

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Determination of regulated earnings of Tampa Electric Company pursuant to stipulations for calendar years 1995 through 1999.

DOCKET NO. 950379-EI
ORDER NO. PSC-01-0113-PAA-EI
ISSUED: January 17, 2001

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
E. LEON JACOBS, JR.
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

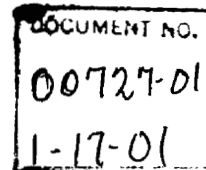
NOTICE OF PROPOSED AGENCY ACTION
ORDER DETERMINING REFUND AMOUNT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. CASE BACKGROUND

On March 1, 1996, Tampa Electric Company (TECO or the company) submitted its 1996 Forecasted Earnings Surveillance Report in compliance with Rule 25-6.1353, Florida Administrative Code. According to that report, TECO forecasted an achieved return on equity (ROE) of 13.27% which exceeded its then currently authorized ROE ceiling of 12.75%. Due to the high level of TECO's forecasted earnings, meetings were held to explore the possible disposition of the excess earnings. TECO, the Office of Public Counsel (OPC), the Florida Industrial Power Users Group (FIPUG), and Commission staff participated in the meetings.



On March 25, 1996, TECO, OPC, and FIPUG filed a joint motion for approval of a stipulation that resolved the issues regarding TECO's overearnings and the disposition of those overearnings for the period 1995 through 1998. This stipulation was approved by Order No. PSC-96-0670-S-EI, issued May 20, 1996. The stipulation, agreed to by TECO, OPC and FIPUG:

- 1) froze existing base rate levels through December 31, 1998;
- 2) refunded \$25 million plus interest over a one year period commencing on October 1, 1996;
- 3) deferred 60% of the net revenues that contribute to a return on equity (ROE) in excess of 11.75% for 1996;
- 4) deferred 60% of the net revenues that contribute to an ROE in excess of 11.75% up to a net ROE of 12.75% for 1997;
- 5) deferred 60% of the net revenues that contribute to an ROE in excess of 11.75% up to a net ROE of 12.75% for 1998;
- 6) refunded any net revenues contributing to a net ROE in excess of 12.75% for 1998 plus any remaining deferred revenues from 1996 and 1997;
- 7) allowed TECO the discretion to reverse and add to its 1997 or 1998 revenues all or any portion of the balance of the previously deferred revenues;
- 8) prohibited TECO from using the various cost recovery clauses to recover capital items that would normally be recovered through base rates; and
- 9) required consideration of the regulatory treatment of the Polk Power Station separately.

Order No. PSC-96-1300-S-EI, issued October 24, 1996, in Docket No. 960409-EI (Prudence review to determine the regulatory treatment of TECO's Polk Unit) approved an additional stipulation entered into by TECO, OPC and FIPUG. The stipulation resolved the issues in the Polk Unit docket, agreed to a rate settlement covering TECO's base rates and rate of return for the period

January 1, 1999, through December 31, 1999, and modified the Stipulation approved in Order No. PSC-96-0670-S-EI. It resulted in an extension through 1999 of the rate freeze established by the first stipulation and a guaranteed additional \$25 million refund starting in October, 1997.

October 1999 stipulation:

- 1) extended the existing freeze on TECO's base rates from January 1, 1999, through December 31, 1999;
- 2) precluded TECO from filing a rate increase request prior to July 1, 1999, and precluded TECO from requesting an interim increase in any such docket which is filed prior to January 1, 2000;
- 3) provided for an additional \$25 million refund over fifteen months beginning about October 1, 1997, and credited to customers' bills based on actual KWH usage adjusted for line losses;
- 4) allowed TECO to defer into 1999 any portion of its 1998 revenues not subject to refund;
- 5) provided for the refund in the year 2000 of 60% of any revenues which contributed to a ROE in excess of 12% up to a net ROE of 12.75% for calendar year 1999;
- 6) provided for the refund in the year 2000 of 100% of any revenues which contributed to a ROE in excess of 12.75% for calendar year 1999;
- 7) resolved all of the issues in Docket 960409-EI by conferring a finding of prudence on the commencement and continued construction of the Polk Unit by TECO;
- 8) allowed TECO to include the actual final capital cost of the Polk Unit in rate base for all regulatory purposes, up to an amount equal to one percent above the capital cost estimate of \$506,165,000 plus related estimated working capital of \$13,029,000;

- 9) allowed TECO to include the full operating expense of the Polk Unit in the calculation of net operating income for all regulatory purposes (estimated to be \$20,582,000 net of DOE funding for the first 12 months);
- 10) placed the entire investment in the Port Manatee site and any future gain on sale of this site to an independent third party below the line;
- 11) continued to use the separation procedure adopted in the company's last rate case to separate any current and future wholesale sales from the retail jurisdiction; and
- 12) provided that any further Commission action relative to this stipulation will be considered in Docket No. 950379-EI.

The parties filed an amendment to the stipulation which allows the Commission to determine the appropriate separation treatment of any off-system sale that is priced based on the Polk Unit's incremental fuel cost. This amendment addressed concerns regarding the potential subsidization of wholesale sales by the retail ratepayers.

