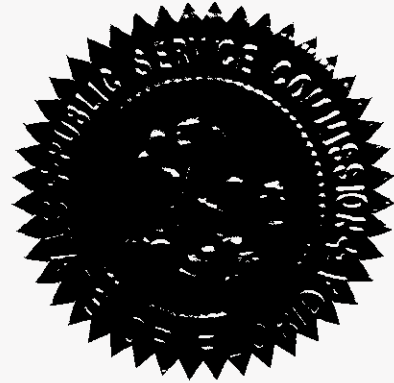


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 090146-EQ

PETITION BY TAMPA ELECTRIC COMPANY  
FOR APPROVAL OF EXTENSION OF SMALL  
POWER PRODUCTION AGREEMENT WITH  
CITY OF TAMPA.



PROCEEDINGS: AGENDA CONFERENCE  
ITEM NO. 8

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

DATE: Tuesday, September 15, 2009

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

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

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## P R O C E E D I N G S

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**CHAIRMAN CARTER:** Staff, we will move now to Item 8. Okay, staff, you're recognized.

**MS. MATTHEWS:** Thank you, Mr. Chairman.

Good morning, Commissioners. I'm Traci Matthews with Commission staff.

Item 8 is a petition from the Tampa Electric Company which requests approval of an extension to an existing contract for renewable energy generation with the City of Tampa. Staff believes that this contract will bring TECO's customer savings of up to \$8.7 million over its most recent standard offer contract using a 2012 combustion turbine as the avoided unit.

The negotiated contract allows either party to terminate the contract on any of three dates. In order to monitor the performance of the facility and the continued cost-effectiveness of the contract, staff recommends that TECO be required to submit update reports periodically to staff in advance of each of those three dropout days.

Staff finds that the proposed extension represents a good value for TECO's customers and is in compliance with the Commission's rules. Staff

1 recommends approval of the petition.

2 Staff and representatives from Tampa  
3 Electric and the City of Tampa are available to  
4 answer any questions you may have.

5 Thank you, Mr. Chairman.

6 **CHAIRMAN CARTER:** Let's hear from the  
7 company.

8 **MR. BEASLEY:** Thank you, Mr. Chairman and  
9 Commissioners. James D. Beasley of the law firm of  
10 Ausley and McMullen for Tampa Electric Company.  
11 With me today is Mr. Carlos Aldazabal, who is the  
12 Manager of Regulatory Affairs for Tampa Electric, as  
13 well as Benjamin Smith, Manager of Strategic Fuels  
14 and Power Services, and also Mr. Rich Zambo for the  
15 City of Tampa.

16 We concur in the staff's recommendation on  
17 this item. We believe that the proposed extension  
18 of this small power production agreement will help  
19 Tampa Electric meet its reserve margin requirements,  
20 and at the same time provide net present value  
21 savings to Tampa Electric's customers. So we  
22 support the staff recommendation and are happy to  
23 attempt to answer any questions you may have.

24 **CHAIRMAN CARTER:** Commissioner Skop.

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

1 Chairman.

2 I do have many questions and many concerns  
3 regarding this issue. I think I would not support  
4 the proposed contract as written, and I would  
5 respectively move to defer this item with direction  
6 to TECO to -- excuse me. I would respectfully move  
7 to defer this item with direction to TECO to  
8 reevaluate the capacity payment provisions under the  
9 proposed extension for the following reasons: The  
10 proposed extension unnecessarily shifts risk to the  
11 ratepayers. Staff has mentioned that at the top of  
12 Page 5. Quote, "It places the risk of future fuel  
13 fluctuations on the ratepayers, and staff questions  
14 why TECO would agree to carry forward with such a  
15 low threshold capacity factor of 70 percent."

16 Second, the contract is marginally  
17 effective. Excuse me. Second, the contract is  
18 marginally cost-effective at a 70 percent capacity  
19 factor. Staff only told you the up side of the  
20 proposed contract and painted it in the light most  
21 favorable to TECO of 8-point-something million  
22 dollars. The fact remains that under the revised  
23 fuel forecast, the expected savings at a 70 percent  
24 capacity factor is marginal at only \$677,000.

25 Another point is the City of Tampa can't

1 have it both ways. You can't expect to command a  
2 premium capacity payment and undermine that by being  
3 contractually obligated to extremely low performance  
4 threshold. Again, has staff recognized that on the  
5 top of Page 5.

6 Fourth, municipal solid waste generated  
7 electricity is a commodity just as any other form of  
8 electricity is a commodity and should be evaluated  
9 appropriately.

10 Now, previously this Commission in a panel  
11 decision approved a high capacity factor for a  
12 standard offer contract, and I guess there was some  
13 renewable providers that objected to that, but that  
14 was done, and the Commission reaffirmed that  
15 decision in a subsequent contract that it approved  
16 for Municipal Solid Waste with FPL.

17 Now, I had the same concerns about the  
18 coal-based capacity payment in that contract, but  
19 it's hard to dispute a \$400 million cost savings  
20 that FPL put on the table with that. But,  
21 nevertheless, FPL demanded an 80 percent or above  
22 capacity factor for premium capacity payments in  
23 that contract. Here it's not the case.

24 If you look at some other things putting  
25 this into perspective, in the staff interrogatories

1 that were responded to by the company, the capacity  
2 payments through this year to 2011 are 18 to \$19,  
3 and those jump up substantially to -- give me a  
4 second -- jump up to \$23 for capacity payments in  
5 dollars per kilowatt hour per month beginning in  
6 August of 2011.

7 So let's put this into perspective. Based  
8 on the original contract, basically the capacity  
9 payment has doubled between the original agreement  
10 and what TECO is proposing now. With respect to the  
11 contract amendment that was initiated for the  
12 3.5 megawatts, the multiple is a ten time premium of  
13 capacity payment. So what has happened here as  
14 staff has alluded to is that the company has -- with  
15 Mr. Zambo negotiating on behalf of the City of  
16 Tampa, which it's my belief he also probably  
17 negotiated the Municipal Solid Waste contract for  
18 FPL, is commanding a coal-based capacity payment in  
19 lieu of a combustion turbine payment that was done  
20 in the 2006 agreement.

