

1 APPEARANCES:

2 JAMES D. BEASLEY, J. JEFFRY WAHLEN, KENNETH
3 R. HART, and ASHLEY M. DANIELS, ESQUIRES, Ausley Law
4 Firm, Post Office Box 391, Tallahassee, Florida 32302,
5 appearing on behalf of Tampa Electric Company.

6 PATRICIA A. CHRISTENSEN and CHARLES
7 REHWINKEL, ESQUIRES, and J.R. KELLY, PUBLIC COUNSEL,
8 Office of Public Counsel, c/o The Florida Legislature,
9 111 West Madison Street, Room 812, Tallahassee, Florida
10 32399-1400, appearing on behalf of the Citizens of
11 Florida.

12 LIEUTENANT COLONEL GREGORY J. FIKE and KAREN
13 WHITE, ESQUIRES, USAF, Chief, Utility Law Field Support
14 Center, Air Force Legal Operations Agency, 139 Barnes
15 Drive, Suite 1, Tyndall Air Force Base, Florida 32403,
16 appearing on behalf of the Federal Executive Agencies.

17 JON C. MOYLE, JR., and KAREN PUTNAL,
18 ESQUIRES, c/o Moyle Law Firm, P.A., 118 North Gadsden
19 Street, Tallahassee, Florida 32301, appearing on behalf
20 of the Florida Industrial Power Users Group.

21 LISA M. PURDY, KENNETH L. WISEMAN, MARK F.
22 SUNDBACK, WILLIAM M. RAPPOLT, BLAKE R. URBAN, and
23 ALLISON E. HELLREICH, ESQUIRES, Andrews Kurth LLP, 1350
24 I Street NW, Suite 1100, Washington, DC 20005,
25 appearing on behalf of WCF Hospital Utility Alliance.

1 APPEARANCES (Continued):

2 ROBERT SCHEFFEL WRIGHT and JOHN T. LAVIA,
3 III, ESQUIRES, Gardner, Bist, Wiener, Wadsworth,
4 Bowden, Bush, Dee, LaVia & Wright, P.A., 1300
5 Thomaswood Drive, Tallahassee, Florida 32308, appearing
6 on behalf of the Florida Retail Federation.

7 MARTHA BARRERA, SUZANNE BROWNLESS, and JULIA
8 GILCHER, ESQUIRES, FPSC General Counsel's Office, 2540
9 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850,
10 appearing on behalf of the Florida Public Service
11 Commission Staff.

12 MARY ANNE HELTON, DEPUTY GENERAL COUNSEL,
13 Florida Public Service Commission, 2540 Shumard Oak
14 Boulevard, Tallahassee, Florida 32399-0850, Advisor to
15 the Florida Public Service Commission.

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P R O C E E D I N G S

1
2 **COMMISSIONER BROWN:** Good afternoon,
3 everybody. How are you all? This will open up the
4 prehearing in Docket Number 130040-EI for the
5 Prehearing Conference in the petition for rate
6 increase for Tampa Electric. It is, today is
7 August 26th. It is 1:00. Staff, will you please
8 read the notice?

9 **MS. BARRERA:** Yes. In the *Florida*
10 *Administrative Report* we, the PSC announced a
11 Prehearing Conference in Docket Number 130040-EI,
12 petition for the rate increase by Tampa Electric
13 Company, and the hearing was noticed for Monday,
14 August 26th, at 1:00 p.m.

15 **COMMISSIONER BROWN:** Thank you. At this
16 time I will take appearances, starting with my left.

17 **MR. BEASLEY:** Thank you. Good afternoon,
18 Commissioner. James D. Beasley, appearing with
19 J. Jeffry Wahlen, Kenneth R. Hart, and Ashley M.
20 Daniels, all of the law firm of Ausley & McMullen,
21 Tallahassee, for Tampa Electric Company.

22 **COMMISSIONER BROWN:** Thank you.

23 Office of Public Counsel?

24 **MS. CHRISTENSEN:** Certainly. Patricia
25 Christensen with the Office of Public Counsel. I

1 would also like to put in an appearance for Mr.
2 J. R. Kelly, and also put in an appearance for Charles
3 Rehwinkel substituting for Mr. Joseph A. McGlothlin.

4 **COMMISSIONER BROWN:** Okay. I'll go back
5 to FEA.

6 **LIEUTENANT COLONEL FIKE:** This is
7 Lieutenant Colonel Greg Fike appearing on behalf of
8 the Federal Executive Agencies, also entering
9 appearances for Ms. Karen White for FEA as well.

10 **MR. MOYLE:** Jon Moyle on behalf of the
11 Florida Industrial Power Users Group. I'd also like
12 to enter an appearance for Karen Putnal, who is with
13 the Moyle law firm, also representing FIPUG.

14 **COMMISSIONER BROWN:** Okay.

15 **MS. PURDY:** Hello. Lisa Purdy on behalf
16 of the WC Hospital Utility Alliance with the law
17 firm of Andrews Kurth. I'd also like to enter the
18 appearance of Kenneth L. Wiseman, Mark F. Sundback,
19 William M. Rappolt, Blake R. Urban, and Allison E.
20 Hellreich, also of the firm Andrews Kurth.

21 **COMMISSIONER BROWN:** Okay. Thank you.

22 **MR. WRIGHT:** Robert Scheffel Wright, the
23 Gardner, Bist, Wiener law firm, appearing on behalf
24 of the Florida Retail Federation. I'd also like to
25 enter an appearance for my partner John T. Lavia,

1 III.

2 **COMMISSIONER BROWN:** Thank you.

3 Staff.

4 **MS. BARRERA:** Martha Barrera, Commission
5 staff. And also I would like to enter an appearance
6 for Suzanne Brownless and Julia Gilcher.

7 **MS. HELTON:** And Mary Anne Helton, advisor
8 to the Commission.

9 **COMMISSIONER BROWN:** Thank you. And I
10 would first like to start out this prehearing by
11 thanking the parties on coming to a lot of
12 resolution on the wording of the issues during the
13 Issue ID meeting. You've all worked very nicely and
14 professionally. I think that's going to make this
15 Prehearing Conference go very smoothly, and
16 hopefully the hearing in a couple of weeks too. So
17 thank you all.