By Order No. PSC-97-0436-FOF-EI, issued April 17, 1997, the Commission determined that \$50,517,063, plus interest should be deferred from 1995. Of the \$50,517,063, \$10 million has already been refunded to the customers as part of the \$25 million refund that began October 1, 1996. By Order No. PSC-99-0683-FOF-EI, issued April 7, 1999, the Commission determined that, after refunding \$15 million, \$22,081,064 plus interest remained to be deferred from 1996. Based on the Commission's decisions for 1995, 1996, and 1997, at December 31, 1997, there was approximately \$44.5 million, including interest, to be deferred into 1998 earnings. By Order No. PSC-99-1940-PAA-EI, issued October 1, 1999, the Commission determined that the maximum allowed revenue reversal for 1997 was \$27,056,807. For 1998, by Order No. PSC-99-2007-PAA-EI, issued October 14, 1999, the Commission determined that the maximum allowed revenue reversal was \$34,069,010 and that the refund, including interest, as of December 31, 1998, was \$11,226,598.

On October 22, 1999, FIPUG filed a protest of Order Nos. PSC-99-1940-PAA-EI and PSC-99-2007-PAA-EI. On October 22, 1999, TECO filed a protest of Order No. 99-1940-PAA-EI and on November 3, 1999, filed a protest of Order No. 99-2007-PAA-EI. On August 8, 2000, the Commission issued Order No. PSC-00-1441-AS-EI approving a settlement agreement among TECO, FIPUG and OPC. The parties agreed:

1) that Order Nos. PSC-99-1940-PAA-EI and PSC-99-2007-PAA-EI should be made final orders by the Commission;

2) to a refund of \$13 million plus interest on the unamortized amount of the refund; and

3) to file a Joint Dismissal of the Appeal in FIPUG v. FPSC, Supreme Court Case No. SC 00-1209.

This Order determines TECO's 1999's jurisdictional earnings and the resulting refund amount. Specifically, this Order addresses asset transfers between affiliates, the change in depreciation rates, the removal of an Environmental Cost Recovery Clause (ECRC) liability, industry association dues, advertising, ECRC depreciation, TECO's investment in a 25% interest in a transmission line, the overpayment of Gross Receipts Tax, the company's equity ratio, and the appropriate treatment of the interest expense associated with certain income tax deficiencies. As a result of these adjustments, we find that \$6,102,126, including interest, shall be refunded to customers. Jurisdiction over this matter is vested in the Commission by Sections 366.04, 366.05, and 366.06, Florida Statutes.

II. APPROPRIATE RATE BASE FOR 1999

Based on the adjustments discussed below, we find that the appropriate rate base for 1999 is \$2,116,831,729.

Adjustment 1: Asset Transfers Between Affiliates - In response to Staff's Data Request, Item No. 8, TECO indicated that it had inadvertently failed to make the reserve adjustments prescribed by Order Nos. PSC-99-1940-PAA-EI and PSC-99-2001-PAA-EI concerning the treatment of the 1997 asset transfers between TECO and Peoples Gas

Company. If an adjustment had been made in 1999 for the two trucks that should have been sold at net book value rather than fair market value, the reserve for heavy vehicles would have increased by a jurisdictional amount of \$61,003.

Adjustment 2: Change in Depreciation Rates - Per Audit Disclosure No. 6, the company made an adjustment in March, 2000 to reflect the revised depreciation rates, dismantlement accruals, and recovery/amortization schedules approved effective January 1, 1999, by Order No. PSC-00-0603-PAA-EI, issued March 29, 2000, in Docket No. 990529-EI. The adjustment only reflected the true-up due to the revised depreciation rates; it did not include any true-up reflecting the approved dismantlement accrual or recovery schedules. Since the adjustment was not booked until 2000, TECO agrees that an adjustment should be made to the 1999 depreciation expenses and accumulated depreciation to reflect the revised depreciation rates, accruals, and recovery schedules. Accordingly, the 1999 depreciation expense and accumulated depreciation should be decreased \$1,905,409 and increased \$952,705, respectively on a jurisdictional basis.

Adjustment 3: ECRC Liability - Per Audit Disclosure No. 5, the company did not make an adjustment to remove a Deferred Credit - ECRC of \$116,591 from working capital. TECO agrees that it did erroneously omit this clause related adjustment. Had the adjustment been included in working capital, the rate base would have increased by \$116,591.

III. APPROPRIATE CAPITAL STRUCTURE FOR PURPOSES OF MEASURING EARNINGS FOR 1999

We find that for the purpose of measuring earnings under the stipulation, the appropriate capital structure for 1999 is as shown on Attachment B.

We began our analysis with the 13-month average capital structure from the company's Earnings Surveillance Report (ESR) for the period ending December 31, 1999. Consistent with the Commission's decision in Order No. PSC-98-0802-FOF-EI, issued June 9, 1998, a specific adjustment was made to cap the equity ratio at the actual level achieved in 1995 of 58.7%.

