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January 14, 1999

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Blanca S. Bayo, Director
Florida Public Service Commission
Division of Records and Reporting
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2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0870

Re: Docket No. 950379-EI

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and fifteen copies of the Florida Industrial Power Users Group's Post-Hearing Statement of Issues and Positions and Post-Hearing Brief in the above docket.

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

Sincerely,

Vicki Gordon Kaufman

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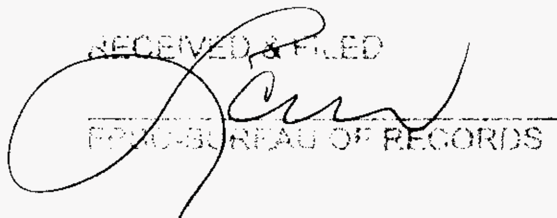

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into earnings for 1995 and 1996 of Tampa Electric Company.	Docket No. 950379-EI Filed: January 14, 1999

THE FLORIDA INDUSTRIAL POWER USERS GROUP'S POST-HEARING STATEMENT OF ISSUES AND POSITIONS AND POST-HEARING BRIEF

Preliminary Statement

Pursuant to Rule 25-22.056, Florida Administrative Code, the Florida Industrial Power Users Group, files its Post-hearing Statement of Issues and Positions and its Post-Hearing Brief.[1]

Summary

The issue before the Commission in this case is a simple one. It is whether the Stipulations contemplate that the ratepayers will bear the cost of the interest to be paid on deferred revenues or whether such interest will be paid by the company's shareholders. Despite TECo's attempts to obscure this straight-forward question, it is the only issue in this case. FIPUG suggests that the Commission simply look at the plain language of the Stipulations, place itself in the position of the parties to the Stipulations and ask itself: Would the consumers have agreed to any provision in the Stipulations which would diminish the amount of revenue available either to be applied to cost of service or available for refund? The answer to that question is a resounding no. That answer resolves the issues in this case.

[1] The following abbreviations are used in this brief. The Florida Industrial Power Users Group is referred to as FIPUG. The Office of Public Counsel is referred to as OPC. Tampa Electric Company is called TECo. The Florida Public Service Commission is referred to as the Commission.

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Argument

Issue 1

What is the appropriate cost rate to apply to deferred revenues in the capital structure?

FIPUG Position: *The appropriate cost rate to apply to deferred revenues is zero. Deferred revenues are revenues in excess of TECo's cost of service to which TECo has no entitlement. To impute interest on the deferred revenues would result in customers having to pay interest on their own money.*

Issue 2

What is the effect of assigning a zero cost rate to deferred revenues for 1996?

FIPUG Position: *The effect of assigning a zero cost rate is to accord to customers the benefit of their bargain and not require them to pay interest on their own money. As TECo admits, assigning a zero cost, even under TECo's calculations, will increase the deferred revenues for 1996 by $2.5 million.*

The Stipulations

Central to the Commission's decision in this case is an understanding of the purpose of the Stipulations at issue. On March 25, 1996, FIPUG, OPC and TECo entered into a Stipulation (Stipulation I)[2] which was subsequently approved and adopted by this Commission in Order No. PSC-96-0670-S-EI. As admitted by Ms. Bacon, in 1995, TECo forecast a return on equity (ROE) of 14.28%; for 1996, TECo forecast an ROE of 13.81%. These returns were well in excess of TECo's allowed return. (Tr. 108-109). The money at issue here represents funds in excess of TECo's cost of service.

To address TECo's overearnings situation, the parties met and entered into Stipulation I.

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[2] Stipulation I was later modified in a Stipulation (Stipulation II) signed on September 25, 1996 and adopted by the Commission in Order No. PSC-96-1300-S-EI, but Stipulation I controls.

(Tr. 109-110). This Stipulation was intended to be a comprehensive rate settlement. (Tr. 115). Alternatively, as Ms. Bacon testified, the Commission could simply have ordered the overearnings returned to customers. (Tr. 110). These excess revenues represent customers' money. The company should not have been planning to use these funds because it should not have been planning to earn in excess of its cost of service. (Tr. 166). Instead, the ratepayers agreed to allow TECo to hold the overearnings (money belonging to the ratepayers which the Commission could have ordered TECo to refund) and to permit TECo to defer those overearnings into future years to offset primarily the new Polk unit and then to refund any remaining overearnings **plus interest** to ratepayers at the end of the Stipulation I period.

