

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
ORDER NO. PSC-00-1441-AS-EI
ISSUED: August 8, 2000

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR.
LILA A. JABER

ORDER APPROVING SETTLEMENT AGREEMENT

BY THE COMMISSION:

On March 1, 1996, Tampa Electric Company (TECO or the Company) submitted its 1996 Forecasted Earnings Surveillance Report in compliance with Rule 25-6.1353, Florida Administrative Code. According to that report, TECO forecasted an achieved return on equity (ROE) of 13.27% which exceeded its then currently authorized ROE ceiling of 12.75%. Due to the high level of TECO's forecasted earnings, meetings were held to explore the possible disposition of the excess earnings. TECO, the Office of Public Counsel (OPC), the Florida Industrial Power Users Group (FIPUG), and the Staff participated in the meetings.

On March 25, 1996, TECO, OPC, and FIPUG filed a joint motion for approval of a stipulation that resolved the issues regarding TECO's over earnings and the disposition of those over earnings for the period 1995 through 1998. This stipulation was approved by Order No. PSC-96-0670-S-EI, issued May 20, 1996. The stipulation, agreed to by TECO, OPC and FIPUG:

- 1) freezes existing base rate levels through December 31, 1998;

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- 2) refunds \$25 million plus interest over a one year period commencing on October 1, 1996;
- 3) defers 60% of the net revenues that contribute to a return on equity (ROE) in excess of 11.75% for 1996;
- 4) defers 60% of the net revenues that contribute to an ROE in excess of 11.75% up to a net ROE of 12.75% for 1997;
- 5) defers 60% of the net revenues that contribute to an ROE in excess of 11.75% up to a net ROE of 12.75% for 1998;
- 6) refunds any net revenues contributing to a net ROE in excess of 12.75% for 1998 plus any remaining deferred revenues from 1996 and 1997;
- 7) allows TECO the discretion to reverse and add to its 1997 or 1998 revenues all or any portion of the balance of the previously deferred revenues;
- 8) prohibits TECO from using the various cost recovery clauses to recover capital items that would normally be recovered through base rates; and
- 9) requires consideration of the regulatory treatment of the Polk Power Station separately.

Order No. PSC-96-1300-S-EI issued, October 24, 1996, in Docket No. 960409-EI (Prudence review to determine the regulatory treatment of TECO's Polk Unit) approved a stipulation entered into by TECO, OPC and FIPUG. The stipulation resolved the issues in the Polk Unit docket, agreed to a rate settlement covering TECO's base rates and rate of return for the period January 1, 1999 through December 31, 1999, and modified the Stipulation approved in Order No. PSC-96-0670-S-EI. It resulted in an additional one year extension of the rate freeze established by the first stipulation and a guaranteed additional \$25 million refund starting in October, 1997.

That stipulation:

- 1) extends the existing freeze on TECO's base rates from January 1, 1999, through December 31, 1999;

- 2) precludes TECO from filing a rate increase request prior to July 1, 1999, and precludes TECO from requesting an interim increase in any such docket which is filed prior to January 1, 2000;
- 3) provides for an additional \$25 million refund over fifteen months beginning about October 1, 1997 and credited to customer's bill based on actual KWH usage adjusted for line losses;
- 4) allows TECO to defer into 1999 any portion of its 1998 revenues not subject to refund;
- 5) provides for the refund in the year 2000 of 60% of any revenues which contribute to a ROE in excess of 12% up to a net ROE of 12.75% for calendar year 1999;
- 6) provides for the refund in the year 2000 of 100% of any revenues which contribute to a ROE in excess of 12.75% for calendar year 1999;
- 7) resolves all of the issues in Docket 960409-EI by conferring a finding of prudence on the commencement and continued construction of the Polk Unit by TECO;
- 8) allows TECO to include the actual final capital cost of the Polk Unit in rate base for all regulatory purposes, up to an amount equal to one percent above the capital cost estimate of \$506,165,000 plus related estimated working capital of \$13,029,000;
- 9) allows TECO to include the full operating expense of the Polk Unit in the calculation of net operating income for all regulatory purposes (estimated to be \$20,582,000 net of DOE funding for the first 12 months);
- 10) places the entire investment in the Port Manatee site and any future gain on sale of this site to an independent third party below the line;

- 11) continues to use the separation procedure adopted in the company's last rate case to separate any current and future wholesale sales from the retail jurisdiction; and
- 12) provides that any further Commission action relative to this stipulation will be considered in Docket No. 950379-EI.

