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ORIGINAL
FILE COPY

February 13, 1996

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 950379-EI

Dear Ms. Bayo:

Enclosed please find the original and fifteen (15) copies of the Citizens' Protest of Proposed Agency Action for filing in the above-referenced docket. A diskette in IBM-compatible WordPerfect 5.1 is also submitted.

Please indicate receipt of filing by date-stamping the attached copy of this letter. Thank you for your assistance in this matter.

Sincerely,

John Roger Howe
John Roger Howe
Deputy Public Counsel

ACK ✓
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into)
earnings for 1995 and 1996 of)
Tampa Electric Company.)
_____)

Docket No. 950379-EI
Filed: February 13, 1996

CITIZENS' PROTEST OF PROPOSED AGENCY ACTION

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to Section 350.0611, Florida Statutes (1995), and Rules 25-22.029(4) and 25-22.036(7)(a) and (f), Florida Administrative Code, protest the proposed agency action announced in Order No. PSC-96-0122-FOF-EI (Order No. 96-0122), issued January 23, 1996.

1. Copies of all pleadings, notices, orders, and correspondence should be served on:

Jack Shreve, Public Counsel
John Roger Howe, Deputy Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400

2. This office received a copy of Order No. 96-0122 on January 24, 1996, in the normal course of distribution of Commission orders to the Office of Public Counsel.

3. The Public Counsel is authorized, pursuant to Section 350.0611, Florida Statutes (1995), to file this protest on behalf of Tampa Electric Company's customers and to advocate the positions expressed below. Public Counsel's statutory authority should obviate the need for any independent showing of how the customers'

substantial interests are or will be affected by the proposed action.

4. However, beyond the statutory standing conferred on the Public Counsel, the substantial interests of those customers are affected by the Commission's proposed action in several ways. In the first place, utility customers have a substantial interest in the Commission complying with its statutory duties before taking even tentative action affecting a utility's earnings. The Commission, however, never allowed itself to become educated enough on relevant subjects to know whether it was appropriate to proceed further. In other words, the Commission did not have a reasoned basis to move from the investigation initiated by Staff to the decision determining Tampa Electric's substantial interests expressed in the proposed agency action.

5. The Commission was informed by its Staff that Tampa Electric's rates allowed the utility to earn well above its authorized return on equity. It was also informed that the allowed return was, in all likelihood, excessive in today's economic environment. Thus, the Commission was provided with a well-founded basis to believe (or at least to suspect) that customer rates and the utility's earnings were excessive. Sections 366.06 and 366.07, Florida Statutes (1995), require the Commission to respond to indications of significant changed circumstances by appropriate action to balance the interests of a utility and its customers. Instead, the Commission accepted a unilateral proposal from Tampa Electric to shortcut the process and forego a hearing that would

reveal whether, and to what extent, rates and earnings were too high. In return, Tampa Electric would agree that any earnings above 12.5% for 1996 would be subject to "the Commission's jurisdiction."

6. Order No. 96-0122 provides no basis at all for affected persons to discern why the Commission believes it is reasonable for customers to continue paying rates which allowed Tampa Electric to earn approximately 16.5% (\$50 million above 12.75%) in 1995. No information is provided to inform affected persons why the Commission believes a 12.5% ROE is appropriate for 1996. It is apparent from numbers mentioned at the agenda conference that Polk Unit 1, which is scheduled to come on line on October 15, 1996, will cost much more than originally anticipated. Yet, the proposed agency action does not provide for an evaluation of the in-service date or the prudence of the Polk unit in measuring the extent of earnings above 12.5%. The statement in the order that the Commission retains jurisdiction over earnings above 12.5% is, essentially, meaningless because no one knows what it means. The retention of jurisdiction on this basis, alone, requires a protest so that customers will not find out, too late, that it meant the company gets to keep the money.

7. Customers, as a group, would be adversely affected by having to pay rates which allow Tampa Electric to earn 12.5% given the current financial market. They are harmed all the more by paying rates to provide earnings well above that level. See, United Telephone Co. v. Mayo, 345 So. 2d 648, 653 (Fla. 1977) ("The rate of return which public utility companies may be allowed to earn is a

question of vital importance to both ratepayers and investors.... That return cannot be set so low as to confiscate the property of the utility, nor can it be made so high as to provide greater than a reasonable rate of return, thereby prejudicing the consumer.") The effect of the proposed action on individual customers should also be considered. Even if the Commission should order refunds of 1996 overearnings sometime in 1997, customers who leave the system before then will have been harmed.

8. Since there was no underlying petition which precipitated the proposed agency action, it must be assumed that this protest will lead the Commission to hold revenues above a 12.75% ROE subject to its jurisdiction and disposition and conduct the ROE hearing originally recommended by the Staff. Disputes of fact will, no doubt, arise over the issue of whether earnings above 12.75% for 1996 should be refunded and whether Tampa Electric's return on equity should be reduced and, if so, to what level. See Utilities Operating Co. v. Mayo, 204 So. 2d 321, 324 (Fla. 1967) ("[W]hether a particular rate is sufficient to produce a 'fair return' is a mixed question of law and fact. What is 'fair' and 'reasonable' is a conclusion to be formed by the regulatory body or the court on the basis of the facts presented.") It is the Citizens' position that overearnings should be refunded expeditiously and that a return on equity well below 12.5% should be established as soon as is practicable.

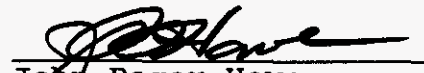
9. The Citizens specifically allege that Tampa Electric Company's allowed return on equity is excessive under current

economic conditions, and these conditions are likely to prevail for the foreseeable future. Section 350.0611(1), Florida Statutes (1995), authorizes the Public Counsel to petition the Commission to take any action he deems to be in the public interest. The regulatory scheme embodied in Chapter 366, Florida Statutes (1995), requires the Commission to revise Tampa Electric's return on equity range when changed conditions indicate that a previously allowed return on equity is excessive.

WHEREFORE, the Citizens of the State of Florida, through the Office of Public Counsel, protest Proposed Agency Action Order No. PSC-96-0122-FOF-EI, issued January 23, 1996, and request that an expedited hearing be conducted pursuant to the provisions of Section 120.57(1), Florida Statutes (1995), to determine a fair return on equity for Tampa Electric Company and to determine whether excess earnings for 1996 should be refunded to customers. The Citizens also request that the Commission hold a separate hearing in 1996 to determine how Tampa Electric's earnings for 1996 should be measured, with specific attention to the issue of whether, and to what extent, investment and expenses associated with Polk Unit 1 should be included in a calculation of 1996 earnings.

Respectfully submitted,

JACK SHREVE
Public Counsel



John Roger Howe
Deputy Public Counsel

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(904) 488-9330

Attorneys for the Citizens
of the State of Florida

**CERTIFICATE OF SERVICE
DOCKET NO. 950379-EI**

I HEREBY certify that a copy of the foregoing CITIZENS' PROTEST OF PROPOSED AGENCY ACTION has been served by *hand delivery or U.S. mail to the following parties of record on this 13th day of February, 1996.

JOSEPH A. MCGLOTHLIN, ESQUIRE
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Davidson, Rief & Bakas
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John Roger Howe
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