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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In Re: Petition by Tampa Electric :  
Company for Approval of Cost Recovery :  
for a New Environmental Program, the : DOCKET NO. 980693-EI  
Big Bend Units 1 & 2 Flue Gas :  
Desulfurization System. :  
\_\_\_\_\_

PROCEEDINGS: PREHEARING CONFERENCE  
  
BEFORE: COMMISSIONER CLARK  
PREHEARING OFFICER  
  
DATE: AUGUST 21, 1998  
  
TIME: COMMENCED AT 9:30 A.M.  
CONCLUDED AT 9:50 A.M.  
  
PLACE: BETTY EASLEY CONFERENCE CENTER  
ROOM 152  
4075 ESPLANADE WAY  
TALLAHASSEE, FLORIDA  
  
REPORTED BY NANCY S. METZKE, RPR, CCR  
POST OFFICE BOX 3093  
TALLAHASSEE, FLORIDA 32315

C & N REPORTERS  
REGISTERED PROFESSIONAL REPORTERS  
POST OFFICE BOX 3093  
TALLAHASSEE, FLORIDA 32315  
(850)697-8314 / FAX (850)697-2263

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## 1 APPEARANCES:

2 GRACE A. JAYE, ESQUIRE, FPSC, 2540 Shumard Oak Boulevard,  
3 Tallahassee, Florida 32399-0850, on behalf of the  
4 Commission Staff.

5 LEE L. WILLIS, ESQUIRE and JAMES D. BEASLEY, Ausley &  
6 McMullen, Post Office Box 391, Tallahassee, Florida 32302,  
7 on behalf of TECO.

8 VICKI GORDON KAUFMAN, ESQUIRE, McWhirter, Reeves,  
9 McGlothlin, Davidson, Decker, Kaufman, Arnold & Steen,  
10 P.A., 117 South Gadsden Street, Tallahassee, Florida 32301,  
11 on behalf of FIPUG.

12 GAIL KAMARAS, ESQUIRE, 1114 Thomasville Road, Suite E,  
13 Tallahassee, Florida 32303-6290, on behalf of LEAF.

14 JOHN ROGER HOWE, ESQUIRE, Office of Public Counsel, c/o The  
15 Florida Legislature, 111 West Madison Street, Room 812,  
16 Tallahassee, Florida 32399-1400, on behalf of the Citizens  
17 of the State of Florida.

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P R O C E E D I N G S

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2 COMMISSIONER CLARK: Let's call the prehearing to  
3 order.

4 Ms. Jaye.

5 MS. JAYE: Pursuant to notice issued August 16th,  
6 1998, this time and place have been set aside for a  
7 prehearing in Docket Number 980693-EI, which is the  
8 Petition by Tampa Electric Company for Approval of Cost  
9 Recovery for a New Environmental Program, the Big Bend  
10 Units 1 & 2 Flue Gas Desulfurization System.

11 COMMISSIONER CLARK: We'll take appearances.

12 MR. BEASLEY: Commissioner, I'm James D. Beasley  
13 with Lee L. Willis, both of the law firm of Ausley &  
14 McMullen, P. O. Box 391, Tallahassee, Florida, 32302,  
15 appearing also with Harry W. Long, senior corporate and  
16 administrative counsel of TECO Energy; and we are  
17 representing Tampa Electric Company.

18 MS. KAUFMAN: Hi. I'm Vicki Gordon Kaufman of  
19 McWhirter, Reeves law firm, 117 South Gadsden Street,  
20 Tallahassee, 32301; and appearing with me at the hearing  
21 will be John McWhirter on behalf of the Florida Industrial  
22 Power Users Group.

23 MS. KAMARAS: Gale Kamaras on behalf of the Legal  
24 Environmental Assistance Foundation, 1114 Thomasville Road,  
25 Suite E, Tallahassee, Florida, 32303.

1 MR. HOWE: I'm Roger Howe with the Public  
2 Counsel's office appearing on behalf of the citizens of the  
3 State of Florida.

