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COMMISSION  
CLERK

January 8, 2002

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:

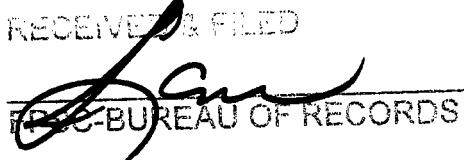
Enclosed is an original and fifteen copies of the Motion for Reconsideration for filing in the above referenced file.

Also enclosed is a 3.5 inch diskette containing the Motion for Reconsideration 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

APP \_\_\_\_\_  
CAF IRH/dsb  
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COM 3 Enclosures  
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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

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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: January 8, 2002

**MOTION FOR RECONSIDERATION**

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to Rule 25-22.060, Florida Administrative Code, move the Florida Public Service Commission to reconsider its Order No. PSC-01-2515-FOF-EI, issued December 24, 2001, and as grounds therefor state:

1. It is generally recognized that a motion for reconsideration must demonstrate some mistake of fact or law which, if corrected, would require the Commission to reach a result different from that reflected in the order being challenged. In its Order No. 01-2515, the Commission accepted a cost-benefit study, Exhibit 8, which purported to show deferred revenue benefits exceeded costs by approximately \$6.8 million. On this basis, the Commission concluded that Tampa Electric had demonstrated the reasonableness of including interest expense on income tax deficiencies in the calculation of earnings for 1999. That study, however, was premised upon an unrealistic hypothetical which assumed the Commission had not ordered rate increases for 1993 and 1994. The reality, of course, is that Tampa Electric did increase its base rates in both of those years. Correcting for this mistake would necessarily lead the Commission to conclude that Tampa Electric had been unable to demonstrate net benefits to customers so as to justify including interest expense on tax deficiencies in the 1999 earnings calculation.

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2. In its Proposed Agency Action order, the Commission said its acceptance of the original cost-benefit study provided by Tampa Electric was the sole reason the company was permitted to include an adjustment for interest expense on income tax deficiencies in the calculation of earnings for 1999, thereby reducing refunds otherwise owed to its customers.<sup>1</sup> Presumably, if a protesting party could demonstrate that the study the Commission relied upon was in error, the Commission would reverse its initial, tentative decision and order additional refunds. Public Counsel accepted the challenge and showed that the study the Commission had accepted was fallacious. The “rate case benefits” claimed by the company in Exhibit 1 were, in fact, nonexistent. And the remaining “deferred revenue benefits” of \$5,690,000 (even before the 60%/40% sharing called for in the stipulation) were inadequate to offset the \$7,612,595 of costs the company hoped to impose on customers.<sup>2</sup>

3. Tampa Electric, however, offered another cost-benefit study, Exhibit 8, at the hearing, which the Commission accepted in its Order No. 01-2515 as demonstrating net benefits to customers. This alternative study was based upon a calculation of “deferred revenue benefits” which differed substantially from those identified in Exhibit 1. The validity of the Commission’s

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<sup>1</sup>See Order No. PSC-01-0133-PAA-EI, at page 10: “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.”

<sup>2</sup>Removing the adjustment for interest on tax deficiencies increases income for 1999 by \$7,793,402. Applying the tax gross-up factor of 1.628 increases excess revenues for 1999 by \$12,687,658. Application of the 60% sharing ratio called for in the stipulations to this revenue increase gives the \$7,612,595 of additional refunds (plus interest) owed to customers. [T-209] (Exhibit 8, page 3, shows a cumulative “Tax deficiency interest expense at 60%” of \$7,542,000. The justification for this lower amount is apparently unexplained in the record. However, use of this smaller amount makes the company’s purported “net benefit” to customers appear larger.)

decision to allow interest on tax deficiencies in the 1999 earnings calculation therefore depends on the validity of the deferred revenue benefits identified in Exhibit 8.

4. What caused the “deferred revenue benefits” to increase from the \$5,690,000 shown in Exhibit 1 to the \$14.3 million shown in Exhibit 8? Where did the additional \$8.6 million come from? The answer is found in the narrative response to Public Counsel’s interrogatory 13 found at page 2 of Exhibit 8. There the company explains that the first analysis in Exhibit 1 included the effects of the 1993 and 1994 rate increases. Exhibit 8, on the other hand, was apparently based upon the implausible assumption that rate increases which were actually granted for 1993 and 1994 never happened:

[I]t can be observed that page 1 of the cost-benefit analysis attached to witness Bacon’s direct testimony [Exhibit 1] shows a \$5.7 million nominal benefit ( $\$5.8\text{M} + \$5.8\text{M} - \$3.8\text{M} - \$2.1\text{M}$ ) to customers during the deferred revenue period rather than the \$14.3 million nominal benefit ( $\$5.8\text{M} + \$6.6\text{M} + \$1.4\text{M} + \$5.5\text{M}$ ) included in the attached cost-benefit analysis [Exhibit 8] that excludes the rate case benefits. The reason for this is because in the first analysis [Exhibit 1], the additional revenues assumed from the rate proceeding would increase the amount of revenues available from 1995 to 1999 for calculating deferred revenues and refunds. The first analysis included these additional revenues when taking into consideration the benefits/costs during the deferred revenue period. If the benefits from the rate case were excluded, then the additional revenues would not be available during the deferred revenue years.

