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In Re: Petition for Rate Increase by Tampa Electric Company.

c. Document being filed on behalf of the Florida Retail Federation.

d. There are a total of 63 pages.

e. The document attached for electronic filing is Posthearing Statement and Brief of the Florida Retail Federation.

(see attached file: FRFBrief.2-17-09.doc)

Thank you for your attention and assistance in this matter.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

| In Re: Petition for Rate Increase by | ) | |
| --- | --- | --- |
| Tampa Electric Company | ) | DOCKET NO. 080317-EI |
| | ) | FILED: FEBRUARY 17, 2009 |

# POSTHEARING STATEMENT AND BRIEF OF THE FLORIDA RETAIL FEDERATION

The Florida Retail Federation (the "FRF"), pursuant to the Prehearing Order in this docket, Order No. PSC-09-0033-PHO-EI, and Order No. 08-0557-PCO-EI as modified by Order No. 08-0635-PCO-EI, and Rule 28-106.215, Florida Administrative Code ("F.A.C."), hereby submits the FRF's Posthearing Statement of Issues and Positions and Brief.

## INTRODUCTION AND STATEMENT OF THE CASE

This case was initiated by Tampa Electric Company's (the "Company" or "Tampa Electric") petition seeking the Commission's authority to raise its rates by $228,167,000 per year. The Florida Retail Federation, the Citizens of Florida ("Citizens") represented by their Public Counsel, the Attorney General of Florida, AARP, and the Florida Industrial Power Users Group ("FIPUG") all intervened in the docket and collectively believe that the Company is at most entitled to a rate increase of approximately $39 million per year. As will be demonstrated in the FRF's Brief, competent substantial evidence of record would support granting the Company no increase at all or even a rate decrease (if the Commission were to adopt the recommendation of former Public Service Commissioner Tom Herndon) or increases between $2.4 million and $36 million per year.

The Commission's statutory mandate is to regulate in the public interest. Fla. Stat. § 366.01 (2008). As a public utility subject to the Commission's plenary regulatory jurisdiction, Tampa Electric's rates must be fair, just, reasonable, and not unduly discriminatory. Fla. Stat. §§ 366.03, 366.04, 366.05(1), 366.06(1). The Company is entitled to the opportunity to earn a reasonable return on its capital reasonably and prudently invested, and actually used and useful

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in providing the public utility electric service for which it has a legal monopoly within its service territory. Fla. Stat. § 366.06(1).

The standard of proof for the Commission's decisions in this case is a preponderance of the evidence. In Re: Petition of Florida Power & Light Co. for Authority to Increase Its Rates and Charges, FPSC Docket No. 810002-EU, Order No. 10306, 1981 WL 634490 at 7. The Commission's decisions must be supported by competent substantial evidence of record, but once thus supported, they are not subject to reversal on factual grounds. United Telephone Co. v. Mayo, 345 So. 2d 640, 654 (Fla. 1977). Where there is competent substantial evidence of record supporting different positions, the Commission has discretion to decide on either position or, at least generally, on any position intermediate between the competing ends of a continuum. Id.; Gulf Power Co. v. Wilson, 597 So. 2d 270, 273 (Fla. 1992); In Re: Application of Gulf Power Company for Authority to Increase Its Rates and Charges, FPSC Docket No. 800001-EU, Order No. 9852, 1981 WL 634110 at 4.

## SUMMARY

Tampa Electric Company's requested rate increase of approximately $228.2 million per year in additional base rate revenues is excessive and contrary to the public interest. As explained by various witnesses who are testifying on behalf of the consumers whom Tampa Electric is asking to bear this unreasonable burden, the Commission should grant the Company at most an increase of approximately $39 million per year. Any greater increase would result in Tampa Electric's rates being unfair, unjust, unreasonable, and contrary to the public interest.