21 It shifts tremendous risk to the  
22 ratepayer, the contract is marginally  
23 cost-effective, and this whole issue becomes moot if  
24 merely the capacity payment was more reflective of  
25 what was done in the 2006 contractual agreement.

1 But what they did was revert back to something that  
2 represented what was most favorable to them and  
3 least favorable to the ratepayer by adopting a  
4 70 percent capacity factor, although the unit has  
5 demonstrated performance of 95 percent.

6 So what this means is that you're  
7 commanding a huge capacity payment based upon a  
8 coal-fired generation plant over and above what was  
9 done in 2006 representing a significant premium to  
10 the existing contract, and you're expecting to do  
11 that all the while you're just agreeing to contract  
12 for a capacity factor that is just so low it defies  
13 logic.

14 And, you know, the bottom line -- and  
15 staff, I think, would agree, that we don't have the  
16 ability to tell the company how to negotiate their  
17 contracts. But, likewise, as a Commission we don't  
18 have the -- we have the discretion not to approve  
19 something that shifts substantial risk to the  
20 ratepayer, and this contract does that.

21 And one other point I would make is the  
22 escalation factor proposed in this extension is  
23 nearly 3 percent per year, whereas in the proposed  
24 standard offer contract it was only 1.84 percent per  
25 year. So, again, there is a lot of -- you know, I

1 could sit there and nit-pick this to death, but I'll  
2 spare the Commission the time because it is  
3 technical in nature.

4 The other point I would note in the most  
5 recent fuel forecast is that the projected savings  
6 at a 70 percent capacity factor is \$677,000. That  
7 was based upon an August 4, 2009 reprojection which  
8 had the forward prices of natural gas. Since that  
9 time, natural gas has declined sharply. It's below  
10 historic norms, although it was slightly volatile  
11 yesterday. But even looking at the closing price of  
12 the futures, the natural gas forwards are  
13 substantially lower than what was projected in terms  
14 of presenting the low threshold cost savings.

15 So the staff recommendation doesn't  
16 provide any sensitivity analysis to determine how  
17 sensitive to minute fluctuations in gas it would be  
18 to be cost-effective. And, furthermore, that the  
19 controls that staff has proposed by looking at the  
20 extension or contractual points to reevaluate the  
21 cost-effectiveness of the agreement, as far as I'm  
22 concerned this agreement could be under water today,  
23 it could be under water tomorrow, it might be under  
24 water well before you get to one of those  
25 contractual points.



1           But, again, the central premise of my  
2 argument is this whole discussion essentially  
3 becomes moot if the company had a capacity factor  
4 and a capacity payment scheduled that effectively  
5 protected its ratepayers rather than shifting risk  
6 to them. And, so, again, I would respectfully move  
7 to defer this item with direction to TECO to  
8 reevaluate the capacity payment provisions under the  
9 proposed extension, and I think the Commission has  
10 good cause to do that.

11           I think that, again, this is just -- it's  
12 not an agreement I'm comfortable with. It is  
13 marginally cost-effective. And, again, I don't want  
14 to be redundant, but I could go on and on and on  
15 about this agreement. It's right at the cusp of a  
16 go/no go, and gas has fallen substantially since the  
17 last financials have been run on this, and there's  
18 not adequate protection for the ratepayer. It  
19 shifts risk. What it does is it guarantees a huge  
20 capacity payment to the City of Tampa over and above  
21 what was done in 2006, over and above what other  
22 utilities do. And if you are going to command that  
23 type of capacity payment, you need to be able to  
24 step up and accept a higher performance threshold  
25 that's commensurate with that type of payment you

1 are receiving. And that is not being done here.  
2 And it was done for FPL, it was done by this  
3 Commission in other decisions, and I think in the  
4 interest of being consistent and fair to the  
5 ratepayer that we ought to send this back to the  
6 parties to let them take a more critical look at  
7 what they're asking the ratepayers to do.

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

9 I think that anytime a Commissioner wants  
10 additional information, I'm inclined to agree with  
11 them. And I agree with you, Commissioner, that  
12 those are some considerations we need to make also  
13 from the sake of consistency. And obviously we  
14 are -- I don't want to say cheerleaders, but we  
15 certainly are in favor of renewables being utilized  
16 here in Florida, particularly as it relates to  
17 generating energy. But by the same token is that we  
18 want to make agreements and we want to make  
19 situations that are in the best interest of the  
20 ratepayers.

21 And, as I said, anytime a Commissioner is  
22 requesting additional information, as long as I have  
23 been Chairman I have been supportive of that, and I  
24 don't see no reason not to be supportive now.

25 Staff, is there any reason why we could

1 not defer this and get the information that was  
2 requested by Commissioner Skop?

3 **MS. BROWN:** No, there's no reason you  
4 can't defer it.

5 **CHAIRMAN CARTER:** Commissioners, I just  
6 wanted to kind of weigh in on that because I did  
7 say, as I have always said before, anytime a  
8 Commissioner wants additional information, I have  
9 always been supportive of that. And I obviously  
10 want to hear from you, my colleagues, in terms of  
11 what do you think about that. Staff has said that  
12 there is no --

13 Commissioner Edgar, you're recognized.

14 **COMMISSIONER EDGAR:** Thank you, Mr.  
15 Chairman.

16 You did ask at least one of the questions  
17 I was going to, maybe more. I also have always been  
18 supportive when a Commissioner -- and tried to be  
19 also if a party or stakeholder has requested  
20 additional time, if, indeed, there is not a harm in  
21 providing that.

