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January 22, 2002

BY HAND DELIVERY

Ms. Blanca S. Bayo, Director
Division of Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Determination of Regulated Earnings of Tampa Electric Company
Pursuant to Stipulations for Calendar Years 1995 through 1999
Docket No. 950379-EI

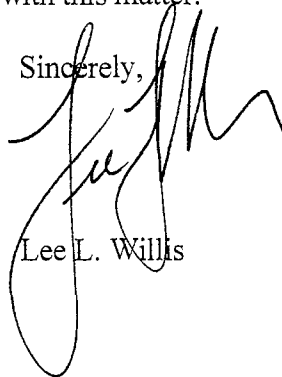
Dear Ms. Bayo:

Enclosed for filing in the above referenced are the original and fifteen (15) copies of Tampa Electric Company's Response to Office of Public Counsel's Motion for Reconsideration.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning the same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,



Lee L. Willis

LLW/bjd
Enclosures

cc: All Parties of Record (w/encl.)

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FPSC-COMMISSION CLERK

2. OPC attempts to assert that the Commission made a mistake of fact that requires the Commission to reach a result different than that reflected in Order 01-2515.¹ Although legally irrelevant, OPC is incorrect in all aspects of its assertion. First, the Commission did not make a mistake of fact regarding the record in this proceeding. Secondly, the Commission did not rely solely on the cost-benefit analysis for its finding of fact that interest on tax deficiency was a prudently incurred expense by Tampa Electric in 1999.

Legal Standard

3. The purpose of a petition for rehearing or reconsideration is to bring to the attention of the trier of fact some point which it overlooked or failed to consider when it rendered its order in the first instance. Diamond Cab Company of Miami v. King, 146 So. 2d 889 (Fla. 1962). Motions for reconsideration are not intended as a procedure for asking the Commission to change its mind or to reargue a case merely because the losing party disagrees with the judgment or the order. Id. at page 3. State ex rel. Jaytex Realty Co. v. Green, 105 So.2d 817, 819 (Fla. 1st DCA 1958). Furthermore, it should not be based on a “. . . feeling that a mistake may have been made but should be based upon specific factual matters set forth in the record and susceptible to review.” Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315, 317 (Fla. 1974). The points raised in OPC’s Motion for Reconsideration were carefully considered by the Commission during the course of this proceeding. OPC’s Motion represents an erroneous attempt to reargue its earlier positions or an attempt to present information not in evidence and should be rejected by the Commission under Diamond Cab, State v. Green and Stewart Bonded Warehouse, *supra*.

¹ Order No. PSC-01-2515-FOF-EI, issued on December 24, 2001 in Docket No. 950379-EI (“Order 01-2515”).

Basis of Commission Order

4. OPC's Motion addresses only the validity of one of Tampa Electric's exhibits, Exhibit 8. This exhibit, however, was not the sole basis of the Commission's ruling. As was clear in the Commissioners' deliberation and Order 01-2515, the cost benefit analysis was only one of the factors the Commission relied on in reaching its conclusion that the interest expense at issue was prudently incurred. The Commission's decision was based on a number of qualitative and quantitative factors, any one of which is fully sufficient to support the Commission's finding of fact. Consequently, the Commission in Order 01-2515 found that the company's actions were prudent based on the overwhelming weight of the evidence.

5. Specifically with regard to Exhibit 8, the Commission stated: "TECO's cost benefit analysis from Exhibit 8 reflects a net benefit to ratepayers, and in this case we find that the inherent expense on deferred tax deficiencies is a prudent above-the line expense." Order 01-2515, p 34. This finding continues to be valid and clearly supported by the record in this case.

6. As trier of fact, the Commission had full discretion to accept Exhibit 8 and its conclusion that \$6.8 million in benefits are derived from the company's tax positions. It should be emphasized that the same result could have also been achieved based on the expert testimony of witnesses Bacon and Sharpe supporting a general policy to encourage aggressive tax positions reasonably taken. See International Minerals & Chemical Corp., et al v. Mayo, 336 So. 2d 548 (Fla. 1976). Thus, it was not necessary to rely on the cost-benefit study (Exhibit 8) to reach a conclusion that the company's actions were prudent and that full recovery should be allowed.

