

FLORIDA PUBLIC SERVICE COMMISSION
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Tallahassee, Florida 32399-0850

M E M O R A N D U M

APRIL 18, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF AUDITING & FINANCIAL ANALYSIS (SLEMKEWICZ, MAUREY, C. ROMIG, SALAK, DEVLIN) *JS ALM*
DIVISION OF ELECTRIC & GAS (BALLINGER, BASS, KUMMER) *DM Tax*
DIVISION OF LEGAL SERVICES (ELIAS) *RUE*

RE: DOCKET NO. 950379-EI - TAMPA ELECTRIC COMPANY - INVESTIGATION INTO EARNINGS FOR 1995 AND 1996 OF TAMPA ELECTRIC COMPANY

AGENDA: 04/30/96 - REGULAR AGENDA - DECISION ON STIPULATION PRIOR TO HEARING - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\AFA\WP\950379ST.RCM ATTACHMENT NOT AVAILABLE

CASE BACKGROUND

On March 1, 1995, Tampa Electric Company (TECO or the Company) submitted its 1995 Forecasted Earnings Surveillance Report in compliance with Rule 25-6.1353, Florida Administrative Code. Per the report, TECO forecasted an achieved return on equity (ROE) of 14.28% for 1995. This exceeded the top of TECO's then currently authorized ROE range (10.35% to 12.35%, with an 11.35% midpoint). Subsequently, additional data was requested and received for 1996 that indicated a projected ROE of 13.81%, which was later adjusted downwards to 13.07%.

Due to concerns over the high level of TECO's forecasted earnings, a meeting was scheduled on March 22, 1995, to explore alternatives regarding the possible disposition of the excess earnings. TECO, the Office of the Public Counsel (OPC), the Florida Industrial Power Users Group (FIPUG) and the Commission staff participated in the discussions at the meeting. As a result of this and subsequent meetings, a proposal was proffered concerning the disposition of the excess revenues for 1995 only. Per Order No. PSC-95-0580-FOF-EI, the Commission accepted Tampa Electric Company's proposal to: (1) establish a new return on

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equity of 11.75% with a range of 10.75% to 12.75%, effective January 1, 1995; (2) irrevocably defer a revenue amount of \$15 million for 1995; (3) defer 50% of any revenues in excess of an 11.75% ROE up to a net 12.75% ROE and to defer all revenues in excess of a net 12.75% ROE; (4) defer any deferred revenues until 1997 and accrue interest at the commercial paper rate; and (5) end the oil backout clause, effective January 1, 1996.

The best information available to staff, including TECO's own projections, indicated that substantial overearnings were projected for 1996. On December 20, 1995, staff filed a recommendation that the Commission: 1) hold a limited proceeding to update the authorized ROE for TECO; and, 2) hold 1996 earnings in excess of the maximum of its currently authorized range of ROE subject to refund. At the January 3, 1996, agenda conference, the Commission denied staff's recommendations. Instead, the Commission approved the following plan proposed by the Company at agenda:

1. 50% of any actual revenues in excess of 11.50% ROE will be held subject to the Commission's jurisdiction up to a net earned ROE of 12.50% on an FPSC adjusted basis per December earnings surveillance reports for calendar year 1996. The company also agrees that any actual revenues in excess of the net 12.50% ROE will be held subject to the Commission's jurisdiction.

2. The 1996 revenues subject to Commission jurisdiction will be held until 1997 and will accrue interest at the thirty day commercial paper rate as specified in Rule 25-6.109, Florida Administrative Code. The revenues will be treated as if collected evenly throughout the year.

3. The calculation of the actual ROE for 1996 will be on an "FPSC Adjusted Basis" using the appropriate adjustments approved in Tampa Electric's last full price change proceeding (Docket No. 920324-EI). All reasonable and prudent expenses and investment will be allowed in the calculation and no annualized or proforma adjustments will be made.

4. Tampa Electric agrees to petition the Commission by March 1, 1997, to determine the specific method for disposition of the 1996 revenues and interest held subject to the Commission's jurisdiction.

5. The calendar year 1996 surveillance report on which the revenues held subject to Commission jurisdiction will be based, is subject to audit and true-up.

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6. The Commission will retain jurisdiction over all revenues held subject to Commission disposition.