If there had been no rate increases, earnings obviously would have been lower each year 1995-99. Lower earnings would have meant fewer deferred revenues under the stipulations for 1995-98 (ignoring for the moment that Staff’s agreement with Tampa Electric for 1995 and the stipulations which followed were predicated on the excess earnings caused by the rate increases). The difference between what the Commission ordered deferred based upon rates that were actually in effect and what might have been deferred under a no-rate-case hypothetical would, of

course, be larger.<sup>3</sup> Thus, for each of the tax periods for which both rate case benefits and deferred revenue benefits are identified in Exhibit 1 (page 1) for the years 1995-98, more deferred revenue benefits are identified in Exhibit 8 (page 3).

5. But Exhibit 8 bears no relation to reality. The rates in effect throughout the stipulation period resulted from the rate increase implemented in 1994. The Commission mistakenly accepted Exhibit 8 as portraying what could have actually happened. Correction of this mistake should force the Commission to conclude Tampa Electric was not able to demonstrate on the record that its income tax strategies resulted in any net savings to customers under factual circumstances which actually existed from 1995-99.

6. Even if the factual basis of Exhibit 8 could be viewed as portraying reality, it is mathematically inaccurate. To begin with, there could not be any deferred revenue benefits in the year 1999. The deferred revenue pot was empty after 1998. Pursuant to the Second Stipulation, earnings for 1999 were to be calculated in the traditional manner, unaffected by nonexistent deferred revenues. It is absolutely absurd for Tampa Electric to contend that in 1999 customers actually received deferred revenue benefits which offset reduced refunds. The only thing customers saw for 1999 was a refund reduction.

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<sup>3</sup>Look for example at the “Avoided lower/(higher) deferred revenue refund” for 1995 for the 1989-1991 Tax Period from Exhibit 1, page 1, which is shown as zero. This calculation is supported by page 18 of Exhibit 1 which starts from a “Commission Adjusted Achieved Rate of Return” of 8.66%. Exhibit 8, however, at page 3 shows a “Deferred revenue benefits/(costs) of \$1,123,000 for 1995 based upon the same 1989-1991 tax period. The supporting calculations are shown at page 16 of Exhibit 8, and the difference (between zero and \$1,123,000) is solely attributable to the fact that Tampa Electric removed the rate increase and reduced the “Commission Adjusted Achieved Rate of Return” from 8.66% to 8.62% (which causes the “Additional/(Less) Deferred Revenues” to fall from \$1,685,000 (Exhibit 1, p. 18) to only \$562,000 (Exhibit 8, p. 16), a difference of \$1,123,000).

7. The remaining deferred revenue benefits for the years 1995-98 are shown on Exhibit 8 to be \$12,626,000. But under the stipulations, all of this money could not go to the customers. To the extent deferred revenues were needed to bring the company up to the bottom of the sharing range in any year, the company retained 100% and the customers got nothing. Customers could, at most, get 60% of whatever was left over. Even if we assume for the sake of argument that all the deferred revenue benefits for the years 1995-98 were subject to the sharing arrangement, the absolute maximum which could have ever gone to the customers was 60% of \$12,626,000 or \$7,575,600. This is less than the \$7,612,595 cost of reduced refunds imposed on customers by including interest expense on income tax deficiencies as an adjustment on the 1999 income statement. Exhibit 8 cannot demonstrate net benefits to customers.

WHEREFORE, the Florida Public Service Commission should reconsider its Order No. PSC-01-2515-FOF-EI, disallow the inclusion of interest expense on income tax deficiencies in the calculation of Tampa Electric Company's earnings for 1999, and order increased refunds plus interest.

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**

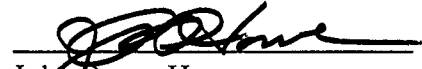
I HEREBY certify that a copy of the foregoing MOTION FOR RECONSIDERATION has been served by \*hand delivery or U.S. Mail to the following parties of record on this 8th day of January, 2002:

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\_\_\_\_\_  
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