BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Tampa Electric Company for Approval of Cost Recovery for a New Environmental Program, the Big Bend Units 1 & 2 Flue Gas Desulfurization System.	DOCKET NO. 980693-EI ORDER NO. PSC-98-1170-PHO-EI ISSUED: August 28, 1998

PREHEARING ORDER

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on Friday, August 21, 1998, in Tallahassee, Florida, before Commissioner Susan F. Clark, as Prehearing Officer.

APPEARANCES:

HARRY W. LONG, JR., TECO Energy, Inc., Post Office Box 111, Tampa, Florida, 33601-0111; and LEE L. WILLIS, ESQUIRE, and JAMES D. BEASLEY, ESQUIRE, Ausley & McMullen, Post Office Box 391, Tallahassee, Florida 32302
On behalf of Tampa Electric Company (TECO).

JOHN W. McWHIRTER, JR., ESQUIRE, McWhirter Reeves McGlothlin Davidson Decker Kaufman Arnold & Steen, P.A., 100 North Tampa Street, Suite 2800, Tampa, Florida 33601-3350; and JOSEPH A. MCGLOTHLIN, ESQUIRE, and VICKI GORDON KAUFMAN, ESQUIRE, McWhirter Reeves McGlothlin Davidson Decker Kaufman Arnold & Steen, P.A., 117 South Gadsden Street, Tallahassee, Florida 32301
On behalf of Florida Industrial Power Users Group (FIPUG).

GAIL KAMARAS, ESQUIRE, 1114 Thomasville Road, Suite E, Tallahassee, Florida 32303-6290
On behalf of Legal Environmental Assistance Foundation (LEAF).

JOHN ROGER HOWE, ESQUIRE, Office of Public Counsel c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida (OPC).

GRACE A. JAYE, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission Staff.

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

Pursuant to Section 366.8255, Florida Statutes, on May 15, 1998, Tampa Electric Company (TECO) filed a Petition of Tampa Electric Company for Approval of Cost Recovery for New Environmental Program. In this petition, TECO proposed a Flue Gas Desulfurization (FGD) system for its Big Bend units 1 & 2. TECO asserted that the proposed FGD system would bring it into compliance with the Clean Air Act Amendments (CAAA) Phase II, which become effective January 1, 2000. According to TECO, the FGD system, as proposed in this docket, will reduce SO2 emissions at its Big Bend units 1 & 2.

On June 2, 1998, the Florida Industrial Power User's Group (FIPUG), petitioned to intervene in the docket. Intervention was granted by Order No. PSC-98-0806-PCO-EI, issued June 10, 1998. FIPUG filed a Motion to Dismiss on July 23, 1998. The Citizens of Florida through the Office of Public Counsel (OPC), filed a Notice of Intervention in this docket on July 29, 1998. OPC filed a Suggestion That the Florida Public Service Commission, On Its Own Motion, Dismiss Tampa Electric Company's Petition Without Prejudice on July 29, 1998. The Legal Environmental Assistance Foundation, Inc. (LEAF), petitioned to intervene and filed a Motion to Dismiss on August 14, 1998.

Pursuant to TECO's Petition, this matter is set for hearing before the Commission under Sections 120.569 and 120.57(2), Florida Statues. The hearing is scheduled for September 2, 1998, September 11, 1998, is reserved, if necessary.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 366.093, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

3) When confidential information is used in the hearing, parties must have copies for the

Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.

5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

Witness	Proffered By	Issues #
Direct		
Charles R. Black	TECO	1, 2, 4
Thomas L. Hernandez	TECO	3 - 8

Witness	Proffered By	Issues #
James T. Selecky	FIPUG	1, 3, 7 - Portions of this testimony have been withdrawn. They are: Exhibit No. JST-1, Capital Structure at 12/31/97; Page 2, lines 7-8, 12-17; page 3, line 2 (after ECRC) through line 3' page 6, lines 14-18; page 7, lines 1-2; page 9, lines 1-18, after the word "rang " on line 1; pages 10-20, all; page 21, lines 1-13, 18-19; and , page 22, lines 1-4.
Rebuttal		
Thomas L. Hernandez	TECO	

VII. BASIC POSITIONS

TECO: Tampa Electric has a definitive obligation to comply with the legal requirements of Phase II of the Clean Air Act Amendments of 1990 (CAAA) which prescribe certain SO_2 emission limitations for Tampa Electric's generation system beginning January 1, 2000. After an exhaustive review of available compliance alternatives, the most cost-effective compliance alternative is the construction of a $90 million FGD system on Big Bend Units 1 and 2. Tampa Electric's cost-effectiveness study shows a system present worth revenue requirement savings for the FGD option of $18 million over the first 10 years, $80

million over the first 20 years and $96 million over the first 25 years.

