

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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

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:
: DOCKET NO. 950379-EI
:
:
:

PROCEEDINGS:

PREHEARING CONFERENCE

BEFORE:

COMMISSIONER JOE A. GARCIA

DATE:

Monday, November 30, 1998

TIME:

Commenced at 1:35 p.m.
Concluded at 1:50 p.m.

PLACE:

Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY:

MARY ALLEN NEEL, RPR

ACCURATE STENOGRAPHY REPORTERS, INC.
100 SALEM COURT
TALLAHASSEE, FLORIDA 32301
(850) 878-2221

BUREAU OF REPORTING

RECEIVED 12-3-98

DOCUMENT NUMBER-DATE

13564 DEC-28

FPSC-RECORDS/REPORTING

APPEARANCES:

LEE L. WILLIS and KENNETH R. HART, Ausley & McMullen, Post Office Box 391, Tallahassee, Florida 32302, on behalf of Tampa Electric Company.

VICKI GORDON KAUFMAN, McWhirter, Reeves, McGlothlin, Davidson, Decker, Kaufman, Arnold & Steen, 117 South Gadsden Street, Tallahassee, Florida 3201, on behalf of Florida Industrial Power Users Group.

JOHN ROGER HOWE, Office of the Public Counsel, 111 West Madison Street, Room 812, Tallahassee, Florida 32399, on behalf of the Citizens of the State of Florida.

WILLIAM COCHRAN KEATING IV, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, on behalf of the Commission Staff.

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COMMISSIONER GARCIA: Good afternoon.
Counsel, will you read the notice, please?

MR. KEATING: Yes. Is this picking up?

COMMISSIONER GARCIA: I don't know. Are we
being picked up? Can you hear us through these
mikes? Are you hearing us?

MR. KEATING: Okay.

COMMISSIONER GARCIA: Can you hear him?

MR. KEATING: This time and place have
been set for a prehearing in Docket No. 950379-EI,
Investigation into earnings for 1995 and 1996 of Tampa
Electric Company, pursuant to notice issued October
28, 1998.

COMMISSIONER GARCIA: Okay. We'll take
appearances.

MR. WILLIS: I'm Lee Willis, appearing
together with Kenneth R. Hart, of Ausley & McMullen,
Post Office Box 391, Tallahassee, Florida 32302,
appearing on behalf of Tampa Electric Company.

MS. KAUFMAN: Vicki Gordon Kaufman of the
McWhirter Reeves law firm, 117 South Gadsden,
Tallahassee, 32301, and I'm appearing on behalf of the
Florida Industrial Power Users Group.

MR. HOWE: Commissioner Garcia, I'm Roger

1 Howe with the Public Counsel's Office, appearing on
2 behalf of the Citizens of the State of Florida. The
3 address is as shown on the Prehearing Order.

4 COMMISSIONER GARCIA: Okay. Staff, are
5 there any preliminary matters?

6 MR. KEATING: I would just like to make my
7 appearance also.

8 COMMISSIONER GARCIA: Okay. I'm sorry.

9 MR. KEATING: Cochran Keating on behalf of
10 the Commission Staff.

11 I don't believe there are any preliminary
12 matters.

13 COMMISSIONER GARCIA: Okay, good.

14 MS. KAUFMAN: Commissioner Garcia, I have
15 -- I don't know if this qualifies as a preliminary
16 matter or not.

17 COMMISSIONER GARCIA: Okay.

18 MS. KAUFMAN: But I can either bring it up
19 now or whenever. It has to do with the briefing
20 schedule in this case. Do you want me to discuss it
21 now or wait until the end?

22 COMMISSIONER GARCIA: What do you want to
23 do?

24 MR. KEATING: I guess we could go ahead and
25 deal with that now.

1 COMMISSIONER GARCIA: Let's go ahead.
2 We've already --

3 MS. KAUFMAN: Okay. We received a second
4 procedural order -- we received it sometime over the
5 weekend -- which changes the due dates for the briefs
6 in this case from January 8th, which is what they
7 were, to December 21st, which is just barely two weeks
8 after the conclusion of the hearing. And from my own
9 perspective, my own workload, and I'm going to be out
10 of town, that's just going to create a heavy burden on
11 me.

12 And I've discussed it with the other
13 parties, and I think they can address their concerns
14 to you as well, but we would request that the briefing
15 date be moved back to January 8th, or forward, I
16 guess, which is what it originally was.

