a limited proceeding without them
4 earning below their authorized rate of return, and
5 that's why I make the bottom line statement, the
6 customers could end up paying more than they should.

7 **COMMISSIONER SKOP:** I guess I'm going to
8 briefly respond. You made the statement in response to
9 a comment I made about settlements and how things are
10 different in the realm of settlements.

11 But, again, to openly criticize the
12 Commission's use of its discretion in a manner that just
13 clearly comports with what goes on every day outside of
14 this one isolated case, it's, you know, it goes on in a
15 much bigger scale outside of this.

16 So, again, I'm really, I guess I'm really
17 torn, because I feel that, you know, again, that the
18 Commission's decision has come into question. But we're
19 looking at that decision in isolation and it's being
20 heavily criticized. Yet, you know, the protective
21 mechanisms that the Commission put in place that were
22 adopted in the Commission's order to scrutinize the
23 costs, to preserve prudence review, all seem to, you
24 know, protect the ratepayer, to balance the interests of
25 the ratepayers, you know, but equally recognizing the

1 fact that the company has invested millions of dollars
2 into placing additional assets into service that come
3 into service in January 2010. It may come into service
4 at the end of this year. A little uncertainty there.

5 So, again, they weren't given a blank check.
6 They were given an opportunity with due scrutiny to
7 recover for those assets should they be placed in
8 service, subject to, again, all the things that I've
9 mentioned.

10 So, again, I'm struggling to understand what
11 would be achieved by a limited proceeding over and above
12 what protection mechanisms are already in place versus
13 the efficiencies of, you know, going through the whole
14 process. I'm not so sure that the end result would be
15 any different.

16 **MS. CHRISTENSEN:** Well, assuming we had a
17 limited proceeding that allowed us to fully litigate all
18 possible issues, that would be different than the
19 conditions that have been set forth for a specific
20 review. So that's one issue.

21 As far as settlements, I think Ms. Kaufman has
22 spoken to the fact that in settlements you get -- you
23 give and you take and there are a lot of things that are
24 on the table that are give and take between the parties
25 so that sometimes you create mechanisms that might

1 otherwise not be provided for within the statutes.

2 And I think I've already spoken to the
3 statutory provision. It's -- I think rules are
4 necessary to implement a step increase, and that's --
5 and I won't go into, further into that.

6 **COMMISSIONER SKOP:** Okay. We've heard that a
7 couple of times.

8 **MS. CHRISTENSEN:** You know, so I think that
9 really the issue here is whether or not we're -- there's
10 a limitedness to the review that the Commission has set
11 forth. Even assuming that we can address the Commission
12 on those limited issues, that's a limitation that wasn't
13 present in the base rate case. We could have addressed
14 it more fully.

15 And I would assume, although we have not
16 discussed the nature of a, of a limited proceeding,
17 assuming one is even necessary, what types of issues
18 would be subject to litigation. And if we were -- you
19 know, assuming you could fully litigate it, it may or
20 may not mitigate the lack of due process in the base
21 rate case. I don't want to make that assertion.

22 But I don't know that you would end up
23 necessarily with the same results that you have made the
24 decision in the final rate case, because it's hard to
25 say what would happen in a limited proceeding.

1 **COMMISSIONER SKOP:** And just in a closing
2 point, Mr. Chair.

3 Again, I do not think that the Commission
4 ignored the essential requirements of the law and I do
5 not believe there was a denial of due process here. But
6 I am open and receptive to the concerns.

7 **CHAIRMAN CARTER:** Thank you, Commissioner.

8 Commissioners, anything further from the bench
9 before disposition of Issue 2?

10 Commissioner Edgar, you're recognized.

11 **COMMISSIONER EDGAR:** Mr. Chairman, as, as my
12 colleagues have said and as Commissioner McMurrian said,
13 which I'd like to reiterate from my own perspective, I
14 learned a lot through this, this process, through this
15 particular rate case. I was looking forward to it,
16 amazingly enough, for that reason, because I knew I
17 would learn a lot.

18 I can remember when the settlement agreements
19 came forward roughly four years ago, I said at the time
20 that I was pleased that there was consensus, but I was
21 also a little disappointed because I had been looking
22 forward to the opportunity to learn, if indeed we went
23 forward with a full-blown rate case at that point in
24 time. So I have learned a lot. I would expect that
25 everybody who participated in this case did.

1 I am -- just, quite frankly, at this point in
2 my opinion the requirements under the law for
3 reconsideration to be granted are not met, and for that
4 reason I would make a motion on Issue 2 in favor of the
5 staff recommendation to deny the motion for
6 reconsideration.

7 **COMMISSIONER SKOP:** Second.

8 **CHAIRMAN CARTER:** It's been moved and properly
9 seconded. Also, Commissioners, incumbent in that is the
10 scrivener's error on that.