18 Staff, are there any preliminary matters
19 at this time?

20 **MS. BARRERA:** Staff knows of no
21 preliminary matters, Commissioner.

22 **COMMISSIONER BROWN:** Okay. Any of the
23 parties?

24 Okay. We're just going to move along. At
25 this time I'd like to go through the draft

1 Prehearing Order, which you should have a revised
2 copy that staff sent out with some revisions to
3 wording which they will address or not address. And
4 I -- we do have a table of contents that what I'm
5 going to do is go through the sections rather
6 quickly until we get to the, the issues and
7 positions.

8 But starting with Section I, case
9 background, are there any changes? And I'm going to
10 start with my left, and a nod or -- any changes?

11 Seeing none, we're going to move to
12 Section II, conduct of proceedings. Any changes?

13 **MR. BEASLEY:** No changes.

14 **COMMISSIONER BROWN:** Seeing none, Section
15 III, jurisdiction. Any changes?

16 **MR. BEASLEY:** No changes.

17 **COMMISSIONER BROWN:** Seeing none, Section
18 IV, procedure for handling confidential information.

19 **MR. BEASLEY:** No changes.

20 **COMMISSIONER BROWN:** No changes.

21 Okay. Section V is the prefiled testimony
22 and exhibits and witnesses. And I understand there
23 is an extensive list of witnesses and we have only a
24 week of hearing scheduled for this. So I would
25 suggest that the parties review those witnesses that

1 they could maybe shorten their summaries. Typically
2 we allow five-minute summaries for witnesses. My
3 suggestion would be if you could either shorten
4 those witnesses to, to a lesser amount, ideally
5 three minutes, that would be preferable. But I will
6 allocate five minutes for summaries of all
7 witnesses.

8 And if the parties are willing to shorten
9 or dispense of any witnesses, now would be the time
10 to, to make that clear. And I see Ms. Christensen.

11 **MS. CHRISTENSEN:** Yes. Thank you. I just
12 wanted to say for the record that the Office of
13 Public Counsel intends to provide their witness
14 summary. And we will obviously take into account
15 the length of our witnesses' testimony and make it
16 between three to five minutes. But since we don't
17 do direct in these types of cases, for us having a
18 summary is exceedingly important.

19 We also would like to note for the record,
20 since the Attorney General's Office has not
21 intervened in this case, we do make our objection to
22 the disallowance of friendly cross to the extent
23 that that is intended to limit our ability to ask
24 questions of other parties' witnesses.

25 We do understand that we're not allowed to

1 ask leading questions. But as to asking any
2 questions, if that's the intent, then we would
3 object to that extent.

4 **COMMISSIONER BROWN:** And I just want to be
5 clear. So your request is, as is the tradition of,
6 of the Commission, to disallow friendly cross. Is
7 that what you're requesting?

8 **MS. CHRISTENSEN:** No. No. No. What
9 I'm -- I'm noting for my, for the record our
10 objection to the Commission's developed practice of
11 disallowing cross-examination of witnesses that the
12 Commission has deemed not to be adverse. And my
13 objection goes to the extent that even if a witness
14 is not deemed to be adverse, that we should be
15 allowed to do questions to the extent that they're
16 not duplicative or repetitious of prefiled testimony
17 and to the extent that they're not leading
18 questions. And I think that is within the
19 parameters of the Civil Rules of Procedure and the
20 Rules of Evidence. And to the extent that it
21 infringes beyond that, then I make my objection.

22 **COMMISSIONER BROWN:** Mr. Beasley.

23 **MR. BEASLEY:** We, we abide by and endorse
24 the Commission's practice of not allowing friendly
25 cross-examination. We think it's, it's valuable to

1 keep the proceeding moving along forward and to be
2 fair to everyone.

3 **COMMISSIONER BROWN:** All right.

4 Ms. Helton or Ms. Barrera.

5 **MS. HELTON:** I'll address that, if that's
6 okay.

7 **COMMISSIONER BROWN:** Uh-huh.

8 **MS. HELTON:** I think what Ms. Christensen
9 is referring to is the paragraph on top of page 5 of
10 the version of the Prehearing Order that I'm looking
11 at. And this is actually a paragraph that the
12 Commission added, I think, after the last TECO rate
13 case or maybe two TECO rate cases before, and
14 basically it says that "The parties shall avoid
15 duplicative or repetitious cross-examination.
16 Further, friendly cross-examination will not be
17 allowed. Cross-examination shall be limited to
18 witnesses whose testimony is adverse to the party
19 desiring to cross-examine. Any party conducting
20 what appears to be a friendly cross-examination of a
21 witness should be prepared to indicate why that
22 witness's direct testimony is adverse to its
23 interests."

24 I don't believe that the Commission has
25 ever used this language to prevent a party from

1 asking a legitimate question of a witness while he
2 or she is sitting on the stand. The intent is to
3 not go down the road of a party asking a witness a
4 question to bolster that witness's testimony or that
5 should have perhaps been asked by the sponsoring
6 party in the direct examination, prefiled direct
7 examination.

8 I have reviewed Padovano's civil procedure
9 treatise, I have reviewed Professor Ehrhardt's
10 evidence treatise, and I believe that this practice
11 is consistent with their recommendations.

12 **COMMISSIONER BROWN:** Thank you. And we
13 will keep that paragraph in the prehearing order,
14 and the presiding officer will rule at the time of
15 the hearing that any questions come up. So we will
16 deal with the friendly cross-examination issue at
17 that time.

18 **MS. CHRISTENSEN:** Thank you.

19 **COMMISSIONER BROWN:** Thank you. So my
20 question is are any of the parties at this point,
21 are they willing to dispense of summaries of their
22 witnesses?

23 **MR. BEASLEY:** Commissioner, Tampa Electric
24 is willing to shorten its summaries. We've spoken
25 with staff and I think the indication was that there

1 would be five minutes for direct and five minutes
2 for rebuttal. We're amenable to using five minutes
3 only for both direct and rebuttal for most of our
4 witnesses, and shortening to three minutes the
5 summaries by Witnesses Gillette, Cifuentes, Fox,
6 Harris, and Carlson.

7 **COMMISSIONER BROWN:** That'll be greatly
8 appreciated by all of us, staff and I guess all of
9 the parties here too, and helpful. Thank you for
10 that.

11 **MR. MOYLE:** Can I ask a clarifying
12 question on that?

