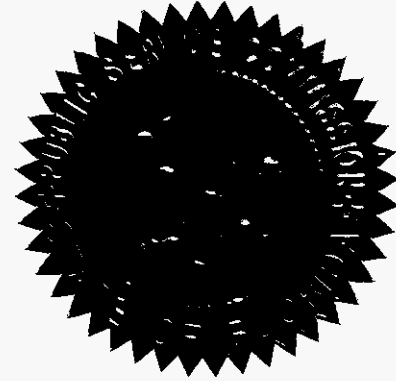


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 090368-EI

REVIEW OF THE CONTINUING NEED
AND COSTS ASSOCIATED WITH TAMPA
ELECTRIC COMPANY'S 5 COMBUSTION
TURBINES AND BIG BEND RAIL
FACILITY.



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 18

COMMISSIONERS
PARTICIPATING: CHAIRMAN MATTHEW M. CARTER, II
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER NANCY ARGENZIANO
COMMISSIONER NATHAN A. SKOP
COMMISSIONER DAVID E. KLEMENT

DATE: Tuesday, December 1, 2009

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

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

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P R O C E E D I N G S

1
2 **CHAIRMAN CARTER:** Commissioners, we are
3 now on Item 18, and staff does have an oral
4 modification.

5 Staff, you're recognized.

6 **MS. CHASE:** Thank you.

7 Commissioners, my name is Joanne Chase.
8 I'm with ECR staff. Item 18 is staff's
9 recommendation regarding TECO's request for a step
10 increase pursuant to the final order in TECO's last
11 rate case to recover the costs to construct five
12 combustion turbines during 2009 and a new rail
13 unloading facility at the Big Bend Station to be
14 placed in service in 2009. Staff's recommendation
15 is to set the matter directly for hearing and to
16 allow TECO to implement a revised step increase
17 effective January 1 of \$25,742,209 subject to refund
18 with interest pending the outcome of the hearing.

19 Mr. Slemkewicz has a revision to the
20 recommendation regarding the amount of the
21 recommended step increase that he would like to
22 explain, and also here to speak to the Commission
23 today -- this is a PAA item -- are representatives
24 from TECO, the Office of Public Counsel, and FIPUG.

25 **CHAIRMAN CARTER:** Thank you. Mr.

1 Slemkewicz, you're recognized.

2 **MR. SLEMKEWICZ:** Staff had originally
3 recommended that a revised step rate increase of
4 \$26,735,801 be authorized subject to refund during
5 the pendency of the recommended hearing. Staff
6 subsequently identified a calculation error on
7 Schedule 1 attached to the recommendation. In that
8 schedule an amount was added rather than subtracted.
9 As a result, the recommended step rate increase
10 should be corrected to the \$25,742,209. And
11 wherever that \$26 million figure appears on Pages 3,
12 6, 7, and on Schedule 1, it should be revised to the
13 \$25 million figure.

14 And, in addition, the 2.8 percent on Page
15 7 should be corrected to 2.7 percent. And on
16 Schedule 1, the \$8,527,329 for the May 2009 CTs
17 should be corrected to \$7,533,737.

18 **CHAIRMAN CARTER:** Did you give this
19 information to the parties? Do they have this?

20 **MR. SLEMKEWICZ:** It's available on-line
21 and it was handed to the Commissioners, but we do
22 have it available.

23 **CHAIRMAN CARTER:** Do you guys need to look
24 at it for a moment before you make your comments?
25 No? Okay. What order do you want to go in? Do you

1 want to start with the company or do you want to
2 start? OPC? Okay. Let's start with the company.

3 You're recognized.

4 **MR. BEASLEY:** Yes, sir. Mr. Chairman,
5 Commissioners, good afternoon and thank you. I'm
6 James D. Beasley for Tampa Electric Company. With
7 me today seated behind me is Ms. Denise Jordan,
8 who's Tampa Electric Company's Managing Director of
9 Regulatory Affairs.

10 We accept the staff's recommendation with
11 the change that has been made here today and support
12 your approval of it. We think the procedural
13 approach the staff has laid out before you is fair
14 and would be an efficient means of implementing the
15 step increase approved in the company's recently
16 concluded rate case, and at the same time give all
17 parties a full opportunity for due process in a
18 hearing to address the conditions that accompanied
19 that decision.

20 Tampa Electric commits to you and has
21 committed in its petition that all revenues
22 associated with the step increase would be collected
23 subject to refund with interest pending the outcome
24 of that hearing. All five of the CTs in question
25 are up and running, serving load, providing

1 customers with savings, and the rail facility has
2 been constructed. We have a train on-site currently
3 that is scheduled to commence unloading at the new
4 unloading facility tomorrow as we speak. So we look
5 forward to an opportunity at the hearing to tell you
6 about all of the benefits that our customers are
7 already receiving and will continue to receive as a
8 result, a direct result of the addition of these
9 five combustion turbines and the rail unloading
10 facility. Thank you.

11 **CHAIRMAN CARTER:** Thank you, Mr. Beasley.
12 Ms. Bradley.

13 **MS. BRADLEY:** I think we'll start down at
14 the other end.

15 **CHAIRMAN CARTER:** Thank you. You're
16 recognized. Let's hear from OPC.

17 **MS. CHRISTENSEN:** Good morning. Or good
18 afternoon, Commissioners. Patty Christensen with
19 the Office of Public Counsel.

20 As you are aware, this docket was
21 established pursuant to the final order that was
22 issued in the TECO rate case. And in that final
23 order the Commission approved a step increase, and
24 it set forth the criteria on which that final --
25 where the step increase was to be judged.

1 The first matter of business that I'd like
2 to addressed today is the fact that, as you may be
3 aware, that step increase is subject to an appeal.
4 And I would request that this Commission consider
5 holding this matter in abeyance until there is the
6 opportunity for the court to rule on whether or not
7 it was appropriate for the step increase to be
8 granted in the first place.

9 Short of that, and I am aware that the
10 company has submitted a petition and they have filed
11 a tariff, and their request purports to move forward
12 under a tariff filing under the file and suspend
13 rule. My reading of the statute would suggest that
14 they have not complied with what would be necessary
15 to move forward under a file and suspend. And in
16 that case they would have had to file MFRs and
17 proceed as you would for a normal base rate case.

18 It's our position that this is really
19 moving forward as a genesis of the Commission's
20 decision in the final order. And what I would
21 suggest is that in the final order the Commission
22 stated that they were allowing the step increase to
23 avoid a limited proceeding. We filed a motion for
24 reconsideration, and in that motion for
25 reconsideration the Commission recognized that we

1 had to have a point of entry, and that this was
2 going to move forward as a PAA. And in your current
3 recommendation now it is being set for a final
4 hearing. We think that that may create a problem
5 because anything that gets protested in a PAA
6 becomes null and void.

7 The other problem is the one criteria that
8 was set forth in the step increase was whether or
9 not these were needed for load requirement, and
10 according to the recommendation they are not. The
11 recommendation clearly states that these exceed the
12 20 percent reserve margin, and that's the only
13 criteria that the Commission is supposed to be
14 judging whether or not they should allow for any
15 step increase. And whether or not it provides any
16 other benefits is irrelevant to the criteria that
17 was established by the Commission in its final
18 order.

19 And what I would suggest is that if the
20 Commission were to deny holding this motion in
21 abeyance and move forward, it should go ahead and
22 deny staff's recommendation, find that the CTs were
23 unnecessary to meet load requirement, issue a PAA
24 order, and allow TECO then to protest it if they
25 wish. And I would suggest that that is how this

1 should proceed.

2 I would note that the Commission should
3 not consider any additional criteria in this
4 recommendation. If it's based on the final order,
5 then it should be based on the criteria that was set
6 forth in the final order. No additional criteria
7 should be considered because that, in essence, would
8 be amending your final order, which is not the
9 subject of this recommendation or proceeding.

10 If the Commission intends to proceed as a
11 new proceeding and allow it to go forward as some
12 sort of limited petition or limited proceeding, then
13 we need to define how we would move forward and what
14 issues would be on the table, because I think as we
15 had mentioned in argument in the base rate case,
16 that we believe that this would be more
17 appropriately addressed as a limited petition with
18 the company coming forward and having the burden to
19 show that it needed the money. In other words, that
20 it was earning outside of its authorized range and
21 that it was entitled to a separate recovery through
22 a separate limited proceeding. And what I'm seeing
23 here today through this recommendation appears to be
24 an attempt to create some sort of hybrid process
25 where you have a petition that purports to move

1 forward under a tariff filing under the file and
2 suspend statute, but yet also purports to try and
3 move forward under your final order, and I think
4 those two tracks are incongruent.

5 So I would urge the Commission to go ahead
6 and hold this in abeyance, suspend the tariff,
7 although I'm not sure that a tariff filing was
8 appropriate at this point, and deny any sort of
9 interim rate increase for a couple of reasons. One,
10 because your own recommendation says and strongly
11 suggests that these CTs were not needed for load.
12 Therefore, it's very likely that they cannot prove
13 that they were necessary to meet load requirement
14 and, therefore, they cannot sustain their burden
15 under the final order.