4 MS. JAYE: Grace A. Jaye appearing on behalf of  
5 Public Service Commission staff.

6 COMMISSIONER CLARK: Ms. Jaye, are there any  
7 preliminary matters we have to take up?

8 MS. JAYE: Yes, there are.

9 COMMISSIONER CLARK: Okay.

10 MS. JAYE: There are some outstanding motions to  
11 dismiss, a suggestion to dismiss, as well as the responses  
12 thereto; and these have been addressed in a recommendation  
13 which was filed yesterday and will be taken up on the  
14 September 1st, 1998 agenda by the full Commission.

15 COMMISSIONER CLARK: So I don't have to do  
16 anything about them today?

17 MS. JAYE: No, ma'am.

18 COMMISSIONER CLARK: Good.

19 MR. BEASLEY: Commissioner, in that regard, I  
20 would just note for the record that we are filing today a  
21 response to Legal Environmental Assistance Foundation's  
22 motion to dismiss.

23 COMMISSIONER CLARK: Okay. Which we won't be  
24 able to take up at that agenda.

25 MR. BEASLEY: Right.

1 COMMISSIONER CLARK: All right. When is the  
2 hearing for this?

3 MS. JAYE: It's set for September 2nd with a date  
4 reserved the afternoon of September 11th if necessary.

5 COMMISSIONER CLARK: Okay. Any other preliminary  
6 matters?

7 MS. JAYE: Yes, ma'am. LEAF has petitioned to  
8 intervene in this docket, and staff has prepared the  
9 appropriate order which will be issued shortly.

10 COMMISSIONER CLARK: Granting intervention?

11 MS. JAYE: Yes.

12 COMMISSIONER CLARK: Okay. Anything else?

13 MS. JAYE: No, ma'am.

14 MR. BEASLEY: Commissioner, we had one  
15 outstanding request for an opportunity to submit reply  
16 briefs, and I note that the briefs are due to be filed on  
17 October 2nd, which is a Friday, with the staff  
18 recommendation being due November 5th; and if we would be  
19 able to -- or be afforded the opportunity to submit a reply  
20 brief on Friday October the 9th, that would still afford  
21 staff approximately four weeks to submit their staff  
22 recommendation. We do this in an offer to have a complete  
23 record and to fully apprise the Commission, and I don't  
24 think the Commission has ever wanted to have less than a  
25 fully-informed record in making its decision. So we would

1 request an opportunity to submit a reply brief by October  
2 the 9th.

3 COMMISSIONER CLARK: Staff. Has anyone else  
4 requested the opportunity to file a reply brief or wish to  
5 comment on the request?

6 MS. KAUFMAN: Commissioner Clark, I would like to  
7 comment. FIPUG would object to the filing of a reply  
8 brief. I know that we have been through this in another  
9 case with Tampa Electric. We think it's bad precedent to  
10 start this practice of having reply briefs, and we would  
11 request that we stick with the schedule that is in the  
12 CSAR.

13 MR. HOWE: I agree with Ms. Kaufman.

14 MR. BEASLEY: Commissioner, we are not proposing  
15 this for any strategic means other than to allow us to  
16 fully apprise the Commission and to address any matters  
17 that may come up in the briefs submitted by the other  
18 parties.

19 COMMISSIONER CLARK: All right. Do I need to  
20 rule on that right now?

21 MS. JAYE: I wouldn't think so.

22 COMMISSIONER CLARK: Okay.

23 MS. JAYE: I think that can be determined at the  
24 hearing by the presiding officer.

25 COMMISSIONER CLARK: Who is the presiding

1 officer?

2 MR. JAYE: It's the full Commission.

3 COMMISSIONER CLARK: Okay. All right. Thank  
4 you.

5 Have you filed anything in writing making that  
6 request for the reply brief?

7 MR. BEASLEY: We have done it orally previously  
8 but not to my recollection in writing.

9 COMMISSIONER CLARK: You asked for reply briefs  
10 in another docket?

11 MR. BEASLEY: Earlier in this proceeding, in  
12 discussions in our preliminary issue identification  
13 meetings with the staff and the other parties.