The parties filed an amendment to the stipulation which allows the Commission to determine the appropriate separation treatment of any off-system sale that is priced based on the Polk Unit's incremental fuel cost. This amendment addressed concerns regarding the potential subsidization of wholesale sales by the retail ratepayers.

By Order No. PSC-97-0436-FOF-EI, issued April 17, 1997, the Commission determined that \$50,517,063, plus interest should be deferred from 1995. Of the \$50,517,063, \$10 million has already been refunded to the customers. By Order No. PSC-99-0683-FOF-EI, issued April 7, 1999, the Commission determined that, after refunding \$15 million, \$22,081,064 plus interest remained to be deferred from 1996. Based on the Commission's decisions for 1995 and 1996, and the Staff recommendation for 1997, at December 31, 1997, there was approximately \$44.5 million, including interest, to be deferred into 1998 earnings. By Order No. PSC-99-1940-PAA-EI, issued October 1, 1999, the Commission determined that the maximum allowed revenue reversal for 1997 was \$27,056,807. For 1998, by Order No. PSC-99-2007-PAA-EI, issued October 14, 1999, the Commission determined that the maximum allowed revenue reversal was \$34,069,010 and that the refund, including interest, as of December 31, 1998, was \$11,226,598.

On October 22, 1999, FIPUG filed a protest of Order Nos. PSC-99-1940-PAA-EI and PSC-99-2007-PAA-EI. On October 22, 1999, TECO filed a protest of Order No. 99-1940-PAA-EI and on November 3, 1999 filed a protest of Order No. 99-2007-PAA-EI. The protests were set for a hearing to be held on August 2 and 3, 2000. On July 31, 2000, TECO, FIPUG and OPC filed a settlement agreement (Attachment A). This Order addresses the Settlement Agreement.

Per the settlement agreement, TECO, FIPUG and OPC have agreed:

- 1) that the refund period shall begin as soon as practicable after Order Nos. 99-1940 and 99-2007 are made final and non-appealable,
- 2) to a refund of \$13 million plus interest on the unamortized amount of the refund, and
- 3) to file a Joint Dismissal of the Appeal in FIPUG v. FPSC, Supreme Court Case No. SC 00-1209. This appeal challenged the Commission's action memorialized by Order No. PSC-99-2512-FOF-EI, issued December 22, 1999, in Docket No. 990001-EI.

We are not aware of any significant issues that were not addressed in Order Nos. PSC-99-1940-PAA-EI and 99-2007-PAA-EI. We continue to believe that the amounts of 1997 and 1998 earnings and the proposed refund in the original PAA orders are reasonable. Based on the amount of refund proposed in Order No. PSC-2007-PAA-EI, we calculate a refund amount, including interest, of \$12,309,085 through September 1, 2000. The parties propose to refund \$13 million, including interest, through September 1, 2000.

Therefore, we find that the settlement agreement which is included in this Order as Attachment A and incorporated by reference herein, proposed by Tampa Electric Company, the Florida Industrial Power Users Group and the Office of Public Counsel is approved.

Based on the foregoing, it is

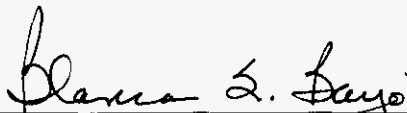
ORDERED by the Florida Public Service Commission that the settlement agreement which is included in this Order as Attachment A and incorporated by reference herein, concerning Tampa Electric Company's earnings in 1997 and 1998, proposed by Tampa Electric Company, the Florida Industrial Power Users Group and the Office of Public Counsel is approved. It is further

ORDERED that Order No. PSC-99-1940-PAA-EI, issued October 1, 1999, and Order No. PSC-99-2007-PAA-EI, issued October 14, 1999 shall be final and effective, as of August 1, 2000, the date of our vote in this matter. It is further

ORDERED that this docket shall remain open pending the determination of Tampa Electric Company's regulated earnings for 1999.

