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August 10, 2001

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COMMISSION  
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Ms. Blanca S. Bayó, Director  
Division of the Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0870

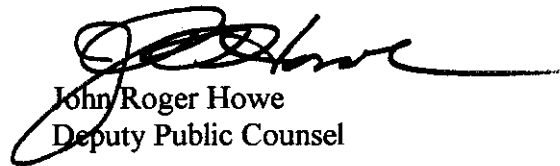
RE: Docket No. 950379-EI

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of Public Counsel's Motion to Strike Prefiled Testimony for filing in the above-referenced docket.

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

- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMP \_\_\_\_\_
- COM 3 \_\_\_\_\_
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
- LEG 1 \_\_\_\_\_
- OPC \_\_\_\_\_
- PAI \_\_\_\_\_
- RGO \_\_\_\_\_
- SEC 1 \_\_\_\_\_
- SER \_\_\_\_\_
- OTH \_\_\_\_\_

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DOCUMENT NUMBER-DATE

09732 AUG 10 01

FPSC-COMMISSION CLERK

**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: August 10, 2001

**PUBLIC COUNSEL’S MOTION TO STRIKE PREFILED TESTIMONY**

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to Rule 28-106.204, Florida Administrative Code, move the Florida Public Service Commission to strike certain prefiled testimony of Tampa Electric Company’s witness DeLaine M. Bacon upon the grounds and for the reasons which follow:

1. Commission precedent holds that, pursuant to Section 120.80(13)(b), Florida Statutes (2000), only matters in dispute can be addressed in this proceeding. Furthermore, “matters in dispute” has been defined by the Commission as being limited to those specific matters found in a protest to a proposed agency action (PAA) order. The only party to file a protest to Order No. PSC-0113-PAA-EI is the Public Counsel. Tampa Electric’s prefiled testimony, which is the subject of this motion to strike, improperly addresses matters not raised in Public Counsel’s Petition on Proposed Agency Action. To allow Tampa Electric’s witness to address these new matters would effectively allow the company to introduce a protest of its own well after the time for filing a protest to the PAA had passed.

2. Public Counsel’s February 7, 2001, protest disputed the content and relevance of the specific cost-benefit analysis the Commission relied upon in concluding that Tampa Electric’s customers had received \$10.7 million of net benefits in the years 1993-99 which, in turn, justified the company’s decision to reduce refunds for 1999 by recording interest expense

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on income tax deficiencies. In response, Tampa Electric was certainly free (indeed, it was expected) to file testimony justifying the Commission's reliance on the challenged cost-benefit study. Instead, the company, in effect, offered a protest of its own: Through Ms. Bacon's prefiled direct testimony, the company asserts the Commission should rely upon a totally different study, one which purports to demonstrate a net benefit of \$12.4 million.<sup>1</sup> Moving even farther afield, Tampa Electric uses Ms. Bacon's direct and rebuttal testimony as a vehicle to allege that, under a totally different type of cost-benefit analysis, one never considered by the Commission, net benefits would still amount to \$6.8 million or even \$8.5 million.<sup>2</sup> But the Commission's interpretations of Section 120.80(13)(b) hold that, if a party does not protest a matter contained in a PAA, it is foreclosed from raising it later, and the Commission itself is foreclosed from even addressing a matter not raised in a protest at the hearing. Alternative cost-benefit analyses are, therefore, off limits for consideration in this docket. The following portions of Ms. Bacon's prefiled testimony concerning her cost-benefit analyses should, therefore, be stricken:

Direct Testimony

Page 2, lines 7 through 22

Page 3, line 6 through page 5, line 9.<sup>3</sup>

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<sup>1</sup>Ms. Bacon's prefiled direct testimony is replete with references to the \$12.4 million cost-benefit study which is included as Document 1 to her appended exhibit.

<sup>2</sup>See Ms. Bacon's prefiled direct testimony at page 8, lines 17-22, and her prefiled rebuttal testimony at page 10, line 22-page 11, line 5, where Ms. Bacon refers to both a brand new \$8.5 million cost-benefit analysis and the \$6.8 million analysis referenced in her prefiled direct testimony.

<sup>3</sup>Although certain language in Ms. Bacon's testimony may appear to address cost-benefit analyses generally, it is clear that, overall, she is addressing her cost-benefit analysis specifically.

Page 5, line 25 through page 9, line 17

Page 9, line 25 (after the word “No.”) through page 10, line 9.

Page 17, the sentence beginning on line 21 and ending on line 24.

Document 1 appended to Ms. Bacon’s prefiled direct testimony.

Rebuttal Testimony

Page 10, line 22 through page 11, line 5.

3. Public Counsel did not protest the Commission’s adjustments to the company’s equity ratio, its short-term debt rate, or its capital structure, and it was not required to. Tampa Electric, for its own reasons, also chose not to protest these issues. Moreover, a previous company protest to the quantification of 1998 earnings on these grounds was withdrawn, with the company agreeing to refund even more than the Commission initially proposed. Tampa Electric is not free to use prefiled testimony as an after-the-fact protest to the PAA on 1999 earnings. Ms. Bacon’s prefiled direct testimony at page 16, line 15 (the sentence beginning with “If”) through line 25, and page 17, line 3 (the sentence beginning with “Using”) through line 10 (through the word “adjustments.”), and her prefiled rebuttal testimony at page 5 (the sentence on lines 11-16) and page 6 (the sentence on lines 22-25) should be stricken.

4. In the PAA, the Commission said it was allowing interest expense on income tax deficiencies to reduce earnings and refunds for 1999 solely on the strength of the \$10.7 million cost-benefit analysis.<sup>4</sup> It’s too late for Tampa Electric to now offer alternative reasons of “logic,”

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<sup>4</sup> “[I]t 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.” Order No. PSC-01-0113-PAA-EI, at page 10. This could only mean the results of the particular study which claimed \$10.7 million of net benefits which was referred to in the immediately preceding paragraph in the order.

“reasoning,” and “judgment” “in addition to a quantitative analysis” to support the PAA. Ms.

Bacon’s rebuttal testimony at page 11, lines 7-19, should be stricken.

5. Refunds for 1999 are solely dependent upon the calculated earnings for that year and the extent to which they allowed Tampa Electric to earn above a 12% ROE. The collapse of the oil-backout clause, the two \$25 million refunds, the \$6.1 million refund for 1999 proposed in the PAA, the fact that Tampa Electric stipulated to refund \$13 million for 1998, and the fact that adding up these disparate amounts totals \$120 million are irrelevant to the appropriate measure of 1999 earnings and refunds. Therefore, Ms. Bacon’s prefiled rebuttal testimony at page 13, line 18 (after the word “Yes.”), through page 14, line 3, and page 15, line 24, through page 16, line 1 (through the word “rates.”) should be stricken.

Respectfully submitted,

JACK SHREVE  
Public Counsel

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John Roger Howe  
Deputy Public Counsel

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Attorneys for the Citizens  
of the State of Florida

**CERTIFICATE OF SERVICE  
DOCKET NO. 950379-EI**

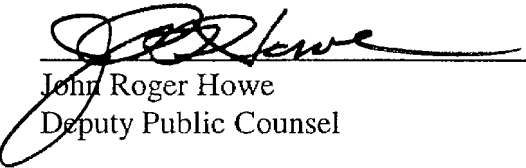
I HEREBY certify that a copy of the foregoing PUBLIC COUNSEL'S MOTION TO STRIKE PREFILED TESTIMONY has been served by \*hand delivery or U.S. Mail to the following parties of record on this 10th day of August, 2001.

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