BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

IN RE: DOCKET NO. 950379-EI - Determination of regulated earnings of Tampa Electric Company pursuant to stipulations for calendar years 1995 through 1999.

BEFORE: COMMISSIONER E. LEON JACOBS, JR.
COMMISSIONER LILA A. JABER
COMMISSIONER BRAULIO L. BAEZ

PROCEEDINGS: AGENDA CONFERENCE

ITEM NUMBER: 48**PAA

DATE: Tuesday, October 17, 2000

PLACE: 4075 Esplanade Way, Room 148
Tallahassee, Florida

REPORTED BY: MARY ALLEN NEEL
Registered Professional Reporter

COPY

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PARTICIPANTS:

ROBERT ELIAS, FPSC, on behalf of the Commission Staff.

THOMAS L. HERNANDEZ, Tampa Electric Company.

ROGER HOWE, Office of Public Counsel, on behalf of the Citizens of the State of Florida.

SAM MERTA, Commission Staff.

SHIRLEY MYERS, Tampa Electric Company.

JACK SHREVE, Office of Public Counsel, on behalf of the Citizens of the State of Florida.

LEE L. WILLIS, Ausley & McMullen, on behalf of Tampa Electric Company.

STAFF RECOMMENDATION

Issue 1: What is the appropriate rate base for 1999?
Recommendation: The appropriate rate base is $2,116,831,729.

Issue 2: What is the appropriate capital structure for purposes of measuring earnings for 1999?
Recommendation: For the purpose of measuring earnings under the stipulation, the appropriate capital structure for 1999 is shown on Attachment B of staff's October 5, 2000 memorandum.

Issue 3: What is the appropriate net operating income for 1999?
Recommendation: The appropriate net operating income is $178,865,684 for 1999.

Issue 4: What is the amount to be refunded?
Recommendation: The amount to be refunded is $6,102,126, including interest, as of December 31, 2000. Additional interest should be accrued from December 31, 2000 to the time the actual refund is completed.

Issue 5: Should this docket be closed?
Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.

COMMISSIONER JACOBS: Item 48.

MS. MERTA: Commissioners, Item 48 is the determination of regulated earnings of Tampa Electric Company pursuant to stipulations for calendar years 1995 through 1999. Before us today is the earnings review for 1999. Staff is recommending that $6,102,126, including interest, be refunded to the customers.

COMMISSIONER JACOBS: We have presentations. Mr. Willis?

MR. WILLIS: Commissioners, I'm Lee L. Willis representing Tampa Electric Company. With me today is Tom Hernandez, who is Tampa Electric's Vice President of Regulatory Affairs, who will make a few brief remarks. We would like to reserve some time to respond to any points that may be raised by the Office of Public Counsel.

COMMISSIONER JACOBS: Very well. Mr. Hernandez?

MR. HERNANDEZ: Good afternoon, Mr. Chairman and Commissioners.

We have finally come to the conclusion of Tampa Electric's stipulation with the Office of Public Counsel and the Florida Industrial Power

Users Group with respect to the Company's earnings for 1995 through 1999. This agreement has provided tremendous benefits to Tampa Electric's customers by freezing our base rates during the stipulation period and providing to date refunds of 25.7 million beginning October 1, 1996, an additional 25.4 million beginning October 2, 1997, and 13 million beginning September 1st of this year. So before considering staff's recommendation for a refund of $6.1 million for calendar year 1999, you should keep in mind that the Company has already made the refunds of 64 million under this agreement.

These refunds were accomplished while the Company placed into service its Polk Unit 1 in September of 1996, 260 megawatts. And with the consideration of reliability issues, the Company accelerated its generation expansion plan to improve system reliability, as well as the state reliability, and incurred an additional $51 million as a result -- during the stipulation period as a result of moving up Polk Unit 2 from 2003 to May of this year. And we are in the process of also constructing our Polk

Unit 2, which again we've moved up approximately two and a half years and are incurring additional expenses. In prior times, these events by themselves would have triggered a rate increase proceeding.

This agreement provided a win-win situation for both our customers and the Company through the use of deferred revenues generated in the early years of the agreement, which were used in the later years to offset the increased costs associated with constructing these new generating plants.

Throughout the stipulation period, the Company worked very hard to reduce its expenses across the board in order to increase the amount of refunds paid to customers under the agreement while earning a fair return on the Company's investments. The Company was remarkably successful in this effort.