22 So I guess I would just briefly like to  
23 ask the parties, both of them, if indeed there are  
24 any harms to a deferral. And I am open to the idea  
25 of a deferral.

1 I would also, Commissioner Skop, then just  
2 like to understand a little better when you are  
3 requesting a deferral, do you have a time frame in  
4 mind that this would take or come back before us,  
5 because it seems like that might be part of the  
6 discussion as to what would be the impacts of a  
7 deferral?

8 **CHAIRMAN CARTER:** Are you asking staff or  
9 the parties?

10 **COMMISSIONER EDGAR:** I guess my first  
11 question was to the parties. And then, if I may,  
12 just to have an idea of the time frame that the  
13 Commissioner is considering.

14 **CHAIRMAN CARTER:** Let's hear from the  
15 parties first and then -- you're recognized. Let's  
16 hear from the parties first.

17 **MR. ZAMBO:** Commissioners, Rich Zambo on  
18 behalf of the City of Tampa Electric -- I'm sorry,  
19 the City of Tampa. Their headquarters are right  
20 down the street, so it gets confusing sometimes.

21 I can't identify a specific harm that  
22 would occur by deferring this, but I will say it has  
23 been deferred several times already. And I will  
24 also say that this negotiation process -- you know,  
25 the Commission encourages negotiations. The City

1 was one of the first municipal solid waste  
2 facilities to begin operating in the state. We  
3 negotiated the first contract with Tampa Electric in  
4 1982. The 70 percent capacity factor was included  
5 at that time and it was pretty much the standard  
6 that the Commission had eventually developed.

7 We renegotiated that contract in 1989, and  
8 the capacity factor was not an issue. We just  
9 continued on at the 70 percent. But we have been  
10 negotiating this contract probably for, I think it's  
11 closing in on two years. It may have been two years  
12 up till the time it got approved by the City Council  
13 in December. So a deferral -- one of the things a  
14 deferral would do, if we have to go back and  
15 renegotiate this we potentially are looking at six  
16 months to maybe a year. Because this has to go  
17 through the City's approval process as well as the  
18 negotiation phase.

19 But with respect to the 70 percent, I  
20 mean, this contract has a lot of moving parts and  
21 this contract is going to extend for over a 20-year  
22 period, and even during the time we were  
23 negotiating, we were watching these natural gas  
24 prices. At one point in time natural gas prices  
25 were so high last year that we were thinking, you

1 know, gee, is this something we really want to do.

2 My point is this can change year-to-year,  
3 month-to-month, and I think you have to take some or  
4 some faith in the parties. We negotiated this in  
5 good faith. There's a lot -- as I said, there's a  
6 lot of give and take. There's provisions in there  
7 that protect both the City and the Company.

8 And as a practical matter, the City must  
9 dispose of solid waste. We do not operate a  
10 landfill. We operate two waste disposal facilities.  
11 One is -- it is called McKay Bay. That is where we  
12 burn the garbage and make electricity. The other  
13 facility is just a collection point where we collect  
14 yard waste, brush, things like that which then  
15 eventually are recycled, turned to mulch, or sent to  
16 the plant to be burned.

17 **COMMISSIONER ARGENZIANO:** Mr. Chair.

18 **CHAIRMAN CARTER:** We have got you,  
19 Commissioner. That is what I was back and forth on.  
20 We got you. Were you able to hear?

21 **COMMISSIONER ARGENZIANO:** No.

22 Commissioner Skop had just started, I  
23 guess, on his --

24 **CHAIRMAN CARTER:** Let me bring you up on  
25 it. What Commissioner Skop had done is he raised a

1 couple of issues about the impact to the ratepayers  
2 with this contract and asked for additional  
3 information, and I agreed with him. And I think  
4 that any time a Commissioner wants additional  
5 information we should do that.

6 I asked staff would there be any  
7 prohibition or problem with us deferring it. They  
8 said no. So right now the question is -- I think  
9 Commissioner Edgar asked the parties -- help me with  
10 reminding me.

11 **COMMISSIONER EDGAR:** Sure, Mr. Chairman.  
12 I asked the parties to address the issue of any  
13 impact to a deferral, additional time on this item,  
14 and then asked if after that Commissioner Skop could  
15 speak to us about the time frame that he has in mind  
16 and elaborate on that for my benefit.

17 **CHAIRMAN CARTER:** And, Commissioner  
18 Argenziano, I apologize to you for the phone. It  
19 was on our end, it was not on your end.

20 **COMMISSIONER ARGENZIANO:** Okay. It just  
21 went dead, and I thought, uh-oh.

22 **CHAIRMAN CARTER:** Yes, ma'am. And Chris  
23 has been turning hijinks back there to try to get  
24 you back. And I apologize to you for that.

25 **COMMISSIONER ARGENZIANO:** No problem.

1 Thank you. I appreciate Chris in getting it back on  
2 very much. And hopefully I will actually be there  
3 soon. It's just unfortunate I can't get there yet.

4 **CHAIRMAN CARTER:** Yes, ma'am. Mr. Zambo.

5 **MR. ZAMBO:** Would you like me to retrack a  
6 little bit?

7 **COMMISSIONER ARGENZIANO:** Maybe if the  
8 answers to Commissioner Edgar's questions could be  
9 spoken again that would help me to figure out --

10 **CHAIRMAN CARTER:** Give us the brief  
11 version, not the disco version.

12 **MR. ZAMBO:** I will try to give you -- I  
13 will try to give you a synopsis. I mentioned that  
14 the City of Tampa was one of the first  
15 waste-to-energy plants in the state. They  
16 negotiated their contract with Tampa Electric in  
17 1982. It included a 70 percent capacity factor at  
18 that point.

19 We renegotiated in 1989. The 70 percent  
20 capacity factor continued on. We negotiated a small  
21 additional contract in 2006 as a result of some  
22 extra capacity we had due to some refurbishment that  
23 we had done at the plant. That was a short-term  
24 interim. We knew this major contract was going to  
25 expire, so we just kind of took the standard offer



1 at that point. And that contract will expire at the  
2 same time as the larger contract with the 70 percent  
3 capacity factor.