11 **COMMISSIONER SKOP:** Yes.

12 **CHAIRMAN CARTER:** We're in -- now we've got a
13 motion and properly seconded. We're in debate,
14 Commissioners. We're in debate.

15 **COMMISSIONER SKOP:** Mr. Chair?

16 **CHAIRMAN CARTER:** Commissioner Skop.

17 **COMMISSIONER SKOP:** Thank you, Mr. Chair.
18 Also too from a legal sufficiency perspective, I concur
19 with the comment that was made in terms of meeting the
20 standards for a motion for reconsideration. I don't
21 think that the arguments raised arise to that necessary
22 to grant the motion.

23 **CHAIRMAN CARTER:** Thank you.

24 Commissioners, we're in debate.

25 **COMMISSIONER ARGENZIANO:** Mr. Chairman?

1 **CHAIRMAN CARTER:** Commissioner Argenziano,
2 you're recognized in debate.

3 **COMMISSIONER ARGENZIANO:** Yes. I do agree --
4 I do not agree that the legal requirements have not been
5 met. I think they have been met quite clearly, and I
6 believe that we are in this motion denying due process.
7 And when we get to the end -- I didn't realize we were
8 going to vote issue by issue -- but as we get to the end
9 I will elaborate further on that. I think it is wrong
10 to deny due process. There's no harm in a hearing. And
11 I do not agree with the statement that the legal
12 requirements have not been met. I think they were
13 clearly met. And that's my comment.

14 **CHAIRMAN CARTER:** Thank you, Commissioners.
15 Any further debate? Any further debate? Hearing none,
16 it's been moved and properly seconded. All in favor of
17 the motion, let it be known by the sign of aye.

18 **COMMISSIONER EDGAR:** Aye.

19 **COMMISSIONER McMURRIAN:** Aye.

20 **COMMISSIONER SKOP:** Aye.

21 **CHAIRMAN CARTER:** Aye.

22 All those opposed, like sign.

23 **COMMISSIONER ARGENZIANO:** Aye.

24 **CHAIRMAN CARTER:** Show it done.

25 Thank you, Commissioners. We are now on

1 Issue 3.

2 Issue 3. Staff you're recognized.

3 **MR. MAUREY:** Andrew Maurey, Commission staff.

4 Issue 3 asks whether the Commission should
5 grant TECO's motion for reconsideration requesting
6 recalculation of its weighted average cost of capital.
7 Staff recommends, yes, the appropriate weighted average
8 cost of capital for TECO should be revised from the
9 8.11 percent approved in the final order to 8.29 percent
10 in the recommendation before you.

11 **MR. YOUNG:** Commissioners, Keino Young again,
12 legal staff.

13 Earlier Mr. Willis pointed out that he wants
14 to address the Commission on Issue 6. I have something
15 for that. While TECO did not file a request for oral
16 arguments with its motion for reconsideration, which is
17 Issue 3, and per the rule waives its opportunity to
18 request oral argument, staff has learned, like you have
19 today, learned that TECO wants to address the Commission
20 on Issue 6, which is a fallout of Issue 3, on their
21 motion for reconsideration.

22 Staff recommends that TECO's request be taken
23 up at that time when we reach Issue 6. Staff would note
24 that the Intervenors did not file a response to TECO's
25 motion for reconsideration. However, as stated, TECO

1 did not file a request either. Thus, if the Commission
2 in its discretion grants TECO's request to address the
3 Commission, staff recommends that the Intervenors be
4 given the same opportunity.

5 Staff recommends that oral arguments as it
6 relates to TECO's motion for reconsideration be limited
7 to five minutes per side.

8 **CHAIRMAN CARTER:** Commissioners? Are you
9 suggesting that in lieu of the fact that the request is
10 for Issue 6, that we should grant it for Issue 3 as
11 well?

12 **MR. YOUNG:** No, sir. When we get to Issue 6,
13 I think they want to speak on Issue 6.

14 **CHAIRMAN CARTER:** On Issue 6?

15 **MR. YOUNG:** Yes, sir.

16 **CHAIRMAN CARTER:** Okay.

17 **MR. YOUNG:** But their motion -- but Issue 3 is
18 their motion for reconsideration.

19 **CHAIRMAN CARTER:** Okay.

20 Commissioners, we're in discussion on Issue 3.
21 Commissioner Skop, you're recognized.

22 **COMMISSIONER SKOP:** Thank you, Mr. Chair.
23 I'll yield to Commissioner Argenziano.

24 **CHAIRMAN CARTER:** Commissioner Argenziano?

25 **COMMISSIONER ARGENZIANO:** Yes. Did Keino just

1 say that their motion to reconsider was on Issue 3?

2 **CHAIRMAN CARTER:** Yes, ma'am.