We now come to the resolution of the level of the Company's earnings for 1999, the last year of the agreement. We have reviewed staff's recommendation and realize that it carries forward some of the staff's positions that we have sharply disagreed with in prior recommendations, and I won't belabor the Commission in going through those items. However, in the interest of bringing this matter to a close today, and to begin making refunds beginning January 2001, the Company will accept the end result of this recommendation if it is accepted by this Commission and no protests are filed.

We strongly believe that at the end of the day, customers have fared well under the agreement. We urge you to approve the staff's recommendation.

And I would also like to commend staff for going through the last four and a half years the exhaustive review of the data, the audits, and the discovery that staff initiated in working these issues out with the Company and with the Office of Public Counsel and FIPUG.

Thank you, Commissioners.

COMMISSIONER JACOBS: Mr. Shreve? I'm sorry. Mr. Howe.

MR. SHREVE: Mr. Howe will argue, but I would like to make just one remark. He's absolutely correct about the benefits that have been received by the customers, and these benefits have been received by the customers under the stipulation. So the fact that they have made refunds and held the rates at this point have absolutely nothing to do with the decision that's going to be made today, because everything that he discussed is what they were obligated to do under the stipulation. And that's what we are here for today, and Mr. Howe will argue this. We want the stipulation carried out in the way it was entered, within the four corners of the stipulation, and we feel that there are further benefits that are deserved by the customers under this stipulation.

TECO has also received benefits. This was a two-way street when we entered this agreement. And Mr. Howe will argue whether we think this should be considered, and there are a few more benefits that should be received by the customers.

COMMISSIONER JACOBS: Mr. Howe?

MR. HOWE: Commissioners, I'm Roger Howe with the Public Counsel's Office. My comments and the point we're taking issue with is found on your staff's recommendation at page 10.

Tampa Electric for 1999 booked $12,687,671 of interest on tax deficiencies. Commissioners, it's our position that these amounts should not be counted as expenses of the Company in 1999 pursuant to the explicit terms of the stipulation, and that by not counting them as expenses, the customers are entitled to approximately an additional $8.3 million, for a total refund of 14.4 million.

COMMISSIONER JABER: How much? Could you please repeat that?

MR. HOWE: Sure. An additional 8.3 million, which would bring the total to 14.4.

Commissioners, we have two stipulations with Tampa Electric, one signed and entered in March of 1996, and the other we signed and was entered by an order of the Commission in October of 1996. The second stipulation essentially incorporated first stipulation, except to the extent it was explicitly modified.

In both stipulations, we provided that Tampa Electric's earnings should be calculated for each year on an FPSC adjusted basis using the appropriate adjustments approved in Tampa Electric's last full revenue requirements proceeding. There was no adjustment for interest on income tax deficiencies. Tampa Electric, however, has included this approximate $12.7 million amount as an adjustment in its December 1999 surveillance report.

Commissioners, we did not ignore the issue of interest on income tax deficiencies in our stipulations. In our first stipulation, at paragraph 10, it states, "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." If this was a matter dealing with interest on a tax deficiency associated with the Polk Power Station, we would support the Company. These tax deficiencies, however, are not associated with the Polk Power Station.

In our second stipulation, there was similar language dealing with the allowance of a tax credit under Section 29 of the Internal Revenue Code if the Company should receive the treatment that they sought under Section 29.

So, Commissioners, what we're here for

today is to see what is the appropriate earnings of Tampa Electric not under some just and reasonable calculation of earnings, but under a stipulation, two stipulations that were entered and approved by this Commission. Under those stipulations, the Company is not entitled to claim as an expense in 1999 interest on income tax deficiencies. Removal of that expense increases the refunds to the customers by $8.3 million and gives both the customers and Tampa Electric the full benefit of the bargains they entered into in those stipulations.

Thank you.

COMMISSIONER JACOBS: You had reserved time. Go ahead.

MR. WILLIS: Yes. Shirley Myers, Tampa Electric's Energy -- or TECO Energy's Vice President of Accounting and Corporate Tax, will join me in responding to OPC's position on the interest on tax deficiencies.

But first let me say that we are very disappointed and strongly disagree with the position of OPC on the interest on tax deficiency issue. Tampa Electric has taken positions on outstanding tax issues and has provided overall benefits to its customers, as pointed out very clearly in your staff's recommendations. Those benefits were derived by avoiding the cost of the tax and avoiding the cost of capital necessary to pay the tax which would have been necessary in these prior periods. These benefits accrued in each year the tax issues were outstanding with the Internal Revenue Service.