**Tampa Electric's requested rate of return** *on common equity* - **an after-tax return of 12.0%, which corresponds to a pre-tax rate of return of 19.6%** - is unfair, unreasonable, and excessive in that it is not representative of current capital market conditions, and far greater than is justified by the minimal risks that the Company faces. Indeed, according to a report by the Commission, in 2007 the Company recovered 57% of its total revenues through cost recovery

clauses and 64% of its annual expenses through cost recovery clauses, which demonstrates the very low risks that Tampa Electric faces as a monopoly provider of a necessity. Moreover, in today's economy when many individuals and businesses are struggling to keep their homes and pay their utility bills, Tampa Electric's request is excessive and if granted, would harm Floridians and Florida's economy.

The Company's requested capital structure is not appropriate as a basis for setting the Company's rates, because it is not representative of the manner in which Tampa Electric finances its rate base investment: the ultimate source of a substantial amount of the Company's claimed common equity investment is long-term debt financing. The Commission should disallow the Company's attempt to leverage low-cost debt financing obtained by Tampa Electric's parent company, TECO Energy, Inc., into alleged high-cost equity financing, with the burden falling on the backs of the Company's captive customers.

Tampa Electric has also requested numerous expense items that should be disallowed in part or in total. Those expense items are identified in the FRF's positions on specific issues.

Tampa Electric's rate increase request is a case of "what ifs", a parade of hypothetical horribles and hypothetical benefits that the Company claims might occur – but cannot confirm – if the Commission were to grant the Company's rate increase request. For example, the Company's request to quintuple its storm reserve accrual, from $4 million to $20 million per year, is based on hypothesized storm events that have never occurred in the 18-year history of the Company's storm reserve, and on model results that are obviously out of touch with reality. Similarly, the Company attempts to justify its requested rate of return on equity on claims that it will reduce the overall cost of capital to customers, which is clearly disproven by the evidence of record in this case. Based on its requested rate of return on equity, the Company <u>claims</u> that it

may be able to qualify its bonds for a "single-A" rating as opposed to its current investment-grade "BBB-" rating. Unfortunately for the Company, none of its witnesses can confirm that any rating agency at all will assign the Company a single-A rating even if the Commission were to grant its requested 12% after-tax ROE. The Commission should note well that this 12% after-tax ROE would require Tampa Electric's customers to pay a before-tax ROE of 19.6%, thus creating an even heavier burden on customers who are already struggling to pay power bills in a very severe recession. The Company thus wants its customers to pay at least $67 million per year more in equity returns for a hypothetical, speculative benefit that the Company and its witnesses cannot confirm will materialize; indeed, the competent, substantial evidence shows that any benefit in terms of reduced interest expense would be mostly outweighed by extra equity cost to customers.

The Company's request is also based on proposed annualized costs for investments that will, at most, only be used and useful in providing public service for part of the test year.

Tampa Electric's request is unreasonable and unjustified by the evidence of record in this case. Contrary to the Company's request, the competent, substantial evidence of record shows that Tampa Electric's request should be reduced by at least $192,000,000 million per year for the following reasons:

**Rate Base & Cost of Capital**

- **Rate Base Adjustments**: Tampa Electric's request is predicated and calculated on the basis of:

(a) having five new Combustion Turbine generating units ("CTs") on line for all of the 2009 test year, when in fact two of those CTs will only come on line in May 2009, and the other three, which were previously scheduled to come on line in September 2009, are now not even certain for service during 2009 at all, warranting a reduction in rate

base of $179 million;

(b) certain proposed rail facilities being in service – and thus included in the Company's proposed Rate Base – for all of 2009, when in fact those facilities will only come into service at the beginning of December 2009;

(c) having additional unjustified amounts of approximately $52 million in jurisdictional Plant in Service, and thus in Rate Base;

(d) having an extraordinary investment in its Customer Information System rolled into Rate Base - $2.4 million;

(e) having excess Plant Held for Future Use in Rate Base - $2.3 million;

(f) having excess Working Capital in Rate Base in the amount of $22 million.