3 **MR. YOUNG:** Yes, ma'am.

4 **COMMISSIONER ARGENZIANO:** He did?

5 **MR. YOUNG:** Yes, ma'am.

6 **CHAIRMAN CARTER:** This one is for TECO.

7 **MR. YOUNG:** And Issue, and Issue 6 is a
8 fallout of Issue 3.

9 **COMMISSIONER ARGENZIANO:** Issue 6 is a
10 fallout. Okay. Thank you.

11 **MR. YOUNG:** Yes, ma'am.

12 **CHAIRMAN CARTER:** Thank you.

13 Commissioner Skop, you're recognized.

14 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

15 I guess I've read staff's analysis and looked
16 through it. It seems to be -- this is a very convoluted
17 issue, because it entails a lot of accounting type
18 issues and such. So, again, it's pretty deep material.
19 But it seems to me that the staff analysis is pretty
20 straightforward on what is a very technical issue.

21 **CHAIRMAN CARTER:** I just -- Commissioners, if
22 you'll permit me, I just had one question. I was in the
23 weeds on that Internal Revenue -- that's, you know, that
24 was pretty -- Andrew, could you kind of briefly address
25 that, please?

1 **MR. MAUREY:** Yes, sir. Section 168 of the
2 Internal Revenue Code deals with normalization of how
3 accelerated depreciation might be flowed through to the
4 benefit of customers, and -- well, actually I should
5 back up.

6 When the government allowed for accelerated
7 depreciation, it was a program to incent investment.
8 And the way -- when depreciation is taken on a plant and
9 it differs from straight line depreciation for how it's
10 reflected on the regulated books, deferred taxes are
11 created. And those deferred taxes have to be recognized
12 because it's a timing difference. In the initial years
13 they're paying, the utility is paying less taxes than
14 it's actually recording, and then in the latter years
15 that reverses as the accelerated depreciation and the
16 ratemaking depreciation cross. So it's a timing
17 difference.

18 But in the initial days when this was first
19 proposed, there was a concern that those benefits could
20 be flowed back to the customers at too rapid of a rate
21 and it was not going to provide the incentive necessary
22 for investment. So the IRS came up with Section 168 to
23 normalize how the flowback of deferred taxes would
24 occur.

25 And the bottom line is that if property or

1 assets are removed from rate base, that the deferred
2 taxes that those investments gave rise to should be
3 removed proportionately from the capital structure as
4 well.

5 And what we have tried to do here is to comply
6 with that normalization so that when assets are removed,
7 the appropriate amount of deferred taxes are taken out.
8 And -- but also if investment is removed that did not
9 give rise to deferred taxes, that deferred taxes aren't
10 excessively removed. So it's a system of accounts to
11 balance the recognition of deferred taxes over time.

12 **CHAIRMAN CARTER:** Thank you.

13 Commissioners, any further questions on that,
14 on Issue 3?

15 Okay. Hearing none, the Chair is open for a
16 recommendation.

17 **COMMISSIONER EDGAR:** Mr. Chairman, I'd make a
18 motion in favor of the staff recommendation.

19 **COMMISSIONER SKOP:** Second.

20 **CHAIRMAN CARTER:** Commissioners, it's been
21 moved and properly seconded that we accept the staff
22 recommendation on Issue 3. We're in debate. We're in
23 debate. Any debate on Issue 3?

24 Hearing none, all in favor, let it be known by
25 the sign of aye.

1 (Unanimous affirmative vote.)

2 All those opposed, like sign. Show it done.

3 Commissioners, now let's turn to Issue 4.

4 **MR. SLEMKEWICZ:** John Slemkewicz, Commission
5 staff.

6 Issue 4 is basically a fallout issue of
7 changing the weighted average cost of capital to the
8 8.29 percent, and it results in an increase of
9 \$9.3 million to the previously authorized \$104 million
10 base rate increase, and a \$516,000 increase to the
11 previously approved step increase.

12 **CHAIRMAN CARTER:** John, on the --
13 Commissioners, I just want to ask a quick question
14 before I forget it, if you don't mind.

15 On Page 21, you've got the chart where you go
16 through -- can you kind of walk me through that?

17 **MR. SLEMKEWICZ:** Oh, yes, sir. Okay.

18 There, there's the three columns there, the
19 as-approved, the staff adjusted and the difference. And
20 what I've shown in the as-approved is what was approved
21 in the order, in the calculation of the revenue
22 requirements. And there was no change in the rate base
23 based on the change that we made to the cost of capital
24 as a result of the reconciliation. The overall rate of
25 return increased from the 8.11 percent to 8.29 percent.