16 Two, there appears to be no statutory
17 authority to authorize this type of interim rate
18 increase. There's a very specific statutory
19 provision that allows for interim rate increases in
20 a base rate type of proceeding, and that requires a
21 showing that they are earning outside their
22 authorized range. We have no such showing in this
23 petition, and they have not attempted to allege that
24 putting these CTs into service and requiring them to
25 absorb the cost of these CTs would cause them to

1 earn outside their authorized range that was
2 authorized in the last base rate case.

3 Thank you, and I will hand it over to my
4 colleagues.

5 **CHAIRMAN CARTER:** Thank you. I was about
6 to pull out my lights on you. Ms. Kaufman, you're
7 recognized.

8 **MS. KAUFMAN:** Thank you, Mr. Chairman. I
9 noticed the lights were missing. Uh-oh.
10 (Laughter.) My comments are very brief.

11 I am Vicki Gordon Kaufman. I am with the
12 law firm of Keefe Anchors Gordon and Moyle, and I'm
13 here on behalf of the Florida Industrial Power Users
14 Group. As you are aware, we were an intervenor and
15 we were an active participant in the Tampa Electric
16 rate case when it was before the Commission, and we
17 are also a party now to the appeal before the
18 Supreme Court regarding the propriety of the step
19 increase that you are talking about today. And I
20 just have three brief points that I want to make.

21 The first one was discussed by Ms.
22 Christensen, and that's the fact that the elephant
23 in the room, or the main issue of whether or not the
24 step increase was appropriate is on appeal before
25 the Florida Supreme Court right now. That's a

1 substantive issue that is inextricably intertwined
2 with the petition that's before you today and we
3 agree that the most prudent course is to take no
4 further action until we hear what the court has to
5 say.

6 As I understand your staff, they are
7 recommending that we have a hearing. We certainly
8 think that would be appropriate, but there's a lot
9 of duplication of effort that is going to go into a
10 hearing if the court ultimately agrees with our
11 appeal, which is that that increase is not
12 authorized at all. However, if you decide to go
13 forward and not wait for the court's judgment, we
14 agree with Ms. Christensen, as well, that this is a
15 PAA. This is not a tariff filing, and it's not
16 subject to the file and suspend law. Simply because
17 Tampa Electric attached a tariff to its filing
18 doesn't bring it under the file and suspend
19 provisions.

20 We would suggest to you that Tampa
21 Electric is trying to put the cart before the horse.
22 The first thing you have to do if you don't wait for
23 the appeal is make some substantive decisions about
24 this case and about Tampa Electric's alleged facts
25 and give the parties an opportunity to put on

1 evidence in regard to that. And even in your motion
2 on reconsideration you say at Page 12 in regard to
3 the step increase, parties who may be substantially
4 affected will have an opportunity to protest our
5 decision on staff's future recommendation, which is
6 the one that we're talking about today.

7 And I know it sounds like I'm talking
8 about a lot of process, but process is significant
9 because regardless of which way you were to vote out
10 the recommendation, a substantially affected party
11 has the opportunity to protest it, and that makes
12 your order null and void, then you go to a hearing.
13 That is what happens under Chapter 120, and that's
14 the process that you ought to follow in this case.

15 And my last point has to do with the rail
16 facility, and that is I don't think there is any
17 disagreement, even Tampa Electric says that that
18 rail facility is not in commercial operation even as
19 we sit here today. Again, we've got the cart before
20 the horse. We've got them saying, and your staff,
21 well, we think it is going to be in commercial
22 operation. Most of it is done, but it's not in
23 commercial operation, so it doesn't comply with the
24 clear requirements of your order. And I know the
25 issue will come up that, well, it is subject to

1 refund, so, no harm, no foul. Ratepayers have
2 already felt the effects of Tampa Electric's rate
3 increase. I think there's going to be some impacts
4 on them from the decision you just made in the prior
5 item, and we have all heard the distressing economic
6 times that we're in. This is more money that's
7 going to come out of ratepayers' pockets. And even
8 they get it refunded at the end of the day it's
9 still money that they don't have today. It's money
10 that my clients don't have to grow their businesses
11 to employ people.

12 So I think the idea that because it is
13 subject to refund means that there's really not a
14 problem doesn't accurately look at our economic
15 reality. So we would ask you to deny your staff's
16 recommendation. But if you go forward, to treat
17 this as it should be, as a PAA, and let the
18 substantial parties protest it if it's appropriate.
19 Thank you.

20 **CHAIRMAN CARTER:** Thank you. Mr. Wright.

21 **MR. WRIGHT:** Thank you, Mr. Chairman and
22 Commissioners. Schef Wright representing the
23 Florida Retail Federation, and I will be very brief.

24 Fundamentally, we agree with the comments
25 made by Ms. Christensen and Ms. Kaufman. I think

1 you have got sort of a fish or fowl situation here.
2 The question it seems to me is is this going forward
3 as a step increase under the order. If so, on its
4 face it appears that they have not satisfied the
5 criteria required in the order that the units would
6 be necessary to meet load requirements. That's what
7 the staff's recommendation appears to say.

8 On the other hand, if the company is
9 purporting to go forward under the file and suspend
10 law, that essentially puts this in the context of
11 being a new rate case and a new rate increase. And
12 Tampa Electric therein would bear the burden of
13 having to prove that it needs additional revenues in
14 order to have the opportunity to cover all of its
15 legitimate costs and earn a reasonable return on its
16 investment in 2010 based on its total costs in 2010,
17 and based on its total projected revenues in 2010.

18 We would agree with the recommendations
19 proposed by Public Counsel, the Citizens, and by
20 FIPUG that you should deny the staff recommendation.
21 If you do go forward, let it go forward as a PAA and
22 whoever is adversely affected by whatever vote you
23 would make can protest, if necessary. Thank you.

24 **CHAIRMAN CARTER:** Thank you, Mr. Wright.

25 Ms. Bradley.

1 **MS. BRADLEY:** Thank you, Mr. Chairman.
2 Cecilia Bradley, Office of the Attorney General on
3 behalf of the citizens. We're here today in support
4 of Office of Public Counsel and the other consumer
5 parties and certainly adopt what they have said and
6 agree with that, and I would just add that this case
7 should be stayed. You know, we would ask that you
8 respect the position and the judgment of the Supreme
9 Court and let them proceed with their proceedings
10 and then we can handle whatever is necessary after
11 that.

12 But if we go forward in the way that has
13 been recommended, that is the type situation that
14 just really creates a mess to have two different
15 groups going at it in different ways and dealing
16 with the same thing. So we would respectfully ask
17 that you stay this and let the court go ahead and
18 address this, and then we can finish dealing with
19 it. Thank you.

20 **CHAIRMAN CARTER:** Thank you. Briefly,
21 Mr. Beasley.

22 **MR. BEASLEY:** Yes, Mr. Chairman. Just in
23 response, this is not a new case, a new rate case.
24 It is a docket to implement a decision that the
25 Commission made as a matter of final agency action

1 and reaffirmed on your order on reconsideration to
2 place the step increase into effect January 1, 2010,
3 subject to our demonstrating that the conditions
4 attached in that order have been met. We are
5 prepared to do that.

6 What staff has recommended will save time
7 because it's pretty obvious if it went forward as a
8 PAA it would be protested by the various parties who
9 are here today. What staff has suggested is to save
10 the time involved in that process and go ahead and
11 set this matter for hearing and let everyone have
12 their full due process opportunity to address the
13 conditions and the extent to which they have been
14 met. We are fully confident we will meet that
15 requirement, and the way staff has proposed this to
16 implement it subject to refund plus interest pending
17 the outcome of that hearing is fair for everyone.
18 It's fair for the ratepayers, it's fair for the
19 shareholders, and in the meantime they get the
20 benefit of the facilities that we have constructed
21 pursuant to what we indicated to you we were doing
22 in the rate case.

23 So we would urge that you recognize
24 staff's recommendation as a reasonable procedural
25 alternative for moving forward, and we look forward

1 to the opportunity to present this evidence to you
2 regarding these new facilities.

3 **CHAIRMAN CARTER:** Thank you.
4 Commissioners? Commissioner Skop, you're
5 recognized.

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

8 **CHAIRMAN CARTER:** Then Commissioner
9 Argenziano.

10 **COMMISSIONER SKOP:** Just a quick question
11 to, I guess, Ms. Christensen on behalf of Public
12 Counsel. If I heard you correctly, or the
13 intervenors correctly, it seems as if in lieu of
14 adopting the staff recommendation they would seek to
15 abate this PAA item pending appellate review of the
16 Commission's approval of the step increase for the
17 five CTs and the rail facility. Is that correct?

18 **MS. CHRISTENSEN:** Yes. And I think for
19 some of the reasons that my colleagues alluded to,
20 which is we would have to move forward with a
21 hearing, which means that we would have to incur the
22 cost of getting experts to testify at hearing.
23 Ultimately it may be found that it wasn't
24 appropriate to go forward with a hearing, so we will
25 incur some costs if not a no harm, no foul type of

1 situation where you incur revenue and subject to
2 refund, because there will be a cost that will have
3 to be incurred to defend against the case as it
4 purports to go forward.

