STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature
111 West Madison St.
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JACK SHREVE
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February 7, 2001

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

RE: Docket No. 950379-EI

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of a Petition on Proposed Agency Action for filing in the above referenced docket.

Also enclosed is a 3.5 inch diskette containing Public Counsel's Petition on Proposed Agency Action in WordPerfect for Windows 6.1. Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

John Roger Howe
Deputy Public Counsel

JRH/dsb
Enclosures

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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 Filed: February 7, 2001

PETITION ON PROPOSED AGENCY ACTION

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to Rule 28-106.201, Florida Administrative Code, protest the Commission's proposed agency action in Order No. PSC-01-0113-PAA-EI (hereinafter referred to as Order No. 0113), issued January 17, 2001, which determines Tampa Electric Company's earnings sharing amount for 1999 pursuant to stipulations previously approved by the Commission. It is the Citizens' position that the Commission should order additional refunds of approximately $8.3 million. Since the $8.3 million, if approved, would be an incremental amount, Tampa Electric should proceed expeditiously to refund the $6.1 million required by Order No. 0113 without waiting for resolution of this protest. The Citizens request a hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2000), and allege the following:

1. The name and address of the agency affected by this petition is:

Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

The agency's docket number is as indicated in the caption of this pleading.

2. Petitioners are the Citizens of the State of Florida, represented by the Office of Public Counsel. Notices, pleadings, correspondence and orders in this docket should be served on:

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

Phone: (850) 488-9330

The Public Counsel is appointed to appear on behalf of the State or its Citizens in matters under the jurisdiction of the Public Service Commission pursuant to Sections 350.061-.0611, Florida Statutes (2000). In this docket, the Office of Public Counsel represents customers of Tampa Electric Company who are substantially and adversely affected by the Commission's determination in Order No. 0113 of the amount of excess earnings for 1999, plus interest, which should be refunded pursuant to stipulations approved in Order No. PSC-96-0670-S-EI, issued May 20, 1996, in this docket (the First Stipulation), and Order No. PSC-96-1300-S-EI, issued October 24, 1996, in Docket No. 960409-EI (the Second Stipulation). The refunds ordered are at least $8.3 million less than customers are entitled to pursuant to the express terms of the stipulations negotiated on their behalf.

3. Order No. 0113 was received by the Office of Public Counsel on January 18, 2001, in the normal course of distribution of Commission orders to this office.

DISPUTED ISSUES OF MATERIAL FACT

4. The Citizens dispute all the factual data, assumptions, and methodology used in, and conclusions drawn from, the cost/benefit analysis used to justify the interest expense on income tax deficiencies claimed for 1999 (reported in Order No. 0113, at page 9, as $12,687,671), including but

not limited to the Commission's factual conclusion that the cost/benefit analysis demonstrates a net benefit to Tampa Electric's customers. It is the Citizens' position (assuming for the sake of argument that a cost/benefit analysis is permissible under the stipulations) that a proper analysis consistent with the terms of the stipulations would not demonstrate any benefit to customers. The Citizens also dispute the Commission's finding that, "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." Order No. 0113, at 10. The Citizens do not dispute the Commission's finding that "[a]lthough this interest was recorded in 1999, the interest is applicable to 1999 and prior years. As such, this interest expense has no future benefit." Order No. 0113, at 10.

ULTIMATE FACTS ALLEGED

5. The Citizens dispute the Commission's factual finding that the appropriate amount of refunds plus interest (through December 31, 2000) derived from 1999 earnings is $6.1 million. It is the Citizens' position that tax related interest expense should be excluded from the calculation of earnings for 1999 and that refunds be increased by at least $8.3 million for a total refund of not less than $14.4 million. Citizens are entitled to this relief pursuant to the express terms of the stipulations and pursuant to relevant Commission orders and case law defining the manner in which stipulations should be interpreted.