7. The Commission correctly held at page 34 of Order 01-2515, "we find the expenses reasonable and prudent because the proactive approach taken by TECO on tax issues benefits the overall body of ratepayers." The Commission also stated at page 30 of Order 01-

2515, “We find the expenses reasonable and prudent because the proactive approach taken by TECO on tax issues benefits the overall body of ratepayers.” Also see Order 01-2515, page 42 where the Commission concluded: “The proactive approach taken by TECO on tax issues benefits the overall body of ratepayers.”

8. The above-quoted findings in Order 01-2515 are supported in the record by the direct testimony of the company’s witness Sharpe:

Neither Tampa Electric nor TECO Energy has ever been assessed penalties. Tampa Electric incurs interest expense and interest income on tax adjustments. It is my opinion that taxpayers, including Tampa Electric, should interpret tax laws and regulations in the way most favorable to them. In other words, taxpayers should be aggressive in interpreting tax provisions provided that they are not so aggressive that they incur non-deductible penalties. If a taxpayer takes a position on its return and the taxpayer ultimately loses the issue, the taxpayer is only out-of-pocket for the interest on the tax underpayment. If you assume that the taxpayer invests the underpayment in tax at a rate similar to that charged by the IRS, the taxpayer does not incur any net cost related to taking an aggressive position on its return. If the taxpayer ultimately sustains the aggressive tax position taken on its return, the taxpayer has had the use of the funds and does not have to pay the tax relating to that issue. The IRS will not generally look for items that result in an overpayment of tax. The point is that tax practitioners urge taxpayers to be aggressive but not so aggressive or frivolous that penalties are incurred. The Florida Public Service Commission (“Commission”) should likewise encourage this policy.

Do you think that Tampa Electric’s basic approach to its income tax return filings has been reasonable?

Most definitely yes. As I stated earlier, I have been reviewing Tampa Electric’s income tax accrual and tax returns for over 15 years. In my opinion, Tampa Electric has been reasonable in its filing positions. Tampa Electric has not been too aggressive or too conservative. Like most taxpayers, Tampa Electric has filed tax returns based on reasonable positions seeking to pay the appropriate amount of tax due.

(Tr. 177-178.)

9. Witness Bacon also presented testimony supporting the Commission's finding.

For example she testified:

And, really, you know, I mean, there's a lot of numbers here, but really, what it boils down to is, deferred taxes are cost-free sources of funds. And to the extent that we took these tax positions, we created deferred taxes, and those deferred taxes offset other sources of capital that have a cost to them. And, you know, you can set aside this entire cost/benefit analysis, and if you just think about in terms of the economics of that and what kind of impact it has on the company's costs and therefore ratepayers' cost, anytime that the company can defer tax payments to the IRS, they create benefits. And that's all that we're trying to show here. (Tr. 108-109.)

10. Consequently, the Commission's order reasonably adopted Staff's

Recommendation on pages 39-40 which stated:

Staff agrees that it is prudent for the utility to attempt to lower its tax expense and that the interest expense associated with tax deficiencies when deemed prudent should be included in the above the line earnings equation. Thus, to the extent that a company is able to be aggressive on tax issues without incurring penalties, the Commission should have a policy that allows above-the-line recovery of prudent interest expense on tax deficiencies. If the Commission were to completely disallow this expense, this could discourage utilities from attempting to lower its tax burden. This could have the unintended result of raising overall costs to the ratepayers. (Emphasis supplied.)

11. At the December 4, 2001 Agenda Conference, Commissioners Jaber and Baez engaged in the following discussion:

COMMISSIONER JABER: . . . Aren't we saying – the three of us what's on the bottom of page 39 [of the Staff Recommendation], that last paragraph on the bottom of page 39 (Tr. 27).

COMMISSIONER BAEZ: I agree with that (Tr. 27).

COMMISSIONER JABER: Based on the record, it recognizes I think that the cost/benefit analysis may not have been comprehensive, but at some point you have to rely on good old common sense (Tr. 28).

12. The Commission reasonably decided that the cost-benefit study, which considered what would have happened if the company had not taken aggressive tax positions, was an appropriate method of analysis which should be considered. However, the Commission did not base its decision solely on the cost-benefit analysis but looked at the whole record to confirm its sound policy of encouraging companies to be aggressive on tax issues without incurring penalties. The totality of this record, the quantitative analysis of the cost-benefit studies, and the qualitative testimony of the company's witnesses on the appropriate policy support that ratepayers were better off as a result of the aggressive tax positions taken by the company.

