INTRODUCTION AND NATURE OF THE ACTION

1. Lead Plaintiffs NECA-IBEW Pension Fund, Monroe County Employees Retirement System, John Marder, and Charles Korpak (collectively, the “Lead Plaintiffs” or “Plaintiffs”), individually and on behalf of a proposed class (the “Class”) of all purchasers of the publicly traded securities of TECO Energy, Inc. (“TECO” or the “Company”) (NYSE: TE) between October 30, 2001 and February 4, 2003 (the “Class Period”), by and through their undersigned counsel, allege the following against TECO and certain of its top officers seeking remedies under the Securities Exchange Act of 1934 (the “Exchange Act”). The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§ 78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5.

2. Plaintiffs bring this case to remedy the massive damages caused by defendants’ securities fraud, including defendants’ numerous misrepresentations and omissions regarding, among other things, TECO’s debt levels, which ballooned by more than $2.5 billion at the close of the Class Period, TECO’s significant vulnerability to Enron’s epic securities fraud and ultimate bankruptcy, the Company’s desperate effort to maintain and continue increasing its long-standing dividend despite the looming pressure of disastrous
financial circumstances, prospects, and severely negative “junk” ratings, all of which were undertaken intentionally, or, at the very least, with severe recklessness and which caused the artificial inflation of TECO’s stock throughout the Class Period. Ultimately, as described herein, when the truth leaked out, the artificial inflation came out of the stock and TECO’s shareholders suffered severe economic damages.

3. TECO, based in Tampa, Florida, is a holding company for both regulated utilities and other unregulated businesses. It owns no operating assets but holds all of the common stock of its regulated operating subsidiary, Tampa Electric Company (“Tampa Electric”), and other non-regulated subsidiaries.

4. From a traditional perspective, i.e., before the start of the Class Period, TECO, like other utilities companies, was a slow-growth stock that operated primarily in the regulated utility market through its wholly-owned subsidiary, Tampa Electric. That slow growth and stability produced a reliable, ample quarterly dividend that attracted conservative investors looking for sustained, safe performance. Indeed, a former long-time development consultant for TECO explained that historically, TECO had not ventured to do business outside of Florida because its long-time Chief Executive Officer (“CEO”) Tim Guzzle was “very risk adverse.”

5. For many years TECO complemented its regulated utilities with diverse small non-regulated businesses, including coal mining, ocean shipping and river barge services. The Company’s non-regulated subsidiaries included TECO Power Services (“TPS”), which was founded in 1989 and slowly acquired some small “merchant” energy power plants over the course of the 1990’s. Thus, TECO’s original movement into wholesale power sales was
consistent with TECO’s historical strategy of steady growth and calculated, controlled risk. Things changed, however, when Guzzle died in January of 1998 and TECO sought to find his successor.

6. In April 1999, defendant Robert D. Fagan (“Fagan”) was brought on as TECO’s CEO. Fagan’s mission was to “put the pedal to the metal” and rapidly accelerate TECO’s foray into the unregulated wholesale – or merchant – power markets. Under Fagan, TECO moved quickly, aggressively, and with great risk into the merchant power markets, attempting to transform itself virtually overnight into a major player in the merchant markets. For example, in 1999 and early 2000, TPS started construction on or came online with eleven new or expanded power generation facilities in, among other places, Costa Rica, Guatemala, Texas, Central Florida, Hawaii, and Virginia.

7. Fagan and TECO moved with such haste because through energy deregulation, markets in California and the Northeast were opening up to retail competition. In short, speculative for-profit trading of energy was booming, thanks in part to a “successful” trading outfit from Houston called Enron Corporation (“Enron”), whose name is now synonymous with the worst securities fraud ever.

8. TECO’s attempted foray into the wholesale energy business through TPS, and under Fagan’s directives, was an unmitigated failure. TECO saw this market as a potential lottery ticket because it either failed to conduct the due diligence that would have shown its shareholders that the risks of the unregulated energy business were enormous and/or concealed that such due diligence revealed huge risks to the potential success of TECO’s merchant power business. In its rush to dive into the “booming” merchant energy market...
and roll the dice for big returns, TECO made several “deals with the devil” by entering into relationships with critically unstable companies under business terms that left TECO vulnerable to being straddled with massive liabilities. Those unstable companies included a financial house of cards called Panda Energy International (“Panda”), a closely held company run by Bob Carter (“Carter”), the so-called (but aptly named) “Kilowatt Cowboy,” and National Energy Production Corporation (“NEPCO”), a subsidiary of (though, as time would tell, not an independent entity from) Enron – the king of securities fraud.

9. TECO was so seduced by dreams of hitting the merchant energy lottery that it recklessly ignored various red flags that clearly indicated that Panda was financially unstable. Further, TECO entered into agreements with Panda that allowed Panda, at virtually any time, to “put” its debt onto TECO, which Panda did when the merchant power market collapsed, leaving TECO holding the bag. Unfortunately, for TECO’s shareholders, the very risks that TECO hid from its shareholders were realized, and TECO’s unstable business partners caused TECO to incur billions of dollars in liabilities. Indeed, soon after TECO covertly abandoned its historical business plan and began throwing caution to the wind and putting its shareholders’ investments at severe risk by heavily investing in these power plant projects, the wholesale power market began to sour, hurt by a confluence of events, including the 2000 California energy crisis and the accounting and trading scandals which hit Enron throughout the fall of 2001.

10. Panicked with the possibility of being unable to maintain its historically steady, rising dividend and its artificially inflated stock price, defendants substantially, materially, and consistently downplayed the significance of these events in relation to
TECO’s own business model and prospects throughout the Class Period, leaving the Company’s shareholders in the dark. As a result of defendants’ acts of concealment, TECO’s common stock traded at artificially inflated levels throughout the Class Period (until the truth leaked out and the artificial inflation came out), permitting defendants to sell more than $4.2 million of their own personally held stock and to raise more than $792 million selling equity securities in the capital markets.

11. The volume and ill-designed nature of TECO’s wholesale investments ultimately backfired badly, causing its stock price to plummet and its long-term debt rating to be downgraded to “junk” status when the onerous terms of the power plant building projects were ultimately revealed.

12. Indeed, through a series of events in late 2002 and early 2003, the Company’s complex financing scheme began to unravel as several of its massive projects and their liabilities were suddenly “put” to TECO, moving hundreds of millions of dollars of off-balance sheet debt onto TECO’s balance sheet, resulting in the Company taking more than $1 billion in impairment charges. For example, following analyst downgrades on September 3, 2002, which shed some light and allowed some of the truth to leak out regarding the Company’s precarious financial arrangements, the Company’s stock price plunged 18% to $16.18 per share, erasing millions of dollars in market capitalization. Again, on February 3, 2003, the Company’s stock price was punished when Panda’s own financial demise came to light – rendering inevitable the day Panda would put all of its own portions of the now virtually worthless assets and astronomical debt to TECO. Once again, on very high volume, the Company’s stock price crashed as investors dumped the stock, causing it to open below
$13 per share on February 5, 2003, despite the fact that on that day TECO would pay its last large dividend to its shareholders. In short, when the lights came on and the truth came out, the price of TECO’s common stock tanked from a Class Period high of over $28 per share to below $13, erasing hundreds of millions of dollars in market capitalization.

JURISDICTION AND VENUE


14. Venue is proper in this Judicial District pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. § 1391(b). At all times relevant to this action, TECO maintained its principal place of business in this District and many of the acts and transactions alleged herein, including the preparation and dissemination of materially false and misleading information, occurred in substantial part in this District.

15. In connection with the acts, conduct, and other wrongs alleged in this Complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mails, interstate telephone communications, and the facilities of the national securities markets.

THE PARTIES

A. Plaintiffs

16. Plaintiffs NECA-IBEW Pension Fund, Monroe County Employees Retirement System, John Marder, and Charles Korpak purchased TECO securities on the open market during the Class Period as set forth in their certifications previously filed with
the Court. The Court’s February 1, 2005 Order appointed Plaintiffs as Lead Plaintiffs in this consolidated action.

B. Defendants

17. Defendant TECO, a Florida corporation, maintains its principal place of business at TECO Plaza, 702 N. Franklin Street, Tampa, Florida 33602. TECO is a public utility holding company for regulated utilities and other unregulated businesses. TECO currently owns no operating assets, but holds all of the common stock of Tampa Electric Company and directly, or through its subsidiaries TECO Diversified, Inc. or TECO Wholesale Generation, Inc., formerly known as TPS, the common stock of several other subsidiaries, such as TECO Coal Corporation, and TECO Transport Corporation, among others.

18. During the Class Period, defendant Robert D. Fagan was CEO and President of TECO, and Chairman of TECO’s Board of Directors (the “Board”). Fagan assisted in the preparation of the false financial statements and repeated the contents therein to the market. Fagan received the following salary and incentive compensation from TECO:

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Salary</th>
<th>Bonus</th>
<th>Restricted Stock Awards</th>
<th>LTIP Payouts</th>
</tr>
</thead>
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<tr>
<td>2002</td>
<td>$675,000</td>
<td>$475,954</td>
<td>$857,082</td>
<td>$825,700</td>
</tr>
<tr>
<td>2001</td>
<td>$625,000</td>
<td>$602,105</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

19. During the Class Period, defendant Gordon L. Gillette (“Gillette”) was Chief Financial Officer (“CFO”) of TECO. Gillette prepared the false financial statements and repeated the contents therein to the market. Gillette received the following salary and incentive compensation from TECO:

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Salary</th>
<th>Bonus</th>
<th>Restricted Stock Awards</th>
<th>LTIP Payouts</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>$290,000</td>
<td>$130,500</td>
<td>$143,701</td>
<td>$147,563</td>
</tr>
<tr>
<td>2001</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
20. Defendants Fagan and Gillette are the “Individual Defendants.”

THE INDIVIDUAL DEFENDANTS’ ACCESS TO CRITICAL INFORMATION

21. The Individual Defendants were privy to non-public information concerning TECO’s business, finances, sales, and present and future business prospects via access to internal corporate documents, conversations, and connections with other corporate officers and employees, attendance at management and Board meetings and committees thereof, and via reports and other information provided to them in connection therewith. Because of their possession of such information, the Individual Defendants knew or with deliberate recklessness disregarded the fact that adverse facts specified herein had not been disclosed to, and were being concealed from, the investing public. Except to the extent set forth in this Complaint as provided by confidential witnesses who are primarily former TECO employees, Plaintiffs and other members of the Class had no access to such information, which was, and remains solely under the control of defendants. The Individual Defendants were involved in drafting, producing, reviewing, and/or disseminating the materially false and misleading statements complained of herein. The Individual Defendants were aware (or disregarded with deliberate recklessness) that materially false and misleading statements were being issued regarding the Company and nevertheless approved, ratified, and/or failed to correct those statements, in violation of the federal securities laws.

22. Throughout the Class Period, the Individual Defendants were able to, and did, control the contents of the Company’s SEC filings, reports, press releases, and other public statements. The Individual Defendants were provided with copies of, reviewed and
approved, and/or signed such filings, reports, releases, and other statements prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or to cause them to be corrected. The Individual Defendants also were able to, and did, directly or indirectly, control the conduct of TECO’s business, the information contained in its filings with the SEC, and its public statements. Moreover, the Individual Defendants made or directed the making of affirmative statements to securities analysts and the investing public at large, and participated in meetings, conference calls, and discussions concerning such statements. Because of their positions and access to material non-public information available to them but not the public, each of the Individual Defendants knew that the adverse facts specified herein had not been disclosed to and were being concealed from the public and that the positive representations that were being made were then false and misleading. As a result, each of the Individual Defendants is responsible for the accuracy of TECO’s corporate releases detailed herein as “group-published” information and is therefore responsible and liable for the representations contained therein.

23. More specifically, the Individual Defendants monitored the progress of the Company’s diverse projects thorough numerous reports and meetings. TECO’s senior management, including the Individual Defendants, kept apprised of issues related to the projects through a variety of reports. A former TPS onsite project manager explained that he/she prepared a one-page Weekly Project Status Report, presented in bullet point format, which summarized data from the specific construction projects. The information contained in the Weekly Project Status Report was then compiled in a more comprehensive report prepared by a senior level Company vice president that covered all of TECO’s power plant
construction projects. These comprehensive reports, which were provided to TECO’s highest-level senior management, included comparisons of the original construction schedule to the actual schedule, budgeted expenses to actual expenses, an allocation of the money spent, a description of the progress of the projects since the last report, any problems with the project, and explanations of how the problems were to be addressed.

24. In addition to these reports, TECO’s executives received a Monthly Project Status Report, presented as an Excel spreadsheet, which compiled more detailed, line-item data, including financial information received from the Accounting Department, concerning the specific power plant projects.

25. A former TPS director of construction reported that he attended “progress review meetings” with Panda representatives regarding the status of the Company’s Union and Gila River power plant projects. After these meetings, the former director of construction would report to high-ranking TECO officials, who in turn reported to the Individual Defendants, and make recommendations regarding Panda’s and NEPCO’s technical competence and construction timing, scheduling and resources.

26. Similarly, a former development consultant for TECO indicated that all of the top officers of the company, including the Individual Defendants, met regularly for breakfast on Monday mornings. The former development consultant said these meetings sometimes took place in the “third floor conference room/breakfast room” or off-site at either the University Club or City Club, which all of TECO’s top officers had memberships to “as part of the executive perks.” The former employee understood that each officer discussed
operational issues of the division he or she was responsible for, including major projects and issues arising from them.

27. Beyond the Monday morning breakfast meetings among the top executives, the former development consultant commented that “there was no shortage of get-togethers” at TECO, and said every day at TECO was essentially a succession of meetings. She/he stressed that “the very minute anything big happened, good or bad, it was brought to their attention.” She/he also said TPS’ President, Richard Ludwig (“Ludwig”) in particular was “fanatical about it,” and that, whenever something went wrong in Ludwig’s division, Ludwig was “big” on knowing all the details and informing those he reported to, such as the Individual Defendants. She/he confirmed that Ludwig reported directly to Fagan, and that whenever any significant developments occurred in the TPS division, Ludwig brought it to Fagan’s attention.

28. The former development consultant further commented that Fagan was an extremely hands-on CEO who had significant input into all decision-making. According to her/him, “[i]t was an agonizing process all the way up to Fagan, including decision-making for Fagan to present things to the Board.” She/he added, that “there were forever progress reports along the way” after TECO undertook a project, including the projects that TECO did with Panda.

29. Indeed, commenting on Fagan’s role in the Company, on December 3, 2001 The Wall Street Transcript published excerpts from its interview with Fagan during which he stated:

Most of my focus is on the financial end of things, which means looking with my CFO to make sure we have a strategic plan in place and a financial plan
in place to support that strategic plan. So that means spending most of my
time and focus on Wall Street, in discussions with Wall Street analysts, and
in discussion[s] with the financial institutions that we need to support us to
raise capital . . . So my time has mainly been on focused on [sic] the strategy,
raising the capital, and working with our Board of Directors to make sure
they’re in agreement with the direction we’re going.

30. Each of the defendants is liable as a primary violator in making false and
misleading statements, and for participating in a fraudulent scheme and course of business
that operated as a fraud or deceit on purchasers of TECO securities during the Class Period.
All of the defendants had motives to pursue a fraudulent scheme in furtherance of their
common goal, i.e., artificially inflating the trading price of TECO securities by making false
and misleading statements and concealing material adverse information. The fraudulent
scheme and course of business was designed to and did: (i) deceive the investing public,
including Plaintiffs and other Class members; (ii) artificially inflate the price of TECO
securities during the Class Period; (iii) cause Plaintiffs and other members of the Class to
purchase TECO securities at inflated prices; (iv) allow TECO to conceal and cover up the
true financial condition of TECO to the detriment of its investors, but to the financial benefit
of the Individual Defendants; and (v) substantially cause the severe decline in TECO’s stock
price as the artificial inflation was released.

CLASS ACTION ALLEGATIONS

31. Plaintiffs bring this action as a class action pursuant to Federal Rules of Civil
Procedure 23(a) and (b)(3) on behalf of the Class, consisting of all those who purchased the
securities of TECO during the Class Period. Excluded from the Class are defendants, the
officers and directors of the Company, members of their immediate families and their legal
representatives, heirs, successors, or assigns and any entity in which Defendants have or had a controlling interest.

32. Because TECO has millions of shares of stock outstanding, and because the Company’s shares were actively traded on the New York Stock Exchange, members of the Class are so numerous that joinder of all members is impracticable. According to TECO’s SEC filings, as of February 28, 2003 (shortly after the close of the Class Period), TECO had more than 176 million shares outstanding. While the exact number of Class members can only be determined by appropriate discovery, Plaintiffs believe that Class members number at least in the thousands and that they are geographically dispersed.

33. Plaintiffs’ claims are typical of the claims of the members of the Class, because Plaintiffs and all of the Class members sustained damages arising out of defendants’ wrongful conduct complained of herein.

34. Plaintiffs will fairly and adequately protect the interests of the Class members and have retained counsel experienced and competent in class actions and securities litigation. Plaintiffs have no interests that are contrary to or in conflict with the members of the Class they seek to represent.

35. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. Furthermore, as the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation make it impossible for the members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.
36. Questions of law and fact common to the members of the Class predominate over any questions that may affect only individual members, in that defendants have acted on grounds generally applicable to the entire Class. Among the questions of law and fact common to the Class are:

   (a) whether defendants violated the federal securities laws as alleged herein;

   (b) whether defendants’ publicly disseminated press releases and statements during the Class Period omitted and/or misrepresented material facts;

   (c) whether defendants breached any duty to convey material facts or to correct material acts previously disseminated;

   (d) whether defendants participated in and pursued the fraudulent scheme or course of business complained of;

   (e) whether defendants acted willfully, with knowledge or severe recklessness, in omitting and/or misrepresenting material facts;

   (f) whether the market prices of TECO securities during the Class Period were artificially inflated due to the material nondisclosures and/or misrepresentations complained of herein; and

   (g) whether the members of the Class have sustained damages as a result of the decline in value of TECO’s stock when the truth was revealed and the artificial inflation came out and, if so, what is the appropriate measure of damages.
CONFIDENTIAL WITNESSES

37. Plaintiffs’ allegations herein, concerning the falsity of defendants’ statements and the scienter of the Individual Defendants, are based upon, in part, interviews with dozens of former TECO employees. Throughout the course of the investigation of defendants’ fraud, many confidential former insiders provided information regarding the various methods employed by defendants in furtherance of their scheme to defraud shareholders. Indeed, among those confidential former insiders interviewed in the course of the investigation of the fraudulent scheme and wrongful business practices complained of herein were several vice presidents, a development consultant, a site construction manager, a former Panda vice president and other high-level former Panda employees, a manager of government and regulatory affairs, a senior analyst in TECO’s investor relations department, a general manager of power plant construction and design for Enron Engineering and Construction (formerly NEPCO), a senior project controls start-up engineer, an onsite project manager, a director of construction for one of TECO’s subsidiaries, a NEPCO instrumentation clerk, a NEPCO/SNC-Lavalin site-expeditor, a former financial analyst in TECO’s cash management

1 Despite locating dozens of former employees who indicated they had knowledge of the facts and circumstances alleged herein, counsel for plaintiffs encountered many individuals who were frightened to speak out against TECO and the Individual Defendants. Indeed, many former employees were forced to sign confidentiality agreements when they left TECO (as a condition to obtaining severance packages). One former employee stated that, as a result of the confidentiality agreements, TECO “owned them” and that if they said anything, they would face potentially dire consequences from TECO. In addition, Linda Miller, a consultant whose responsibilities now include defending this case (and once included the financial due diligence between TECO and Panda), subsequent to the filing of the case, called former employees to give them a “heads up” regarding Plaintiffs’ ongoing investigation and to “urge” them not to cooperate.
department, a TECO market analyst and business analyst, an executive manager for TECO Properties, a former TPS director of engineering, and, among others, a former TPS market analyst, price forecasting analyst, and power origination specialist.

38. One former high-level TECO employee worked for TECO and its subsidiaries for almost 40 years. During the course of her/his employment with TECO, she/he was a senior vice president involved in, among other things, all new power plant construction. In fact, this confidential witness supervised several other vice presidents as part of her/his duties. In addition, she/he also oversaw the onsite management and operations at TPS’ completed power plants. As part of her/his employment, she/he regularly visited TPS’ power plant construction sites, including the Union and Gila River Plants that TPS partnered with Panda to build, as well as the Dell and McAdams plants that TPS built independently. This former senior vice president reported directly to TPS President Ludwig.

39. Another former senior executive worked for Panda as a vice president of commodities transactions during parts of 2001 and 2002. Among the responsibilities of Panda’s commodities transactions group was to handle power marketing (sales) and gas purchasing in primarily long-term deals. This confidential witness was in charge of all of Panda’s power and gas trading, selling, and hedging activities, and regularly presented to Panda’s Board of Directors, stockholders, and potential strategic investors. As part of her/his duties, she/he worked with TECO on the Union and Gila River projects.

40. One of TECO’s former senior managers worked for TPS from around late 2001 until 2003. From 2001 until late 2002, she/he was a site construction manager at one of TECO’s power plant projects. She/he reported to a director of construction, who reported to
a vice president of engineering and construction, who reported to a senior vice president of engineering and construction, who, in turn, reported to TPS President Ludwig. Ludwig reported directly to CEO Fagan. As a manager, this former TECO employee’s job was to make sure TECO’s interests were represented and communicated to Panda, as Panda was responsible for onsite construction management under the agreement between Panda and TECO.

41. One confidential witness worked for a TECO subsidiary as a senior engineer and as an onsite construction manager at one of TECO’s merchant power plant projects from 2001 until 2002. She/he was responsible for overseeing the implementation of the engineering aspects of the EPC contract with NEPCO. She/he is familiar with TECO’s relationship with NEPCO and Panda, and its exposure to Enron’s demise. She/he reported to a director of engineering, who reported to a vice president of construction and engineering, who reported to a senior vice president of engineering and operations, who reported directly to TPS President Ludwig. In turn, Ludwig reported directly to TECO’s CEO, defendant Fagan.

42. Another confidential witness was a senior manager of power plant construction and design for Enron Engineering & Construction Company (“EE&C”). She/he has significant knowledge about Enron’s power plant construction business and background on how and why NEPCO became part of EE&C, its key players, and details about the Union power plant project in El Dorado, Arkansas.

43. One confidential witness worked for a TECO subsidiary as a construction executive. She/he worked for TECO in a variety of capacities and divisions for decades.
She/he was involved with, among other things, the construction planning for the Union, Gila River, McAdams, and Dell power plant projects, and spent at great deal of time at Panda’s headquarters. She/he also attended numerous “progress review meetings” and was heavily involved with handling the impact of the impact of Enron’s bankruptcy on TECO’s relationship with NEPCO. She/he reported to a vice president of construction and engineering for TPS, who reported to Ludwig and a senior vice president of engineering and operations.

44. Another confidential witness worked for Panda as a senior project coordinator at the TECO-Panda power plant projects. She/he worked for Panda from 2002 through 2003. She/he has knowledge regarding TECO’s inability to access the Entergy power grid adjacent to the Union plant, TECO’s failure to secure any long term service agreements, and TECO’s relationship with Panda.

45. One confidential witness worked for TECO as a senior site construction manager at its power plant projects from 2001 until 2003. Throughout her/his employment, she/he reported to a former construction executive, who reported to a vice president of construction and engineering for TPS. She/he has knowledge regarding the impact of Enron’s bankruptcy on TECO’s relationship with NEPCO, NEPCO’s milestone payments, and, among other things, TECO’s relationship with Panda.

46. Another confidential witness worked as a senior development consultant for TECO from 2000 until 2003. Prior to working for TECO in that capacity, she/he held several other positions at TECO at various times. Her/his responsibilities were to assist in power plant development activities outside of Florida. She/he also has knowledge
concerning TECO’s relationship with Panda and entry into the wholesale power generation market, as well as knowledge concerning TECO’s inability to secure access to power grids from its power plant projects and TECO’s “meeting-oriented” culture.

47. Another confidential witness worked for a TECO subsidiary as a senior director of engineering. She/he later was employed by Calpine Corporation (“Calpine”) an aggressive merchant power production company that was known to take substantial risks in the emerging unregulated market. She/he has knowledge concerning Calpine’s merchant power plant projects, including projects TECO dove into after Calpine had walked away from them.

48. One confidential witness worked with a TECO subsidiary as a development partner in an attempt to construct or acquire power plant projects in foreign countries. During the course of her/his relationship with TECO, she/he dealt with Ludwig and a former senior director of engineering, among others. She/he has information concerning TECO’s loans of money to Panda for power plant projects.

49. Another confidential witness worked for a TECO subsidiary as a manager of government and regulatory affair from 2001 through 2003. She/he was involved in lobbying efforts on behalf of TECO and has knowledge concerning TECO’s problems securing sufficient access to power grids for its power plant projects.

SUBSTANTIVE ALLEGATIONS

A. Background

1. History of the Company
50. TECO, based in Tampa, Florida, is a holding company for both regulated utilities and other unregulated businesses. It owns no operating assets, but holds all of the common stock of its regulated operating subsidiary, Tampa Electric, and other non-regulated subsidiaries. Tampa Electric provides retail electric service to more than 612,000 customers in West Central Florida and, through its Peoples Gas division, markets natural gas in Florida.

51. Historically, TECO, like other utilities companies, relied heavily on its regulated businesses for slow and steady growth. This relative stability allowed TECO to provide a reliable and ample quarterly dividend that attracted conservative investors looking for sustained, safe performance. In fact, in 2002, TECO increased its dividend for the 43rd consecutive year.

52. Prior to the start of the Class Period, TECO had very little involvement in the independent power business. To be sure, for many years, TECO complemented its regulated utilities with diverse small businesses, including coal mining, ocean shipping and river barge services. In 1989, the Company founded TPS (currently known as TECO Wholesale Generation, Inc.) to develop wholesale power to sell into the independent power producer market. By 1993, TPS had a 295-megawatt plant running in Hardee County, Florida. In 1995, TPS began international operations, opening a 78-megawatt plant in Guatemala in partnership with investors there. In 1998, TPS acquired an interest in a power plant in the Czech Republic.

53. Thus, TECO’s original movement into wholesale power sales had been well-planned and conservative, in keeping with TECO’s then-strategy of controlled risk and consistent growth. In fact, according to a former construction executive, Fagan’s
predecessors, including Gerard Anderson and H.L. Culbreath, had very high standards and “insisted that people do their homework on new projects” before a decision was made to go forward. Similarly, a former senior development consultant, explained that, historically, TECO had not ventured to do business outside of Florida because its long-time CEO Tim Guzzle was “very risk adverse.”

54. That philosophy, which was widely known and relied upon by TECO’s shareholders, was soon to be abandoned, to the detriment of TECO’s shareholders, and replaced with the “ignore the risks and go for broke” mentality that led to massive securities fraud. In fact, when employees found problems with the projects as part of their due diligence, they were told to “shut up” and do the deals.

2. Deregulation of the Power Markets

55. In the late 1990s, nascent unregulated (or “merchant”) wholesale power markets developed, as many states deregulated their energy markets in an effort to create competition among energy suppliers where there had been little before.

56. Through energy deregulation, markets in California and the Northeast United States were opening up to retail competition. Speculative for-profit trading of energy was booming, thanks in part to a hot trading outfit from Houston called Enron, whose name is now synonymous with the worst securities fraud ever.

57. Within this climate, many existing utility companies, which had been experiencing stagnant returns from their regulated businesses, saw this developing unregulated market as an avenue from substantial growth. In fact, due to deregulation, there was a veritable “gold rush” mentality among many energy companies to gain entry into the
seemingly lucrative unregulated merchant power markets. According to a former senior manager of an Enron subsidiary, deregulation created a tremendous amount of competition, particularly among newly created private utility companies and existing public utility companies (such as TECO) seeking to make a financial killing in this newly emerging merchant power market.

3. TECO’s Late Entry into the Deregulated Power Market

Although it had dabbled in the power markets throughout the 1990’s, TECO had not fully committed to a full scale entry into such markets after deregulation due to its conservative philosophy and “risk averse” CEO. All that changed, however, when Guzzle passed away in January of 1998, and TECO searched for his successor.

In April 1999, Fagan was brought on as TECO’s CEO, buoyed by his success in building up the unregulated wholesale power business at PP&L Resources Inc. Fagan’s mission was to jump-start and accelerate TECO’s foray into the unregulated wholesale power markets. A former construction executive indicated that, once Fagan became CEO, “the whole atmosphere changed” at TECO due to his supposed expertise in the independent power development field. Indeed, under Fagan, TECO moved quickly, aggressively, and with great risk into the merchant power markets in an attempt to transform itself virtually overnight into a major player in this industry.

A few months after Fagan’s arrival at TECO in 1999, Florida Progress of St. Petersburg, parent of Florida Power and TECO’s bigger competitor across Tampa Bay, announced that it was being acquired by Carolina Power & Light of Raleigh, N.C. The
Florida Progress deal underscored doubts in the investment community about whether TECO could survive on its own in an era of giant energy conglomerates.

61. Fagan’s response to these concerns was to adopt and implement a near frantic pace in developing wholesale power far outside TECO’s home market, energy that Fagan hoped (unrealistically) would be sold to other utilities. A former construction executive indicated that Fagan gave Ludwig substantially more latitude than he had possessed in the past to expand TPS’ power plant portfolio. In turn, Ludwig exercised this new freedom by charging his management with identifying available power development projects. As a result of this new focus, TECO started by buying the 312-megawatt Commonwealth Chesapeake Power Station in Virginia and followed that with the addition of the 60-megawatt Hamakua Energy Project in Hawaii. Thus, despite its relatively late entry into the unregulated power market, by early 2000, TPS started construction on or came online with eleven new or expanded power generation facilities in Costa Rica, Guatemala, Texas, Central Florida, Hawaii and Virginia.

B. TECO’S Joint Venture with Panda

62. Following through on Fagan’s orders, TECO, through TPS, sought to buy its way further into the merchant power market by entering into a joint venture relationship with Panda, a closely held company with its headquarters in Dallas, Texas. At the time, Panda was a non-regulated electric generation company whose primary focus was the development, ownership, and operation of “state-of-the-art” environmentally clean, low-cost power plants. Panda was and is run by the so-called “Kilowatt Cowboy,” Bob Carter. In addition, Bob
Carter’s wife, Janice, is Panda’s Executive Vice-President, Secretary, and Treasurer, and their son, Todd W. Carter, is Panda’s President.

63. Financially strapped and severely struggling, Panda had been developing several power plant projects over the years but desperately needed money to fund their construction. Indeed, a former senior engineer explained that Panda’s business model was to partner with a company that had “deep pockets” (since Panda had virtually no money of its own) to develop merchant power plants and gain equity interests in them upon completion. As a former Panda senior executive, put it, “Panda had a big vision and appetite for developing projects that it didn’t have the money to follow through on.”