The cost rate on the balance of deferred revenues is based on the average 30-day commercial paper rate as per Rule 25-6.109, Florida Administrative Code. The average 30-day commercial paper rate for 1999 was 5.06%. The treatment of deferred revenue as a separate line item in the capital structure is consistent with the Commission's decision in Order No. PSC-99-0683-FOF-EI.

The company calculated the cost rate for short-term debt as 5.28% by using the actual interest expense and the average daily balance for short-term debt. This average daily balance is calculated by totaling the balance of outstanding short-term debt for each day and then dividing by the number of days in the year. We calculated a cost rate of 5.00% for short-term debt by using the actual interest expense and the 13-month average balance for short-term debt. We believe that 5.00% is the appropriate cost rate to use for short-term debt for the following reasons. First, using the 13-month average cost rate allows the recovery of only the actual interest expense incurred. Second, this method is consistent with the 13-month average balances reported in the capital structure and rate base. Unless this adjustment is made, applying the cost rate calculated by the company to the 13-month average balance of short-term debt would result in an overrecovery of interest expense incurred by the company in 1999.

The Stipulation approved by Order No. PSC-96-1300-S-EI, in Docket No. 960409-EI provides for a refund in the year 2000 of 60% of any revenues which contribute to an ROE in excess of 12.0% up to a net ROE of 12.75% and 100% of any revenues which contribute to a ROE in excess of 12.75% for calendar year 1999. For purposes of measuring, earnings for 1999 in accordance with the Stipulation, we used a cost rate for common equity of 12.0%.

In 1995 and 1996, the pro rata adjustments were made over all sources of capital to be consistent with how the company filed its ESR. After reviewing Order No. PSC-93-0165-FOF-EI, issued February 2, 1993, following TECO's last rate case, we determined that the reconciling adjustment in the company's ESR was not consistent with the treatment in the last rate case. To be consistent with how the pro rata adjustment was made in the last rate case, we find that pro rata adjustments shall be made over investor sources of capital and customer deposits. As discussed in Section II of this Order, we made an adjustment of \$1,008,293 to rate base. Consistent with

the Commission's decision in Order No. PSC-99-2007-PAA-EI, and for the reasons just discussed, we made this pro rata adjustment over investor sources of capital and customer deposits.

IV. APPROPRIATE NET OPERATING INCOME FOR 1999

Based on the adjustments discussed below, we find that the appropriate net operating income for 1999 is \$178,865,684, as detailed in Attachment C.

Adjustment 4: Deferred Revenue Accrual - In 1999, TECO accrued \$4,000,000 of deferred revenue for its estimated refunds. In order to properly determine the amount of 1999 revenues to be refunded, \$4,000,000 should be included in revenues.

Adjustment 5: Industry Association Dues - Based on Audit Disclosure No. 2, we find that expenses shall be reduced by \$18,750 for the Global Climate Coalition and \$1,500 for The Conference Board. The dues of these associations do not relate to the provision of electricity and do not provide direct benefit to ratepayers; therefore, the costs should not be borne by ratepayers. Order No. 93-0165-FOF-EI, (TECO's 1992 rate case), issued February 2, 1993, disallowed similar costs. We find that expenses shall be reduced by a total of \$20,250 for industry association dues.

Adjustment 6: Advertising - Based on Audit Disclosure No. 1, 100% of Y2K readiness bill inserts for Tampa Electric and Peoples Gas were charged to TECO instead of being allocated between TECO and Peoples Gas. We find that expenses shall be reduced by \$5,443 for the allocation. In addition, consistent with Order No. PSC-94-0170-FOF-EI (Florida Public Utilities Company Marianna Division 1993 rate case), issued February 10, 1994, we find that image building, promotional advertising shall be removed because such expenses provide no benefit to ratepayers. We find that \$5,000 to the Tampa Bay Regional Planning Council for sponsorship of the 1999 Hurricane Guide Public Awareness Campaign, \$12,000 to the New York Yankees for wall signs at Legends Field with the Tampa Electric logo, \$2,281 for mini soccer balls with the Tampa Electric logo given away at Tampa Bay Mutiny soccer games, \$3,412 for food and drinks at the Florida Plant Engineering & Maintenance Show, and \$1,000 for co-sponsorship of the Pinellas and Hillsborough County Hotel and

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Motel Association annual education fund raiser shall be disallowed. Therefore, expenses shall be reduced by \$29,136.

Adjustment 7: Environmental Cost Recovery Clause (ECRC) Depreciation - A scrubber went into service in December 1999. The depreciation expense related to the scrubber, which will be recovered through the ECRC, was not removed from the Earnings Surveillance Report (ESR). Therefore, we find that depreciation expense shall be reduced by \$507,000.