Exhibit 8 Shows Net Benefits to Customers

13. In addition to the qualitative evidence presented in the record to support a finding of prudence, Tampa Electric also presented quantitative proof of the prudence of its actions. Such proof is in Exhibit 8 which is the cost-benefit study cited as one of the bases for the decision in Order 01-2515. Without any doubt, Exhibit 8 shows \$6.8 million of net benefits to customers.

14. On page 3, paragraph 4 of OPC's Motion, OPC asserts that Exhibit 8 is "based on the implausible assumption that rate increases which were actually granted for 1993 and 1994 never happened." OPC makes this same argument on page 4 of its Motion in footnote 3 by asserting that Tampa Electric, in Exhibit 8, removed the actual rate increase approved in the company's last rate case. These assertions are simply incorrect.

15. In support of its argument, OPC in paragraph 4 of OPC's Motion misconstrues and distorts the company's answer to Interrogatory 13. The revenue that was referred to in the company's answer to Interrogatory 13 was the additional revenue over and above the actual base

rate increase approved in the rate proceeding. The company's answer to Interrogatory 13 did not state that the actual, approved permanent rate increase was excluded in Exhibit 8. The actual base rate increase from the rate case was included in Exhibit 8. As the company confirmed on pages 19-20 of its reply brief, the cost-benefit analysis did not change in any way the permanent rates charged by the company.

16. The \$6.8 million benefit identified in the cost-benefit study in Exhibit 8 includes the rate increases for 1993 and 1994 that were actually ordered by the Commission in Tampa Electric's last rate case.² The company simply eliminated the impact of the additional hypothetical rate increase ("rate case benefits") included in Exhibit 1 that the company argued would have been approved by the Commission if less deferred taxes had been included in the test years of the rate case. These additional hypothetical rate increases would have been over and above the permanent base rates that were actually approved by the Commission, and would have been collected each year during the deferred revenue period, which would have affected the refunds from 1998 and 1999. These "rate case benefits" were not included in the analysis contained in Exhibit 8 consistent with the question raised by OPC in Issue 5 of this proceeding.

17. The inaccuracies in OPC's Motion continue on page 4, footnote 3. The \$1,123,000 of deferred revenue benefits in 1995 cited by OPC represents the impact on deferred revenues for 1995 that results from the differences in methodologies used in Exhibit 1 and in Exhibit 8. This impact is the difference between adding the additional hypothetical base rate revenues (i.e., "rate case benefits") to a deferred revenue year compared and excluding the

² This fact is obvious since the "adjusted achieved rate of return" for the company identified in the Exhibit 8 schedules for each year 1995-1999 are comparable to the "adjusted achieved rates of return" found by this Commission in its orders for each of those years. It is clear that if the company had removed the actual rates approved in the last rate case, then the achieved rate of return for 1995-1999 in Exhibit 8 would have been much lower than what was approved in the Commission orders. This is because the Commission approved \$15,957,000 permanent rate increase would have been removed each year from 1995 to 1999.

additional hypothetical rate case benefits from a deferred revenue year. It is obvious that this \$1,123,000 differential between Exhibit 1 and Exhibit 8 would have been much higher had the company excluded any of the \$15,957,000 of the permanent base rate increase approved by the Commission for the 1994 test year.³

18. OPC's attempts to explain the difference between Exhibit 1 and Exhibit 8 are simply inaccurate. An accurate explanation of what happens when the "rate case benefits" are excluded was provided in the record by witness Bacon at the hearing when she explained:

Mathematically it may work out that way, Mr. Howe, but that is not appropriate to do that calculation. Basically, the reason why, and I know this has been a difference of opinion between your office and Tampa Electric in this hearing since the beginning, but as the preparer of the cost/benefit analysis I can tell you that there's two portions – two impacts related to the rate case numbers.

The first is shown as being the higher permanent rates. When we went into 1994, to the extent that rates were set at a higher amount, those are shown there. But the other part that we included in the cost/benefit analysis is the impact those higher rates would have had on the deferred revenue amounts, and to pull out one without pulling out the other makes no sense at all. If you're really going to exclude the rate case impacts for 1994, it will affect both the avoided higher permanent rates line, but it also – a portion of the avoided lower/higher deferred revenue refund also would be affected. And that's the reason why we're getting a benefit of 8.5 million, and then you remove that line, you're getting a negative million or negative whatever the number is.

* * * * *

I'm saying that if you remove just the avoided higher permanent rates, you're only removing half of it. There is another impact that's included in the cost/benefit analysis of those varied – of that 1994 test year. And I can tell you that to exclude it, you have to affect both of those lines.