14 COMMISSIONER CLARK: Okay. But I haven't seen  
15 anything in writing?

16 MR. BEASLEY: No, ma'am.

17 MR. WILLIS: No. Commissioner, this is a  
18 practice that you routinely follow with respect to the  
19 telephone industry, and --

20 COMMISSIONER CLARK: Allowing reply briefs?

21 MR. WILLIS: Allowing reply briefs, and it helps  
22 focus the case. It's possible that a party could raise an  
23 issue that is discussed entirely in the brief and not at  
24 the hearing, and the reason that you do that is to focus  
25 the case and to sharpen it for your decision. And in this

1 instance it won't affect the schedule. Of course, we'll  
2 discuss that with the full Commission or whenever the time  
3 period for decision is, but that's the reason for this.

4 COMMISSIONER CLARK: Okay.

5 MS. KAUFMAN: Commissioner Clark, I'm sure you  
6 don't want to belabor this since you're not going to rule  
7 on it, but I would take issue with the statement that we  
8 routinely do this on the telephone side. For example, in  
9 the 271 case with BellSouth, which was a very complicated  
10 case, there were no reply briefs; and I think this request  
11 is the exception rather than the rule; and again, we would  
12 object to it.

13 COMMISSIONER CLARK: Okay. All righty. Anything  
14 else preliminarily?

15 MS. JAYE: Yes, Commissioner. Staff is prepared  
16 to note in the prehearing order that ruling on this issue  
17 of reply briefs is being reserved until the hearing.

18 COMMISSIONER CLARK: Okay. Is that it?

19 MS. JAYE: Yes, ma'am.

20 COMMISSIONER CLARK: Are there any changes to, I  
21 guess, the first five pages of the prehearing order?

22 MS. KAUFMAN: Commissioner Clark, I'm sorry, this  
23 may be a preliminary matter that you might want to take up.

24 COMMISSIONER CLARK: Okay.

25 MS. KAUFMAN: And it has to do with withdrawing



1 portions of Mr. Selecky's testimony due to the fact that we  
2 have narrowed the issues, and many of the issues he  
3 addressed have now been withdrawn.

4 COMMISSIONER CLARK: Okay.

5 MS. KAUFMAN: And I have prepared a list and  
6 discussed with Tampa Electric Company the particular  
7 portions of his testimony that will be withdrawn, so I can  
8 distribute that now or read it into the record, whatever  
9 your pleasure.

10 COMMISSIONER CLARK: Which issues is he going to  
11 cover?

12 MS. KAUFMAN: Currently he is going to cover, I  
13 think it's 1, 3 and 7. Yes.

14 COMMISSIONER CLARK: Anything -- And that is  
15 correct?

16 MS. KAUFMAN: Yes, it's correct as reflected in  
17 the draft prehearing order.

18 COMMISSIONER CLARK: Okay.

19 MS. KAUFMAN: But there is a good part of his  
20 testimony that we are withdrawing because, for example,  
21 issues related to return on equity and cost of capital have  
22 been removed.

23 COMMISSIONER CLARK: All right. You've already  
24 submitted the testimony?

25 MS. KAUFMAN: Yes, ma'am.

1           COMMISSIONER CLARK: So when he takes the stand,  
2 you will indicate that these -- you will indicate what  
3 pages are withdrawn? Perhaps we should indicate that in  
4 the prehearing order somehow.

5           MS. KAUFMAN: I just think it might be more  
6 clear, but --

7           COMMISSIONER CLARK: Okay. Let's indicate in the  
8 prehearing order what portions of Mr. Selecky's prefiled  
9 testimony have been withdrawn.