It is critical that the Commission now confirm that, on the basis of circumstances at the time the decision to build the FGD system is made, the FGD project is a reasonable compliance option; that it is a project which qualifies for environmental cost recovery; and that the prudent and reasonable costs associated with implementing the project will be recoverable through the Environmental Cost Recovery Clause (ECRC) mechanism.

Consistent with the Guidelines in Order No. PSC-94-0044-FOF-EI, the FGD system related costs (a) will be incurred after April 13, 1993; (b) will be incurred on the basis of the legal requirement of the CAAA; and (c) are not currently being recovered through base rates or any other cost recovery mechanism. Accordingly, under the principles applied by this Commission for recovery under the ECRC, the proposed FGD system is clearly eligible for recovery under that mechanism. The investment in equipment such as an FGD system, which has the sole purpose of complying with environmental law in the most cost-effective way, is precisely the type of cost which the ECRC was designed by the Legislature to cover.

The Commission has encouraged the parties to come in early for determinations involving capital expenditures for environmental cost recovery so that timely guidance can be provided by the Commission with respect to that investment. Consequently, the Commission should find that the FGD project is the most cost-effective alternative and is eligible for ECRC recovery at the earliest possible time so that all parties may plan accordingly.

The Commission should also approve Tampa Electric's tracking and accumulation of project costs in AFUDC until the FGD system goes into service. Prior to seeking the actual recovery of costs associated with this project, Tampa Electric will file additional supporting testimony and exhibits for consideration at the hearing in which the ECRC factors will be set for the cost recovery period when the FGD system will be placed in service.

FIPUG: TECO has failed to seek preconstruction prudency approval pursuant to § 366.825, *Florida Statutes*. Therefore, its attempt to proceed under § 366.8255 must fail. Further, because the Commission cannot yet determine the status of TECO's earnings in the year 2000 (the in-service date of the FGD), it is too early to tell whether TECO's earnings from base rates will be sufficient to cover the investment without an additional surcharge on consumers. These omissions preclude the Commission's consideration of TECO's petition at this time. FIPUG has addressed these issues in its motion to dismiss.

Environmental costs are driven by energy sales. TECO has substantial firm and economy wholesale energy sales. Approving cost recovery under the cost recovery clause, ECRC, without accounting for wholesale sales discriminates against retail customers and is an unfair trade practice *vis a vis* other utilities.

LEAF: Tampa Electric Co. (TECO) has failed to seek approval pursuant to section 366.825, Florida Statutes and cannot proceed under section 366.8255. Further, its failure to file a comprehensive compliance plan for Clean Air Act Phase II compliance deprives the Commission of the information it needs to determine whether TECO's plan is prudent or in compliance with the Clean Air Act. Installation of flue-gas de-sulfurization may provide an incentive to continue to operate Big Bend units 1 and 2 even though it is not the most cost-effective alternative.

OPC: Tampa Electric Company's petition and testimony only address the method chosen to meet SO_2 standards imposed by Phase II of the Clean Air Act Amendments of 1990, ignoring the NO_x and particulate standards. The company apparently settled on the FGD system ("scrubber") as the most cost effective alternative for reducing SO_2 emissions in the late-1996 or early-1997 time frame. If the company was really interested in prior approval for its plan, it would have filed a petition last year which addressed all the requirements of Section 366.825, Florida Statutes (1997). It's too late now to adopt another approach in time for year 2000 implementation. Neither the petition nor the prefiled testimony identify any adverse consequences which might flow from a

Commission decision not to address the company's SO_2 compliance plan at this time. The Commission is being asked to ignore the dictates of Section 366.825 and misuse Section 366.8255 to evaluate an incomplete plan to achieve only partial compliance with the Act and declare the project eligible for environmental cost recovery and, perhaps, for AFUDC accrual.