7. If through a protest, the Proposed Agency Action is nullified, Tampa Electric agrees that effective with a beginning date of January 3, 1996, 100% of any actual 1996 revenues in excess of a 12.75% ROE will be held subject to Commission jurisdiction. The calculation methodology will be the same as in Item Number 3 above.

By Order No. PSC-96-0122-FOF-EI, issued January 23, 1996, in this docket the Commission approved TECO's proposal as Proposed Agency Action. On February 13, 1996, FIPUG and OPC each filed a Protest of the Commission's Order. The Staff subsequently filed a recommendation on February 26, 1996, that addressed the protests and recommended that a hearing be held to consider what is an appropriate ROE for TECO and to determine whether any additional revenues should be held subject to refund. On March 4, 1996, TECO, OPC and FIPUG filed a joint request to defer consideration of Staff's recommendation at the March 5, 1996, agenda conference. The request was granted.

On March 25, 1996, TECO, OPC and FIPUG filed a joint motion for approval of a stipulation that resolves the issues regarding TECO's overearnings and the disposition of those overearnings for the period 1995 through 1998. This recommendation addresses that stipulation.

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DISCUSSION OF ISSUES

ISSUE 1: Should the stipulation (Attachment A) proposed by Tampa Electric Company, the Office of Public Counsel and the Florida Industrial Power Users Group: to freeze existing base rate levels through December 31, 1998; to refund \$25 million plus interest over a one year period commencing on October 1, 1996; to defer 60% of the net revenues that contribute to a return on equity (ROE) in excess of 11.75% for 1996; to defer 60% of the net revenues that contribute to a ROE in excess of 11.75% up to a net ROE of 12.75% for 1997 and to defer any net revenues contributing to a net ROE in excess of 12.75% for 1997; to defer 60% of the net revenues that contribute to a ROE in excess of 11.75% up to a net ROE of 12.75% for 1998 and to refund any net revenues contributing to a net ROE in excess of 12.75% for 1998; to allow Tampa Electric Company the discretion to reverse and add to its 1997 or 1998 revenues all or any portion of the balance of the previously deferred revenues; to not use the various cost recovery clauses to recover capital items that would normally be recovered through base rates; and to have the regulatory treatment of the Polk Power Station separately considered, be approved?

PRIMARY RECOMMENDATION: Yes, the joint stipulation for resolving the issues related to Tampa Electric Company's earnings for the period 1995 through 1998 should be approved. [DEVLIN, C. ROMIG, BALLINGER, BASS]

ALTERNATIVE RECOMMENDATION: No. At a minimum, the Commission should defer voting on the stipulation until the regulatory treatment of the Polk Power Station is determined. [SALAK, KUMMER, MAUREY, SLEMKEWICZ, ELIAS]

PRIMARY STAFF ANALYSIS: Primary Staff believes a \$25 million refund is substantial and provides an immediate benefit to ratepayers. Also, ratepayers are protected, for the most part, from rate increases over the next three years. In the event Polk Power Unit One costs are included in rate base, a rate increase within a year is very possible.

Although Primary Staff believes the capped returns on equity (ROEs) for 1997 and 1998 are high, current information provided by TECO indicates that TECO will not achieve these returns. For 1996, the combination of a refund of \$15 million, and deferral of revenues will reduce the possibility of overearnings for that period.

Since 1992, TECO has experienced significant variation between budget ROEs and actual ROEs. After adjusting for normal weather, the variation between budget and actual for the period 1992 through

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1995 averages 95 basis points on ROE. The projections were adjusted for normal weather in an effort to identify the part of the budget process under control of the Company. There is a consistent trend of the Company underbudgeting ROE. This calculation relates to TECO's standard annual budget and is considered in the following analysis of the impact of the proposed settlement on ROE:

	<u>1996</u>	<u>1997</u>	<u>1998</u>
TECO projected ROE pursuant to the settlement	11.92%	8.75%	8.45%
Average forecast error of 95 basis points (NOTE)	12.30%	9.70%	9.40%
Reversal of 1995 & 1996 deferred revenues into 1997 & 1998	12.30%	11.24%	10.94%

NOTE: The probability of a budget variance is greater when the projections are two and three years into the future.

Without a settlement, it is likely that TECO will earn its maximum allowed ROE of 12.75% in 1996 with any additional earnings subject to refund or other Commission disposition. Also, the settlement provides an opportunity for refunds after 1998.

This settlement provides an incentive for TECO to be more cost efficient since it can retain a significant portion of any increased earnings. In recent years, the Commission has promoted various forms of incentive regulation.