1 Because you're multiplying those percentages
2 times the rate base, the required net operating income
3 increased under the staff adjusted column because of the
4 8.29 percent. There was a slight difference -- on Line
5 4 there was a slight difference in the achieved net
6 operating income due to the intra-synchronization when
7 you make an adjustment to the capital structure.

8 Line 5 is greater because of the increase of
9 the, to the 8.29 percent, so the deficiency is larger.
10 Line 6, the net operating income multiplier is the same
11 as was approved. And then Line 7 is the calculation of
12 the, what the operating revenue increase is. And
13 it's -- the staff adjusted is the 113.6 million versus
14 the 104.3 million that was approved, which gives you the
15 difference of the \$9.3 million.

16 And then Line 8 is the bottom line calculation
17 of the step increase, and because of the, again, the
18 change to the 8.29 percent, the step increase went from
19 33.6 million to 34.1 million, which is that \$516,000
20 increase. And then Line 9 is just the total of those
21 amounts.

22 **CHAIRMAN CARTER:** Commissioners, any questions
23 for staff on Issue 4? Hearing none, it's open for
24 disposition.

25 **COMMISSIONER EDGAR:** Mr. Chairman, I view this

1 obviously as a fallout issue from Issue 3 and as more of
2 a calculation. And with that in mind, I move the staff
3 recommendation on Issue 4.

4 **COMMISSIONER SKOP:** Second.

5 **CHAIRMAN CARTER:** It's been moved and properly
6 seconded to accept staff recommendation on Issue 4.

7 Commissioners, we're in debate. Any debate on
8 Issue 4? Hearing none, all in favor, let it be known by
9 the sign of aye.

10 **COMMISSIONER McMURRIAN:** Aye.

11 **COMMISSIONER ARGENZIANO:** Aye.

12 **COMMISSIONER SKOP:** Aye.

13 **CHAIRMAN CARTER:** Aye.

14 All those opposed, like sign.

15 **COMMISSIONER EDGAR:** I didn't say aye, but I
16 meant to vote for my motion. That could be recorded.

17 **CHAIRMAN CARTER:** Okay. Let's try that again.

18 **COMMISSIONER EDGAR:** Sorry. I was looking
19 ahead to the next one.

20 **CHAIRMAN CARTER:** Okay. On Issue 4, all in
21 favor of the motion, let it be known by the sign of aye.

22 (Unanimous affirmative vote.)

23 All those opposed, like sign. Show it done.

24 Staff, now we're on Issue 5.

25 **MS. DRAPER:** Issue 5, Elisabeth Draper with

1 staff.

2 Issue 5 is not a fallout issue and it deals
3 with how the revised annual base rate revenue increase
4 you voted on in Issue 4 should be distributed among the
5 rate classes.

6 Staff is recommending that the increase be
7 allocated through the classes consistent with the cost
8 of service methodology approved in the final order to
9 retain the relative class relationships.

10 **CHAIRMAN CARTER:** Thank you.

11 Commissioners, any questions on Issue 5?

12 Hearing none --

13 **COMMISSIONER EDGAR:** Mr. Chairman, if there
14 are no questions, I would make a motion in favor of the
15 staff recommendation, with the recognition that it is
16 consistent with what we have done in this matter prior.

17 **COMMISSIONER SKOP:** Second.

18 **CHAIRMAN CARTER:** It's been moved and properly
19 seconded that we accept staff's recommendation on Issue
20 5, which is a fallout issue. Any further questions?

21 We're in debate. Any debate on Issue 5?

22 Hearing none, all in favor, let it be known by the sign
23 of aye.

24 (Unanimous affirmative vote.)

25 All those opposed, like sign. Show it done.

1 **COMMISSIONER SKOP:** Mr. Chair?

2 **CHAIRMAN CARTER:** Commissioner Skop.

3 **COMMISSIONER SKOP:** Can we take a brief break,
4 just a real quick break?

5 **CHAIRMAN CARTER:** A brief break?

6 **COMMISSIONER SKOP:** Before -- yeah.

7 **CHAIRMAN CARTER:** Okay. Don't nobody leave
8 the building. We'll come back at ten after.

9 (Recess taken.)

10 **CHAIRMAN CARTER:** We are back on the record.

11 And when we last, when we last left, we had just
12 completed Issue 5. And now, staff, would you please
13 introduce Issue 6.

14 **MS. DRAPER:** Elisabeth Draper again with
15 staff. Issue 6 is what is the appropriate effective
16 date in 2009 for TECO's revised rates and charges? And
17 staff is recommending that the revised rates go into
18 effect 30 days following a Commission vote.

19 **CHAIRMAN CARTER:** And, Commissioners, on this
20 one, as Mr. young mentioned to us earlier on, the
21 company had asked for, asked to be heard on it, and his
22 recommendation was that if we heard from the company, we
23 give each side the same amount of time on this. What's
24 your pleasure, Commissioners? Commissioner Edgar.