64. A former TECO senior manager stated that, prior to TECO’s involvement with Panda, Panda had a partnership with Calpine relating to several large power plant projects. In that regard, on June 26, 2000, Calpine issued a press release entitled “Calpine Announces Strategic Alliance with Panda Energy to Acquire Development Rights and Gas Turbines; Panda Alliance to Provide Calpine with 10,000-Megawatt Development Pipeline.” A former TECO senior manager recalled that, although the Calpine-Panda partnership gave Calpine a right of first refusal to build these projects, Calpine decided to pass on them, despite earlier statements that its earlier indication of interest.

65. In short, Calpine’s refusal to move forward with the Panda projects was surprising given Calpine’s reputation in the industry as a well-funded and overly aggressive

2 Calpine describes itself as North America’s leading geothermal power producer with an aggressive program of developing and building natural gas-fired energy centers.
power plant developer. In fact, according to a former senior director of engineering, a former TECO and Calpine employee, because of Calpine’s reputation as a risk taker, it raised “a lot of eyebrows” about the quality of Panda’s projects. As it turned out, Calpine ran away from the Panda projects, particularly those in Arizona and Arkansas because it had determined that the power plants would not be able to secure access to the local power grids so as to permit a steady flow of power to its potential customers.

66. After being spurned by Calpine, Panda was desperate for a deep-pocketed partner to salvage its power plant projects. With dollar signs in its eyes and money to burn, TECO came to the rescue. TECO viewed Panda as a particularly attractive partner through which it could rapidly expand its power plant portfolio due to Panda’s existing efforts to develop several large capacity power plant projects and its access to the turbines that are essential to plant operation. According to a former construction executive, TECO aligned itself with Panda because Fagan pushed TECO to get into the merchant power market and “do it fast.”

67. Indeed, at the time, Panda was in a much better position than TECO to acquire the turbines necessary to generate the power at its power plants due to a favorable spot on the turbine manufacturing waiting list with General Electric, one of the few turbine manufacturers. According to a former senior engineer, “it was a seller’s market for the machines [turbines] at the time, and Panda had the leverage.” A former Panda senior project coordinator confirmed that Panda controlled the rights to seven turbines on GE’s manufacturing waiting list at a time when there was a five-year backlog on turbine orders,
and this was part of Panda’s bargaining power when the new power plant construction craze began.

68. Ultimately, TECO and Panda agreed to a partnership through which TECO would finance the construction of these power plants. Under the partnership agreement, TECO, as the funding party, received priority over Panda on the annual returns (net profit) once the plants became operational. According to a former senior vice president, these return priorities carried over from one year to the next year in the event that the total annual return was less than the return percentage that TECO was entitled to under the agreement. For its part, Panda would receive fees from TECO for serving as Onsite Construction Manager, which involved overseeing the primary contractor and other major subcontractors. Unbeknownst to TECO’s shareholders, Panda also negotiated a buyout provision that allowed it to “put” the projects on TECO – Panda had the option of walking away from the projects, without any liability for potential losses, and literally burying TECO with all the debt.

69. Compounding this problem was the fact that, while TECO was financially responsible, it had very little control over construction and cost decisions. A former senior engineer confirmed that TECO agreed to serve as the financier and an equity partner with Panda on certain projects, but that Panda would maintain control of the construction. She/he also verified that the partnership agreement between TECO and Panda contained a buyout provision through which TECO could be forced by Panda to purchase Panda’s interests in the power plant projects and that Panda could walk away from the projects without further
liability for project costs. She/he explained that TECO had agreed to such a risky provision because Panda had greater bargaining power due to its access to the turbines.

70. A former construction executive corroborated that, under the partnership agreement, Panda would provide all oversight management at the construction sites such that “Panda was making decisions [that] affect[ed] the cost and quality of work.” According to her/him, TECO expressed concern to Panda regarding the overall design of its power plant projects, which reflected Panda’s engineering style “to build lean projects, to the point of affecting the reliability of the projects.”

C. TECO’s Power Plant Project Acquisition Binge

71. With its new strategy in place, and an obviously willing partner in Panda, TECO dove headlong into the merchant power market. In addition to its existing power plant projects in its portfolio, TECO added the following projects to the mix:

1. The Guadalupe & Odessa Projects

72. On September 25, 2000, the Company announced that it had made a $93 million “investment in the form of a loan” to Panda in connection with two independent energy projects that Panda was then building in Texas called Guadalupe and Odessa. The Guadalupe and Odessa projects, known as the Texas Independent Energy (“TIE”) projects, were to operate as gas-fired, combined-cycle units with a combined capacity of 2000 megawatts. The Company’s September 25, 2000 press release anticipated that the TIE projects would be brought online in phases beginning in December of 2000, with all capacity online in the third quarter of 2001. The Company’s press release stated that the “transaction ultimately provides TPS with an opportunity for an economic interest in 50 percent of both
projects” and that the “investment is expected to be slightly accretive to TECO Energy
earnings in 2000 and 2001 and to provide meaningful contributions beyond.”

2. The Union & Gila River Projects

73. On November 14, 2000, TECO announced that through a 50/50 joint venture
with Panda, it had agreed to build, own and operate two enormous natural gas power plants
with an expected combined capital cost of $2.3 billion. The Company represented that it
would provide interim loans totaling $370 million for these projects, $250 million of which
would be funded in the fourth quarter of 2000. This initial funding supposedly would be
paid back by the end of first quarter of 2001 at project finance closing and TECO’s equity
investment in the project was expected to be approximately $960 million at commercial
operation.

74. Specifically, the press release announcing the projects stated, in part:

TECO Power Services and Panda Energy International today announced that
they have formed a joint venture to build, own, and operate two merchant
power plants at a capital cost of $2.3 billion.

* * *

TECO Energy Chairman and CEO Robert Fagan said, “This transaction gives
TECO Energy as a whole more than 10,000 megawatts of electric generation
capacity either operating or committed to, the majority of which is in
domestic, competitive, deregulated markets. We are well on our way to
transforming our company into one that is predominantly unregulated in a
financially disciplined manner.

75. Both projects were to be natural gas-fueled and similar in design. The plant
sites, which would have a combined capacity of nearly 4,600 megawatts, were located in El
Dorado, Arkansas (“Union”) and Gila Bend, Arizona (“Gila River”). Union would
purportedly sell power primarily to utilities and industrial customers in Arkansas, Louisiana,
eastern Texas and Mississippi. Electricity from Gila River was to be sold primarily in Arizona, Nevada and New Mexico.

76. The first phase of the Union project was expected to begin commercial operation in the fall of 2002, with commercial operation of the entire facility expected in early 2003. The Gila River project was expected to begin commercial operation in early 2003, with all phases expected to be completed by the summer of the same year. Under the terms negotiated, TECO reported that it would be a 50% equity owner but would receive 75% of the profits from the Union and Gila River projects.

3. The Dell & McAdams Projects

77. In addition to partnering up with Panda, TECO made its own inroads in the newly emerging wholesale power market by purchasing other existing power plant projects. On October 30, 2000, the Company acquired full ownership of two independent power projects being developed by Genpower LLC in Arkansas and Mississippi with a combined capacity of nearly 1,200 megawatts. The two 599-megawatt facilities, known as the Dell and McAdams projects, were designed to be natural gas-fired combined-cycle plants. TECO’s initial equity investment in the Dell & McAdams projects was projected to be about $330 million, and it expected to raise an additional $400 million from banks or other lenders to finance the rest of the construction, bringing the total price of the plants up to $730 million.

78. As more fully described below, each of these projects – Guadalupe, Odessa, Union, Gila River, Dell and McAdams – eventually led to large losses and/or liabilities for TECO due in large part to problems that existed at the beginning of the Class Period.

D. TECO’s Relationship with Enron
79. To assist in the construction of several of the projects listed above, namely Union, Gila River, Dell, and McAdams, TECO and Panda enlisted NEPCO, a subsidiary of Enron. NEPCO was hired to be the “lead” or “engineering, procurement, and construction” (“EPC”) contractor on these projects. A former senior manager of an Enron subsidiary recalled that NEPCO used Enron’s supposed good name and financial wherewithal, prior to Enron’s bankruptcy and infamous demise, to take on huge construction projects, and the Union and Gila River plants were among NEPCO’s biggest projects in that NEPCO would receive a total of $1 billion per project to complete the construction of these plants. While TECO embraced the Enron relationship by hiring NEPCO, when Enron imploded, TECO attempted to distance itself from Enron and misled its shareholders regarding Enron’s devastating impact on TECO’s business.

80. A former senior vice president explained that the original EPC agreement between TECO and NEPCO was a “fixed price” contract, meaning there was one total price to complete the entire project. As a result, NEPCO was supposed to carry the risk if its actual expenses went higher than the fixed contract price.

81. According to a former senior manager of an Enron subsidiary, Enron reviewed and approved the project proposals, designs and guarantees for NEPCO’s work on the TECO-Panda projects. In this respect, she/he characterized Enron as NEPCO’s “rich uncle” that was there to bail out NEPCO if needed. On these particular projects, Enron guaranteed NEPCO’s performance under the loan agreements such that Enron would be responsible for payment on the loan should NEPCO default. A former senior vice president corroborated that Enron served as a corporate guarantor on the EPC contracts with NEPCO,
and that this guarantee was backed by performance bonds. In this regard, the former senior vice president understood that Enron was a direct signatory on the EPC contracts entered into on November 1, 2000 (Dell), July 11, 2000 (McAdams), December 15, 2000 (Union) and February 28, 2001 (Gila River). However, by the beginning of the Class Period, Enron was front page news due to its financial collapse, thereby removing any possible bail out of NEPCO – meaning that TECO would be on the hook for any problems.

82. As the EPC, NEPCO was entitled to receive payments from TECO after completion of certain “milestones” on the projects, and NEPCO was required, in turn, to pay various subcontractors for the work they had performed. More specifically, the project contracts NEPCO had with TECO included timetables and schedules for the completion of various portions of NEPCO’s construction of the projects. A former senior vice president recalled that the contracts had schedules of work to be done in four phases, and the schedule of work for each phase was sketched out in detail. She/he also said that each milestone payment was calculated as a particular percentage of the total contract price.

E. TECO’s Entry into the Merchant Power Market was a Complete Failure

1. TECO Was Aware of But Ignored Panda’s Poor Financial Condition

83. Panda’s finances were in a precarious position at the time it entered into its joint venture with TECO, a fact TECO knew or was severely reckless in disregarding. For example, Panda built a 100-megawatt coal-fired plant in Luannan, China. According to published reports, Panda officials said that the Chinese government sought to pay just one-third of the agreed-upon amount for electricity generated from Panda’s Luannan plant. Compounding the problem, Panda had mortgaged some of the profits from its existing plants
to secure financing for the Luannan project. In 2000, one of Panda’s subsidiaries disclosed in a corporate filing that it might not be able to make debt payments and that it was not clear if the subsidiary could continue as a going concern.

84. According to a former development partner, TECO had “no business” negotiating a deal with Panda because Panda’s financial situation was “really bad” at the time and TECO knew it. She/he knew that a former senior director of engineering told TECO’s high-ranking executives, including the Individual Defendants, not to get involved in the Panda projects due to Panda’s financial condition at the time.

85. Similarly, according to a former construction executive, TECO knew Panda was experiencing financial difficulties from the outset of their relationship. She/he revealed that, while he was working on the Union and Gila River projects, Panda began “reorganizing very dramatically” and cut its staff in half from the top down in all departments virtually overnight. She/he spoke with a Panda representative who stated that this massive layoff was announced at an “all Panda meeting” without any prior notice. She/he stated that this conduct “to me was indicative of financial problems.”

2. TECO Ignored Its Own Due Diligence

86. While working on the Union and Gila River construction projects for TECO, a former construction executive “spent a lot of time in Dallas” at Panda’s headquarters. She/he explained that many at TECO and in the power plant development field found Panda, as a whole, to be “very arrogant” due to its attitude that “they had all the expertise they needed.” According to her/him, “[t]he Panda guys were typical Texans, they shoot from the hip” and, consequently, and they were not very receptive to outside input from TECO.
87. In contrast, she/he indicated that “this isn’t how TECO operated” in that TECO usually employed a detailed step-by-step process for evaluating new power development projects before deciding to pursue them, including transmission access feasibility and rights. If any component of this decision-making process was missing, TECO would normally choose not to pursue the project. However, due to Fagan’s emphasis on getting deals done, much of the due diligence was ignored.

88. According to a former construction executive, when TECO began discussions about a partnership with Panda on the Union and Gila River projects, which had a total theoretical capacity of 2,200 megawatts, “we thought we hit the motherlode.” As a result, “TECO didn’t [go through its normal decision-making process] on the Panda deals.”

89. According to a former senior vice president, TECO had an engineering team conduct due diligence by looking at the proposed plant technology and technical and practical aspects of plant construction, including construction feasibility. With respect to the Union and Gila River projects, the due diligence revealed, almost immediately, that they were “bad projects.” The same conclusion was reached as to the McAdams and Dell projects. More specifically, the due diligence reports, which were typically one page long and provided to an executive vice president, Fagan, Gillette, and Ludwig, all concluded that transmission capacity from the projects was limited, and the projects were ill-conceived because there was nowhere for the power to go. In fact, the due diligence reports stated that some of the projects had no transmission capacity and that there would be nowhere to send the power once the projects were complete. Moreover, there was no transmission capacity
out of the Dell and McAdams plants—they could not put the “whole load” on the line and that the “grid could not take the power” except on “low load” days.

90. The due diligence team concluded that while construction of the power plants was technologically feasible and, from an engineering and construction perspective, the projects could be built, there was no reason to build them because there was nowhere for the power to go. When these conclusions were relayed to TECO’s senior management, the team leaders were told to “shut up” and “do the projects.” Of course, the fact that the theoretical capacities of the plants were meaningless because of a lack of grid access was never disclosed to investors.

3. TECO Conspires with Panda to Hide its Debt

91. Concerning financing for the Union and Gila River projects, a former Panda senior executive stated that the project financing consisted of non-recourse loans, primarily from Citigroup and Societe Generale, on which the borrowers were the projects themselves. She/he explained that Panda and TECO created off-book (off-balance sheet) subsidiaries and made them the general partners of the project entities created as borrowers for the loans. By structuring the financing this way, these entities actually owned the projects and borrowed the money to fund the projects such that the loans were non-recourse against Panda or TECO.

92. Thus, TECO created TECO Panda Generating Company (“TPGC”) and an array of related subsidiaries through which it was able to keep high-debt assets, such as Union and Gila River projects, off its balance sheet and make TECO appear more creditworthy (i.e., investment grade) than it actually was. For example, according to a
TECO corporate chart, TPS owned 100% of TPS, Limited Partnership, Inc. (“TPS LP”) and TPS General Partnership, Inc. (“TPS GP”). In turn, TPS LP owned 99% of TPCG and TPS GP owned 1% of TPCG.

93. The following organizational chart demonstrates TECO’s complex structure that was designed to, and did, hide massive amounts of debt off of TECO’s balance sheet and out of sight from investors:

3. TECO’s Inability to Access Power Grids

94. Electricity generation stations throughout the United States are interconnected in a system called power grids. This allows electricity generated in one state to be sent to users in another state. It also allows distant power generation stations to provide electricity for cities and towns whose power generators may have failed or been destroyed. In the United States electrical system, there are more than 6,000 power generating units energized
with coal, oil, gas, falling water, wind, or nuclear fission. Power from these stations is moved around the country on almost a half-million miles of bulk transmission lines that carry high voltage charges of electricity. In short, in order to send power, a power generation facility must have access to the power grid in its region or state. Further, unlike coal or natural gas, electricity cannot be stored; power is generated as it is used.

95. A former senior development consultant explained that, after the electricity market was deregulated, there were no federal laws governing competition among independent and established electric utilities. The established utilities took the position that they had both “the right and the duty” to provide adequate power to people in their coverage areas. Most state regulations simply required the utilities to base their decisions on how they would supply power to their customers on a “prudency” standard. Thus, when TECO and other emerging new merchant power suppliers sought to compete with the established utilities to provide power to the customer base, all the utilities had to do was deem this means of supplying power as not “prudent,” and they could then simply refuse to do business with the new market players. Various state regulatory hearings took place on these issues in Texas, Florida, and Arizona during the early 2000s, but the result in all these states was “a small amount of power going out to bid” from the utilities to the independent producers, primarily for political appeasement.

96. A former construction executive stated that TECO’s strategy for growth in the emerging unregulated power market was to have power available and displace the older technology with updated combined-cycle plants, and provide “peak power” at the highest prices. A former construction executive explained that power plant owners make the most
money during the “peak power” periods of mid-summer when demand and the price per megawatt are at their highest. This strategy, of course, required TECO to actually be able to access the power grids through which its energy was to flow.

97. For its Union power plant, TECO needed to secure access to the power grid controlled by Entergy Corporation (“Entergy”). Entergy is an integrated energy company engaged primarily in electric power production and retail distribution operations. The Entergy transmission system is comprised of more than 15,000 miles of transmission lines extending from the southeastern portion of Missouri to southern Louisiana and includes the western portion of Mississippi and southeastern portion of Texas. In 1998, Entergy was among the first companies to declare its intent to create an independent, incentive-driven transmission company to own and operate its transmission system.

98. For its Gila River power plant, TECO needed to secure access to the power grid controlled by Arizona Public Service (“APS”). APS is an affiliate of Pinnacle West Capital Corporation, which provides energy and energy related products and services to people and businesses throughout Arizona. APS generates, sells, and delivers electricity and serves more than 900,000 customers in Arizona. In addition, APS is the operator and co-owner of the Palo Verde Nuclear Generating Station, a primary source of electricity for the Southwest United States. A former TECO senior manager confirmed that APS, along with several other utilities that provided a significant amount of power to Arizona customers, controlled the power grid that Gila River needed to connect to in order to operate.

99. A former senior development consultant said this strategy did not work because Panda and TECO underestimated or disregarded the threat that their brand new
power plants posed to these established utility companies. She/he characterized the Panda-TECO power plants as “a shark in their pool.” In other words, Union and Gila River represented direct competition for established power plants that APS and Entergy owned and operated.

100. Along these lines, a former construction executive believed that Panda and TECO disregarded the issues related to the access of the plants to the local power grids or to officially secure the access rights from APS or Entergy before the projects got underway. Similarly, a former regulatory affairs manager confirmed that TECO faced severe problems in attempting to obtain power grid access because TECO was “building power plants in the utilities’ back yard, and they will do all they can to prevent access to the grid” to prevent competition with their own power plants.

101. A former TECO senior manager further stated that, when a power generation plant does not have any long-term service agreements to provide power to end user customers (which was the case with Gila River as discussed below), the utilities controlling the power grid that the plant must connect to have the upper hand in negotiating the terms of any transmission agreement with the plant.

102. A former construction executive revealed that TECO representatives dealing with Panda knew or should have known that there might be access problems, but did not properly pursue the issue because they were desperately trying to secure a foothold in the unregulated power market, and dispensed with TECO’S normal due diligence on the Panda projects. In fact, as stated above, TECO’s internal due diligence reports specifically stated that, at the inception of TECO’s involvement in the projects with Panda, the plants would not
be able to access the power grids controlled by Entergy and APS. Without such access, the plants could not attain commercial viability.

103. The Individual Defendants were keenly aware of TECO’s access problems. In addition to the initial due diligence reports, a former senior vice president stated that TECO retained independent consultants to evaluate the market for both the Union and Gila River facilities on a monthly and quarterly basis, and that this analysis included evaluation of access to nearby power grids. She/he stated that these market studies, with respect to the issue of grid access, contemplated both the structural feasibility of connecting up to the nearest grid, as well as an analysis of the ability to gain access rights to the grids from the public utility that owned or operated the grids. These regular reports continued to show that TECO faced significant difficulties obtaining access to the applicable power grids.

104. As discussed below, a former senior development consultant stated that securing transmission agreements with APS and Entergy was “a fight all the way along, and TECO got caca” from Entergy in particular and only secured a very short-term contract with APS.

(a) Access to Arizona Power Grid Controlled by APS

105. As the Gila River project got underway, a former senior vice president confirmed that TECO “encountered resistance from Arizona Public Service” regarding running power from the Gila River power plant through APS’ power grid. A former construction executive had heard that APS “got skittish” about giving TECO access to the power grid, and there was “a lot of wrangling” that ultimately cast substantial doubt on whether TECO would ever obtain the access that it had wanted. Similarly, a former Panda
senior project coordinator confirmed that the Arizona utility controlling the power grid tied to Gila River also created difficulties for TECO in obtaining access to the grid.

106. A former construction executive reported that a major factor affecting TECO’s inability to gain access to the power grid was that APS had already granted access rights to the nearby Palo Verde Nuclear Generation facility, a primary source of electricity for the Southwest United States that APS co-owned. As a result, APS strongly resisted TECO’s efforts because it did not want to allow a competitor to enter into its Phoenix markets and the other major power markets throughout the Southwestern United States that APS and its parent Pinnacle West Capital Corporation controlled. Consequently, APS took the position that TECO could not force it to allow access to its power grid or to allow TECO to “wheel” the power through the grid to another power market, leaving TECO with an enormous power plant capable of generating more than 2,000 megawatts of electricity – with nowhere for the electricity to go.

(b) Access to Entergy Power Grid

107. A former Panda senior project coordinator said TECO’s biggest problem with the Union power plant project was that it failed to secure any “LTSAs,” or long-term service agreements, with end user customers for the electricity that these plants could generate once the plants reached its “C.O.D.,” or commercial operations date (indeed, TECO wanted to avoid such contracts because of perceived accounting implications, as discussed below). She/he explained that LTSAs are necessary for a power plant owner to make money. For new merchant power plants like Union, she/he said that the owner ideally would want one or more LTSAs in place so that a couple of power units or blocks are running constantly to
supply power year round, which will generally allow the plant to break even on construction expenses. If a merchant power plant fails to secure LTSAs to permit power units to run continuously, “what you have is a billion dollar peaker plant,” which requires one or more units to be started up every time spot power is needed, and only involves generating a small amount of power for short term needs. In other words, a “peaker” plant operates only when demand for power is at its peak, for short-term periods, when the plants that usually supply the power cannot keep up with the demands of its customers. She/he indicated that construction project lenders would surely want to know whether the borrower had secured LTSAs before construction was complete in order to ensure that the loan would be paid off in a timely manner.

108. Because TECO could not secure sufficient LTSAs, TECO also had enormous difficulty obtaining access to the power grid owned and operated by Entergy. According to a former Panda senior project coordinator, “Entergy was squeezing [TECO]” over transmission rights for the power generated at the Union plant. She/he explained that, pursuant to its agreement with Panda, TECO was responsible for obtaining LTSAs. TECO’s inability to obtain LTSAs for Union meant that TECO had no bargaining power when it went to Entergy to negotiate transmission rights to run power from the Union plant to the Entergy grid. She/he confirmed that TECO’s only option for transmitting power from Union was through the Entergy grid because the plant physically tied into that grid, and so obtaining
Entergy’s approval to send power to the grid was imperative. She/he explained that Entergy had complete control over TECO and did things like rerouting power from other locations in order to fill up the grid and have no room for Union’s electricity output.

109. The inability to secure Entergy’s cooperation for access to its grid also delayed the performance guarantee testing on the Union plant, which involved transmission of power from the Union plant to the Entergy grid, because, according to a former Panda senior project coordinator, “we didn’t have anywhere to send it” (i.e., TECO had no end user customers). She/he said that “Entergy held all the cards” because, in the absence of a LTSA, either the transmission company or a utility company with an established end user

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3 A former Panda senior project coordinator explained that for power to be transmitted from the originating power plant to a power grid, there are actual switches that have to be activated on the grid itself before the grid can take on the power. The entity that owns or controls the grid – Entergy in the case of the Union plant – controls those switches.

4 A former Panda senior project coordinator described how before a power plant can be certified as a commercially operating plant, a series of tests on the major components of the plant and then on the overall plant must be successfully performed. These tests are generally referred to as “performance guarantee testing.” The purpose of performance guarantee testing is to ensure that every major piece of equipment used in the construction of the plant works properly. As a matter of course, each major component manufacturer, the EPC contractor (NEPCO/SNC-Lavalin) and the construction management contractor (Panda) have performance guarantees in their respective contracts that have to be met before the plant owner is required to sign off on the work as completed. Performance guarantee testing requires start-up and continuous operation of each individual power block (individual power generating units) at a pre-specified heat rate, and generation of a pre-specified amount of power for a pre-specified amount of time, followed by simultaneous operation of all power blocks for a set time period and at a set heat rate and megawatt volume. If any aspect of the testing does not meet the guaranteed specifications, the tests have to be re-run until the specifications are met.
customer base have to determine where the power can be delivered once it is in the grid since the power cannot be stored in the grid.

110. As a result of these access issues, a former regulatory affairs manager said that TECO had “legal people working to try and change the laws and make it possible for the independents to transmit power through their established grids.” In fact, according to a former senior development consultant, TECO aggressively lobbied state governments to secure access to the power grids from the controlling utilities. In addition to a cadre of employee lobbyists, TECO hired a lobbying firm in Arkansas comprised of former state governmental officials to assist with TECO’s lobbying efforts in Arkansas. As a result of these efforts, in or around mid-to-late 2000, TECO managed to get a meeting with Arkansas Governor Huckabee directly in order to try to persuade him to propose regulatory changes that would facilitate access to Entergy’s power grid in for the Union plant. However, despite TECO’s pleas, Governor Huckabee decided not to intervene or propose any new regulations to the state regulatory agency that would assist TECO and other emerging independent operators. Once this happened, a former senior development consultant said TECO “knew they were in trouble.”

111. According to a former Panda senior project coordinator, Entergy eventually agreed to provide access to its grid to run “test power” from each of the four power blocks at Union, but Entergy only paid TECO “test power prices” instead of the market price. She/he said that, until performance guarantee testing is completed successfully on a power block or “unit” at a power plant, the plant is not considered a commercially operating facility, and so purchasers are able to purchase the power for “test power” prices, which are a fraction of the
going market rate per megawatt. She/he also said that, during the time frame when the Union performance guarantee testing occurred (January through April 2003), test power prices were mostly around $49-$50 per megawatt, while market prices were around $200 per megawatt.

4. **TECO Fails to Secure Forward Contracts**

112. The key to profit for merchant energy power producers is the ability to buy fuel cheaply and sell electricity at higher prices. To do that, they must carefully weigh how much fuel to buy ahead of time. Therefore, it is critical for merchant power producers to enter into forward-contracts. Without contracts to supply electricity, merchant power plant operators, such as TECO, have no idea how much fuel to buy, or what price to negotiate to ensure profitability. Power generators that do not buy enough fuel ahead of time risk paying very high prices during volatile periods. In addition, merchant energy power producers must also take into consideration their ability to access power grids (such as the Entergy grid) when negotiating contracts to supply electricity. Without access to power grids, power producers cannot guarantee (or reasonably expect) delivery of power to potential customers, making it virtually impossible to negotiate sales. Independent generators must also know how much electricity to sell at fixed prices in long-term contracts. Lenders that finance new power plant construction often require long-term sales contracts even before a plant is built.

113. A former Panda senior executive involved in commodity transactions who worked closely with TECO during the Class Period, stated that at the time TECO and Panda entered into their joint venture, TECO had not yet developed its internal trading organization and infrastructure that TPGC would use to market the power generated by the projects. As a
result, Panda and TECO relied on Aquila, Inc. (“Aquila”), an energy trading and marketing company,5 to assist with efforts to find short-term and long-term power sales agreements during 2001 until approximately the first quarter of 2002.

114. A former Panda senior executive recalled that in April 2002, TPS began aggressively building its internal energy trading organization, and invested between $30 and $50 million to hire experienced power traders and design an infrastructure for its trading operations. According to her/him, as TPS did this, it pressured Panda to relinquish all control over selling both short-term and long-term power from Union and Gila River pursuant to the TPGC joint venture agreement. As TECO was working to develop its own trading arm, she/he stated that Panda was not confident in TECO’s ability to handle the mechanics involved with trading operations, due to TPS’ lack of prior experience in the trading business. As a result, Panda wanted to retain certain rights to trading records and reporting from TPS. For example, she/he stated that Panda wanted to receive daily trade reporting records on any short-term trades TPS entered into in order to ensure that TPS was not siphoning cash off of the projects for itself rather than for the partnership. TPS, however, did not want Panda to have any input into or access to any aspect of TPS’ trading operations. For these reasons, she/he stated that the negotiations over trading rights between TECO and Panda took several months.

5 Aquila operates electricity and natural gas distribution utilities, owns and operates power generation assets, and delivers energy through power grids. Aquila serves seven north Mid-Western states in the United States.
115. In late summer 2002, a former Panda senior executive attended a meeting with TECO senior management in Tampa, along with Panda’s top executives, Bob and Todd Carter, and CFO Jerry Thurman. Present at the meeting for TECO and TPS were Fagan, Gillette, General Counsel Sheila McDevitt, TPS President Ludwig, TPS’ Vice President of Finance Linda Miller and an executive vice president. The former Panda senior executive recalled that at the meeting, the parties went over the current status of construction at Union and Gila River, power sales agreement prospects, and TPS’ interest in taking over responsibility for power sales and other issues related to the projects. Following the meeting of the full group, Fagan, Gillette, and Bob and Tom Carter went to dinner. Following the dinner, the former Panda senior executive discussed with Ludwig that the decision had been made at the dinner to hand over power sales control to TPS. She/he confirmed this in a discussion with Bob Carter on the plane back to Texas from Tampa, when Carter said to her/him, “you don’t want this responsibility anyway.” She/he also stated that once TECO took control of the trading responsibility in late summer 2002, Gillette’s department gained total control over the accounting aspects for power sales agreements.

116. On top of trying to wrangle control over power sales from Panda, according to several confidential witnesses, TECO failed to secure anywhere near the amount of power sales agreements necessary to make the Union & Gila River plants commercially viable. Despite knowing this, TECO and the Individual Defendants never gave the Company’s shareholders an accurate picture of the Company’s woes. Further, even if the customers were ever obtained, the power grids necessary to move the electricity to the Company’s customers were never sufficiently accessible to the levels at which TECO could operate the
projects at full capacity, let alone a profit. In short, profits were dependent upon not only demand, but also on grid access. TECO had neither and failed to disclose its impossible situation to its shareholders.

