

Steel Hector & Davis

Tallahassee, Florida

Charles A. Guyton
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**ORIGINAL
FILE COPY**

March 23, 1990

Mr. Steve Tribble
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32301

RE: Docket No. 890148-EI

Dear Mr. Tribble:

Enclosed for filing in Docket No. 890148-EI are the original and 15 copies of Florida Power & Light Company's Motion for Leave to File Notice of Supplemental Authority and Notice of Supplemental Authority.

Very truly yours,

Charles A. Guyton

CAG:do
Enclosures

cc: All Counsel of Record

- ACK
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG 1 W/M
- LIN 6
- OPC _____
- RCH _____

RECEIVED & FILED

EPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

02650 MAR 23 1990

EPSC-RECORDS/REPORTING

Tallahassee Office
215 South Monroe
Suite 801
Tallahassee, FL 32301-1804
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515 North Flagler Drive
1200 Northbridge Centre 1
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Palm Beach, FL 33480
(305) 650-7200

1200 North Federal Highway
Suite 409
Boca Raton, FL 33432
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SEC 1
WAS _____
OTH _____

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Industrial) Docket No. 890148-EI
Power Users Group to Discontinue)
Florida Power & Light Company's Oil) Filed: March 23, 1990
Backout Cost Recovery Factor)

**MOTION FOR LEAVE TO FILE
NOTICE OF SUPPLEMENTAL AUTHORITY**

At the March 5, 1990 oral argument on Florida Power & Light Company's motion for reconsideration in this case, a question arose about the proper scope and use of FPL's agreements to use a return on equity for purposes of tax savings proceedings lower than the return on equity authorized in FPL's last rate case. Specifically, questions were raised about the dates of relevant Agenda Conference transcripts and the scope of the matters addressed therein. A desire to review those transcripts was expressed. To facilitate that review, FPL moves for leave to file supplemental authority. FPL requests leave to file the attached Notice of Supplemental Authority listing the relevant Agenda Conference transcripts as well as copies of Commission orders in which FPL's stipulations regarding the return on equity to be used in tax savings proceedings were accepted.

Respectfully submitted,

Steel Hector & Davis
Attorneys for Florida Power
& Light Company

By: 
Charles A. Guyton

DOCUMENT # 890148-EI
02650 MAR 23 1990
100-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Industrial) Docket No. 890148-EI
Power Users Group to Discontinue)
Florida Power & Light Company's Oil) Filed: March 23, 1990
Backout Cost Recovery Factor)

NOTICE OF SUPPLEMENTAL AUTHORITY

To address questions raised at the March 5, 1990 oral argument on Florida Power & Light Company's Motion for reconsideration in this case (see transcript at pages 50-54), FPL has requested leave to file this Notice of Supplemental Authority providing references to relevant Agenda Conference transcripts as well as copies of Commission orders in which FPL's offers to use an equity return for purposes of the tax savings rule lower than its authorized equity return have been accepted.

1987 Proceeding: January 20, 1987 Agenda Conference
Order No. 17126

1988 Proceeding: October 6, 1987 Agenda Conference
Order No. 18340

1989 Proceeding: November 15, 1988 Agenda Conference
Order Nos. 20451, 20451-A

Respectfully submitted,

Steel Hector & Davis
215 South Monroe Street
Tallahassee, Florida 32301
Attorneys for Florida Power
& Light Company

By: Charles A. Guyton
Charles A. Guyton

BY THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the)	DOCKET NO. 861145-PU
effect of 1986 Federal Tax Reform)	
Requirements for Regulated)	ORDER NO. 17126
Utilities.)	ISSUED: 1-23-87

The following Commissioners participated in the disposition of this matter:

KATIE NICHOLS, Chairman
 GERALD L. GUNTER
 JOHN T. HERNDON
 JOHN R. MARKS, III
 MICHAEL MCK. WILSON

ORDER ACCEPTING REDUCED EQUITY RETURN
"MIDPOINTS" FOR APPLICATION
IN "TAX SAVINGS RULE"

BY THE COMMISSION:

This docket was opened in late-1986 for the purpose of addressing the effects of the Tax Reform Act of 1986 (Tax Reform) on the revenue requirements of jurisdictional utilities, as well as determining whether any resulting "tax savings" should be collected subject to refund pending final resolution of their treatment pursuant to applicable Commission rules.

