

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 950379-EI  
ORDER NO. PSC-98-1619-PHO-EI  
ISSUED: December 4, 1998

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on November 30, 1998, in Tallahassee, Florida, before Commissioner Joe Garcia, as Prehearing Officer.

APPEARANCES:

LEE L. WILLIS, ESQUIRE, and KENNETH R. HART, ESQUIRE, Ausley & McMullen, Post Office Box 391, Tallahassee, Florida 32302  
On behalf of Tampa Electric Company (TECO).

VICKI GORDON KAUFMAN, ESQUIRE, McWhirter Reeves McGlothlin Davidson Decker, Kaufman, Arnold and Steen, P.A., 117 South Gadsden Street, Tallahassee, Florida 32301  
On behalf of Florida Industrial Power Users Group (FIPUG).

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

WILLIAM COCHRAN KEATING IV, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
On behalf of the Commission Staff (STAFF).

**PREHEARING ORDER**

I. CONDUCT OF PROCEEDINGS

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

DOCUMENT NUMBER-DATE

13669 DEC-4 98

FPSC-RECORDS/REPORTING

## II. CASE BACKGROUND

On June 9, 1998, Proposed Agency Action Order No. PSC-98-0802-FOF-EI was issued in this docket, establishing the amount of revenue to be deferred by Tampa Electric Company for 1996, pursuant to the stipulations approved by Order No. PSC-98-0670-S-EI, issued May 20, 1996, and Order No. PSC-98-1300-S-EI, issued October 24, 1996. The Office of Public Counsel (OPC) and the Florida Industrial Power Users Group (FIPUG) timely filed protests to Order No. PSC-98-0802-FOF-EI. This hearing has been scheduled to address those protests.

## III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

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

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

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

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7)

days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

#### IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the

prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

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

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

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

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Delaine M. Bacon	TECO	1, 2, 3, 4
Jeffry Pollock	FIPUG	1, 2, 3, 4

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
Hugh Larkin, Jr.	OPC	1, 2, 4
<u>Rebuttal</u>		
Delaine M. Bacon	TECO	1, 2, 3, 4

VII. BASIC POSITIONS

**TECO:** The Commission's Proposed Agency Action in Order No. PSC-98-0802-FOF-EI is appropriate and should be implemented. In 1995 and 1996, the Commission approved the regulatory accounting and treatment in which Tampa Electric deferred revenues in excess of its allowed rate of return on equity in 1995 and 1996. These deferred revenues were to be included as part of Tampa Electric's earnings in 1997 and 1998 to offset Polk revenue requirements and other expenses of the Company. As part of this regulatory treatment, the Company returned \$50 million to Customers over the October 1996 to December 1998 time frame. This equates to over half of the revenues deferred from 1995 and 1996. The Company also agreed to freeze base rates through 1999, absorb \$12 million of new annual base rate revenue requirements previously recovered through the oil backout clause, share equity returns on a 60/40 basis with customers even within its allowed return on equity, and potentially refund additional earnings to customers in 1999 and 2000.

The previous stipulations and orders of the Commission in these proceedings require the Company to accrue interest at the 30-day commercial paper rate specified in Rule 25-6.109, F.A.C. Under the Commission's orders and the appropriate accounting treatment, this interest is accrued and included in the deferred revenue balance. Because such deferred revenues have a cost ordered by the Commission, the same cost rate is applied to the deferred revenue balance in the capital structure.

The purpose of accruing this interest is to recognize the time value of money associated with the deferred revenue as they are being used by the Company during the stipulation period. To the extent the funds are available to the Company they offset other sources of funds. To properly reflect this source of capital, the

Commission, in accordance with previous orders referenced in this docket as well as others, ordered the Company to treat deferred revenues in the capital structure as a separate item, and apply a cost rate at the 30-day commercial paper rate as specified in Rule 25-6.109, F.A.C. In making this decision, the Commission stated that it was inappropriate to apply one cost for calculating interest for refund purposes and another cost for capital structure purposes.

Using a zero cost rate for deferred revenues in the capital structure would be contrary to financial and regulatory theory and against Commission precedent. It would have the effect of treating the interest expense being accrued by the Company as though it is not a legitimate cost for providing service and, would leave the cost to be absorbed by the utility shareholders "below the line." Under this treatment, the Company would not be afforded an opportunity to achieve the return on equity disclosed in its surveillance reports because the interest expense being incurred would effectively be disallowed.

Since the Company is obligated to accrue this interest pursuant to Commission order, it is clear that it should be included in the determination of regulatory earnings. It should not be treated in a manner that, in effect, represents a disallowance of an expense ordered by the Commission. The Commission should continue the methodology it approved in the 1995 earnings review. This methodology achieves an appropriate balance between stockholder and ratepayer interests.