Adjustment 8: Orlando Utility Commission's (OUC) Transmission Line - This adjustment is being made consistent with the Commission's decision in Order No. PSC-97-0436-FOF-EI (TECO's 1995 Earnings), Order No. PSC-98-0802-FOF-EI (TECO's 1996 Earnings), Order No. PSC-99-1940-PAA-EI (TECO's 1997 Earnings), and Order No. PSC-99-2007-PAA-EI (TECO's 1998 Earnings). TECO owns a 25% share in OUC's 230 KV line connecting the Lake Agnes substation to the Cane Island generating station. By Order No. PSC-97-0436-FOF-EI, the Commission directed that TECO's entire investment in the transmission line be removed from the calculation of 1995 earnings and allocated to the wholesale jurisdiction because the line was purchased "primarily to ensure the ability to make wholesale sales to entities such as the Reedy Creek Improvement District." The Commission stated:

The utility has failed to demonstrate the benefits to retail ratepayers that would justify the allocation of any portion of the transmission line to the retail jurisdiction. Based on the information available at this time, we find that the entire investment shall be assigned to the wholesale jurisdiction.

The company removed plant-in-service, accumulated amortization, net acquisition adjustment and amortization expense related to the OUC transmission line from the 1999 ESR. However, it failed to remove Taxes Other. Therefore, we find that Taxes Other shall be reduced by \$43,128. The 1999 O&M costs associated with the OUC transmission line were booked February 2000 and therefore, not included in 1999's earnings.

Adjustment 9: Gross Receipts Tax - Per Audit Disclosure No. 4, the company overpaid its Gross Receipts Tax by \$158,608. We find that

Taxes Other Than Income shall be reduced by \$158,608. The company made this adjustment in its June 2000 return.

Adjustment 10: Tax Effect of Other Adjustments, ITC Synchronization and Interest Reconciliation - The tax effect of our adjustments to NOI, ITC synchronization and interest reconciliation results in a \$2,014,423 increase to income taxes.

Adjustment 11: Interest Reconciliation - This adjustment is based on the reconciliation of the rate base and the capital structure. In this instance, income taxes shall be reduced by \$556,034.

V. INTEREST ON TAX DEFICIENCIES

On its December 31, 1999 ESR, the company included \$12,687,671 for "Interest on Tax Issues" as an above-the-line expense. The \$12,687,671 represents,

... the interest associated with income tax positions taken by the company for the 1986-1988, 1989-1991 and 1992-1994 tax periods that the IRS had contested. The expense also recognizes interest for the unaudited 1995-1998 tax period since the tax positions for 1995-1998 are identical to issues disputed by the IRS in the earlier periods.

To include the interest expense in the calculation of regulated earnings, the company must demonstrate that its positions for the approximately \$37,649,000 of taxes were prudent and in the best interest of the ratepayers. To substantiate its position on the foregoing, the company produced documentation that listed the items that had been contested by the Internal Revenue Service (IRS) and lost by the company and several cost/benefit analyses that indicated that the benefit of the deferred taxes associated with the tax positions taken by the company outweighed the interest expense associated with these taxes.

We reviewed the information provided by TECO, paying particular attention to its cost/benefit analyses. One of the company's analyses used the method applied by the Commission in Order No. PSC-98-0329-FOF-GU, in Docket No. 971310-GU, Peoples Gas. This analysis, which does not consider the time value of the savings, shows customer benefits of approximately \$10,742,000.

This method assumes that the deferred taxes related to the "withheld tax payments" is replaced with investor sources of capital. We believe that this method is supportable. Therefore, we find that the above-the-line treatment of the \$12,687,671 is be appropriate for 1999.

However, it should be noted that the above-the-line treatment of the interest on tax deficiencies/issues for TECO is approved solely upon the merits of the company's cost/benefit results. Therefore, the above-the-line treatment of interest on subsequent tax deficiencies/issues should not be assumed to be appropriate. The appropriate accounting and recovery should be decided on a case by case basis, following the careful examination of the unique circumstances of each underlying position taken by the company that gave rise to the interest and whether it resulted in a benefit to the ratepayers.

Although this interest was recorded in 1999, the interest is applicable to 1999 and prior years. As such, this interest expense has no future benefit. However, had the company recorded the interest expense in prior years when it was actually accruing, then the prior years' earnings and the prior years' refunds that have already been distributed would have been less.

Prior Commission decisions address the inclusion of the interest expense on tax deficiencies in the calculation of regulated earnings. In Order No. 13948, issued December 28, 1984, in Docket No. 830456-EI, the Commission allowed FPL to recognize in cost of service interest on tax deficiencies. The Commission determined that FPL had demonstrated that its ratepayers received some benefits from its practice of aggressively seeking to reduce its tax liability. In Order No. PSC-92-1197-FOF-EI, issued October 22, 1992, in Docket No. 910890-EI, the Commission allowed Florida Power Corporation to recognize the interest on both actual and potential deficiencies in its cost of service. In Order No. PSC-98-0329-FOF-GU, issued February 24, 1998, in Docket No. 971310-GU, the Commission allowed Peoples Gas System, Inc. (Peoples) above-the-line treatment in 1996 of the interest Peoples paid in 1996 for tax deficiencies resulting from the audit of tax years 1988 through 1990. The final settlement for these years between Peoples and the Internal Revenue Service was reached in January of 1996 and paid in 1996.