117. Specifically, according to a former Panda senior executive, during 2001 and through approximately the third quarter of 2002, no long-term power sales agreements, referred to as “PSAs” or “tolling agreements,”\(^6\) for Union or Gila River were executed. She/he stated that TECO’s subsidiary, TPS, actually avoided signing PSAs or tolling agreements in a deliberate effort to stay away from agreements that would require FAS 133 accounting.\(^7\) The PSAs would require FAS 133 accounting because TECO would be required to report “mark-to-market” valuation adjustments and related gains and losses on power sales. Instead, she/he stated that TECO wanted to focus on obtaining “full

\(^6\) Tolling agreements are variations of PSAs, in which the power purchaser has responsibility to deliver the gas to the generating power plant in order to convert the gas to power. Tolling agreements are beneficial in that they help simplify the parties’ credit arrangements. In a PSA, both parties have to securitize respective performance obligations (through letters of credit) to insure they each receive what they bargained for, in the event the other party defaults.

\(^7\) Certain types of contracts are not subject to requirements of FAS 133 (which requirements mandate adjustments in the valuation of assets due to changes in fair value and could impact future earnings adversely) including what FAS 133 calls “normal purchases and normal sales.” FAS 133, 10b. A power purchase or sale agreement qualifies as a “normal purchase or normal sale” if all of the following conditions are met: (a) the term of the contract requires physical delivery of electricity rather than using a “net” settlement; (b) the agreement is a capacity contract; (c) the amount of electricity that would be sold under the contract involves quantities that can be sold by the entity in the normal course of business. FAS 133, 58b. Because the market could not handle the amount of megawatts indicated in the contract in the normal course of business, the contract had to be a forward contract and so it would not qualify for non-FAS 133 treatment.
requirements contracts” that would allow “load following,” and would have allowed TECO to avoid FAS 133 accounting requirements. These kinds of deals, however, were not available to TECO. A former Panda senior executive stated that entering into the smaller PSA contracts would have helped cover capital costs for the projects. She/he tried to explain to TPS representatives that “you can’t jam 2000 megawatts of power into a 200 megawatt market, and so you have to sell power forward.”

118. Similarly, a former TECO senior manager stated that, at the Gila River plant, no agreements to sell power emerged until around the time at which Gila River became operational in mid-2003, and that those agreements were only for small amounts of power at select times.

119. In addition, a former Panda senior executive stated that TECO had the opportunity to enter into PSAs during 2002, including one with Dynergy, Inc. (“Dynergy”) and another with Morgan Stanley. She/he stated that Panda was desperately trying to lock in deals in an effort to cover debt obligations. TECO, however, blocked all of these deals until it got control over the trading operations. TECO, of course, did not disclose to its shareholders its decision not to pursue long-term power contracts to specifically avoid disclosing losses, or the difficulty in obtaining other suitable arrangements. To the contrary,

8 Full requirements contracts are contracts to provide a party with all of its power needs at a set price or variable price range, and bind the purchasing party to pay a set amount regardless of whether it uses all the power. “Load following” is a method of operating a power plant to generate a varying amount of power depending on the load demand.

9 Dynergy provides electricity, natural gas, and natural gas liquids to markets and customers throughout the United States.
TECO consistently soft-pedaled the issue of power contracts, always telling investors that TECO was working diligently to sell as much of the power plants’ output as possible.

5. TECO’s Exposure to Enron’s Demise

120. As discussed above, TECO and Panda retained NEPCO, a subsidiary of Enron based in Seattle, Washington, to serve as the EPC contractor on the Union, Gila River, McAdams and Dell power plant projects. Upon completion of certain project milestones, TECO made payment to NEPCO (to the tune of hundreds of millions of dollars). The project contracts, which were guaranteed by Enron, expressly contemplated that NEPCO would use and pay for subcontractors and third party vendors to provide goods and services in connection with the construction of the power plant projects.

121. On several occasions throughout 2001, NEPCO notified TECO and Panda that it had attained project milestones, and requested that the corresponding milestone payments be made. As part of such notices and requests for payment, NEPCO certified that it would pay all subcontractors and vendors. A former TECO senior construction manager was responsible for approving NEPCO’s “Milestone Completion Reports,” which were submitted as a prerequisite to a milestone payment becoming due.

122. On October 16, 2001, an unprecedented accounting scandal began to erupt at Enron as it reported an enormous quarterly earnings loss and disclosed a $1.2 billion reduction in stock value. Defendants knew that the problems at Enron could have a devastating impact on TECO’s power business due to NEPCO’s role as the EPC contractor on all of TECO’s pending construction projects and the fact that Enron served as guarantor
for all of NEPCO’s liabilities. If the Enron scandal engulfed NEPCO, TECO’s power plant construction projects would face an uncertain future.

123. According to a former senior vice president, in November 2001, about three to five weeks before Enron filed for bankruptcy, she/he received a call from NEPCO’s President who disclosed that the milestone payments for the Union, Gila River, McAdams and Dell projects that TECO had made to NEPCO had been “swept” into Enron’s corporate bank accounts. In fact, during this conversation, she/he learned that Enron’s “normal mode of operation” had been to sweep the milestone payments into its corporate accounts and then pay NEPCO’s third party vendor invoices directly. A former senior manager of an Enron subsidiary and a former senior engineer corroborated that Enron had been sweeping the funds received by NEPCO into its general corporate accounts. According to a former senior manager of an Enron subsidiary, Enron knowingly engaged in these cash sweeps to make up for the numerous money-losing ventures it had undertaken.

124. According to a former senior vice president, within hours of receiving information about Enron’s cash sweeps, Fagan made a “panic” call to other TECO’s senior executives, including Gillette and Ludwig, to set up an emergency meeting. Shortly thereafter, Fagan convened a meeting of TECO’s senior executives where they discussed the effect of these cash sweeps and TECO’s options for completing construction of the various projects should NEPCO file for bankruptcy. A former senior engineer confirmed that immediately after the cash sweeps became known, there were several meetings among TECO management, including the Individual Defendants, in order to “rush to restructure the
projects” and determine actual expenses and revised cost of completion figures. She/he also revealed that TECO discussed measures designed to “help keep NEPCO afloat.”

125. TECO was terrified of being painted with the broad brush of the impact from Enron’s catastrophic fraud. As a result, at this initial meeting, TECO began to develop a scheme to distance itself from Enron to the greatest extent possible by downplaying its relationship to Enron (through NEPCO) and by representing to the market that the impact of Enron’s collapse was minimal.

126. Shortly after the meeting, Fagan instructed several of TECO’s senior executives to fly to NEPCO’s Seattle headquarters to meet with NEPCO and Panda representatives and to develop plans that would allow for the continued construction of the power plant projects. Further, a former senior vice president reported that accountants from TECO’s Internal Audit group and Panda also met at NEPCO’s offices to determine the extent of Enron’s cash sweeps.

127. In this regard, a former senior engineer and a former TECO senior manager reported that “NEPCO opened its books” to TECO. According to a former TECO senior manager, when TECO reviewed NEPCO’s books and records, it became glaringly apparent that NEPCO was not operating autonomously from Enron, as it purported to be, and was instead totally controlled by and immersed in Enron’s processes. In fact, she/he described how NEPCO did not even have its own bank accounts and that all of NEPCO’s cash was handled directly by Enron in its Houston headquarters.

128. As a result of this audit of NEPCO’s accounting books, TECO discovered that, of the approximately $1.13 billion that TECO had paid to NEPCO relating to milestone
payments for TECO’s four construction projects, only $778.4 million had been paid out by NEPCO, leaving $351.8 million in unpaid obligations for work already completed. A former senior vice president and a former senior engineer confirmed that the total amount that Enron had swept was, at a minimum “in excess of $200 million” and reached as high as “several hundred million dollars.”

129. NEPCO further informed TECO that, as a result of Enron’s financial crisis, NEPCO was unable to access the $351.8 million controlled by Enron to fulfill its obligations under the project contracts. A former senior manager of an Enron subsidiary confirmed that, as a result of these cash sweeps, NEPCO did not possess sufficient funds to finish its numerous construction jobs and, thus, could not pay its subcontractors, who would eventually stop working on projects. NEPCO assured TECO, however, that it did not intend to go bankrupt. However, a former senior vice president further reported that, at or around this time, NEPCO had about 10 different partially completed projects, but no working capital to continue with the construction.

130. Simply stated, TECO’s $351.8 million had disappeared into Enron’s financial black hole. This left TECO with no choice but to pay once again to fund NEPCO’s outstanding obligations to subcontractors and vendors or face aborting the projects. So, TECO paid twice for the same work.

131. On December 2, 2001, Enron filed for Chapter 11 bankruptcy under the weight of a massive accounting fraud. By this time, Defendants had been implementing their plan to minimize the impact of the Company’s relationship with NEPCO. A former vice president participated in developing strategy and resolving business, legal, and financial
issues throughout the Enron bankruptcy. She/he stated that she/he and others at TECO heard about the Enron bankruptcy before it happened and that they knew that there was a very high probability that Enron would go bankrupt.

132. From a construction standpoint, a former senior manager of an Enron subsidiary confirmed that, in light of Enron’s bankruptcy, Panda expressed concern that NEPCO would be unable to complete its work on the Union project due to financial viability issues. Similarly, a former TECO senior manager recalled that the collapse of Enron and its eventual bankruptcy caused a default under the NEPCO construction contracts with TECO because Enron was the guarantor of NEPCO’s obligations. TECO decided that, due to the status of the various construction projects, it was too risky to replace NEPCO as the EPC contractor.

133. Accordingly, as a result of numerous meetings, TECO agreed to permit NEPCO to continue to serve as the EPC contractor for the Union Gila River, McAdams and Dell projects, but, effective immediately, TECO would have to pay NEPCO’s onsite employees and subcontractors directly.

134. Prior to the Enron bankruptcy, a former TECO senior construction manager stated that TECO maintained only one employee onsite at the various projects. According to her/him, when Enron went bankrupt in December of 2001, TECO decided it needed a more visible onsite presence at all of the power plan construction sites where NEPCO served as the EPC. She/he explained that, despite NEPCO’s assurances, TECO’s was concerned that NEPCO’s precarious financial situation might cause it to simply walk away from the construction projects.
135. As a direct result of these concerns, a former TECO senior construction manager said that TECO moved several managers, including financial personnel, from TECO’s Tampa headquarters to the various construction sites and hired several construction contractors to stay informed about NEPCO’s performance.

136. A former senior engineer revealed that, at the McAdams site, TECO’s role expanded significantly as it took over responsibility for paying third party subcontractors, managing payroll for the 400-500 NEPCO employees onsite, and handling accounts receivable and accounts payable. In fact, according to her/him, all of NEPCO’s subcontracts and onsite equipment were “legally turned over to TECO right away.” Although NEPCO did retain some financial responsibility, TECO established a “very rigorous accounting and project monitoring” process for NEPCO, which included, *inter alia*, the opening of a local bank account.

137. Additionally, in or around January or February of 2002, TECO made the decision at the McAdams construction plant to have NEPCO cut back on personnel, slow down work on the project, and extend the schedule from a June 2003 targeted completion date to the end of 2003 instead. A former TECO senior construction manager said these directives, which came from her/his superiors, were made in order to spread TECO’s cash flow out as much as possible. As a result of these orders, a former TECO senior construction manager cut NEPCO’s onsite construction team from approximately 500 employees to 200 employees.

138. From a financial standpoint, TECO’s exposure to Enron was tremendous. According to a former senior vice president, through its investigation of NEPCO’s finances,
in addition to the cash sweeps of over $350 million, TECO learned that the cash payments it 
had made to NEPCO were in excess of NEPCO’s actual costs incurred on the project to date. 
Thus, in order to minimize the appearance of Enron’s devastation, TECO decided to take the 
very misleading position that its exposure to Enron’s cash sweeps was the difference 
between what TECO had paid NEPCO and NEPCO’s actual costs (i.e., NEPCO’s profits on 
the projects).

139. In reality, TECO’s exposure to Enron was materially more substantial than 
what TECO intended to publicly report. While the cash sweeps from Enron were in excess 
of $350 million, TECO had letters of credit to partially offset that amount. As a result, an 
internal analysis showed that the real impact on TECO was approximately $150 million. 
This analysis was contained in an internal document that was disseminated to the Individual 
Defendants and other senior executives occupying the 3rd floor of TECO’s Tampa, Florida 
headquarters.

140. Further, when TECO decided to go public with its version of details regarding 
its Enron exposure, there were several meetings, in which the Individual Defendants 
participated, to discuss whether to report the $150 million figure. A former vice president 
reported that, at these meetings, there was immense pressure from the Individual Defendants 
to make the number as low as possible. Ultimately, the Individual Defendants decided to 
report a substantially lower number to the public than $150 million. The Individual 
Defendants were specifically told be a peer who had also analyzed and determined the true 
impact of Enron that the number they chose to report to the public was wrong and should be 
significantly and materially higher.
141. Nonetheless, on December 7, 2001, TECO issued a press release purportedly to report its exposure to Enron’s bankruptcy. In this release, TECO stated that NEPCO’s parent had filed for bankruptcy, that it believed it had exposure totaling $3.5 million or less concerning trade payables and trading positions (on natural gas), and that the potential aggregate capital cost overrun for the four projects would be approximately $61 million. Thus, at a minimum, TECO reported losses stemming from Enron’s demise in an amount that was approximately $90 million less than what Defendants knew at the time of the press release was the real impact of Enron’s bankruptcy on TECO.

142. In the weeks and months following Enron’s bankruptcy, the Individual Defendants led numerous meetings of TECO’s management to discuss the Company’s various options for completing construction of the Union, Gila River, McAdams and Dell projects, including whether to continue to retain NEPCO as the EPC contractor. These meetings typically took place at TECO’s Tampa headquarters in either the executive conference room located adjacent to Fagan’s third floor office or one of TECO’s “board rooms,” depending on the number of participants attending the meetings. A former senior vice president added that, in addition to these meetings, Fagan was kept informed about developments regarding Enron’s bankruptcy and issues concerning NEPCO’s ability to continue as EPC contractor by Ludwig.

143. During these meetings and other communications, the Individual Defendants and other members of management continued to discuss whether NEPCO should be replaced as the EPC contractor. A former senior vice president reported that TECO’s senior management, with input from Panda, recommended to the Individual Defendants that
NEPCO continue to serve as EPC contractor for reasons of efficiency and cost-effectiveness. According to her/him, the Individual Defendants reviewed and approved of this strategy, and directed TECO to approach NEPCO about renegotiating the terms of their relationship. A former senior engineer explained that the McAdams contract was renegotiated after Enron declared bankruptcy from a “fixed price plus fee” contract to a “cost plus fee” contract. Under the new arrangement, TECO assumed the risk of loss for expenses exceeding the original budgeted amount.

144. In addition to the renegotiation of NEPCO’s contracts, TECO entered into discussions with the project lenders to resolve any defaults arising from Enron’s bankruptcy. As a result of these discussions, TECO agreed to replace Enron as the guarantor on the projects, thereby opening itself up to further financial risk should NEPCO walk away from the project.

145. Ultimately, in or around mid-2002, TECO replaced NEPCO with SNC-Lavalin, a Canadian construction company, which, in turn, hired on NEPCO’s employees who had been working on the four project sites.

6. **TECO’s Power Plant Projects Start to Crumble**

(a) **TECO’s TIE Loans to Panda**

146. As mentioned above, on September 25, 2000, the Company announced that it had made a $93 million “investment in the form of a loan” to Panda in connection with the TIE projects - two independent energy projects that Panda was then building in Texas called Guadalupe and Odessa. TECO’s investment in the TIE projects, in the form of a loan through 2002, had a potential 75% interest in the facilities from Panda. Specifically, the $93
million, late 2000 investment was supposed to net TPS 2,000 megawatts being developed by Panda. A former Panda senior executive stated that TECO’s security for the original TIE loan was a “call option” on Panda’s equity interest in Union and Gila River, in addition to the equity stake in the TIE projects. She/he stated that, in other words, the TIE loans were, in part, tied to the Union and Gila River joint venture. TECO failed to disclose, however, that under the terms of the transaction Panda had the right to walk away from the $93 million TIE loan and “put” enormous obligations to TECO if the TIE (i.e., Guadalupe & Odessa) projects did not turn out to be financially viable. In reality, TECO’s “security” carried massive liabilities.

147. By the fall of 2001, TECO had funded approximately the entire $93 million in loans to Panda to finance its equity in the TIE projects. However, the TIE projects were already in trouble at that time and Panda was about to default on the first interest payment to TECO. Consequently, a former construction executive understood that, during the Class Period, Panda could not satisfy its obligations to pay TECO money owed pursuant to the TIE power plant loans. By the time Panda was about to default on the TIE loan interest payments in the fall of 2001, TECO had already included the interest on the TIE loan in the Company’s analysis of its projected 2002 earnings. Because the TIE projects were certain to lose money, causing Panda to be unable to make its interest payment, TECO had to find a way to “help” Panda pay TECO the interest it needed to help it make its 2002 numbers and be able to “pay” a dividend.

148. As a result, in February 2002 TECO and Panda revised their joint venture agreement. A former Panda senior executive stated that the revision to the TPGC joint
venture agreement related to financing issues on the Union and Gila River projects, rather than to the commercial operations of the plant. She/he also stated that the February 2002 revision to the joint venture agreement was tied to additional money TECO loaned Panda for the TIE projects in February 2002. In short, instead of taking Panda’s interest in TIE (which TECO could have done), TECO decided to manipulate its earnings.

149. In order to accomplish this accounting sleight-of-hand, TECO did the following: (1) TECO loaned Panda an additional $45 million in February of 2002; and (2) TECO entered into an agreement with Panda that obligated TECO to purchase Panda’s interest in the Union and Gila River plants (described below) for $60 million. Panda used this agreement to obtain a revolving line of credit which it then used to pay TECO’s interest on the $135 million TIE loan, enabling TECO to successfully scheme the interest into its 2002 earnings instead of having to take a loss on Panda’s unpaid interest payment.

150. Then, suddenly, in the fall of 2003, Panda walked away from the unprofitable projects and “put” them squarely on TECO’s shoulders, forcing TECO to take the projects onto its own balance sheet, stop recognizing interest income from the loans and instead start recognizing the projects’ operating losses. A former construction executive believed that Panda walked away from the partnership agreement because “as the cost of the project went

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10 Around the same time Panda was about to default on its payment obligations on the TIE loan, a former Panda senior executive stated that the power market “spark spreads,” which is the difference between the price to purchase gas to generate power and the price that power sells for, severely declined. Despite the fact that TECO and the Individual Defendants knew the declining spark spreads further threatened the commercial viability of the Company’s projects, she/he stated that by mid-2002, TECO continued to commit more and more money to its merchant power business strategy and loaned more money to Panda.
up, Panda’s opportunity for any return diminished,” particularly given that “TECO had the lion’s share of the potential return.”

151. Panda’s default on the TIE loans was the specific event, according to a former Panda senior executive, that led to TECO’s buyout of Panda and the dissolution of the joint venture. When Panda forced TECO to take the projects, TECO was obligated to pay the $60 million. In effect, TECO paid itself the interest on the TIE loans and, very soon after, wrote off the $60 million when it began the process of handing over Union and Gila to the bankers that financed the projects, as discussed in more detail below.

(b) TECO Mothballs the McAdams and Dell Projects

152. In purchasing the McAdams plant, TECO expected that it could export the power that was produced to the Entergy power grid, and, as a result, sought to build out the plant sooner rather than later in order to minimize the cost to build and maximize the opportunities in the market.

153. Because TECO planned McAdams as a 100% merchant plant, it sought to sell power to both utilities and to industrial customers through its power trading group, TPS Power Marketing. A former senior engineer indicated that, from the inception of the project, TECO planned to secure participation agreements in addition to trading power from the McAdams plant.

154. A former senior engineer recalled that after about a year into the construction at McAdams (which began approximately in early 2001), TECO was “hit with trying to refinance the project” as well as the Dell and Frontera projects. In this respect, TECO had to put together new loan applications for each project. In connection with these loan
applications, the projects lenders, including Credit Lyonnais and a “Swiss bank,” requested updated market studies to assess market conditions and the demand for power from McAdams and Dell. According to her/him, a market analysis typically takes approximately 3-4 months to complete as the parties “have to argue about the assumptions, the data to be used, and the results” before reaching a consensus for the final version of the analysis.

155. For these particular loans, TECO retained PACE Global Energy Services (“PACE”) to conduct the market analysis, and the lenders chose R.W. Beck to oversee its effort. PACE’s updated market analysis concluded that a decline in demand forecasts, *dating back to the summer of 2001*, made the full megawatt capacity at McAdams and Dell unnecessary. In addition, TECO had conducted its own internal market analysis and, according to a former senior engineer, the pro forma numbers for capacity demand were lower than the original capacity numbers. She/he further stated that the analysis evaluated how much of the plants’ total capacity could be run, known as the “capacity factor,” which equated to a percentage of the total megawatt capacity plus how often the plant would run based on demand. She/he revealed that the internal analysis showed a “significant difference” from the original capacity factor figures, and that *the revised numbers indicated that the plants would operate at a loss*. Although TECO ultimately disclosed that the merchant power market had weakened, it never disclosed that it knew its Dell & McAdams plants would operate at a loss.

156. Shortly after the completion of the market analysis, the lenders “pulled the plug” on the financing for McAdams and Dell and denied the loan applications. Following such denials, TECO ultimately “mothballed” the McAdams and Dell construction projects in
September of 2002. At the time construction on the McAdams project was shut down, a former senior engineer reported that construction was 84% complete and the “commissioning” process, which involved the steps undertaken to start up the plant, was approximately 35% complete, according to a Weekly Project Status Report she/he had prepared. A former TECO senior construction manager confirmed that, at the time the decision was made to shut it down, the McAdams project was 85% complete, on schedule for completion, and under budget. In fact, the day before the cancellation was announced, she/he said that preparations were being made to fire up the turbines. She/he also stated that the McAdams project was shut down because TPS did not have any bank financing to cover its completion. Prior to closing down the McAdams plant, she/he stated that there was an effort onsite to put the major equipment at McAdams in storage.

157. In addition to these problems, the Company failed to disclose that, as part of the Dell and McAdams transaction, TECO had committed to purchase turbine generator sets from General Electric, through Panda, at an aggregate purchase price of approximately $176 million. In February 2002, TPS and Tampa Electric entered into an assignment and assumption agreement whereby Tampa Electric obtained TPS’ interests in the four combustion turbines to be purchased from General Electric, and assumed the corresponding liabilities and obligations. In the first quarter of 2003, TECO recorded a $104.1 million charge to cancel those turbine purchase commitments, representing $24.5 million at TPS and $79.6 million at Tampa Electric.
158. As of December 31, 2003, approximately $690 million had been invested in the Dell and McAdams plants and the Company estimated the construction cost to complete these projects at approximately $100 million.

(c) Panda Forces TECO to Buy Out Panda’s Interest in Union and Gila River

159. In June 2001, the Union & Gila River project closed on a bank financing of $2.175 billion, including $1.675 billion in five-year non-recourse debt and $500 million in equity bridge loans guaranteed by TECO. In TECO’s Form 10-Q for the quarter ended September 30, 2001, TECO described its financial obligations and guarantees for the Union and Gila River power plant projects:

In addition, TECO Energy is guaranteeing $500 million in fully-drawn equity bridge facilities for the construction of the Gila River and Union Power (formerly El Dorado) projects. Equity contributions from the joint venture, which TECO Energy has guaranteed to make will be required to fund additional construction projects of up to approximately $657 million for these projects. TECO Energy’s guarantees of the equity bridge loans and the additional equity contributions, and for certain additional undertakings relating to compliance by the Gila River project with certain environmental requirements, contain customary covenants, as well as two financial covenants. Under the guarantees, TECO Energy’s consolidated debt to capital (as defined in the guarantees) must not exceed 65% as of the end of each quarter, and its twelve months ended consolidated net earnings before certain charges (EBITDA) at the end of each quarter must be at least 3.0 times its consolidated adjusted interest expense on indebtedness (as such terms are defined in the guarantees). At Sept. 30, 2001, debt to capital was 61.6% and interest coverage was 4.3 times.

160. The equity bridge loans were repaid in 2002 and 2003. However, following the Enron bankruptcy in December 2001, the Company was required to replace NEPCO as the contractor and, when the project became unprofitable, Panda just walked away, forcing TPS to buy out Panda’s interest and recognize a pre-tax asset impairment charge of
approximately $1.2 billion in 2003. The Union & Gila River project assets, with a value as of June 30, 2004 of $2.177 billion and liabilities of $2.243 billion, are currently held on TECO’s books as assets for sale.\footnote{In TECO’s most recent annual report, filed with the SEC on March 15, 2005, the Company states that TPS’ (now TECO Wholesale Generation, Inc.) interest in the Union and Gila River project companies, is held by TPGC. TPGC was part of the TPS operating segment until designated as assets held for sale in December 2003. The Company states that: As of December 31, 2003, TECO management was committed to a plan to sell TECO Energy’s indirect ownership of the equity or net assets of TPGC through a sale and transfer agreement to the lenders of ownership of these plants. As of Dec. 31, 2004, management expects to complete the transfer of TPGC in 2005, and therefore the assets and liabilities of TPGC continue to be reported as held for sale. To facilitate the completion of this transaction, the lending group approved a pre-negotiated Chapter 11 bankruptcy case for the Union and Gila River project entities. TPGC’s results are accounted for as discontinued operations for all periods reported. Revenues from the discontinued operations of TPGC in 2004 and 2003 were $510.7 million and $319.4 million, respectively. TPGC had no revenues in 2002.}

161. Concerning the Union and Gila River projects, a former senior development consultant believed that TECO was “victim of the banks” and that TECO’s top executives were “what we called ‘pro forma drunk.’” She/he explained that the bankers behind the Union and Gila projects provided TECO’s top executives with pro forma future profit figures for the Union and Gila projects, which reflected very positive prospects for returns. The problem was that, according to her/him, the pro forma figures that banks provide when they are trying to broker a deal are routinely unrealistic and inflated, and so the actual results were nowhere close to these pro forma estimates.
162. Thus, seduced by the prospects of easy money, TECO “was remiss on its due
diligence” on the Union and Gila River projects. As a result, a former senior development
consultant commented that TECO “paid too much” to buy in to the Union and Gila projects
based on the fact that the margins were “too skinny,” and the projected level of profit “kept
going down,” such that “it was implied by a whole lot of people that [TECO] overpaid for
them.”

163. In or about early 2003, Panda made the decision to opt out of its partnership
agreement with TPS and walk away from the Union and Gila River projects. A former
senior vice president understood that Panda opted out of the partnership agreement because it
recognized that the opportunity for a timely financial return had clearly ended, and Panda
decided to focus its energies on other projects with a greater short-term financial return
prospects. Commenting on Panda’s ability to “put” its obligations to TECO, a high-ranking
TECO vice president stated that Panda’s ability to do that was in the parties’ development
agreement and that TECO “knew it from day one” that it could get stuck with the projects
and the TIE projects.

164. As a result of Panda’s decision to opt out of the partnership agreement, TECO
was forced by Panda to buy out Panda’s interest in the Union and Gila River projects. For
example, a former TECO senior construction manager stated that Panda simply walked away
from the Gila River project and that TECO was forced to buy its interest out. She/he recalled
that the buyout timing was around late spring or early summer of 2003, but that it had been
discussed as a possibility a month or so earlier. TECO did not announce its plans to buy out
Panda’s 50% interest in TPGC until April 11, 2003.
165. From an operational standpoint, TECO took over the responsibility to oversee construction of the plants, but retained Panda to continue in the role of Onsite Construction Manager because TECO did not have adequate staff to take over the construction oversight management role. In fact, a former TECO senior construction manager reported that TECO signed a contract with Panda to continue in that role after the buyout.

166. During this time period, the Panda employees reported directly to TECO’s onsite representative, rather than to Panda’s corporate office. Further, TECO established a timetable for downsizing the number of Panda representatives onsite as the projects moved further toward completion.

DEFENDANTS’ FALSE AND MISLEADING STATEMENTS DURING THE CLASS PERIOD

167. The Class Period begins on October 30, 2001. On that date, TECO issued a press release entitled “TECO Energy Updates Earnings Outlook for 2002 and Beyond for Investors,” which stated in relevant part:

TECO Energy Chairman, President and CEO Robert Fagan said, “TECO Energy is committed to 10 percent average annual earnings growth over the long term, despite the fact that economic and energy market conditions will make 2002 a challenging year. Even so, I see TECO Energy as different from many others in the current environment. We expect good growth in our regulated businesses in Florida, we expect improved results at TECO Power Services and in our portfolio of other unregulated businesses, we see the opportunity to deliver real earnings growth of 5 to 10 percent next year.”

“The year 2002 will be a transition year for us, as we focus on construction of major generating projects and bring them into commercial service. The year 2003 should be a breakout year for us with the commercial operation of the four major power plants that TECO Power Services is now building, and the first phase of the Bayside repowering coming on line,” added Fagan.

* * *

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TECO Power Services expects to produce significant growth next year from a complete year of operation of the full capacity of the Commonwealth Chesapeake Power Station in Virginia, the Frontera Power Station in Texas, and the initial operations of the first two phases of the Union Power Station in Arkansas late in the year.

In 2003, TECO Energy expects double digit growth primarily from ... the major new generating projects entering service in the first half of the year at TECO Power Services.

168. On November 14, 2001, the Company filed its interim quarterly financial report on Form 10-Q for the quarter ending September 30, 2001. The financial results reported in the 10-Q were substantially similar to those reported in the Company’s October 30, 2001 press release. The November 14, 2001 10-Q stated, in part:

TECO Energy and its subsidiaries had $197 million of guarantees and letters of credit in place primarily to support operations and debt service requirements for various TPS projects and other subsidiary operations. TECO Energy has also guaranteed certain construction payments for TPS projects totaling $483 million, however exposure under these guarantees has been reduced to $171 million as construction on the projects has progressed ... In addition, TECO Energy is guaranteeing $500 million in fully-drawn equity bridge facilities for the construction of the Gila River and Union Power (formerly El Dorado) projects. Equity contributions from the joint venture, which TECO Energy has guaranteed to make will be required to fund additional construction costs of up to approximately $657 million for these projects. TECO Energy’s guarantees of the equity bridge loans and the additional equity contributions, and for certain additional undertakings relating to compliance by the Gila River project with certain environmental requirements, contain customary covenants, as well as two financial covenants. Under the guarantees, TECO Energy’s consolidated debt to capital (as defined in the guarantees) must not exceed 65% as of the end of each quarter, and its twelve months ended consolidated net earnings before certain charges (EBITDA) at the end of each quarter must be at least 3.0 times its consolidated adjusted interest expense on indebtedness (as such terms are defined in the guarantees). At Sept. 30, 2001, debt to capital was 61.6% and interest coverage was 4.3 times.