5 And although I don't think there's a
6 requirement of an automatic stay, and we're not
7 suggesting that an automatic stay is required under
8 the appellate rules, it certainly is within the
9 discretion of the lower tribunal to issue a stay. I
10 mean, that's within your discretion. And I think
11 for reasons of judicial economy it would be
12 appropriate to hold this in abeyance until that is
13 decided.

14 **COMMISSIONER SKOP:** So if I understand you
15 correctly, because the step increase previously
16 approved by the Commission is currently in appellate
17 review, you're saying that going forward with a
18 hearing would cost unnecessary costs, or cost OPC,
19 Public Counsel, and others to incur unnecessary
20 costs in anticipation of moving forward with a
21 hearing, whereas if the court were to rule in your
22 favor and against the Commission, then it would be a
23 whole do over and that the hearing would be at that
24 point sunk costs, if you will. Is that generally
25 correct?

1 **MS. CHRISTENSEN:** Correct.

2 **COMMISSIONER SKOP:** Okay. Let me ask a
3 few variations of that, because I'm trying to get a
4 better understanding of your position, the position
5 of staff, and the position of the parties in light
6 of what the Commission previously approved.

7 If the issue is one of due process and
8 ultimately the prudence of the five CTs and the cost
9 of putting those into service, would a hearing of
10 some sort, whether it be what staff proposed or in
11 the future be the appropriate mechanism to afford
12 the parties due process to vet those issues?

13 **MS. CHRISTENSEN:** Assuming for sake of
14 argument that the court upholds the step increase,
15 and given that the Commission has made a decision in
16 the order on reconsideration that parties would have
17 the opportunity to protest, then pursuant to the
18 Commission's normal PAA process, we can, at that
19 point, protest and set it for hearing. And, of
20 course, that may depend. If we're talking about
21 something in the future, some six months to a year
22 from now depending on how long it takes the court to
23 make its decision, facts and circumstances may
24 change. And I would hesitate to guess what our
25 position would be at that in the future, because I

1 don't know economically or situationally how that
2 will be.

3 As we sit here today, I can tell you from
4 reading your staff's recommendation and based on
5 what was in the final order, it appears to me today
6 that if you are proceeding under the final order and
7 judging it by the criteria that was set forth in
8 that final order, that you would make the
9 decision -- or we would suggest that the decision
10 that is appropriate to be made is that they have not
11 met the requirement that those CTs were needed for
12 load.

13 And I'm not addressing the Big Bend rail
14 facility, because as of the writing of the
15 recommendation they had not been put into service,
16 and my understanding from Mr. Beasley is that they
17 are ready to start service, but, you know, we would
18 have to address that when it actually starts
19 unloading or loading coal and come into service at a
20 future point.

21 **COMMISSIONER SKOP:** Okay. Just two
22 follow-up questions, and then a quick follow up with
23 staff. Would there be -- well, let me ask this.
24 It's going through appellate review now. And say,
25 for instance, that the Commission were to stay this

1 proceeding, which requests the ability to implement
2 the new rates subject to refund with interest, so,
3 you know, there is some adequate protection there.

4 But what would happen if this proceeding
5 were stayed pending appellate review, and then the
6 court ultimately upheld the Commission's prior
7 decision to grant the step increase. What posture
8 would that leave the Commission in to grant any
9 additional increase? I mean, where I'm getting to
10 is here if the increase were granted by virtue of
11 this item before us, it would be subject to refund
12 with interest. But if you stay it in the converse
13 of that and you come back and, say, a year lapses
14 and the court upholds the prior decision of the
15 Commission, then the company comes back in for
16 rates, are those rates also going to be with
17 interest, or is there going to be just the rates? I
18 guess I'm trying to figure out where we are at and
19 figure out a way that we can address all the
20 parties' concerns.

21 **MS. CHRISTENSEN:** Well, I think you've got
22 two different things going on. I think if you issue
23 the stay, whatever proceeds in the future, there is
24 no retroactive ratemaking. I mean, that's a clear
25 policy. Well, not a policy, but it's clear from the

1 Supreme Court you can't have retroactive ratemaking.

2 So if you grant the stay, you couldn't go
3 back and grant the step increase with interest, I
4 don't believe, and my colleagues can correct me if
5 I'm wrong, but I don't I think that that would
6 happen.

7 However, to address your -- I think the
8 underlying concern is what happens if the company
9 finds themselves in a position where they are
10 earning below their authorized rate of return. I
11 think they would, even if you stayed this particular
12 proceeding, if they found themselves in a position
13 where they are underearning at any point in the
14 future they are not precluded from filing a rate
15 case. They always have that. And if they filed a
16 future rate case they could, as they would with any
17 plant, include this as part of their plant and have
18 to prove whether or not it was entitled to recovery.
19 So they are not placed in a position where they are
20 going to suffer financial harm without redress. I
21 think there's statutory provisions under the -- you
22 know, base ratemaking statute that they could come
23 in.

24 I think also that -- I think, based on
25 what the recommendation is right now, I think what

1 posture you would be in in six months from now is
2 whether or not the company has met the criteria that
3 you set out in the order, which is whether or not
4 those CTs were needed to meet load requirement in
5 2009 and 2010. And I think based on what your
6 staff's recommendation is telling you as of today
7 the answer is no. And, therefore, I don't think
8 that -- you know, I think essentially customers are
9 going to have to -- if you grant the interim rate
10 increase, which as we had mentioned before we don't
11 think there is a statutory provision that allows for
12 that outside of the normal base rate case
13 proceeding, I mean, there is an interim statute that
14 sets forth specific criteria.

15 That has not been met in here and they
16 haven't attempted to make a showing that they are
17 entitled to any sort of interim. So I have to
18 assume that we are moving solely under the final
19 order, and the only way to move forward under the
20 final order is to establish that they have met the
21 criteria, and from my reading of your staff
22 recommendation they haven't.

23 **COMMISSIONER SKOP:** Let me -- that's a
24 little bit longer explanation. I guess my concern
25 was trying to gain a better appreciation for if the

1 company were to place the assets in service, being
2 the five CTs, which I believe they are all in
3 service now or will be shortly, plus the rail
4 facility, and that the appellate review is underway
5 and that takes a year, and assuming for the sake of
6 discussion this proceeding is stayed pending that
7 appellate review.

8 So in that interim time of a year they
9 have already placed assets in service, and I'm
10 trying to rationalize should the court ultimately
11 rule one way or another, but say it upholds the
12 Commission's decision, then you raise an excellent
13 point about retroactive ratemaking, but then I'm
14 also trying to balance the prejudicial effect, if
15 any, of placing assets in service and not being able
16 to recover for those.

17 And I think if I understand you correctly
18 that your point is well taken that they may have --
19 the check and balance to that should be that they
20 may have the ability to absorb that within existing
21 rates and not have a problem with it. But if they
22 were not able to absorb it, then they certainly
23 would have recourse to come in to petition for any
24 rate increase as a result of that. Is that
25 generally correct?

1 **MS. CHRISTENSEN:** I believe you've
2 perfectly stated what my position was on that.

3 **COMMISSIONER SKOP:** Okay. And then just
4 one follow-up question. Given that staff -- and I
5 think I need to correct myself, I think this is a
6 regular agenda item instead of a PAA, is that
7 correct? So any action here would be final agency
8 action not subject to protest.

9 **MS. BRUBAKER:** It would be procedural in
10 nature.

11 **COMMISSIONER SKOP:** Okay. Fine. I guess
12 with the fact that staff has proposed setting this
13 for hearing, and obviously there's contention here
14 over the need for it, and the manner in which it was
15 done. And, you know, my perspective is the things
16 that we are talking about are pretty finite and well
17 qualified in terms of cost, like a CT, it's pretty
18 much going to Publix -- you know what a box of
19 cereal is going to cost, and it is kind of like the
20 same thing when you get down to CTs and some other
21 projects. It's not like trying to build, you know,
22 a space station or something like that. You have a
23 good idea of what the costs are.

24 That part doesn't give me a whole lot of
25 concern. I mean, I think because, again, recency

1 and then the cost is well constrained subject to
2 being reviewed for prudence. Since staff has
3 recommended that this be set for hearing, would
4 there be any benefit or expediency in terms of
5 resolving this issue more expeditiously by
6 withdrawing the appellate review and going directly
7 to hearing on this?

8 **MS. CHRISTENSEN:** Well, in short answer,
9 no. And I think the reasoning is I think we have
10 issues with the way the step increase was done in
11 the base rate case which I think are fundamental.
12 And I'm not even sure that if we get to the final
13 conclusion of the hearing that will resolve the
14 issues that are currently on appeal. And I would
15 certainly have to take more time to think about it,
16 but I think there were so many issues arising out
17 of what was done and how it was done in the base
18 rate proceeding that those issues may stand alone --
19 stand up alone as opposed to the, you know, what the
20 ultimate cost and whether or not they were needed
21 for future proceedings.

