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June 21, 1996

HAND DELIVERY

ORIGINAL
FILE COPY

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

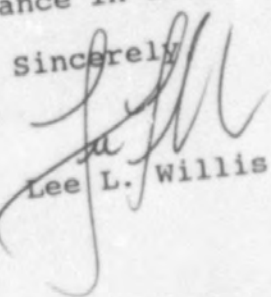
Re: Prudency Review to Determine Regulatory
Treatment of Tampa Electric Company's
Polk Unit; FPSC Docket No. 960409-EI

Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa Electric Company's Motion for an Order Declaring Certain Issues to be Beyond the Scope of the Proceeding.


Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,

Lee L. Willis

TWK ✓
RFA 3
APP
CAF LLW/pp
DMU Enclosures
GTH
CAG Dudley
LEG 1
LW 5
OPC
TRH
SEC 1
WAS
JTH

cc: All Parties of Record (w/enc.)

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
06683 JUN 21 1996
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Prudency Review to Determine) DOCKET NO. 960409-EI
Regulatory Treatment of Tampa Electric)
Company's Polk Unit.) FILED: June 21, 1996
_____)

**TAMPA ELECTRIC COMPANY'S MOTION FOR
AN ORDER DECLARING CERTAIN ISSUES
TO BE BEYOND THE SCOPE OF THE PROCEEDING**

Pursuant to Rule 25-22.037(2) of the Florida Administrative Code, Tampa Electric Company ("Tampa Electric" or the "company") hereby requests that the Prehearing Officer issue an order declaring that certain issues which the Staff and intervenors have raised are beyond the reasonable scope of this proceeding. As discussed in more detail below, issues addressed in this motion are related to alternative cost recovery for the Polk unit, the capital structure to be imputed to the company's Polk Unit investment and retail/wholesale jurisdictional separation of Polk-related cost. The company respectfully submits that these issues are rate case matters which have no reasonable nexus to the evaluation of the company's prudence in the construction of Polk Unit One, which is the sole purpose of this proceeding.

DOCUMENT NUMBER-DATE

06683 JUN 21 96

FPSC-RECORDS/REPORTING

I.

SINCE TAMPA ELECTRIC'S BASE RATES WILL BE FROZEN THROUGH 1998, IT IS BOTH PREMATURE AND UNNECESSARY FOR THE COMMISSION TO CONSIDER POLK-RELATED COST ALLOCATION, CAPITAL STRUCTURE AND RATE DESIGN ISSUES IN THIS PROCEEDING

On May 20, 1996, this Commission issued its Order Approving Stipulation (Order No. PSC-96-0670-S-EI) which adopted and implemented the joint proposal of Tampa Electric, the Office of Public Counsel, and the Florida Industrial Power Users Group to freeze Tampa Electric's base rates through 1998. The joint stipulation also provided for a refund of \$25 million to ratepayers over a twelve month period starting in October of 1996, established a mechanism for handling Tampa Electric's deferred revenues, and created the possibility of additional refunds in 1999.

By its terms, the Stipulation resolved all issues related to Tampa Electric's rate levels and allowed return on equity through 1998. The parties to the agreement reached consensus on these points with full knowledge that Tampa Electric's base rates would not be adjusted during the stipulation period to reflect the anticipated commercial operation of Polk Unit One in October of 1996. Implicit in this understanding was the agreement that the stipulation would obviate the rate case which otherwise would have been necessary to address Tampa Electric's Polk-related revenue requirement.

Paragraph 12 of the Stipulation, as adopted, specifies that:
"This agreement does not preclude the review of the investment in

and expenses of the Polk Power Station and the Port Manatee site" (emphasis added). By implication, review of matters beyond Tampa Electric's investment in the Polk Unit and the associated expenses is precluded by the Stipulation. We believe that this language has the effect of deferring all "rate case" issues, such as cost allocation, capital structure and rate design, until such time after 1998 as Tampa Electric seeks Commission authorization to adjust its rates. In sharp contrast, the Stipulation expressly provided that the prudence issues associated with the Polk project should be considered and resolved by the Commission as soon as possible.