It has been the policy of this Commission in several decided cases that where a cost-benefit analysis shows benefits to customers, that the interest on tax deficiencies is considered to be an appropriate and above the line expense. This was specifically held in a Peoples Gas case, where the issue in that case involved the appropriate amount of earnings under a stipulation. And in that case, it was determined that that interest would be considered as an appropriate expense.

Now, to respond to the specific points made by Mr. Howe with respect to the wording of the stipulation, apparently OPC contends that to consider the interest on tax deficiencies in 1999 would be to make an adjustment inconsistent with the last rate case. Well, we disagree with that. In fact, to make any adjustment here to an expense that was recorded on the Company's books would be to make an adjustment that was inconsistent with the Company's last rate case. So we specifically disagree with that.

But we think that the focus here is on the wrong paragraph of the agreement. On paragraph 7 of the stipulation, it's provided that all reasonable and prudent expenses and investment will be allowed, and no annualization of pro forma adjustments will be made. As recommended by your staff in this proceeding, the interest on tax deficiency most certainly is a prudent expense which was incurred in 1999.

The language referring to the Company's last rate case was never intended to be less than the universe of prudent expenses for Tampa Electric Company, and the mention of a specific tax issue within the stipulation, as Mr. Howe pointed out, we don't believe in any way precludes the consideration of other prudent expenses that would be incurred by the Company. In fact, we believe that it underscores and outlines the fact that these types of expenses are appropriate.

So under the stipulation, we believe that OPC would be precluded from even arguing about certain types of tax deficiency interest with respect to the Polk Power Station. But that stipulation does not expressly disable the OPC from taking a different position on other tax deficiency interest, but it also does not preclude the Company from asserting that that tax deficiency is a prudent expense, which the staff has agreed that it is. And that's a far cry from precluding the Company from considering this expense within the appropriate period.

I'm going to ask Shirley Myers to elaborate on the Company's position very briefly.

MS. MYERS: Thank you. I want to first address why we asked for certain tax points to be specifically included in the stipulation. I will then address the reason the tax deficiency interest must be recognized as an expense in 1999.

First of all, I want to say these were very extraordinary items related to the Polk Power Station. Tampa Electric specifically disclosed its position regarding the life of the Polk

Power Station because its position before the Internal Revenue Service on this issue was at the outer bounds of reasonableness, that is to say, the position was very, very aggressive. We take routine positions that may or may not be challenged by the Internal Revenue Service. Those are very prudent business practices that most, if not all, utilities do. The positions we were going to take on the Polk Power Station went beyond some those limits of what could be construed as reasonable.

COMMISSIONER JACOBS: Could you give me some background on that, how so?

MS. MYERS: This was a new type of plant, new technology. There was not proven ground as to what some of these positions would be. So we chose the positions that would be most in favor of the ratepayers, which is always deferring paying the tax rather than paying tax earlier. It's never a matter of is the tax due. It's always a matter of when is the tax due. So we chose to choose lives that would be longer and would make the tax be due later rather than sooner.

COMMISSIONER JACOBS: Okay. Thank you.

MS. MYERS: In fact, on this particular position, we had to be extremely careful in how the issue was disclosed to the Internal Revenue Service to avoid potential penalties for even taking the position.

The regulatory treatment of the potential Section 29 credits was addressed because of the unusual nature of the credits and the amounts involved.

OPC's contentions here are not logical nor reasonable. If you assume that the specific provisions in the stipulations precluded consideration of interest on any other tax deficiency, the Company would have been encouraged, if not forced, to not pursue any potential position that the IRS might later challenge. That clearly was not the intent of the stipulation and would not have been in the best interest of any party.

Staff correctly points out that customers benefited from the tax position taken by Tampa Electric that have been challenged.

Thank you.

COMMISSIONER JACOBS: You were going to speak to the idea of why it was best to pay --

to recognize this expense in 1999.

MS. MYERS: Well, it wasn't a matter of is it best to recognize it in 1999. It was a necessity to recognize it in 1999. Tampa Electric cannot and is not allowed to keep its books on a cash basis. It is required under Generally Accepted Accounting Principles to accrue for its expenses based on routine and continual analysis of any contingent liabilities.