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By ORDER of the Florida Public Service Commission this 8th day
of August, 2000.



BLANCA S. BAYO, Director
Division of Records and Reporting

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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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 and/or

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wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In re: Determination of Regulated Earnings of Tampa)
Electric Company pursuant to Settlement Agreement)
for Calendar Years 1995 through 1999)**

DOCKET NO. 950379-EI

Filed: July 31, 2000

SETTLEMENT AGREEMENT

The Office of Public Counsel ("OPC"), the Florida Industrial Power Users Group ("FIPUG") and Tampa Electric Company ("Tampa Electric" or "the company") collectively referred to as "the Parties" enter into this Agreement to settle the various issues pending between the Parties as described herein. Accordingly, the Parties have agreed as follows:

1. The Parties agree that Order Nos. PSC-99-1940-PAA-EI ("99-1940") and PSC-99-2007-PAA-EI ("99-2007") should be made final orders by the Commission.

2. In order to avoid what could be a delay of two years or more in making the refund, the Parties agree to the following:

The refund period shall begin as soon as practicable after Order Nos. 99-1940 and 99-2007 are made final and non-appealable. A refund of \$13 million will be reflected as a credit on customer's bills calculated by multiplying a levelized factor adjusted for line losses times the actual kwh usage for the period of the refund which shall not exceed four months. The refund shall include interest on the unamortized amount of the refund. Any amount over or under the refund shall be treated as a true-up component in the normal course of Tampa Electric's fuel cost recovery proceedings. The Parties' goal is to begin the refund by September 1, 2000.

3. FIPUG and OPC will file a Joint Dismissal of the Appeal in FIPUG v. FPSC, Supreme Court Case No. SC 00-1209.

4. The Parties agree that this Settlement Agreement is intended to and shall settle the disposition of all issues raised in Docket No. 950379-EI with respect to the company's earnings in 1997 and 1998.

5. This Settlement Agreement shall be submitted to the FPSC forthwith and shall be effective upon Commission approval. The Parties agree that if the FPSC does not adopt this Settlement Agreement in its entirety, without modification, this Settlement Agreement shall become null and void and of no effect. Any dispute with respect to this Agreement shall be resolved by the Commission.

6. The Parties agree to actively support approval of this Settlement Agreement by the Commission at the earliest possible time. The Parties agree not to protest, seek reconsideration or judicial review of the Commission's approval of the Settlement Agreement or seek modification of the Settlement Agreement subsequent to final Commission approval except by mutual agreement.

7. The Parties acknowledge this Settlement Agreement is being entered into for purposes of settlement only and that the Parties are entering into this Settlement Agreement to avoid the expense and length of further legal proceedings and the uncertainty and risk inherent in any litigation. Neither this Settlement Agreement nor any action to reach, effectuate or further this Settlement Agreement may be construed as, or may be used as an admission by or against any party. Entering or carrying out this Settlement Agreement or any negotiations related thereto shall not in any event be construed as, or deemed to be evidence of, an admission or concession by any of the Parties or a waiver of any applicable claim or defense, otherwise available.

8. The Parties participated jointly in the drafting of this Settlement Agreement and, therefore, the terms of this Settlement Agreement are not intended to be construed against any Party by virtue of draftsmanship.

9. This Settlement Agreement may be executed in several counterparts, each of which shall constitute an original and all of which together constitute one and the same instrument.

IN WITNESS WHEREOF, this Settlement Agreement has been executed on the 31st day of July, 2000 by the undersigned counsel of record for the Parties hereto and/or by the Parties themselves in counterparts each of which shall be deemed an original.

Office of Public Counsel

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Tampa Electric Company

By _____
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Counsel of Public Counsel

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