4 And I was just getting to the point where  
5 the 70 percent capacity factor was not an issue we  
6 even discussed during these negotiations, frankly,  
7 because the parties have been operating under this  
8 contract for 25 years. They know what they have  
9 got, they know each other, they know how the  
10 facility operates.

11 And as staff has mentioned and TECO knows,  
12 the plant actually operates at a capacity factor in  
13 the 90 to 95 percent range. So it's not that we are  
14 trying to shy from any responsibility. I mean, our  
15 historical operation shows that that is where we  
16 operate.

17 But the point I was just making is that as  
18 a practical matter the City has to dispose of  
19 garbage. The garbage is what produces the steam  
20 that produces the electricity that we sell to Tampa  
21 Electric, and we have nowhere to dispose of that  
22 garbage internally. The City does not own a  
23 landfill that is currently operating. It operates  
24 only the waste-to-energy plant and a small transfer  
25 station or collection site where yard waste and

1 things are collected.

2 If we don't burn it at our plant it goes  
3 to the Hillsborough County landfill where the price  
4 of disposal is more than twice as high as burning it  
5 at the plant. So we have every incentive in the  
6 world to continue to burn as much garbage as we can.  
7 And I would urge you, Commissioners, we have spent a  
8 lot of time and effort, there is a lot of moving  
9 pieces to this contract that's going to be in place  
10 until 2032, I think, and who knows what's going to  
11 happen.

12 You know, I'm not sure the fuel risks have  
13 been shifted to the consumer. I think the fuel  
14 risks are shared. If natural gas prices go up  
15 again, which a lot of people predict they will, then  
16 the City is taking the risk and the customers are  
17 going to benefit from it. So I'm not -- as I said  
18 earlier, I can't point to any specific damage that  
19 would occur from a delay or another deferral, but  
20 the negotiation process has been a long and lengthy  
21 one. We think we have reached a fair and equitable  
22 balance between both parties, and I guess that's  
23 about all I have got to say on it.

24 **CHAIRMAN CARTER:** Commissioner Skop.

25 **COMMISSIONER SKOP:** Thank you.

1           To Commissioner Edgar point, and I will  
2 respond to, I guess, Commissioner Argenziano's  
3 question, and then to Mr. Zambo's assertions.

4           I guess my expectation would be that what  
5 essentially I am asking in principle seems to be a  
6 very easy change. It is analogous to a type and  
7 strike. So the inference that this is such a  
8 hardship on the parties, given my 15 years of  
9 Fortune 500 corporate experience, including  
10 substantial power generation experience, is not very  
11 persuasive to me, okay? So, again, I'm calling it  
12 for what I see. This could be done relatively  
13 quickly.

14           I'm looking at Page 32 of the 2006  
15 amendment, and it seems to be a lot of  
16 representations being made, but they don't seem to  
17 be complete representations here. Essentially, the  
18 2006 amendment with the extra capacity resulted from  
19 the plant coming out of a force majeure outage,  
20 which I guess through the refurbishment there was  
21 some additional capacity. It was contracted for on  
22 the basis of a combustion turbine with a capacity  
23 payment of about \$2 and change per kilowatt hour per  
24 month, okay. The capacity payment they are asking  
25 for in this amended contract is \$23 per kilowatt per

1 month, and the bottom line is what has changed?

2 Nothing.

3 The same plant they just want to get paid  
4 a whole lot more for it in capacity payment, and  
5 that shifts risk to the ratepayer, okay, instead of  
6 having fuel which is a pass-through cost and  
7 whatever. Again, they are looking to command a  
8 premium capacity payment. As Mr. Zambo has alluded  
9 to, the operational performance of the unit is 90 to  
10 95 percent capacity factor, but they don't want to  
11 be contractually obligated to that. They want to  
12 set the threshold so low that even our staff says  
13 that it places -- quote, "It places the risk of  
14 future fuel fluctuations on the ratepayers, and  
15 staff questions why TECO would agree to carry  
16 forward such a low threshold capacity factor of  
17 70 percent."

18 That is not me, that's our staff. I share  
19 the same view. I'm looking at Page 32 of the 2006  
20 contractual amendment, which delineates the monthly  
21 capacity payment, and it has to be over 80 percent  
22 to get any money at all. It is very consistent with  
23 what the Commission approved for FPL, and I believe  
24 Mr. Zambo negotiated that solid waste agreement that  
25 the Commission recently approved. But the threshold

1 performance level for the capacity premium that was  
2 granted in that was much higher, okay?

3 So, again, this is a commodity. Municipal  
4 solid waste is municipal solid waste and should be  
5 priced and valued accordingly. And here what you  
6 have is a sweetheart deal which favors the City of  
7 Tampa at the expense of the ratepayers because  
8 somebody doesn't want to consider a term that  
9 protects the ratepayers. And, again, you can't have  
10 it both ways. You can't command a huge capacity  
11 payment increase over and above the original  
12 contract, which the capacity payment, I can look it  
13 up, but it was roughly half of what they are asking  
14 for now, and it's ten times higher than what they  
15 agreed to in 2006 for the combustion turbine.

16 So, again, we're talking a huge capacity  
17 payment and in exchange or consideration for getting  
18 that payment they don't want to commit contractually  
19 to a performance level commensurate with receiving  
20 that type of payment. I mean, you are asking -- the  
21 ratepayers are being essentially asked to pay a  
22 premium that is analogous to baseload generation and  
23 they are wanting to perform at a level that's not  
24 baseload generation, or be able to be paid even if  
25 they perform at a level lower than that.