The Company's decision to record this interest expense in 1999 was triggered by audit adjustment notices the Company received in 1999 definitively setting out the Internal Revenue Service positions on the various issues which give rise to the tax deficiency interest. According with Generally Accepted Accounting Principles and Financial Accounting Standard No. 5, once you have a probable and measurable liability, it must be recognized on the company's books, and that result was required by our outside auditors in 1999.

COMMISSIONER JACOBS: That's the requirement for IRS that you follow that practice; is that correct?

MS. MYERS: No, no, it's not. It's under the AICPA's generally accepted accounting standard of once you have an assessment and it's probable that assessment is going to have to be paid and you can measure, you can reasonably measure that assessment, then it's a requirement that it be recorded on your books.

COMMISSIONER JACOBS: Is it your position that we -- because if I'm not mistaken, these deficiencies occurred '86 through '88, '89 through '91, or for the years '86 through '88, '89-91, '92-94, and '95 through 98. I assume that there was a deficiency in each of those years, and you've taken the interest on -- accumulated the interest on each deficiency, and it was accumulated and recognized in 1999; is that correct?

MS. MYERS: Right. When it became evident that we were going to have to pay those taxes, it became evident in 1999. In other words, those return positions were taken in those previous years, but we had every reason to believe that we would prevail. It became obvious to us, and we have written documentation from the Internal Revenue Service that we were not going to prevail or that they were going to challenge or protest these items. So once that liability became probable, we were required to record it.

MR. WILLIS: Commissioners, I would --

COMMISSIONER JACOBS: The Commissioners have questions.

COMMISSIONER JABER: You made reference to your actions being consistent with GAAP, general accounting principles.

MS. MYERS: Yes.

COMMISSIONER JABER: Does GAAP speak to whether an interest tax deficiency is a liability, is in fact a liability?

MS. MYERS: GAAP would certainly support that these are liabilities of Tampa Electric Company at this point in time, yes, ma'am.

COMMISSIONER JABER: All right. And when it became apparent to you in 1999 that this was a liability, was that the time in which you made it a liability? In other words, did the IRS give you any flexibility with respect to when the amounts were due at all?

MS. MYERS: Well, when the actual payments would be made -- again, we don't want to confuse if we were a cash -- you know, that we were allowed to keep our books on a cash basis, which we're not.

We had several events occur in 1999 with the Internal Revenue Service that gave rise to the definitiveness of this liability. First and foremost, we entered into a settlement agreement, a legal settlement agreement with a closing statement, et cetera, in early 1999.

Entering into that agreement brought forward several issues that carried through subsequent years' tax returns. And once the settlement was reached on that issue, that issue was agreed to be treated in a similar manner for any future years. So maybe you only settled on 1986 or 1987 or that particular year, say a particular item, call it repairs. But you were making an agreement that that identical item would be treated in a like manner on any future tax return that had been filed. So then that liability became known, set, measurable, and you had a GAAP requirement to record it.

COMMISSIONER JACOBS: Being an absolute novice on GAAP, it would occur to me there would be some kind of a remoteness test that --

MS. MYERS: Absolutely, absolutely.

COMMISSIONER JACOBS: And it would occur to me that going back to '86-88 and '89-91 would begin to bridge into some kind of a remoteness issue.

MS. MYERS: The way Financial Accounting Standard No. 5 reads, you do three tests. You look at a liability and say is it probable, likely, or remote that you'll write a check for this. If it's probable, you have to record it. If it's likely, you have to disclose it. And if it's remote, you can ignore it. Once we entered into a settlement agreement with the Internal Revenue Service, it wasn't probable. It was absolute. We had no other way to do other than record that liability.

COMMISSIONER JABER: Did you offer that up? Did you offer this up to the IRS as one of the things that TECO offered with the IRS as a settlement?

MS. MYERS: Well, when you say offered up, there were many different issues in these three years, and we had through legal counsel sat and negotiated and renegotiated and come up with compromise positions in order to avoid going to court and the hazards of litigation, the costs and the resources that that meant. Some of them may have been compromise positions that we would have agreed to say, "We'll keep 50% of that, and we'll give you 50% of that."

And let me say here that the 50% that we prevailed on has not been even included in this benefits analysis, which would make the benefits much greater than what our analysis indicated.

And so those -- item by item, you do go through and do a hazards of litigation analysis, and you decide whether or not to settle, and we did.

COMMISSIONER JABER: Was the treatment of the amount as a liability in 1999 something that you offered as a compromise position?

