

8/10  
2

LAW OFFICES

McWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, RIEF & BAKAS, P.A.

100 NORTH TAMPA STREET, SUITE 2800  
TAMPA, FLORIDA 33602-5126

TALLAHASSEE OFFICE  
117 S. GADSDEN  
TALLAHASSEE, FLORIDA 32301  
TELEPHONE (904) 222-2525  
FAX (904) 222-5606

LYNWOOD F. ARNOLD, JR.  
JOHN W. BAKAS, JR.  
LINDA C. DARSEY  
C. THOMAS DAVIDSON  
STEPHEN O. DECKER  
VICKI GORDON KAUFMAN  
JOSEPH A. MCGLOTHLIN  
JOHN W. McWHIRTER, JR.  
RICHARD W. REEVES  
FRANK J. RIEF, III  
PAUL A. STRIKE

MAILING ADDRESS: TAMPA  
P.O. Box 3350, TAMPA, FLORIDA 33601-3350

TELEPHONE (813) 224-0866  
FAX (813) 221-1854  
CABLE GRANDLAW

PLEASE REPLY TO:  
TALLAHASSEE

ORIGINAL  
FILE COPY

February 13, 1996

VIA HAND DELIVERY

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

Re: Docket No. 950379-EI - Investigation into earnings for 1995  
and 1996 of Tampa Electric Company

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and 16  
copies of the Florida Industrial Power Users Group Petition On  
Proposed Agency Action.

Please acknowledge receipt of the above on the extra copy  
enclosed herein and return it to me. Thank you for your  
assistance.

ACK \_\_\_\_\_  
AFA \_\_\_\_\_  
APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMU \_\_\_\_\_  
CTR \_\_\_\_\_  
EAG 1 \_\_\_\_\_  
LEG 1 \_\_\_\_\_  
LIN 5 \_\_\_\_\_  
OPC \_\_\_\_\_  
RCH \_\_\_\_\_ VGK/spf  
SEC 1 \_\_\_\_\_  
WAS \_\_\_\_\_  
OTH \_\_\_\_\_

Sincerely,

*Vicki Gordon Kaufman*  
Vicki Gordon Kaufman

RECEIVED & FILED  
MAR  
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE  
01697 FEB 13 1996  
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into ) DOCKET NO.: 950379-EI  
earnings for 1995 and 1996 of )  
Tampa Electric Company. ) FILED: February 13, 1996  
\_\_\_\_\_ )

**FLORIDA INDUSTRIAL POWER USERS GROUP  
PETITION ON PROPOSED AGENCY ACTION**

The Florida Industrial Power Users Group (hereinafter "FIPUG"), through its undersigned counsel, files the following protest to Order No. PSC-96-0122-FOF-EI, issued on January 23, 1996.

The names and addresses of the persons who should receive notices, pleadings and other communications are as follows:

John W. McWhirter, Jr.  
McWhirter, Reeves, McGlothlin,  
Davidson, Rief & Bakas, P.A.  
Post Office Box 3350  
Tampa, Florida 33601-3350

Joseph A. McGlothlin  
Vicki Gordon Kaufman  
McWhirter, Reeves, McGlothlin,  
Davidson, Rief & Bakas, P.A.  
117 South Gadsden Street  
Tallahassee, Florida 32301

FIPUG is a coalition of Tampa Electric Company ("TECO") core customers. As core customers, their only source of purchased power is through TECO. FIPUG members consume large amounts of electricity, contribute to TECO's excess earnings and are substantially affected by the proposed agency action.

The principal objection of FIPUG to the Commission's proposed agency action is that the Commission accepts TECO's proposal without explanation and without establishing important policy

DOCUMENT NUMBER-DATE

01697 FEB 13 88

FPSC-RECORDS/REPORTING

decisions that are presently ripe for determination. Specifically, FIPUG seeks clarification of the following issues. It has no objection to dealing with the issues and determination of administrative policy without a hearing, but requests a hearing if there are factual issues in dispute over which agreement cannot be reached.

**DISPUTE ISSUES OF FACT**

1) **DOUBT AS TO THE MEANING OF THE TERM "REVENUES HELD SUBJECT TO COMMISSION JURISDICTION."**

The Commission's proposed agency action finds that 1995 and 1996 earnings exceed "the range of reasonableness." They are therefore unreasonably high. The excess earnings are anticipated to grow to over \$100,000,000.00 by the end of 1996. Instead of ordering a reduction in rates and a refund of 1995 excessive earnings, the proposed agency action directs that excess revenues "will be held subject to Commission's jurisdiction." This phrase has no legal significance and should be clarified to ensure that the Commission does not lose the option of refunding excess revenues when hearings are held on the subject.