25 **COMMISSIONER EDGAR:** Mr. Chairman, I would

1 propose, as I think our staff suggested, five minutes a
2 side.

3 **CHAIRMAN CARTER:** Okay. Mr. Willis.

4 **MR. WILLIS:** Thank you, Mr. Chairman. Staff
5 has recommended in Issue 6 that the adjustment required
6 by Issue 3 be collected from Tampa Electric customers on
7 a prospective basis. We believe that both Florida law
8 and the Internal Revenue Service require that a
9 potential normalization error be corrected back to the
10 date of the original order containing that potential
11 error.

12 Let's look first at Florida law. It is very
13 clear in *GTE v. Clark*, which was decided by the Florida
14 Supreme Court in 1996, that it overturned this
15 Commission's decision to prospectively correct a mistake
16 in a prior rate order. The court held that the
17 Commission was required to correct its order back to the
18 date of the original decision saying, and I quote, "We
19 view that utility ratemaking is a matter of fairness.
20 Equity requires that both the ratepayers and the
21 utilities be treated in a similar manner."

22 The court then went on to quote a prior
23 decision, which says, and I quote, "The soundness of
24 what we do here is demonstrated by the fact that if the
25 instant case involved an order decreasing rates, it

1 would be equally inequitable to allow the utility to
2 continue to collect the old and greater rates for the
3 period between the entry of the first and the second
4 orders."

5 What the court was saying is that, and I
6 quote, "Equity applies to both utilities and ratepayers
7 when an erroneous rate order is entered." The court
8 said it would clearly be inequitable for either the
9 utilities or the ratepayers to benefit and thereby
10 receiving a windfall from an erroneous rate order.

11 The court noted as an additional support for
12 its holding was found by examining the method by which
13 the Commission addressed the reciprocal situation. It
14 pointed out that the Commission had taken a position
15 contrary to its stance in the GTE case when a utility
16 had overcharged its ratepayers. The court also said,
17 "We reject any contention that this involves retroactive
18 ratemaking."

19 It's vital that you allow the recovery back to
20 May 8th, because it's not only required under Florida
21 law, but it's also required to avoid a normalization
22 violation.

23 In Issue 6, the staff proposes to correct the
24 normalization violation by adjusting rates prospectively
25 to reflect the corrected capital structure. This does

1 not fully correct the normalization violation.

2 The IRS has specifically held that where
3 regulators have the authority to cure the normalization
4 defect back to the original order, they must do so. In
5 fact, the private letter ruling PLR 8831012 is directly
6 on point here. The IRS there said that although the
7 regulators may want to implement normalization fixed
8 prospectively, the IRS requires that the prior violative
9 undercharges be recouped in order to purge the
10 normalization defect. The basic policy of the IRS
11 national office is that a violative, if a violative
12 undercharge can be recouped, it must be.

13 The 12-month time frame that's mentioned by
14 the staff in its order is just not on point here. If
15 anything, it confirms, I think, that the correction
16 should be made back to the original order.

17 The staff recommendation specifically rejects
18 any mechanism to recoup the undercharges that may be
19 embedded in rates since May, and implementing its fixed
20 (phonetic) prospectively only, the company believes the
21 normalization violation is not cured. Accordingly, we
22 urge you to approve that the shortfall in revenue must
23 be calculated from May 8th through the end of the year
24 and recovered in a base charge to be collected by this
25 amount. And then beginning January 1st, 2010, the

1 additional associated annual revenue requirement must be
2 part of the overall rates coincidentally with the step
3 change.

4 We urge you to make that one change in the
5 staff's recommendation.

6 **CHAIRMAN CARTER:** Thank you.

7 Ms. Christensen or Ms. Kaufman?

8 **MS. KAUFMAN:** Thank you, Mr. Chairman. And my
9 remarks are going to be very brief.

10 Number one, we support the staff's
11 recommendation, and we think that any change that you
12 make should be -- excuse me -- should be prospective.
13 And I just want to point out that the argument that you
14 just heard Mr. Willis make, I don't see anywhere in his
15 motion for reconsideration and I don't see anywhere in
16 that motion that there is any discussion of retroactive
17 ratemaking. I think that it's correct that the parties
18 did not file a response to the motion for
19 reconsideration.

20 But this issue of the timing is not, unless
21 I've missed it, is not one that was addressed in
22 Mr. Willis's papers. And the letter ruling that he
23 cited to you, which I admit I had some difficulty
24 understanding because of all the deletions, also was not
25 cited in his motion for reconsideration.

1 So we would support the staff on this issue.
2 And if you make a change, we believe it should be on a
3 forward-going basis only. Thank you.

4 **CHAIRMAN CARTER:** Thank you.