MS. MYERS: Oh, no, no, no. The treatment in 1999 was a consequence and an outcome of that settlement agreement.

COMMISSIONER JABER: Okay.

MR. HOWE: Commissioners, may I respond?

COMMISSIONER JACOBS: Sure.

MR. HOWE: Several things. One is that my understanding is that Tampa Electric has only settled their dispute with the IRS for the period 1986 to 1988. What they have done is, they have booked as a liability or as an expense anticipated results of future negotiations with the IRS.

But more importantly, we seem to be going a little bit off track here. The way it's being addressed by the Company is, for example, does it satisfy Generally Accepted Accounting Principles. If you look at their surveillance reports and if you look at their last rate case, if you look under their FPSC adjustments, you see such things and Solaris and waterfall being excluded. You see industry association dues being excluded. You see economic development expenses being excluded. These expenses were all recorded consistent with Generally Accepted Accounting Principles.

The only issue is were these -- is the claim of interest on tax deficiency, one, is it an adjustment. I suggest that it has to be an adjustment. It's listed on the Company's December 31, 1999 surveillance report under FPSC's adjustments.

Secondly, is it an adjustment consistent with those allowed in the last rate case? I suggest that it's clearly not.

COMMISSIONER JABER: Tell me why that's important. This isn't a rate proceeding as we would know it under the statue, so why -- or a decision on interim rates.

MR. HOWE: That's a very good point. The reason it's so important is, we aren't here in a rate case. We aren't here on an academic exercise to figure out what Tampa Electric's reported earnings should be for 1999. We are here to calculate what their earnings are pursuant to the explicit provisions of a stipulation. Both stipulations included explicitly the provision that the calculations of the actual ROE for each calendar year will be on a, quote, FPSC adjusted basis, close quote, using the appropriate adjustments approved in Tampa Electric's full revenue requirements proceeding. We are here for --

COMMISSIONER JABER: You're interpreting that to be adjustments made consistent with the last rate proceeding.

MR. HOWE: Yes. And what they have listed on their surveillance report is those adjustments made in the last rate case, like for the Solaris and the waterfall, for industry association dues. And they have another line item called interest on taxes with an amount of $12, 687,671.

Now, much has been said by the Company that the customers receive benefits from the positions that they take on tax issues. I do not agree with the cost-benefit analysis. But we don't even need to go there. What the customers will get from acceptance of the Company's position here today if staff recommendation is accepted, they will get $8.3 million less than the explicit terms of the stipulation require. We are only here to calculate what is the Company's ROE and what is the revenue requirement that falls out pursuant to stipulations. It does not involve Generally Accepted Accounting Principles. It doesn't accept policies regarding aggressive positions on taxes. It's a calculation pursuant to a stipulation. And under that standard, the customers are entitled $14.4 million.

COMMISSIONER JABER: So your position would be that regardless of whether they have to follow GAAP or FASB or anything else, or what their requirements are with IRS, we're bound by the stipulation to calculating the revenues in accordance with the stipulation?

MR. HOWE: Yes, ma'am. In fact, all expenses from a sophisticated company are going to be recorded according to GAAP. As we all know, many are disallowed in rate cases, and many, based on the negotiation positions of the parties, can be disallowed in a stipulation.

MR. WILLIS: The important part of the stipulation --

COMMISSIONER JACOBS: Before you respond, staff has been wanting to chip in, and then I'll come and give you a last bite at the apple.

MR. ELIAS: Two points. The first is, until this morning, shortly after the agenda started, I guess, I don't think anybody on the staff realized that OPC had a concern about what was in the recommendation. We think their concerns are worthy of further consideration. This item is not time sensitive. We would like an opportunity to go back, digest the comments that both sides made, as well as your comments, and consider them in light of the language of the stipulation.

And the second thing is, you know, sitting here, it strikes me that this might be an issue that would be ripe for further discussion between the parties and a possible negotiated resolution. There may be some benefit to the ratepayers to coming to some kind of negotiated resolution rather than having to issue this as proposed agency action and risk a hearing in terms of getting whatever refund is appropriate back sooner. So that would be the course of action that I would suggest.

COMMISSIONER JACOBS: So I take that to be a modification of the recommendation.

MR. ELIAS: Well, we would ask that it be deferred, that we have an opportunity to consider their comments. And we would also expect to meet with the Company and Public Counsel to discuss the matter, with one subject explicitly being some kind of negotiated resolution that we can bring back to you.