169. The statements referenced in ¶¶167 through 168 were each materially false and misleading when made as they misrepresented and/or omitted adverse facts which then
existed and disclosure of which was necessary to make the statements not false and/or misleading. The true facts, which were then known to each of the defendants, based upon their access to and review of internal TECO data, as well as their direct involvement in TECO’s merchant power plant projects, were:

- TECO has abandoned its prior business model and had exponentially increased its risk by attempting to transform itself into a major player in the merchant power market while concealing its change in fundamental philosophy from its shareholders.

- TECO’s potential liability for the power plant projects was materially greater than the amounts identified in the guarantees it disclosed. TECO was literally at the mercy of Panda because, at Panda’s discretion, TECO could be forced to bear the entire cost of the power plant projects, causing the Company’s off-balance sheet debt to come crashing down on TECO’s finances and stock price, which is exactly what ultimately happened.

- TECO and the Individual Defendants knew that Panda was in precarious financial condition since the time TECO entered into its relationship with the struggling, privately held company. Panda’s financial problems finally caused Panda to “put” its debt and liabilities to TECO, overloading the Company’s own debt balances and triggering financial covenants in the Company’s own debt instruments.

- TECO’s Gila River and Union projects lacked transmission capacity and would not have access to power grids in the areas in which the plants were located. Thus, while Gila River and Union’s theoretical output capacity was a combined 4,500 megawatts, the reality was that the power had nowhere to go. Further, similar transmission capacity problems plagued TECO’s Dell and McAdams power plant projects.

- TECO failed to obtain sufficient contracts to sell what energy its plants could produce, such that TECO was not even able to cover the costs of running the plants, let alone turn a profit.

- TECO’s failure to obtain long-term contracts to sell its energy contributed to its inability to obtain sufficient grid access.

- The combination of a shortfall of long-term contracts and lack of grid access meant that TECO’s financial picture was materially less promising than TECO said it was.
Because of Panda’s financial condition, TECO’s inability to access power grids, and the inability to secure contracts for the plants’ electrical output, there was, therefore, a strong likelihood that the projects would be “put” to TECO, causing its debt levels to rise to dangerously high levels, exposing the Company to ratings downgrades that would trigger covenants in financial commitments it had with its venture partners and with its financiers.

There was an extremely high likelihood that TECO’s merchant power plant projects would put the Company’s dividend at risk, and that dividend cuts would become inevitable.

170. In late 2001, shortly after Enron’s unprecedented and absolutely devastating accounting scandal began to erupt as it reported an enormous quarterly earnings loss and disclosed a $1.2 billion reduction in stock value, Enron shocked the market again by revealing that it would incur losses of at least $1 billion and would restate its financial results for 1997, 1998, 1999, 2000, and the first two quarters of 2001, to correct errors that inflated Enron’s net income by $591 million. The impact of this restatement was enormous and Enron’s stock dropped 91%. Soon after, Dynergy’s attempted acquisition of Enron fell through, Enron’s debt was downgraded to junk bond status, and its stock dropped to just $0.26 per share. On December 2, 2001, Enron sought protections under the federal bankruptcy laws and filed for Chapter 11.

171. On December 3, 2001, The Wall Street Transcript published excerpts from its interview with Fagan. During the interview, Fagan smoothly discussed TECO’s headlong foray into the merchant power market to make it appear to unsuspecting shareholders that TECO’s risk was minimal and that TECO was well-positioned for success:

We have about 6,000 megawatts outside of Florida, and those are the plants that are in construction and will be coming into operation late next year. The biggest thing we can do at this time is to secure our customers for the output from those plants. *Those plants are being built in markets that have high*
growth rates and have the need for additional capacity. We’re positioning ourselves through a number of long-term contracts, as well as intermediate and short-term contracts, to take advantage of those markets. So what we’re looking to do now is place the power from those plants that are under construction. To do that, we rely upon contracts with some outside sources, but we’re also building our marketing group internally, which will have the ability to not only place long-term contracts for the output from those plants, but also trade in day-to-day markets around those plants.

172. The statements by Fagan referenced in ¶171 were each materially false and misleading when made as they misrepresented and/or omitted adverse facts which then existed and disclosure of which was necessary to make the statements not false and/or misleading. The true facts, which were then known to each of the defendants, including Fagan, based upon their access to and review of internal TECO data, as well as their direct involvement in TECO’s merchant power plant projects, were:

- TECO absolutely was not positioning itself “though a number of long-term contracts, as well as intermediate and short-term contracts, to take advantage” of the merchant power markets outside of Florida.

- To the contrary, as detailed by several former insiders, TECO specifically avoided entering into the contracts described by Fagan because of the impact those contracts would have on TECO’s finances if properly accounted for under FAS 133 (i.e., the Company would not be able to hide the tremendous exposure it was facing).

- TECO’s Gila River and Union projects lacked transmission capacity and would not have access to power grids in the areas in which the plants were located. Thus, while Gila River and Union’s theoretical output capacity was a combined 4,500 megawatts, the reality was that the power had nowhere to go. Further, similar transmission capacity problems plagued TECO’s Dell and McAdams power plant projects.

- TECO failed to obtain sufficient contracts to sell what energy its plants could produce, such that TECO was not even able to cover the costs of running the plants, let alone turn a profit.

- TECO’s failure to obtain long-term contracts to sell its energy contributed to its inability to obtain sufficient grid access.
The combination of a shortfall of long-term contracts and lack of grid access meant that TECO’s financial picture was materially less promising than TECO said it was.

Because of Panda’s financial condition, TECO’s inability to access power grids, and the inability to secure contracts for the plants’ electrical output, there was, therefore, a strong likelihood that the projects would be “put” to TECO, causing its debt levels to rise to dangerously high levels, exposing the Company to ratings downgrades that would trigger covenants in financial commitments it had with its venture partners and with its financiers.


TECO Energy, Inc. today reported on its exposure relating to the Enron Corp. bankruptcy filing. TECO Energy believes it has exposures in operations from trade payables and other trading positions due to the Enron bankruptcy totaling $3.5 million or less after tax at TECO Power Services (TPS), Peoples Gas System and its new gas marketing subsidiary, Prior Energy. The effect of these exposures is not material and is not expected to impact net income in 2001.

The Enron subsidiary NEPCO is currently constructing four merchant power stations for TPS. Earlier today, it was reported that Enron Engineering and Operational Services (EEOS), formerly known as Enron Engineering and Construction Company, has filed for bankruptcy. This entity is NEPCO’s parent, however NEPCO has not filed for bankruptcy, and has told TPS that it has no plans to do so. EEOS has no connection with the TPS projects.

Two of the NEPCO projects, Union Power and Gila River, which are sponsored by a joint venture of TECO Energy and Panda, have financing in place with a syndicate of banks. The other two projects, Dell and McAdams, are owned by TPS and were in the process of being financed. NEPCO is continuing its work to build these power plants, and currently all four projects are ahead of schedule and on budget.

As part of Enron’s centralized cash management procedure, NEPCO’s cash was swept by Enron before being applied to pay project costs. As a result of these sweeps, net of NEPCO profit and contingency amounts, there appears to be a potential aggregate capital cost overrun for the four projects of approximately $61 million. Because these increased costs are well within the contingency amounts included as part of the original estimated project costs
of $3.4 billion, TPS does not expect the total capital costs to exceed the previously disclosed estimated costs for these projects. Additionally, TPS is evaluating its rights to recover from Enron.

TPS and Panda have reached a series of agreements with NEPCO for the projects. These agreements provide for the construction of the four plants to continue on schedule, and within the estimated total project cost amounts. These revisions allow TPS to make direct payments to subcontractors and suppliers, allow for no profit or markup to NEPCO and call for 10 percent cash retainage on all future payments to NEPCO.

The bankruptcy of Enron, as guarantor under the construction contracts, permits the project lenders to stop funding construction unless the condition is cured or waived. TPS and Panda are working with the project lenders to obtain the necessary approvals to permit continued funding, and resolution is expected shortly.

The uncertainties arising from the Enron bankruptcy have also delayed TPS’ ability to complete a proposed multi-project financing for the Dell and McAdams projects and the Frontera Power Station, which is in operation. TPS is continuing to fund construction of the Dell and McAdams projects with equity contributions and will seek to finance them as well as Frontera in the future.

174. Commenting on the Company’s exposure to Enron, Mark Kane, the Company’s Director of Investor Relations, said that TECO expected only minimal impact on earnings from its exposure to Enron and that “[w]e’ve actually managed this process in a way that is transparent to investors.”

175. The statements referenced in ¶¶173 through 174 were each materially false and misleading when made as they misrepresented and/or omitted adverse facts which then existed and disclosure of which was necessary to make the statements not false and/or misleading. The true facts, which were then known to each of the defendants, based upon their access to and review of internal TECO data, as well as their direct involvement in TECO’s merchant power plant projects, were:
TECO’s true exposure to Enron’s bankruptcy was indeed material. Rather than the approximately $60 million the Company did disclose, TECO faced approximately $150 million in Enron exposure, $90 million more than the Company reported to the public.

The Company was not being “transparent” with investors – the only transparency was the Company’s misrepresentations and omissions.

Panda’s financial frailty and ability to “put” its financial obligations on to TECO’s balance sheet left TECO particularly vulnerable, and that vulnerability was magnified as a result of the Enron bankruptcy. If the project lenders stopped funding construction of the projections, Panda could easily then walk away and leave TECO responsible for the entire project debt.

When TECO reviewed NEPCO’s finances after Enron declared bankruptcy, it was glaringly apparent that NEPCO was totally controlled by and was not operating autonomously from Enron. Despite this, TECO stressed that only Enron, not NEPCO, had declared bankruptcy in a concerted effort to mislead investors into thinking TECO would not be impacted by Enron’s implosion.

TECO knew there was a high likelihood that NEPCO would become unable to continue performing its duties for the construction projects and simply walk away from the projects, leaving TECO unable to continue their construction.


TECO Energy, Inc. today reported its 2001 financial results and provided updated information on its 2002 outlook, its capital spending plans and the status of the bank financing for the construction of two power plants for TECO Power Services (TPS).

Financial Results: 2001 Earnings Increase 14 percent

TECO Energy’s full-year 2001 earnings per share rose 14 percent to $2.26 per share from $1.99 per share for 2000. Fourth quarter earnings increased 2 percent to $0.47 per share from $0.46 per share in 2000.
Full-year 2001 net income was $303.7 million, up 21 percent compared with 2000’s net income of $250.9 million. Net income for the quarter was $64.8 million, 12 percent higher than the $57.8 million recorded in the 2000 period. Full-year 2001 revenues rose 15 percent to more than $2.6 billion from $2.3 billion last year.

TECO Energy Chairman and CEO Robert Fagan said, “TECO Energy had another great year in 2001. In April, we committed to delivering 15 percent earnings-per-share growth for the year, and we remained committed to that target even in the face of a slowdown in the national economy and lower energy prices. By the end of the year, we had essentially delivered the growth we had projected earlier in the year, achieving record revenues and net income. This is a major accomplishment for all of the TECO Energy companies.”

“I see 2002 as a transition year for TECO Energy while we continue the construction of major TPS generating projects expected to come on line and add to earnings in 2003. For 2002, we are targeting earnings-per-share growth of 5 percent or more. Unlike utilities in other areas of the country, we expect continued growth in our regulated electric and gas operations in Florida. We also expect growth from our diversified portfolio of unregulated companies. Our mix of businesses allows our company to grow during time periods when others are not,” Fagan added.

As to financing effects resulting from Enron’s bankruptcy, the press release stated that:

Status Of NEPCO Contracts and Bank Financing:

As previously reported, an Enron subsidiary, NEPCO, is currently serving as the construction contractor for four power stations in which TPS has interests. Two of the projects for which NEPCO is the contractor have financing in place with a syndicate of banks. These projects are the Union and Gila River projects, which are sponsored by a joint venture of TECO Energy and Panda Energy International, Inc. Because Enron had guaranteed NEPCO’s obligations under the construction contracts, the bankruptcy of Enron permitted the project lenders to stop funding construction costs for the Union Power and Gila River projects unless the condition is cured or waived.

TPS and Panda have reached an understanding with the lead project lenders with respect to submittal of a plan to the syndicate banks to remedy the situation and resume project funding. Indications from the remaining syndicate banks regarding the proposed plan are positive, and approval is expected shortly. The plan involves TECO Energy replacing Enron as the
guarantor of certain of NEPCO’s obligations under the construction contracts for these two projects, including payment by the company of any project cost overruns (currently estimated at $63 million, against which TECO Energy could offset any of the unused construction contingency amount remaining after completion of construction).

Funding will resume upon final bank approval at the previously agreed upon 60/40 ratio of non-recourse debt to project equity, except for the acceleration of $200 million of project equity contributions to mid-year 2002. As a result, the complete project equity commitment of $1.12 billion would be expected by October 2002 rather than the originally planned mid-2003 date.

TPS and Panda have requested the required approval from the project lenders on January 11, 2002. In the event that bank approval is not received, TPS and Panda would have until January 31, 2002 to remedy the situation by providing a suitable replacement obligor.

The other two projects, Dell and McAdams, are owned by TPS and were in the process of being financed. Financing activities for these projects will resume upon completion of the activities required to resume funding for the Union and Gila River projects.

Revised Capital Expenditure Forecast:

In light of the accelerated equity commitments for the Union and Gila River projects under the bank financing plan and the capital requirements for committed regulated and unregulated projects, the company is exploring various options to strengthen its balance sheet. As a first step, the company has reduced its capital expenditure forecast for 2002 through 2004 by about $700 million primarily by delaying for an extended period generation projects that are not yet under construction for TPS and Tampa Electric, including the recently announced Bayside Units 3 and 4 repowering project. Resumption of work on those projects will be evaluated periodically as market conditions evolve.

The total reduction in 2002 of $320 million, more than offsets the effect of accelerating equity commitments at the Union and Gila River projects under the bank financing plan. The majority of the reduction in capital expenditures occurs in 2003, when expenditures are $280 million lower than forecast in October 2001. The 2004 reduction is $105 million.

* * *

External Financing Requirements:
The revised capital expenditures have reduced the amount of external financing expected to be required by the company. The company’s previous forecast for external financing needs for the 2001 through 2004 period was $2.3 billion. The revised forecast for external financing for the same period is less than $1.6 billion. The company had previously indicated that it would fund new external financing needs with 50 percent debt and 50 percent equity, but currently expects the funding to be more heavily weighted with equity. The company expects that by the end of 2002 it will have issued approximately half of the anticipated $1.6 billion 2001 through 2004 financing needs in the form of common equity and mandatorily convertible securities, including the $325 million of common equity through two offerings in 2001. The company is proceeding with its plans to issue mandatorily convertible securities in early 2002. In addition, the company plans to issue additional equity in the 2003 and 2004 period to further strengthen its balance sheet.

The reduction in capital expenditures and the future issuance of additional equity is a part of TECO Energy’s overall plan to strengthen its balance sheet and remain a strong investment grade credit.

178. The statements referenced in ¶¶176 through 177 were each materially false and misleading when made as they misrepresented and/or omitted adverse facts which then existed and disclosure of which was necessary to make the statements not false and/or misleading. The true facts, which were then known to each of the defendants, based upon their access to and review of internal TECO data, as well as their direct involvement in TECO’s merchant power plant projects, were:

- In order to spread its cash flow out as much as possible, TECO instructed NEPCO to cut back on personnel at the McAdams project site, reducing the number of employees on NEPCO’s onsite construction team from approximately 500 employees to 200 employees.

- TECO’s potential liability for the power plant projects was materially greater than the amounts identified in the guarantees it disclosed. TECO was literally at the mercy of Panda because, at Panda’s discretion, TECO could be forced to bear the entire cost of the power plant projects, causing the Company’s off-balance sheet debt to come crashing down on TECO’s finances and stock price, which is exactly what ultimately happened.
• TECO and the Individual Defendants knew that Panda was in precarious financial condition since the time TECO entered into its relationship with the struggling, privately held company. Panda’s financial problems finally caused Panda to “put” its debt and liabilities to TECO, overloading the Company’s own debt balances and triggering financial covenants in the Company’s own debt instruments.

• TECO’s Gila River and Union projects lacked transmission capacity and would not have access to power grids in the areas in which the plants were located. Thus, while Gila River and Union’s theoretical output capacity was a combined 4,500 megawatts, the reality was that the power had nowhere to go. Further, similar transmission capacity problems plagued TECO’s Dell and McAdams power plant projects.

• TECO failed to obtain sufficient contracts to sell what energy its plants could produce, such that TECO was not even able to cover the costs of running the plants, let alone turn a profit.

• TECO’s failure to obtain long-term contracts to sell its energy contributed to its inability to obtain sufficient grid access.

• The combination of a shortfall of long-term contracts and lack of grid access meant that TECO’s financial picture was materially less promising than TECO said it was.

• Because of Panda’s financial condition, TECO’s inability to access power grids, and the inability to secure contracts for the plants’ electrical output, there was, therefore, a strong likelihood that the projects would be “put” to TECO, causing its debt levels to rise to dangerously high levels, exposing the Company to ratings downgrades that would trigger covenants in financial commitments it had with its venture partners and with its financiers.

• There was an extremely high likelihood that TECO’s merchant power plant projects would put the Company’s dividend at risk, and that dividend cuts would become inevitable.

179. On January 9, 2002, the Company issued a press release announcing that it had entered into an underwriting agreement with Goldman Sachs to sell 16 million mandatorily convertible securities in the form of 9.5% equity security units at $25 per unit for $400 million in proceeds. On January 11, 2002, the Company filed a Prospectus
Supplement relating to the offering of the 9.5% Adjustable Conversion-Rate Equity Security Units. In this filing, the Company emphasized that it was “in the process of transforming from a predominantly regulated energy company to one that is predominantly operating in deregulated competitive markets” and that its “growth strategy” focused on an “increase TECO Power Services’ portfolio of quality projects, particularly in the high growth areas of the United States’ power market, to become a leading generation company positioned to take advantage of energy market deregulation.”

180. The Company further discussed its exposure to the recent Enron bankruptcy, repeating earlier statements and adding:

. . . To date, NEPCO has continued construction and engineering work on these power plants and currently the construction of all four plants is on schedule and on budget. If NEPCO had to be replaced as contractor, it is likely that there would be delays in the project schedules and substantial additional project costs, including payment of added fees to a new contractor. A new contractor would also have to be reasonably satisfactory to the project lenders for the Union Power and Gila River projects to avoid a default.

Enron’s bankruptcy permitted the project lenders to stop funding construction costs for the Union Power and Gila River Projects until the condition is cured or waived. TPS and Panda have reached an understanding with the lead project lenders with respect to the submission of a plan to the project lenders to remedy the situation and permit continued project funding. The plan involves our becoming guarantor of NEPCO’s payment and performance obligations under the construction contracts for these two projects, including payment by us of any project cost overruns (currently estimated at $63 million, against which we could offset any unused construction contingency amount remaining after completion of construction). The plan also contemplates our replacing the letter of credit furnished by Enron that has been drawn upon and acceleration of $300 million of our project equity contributions to mid-year 2000, with the result that our total project equity commitment of $1.12 billion would be expected by October 2002 rather than mid 2003 as originally planned. We have requested the required approval of the plan from the project lenders.
While we expect a favorable response from the project lenders, we cannot assure you that we will obtain the required lender approval. If we do not, we have until January 31, 2002 to remedy the situation and avoid a default by providing a replacement obligor for Enron under its guaranty of the contractor's obligations reasonably satisfactory to the project lenders, together with a letter of credit or other collateralization to replace the Enron letter of credit.

The uncertainties arising from Enron’s bankruptcy also have delayed completion of a proposed multi-project financing for construction of the Dell and McAdams projects and for the Frontera Power Station which is in operation. TPS is continuing to fund construction of the Dell and McAdams projects with equity contributions and will seek to finance them and the Frontera project in the future.

181. Further, the Company purported to discuss some of the risks related to operating in the merchant power market:

TECO Power Services is currently operating, developing, constructing and investing in merchant power plants. A merchant plant sells power based on market conditions at the time of sale, so there can be no certainty at present about the amount or timing of revenue that may be received from power sales from operating plants or about the differential between the cost of operations (in particular, natural gas prices) and merchant power sales revenue. Our forecast assumes that TECO Power Services will avoid losses associated with these risks by building in well-established markets that enables TECO Power Services to use established hedging mechanisms, hiring an experienced, investment-grade power marketer, avoiding selling short and entering into non-energy related sales to offset potential operational risks and that TECO Power Services will receive forecasted prices from its merchant power plants. Changes in market conditions, increases in project costs or inability to obtain financing on satisfactory terms could result in project delays, reduced returns on investment or efforts to reduce our ownership interests and corresponding commitments.

182. The statements referenced in ¶¶179 through 181 were each materially false and misleading when made as they misrepresented and/or omitted adverse facts which then existed and disclosure of which was necessary to make the statements not false and/or misleading. The true facts, which were then known to each of the defendants, based upon
their access to and review of internal TECO data, as well as their direct involvement in TECO’s merchant power plant projects, were:

- TECO’s true exposure to Enron’s bankruptcy was indeed material. Rather than the approximately $60 million the Company did disclose, TECO faced approximately $150 million in Enron exposure, $90 million more than the Company reported to the public.

- TECO had virtually no transmission access from its power plant projects, making it impossible for the Company to “avoid losses” associated with market risk.

- TECO’s own due diligence informed defendants that TECO could not “avoid losses” with its merchant power plants because TECO would not have access to power grids; in short, there was no where to send the power generated by the plants.

- TECO’s potential liability for the power plant projects was materially greater than the amounts identified in the guarantees it disclosed. TECO was literally at the mercy of Panda because, at Panda’s discretion, TECO could be forced to bear the entire cost of the power plant projects, causing the Company’s off-balance sheet debt to come crashing down on TECO’s finances and stock price.

- TECO and the Individual Defendants knew that Panda was in precarious financial condition since the time TECO entered into its relationship with the struggling, privately held company. Panda’s financial problems finally caused Panda to “put” its debt and liabilities to TECO, overloading the Company’s own debt balances and triggering financial covenants in the Company’s own debt instruments.

- TECO failed to obtain sufficient contracts to sell what energy its plants could produce, such that TECO was not even able to cover the costs of running the plants, let alone turn a profit.

- TECO’s failure to obtain long-term contracts to sell its energy contributed to its inability to obtain sufficient grid access.

- The combination of a shortfall of long-term contracts and lack of grid access meant that TECO’s financial picture was materially less promising than TECO said it was.
Because of Panda’s financial condition, TECO’s inability to access power grids, and the inability to secure contracts for the plants’ electrical output, there was, therefore, a strong likelihood that the projects would be “put” to TECO, causing its debt levels to rise to dangerously high levels, exposing the Company to ratings downgrades that would trigger covenants in financial commitments it had with its venture partners and with its financiers.

There was an extremely high likelihood that TECO’s merchant power plant projects would put the Company’s dividend at risk, and that dividend cuts would become inevitable.


TECO Power Services Corporation and Panda Energy International, Inc. today announced that they have resolved all outstanding issues related to the $1.6-billion, five-year non-recourse bank financing for the construction of the two largest independent power projects in the nation, and that funding has resumed.

NEPCO, a subsidiary of Enron Corp., is the engineering, procurement and construction (EPC) contractor for the Union and Gila River projects. Because Enron had guaranteed NEPCO’s obligations under the construction contracts, the bankruptcy of Enron permitted the project lenders to stop funding construction costs for the two projects until the condition was cured or waived.

To resolve the issue, TECO Energy replaced Enron as the guarantor of certain of NEPCO’s obligations under the construction contracts for these two projects, including payment by the company of any project cost overruns, which are currently estimated at $63 million. This amount could be offset by unused construction contingency upon the completion of construction.

NEPCO is also serving as EPC contractor for two projects wholly owned by TECO Power Services, the Dell and McAdams power stations. The company has now resumed its activities to obtain financing for those projects.

184. The statements referenced in ¶183 were each materially false and misleading when made as they misrepresented and/or omitted adverse facts which then existed and
disclosure of which was necessary to make the statements not false and/or misleading. The true facts, which were then known to each of the defendants, based upon their access to and review of internal TECO data, as well as their direct involvement in TECO’s merchant power plant projects, were:

- TECO’s true exposure to Enron’s bankruptcy was indeed material. Rather than the approximately $60 million the Company did disclose, TECO faced approximately $150 million in Enron exposure, $90 million more than the Company reported to the public.

- When TECO reviewed NEPCO’s finances after Enron declared bankruptcy, it was glaringly apparent that NEPCO was totally controlled by and was not operating autonomously from Enron. Despite this, TECO stressed that only Enron, not NEPCO, had declared bankruptcy in a concerted effort to mislead investors into thinking TECO would not be impacted by Enron’s implosion.

- TECO knew there was a high likelihood that NEPCO would become unable to continue performing its duties for the construction projects and simply walk away from the projects, leaving TECO unable to continue their construction.

185. The Company’s Form 10-K for the period ending December 31, 2001, filed with the SEC on March 29, 2002 (the “2001 10-K”) and signed by Fagan and Gillette, contained financial results similar to those reported in the Company’s press release and repeated earlier public statements concerning the Company’s exposure to Enron, adding that:

Enron’s bankruptcy permitted the project lenders to stop funding construction costs for the Union and Gila River projects until the condition was cured or waived. TPS received approval from the project lenders on a plan that allowed funding to resume. The plan involves TECO Energy replacing Enron as the guarantor of certain of NEPCO’s obligations under the construction contracts for these two projects, including payment by the company of any project cost overruns (currently estimated at $63 million, against which TECO Energy could offset any of the unused construction contingency amount remaining after completion of construction). The plan also provided for TECO Energy to replace the letter of credit furnished by Enron that had been drawn upon and acceleration of $200 million of project cash commitments to mid-year 2002, with the result that TECO’s total
investment of $1.1 billion is expected by October 2002 rather than mid-2003 as originally planned. Although TECO Energy is not directly obligated by the project financing, it has commitments to the lenders to make additional cash contributions to the projects of $493 million in addition to the $624 million, including the $500 million equity bridge loan, it has already made.

186. As to the Union/Gila River projects, the Company’s 2001 10-K disclosed that:

[In] February 2002, the TPS and Panda affiliates that comprise the joint venture that owns the Union and Gila River projects entered into an arrangement providing for TPS to purchase and for Panda to sell Panda’s interest in the joint venture in 2007 for $60 million. Panda has the right to cancel the purchase arrangement by paying TPS $20 million, or a lesser amount under certain circumstances. The purchase arrangement can result in TPS’s purchase of the interest prior to 2007 under certain circumstances, including Panda’s default under a bank loan made to Panda using the purchase arrangement as collateral.

187. As to the TIE projects, the 2001 10-K disclosed that “[u]nder certain circumstances, among which are additional capital investments by TPS, this loan could give TPS an ownership interest in these projects in late 2002.”

188. Discussing the Company’s outlook for 2003, the 2001 10-K stated, “In 2003, a significant earnings driver will be the four new independent power projects that TPS announced in late 2000 which are expected to be placed in service in 2003.”

189. While discussing the status of the merchant power market, the 2001 10-K stated:

While future wholesale power prices have declined, TPS expects to enter into negotiated contracts for much of the output of its facilities at higher prices, reflecting the value-added services it can provide. TECO Energy remains committed to the completion of the four projects under construction by TPS.

* * *

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TPS’ strategy for selling the output of these plants is to enter into three to five year contracts with load serving entities, or ultimate customers where it is allowed, for up to 50 percent of the output of the plants. TPS expects to contract another 25 percent of the output in the shorter term (less than one year market) with the remaining 25 percent sold in the spot market. TPS has retained experienced power marketers, such as Aquila for the Dell and McAdams stations, to market the 25 percent of the output planned for the spot market.

190. In an attempt to distinguish itself in the declining energy market, TECO stated:

The power plants that TPS is operating and constructing are located in markets that have a history of high load growth. In 2001, the general U.S. economic slowdown and the perception that excess generating capacity is being built in many of these markets caused future wholesale power prices to drop significantly. Current forward curve prices for the 2003 period would make the 2003 returns from many of the projects under construction by TPS and others unattractive. The current forward curve prices represent prices for spot-market power that a seller would expect to receive if future capacity was sold today and do not represent the prices that TPS believes would be paid under negotiated contracts where capacity payments and ancillary services are included and there is a premium for physical assets.

191. Regarding TECO’s off-balance sheet debt, the Company stated in its 2001 10-K that:

OFF BALANCE SHEET FINANCING

Unconsolidated affiliates in which TECO Power Services has a 50% ownership interest or less have non-recourse project debt balances as follows at Dec. 31, 2001. This debt is recourse only to the unconsolidated affiliate, and TECO Energy has no debt payment obligations with respect to these financings.

<table>
<thead>
<tr>
<th>Affiliate</th>
<th>Affiliate Debt Balance (millions)</th>
<th>TPS Ownership Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Union &amp; Gila River</td>
<td>$683</td>
<td>50%</td>
</tr>
<tr>
<td>EEGSA</td>
<td>$200</td>
<td>24%</td>
</tr>
<tr>
<td>Hamakua</td>
<td>$ 86</td>
<td>50%</td>
</tr>
</tbody>
</table>

- 84 -
The TECO/Panda debt balance is expected to reach $1.17 billion by the end of 2002 and $1.4 billion upon completion of construction of the Union and Gila River power stations.

In addition, TECO Energy has guaranteed a $500 million equity bridge loan of the unconsolidated TECO/Panda affiliate, a TPS turbine lease financing facility of $69 million, and other debt-related items totaling $25 million. These facilities are not included in liabilities on TECO Energy's consolidated balance sheet, but do represent payment obligations of the company.

192. The statements referenced in ¶¶185 through 191 were each materially false and misleading when made as they misrepresented and/or omitted adverse facts which then existed and disclosure of which was necessary to make the statements not false and/or misleading. The true facts, which were then known to each of the defendants, based upon their access to and review of internal TECO data, as well as their direct involvement in TECO’s merchant power plant projects, were:

- Panda was about to default on the TIE loans when TECO loaned it an additional $45 million in February 2002 and Panda used the “arrangement” described in the 2001 10-K to obtain a revolving line of credit which Panda then used to pay TECO’s interest on the $135 million TIE loan. In other words, the “arrangement” was a sham transaction used by TECO to pay itself interest so that it could recognize the interest as income rather than having to write off the Panda debt as a loss.

- TECO’s four merchant power plant projects would not be able to transmit power to prospective customers because the plants would not have, and did not have, sufficient access to power grids.

- Without access to power grids, TPS would not be able to enter into negotiated contracts to sell output from the plants, thus TECO had no reasonable basis for stating that TPS would sell “much of the output of its facilities at higher prices” or that the power projects would be a “significant earnings driver.”