TECo had no entitlement to such revenues and was only permitted to retain them to provide rate stability. (Tr. 155). These revenues actually represent customer advances against future increases in TECo's cost of service. (Tr. 155). Ratepayers expected to get the full benefit of the bargain they struck with TECo; that is, they expected at the end of the Stipulation I period that the deferred revenues **plus interest** would either be returned to them or that such revenues **plus interest** would be applied to TECo's cost of service or some combination of the two.

To twist the language and intent of Stipulation I to require the ratepayers to **pay interest on their own money** results in the pot of deferred revenues being diminished by the amount of interest. Put another way, such an interpretation would require the customers to pay interest on their own money. Ms. Bacon admitted that the Commission's PAA order and the company's calculations would require customers to pay interest on a principal of $74.3 million of deferred revenue on a 13-month average basis **and** $3.3 million of interest on a 13-month average basis. (Tr. 70). Further, TECo's approach would reduce the likelihood of a refund at all since the

interest TECo is attempting to charge customers has the effect of raising the overearnings bar for TECo.

As Mr. Larkin put it: "If . . . the interest expense associated with the deferral is included as an offsetting expense to the Company's over-earnings, the ratepayers are paying their own interest costs, and the provisions of the stipulations are violated." (Tr. 189). Such an interpretation, urged by TECo, just makes no sense. It would diminish the amount to which ratepayers are entitled, even under TECo's own calculation, by $ 2.5 million. (Tr. 125-126).[3]

The Commission must ask itself why would ratepayers agree to diminish the amount of money due them which TECo has been holding as overearnings?[4] The simple answer is: they would not! As Mr. Pollock testified: "Logic and common sense suggests that at least two of the three Stipulating Parties --OPC and FIPUG--would not have agreed to any provision that would cause the customers to receive less than a full refund of excess revenues, including compensation for the time value of money. . . . [C]ustomers would never have acquiesced to an accounting treatment that would have reduced the benefits that they bargained for under the Stipulations." (Tr. 159). Customers are entitled to the time-value of their money and the Commission should so interpret the Stipulations. (Tr. 155).

Ms. Bacon argues that if the parties had intended that TECo shareholders make the interest payment to consumers, the Stipulations would have been explicit on that point. But Ms. Bacon

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[3] Pursuant to Mr. Larkin's calculations, if the methodology in the Fernandina Beach case is followed, deferred revenues would be greater by $6.1 million. (Tr. 205; Exhibit No. 7).

[4] Both Mr. Pollock and Mr. Larkin, gentlemen with long histories in the regulatory arena, found it impossible to believe that the ratepayers would have agreed to the "bargain" TECo now wants to impose. (Tr. 155, 209)

has it backwards. When interest is to be included as a regulatory expense, the Stipulation so provides. For example, paragraph 10 discusses interest expense that might be incurred as to the Polk Power Station. The provision states that any interest so incurred "will be considered a prudent expense for ratemaking purposes. . . ." Thus, there is an explicit provision finding the interest to be a regulatory expense. The perverse result TECo seeks would have been similarly and specifically included, but it was not, leading to the inescapable conclusion that shareholders should be responsible for the interest.

Interestingly, in that portion of Stipulation I calling for a $25 million refund to be made (paragraph 1), the Stipulation says that "Tampa Electric shall refund $25 million to Customers plus interest." Of the $25 million, $15 million came out of 1996 deferred revenues. In that instance, as opposed to the position TECo now takes, TECo's shareholders paid the interest on the refund, **not** the ratepayers. (Tr. 87-89). Similarly, the $10 million refund which came from 1995 revenues was $10 million **plus** interest, with TECo shareholders paying the interest. That is, the customers received $25 million **plus** interest on the $25 million. (Tr. 92). TECo did not claim that ratepayers should pick up the tab for interest on their money. This precedent should be followed here.

Regulatory Theory

An attempt was made by TECo to assert that if shareholders paid ratepayers interest on ratepayers' money, this action would somehow be inconsistent with Commission regulatory practice. This unfounded argument must be rejected for several reasons.