DISPUTED ISSUES OF LAW AND POLICY

6. The Citizens dispute the Commission's implicit conclusion that a cost/benefit analysis is relevant to the issue of whether interest expense on income tax deficiencies should affect Tampa Electric's 1999 earnings under the stipulations. It is the Citizens' position that it is irrelevant. The Citizens dispute that interest expense on tax deficiencies generally can be claimed as an expense for

purposes of calculating Tampa Electric's 1999 earnings. It is the Citizens' position that only interest expense related to a Polk Power Station tax deficiency assessment is recoverable. The Citizens dispute that the cost/benefit analysis accepted by the Commission is contemplated by, or permissible under, the terms of the stipulations when the explicit language of the stipulations, relevant case law, and previous Commission decisions are taken into consideration. Moreover, it is the Citizens' position that reducing refunds (by including an improper expense in the calculation of 1999 earnings) to make up for purported past revenue deficiencies violates the proscription against retroactive ratemaking.

Violation of Stipulation Terms

7. There are three provisions in the First Stipulation applicable to the manner in which Tampa Electric's earnings for 1999 must be calculated. Paragraph 10, a very specifically worded provision, allows Tampa Electric to include interest expense on a tax deficiency assessment related to its Polk generating station. The first sentence of Paragraph 11, another specific provision, allows the company to use adjustments consistent with those used in its last rate case. And the second sentence of Paragraph 11, a very general provision, allows for the inclusion of reasonable and prudent expenses. A fair reading of these provisions, giving effect to each, should require Tampa Electric to calculate its 1999 earnings by first recognizing any interest expense on a tax deficiency assessment related to the Polk Power Station and then by using only adjustments consistent with those used in the last rate case. All reasonable and prudent expenses within these categories would be allowed to derive the excess earnings to be refunded.

8. To support its decision in Order No. 0113, the Commission turns relevant concepts of contract interpretation inside out. Normally, inclusion of a specific provision in an agreement implies the exclusion of others. The Commission, however, reaches the opposite result: Specific

reference to a tax deficiency assessment on Polk does not imply the exclusion of interest expense on tax deficiencies generally. Normally, specific provisions control over the more general. Not in this case, where the most general provision allowing for "reasonable" expenses is elevated above both the Polk and adjustments-consistent-with-the-last-rate-case limitations. Normally, all provisions in an agreement must be given effect; one provision should not be read so as to make others meaningless. The Commission, however, allows the second sentence in Paragraph 11 to supersede all others. Normally, an agreement will not be rewritten under the guise of interpretation to give one party more rights or benefits than it bargained for. The Commission, however, "interpreted" a new entitlement for Tampa Electric, allowing the company to retain refunds from excess earnings in 1999 to make up for purported rate inadequacies dating back to 1993 -- notwithstanding the well-recognized prohibition against retroactive ratemaking. The Commission implicitly concluded that Tampa Electric, in the 1996 negotiations but without insisting on explicit language, must have reserved to itself the right to minimize refunds for 1999 by claiming a new "adjustment" in the last four months of that year. Additionally, in the Commission's view, the stipulations must have implicitly allowed for a cost-benefit analysis comparing interest expense on tax deficiencies generally against past rate "deficiencies" on a present value basis. The stipulations entered into in 1996 are, of course, devoid of any express authorization for Tampa Electric to use its failure to raise certain issues in a rate case more than eight years ago as justification for not making refunds today on a cost-benefit or any other basis.

9. Although the Commission tries to conform its decision to the terms of the stipulations, it is clear that its decision is fact driven and that in other circumstances, under the same stipulation terms, Tampa Electric might not have been able to claim interest expense on tax deficiencies:

> [I]t should be noted that the above-the-line treatment of the interest on tax deficiencies/issues for TECO is approved solely on 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.
>
> Order No. 0113, at 11.

Instead of first asking whether the stipulations might limit the company's ability to include interest expense on tax deficiencies generally, the Commission first asks whether Tampa Electric was able to demonstrate a "net benefit" in its cost/benefit analysis. This puts the cart before the horse: An irrelevant expense (because it is not Polk-related), whether cost-beneficial or not, is still irrelevant. Recognizing that its result cannot be conformed to explicit provisions in Paragraphs 10 or 11, the Commission "interprets" the stipulations in a manner never contemplated by the people who actually sat down and negotiated them.

10. The Commission's decision violates applicable standards of contract interpretation previously followed by the Commission and by the Florida Supreme Court. Order No. 0113 concludes, at page 17, that the fact that Paragraph 10 specifically allows for inclusion of Polk-related interest expense does not limit Tampa Electric's entitlement to claim interest expense on tax deficiencies generally. This is directly contrary to the Commission's decision of a few years ago in Docket No. 970022-EU, In re: Petition of Florida Power & Light Company for enforcement of Order 4285.