Both the FPL and the FPC decisions were reflected in final orders after litigation. The decision concerning Peoples was reflected in a Proposed Agency Action Order that was not protested. Although none of above cases involved stipulations or settlements, in each case the Commission found the companies' aggressive tax strategies to have been in the ratepayers' best interest and allowed the interest cost to be included in cost of service based on the cost/benefit analyses provided.

At the October 17, 2000, Agenda Conference, OPC opposed the inclusion of the interest expense in the calculation of 1999 earnings. OPC suggested that the stipulations prohibited this adjustment. OPC further alleged that TECO's cost-benefit analysis was flawed. On November 15, 2000, TECO and OPC provided written comments concerning the treatment of the interest on TECO's tax deficiencies in the calculation of TECO's 1999 actual ROE.

A. POSITIONS OF THE PARTIES

1. TECO:

Tampa Electric contends that the guiding principle of the Stipulations is whether the item of expense or investment at issue is reasonable and prudent. While the Stipulations provide for specific treatment of certain specific items, the Stipulations were not intended to provide an exclusive laundry list of which items to include or exclude in the ROE calculation. This is consistent with prior rulings of the Commission in interpreting the Stipulations and is consistent with OPC's prior positions for other adjustments.

The sentence being referenced by OPC requires FPSC adjustments approved in the last rate case to be made, but it does not limit the allowable adjustments to only those adjustments approved in the last rate case. The very next important sentence in the Stipulations below the sentence referenced by OPC states that "all reasonable and prudent expenses and investment will be allowed in the computation and no annualization or proforma adjustments shall be made." OPC cites the first sentence of the paragraph and concludes that only adjustments from the last rate case be used, and then ignores the rest of the paragraph stating that all

reasonable and prudent expenses will be allowed. The Commission Staff has already recommended that the tax deficiency interest be considered a reasonable and prudent expense. What OPC suggests is that the Commission remove a reasonable and prudent expense from the surveillance report that was incurred on the company's books and records in 1999.

OPC has already acknowledged in a prior Agenda Conference that the key principle in the Stipulations is whether an investment or expense is reasonable and prudent. OPC argued at the May 12, 1998 Agenda Conference addressing 1996 earnings (pg. 17 of transcripts) that an adjustment to the equity ratio was appropriate because the adjustment was reasonable and the Stipulations contemplate that all reasonable and prudent expenses and investments will be allowed. OPC supported an equity ratio adjustment even though the adjustment was not considered in the last rate case. Using that same logic previously advanced by OPC and accepted by this Commission, the tax deficiency interest is allowable if the Commission deems it a reasonable expense.

What Tampa Electric seeks is fair treatment on the principle that all reasonable and prudent expenses shall be included in the earnings calculation. Such treatment is consistent with prior decisions of this Commission that were supported by OPC.

It is also clearly practical that the Stipulations would not provide a complete laundry list of what costs can be included or excluded in determining regulated earnings. The Commission has full authority to judge the prudence of an expense and its inclusion in ROE calculations under the Stipulations.

(Company Positions on the Treatment of Tax Deficiency Interest Incurred in 1999, pp. 2, 3, 8, and 9)

2. OPC:

The stipulations did not ignore the subject of interest expense on income tax deficiencies. To the contrary, Paragraph 10 of the First Stipulation provides that

interest expense on an income tax deficiency related to the Polk Power Station will be considered a prudent expense in deriving Tampa Electric's ROE. Paragraph 11 provides that the ROE calculation for 1999 will be on an "FPSC Adjusted Basis" using appropriate adjustments consistent with those used in the company's last rate case. Tampa Electric's attempt to claim interest expense on tax deficiencies should be rejected because it is not related to the Polk Power Station. This should be the end of the matter. However, even if Paragraph 10 were not dispositive, the interest on tax deficiencies claimed by Tampa Electric is not an adjustment consistent with the last rate case and should therefore be rejected pursuant to the first sentence of Paragraph 11.

...the parties recognized that any allowance for interest expense on tax deficiencies would be an unusual event which could not affect ROE (as an "adjustment," as a "reasonable and prudent expense," or otherwise) unless they specifically allowed for it. Paragraph 10 allowed for recovery of a narrowly defined potential future expense not contemplated at the time rates were set which would not otherwise be recoverable as either an adjustment consistent with the last rate case or as a reasonable and prudent expense.

Clearly, the parties intended that the only interest on tax deficiencies which could affect the calculation of Tampa Electric's ROE for 1999 must be related to the Polk Power Station. Tampa Electric wants to treat Paragraph 10 as a hurdle easily cleared, but it should, in fact, be a barrier to further inquiry.

Even if Paragraph 10 could be ignored, Tampa Electric is then faced with the first sentence of Paragraph 11 limiting adjustments to those consistent with the last rate case.