Of major concern to Primary Staff is the ratemaking treatment of the Polk Power Unit One plant addition. The prudence of the related costs is subject to an evidentiary proceeding. In the event of a significant disallowance, the settlement may prevent an otherwise justified rate reduction and/or refund.

It would be preferable for the parties to agree that the settlement could be modified to the limited extent action is taken for the Polk Power Plant. Absent that modification to the settlement, Primary Staff recommends that any surveillance report impacts other than full recovery of the plant and related expenses should be deferred until 1999 when the settlement period ends. If a portion of the Polk investment or expenses is disallowed for ratemaking purposes, the achieved surveillance earnings will be higher than otherwise projected.

Under the settlement, TECO's regulatory ROEs for 1997 and 1998 could actually be made higher by a disallowance for Polk, but will not necessarily be shared by the ratepayers. Primary Staff recommends isolating the 1997 and 1998 ROE impact of any

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disallowance of Polk Power Plant costs and deferring it until 1999 when the disposition of the potential increased earnings can be determined.

The following is an example of this concept:

1997 ROE after sharing pursuant to the settlement 12.00%

Partial disallowance of Polk Power Plant costs-
Revenue requirement effect of \$10 million:

\$6 million or 60% is deferred until 1998
pursuant to the settlement

1997 ROE 12.24%

\$4 million or 40% is deferred until 1999
pursuant to this recommendation

1997 ROE 12.00%

The entire stipulation proffered by the parties contains 22 separate provisions which have been summarized by major components in the ISSUE section. The stipulation is basically self-explanatory, but the following items are being addressed for the sake of clarity.

Rate Freeze (Section 2.) - The stipulation implements a freeze on base rates through December 31, 1998. However, the terms of the stipulation permit TECO to file for a base rate increase on or after July 1, 1998. It is Staff's belief that the moratorium on increases applies to interim rate increases as well as permanent base rate increases.

1996 Earnings (Section 4.) - It should be noted that the deferral methodology for 1996 does not include a ROE cap on earnings. Although the 60% deferral / 40% current earnings split for any net revenues in excess of a 11.75% ROE is operable, the stipulation would allow TECO to earn in excess of its maximum authorized ROE of 12.75% for 1996.

Recovery Clauses (Section 2.) - As part of the stipulation, the parties agree that TECO will not use the various recovery clauses to recover capital items that normally would be recovered through base rates. However, TECO would be allowed to recover its prudent expenditures associated with compliance with environmental laws and regulations through the environmental cost recovery clause. Staff believes it is important to reiterate the Commission's policy

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regarding the recovery of environmental costs as stated in Order No. PSC-94-1207-FOF-EI:

Environmental compliance cost recovery, like cost recovery through other cost recovery clauses, should be prospective. Section 366.8255(2), Florida Statutes, is clear: a utility's petition for cost recovery must describe proposed activities and projected costs, not costs that have already been incurred. Utilities may recover the costs of environmental compliance projects after the Commission has had the opportunity to review and approve cost recovery for the projects. Utilities may not recover costs incurred in past periods for activities not yet approved. This is the general rule for environmental compliance cost recovery that we wish to make clear here.

Polk Power Station (Section 12.A.) - One provision of the stipulation deals with the regulatory treatment of the Polk Power Station and the Port Manatee site. Docket No. 960409-EI has been established to address this issue. Staff interprets regulatory treatment to include the traditional determination of the amount, if any, of plant costs to be placed in rate base as well as the ability to explore alternative cost recovery mechanisms for the Polk Power Station. These alternative mechanisms may be appropriate in light of the Polk units' apparent high overall cost of generating electricity and increasing electric utility competition.

Tax Deficiency Assessment (Section 10.) - The parties have agreed to support any interest expense incurred as a result of any tax deficiency assessment related to the tax life of the Polk Power Station as a prudent expense for ratemaking purposes. However, it is Staff's belief that this provision is binding only on the parties whose signatures appear on the stipulation. Based on the evidence presented during a proceeding, the Commission may make a determination to either include or exclude any such interest expense for ratemaking purposes.

Return on Equity (Section 15.) - During the term of the stipulation, TECO's currently authorized ROE remains fixed at a 11.75% midpoint level, with a cap of 12.75% for 1997 and 1998. As noted previously, there is no ROE cap in effect for 1996.