11. In that case, the Commission was concerned with the appropriate interpretation of a territorial agreement (i.e., a stipulation) between FPL and the City of Homestead. The disputed

provision allowed Homestead to continue serving "city-owned facilities," even if the facility was otherwise within FPL's service area. The city interpreted this language as allowing it to serve commercial enterprises built on the city's land, essentially equating "city-owned facilities" with "city-owned property." The Commission disagreed, concluding that specific reference to the Homestead Housing Authority Labor Camp as an example of a city-owned facility limited the category to facilities that performed a governmental function, stating that "[i]t is a fundamental principle of construction that the mention of one thing implies the exclusion of another. Thayer v. State, 335 So.2d 815 (Fla. 1976); Ideal Farms Drainage Dist. v. Certain Lands, 19 So.2d 234 (Fla. 1944). . . [S]pecific terms imply [the] exclusion of others." Order No. PSC-97-1132-FOF-EU, at page 8.

12. The Commission, in the City of Homestead case, also applied the rule of construction that an agreement should be read in such a manner as to give meaning to each of its terms. One provision should not be read so as to make another provision meaningless:

> Finally, the rule of construction that requires harmonizing the different provisions of the Agreement in order to give effect to all portions thereof, supports the interpretation that the location and the use of the service exception site are limited. Oldham v. Rooks, 361 So.2d 140 (Fla. 1978); Ideal Farms Drainage Dist. v. Certain Lands, 19 So.2d 34 (Fla. 1944).
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> Order No. 97-1132, at page 9.

See Pressman v. Wolf, 732 So.2d 356, 360 (Fla. 3d DCA 1999) ("Individual terms of a contract are not to be considered in isolation, but as a whole and in relation to one another, with specific language controlling the general.")

13. Order No. 0113 violates all the standards of construction deemed controlling in the City of Homestead docket. Reference to interest expense on tax deficiencies related to Polk in Paragraph 10 of the First Stipulation means that others are excluded. Yet the Commission reaches

the opposite conclusion in Order No. 0113, finding that Tampa Electric is not precluded from including interest expense on other tax deficiencies. A fair reading of Paragraphs 10 and 11, giving meaning to each provision, would allow only interest expense on Polk-related tax deficiency assessments and then adjustments consistent with those allowed in the last rate case. Yet the Commission reads the second sentence of Paragraph 11 so as to make the first sentence of that paragraph and all of Paragraph 10 meaningless. See Aromin v. State Farm Fire & Casualty Company, 908 F.2d 812, 814 (11th Cir. (Fla.) 1990)("[I]t is a cardinal principle of construction that, if reasonably possible, no part of a contract should be taken as eliminated or stricken by some other part."); and Belen School, Inc. v. Higgins, 462 So.2d 1151, 1153 (Fla. 4th DCA 1985)("In interpreting a contract, the meaning of which is in doubt, 'an interpretation which gives a reasonable, lawful, and effective meaning to all the terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect.' Restatement (Second) of Contracts § 203(a) (1979).")

14. Paragraph 10 identified a narrow category of expense which the parties to the stipulations necessarily considered not to be encompassed within the terms of Paragraph 11 or elsewhere. The parties also agreed that only an assessment of interest expense on tax deficiencies related to the Polk Power Station could affect the calculation of Tampa Electric's earnings for 1999. Application of principles of construction such as the Commission applied in the City of Homestead docket could lead to no other result.

15. The Commission urged the Florida Supreme Court to accept its former, pre-Order No. 0113, approach to interpreting stipulations when its City of Homestead order was appealed in City of Homestead v. Johnson, 760 So.2d 80 (Fla. 2000). The Court agreed and affirmed the Commission's order:

> The [Homestead Housing Authority] Labor Camp serves as an example of the type of "city-owned facility" contemplated by the agreement. Under the doctrine of expressio unis est exclusio alterius, [FN6] paragraph 8 has a limited application to exclude from FPL's service area "city-owned facilities" similar to the Labor Camp, i.e., facilities that serve a municipal/governmental function. Had the City also intended to exclude from FPL's service area city-owned land not associated with the provision of municipal-type services from the agreement, it could have easily so stated by using the term city-owned property.
>
> > [FN6] Meaning the expression of one term implies the exclusion of other terms not mentioned.
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> * * *
>
> Finally, we rely upon the rule of construction requiring courts to read provisions of a contract harmoniously in order to give effect to all portions thereof. See Sugar Cane Growers Cooperative of Florida, Inc. v. Pinnock, 735 So.2d 530, 535 (Fla. 4th DCA 1999)(holding contracts should be interpreted to give effect to all provisions); Paddock v. Bay Concrete Indus., Inc., 154 So.2d 313, 315 (Fla. 2d DCA 1963)(stating "All the various provisions of a contract must be so construed, if it can reasonably be done, as to give effect to each.").

760 So.2d at 84.

16. If the parties to the stipulations thought any and all interest expense on income tax deficiencies was allowable, they would not have drafted Paragraph 10. If the parties wished to address interest expense separately but have it apply generally, they would have said so. Instead, the parties addressed the subject very narrowly, limiting it to tax deficiencies related to Polk and further limiting it to actual assessments. See Barakat v. Broward County Housing Authority, 771 So.2d 1193, 1195 (Fla. 4th DCA 2000)("It is never the role of a trial court to rewrite a contract to make it more reasonable for one of the parties or to relieve a party from what turns out to be a bad bargain.") The subject of interest expense on tax deficiencies was not ignored; it was raised as a specific subject of concern. But Paragraph 10 of the First Stipulation was crafted even more narrowly than the disputed paragraph in the City of Homestead case. In that case, the Labor Camp was given as an example of

the type of facility the city could continue to serve, which indicated that other facilities serving a clear municipal function were also permitted, but other dissimilar facilities were not. Even those other similar facilities would not have been included under the doctrine of expressio unis according to the Florida Supreme Court's interpretation, however, if the territorial agreement had said the city-owned facility at the Homestead Labor Camp will continue to be served by the city. Then the Labor Camp would have been the only city-owned facility which the City of Homestead could serve outside its municipal boundaries. See United States of America v. First National Bank of Crestview, 513 So.2d 179, 181 (Fla. 1st DCA 1987)("The maxim 'expressio unis est exclusio alterius' applies to contracts as well as statutes, 17 Am.Jur.2d Contracts § 255; hence, the enumeration of certain classes of activities which the contract permits is ordinarily construed as excluding from its operation all of those not expressly mentioned."); and Espinosa v. State, 688 So. 2d 1016, 1017 (Fla. 3d DCA 1997)("The deficiency in this agreement is plainly encapsulated within the maxim expressio unis est exclusio alterius. 'If one subject is specifically named [in a contract], or if several subjects of a large class are specifically enumerated, and there are no general words to show that other subjects of that class are included, it may reasonably be inferred that the subjects not specifically named were intended to be excluded.' 3 Corbin on Contracts § 552 (1960).")

17. Even if Paragraph 10 of the First Stipulation did not exist, the first sentence of Paragraph 11, which allows for adjustments consistent with the last rate case, would operate as a barrier to recognizing any interest expense on income tax deficiencies. Under the doctrine of expressio unis, the inclusion of adjustments consistent with the last rate case implies the exclusion of all others. There is no question that Tampa Electric included the disputed interest expense as an adjustment to NOI on its September-December, 1999, surveillance reports, and there is no question

that this adjustment was not allowed in its last rate case. The same result would obtain under the rule of construction for contracts requiring that the specific language of the first sentence of Paragraph 11 controls over the more general language of the second sentence. The Commission's allowance of this "adjustment" would violate rules of reasonable contract interpretation as applied by the courts and by the Commission, itself, in previous cases.

Violation of the Prohibition Against Retroactive Ratemaking

18. As noted above, the parties to the stipulations could have, if they had so chosen, agreed that Tampa Electric could include interest expense on all tax deficiencies in calculating its 1999 earnings. They didn't do that. The parties could have agreed foregone revenues in prior years could justify reduced refunds for 1999 without regard to the proscription against retroactive ratemaking if, on a present value basis, the interest expense in 1999 was less than the revenue effect of higher deferred taxes since the last rate case. They didn't do that either.