5 Ms. Christensen.

6 **MS. CHRISTENSEN:** And briefly as well, we
7 support staff's recommendation. Since the final order
8 is subject to motions for reconsideration, we don't
9 agree that an error has occurred, because the Commission
10 is here today and has voted to correct the normalization
11 and to apply that to rates on a prospective basis.

12 And letter rulings, as you heard in testimony,
13 in the case are specifically stated to be limited to the
14 persons to whom they apply. But even assuming a broader
15 application of this letter ruling, given that the dates,
16 the applicable dates are deleted, it's hard to tell how
17 long it took from the letter ruling to the original
18 order. Here you have a period of less than I think 30
19 days. I mean, so there isn't a huge time gap; whereas,
20 this may have been years.

21 So we would support staff's recommendation,
22 you know. This is -- essentially you are, in fact,
23 putting the normalization into the final rates that were
24 approved in this case.

25 **CHAIRMAN CARTER:** Thank you.

1 Commissioner Skop.

2 **COMMISSIONER SKOP:** Thank you, Mr. Chair. And
3 I probably will have a question for staff.

4 But to Mr. Willis, again, I've not read a
5 private letter ruling since law school and I try and
6 remember those things. But at least to me one thing
7 that was drilled in my head, and if you see at the
8 bottom of Page 4, that a private letter ruling, quote,
9 "This ruling is directed only to the taxpayer who
10 requested it. Section 6110(j)(3) of the Internal
11 Revenue Code provides that it may not be used or cited
12 as precedent."

13 So, again, I think that looking at this ruling
14 really would not be applicable, and I'd like staff to
15 briefly comment on that, if I could, if they've had a
16 moment to look at the ruling.

17 **MR. MAUREY:** Andrew Maurey, Commission staff.

18 We have read through the ruling. And, as Ms.
19 Kaufman has mentioned, with all the redactions, it is
20 difficult to follow in places. But we, due to the
21 difference in methodologies for the treatment of
22 deferred taxes, the difference in methodologies in
23 determining the test period between the company and this
24 PLR versus Tampa Electric and also, or more importantly,
25 how much time elapsed in the decision-making in the case

1 involving the PLR versus this case, we -- we're not
2 prepared to recommend that the facts in these two cases
3 are similar enough for this, for the Commission to rely
4 on this PLR for the disposition of this matter.

5 **COMMISSIONER SKOP:** Thank you.

6 Mr. Chair, I'd also tend to agree with
7 Ms. Kaufman and also Ms. Christensen. I think that
8 staff has properly distinguished this case from the
9 *Clark* case that was cited for the two reasons cited by
10 staff at the bottom of Page 24. So I'm reasonably
11 comfortable with the staff recommendation.

12 **CHAIRMAN CARTER:** Thank you.

13 Commissioners, anything further on Issue 6?

14 **MS. BRUBAKER:** Mr. Chairman?

15 **CHAIRMAN CARTER:** Oh, Ms. Brubaker, you're
16 recognized.

17 **MS. BRUBAKER:** I'm sorry to interrupt the
18 proceedings. I'll try to be brief.

19 I just want to say I also support *GTE v. Clark*
20 as applicable to this case. However, I would like to
21 clarify that the initial erroneous order that was
22 remanded to the, back to the Commission and was entered
23 on May 27th, 1993, was actually the order issuing from
24 the motions on reconsideration. It was not the
25 underlying final order establishing rates and charges

1 for *GTE*.

2 So, again, I support this case as being
3 applicable to what staff has recommended, which is the,
4 the change in rates be prospective, not retrospective.

5 **CHAIRMAN CARTER:** Okay. Thank you.

6 Commissioner Skop.

7 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

8 In briefly looking at that private letter
9 ruling, in the third paragraph at the bottom of Page 3,
10 it talks about a prospective basis. But, again, I
11 haven't reviewed the private letter ruling in its
12 entirety. It's pretty complicated. A lot of things
13 have been redacted. So, again, I would just turn to,
14 again, the bottom where it shouldn't be cited as
15 precedent and really not given a whole lot of weight.

16 **CHAIRMAN CARTER:** Thank you.

17 Commissioner McMurrin.

18 **COMMISSIONER McMURRIAN:** Yes. I think
19 Ms. Brubaker is going to have to help me again on this
20 *GTE v. Clark*, because -- and maybe I'm getting confused.
21 And if you could maybe go back through what you just
22 said, but I thought the staff rec said that *GTE* is not
23 applicable here and cited the reasons. But you're
24 saying it is applicable. And so can you help me figure
25 out what you're saying, what's applicable and what's

1 not?