**FIPUG:** It is inappropriate to impute interest expense on deferred revenues in determining TECO's earned return on common equity for regulatory surveillance reporting purposes. These deferred revenues represent over earnings which TECO is holding for customers. They are a source of cost free capital which TECO can use for its own internal purposes. If interest is imputed, it will require customers to pay interest on their own money -- a result at odds with the intent of the Stipulations.

**OPC:** The Commission's proposed agency action, Order No. PSC-98-0802-FOF-EI, was inconsistent with the stipulations

entered in this docket and in Docket No. 960409-EI. (the "First Stipulation" and the "Second Stipulation," respectively). Excess revenues for 1996 should have been calculated in a traditional manner. Adjustments should have been made to remove deferred revenues, along with any accrued interest, from the rate base, the income statement and the capital structure. The appropriate amount of 1996 earnings above an 11.75% return on equity should then have been identified, expanded for revenues, and increased for interest at the 30-day commercial paper rate. Deferred revenues plus interest for 1996 should then have been added to deferred revenues plus interest for 1995 (increased for interest earned in 1996) to arrive at the total to be carried forward for potential refunds in later years.

If the Commission had, in fact, followed the FPC-Fernandina Beach methodology (Order No. PSC-97-0135-FOF-EI, issued February 10, 1997, in Docket No. 961542-EI), it would have calculated an amount of revenues plus interest to be deferred consistent with this interpretation. Deferred revenues would have been completely removed from Tampa Electric's rate base and income statement to measure earnings for 1996. Deferred revenues would have been included in the capital structure at the 30-day commercial paper rate, but only in conjunction with an adjustment reducing other sources of capital by an equal amount. Tampa Electric's profits for 1996 would not have been reduced by interest expense associated with deferred revenues and its capital structure would not have been increased by the thirteen-month average of deferred revenues.

The method used by the Commission to determine Tampa Electric's 1995's over earnings is not dispositive of the appropriate method to be used for 1996. The calculation of earnings for 1995 was controlled by Order No. PSC-95-0580-FOF-EI, not by the stipulations signed one year later, in 1996. Tampa Electric did not insist upon, and the parties did not include, a provision in the first stipulation requiring 1996's earnings to be calculated in a similar manner. Instead, the First Stipulation, at page 5, states that "[t]he Parties have now agreed on the treatment of Tampa Electric's base revenues and accumulated deferred revenues for 1996, 1997 and 1998 as

set forth below. [Emphasis added.]” This statement is followed immediately by paragraph 4, which requires that earnings be calculated on an “FPSC adjusted basis.” Paragraph 11, on page 8, provides that “calculations of the actual ROE for each calendar year will be on an ‘FPSC adjusted basis’ using appropriate adjustments approved in Tampa Electric’s full revenue requirements proceeding.” The Commission did not increase the capital structure in Tampa Electric’s last rate case for deferred revenues.

It is the position of this office that, given the posture of this case, the Commission can only reach a result consistent with either the FPC-Fernandina Beach Division case or the explicit language of the First Stipulation by assigning a zero cost to deferred revenues in Tampa Electric’s capital structure. To do otherwise, would cause less to be deferred than if no interest was required by the stipulations.

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

#### VIII. ISSUES AND POSITIONS

**ISSUE 1:** What is the appropriate cost rate to apply to deferred revenues in the capital structure?

#### **POSITIONS:**

**TECO:** As previously ordered by the Commission and as provided in Rule 25-6.109, F.A.C., the 30-day commercial paper rate should be used. Accrued interest should not be reflected in the capital structure at a zero cost rate. This would have the effect of disallowing a prudent cost related to a source of funds used to provide utility service. However, if a zero cost rate is deemed appropriate, it would be also appropriate to remove the interest accrued in the deferred revenue balance in regard to the capital structure.



**FIPUG:** The appropriate cost rate to apply deferred revenues is zero. Deferred revenues are revenues in excess of TECO's cost of service to which TECO has no entitlement. They represent a source of cost free capital. To impute interest on the deferred revenues would result in customers having to pay interest on their own money which TECO is holding for them and would result in less revenues being deferred than the Stipulations require.

It would not be appropriate to adjust the amount of deferred revenues in the capital structure if a zero cost is assigned because this issue has neither been protested by the Intervenors nor placed in dispute in Tampa Electric's or the Intervenors' prefiled testimony. It should, therefore, be deemed stipulated pursuant to Section 120.80(13)(b), Florida Statutes (1997).