1           So, again, the proposed extension  
2 unnecessarily shifts risk to the ratepayers. Staff  
3 has recognized that on Page 5 of the staff  
4 recommendation. The contract is marginally  
5 cost-effective at a 70 percent capacity factor; it's  
6 only a few hundred thousand dollars, and that was  
7 based upon forward gas prices that have since  
8 fallen. So, again, I question whether any value  
9 exists today.

10           What would be very simple to do would be  
11 for the parties, given the documented performance  
12 level of the units to merely go into the 2006  
13 agreement and adopt the capacity payment provision  
14 delineated in the formula on Page 32 of that,  
15 incorporate it into the agreement and we could be  
16 done. The discussion would be moot, the ratepayers  
17 would be protected, and there would be adequate  
18 margin in terms of the cost-effectiveness of the  
19 contracts and my concern would go away. But I am  
20 not going to approve this contract even if it were  
21 brought back under the current terms and conditions.

22           I mean, you know, I can get into the  
23 escalation factor. Let's look at what was in the  
24 TECO standard offer contract, 1.8 percent versus  
25 nearly 3 percent in this contract. So, again, what

1 I see is a wholesale agreement that benefits the  
2 City of Tampa at the expense of TECO's ratepayers.  
3 And TECO, frankly, I expect more from you in terms  
4 of negotiating a contract. Because, again, this  
5 provision and the manner in which it has been  
6 negotiated -- you know, Mr. Zambo is obviously  
7 representing the best interests of his clients, but  
8 I expect more. I see it for other utilities, and  
9 this contract -- again, I'm the biggest supporter of  
10 renewables there, but I'm not going to overpay for a  
11 renewable resource, and it is incumbent upon you to  
12 protect your ratepayers.

13 And I can't be any nor clearer. And it is  
14 not personal, it is a matter of doing what's right.  
15 And for that type of capacity payment which is based  
16 on a coal-fired brand new baseload generating unit  
17 that doesn't exist, it's a legal fiction, you are  
18 wanting that capacity payment, but you are not  
19 wanting to commit the generator to a performance  
20 level commensurate with that type of payment. And  
21 that's the problem here, notwithstanding some of the  
22 other little things that you can nit-pick on. But  
23 if they did it in 2006, that set a precedent. You  
24 are asking me to completely ignore what I see on the  
25 page in 2006 and just completely just unilaterally

1 sign off on a much higher capacity payment over and  
2 above what they are being paid now for the same unit  
3 and that defies all reasonable logic.

4 And, furthermore, in the 1990s when this  
5 technology came into play it wasn't mature and  
6 proven, so I could understand maybe there were some  
7 risk that warranted a higher capacity payment at  
8 that time. But here we're just trading off fuel  
9 cost for a guaranteed capacity payment. And, again,  
10 I had concerns with the FPL contract. They were  
11 basing it on a 2012 Glades plant that didn't exist.  
12 It was a huge capacity payment, but FPL brought  
13 \$400 million of proven cost savings in front of me,  
14 so it's kind of hard to criticize that where there  
15 is value for the ratepayers. Here it is not. It is  
16 marginal, okay.

17 And it does not become marginal if you  
18 merely come off the issue of making a more prudent  
19 capacity factor and capacity payments schedule that  
20 is inherent with the existing performance of the  
21 unit. Because we know what the unit does. As staff  
22 pointed out on Page 4, it's 95 percent, okay? But  
23 you guys only want to commit to 70 percent and get  
24 the whole enchilada payment of a huge capacity  
25 payment. And to me that's inherently unfair to the



1 ratepayers. And, you know, my issue is it is not  
2 for me to tell you how to negotiate the contract,  
3 but it is my purview to deny something that shifts  
4 risk to the ratepayer. And I guarantee you I will  
5 not approve this contract as it is currently  
6 written.

7 **MR. BEASLEY:** Commissioner Skop, I would  
8 respond that we think that your concern is very  
9 valid, and we think that that concern is  
10 accommodated and taken care of by the fact that the  
11 City has no alternative but to generate all the  
12 electricity it can 24/7, because it has to burn  
13 solid waste 24/7. So it's a by-product, it's not  
14 really the main function of that facility.

15 That point together with our provision in  
16 the agreement saying that they have to generate at  
17 100 percent capacity factor for 19 megawatts before  
18 they can do anything else with that power, we  
19 believe accommodates the concern that you have  
20 raised about the 70 percent capacity factor. And  
21 that's kind of evidenced by the fact that the City  
22 has done that in all the recent years, at least in  
23 the past seven years they have generated electricity  
24 in the 90 to 95 percent capacity factor range. So  
25 the practicalities of the situation together with

1 that provision that I mentioned in the agreement we  
2 think ameliorates those concerns.

3 **COMMISSIONER SKOP:** Well, I respectfully  
4 disagree with that. Again, to the extent that the  
5 original contract provided for -- if it would have  
6 been extended by operation of capacity payment in  
7 nearly \$100 per kilowatt per month based upon a  
8 prior escalation, and, again, there were different  
9 circumstances back then. You know, fuel and what  
10 have you. But, again, I wasn't too happy with the  
11 out years of that contract. It needed to be  
12 reformed. But what they did was essentially revert  
13 back to something that was the most favorable to Mr.  
14 Zambo's client at the expense of the ratepayer. And  
15 my concerns are not mitigated by the fact that they  
16 have to generate 19 megawatts. My concerns are not  
17 mitigated by the fact that TECO -- I mean, the City  
18 of Tampa must burn municipal solid waste.

19 Again, my concern is getting the best deal  
20 for the ratepayer. And right now if they're  
21 alleging or representing this unit performs at  
22 95 percent, then why won't they step up to the plate  
23 and commit to a contractual capacity payment that  
24 parallels what was done in the 2006 amendment, okay?

25 So it's very simple to me. Don't ask me

1 to ignore what I'm staring at in the face, because  
2 it doesn't wash with me, okay? Plain and simple,  
3 this is not favorable for the ratepayer. It's  
4 marginally cost-effective. The contract may be  
5 under water now in terms of the forwards of natural  
6 gas, and the criteria for the Commission is at the  
7 time of approval is it cost-effective, and I can't  
8 answer that question in the affirmative now, okay.