COMMISSIONER JABER: Bob, I think that's an excellent idea. Let me give you a couple of questions so that in the event this has to come back to us, you could address them in your recommendation.

You make reference to Peoples Gas and a Florida Power & Light matter that had a similar issue. State for me in your recommendation or verbally whether that treatment of the tax deficiency was done in a settlement or if the Commission actually made the finding that that was an appropriate treatment of the deficiency.

And then secondly, anything that OPC has raised today, if you all could specifically address that in the recommendation, that would be helpful, because if they're correct, an additional $8.3 million I think is critical.

COMMISSIONER JACOBS: I think it's extremely important to clarify the point raised as to whether or not we're here on generic standards or limited to the boundaries of the settlement.

MR. ELIAS: Well, I think I can answer that question now. I think we're bound by what the stipulation says. This is a calculation pursuant to the stipulation. But it almost begs the question, well, in this context, what does that mean? I think you've heard arguments on both sides of the question today, and that's one of the things that we'll have to sort out.

COMMISSIONER BAEZ: Bob, so part of what staff is going to do is try and interpret the intent of that, you know, try and interpret the terms that Mr. Howe was --

MR. ELIAS: We're going to try and understand better everybody's arguments. We're going to see if there's any possibility of a negotiated settlement. And to the extent that those are unsuccessful, we'll give you our best take, having considered the arguments, the numbers, and the explicit terms of the stipulation, stipulations, plural.

COMMISSIONER JACOBS: Mr. Willis, things have changed a bit.

MR. WILLIS: Well, I wanted to, before you leave this or go further with it, to emphasize that the very next sentence in the stipulation from the one that Mr. Howe read to you states that all reasonable and prudent expenses and investment will be allowed in the computation. So the listing of one prudent expense does not preclude the others. There are any number of expenses that the Company has incurred within 1999 or within any other period. We never intended to list every one of them, although we did list some that were unquestionably prudent.

COMMISSIONER JABER: That's a good point. But I think also a good point that has been raised today that I need to better understand is whether the interest on the tax deficiency should be treated as an expense.

COMMISSIONER BAEZ: And, Mr. Willis --

MR. WILLIS: We unquestionably think so.

COMMISSIONER BAEZ: Mr. Willis, just so that I can understand where you're coming from, it seems to be you all's suggestion that but for its being listed explicitly as part of the stipulation, something like the tax deficiencies related to the Polk Plant would never have been considered reasonable.

MR. WILLIS: No, no. I think that they unquestionably would, and under the policies of this Commission would have been considered a reasonable expense. The reason that that one was listed that he read was, as Ms. Myers indicated to you, our position on that, while all of these are aggressive positions, that one was at the outer bounds, and it was -- we were concerned that the position would be taken later that our position taken with the IRS was so aggressive that it was not reasonable for us having taken it in the first place. That was why we put it in there.

COMMISSIONER BAEZ: No measure of concession. I guess it wasn't meant as a concession as to its reasonableness.

MR. WILLIS: No, not at all.

COMMISSIONER JACOBS: Mr. Shreve, you've got to say one thing.

MR. SHREVE: That wasn't meant as a concession in the stipulation?

Yes, I think Mr. Elias is correct about the timing on that. I made a final decision on this yesterday. We dug into it. And I understand completely. I didn't notify Mr. Willis until yesterday that we were going to contest it. I did try and give them a heads-up ahead of time, and I think Mr. Howe tried to let the staff know, but they did not have much time on this.

And Mr. Willis was talking about their aggressive positions on this. Had they been a little more aggressive and they didn't book it until the year 2000, then the $8 million would have gone back to the customers.

COMMISSIONER JACOBS: Before we go there, let's figure out where we are. I understand we have modified --

MR. ELIAS: The request is to defer consideration of the recommendation, with the explicit understanding that we're going to do basically two things. We're going to understand the arguments better. We're going to talk to the parties, and as part of that discussion, we're going to explore the possibility of a negotiated resolution.

COMMISSIONER JACOBS: Commissioners?

COMMISSIONER JABER: Deferral.

COMMISSIONER JACOBS: So without objection, show that this item is deferred.

(Conclusion of consideration of Item 48.)

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 transcribed under my supervision; and that the foregoing pages numbered 1 through 31 are a true and correct transcription of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, or relative or employee of such attorney or counsel, or financially interested in the action.

DATED THIS 19th day of October, 2000.

Mary Allen Neel

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