**OPC:** Deferred revenues should be assigned a zero cost rate. To do otherwise would cause less revenues to be deferred than if the stipulations called for no interest at all. Tampa Electric's customers are clearly entitled under the explicit terms of the stipulations to have certain earnings above an 11.75% ROE plus interest deferred for potential refunds in the future. The method used by the Commission to quantify 1995's deferred revenues, which was governed by Order No. 95-0580, is not applicable to 1996, which is governed by the First Stipulation. Use of a zero cost rate for deferred revenues in the capital structure will result in an appropriate calculation of deferred revenues for 1996 to which interest should then be added. It would not be appropriate to adjust the amount of deferred revenues in the capital structure if a zero cost is assigned because this issue has neither been protested by the Intervenors nor placed in dispute in Tampa Electric's or the Intervenors' prefiled testimony. It should, therefore, be deemed stipulated pursuant to Section 120.80(13)(b), Florida Statutes (1997). Furthermore, it would be inappropriate to change the amount of deferred revenues in the capital structure without also adjusting the rate base and income statement.

**STAFF:** Staff takes no position as to the appropriate cost rate to apply to deferred revenues in the capital structure. However, if a zero cost rate is assigned, the related

interest expense accrued in the deferred revenue balance should be placed below-the-line rather than in the capital structure. This adjustment would reduce the amount of the deferred revenue component in the capital structure. This adjustment is unnecessary if the deferred revenue component is assigned the commercial paper rate.

**ISSUE 2: What is the effect of assigning a zero cost rate to deferred revenues for 1996?**

**POSITIONS:**

**TECO:** The effect is to increase deferred revenues by \$2,502,000. Such an adjustment would result in disallowing an expense ordered by the Commission, requiring the Company's shareholders to pay the accrued interest and depriving the Company of an opportunity to earn its authorized rate of return.

**FIPUG:** The effect of assigning a zero cost rate is that the customer parties to the Stipulations receive the benefit of their bargain and are not required to pay interest on their own money.

**OPC:** It gives Tampa Electric's customers the benefit of the bargain reached in the stipulations approved by the Commission in this docket and in Docket No. 960409-EI. The clear intent of the stipulations and the Commission orders approving them is to have monies deferred for possible future refunds equal to the amount of earnings above prescribed limits plus accrued interest. The inclusion of deferred revenues in the capital structure at a cost rate, however, would defeat this intent and allow Tampa Electric to defer less than if the customers were not entitled to any interest at all. Deferred revenues should be included in the capital structure at a zero cost rate. Accrued interest should then be added to the resulting calculation of over earnings to arrive at the appropriate deferral amount.

**STAFF:** No position at this time.

**ISSUE 3: What is the appropriate method to calculate the separation of the FMPA and City of Lakeland wholesale contracts from the retail jurisdiction for 1996?**

**POSITIONS:**

**TECO:** The treatment employed by the Company in 1996, as modified by Ms. Bacon's testimony, is appropriate. The Company's separation methodology accurately removes from the retail jurisdiction the costs associated with the Company's resources used to serve the FMPA and Lakeland contracts in 1996.

**FIPUG:** TECO has conceded that the cost separation for 1996 should have included the entire month of December and will make the appropriate adjustment to increase the deferred revenue balance. This resolves FIPUG's concern for 1996. However, FIPUG's position on this issue should not be viewed as precedent on this issue in the future and should be without prejudice to any party to take any position on this issue in future proceedings.

**OPC:** The company has agreed in the prefilled direct testimony of its witness, Ms. Delaine Bacon, to make the appropriate adjustment to fully separate these sales for 1996.

**STAFF:** The Company has agreed to make an adjustment to include the entire month of December in the cost separation for 1996. This adjustment should be included in the 1996 calendar year for purposes of determining the correct amount of 1996 deferred revenues.

**ISSUE 4: Has TECO properly calculated the amount of deferred revenues for 1996?**

**POSITIONS:**

**TECO:** Yes. The Commission and the Staff have calculated properly the amount of deferred revenues for 1996 in relation to the treatment of interest on deferred revenues.

- FIPUG:** No. Deferred revenues should be assigned a zero cost and the deferred revenue amount increased accordingly.
- OPC:** No.
- STAFF:** No position at this time.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
			<u>Direct</u>
Bacon	TECO	_____ (DMB-1)	Alternative Treatment of Interest on Deferred Revenues
Larkin	OPC	_____ (HL-1)	Schedules 1 and 2 are copies of Attachments A and B to staff's March 26, 1998, recommendation

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

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. RULINGS

Order No. PSC-98-1584-PCO-EI, issued November 25, 1998, (Second Order Establishing Procedure) is hereby modified to change the due date for filing post-hearing briefs from December 21, 1998,

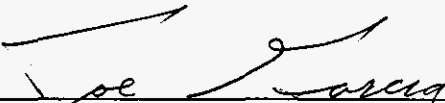
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to January 8, 1999. Order No. PSC-98-1584-PCO-EI is reaffirmed in all other respects.

It is therefore,

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

By ORDER of Commissioner Joe Garcia, as Prehearing Officer, this 4th day of December, 1998.

  
\_\_\_\_\_  
JOE GARCIA  
Commissioner and Prehearing Officer

( S E A L )

WCK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

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

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida

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