2 **MS. BRUBAKER:** Well, no, no, no, no. We can
3 distinguish *GTE* -- actually you can use *GTE* in two ways.
4 One is *GTE* actually asked for a surcharge. The company
5 did not do so here. Another distinguishing element is,
6 if you want to about whether the surcharge, excuse me,
7 whether the change that we're discussing here should
8 apply retrospectively or proactive -- or prospectively,
9 I think *GTE* supports prospectively. So actually you can
10 use *GTE/Clark* for several different reasons.

11 Sorry. I didn't realize that that would be
12 confusing.

13 **COMMISSIONER McMURRIAN:** Thank you.

14 **CHAIRMAN CARTER:** Thank you.

15 Commissioners, anything further on Issue 6?
16 Hearing none, Commissioner Edgar.

17 **COMMISSIONER EDGAR:** Mr. Chairman, I also am
18 comfortable with the staff recommendation for the
19 reasons that have been discussed, so I would move the
20 staff recommendation on Issue 6.

21 **COMMISSIONER SKOP:** Second.

22 **CHAIRMAN CARTER:** Commissioners, we have a
23 motion and a second on Issue 6. It's been moved and
24 properly seconded. Is there any debate, any comments?
25 Any questions, any concerns?

1 Hearing none, all in favor, let it be known by
2 the sign of aye.

3 (Unanimous affirmative vote.)

4 All those opposed, like sign. Show it done.

5 Do we, do we even need a motion on Issue 7?

6 Do we need that?

7 **COMMISSIONER EDGAR:** Mr. Chairman, if we do, I
8 would joyously make a motion in favor of the staff
9 recommendation on Issue 7.

10 **COMMISSIONER SKOP:** Second.

11 **COMMISSIONER ARGENZIANO:** Mr. Chair?

12 **CHAIRMAN CARTER:** Move and -- Commissioner
13 Argenziano, you're recognized.

14 **COMMISSIONER ARGENZIANO:** We're talking about
15 Issue 7, the closing of the docket?

16 **CHAIRMAN CARTER:** Closing of the docket. Yes,
17 ma'am.

18 **COMMISSIONER ARGENZIANO:** Well, I do not agree
19 with the closing of the docket, so I want to make that
20 clear. And I still want to have time before we adjourn
21 to make comments on the record.

22 **CHAIRMAN CARTER:** Okay. We'll do that. We'll
23 do that.

24 Commissioners, we're discussing Issue 7, on
25 whether or not the docket should be closed.

1 **COMMISSIONER EDGAR:** My motion stands.

2 **COMMISSIONER ARGENZIANO:** Mr. Chair?

3 **CHAIRMAN CARTER:** You're recognized.

4 **COMMISSIONER ARGENZIANO:** I do not agree.

5 And, of course, you already have figured out that I
6 would be for the reconsideration and not for the closing
7 of the docket.

8 **CHAIRMAN CARTER:** Okay.

9 **COMMISSIONER EDGAR:** I would reiterate my
10 motion to close the docket.

11 **COMMISSIONER SKOP:** Second.

12 **CHAIRMAN CARTER:** Moved and properly seconded.

13 We're now in debate on the issue whether or
14 not to close the docket on Issue 7. In debate on Issue
15 7.

16 Hearing none, all in favor, let it be known by
17 the sign of aye.

18 **COMMISSIONER EDGAR:** Aye.

19 **COMMISSIONER McMURRIAN:** Aye.

20 **COMMISSIONER SKOP:** Aye.

21 **CHAIRMAN CARTER:** Aye.

22 All those opposed, like sign.

23 **COMMISSIONER ARGENZIANO:** Aye.

24 **CHAIRMAN CARTER:** Show it done.

25 Before we adjourn, Commissioners --

1 **COMMISSIONER ARGENZIANO:** Mr. Chair?

2 **CHAIRMAN CARTER:** Before we adjourn,
3 Commissioners, Commissioner Argenziano, you're
4 recognized.

5 **COMMISSIONER ARGENZIANO:** Yes. Thank you.
6 Just for brief comments, as I'm not there and have been
7 home studying and last night stayed up very late in
8 regards to some of the issues of this case. So here we
9 go.

10 In the issue of reconsideration, to me the
11 purpose is to argue the existence of a point of fact or
12 law which the Commission overlooked in making its
13 decision. Examples are, one, due process, which to me
14 requires notice and an opportunity to be heard. Notice
15 in this case is conceded by this Commissioner if
16 annualization and step increase are identical, but they
17 obviously are not.

18 Staff's comments at Page 8, quote, "The step
19 increase was a lesser included component in the rate
20 relief that would have been granted had the Commission
21 approved the annualization sought by TECO," unquote.

22 That conflicts with staff's observation at
23 Page 15. Quote, "Rather than annualize the costs, the
24 Commission decided that a better approach was to defer
25 the recovery of the costs," end quote.