- TECO had no reasonable basis for stating that it believed it would not be subject to spot-market prices, because TECO, for all of the reasons set forth above, was unable to sell its energy in more profitable markets.
193. On April 17, 2002, the Company issued a press release entitled “TECO Energy First Quarter Net Income Up 8 Percent; Earnings per Share Total $.54.” The press release stated in relevant part:

TECO Energy, Inc. today reported first quarter net income increased 8 percent to $75.4 million, compared with $69.7 million in 2001. Earnings per share for the quarter were $.54 (basic), unchanged from the same period in 2001. The average number of common shares outstanding in the first quarter was 8.6 percent higher in 2002 than the same period in 2001. Revenues increased 10.3 percent to $740.3 million for the quarter, compared to $671.2 million for the same period last year.

TECO Energy Chairman and CEO Robert Fagan said, “Achieving 8 percent higher net income is quite an accomplishment considering the impact of mild winter weather and soft economic conditions on gas and electricity prices in the first quarter. We have been expecting the weather and the economy to be major question marks in our outlook this quarter and year, so we are pleased with these first quarter results.

“Florida continues to be a great energy market, with good customer growth in our regulated operations even during a time of economic recovery, and our portfolio of unregulated businesses continues to demonstrate its value,” Fagan added.

194. On May 15, 2002, the Company filed its interim financial report for the quarter ending March 31, 2002 on Form 10-Q. The 10-Q, signed by Gillette, reported financial results similar to those reported in the press release and disclosed that TECO had loaned Panda an additional $44 million on the TIE projects, bringing the total loan on those projects up to $137 million. Specifically, the May 15, 2002 10-Q stated:

In addition, TPS recognized income on notes receivable from unconsolidated affiliates in which TPS holds joint venture interests, and from credit support for the TPGC joint venture. The notes receivable from unconsolidated affiliates include:

<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>$ millions</td>
<td>Rate</td>
<td>$</td>
</tr>
<tr>
<td>----------------------</td>
<td>--------------</td>
<td>--------------</td>
</tr>
</tbody>
</table>

- 86 -
<table>
<thead>
<tr>
<th>Company</th>
<th>Percentage</th>
<th>Value 1</th>
<th>Value 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Panda Energy</td>
<td>12%</td>
<td>$137.0</td>
<td>$92.7</td>
</tr>
<tr>
<td>Mosbacher Power Partners L.P.</td>
<td>12%</td>
<td>13.1</td>
<td>13.1</td>
</tr>
<tr>
<td>Mosbacher Power Partners L.P.</td>
<td>9%</td>
<td>21.1</td>
<td>21.1</td>
</tr>
<tr>
<td>Mosbacher Power Partners L.P.</td>
<td>12%</td>
<td>6.2</td>
<td>6.2</td>
</tr>
<tr>
<td>EEGSA</td>
<td>7.01%(1)</td>
<td>13.3</td>
<td>10.9</td>
</tr>
<tr>
<td>TPGC</td>
<td>6.69%(1)</td>
<td>162.1</td>
<td>37.5</td>
</tr>
<tr>
<td>TPGC</td>
<td>7.82%(1)</td>
<td>123.5</td>
<td>86.7</td>
</tr>
</tbody>
</table>

(1) Current rate at Mar. 31, 2002

TPS has agreed to purchase the interests of Panda Energy in the TPGC projects in 2007 for $60 million, and TECO Energy has guaranteed TPS’ purchase obligation. This obligation may be accelerated if Panda Energy defaults on a bank loan for which the TPS purchase obligation is collateral or if TECO Energy permits its debt-to-capital to exceed 65% or defaults in the payment of indebtedness in excess of $50 million. Panda Energy may negate the purchase arrangement at any time by paying TPS a cancellation fee that ranges from $8 million to $20 million.

* * *

Other investments increased by $164.1 million as a result of TPS’ additional investments in the Gila River and Union projects. Current notes receivable increased $44.3 million due to additional funds loaned on a Panda Energy project.

195. The statements referenced in ¶194 were each materially false and misleading when made as they misrepresented and/or omitted adverse facts which then existed and disclosure of which was necessary to make the statements not false and/or misleading. The true facts, which were then known to each of the defendants, based upon their access to and review of internal TECO data, as well as their direct involvement in TECO’s merchant power plant projects, were:

- TECO’s “agreement” to purchase Panda’s interest in the project, in reality, meant that Panda was exercising its heretofore undisclosed “put” on to TECO’s financial statements and balance sheets.

- Panda was about to default on the TIE loans when TECO loaned it an additional $45 million in February 2002 and Panda used the “arrangement”
described in the 2001 10-K to obtain a revolving line of credit which Panda then used to pay TECO’s interest on the $135 million TIE loan. In other words, the “arrangement” was a sham transaction used by TECO to pay itself interest so that it could recognize the interest as income rather than having to write off the Panda debt as a loss.

- TECO’s debt levels had risen to dangerously high levels, exposing the Company to ratings downgrades and financial covenant triggers, especially considering Panda’s ability to force TECO to carry all of the debt from the Union and Gila River projects on TECO’s balance sheet.

- TECO’s potential liability for the power plant projects was materially greater than the amounts identified in the guarantees it disclosed. TECO was literally at the mercy of Panda because, at Panda’s discretion, TECO could be forced to bear the entire cost of the power plant projects, causing the Company’s off-balance sheet debt to come crashing down on TECO’s finances and stock price, which is exactly what ultimately happened.

- TECO and the Individual Defendants knew that Panda was in precarious financial condition since the time TECO entered into its relationship with the struggling, privately held company. Panda’s financial problems finally caused Panda to “put” its debt and liabilities to TECO, overloading the Company’s own debt balances and triggering financial covenants in the Company’s own debt instruments.

- Because of Panda’s financial condition, TECO’s inability to access power grids, and the inability to secure contracts for the plants’ electrical output, there was, therefore, a strong likelihood that the projects would be “put” to TECO, causing its debt levels to rise to dangerously high levels, exposing the Company to ratings downgrades that would trigger covenants in financial commitments it had with its venture partners and with its financiers.

- There was an extremely high likelihood that TECO’s merchant power plant projects would put the Company’s dividend at risk, and that dividend cuts would become inevitable.

196. On May 21, 2002, the Company issued a press release, entitled “TECO Energy Defines Company’s Role in Energy Trading and Power Marketing,” which attempted to lull TECO investors into believing that TECO was safe from merchant power market volatility and stated in relevant part:
TECO Energy affirmed today that the company has never traded in the California energy markets, and that none of its subsidiaries has been involved in any region of the country in so-called “wash” or “round-trip” trades that have been widely reported.

Senior Vice President-Finance and CFO Gordon Gillette said, “With the media spotlight on companies with extensive energy trading and power marketing activities, we’ve seen some investors become concerned about the energy sector in general. There are major differences between pure energy merchants/traders and integrated, asset-intense companies like TECO Energy, and investors need to be able to distinguish between the two to make educated investment decisions. **Unlike companies that are solely energy traders, TECO Energy has the physical assets to deliver the power.**”

Gillette outlined critical differences between pure energy traders and TECO Energy, including the fact that TECO Energy does not trade energy or gas on a speculative basis. The company’s TECO Power Services subsidiary (TPS) only sells power from its physical assets. Further, TECO Energy’s businesses engaged in gas sales are focused on selling gas to end-use customers. These companies include Peoples Gas System, Prior Energy and TECO Gas Services.

None of TECO Energy’s subsidiaries has engaged in any “wash” or “round-trip” energy trading activities. Policies and procedures are in place to prevent any such trades and to detect them immediately, if any were to occur.

TPS is actively selling ancillary services at the company’s Frontera Power Station, as well as hedging and seeking longer-term contracts for the plant’s capacity. Hedging activities for other plants, now under construction, are currently underway. The company maintains a balanced book of fuel purchases measured against energy sales.

In addition, the company reported that it was not a participant in the California energy markets in 2000 or 2001, nor was it one of the 100 companies asked by the Federal Energy Regulatory Commission to provide information on their activities in that market.

197. On May 30, 2002, the Company issued a press release, entitled “TECO Energy Affirms 2002 Earnings Guidance,” which stated in relevant part as follows:

TECO Energy, Inc. (NYSE: TE) today affirmed its earnings guidance to the financial community in conjunction with its announced offering of 13.5 million shares of common stock. TECO Energy stated that it is continuing to target 5 percent earnings per share growth for 2002 from 2001 earnings per
share of $2.26 (basic), even after considering the dilutive effect of accelerating the company’s equity offering into 2002. Compared to the guidance issued earlier in 2002, higher net income is expected to be driven by improved results at Tampa Electric from increased energy sales and higher Allowance for Funds Used During Constructions (AFUDC) (which represents interest and allowed equity cost capitalized to the construction costs); increased synthetic fuel production at TECO Coal; and a higher level of sales of ancillary and other services at the Frontera Station in Texas. Senior Vice President and Chief Financial Officer Gordon Gillette said, “Even with the improved results from several of our key operating companies, we still have challenges in 2002, which include our dependence on summer weather patterns and a strengthening in the U.S. economy to improve energy prices in the markets we serve. This offering will strengthen our balance sheet and complete the company’s equity raising efforts which were originally planned to extend through 2004.”

198. The statements referenced in ¶¶196 through 197 were each materially false and misleading when made as they misrepresented and/or omitted adverse facts which then existed and disclosure of which was necessary to make the statements not false and/or misleading. The true facts, which were then known to each of the defendants, based upon their access to and review of internal TECO data, as well as their direct involvement in TECO’s merchant power plant projects, were:

- Although TECO was constructing power plants, it did not have the ability to “deliver” power because the plants did not have the requisite access to energy grids.

- TECO was aware that its power plants under construction would not be able to enter into contracts or agreements to sell enough of their energy output to cover operating expenses, let alone turn a profit.

- TECO’s potential liability for the power plant projects was materially greater than the amounts identified in the guarantees it disclosed. TECO was literally at the mercy of Panda because, at Panda’s discretion, TECO could be forced to bear the entire cost of the power plant projects, causing the Company’s off-balance sheet debt to come crashing down on TECO’s finances and stock price, which is exactly what ultimately happened.
• TECO and the Individual Defendants knew that Panda was in precarious financial condition since the time TECO entered into its relationship with the struggling, privately held company. Panda’s financial problems finally caused Panda to “put” its debt and liabilities to TECO, overloading the Company’s own debt balances and triggering financial covenants in the Company’s own debt instruments.

• TECO’s Gila River and Union projects lacked transmission capacity and would not have access to power grids in the areas in which the plants were located. Thus, while Gila River and Union’s theoretical output capacity was a combined 4,500 megawatts, the reality was that the power had nowhere to go. Further, similar transmission capacity problems plagued TECO’s Dell and McAdams power plant projects.

• TECO’s failure to obtain long-term contracts to sell its energy contributed to its inability to obtain sufficient grid access.

• The combination of a shortfall of long-term contracts and lack of grid access meant that TECO’s financial picture was materially less promising than TECO said it was.

• Because of Panda’s financial condition, TECO’s inability to access power grids, and the inability to secure contracts for the plants’ electrical output, there was, therefore, a strong likelihood that the projects would be “put” to TECO, causing its debt levels to rise to dangerously high levels, exposing the Company to ratings downgrades that would trigger covenants in financial commitments it had with its venture partners and with its financiers.

• There was an extremely high likelihood that TECO’s merchant power plant projects would put the Company’s dividend at risk, and that dividend cuts would become inevitable.

199. On May 30, 2002, the Company also issued a press release announcing it was conducting another equity offering entitled “TECO Energy Announces Common Stock Offering.” The press release stated in relevant part:

TECO Energy, Inc. announced today that it plans to offer 13.5 million shares of its common stock through underwriters jointly led by Credit Suisse First Boston and UBS Warburg. This offering is expected to be marketed to retail and institutional investors. The sale of the common stock is expected to commence during the week of June 3.
TECO Energy will also grant the underwriters an option to purchase up to 2,025,000 additional shares of common stock to cover any over-allotments.

The proceeds from the sale of these shares are expected to be used to reduce short-term debt and for general corporate purposes.

On June 4, 2002, the Company filed with the SEC a Prospectus Supplement relating to the offering of 13,500,000 shares of TECO Energy common stock at $23 per share for $310.5 million in proceeds, underwritten by Credit Suisse First Boston (“CSFB”). In this filing, the Company discussed the replacement of NEPCO with SNC-Lavalin:

RECENT DEVELOPMENTS

TECO Power Services and its joint venture with Panda Energy have agreed with a subsidiary of SNC-Lavalin Group, Inc., a large Canadian-based engineering and construction company, to replace NEPCO, whose parent, Enron Corp., is in bankruptcy, as contractor on TECO Power Services’ Dell and McAdams projects and on the joint venture's Gila River and Union projects. Under the new arrangements, SNC-Lavalin Constructors Inc. will complete the engineering and construction of those projects on a cost-plus-fee basis, with the fee portion at-risk until the completion of the projects.

Coincident with the execution of the four contracts, the new contractor is hiring substantially all of NEPCO's management and staff. As a result, management and staff overseeing the projects will remain substantially the same, providing continuity, job knowledge and maintenance of the construction quality and schedule. In addition, the SNC-Lavalin arrangements eliminate the risk of having the construction contractor for these projects drawn into the Enron bankruptcy.

The lenders financing the Gila River and Union projects have approved the arrangements with SNC-Lavalin. Under our agreement with those lenders, we will continue to be responsible for potential construction cost overruns on those projects. We currently estimate this amount, including additional oversight and other requirements of the lenders and credits for improvements in other project costs, which we previously estimated to be $63 million, to be approximately $90 million with the SNC-Lavalin arrangements.

TECO Power Services is proceeding with efforts to arrange project financing for its Dell and McAdams projects and expects that financing to be completed later this year. We currently estimate the potential construction
cost overruns, including estimates for additional oversight and other requirements necessary to complete the financing, which we previously estimated to be $17 million, to be approximately $27 million with the SNC-Lavalin arrangements.

201. The Company also attempted to downplay its risk in the merchant power plant business:

TECO Power Services is currently operating, developing, constructing and investing in merchant power plants. A merchant power plant sells power based on market conditions at the time of sale, so TECO Power Services cannot predict with certainty:

- the amount or timing of revenue it may receive from power sales from operating plants;
- the differential between the cost of operations (in particular, natural gas prices) and merchant power sales revenue; or
- whether it will recover its initial investment in these plants.

Our forecast assumes that TECO Power Services will manage these risks by:

- building in well-established markets that enable TECO Power Services to use established hedging mechanisms;
- hiring experienced power marketers;
- entering into negotiated contracts with power purchasers resulting in higher revenues than the spot market for capacity payments and ancillary services for a significant portion of the plant’s output;
- avoiding selling short; and
- entering into non-energy related sales to offset potential operational risks.

202. The statements referenced in ¶¶200 through 201 were each materially false and misleading when made as they misrepresented and/or omitted adverse facts which then existed and disclosure of which was necessary to make the statements not false and/or misleading. The true facts, which were then known to each of the defendants, based upon their access to and review of internal TECO data, as well as their direct involvement in TECO’s merchant power plant projects, were:
• The Company did not adequately disclose the true extent of Panda’s financial frailty, or the ease with which Panda could put the failing power plants and related financial obligations to TECO.

• TECO’s potential liability for the power plant projects was materially greater than the amounts identified in the guarantees it disclosed. TECO was literally at the mercy of Panda because, at Panda’s discretion, TECO could be forced to bear the entire cost of the power plant projects, causing the Company’s off-balance sheet debt to come crashing down on TECO’s finances and stock price.

• TECO and the Individual Defendants knew that Panda was in precarious financial condition since the time TECO entered into its relationship with the struggling, privately held company. Panda’s financial problems finally caused Panda to “put” its debt and liabilities to TECO, overloading the Company’s own debt balances and triggering financial covenants in the Company’s own debt instruments.

• TECO was unable to enter into “negotiated contracts with power purchasers” because its power plants under construction would not have the necessary access to energy grids, such that TECO was not even able to cover the costs of running the plants, let alone turn a profit.

• TECO’s Gila River and Union projects lacked transmission capacity and would not have access to power grids in the areas in which the plants were located. Thus, while Gila River and Union’s theoretical output capacity was a combined 4,500 megawatts, the reality was that the power had nowhere to go. Further, similar transmission capacity problems plagued TECO’s Dell and McAdams power plant projects.

• TECO’s failure to obtain long-term contracts to sell its energy contributed to its inability to obtain sufficient grid access.

• The combination of a shortfall of long-term contracts and lack of grid access meant that TECO’s financial picture was materially less promising than TECO said it was.

• Because of Panda’s financial condition, TECO’s inability to access power grids, and the inability to secure contracts for the plants’ electrical output, there was, therefore, a strong likelihood that the projects would be “put” to TECO, causing its debt levels to rise to dangerously high levels, exposing the Company to ratings downgrades that would trigger covenants in financial commitments it had with its venture partners and with its financiers.
There was an extremely high likelihood that TECO’s merchant power plant projects would put the Company’s dividend at risk, and that dividend cuts would become inevitable.

On July 18, 2002, the Company issued a press release entitled “TECO Energy reports second quarter earnings per share up 11 percent to $.59 per share on 19 percent higher net income.” The press release stated in part:

TECO Energy, Inc. today reported second quarter earnings of $.59 per share (basic), up 11 percent from $.53 per share in 2001. Net income for the quarter was $85.7 million, 19 percent higher than the $71.9 million recorded in the 2001 period. The average number of common shares outstanding in the second quarter was 6.3 percent higher than in the same period in 2001.

Year-to-date earnings per share increased almost 6 percent to $1.13 from $1.07 per share in the first six months of 2002. Net income for the six-month period increased 14 percent to $161.1 million, compared with $141.6 million for the same period last year.

Chairman and CEO Robert Fagan said, “We are delivering strong earnings per share growth, even while strengthening our balance sheet by issuing additional equity. The continued solid growth this quarter was led by strong results from Tampa Electric, and good results from our unregulated companies, once again demonstrating the value in our balanced portfolio of regulated and unregulated businesses.”

“Economic conditions, weather and energy prices affect all of our businesses to some extent, but we have met the challenges posed by these factors thus far this year,” Fagan added.

TECO Power Services’ net income for the quarter was $8.9 million, compared with $6.8 million last year. Results for the quarter reflected higher capacity payments due to higher prices and generation at the San Jose Station in Guatemala, increased earnings from construction-related and loan agreements with Panda Energy, and higher contributions from the full build-out of the Commonwealth Chesapeake Station, where the second phase began commercial operation in the second half of 2001. These improved results were partially offset by increased operating and financing costs.

Year-to-date net income at TECO Power Services was $13.8 million, compared with $9.3 million for the same period last year. These results reflected higher capacity payments due to higher prices and generation at
both the San Jose and Alborada stations in Guatemala and increased earnings from construction-related and loan agreements with Panda Energy. The improved operating performance was partially offset by higher operations and maintenance expense and low energy prices at the Frontera Station in Texas, higher operating costs and increased financing costs. First half results in 2001 included a $6.1-million after-tax valuation reserve recognized for TPS’ sale of its minority interests in Energia Global International, Ltd. (EGI), which owned smaller projects in Central America.

204. On August 13, 2002, the Company filed its interim financial report on Form 10-Q for the period ending June 30, 2002. The 10-Q, signed by Gillette, reported similar financial results to those reported in the Company’s press release and with regards to the Company’s and Panda’s joint obligations concerning the Union/Gila River, the 10-Q stated that:

Except to the extent that TECO Energy has guaranteed $250 million of the project financing for each of the Gila River project and the Union Power project and its equity contributions for the projects of up to approximately $493 million, both of which are owned by wholly-owned subsidiaries of TPGC, no partner has made any direct guarantees of partnership debt. In addition, TECO Energy has guaranteed the obligations of the contractor under the construction contracts for these projects.

205. The statements referenced in ¶¶203 through 204 were each materially false and misleading when made as they misrepresented and/or omitted adverse facts which then existed and disclosure of which was necessary to make the statements not false and/or misleading. The true facts, which were then known to each of the defendants, based upon their access to and review of internal TECO data, as well as their direct involvement in TECO’s merchant power plant projects, were:

• TECO’s equity offerings were not strengthening the Company’s balance sheet; rather, the offerings made it more and more inevitable that the Company would have to cut its dividend. Put simply, the more shares the Company issued, the more the Company would have to pay out to meet its dividend obligations.
• Despite the Company’s statement that “no partner” in TPGC “has made any direct guarantees of partnership debt,” Panda had the ability to force TECO to carry all of the debt from the Union and Gila River projects solely on TECO’s balance sheet by exercising its no-strings-attached put option.

• The Company did not adequately disclose the true extent of Panda’s financial frailty, or the ease with which Panda could put the failing power plants and related financial obligations to TECO.

• TECO’s potential liability for the power plant projects was materially greater than the amounts identified in the guarantees it disclosed. TECO was literally at the mercy of Panda because, at Panda’s discretion, TECO could be forced to bear the entire cost of the power plant projects, causing the Company’s off-balance sheet debt to come crashing down on TECO’s finances and stock price, which is exactly what ultimately happened.

• TECO and the Individual Defendants knew that Panda was in precarious financial condition since the time TECO entered into its relationship with the struggling, privately held company. Panda’s financial problems finally caused Panda to “put” its debt and liabilities to TECO, overloading the Company’s own debt balances and triggering financial covenants in the Company’s own debt instruments.

• Because of Panda’s financial condition, TECO’s inability to access power grids, and the inability to secure contracts for the plants’ electrical output, there was, therefore, a strong likelihood that the projects would be “put” to TECO, causing its debt levels to rise to dangerously high levels, exposing the Company to ratings downgrades that would trigger covenants in financial commitments it had with its venture partners and with its financiers.

• There was an extremely high likelihood that TECO’s merchant power plant projects would put the Company’s dividend at risk, and that dividend cuts would become inevitable.

206. Suddenly, on September 3, 2002, the price of TECO’s common stock tumbled 18%, or $3.57 to $16.18 per share, following a severe ratings cut on the Company’s stock by analysts. Paul B. Fremont, an analyst at Jefferies & Company, Inc. cut his rating to “sell” from “hold” after slashing his estimate for 2003 earnings per share by $0.45 to $1.80. Neil Stein at CSFB – the underwriter for the Company’s June 2002 equity offering – also cut his
rating to “sell” from “buy” and Merrill Lynch followed suit, reducing its ratings of the Company’s stock.

207. In response to the analyst downgrades, on September 9, 2002, the Company issued a press release, entitled “TECO Energy accelerates 2003 budget process, calls cash flow and dividend ‘top priorities,’” which stated in relevant part:

TECO Energy today announced that it has accelerated its 2003 budgeting process, which is currently underway. In the next few weeks, the company will respond definitively to recent market reports questioning its future earnings and dividend payment prospects. In doing so, the company will provide updated information to the public.

Chairman and CEO Robert Fagan said, “The market events of the last week have been extremely difficult for the company and its shareholders, management and employees. We remain completely dedicated to doing the right things for our shareholders in these challenging times, including maintaining the dividend.

Fagan cited recent actions the company has taken to demonstrate its commitment to shareholder value. The company has:

- Raised the majority of external financing needed for the major construction program at Tampa Electric and TECO Power Services through equity and equity-like securities, strengthening the company’s balance sheet;
- Completed the bulk of its construction program, with significantly less capital expenditures expected in 2003 compared to previous years;
- Produced its 11th consecutive quarter of earnings growth;
- Filed its CEO/CFO financial certifications for 2001 and the first half of 2002 with no exceptions; and
- Increased its dividend for the 43rd consecutive year. The company “recognizes that the dividend is an important source of income to our shareholders,” said Fagan.

Senior Vice President and CFO Gordon Gillette said, “We regularly report detailed financial information on five of our core businesses – Tampa
Electric, Peoples Gas, TECO Transport, TECO Coal and TECO Power Services – and would normally provide updated information on our outlook for the coming year upon completion of our budget process. We have said for some time that we expect the first four of those businesses to grow in 2003 but that, due to currently projected low power prices, TPS will be challenged with its new projects. Consequently, the recent negative reports, preempting our customary communications and challenging the fundamentals of our business, including the dividend, came as a surprise.”

Gillette further added that these current projections have been caused by a number of factors, including the failure of deregulation in California, as well as a substantial reduction in the number of participants in the power market and recent milder weather.

Fagan said that despite this difficult environment, “we are making considerable progress. Our major generating projects at TPS do not begin operating until next year, and we are continuing to work diligently to secure power contracts for a material portion of those projects. I’m happy to report that we already have contracts in place for portions of the output in each of the regions we will serve, including Texas, Arizona and the Entergy region,” said Fagan.

“The timing of recent market events is particularly difficult for us while we are in the midst of our budgeting process for next year and engaged in negotiations for power contracts, the results of which will affect our budget. Our original plan was to complete these activities and provide a full update to shareholders and the financial community in mid-October. However, given the concerns in the marketplace, we will provide this information earlier,” said Gillette.

Gillette added that the company intends to provide a business update in the next few weeks, including plans addressing cash requirements, potential earnings volatility and the dividend.

“We are working overtime to do the right things for our shareholders, including maintaining the dividend. Trading of our stock over the past few weeks has been disappointing. We believe that this is due in large part to the activities of non-traditional market players who have no long-term investment in our company. We will provide our shareholders and the financial community an update in the next few weeks,” said Fagan.

208. The statements referenced in ¶207 were each materially false and misleading when made as they misrepresented and/or omitted adverse facts which then existed and
disclosure of which was necessary to make the statements not false and/or misleading. The true facts, which were then known to each of the defendants, based upon their access to and review of internal TECO data, as well as their direct involvement in TECO’s merchant power plant projects, were:

- Despite Fagan’s statement that the Company had “contracts in place” for the output of its merchant power projects, the Company did not have sufficient access to energy grids in the regions Fagan described, and, to the extent the Company did secure any transmission rights and power contracts, those contracts were on such a small scale that they did not change the fact that the plants were not commercially viable.

- It was inevitable that the Company would have to cut its dividend because it knew that it would be unable to sell power from its newly-built merchant plants due to lack of transmission access.

- That TECO’s debt levels had risen to dangerously high levels, exposing the Company to ratings downgrades and financial covenant triggers, especially considering Panda’s ability to force TECO to carry all of the debt from the Union and Gila River projects on TECO’s balance sheet due to Panda’s ability to utilize its put options.

- TECO’s Gila River and Union projects lacked transmission capacity and would not have access to power grids in the areas in which the plants were located. Thus, while Gila River and Union’s theoretical output capacity was a combined 4,500 megawatts, the reality was that the power had nowhere to go. Further, similar transmission capacity problems plagued TECO’s Dell and McAdams power plant projects.

- TECO failed to obtain sufficient contracts to sell what energy its plants could produce, such that TECO was not even able to cover the costs of running the plants, let alone turn a profit.

- TECO’s failure to obtain long-term contracts to sell its energy contributed to its inability to obtain sufficient grid access.

- The combination of a shortfall of long-term contracts and lack of grid access meant that TECO’s financial picture was materially less promising than TECO said it was.
Because of Panda’s financial condition, TECO’s inability to access power grids, and the inability to secure contracts for the plants’ electrical output, there was, therefore, a strong likelihood that the projects would be “put” to TECO, causing its debt levels to rise to dangerously high levels, exposing the Company to ratings downgrades that would trigger covenants in financial commitments it had with its venture partners and with its financiers.

There was an extremely high likelihood that TECO’s merchant power plant projects would put the Company’s dividend at risk, and that dividend cuts would become inevitable.


TECO Energy’s top management today said the company expects 2002 earnings-per-share to increase over 2001, and that net income is expected to grow by more than 10 percent. TECO Energy’s business outlook for 2003 focuses on continued growth in its Florida operations, optimizing its independent power investments and minimizing potential earnings volatility and external financing needs while maximizing cash flow to support the company’s capital obligations.

Chairman and CEO Robert D. Fagan said, “TECO Energy is having another good year in 2002 – our third straight year of solid earnings per share growth – despite the general economic downturn and low prices in the energy sector. We told investors two weeks ago that we would accelerate our planning process and provide them with information on our 2003 outlook earlier than usual. Today, we are doing that.”

“We have long described 2003 as ‘transitional’ as our major utility and non-utility generating projects begin commercial operation. The plan we are announcing today eliminates the need for additional financing and virtually removes our cash exposure to merchant power prices for next year,” said Fagan.

“TECO Energy is different from many others in the industry. We have a strong underpinning of proven, earnings-producing assets, including our utilities, transportation and mining operations,” added Fagan.

Key elements in the 2003 plan being presented to TECO Energy’s Board of Directors are: (1) deferral of its Dell and McAdams independent power
plants, and other actions to reduce capital expenditures; (2) monetization of
certain Section 29 tax credits related to the production of synthetic fuel at
TECO Coal and the coal gasification unit at Tampa Electric’s Polk Power
Station; (3) sale of its TECO Coalbed Methane gas assets in Alabama, which
have 150 billion cubic feet of long-lived, proven reserves; and (4) $250
million of cash from repatriation of cash and non-recourse refinancings on
generating facilities in Guatemala and other financial transactions or asset
sales.

The combination of the sale and monetization actions is expected to generate
more than $400 million, which more than offsets the proceeds previously
expected from a non-recourse financing for the Dell, McAdams and Frontera
facilities.

“We are monetizing quality non-core assets that have greater value to others
than they do to us. For example, synfuel production levels can exceed our
ability to utilize the related tax credits, and thus monetizing a portion of these
assets enables us to realize additional value for our shareholders,” said Fagan.

Senior Vice President-Finance and CFO Gordon Gillette said, “Our plan for
the rest of 2002 and 2003 is focused on maximizing cash flow. Although we
have a $200-million debt maturity refinancing that we will undertake this
year, our plans call for no incremental new debt in 2003. While we expect
the rating agencies to cut our debt ratings, we want to improve our ratings,
and rapid execution of this plan would be the first step in this direction. The
debt rating agencies have been fully briefed on this plan and view our
commitment to it as being very important. Depending on the rating agencies’
actions we may need to do some renegotiations of our existing bank
agreements.”

TPS President Richard E. Ludwig said, “Deferring the Dell and McAdams
facilities is the best economic choice in the current market conditions. We
have had upward pressure on our capital spending plans due to the potential
cost overruns that resulted from the Enron bankruptcy and the replacement of
NEPCO with SNC Lavalin. This deferral will allow us to complete
construction whenever power prices increase to a level commensurate with
our investment. When the market is ready for us, we will be ready for the
market.”

The company has reduced its projected capital expenditures by $250 million
based on the deferrals of Dell and McAdams and other reductions made at
the other companies.