In its recommendation requesting that an investigation be opened to address these issues, our Staff noted, among other things, that the application of Rule 25-14.003, Florida Administrative Code, (the tax savings rule) could be hindered because the authorized rate of return on equity for many utilities was higher than would be warranted by current economic and financial conditions. More specifically, the tax savings rule allows utilities to keep "tax savings" resulting from reduced corporate income tax rates so long as their retention does not cause the utility's earned rate of return to exceed the "midpoint" of the overall rate of return approved by the Commission in the utility's last rate case. While this midpoint is to be adjusted for the cost of debt issued subsequent to that rate case, the tax savings rule has no provision for adjusting equity returns to reflect current conditions. Logically, the probabilities of tax savings refunds are reduced if calculated using authorized equity returns, which are higher than more current returns.

While our Staff had recommended that we hold all tax savings resulting from tax reform subject to refund, they also recommended at our December 16, 1986 Agenda Conference, that we defer such action to allow the continuation of negotiations designed to produce lower stipulated equity returns solely for the purpose of the tax savings rule. We concurred and deferred action on Staff's recommendation.

The negotiations between FPL, Teco, Gulf, the Office of Public Counsel (Public Counsel), the Florida Industrial Power Users Group (FIPUG) and our Staff resulted in an impasse.

On January 15, 1987, Tampa Electric Company (Teco), Florida Power and Light Company (FPL) and Gulf Power Company (Gulf) filed a Stipulation and Proposed Settlement (Proposal), by which they offered to substitute an equity midpoint of 13.8% for the currently authorized returns of 15.6% for FPL and Gulf

ORDER NO. 17126
DOCKET NO. 861145-PU
PAGE 2

and 14.5% for Teco. The offer of the 13.8% figure was for the purposes of the tax savings rule only.

We considered the utilities' Proposal at our January 20, 1987 Agenda Conference at which time Teco, FPL and Gulf reduced their offer to 13.6%. Public Counsel, FIPUG and our Staff urged our rejection of the Proposal on the basis that 13.6% was still too high compared to current conditions.

We note that Rule 25-14.003, Florida Administrative Code, provides that both refunds associated with "tax savings" and collections resulting from "tax deficiencies" shall be calculated using the midpoint of the overall rate of return authorized in a utility's last rate case. Absent a new, lower return on equity authorized in a more recent rate case, these utilities are entitled to rely upon their currently authorized equity returns for the purposes of the tax savings rule. Irrespective of whether we might find current equity returns for these utilities to be higher or lower after considering a proper evidentiary record, it appears unassailable to us that the prospects of tax savings refunds are improved by substituting a midpoint of 13.6% for the 15.6% and 14.5% equity midpoints that the respective utilities are now entitled to rely upon. Accordingly, we shall accept this offer as being an improvement over the status quo and as being in the public interest.

As modified at the January 20, 1987 Agenda Conference, the proposal that we are accepting is that FPL and Gulf will voluntarily substitute 13.6% for the 15.6% equity midpoint currently authorized for the purpose of calculating a tax savings refund, if any, pursuant to Rule 25-14.003, Florida Administrative Code, for calendar year 1987. Teco will substitute the 13.6% figure for its currently authorized equity midpoint of 14.5% for the same purposes. It is understood that the 13.6% equity midpoint is for the sole purpose of calculating the effect of Rule 25-14.003, Florida Administrative Code, for 1987. It is further understood that our acceptance of this proposal shall in no way prejudice the Commission's ability to seek or consider revised equity returns for these three electric utilities for any purpose.

In view of the above, it is

ORDERED by the Florida Public Service Commission that the proposal of Tampa Electric Company, Florida Power and Light Company and Gulf Power Company to utilize a 13.6% equity midpoint in the calculation of an overall rate of return, pursuant to Rule 25-14.003, Florida Administrative Code, as described in the body of this order for calendar year 1987 is approved. It is further

ORDERED that Tampa Electric Company, Florida Power and Light Company, and Gulf Power Company are removed from further consideration in this docket.

By ORDER of the Florida Public Service Commission,
this 23rd of JANUARY, 1987.