If you think about it, if we would have come in here with a cost/benefit analysis that had reflected higher rates in 1994 and beyond and not also taken it to the next step to look at what those

³ Order No. PSC-93-0758-FOF-EI issued May 19, 1993 approved 1994 rates for 1994 with a \$15,957,000 increase in rates (see Order 93-0758, page 3, Column (6)).

higher rates would have also had impacted the deferred revenue refunds, I think you would have argued that we didn't take it to the next step.

And when we did the analysis, we thought, well, okay, we're going to have higher rates come out of the test year, but then as we, without using this term again, push it through the years, if we run the calculations through each of the deferred revenue years, we're also going to have higher refunds from those very higher rates. And so included in the avoided lower/higher deferred revenue refunds is those refunds. So if you are going to say that the 1994 test year would not have changed, you've got to pull up both lines. And the only way to do that is to run the model. The numbers as they're shown here you can't mathematically add them up to get back to the correct number, and the correct number is the 8.5 million. (Tr. 96-97.)

Witness Bacon explained the appropriate way to make an adjustment of "rate case benefits" and the appropriate adjustment was included in Exhibit 8. OPC's Motion demonstrates once again OPC's attempt to confuse the issues in this proceeding by injecting a hypertechnical, confusing and incorrect analysis which is not in the record.

19. OPC's Motion on page 4, paragraph 6 challenges whether any "deferred revenue benefits" could be identified for 1999 since refunds for 1998 eliminated the "pot" of deferred revenues which existed up to that time. On reflection, the "deferred revenue benefit" label used by the company to identify the 1999 benefits could have been identified as "refund benefits" or "customer benefits." However, this title or label does not detract from the fact that customers received a benefit in 1999 due to the company's aggressive tax positions and that the calculations in Exhibit 8 are clearly correct. The first full paragraph of page 25 of Order 01-2515 confirms that the Commission understood that the 1999 earnings impacts in the analysis are separate from the 1995-1998 impacts.

20. On page 5 of OPC's Motion, OPC erroneously states that customers got no benefit from the company's aggressive tax position in the 1995-1998 refund received by

customers in 1999. However, customers did in fact receive a \$13 million refund. That refund would have been virtually wiped out but for the company's aggressive tax position. The Commission appropriately recognized on page 23 and 26 of its Order 01-2515 that customers received actual refunds from the 1995-1998 deferred revenues.

21. Exhibit 8 makes a full, fair and accurate adjustment that removes the "rate case benefits." If the additional hypothetical base rate revenues from the rate case were to be excluded as this Commission decided in Issue 5, then these additional hypothetical base rate revenues that also were added to the deferred revenue period in Exhibit 1 must be excluded. The appropriate method to make an adjustment to remove the "rate case benefits" was fully explained by witness Bacon at the hearing (Tr. 95-97). Exhibit 8 accurately represents a cost-benefit analysis which removed the "rate case benefits."

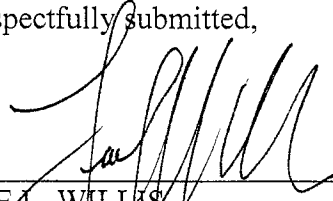
Conclusion

22. OPC's Motion is simply an argument expressing a disagreement with the Commission's final decision and reargues positions already carefully considered and rejected by the Commission.

WHEREFORE, Tampa Electric urges the Commission to deny OPC's Motion for Reconsideration.

DATED this 22nd day of January, 2002.

Respectfully submitted,



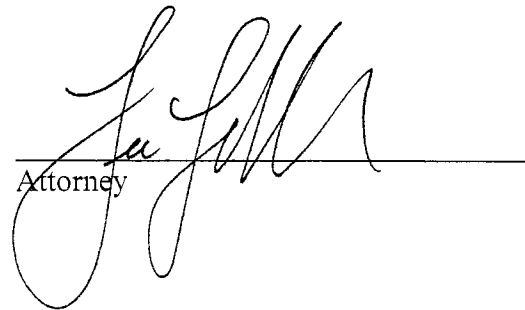
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ATTORNEYS FOR TAMPA ELECTRIC
COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Response to Office of Public Counsel's Motion for Reconsideration has been furnished by hand delivery (*) or U. S. Mail on this 22nd day of January, 2002 to the following:

Mr. Robert V. Elias*
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