“When we review our individual businesses, there are many positives in
2003. We expect continued growth in our Florida operations; we expect that
TECO Transport will experience growth as the U.S. economy strengthens; and we expect that higher production levels and monetization of synthetic fuel will improve TECO Coal’s results. Excluding TECO Power Services, we expect net income from TECO Energy’s operating companies to be more than $310 million in 2003,” said Gillette.

“As has historically been the case at TECO Energy, our management and employees are demonstrating remarkable flexibility in response to challenging market conditions,” said Fagan.

* * *

-- TECO Power Services expects higher results from the sale of ancillary services and power sales to Mexico at the Frontera Power Station in Texas, continued good performance from its other operating plants and increased earnings from construction-related and loan agreements with Panda Energy.

* * *

COMPANY OUTLOOK: INDEPENDENT POWER

In 2003, TECO Power Services results will be driven by the phased commercial operation of the Union and Gila River facilities. The company expects to continue putting contracts in place for portions of the output of its Arizona, Texas and the Entergy region projects, which would reduce potential volatility in earnings and cash flow for these projects in 2003, with the goal of having at least 40 percent of its combined merchant output (Union, Gila River and Frontera power stations) hedged by the end of 2002. The portion of output that has been sold forward for 2003 has been at pre-tax cash flow-positive prices at the projects.

Transmission

The Gila River Power Station plans to compete to serve the load, which will include transmission capacity, that will be put up for bid in March 2003 under Arizona's competitive bidding process. In addition, TPS has or has applied for firm transmission service for more than 1,800 megawatts of capacity, which will ensure power can move to customers.

Union Power Station expects to secure short-term transmission capacity, as is customary, for sales within the Entergy region, and it is currently pursuing firm transmission options for sales outside of the region.
Operating Projects - TPS' Hardee Power Station in Florida, Hamakua Power Station in Hawaii and the Alborada and San Jose facilities in Guatemala are selling power under long-term contracts. Commonwealth Chesapeake Power Station, a peaking facility in Virginia, has sold capacity on a forward basis and is expected to receive capacity credit payments in addition to energy payments, as it has in the past; these payments are a function of the Pennsylvania-New Jersey-Maryland market. The contracted portion of the TPS portfolio is expected to deliver the performance that it has for the past several years. Discussions are underway for a 2003 contract on the Frontera Power Station in Texas. These facilities represent 30 percent of its total portfolio that is under contract for 2003, thereby significantly reducing the company's merchant exposure.

Other Holdings – TPS’ position in the Odessa and Guadalupe power stations in Texas is currently in the form of a loan to Panda Energy International through the end of 2002, at which time Panda Energy will either repay the loans or the loans will convert to an equity ownership in these facilities. TPS is evaluating various options regarding its position in these projects going forward.

Assumptions for 2003 -- The 2003 plan includes an after-tax loss of about $30 million at TPS. Assumptions include a relatively low capacity factor, supported by the forward curve, and a premium for physical dispatchability and ancillary services for the uncontracted portion of the Frontera Power Station and the Union and Gila River facilities. The plan also assumes the current 5 or 6 by 16 forward curve, which indicates spark spreads of approximately $9 per megawatt hour in Arizona; less than $4 per megawatt hour in Texas; and less than $1 per megawatt hour in Entergy.

Based on our current estimates of the dispatch profile for each facility, the effective spark spread embedded in the earnings guidance is less than $14 per megawatt hour at the Gila River Power Station, less than $4 per megawatt hour at the Frontera Power Station and more than $4 per megawatt at the Union Power Station.

With the higher power prices that would result from economic dispatch results from TPS results would be a less than a $10 million after-tax loss.

In response to TECO’s September 23, 2002 press release, Neil Stein of CSFB expressed serious concern, stating, in part:
• Our initial review of TECO’s updated financial plan indicates that management is overstating its earnings power for 2003 and understating its true capital needs.

• We believe management’s guidance embodies overly optimistic spread assumptions. Further, we do not see any real economic benefits from TECO’s project deferrals.

• Despite management’s contention, we believe TECO needs to raise an additional $700 mil. of parent level financing. Importantly, it did not rule out the possibility of issuing additional equity, which we continue to view as a risk.

• We still do not expect TECO to have the ability to fund its $1.42 dividend internally for the foreseeable future. As such, we view it as a misleading indicator of value and a poor proxy for the underlying cashflow economics of the business.

Thus, despite the Company’s obfuscation, the market was starting to see through the façade that TECO had created. As a result, the artificial inflation in TECO’s stock price began to leak out.

211. The statements referenced in ¶209 were each materially false and misleading when made as they misrepresented and/or omitted adverse facts which then existed and disclosure of which was necessary to make the statements not false and/or misleading. The true facts, which were then known to each of the defendants, based upon their access to and review of internal TECO data, as well as their direct involvement in TECO’s merchant power plant projects, were:

• TECO was not “different” than others in the industry with respect to its vulnerability to risk because TECO’s power plant projects lacked sufficient and consistent transmission access and, as a result, could not negotiate or enter into long-term power supply contracts.

• TECO’s inability to access power grids and secure contracts made it impossible for TECO to remove its cash exposure to merchant power prices.
• TECO failed to obtain sufficient contracts to sell what energy its plants could produce, such that TECO was not even able to cover the costs of running the plants, let alone turn a profit.

• TECO’s failure to obtain long-term contracts to sell its energy contributed to its inability to obtain sufficient grid access.

• The combination of a shortfall of long-term contracts and lack of grid access meant that TECO’s financial picture was materially less promising than TECO said it was.

• For what little power TECO could transmit to the energy grids, TECO’s inability to secure long-term forward contracts, and its unwillingness to do so because of FAS 133 accounting implications, TECO was vulnerable and exposed to the volatile merchant power market spot prices.

• It was inevitable that the Company would have to cut its dividend for a variety of reasons, including because it knew that it would be unable to sell sufficient amounts of power from its newly-built merchant plants due to lack of requisite transmission access.

• Rapid execution of TECO’s plan would not help improve the Company’s ratings because defendants knew its merchant power plant projects lacked the ability to be commercially viable.

• TECO and the Individual Defendants knew that Panda was in precarious financial condition since the time TECO entered into its relationship with the struggling, privately held company. Panda’s financial problems finally caused Panda to “put” its debt and liabilities to TECO, overloading the Company’s own debt balances and triggering financial covenants in the Company’s own debt instruments.

• TECO did not expect legitimate increased earnings from its relationship with Panda – in fact, TECO had been forced to loan Panda additional money for the TIE loans, which Panda then used to obtain a revolving line of credit to pay the interest on those loans.

• TECO’s potential liability for the power plant projects was materially greater than the amounts identified in the guarantees it disclosed. TECO was literally at the mercy of Panda because, at Panda’s discretion, TECO could be forced to bear the entire cost of the power plant projects, causing the Company’s off-balance sheet debt to come crashing down on TECO’s finances and stock price, which is exactly what ultimately happened.
Because of Panda’s financial condition, TECO’s inability to access power grids, and the inability to secure contracts for the plants’ electrical output, there was, therefore, a strong likelihood that the projects would be “put” to TECO, causing its debt levels to rise to dangerously high levels, exposing the Company to ratings downgrades that would trigger covenants in financial commitments it had with its venture partners and with its financiers.

There was an extremely high likelihood that TECO’s merchant power plant projects would put the Company’s dividend at risk, and that dividend cuts would become inevitable.

212. On September 25, 2002, TECO hosted a conference call to discuss its 2003 outlook. Fagan, Gillette, John Ramil (President of Tampa Electric), Ludwig, and Sandy Callahan participated in the call on behalf of TECO. During the call, TECO executives, including the Individual Defendants, made numerous false and misleading statements designed to calm the market regarding the level of TECO’s exposure to risk and continue to buoy the stock price. For example, Fagan stated:

In response to analyst reports that questioned our dividend, I want to say right up front that the plan we are discussing today includes maintaining our dividend for next year. Now, let’s look at 2002. We’re having another strong year this year. We see that by the end of the year, we will provide another year of double-digit net income growth and good EPS growth. Even after the effects of the new equity issued in June are accounted for.

*  *  *

Finally, we are dealing with lower power price expectations for next year, as well. In this regard, TPS has taken a number of actions to minimize cash flow volatility and lock in power contracts to minimize merchant exposure.

*  *  *

Combined, we expect three transactions to generate more than $400 million in cash, which offsets the shortfall from our Trico [i.e., the non-recourse project financing for Dell and frontier plants] financing. In addition to raising capital, we have thoroughly reviewed capital spending plans and made revisions to them. We continue to plan to support the completion of the Union and Gila power station[s] and Tampa Electric.
Overall, the plan includes 250 million reduction in capital spending across all of TECO Energy. The major reduction comes from TPS with expansion on Dell and McAdams plants. Due to lower energy prices projected for energy market (sic), we will mothball the plants until we see signs of improving power prices to reduce capital expenditures by $100 million.

213. Further commenting on forward power contracts, Fagan stated:

The last challenge I mentioned earlier was to deal with the projected low power prices for 2003. Let me tell you, TPS has been very busy addressing this issue. In addition to suspending construction at Dell [&] McAdams, TPS has been hedging output for the plants in Texas, Arizona, and the Entergy region. Dell continue[s] to increase the amount hedged as market permits. Our goal is to have 40% of combined output hedged by the end of the year. At the same time, we are talking to potential purchasers and have good prospects for longer term contracts.”

214. Fagan further stated “Yes, we do have transmission access to the market in Arizona.”

215. Similarly, during the September 25th conference call, Gillette stated:

Thus, currently we are at over 30% of our portfolio under contracts, including the long-term contracted projects Hardee, Hamakua, Alborada, and San Jose. We expect 40% of our merchant capacity to be hedged by year-end, continuing at the pace that we are currently hedging the merchant capacity. This will take us to the point where our portfolio will be close to 50% hedge[d] for 2003 by the end of 2002.

* * *

During the last two years, we have expanded capacity at Tampa Electric and TECO Power Services and maintained financial discipline and focused on improving our balance sheet. These are the results of those efforts, seeing difficult times in the market in 2001, we sustained reduction in 2002 to 2004 capital expenditures of $700 million by suspending the development in December of 2001. We announced this in December of 2001. Even with recent upward pressure on capital expenditures, due to lower nonrecourse financing and now resolved Enron and NEPCO issues, we kept the lid on capital expenditures. In addition, we issued 1.1 billion dollars of equity in 2001 and 2002, reduced commercial paper balances by $900 million, initiated [several] million
dollars [in] line[s] of credit, financed large Gila and Union projects, nonrecourse and extended average debt maturity by 2 years and reduced floating debt rate.

216. During the conference call, Gillette continued:

*The reasons that the TPS contribution (to cash flow) is lower is that in our analysis with the forward curves, we expect Union and Gila to be about cash neutral and with higher [spark] spreads in our economic dispatch projections, we expect positive cash.* This cash will be trapped in the projects per our financing arrangements. Thus, [our] cash position is not sensitive to merchant prices next year.

217. As the September 25th conference call continued, analysts began to challenge TECO’s disclosures, but the Individual Defendants scrambled to avoid the truth and did so with additional false and misleading statements. For example, the following exchanges took place:

**Analyst:** Okay. You don’t quantify it (capitalized interest). With capacity factors. You characterize them as low in the press release. I was wondering how low those are, if you could give us a feel for what you are looking at?

**Fagan:** We are expecting Gila and Frontera to be in the 40 to 50% range. And the Union project to be in the 25 to 30-25 to 35% range.

218. As the conference call continued, analysts continued to probe:

**Analyst:** Okay. And then also just to circle back to Paul’s question. I am sorry, you said Union capacity factor in the 25 to 30% range?

**Fagan:** 25 to 35.

**Analyst:** Okay. Then Gila and Frontera to 40 to 50?

**Fagan:** That’s correct.
Analyst: Okay. With the Arizona bidding process this spring, I mean, how much do you expect to be able to sell from Gila?

Gillette: Look at our projections. We have been doing, what we have done is taken the amount that we have been able to hedge in Arizona to this point and assumed that we will continue to hedge at those levels. If we’re – when we enter in to the bidding process and assume we will be successful in that, I am looking at that as upside.

Analyst: So, you haven’t factored in any specific amounts?

Gillette: No, that is why we believe – what we try to do when we looked at the forecast is to be conservative in what we are looking at. What we wanted to do is come up with a plan that made the challenge to us to be able to meet all the things we talked about with the expectations for lower prices. We have been just assuming the worst and hoping for the best.

* * *

Analyst: Hi, (inaudible). Can you hear me? I want to talk about the Gila project. It seems like everybody is using the same type of assumptions. I am reading the Arizona corporation commission filing that you made that states the peak load will be 6000 megawatts, yet 12,500 megawatts of capacity. Of that, I think about 3700 is under the rate base of Pinnacle West, leaving 2400 megawatts available for merchant power guys. (inaudible) of merchant power. So, it makes no sense to me – you would have to, like 400% excess capacity. Everyone is trying to hedge out the same thing.

Fagan: I will get Rick Ludwig to talk about that.

Ludwig: One thing you are talking about, I believe APS in the Salt River project and western area, as well as what may be able to be sold through Palo Verde into California and Nevada. I think the number may be conservative that you are speaking of we are buying the small amount of load. We have said our transmission situation puts us in a preferred position with regard to giving into TB and
getting to APS and Salt River and Western. So, we think frankly although there is competition out there, we see it as a fairly good situation.

219. In addition, during the conference call, TECO and the Individual Defendants specifically misrepresented the Company’s exposure to and knowledge of Panda’s financial circumstances:

Analyst: Hi gentlemen. Could you comment on what Panda’s financial shape – what the implications of their financial condition may be to Union and Gila, if any?

Fagan: This is Bob. They are a private company. We are not privy to their financials and I don’t want to discuss it. Beyond that, simple way to look at it, the way we look at everything is conservative. We are not counting on Panda for any of the cash flows we are talking about with respect to our plan for next year. In my mind, it is not a real big issue for us.

Analyst: If [Panda] go[es] dark, is there a scenario where you end up owning their share of the plants?

Fagan: The way it works and I am sure you read our disclosures and actually I think it is something that is a good belt and suspenders for us when we put it in place, we recognized that. We have the opportunity in the event of [a] major issue with Panda [for] potentially buying out their interest in Gila and Union. And also, when we did that, we put in special provisions on the structure of it to preserve our interest and our rights in the event they run into major difficulties.

Analyst: Are there any triggers on any bank loans that could cause renegotiations and how big are your bank loans?

Fagan: With respect to who, Panda?

Analyst: No, the entire TECO, and bank loans any subs? I am just concerned about any potential triggers if they exist on any bank debt and what that could potentially mean? I mean,
we have seen other companies, banks have forced them to – make the banks happy.

Fagan: Let me ask Gordon to issue that. One of the things as Gordon mentioned, you know, we have gone through recently this whole plan with the credit rating agencies and where we have come out, we are [an] investment grade company and stable in two instances. I think that help us and Gordon, address this issue.

Gillette: Good morning, Stewart. We have existing equity bridge loan in place. I mentioned earlier, we will be paying that off quickly in the normal course. It is part of our assumed capital expenditures over the course of the next 6 to 9 months. Or, better a year over the next year. But, that equity bridge loan has 3 significant covenants. The first of which is debt to total cap covenant. The second is EBITDA to interest covenant. The third is a ratings covenant.

Analyst: Okay.

Fagan: *We meet all three [covenants].*

* * *

Fagan: Let me talk to the last one and I will let Gordon take the other one. We are looking at – one of the things people have questions about on transmission in Arizona. The more we got into it, the more it is a non-issue. *We have the right-right off the top, transmission access to Palo Verde. It can more than handle the output from our plant. We are making a business decision how much to lock up on a firm basis. It is available. We can go ahead and do it.*

On the other transmission – Rick, you might mention the other transmission that we are talking about.

Ludwig: 300 plus megawatts in Arizona. But, as Bob said, *there is currently adequate capacity on the Palo Verde line, the 1600 to 2000 megawatts available for purchase. We are looking at that. We are not making commitments because we don't have the need to commit just yet.* To the extent we were successful on bidding into APS and winning that,
which we intend to be, we would use their network resource on their transmission system to –

Fagan: Which comes with the bid.

Ludwig: Yeah, which comes with the bid. In addition, we also have access through Liberty substation, which will give us access to sell power not to the existing Palo Verde connection, but directly to Salt River and Western to serve their need load. *We have a variety of alternatives.* As we continue to hedge the facility, we will lock down on which transmission option makes the best sense.

* * *

Analyst: Does ’03 guidance – you said you assumed the worst and hoped for the best. Worst case would be Panda exercising their book, is that in the guidance?

Gillette: On the TIE project, we assume that earnings per next year will be neutral. As we stepped into being an equity investor.

* * *

Analyst: Thank you for having the call. When you say you are assuming the worst and hoping for the best, you mentioned going for Dell and McAdams, mothballing the plants. Then, you mentioned perhaps recovering pricing in ’03. Are you expecting to start the plants in ’03?

Fagan: What basically our plan, we are watching the market and negotiating – I should say, we have discussions under way on long-term power contracts from the plant. Should we enter into two things – if we see good upswing in the market for 2004 and if we – or if we enter in to power contracts for the plants – as we said, we have discussions underway. At that point in time, we would bring the plants back on.

* * *

Analyst: The, two other quick questions. The first one is with regard to your commentary that you don’t need external debt
financing in 2003, you don’t specifically comment on external equity financing. Can you comment one way or the other on that?

Fagan: This is Bob. I will let Gordon answer. But, in our plans and again, we have laid out a deliberate plan with contingencies. I say that we have provided you all with what we believe is a plan to meet our cash needs through 2003.

Being conservative engineer types, we also have back-ups to the plan, as well. So, that is why in addition to what we have queued up as the number one objective, we have back-ups to those. *We feel comfortable we will be able to get through 2003, without having to talk about equity.*

Gordon.

Gillette: I don’t have anything to add.

* * *

Analyst: Good morning. Follow up on Zach’s question. The Panda project were put back to you under the current spark spreads that you are using for the other Texas projects of $4. *I am getting the implication there would be further downside to earnings?* Second question is can you provide more detail on the source of cash from the repatriation of the foreign assets.

Fagan: Yeah, for planning purposes right now, we have ties as neutral. *We are not in that project. You got to understand that. Since we are not in the project, it is difficult at this point in time to come up with assumptions other than neutral projection. As we get more into the project and get a seat at the table, we will have a better understanding of all the ins and outs and our go-forward plan.*

220. The statements referenced in ¶¶212 through 219 were each materially false and misleading when made as they misrepresented and/or omitted adverse facts which then existed and disclosure of which was necessary to make the statements not false and/or
misleading. The true facts, which were then known to each of the defendants, based upon their access to and review of internal TECO data, as well as their direct involvement in TECO’s merchant power plant projects, were:

- TECO’s potential liability for the power plant projects was materially greater than the amounts identified in the guarantees it disclosed. TECO was literally at the mercy of Panda because, at Panda’s discretion, TECO could be forced to bear the entire cost of the power plant projects, causing the Company’s off-balance sheet debt to come crashing down on TECO’s finances and stock price, which is exactly what ultimately happened.

- TECO and the Individual Defendants knew that Panda was in precarious financial condition since the time TECO entered into its relationship with the struggling, privately held company. Panda’s financial problems finally caused Panda to “put” its debt and liabilities to TECO, overloading the Company’s own debt balances and triggering financial covenants in the Company’s own debt instruments.

- Instead of informing investors of the tremendous financial impact that Panda’s walking away from the projects and putting the on TECO’s balance sheet would have, the Individual Defendants played dumb, claiming not to know the status of that situation, saying “[w]e are not in that project,” despite knowledge of having to loan Panda the money Panda needed to pay TECO interest on its loan (in essence, paying itself).

- TECO’s Gila River and Union projects lacked transmission capacity and would not have access to power grids in the areas in which the plants were located. Thus, while Gila River and Union’s theoretical output capacity was a combined 4,500 megawatts, the reality was that the power had nowhere to go.

- TECO failed to obtain sufficient contracts to sell what energy its plants could produce, such that TECO was not even able to cover the costs of running the plants, let alone turn a profit.

- TECO’s failure to obtain long-term contracts to sell its energy contributed to its inability to obtain sufficient grid access.

- The combination of a shortfall of long-term contracts and lack of grid access meant that TECO’s financial picture was materially less promising than TECO said it was and made it impossible for TECO to remove its cash exposure to merchant power prices.
For what little power TECO could transmit to the energy grids, TECO’s inability to secure long-term forward contracts, and its unwillingness to do so because of FAS 133 accounting implications, TECO was vulnerable and exposed to the volatile merchant power market spot prices. Put simply, TECO was not having anything remotely close to a strong year and billions of dollars in additional debt were hanging precariously over TECO’s balance sheet.

Because of Panda’s financial condition, TECO’s inability to access power grids, and the inability to secure contracts for the plants’ electrical output, there was, therefore, a strong likelihood that the projects would be “put” to TECO, causing its debt levels to rise to dangerously high levels, exposing the Company to ratings downgrades that would trigger covenants in financial commitments it had with its venture partners and with its financiers.

The Company was fully aware that it would require additional equity offerings to meet its financial obligations, further putting its dividend at risk and making it inevitable that a cut to the dividend would occur.

While TECO may have been focused on improving its balance sheet, it did not tell investors of the billions of dollars in debt looming overhead.

Apparently, in only 13 short days, TECO’s previously disclosed hearty financial well-being took a severe turn for the worse. Specifically, on October 8, 2002, CSFB’s Neil Stein again questioned TECO’s disclosures, following TECO’s announcement, after the September 25th conference call, during which Fagan stated that TECO would not need to raise equity, that it planned to issue 15 million shares of common stock that would result in approximately $216 million of gross proceeds, stating:

- Investors should view the offering as a negative event and a major surprise. Since it released its updated financial plan on 9/23, management has consistently stated that it requires no additional equity. This announcement could indicate that the company’s problems are worse than initially indicated by [TECO].

- Despite management’s contention, in our view, this transaction does nothing to bolster [TECO’s] liquidity position. In early October, about $200 mil. of [TECO’s] parent level debt matured. Assuming
the equity offering proceeds are used to refinance that obligation, this deal will not reduce [TECO’s] reliance on its planned $650 mil. asset monetization program.

- Even assuming flawless execution on its asset sale program, we still see risk that [TECO] will need to again return to the equity markets in 2003.

- **The share issuance will increase [TECO’s] annual dividend payout by 9% to $248 mil. Following this offering, we believe that [TECO] will be under more pressure to reduce its dividend.** In any event, we continue to view the dividend as a misleading indicator of value and a poor proxy for the underlying cash economics of the business.

- **We maintain our Underperform rating on [TECO] and continue to believe these shares are overvalued.**

222. On October 11, 2002, the Company announced that it had entered into an underwriting agreement for the sale of 17 million shares of its common stock for almost $200 million in proceeds. In a prospectus filed on October 11, 2002, defendants again revealed that the financing for the TIE projects had been originally structured as a 50/50 joint venture between Panda and Pub Svc. Enterprise Group, with TECO making a $93 million loan to Panda. However, under the new structure, TECO was now “investing” (i.e., taking an equity stake) $137 million in the project. Thus, TECO’s only recourse on the “loan” Panda would never repay was the assumption of 75% of Panda’s equity stake. In its description of its merchant power plant projects in operation, the Company stated that “TECO Power Services is currently evaluating its options with respect to continuing its interest in these projects.” Referring to the “risk factors” section of the Prospectus, the Company added that “TECO Power Services’ existing and planned power plants are affected by market conditions, and TECO Power Services may not be able to sell power at prices that enable it to recover its investments in the plants.” In discussing its outlook for 2002 and
2003, the Company reiterated the statements previously disclosed in its recent press releases, including the Company’s decision to shut down the McAdams and Dell power plants.

223. Additionally, in the “risk factors” section of the Prospectus, another small portion of the truth emerged:

At present, several of the wholesale markets supplied by so-called ‘merchant’ power plants are experiencing significant pricing declines due to excess supply and weak economies. Consequently, only a portion of the projected output of TECO Power Services’ plants has been hedged for 2003 and 2004. TECO Power Services’ results could be adversely affected if it is unable to sufficiently sell the output of its plants at a premium to forward curve prices or if we need to write off any capital already invested in projects.

*   *   *

TECO Power Services’ position in the Odessa and Guadalupe power stations in Texas is currently in the form of a $137 million loan to a Panda Energy International subsidiary, which is a partner in Texas Independent Energy (TIE). At the end of 2002, either the borrower will repay the loan or the loan will convert to an indirect equity interest in these projects. TECO Power Services is evaluating various options regarding its loan, including renegotiating the terms of the loan, converting into equity and renegotiating the ownership structure, selling TECO Power Services’ interest in the projects, or writing-off of the loan amount. Any write-off or charge from a renegotiation or sale would adversely affect our results and has not been included in our estimates for 2002 or 2003.

224. The statements referenced in ¶¶222 through 223 were each materially false and misleading when made as they misrepresented and/or omitted adverse facts which then existed and disclosure of which was necessary to make the statements not false and/or misleading. The true facts, which were then known to each of the defendants, based upon their access to and review of internal TECO data, as well as their direct involvement in TECO’s merchant power plant projects, were:

- Panda was about to default on the TIE loans when TECO loaned it an additional $45 million in February 2002 and Panda used the “arrangement”
described in the 2001 10-K to obtain a revolving line of credit which Panda then used to pay TECO’s interest on the $135 million TIE loan. In other words, the “arrangement” was a sham transaction used by TECO to pay itself interest so that it could recognize the interest as income rather than having to write off the Panda debt as a loss.

- In addition to having no significant forward contracts to sell energy out of its massive new power plants, TECO did not have the ability to sufficiently access the power grids – even if TECO had forward energy contracts, which it did not, it could not have sent the power out.

- TECO’s potential liability for the power plant projects was materially greater than the amounts identified in the guarantees it disclosed. TECO was literally at the mercy of Panda because, at Panda’s discretion, TECO could be forced to bear the entire cost of the power plant projects, causing the Company’s off-balance sheet debt to come crashing down on TECO’s finances and stock price, which is exactly what ultimately happened.

- TECO and the Individual Defendants knew that Panda was in precarious financial condition since the time TECO entered into its relationship with the struggling, privately held company. Panda’s financial problems finally caused Panda to “put” its debt and liabilities to TECO, overloading the Company’s own debt balances and triggering financial covenants in the Company’s own debt instruments.

- Because of Panda’s financial condition, TECO’s inability to access power grids, and the inability to secure contracts for the plants’ electrical output, there was, therefore, a strong likelihood that the projects would be “put” to TECO, causing its debt levels to rise to dangerously high levels, exposing the Company to ratings downgrades that would trigger covenants in financial commitments it had with its venture partners and with its financiers.

225. On October 17, 2002, the Company issued a press release entitled “TECO Energy reports detailed third quarter results, total earnings per share up almost 6 percent to $0.76 per share,” which stated in relevant part:

TECO Energy, Inc. today reported third quarter earnings from continuing operations of $0.72 per share (basic), up 7 percent from $0.67 per share in 2001. Net income from continuing operations for the quarter was $112.8 million, 24 percent higher than the $90.8 million recorded in the 2001 period. The actions taken to advance the sale of TECO Coalbed Methane’s gas-producing assets resulted in this business being shown as discontinued operations
effective with the third quarter results. Total earnings per share including discontinued operations at TECO Coalbed Methane were $.76, compared with $.72 for the third quarter last year. The average number of common shares outstanding in the third quarter was almost 15 percent higher than in the same period in 2001.

Year-to-date earnings per share from continuing operations increased almost 12 percent to $1.80 from $1.61 per share for the nine-month period ended Sept. 30, 2001. Net income from continuing operations for the 2002 nine-month period increased almost 23 percent to $263.6 million, compared with $214.7 million for the same period last year. Total earnings per share, including the discontinued operations of TECO Coalbed Methane, increased almost 7 percent to $1.91, compared with $1.79 for the first nine months last year.

Chairman and CEO Robert Fagan said, “Once again, we are delivering the earnings per share growth we projected. Our regulated Florida operations continued to grow, and our balanced portfolio of unregulated companies performed well. We achieved these results in spite of an economy that continues to sputter and energy prices that remained lower than expected this summer.”

“We have announced our plans for the remainder of this year and for 2003 and are committed to delivering on those plans. Our recent issuance of additional equity has strengthened our balance sheet, which is important during this time of market turmoil and uncertainty in the energy markets, and has allowed us to accelerate the implementation of our financial plan for next year as well as reduce our execution risk,” Fagan added.

226. The statements referenced in ¶225 were each materially false and misleading when made as they misrepresented and/or omitted adverse facts which then existed and disclosure of which was necessary to make the statements not false and/or misleading. The true facts, which were then known to each of the defendants, based upon their access to and review of internal TECO data, as well as their direct involvement in TECO’s merchant power plant projects, were:

- TECO’s unregulated power plant projects were not performing well because they lacked transmission access and, thus, the ability to enter into forward contracts to sell power and operate on a commercially viable basis.
TECO’s recent issuance of additional equity did not strengthen the Company’s balance sheet; rather, it put the Company’s already doomed dividend further at risk.

Panda’s failure to maintain its obligations on the TIE loans would lead to Panda putting its Union and Gila River obligations to TECO, forcing TECO to carry an enormous amount of additional debt on its balance sheet.

It was inevitable that the Company would have to cut its dividend because it knew that it would be unable to sell power from its newly-built merchant plants due to lack of transmission access.

In addition to having no significant forward contracts to sell energy out of its massive new power plants, TECO did not have the ability to sufficiently access the power grids – even if TECO had forward energy contracts, which it did not, it could not have sent the power out.

TECO’s potential liability for the power plant projects was materially greater than the amounts identified in the guarantees it disclosed. TECO was literally at the mercy of Panda because, at Panda’s discretion, TECO could be forced to bear the entire cost of the power plant projects, causing the Company’s off-balance sheet debt to come crashing down on TECO’s finances and stock price, which is exactly what ultimately happened.

TECO and the Individual Defendants knew that Panda was in precarious financial condition since the time TECO entered into its relationship with the struggling, privately held company. Panda’s financial problems finally caused Panda to “put” its debt and liabilities to TECO, overloading the Company’s own debt balances and triggering financial covenants in the Company’s own debt instruments.

Because of Panda’s financial condition, TECO’s inability to access power grids, and the inability to secure contracts for the plants’ electrical output, there was, therefore, a strong likelihood that the projects would be “put” to TECO, causing its debt levels to rise to dangerously high levels, exposing the Company to ratings downgrades that would trigger covenants in financial commitments it had with its venture partners and with its financiers.

On November 11, 2002, the Company issued a press release, entitled “TECO Energy reports progress on its plan, credit facilities and bond exchange and responds to investor concerns,” which stated in relevant part:
TECO Energy, Inc. reported today that it is making good progress on the execution of its recently announced 2003 plan. In related news, the company announced that it has received written commitments for the renewal of Tampa Electric’s $300 million credit facility. The company also indicated that it is moving forward with its previously announced plans to exchange $200 million of bonds and has received the necessary affirmations of its bond ratings related to this offering.