In addition to the guidance offered by the Stipulation as adopted by the Commission, there are other practical considerations which suggest that "rate case" issues should be deemed outside the scope of this proceeding. Under the Order Establishing Procedures, Order No. PSC-96-0567-PCO-EI, issued in this docket on April 30, 1996, ("Procedural Order"), only two days, July 17-18, 1996, are allotted for evidentiary hearings. Tampa Electric is concerned that even with a very narrow focus on the issues directly related to the prudence of Tampa Electric's Polk-related investment, it will be a challenge to insure that facts sufficient to create a full and complete record can be adduced for the Commission's use in its deliberations. The company respectfully suggests that the unnecessary inclusion of extraneous rate case issues may make it difficult to create an adequate record in the two days of hearing room time allotted. However, Tampa Electric is committed to making

this proceeding work under any circumstances.

On the other hand, exclusion of these "rate case" issues from the current proceeding would not limit the Commission's ability to review these matters at the appropriate time in the future. In addition, the exclusion of these issues would not disadvantage any party or provide any advantage to the company since the parties would have a full opportunity to explore these issues in the context of any Tampa Electric application to adjust rates following the stipulation period.

II.

THE CURRENT PRELIMINARY LIST OF ISSUES DOES NOT REPRESENT A CONSENSUS AMONG THE PARTIES

In the Procedural Order, a list of "preliminary" issues was set forth and the scope of this proceeding was defined as follows:

The scope of this proceeding shall be based upon the issues raised by the parties and Commission staff (staff) up to and during the prehearing conference, unless modified by the Commission.

The Procedural Order further directed the parties to file Prehearing Statements on June 26, 1996, addressing the list of "preliminary" issues attached to the Order. This preliminary issues list was not the result of a consensus among the parties. Instead, the issues specified represented a cumulative list of all of the issues raised by the Staff. From the outset, the company has had serious reservations with regard to the relevance of a number of the issues included on the preliminary list. In light of these

concerns, Tampa Electric has worked with the Staff and other parties in a cooperative effort to insure that the issues addressed in this proceeding are directly relevant to an examination of the prudence of the company's Polk investment.

On June 19, following preliminary discussions regarding the proper scope of the proceeding, the parties and Staff met to discuss refinements in the issues listed in Order 96-0567. Attachment "1" hereto contains the revised issue list which resulted from those discussions. While this revised issue list is an improvement, three of the issues remaining on the list involve matters which are well beyond any reasonable scope for this proceeding.

III.

THE CAPITAL STRUCTURE TO BE IMPUTED TO TAMPA ELECTRIC'S POLK INVESTMENT HAS NOTHING TO DO WITH PRUDENCE AND HAS ALREADY BEEN RESOLVED

Issue number 13 on the revised list of issues reads as follows:

What are the appropriate capital structure components associated with the Polk Unit?

As noted above, the joint stipulation, as adopted by the Commission, resolves all rate of return issues through 1998. In fact, paragraph 11 of the stipulation provides that the calculations of the actual ROE for each calendar year during the term of the agreement will be done on an FPSC adjusted basis, using the appropriate adjustments approved in Tampa Electric's full

revenue requirements proceeding. Therefore, in keeping with the requirements of the Stipulation, the Polk unit will be treated like any other investment which is supported on a prorata basis by the total capital structure. To the extent that the staff or other parties wish to advance a case for a different capital structure, the time to advance such positions would be in Tampa Electric's next rate case or cost of capital proceeding. However, this issue has nothing to do with the prudence of Tampa Electric's Polk investment and should not be considered in this proceeding.

IV.

THE JURISDICTIONAL SEPARATION OF POLK-RELATED COSTS HAS ALREADY BEEN RESOLVED FOR THE STIPULATION PERIOD

Issue 15 on the revised list of issues reads as follows:

How should the capital, O&M and fuel costs associated with wholesale sales made from the Polk IGCC unit be separated from the retail jurisdiction?

There is no doubt that a portion of the Polk-related investment will be allocated to Tampa Electric's wholesale ratebase. The separation procedure to be used to separate capital and O&M was approved in the company's last rate case, Docket No. 920324-EI and will be followed. The allocation of fuel expense associated with a sale from the Polk IGCC unit can be addressed in the Fuel Adjustment proceedings. Proposed changes to the currently approved jurisdictional separation procedure have nothing to do with the prudence of Tampa Electric's Polk-related investment. As noted above, this issue can be addressed at such time as the

company files an application to adjust its rates, without any prejudice to the position of any party.