17 COMMISSIONER GARCIA: Okay.

18 MR. WILLIS: We have no objection to that.

19 MR. HOWE: Commissioner Garcia, I would
20 like to support Ms. Kaufman. Having checked the CASR
21 and everything, I told my wife it was safe to go ahead
22 and guarantee a room for that week to be out of town.
23 So I was really surprised to see --

24 COMMISSIONER GARCIA: Now we know money is
25 on the line, Roger, so I can hold you up here.

1 MR. HOWE: I was really surprised to see
2 that the date had changed.

3 COMMISSIONER GARCIA: Okay.

4 MR. KEATING: To be honest, I'm not sure
5 why the date was changed. I kind of got in on this
6 docket a little late in the game. But the CASR does
7 show that it was January 8th, and I'm not sure if
8 there was an error in drafting the order.

9 COMMISSIONER GARCIA: Okay. We'll make it
10 so. January 8th it is. We'll go back.

11 Mr. Keating, unless you find that there was
12 some reason unbeknownst to any of us, you'll get it
13 back to them, but I think we're fine with that date.
14 And then Mr. Howe owes us big.

15 All right. So we'll go through -- we'll go
16 through this. If you have any questions, just stop
17 me, and hopefully we can be out of here in relatively
18 short order.

19 Okay. Corrections or changes to the case
20 background?

21 Corrections or changes to the witness list
22 or order of witnesses?

23 MR. HOWE: Commissioner Garcia, on the
24 witness list, for Mr. Larkin, he will address Issues
25 1, 2, 3, and 5.

1 COMMISSIONER GARCIA: Okay. You all have
2 that? Very good.

3 The basic positions?

4 Okay. We'll go through the issues.

5 Issue 1?

6 Issue 2?

7 MR. HOWE: Commissioner Garcia, on Issue 2,
8 I would just bring to your attention that we have
9 taken the position that this is not an appropriate
10 issue for the reasons as stated in our statement of
11 position.

12 COMMISSIONER GARCIA: Okay. Ms. Kaufman?

13 MS. KAUFMAN: Yes. That's FIPUG's position
14 as well.

15 COMMISSIONER GARCIA: Okay.

16 MR. HART: We believe that it is an
17 appropriate issue and that the issue really doesn't
18 appear in the case except in response to the proposals
19 filed by the Office of Public Counsel and FIPUG. It's
20 not an issue that would have been apparent from the
21 face of the proposed agency action. So I think Staff
22 is correct in proposing this as an additional issue in
23 the case.

24 MR. HOWE: Commissioner Garcia, if I might,
25 I agree that it is something raised in response to the

1 positions taken by Public Counsel's witness and
2 FIPUG's witness. However, it is not addressed in the
3 Company's witnesses' rebuttal testimony.

4 COMMISSIONER GARCIA: Okay. Staff?

5 MR. KEATING: It's Staff's position that
6 this issue is a fallout from Issue 1. Staff believes
7 that if the Commission does determine that zero cost
8 should be assigned to the deferred revenues, that this
9 issue necessarily needs to be decided by the
10 Commission also.

11 COMMISSIONER GARCIA: So regardless, Staff
12 is going to consider this issue? I mean, it may not
13 consider this issue, but the issues that are
14 comprehended within this issue are going to be
15 addressed regardless?

16 MR. KEATING: That's correct.

17 COMMISSIONER GARCIA: Mr. Howe, if you want
18 them just subsumed in another issue, that's fine. But
19 I think Staff is going to address it one way or
20 another.

21 MR. HOWE: I understand. Commissioner
22 Garcia, one of the things we're addressing here and I
23 guess actually are going to be looking for some
24 guidance on is, under the APA, Section 120.80(13)(b)
25 states that once a protest is filed, only the issues

1 in dispute go to hearing. The other matters are
2 deemed stipulated.

3 I believe the dollar amount of deferred
4 revenues in the capital structure is an easily
5 identified issue. However, it has not been placed in
6 dispute by the Office of Public Counsel, by FIPUG, or
7 by Tampa Electric, and as such, it would appear that
8 the Administrative Procedure Act as amended in 1996
9 would preclude the Commission from addressing this
10 issue.

11 COMMISSIONER GARCIA: Do you want to
12 respond to this?

13 MR. HART: It's just an issue that's a
14 natural fallout. There's nothing to protest in the
15 proposed agency action. Therefore, it's not possible
16 to raise it in that sense. What it is is part of the
17 mathematical calculation that follows from their
18 position about if you're going to adopt their
19 position, how do you get the right number. It's
20 simply an issue that everyone needs to know, is aware
21 of, and that will come up in the natural course of the
22 proceedings.