13 **COMMISSIONER BROWN:** Sure.

14 **MR. MOYLE:** Does that then contemplate --
15 I was not 100% sure that there will be a combining
16 of direct and rebuttal with respect to TECO.

17 **COMMISSIONER BROWN:** We're going to get to
18 that, by the way, in the next section. We'll get to
19 that. But, Mr. Beasley, we're going to take that up
20 in a second.

21 **MR. BEASLEY:** Great.

22 **COMMISSIONER BROWN:** We're just going to
23 deal right now with summaries. If there are any
24 other parties that are willing, we'd greatly
25 appreciate that. Thank you.

1 Section VI, this goes to Mr. Moyle's
2 question with regard to the order of witnesses.

3 At this time I'd like to ask if any
4 witnesses can be taken direct and rebuttal at the
5 same time. Mr. Beasley.

6 **MR. BEASLEY:** All of ours can who have
7 filed direct and rebuttal. We have a couple of
8 witnesses that are rebuttal only, but the others can
9 go together.

10 **COMMISSIONER BROWN:** Do any of the parties
11 have any objection to that?

12 **MS. CHRISTENSEN:** No objection from OPC to
13 take direct and rebuttal together.

14 **COMMISSIONER BROWN:** Okay. Seeing --

15 **MR. MOYLE:** No objection. So then the
16 summary for their direct and rebuttal will total,
17 what is it, five minutes?

18 **MR. BEASLEY:** Five minutes, except those
19 that I indicated for three minutes.

20 **MR. MOYLE:** Okay. Thank you.

21 **COMMISSIONER BROWN:** Yes, Mr. Wright.

22 **MR. WRIGHT:** Commissioner, thank you. So
23 I'm clear, the final Prehearing Order when it comes
24 out will show that all of Tampa Electric's witnesses
25 will be taken direct and rebuttal together as they

1 appear in whatever the order is?

2 **COMMISSIONER BROWN:** That is my intent.
3 Staff, correct?

4 **MS. BARRERA:** Except for the witnesses
5 that Mr. Beasley has delineated as taking three
6 minutes. Would that be --

7 **MR. BEASLEY:** Yes.

8 **MS. BARRERA:** Okay.

9 **COMMISSIONER BROWN:** Okay.

10 **MR. WRIGHT:** I was trying to ask about
11 the -- I just want to know for planning purposes
12 what I'm dealing with preparing from day to day.
13 The order of witnesses will be for those witnesses
14 who are doing direct and rebuttal. All their direct
15 and rebuttal will be together in whatever order the
16 final Prehearing Order shows.

17 **COMMISSIONER BROWN:** Ms. Barrera, that's
18 my understanding. Correct?

19 **MS. BARRERA:** Right.

20 **COMMISSIONER BROWN:** Yes.

21 **MR. WRIGHT:** Thank you.

22 **MS. CHRISTENSEN:** And then the remaining
23 rebuttal witnesses who are rebuttal only would go
24 after the Intervenor witnesses?

25 **COMMISSIONER BROWN:** That is my

1 understanding. Ms. Barrera, confirmation?

2 **MS. BARRERA:** Yes. Yes. Makes sense.

3 **COMMISSIONER BROWN:** Okay. Thank you.

4 All right. And that will all be clearly delineated
5 in the, in the final Prehearing Order so there's no
6 confusion or questions. And, again, I appreciate
7 that, so thank you.

8 I also know that the parties may would
9 like to take witnesses out of order, and my
10 understanding right now is that there are no
11 requests or stipulations at this time.

12 Yes?

13 **MS. PURDY:** Just one item. I don't know
14 if now is the right time or not, but our witness
15 Steve Baron has requested a date certain and I know
16 that's been done in the past. In particular, he, he
17 would prefer the 12th, although he is available the
18 morning of the 13th. He could also be available on
19 the 11th.

20 **COMMISSIONER BROWN:** Ms. Barrera, would
21 you like to work with her on solidifying a date for
22 the final order of witnesses?

23 **MS. BARRERA:** Yes.

24 **COMMISSIONER BROWN:** Okay. Our staff will
25 work with you.

1 **MS. PURDY:** Thank you.

2 **MR. MOYLE:** And FIPUG has a similar issue
3 with Mr. Pollock and would like to make the
4 Prehearing Officer aware of it, but we'd also like
5 the ability to work with the parties and staff to
6 come up with a date certain for Mr. Pollock.

7 **COMMISSIONER BROWN:** We are amenable to
8 that. And my understanding is that the order is
9 going -- will change and staff is willing to
10 accommodate everybody. So if you'd like a certain
11 request, please contact them and we'll get that
12 situated.

13 **MR. MOYLE:** Thank you very much.

14 **COMMISSIONER BROWN:** Any other requests?
15 Okay. Moving to basic positions under
16 Section VII. Are there any changes?

17 **MR. MOYLE:** Madam Chair, it's FIPUG's
18 understanding in conversations with staff to the
19 extent there are, you know, kind of administrative
20 typo type changes, that we can get those to staff by
21 noon tomorrow. And FIPUG has a few, but we won't
22 burden the record with that today as long as we're
23 clear on that understanding.

24 **COMMISSIONER BROWN:** Non-substantive,
25 just --

1 **MR. MOYLE:** Right.

2 **COMMISSIONER BROWN:** Okay. That's not a
3 problem.

4 Yes.

5 **LIEUTENANT COLONEL FIKE:** FEA has
6 submitted a, some revised positions to staff this
7 morning via e-mail. So they should have all those
8 already.

9 **COMMISSIONER BROWN:** They are in receipt
10 of it. Uh-huh.

11 Yes, Ms. Christensen.

12 **MS. CHRISTENSEN:** As well, OPC on Friday,
13 I believe, submitted our updated positions, when we
14 get to the next section, as well as any other
15 substantive changes that we had to be incorporated
16 into the Prehearing Order. So I'm not sure when we
17 get to the positions and issues if you want to go
18 over those individually or just have the staff
19 incorporate what we've already submitted.

20 **COMMISSIONER BROWN:** Staff has received
21 all of the parties', intervening parties here that
22 have sent them in prior to today, we have them. My
23 intent was not to go over them. She -- Ms. Barrera
24 sent a final Prehearing Order; correct? The one
25 that has been distributed has those positions

1 incorporated?