ALTERNATIVE STAFF ANALYSIS: Alternative Staff believes that the Stipulation should be rejected by the Commission. Although a \$25 million refund and a three year base rate freeze, in isolation, would argue for acceptance of the stipulation, there are mitigating factors that make the stipulation unacceptable to Alternative

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Staff. At a minimum, the Commission should defer voting on the stipulation until the regulatory treatment of the Polk Power Station is determined.

The regulatory treatment of the Polk Power Station is a major controversial issue yet outstanding. As the primary recommendation states, the issue will be determined in Docket No. 960409-EI. As suggested by Primary Staff, alternative treatments for the Polk Power Plant may be proposed. According to TECO's calculations, Polk Power Station going on-line will impact TECO's earnings by approximately \$100 million, or over 600 basis points, in 1997. Depending upon the outcome of the Polk treatment, TECO may actually need a decrease in base rates. Discovery is in process and it is premature to discuss issues, resolutions, or recommended adjustments. Alternative Staff believes it is also premature to make decisions concerning a long-term plan for TECO given that an issue of this magnitude is unresolved. Alternative Staff believes that there should not be a decision on the stipulation until the regulatory treatment of Polk is determined. Alternative Staff believes that the terms of the stipulation will be met if the decision is deferred until after the decision in Docket No. 960409-EI.

If a decision is made at this time, Alternative Staff would recommend that the Commission not approve the stipulation. Alternative Staff has three concerns with the stipulation with respect to the ROE. The stipulation offered by the parties in this docket proposes revenue sharing based on TECO's currently authorized ROE of 11.75%. However, based on current market conditions and the returns recently allowed in other jurisdictions, Alternative Staff believes the Company's currently allowed midpoint is too high. Alternative Staff believes that the midpoint should fall within the range of 9.75% to 11.25%. In the Stipulation, sharing does not begin until 11.75%. By accepting the Stipulation, the Commission is sending a signal that the ROEs currently authorized by the Commission are reasonable.

The second concern Alternative Staff has with the stipulation regarding ROE is a function of the duration of the plan. Although the plan, if approved, will remain in effect through December 31, 1998, the stipulation is silent with respect to how changes in capital costs over the next three years may be taken into account in the sharing calculation. When designing a revenue sharing plan, almost as important as setting the appropriate starting point is implementing a mechanism to ensure that future sharing points are reasonable. To protect both the Company's shareholders and the ratepayers from large swings in capital costs, Alternative Staff would recommend that future sharing points be indexed to movements in a readily available, widely traded interest rate.

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As noted, there is no ROE cap in place for 1996 per the stipulation. This would be the first time that a large utility would be allowed to earn without "reasonable earnings" being defined by the top of the range on ROE since the Commission began its earnings surveillance program. This will set a precedent for the Commission. The Commission is required to afford the utility the opportunity to earn a reasonable rate of return on prudently invested capital. Historically, "reasonable" has been defined by establishing a range for return on equity for the utility. Alternative Staff is concerned that for 1996, reasonable is not defined and there are no limitations placed upon the utility's earnings. Prior to implementation of the Stipulation, TECO's projected returns on equity for 1996, 1997, and 1998 are 13.27%, 8.75%, and 8.45%, respectively. From 1992 through 1995, TECO's projections varied from actual results by 5 to 224 basis points. TECO's variances from their prior budgets, combined with the outstanding Polk issues, cast some doubt on the accuracy of their current projected returns. Alternative Staff believes that the actual returns will be higher than the projected returns.

Page 2 of the Stipulation states that "Tampa Electric will have a reasonable opportunity to earn a fair rate of return." Alternative Staff is concerned that TECO will use this statement as an argument against adjustments being made to earnings. It should be clarified that this language should be used as background information that the Stipulation provides a method for the company to earn a fair return.

The Stipulation requires a \$25 million refund. Staff would first note that the Commission does not need the Stipulation in order to make a refund in 1997. The 1995 revenue deferral plan specifies that certain revenues will be deferred from 1995 into 1997. If TECO does not file a rate case, a petition is to be filed with the Commission "to determine the specific method for return of the deferred revenues and interest to Customers." The Commission currently has approximately \$48.8 million from the 1995 deferral plan to dispose of at its discretion. If the Commission determines a refund is in the best interest of the Company and the ratepayers, a refund can be ordered; however, other opportunities to reduce regulatory assets, mitigate potential "stranded costs", or handle other regulatory balance sheet concerns will be foregone. The long-term benefits for the ratepayers should be considered when deciding whether to refund the money.