The better approach is to give effect to both sentences in Paragraph 11. After the surveillance report is first limited to adjustments consistent with the last rate case, then no further inquiry should be made into the reasonableness of acceptable categories of expenses. If interest on tax deficiencies is an appropriate

adjustment, then no further inquiry should be permitted on the level of expense claimed.

(Public Counsel's Statement of Position on Appropriate Treatment of Interest Expense on Tax Deficiencies pp. 1, 2, 3, and 4)

B. RELEVANT PROVISIONS OF THE STIPULATIONS:

By Order No. PSC-96-0670-S-EI, issued May 20, 1996, in this docket, the Commission approved a stipulation which includes the following provisions:

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

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

By Order No. PSC-96-1300-S-EI, issued October 24, 1996, in Docket No. 960409-EI, the Commission approved a stipulation which includes the following provision:

7. The calculation of the actual ROE for calendar year 1999 will be on an "FPSC Adjusted Basis" using the appropriate adjustments approved in Tampa Electric's full revenue requirements proceeding. All reasonable and prudent expenses and investment will be allowed in the computation and no annualization or proforma adjustments shall be made...

C. DISCUSSION

Based on the previous Commission decisions interpreting these stipulations, the language of the stipulations, and the actions of the parties, we believe it is appropriate to include the interest expense on tax deficiencies in the calculation of TECO's 1999 actual ROE. We agree with TECO that "(t)he guiding principal of the stipulations is whether the item of expense or investment at issue is reasonable and prudent." Further, the first sentence of paragraphs 7 and 11 does not serve as a limit to the types of reasonable and prudent expenses which may be included in the calculation of TECO's actual ROE.

By Order No. PSC-97-0436-FOF-EI, issued April 17, 1997, in this docket, the Commission determined the actual ROE for TECO for calendar year 1995. This determination included an adjustment to remove TECO's investment (and the associated expenses) in a transmission line. The Commission found that "(t)he utility has failed to demonstrate the benefits to retail ratepayers that would justify the allocation of any portion of the transmission line to the retail jurisdiction." (Order No. PSC-97-0436-FOF-EI at p. 4). There had been no adjustment to remove this investment in TECO's most recent "full revenue requirements proceeding", as TECO did not own the line at that time. The interpretation of the stipulations now urged by OPC would seem to foreclose the possibility of such an adjustment.

Moreover, the Commission further stated that the adjustment "...does not preclude the utility from seeking, at some future time, recovery of its investment in the retail jurisdiction, upon a showing that it is a reasonable and prudent investment to provide retail service." (Order No. PSC-97-0436-FOF-EI at p. 4). This is entirely consistent with the provisions of the stipulations that provide "All reasonable and prudent expenses and investment will be allowed..."

By Order No. PSC-98-0802-FOF-EI, issued June 9, 1998, in this docket, the Commission determined the actual ROE for calendar year 1996. In that Order the Commission again removed the investment (and associated expenses) in the transmission line. In that Order, the Commission also reduced TECO's equity ratio from the actual reported amount of 59.5% to 58.7%. This adjustment would not be permitted under the interpretation now urged by OPC, since no such

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adjustment was made in the last full revenue requirements rate proceeding.

By Order No. PSC-99-1940-PAA-EI, issued October 1, 1999, in this docket, the Commission determined the actual ROE for calendar year 1997. In that Order the Commission again removed the investment (and associated expenses) in the transmission line. The Commission again reduced the equity ratio to 58.7%. The Commission considered, but rejected, an adjustment to the expenses associated with TECO's participation in the Energy Technology Resource Center (ETRC). While TECO suggested these "types" of expenses were included in the last full revenue requirements proceeding, no specific expenses associated with the ETRC were included in the last full revenue requirements proceeding. The basis of the Commission's determination to allow the expenses was that these were prudent expenses. "The activities at the ETRC appear to be legitimate utility undertakings." (Order No. PSC-1940-PAA-EI at p. 10).

By Order No. PSC-99-2007-PAA-EI, issued October 14, 1999, in this docket, the Commission determined the actual ROE for 1998. The Commission again removed the investment (and associated investment) in the transmission line and reduced the equity ratio to 58.7%.

Each of the adjustments discussed was not made in the last full revenue requirements proceeding. Each of these adjustments was allowed or disallowed on the basis of prudence. All of these adjustments, except for the inclusion of expenses related to the ETRC, increased the actual ROE, and thus, the amount available for sharing/refund.

OPC suggests that any adjustment allowing the interest expense on the tax deficiencies would violate the prohibition concerning retroactive ratemaking. OPC describes retroactive ratemaking as "an increase in rates in the future to make up for a past deficiency in rates, or a reduction of rates in the future to make up for an excess in rates in the past." (Transcript of December 19, 2000, agenda conference, at page 32). This is not retroactive ratemaking. See the opinion in GTE Florida, Inc. v. Clark, 668 So.2d 971 (Fla. 1996). In that case, the Florida Supreme Court held that it was appropriate for GTE to recover from customers in future rates, expenses improperly denied which were incurred in prior periods. This situation is more appropriately characterized as the inclusion in the calculation of earnings of an expense duly

recognized in that period. There is no "change in rates" resulting from the allowance of this expense.