10           (DOCUMENTS DISTRIBUTED BY MS. KAUFMAN)

11           COMMISSIONER CLARK: Are there any other  
12 preliminary matters?

13           MR. BEASLEY: We had discussed amongst the  
14 parties potentially stipulating in the remaining portions  
15 of Mr. Selecky's testimony, waiving cross examination of  
16 his -- of that portion of his testimony which is admitted,  
17 and also submitting Mr. Hernandez's brief rebuttal  
18 testimony to Mr. Selecky and waiving cross examination of  
19 Mr. Hernandez on that rebuttal testimony which would allow  
20 the remaining portions of Mr. Selecky's testimony and  
21 Mr. Hernandez's testimony to be made a part of the record,  
22 and I would offer that.

23           MS. KAUFMAN: Mr. Beasley and I have discussed  
24 this, and I need to check with the client on that, and I  
25 think it's possibly something that can be done. And what

1 I'd suggest is that I check, and we will get back with  
2 staff and let them know.

3 COMMISSIONER CLARK: Okay. So we would be  
4 stipulating into the record the rest of Mr. Selecky's  
5 testimony and Mr. Hernandez's rebuttal?

6 MS. KAUFMAN: That's correct.

7 MR. BEASLEY: Also, Commissioner, in connection  
8 with that, we would withdraw our discovery request of FIPUG  
9 because they relate to portions of Mr. Selecky's testimony  
10 that have been withdrawn.

11 COMMISSIONER CLARK: Okay. So we can show that  
12 the request for the discovery has been withdrawn based on  
13 the fact Mr. Selecky's testimony is withdrawn, and with  
14 respect to whether or not we can stipulate into the record  
15 Mr. Hernandez's rebuttal and the remainder of Mr. Selecky's  
16 testimony, you all will let me know?

17 MS. KAUFMAN: That's right, but I think that the  
18 withdrawal of the discovery is not related or dependent on  
19 to whether we stipulate Mr. Hernandez's rebuttal.

20 COMMISSIONER CLARK: I understand that.

21 MS. KAUFMAN: Okay.

22 COMMISSIONER CLARK: My question is, my  
23 prehearing indicates only direct testimony of Black,  
24 Hernandez and Selecky. Is there direct and rebuttal for  
25 Mr. Hernandez?

1 MR. BEASLEY: Yes, ma'am.

2 COMMISSIONER CLARK: What about Mr. Black?

3 MR. BEASLEY: No rebuttal for Mr. Black.

4 COMMISSIONER CLARK: Okay. All right. We'll be  
5 sure that the prehearing indicates that there is rebuttal  
6 testimony.

7 MS. KAUFMAN: Yes, ma'am.

8 COMMISSIONER CLARK: Any other preliminary  
9 matters?

10 MS. KAUFMAN: Well, I guess I'll raise this now  
11 too. We have some documents that we would like the  
12 Commission to take official recognition of, and I have a  
13 list that I'll distribute. They are all documents that  
14 have been prepared by Tampa Electric Company, so I don't  
15 anticipate a problem; but I'll distribute that now and see  
16 if they have any concerns.

17 (DOCUMENTS DISTRIBUTED BY MS. KAUFMAN)

18 COMMISSIONER CLARK: And your intention being  
19 that we will list at the end of the prehearing that they  
20 are stipulated into the record, or I mean why are we doing  
21 this now as opposed to at the hearing?

22 MS. KAUFMAN: I was just trying to give people a  
23 heads up.

24 COMMISSIONER CLARK: Heads up, okay. All right.

25 MS. KAUFMAN: We would expect that the Commission

1 would take official recognition of the documents, not that  
2 they would be exhibits.

3 COMMISSIONER CLARK: Okay. Good.

4 MR. BEASLEY: Commissioner, we would just like to  
5 reserve the opportunity to look at these documents and  
6 perhaps address them at the hearing.

7 COMMISSIONER CLARK: All right. Okay. We'll  
8 just -- if you will renew your request at the hearing, and  
9 at that time maybe you can represent that Tampa Electric  
10 Company has no problem with it or that they do and we can  
11 resolve it then. Thank you.