Alternative Staff has serious concerns about the proposed method of distributing the proposed refunds. The stipulation provides for both the initial \$25 million and subsequent refunds to be refunded on an energy basis, rather than on a demand basis. Applying a refund factor to KWH usage results in large industrial

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(especially non-firm) customers receiving a greater share of the refund than merited based on the cost allocations underlying the rates which generated the overearnings.

If the \$25 million is allocated on energy, the residential customers could realize up to \$4.25 million less in total refund dollars than if the refund were allocated on demand (\$10.75 million versus \$15 million). According to the cost of service study filed by TECO in its last rate case, the residential class represented 60% of the total demand measured by coincident peak KW, but only 43% of the total MWH. Under a coincident CP demand allocation, the interruptible class would receive no refund, since they are allocated no coincident CP demand costs. Even the definition of demand used to allocate substations and transmission lines which includes demand for interruptible customers results in the residential class receiving 55% and the interruptible class 8% of the refund compared to 43% and 12% respectively under an energy allocation. Allocation of the refund on a demand basis is more consistent with the way costs were allocated in setting base rates. If it is appropriate to allocate the overearnings on an energy basis, it could be argued that it is appropriate to allocate the cost of Polk on energy as well.

In addition, there is an inherent unfairness in giving a smaller share of a refund resulting from over-recovery of base rate costs to the customers who will likely be asked to shoulder the bulk of any stranded generation costs in a competitive environment. Large customers are likely to have the most opportunities to utilize alternative electric suppliers, and, as a result, "strand" utility plant. Since the bulk of stranded costs will be production related, any refund of base rates should be made on a demand basis to mitigate the impact of stranded costs.

If the stipulation is not accepted, it is important to consider the current protections provided the ratepayers for 1996. Beginning January 3, 1996, TECO's earnings above 12.75% are subject to Commission jurisdiction. At the March 19, 1996, Agenda Conference, TECO made a commitment to the Commission that April 22, 1996, is the effective date for any decision the Commission could have made at a hearing tentatively scheduled to be held on that date. Alternative Staff believes that a new ROE would have been authorized and the amount of monies held subject to Commission disposition would have been adjusted on that date.

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ISSUE 2: Should the Commission waive the provisions of Rule 25-6.1353(1), Florida Administrative Code, and require Tampa Electric Company to file an annual Forecasted Earnings Surveillance Report for 1997 and 1998 if an earnings cap is in place?

RECOMMENDATION: Yes, Tampa Electric Company should be required to file Forecasted Earnings Surveillance Reports for 1997 and 1998 even if the Company is subject to an earnings cap. [SALAK]

STAFF ANALYSIS: Per Paragraph (1) of Rule 25-6.1353, F.A.C., an electric utility that is subject to an earnings cap is not required to file a Forecasted Earnings Surveillance Report. In Staff's opinion, the forecasted financial data that is filed serves many other useful purposes besides providing the utility's estimate of its ROE for the upcoming year. The data presents an overview of the utility's overall operations and highlights major assumptions affecting the utility. The data also forms the foundation of a data base for use in evaluating the relative accuracy of the utility's forecasts as compared to actual results for that year.

The imposition of an earnings cap is a temporary limitation on the overall earnings of a utility, while an incentive regulation plan can be viewed as a more long term type of constraint. In Staff's opinion, the temporary nature of the earnings cap and the desirability of maintaining a continuity of the data base are sufficient reasons to warrant a waiver of the rule in this instance.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: No. [ELIAS]

STAFF ANALYSIS: Whether the Primary or Alternative recommendation is approved, this docket should remain open.

As provided for in Section 16 of the stipulation, this docket should remain open solely for the purposes of: resolving any issues pertaining to the calculation of earned ROE for the periods covered by the stipulation; implementing the refunds provided for in the stipulation; and determining TECO's earnings for the purposes of revenue deferral and sharing as set forth in the stipulation.