STEVE TRIBBKE, Director
Division of Records and Reporting

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposal of Florida Power) DOCKET NO. 870890-E1
and Light Company, Gulf Power)
Company and Tampa Electric Company) ORDER NO. 18340
for Determination of Midpoint of)
Equity for 1988.) ISSUED: 10-26-87

The following Commissioners participated in the disposition of this matter:

KATIE NICHOLS, Chairman
THOMAS M. BEARD
GERALD L. GUNTER
JOHN T. HERNDON
MICHAEL McR. WILSON

ORDER ACCEPTING REDUCED EQUITY RETURN "MIDPOINTS"
FOR APPLICATION IN "TAX SAVINGS RULE"
AND FOR OTHER PURPOSES

BY THE COMMISSION:

By their joint petition filed in this docket on August 14, 1987, Florida Power and Light Company (FPL), Gulf Power Company (Gulf) and Tampa Electric Company (Teco) offered to utilize revised return on equity numbers of 13.80% for FPL and Teco and 13.95% for Gulf in connection with the application of Rule 25-14.003, Florida Administrative Code (as currently worded) for the calendar year 1988. Additionally, these utilities offered the use of the same return on equity numbers for the calculation of their respective AFUDC rates to be effective January 1, 1988.

As with many other utilities, the currently authorized rates of these three electric utilities reflect federal income tax expense at the 46% rate rather than at the 34% rate effective since July 1, 1987. Rule 25-14.003, Florida Administrative Code (the tax savings rule) allows utilities to keep "tax savings" resulting from reduced corporate income tax rates so long as their retention does not cause a utility's earned rate of return to exceed the "midpoint" of the overall rate of return approved by the Commission in that utility's last rate case. While the tax savings rule provides for the midpoint of the overall rate of return to be adjusted for the cost of debt issued subsequent to the last rate case, it has no provision for adjusting equity returns to reflect current conditions. Recognizing that the currently authorized equity returns for FPL and Gulf of 15.6% and 14.5% for Teco were higher than warranted by current conditions, the Commission Staff, Office of Public Counsel, and the Florida Industrial Power Users Group (FIPUG) attempted to negotiate the use of lower equity returns for FPL, Gulf and Teco. While these negotiations resulted in an impasse, FPL, Gulf and Teco ultimately offered equity rates lower than those currently authorized, for the purposes of the tax savings rule and for the calculation of AFUDC rates for calendar year 1988. As reported in Order No. 17126, these three utilities offered, and we accepted, the use of an equity midpoint of 13.6% for application of the tax savings rule in calendar year 1987.

We considered the utilities' current offer at our October 6, 1987 Agenda Conference and accepted a modified version of that offer. As modified, the utilities' proposal provides:

DOCUMENT NUMBER-DATE

00953 OCT 26 1987

DOC-RECORDS/REPORTS

1. FPL and Teco agree to the utilization of an equity midpoint of 13.6% in the calculation of an overall rate of return, pursuant to Rule 25-14.003, Florida Administrative Code (as currently worded), for calendar year 1988;
2. Gulf, which has a lower bond rating than FPL and Teco, agrees to the utilization of an equity midpoint of 13.75% in the calculation of an overall rate of return, pursuant to Rule 25-14.003, Florida Administrative Code;
3. FPL and Teco agree to the use of an equity component of 13.6%, and Gulf to 13.75%, in the calculation of their respective Allowance for Funds Used During Construction (AFUDC) rates for calendar 1988;
4. FPL and Teco agree to the use of an equity figure of 13.6%, and Gulf to 13.75%, as surveillance report ceilings. They agree that earnings above these respective numbers during 1988 could serve as a basis for the Commission to institute show cause proceedings, and, further, that if such proceedings were instituted, earnings above 13.6% and 13.75%, for the respective companies, could be held subject to refund on a prospective basis; and
5. The three utilities agreed that they would not file for either interim or permanent base rate increases designed to become effective prior to January 1, 1989. This provision does not affect (1) Individual tariff filings of contract rates that may be proposed; (2) Fuel adjustment, conservation cost recovery or oil backout charges; or (3) Teco's 1988 subsequent year base rate increase approved in previous orders of this Commission in Docket No. 850050-EI

We accept and approve the utilities' proposal as modified. As we noted in Order No. 17126, the three utilities are voluntarily giving up their entitlement to utilize their existing authorized equity returns of 15.6% and 14.5% for the purposes of the tax savings rule. Whether or not we would find current equity returns lower than those offered by the utilities after considering a proper evidentiary record, the volunteered rates are an improvement over the status quo and, therefore, should be accepted. Importantly, their acceptance in no way prejudices the right of any affected person or the Commission to seek revised equity returns for these three electric utilities for any purpose.

The utilities' offer to utilize lower equity rates in the calculation of their AFUDC rates for 1988 is also an improvement over the status quo, inasmuch as they are currently allowed by rule (Rule 25-6.0141, Florida Administrative Code) to incorporate the "midpoint of the last allowed return on common equity." As mentioned earlier, these rates are 15.6% for FPL and Gulf and 14.5% for Teco.