Chairman, President and CEO Robert Fagan said, “We are making good progress on and, in fact, accelerating the execution of the plan we announced on September 23rd. At the same time we are continuing to make good progress on short-term power sales contracts towards our target of having 40 percent contracted by year-end for the Union and Gila River power stations for 2003.”

TECO Energy’s announced plan was focused on completing the remainder of its construction program for generating plants on the regulated and unregulated sides of its business without raising incremental debt and being internally funded by 2004. As part of the plan, the company announced cash raising and spending reduction activities totaling $900 million. These activities include $250 million in capital expenditure reductions, $400 million of monetizations/sales of assets and $250 million of “other” cash to come from repatriation and refinancings of TECO Power Services’ Guatemalan assets and other financial transactions by the end of the first quarter.

Fagan said, “Since the plan was announced, we have been working hard to accelerate its completion. We raised $207 million of common equity in early October and have been making excellent progress on the more than $50 million of repatriation and refinancing activities, such that we expect the planned amount before the end of the year. Thus, we have virtually completed raising the $250 million in the “repatriation/other” category. This, combined with the reductions in capital expenditures, means that we have addressed about $500 million of the $900 million of cash raising and spending reductions and are more than half way to the completion of our plan in a little over a month.”

Fagan added that the sale of $400 million of non-core assets was also progressing well. He said that the company has received pricing indications at acceptable levels for its sale of the coalbed methane operation and that closing is expected by year-end. He added that that the gasifier and synfuel transactions were progressing on schedule as well, with closings expected in the first quarter of next year.

In related news, TECO Energy’s Senior Vice President and CFO Gordon Gillette indicated that the company was making progress on the last
significant TECO Energy debt maturity refinancing for the next several years and on the renewal of its credit lines. The $240 million debt maturity refinancing transaction is an exchange of $200 million of existing TECO Energy put bonds to a longer maturity, and includes an option payment, the remarketing premium, and issuance costs.

Gillette said, “We have been talking to bond investors for several weeks about this exchange. We have received the necessary affirmations of our bond ratings from each of the agencies. The current ratings are Baa2 at Moody’s Investor Services, BBB- at Standard & Poor’s Rating Services and BBB at Fitch Ratings.”

TECO Energy has total bank credit facilities of $1 billion, consisting of $700 million for TECO Energy and $300 million for Tampa Electric. $350 million of the TECO Energy facility has a renewal date of November 2004. As noted above the company has received written commitments for renewal of the Tampa Electric Company facility for an additional 364 days for a final maturity date of Nov. 12, 2003. The remaining $350 million of the TECO Energy 364 day facility has a renewal date of November 13, 2002.

Gillette noted, “TECO Energy and the bank group are continuing to work toward renewal of the TECO Energy $350 million 364-day credit facility. The company currently has commitments from a portion of the bank group to renew the facility. But, due to current conditions in the bank market, it has not received all of the necessary commitments to renew the facility. For this reason, it is likely that the company will exercise its right to convert the $350 million to a one-year term loan on November 13 while it continues to work toward renewal of the facility. Under either option, renewal or term conversion, our access to the credit facilities is not affected, and the rating agencies are fully apprised of our options.”

The company has estimated for the next five quarters that its expected drawings of the lines will leave a significant cushion, including the dividend, within the credit facilities. As of this date, outstanding under these facilities are non-cash letters of credit of $161 million and draws of $500 million, of which $234 million is cash which will be released upon completion of the sale of the notes and over $100 million is cash available to TECO Energy for general corporate purposes. Thus cash draws, assuming exchange of the notes, net of cash available is $166 million. Tampa Electric has not drawn any funds under its facility, and currently has no commercial paper outstanding and has cash on hand of more than $30 million.

Gillette also said, “We know that there has been misinformation, rumor and misunderstanding in the markets recently concerning our progress on the execution of our plan and related items. Some of the recent analyst reports
have taken a less favorable outlook on our progress than we believe is warranted. Our intent in communicating at this time is to put the uncertainty to rest and to show our significant progress in a short period of time to accelerate the execution of the plan. In addition, we are communicating today our continued commitment to executing the remainder of the plan as quickly as possible.”

228. On November 14, 2002, the Company filed its interim financial report for the quarter ending September 30, 2002 on Form 10-Q. The 10-Q, which was signed by Gillette and included certifications signed by Gillette and Fagan, reported financial results similar to those reported in the October 17, 2002 press release and disclosed slightly more information concerning TECO’s relationship with Panda:

TPS has agreed to purchase the interests of Panda Energy in the TPGC projects in 2007 for $60 million, and TECO Energy has guaranteed payment of TPS’ purchase obligation. This obligation may be accelerated if Panda Energy defaults on a bank loan for which the TPS purchase obligation is collateral or if TECO Energy permits its debt-to-capital ratio to exceed 65.0% or defaults on the payment of indebtedness in excess of $50 million . . . Panda Energy may cancel the purchase obligation at any time prior to 2007 by paying TPS a cancellation fee that ranges from $8 million to $20 million based on the time of such cancellation.

229. The November 14, 2002 10-Q also mentioned TECO’s exposure to Enron’s bankruptcy:

TPS project entities submitted claims in the Enron Bankruptcy Proceeding in mid-October 2002. The claims associated with the NEPCO engineering, procurement and construction (EPC) contract for the four projects total approximately $214 million, which is a gross dollar amount and does not take into account efficiencies in the projects and other credits which may be available.

230. Regarding TECO’s relationship with Panda, the November 14, 2002 10-Q also stated:

Unconsolidated affiliates in which TECO Power Services has a 50-percent ownership interest or less have non-recourse project debt balances as follows
at Sept. 30, 2002. **This debt is recourse only to the unconsolidated affiliate.**

TECO Energy has no debt payment obligations with respect to these financings, although it has significant equity investments and commitments in these affiliates.

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<th>Affiliate</th>
<th>Affiliate Debt Balance (millions)</th>
<th>TPS Ownership Interest</th>
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<tr>
<td>Union &amp; Gila River</td>
<td>$1,032.4</td>
<td>50%</td>
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Commenting on the Company’s financial outlook, the November 14, 2002 10-Q stated:

The 2003 business outlook focuses on continued growth in the Florida operations, optimizing the independent power investments and minimizing potential earnings volatility and external financing needs while maximizing cash flow to support the company’s expense and capital obligations as well as the dividend.

Key elements in the plan are: (1) deferral of the Dell and McAdams independent power plants and other actions to reduce capital expenditures by $250 million; (2) proceeds of more than $400 million from the partial sale of certain facilities involved in to the production of synthetic coal at TECO Coal and the coal gasification unit at Tampa Electric’s Polk Power Station and the sale of the TECO Coalbed Methane gas assets in Alabama; and (3) $250 million of cash derived from repatriation of cash and non-recourse refinancings on generating facilities in Guatemala and other financial transactions or asset sales. In October 2002, the Company accelerated a portion of the plan and increased its certainty by selling 19.4 million shares of common stock for $206.4 million.

The activities on the sale of assets are progressing rapidly. A letter of intent has been signed for the sale of Tampa Electric’s gasifier with negotiations proceeding toward a definitive agreement, with a closing expected in the first quarter of 2003 subject to the purchaser’s receipt of a favorable tax ruling from the Internal Revenue Service. Bids for the sale of the coalbed methane assets are expected in November, with a target to complete the sale by year-end. Completion of the partial sale of synfuel production assets is not expected until sometime in the first quarter of 2003. Based on projected net income of $270 million to $305 million, earnings-per-share are expected to be between $1.60 to $1.85 per share after the effects of the $0.15 cents per share dilution from the October 2002 issuance of 19.4 million shares. The low end of the range is based on the company-by-
company assumptions outlined in the Sept. 23, 2002 Current Report on Form 8-K, with power margins based on the-then current forward curves at TECO Power Services. The high end of the range assumes moderate improvement in wholesale power prices due to economic dispatch, which means the most efficient units, regardless of ownership, are dispatched first.

Cash flow projections for 2003 include capital expenditures of $700 million, which includes $255 million at the Florida operations; $400 million for TECO Power Services, including $375 million to repay the equity bridge loan, and $45 million for all other operating companies combined; and dividend payments of $250 million. Cash from operations at the lower end of the earnings-per-share guidance range is expected to be about $590 million, including the effects of higher synfuel production and partial sale of synfuel production assets at TECO Coal. Total cash flow from operations, including cash from the transactions described above and other activities including the repatriation of cash and non-recourse refinancings on generating facilities in Guatemala, is projected to be approximately $940 million.

The 2003 plan includes a $250 million reduction in capital expenditures. The major components of this reduction include: $100 million from the deferral of the Dell and McAdams power stations; $55 million from timing of the completion of Bayside Unit 2 and $30 million lower recurring capital expenditures at Tampa Electric; and $65 million lower capital expenditures at all of the other operating companies combined.

TECO Power Services’ position in the Odessa and Guadalupe power stations in Texas is currently in the form of a $137 million loan to a Panda Energy International subsidiary, which is a partner in Texas Independent Energy (TIE). At the end of 2002, either the borrower will repay the loan or the loan will convert to an indirect equity interest in these projects. TECO Power Services is evaluating various options regarding its loan, including renegotiating the terms of the loan, converting into equity and renegotiating the ownership structure, selling TECO Power Services’ interest in the projects, or writing-off the loan or investment amount. The expected outcome of these activities is to make these projects neutral to earnings and cash flow in 2003. Any write-off or charges from a renegotiation or sale would adversely affect the Company’s results, and has not been included in 2002 or 2003 estimates.

232. On November 15, 2002, TECO announced the sale of $380 million in Five-Year Notes to Credit Suisse First Boston (“CSFB”). CSFB “resold” the notes in a
Rule 144A offering. The notes had covenants that would trigger if TECO’s credit rating fell below junk grade.

233. The statements referenced in ¶227 through 231 were each materially false and misleading when made as they misrepresented and/or omitted adverse facts which then existed and disclosure of which was necessary to make the statements not false and/or misleading. The true facts, which were then known to each of the defendants, based upon their access to and review of internal TECO data, as well as their direct involvement in TECO’s merchant power plant projects, were:

- The Company was not making “good progress” on power sales from the Union and Gila River plants because it did not have sufficient access to energy grids and thus could not sell enough output from the plants to even cover operating expenses, let alone turn a profit – even if TECO had forward energy contracts, which it did not, it could not have sent the power out.

- TECO was highly exposed to the debt of the Union and Gila River power plant projects because Panda could force TECO to carry 100% of the $1.032 billion in debt on TECO’s balance sheet.

- Panda was about to default on the TIE loans when TECO loaned it an additional $45 million in February 2002 and Panda used the “arrangement” described in the 2001 10-K to obtain a revolving line of credit which Panda then used to pay TECO’s interest on the $135 million TIE loan. In other words, the “arrangement” was a sham transaction used by TECO to pay itself interest so that it could recognize the interest as income rather than having to write off the Panda debt as a loss.

- Panda’s failure to maintain its obligations on the TIE loans would lead to Panda putting its Union and Gila River obligations to TECO, forcing TECO to carry an enormous amount of additional debt on its balance sheet.

- TECO was not putting uncertainty to rest because TECO’s potential liability for the power plant projects was materially greater than the amounts identified in the guarantees it disclosed. TECO was literally at the mercy of Panda because, at Panda’s discretion, TECO could be forced to bear the entire cost of the power plant projects, causing the Company’s off-balance sheet.
sheet debt to come crashing down on TECO’s finances and stock price, which is exactly what ultimately happened.

- TECO and the Individual Defendants knew that Panda was in precarious financial condition since the time TECO entered into its relationship with the struggling, privately held company. Panda’s financial problems finally caused Panda to “put” its debt and liabilities to TECO, overloading the Company’s own debt balances and triggering financial covenants in the Company’s own debt instruments.

- Because of Panda’s financial condition, TECO’s inability to access power grids, and the inability to secure contracts for the plants’ electrical output, there was, therefore, a strong likelihood that the projects would be “put” to TECO, causing its debt levels to rise to dangerously high levels, exposing the Company to ratings downgrades that would trigger covenants in financial commitments it had with its venture partners and with its financiers.

- TECO’s recent issuance of additional equity the Company’s already doomed dividend further at risk.

- It was inevitable that the Company would have to cut its dividend because it knew that it would be unable to sell power from its newly-built merchant plants due to lack of transmission access.

234. On January 6, 2003, the Company filed a Prospectus relating to an exchange offering of 10.5% Notes due in 2007. This Prospectus contained identical risk warnings to the previous filings regarding the risks related to the independent power projects.

235. On January 22, 2003, the Company issued a press release, entitled “TECO Energy’s 2002 net income rises 9 percent; Revenues rise 8 percent to $2.7 billion,” which stated in relevant part:

TECO Energy, Inc. today reported that its full-year 2002 net income from continuing operations rose 9 percent to $298.2 million, up from $273.8 million in 2001. Fourth quarter net income from continuing operations decreased 41 percent to $34.6 million, down from $59.1 million in 2001. Full-year 2002 revenues rose 8 percent to almost $2.7 billion, up from $2.5 billion in 2001.
Full-year 2002 earnings per share from continuing operations were $1.95, down 4 percent, compared with 2001 earnings per share of $2.04. Earnings per share from continuing operations for the quarter were $0.20, compared to $0.43 in 2001. The number of common shares outstanding was 14 percent and 23 percent higher for the year and the quarter, respectively, than for the same periods in 2001.

Results from continuing operations for the year and the fourth quarter include a $34-million pre-tax ($20.9 million after-tax) charge related to a debt refinancing transaction executed by TECO Energy in the fourth quarter, and a $5.8-million after-tax charge for an asset valuation adjustment for TECO Power Services’ (TPS) proposed sale of generating facilities in the Czech Republic. Absent these charges, net income from continuing operations rose 19 percent to $324.9 million for the year, and earnings per share rose 4 percent to $2.12 per share for the year. Results from continuing operations exclude the results from TECO Coalbed Methane, which was sold in December and is reported as discontinued operations.

Total net income and earnings, including continuing operations and recently discontinued operations were $330.1 million and $2.15 per share, respectively. Total non-GAAP net income and earnings, excluding the $20.9 million debt refinancing and $5.8 million asset valuation charges and the $7.7 million gain on the sale of TECO Coalbed Methane, were $349.1 million and $2.28 per share, respectively.

TECO Energy Chairman and CEO Robert Fagan said, “TECO Energy had another good year for net income in 2002, despite a soft economy and tough energy markets. Except for the two unusual items, we delivered the double-digit net income growth we projected earlier in the year. While earnings per share were diluted by the new shares issued during the year, the share issuance was important to strengthen the balance sheet and improve our cash position.”

“We will have our challenges in 2003, but we are making good progress on our $900 million cash generation plan, which we announced in September to fund the completion of the construction programs at TPS and Tampa Electric without raising incremental debt. We have already accounted for more than 70 percent of the targeted $900 million of cash generation from capital expenditure reductions, non-core asset sales and monetization of Section 29 tax credits, and other financial transactions or asset sales. I expect our Florida utilities to have a good year in 2003, contributing strong earnings and cash flow, thanks to continuing growth in the state’s economy. TECO Energy’s mix of profitable regulated and unregulated businesses helps
mitigate the impact of the weak energy markets that TPS is experiencing,”
Fagan added.

236. The statements referenced in ¶¶234 through 235 were each materially false
and misleading when made as they misrepresented and/or omitted adverse facts which then
existed and disclosure of which was necessary to make the statements not false and/or
misleading. The true facts, which were then known to each of the defendants, based upon
their access to and review of internal TECO data, as well as their direct involvement in
TECO’s merchant power plant projects, were:

- TECO’s recent issuance of additional equity did not strengthen the
  Company’s balance sheet; rather, it put the Company’s already doomed
  dividend further at risk;

- TECO was highly exposed to the debt of the Union and Gila River power
  plant projects because Panda could force TECO to carry 100% of the $1.032
  billion in debt on TECO’s balance sheet;

- Panda had already defaulted on the TIE loans, and in early 2002, TECO
  loaned Panda an additional $45 million, which Panda used to obtain a line of
  credit that it used to pay the interest on the revised TIE loan;

- TECO had no material contracts for the massive output from the Union and
  Gila River power plant projects because it lacked sufficient access to power
  plant grids and specifically avoided long-term contracts because of the
  negative accounting implications; and

- That TECO’s merchant power plants under construction would not be
  commercially viable and would operate at a loss.

237. Just days after TECO reported its 2002 earnings, on January 24, 2003, more
of the truth emerged as Merrill Lynch issued a report stating that TECO had reached “the end
of the ‘good times.’” Merrill Lynch lowered its 2003 earnings per share estimates for TECO
to $1.45 from $1.60 per share and said that continued growth at TECO’s regulated business
would be offset by, among other things, higher interest expense from the Company’s
November 2002 debt offering and TPS’s losses of $40 million to $45 million, compared with $40 million in income in 2002. “In 2003, [capital expenditures], dividends and loan payments are barely covered by cash flow, asset sales and cash on hand,” the Merrill Lynch report stated. “Risks to the numbers include a potential downgrade of one-notch by either Moody’s or S&P which would make $200 million in other commitments come immediately due.” Further, for 2004, Merrill Lynch dropped its earnings estimate for TECO to $1.30 a share in part because of expected “full-year losses of the Union and Gila River projects that come online during 2003.” In the conclusion of its February report, Merrill stated what had now become all too obvious: “The lingering risk is that Panda Energy becomes insolvent and as such puts [at risk] its 50% stake in Union and Gila River projects.”

238. A SalomonSmithBarney (“SSB”) report from mid-January raised similar concerns. The SSB analyst wrote, “With Florida’s reasonable regulatory climate providing for a stable outlook on the company’s largest business, [TECO Energy’s] major risks shift to liquidity issues and weak commodity prices for its current expansion of the merchant generation fleet.” SSB cautioned that the size of TECO’s “merchant fleet” would hit 6,575 megawatts by year-end 2003 compared with a regulated fleet of 3,788 megawatts, but that “[w]ithout contracts for the output, the return on the units could be negative.”

239. On February 4, 2003, Moody’s Investors Service downgraded Panda Funding Corp.’s $99 million of senior secured debt from Ba3 to B1, Moody’s fourth-highest speculative grade, citing lower-than-expected dividend distributions from Panda’s other power plants. Such dividends were Panda Funding’s only source of cash to pay back debt to
TECO, stated Scott Solomon, a Moody’s analyst and assistant vice president. Thus, TECO’s house of cards finally collapsed as even more of the truth emerged.

240.  Now that the truth behind TECO’s finances was exposed, between the close of trading on February 3, 2003 and the opening of trading on February 5, 2003, the Company’s stock price collapsed to $12.78, from a class period of peak of $29.05 on April 23, 2002. Thousands of shares of TECO’s common stock were dumped on February 4, 2003, releasing the artificial inflation from the Company’s stock price, despite the fact that holders of TECO’s common stock on February 5, 2004 would be paid what investors would later learn was TECO’s last large cash dividend.

**TECO ENERGY’S FALSE FINANCIAL REPORTING DURING THE CLASS PERIOD**

241.  In order to artificially inflate the price of TECO’s stock during the Class Period, Defendants caused TECO to falsely report its results during 2001 and 2002 through several improper accounting practices including by failing to make timely and adequate disclosures for its obligations related to acquiring the Panda joint venture. More specifically, which, by the beginning of the Class Period, the Panda joint venture was experiencing extreme problems which meant the asset was impaired. TECO’s accounting practices were improper because they failed to record asset impairment losses in a timely manner and by recording income from the Panda investment in 2002 in the form of notes receivable which notes were not collectible due to Panda’s financial problems, among other miscellaneous manipulations.

242.  TECO reported the following results for 2001-2002:
<table>
<thead>
<tr>
<th></th>
<th>9/30/01</th>
<th>12/31/01</th>
<th>3/31/02</th>
<th>6/30/02</th>
<th>9/30/02</th>
<th>12/31/02</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td>$659.6M</td>
<td>$574.0M</td>
<td>$606.6M</td>
<td>$677.7M</td>
<td>$725.6M</td>
<td>$660.5M</td>
</tr>
<tr>
<td>TPS Revenue</td>
<td>$ 90.4M</td>
<td>$ 58M</td>
<td>$ 55.3M</td>
<td>$ 75.4M</td>
<td>$ 98.5M</td>
<td>$ 80.6M</td>
</tr>
<tr>
<td>Operating Income</td>
<td>$131.7M</td>
<td>$ 68.1M</td>
<td>$ 89.2M</td>
<td>$ 97.8M</td>
<td>$136.6M</td>
<td>$ 59.5M</td>
</tr>
<tr>
<td>Net Income</td>
<td>$101.5M</td>
<td>$ 69.1M</td>
<td>$ 75.4M</td>
<td>$ 85.7M</td>
<td>$118.9M</td>
<td>$ 50.1M</td>
</tr>
<tr>
<td>TPS Net Income</td>
<td>$ 15.5M</td>
<td>NA</td>
<td>$ 4.9M</td>
<td>$ 8.9M</td>
<td>$ 25.6M</td>
<td>NA</td>
</tr>
<tr>
<td>EPS</td>
<td>$ 0.66</td>
<td>$ 0.43</td>
<td>$ 0.50</td>
<td>$ 0.56</td>
<td>$ 0.71</td>
<td>$ 0.36</td>
</tr>
</tbody>
</table>

243. TECO’s results and representations concerning the results were false and misleading when made, as TECO’s financial statements for at least 2001-2002 were not a fair presentation of TECO’s results and were presented in violation of GAAP and SEC rules.

244. Ultimately, TECO announced disappointing results for the fourth quarter of 2002 caused in part by the suspension of work on certain projects due to lower wholesale prices. Later in April 2003, TECO acknowledged that it would have to acquire the remaining interest in Panda and began to consolidate Panda in its financial statements. The Company’s September 30, 2003 Form 10-Q stated:

> When combined with TECO Energy’s exposure to the **majority of risk of loss** under the previously disclosed letters of credit and contractor undertakings, management believed that consolidation of TPGC was appropriate as of the date of the modifications to the agreements. For convenience of reporting periods and accounting cycles, management selected April 1, 2003 as the initial date of consolidation.

245. This added billions of dollars in debt to TECO’s balance sheet. Subsequently, TECO determined to treat the Panda projects as discontinued operations and recorded asset impairment charges exceeding $1.1 billion. In the Company’s 2003 Form 10-K, TECO acknowledged the severe impact of having to acquire the Panda projects:

> Our results and many of our activities in 2003 were driven by the capital requirements to complete the construction of the Union and Gila River power stations and the Tampa Electric Bayside Station repowering; the
initial operations of Union and Gila River power stations and the poor financial performance of these two large plants; the generally poor financial results from our other merchant power plants; and our decision to exit our ownership of the Union and Gila River power stations.

* * *

Driven by the poor financial performance of the Union and Gila River power plants, the diminished prospects for power price improvement in the near term, and increased rating agency concerns regarding our exposure to the merchant energy sector, in October, we announced that we would invest little, if any, additional cash in the merchant generation portfolio. Following this announcement we entered into negotiations with the Union and Gila River lending bank group. These negotiations resulted in a non-binding letter of intent containing a binding settlement agreement in February 2004 to transfer ownership to the lenders through a purchase and sale, or other, agreement. The letter of intent is described in the TECO Wholesale Generation company discussion.

246. In fact, TECO’s failure to record losses from its obligation to acquire an impaired asset (Panda), its improper recognition of income from Panda and its inadequate disclosures concerning Panda caused its financial statements to be false and misleading in violation of GAAP.

247. GAAP are those principles recognized by the accounting profession as the conventions, rules and procedures necessary to define accepted accounting practice at a particular time. SEC Regulation S-X (17 C.F.R. §210.4-01(a)(1)) states that financial statements filed with the SEC which are not prepared in compliance with GAAP are presumed to be misleading and inaccurate, despite footnote or other disclosure. Reg. S-X requires that interim financial statements must also comply with GAAP, with the exception that interim financial statements need not include disclosure which would be duplicative of disclosures accompanying annual financial statements. (17 C.F.R. §210.10-01(a)).
A. **TECO’s Inadequate Reserves for Contingent Losses Related to Panda**

248. GAAP, as set forth in Statement of Financial Accounting Standards (“SFAS”) No. 5, Accounting for Contingencies, ¶8, states that: “An estimated loss from a loss contingency ... shall be accrued by a charge to income if ... Information available prior to issuance of the financial statements indicates that it is probable that an asset had been impaired or that a liability had been incurred at the date of the financial statements ... [and] The amount of the loss can be reasonably estimated.”

249. GAAP, as set forth in SFAS No. 144, Accounting for the Impairment for Disposal of Long-Lived Assets, requires that an impairment loss shall be recognized where the carrying amount of the asset is not recoverable and exceeds its fair value. SFAS No. 144 states in part:

**Recognition and Measurement of an Impairment Loss**

7. For purposes of this Statement, *impairment* is the condition that exists when the carrying amount of a long-lived asset (asset group) exceeds its fair value. An impairment loss shall be recognized only if the carrying amount of a long-lived asset (asset group) is not recoverable and exceeds its fair value. The carrying amount of a long-lived asset (asset group) is not recoverable if it exceeds the sum of the undiscounted cash flows expected to result from the use an eventual disposition of the asset (asset group). That assessment shall be based on the carrying amount of the asset (asset group) at the date it is tested for discoverability, whether in use (paragraph 19) or under development (paragraph 20). An impairment loss shall be measured as the amount by which the carrying amount of a long-lived asset (asset group) exceeds its fair value.

**When to test a long-lived asset for recoverability**

8. A long-lived asset (asset group) shall be tested for recoverability whenever events or changes in circumstances indicate that its carrying amount may not be recoverable. The following are examples of such events or changes in circumstances:
a. A significant decrease in the market price of a long-lived asset (asset group);

b. A significant adverse change in the extent or manner in which a long-lived asset (asset group) is being used or in its physical condition;

c. A significant adverse change in legal factors or in the business climate that could affect the value of a long-lived asset (asset group), including an adverse action or assessment by a regulator;

d. An accumulation of costs significantly in excess of the amount originally expected for the acquisition or construction of a long-lived asset (asset group);

e. A current-period operating or cash flow loss combined with a history of operating or cash flow losses or a projection or forecast that demonstrates continuing losses associated with the use of a long-lived asset (asset group);

f. A current expectation that, more likely than not, a long-lived asset (asset group) will be sold or otherwise disposed of significantly before the end of its previously estimated useful life.

250. In September 2000, TPS provided a $93 million investment in the form of a loan related to Panda’s Texas Independent Energy Projects (TIE). This investment, under certain circumstances, gave TPS an opportunity for an effective economic interest, estimated at 75 percent, in Panda’s 1,000-megawatt interest in these projects. As discussed in great detail above, in November 2000, TPS announced a joint venture with Panda to build, own and operate two natural gas power plants located in Arkansas and Arizona, known as the Union and Gila River projects. In June 2001, TECO and Panda Energy secured $2.2 billion in bank financing for the projects. By the fall of 2001, TIE was in severe trouble. Panda was

12 The term *more likely than not* refers to a level of likelihood that is more than 50 percent.
about to default on its interest payment. Because of Panda’s poor condition, TECO could have taken on Panda’s interest in TIE and been done with Panda. However, this would have eliminated TECO’s ability to recognize interest income from the transaction which was important to TECO’s reported financial results, notwithstanding the fact that this interest was uncollectible. To be able to continue to recognize such interest income, TECO, instead of taking over Panda’s interest, funded an additional $45 million, and in February 2002, TPS entered into an agreement requiring TPS to purchase 100 percent of Panda’s interest in the joint venture for $60 million in 2007, unless Panda chose to remain a partner by canceling the agreement and paying a cancellation fee. Given the problems with the projects, described herein, it was extremely unlikely Panda would make this choice. During this time, Panda was suffering such severe problems that were becoming worse, it became much more likely that TECO would be required to purchase 100% of Panda.

251. The Enron bankruptcy in late 2001 had also impacted TECO’s obligations with respect to the Gila and Union Power projects. As set forth above, NEPCO had been serving as the construction contractor for the Union, Gila River, Dell and McAdams power stations when construction began in 2001. Enron guaranteed certain of NEPCO’s obligations under the construction contracts. As part of Enron’s centralized cash management procedure, Enron swept NEPCO’s cash before it was applied to pay project costs. Enron’s bankruptcy permitted the project lenders to stop funding construction costs for the Union and Gila River projects until the condition was cured or waived. Moreover, NEPCO had been paying some of the materials vendors on the Gila project and when NEPCO stopped paying these vendors, the vendors began to demand advance payments from
Panda for materials. TPS ultimately received approval from the project lenders on a plan that allowed funding to resume. The plan involved TECO Energy replacing Enron as the guarantor of certain of NEPCO’s obligations under the construction contracts for these two projects, including payment by TECO Energy of any project cost overruns and guaranteeing the completion of construction. Thus, TECO became guarantor on these very risky projects. As a result of these and other problems, the Company’s anticipated investment in Panda was already impaired in late 2001. The other problems included:

- The power market crashed in the summer of 2001. The electricity blackouts that occurred in California that summer essentially caused a market backlash and led power prices to drop significantly. When TECO committed to developing Union and Gila River with Panda, TECO was “basically gambling on the construction: in hopes that deregulation in the power market would make the projects pay off in the end.”

- Due to the change in power prices and capacity demand during mid-2001, TPS began seeking long term contracts for Union and Gila River. This was unusual because “there are no contracts for merchant power plants,” in that they are intended to supply peak power on an as-needed basis. TPS’s efforts to secure long-term power supply contracts occurred over several months beginning in late 2001 or early 2002. However, no significant or material contracts ever developed.

- The Panda projects were bad projects from the beginning as the projects were ill-conceived with nowhere for the power to go. Reports written about the projects prior to commencing work stated that “transmission capacity was limited.” In short, TECO knew or was severely reckless in disregarding that the projects could likely never operate at capacity because of the combination of a lack of access to the relevant power grids and a lack of demand for merchant power.

- The relationship with Panda was such that Panda required TECO put up money but Panda was in control of the projects. TPS was not even welcomed on the project job sites.

- As to Gila River, TPS encountered difficulties in gaining access rights to APS’ power grid. The Arizona market changed for the worse from TECO’s perspective in 2002. Originally, the state required APS and Tucson Electric
Power to divest their power plants and buy all their power from the competitive market. But the Arizona Corporation Commission (“ACC”) reversed course in 2002, following the meltdown of the Western energy markets. Instead, the ACC voted to require that the utilities put out to bid their power needs that they could not supply via their own power plants. TECO encountered resistance from APS about running power from the Gila River power plant through APS’s power grid. It was the general consensus among the TPS players involved with the Panda projects that Panda “operated on the assumption going into the projects that they could get transmission rights” from APS.