If the Alternative recommendation is approved, the docket needs to remain open to further evaluate TECO's earnings and the disposition of any overearnings.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

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STIPULATION

The Office of Public Counsel ("OPC"), Florida Industrial Power Users Group ("FIPUG") and Tampa Electric Company ("Tampa Electric" or "the Company"), (collectively referred to as the "Parties"), enter into this Stipulation which represents their agreement to a comprehensive rate settlement covering Tampa Electric's base rates and rate of return for the period January 1, 1996 through December 31, 1998. Accordingly, as described in more detail below, the Parties have agreed as follows:

- 1) Tampa Electric's existing base rates will be frozen at current levels through December 31, 1998;
- 2) Any base rate increase, including any base rate increase associated with the commercial operation of Tampa Electric's Polk Power Unit One plant addition, is avoided at least through December 31, 1998;
- 3) The Commission will be requested to immediately set a procedural schedule for hearing and decision on the Polk Power Station by October 31, 1996. In an effort to avoid the need for such a hearing, the Parties will negotiate, in good faith, a joint recommendation specifying the regulatory treatment for the Polk Power Station for Commission approval.

- 4) Tampa Electric will refund \$25 million plus interest to its Customers over a period of one year, commencing on October 1, 1996, with the possibility of additional refunds in 1999;
- 5) Tampa Electric will have a reasonable opportunity to earn a fair rate of return.

This Stipulation, as proposed, reflects the Commission's policy of encouraging parties to negotiate an amicable resolution of potentially contentious issues. As is the case with most fair and reasonable settlements, this Stipulation represents a very fine balance of benefits and burdens for all concerned. Therefore, the Parties respectfully request that the Commission approve and adopt this Stipulation in its entirety, without change or modification, at the earliest possible time.

Refunds

1. The Parties agree that Tampa Electric shall refund \$25 million to Customers plus interest. The refund will be composed of \$15 million derived from Tampa Electric's 1996 revenues and \$10 million derived from those Tampa Electric revenues deferred in accordance with Order No. PSC-95-0580-FOF-EI ("Order 95-0580") issued May 10, 1995. The \$25 million refund plus interest will be reflected as a credit on customer bills starting with the effective date of the new fuel adjustment charge beginning the first billing cycle for October, 1996.

Any portion of the \$25 million refund not refunded shall accrue interest beginning October 1, 1996 at the thirty day commercial paper rate as specified in Rule 25-6.109, Florida Administrative Code. The refund credit 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 during the period of the credit. The total credit shall be spread over a 12-month period. However, in the event judicial review is sought by any person not a party to the stipulation of the Commission Order approving this stipulation or the continuing validity thereof, Tampa Electric shall not be required to commence or continue any refunds until the matter is finally resolved. Any over or under collection associated with the credit will be handled as a true-up component in the normal course of Tampa Electric's fuel cost recovery proceedings.

Rate Freeze

2. The Parties agree that Tampa Electric's current base rate level shall be frozen during the period January 1, 1996 through December 31, 1998. OPC and FIPUG agree that they will neither seek nor support any reduction in Tampa Electric's base rates between January 1, 1996 and December 31, 1998 unless such reduction is sought by Tampa Electric. The Parties further agree that Tampa Electric will not use the various recovery clauses which shall continue to be available to it in 1996, 1997 and 1998, to recover through such clauses capital items that normally would be recovered

through base rates. However, the Parties agree, for example, that Tampa Electric may recover its prudent expenditures associated with compliance with environmental laws and regulations through the environmental cost recovery clause. However, during the term of this stipulation, the environmental cost recovery clause will not be used to recover any of the costs incurred relative to Polk Power Station, except costs attributable to changes in environmental laws or regulations or any change in the application or enforcement thereof occurring after October 15, 1996. Tampa Electric will not seek to make any base rate increase effective on or before December 31, 1998, including any increase to reflect the major plant addition resulting from commercial operation of Tampa Electric's new Polk Power Unit One which is scheduled to commence service in October 1996. Provided further Tampa Electric shall not file before July 1, 1998 a petition and rate schedules initiating a base rate increase proceeding for rates to be effective after December 31, 1998.

Treatment of Base Revenues: 1996-1998

3. As part of this agreement, the Parties have settled on a disposition of certain deferred Tampa Electric revenues which accrued in 1995 and pursuant to this Stipulation will continue to accrue through 1998. In Order 95-0580, the Commission approved the deferral of certain of Tampa Electric's 1995 revenues to periods beginning January 1, 1997. As part of its order, the Commission required Tampa Electric to either file for a rate increase or

petition for the disposition of the 1995 deferred revenue by December 1, 1996. In addition, on January 3, 1996, the Commission approved Tampa Electric's proposal to hold certain 1996 revenues subject to the Commission's jurisdiction. This order accepting Tampa Electric's proposal was protested by OPC and FIPUG, the signatories to this Stipulation and settlement.¹ The 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.