19. The concept of retroactive ratemaking has been addressed in several different forms and with differing phraseology in the reported cases. The relevant Florida cases are discussed at length in a 1998 full-Commission decision involving Florida Cities Water Company's attempt to impose a future surcharge to make up for litigation expenses incurred in the past: In re: Petition of Florida Cities Water Company for [a] limited proceeding to recover environmental litigation costs for North and South Ft. Myers Divisions in Lee County and Barefoot Bay Division in Brevard County, Docket No. 971663-WS, Order No. PSC-98-1583-FOF-WS (hereinafter referred to as Order No. 98-1583), issued November 25, 1998.

20. The facts of the Florida Cities case closely parallel the Tampa Electric case. Florida Cities wanted to recover litigation expenses, which had not been previously claimed in a rate case or

elsewhere, through a surcharge on customer bills. Tampa Electric wants to recover purportedly foregone revenues related to deferred taxes, which had not been requested previously, in the form of reduced refunds for the future (the equivalent of netting a surcharge against refunds). After discussing the relevant case law, the Commission dismissed Florida Cities' claim with words appropriate to the Tampa Electric situation:

> The utility argues that the Commission has allowed recovery of other out of test year litigation expenses on the basis that these expenses are extraordinary and non-recurring. . . . However, we note that the expenses approved in those dockets were requested in rate cases, and not for costs incurred prior to the date the application was filed, as is the case here. As courts have made clear, there is no reasonable claim for costs incurred prior to the date the application was filed or for cost categories discovered after the rate case is approved. We find that the prohibition against retroactive ratemaking protects the public by ensuring that present consumers will not be required to pay for past deficits of the company in their future payments.
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> * * *
>
> Allowance of these litigation expenses would violate the principle against retroactive ratemaking because it denies customers their right to be free from surprise surcharges after the service has been provided. [Emphasis added.]

Order No. 98-1583, at 17-18.

21. Order No. 0113's conclusion that retroactive ratemaking does not apply to the Tampa Electric matter is based upon an interpretation of GTE Florida Inc. v. Clark, 668 So.2d 971 (Fla. 1996), which was rejected in the Florida Cities order, where the Commission said:

> We agree with OPC that the utility's argument that GTE Florida Inc. v. Clark should be interpreted to mean that the proposed surcharge is not a new rate applied to prior consumption fails to take into consideration that GTE concerned a surcharge which the Court sanctioned to allow the utility to recover costs already expended which the Commission should have previously allowed in an order which was reversed by the Court. The facts of the present case are clearly distinguishable from those in GTE. As noted by the Commission in Order No. PSC-98-1243-FOF-WS, at page 16, the GTE case "should be read narrowly to apply in situations in which a surcharge was permitted to recover costs which should have been allowed in a timely

> filed rate case. UWF did not request recovery or deferral of the OPEB costs in question prior to incurring the costs." Likewise, FCWC did not request recovery or deferral of the litigation costs in question prior to incurring the costs, and there is no erroneous order in existence which must be corrected to allow the utility to recover costs which should have been previously allowed.
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> Order No. 98-1583, at 15-16.

22. Tampa Electric's 1992 rate case was decided eight years ago, in February 1993. In that case, Tampa Electric did not ask for recovery of interest expense on income tax deficiencies (but Florida Power Corporation, whose case was being processed around the same time, did). That docket became final and closed to future review or revision. The Commission has now taken the position, however, that since Tampa Electric received a bill from the IRS in late 1999, it's okay to reach back over those many years, reevaluate what might have been, and use the hypothetical reduction in deferred taxes to lessen refunds in 2001 based upon a newly announced if-only-we-had-known regulatory principle. This is a classic case of retroactive ratemaking, made all the more egregious by the distortions necessary to "conform" the result to stipulations which, by their terms, preclude this outcome.