The AFUDC issue is particularly troublesome because Tampa Electric has not been at all clear about what it is asking for. The company's prefiled testimony identifies the amount of AFUDC it thinks should be charged on the project and asks that the Commission allow the accrual pursuant to Rule 25-6.0141, Florida Administrative Code. But the rule already allows the utility to charge AFUDC on the scrubber project, albeit limited to the balance of major construction projects which exceed the amount of CWIP allowed in rate base in the last rate case. Tampa Electric was authorized pursuant to Order No. PSC-93-0664-FOF-EI to include almost $55 million of CWIP ($18,793,000 of short-term CWIP and $36,171,000 of CWIP otherwise subject to AFUDC) in rate base in its last rate case. The Commission, at page 2 of that order, said that "[f]rom January 1, 1994 until ordered to modify or cease, the $36,171,000, which is earning a return from this proceeding, shall offset CWIP balances that accrue AFUDC." Most of the $83 million scrubber project, therefore, will not qualify for AFUDC under the cited rule or the last rate case order. Mr. Black's prefiled testimony [Exhibit (CRB-1), Document No. 4], however, shows projected AFUDC for the project of $7,245,954. Is Tampa Electric intending to accrue AFUDC without regard to the CWIP-in-rate-base limitation and without saying so directly? Charging AFUDC on the entire project would allow Tampa Electric to report higher earnings to shareholders and require customers to pay higher environmental cost recovery factors to compensate for an investment improperly inflated by AFUDC. The Commission, however, could only allow Tampa Electric to accrue AFUDC on the entire scrubber project by waiving the provisions of Rule 25-6.0141. No request for waiver has been filed. Rule 25-22.036(7)(a)4 (which was applicable at the time the petition was filed) requires citation in the initial pleading to "rules and statutes which entitle the

petitioner to relief." Rule 25-6.0141 was not cited in the petition.

Tampa Electric's petition should be denied. It's too late for prior approval and too early for a final evaluation. The company is already implementing the SO_2 portion of its compliance plan and building a scrubber for Big Bend Units 1 and 2. All relevant matters can be addressed at a subsequent proceeding when the company's compliance plan is complete and costs are known. Commission action is unnecessary on the AFUDC issue because Rule 25-6.0141 and Order No. 93-0664 already specify the appropriate treatment.

Staff: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

Issue 1: Has Tampa Electric Company (TECO) adequately explored alternatives to the construction of a Flue Gas Desulfurization (FGD) system on Big Bend Units 1 and 2?

Positions:

TECO: Yes. Tampa Electric has carefully and prudently explored all reasonable alternatives to the construction of its proposed FGD system for Big Bend Units 1 and 2. (Witnesses: Black, Hernandez)

FIPUG: No. TECO did not present its petition in a timely fashion before construction contracts were awarded and construction of the major component commenced. It has not provided the basic information concerning its total CAAA II compliance plan and its rate impact as required by § 388.825 *Florida Statutes*, the primary preconstruction prudency section. There is insufficient time for the Commission to give meaningful consideration to any alternatives other than those TECO promoted. The

petition should be denied without prejudice to come back when all compliance requirements have been met and costs are known.

LEAF: No. TECO did not provide sufficient and complete information concerning its total Clean Air Act Phase II compliance requirements and plan as required by section 366.825, F.S.. The Commission has inadequate time and information to properly consider alternatives other than the ones provided by TECO. The petition should be denied without prejudice to re-file.

OPC: Tampa Electric has adequately explored alternatives for SO_2 compliance, but it is unknown whether the scrubber would be part of a least-cost alternative when all facets of Clean Air Act compliance are considered together. Certainly, the company has not provided the Commission with all the information it must consider under Section 366.825, Florida Statutes (1997).

Staff: No position at this time, pending further discovery and the evidence adduced at hearing.

Issue 2: Is the fuel price forecast used by TECO in its selection of a CAAA Phase II Compliance plan reasonable?

Positions:

TECO: Yes. (Witnesses: Black)

FIPUG: The Commission should decline to rule on this issue because TECO has not sought relief under § 388.825, *Florida Statutes*, the preconstruction prudency section.

LEAF: The Commission should decline to rule on this issue because TECO has not sought relief under section 366.825, F.S. In the alternative, LEAF is without a factual basis to have a position on this statement since fuel price information was treated as confidential.