2 **MS. BARRERA:** No, Commissioner. The --
3 since we got them rather late after we distributed
4 one order on Friday; however, they are being
5 incorporated even as we speak and we will get them,
6 you know, send it out as soon as we get all of them.
7 I believe FIPUG is still -- is the only party that
8 will be submitting something today or by close of
9 business tomorrow, if that's okay with you.

10 **COMMISSIONER BROWN:** Do you have an
11 estimated date that we can get this out?

12 **MS. BARRERA:** I think tomorrow afternoon.

13 **COMMISSIONER BROWN:** Okay. Thank you.

14 All right. Any further comment?

15 **MS. PURDY:** HUA had circulated revised
16 positions on Friday, but I understand that now,
17 number one, there is an issue that may change. And
18 there were a couple of revised issues sent out on
19 Friday, so we may have just a very few minor changes
20 sent to you tonight or, as Mr. Moyle said, by
21 tomorrow noon.

22 **COMMISSIONER BROWN:** What I'm going to do
23 is when we get to the issues, I'm going to go issue
24 by issue.

25 **MS. PURDY:** Okay.

1 **COMMISSIONER BROWN:** And you can, you can
2 raise that at the time and identify that issue to
3 the parties and to staff.

4 **MS. PURDY:** Okay. Thank you.

5 **COMMISSIONER BROWN:** Thanks. Any other
6 further?

7 Okay. We're going to move to the issues
8 now. Staff, Section VIII.

9 **MS. BARRERA:** Yes, ma'am. Staff will note
10 that there is agreement among the parties on the
11 wording of all the issues at this time. The Order
12 Establishing Procedure requires that a party take a
13 position at the Prehearing Conference unless good
14 cause is shown as to why that party cannot take a
15 position at this time. Otherwise, the Prehearing
16 Order will reflect no position for that party on
17 those issues.

18 And staff again requests that the parties,
19 most of them have, but the parties submit their
20 positions in writing no later than noon tomorrow if
21 they haven't done so or if there's any last-minute
22 revisions.

23 **COMMISSIONER BROWN:** Okay. Everybody
24 understand that? We're going to take up these
25 issues and positions in a block, in different

1 blocks. We have a table of contents here starting
2 with Issues 1 through 6. They're under a
3 subcategory Test Period and Forecasting. This is
4 just to aid us in making this Prehearing Conference
5 go a little more swiftly.

6 So issue -- and there's -- my
7 understanding is Issue 4 and 5 have been agreed to
8 by all the parties and revised. So Issues 1 through
9 6, are there any changes as amended?

10 **LIEUTENANT COLONEL FIKE:** Just to clarify,
11 so some of the positions 1 through 6 for FEA in the
12 Prehearing Order issued on Friday are not the
13 current positions we've issued with our new updated
14 position statement this morning and via emails. So
15 that goes throughout the whole Prehearing Order.

16 **COMMISSIONER BROWN:** That is correct.

17 **LIEUTENANT COLONEL FIKE:** Okay. So I just
18 --

19 **COMMISSIONER BROWN:** Yes.

20 **LIEUTENANT COLONEL FIKE:** Okay.

21 **MS. PURDY:** And again to clarify, so to
22 the extent we have any additional changes, we can
23 just submit those in writing. We don't need to
24 review them now.

25 **COMMISSIONER BROWN:** That is correct, by

1 noon tomorrow.

2 **MS. PURDY:** Yes.

3 **COMMISSIONER BROWN:** Does -- if it's the
4 parties' desire to go through the issues one by one
5 or just take them up as a block as I've done,
6 1 through 6.

7 **MS. CHRISTENSEN:** And just for
8 clarification -- this is Patty Christensen with the
9 Office of Public Counsel. I just wanted to make
10 sure that my understanding is there have been no
11 additional changes to the issue since e-mails that
12 were sent by staff last week. I think we provided
13 positions to those issues. So as long as no
14 additional issues have been changed. If there have
15 been changes to the issues that were made on Friday
16 or later, if we could just have that identified,
17 then we might be able to help clarify what might
18 need additional positions. Otherwise, I think we
19 provided our updated positions, and I was not clear
20 if there was any additional changes to the issues
21 language subsequent to staff's e-mail sometime last
22 week, mid-Wednesday or so.

23 **MS. BARRERA:** No. Staff -- excuse me.
24 Staff emailed a, not a final draft but a next to
25 next to final draft on Friday with the issues, and

1 those issues from that draft have not changed and
2 will not change.

3 **COMMISSIONER BROWN:** So Issue 4 and Issue
4 5, are those issues you'd like to review?

5 **MS. CHRISTENSEN:** I believe if Issue
6 4 refers to the Calpine contract and how it's to be
7 treated and Issue 5 refers to the Auburndale Power
8 Partners contract and how that should be treated, we
9 have provided staff with our positions in a written
10 format.

11 **COMMISSIONER BROWN:** Okay. That's fine.

12 **MS. BARRERA:** And we'll -- we can
13 review -- I mean, I can review the issues against
14 your statements and against your positions, and if
15 we have any questions, I'll just e-mail.

16 **MS. CHRISTENSEN:** I think that might be
17 helpful. I assume we haven't missed an issue. And
18 just if we have missed something that got left or
19 dropped off in between all the e-mailings, if we
20 could get just a notification and we'll provide our
21 position as swiftly as possible. Otherwise, I won't
22 burden the rest of the hearing with going over the
23 issues we've already provided.

24 **COMMISSIONER BROWN:** Okay. That's good.
25 Thank you. All right. So we are moving through

1 Issues 1 through 6, no changes as revised and set
2 out.

3 All right. Moving through, Quality of
4 Service, Issue 7. Any changes?

5 **MR. BEASLEY:** No changes.

6 **COMMISSIONER BROWN:** Seeing none. Going
7 to Rate Base, Issues 8 through 19. Any changes?

8 **MR. BEASLEY:** None.

9 **COMMISSIONER BROWN:** Okay. I don't want
10 to go too fast, so please slow me down if I'm going
11 too fast.