We also note that this is not a rate case, where we are setting rates on a going-forward basis. It is more akin to an overearnings investigation, where jurisdiction has attached to revenues above a certain amount. The analysis is based on the determination of whether this is a prudent expense for 1999, rather than what amount should be included in future rates.

We believe the most reasonable interpretation of the provisions of paragraphs 7, 10 and 11 is as follows:

1. If an adjustment was made in the last full revenue requirements rate proceeding, the methodology employed in the full revenue requirements proceeding will control.
2. The fact that no adjustment was made in the last full revenue requirements rate proceeding does not preclude an adjustment in any year covered by the stipulation. The relevant question is one of prudence.
3. With respect to the potential interest on tax deficiencies associated with Polk Power station addressed in paragraph 10, the stipulation forecloses the possibility of any challenge to the prudence of those costs. It was not meant to, has not been interpreted to, and should not be interpreted to, limit the possible prudent expenses to those categories either included in the last full revenue requirements proceeding or specifically enumerated in the stipulations.

The interpretation urged by OPC could lead to an unintended result. For example, a new type of additional expense might produce significant long term savings, but if that expense was not included in the last full revenue requirements proceeding, the utility would risk disallowance. Such a result could discourage innovation, encourage inefficiency, and limit the utility's ability to react to changing conditions.

We note that OPC supported the adjustments to the equity ratio, even though no such adjustment was made in the last full revenue requirements proceeding. As discussed previously in this Order, we believe this interest is a prudent expense. Consistency, fairness, and the most reasonable interpretation of the

stipulations lead us to find that it is appropriate to include the interest expense associated with the tax deficiencies in the calculation of Tampa Electric Company's 1999 actual ROE.

VI. AMOUNT TO BE REFUNDED

The stipulation requires that 60% of any earnings over 12.0% ROE for 1999 be refunded. Attachment D summarizes the amount to be refunded. In accordance with paragraph 4 of the stipulation approved in Order No. PSC-96-1300-S-EI, the total refund paid out in 2000 shall be provided to customers at a rate of \$2 million per month until the entire refund is exhausted except for any amount less than \$2 million which shall be treated as a true-up in the next fuel adjustment period. The refund shall include interest on the unamortized amount of the refund. Therefore, additional interest shall be accrued from December 31, 2000, until the actual refund is completed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the appropriate rate base for 1999 is \$2,116,831,729, as detailed in ATTACHMENT A to this Order, which is incorporated by reference herein. It is further

ORDERED that for the purpose of measuring earnings under the stipulation, the appropriate capital structure for 1999 is shown on ATTACHMENT B to this Order, which is incorporated by reference herein. It is further

ORDERED that the appropriate net operating income for 1999 is \$178,865,684 as detailed in ATTACHMENT C to this Order, which is incorporated by reference herein. It is further

ORDERED that Tampa Electric Company shall refund \$6,102,126, including interest, as of December 31, 2000, to its customers. Additional interest shall be accrued from December 31, 2000 to the time the actual refund is completed. This calculation is detailed in ATTACHMENT D to this Order, which is incorporated by reference herein. It is further

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DOCKET NO. 950379-EI
PAGE 20

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 17th day of January, 2001.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

RVE

Commissioner Palecki dissents and would set the matter for hearing.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

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Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on February 7, 2001.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

TAMPA ELECTRIC
COMPANY
DOCKET NO
950379-EI
REVIEW OF 1999
EARNINGS

ATTACHMENT A

As Filed FPSC Adjusted Basis	Asset Transfer	Change in Depreciat Rates	ECRC Liability	Deferred Revenue Accrual	Industry Assoc Dues	Advertising Expenses	ECRC Depreciat on	OUC Transmissi on Line	Gross Receipts Tax	Interest Reconciliatio n	Total Adjustments	Total Adjusted Rate Base
\$3,461,523, 114												\$3,461,523,114
(1,453,094,6 72)	(61,003)	952,705									891,702	(1,452,202,971)
2,008,428,4 42	(61,003)	952,705									891,702	2,009,320,144
31,218,432												31,218,432
48,904,076												48,904,076
2,088,550,9 50	(61,003)	952,705									891,702	2,089,442,652
27,272,486			116,591								116,591	27,389,077
\$2,115,823, 436	(\$61,003)	\$952,705	\$116,591	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,008,293	\$2,116,831,729