ORDER NO. 18340
DOCKET NO. 870890-E1
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The utilities' stipulation that revenues subject to refund during any 1988 show cause proceeding may be calculated using the 13.6% and 13.75% equity rates is more advantageous to the customers than the interim rate statute (Section 366.071(5), F.S.), which the utilities might rely upon and which provides that revenues collected under bond and held subject to refund shall be calculated using "the maximum of the range of the last authorized rate of return on equity established in the most recent rate case of the public utility." Based upon their currently authorized equity returns, Teco would be entitled to claim a 15.5% return for purposes of calculating an interim decrease, while FPL and Gulf could claim 16.6%.

Lastly, the advantages associated with these three utilities' not seeking either interim or permanent base rate increases to be effective in 1988 should be self-evident.

In view of the above, it is

ORDERED by the Florida Public Service Commission that the proposal of Florida Power and Light Company, Tampa Electric Company, and Gulf Power Company, as described in the body of this Order, is approved. It is further

ORDERED that this docket be closed.

By ORDER of the Florida Public Service Commission,
this 26th day of October, 1987.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

MBT

by Kay Ferguson
Chief, Bureau of Records

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation and show cause as to why Florida Power & Light Company should not continue to use a current market rate of return for application in Rule 25-14.003, F.A.C. (Tax Rule), Earnings Surveillance, AFUDC, and Interim Purposes.

DOCKET NO. 881139-EI

In re: Investigation and show cause as to why Tampa Electric Company should not continue to use a current rate of return for application in Rule 25-14.003, F.A.C. (Tax Rule), Earnings Surveillance, AFUDC, and Interim Purposes.

DOCKET NO. 881140-EI

In re: Investigation and show cause as to why Gulf Power Company should not continue to use a current rate of return for application in Rule 25-14.003, F.A.C. (Tax Rule), Earnings Surveillance, AFUDC, and Interim Purposes.

DOCKET NO. 881141-EI

ORDER NO. 20431

ISSUED: 12-13-88

The following Commissioners participated in the disposition of this matter:

- KATIE NICHOLS, Chairman**
- THOMAS M. BEARD**
- GERALD L. GUNTER**
- JOHN T. HERRNDON**
- MICHAEL McK. WILSON**

ORDER ACCEPTING REDUCED EQUITY RETURN
"MIDPOINTS" FOR APPLICATION IN
TAX SAVINGS RULE

BY THE COMMISSION:

As a result of the Tax Reform Act of 1986 the maximum federal corporate income tax rate was reduced from 46 percent to 34 percent. Rule 25-14.003, Florida Administrative Code, (the tax savings rule) allows utilities to keep "tax savings" resulting from reduced corporate income tax rates so long as their retention does not cause the utility's earned rate of return to exceed the "midpoint" of the overall rate of return approved by the Commission in the utility's last rate case. While this midpoint is to be adjusted for the cost of debt issued subsequent to that rate case, the tax savings rule has no provision for adjusting equity returns to reflect current conditions. Since the most recent authorized rates of return on equity for many utilities are higher than might be warranted by current economic and financial conditions, Staff, intervenors and the utilities have attempted to negotiate lower equity rates for use in the tax savings rule.

As is reported in Order No. 17126, negotiations were initially held between Florida Power & Light Company (FPL), Tampa Electric Company (TECO), Gulf Power Company (Gulf), the Office of Public Counsel (Public Counsel), Florida Industrial Power Users Group (FIPUG) and our Staff. Although, these negotiations resulted in an impasse, the three electric utilities filed a Stipulation and Proposed Settlement (Proposal) by which they offered to substitute an equity midpoint of 13.8% for calendar year 1987 for the currently authorized returns of 15.6% for FPL and Gulf and 14.5% for Teco. The offer of the 13.8% figure was for the purposes of the tax savings rule only.

We considered the utilities' Proposal at our January 20, 1987 Agenda Conference at which time TECO, FPL and Gulf reduced their offer to 13.6 percent. We accepted the offer as being an improvement over the status quo, and as being in the public interest, while noting that our acceptance of the proposal in no way would prejudice our ability to seek or consider revised equity returns of these three electric utilities for any purpose.

In Order No. 18340, issued in Docket No. 870890-EI on October 26, 1987, we accepted TECO's and FPL's offer to utilize an equity "midpoint" of 13.6 percent for the purposes of the tax savings rule for calendar year 1989 and Gulf's offer to use a rate of 13.75 percent. Additionally, these utilities agreed to use their respective rates for the calculation of their Allowance for Funds Used During Construction (AFUDC) rates for calendar 1988 and as their equity "ceilings" for purposes of the Commission's surveillance reporting system.