12 Going to -- the next subcategory is Cost
13 of Capital, which encompasses Issues 20 through 27.

14 **MS. PURDY:** Yes, Your Honor. This is Lisa
15 Purdy for HUA. HUA had recommended the addition of
16 Issue 25 regarding flotation costs as our witness
17 directly addresses that. However, we've reached an
18 understanding with Tampa Electric that so long as
19 we're able to address Issue 25, I think, and Issue
20 26, General ROE, we'd be willing to drop 25. But
21 that's also if we can have the word limit for the
22 post-hearing statement of issues increased from 50
23 words to 75 words to ensure that we're able to
24 adequately address it.

25 **COMMISSIONER BROWN:** Well, when I get to

1 that section I'll let you know. But there will be
2 no word limitation on your post-hearing briefs.
3 There will only be a page limitation. So you can
4 use the words as you see fit. I'm only going to
5 give you a page limitation. So 75 words I'm sure
6 would encompass that.

7 **MS. PURDY:** I'm sorry. I thought there
8 was a word limit on the post-hearing statement of
9 issues.

10 **COMMISSIONER BROWN:** We haven't gotten to
11 that yet.

12 **MS. PURDY:** Okay.

13 **COMMISSIONER BROWN:** There will not be.
14 Staff, do you have --

15 **MS. BARRERA:** No. We have -- it just
16 applies to the summary of, of the position in the
17 brief. So the word limitation, if there is any.
18 And then the entire brief, as I understand it, can
19 be no more than 50.

20 **COMMISSIONER BROWN:** Fifty pages, yes.
21 And we'll get to that towards the end of the brief.
22 But with regard to your willingness to drop Issue 25
23 for, in exchange for additional word coverage, I
24 think that would -- I'm going to allow 50 pages in
25 your, for your post-hearing briefs without, without

1 an actual word count limitation.

2 **MS. PURDY:** So, again, just so I
3 understand, so if the -- the word count limit that
4 we're talking about, that refers to the summary
5 portion?

6 **COMMISSIONER BROWN:** Summary. Yes.

7 **MS. PURDY:** Now is, I'm sorry, is that the
8 summary -- I thought that was the summary broken out
9 by issue. Am I incorrect in understanding that?

10 **MS. BARRERA:** Yes. Yes.

11 **COMMISSIONER BROWN:** Yes. Thank you.

12 **MS. PURDY:** Okay. So if there's no word
13 limit, I think we'll just move forward. Thank you.

14 **COMMISSIONER BROWN:** So, so that we're
15 clear and everybody else is clear, we will be
16 dropping Issue 25. Okay? And I think you can
17 adequately take that up under Issue 26, so.

18 All right. No issue with 27.

19 We're going to the next subcategory, Net
20 Operating Income, which encompasses 28 through
21 52 issues. Do any of the parties have any changes?
22 Again, as a reminder, staff sent out a revised draft
23 on Friday. So are there any changes in the wording?

24 Okay. Seeing none, we're going to move
25 along to the next category, which is Revenue

1 Requirements, Issues 53 and 54. Any changes?

2 Seeing none, moving along to Cost of
3 Service and Rates, Issues 55 through 71.

4 **MR. BEASLEY:** Commissioner, Tampa Electric
5 can change its position on Issue 57 to read exactly
6 as the staff's position.

7 **COMMISSIONER BROWN:** Okay. Any of the
8 parties have any changes to that? Okay. Any other
9 changes?

10 Seeing none, Other Issues, 72 through 74,
11 I think. Any changes?

12 **MR. BEASLEY:** On 74, Commissioner, we can
13 change our position to read exactly as staff's
14 position reads.

15 **COMMISSIONER BROWN:** Okay. Any objection?

16 Okay. At this point we will be closing
17 the issues and positions. So if there are any
18 changes to any of the issues that I presented, you
19 can raise them now. But as for the other comments
20 with regard to getting to staff no later than noon
21 tomorrow, that's just a reminder there.

22 Okay. Moving to Section IX, Exhibit List.
23 Staff.

24 **MS. BARRERA:** Staff will note that it has
25 prepared a Comprehensive Exhibit List which includes

1 all prefiled exhibits as well as cross-examination
2 exhibits staff intends to sponsor at the hearing.
3 Staff has distributed the list and will check with
4 the parties prior to the hearing within the next
5 couple of weeks to determine if there are any
6 objections to the Comprehensive Exhibit List itself
7 or to any of staff's proposed exhibits being entered
8 into the record.

9 **COMMISSIONER BROWN:** Okay. Thank you.

10 Section X, Proposed Stipulations. Are
11 there any proposed stipulations at this time?

12 **MS. BARRERA:** Staff knows of no proposed
13 stipulations. But we'll be working with the parties
14 to see if we can agree on anything, including
15 whether or not the docket can be closed.

16 **COMMISSIONER BROWN:** Okay. And,
17 Ms. Barrera, I would suggest that maybe after, after
18 tomorrow, after close of noon, if you can send out a
19 draft by the end of the day to the parties to see if
20 the revisions have been incorporated, that would be
21 great, before the final order is issued.

22 **MS. BARRERA:** Yes, Commissioner.

23 **COMMISSIONER BROWN:** Okay. So we'll have
24 a draft Prehearing Order sent out tomorrow
25 afternoon, late afternoon, after noon.

1 **MR. MOYLE:** Can I just a clarify one, one
2 thing on that point?

3 **COMMISSIONER BROWN:** Sure.

4 **MR. MOYLE:** In the past we've had a
5 practice where if a party had not taken a position
6 and other parties had and the issues lined up, then
7 it was subject to, I think we called it a Type B
8 stipulation. I assume that practice will be
9 followed in this case; is that correct?

10 **MS. BARRERA:** Yes. We intend to follow,
11 to follow that practice. Type A would be where
12 everybody agrees, and Type B would be where parties
13 agree and other parties take no position. Is that
14 how you understand it?

15 **MR. BEASLEY:** Yes. Yes.

16 **MR. MOYLE:** Thank you.

17 **MS. CHRISTENSEN:** I would ask for
18 clarification. Since we aren't addressing that here
19 at the prehearing today, is that a preliminary
20 matter that would be taken up at the beginning of
21 the hearing?

22 **MS. BARRERA:** I'm sorry. I didn't hear.

23 **MS. CHRISTENSEN:** Since we're not
24 addressing which issues are Type A or Type B
25 stipulations today and they won't be incorporated

1 into the Prehearing Order, that we would create some
2 sort of document listing what would be a Type A and
3 Type B and take that up as a preliminary matter at
4 the hearing. I just want to make sure that we're
5 clear -- that I'm clear on that.