23 But I think Staff is absolutely correct in
24 making this a separate issue in the case so that
25 everyone is on notice of it and because it's a natural

1 fallout of what happens when you address the issues
2 raised by --

3 COMMISSIONER GARCIA: Staff?

4 MR. KEATING: Well, Staff believes that --
5 Public Counsel disagrees with the cost rate that's
6 supposed to be assigned to the deferred revenues. And
7 if we adopt the cost rate proposed by Public Counsel,
8 that's going to change the amount of the deferred
9 revenues. So I don't think the amount is stipulated
10 here.

11 MR. HOWE: Commissioner Garcia, our concern
12 is, as with most things in regulation, everything is
13 pretty well tied together. Our concern here, as we
14 notice in the last sentence of the position we've
15 taken, is, assuming we're starting from a series of
16 accounts, the income statement, the balance sheet, and
17 -- I mean the rate base and the capital structure,
18 Staff is now proposing to reduce the capital structure
19 without making a commensurate adjustment in the rate
20 base.

21 So our point is, if you're going to do it,
22 you've got to introduce more than just make an
23 adjustment to capital structure. If the capital
24 structure starts out equal to the rate base and you
25 reduce the capital structure, you've got to make an

1 adjustment in the rate base. If you're going to
2 adjust the capital structure and the rate base, you're
3 probably going to need to make an adjustment in the
4 income statement, because the NOI calculation would
5 change, because if you take the interest out of the
6 capital structure, there's an income tax effect, a
7 deduction is lost, and so the income statement will
8 change.

9 So we think the statute requires that only
10 those matters protested should be addressed in the
11 hearing. However, we believe if the Staff is going to
12 introduce a schedule, a component of ratemaking that
13 has not been protested, that they need to go all the
14 way, get the rate base right, get the income statement
15 right, get the capital structure right, and get the
16 cost rates right. It all goes together.

17 MR. HART: I think you can see from those
18 comments this is an argument on the merits and how you
19 reach the right number, and they're trying to make a
20 point that there's still something else beyond this
21 they want to consider if we go down this road. But
22 it's part of the merits of calculating the right
23 number.

24 COMMISSIONER GARCIA: Does Staff have
25 anything to add?

1 MR. KEATING: No.

2 COMMISSIONER GARCIA: All right. Mr. Howe,
3 you're going to get your way. We're going to drop
4 it. It's a fallout. We'll take -- Issue 2 is going
5 to be dropped. The issue that Staff wants to address
6 can be addressed, I believe, relatively easily in
7 Issue 3, if I'm not mistaken.

8 Issue 3 becomes Issue 2. Are there any
9 questions there?

10 Issue 4 becomes Issue 3.

11 Issue 5 becomes Issue 4.

12 Are there any corrections or changes to the
13 exhibit list?

14 MR. HOWE: Commissioner Garcia, I would
15 just point out that with those changes in the numbers,
16 we would need to change the issues that are being
17 addressed by the witnesses.

18 COMMISSIONER GARCIA: Okay.

19 MR. HOWE: But those will just --

20 COMMISSIONER GARCIA: I think those
21 naturally fall that way, and you can take care of it.

22 MR. HART: It seems to us that if we're
23 going to go that route, Issue No. 5 is certainly
24 included within Issue No. 1, and 2, within Issue 1 and
25 2.

1 MS. KAUFMAN: Well, Commissioner, I think
2 that was FIPUG's issue, and I don't agree that it's
3 included in the prior issues. I think we need to
4 reach the question of whether or not they've done the
5 calculation properly.

6 COMMISSIONER GARCIA: Staff?

7 MR. KEATING: Staff really doesn't have an
8 opinion either way on this one.

9 COMMISSIONER GARCIA: We're going to keep
10 it the way it is.

11 All right. Corrections or changes to the
12 exhibit list, there were none.

13 Is there anything else that needs to be
14 taken up?

15 MR. WILLIS: Commissioner, I've placed
16 before you a list of orders which Tampa Electric would
17 request be officially noticed, and I've given the list
18 to all the parties. It's pretty pro forma.