22 **COMMISSIONER SKOP:** So if I understand
23 correctly, the purpose of the appellate review is to
24 ascertain the controlling case law as to the
25 Commission's inherent authority to grant a step

1 increase in the manner --

2 **MS. CHRISTENSEN:** Yes. I mean, I think
3 that is fundamentally what is on appeal along with
4 certain -- you know, the aspects of how we got there
5 which we are not attempting to address today. I
6 think we've raised those issues in our motion on
7 reconsideration and the Commission had an
8 opportunity to look at it at that point. And those
9 are the issues that will be pursued on appeal.

10 **COMMISSIONER SKOP:** And thank you for
11 that. I was just trying to gain a better
12 appreciation for what the concerns were in relation
13 to the staff's recommendation, and I'll yield back
14 to the Chair and he will hear from my colleagues.

15 **CHAIRMAN CARTER:** Thank you. Commissioner
16 Argenziano, you're recognized.

17 **COMMISSIONER ARGENZIANO:** Thank you.

18 To staff, is there a requirement that the
19 rail facility be complete and that the CTs meet the
20 load requirement?

21 **MS. CHASE:** Yes, Commissioner. The order
22 is clear they have to be completed by the end of
23 2009.

24 **COMMISSIONER ARGENZIANO:** And we do know
25 that that is going to happen?

1 **MS. CHASE:** We do not know for certain.
2 We certainly have indications that it will, and I
3 think if the -- they will be putting -- if approved,
4 they will be putting the rate increase in effect
5 January 1 and subject to them putting that portion
6 in effect, they would have to provide an affidavit
7 or some documentation that it is actually in
8 operation. I think that's something we can take
9 care of.

10 **COMMISSIONER ARGENZIANO:** Okay. But it is
11 not in operation as of today?

12 **MS. CHASE:** That's correct.

13 **COMMISSIONER ARGENZIANO:** Okay. Thank
14 you.

15 **CHAIRMAN CARTER:** Commissioner Skop.

16 **COMMISSIONER SKOP:** Thank you, Mr. Chair.
17 Just a quick intervening question to Commissioner
18 Argenziano's point.

19 With respect to TECO's proposal to
20 implement rates effective January 1st, has TECO
21 provided notice of those rates yet? Because, I
22 mean, it takes usually a month or two to implement
23 rates. Here we are 1 December, and obviously
24 billing systems don't work, so I'm wondering whether
25 there's some inherent flex time from the Commission

1 as to the point of whether they have noticed these
2 rates yet. Because if not, I don't believe they
3 could implement them on January 1st.

4 **CHAIRMAN CARTER:** Mr. Beasley.

5 **MR. BEASLEY:** Perhaps I can answer that
6 question. We have notified our customers that the
7 rate would be placed into effect January 1, 2010,
8 pursuant to the final order and order on
9 reconsideration. They are fully apprised of that
10 and have been for some time.

11 The key point I want to respond to is the
12 suggestion that delay is not harmful. I think
13 because of the doctrine of retroactive ratemaking,
14 any delay beyond that date that's the date that was
15 finalized in an order that's on appeal, but with
16 respect to which no party has asked for any type of
17 stay of that order. Delay would cause irretrievable
18 harm to the people who have their money invested in
19 Tampa Electric Company because the money that would
20 not be collected during the period of any such delay
21 would be gone forever.

22 What staff has suggested, though, is
23 something that protects everyone. It protects the
24 shareholders of Tampa Electric from irretrievably
25 losing revenues that the final order says they're

1 entitled to, and at the same time fully protects the
2 customers of Tampa Electric Company because those
3 funds are not going to be kept until they have shown
4 to be justified. And we are prepared to do that,
5 and we think that is why the staff's approach is the
6 fairest for all parties.

7 **CHAIRMAN CARTER:** Thank you.

8 Commissioner Edgar and then Commissioner
9 Argenziano.

10 **COMMISSIONER EDGAR:** Okay. Two quick
11 questions and there may be some more later. The
12 first is, and I think Mr. Beasley may have just
13 touched on this, but to the intervenors, was a stay
14 requested as part of the appeal?

15 **MS. CHRISTENSEN:** We filed a notice of
16 appeal. We did not file a motion for stay up in the
17 appellate court because the appropriate vehicle is
18 to come to the lower tribunal and ask for a stay.
19 And I would -- a stay, we are here today on this
20 item asking for a stay of this item today.

21 **COMMISSIONER EDGAR:** I'm a little
22 confused, and I guess your point about that you are
23 asking for a stay. I thought I heard you say that
24 you are asking for us to hold it in abeyance. First
25 of all, I don't remember hearing you say that you

1 were requesting a stay in this forum for this body
2 today. And I'm not sure about the rules of
3 procedure that say that a stay would be more
4 properly requested here than as part of the appeal.

5 **MS. CHRISTENSEN:** I guess part of the
6 problem we have is that the appeal is being taken in
7 the base rate case. This is proceeding under a
8 different docket number, so there was nothing to ask
9 to essentially stay in the base rate case because
10 this docket was opened up as an audit, and then
11 there was a petition filed. And until this
12 recommendation came out, there was no action to
13 request it be held in abeyance, or stayed, or asking
14 the Commission to hold off on moving forward with
15 something.

16 So until the recommendation came forward
17 and purported to set up a process of moving forward,
18 there was nothing to be requested that you stay your
19 hand from while the appeal was going on. So I guess
20 that would be my answer. And because we're
21 proceeding under two separate dockets, you wouldn't
22 necessarily file a stay in the base rate case
23 proceeding. For this docket, I think the
24 appropriate mechanism is to ask you to abate
25 whatever action you're purporting to take with

1 implementing the final step increase into rates.
2 And then if it's appropriate we would have to make
3 that determination if it was denied whether or not
4 we would seek to somehow bring that to the attention
5 of the appellate court. And it's a little bit
6 unusual because we have got two separate dockets
7 going. If this was proceeding forward under the
8 base rate case, then I think we would have a clearer
9 path.

10 **CHAIRMAN CARTER:** Commissioner, hang on.

11 **COMMISSIONER EDGAR:** Perhaps clearer, but
12 I'm not sure. Candidly, I'm not sure I agree.
13 Well, actually I'm sure. I don't agree.

14 **CHAIRMAN CARTER:** Commissioner, will you
15 yield for a moment?

16 **COMMISSIONER EDGAR:** With that procedural
17 description of the options. But be that as it may,
18 my second question was what is the status of the
19 case on appeal today?

20 **MS. CHRISTENSEN:** Currently we are
21 awaiting the initial briefs to be filed as of
22 February 4th, 2010.

23 **COMMISSIONER EDGAR:** And am I correct that
24 the intervenors or the -- the intervenors here, but
25 the requesters of the appeal, shall I say, requested

1 an extension as far as the dates to file briefs?

2 **MS. CHRISTENSEN:** Yes. It was an
3 unopposed request to extend the time for the initial
4 brief. Given that the initial brief was due within
5 70 days of filing the notice of appeal and the
6 actual record would not be prepared until 110, and
7 given the length of the transcript and the record,
8 we felt it was appropriate to ask for the additional
9 time and to go ahead and ask for significant time --
10 you know, sufficient to get it completed. Because
11 as the court stated in their order, there will be no
12 more extensions granted. So we believe that we are
13 on schedule and set to file that initial brief, and
14 we don't believe that we would even need an
15 extension, and we're ready to move forward with the
16 appeal.

17 **COMMISSIONER EDGAR:** Okay. And just a
18 comment. I have said this many times. Whenever I
19 can and somebody asks for more time, or an
20 extension, or whatever, I try to support that
21 because there are many times I need more time. I
22 always need more time. But I do have a little bit
23 of a concern with, you know, delays in an appellate
24 forum and as part of the larger, the entire process
25 for this forum to be requested to delay

1 implementation of an order. And I may have more
2 questions later, Mr. Chairman.

3 **CHAIRMAN CARTER:** I'll come back to you.
4 I just wanted to yield for one moment. I'll come
5 back to you.

6 **COMMISSIONER EDGAR:** Absolutely.

7 **CHAIRMAN CARTER:** Ms. Helton, you're
8 recognized.

9 **MS. HELTON:** I have consulted with our
10 appellate expert, Ms. Cibula, and my understanding
11 of the appellate rules with respect to stays is that
12 the request needs to be made in writing, and there's
13 specific showings that need to be made when you do
14 ask for a stay, and I have to go too far back in the
15 recesses of my mind to remember what those are, but
16 I'm not sure that we have met the requirements today
17 to actually ask for a stay.

18 And if I could address, if you don't mind,
19 a couple of the other points that have been raised.
20 I think that it's -- I'm not stepping out of school
21 here to say that one of the reasons why staff has
22 made this recommendation today is because of its
23 concern that if the Commission's order is upheld,
24 which we believe that it will be, and we have not
25 implemented the final order and allowed TECO to

1 start charging the step increase the beginning of
2 next year, that there is the possibility that
3 customers could be surcharged, that there may be a
4 requirement for surcharges.