6 **MS. BARRERA:** Yes. Yes. That would --
7 yes, you're clear on it.

8 **MS. CHRISTENSEN:** Okay. Thank you.

9 **MS. BARRERA:** We'll, we'll announce it.

10 **COMMISSIONER BROWN:** Okay. Any other
11 questions regarding that subsection? We are going
12 to get to pending motions, Section XI. My
13 understanding is that we do have a pending motion to
14 compel discovery filed by TECO, and I am in receipt
15 of HUA's response.

16 Staff, would you like to add anything?

17 **MS. BARRERA:** No, Commissioner. If, if
18 the parties would like to do oral argument, that
19 would be your prerogative to grant or not grant.

20 **COMMISSIONER BROWN:** I don't really need
21 to hear oral argument but I will allow it. It may
22 elucidate some of your positions. So if the parties
23 would like, it's really up to you.

24 **MR. BEASLEY:** Mr. Hart.

25 **MR. HART:** We would like to make a short

1 oral argument.

2 **COMMISSIONER BROWN:** Okay. I will give
3 you a five-minute cap for each party. So I hope
4 that's good enough to accommodate your request. And
5 I will let you know when that begins. Since it's
6 your motion, you can begin first.

7 **MR. HART:** We obviously won't go through
8 each item then. Let's talk about the major issues
9 that will apply to each item.

10 The first one is there's a number of
11 requests regarding the consultants testifying in
12 this case. That information is -- they've asserted
13 some sort of privilege. Actually the *Rules of*
14 *Florida Civil Procedure* couldn't be clearer. Under
15 Rule 280(b)(5), the scope of employment and the
16 compensation for services of expert witnesses is
17 available to everybody. That's clear under the
18 rules, and that was not an appropriate objection for
19 a number of reasons.

20 Two, there's another assertion in the,
21 some of the statements about confidential
22 information of the parties represented by HUA.
23 There's a confidentiality agreement by the parties.
24 The confidentiality agreement between the parties,
25 us and HUA, says that the agreement itself is

1 confidential. But I'm assuming that whoever drafted
2 these objections was not aware of the
3 confidentiality because there's already one in place
4 between the parties that would cover any such
5 information.

6 A lot of the issues here are about
7 compensation. They are directly relevant to the
8 issues in this proceeding for a number of different
9 reasons. I have an article here, which we won't
10 have time to pass out, showing a large hospital
11 recruiting employees, a Chief Financial Officer from
12 a major utility. We compete for the same employees,
13 so the structure of our compensation programs -- we
14 say ours are designed to attract quality employees.
15 We've got disputes about whether or not that's
16 necessary when our competitors are doing it. It's
17 not that hospitals and utilities are the same.
18 Electrical engineers and surgeons may be different,
19 but accountants aren't different, financial people
20 aren't different, IT people aren't different --
21 there's a whole -- human resources people aren't
22 different. There's a whole lot of competition for
23 people.

24 Second of all, one of the main issues in
25 this case is whether or not some of Tampa Electric's

1 compensation program is for the benefit of the
2 shareholders, not the ratepayers. A number of the
3 HUA hospitals competing in this place are
4 not-for-profits. They have no shareholders but they
5 have the same compensation plans we do, so obviously
6 those compensation plans were not designed to
7 benefit shareholders. We think the Commission
8 should have that evidence. We think it's directly
9 relevant to the issues in this case.

10 There are some issues on time limits.
11 Some of our requests were lengthy. We would agree
12 to shorten all those to five years. So any of them
13 that are longer than five years such as --

14 **COMMISSIONER BROWN:** You mean the ones
15 that begin with the year 2000? Some of the
16 requests --

17 **MR. HART:** Some of them start at 2000,
18 some of them start at 2001. There's only a few of
19 those, but we would agree 2008 or 2009 would be
20 appropriate.

21 There's also a certain, and it's wide
22 ranging in here about attorney-client privilege.
23 There is attorney-client privilege, but under the
24 *Florida Rules of Civil Procedure* you have to have a
25 privilege log. Not everything between a client --

1 first of all, it has to be privileged information.
2 Then it depends on who gets it and who sees it, how
3 many parties it was disseminated to. So just merely
4 inserting a blank privilege that this kind of
5 information could be privileged doesn't mean it's
6 in. They've furnished no privilege log, they don't
7 say who the authors are, they don't say who it went
8 to, they don't say the number of parties, they don't
9 provide the nature of it. You're supposed to be
10 able to look at the privilege log and actually have
11 a dispute about whether or not it covers
12 attorney-client information. All of that is
13 missing, so I think that that's really not
14 warranted.

15 They also misstate the test. They really
16 think they've run out the clock. They say that one
17 of the reasons we should deny is there's no chance
18 to do anymore discovery. The test is not whether or
19 not what we're seeking will lead to more discovery;
20 the test is will it lead to admissible evidence.
21 The evidence may come on cross-examination of their
22 witnesses. So there's really no argument that it's
23 too late to get information that may lead to
24 admissible evidence.

25 Those would be the major points. And if

1 we went through these, you know, we've had an
2 exchange which is not particularly relevant, but the
3 number of requests that they've asked us is like 239
4 document production and they're extensive ones. All
5 the parties in this proceeding together, other than
6 them, all five intervenors, everybody else is less
7 than 200 in total. They've got 239. They don't
8 want to produce any of the documents that we need to
9 prepare our case.

10 And one of the issues I think is also
11 important is we asked their witnesses what
12 commissions have adopted your policy? What
13 commissions have adopted this? And they've said
14 that we can go conduct our own legal research and,
15 therefore, they're not going to respond to it.
16 However, when they send us questions, they ask us on
17 a regular basis to, in their discovery request 98 --
18 199, 198, Please identify all Commission precedent
19 on a number of different issues.

20 So this idea that if you ask them if any
21 commission has ever adopted their witnesses'
22 methodology or statements, they say you can go do
23 your own legal research, when they send us questions
24 every day about give us all the commission
25 precedence on one particular issue.

1 So that kind of summarizes. We could go
2 through and apply these general statements to
3 individual interrogatories and requests for
4 productions and requests for admissions, and I think
5 that we would find most of them fall under these
6 categories and should be produced.