For calendar year 1989, FPL, TECO and Gulf have agreed, essentially, to continue the agreement in effect for 1988. Specifically:

1. FPL and TECO agree to the utilization of an equity midpoint of 13.6 percent in the calculation of an overall rate of return, pursuant to Rule 25-14.003, Florida Administrative Code (as currently worded), for calendar year 1989;
2. Gulf, which has a lower bond rating than FPL and TECO, agrees to the utilization of an equity midpoint of 13.75 percent in the calculation of an overall rate of return, pursuant to Rule 25-14.003, Florida Administrative Code for calendar year 1989;
3. FPL and TECO agree to the use of an equity component of 13.6 percent, and Gulf to 13.75 percent, in the calculation of their respective Allowance for Funds Used During Construction (AFUDC) rates for calendar 1989; and

4. FPL and TECO agree to the use of an equity figure of 13.6 percent, and Gulf to 13.75 percent, as surveillance report ceilings. They agree that earnings above these respective numbers during 1989 could serve as a basis for the Commission to institute show cause proceedings, and, further, that if such proceedings were instituted, earnings above 13.6 percent and 13.75 percent, for the respective companies, could be held subject to refund on a prospective basis.

We accept and approve the utilities' proposal. As we noted in Orders Nos. 17126 and 18340, the three utilities are voluntarily giving up their entitlement to utilize their existing authorized equity returns of 15.6 percent and 14.3 percent for the purposes of the tax savings rule. Whether or not we would find current equity returns lower than those offered by the utilities after considering a proper evidentiary record, the volunteered rates are an improvement over the status quo and, therefore, should be accepted. Importantly, their acceptance in no way prejudices the right of any affected person or the Commission to seek revised equity returns for these three electric utilities for any purpose.

The utilities' offer to utilize lower equity rates in the calculation of their AFUDC rates for 1989 is also an improvement over the status quo, inasmuch as they are currently allowed by rule (Rule 25-6.0141, Florida Administrative Code) to incorporate the "midpoint of the last allowed return on common equity." As mentioned earlier, these rates are 15.6 percent for FPL and Gulf and 14.5 percent for TECO.

The utilities' stipulation that revenues subject to refund during any 1989 show cause proceeding may be calculated using the 13.6 percent and 13.75 percent equity rates is more advantageous to the customers than the interim rate statute (Section 366.071(5), F.S.), which the utilities might rely upon and which provides that revenues collected under bond and held subject to refund shall be calculated using "the maximum of the range of the last authorized rate of return on equity established in the most recent rate case of the public utility." Based upon their currently authorized equity returns, TECO would be entitled to claim a 15.3 percent return for purposes of calculating an interim decrease, while FPL and Gulf could claim 16.6 percent.

In view of the above, it is

ORDERED by the Florida Public Service Commission that the proposal of Florida Power & Light Company, Tampa Electric Company, and Gulf Power Company, as described in the body of this Order, is approved. It is further

ORDERED that these dockets be closed.

By ORDER of the Florida Public Service Commission,
this 13th day of DECEMBER, 1988.


STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

NBT

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 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 or sewer 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.

ORDERED by the Florida Public Service Commission that Order No. 20451 is amended to include Paragraph 5 as stated in the body of this Order. It is further

ORDERED that Order No. 20451 is affirmed in all other respects.

By ORDER of the Florida Public Service Commission,
this 9th day of FEBRUARY, 1989.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Industrial) Docket No. 890148-EI
Power Users Group to Discontinue)
Florida Power & Light Company's Oil) Filed: March 23, 1990
Backout Cost Recovery Factor)

CERTIFICATE OF SERVICE

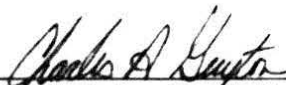
I HEREBY CERTIFY that on the 23rd day of March, 1990,
a true and correct copy of Florida Power & Light Company's
Motion for Leave to File Notice of Supplemental Authority and
Notice of Supplemental Authority were served by hand delivery*
and U.S. Mail** on the persons listed below.

Marsha Rule, Esq.*
Division of Legal Services
Florida Public Service Commission
101 E. Gaines Street
Tallahassee, FL 32399

Gail P. Fels, Esq.**
Assistant County Attorney
Metro-Dade County
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Jack Shreve, Esq.*
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Joseph A. McGlothlin, Esq.*
522 East Park Ave.
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Tallahassee, FL 32301



CHARLES A. GUYTON