5 So by recommending to you today that TECO
6 be allowed to start collecting that money at the
7 beginning of the year subject to refund, we're
8 trying to avoid that prospect. And I say that to
9 you based on GTE versus Clark, which is a Supreme
10 Court decision that was entered back in 1996 when
11 the Commission had disallowed some affiliate
12 expenses and remanded the decision back to the
13 court, or remanded the case back to the court -- I'm
14 sorry, I didn't eat lunch today and I can feel it
15 now -- remanded the decision back to the Commission
16 to implement the disallowance. The Commission did
17 so on a going-forward basis and did not allow
18 recovery for the time period between what the court
19 called an erroneous final order and when it was
20 remanded back to the Commission.

21 And the court said, no, you would have
22 refunded that money back to the customers if it was
23 appropriate to disallow it, and you allowed -- and
24 the company had collected it. Here there's fairness
25 involved between the ratepayers and the utility, and

1 the company was entitled to that money, and you
2 should collect it or allow recovery of it by way of
3 a surcharge.

4 So that is our concern here. The court
5 also said that in allowing that surcharge that that
6 was not retroactive ratemaking. That was one of the
7 arguments that the Commission had made and they
8 disagreed with the Commission. And as far as the
9 argument with respect to we're not doing this as a
10 Proposed Agency Action process, I think of tariff
11 filings as a subset of Proposed Agency Action. When
12 you approve a tariff filing, you do so -- or you
13 deny a tariff filing, you do so given a point of
14 entry of 21 days allowing someone to protest that.

15 And our typical practice is if there is a
16 protest of that tariff filing that the money that
17 would be collected under the tariff be collected
18 subject to refund. I think the staff here is just
19 trying to avoid that process because in their mind
20 they thought that there would be a protest anyway
21 and we were just trying to be more administratively
22 efficient.

23 **CHAIRMAN CARTER:** Thank you. Commissioner
24 Edgar, anything further?

25 **COMMISSIONER EDGAR:** Not right now. Thank

1 you, Mr. Chairman.

2 **CHAIRMAN CARTER:** Commissioner Argenziano.

3 **COMMISSIONER ARGENZIANO:** Thank you. Just
4 a couple of things. Mary Anne, you had mentioned
5 that there was a requirement to -- if a stay was
6 desired, that it be in writing.

7 **MS. HELTON:** Yes, ma'am, that's my
8 understanding.

9 **COMMISSIONER ARGENZIANO:** Okay. And to
10 OPC and the intervenors, you have been around a long
11 time, do you know of that requirement?

12 **MS. KAUFMAN:** Well, I was just going to
13 reiterate I think what Ms. Christensen said. We
14 haven't had anything to stay. And the process of
15 treating this as though it is a separate docket
16 convolutes the procedure. Until there is an order
17 in this new docket, we have nothing to ask you to
18 stay. And, therefore, I agree that it should be in
19 writing, but we are kind of between a rock and a
20 hard place.

21 And as Ms. Christensen said, the item is
22 before you now. This is the first opportunity that
23 we have had to raise it. I will say that I was very
24 surprised in the way this was filed as a tariff,
25 which I suggest to you that it is not, and that the

1 tariff filing rules that Ms. Helton is alluding to
2 just are not applicable here. So the whole way this
3 has been processed was surprising to me, and this is
4 our first opportunity to discuss it with you as far
5 as I'm aware.

6 **COMMISSIONER ARGENZIANO:** Okay. Then, Ms.
7 Helton, so with things being a surprise as has been
8 explained, how would they have the opportunity to
9 have it in writing?

10 **MS. HELTON:** In my mind what they are
11 asking for you to stay today is implementation of
12 the final order where you required in the final
13 order and in the motion -- excuse me, the order on
14 reconsideration that TECO start collecting the step
15 increase the beginning of next year. So that, I
16 think, is what they are asking you to stay, so I
17 think there is something out there.

18 **COMMISSIONER ARGENZIANO:** Can I have a
19 response?

20 **CHAIRMAN CARTER:** Ms. Christensen.

21 **MS. CHRISTENSEN:** Thank you. I think
22 fundamentally the problem that we are running into
23 here and why this came as a surprise the way it was
24 presented is because there is an assumption that
25 they have met the criteria in the final order, and I

1 am suggesting the way that the recommendation was
2 written they have not met the criteria, so there was
3 no automatic putting in of this rate on January 1st,
4 2010. There always had to be a showing by the
5 company in their burden to demonstrate that these
6 CTs were needed for load requirement and that the
7 Big Bend Rail Unit was, in fact, in commercial
8 service. I mean, I think the order --

9 **COMMISSIONER ARGENZIANO:** Let me stop you
10 there for a minute, if I can. I asked the question
11 of staff a little while ago if there was a
12 requirement of the rail facility to be in commercial
13 operation or the CTs met the load requirement, and
14 staff indicated that they have not, but they were
15 going to. And are you telling me that in the past
16 in your experience here that they had to have today
17 been in operation or -- staff replied to me, I'm
18 sure you heard their reply before was that we expect
19 that they will be.

20 **MS. CHRISTENSEN:** Well, I think you have
21 two different things happening. You have the five
22 commercial CT units, which I don't think there's a
23 dispute that those have been placed into service.
24 The dispute comes up with the second criteria that
25 was established by the Commission in its final order

1 that stated that TECO shall only move forward with
2 the units if the capacity is needed. This condition
3 will help to ensure that TECO will only move forward
4 with its plans for the CTs if it is justified in
5 terms of load requirement.

6 That was the second criteria that the
7 Commission established in the final order. And what
8 I'm suggesting today, based on the data was
9 collected by the staff, and as it has been put forth
10 in its recommendation, they have not met that
11 requirement. And, therefore, there is no automatic
12 entitlement to the step increase. The step increase
13 was conditioned upon meeting that requirement, and I
14 think that's why this came as such a concern to us
15 the way that it was presented, because originally --
16 and there was no description in the final order of
17 how the process would proceed, so we were all kind
18 of going forward as it was being presented.

19 I think from the order on reconsideration
20 it was clear that there would be some sort of
21 recommendation brought to the Commission and that
22 that would be presented as a PAA recommendation
23 clearly from the order on reconsideration at Page
24 12. So I think the real issue here is that if we
25 are going to proceed forward there had to have been

1 a showing by the company that it was needed for load
2 requirement and it hasn't done that.

3 **COMMISSIONER ARGENZIANO:** Mr. Chairman, if
4 I can, because I like to flesh things out. Has
5 there been a showing according to staff?

6 **MS. CHASE:** Commissioner, I think we would
7 agree with OPC that they did not demonstrate that it
8 was needed for load generation and that the final
9 order is very specific to that. However, they did
10 show evidence and our staff evaluated it that there
11 is a benefit to these CTs in fuel savings and in
12 other efficiencies.

13 **COMMISSIONER ARGENZIANO:** Okay.

14 **MS. CHASE:** And those --

15 **COMMISSIONER ARGENZIANO:** So what you're
16 saying -- I get what you're saying. But, but you
17 are telling me then that they did not meet the
18 requirement in the final order. Okay. That's --

19 **MS. CHASE:** On load generation, that's
20 correct.

21 **COMMISSIONER ARGENZIANO:** Okay. So then
22 they did not meet the requirement.

23 Let me ask two other things; one is a
24 question and one is a comment. The next question is
25 has the PSC been in this position -- I'm sure we've

1 had to be with appeals. What has happened? Is
2 there a similar situation you could refer to where
3 we've been in this position where we've gone to
4 appeal? Has the PSC moved forward or have we waited
5 for the appeal? What is the general practice?

6 **MR. BALLINGER:** Commissioner Argenziano,
7 if I could address the prior one about needed for
8 load generation. I differ a little bit with JoAnn.
9 I think load generation is a broad term. The order
10 did not say are they needed to meet a 20 percent
11 reserve margin criteria? That's one part of load
12 generation is to meet your peak load.

13 There's other parts of load generation:
14 There's backup capability, there's quick start
15 capability of units, there's load generation from an
16 energy efficiency standpoint, these are more
17 efficient units. So my belief is I think they have
18 met the burden of showing that they're needed for
19 load generation in a broad term.

20 **COMMISSIONER ARGENZIANO:** So then we have
21 split staff saying, one saying no and one saying
22 yes. And the way I'm reading it now is because when
23 I've read the final order and now it's been back in
24 my memory, that it does not meet the final
25 recommendation.

1 **MR. BALLINGER:** I think, I think we are
2 saying the same thing.

3 **COMMISSIONER ARGENZIANO:** I didn't hear
4 that.

5 **MR. BALLINGER:** Okay.

6 **COMMISSIONER ARGENZIANO:** Let's get off
7 that one. I've already -- I think I got the answer
8 to that. And I appreciate that, I understand what
9 you're saying.

10 Let me move to, to the, just one other
11 comment I wanted to make. And I do appreciate that
12 because now I understand a different side to that.
13 But, and I just want to say I'm not so sure that I
14 feel as certain as maybe Ms. Helton does that the
15 court will uphold the Commission's order as a
16 dissenting vote on that case with good reason. I'm
17 not so certain of that. So I don't want anybody to
18 feel, especially a new Commissioner, that that may
19 be a done deal. It may not. There's a lot to that
20 case, and we will only know when the court makes its
21 decision. But I did want the new Commissioner to
22 understand there was a dissenting vote on that.