V.

INVESTIGATION OF ALTERNATIVE COST RECOVERY MECHANISMS FOR THE COMPANY'S POLK-RELATED INVESTMENT IS A RATE DESIGN ISSUE WHICH HAS NOTHING TO DO WITH THE PRUDENCE OF TAMPA ELECTRIC'S POLK INVESTMENT

Issue number 16 on the revised list reads as follows:

Should the Commission adopt an alternative method of cost recovery for TECO's Polk County IGCC Unit?

As discussed above, Tampa Electric has voluntarily agreed to a ratemaking plan which will result in the commercial operation of a major plant addition without any adjustment of base rates to reflect the significant increase in revenue requirement for at least the first two years that the plant is in service. At the same time, the company will make a refund to customers of \$25 million, with the possibility of additional refunds in 1999. The company respectfully suggests that it would be difficult, if not impossible, to devise a more innovative and creative alternative to conventional rate making for a major plant addition than the approach already adopted by the Commission in the form of the Joint Stipulation.

There is simply no useful purpose to be served is using the limited time allotted to this proceeding to consider cost recovery alternatives. Paragraph 11 of the above mentioned stipulation provides that all reasonable and prudent expense and investment

will be allowed in the computation of ROE during the Stipulation period. Once Tampa Electric's Polk investment has been proven prudent, the Stipulation requires that all of that prudent investment be reflected in the ROE calculation as opposed to alternative ratemaking approaches. Tampa Electric has proceeded prudently with the construction of the IGCC plant authorized by the Commission in Docket No. 910883-EI, Order No. PSC-92-0002-FOF-EI, and sees no need to complicate the recovery of the company's prudent expenditures.

Tampa Electric is cognizant of the fact that Order No. PSC-96-0670-S-EI approving the Stipulation anticipated that the prudence of Tampa Electric's investment in the Polk Power Station would be addressed in a separate proceeding in stating at page 4 as follows:

These alternative (cost recovery) mechanisms may be appropriate in light of the Polk unit's apparent high overall cost of generating electricity and increasing utility operation.

Since the record in the above mentioned proceeding is devoid of any evidence or discussion concerning the cost or competitiveness of Polk Unit One or the need to explore alternative cost recovery mechanisms for Tampa Electric's Polk investment, this language must be taken as dicta with no operative effect. We believe such to be the case since the Commission simply voted to approve the Stipulation and expressly denied the Staff recommendation which contained the above quoted statement. See Attachment "2" - Agenda Conference transcript pages 25-28.

In any event, cost recovery methodology, stranded cost recovery eligibility and performance based ratemaking for the

company's Polk investment, which are some of the topics that the parties have addressed in testimony, are clearly rate design issues which are more appropriately addressed at such time as Tampa Electric applies to the Commission to adjust its rates to recover its Polk-related investment. Consideration of such issues now would be premature and, therefore, unnecessary.

CONCLUSION

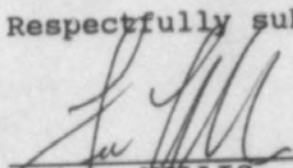
Tampa Electric respectfully submits that the focus of this proceeding is the prudence of the company's expenditures in connection with its Polk IGCC unit. This is not a rate case. There is no proposal to adjust rates in this proceeding. Issues of rate design, cost allocation and capital structure are rate case issues which are well beyond any reasonable scope for this proceeding. While it is possible to argue that just about anything could be related to a prudence proceeding if one is willing to entertain a sufficiently attenuated and abstract argument, there is no useful purpose to be served in this instance by the Commission to engaging in such conceptual acrobatics.

Tampa Electric would greatly appreciate any expedited consideration which could be afforded this motion. The current procedural schedule calls for the filing of Prehearing Statements by the parties on June 26. Any guidance which the Commission could provide with regard to the issues raised in this motion before that date or prior to the scheduled July 2 prehearing conference would be extremely useful to the parties.