2) **THE IMPACT OF THE POLK POWER STATION.**

The Commission's proposed agency order is incomplete in that it fails to address major policy considerations connected with TECO's Polk Power Station now under construction. The only rational justification for postponing a ruling on TECO's profits in excess of the range of reasonableness is the profits will not be excessive after the Polk Power Station under construction becomes

commercially operable in the fall of 1996. The failure to address the impact of this plant upon current customers until some indefinite future time is prejudicial to current customers for the following reasons:

- A) **RETURN DISPARITY**. Excess profits that should be refunded to customers are being used to fund new construction. The proposed agency action has determined that interest will accrue on excess earnings at the commercial paper rate (approximately 5%). The order fails to deal with the fact that customers are currently funding:

FUND	AMOUNT	ALLOWED RETURN
a. AFUDC	\$53,513,000	7.9%
b. CWIP	\$48,017,000	8.34%
c. PHFU	\$62,036,000	8.34%

The proposed agency action should address the disparity in interest accruals for the benefit of customers with the returns set for the company on funds available for the Polk Plant investment.

- B) **INTERGENERATIONAL SUBSIDY**. Deferring judgment on present excessive earnings requires present customers to subsidize benefits that will accrue to future customers. The proposed agency action fails to identify the benefits that future customers will receive nor the justification for imposing the cost of these benefits upon current rate payers.

C) **WAIVER OF PRUDENCEY ANALYSIS**. When measured upon a cost per kilowatt basis, the Polk Power Station is the most expensive electric generating station ever constructed in Florida by a substantial margin. The Commission determined in TECO's determination of need application that the Polk Power Station was the most cost effective method for meeting TECO's need for a new power supply because the much higher capital costs are justified by anticipated fuel savings which will occur in the distant future. The proposed agency action refers to a TECO adjusted basis and says "All reasonable and prudent expenses and investment will be allowed" without addressing whether known capital cost overruns are reasonable and prudent and without a current examination of TECO's operating revenues and expenses which have changed significantly as a result of a major reduction in employment and corporate restructuring. FIPUG is in doubt as to whether the proposed agency action by accepting TECO's proposal also accepts its analysis of costs as being prudent as of the date of the agency action.

D) **THE WHOLESALE PROBLEM SHOULD BE ADDRESSED BEFORE IT EXACERBATES**. In its petition for the establishment of a new fuel cost recovery factor in PSC Docket 960001-EI, TECO discloses that for the period between April 1996 and September 1996, it proposes to charge retail customers 2.39 cents per KWH for fuel cost while in the competitive

wholesale market it proposes to charge customers as low as 1.32 cents per KWH for the cost of fuel. If the Polk Power Station trades off higher capital cost to obtain lower fuel costs, the proposed agency action which postpones rate relief to consumers because of the forthcoming impact of the Polk Power Plant should likewise establish a policy that ensures that the consumers bearing the capital cost should receive the benefit of fuel savings.

3) **NO RATIONALE FOR SELECTING HIGHER RETURN ON EQUITY.** The proposed agency action is defective in that it fails to clarify why in the event of a protest 1996 revenues will only be deemed excess revenues if they exceed a 12.75% return on equity rather than the lower return established after public hearing in 1993 or the lower return tentatively established without protest in 1995.

#### **ULTIMATE FACTS**

The Commission should resolve the issues listed above.

WHEREFORE, the Florida Industrial Power Users Group protests the proposed agency action contained in Order No. PSC-96-0122-FOF-EI and requests that the Commission hold Tampa Electric Company earnings in excess of the ceiling of the range of reasonableness established after public hearing in 1993, subject to refund pending a resolution of the major policy issues identified herein. If no amicable resolution of the issues can be agreed upon by May 1, 1996, Tampa Electric Company should be ordered to prepare minimum

filing requirements with respect to those factual issues over which the parties cannot reach agreement.

*Vicki Gordon Kaufman*  
John W. McWhirter, Jr.  
McWhirter, Reeves, McGlothlin  
Davidson, Rief & Bakas  
Post Office Box 3350  
Tampa, Florida 33601-3350  
813/224-0866

Joseph A. McGlothlin  
Vicki Gordon Kaufman  
McWhirter, Reeves, McGlothlin  
Davidson, Rief & Bakas  
117 South Gadsden Street  
Tallahassee, Florida 32301  
904/222-2525

Attorneys for the Florida  
Industrial Power Users Group

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished via U.S. Mail this 13th day of February, 1996 to the following parties:

Mr. Robert Elias  
Staff Counsel  
Division of Legal Services  
Florida Public Service  
Commission  
Capital Circle Office Center  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Mr. John Roger Howe  
Deputy Public Counsel  
Office of Public Counsel  
Room 812  
111 West Madison Street  
Tallahassee, FL 32399

Mr. Lee L. Willis  
MacFarlane, Ausley, Ferguson  
& McMullen  
Post Office Box 391  
Tallahassee, Florida 32302

  
\_\_\_\_\_  
Vicki Gordon Kaufman