Staff's Role Pursuant to Section 120.66

23. The facts will have to be developed at hearing, but preliminarily it appears that the Staff acted as an advocate in recommending the treatment of interest expense on tax deficiencies adopted by the Commission in Order No. 0113. Tampa Electric, in communications with Staff, apparently learned Staff would not recommend inclusion of the interest expense in 1999 unless the company could demonstrate a net benefit for customers. In response, Tampa Electric provided a cost/benefit analysis which was refined over several iterations based upon discussions with Staff. For all practical purposes, Staff and the company had entered into a stipulation of their own: Staff would

recommend approval if the company would provide a cost/benefit analysis satisfying Staff's concerns. It is unknown, but doubtful, whether Staff and the company ever discussed the reference to interest expense on income tax deficiencies in Paragraph 10 of the First Stipulation or the limitation for adjustments consistent with the last rate case found in Paragraph 11. (After Public Counsel voiced opposition at the October 17, 2000, agenda conference, staff members expressed surprise and stated they would have to review the stipulations which they had not read recently.)

24. The first question that should have been asked about the propriety of including interest on tax deficiencies in 1999's earnings calculation was whether the subject was specifically addressed or in any way limited by the stipulations. This is a legal issue which should have been addressed by the Commission's attorneys in the first instance. But it was apparently not done. Accordingly, Staff considered only the factual basis of the cost/benefit analysis Tampa Electric offered to allay Staff's analytical (but not legal) concerns. Having become wedded to the cost/benefit analysis, Staff was apparently unable to evaluate the issue objectively (i.e., as if no analysis had been done) in order to decide whether the provisions of Paragraph 10 and/or the first sentence of Paragraph 11 made any analysis at all superfluous. The December 7, 2000, recommendation accepted by the Commission at the December 19, 2000, agenda conference, while for the first time addressing the language in the stipulations on this tax interest issue, appeared to be a mere confirmation of the predisposition Staff had already formed.

25. The pre-1996 version of subsection 120.66(1) provided that ex parte communications relative to the merits of a proceeding could not be made to the agency head after receipt of a recommended order or to a DOAH hearing officer by public employees engaged in prosecution or advocacy. The Commission construed Section 120.66 as being applicable only in those cases which

were referred to hearing officers, not those in which the Commission sat as the trier of fact. Citizens v. Wilson, 569 So.2d 1268, 1270 (Fla. 1990)("This statute [Section 120.66] is wholly inapplicable because it is directed toward ex parte communications to a hearing officer or to an agency head after receipt of a recommended order. There was no hearing officer involved in these proceedings.")

26. Subsection 120.66(1) was amended in 1996 and now precludes ex parte communications with an agency head, after receipt of a recommended order, or with a "presiding officer." Substitution of "presiding officer" for "hearing officer" effected a fundamental change in the applicability of Section 120.66 to Commission proceedings. Subsection 120.66(2) defines presiding officer as "including an agency head or designee." Rule 28-106.102, Florida Administrative Code, provides:

> "Presiding officer" means an agency head, or member thereof, who conducts a hearing or proceeding on behalf of the agency, an administrative law judge assigned by the Division of Administrative Hearings, or any other person authorized by law to conduct administrative hearings or proceedings who is qualified to resolve the legal issues and procedural questions which may arise.

Therefore, public employees engaged in prosecution or advocacy -- which should include PSC staff members who advocated inclusion of interest expense to derive Tampa Electric's 1999 earnings -- should be precluded from engaging in ex parte communications in this docket. At the very least, a neutral, purely advisory staff member should be assigned to make a recommendation on the pivotal issue in this proceeding: Whether a fair reading of the stipulations according to relevant court and Commission precedents allows for the inclusion of any interest expense on income tax deficiencies which is not an assessment against the Polk Power Station.

DEMAND FOR RELIEF

27. The Commission should order additional refunds of approximately $8.3 million plus additional interest through the final resolution date of this docket.

WHEREFORE the Citizens of the State of Florida, through the Office of Public Counsel, protest the Florida Public Service Commission's Order No. PSC-01-0113-PAA-EI, dated January 17, 2001, and request a hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2000).

Respectfully submitted,

JACK SHREVE
Public Counsel

John Roger Howe
Deputy Public Counsel

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(904) 488-9330

Attorneys for the Citizens
of the State of Florida

CERTIFICATE OF SERVICE
DOCKET NO. 950379-EI

I HEREBY certify that a copy of the foregoing PETITION ON PROPOSED AGENCY ACTION has been served by *hand delivery or U.S. Mail to the following parties of record on this 7th day of February, 2001.

*Robert V. Elias, Esquire
Division of Legal Services
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