WHEREFORE, Tampa Electric respectfully requests that the Commission issue an order, on an expedites basis, specifying that, as a general matter, cost allocation, rate design and capital structure issues are beyond the scope of this proceeding and that issues 13, 15, and 16 , as they appear on the attached revised list of issues, shall be excluded from consideration in this proceeding.

DATED this 21st day of June, 1996.

Respectfully submitted,



LEE L. WYLLIS
JAMES F. BEASLEY
KENNETH R. HART
Ausley & McMullen
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(904) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

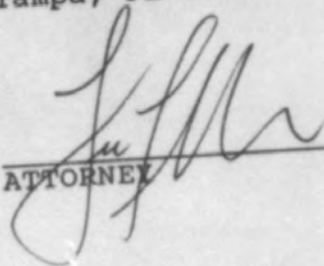
I HEREBY CERTIFY that a true copy of the foregoing Motion for an Order Declaring Certain Issues to be Beyond the Scope of the Proceeding, filed on behalf of Tampa Electric Company, has been furnished by U. S. Mail or hand delivery (*) on this 21st day of June, 1996 to the following:

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

Mr. Joseph A. McGlothlin
Ms. Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas
117 S. Gadsden Street
Tallahassee, FL 32301

Mr. Jack Shreve
Mr. John Roger Howe
Deputy Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street - #812
Tallahassee, FL 32399-1400

Mr. John W. McWhirter, Jr.
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas
100 North Tampa Street
Suite 2800
Tampa, FL 33602



ATTORNEY

Prudence Review to Determine Regulatory Treatment
of Tampa Electric Company's Polk Unit

Revised Preliminary Issues - 6/19/96

LEGAL ISSUE

1. What is the appropriate legal standard in a prudence review?

PLANNING ISSUES

2. Was the continued construction of the Polk IGCC unit by Tampa Electric Company reasonable and prudent?
3. Were Tampa Electric Company's assumptions regarding sunk costs in each of its annual cost-benefit analysis reasonable?
4. Were Tampa Electric Company's assumptions regarding variable operations and maintenance expense in each of its annual cost-benefit analysis reasonable?
5. Were Tampa Electric Company's assumptions regarding tax credits in its 1994 and 1995 Polk IGCC cost-benefit analysis reasonable?
6. Did Tampa Electric Company adequately address its declining demand and energy forecasts in each of its annual cost-benefit analysis?

FUEL ISSUES

7. Has Tampa Electric Company demonstrated that its 1992, 1993, 1995, and 1995 fuel price forecasts were reasonable and prudent?
8. Has Tampa Electric Company demonstrated that petcoke is a reliable and viable fuel for the Polk IGCC Unit?
9. Were Tampa Electric Company's assumptions regarding the combined use of as-available natural gas and light oil as the primary fuels for a combined cycle alternative in its 1994, 1995, and 1996 Polk IGCC cost-benefit analysis reasonable?
10. Was it reasonable for Tampa Electric Company to assume as-available natural gas transportation rather than firm gas transportation in its 1992, 1992, 1994, and 1995 Polk IGCC cost-benefit analysis?

RATE BASE TREATMENT

11. What is the appropriate amount of the Polk IGCC Unit's cost to be included in rate base
12. What is the appropriate amount of the Polk IGCC Unit's cost to be included in the calculation of net operating income?
13. What are the appropriate capital structure components associated with the Polk IGCC unit?
14. What is the appropriate regulatory treatment for the Port Manatee (HIL7) site?

OTHER

15. How should the capital O & M and fuel costs associated with wholesale sales made from the Polk IGCC unit be separated from the retail jurisdiction?