7 **COMMISSIONER BROWN:** Thank you. And if
8 you'd like, we can have our staff get a copy of that
9 handout and it may help, and I'd take a look at it.

10 (Handout distributed.)

11 Thank you.

12 **MR. HART:** This handout is just one
13 example of what we could find quickly. It's not
14 intended to be an exhaustive research. It's just
15 intended to illustrate the point that this occurs.

16 **COMMISSIONER BROWN:** Okay. All right.

17 HUA, you will have -- Ms. Purdy, you'll
18 have five minutes.

19 **MS. PURDY:** Great. Okay. Well, I'd have
20 to agree. I think Your Honor has all the
21 information that you need at this point already to
22 make a decision, so I'll make this brief.

23 I think in general the motion to compel is
24 essentially a waste of this Commission's resources
25 and is distracting and inefficient.

1 I'll hit off on a number of points that
2 Tampa Electric raises. First, he identifies the
3 request that, where they were seeking HUA to provide
4 a list of commission decisions or commission
5 citations. The issue from our front is that those
6 requests are over broad and they're not narrowed.
7 Tampa Electric did not request what the witness is
8 aware of: For example, what the witness relies
9 upon. Rather, the questions are phrased as "Please
10 provide all references where the commission has
11 stated," or "Please list all commission decisions."
12 Those are overbroad and we're not willing to do
13 Tampa Electric's legal research for them.

14 Second, as to the number of questions, as
15 we raised in our response, we're allotted 900 in
16 total and I think we've provided or made less than
17 half of those. So in terms of us doing a thorough
18 job, I don't think that's a basis for a motion to
19 compel.

20 With respect to discovery and what Rule
21 1.280(b)(1) stands for, Tampa Electric is right that
22 it does say that it's looking for what's reasonably
23 calculated to lead to the discovery of admissible
24 evidence. But as we see in these requests, they're
25 not, they're not going to be obtaining relevant

1 information. So in terms of the discovery period
2 already being out of close, that, that argument
3 stands.

4 Now in looking at the request provided to
5 us, they dealt with incentive compensation,
6 litigation expense, O&M costs, looking at financial
7 statements for the hospitals, what our uncollectible
8 expense are. The simple fact remains that hospitals
9 in this case do not have the burden of proof. What
10 the hospitals' costs are will not provide the
11 Commission or any of the parties here with any means
12 for determining whether the costs that are argued by
13 Tampa Electric are just and reasonable. The
14 hospitals don't have the burden of proof. Tampa
15 Electric does.

16 Further, the hospitals are not putting
17 their costs at issue. The witness is not saying
18 that Tampa Electric's costs are unreasonable in
19 comparison to those of the hospital. Simply put,
20 the hospitals' costs are irrelevant.

21 And, again, I would argue, you know, Tampa
22 is saying that they may be competing for, for
23 similar people or resources. But either way, the
24 cost of the hospitals, the patterns in which those
25 costs are incurred again are simply not at issue.

1 If, if they were competing for the same people, I
2 would presume that would be true for a number of
3 parties sitting at this table, whether it be
4 retailers or industrials. Presumably those folks
5 use accountants and HR people as well, but I don't
6 see that those questions were raised of these other
7 individuals.

8 I think with that I'd like to close it.
9 If you do have any questions, I'd be happy to answer
10 them.

11 **COMMISSIONER BROWN:** Thank you. Well, I
12 don't have any questions for either of the parties
13 here, and I appreciate the parties being willing to
14 elucidate their positions. I reviewed each request
15 item by item for admission and interrogatories and
16 production, reviewed the response that we got late
17 Friday, and I am prepared to issue a bench decision,
18 even considering the arguments that were presented
19 here today.

20 I will -- my reasoning will be elaborated
21 in a follow-up order with more details, but I wanted
22 to let you know so the parties can act swiftly,
23 given the short time frame that we have before the
24 hearing begins.

25 And I'm just going to make a general

1 statement. I think that the discovery requests
2 propounded by TECO were, are overly broad. I
3 appreciate you being willing to lessen the time
4 frame on some of the requests to 2008 and 2009, but
5 I do still feel that they're overly broad. I really
6 think that the focus of the requests are undermining
7 the credibility of HUA's witnesses and not
8 necessarily negating the testimony.

9 And I'll get into the specifics real
10 quickly regarding TECO's requests for admission.
11 All of number 1 through 10 are denied. I believe
12 these requests are irrelevant and are not at issue
13 in the instant rate case, nor are they being
14 addressed by HUA's witnesses in their prefiled
15 testimony.

16 With regard to the ROGs -- let me see --
17 all are denied except for interrogatory number 15
18 will be allowed and 16 -- well, 15 will be allowed,
19 but I would limit the response to only those
20 commission orders Mr. Kollen relied upon in his
21 testimony.

22 Interrogatories 16, 19, and 20 will also
23 be allowed, but to the extent the witness relied
24 upon specific commission orders.

25 Moving to the request for production, my

1 understanding is that number 14 was produced on
2 August 23rd; is that correct?

3 **MS. PURDY:** Yes, Your Honor, that's my
4 understanding.

5 **COMMISSIONER BROWN:** Okay. All other
6 requests to produce are denied. The deadline for
7 HUA's response is this Friday, 5:00. And that
8 covers that motion. Again, we'll have a follow-up
9 motion -- order after this hearing. It'll be coming
10 this week.

11 Okay. We are on Section XII, pending
12 confidentiality matters. There are two pending
13 matters right now that I'm working on an order, and
14 we will have it sometime issued this week.

15 Staff, anything else on that?

16 **MS. BARRERA:** No.

17 **COMMISSIONER BROWN:** Okay. Section XIII,
18 which we already touched on a little bit with regard
19 to the summary, is the post-hearing procedures. I
20 will set the post-hearing briefs to 50 pages, unless
21 a party objects. No objections?

22 As I stated earlier, there will be no word
23 limitations on the summaries. You can use those
24 pages as you see fit.

25 Section XIV. We talked about the opening

1 statement, opening witness statement summaries, but
2 are any parties willing to waive their opening
3 statements? No. I wouldn't either, but I still
4 have to ask.

5 Okay. Staff has recommended that opening
6 statements not exceed ten minutes per side, but I'm
7 going to give ten minutes to TECO. I'm going to
8 give 20 minutes to the intervening parties to be
9 used and allocated among yourselves as you see fit
10 to use the time.