1 That's to say nothing of staff's would have,
2 should have, could have position that I even heard today
3 regarding annualization, if we did this, if we did that
4 type thing. Both staff and TECO have to know that the
5 step increase and annualization are neither one and the
6 same, nor is one included in the other.

7 But quite beyond that, the defense of the step
8 increase by TECO and staff constitutes, constitutes
9 ratemaking by ambush. It is both ludicrous and
10 offensive to be asked to accept that an aside reference
11 to a Commissioner's inquiry by an industry witness at
12 Page 1,505 of the record, together with the unresponsive
13 inclusion of a vague reference in an exhibit requested
14 by the Intervenor in another matter, constitutes due
15 process. That's just not due process.

16 The effort by the way of Exhibit 112 is very
17 insidious -- insidious. Excuse me. And staff's note on
18 Page 10 that the Intervenor failed to address the step
19 increase in the posthearing briefs more supports the
20 idea that they had no notice of that approach than that
21 they accepted it. They never saw it coming. It was not
22 raised as an issue in my mind and in this Commissioner's
23 mind. It may be with the other Commissioners, but not
24 in this Commissioner's mind.

25 The motion to reconsider should be granted on

1 the due process basis alone, with the burden on the
2 Intervenors in brief and argument to advise of the
3 distinction and the impact of the approach selected by
4 staff. But we won't let that happen here. There's no
5 harm to me in having a hearing, to have that occur.

6 And regarding the used and useful argument,
7 broad discretion does not mean unfettered discretion,
8 especially where subsequent statutory enactment has
9 modified that discretion. For example, no one, I trust,
10 could possibly suggest that the PSC could have
11 implemented nuclear construction cost recovery in the
12 fashion which the Legislature has undertaken, but that
13 would have been within its ratemaking purview, if not
14 its authority.

15 In regards to 120, *Florida Statutes*, if the
16 PSC had undertaken proper rulemaking in connection with
17 a limited proceeding, the parties' expressed concern, if
18 not fear, of the expense in undertaking a limited
19 proceeding and properly complying with the used and
20 useful statutory requirement would be minimized, if not
21 eliminated, and we would not be engaged in the realm of
22 the projected, the contemplated, to be undertaken, the
23 hopeful, the subsequent determination wonderland in
24 which we find ourselves now.

25 And the scrivener's errors I have to say,

1 with, with, with all of the argument or the discussion
2 pertaining to the delegation of authority of that issue,
3 it's hard to believe that it inadvertently made it into
4 the record.

5 And I would like to -- I would have liked to
6 have heard on Issue 3, would have liked to have heard
7 the Intervenors address the reapportionment of the debt
8 equity and ratio given -- the ratio giving rise to the
9 increase that was discussed. That would have been good
10 to have some, some informative discussion on that.

11 And in the comment that was made before about
12 due process being flexible, I'm appalled at that
13 suggestion, I really am. Because just because we have
14 broad authority, which, by the way, has been nibbled
15 down by the Legislature, and probably rightfully so,
16 does not mean that we can deny due process, and I think
17 that's what we did today.

18 And I am getting a little concerned with some
19 of the misstatements that the -- or the
20 mischaracterizations. Actually I'm disappointed and
21 concerned with the staff's mischaracterizations that
22 I've seen throughout this case and several other places,
23 and I'm sure that in due time I will elaborate on those
24 matters with citation in an inevitable dissent.

25 Thank you, Mr. Chair.

1 **CHAIRMAN CARTER:** Thank you.

2 Commissioner Skop.

3 **COMMISSIONER SKOP:** No comment, Mr. Chair.

4 **CHAIRMAN CARTER:** Okay.

5 Commissioners, here's the -- let me give you
6 kind of the lay of the landscape. I'm going to need a
7 break, and we only got one court reporter today, and
8 we've got Internal Affairs. Let's come back to Internal
9 Affairs at 2:00.

10 (Agenda item concluded.)

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1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA)
 3 : CERTIFICATE OF REPORTER
 4 COUNTY OF LEON)

5 I, LINDA BOLES, RPR, CRR, Official Commission
 6 Reporter, do hereby certify that the foregoing
 7 proceeding was heard at the time and place herein
 8 stated.

9 IT IS FURTHER CERTIFIED that I
 10 stenographically reported the said proceedings; that the
 11 same has been transcribed under my direct supervision;
 12 and that this transcript constitutes a true
 13 transcription of my notes of said proceedings.

14 I FURTHER CERTIFY that I am not a relative,
 15 employee, attorney or counsel of any of the parties, nor
 16 am I a relative or employee of any of the parties'
 17 attorneys or counsel connected with the action, nor am I
 18 financially interested in the action.

19 DATED THIS 28th day of July,
 20 2009.

21
 22 Linda Boles
 23 LINDA BOLES, RPR, CRR
 24 FPSC Official Commission Reporter
 25 (850) 413-6734