9 Now, could I answer that question if there  
10 would have been an 80 percent capacity factor  
11 requirement in the payment schedule of 2006? Most  
12 likely I would have a comfort level, okay? But even  
13 our staff says it's marginal at 70 percent. So you  
14 are asking me -- it's a circular argument. You are  
15 saying the unit performs at a much higher level, so  
16 that's okay and we should ignore the 70 percent.  
17 That's wrong because they can perform at a low level  
18 that -- so low an ant jump over it, yet they are  
19 commanding a huge premium capacity payment, and you  
20 can't have it both ways.

21 FPL didn't get it both ways. The prior  
22 decisions of the Commission upheld a much higher  
23 capacity factor. It's the same underlying  
24 commodity, okay. It shouldn't be any different. It  
25 should be priced and valued accordingly. And so,

1 again, I am dissatisfied with the contract, the  
2 underlying contract, and it's incumbent upon you to  
3 do what you think is necessary to gain my support.  
4 But I'm not supporting it as it is currently written  
5 because, again, it's not for me to tell you how to  
6 negotiate your contracts, but it is inherent upon me  
7 and this Commission not to approve something that  
8 shifts substantial risk to the ratepayer and doesn't  
9 represent good value for the ratepayer. And I'm not  
10 about to do that.

11 And I'm very supportive of renewables, but  
12 we are having an unnecessary discussion over the  
13 unwillingness of TECO to take a harder negotiating  
14 position to do something to protect its ratepayers  
15 and that's problematic. That just mirrors what I  
16 see before the Commission every day, an  
17 unwillingness of the utilities to just listen to  
18 valid concerns. And that needs to change. That  
19 culture needs to change.

20 And I would respectfully, again, defer  
21 this item, and you guys can go back to the drawing  
22 board. I understand that, but you knew -- you  
23 should have known that, you know, again, the issue  
24 of looking at the two contracts and reverting back  
25 to the one that was most favorable, you know, I

1 just -- that's not going to escape my notice.

2 I mean, I review things, and I apply  
3 critical judgment. And in doing so, my interest is  
4 to protect the ratepayer. And here, as properly  
5 noted by our staff, even staff questions why TECO  
6 would agree to carry forward with such a low  
7 capacity threshold capacity factor.

8 So, again, it is not just my view, it's  
9 our staff's view. And, I mean, they stopped short  
10 of taking the harsh position and just say let's take  
11 a wait and see approach and we will evaluate it at  
12 the decision points. But, you know, it may not be  
13 cost -- the contract may be under water before we  
14 get to those decision points, and that's where I  
15 disagree with the staff recommendation.

16 So, again, the whole argument is moot if  
17 TECO would merely show some good faith and look at  
18 Page 32 of the 2006 agreement and adopt something  
19 that is more robust and commensurate with what they  
20 have previously adopted, but they don't want to do  
21 that. So I can't figure why they would want to  
22 regress and do something less for the ratepayer. It  
23 doesn't make sense to me.

24 **MR. ZAMBO:** Mr. Chairman, may I respond?

25 **CHAIRMAN CARTER:** Every so briefly.

1 You're recognized, Mr. Zambo.

2 **MR. ZAMBO:** I wanted to clarify something  
3 about the 2006 agreement, okay. This gets a little  
4 confusing. There's two agreements in effect today.  
5 There is an agreement originally negotiated in 1982  
6 that was amended in 1989 for 15.5 megawatts. There  
7 is a second agreement that was negotiated in 2006  
8 for 3.5 megawatts.

9 You know, everything is not always obvious  
10 on its surface. The reason we negotiated that  
11 contract in 2006 for 3.5 megawatts is the City  
12 had -- they were routinely delivering capacity to  
13 Tampa Electric at well over 100 percent capacity  
14 factor because they had additional capacity as a  
15 result of a refurbishment that we did.

16 We went to Tampa Electric and we said we  
17 don't think it's fair that we should be delivering  
18 you all this extra energy but only be getting paid  
19 the price of coal. We would like to sell it to you  
20 at your as-available energy price. Tampa Electric  
21 said no, we are not willing to do that. I mean,  
22 they are not pushovers at the negotiating table.  
23 After several months we came up with the concept,  
24 well, you can sell it under our standard offer  
25 tariff and that will essentially give you

1 as-available energy price, but we probably -- I  
2 don't think we hardly ever earned the capacity  
3 payment because we can't reach that capacity factor  
4 in that second little increment.

5 The other reason that Tampa Electric was  
6 willing to do that for us, again, is the City  
7 actually had the ability to sell that extra capacity  
8 to someone else. We waived that ability to sell to  
9 someone else. We said if you will let us negotiate  
10 this 3.5 megawatt contract, when we get extra  
11 revenue for our energy we will waive that  
12 opportunity.

13 And the other thing we did importantly in  
14 this contract that I don't think the staff has  
15 evaluated, but has a lot of value to it, we have  
16 waived our ability to use that power ourselves over  
17 the term of that contract. That means we can't --  
18 you know, we have got some other large facilities in  
19 the City that use electricity, and part of our  
20 strategy in negotiating and deciding what to do in  
21 this contract was, well, if we build the one and a  
22 half mile line we can serve this five megawatt load  
23 over here, and if we build another line we can serve  
24 these loads. We have waived our ability to do that.  
25 Part of this contract says all the power we

1 generate, 100 percent of it goes to Tampa Electric  
2 for the next, I guess, 23 years.

3 So, I mean, there's things in here. It's  
4 a give and take between the two parties. And I  
5 guess there's some sense that Tampa Electric and the  
6 City are very friendly in negotiating these things.  
7 I will tell you, that couldn't be further from the  
8 truth. I mean, there is a lot of moving parts to  
9 this puzzle, as I said, and those are just two of  
10 them, is waiving our ability to sell this power to  
11 someone else or waiving our ability to use this  
12 power internally for the term of the contract. And,  
13 you know, as I said, I don't believe that has been  
14 addressed or evaluated.

