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September 24, 2001

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COMMISSION
CLERK

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

RE: Docket No. 950379-EI

Dear Ms. Bayó:

Enclosed is an original and fifteen copies each of the Public Counsel's Post-Hearing Statement of Issues and Positions and Public Counsel's Brief for filing in the above referenced file.

Also enclosed is a 3.5 inch diskette containing the Public Counsel's Post-Hearing Statement of Issues and Positions and Public Counsel's Brief in WordPerfect for Windows 6.1. Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

John Roger Howe
Deputy Public Counsel

JRH/dsb
Enclosures

- APP _____
- CAF _____
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DOCUMENT NUMBER-DATE

11990 SEP 24 01

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Determination of regulated)
earnings of Tampa Electric Company)
pursuant to stipulations for calendar)
years 1995 through 1999.)
_____)

Docket No. 950379-EI
Filed: September 24, 2001

**PUBLIC COUNSEL'S POST-HEARING
STATEMENT OF ISSUES AND POSITIONS**

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to Order No. PSC-01-0629-PCO-EI, issued March 14, 2001, submit this Post-Hearing Statement of Issues and Positions.

ISSUE 1: Does the inclusion of interest expense on tax deficiencies in the calculation of TECO's regulated earnings comply with the provisions of the settlement?

OPC: *No. None of the claimed expense relates to the tax life of Polk, which is the only category allowable pursuant to Paragraph 10. If Paragraph 10 wasn't there, Paragraph 11 would preclude all such interest expense because it was not an adjustment made in the last rate case.*

ISSUE 2: Does the settlement preclude interest on tax deficiencies for any item other than those related to the Polk Power Station?

OPC: *Yes. Paragraph 10 would not exist if the parties thought interest expense was recoverable under other provisions of the stipulations. And Paragraph 10 cannot be expanded beyond Polk's tax life by the doctrine of expressio unius est exclusio alterius, as well as other standards of contract interpretation.*

ISSUE 3: Was it appropriate for Tampa Electric to record interest expense on income tax deficiencies in 1999?

OPC: *No. Interest expense cannot be recorded above-the-line without prior authorization. Whether appropriately recorded or not, interest expense is not allowed to affect refunds for 1999 unless it arose out of a dispute with the IRS over Polk's tax life. None of the claimed expense fits this category.*

DOCUMENT NUMBER-DATE

11990 SEP 24 5

FPSC-COMMISSION CLERK

ISSUE 4: What amount of tax deficiency interest included in the calculation of the company's earnings in 1999 is related to the Polk Power Station that OPC is obligated to support as a prudent expense for rate making purposes in this proceeding under paragraph 10 of the stipulation?

OPC: *None. Tampa Electric has not demonstrated that any interest expense on tax deficiencies were recorded in 1999 as a result of the IRS questioning the tax life of the Polk Power Station.*

ISSUE 5: Should "[r]ate case benefits" be included in the cost-benefit analysis used to determine the prudence of costs incurred in 1999?

OPC: *No. Lower rates in past years cannot justify higher rates in the future without violating the prohibition against retroactive ratemaking. Moreover, rates charged from 1994-99 were not affected by the company's tax positions because the Commission set rates for 1994 to meet a financial integrity standard.*

ISSUE 6: Should "[d]eferred revenue benefits/(costs)" be included in the cost-benefit analysis used to determine the prudence of costs incurred in 1999?

OPC: *No. Amounts deferred and refunded in 1995-98 pursuant to the stipulations could not, by definition, have contained any hidden benefits or costs. Since the deferred revenue pot was empty after 1998, there couldn't have been any deferred revenue effect on the calculation of refunds for 1999.*

ISSUE 7: Is a cost-benefit analysis based upon the one used to evaluate Peoples Gas System's overearnings for 1996 relevant to this proceeding?

OPC: Note: The Prehearing Officer ruled that this issue is subsumed by Issue 9.

ISSUE 8: Is it appropriate to include the interest accrued on deferred revenues as a component of the cost-benefit analysis?

OPC: *No. Interest expense on deferred revenues has already been used to reduce the amounts deferred and refunded. Nothing in the stipulations suggests Tampa Electric can tap the interest accrued and paid for by customers to increase its earnings and reduce either deferrals or refunds.*

ISSUE 9: Does the cost/benefit analysis prepared by the company support its claim that the interest on tax deficiencies is prudent and in the best interest of the customers?

OPC: *No. The analysis is wrong in its philosophical approach; it is based upon an erroneous methodology; and it is replete with factual mistakes.*

ISSUE 10: Does the use of a cost-benefit analysis as a method to determine the prudence of a cost incurred in 1999 violate the proscription against retroactive ratemaking?

OPC: *It does when the purported inadequacy of past rates is used as a justification for higher rates in the future. Finding that customers should pay higher rates (in the form of lower refunds) in the future to make up for lower rates in the past is the essence of retroactive ratemaking.*

ISSUE 11: Is OPC equitably estopped from asserting inconsistent positions in this proceeding regarding adjustments not made in the last Tampa Electric rate case?

OPC: *No.*

ISSUE 12: What effect, if any, does Section 120.66, Florida Statutes (2000), have on the Commissioners ability to engage in ex parte communications with staff members?

OPC: *The cost benefit analysis accepted by the Commission in its PAA order resulted from a collaboration between the company and Staff. Communications with certain staff members would therefore constitute prohibited ex parte communications under the statute.*

ISSUE 13: What is the appropriate net operating income for 1999?

OPC: *\$186,659,086.*

ISSUE 14: What is the amount to be refunded?

OPC: *\$14,422,766 plus additional accrued interest.*

Respectfully submitted,

JACK SHREVE
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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 PUBLIC COUNSEL'S POST-HEARING STATEMENT OF ISSUES AND POSITIONS has been served by *hand delivery or U.S. Mail to the following parties of record on this 24th day of September, 2001.

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