First, the matter before the Commission in this case is governed by the language of the parties' Stipulation. Stipulation I provides:

> 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.

Order No. PSC-96-0670-S-EI at 14-15.[5] The language says TECo will accrue interest. This does not mean it will charge the ratepayers interest. It simply means TECo will determine how much interest will be paid. The language does not provide for an "interest surcharge."

Nor does the language require ratepayers to pay interest on their own money. And, as discussed above, such an interpretation defies logic and common sense when viewed from the ratepayers' perspective. Thus, even if regulatory policy suggested otherwise (which, as discussed below, it does not), that would not control the Commission's decision in this case.[6] TECo's approach would result in the ratepayers receiving less than that for which they bargained in the Stipulation. This result is clearly illustrated in Ms. Bacon's Exhibit No. 8.[7]

Second, Ms. Bacon attempts to rely on this Commission's treatment of TECo's overearnings in 1995 for the proposition that ratepayers should pay interest on their own money. Order No. PSC-97-0436-FOF-EI. However, in that case, the interest imputation issue was never

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[5] Ms. Bacon asserted that paragraph 11 of the Stipulation also controls, but this position simply begs the question. Paragraph 11 provides that "[a]ll reasonable and prudent expenses and investment" will be allowed." Obviously, the issue before the Commission is the reasonableness of TECo's position that the interest which its shareholders should pay falls within that category of expenses. Additionally, the refund rule does not control here -- it does not address who is responsible for the interest.

[6] Ms. Bacon admitted that the Stipulation does not contain any language indicating that the parties agreed to incorporate past precedent into the Stipulation. (Tr. 92).

[7]When the Commission reviews Exhibit No. 8, it should keep two things in mind. First, the middle column (Schedule B) is irrelevant to this case. No party has suggested that no interest be accrued. (Tr. 289). Second, none of the back-up information for the figures in Exhibit No. 8 was provided to the parties. Therefore, it is impossible to verify the accuracy of the numbers displayed there.

actually contested by the parties. FIPUG and OPC were not permitted to participate in that proceeding pursuant to Stipulation II. (Tr. 113-114; see paragraph 10 of Stipulation II). Thus, the outcome in that case is not precedent in this case. (Tr. 160).

Third, the cases which TECo relies upon do not support the result it seeks. Ms. Bacon refers to several cases in her testimony which she asserts support TECo's position. However, these cases are easily distinguished. As Ms. Bacon admitted, the Quincy case (Order No. 22367) does not involve a comprehensive rate settlement among the parties. (Tr. 116). The Southern Bell order (Order No. PSC-94-0172-FOF-TL), as Ms. Bacon admitted, does not even address the issue before the Commission; therefore, this order is irrelevant. (Tr. 116-118). And the Fernandina Beach case (Order No. PSC-97-0172-FOF-TL), upon which TECo places so much reliance, actually supports FIPUG's position. In fact, if TECo were to follow the procedure set out in the Fernandina Beach case, the amount of deferred revenues due ratepayers would increase to $6.1 million. (Tr. 205; Exhibit No. 7).

Fourth, to the extent the Commission is interested in analogies in regulatory practice, there are several which point to the methodology FIPUG and OPC urge. For example, accumulated deferred income tax expense (ADIT) is an expense the Commission recognizes. While rates are set based on the assumption that the utility depreciates its plant on a straight-line basis in determining the amount of income tax expense for ratemaking purposes, in reality, the utility is allowed to accelerate depreciation for tax reporting purposes. The effect of accelerated depreciation is to defer the actual payment of taxes associated with a particular asset until later in the life of that asset. This method makes the calculated income tax expense higher than the amount of tax actually paid in the early years of the life of the asset. Essentially, ratepayers are

prepaying the income tax. (Tr. 156-157).

Traditional regulatory practice recognizes these prepayments as cost-free capital supplied by ratepayers. This Commission treats these prepayments as zero cost capital in determining a utility's cost of providing service. Just as deferred taxes are used to pay future tax obligations, the deferred revenues can be used to offset or pay for future rate increases. (Tr. 157). They should be treated similarly.

Traditional regulatory practice is also illustrated by this Commission's treatment of over- and under-recoveries in the fuel adjustment proceeding. Though the utility is required to pay interest on fuel over-recoveries, the Commission does not permit the utility to include the interest expense in the capital structure in determining the return on equity. (Tr. 161). This is the pertinent regulatory practice to which the Commission should look.