23 **CHAIRMAN CARTER:** Well, Commissioners,
24 we've beat a dead horse to sleep on this and I think
25 we need to come to some kind of resolution. I mean,

1 I'm open to wherever the will of the Commission in
2 terms of where you guys want to go, but we need to
3 go someplace on it. So I think that we've had a lot
4 of comments, we've had a lot of questions, we've had
5 a lot of different perspective from the lawyers and
6 all like that, so I think we need to bring it in for
7 a landing. And I'm open to whatever way you guys
8 want to go, but let's go someplace with it.

9 Commissioner Skop, you're recognized.

10 **COMMISSIONER SKOP:** Thank you. I just
11 have a final question to --

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

13 **COMMISSIONER SKOP:** Thank you. A final
14 question to Public Counsel. Again, the purpose of
15 the appellate review is to establish controlling
16 case law as to the Commission's authority or
17 discretion to approve a step increase. I believe
18 that's the legal issue; is that correct?

19 **MS. CHRISTENSEN:** Well, I think that's one
20 of the issues that's going to be on appeal. I think
21 there are other due process issues that are going to
22 be the subject of the appeal. So it's going to
23 be -- and that certainly will be one of the issues.
24 But I think there are fundamental due process issues
25 that really were the thrust of the motion on

1 reconsideration and will ultimately be the thrust of
2 the motion on reconsideration. I think as we
3 articulated in our motion for reconsideration one of
4 our concerns was this was not an issue that was teed
5 up for litigation.

6 And I think the fact that we're here today
7 setting this for a hearing I think just demonstrates
8 that it was not fully litigated in the rate case,
9 and we are here now having, in a posture where we
10 will be having a hearing and litigating at minimum
11 the issue of whether or not they met the load
12 requirement, which I think based on your own staff
13 recommendation that's a no-go. And I think
14 Mr. Ballinger's statement that the load requirement
15 is now larger than what was stated in the order I
16 think is, is another problem that I saw with this
17 recommendation. It appeared to me to attempt to put
18 in two different criteria than what was clearly
19 stated in the final order, so that's another
20 problem. But with that I'll leave my statement.

21 **COMMISSIONER SKOP:** Okay. So, so there, I
22 guess there's a question of law that needs to be
23 resolved at the appellate level. But ultimately
24 when you get to the nuts and bolts of this, again,
25 my view is, you know, the utility could accomplish

1 this a couple of ways or the Commission could
2 accomplish it a couple of ways. You could do it in
3 a full-blown rate case, which costs the ratepayers a
4 lot of money to do a separate case, you could do it
5 in a limited proceeding, or you can do it, if
6 something is reasonably temporal in time and you
7 have procedural safeguards, some of which are
8 articulated in this recommendation, the three
9 criteria that have to be met or the three or four
10 that were safeguards, that provides some protection
11 subject to prudence review, which might result from
12 the hearing that staff has requested.

13 I guess the tension that I'm having in
14 trying to not only accommodate the concerns but also
15 to accommodate, you know, what I previously voted
16 for is that if the court were to rule against the
17 Commission at the appellate level say a year from
18 now whenever briefs are done and if it works its way
19 through the process that quick and overturned the
20 decision that we previously rendered, wouldn't we be
21 in the same situation that we find ourselves today?
22 We would still have a limited proceeding to allow
23 for cost recovery on the five CTs subject to the
24 prudence and cost as well as the rail facility?

25 **MS. CHRISTENSEN:** Not necessarily. I

1 think if the Commission -- if the court was to rule
2 against the Commission, then the company -- if --
3 you know, the company puts plant into service all
4 the time in between rate cases, and the majority of
5 the time when they bring plant online, unless it's a
6 fairly large plant, and these are very small plants,
7 these are 60-megawatt CT plants, you know, they can
8 absorb the cost of bringing new generation online
9 because, you know, there's either increases in
10 revenues because they're increasing their customer
11 load. So there's a lot of different factors that go
12 into whether or not they need to file for a base
13 rate case.

14 **COMMISSIONER SKOP:** I understand.

15 **MS. CHRISTENSEN:** So I would respectfully
16 disagree that it necessarily would lead to a base
17 rate case if they put plant-in-service. And the
18 other problem is, is if they didn't need the
19 generation, which I think is where we are today,
20 then we're in a prudency --

21 **COMMISSIONER SKOP:** I'll get to that, I'll
22 get to that in a second. But, again, new issues
23 keep getting raised and it makes this issue even
24 more confusing, which, you know, there's different
25 ways to do things, and at least for me some ways are

1 more straightforward than the others. But, you
2 know, when the other issues are coming in, it's
3 starting to get clouded even for me.

4 And what I'm trying to do is accommodate
5 to the best of my ability the due process
6 considerations and concerns raised by Public
7 Counsel, as well as the Intervenors, as well as
8 being fair to the utility. And that's the operative
9 word, doing what's fair.

10 What I fail to see though is even if the
11 Commission were overturned on the decision to grant
12 a step increase, to me that's not fatal and not
13 prejudicial to TECO's right to request a proceeding.
14 And again it's up to them. They may say, hey, we're
15 just going to eat this. We're going to absorb it
16 within existing rates. But there's nothing at the
17 appellate level that would prevent them from
18 immediately filing for a limited proceeding to do
19 exactly what staff has recommended here today; is
20 that correct?

21 **MS. CHRISTENSEN:** Yes. I would think that
22 if they could make the showing that they needed the
23 revenue, they could file for a limited proceeding
24 and request the Commission process it. And, yes, I
25 would agree with you.

1 **COMMISSIONER SKOP:** Mr. Wright, did you
2 want to respond? I saw you --

3 **MR. WRIGHT:** I think the difference -- Mr.
4 Chairman, with your leave.

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

6 **MR. WRIGHT:** Thank you, sir. I think the
7 difference is that in that scenario it would be
8 de novo as of that point in time. If the court
9 rules against the Commission, Tampa Electric always
10 has the right to come in and say we need more money
11 in order to provide adequate service and have the
12 opportunity to earn a reasonable rate of return with
13 adequate, sound, prudent management. But the
14 difference is it would be as of that point in time
15 they could come and ask for it.

16 If I could make, make just one other
17 observation. I, I have read fairly recently in
18 connection with the Progress Item 17 *GTE v. Clark*,
19 but, and I will say I believe that Ms. Helton's
20 exposition of that case is accurate.

21 I would want to think about it further
22 before I lock myself down to that as to whether the
23 facts in this case as to the potential for a future
24 surcharge comport on all fours with *GTE v. Clark*.
25 But if, if it's true that *GTE v. Clark* would provide

1 Tampa Electric with the opportunity for a surcharge
2 down the road, then the assertion that the money
3 would be irretrievably lost to Tampa Electric is not
4 accurate. And in fact what could happen is if the
5 court upholds the Commission, contrary to our
6 position, then you could have a hearing as to
7 whether Tampa Electric satisfied the requirements of
8 the final order in the rate case as of that, you
9 know, at that time -- you could have the hearing,
10 you know, as to whether they satisfied the
11 requirements as of January 1st, 2010. And, if so,
12 again assuming that *GTE v. Clark* does apply, they
13 would have a remedy of getting the revenue
14 requirements back to the effective date of the
15 original final order in the rate case plus interest,
16 I believe. So I think it's a corresponding remedy.

17 **MS. BRUBAKER:** Mr. Chairman -- I'm sorry.

18 **MR. WRIGHT:** Thank you, Mr. Chairman.

19 Thank you.

20 **CHAIRMAN CARTER:** Ms. Brubaker.

21 **MS. BRUBAKER:** Jennifer Brubaker for legal
22 staff.

23 I would like to take Mr. Wright's comments
24 and actually amplify them a little. The concern
25 isn't so much that TECO may not have a remedy

1 available to it if we get into a surcharge
2 situation. The concern is more the impact on the
3 customers.

4 If the court upholds the Commission's
5 order and we should have been implementing rates
6 from the date of the final order forward, we are
7 looking at those rates to customers being raised not
8 only consistent with the final order but having a
9 surcharge on top of that. And one of the concerns
10 about a surcharge is rate shock to customers. So
11 that is a concern that staff would have.

12 **CHAIRMAN CARTER:** Commissioner Skop.

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

14 Just to Ms. Christensen and perhaps
15 Mr. Wright, if, Ms. Christensen, if you could just
16 make this a very short response, please.

17 **MS. CHRISTENSEN:** I will, I will try. I

18 --

19 **COMMISSIONER SKOP:** But here's the
20 question. You've got to wait for the question.

21 (Laughter.)

22 **MS. CHRISTENSEN:** I like to answer my own
23 question, but --

24 **COMMISSIONER SKOP:** It's Jeopardy. You
25 have to wait for the question.

1 **CHAIRMAN CARTER:** Yeah, Jeopardy. She
2 gives you the answer and then you ask the question.

3 **COMMISSIONER SKOP:** Exactly. Exactly.