The Union project suffered from structural problems. Entergy, which owned and controlled the main power grid in the area (which was physically adjacent to the Union site), wouldn’t play ball when it came to allowing Union to run power on the Entergy grid. TECO had no bargaining power with Entergy to gain access because it has no long term sales agreements (“LTSAs”) with third parties. As a result, Entergy would tell TECO it didn’t have room on the grid for Union’s electricity output. They even had trouble getting access to Entergy’s power grid to run “test power” (to make sure the connections worked properly), and when they finally got Entergy to agree, Entergy would only agree to pay TECO at “test power prices” because “we didn’t have anywhere to sent it” (no end user customer). Test power prices were around $50 per megawatt, while market rates were around $200 per megawatt at the time, and as a result, it cost more to generate and transmit the power than the amount they received for the test power. There was a brief period when Entergy actually needed “spot” power and so agreed to purchase power from Union at the stop market price of $195/megawatt, but it didn’t last long. The lack of LTSAs in hand when the plant became operational meant that essentially they had built a billion dollar power plant that had no demand for steady stream of electricity output, the income from which normally pays for the operating overhead and allows the remaining power units to be available to start up and generate spot power that can be sold at spot market prices (normally much higher price than the price in a LTSA) and provides the means for turning a profit. In the absence of any LTSAs for the Union when it became operational, TECO essentially had a billion dollar “peaker plant” because it would cost more to run one of the units continuously so the power is available when a spot market develops, or to start up a unit to provide spot power, than the revenues they would receive for the power provided.

All of these problems with Panda increased the probability that Panda would “put” the projects on TECO and TECO would have no choice but to acquire the remainder of
Panda. Moreover, the problems indicated that the asset which TECO would be forced to acquire would not be worth as much as its cost and was already impaired. In fact, in the months before the acquisition of Panda’s interest there were rumors at TECO about TECO buying out Panda. It was clear to employees that TECO was exercising more control.

253. During the Class Period, TECO failed to adequately reserve for losses on its obligations to purchase the remainder of Panda. This failure caused TECO’s reported earnings to be artificially inflated during the Class Period. These reserves should have been in the hundreds of millions of dollars. Had TECO taken the appropriate reserves, its earnings would have been wiped out.

254. TECO was desperate to maintain its dividend and therefore was not only highly aware of information that could jeopardize the dividends, but extremely aggressive in “protecting” them.

255. Ultimately, TECO and Panda amended their agreement to accelerate TECO’s obligation to purchase Panda, albeit at a slightly lower price. TECO indicated the amendments to these agreements in early April 2003, made the exercise of the modified guarantee and the related purchase obligation became highly probable at that time. The likelihood of the exercise of the purchase obligation created a presumption of effective control.

256. However, many of these factors had existed for at least a year by this time. Thus, TECO belatedly consolidated Panda on its own financial statements and its debt long-term levels immediately increased from $3.97 billion to $6.59 billion. While there was also
an increase in TECO’s assets due to the consolidation, much of these assets would soon be
written off, as the assets were severely impaired.

257. Notwithstanding the factors indicating that TECO’s obligation to purchase
Panda would become operative and that the investment was impaired, the Company failed to
record adequately and timely impairment losses as required by GAAP.

258. The first phase of Union began commercial operation in January 2003, and
commercial operation of the entire facility was to be the second quarter of 2003.

259. In fact, the plants did not perform well after TECO acquired them in the
second quarter of 2003. In the third quarter of 2003, Union operated at only 39% capacity
and Gila River operated at only 45% capacity.

260. Ultimately in the fourth quarter of 2003, TECO categorized Panda as
discontinued operations and recorded a $1 billion charge for impaired assets, writing off its
entire investment in Panda.

B. TECO’s Improper Recognition of Uncollectible Income

261. As noted above, TECO could have obtained a controlling interest in Panda
much earlier (in early 2002 at the latest) than it actually did. However, because TECO
wanted to report the income it accrued on loans to Panda in TECO’s financial statements, it
chose to structure the transaction such that it would not acquire it until later. Such
recognition of income was improper and in violation of GAAP for at least two reasons: (a)
the income was not collectible as Panda’s operations were so poor it would not be able to
pay the amount; and (b) Panda should have been consolidated on TECO’s financial
statement as noted above.
262. GAAP, as described by FASB Statement of Concepts No. 5, states that revenue and gains should not be recognized until earned and collectible. Concepts No. 5, ¶83-84. See also SEC Staff Accounting Bulletin No. 101.

263. TECO’s recognition of income from Panda was material to TECO’s financial statement as shown by the fact that TECO referred to the income in the management discussion and analysis section of its SEC filings during the Class Period.

264. TECO’s manipulation of the Panda arrangement in failing to consolidate Panda (even though TECO effectively controlled Panda), so that it could continue to recognize income from Panda caused TECO’s financial statements to be misleading.

265. Due to these accounting improprieties, the Company presented its financial results and statements in a manner which violated GAAP, including the following fundamental accounting principles:

   (a) The principle that interim financial reporting should be based upon the same accounting principles and practices used to prepare annual financial statements (APB No. 28, ¶12);

   (b) The principle that financial reporting should provide information that is useful to present and potential investors and creditors and other users in making rational investment, credit and similar decisions was violated (FASB Statement of Concepts No. 1, ¶34);

   (c) The principle that financial reporting should provide information about the economic resources of an enterprise, the claims to those resources, and effects of
transactions, events and circumstances that change resources and claims to those resources was violated (FASB Statement of Concepts No. 1, ¶40);

(d) The principle that financial reporting should provide information about how management of an enterprise has discharged its stewardship responsibility to owners (stockholders) for the use of enterprise resources entrusted to it was violated. To the extent that management offers securities of the enterprise to the public, it voluntarily accepts wider responsibilities for accountability to prospective investors and to the public in general (FASB Statement of Concepts No. 1, ¶50);

(e) The principle that financial reporting should provide information about an enterprise’s financial performance during a period was violated. Investors and creditors often use information about the past to help in assessing the prospects of an enterprise. Thus, although investment and credit decisions reflect investors’ expectations about future enterprise performance, those expectations are commonly based at least partly on evaluations of past enterprise performance (FASB Statement of Concepts No. 1, ¶42);

(f) The principle that financial reporting should be reliable in that it represents what it purports to represent was violated. That information should be reliable as well as relevant is a notion that is central to accounting (FASB Statement of Concepts No. 2, ¶¶58-59);

(g) The principle of completeness, which means that nothing is left out of the information that may be necessary to insure that it validly represents underlying events and conditions was violated (FASB Statement of Concepts No. 2, ¶79); and
(h)  The principle that conservatism be used as a prudent reaction to uncertainty to try to ensure that uncertainties and risks inherent in business situations are adequately considered was violated. The best way to avoid injury to investors is to try to ensure that what is reported represents what it purports to represent (FASB Statement of Concepts No. 2, ¶¶95, 97).

266.  Further, the undisclosed adverse information concealed by defendants during the Class Period is the type of information which, because of SEC regulations, regulations of the national stock exchanges and customary business practice, is expected by investors and securities analysts to be disclosed and is known by corporate officials and their legal and financial advisors to be the type of information which is expected to be and must be disclosed.

POST CLASS PERIOD EVENTS

267.  On April 10, 2003, the Company cut its dividend by 46%, from an annual rate of $1.42 per share to $0.76 per share. The Company also stated it would have to pay $58 million to buy out Panda’s interest in the Union & Gila River and Guadalupe & Odessa projects.

268.  On April 21, 2003, Moody’s cut TECO’s key long-term debt rating by two notches to “junk,” or non-investment grade. The debt rating downgrades triggered accelerated repayment of TECO’s equity bridge loan of $375 million. More importantly, the downgrade required TECO to post cash collateral and letters of credit against its construction guarantees for the Union & Gila River projects, in an amount satisfactory to the majority of the lenders.
269. On October 27, 2003, the Company disclosed that it had entered into a Suspension Agreement with the Union/Gila River project lenders because of TECO’s non-compliance with a 3.0x EBITDA/interest coverage ratio covenant in a construction undertakings agreement. Although the plants were not in commercial operation, they were still in the warranty phase and had not yet received final acceptance from the project lenders. In an 8-K report, TECO estimated that it would cost an additional $11-$13 million to close out matters and that the lenders might not agree to that amount. The lenders had also refused to accept a substitute guarantor proposed by TECO. A default, including a violation of the EBITDA to interest test, would trigger a cross default under the non-recourse Union/Gila River project debt. Accordingly, TECO was reclassifying the $1.4 billion of Union/Gila River project debt to short-term debt on its September 30, 2003 balance sheet from long-term debt.

270. The Company’s annual financial report for the fiscal year ending December 31, 2003 on Form 10-K filed in March 2004 disclosed that: “As a result of events in October 2003 and December 2003 . . . and other economic factors impacting the general market conditions for independent power projects, [TPS] recognized a pre-tax asset impairment charge of $1.185 billion in 2003. Subsequent to December 31, 2003, discussions

13 The EBITDA/interest coverage ratio covenant is TECO’s Earnings Before Interest, Taxes, Depreciation & Amortization divided by the interest coverage (meaning the interest on bonds and other long term debt) which ratio indicates how many times interest charges have been earned by TECO in the period. The ratio measures a margin of safety for the lenders.
with the bank financing group have resulted in a non-binding letter of intent that would allow for an exit from the ownership of these project companies.”

271. On July 8, 2004, the Company announced the impending resignation of Fagan, and that TECO Board member Sherrill Hudson would take over as CEO and Chairman of TECO in Fagan’s place. The Board did not consider any external candidates for the CEO position and thus averted any external inquiry into TECO’s previous nondisclosures.

272. In July 2004, the Company reported its second quarter 2004 results, reporting a net loss of $108.2 million, or $0.57 per share, due in large part to a $98.7 million after-tax charge to write off TECO’s investment in the TIE projects. The Company revealed the charge in connection with selling its 50% interest in the TIE projects to Public Service Enterprise Group of New Jersey, Panda’s original partner in the projects, for “nominal consideration,” i.e., $500,000. The sale price was a fraction of the $160 million TECO had sunk into the TIE projects since September 2000.

ADDITIONAL SCIENTER ALLEGATIONS

273. As alleged herein, defendants acted with scienter in that they knew or disregarded with severe recklessness that the public documents and statements, issued or disseminated in the name of the Company, were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail throughout this complaint, defendants, by virtue of their
receipt of information reflecting the true facts regarding TECO, their control over, and/or receipt and/or modification of TECO’s allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning TECO, participated in the fraudulent scheme alleged herein.

274. Defendants knew and/or disregarded with severe recklessness the falsity and misleading nature of the information that they caused to be disseminated to the investing public. The ongoing fraudulent scheme described in this complaint could not have been perpetrated over a substantial period of time, as has occurred, without the knowledge and complicity of the personnel at the highest level of the Company, including each of the Individual Defendants.

275. In addition to the foregoing and other facts alleged herein, the following facts provide compelling evidence that defendants acted with intent to deceive TECO investors.

276. Importantly, Fagan and Gillette were motivated to perpetrate the fraudulent scheme and course of conduct described herein so that they could sell their personally-held shares for gross proceeds of more than $4.2 million at artificially inflated prices. While these sales, in and of themselves, may not show defendants’ scienter, when the complaint is viewed in its entirety, Fagan and Gillette’s sales further support the strong inference of scienter raised in the complaint and such sales also provide important context from which to view defendants’ fraudulent scheme.

277. Notwithstanding their access to non-public information, defendants disposed of the following amounts of their stock:
Robert D. Fagan, President and CEO

<table>
<thead>
<tr>
<th>Date</th>
<th>Number of Shares Sold</th>
<th>Price Per Share</th>
<th>Total Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>04/19/2002</td>
<td>126,239</td>
<td>$28.04</td>
<td>3,539,742</td>
</tr>
<tr>
<td>TOTAL</td>
<td>126,239</td>
<td></td>
<td>$3,539,742</td>
</tr>
</tbody>
</table>

Gordon Gillette, CFO

<table>
<thead>
<tr>
<th>Date</th>
<th>Number of Shares Sold</th>
<th>Price Per Share</th>
<th>Total Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>04/22/2002</td>
<td>463</td>
<td>$28.28</td>
<td>$13,094</td>
</tr>
<tr>
<td>05/06/2002</td>
<td>23,318</td>
<td>$27.83</td>
<td>$648,940</td>
</tr>
<tr>
<td>TOTAL</td>
<td>23,781</td>
<td></td>
<td>$662,034</td>
</tr>
</tbody>
</table>

278. Both the timing of the sales and the sale prices are suspicious. First, Fagan and Gillette sold their shares between $27.83 and $28.28 per share, near the stock’s Class Period peak at $29.05 on April 23, 2002. Both Fagan and Gillette sold within days of the stock hitting its Class Period high and right before the stock began its descent to an ultimate Class Period low of $10.02 on November 8, 2002.

279. Additionally, Fagan and Gillette’s prior trading history indicated that sales during the Class Period were both unusual and suspicious. In no time prior to the Class Period had Fagan ever sold stock. Prior to the Class Period, Gillette only sold 6,800 shares of stock. Thus, during the Class Period, Gillette sold approximately 350% more stock than during his entire time with the Company.

280. Fagan and Gillette’s knowledge about the false and misleading nature of the Company’s and their own public statements regarding TECO’s tremendous difficulty securing transmission access from its merchant power plant projects (as detailed in the Company’s own due diligence), the Company’s resulting inability to secure forward contracts (and its desire to avoid doing so to circumvent the resulting impacts of FAS 133
accounting), and Panda’s financial condition all make their Class Period stock sales unusual and suspicious.

281. The unusual circumstances surrounding Fagan and Gillette’s sales of their stock at nearly the same time, and at the height of the stock’s Class Period price (and shortly before its rapid decline) further demonstrate both the Individual Defendants’ motive to commit the fraud alleged herein as well as their scienter. As described herein, defendants acted with scienter in that they knew, or with severe recklessness disregarded, that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew, or with severe recklessness disregarded, that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, the Individual Defendants, by virtue of their receipt of information reflecting the true facts regarding TECO, their control over, and/or receipt and/or modification of TECO’s allegedly materially misleading misstatements and/or their associations with the Company, which made them privy to confidential proprietary information concerning TECO, participated in the fraudulent scheme alleged herein.

C. TECO’s Equity Offerings and Rising Dividend

282. In addition, defendants had another motive to deceive the investing public. While TECO and the Individual Defendants were issuing false and misleading statements about TECO’s business, TECO raised more than $1.5 billion through the sale of TECO stock and equity units at artificially inflated prices. Indeed, between the fall of 2000, when TECO
started investing in the Dell/McAdams, Guadalupe/Odessa and Union/Gila River power projects, and October 2002, TECO used the Company’s artificially inflated stock to fill its coffers, making six equity (or equity hybrid) securities offerings:

<table>
<thead>
<tr>
<th>Date</th>
<th>Type</th>
<th>Underwriter</th>
<th>Shares/Units</th>
<th>Unit Price</th>
<th>Proceeds</th>
</tr>
</thead>
<tbody>
<tr>
<td>12/15/00</td>
<td>Trust Preferred</td>
<td>Solomon</td>
<td>8 million</td>
<td>$25.00</td>
<td>$200 million</td>
</tr>
<tr>
<td>03/06/01</td>
<td>Common</td>
<td>CSFB</td>
<td>8.625 million</td>
<td>$27.75</td>
<td>$239 million</td>
</tr>
<tr>
<td>10/09/01</td>
<td>Common</td>
<td>Goldman</td>
<td>3.5 million</td>
<td>$26.72</td>
<td>$93.5 million</td>
</tr>
<tr>
<td>01/11/02</td>
<td>Equity Units</td>
<td>Goldman</td>
<td>18.4 million</td>
<td>$25.00</td>
<td>$460 million</td>
</tr>
<tr>
<td>06/05/02</td>
<td>Common</td>
<td>CSFB</td>
<td>15.5 million</td>
<td>$23.00</td>
<td>$356.5 million</td>
</tr>
<tr>
<td>10/10/02</td>
<td>Common</td>
<td>Morgan</td>
<td>19.5 million</td>
<td>$11.00</td>
<td>$215 million</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td><strong>$1.564 billion</strong></td>
</tr>
</tbody>
</table>

283. As detailed herein, the deregulation of the energy markets in some states offered an opportunity for the unregulated subsidiaries of regulated utilities, such as TECO, to sell electricity through wholesale power plants. Gradually, at first, and a breakneck pace once Fagan was hired, TECO’s business model took on substantially more risk. But, the transformation escaped the attention of many of TECO’s shareholders – conservative investors expecting a slow-growth company with a reliable dividend – just as TECO and the Individual Defendants intended.

284. As a result, the investment bankers assisting TECO (and ultimately themselves through the receipt of tens of millions of dollars in investment banking fees) had little difficulty selling TECO stock to the public, as TECO was long known as a conservative “widows and orphans” type utility stock with a very reliable dividend. TECO’s public image as a company that paid consistent dividends was critical to TECO’s ability to continue to
make money, and TECO and the Individual Defendants were highly motivated (indeed, they had more than a $1.5 billion in motivation) to maintain that public image.

285. Further, in 2002, despite the Company’s concealed exposure to Enron’s 2001 bankruptcy, TECO’s annual dividend was increased for the 43rd consecutive year to $1.42 a share. At the beginning of 2003, TECO had the highest shareholder payout relative to its stock price in the Standard & Poor’s 500 index and a significant portion of TECO’s investor base was comprised of conservative utility stock investors who – thanks to defendants’ misleading statements – did not understand the 180-degree change TECO’s business model had taken. Maintaining and increasing the dividend was critically important to TECO’s executives for other reason. First, maintaining and increasing dividends was meant to be and was an indicator of the strength of TECO’s stock, thus stimulating (albeit artificially), both the price and volume of sales of TECO’s stock. Further, their own compensation was actually tied to the degree to which TECO’s dividends exceeded those of its peers, earning the Company’s executives lucrative bonuses throughout the Class period and incentivizing them to conceal anything that would put that dividend in jeopardy.

APPLICABILITY OF PRESUMPTION OF RELIANCE: FRAUD ON THE MARKET DOCTRINE

286. At all relevant times, the market for TECO’s publicly traded securities was an efficient market for the following reasons, among others:

   (a) TECO’s securities met the requirements for listing, and were listed and actively traded on the NYSE, a highly efficient and automated market;

   (b) as a regulated issuer, TECO filed periodic public reports with the SEC, including reports on Form S-3;
(c) TECO regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

(d) TECO was followed by several securities analysts employed by major brokerage firms who wrote reports that were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

287. As a result, the market for TECO’s publicly traded securities promptly digested current information regarding TECO from all publicly-available sources and reflected such information in TECO’s securities prices. Under these circumstances, all purchasers of TECO’s publicly traded securities during the Class Period suffered similar injury through their purchase of TECO’s publicly traded securities at artificially inflated prices and a presumption of reliance applies.

LOSS CAUSATION/ECONOMIC LOSS

288. During the Class Period, as detailed herein, defendants engaged in a scheme to deceive the market and a course of conduct that artificially inflated TECO’s stock price and operated as a fraud or deceit on Class Period purchasers of TECO stock by misrepresenting the Company’s financial results, business success and future business prospects, including but not limited to misrepresentations regarding its ability to access energy grids, its ability to run its power projects at full capacity, its desire and ability to
obtain long-term energy agreements, the financial strength of and business relationship with its joint venturer, Panda, and the impact of the demise of Enron on its business. Defendants achieved this façade of success, growth and strong future business prospects by blatantly misrepresenting the Company’s risk and making a series of false and misleading statements regarding these material issues.

289. As a result of defendants’ fraudulent conduct as alleged herein, the prices at which TECO securities traded were artificially inflated during the Class Period. When Plaintiffs and other members of the Class purchased their TECO securities, the true value of such securities was substantially lower than the prices actually paid by Plaintiffs and the other members of the Class.

290. During the Class Period, defendants improperly inflated TECO’s reported results and made numerous false and misleading statements regarding many aspects of its business. Later, however, when the truth gradually leaked out and defendants’ prior misrepresentations and fraudulent conduct were disclosed and became apparent to the market, TECO stock fell precipitously as the prior artificial inflation came out of TECO’s stock price. As a result of their purchases of TECO stock during the Class Period, Plaintiffs and other members of the Class suffered economic loss, i.e., damages under the federal securities laws.

291. By their misrepresentations, the defendants consistently presented a misleading picture of TECO’s business and prospects. Thus, instead of truthfully disclosing during the Class Period that TECO’s business was not as healthy as represented, defendants caused TECO to falsely report revenues and earnings. Defendants also concealed TECO’s
obligations with respect to Panda and Enron and TECO’s failure to secure access to relevant power grids and long-term end user power agreements.

292. In ignorance of the materially false and misleading nature of the statements and documents made by the defendants, as well as the adverse, undisclosed information known to the defendants, Plaintiffs and the other members of the Class relied, to their detriment on such statements and documents, and/or on the integrity of the market, in purchasing their TECO stock at artificially inflated prices during the Class Period. Had Plaintiffs and the other members of the Class known the truth, they would not have taken such actions.

293. These false statements directly or proximately caused, or were a substantial contributing cause of the damages and economic loss sustained by Plaintiffs and the other members of the Class, and maintained the artificial inflation in TECO’s stock price throughout the six quarter Class Period and until the truth leaked into and was revealed to the market, at which time the prior artificial inflation came out of the stock.

294. Concurrent with the concealment of the falsification of TECO’s 2001-02 financial statements, defendants also misled investors by asserting that TECO was “strengthening its balance sheet.”

295. Defendants’ false and misleading statements had the intended effect and directly or proximately caused, or were a substantial contributing cause of TECO’s stock trading at artificially inflated levels, reaching as high as more than $28 per share, throughout the Class Period.
296. In early September 2002, TECO’s stock price dropped 18% to $16.18 per share following ratings cuts by analysts as news leaked out that TECO was not doing nearly as well as prior representations. Later, on January 22, 2003, defendants were forced to publicly disclose that its cash flow was diminished and fourth quarter 2002 EPS had declined 41% from the prior year. These public revelations indicated that TECO’s future results would be much worse then prior forecasts. Merrill Lynch immediately cut its forecasts for TECO’s 2003 EPS from $1.60 per share to $1.45 per share. On February 4, 2003, Moody’s downgraded Panda’s debt.

297. As a direct result of the public revelations regarding the truth about TECO’s previously reported financial results and its actual business prospects going forward, TECO’s stock price plummeted an additional 21%, on unusually high volume, falling from $15.14 on January 21, 2003 to $11.94 per share on February 6, 2003, a drop of $7.81 per share from August 2002. This drop, and the drop in September 2002, removed the inflation from TECO’s stock price, causing real economic loss to investors who had purchased the stock during the Class Period.

298. The 40% decline in TECO’s stock price between August 2002 and February 2003 was a direct result of the nature and extent of defendants’ fraud finally being revealed to investors and the market. The timing and magnitude of TECO’s stock price declines negate any inference that the loss suffered by plaintiff and other Class members was caused by changed market conditions, macroeconomic or industry factors or Company-specific facts unrelated to the defendants’ fraudulent conduct. During the same period in which TECO’s stock price fell 40% as a result of defendants’ fraud being revealed, the Standard & Poor’s
500 index declined less than 10%. The economic loss, i.e., damages, suffered by plaintiff and other members of the Class was a direct result of defendants’ fraudulent scheme to artificially inflate TECO’s stock price and the subsequent significant decline in the value of TECO’s stock when defendants’ prior misrepresentations and other fraudulent conduct was revealed and the artificial inflation came out of TECO’s stock.

299. In other words, there were no changed economic circumstances, changed investor expectations, new industry-specific facts or TECO-specific facts, conditions or other events, which taken separately or together account for the declines in the price of TECO stock described herein.

NO SAFE HARBOR

300. The federal statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this complaint. Many of the specific statements pleaded herein were not identified as “forward-looking statements” when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of TECO who knew that those statements were false when made. Moreover, to the extent that
defendants issued any disclosures designed to “warn” or “caution” investors of certain “risks,” those disclosures were also false and misleading since they did not disclose that defendants were actually engaging in the very actions about which they purportedly warned and/or had actual knowledge of material adverse facts undermining such disclosures.

**COUNT I**

**FOR VIOLATIONS OF SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5 PROMULGATED THEREUNDER AGAINST ALL DEFENDANTS**

301. Plaintiffs repeat and reallege the allegations set forth above as though fully set forth herein. This claim is asserted against all defendants.

302. During the Class Period, TECO and the Individual Defendants, and each of them, carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, Plaintiffs and other Class members, as alleged herein; (ii) artificially inflate and maintain the market price of TECO’s publicly traded securities; and (iii) cause Plaintiffs and other members of the Class to purchase TECO’s publicly traded securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, TECO and the Individual Defendants, and each of them, took the actions set forth herein.

303. These defendants: (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially high market prices for TECO's
securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5. These Defendants are sued as primary participants in the wrongful and illegal conduct charged herein. The Individual Defendants are also sued as controlling persons of TECO, as alleged below.

304. In addition to the duties of full disclosure imposed on defendants as a result of their making of affirmative statements and reports, or participating in the making of affirmative statements and reports to the investing public, they each had a duty to promptly disseminate truthful information that would be material to investors in compliance with the integrated disclosure provisions of the SEC as embodied in SEC Regulation S-X (17 C.F.R. § 210.01 et seq.) and S-K (17 C.F.R. §229.10 et seq.) and other SEC regulations, including accurate and truthful information with respect to the Company’s operations, sales, product marketing and promotion, financial condition and operational performance so that the market prices of the Company’s publicly traded securities would be based on truthful, complete and accurate information.

305. TECO and each of the Individual Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, business practices, sales performance, product marketing and promotion, operations and future prospects of TECO as specified herein.

306. These defendants each employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of
TECO’s value and performance and continued substantial sales, financial and operational growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about TECO and its business operations and future prospects in the light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of TECO’s securities during the Class Period.

307. Each of the Individual Defendants’ primary liability, and controlling person liability, arises from the following facts: a) each of the Individual Defendants was a high-level executive and/or director at the Company during the Class Period; b) each of the Individual Defendants, by virtue of his responsibilities and activities as a senior executive officer and/or director of the Company, was privy to and participated in the creation, development and reporting of the Company's internal sales and marketing plans, projections and/or reports; c) each of the Individual Defendants enjoyed significant personal contact and familiarity with each other and were advised of and had access to other members of the Company’s management team, internal reports, and other data and information about the Company’s financial condition and performance at all relevant times; and d) each of the Individual Defendants was aware of the Company's dissemination of information to the investing public which each knew or recklessly disregarded was materially false and misleading.
308. Each of these defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with severely reckless disregard for the truth in that each failed to ascertain and to disclose such facts, even though such facts were available to each of them. Such defendants’ material misrepresentations and/or omissions were done knowingly or with deliberate recklessness and for the purpose and effect of concealing TECO’s operating condition, sales, product marketing and promotional practices and future business prospects from the investing public and supporting the artificially inflated price of its securities. As demonstrated by defendants’ overstatements and misstatements of the Company’s financial condition and performance throughout the Class Period, each of the Individual Defendants, if he did not have actual knowledge of the misrepresentations and omissions alleged, was reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

309. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market prices of TECO’s securities were artificially inflated during the Class Period. In ignorance of the fact that market prices of TECO’s publicly traded securities were artificially inflated, and relying directly or indirectly on the false and misleading statements made by defendants, or upon the integrity of the market in which the securities trade, and/or on the absence of material adverse information that was known to or disregarded with deliberate recklessness by defendants but not disclosed in public statements by defendants during the Class Period, Plaintiffs and the other members of the Class acquired TECO securities during the Class
Period at artificially high prices and were damaged thereby, as evidenced by, among others, the stock price decline on or about February 4, 2003 when artificial inflation was released from TECO stock.

310. At the time of said misrepresentations and omissions, Plaintiffs and other members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiffs and the other members of the Class and the marketplace known of the true performance, sales, marketing, promotion and other fraudulent business practices, future prospects and intrinsic value of TECO, which were not disclosed by defendants, Plaintiffs and other members of the Class would not have purchased or otherwise acquired their TECO publicly traded securities during the Class Period, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

311. By virtue of the foregoing, TECO and the Individual Defendants have each violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

312. As a direct and proximate result of defendants’ wrongful conduct, Plaintiffs and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company’s securities during the Class Period, as evidenced by, among others, the stock price decline on or about February 4, 2003 when artificial inflation was released from TECO stock.
COUNT II

FOR VIOLATIONS OF SECTION 20(a) OF THE
EXCHANGE ACT AGAINST THE INDIVIDUAL DEFENDANTS

313. Plaintiffs repeat and reallege the allegations set forth above as though fully set forth herein. This claim is asserted against the Individual Defendants.

314. Each of the Individual Defendants acted as a controlling person of TECO within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions with the Company, participation in and/or awareness of the Company’s operations and/or intimate knowledge of the Company’s fraudulent marketing and promotions and actual performance, each of the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiffs contend are false and misleading. Each of the Individual Defendants was provided with or had unlimited access to copies of the Company’s reports, press releases, public filings and other statements alleged by Plaintiffs to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

315. In addition, each of the Individual Defendants had direct involvement in the day-to-day operations of the Company and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

316. As set forth above, TECO and the Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By
virtue of their controlling positions, each of the Individual Defendants is liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants’ wrongful conduct, Plaintiffs and other members of the Class suffered damages in connection with their purchases of the Company’s securities during the Class Period, as evidenced by, among others, the stock price decline on or about February 4, 2003 when artificial inflation was released from TECO stock.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class, pray for relief and judgment, as follows:

A. Declaring that this action is a proper class action, and certifying Plaintiffs as class representatives pursuant to Rule 23 of the Federal Rules of Civil Procedure and Plaintiffs’ counsel as Lead Counsel for proposed Class;

B. Awarding compensatory damages in favor of Plaintiffs and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants’ wrongdoing, in an amount to be proven at trial, including interest thereon;

C. Awarding Plaintiffs and the Class their reasonable costs and expenses incurred in this action, including attorneys’ fees and expert fees; and

D. Such other and further relief as the Court deems appropriate.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury.
This 3rd day of May 2005.

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP

/s/ David J. George
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Douglas Wilens
Florida Bar No. 0079987
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Lead Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of May, 2005, I presented the foregoing to the Clerk of the Court for filing and uploading to the CM/ECF system. I further certify that on the same date I mailed the foregoing document to counsel of record listed below.

/s/ David J. George

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