15 **CHAIRMAN CARTER:** Commissioner Edgar.

16 **COMMISSIONER EDGAR:** Thank you, Mr.  
17 Chairman.

18 I think two questions, I think, although  
19 maybe there's a third. The first is to our staff,  
20 and I think you told us this item had been --  
21 somebody told us that this item had been delayed a  
22 couple of different times, and my memory is that it  
23 was on the agenda for a recent -- July, I think --

24 **CHAIRMAN CARTER:** July 14th.

25 **COMMISSIONER EDGAR:** Thank you. Which I



1 should remember, because that was my birthday, which  
2 is maybe one of the reasons I don't remember it. So  
3 let me ask this, the item that was before us on  
4 July 14th, was the language at the top of Page 5  
5 about the risk fluctuations to the ratepayers in  
6 staff questions, was that a part of the agenda item  
7 that was before us at that time? Because I just  
8 don't remember it. But then, again, you know, it  
9 was awhile ago and a lot has happened since then.

10 **MR. BALLINGER:** I can't recall. Your  
11 question was, was the risk of future fuel on the  
12 ratepayers. I don't believe so, because at that  
13 time the recommendation was based on another fuel  
14 forecast. The ranges of savings were not in the  
15 margin --

16 **CHAIRMAN CARTER:** Excuse me for  
17 interrupting.

18 **MR. BALLINGER:** I'm sorry.

19 **CHAIRMAN CARTER:** Commissioner Argenziano,  
20 that's Tom Ballinger from our staff.

21 **COMMISSIONER ARGENZIANO:** Thank you.

22 **MR. BALLINGER:** I'm sorry, Commissioner.  
23 When that recommendation was filed it was based on a  
24 much older fuel forecast and the savings were much  
25 higher, so we did not have that concern of the risk.

1 We saw that it wasn't as marginal as it is now.

2 When we asked for the updated fuel  
3 forecast and got the information that's when we saw  
4 the marginality, if you will, of the contract and we  
5 wanted to point out that it is driven by this  
6 capacity factor performance.

7 **COMMISSIONER EDGAR:** Okay. So, again,  
8 this item -- the staff recommendation, the analysis  
9 and description has changed somewhat since it was  
10 before us before.

11 **MR. BALLINGER:** Yes. The prior  
12 recommendation was still for approval of the  
13 contract. This one, again, is for approval of the  
14 contract with the caveats and mentioning that it is  
15 a bit more marginal, and staff also added in the  
16 notification provisions consistent with the contract  
17 with the dropout dates.

18 **COMMISSIONER EDGAR:** Okay. And I think it  
19 is two questions more, Mr. Chairman.

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

21 **COMMISSIONER EDGAR:** Thank you.

22 The next is that Commissioner Skop has  
23 raised concerns about the benefit, and I know that  
24 certainly I, and I think all of us probably agree,  
25 or feel strongly about analyzing and understand and

1 supporting benefits to ratepayers and customers, but  
2 when we talk about the marginal benefit, is saying  
3 that the benefit is marginal, is that a subjective  
4 determination or is that something that is more  
5 defined?

6 **MR. BALLINGER:** Tom Ballinger with staff,  
7 again. It's subjective. And, again, you must  
8 recognize that is a net present value number over 13  
9 years, the \$677,000. I would point out if you  
10 looked at Attachment A, I believe it is, to the  
11 recommendation, that the first several years of the  
12 contract shows positive benefits to the contract.  
13 It's really in the latter years under a 70 percent  
14 capacity factor that the contract doesn't show  
15 savings.

16 That's why in staff's mind, I think, the  
17 notification provision that we have in the  
18 recommendation and the dropout days that are part of  
19 the negotiated contract give some protection. In  
20 other words, in 2014 if we see this contract going  
21 south, TECO will alert us, and TECO hopefully will  
22 be able to exercise that part of the contract and  
23 get out of the contract.

24 **COMMISSIONER EDGAR:** Okay, thank you.

25 And then a point, and I think my last

1 question for the moment anyway. I certainly  
2 recognize that every contract, or certainly every  
3 negotiated contract separating from a boilerplate or  
4 a standard offer contract, that every negotiated  
5 contract is going to be somewhat unique. Points  
6 have been raised about the inconsistency or  
7 consistency of this proposal with other actions that  
8 the Commission has taken, so I guess my ask would be  
9 if this item comes before us again, and/or if other  
10 items along the same line come before us, I would  
11 just be looking and asking for more discussion or at  
12 least analysis for my benefit of how those contracts  
13 are consistent with past actions, or inconsistent.

14 And sometimes inconsistency is certainly  
15 merited because the circumstances are unique and  
16 things change, but I would just be wanting to have  
17 more information for my own benefit on those points  
18 to understand where we are going and where we have  
19 been.

20 And then I guess my last question is we  
21 have had some discussion about maybe deferring this  
22 item to get additional information. As I said  
23 earlier, and I think consistent, Mr. Chairman, with  
24 your comments that whenever a Commissioner or a  
25 party has asked for the opportunity to have more

1 information, I have tried to be very supportive of  
2 that. Sometimes it's me that is making that  
3 request, and I appreciate support of that if,  
4 indeed, there is not a significant reason that that  
5 request cannot or should not be accommodated.

6 So I guess I'm wondering, we have had some  
7 discussion about a deferral, we have also had some  
8 discussion, I think, about maybe requesting specific  
9 changes, and I'm trying to understand and I guess  
10 welcome thoughts as to what is the best way to  
11 proceed.