- **Return on Equity & Cost of Capital**: Tampa Electric's request is predicated on, and calculated on the basis of, the Company's rates being set using a rate of return on equity of 12.0%. This rate is unreasonable and unnecessary for the Company to attract needed capital. Other things equal, adjusting to set the Company's ROE at 9.75% as recommended by Citizens Witness Woolridge and FRF Witness O'Donnell would **reduce the Company's request by approximately $67,500,000 per year**. Adjusting this rate to 7.5% as recommended by FIPUG/FRF Witness Tom Herndon would **reduce the request by approximately $135,000,000 per year**. (More specific estimates, incorporating other relevant adjustments, are presented below.)

- **Imputed Debt Adjustment**. Tampa Electric's request is predicated on an imputed debt adjustment for power purchase agreements, even though the Company's witnesses could not come up with any realistic scenario to justify the purported risk, and even though only one of the 3 major rating agencies, Standard & Poor, uses any analytical adjustment, and even though the Company did not produce a Standard & Poor witness to explain or support this adjustment. Adjusting to remove this improper, unjustified adjustment **reduces the Company's request by approximately $5,000,000 per year.**

- **Capital Structure**. Tampa Electric proposes to use a hypothetical capital structure that is heavily weighted toward equity, which is significantly more costly than debt capital, for the purpose of setting rates in this case. FRF Witness O'Donnell presented evidence that the Company could not refute showing that TECO Energy, which is the parent holding company for Tampa Electric, was effectively manipulating its capital structure for regulatory purposes in order to gain extraordinary profits at the expense of its ratepayers. To be specific, Mr. O'Donnell provided evidence that showed TECO Energy had issued debt securities and then infused general TECO Energy capital into its subsidiaries and called it equity, a process known as "double-leverage" in utility regulation, thereby raising the total cost of capital for which ratepayers must pay the utility. Other things equal, adjusting Tampa Electric's requested capital structure for TECO Energy's manipulation will **reduce the Company's request by approximately $28.8 million.**

**Operation and Maintenance Costs**

- **Storm Reserve Accrual**. Tampa Electric's request is predicated on and calculated based on the Company's request for a 400% increase in its storm damage accrual, from $4,000,000 per year to $20,000,000 per year, despite the fact that in the 16 years that the Company has had a storm reserve, that storm reserve has never gone negative. Adjusting the Company's request to keep the storm reserve accrual at its current reasonable level of $4,000,000 per year **reduces the Company's request by $16,000,000 per year**.
- Tampa Electric's request is predicated on excessive and unjustified Salaries and Employee Benefits, including non-tracked overtime costs and unjustified claims of employee growth, as well as excessive benefits. Adjusting to allow the Company to recover its reasonable employee salaries and benefits expenses **reduces the Company's request by approximately $6,900,000 per year**.

- Tampa Electric's request is predicated on an incentive compensation plan that is not justified in terms of being necessary to attract or motivate employees, and that does not reward employees for saving customers money or improving customer service reliability. While the Company is free to pay its employees what it wants, there is no justification for imposing the burden of these unreasonable costs on the Customers' backs where the incentivized behaviors do not benefit customers. Adjusting to remove this burden from Customers **reduces the Company's request by approximately $11,234,000 per year**.
- Tampa Electric's request is predicated on overstated generation maintenance expenses. Adjusting to remove the overstated costs **reduces the Company's request by approximately $8,173,000 per year**.
- Tampa Electric's request is predicated on overstated substation maintenance expenses. Adjusting to remove these overstated costs **reduces the Company's request by approximately $973,000 per year**.
- Tampa Electric's request is predicated on overstated dredging expenses. Adjusting to remove these overstated costs **reduces the Company's request by approximately $1,330,000 per year**.
- Tampa Electric's request is predicated on the including of Directors and Officers Liability Insurance that does not benefit customers, but rather benefits shareholders. The Company is free to provide this insurance coverage, but not at the expense of Customers who do not benefit from it. Adjusting to remove these overstated costs **reduces the Company's request by approximately $1,605,000 per year**.
- Tampa Electric's request is predicated on excessive rate case expense and an unreasonably short amortization period of 3 years, where it has been 16 years since the Company's last rate case and it was 7 years between the last case and the next previous case. Adjusting to remove the overstated rate case expenses and to use a more reasonable amortization period of 5 years **reduces the Company's request by approximately**

**$631,000 per year**.

- Tampa Electric's request is predicated on overstated bad debt expense. Adjusting to remove these overstated costs **reduces the Company's request by approximately $2,342,000 per year**.