INCOME STATEMENT

Operating Revenues	\$673,131,789	\$4,000,000	\$4,000,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$4,000,000	\$677,131,789
Operating Expenses												
Operation & Maintenance - Fuel	10,980,860											10,980,860
Operation & Maintenance - Other	234,627,583										(49,386)	234,578,197
Depreciation & Amortization	137,203,881	(1,905,409)		(20,250)		(29,136)	(507,000)				(2,412,409)	134,791,472
Taxes Other Than Income	47,435,458							(43,128)	(158,608)		(201,736)	47,233,722
Income Taxes - Current	86,416,588	735,012		1,543,000	7,811	11,239	195,575	16,637	61,183	(556,034)	2,014,423	88,430,991
Deferred Income Taxes (Net)	(13,465,313)											(13,465,313)
Investment Tax Credit (Net)	(4,263,365)											(4,263,365)
(Gain)/Loss on Disposition	(20,459)											(20,459)
Total Operating Expenses	498,915,213	0	1,170,397	1,543,000	(12,439)	(17,897)	(311,425)	(26,491)	(97,425)	(556,034)	(649,108)	498,266,105
Net Operating Income	\$174,216,576	\$0	\$1,170,397	\$2,457,000	\$12,439	\$17,897	\$311,425	\$26,491	\$97,425	\$556,034	\$4,649,108	\$178,865,684

OVERALL RATE OF RETURN

8.23%

RETURN ON EQUITY

11.95%

0.22%

0.61%

8.45%

12.58%

ATTACHMENT B
DOCKET NO 950379-EI
TAMPA ELECTRIC COMPANY
ADJUSTED EARNINGS SURVEILLANCE REPORT
YEAR ENDING DECEMBER 31, 1999
AVERAGE TEST YEAR

	ADJUSTMENTS									
RETAIL PER BOOKS	COMPANY SPECIFIC	COMPANY PRO RATA	COMPANY ADJUSTED	COMMISSION SPECIFIC	COMMISSION PRO RATA	COMMISSION ADJUSTED	WEIGHT	COST RATE	WEIGHTED COST	
LONG TERM DEBT	\$686,573,509	(\$5,548,455)	(\$73,309,204)	\$607,715,850	\$23,416,300	\$360,699	29.83%	6.54%	\$631,492,849	1.95%
SHORT TERM DEBT	87,022,511	(212)	(9,367,549)	77,654,750	44,381	\$77,699,131	3.67%	5.00%	\$77,699,131	0.18%
PREFERRED STOCK	0	0	0	0	0	\$0	0.00%	0.00%	\$0	0.00%
CUSTOMER DEPOSITS	53,866,130	0	(5,798,440)	48,067,690	27,471	\$48,095,161	2.27%	6.12%	\$48,095,161	0.14%
COMMON EQUITY	1,154,445,058	723,930	(124,348,611)	1,030,820,377	(23,416,300)	\$1,007,979,819	47.62%	12.00%	\$1,007,979,819	5.71%
DEFERRED REVENUE	7,705,739	0	0	7,705,739	575,742	\$7,705,739	0.36%	5.06%	\$7,705,739	0.02%
DEFERRED TAXES	341,426,601	1,530,664	(36,917,767)	306,039,498	14,46%	\$306,039,498	14.46%	0.00%	\$306,039,498	0.00%
FAS 109 DEFERRED TAXES	0	0	0	0	0.00%	\$0	0.00%	0.00%	\$0	0.00%
TAX CREDITS - ZERO COST	0	0	0	0	0.00%	\$0	0.00%	0.00%	\$0	0.00%
TAX CREDITS - WEIGHTED COST	42,392,160	(10,430)	(4,562,198)	37,819,532	1.79%	\$37,819,532	1.79%	9.90%	\$37,819,532	0.18%
	\$2,373,431,708	(\$3,304,503)	(\$254,303,769)	\$2,115,823,436	\$0	\$1,008,293	100%		\$2,116,831,729	8.18%
				60.06%		58.70%				

ATTACHMENT C
TAMPA ELECTRIC COMPANY
DOCKET NO. 950379-EI
REVIEW OF 1999 EARNINGS

INTEREST RECONCILIATION

	Amount	Cost Rate	Interest Exp.	Tax Rate	Effect on Income Tax
Long Term Debt	\$631,492,849	6.54%	\$41,299,632		
Short Term Debt	77,699,131	5.00%	3,884,957		
Customer Deposits	48,095,161	6.12%	2,943,424		
Deferred Revenue	7,705,739	5.06%	389,910		
Tax Credits - Weighted Cost	37,819,532	2.52%	952,704		
Interest Expense			<u>49,470,627</u>		
Adj. Company Interest Expense Adjustment			<u>48,029,192</u>		
			<u>(\$1,441,435)</u>	38.575%	<u>(\$556,034)</u>

ATTACHMENT D

TAMPA ELECTRIC COMPANY
DOCKET NO. 950379-EI
REVIEW OF 1999 EARNINGS

Adjusted Rate Base		\$2,116,831,729
Adjusted Achieved Rate of Return	8.45%	
Allowed Maximum Rate of Return at 12.00% ROE	<u>8.18%</u>	
Excess Rate of Return		x <u>0.27%</u>
Excess Net Operating Income		5,715,446
Revenue Expansion Factor		x <u>1.62800</u>
Revenues in Excess of 12.00% ROE		9,304,757
Less 40% Sharing		(3,721,903)
Amount to be Refunded		<u>5,582,854</u>
Interest from January 1, 1999 to December 31, 2000		519,272
Total Amount to be Refunded		<u>\$6,102,126</u>