4 Okay. Appellate review aside and the
5 legal issues associated with that aside, in terms of
6 protecting your interests on behalf of the citizens
7 of the State of Florida and the Intervenors'
8 interests and getting to an end result on this as
9 expediently as possible, what harm do you foresee in
10 going to hearing which provides you with full due
11 process to fully litigate the issues, to address all
12 the concerns, outside the legal issues, again those
13 are procedural legal issues, inherent authority of
14 the Commission, due process, at that level, but in
15 terms of the nuts and bolts as to whether consumers
16 should be, or the nuts and bolts as to whether the
17 utility should be allowed to recover from its
18 ratepayers the revenue requirement associated with
19 putting five CTs and the rail facility into service
20 for the benefit of the ratepayers, wouldn't the
21 hearing provide that due process to fully vet, to
22 fully flesh out any concerns you have to address
23 once and for all, notwithstanding your right under
24 appellate review, but wouldn't it give you that
25 opportunity that you so desperately seek to raise

1 the concerns as to why it's not appropriate to grant
2 recovery, why criteria have not been met?

3 Again, we're looking for the end result
4 here. Either they should be allowed to recover or
5 they should not be allowed to recover, and that
6 comes down to a prudence review. Was it prudent to
7 put the five CTs in? Are the costs associated with
8 that capital investment prudent? Should the
9 ratepayers be required to pay for those assets that
10 have been placed in service for the public use? You
11 know, controlling case law, Bluefield, Hope, you
12 know, all that good stuff.

13 I recognize due process, but I'm also
14 trying to get to an end result that makes everyone
15 happy, to allow you to fully vet, fully litigate any
16 issues and questions you have. But what gets to me
17 to some degree -- and again those are the issues
18 raised which we are going to litigate at some point,
19 but we're talking about five CTs. I mean, the costs
20 of those are very finite and definitized. And the
21 rail facility which is a little bit more open-ended,
22 but we should be able to lock that down. So we know
23 what the costs are. It's not like we're building a
24 nuclear power plant or trying to build a rocket to
25 space. But, you know, I'm just trying to understand

1 why a hearing would not get you in the process to
2 afford due process to allow you to fully litigate
3 the concerns that you have, because it sounds to me
4 like that's the big concern here.

5 **MS. CHRISTENSEN:** Well, I think a couple
6 of things, and then I would also request that my
7 colleagues be given an opportunity to answer.

8 I think first and foremost is that the
9 Commission set up its criteria in the final order
10 and it says we're going to judge it by this one --
11 two criterias. Basically whether or not they've
12 come into commercial service, it appears that that's
13 not disputed. I mean, that's -- but the second
14 criteria is needed for load requirement. And under
15 the process in the final order there would be a
16 recommendation and a PAA order would be issued by
17 the Commission which would either make a finding
18 that they were needed for load requirement or they
19 were not needed for load requirement.

20 And my suggestion was we are here today
21 with a recommendation that says basically they were
22 not needed for load requirements. And although it's
23 trying to add two different criteria -- and the
24 reason I'm saying that is because essentially then
25 you have customers paying for something that the,

1 what I believe TECO is not entitled to.

2 **COMMISSIONER SKOP:** I got that. I've got
3 an extensive power generation background, so I'm
4 with you on that.

5 My concern again, and this seems to be a
6 new issue, which is what -- it's been so long,
7 either this is a new issue or emerging issue or
8 something, there's a disconnect for me on that very
9 point.

10 **MS. CHRISTENSEN:** Uh-huh.

11 **COMMISSIONER SKOP:** For the five CTs, I
12 guess the question to staff, was there a need
13 determination by this Commission that they were
14 needed? No? Mr. Ballinger?

15 **MS. CHRISTENSEN:** No.

16 **MR. BALLINGER:** You're not required to do
17 a need determination for combustion turbines.

18 **COMMISSIONER SKOP:** Okay. So they were
19 used for peakers or -- okay. And then how would you
20 respond to, to Ms. Christensen's assertion that they
21 were not needed for a reserve margin as a
22 reliability issue or what, what's driving that?
23 Again, is this a new issue that OPC is seeking to
24 litigate late in the game or was this issue always
25 in play?

1 **MR. BALLINGER:** The -- my understanding
2 is -- I'm sorry. My understanding is the final
3 order asked that the one condition be are they
4 needed for load generation? Our group was asked to
5 look at that from the need of the facilities to
6 serve load.

7 They are not needed from a strict reserve
8 margin standpoint, if you will, except for a couple
9 of months in 2009 and 2010. Those months being like
10 in January I believe when they're doing some
11 extended maintenance on the Big Bend 4 facility.
12 Staff noted that TECO would have other options to
13 cover short-term shortages, if you will, due to
14 maintenance. They could purchase power from other
15 utilities. You don't necessarily build another
16 power plant just to cover a maintenance outage. But
17 TECO is in the process of constructing these units,
18 so they are serving that need to serve load
19 reliability over those couple of months.

20 Is that a strict reserve margin for peak
21 load? No. It's a, it's a -- we try to evaluate the
22 whole system as a whole. So they are providing a
23 reliability benefit to TECO's system.

24 **COMMISSIONER SKOP:** Okay. Well, I've
25 heard reliability before. And, again, it's been

1 months since we've delved into this issue. It seems
2 to me like Ms. Christensen is trying to raise a
3 point and I'm trying to find out whether it's a,
4 it's a valid point. It seems like it would be
5 vigorously litigated within any type of hearing as
6 to whether it was prudent to do this from a load
7 perspective. And it seems like even staff is kind
8 of conceding that they may have a point. Is that --

9 **MR. BALLINGER:** I don't know that's a
10 point. I think it goes back to when we had this
11 discussion with Mr. Devlin, the final order that
12 said for load generation didn't lay out all the
13 criterias of load generation. Staff has pointed out
14 there's many facets of it. And, yes, this may be a
15 contested issue at a hearing. I think that's one
16 reason why staff has suggested to you go straight to
17 hearing with this item because these may come up.

18 **MR. BEASLEY:** Mr. Chairman, if I may,
19 we're, we're fully prepared to meet that burden at
20 hearing and that's why we think that staff's
21 approach is the better alternative.

22 **CHAIRMAN CARTER:** Hang on a second,
23 everybody. Just hold on for a minute. We've, we've
24 kind of -- we've gone as much as we need to go and
25 we'll probably go a little longer. But I'm

1 concerned fundamentally that the issue of rate
2 shock, is that if we don't do this, then not only
3 would they get the rate increase that's within the
4 context of the case, but they'll also get -- this
5 would be a surcharge for this; is that correct? Am
6 I reading this right, Ms. Brubaker?

7 **MS. BRUBAKER:** I think the concern is
8 whether, whether the Commission wants to go forward
9 with a hearing, whether it wants to abate that
10 proceeding pending the outcome of the appeal. I
11 think we would still recommend that the, the, the
12 increase be put in subject to refund. The concern
13 being if the final order is upheld on appeal, that
14 we would be in a surcharge issue. And, of course,
15 as I stated earlier, there is the concern about --

16 **CHAIRMAN CARTER:** Hang on one second,
17 Commissioner. I'll be with you. I want to just get
18 this out.

19 Probably no one has done this yet, but I
20 would want to know how much of a rate increase that
21 would be if that were to happen.

22 **MS. CHASE:** Commissioner, that would
23 depend on how long it takes the court to make the
24 decision. And, no, we have not done those, run the
25 numbers yet.

1 **MR. BEASLEY:** Mr. Chairman, I have some
2 input, if you would like it, on that subject.

3 **CHAIRMAN CARTER:** Mr. Beasley.

4 **MR. BEASLEY:** The staff recommendation
5 step increase before the slight modification they
6 made this morning or this afternoon would have a
7 \$1.55 per kWh base energy charge increase, but that
8 would be offset by an overall decrease in the fuel
9 adjustment charge of over \$6, with a net impact in
10 January of the bills going down \$1.88 after
11 inclusion of the step increase. So that would give
12 you the impact on the front end. I'm not sure what
13 the impact would be if the surcharge had to later be
14 imposed.

15 **CHAIRMAN CARTER:** Commissioner Argenziano.

16 **COMMISSIONER ARGENZIANO:** And with all due
17 respect, and I appreciate that and I really am
18 concerned about rate shock also, but it would also
19 be lower if it wasn't implemented, if it wasn't
20 meant to be. If the court ultimately decides that
21 it was not right and does not uphold the
22 Commission's vote, the fuel decrease would be the
23 opposite of rate shock. There would be nothing
24 added to that, so it would be even less of a burden
25 for the consumer. So you can argue it both ways.

1 It is a difficult one.

2 **CHAIRMAN CARTER:** Speaking of arguing it
3 both ways, we've heard multiple recitations and I
4 think that, you know, we probably need to bring this
5 in for a landing, Commissioners. I don't think --
6 you know, we've said it multiple times, the parties
7 have said it multiple times, and we've had multiple
8 answers from staff, and I think we need to kind of
9 cut the Gordian Knot. The Chair is now open for a
10 motion.

11 Commissioner Skop, you're recognized.

12 **COMMISSIONER SKOP:** Thank you, Mr.
13 Chairman. In making this motion I just want it to
14 be known that I'm firmly convinced that moving
15 forward with the hearing will allow the parties full
16 due process to litigate the issues that are
17 troubling them. I feel that there's adequate
18 protection provided by recovering costs subject to
19 refund with interest. Again, it's a, it's a touchy
20 issue because there's appellate issues going on in
21 parallel with this.