12 Any other preliminary matters?

13 (NO RESPONSE)

14 COMMISSIONER CLARK: Okay. Are there any  
15 problems with the first five pages of the prehearing order?

16 (NO RESPONSE)

17 COMMISSIONER CLARK: Let me ask a question. Is  
18 it better that we maybe ask what changes need to be made to  
19 the order? Do you have any changes, Tampa Electric?

20 MR. BEASLEY: Only the one you noted earlier  
21 about inserting Mr. Hernandez's rebuttal testimony.

22 COMMISSIONER CLARK: Okay. All right.  
23 Ms. Kaufman, do you have any changes?

24 MS. KAUFMAN: No, I do not.

25 COMMISSIONER CLARK: Ms. Kamaras?

1 MS. KAMARAS: No.

2 COMMISSIONER CLARK: Mr. Howe.

3 MR. HOWE: Commissioner Clark, we have changed  
4 our position on Issue Number 6. We have distributed a text  
5 of that change in legislative format just so it's clear to  
6 all the parties.

7 COMMISSIONER CLARK: Okay.

8 MR. HOWE: And we would ask that it be  
9 incorporated into the prehearing order.

10 COMMISSIONER CLARK: It will be incorporated into  
11 the prehearing order.

12 COMMISSIONER CLARK: Staff, do you have any  
13 changes to the prehearing order?

14 MS. JAYE: We do have a change to the wording on  
15 Issue 6 on page 13, if we could go there momentarily.

16 MR. HOWE: This might change my position,  
17 Commissioner Clark.

18 MS. JAYE: I don't think so. I think it's more  
19 or less a scrivener's error in copying Issue 6. It does  
20 not represent the language that the parties agreed to. It  
21 says "for recovery of." That should say "to accrue"  
22 instead and will be changed to reflect that agreement of  
23 the parties that is actually on the last issues' list that  
24 was distributed to the parties.

25 COMMISSIONER CLARK: Okay. That change will be

1 made.

2 Anything else, Ms. Jaye?

3 MS. JAYE: No, ma'am.

4 COMMISSIONER CLARK: Is there anything else we  
5 have to take up in this prehearing?

6 (NO RESPONSE)

7 COMMISSIONER CLARK: Thank you very much. This  
8 prehearing is adjourned.

9 (WHEREUPON, THE HEARING WAS CONCLUDED)

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STATE OF FLORIDA     )  
COUNTY OF LEON     )

I, NANCY S. METZKE, Certified Shorthand Reporter and Registered Professional Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 26th day of August, 1998.

\_\_\_\_\_  
NANCY S. METZKE, CCR, RPR



<p><b>&amp;</b>  &amp; 1:6,22 2:7 3:10,13  <b>*</b>  * 15:12,12,12,12  / 1:24</p>	<p>amongst 10:13  another 6:8 7:10  anticipate 12:15  anyone 6:3  anything 4:16 5:12 7:5,15 8:13  9:14 15:2,4  <b>APPEARANCES</b> 2:1 3:11  appearing 3:15,20 4:2,4  apprise 5:23 6:16  appropriate 5:9  Approval 1:5 3:8  approximately 5:21  Arnold 2:7  aside 3:6  ask 13:17,18 14:8  asked 7:9  Assistance 3:24 4:21  <b>AUGUST</b> 1:13 3:5 16:8  Ausley 3:13  authorized 16:6</p>	<p>complete 5:22  complicated 8:9  concerns 12:16  <b>CONCLUDED</b> 1:15 15:9  connection 11:7  copying 14:19  corporate 3:15  correct 9:15,16 11:6  Cost 1:5 3:8 9:21  counsel 3:16  Counsel's 4:2  <b>COUNTY</b> 16:3  course 8:1  cover 9:12  cross 10:15,18  CSAR 6:12  Currently 9:12</p>	<p>Foundation 3:24  Foundation's 4:21  four 5:21  <b>FPSC</b> 2:2  Friday 5:17,20  full 4:14 7:2 8:2  fully 5:23 6:16  fully-informed 5:25</p>
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