11 Section XIV, rulings -- oh, no, we already
12 did that. Sorry. Section XVI -- there's not a
13 Section XV? We just go straight to XVI?

14 **MS. BARRERA:** I don't believe there is.

15 **COMMISSIONER BROWN:** Should it be XV? Not
16 on my thing.

17 **MS. BARRERA:** She's XIV.

18 **COMMISSIONER BROWN:** Okay. I've got
19 really weird numbers here. We already did rulings.
20 We're on -- where are we?

21 **MS. BARRERA:** We're on Section -- I'm
22 sorry -- we're on Section XIV under rulings, which I
23 believe you've made.

24 **COMMISSIONER BROWN:** Okay. We're done
25 with that. All right. So other matters, Section VI

1 [sic], I don't believe there are any other matters
2 to be addressing in this Prehearing Conference.
3 Does any party have any additional matters? Yes.

4 **MR. MOYLE:** I just want to make sure I
5 understand the post-hearing procedures because the
6 draft, I guess, has still discussion about
7 summaries. But I understand your verbal ruling to
8 say essentially you guys got 50 pages. You can
9 figure it out, whether you want to do summaries,
10 however you want to break it up. Am I understanding
11 that correctly?

12 **COMMISSIONER BROWN:** That will be
13 memorialized in the final order. It will, it will
14 be very clear.

15 **MR. MOYLE:** Okay.

16 **MS. CHRISTENSEN:** And I'm -- can I clarify
17 for purposes of the record? The -- you're
18 eliminating the word limitation but you still want
19 positions with asterisk setoffs.

20 **COMMISSIONER BROWN:** Yes.

21 **MS. CHRISTENSEN:** Okay.

22 **MR. MOYLE:** Okay.

23 **COMMISSIONER BROWN:** Yes.

24 **MS. HELTON:** And, Madam Chair, if I could
25 just clarify, the summary that gets provided,

1 regardless of the word limit, is the summary that
2 will be provided in staff's recommendation that the
3 Commission will ultimately vote on; is that still
4 correct?

5 **COMMISSIONER BROWN:** That's still correct.
6 Do you understand that, Mr. Moyle?

7 **MR. MOYLE:** No.

8 **COMMISSIONER BROWN:** No? Give it a shot,
9 Ms. Helton.

10 **MS. HELTON:** In the past there has -- some
11 Prehearing Officers have limited the summary to 50
12 words or 75 words or whatever, and that is the, that
13 is the language that gets copied and pasted into
14 staff's recommendation next to each party's name.
15 So it sounds like regardless of the number of words
16 now that you put in your summaries, that same part
17 of your brief will be what is copied and pasted and
18 put into staff's recommendation for the
19 Commissioners to ultimately vote on.

20 **MR. MOYLE:** Regardless of how long it is.

21 **MS. HELTON:** Well, there -- if, if we
22 think it's too long, I can guarantee you that staff
23 will go to the Prehearing Officer.

24 **MR. MOYLE:** Okay. But we're still having
25 summaries of issues like where we --

1 **COMMISSIONER BROWN:** Yes, that's correct.

2 **MR. MOYLE:** Okay. Okay.

3 **COMMISSIONER BROWN:** My, my only

4 limitation is on 50 pages.

5 **MR. MOYLE:** Okay. We still have a while;

6 right?

7 **COMMISSIONER BROWN:** Yes.

8 **MR. MOYLE:** Thanks.

9 **COMMISSIONER BROWN:** Are there any other
10 matters that need to be taken up at this time?

11 Okay. I think we can adjourn. Thank you
12 very much. Looking forward to seeing you all.

13 (Prehearing Conference adjourned at 1:46
14 p.m.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

3
4 I, LINDA BOLES, CRR, RPR, Official Commission
5 Reporter, do hereby certify that the foregoing
6 proceeding was heard at the time and place herein
7 stated.

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

13 I FURTHER CERTIFY that I am not a relative,
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18 DATED THIS 28th day of August, 2013.

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February 22, 2005

Parties/Staff Handout
event date 8/26/13
Docket No. 130040-EI

WHO'S NEWS

Tenet Selects Utility Executive As Its Chief Financial Officer

By RHONDA L. RUNDLE and JOANN S. LUBLIN
Staff Reporters of THE WALL STREET JOURNAL
February 22, 2005

Tenet Healthcare Corp. is set to announce today that it has recruited an energy-industry veteran, Robert S. Shapard, as chief financial officer, succeeding Stephen D. Farber, who resigned last summer rather than move with the company to Dallas.

Mr. Shapard, 49 years old, is executive vice president and chief financial officer of Exelon Corp., a large electric utility based in Chicago with customers in northern Illinois and southeastern Pennsylvania.

The selection of a utility executive with operating experience underscores continuing efforts by Tenet to transform its corporate culture. For most of the company's history, its management has been driven by hospital deal making and the reshuffling of physical assets. Such wheeling and dealing created the nation's second-largest hospital company by revenue after HCA Inc., but also spurred aggressive business practices and huge swings in financial performance.

Tenet also faces various allegations of corporate misconduct and is trying to negotiate a global settlement with the federal government.

Mr. Shapard said he was drawn to Tenet's revamped management team, led by Trevor Fetter, president and chief executive officer, who has outlined a radically different course, including a strategy focused on improving hospital quality and patient care.

"We have to get the investigations and litigation behind us and focus on the quality of service and other fundamentals of the business," Mr. Shapard said.

A U.S. District court judge in San Diego declared a mistrial last week after a four-month jury trial in which a Tenet hospital and its former chief executive were accused of paying kickbacks in exchange for patient referrals. Tenet has denied any wrongdoing.

Crist Associates, a search boutique in Hinsdale, Ill., handled the chief-financial-officer hunt for Tenet.

Mr. Shapard, who was born and raised in Dallas, will join Tenet in early March after Mr. Farber wraps up Tenet's 2004 financial reports.

At the outset of the search, Tenet decided to also look outside its industry because "there aren't many companies in their space that have the size and scale that they have," a person close to the situation said. Besides utility executives, Tenet considered candidates at banks, insurers and information-services giants. Among the targeted high-tech providers were ones that provide a lot of services to the federal government.

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