22 But I would respectfully make the motion
23 based on my comments to approve the staff
24 recommendation for Issues 1 and 2. I think that's
25 the best path forward based on all I've heard.

1 **COMMISSIONER EDGAR:** Mr. Chairman, if I
2 may.

3 **CHAIRMAN CARTER:** Yes, ma'am.
4 Commissioner Edgar, you're recognized.

5 **COMMISSIONER EDGAR:** A comment was made I
6 think by Commissioner Skop a few moments ago about
7 trying to make everybody happy, and unfortunately
8 not every item that comes before us I think we have
9 the wisdom or the ability to, to do that. That is
10 part of the adversarial process.

11 In this instance I hear loudly the
12 concerns of the Intervenors and in my mind they're
13 just, there isn't necessarily a way to make
14 everybody happy on these particular specific and
15 unique factors. So with that I will second the
16 motion, recognizing it as maybe not a perfect
17 decision but probably the better decision,
18 realizing, as Commissioner Skop has said, that I do
19 think it provides procedural and due process
20 protections to all parties and the ratepayers
21 included.

22 I would also add just as a comment that I
23 am very interested in the appellate proceeding. I
24 recognize, and, Commissioner Argenziano, as you
25 pointed out, that the vote that has kind of brought

1 us to here on these issues during the rate case and
2 at the conclusion of it was made on a four to one.
3 I remain comfortable with the basis for that
4 majority decision and my participation in it, but I
5 fully recognize that it is not black and white and
6 that it is one of those issues that reasonable
7 people could easily have seen it differently. And
8 because of that all the more I look forward to the
9 supreme court's review of our authority and our
10 implementation of it under these circumstances and
11 hope that that will proceed and that we will then be
12 able to implement whatever that clarification is.

13 So again, Mr. Chairman, I appreciate the
14 discussion and I second Commissioner Skop's motion.

15 **CHAIRMAN CARTER:** Commissioners, we've got
16 a motion and a second. We're in debate. Any
17 debate?

18 Commissioner Klement, you're recognized.

19 **COMMISSIONER KLEMENT:** Thank you, Mr.
20 Chairman.

21 I agree with Commissioner Skop's position,
22 especially the caveats that he's put in regarding
23 the future. But the comments made by, by
24 Commissioner Argenziano and Commissioner Carter
25 regarding the risk of a surcharge to the ratepayers

1 is my biggest concern. It would, it would be bad
2 for them and it would be bad for us.

3 I also acknowledge what TECO's
4 representative has said regarding the potential harm
5 to TECO investors, and we need to consider those
6 too. So I think I can support the motion.

7 **CHAIRMAN CARTER:** Okay. Further debate.
8 Commissioner Argenziano. We're in debate,
9 Commissioners, in debate.

10 **COMMISSIONER ARGENZIANO:** Just comments
11 on -- since I was the one who dissented on the
12 original vote, I agree that everybody has their own
13 opinion, I would be, it would be hypocritical for me
14 to think that now instituting a, a charge to a
15 customer now would be fair or right since I pointed
16 out in my dissent due process issues and other,
17 other issues. So I could not vote in favor of this
18 today. It just wouldn't be right.

19 So -- and in regards to the consumers, the
20 impact, as well as the shareholders, I fully
21 recognize, am cognizant of those impacts. As I said
22 before, I see the, the rate shock working both ways.
23 If, if I'm of the belief that that shouldn't be
24 charged to those consumers and the court does, does
25 uphold, well, then we have to live by what the court

1 says. If they go the other way, then the, then the
2 consumer never should have been charged that to
3 begin with. So I look at it as maybe a relief in
4 that sense that as the fuel goes down, maybe there
5 would be not something else added upon their bills
6 until the court makes that decision.

7 But with all respect to my colleagues, I
8 understand there's differences of opinions, and I
9 think really what it comes down to is we have to
10 wait for the court's decision. But I could not vote
11 for this, staff's recommendation today.

12 **CHAIRMAN CARTER:** Thank you. In debate.
13 Commissioner Skop.

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

15 And, Commissioner Argenziano, I fully
16 appreciate that position. Actually I'm, I'm
17 struggling with this one to the extent that I fully
18 support my prior vote; however, with this one
19 there's merits to granting or looking at seriously
20 taking a stay or abatement during the pendency of
21 the appellate review. But I can't foresee how long
22 that will take with any reasonable degree of
23 certainty. So if you got in a situation where you
24 stated that assets were placed in service for the
25 public use, the court upheld the Commission's

1 decision, then that might be a situation where it
2 could be prejudicial to the company. And, again,
3 that's where that fairness comes into play.

4 So I think with your perspective, I think
5 it's a very good one that, you know, if the court
6 rules against the Commission, then the consumer
7 should never be charged in the first place, which is
8 factual. If the court rules in favor of the
9 Commission, the customer should have been charged,
10 but there's no way to do it. So it's trying to
11 balance that tug of war in light of the fact that
12 we've made a decision that's obviously being
13 appealed.

14 So I think what turned the table for me
15 and gave me some comfort is that even if the court
16 rules against us, that's where that subject to
17 refund with interest I think protects the
18 ratepayers. They have to maybe pay it a little bit
19 now. But, you know, if the court ultimately rules
20 against the Commission, then there's that at least
21 to me adequate protection. And I know that's not
22 probably in line with, with, you know, your feelings
23 on the matter. But, again, I think that, you know,
24 I've got to stand by the previous vote, but then in
25 this situation there's a little bit more discretion

1 as to what the best approach is. And at least to me
2 there's not really a good one here because I see, I
3 see both and it's like one of those fine lines.

4 But I think it's, to me I'd rather get
5 into -- what intrigues me is the issues that were
6 raised by the Intervenors today. Because, again,
7 this seems to be hotly contested and I didn't even
8 really know that that would be as contested as it
9 would be. So I think with those regards I'd really
10 like to have a hearing and see what the real issues
11 are and get to the nuts and bolts and maybe they
12 make their case that way.

13 So, again, I just wanted to give a little
14 bit more explanation as to why I made the motion.

15 **CHAIRMAN CARTER:** Thank you. Any further
16 debate, Commissioners? Any further debate? A
17 motion and a second has been made.

18 All in favor, let it be known by the sign
19 of aye.

20 **COMMISSIONER SKOP:** Aye.

21 **COMMISSIONER KLEMENT:** Aye.

22 **COMMISSIONER EDGAR:** Aye.

23 **CHAIRMAN CARTER:** Aye.

24 All those opposed, like sign.

25 **COMMISSIONER ARGENZIANO:** Aye.

1 **CHAIRMAN CARTER:** Show it done. Thank
2 you.

3 Commissioners, I really want to push
4 through. I want to keep on going, so, so let's kind
5 of change out there.

6 **MR. YOUNG:** Mr. Chairman?

7 **CHAIRMAN CARTER:** Yes, sir. Mr. Young?

8 **MR. YOUNG:** Issue 3 was not voted on. I
9 think Commissioner Skop made a motion on Issue 1 and
10 2.

11 **CHAIRMAN CARTER:** Is that the close the
12 docket?

13 **MR. YOUNG:** Yes.

14 **CHAIRMAN CARTER:** Commissioner, on the
15 close the docket?

16 **COMMISSIONER SKOP:** I did not, I did
17 not --

18 **MR. YOUNG:** It's to leave the docket open.

19 **COMMISSIONER SKOP:** Okay. My mistake.
20 There's so many pages here in this book, the one I
21 looked, I thought when I did my count -- so I'd move
22 to approve staff recommendation on Issue 3. Sorry.

23 **COMMISSIONER EDGAR:** Second.

24 **CHAIRMAN CARTER:** Moved and properly
25 seconded. All in favor, let it be known by the sign

1 of aye.

2 **COMMISSIONER EDGAR:** Aye.

3 **CHAIRMAN CARTER:** Aye.

4 **COMMISSIONER SKOP:** Aye.

5 **COMMISSIONER KLEMENT:** Aye.

6 **CHAIRMAN CARTER:** All those opposed, like

7 sign.

8 **COMMISSIONER ARGENZIANO:** Aye.

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

10 **COMMISSIONER SKOP:** Mr. Chair, I'm getting
11 old because again I did my count and only saw two
12 issues there. So I need to get my glasses on or
13 something.

14 **CHAIRMAN CARTER:** Just for the clerk so
15 you can note, the vote was four to one on both.
16 Okay? Thank you.

17 (Agenda item concluded.)

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTERS


3 COUNTY OF LEON)


4 WE, JANE FAUROT, RPR, and LINDA BOLES,
5 RPR, CRR, Official Commission Reporters, do hereby
6 certify that the foregoing proceeding was heard at
7 the time and place herein stated.

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

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

19 DATED THIS 16th day of December, 2009.

20 
21 JANE FAUROT, RPR
22 FPSC Official Commission
23 Reporter
24 (850) 413-6732

25 
LINDA BOLES, CRR, RPR
FPSC Official Commission
Reporter
(850) 413-6734