1996

4. After accounting for the \$15 million refund contemplated in paragraph 1 hereof, any actual Tampa Electric net revenue contributing to a ROE in excess of 11.75% on an FPSC adjusted basis, as specified in Tampa Electric's December earnings surveillance report for calendar year 1996, will be split 60%/40%. 60% of such revenues shall be deferred to periods beginning in 1997. The remaining 40% of such revenues shall be retained as earnings of the Company in 1996.

¹The Commission's January 3, 1996 decisions were incorporated into Order PSC-96-0122-FOF-EI ("Order 96-0122") issued January 23, 1996. The Commission on February 26, 1996 entered procedural Order No. PSC-96-0272-PCO-EI ("Order 96-0272") establishing a schedule for a hearing on various issues raised by OPC and FIPUG in protests of the Commission's Order 96-0122.

In order to give the Parties time to negotiate, the Commission's consideration of this matter was deferred from the Commission's March 5, 1996 Agenda. The 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.

1997

5. Tampa Electric shall have the discretion to reverse and add to the Company's revenues in 1997 all or any portion of the balance (remaining after the refunds required under paragraph 1 of this agreement) of the 1995 revenues deferred to periods beginning 1997 under the terms of Order 95-0580 and the 1996 deferred revenues described in paragraph 4 above.

6. The actual 1997 Tampa Electric net revenues which contribute to a ROE in excess of 11.75%, up to a net ROE of 12.75% for calendar year 1997, will be split 60%/40%. Sixty percent of such revenues shall be deferred and added to the revenues of the Company in 1998. The remaining 40% of such revenues shall be included in the earnings of the Company in 1997. The actual revenues contributing to a net ROE in excess of 12.75% for calendar year 1997 shall be deferred to calendar year 1998 and added to the revenues of the Company in 1998.

1998

7. The balance of all accumulated deferred revenues which were not reversed in 1997 will be deferred to calendar year 1998 and added to the revenues of the Company in 1998.

8. The actual 1998 Tampa Electric net revenues which contribute to a ROE in excess of 11.75%, up to a net ROE of 12.75% for calendar year 1998, will be split 60%/40%. 40% of the actual net revenues resulting in a ROE in excess of 11.75%, up to a net 12.75% ROE, shall be retained as earnings of the Company in 1998. The remaining 60% of the actual net revenues resulting in a ROE in

excess of 11.75%, up to a net 12.75% ROE for calendar year 1998 and all of the actual 1998 revenues resulting in a net ROE in excess of 12.75% shall be refunded to Customers. All of the monies held subject to refund after 1998 under this paragraph shall be refunded through a credit on Customer's bills calculated by multiplying a levelized factor adjusted for line losses times the actual KWH usage during the period of the credit. The credit shall include interest on the unamortized amount of the refund calculated in accordance with paragraph 9 herein. The refund period shall begin concurrently with the first fuel adjustment period following a final determination of the amount to be refunded, if any, and shall extend over a 12-month period. However, no refunds contemplated under this paragraph will be commenced until a final, non-appealable order (by the Commission or a court as the case may be) has been issued resolving all issues with respect to the calculation of earned ROE during the periods covered by this agreement, including the appropriate regulatory treatment of the Polk Power Station, all as set forth in paragraph 17 below. Any over or under collection associated with the proposed refund credit will be handled as a true-up component in the normal course of the fuel cost recovery proceedings.

General Provisions

9. The revenues held subject to refund and the deferred revenues provided for herein shall accrue interest at the thirty day commercial paper rate as specified in Rule 25-6.109, Florida

Administrative Code. These revenues shall be treated as if collected evenly throughout the year.

10. The Company plans to take a position regarding the tax life of its Polk Power Station intended to minimize its revenue requirements and to provide maximum benefits to its Customers. The Parties agree that any interest expense that might be incurred as the result of a Polk Power Station related tax deficiency assessment will be considered a prudent expense for ratemaking purposes and will support this position in any proceeding before the FPSC.

11. The calculations of the actual ROE for each calendar year will be on an "FPSC Adjusted Basis" using the appropriate adjustments approved in Tampa Electric's full revenue requirements proceeding. All reasonable and prudent expenses and investment will be allowed in the computation and no annualization or proforma adjustments shall be made.