ALTERNATIVE RATEMAKING TREATMENTS

16. Should the Commission adopt an alternative method of cost recovery for TECO's Polk County IGCC unit?

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

MAY 16 1996

REG. & BUS. STRATEGY

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IN RE: Investigation into earnings for 1995 and 1996 of
Tampa Electric Company

DOCKET NO. 950379-EI

COPY

BEFORE: CHAIRMAN SUSAN F. CLARK
COMMISSIONER J. TERRY DEASON
COMMISSIONER JULIA L. JOHNSON
COMMISSIONER DIANE K. KIESLING
COMMISSIONER JOE GARCIA

PROCEEDING: AGENDA CONFERENCE

ITEM NUMBER: 5**

DATE: Tuesday, April 30, 1996

PLACE: 4075 Esplanade Way, Room 148
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Notary Public in and for the
State of Florida at Large

JANE FAUROT, RPR
P.O. BOX 10751
TALLAHASSEE, FLORIDA 32302
(904) 379-8669

1 of the stipulation, we are entering into this decision
2 by having -- you can't say we weren't told or given the
3 upsides and the downsides of this, so it's a decision
4 made with full knowledge of the ramifications, so I
5 appreciate that. But I also appreciate the fact that
6 this is a stipulation reached by all the parties whose
7 interests are going to be affected. And the fact that
8 Mr. McWhirter, and Mr. Shreve, and Mr. Howe were
9 involved in this negotiation gives me great confidence
10 that they didn't give up much. I can think of very few
11 people I would like less to negotiate with. And, you
12 know, I think we should encourage these stipulations,
13 and it has the added aspect of providing some
14 incentives to the company, too, to be a more efficient
15 company. And it accomplishes a lot of positive things,
16 including the sharing and putting a cap and, quite
17 frankly, including a refund. And I think to that
18 extent it's a stipulation that we can accept and we
19 should approve it.

20 COMMISSIONER JOHNSON: So moved.

21 COMMISSIONER DEASON: Second.

22 CHAIRMAN CLARK: All those in favor say aye.

23 COMMISSIONER GARCIA: Aye.

24 COMMISSIONER JOHNSON: Aye.

25 COMMISSIONER KIESLING: Aye.

1 CHAIRMAN CLARK: Aye.

2 COMMISSIONER DEASON: Aye.

3 CHAIRMAN CLARK: Opposed, nay. Thank you all very
4 much for your hard work.

5 MR. SHREVE: Could I say one thing. I wanted to
6 thank you for your consideration. And I would like to
7 also say that this is one that we felt might not be
8 able to settle out, but all parties dealt with the
9 facts and dealt in good faith and negotiated in faith
10 and it was well handled. Thank you for your
11 consideration.

12 CHAIRMAN CLARK: Thank you.

13 MR. ELIAS: We need to get some clarification on
14 the vote.

15 COMMISSIONER GARCIA: Yes.

16 MR. ELIAS: Are you moving --

17 CHAIRMAN CLARK: That is a good point. My
18 recommendation would not be that --

19 COMMISSIONER JOHNSON: Approving the stipulation.

20 CHAIRMAN CLARK: -- we are approving the
21 stipulation

22 MR. ELIAS: As far as Issues 2 and 3.

23 CHAIRMAN CLARK: So, I think it would be we are
24 denying staff, both the primary and the alternate, and
25 we are approving the stipulation. All right. With

1 respect to Issue 2, we need a motion, is that right?

2 COMMISSION STAFF: Yes.

3 CHAIRMAN CLARK: Is there a motion on Issue 2?
4 There is no objection to filing the report, is there?

5 COMMISSION STAFF: Commissioners, we'd prefer not
6 to. The rules do not require us to, and we think with
7 the sharing and the caps that are involved in the
8 stipulation, it's not necessary.

9 CHAIRMAN CLARK: Is it a big issue with you?

10 COMMISSION STAFF: Not especially.

11 COMMISSIONER JOHNSON: Let's move it.

12 CHAIRMAN CLARK: Without objection, Item 2 is
13 approved. Item 3. Show Issue 3 approved without
14 objection.

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CERTIFICATE OF REPORTER

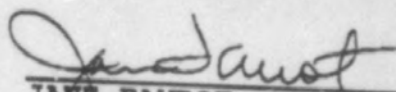
STATE OF FLORIDA)

COUNTY OF LEON)

I, JANE FAUROT, Court Reporter, do hereby certify that the foregoing proceedings was transcribed from cassette tape, and the foregoing pages numbered 1 through 29 are a true and correct record of the proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED THIS 14th day of May, 1996.



JANE FAUROT, RPR
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Tallahassee, Florida 32302
(904) 379-8669