OPC: No. Tampa Electric has not yet addressed all facets of its compliance plan and the effects of those compliance actions, taken together, on its fuel prices. Moreover,

Tampa Electric has not identified its present and potential sources of fuel as required by subparagraph 366.825(2)(d)5, Florida Statutes (1997).

Staff: No position at this time, pending further discovery and the evidence adduced at hearing.

Issue 3: **Are the economic and financial assumptions used by TECO in its selection of a CAAA Phase II Compliance plan reasonable?**

Positions:

TECO: Yes. (Witness: Hernandez)

FIPUG: The financial assumptions used by TECO result in a far more expensive cost than is prudent, but if they are used only for the purpose of comparing the alternatives TECO requests the Commission to compare, they are conservative and FIPUG has no objection to their use, provided they set no precedent for determining the prudent costs that can be charged to ratepayers. The Commission should decline to rule on this issue because TECO has not sought relief under § 388.825, *Florida Statutes*, the preconstruction prudency section.

LEAF: The Commission should decline to rule on this issue for the reasons stated under issue 2. The financial assumptions used by TECO result in a more expensive alternative than may be reasonable and prudent; however, for comparative purposes they are not objectionable at this time.

OPC: The assumptions used in making the SO_2 compliance comparisons do not appear to be unreasonable. Tampa Electric, however, has apparently not adopted a comprehensive compliance plan at this time.

Staff: No position at this time, pending further discovery and the evidence adduced at hearing.

Issue 4: **Did TECO reasonably consider the environmental compliance costs for all regulated air, water and land pollutants in its selection of the proposed FGD system on Big Bend Units 1 and 2 for sulfur dioxide (SO_2) compliance purposes?**

Positions:

TECO: Yes. (Witnesses: Black, Hernandez)

FIPUG: FIPUG takes no position on this issue except that the Commission should decline to rule on this issue because TECO has not dealt with all of the compliance requirements of CAAA II as required by § 388.825, *Florida Statutes*, the primary preconstruction prudency section.

LEAF: The Commission should decline to rule on this issue for the reasons stated under issue 2. In the alternative, LEAF believes that TECO has not reasonably or completely considered all appropriate environmental costs.

OPC: No.

Staff: No position at this time, pending further discovery and the evidence adduced at hearing.

Issue 5: **Has TECO demonstrated that its proposed FGD system on Big Bend Units 1 and 2 for SO_2 compliance purposes is the most cost-effective alternative available?**

Positions:

TECO: Yes. (Witness: Hernandez)

FIPUG: No. TECO made its SO2 decision long ago. Other expensive environmental issues are not addressed as required by §388.825, *Florida Statutes*. The Commission should decline to rule on SO2 in isolation. It is too late for the Commission to second guess the utility's decision on even this single compliance issue in time to meet the compliance deadline.

LEAF: No. TECO has not adequately considered all reasonable cost-effective alternatives in the context of all environmental compliance costs.

OPC: Yes, at this time. Tampa Electric should be required at the next proceeding to affirmatively demonstrate that changed circumstances during the intervening period did not make another alternative more cost-effective when total costs, including costs already incurred in the scrubber option, are considered. Section 366.825, Florida Statutes (1997), however, precludes the Commission from piecemeal consideration of Clean Air Act compliance plans.

Staff: No position at this time, perding further discovery and the evidence adduced at hearing.

Issue 6: Should the Commission approve TECO's request to accrue allowance for funds used during construction (AFUDC) for the proposed FGD system on Big Bend Units 1 and 2?

Positions:

TECO: Yes. Accrual of AFUDC until such time as the FGD system is placed into operation is reasonable accounting alternative which does not affect any customers' rates while the project is being constructed. The accrual of AFUDC is consistent with Rule 25-6.0141, F.A.C. which identifies projects eligible for AFUDC. (Witness: Hernandez)

FIPUG: No. AFUDC would not be authorized by Commission rule 25-6.0141 unless the Commission specifically permits it. The Commission should not permit it because:

a. TECO has failed to show any extraordinary justification for accruing AFUDC;

b. The standard AFUDC rate is inappropriate. TECO has failed to explain why it failed to use low cost tax exempt pollution control bonds it previously used for a major environmental project;

c. The standard AFUDC rate is inappropriate because TECO is holding cost free excess revenue received from customers that could be used for the project at the commercial paper rate;

d. Commission approval of AFUDC may result in book earnings during construction that are subject to disallowance when cost recovery is sought and TECO must prove the prudency of expenditures. It would be better to wait until other cost issues are considered in the deferred portion of this docket;

e. Sufficient CWIP was allowed in the last rate case to cover this project until near completion.