12 **CHAIRMAN CARTER:** Well, I'm thinking -- of  
13 course, I'm thinking aloud, too. I'm thinking that  
14 based upon the parameters and provisions that  
15 Commissioner Skop delineated initially that would go  
16 to the perspective in terms of maybe adding some  
17 qualitative value to the subjective statement in the  
18 context of it places the risk of future fuel  
19 fluctuations on the ratepayers, and also why staff  
20 questions that TECO would agree to follow a low  
21 threshold capacity factor of 70 percent.

22 I think that in the context of that is the  
23 necessity -- this is my word, not Commissioner Skop,  
24 this is my word -- the necessity to be consistent in  
25 these areas. And I think for those reasons, I would

1 certainly support the Commissioner's request that  
2 this item be deferred and bring it back to us based  
3 upon what they have heard from us today. That would  
4 be my recommendation.

5 **MR. BEASLEY:** Mr. Chairman, we fully  
6 appreciate the concerns that have been expressed,  
7 and Mr. Smith, if he could address you briefly on  
8 that subject.

9 **CHAIRMAN CARTER:** Mr. Smith, you're  
10 recognized. Good morning.

11 **MR. SMITH:** Good morning. Benjamin Smith  
12 with Tampa Electric Company.

13 **CHAIRMAN CARTER:** Commissioner Argenziano,  
14 can you hear?

15 **COMMISSIONER ARGENZIANO:** Yes. A little  
16 low, but I can hear him.

17 **CHAIRMAN CARTER:** Get a little closer to  
18 your microphone, sir.

19 **MR. SMITH:** Benjamin Smith with Tampa  
20 Electric Company. Is that better?

21 **CHAIRMAN CARTER:** Yes.

22 **COMMISSIONER ARGENZIANO:** That's better.  
23 Thank you.

24 **MR. SMITH:** We definitely hear the  
25 concerns of the Commission concerning the agreement,

1 and Tampa Electric Company in no way wants to imply  
2 that we are not willing to go back and take a good  
3 hard look at this. So Tampa Electric is willing to  
4 go back and look at this agreement. Its commercial  
5 terms which, of course, includes its performance  
6 standards and its capacity payment stream, and see  
7 if we can come up with something that is more  
8 commensurate with what the Commission would like to  
9 see.

10 **CHAIRMAN CARTER:** Thank you.

11 Commissioner Skop.

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

13 Just two questions; one to staff. With  
14 respect to the marginality being subjective, again,  
15 I know it's based on net present value analysis, but  
16 that analysis was done on an August fuel forecast,  
17 is that correct?

18 **MS. MATTHEWS:** Yes, Commissioner, that's  
19 true.

20 **COMMISSIONER SKOP:** Okay. So based upon  
21 the more recent fuel forecast, there is no guarantee  
22 that that would be a positive net present value at  
23 the current time if it were reevaluated today.

24 **MS. MATTHEWS:** No, there is no guarantee,  
25 sir.

1                   **COMMISSIONER SKOP:** All right, thank you.

2                   And then to the point just made by the  
3                   TECO representative. Again, I'm generally in favor  
4                   of the contract, but what's fair to the ratepayers  
5                   is fair to the ratepayers. There are some  
6                   provisions in there that give me some trouble. And,  
7                   again, it's my discretion to protect the ratepayers  
8                   by not having to approve a proposal that I fell  
9                   shifts risk to the ratepayer.

10                   My concerns, just so I'm crystal clear,  
11                   could be adequately addressed by adopting a capacity  
12                   payment schedule based upon the capacity factor  
13                   listed on Page 32 of the 2006 agreement. I think  
14                   it's fair. The unit performs well above that.  
15                   Again, if the unit is performing at a much higher  
16                   level, then why is there an unwillingness to commit  
17                   to something that was previously committed to. It  
18                   seems fair. So, again, that would go a long way in  
19                   addressing my concerns.

20                   My other concern would be the escalation  
21                   factor is much higher than what was used on the  
22                   standard offer contract. And, again, those impact  
23                   the out years, because the capacity payment grows up  
24                   to \$33 per kilowatt per month on capacity in the out  
25                   years. And if such a large escalation factor was



1 not implemented and one more consistent with what  
2 was used in the standard offer contract, the overall  
3 value to the ratepayers would arguably be much  
4 higher.

5 So, again, the threshold used by the  
6 Commission is is it cost-effective, but no one  
7 really cares as long as it's cost-effective, and I  
8 think that is the wrong paradigm to apply. I think  
9 that it is incumbent upon the utility to make it as  
10 cost-effective as possible for the ratepayers and to  
11 cut the most favorable deal for the ratepayers. Not  
12 to just say as long as we can make it to the line,  
13 who cares.

14 And so some of the things I see here  
15 concern me. There is ways to add value to protect  
16 the ratepayer. And, again, I will leave that to you  
17 guys, but my concern is specific. I'm looking at a  
18 contract from 2006 which expressly states a very  
19 simple formula that could be readily adopted to  
20 alleviate my concern. But, instead you want to  
21 regress back to the original contract and accept  
22 terms and conditions that are much more favorable  
23 for the City and much less favorable for the  
24 ratepayer, and that's a legitimate concern that I  
25 hope will be addressed in short order. Thank you.

1                   **CHAIRMAN CARTER:** Thank you.

2                   Commissioners, are there any objections to  
3 us deferring this? Are there any objections?

4                   **COMMISSIONER EDGAR:** No objection, Mr.  
5 Chairman.

6                   **CHAIRMAN CARTER:** Okay. Well, let's  
7 consider this item deferred based upon the input  
8 that has been given by the bench today:

9                   So, staff, when you come back and the  
10 parties when you come back, please govern yourself  
11 accordingly.

12                                   \* \* \* \* \*

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STATE OF FLORIDA )

: CERTIFICATE OF REPORTER

COUNTY OF LEON )

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 22nd day of September, 2009.



JANE FAUROT, RPR  
Official FPSC Hearings Reporter  
(850) 413-6732