19 COMMISSIONER GARCIA: Correct.

20 MR. WILLIS: And we would request that
21 those orders be officially noticed for this
22 proceeding.

23 COMMISSIONER GARCIA: Okay. Is there any
24 objection?

25 MR. HOWE: Commissioner Garcia, I would

1 object. Number 2, the FPUC orders, I believe those
2 are orders addressed in the rebuttal testimony of
3 Tampa Electric's witness, Delaine Bacon. I do not
4 think it would be appropriate to take official notice
5 of those, because Ms. Bacon is raising those for the
6 first time on rebuttal. In her direct testimony, she
7 cites to that first order there listed, the 1995
8 Fernandina Beach order. Mr. Larkin addresses that in
9 rebuttal.

10 Now, Ms. Bacon is free to come back in her
11 rebuttal testimony and say Mr. Larkin is wrong. But
12 instead, what she has done is introduce two new cases,
13 two new orders that Mr. Larkin has not and will not
14 have the opportunity to address. I think these two
15 orders are clearly outside the scope of rebuttal
16 testimony, in that they address orders not considered
17 by our witness.

18 MR. WILLIS: You know, quite frequently in
19 placing your post-hearing statements, parties cite
20 cases and orders and other things. This gives advance
21 notice of things that the Company or any party could
22 rely on. They are the orders of the Commission. They
23 are the purest form of things that can be officially
24 recognized by the Commission. And whether they are
25 addressed or not in testimony is totally immaterial.

1 These are matters which --

2 COMMISSIONER GARCIA: Mr. Willis, I happen
3 to agree with you.

4 Mr. Howe, I generally think that when you
5 officially recognize something, we have the broadest
6 latitude possible. It may be of interest and help to
7 your witness to bone up on these. It may not be in
8 his testimony, but it certainly wouldn't hurt to
9 know. And clearly, we generally recognize all sorts
10 of things that may not have much of a bearing on our
11 final decision here. But it's a heads-up for
12 everyone, and I don't think anyone is hurt by it.

13 MR. HOWE: I don't disagree, Commissioner
14 Garcia. I hope you understand that I'm looking
15 forward to the hearing, and if I make an objection at
16 that time, I don't want somebody saying, well, he did
17 not object at the prehearing conference.

18 COMMISSIONER GARCIA: No. That's
19 absolutely fine. Of course, I didn't object to your
20 vacation.

21 Are we all right with everything else? Do
22 you have anything else?

23 MR. KEATING: I believe that's it.

24 COMMISSIONER GARCIA: I think so. Well,
25 that's it. We adjourn the hearing. Thank you very

1 much. Sorry for being late.

2 (Proceedings concluded at 1:50 p.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA:

COUNTY OF LEON:

I, MARY ALLEN NEEL, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and that the foregoing pages numbered 1 through 16 are a true and correct record of the aforesaid 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 matter.

DATED THIS 2nd day of December, 1998.

Mary Allen Neel

MARY ALLEN NEEL, RPR
100 Salem Court
Tallahassee, Florida 32301
(850) 878-2221

<p style="text-align: center;">1</p> <p>1 [6] 6:25 7:5 8:6 12:24,24 17:10 1:50 [1] 16:2 117 [1] 3:22 120.80(13)(b) [1] 8:24 16 [1] 17:10 1995 [2] 3:12 14:7 1996 [2] 3:12 9:8 1998 [2] 3:14 17:16</p> <hr/> <p style="text-align: center;">2</p> <p>2 [8] 6:25 7:6,7 12:4,8,24,25 14:1 21st [1] 5:7 28 [1] 3:14 2nd [1] 17:16</p> <hr/> <p style="text-align: center;">3</p> <p>3 [4] 6:25 12:7,8,10 32301 [2] 3:23 17:20 32302 [1] 3:19 391 [1] 3:19</p> <hr/> <p style="text-align: center;">4</p> <p>4 [2] 12:10,11</p> <hr/> <p style="text-align: center;">5</p> <p>5 [9] 6:25 12:11,23</p> <hr/> <p style="text-align: center;">8</p> <p>8th [4] 5:6,15 6:7,10</p> <hr/> <p style="text-align: center;">9</p> <p>950379-EI [1] 3:11</p> <hr/> <p style="text-align: center;">A</p> <p>absolutely [2] 9:23 15:19 accounts [1] 10:16 Act [1] 9:8 action [2] 7:21 9:15 actually [1] 8:23 add [1] 11:25 additional [4] 7:22 address [8] 4:3 5:13 6:24 8:19 10:1 12:5 14:14,16 addressed [7] 8:2,15 11:10 12: 6,17 14:2,25 addresses 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