In contrast to what TECo has asserted, TECo's holding of overearnings due to customers is not analogous to customer deposits. As Mr. Pollock pointed out, customer deposits are a normal part of doing business for a utility, and though Ms. Bacon equivocated on this a bit, she finally admitted that overearnings are not. (Tr. 282-283). TECo has **no** entitlement to the overearnings collected from customers and despite Ms. Bacon's statement to the contrary, the source of the funds **is** important to the Commission's determination in this case. If such funds had not been held by TECo, they would have been returned to the ratepayers who would have had them available for use. Since instead, TECo was able to have the use of those funds, ratepayers are entitled to interest to compensate them for the time value of their money held by TECo. Additionally, customer deposits are a requirement for customers to receive service (as opposed to overearnings, to which the company has no entitlement). (Tr. 196). The fact that

TECo is obligated under Stipulation I to accrue interest on the deferred revenue does **not** create an entitlement to recover additional interest expense under the Commission's current practices. (Tr. 161).

Further, imputing a cost of short-term debt the deferred revenues artificially inflates TECo's cost of service. Certainly, it has always been Commission regulatory policy to accurately estimate cost of service and not to inflate such costs to the detriment of ratepayers.

Finally, Ms. Bacon took issue with the banking analogy Mr. Pollock suggested, in which customers receive interest on funds deposited. However, the banking analogy is right on point. When a customer deposits money in a bank, the customer expects to earn interest on that money and, upon withdrawal, to receive the principal **plus** interest. Under TECo's theory, the customer's principal would be reduced by the amount of interest the bank had agreed to pay the customer! No one would think that result was fair to the customer. (Tr. 159-160). Similarly, when the company pays interest on its bonds, bondholders are not charged interest on the funds they provide. (Tr. 261-262). However, in this case, TECo wants customers to pay interest on their own money -- a result this Commission should disavow.

Issue 4

Has TECo properly calculated the amount of deferred revenues for 1996?

FIPUG Position: *No. TECo has assigned a cost rate to the deferred revenues; they should be assigned a zero cost and the deferred revenues should be increased accordingly.*

As discussed in detail in Issues 1 and 2 above, to interpret Stipulation I in the way TECo seeks would deprive the ratepayers of the benefit of the bargain set out in the Stipulation. It would also discourage parties from entering into future stipulations in order to resolve disputes.

The Commission should interpret the Stipulation in keeping with common sense and logic and not diminish the benefit to which ratepayers are entitled.

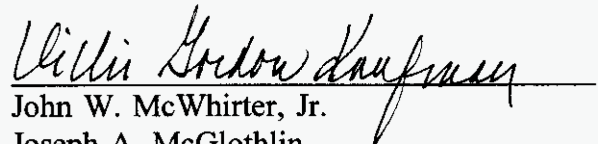
Issue 3

What is the appropriate method to calculate the separation of the FMPA and City of Lakeland wholesale contracts from the retail jurisdiction for 1996?

FIPUG Position: *The parties have stipulated that the methodology shown in Staff Exhibit No. 1 is appropriate for 1996. FIPUG enters into this stipulation without prejudice to any party to take any position on this issue in future proceedings as so reflected in the hearing transcript. (Tr. 8-10).*

Conclusion

The Commission should ensure that ratepayers receive the benefit of the bargain they struck when they entered into the overearnings Stipulations. They should receive the full amount of deferred revenue **plus interest** paid by the stockholders--to interpret the Stipulations any other way would deprive the ratepayers of the benefit of their bargain.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the **Florida Industrial Power Users Group's** foregoing **Post-Hearing Statement of Issues and Positions and Post-Hearing Brief** has been furnished by hand delivery (*) or United States mail this **14th** day of **January, 1999**, to the following:

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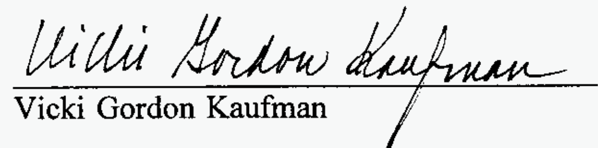

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