LEAF: No position.

OPC: Tampa Electric should accrue AFUDC only to the extent that its balance of CWIP otherwise eligible for AFUDC exceeds the amount of CWIP allowed in rate base in the company's last rate case consistent with Rule 25-6.0141(1), Florida Administrative Code, and Order No. PSC-93-0664-FOF-EI. There is no need for the Commission to rule on this issue, however, because Rule 25-6.0141 and Order No. 93-0664 already specify the appropriate treatment. Moreover, an order allowing a utility to do what it is required to do by rule would be meaningless.

Staff: No position at this time, pending further discovery and the evidence adduced at hearing.

Issue 7: Should TECO's petition for cost recovery of a FGD system on Big Bend Units 1 and 2 through the Environmental Cost Recovery Clause (ECRC) be granted?

Positions:

TECO: Yes. The proposed FGD project is the most cost-effective alternative for compliance with legal requirements of the CAAA. The FGD related costs: will be incurred after April 13, 1993; will be incurred because of legal requirements of the CAAA; and are not currently being recovered through base rates or any other cost recovery

mechanism. Accordingly, the prudently incurred FGD costs are clearly costs entitled to be recovered under the ECRC. At this juncture the Commission should approve the reasonableness and prudence of the proposed project, indicate that costs prudently incurred in connection with the project will be eligible for cost recovery under the ECRC, and approve the accrual of the AFUDC until such time as the FGD system is placed into operation. (Witness: Hernandez)

FIPUG: No. Cost recovery is unnecessary because base rates are sufficient to cover the carrying cost of TECO's selected compliance plan. TECO has failed to show that it will earn less than its authorized return on base rates unless an environmental surcharge is imposed upon its customers.

In addition, the environmental cost recovery mechanism which may be proper for other utilities and is proper when fuel switching is used, is inappropriate to fund capital investment used to remove SO2 created by coal burned to furnish electricity to wholesale customers without requiring the wholesale customers who receive the energy to bear all the costs attributable to creating that energy. The use of the cost recovery mechanism to fund capital improvements for TECO, which has substantial wholesale sales, will result in retail customers subsidizing TECO's ventures in the competitive market, giving TECO an advantage over other Florida utilities in wholesale sales at the expense of TECO's retail customers.

LEAF: No.

OPC: No. Such a decision would be premature given the fact that Tampa Electric plans to file at a later date for actual cost recovery after costs are known.

Staff: No position at this time, pending further discovery and the evidence adduced at hearing.

Issue 8: Should this docket be closed?

Positions:

TECO: Upon final disposition of the foregoing issues, this docket should be closed.

FIPUG: Yes. TECO's petition should be denied and this docket should be closed.

LEAF: Yes. TECO's petition should be denied and this docket closed.

OPC: Yes.

Staff: No position at this time, pending further discovery and the evidence adduced at hearing.

IX. EXHIBIT LIST

Witness	Proffered By	I.D. No.	Description
Direct			
Black	TECO	(CRB - 1)	CAAA SO_2 Compliance
Hernandez	TECO	(TLH - 1)	Tampa Electric's CAAA Phase I and Phase II Compliance Plans and 1998 Ten Year Site Plan

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

FIPUG's Motion to Dismiss and Tampa Electric Company's Memorandum in Opposition to such motion; OPC's Suggestion for Dismissal and Tampa Electric Company's response thereto. LEAF's Motion to Dismiss. These Motions, Memoranda and Responses will be addressed at the September 1, 1998, Agenda Conference. LEAF likewise has Petitioned to Intervene in this docket. Staff has contacted the parties and they have stated that they have no objection to LEAF's intervention.

It is therefore,

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this **28th** day of **August**, **1998**.

Susan F. Clark

SUSAN F. CLARK
Commissioner and Prehearing Officer

(S E A L)

GAJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative

hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.