12. This agreement does not preclude the review of the investment in and expenses of the Polk Power Station and the Port Manatee site. However, the Parties agree to negotiate in good faith a joint recommendation specifying the regulatory treatment of the Polk Power Station and Port Manatee site investment and expenses.

A. The Parties further agree to use their best efforts to obtain approval by the Commission of their joint recommendation or, in the absence of a joint recommendation, to seek a final resolution of the Polk Power Station and Port Manatee site regulatory treatment.

B. The timing of the resolution of the ratemaking treatment of the Polk Power Station and Port Manatee site investment is important to the Parties. The Parties request that the Commission immediately set a procedural schedule for hearing and decision on the Polk Power Station and Port Manatee site by October 31, 1996. The need for a hearing will be obviated if the Parties negotiate a resolution of the regulatory treatment of the Polk Power Station and Port Manatee site which is approved by the Commission.

13. The calendar years 1996, 1997 and 1998 surveillance reports on which the refunds and the revenue deferrals provided herein will be based are subject to audit by the FPSC staff and true-up.

14. The Parties agree that this Stipulation is intended to and shall settle the disposition of the Company's 1995 revenues deferred by Order 95-0580 and shall obviate the need for the hearings scheduled by Order 96-0272.

15. The provisions of this stipulation also resolve issues related to Tampa Electric's existing base rate levels, allowed return on equity, the procedures for the determination of Tampa Electric's earnings and the disposition of revenues earned above certain levels specified herein for the period 1996-1998.

16. The Parties agree that this docket shall remain open solely for the purpose of: resolving any issues pertaining to the calculation of earned ROE for the periods covered by this agreement; implementing the refunds provided herein; and

determining Tampa Electric's earnings for purposes of revenue deferral and sharing as set forth herein.

17. The Parties agree that any dispute relating to this Stipulation shall be addressed by the FPSC in the first instance. Except as provided in paragraph 19 hereof, each Party reserves any rights it may have to seek judicial review of any ruling concerning this Stipulation made by the FPSC. In the event judicial review is sought by any party hereto or any third party, in connection with this Stipulation, the Commission's approval thereof, the joint recommendation of the Parties concerning the Polk Power Station contemplated herein, or any action of the Commission or any party hereto under this Stipulation, whether relating to the calculation of earned ROE or otherwise, the Company shall not be required to commence or continue any refunds under paragraph 8 of this Stipulation until the matter is finally resolved.

18. This Stipulation shall be effective upon Commission approval. The Parties agree that if the FPSC does not adopt this Stipulation in its entirety, without modification, this Stipulation shall become null and void and of no effect.

19. The Parties agree to actively support the approval of this Stipulation by the Commission at the earliest possible time in order to avoid the time and expense of litigation. The Parties agree not to protest, seek reconsideration or judicial review of the Commission's approval of this Stipulation or to seek modification of this settlement and Stipulation subsequent to final Commission approval, except by mutual agreement.

20. The Parties acknowledge this Stipulation is being entered into for purposes of settlement only and that the Parties are entering into this Stipulation to avoid the expense and length of further legal proceedings and the uncertainty and risk inherent in any litigation. Neither this Stipulation nor any action to reach, effectuate or further this Stipulation may be construed as, or may be used as an admission by or against any party. Entering or carrying out this Stipulation 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 as a waiver of any applicable claim or defense, otherwise available.

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

22. This Stipulation may be executed in several counterparts, each of which shall constitute an original and all of which together constitute as one and the same instrument.

IN WITNESS WHEREOF, this Stipulation has been executed on the
25th day of March, 1996 by the undersigned counsel of record
for the Parties hereto and/or by the Parties themselves in counter
parts each of which shall be deemed an original.

The Office of Public Counsel

Tampa Electric Company

By Jack Shreve
Jack Shreve, Public Counsel

By Gordon L. Gillette
Gordon L. Gillette
Vice President, Regulatory
and Business Strategy

Florida Industrial Power Users Group

By John W. McWhirter, Jr.
John W. McWhirter, Jr.
Joseph A. McGlothlin
Vicki Gordon Kaufman
Attorneys for Florida Industrial
Power Users Group

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Stipulation has been furnished by U. S. Mail or hand delivery (*) on this 25th day of March, 1996 to the following:

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Florida Public Service
Commission
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