- Tampa Electric's request is predicated on overstated office supplies and expenses. Adjusting to remove these overstated costs **reduces the Company's request by approximately $2,295,000 per year**.

- Tampa Electric's request is predicated on excessive tree-trimming costs; adjusting to allow the Company to recover its reasonable tree-trimming costs **reduces the Company's request by approximately $4,000,000 per year**.

- Tampa Electric's request is predicated on overstated pole inspection costs. Adjusting to allow the Company to recover its reasonable pole inspection costs **reduces the Company's request by approximately $236,000 per year**.

- Tampa Electric's request is predicated on overstated transmission inspection costs. Adjusting to allow the Company to recover its reasonable transmission inspection costs **reduces the Company's request by approximately $268,000 per year**.

- Tampa Electric's request is predicated on excessive generation maintenance expenses, due at least in part to an abnormal amount of scheduled generation outages during the 2009 test year. Adjusting to allow the Company to recover its reasonable generation maintenance expenses **reduces the Company's request by approximately $7,710,000 to $8,173,000 per year**.

**O&M, Depreciation, and Other Taxes Effects of Rate Base Adjustments**

- **The 5 Partial-Year Combustion Turbines**. As noted above, Tampa Electric's request is predicated on the inclusion of its 5 projected CTs for the entire 2009 test year, but 2 of those units will only be in service for 8 months and the other 3 may not be in service at all during the test year. Adjusting the Company's O&M expenses, depreciation

expense, and Taxes Other Than Income Taxes based on the 5 CTs coming on line in May and September as originally scheduled **reduces the Company's costs, and thus its allowable, reasonable and prudent revenue requirement for 2009 by $11,748,000: $870,000 in O&M costs, $5,425,000 in depreciation expense, and $5,453,000 in Taxes Other Than Income Taxes**. Adjusting further to remove the 3 September CTs altogether, which is appropriate because the Company's testimony is that it is considering not bringing them on line at all in 2009, ***further reduces*** **the 2009 revenue requirement by an estimated *additional* $4,405,000 in combined O&M expense, depreciation expense, and Taxes Other Than Income Taxes, for a total reduction of $16,153,500.**

- **The Partial-Year Rail Facilities**. As noted above, Tampa Electric's request is predicated on the inclusion of certain rail facilities in Rate Base for the entire 2009 test year, but these facilities are only projected to be in service for the month of December 2009. Properly adjusting the Company's O&M expenses, depreciation expense, and Taxes Other Than Income Taxes based on the rail facilities coming on line in December **reduces the Company's costs, and thus its allowable, reasonable and prudent revenue requirement for 2009 by $1,945,000: $906,000 in depreciation expense, and $1,039,000 in Taxes Other Than Income Taxes**.

**The Bottom Line**: Competent, substantial evidence of record would support reducing the Company's requested increase to no more than $36 million per year; in fact, using an ROE of 8.75%, which is between Mr. O'Donnell's and Dr. Woolridge's recommended ROE of 9.75% and Mr. Herndon's 7.5%, would reduce the Company's increase to $2.4 million per year. Making appropriate adjustments to rate base, including removing the 3 September CTs that are not certain of being in service in 2009 at all, and making appropriate adjustments to capital structure, expenses and Net Operating Income, including the corresponding expense adjustments associated with the September CTs, but setting rates based on an ROE of 9.75%, would reduce the Company's requested increase to between $25 million per year (using Woolridge's capital structure) and $36 million per

year (using O'Donnell's capital structure). Using Mr. Herndon's recommended ROE of 7.5% would produce a rate decrease of $26.7 million per year. See Exhibit A to this Brief.

## RELEVANT HISTORY

Tampa Electric's attempt to persuade the Commission that it is entitled to its request because it "hasn't sought an increase in its base rates in sixteen years" is misleading and of no probative value as to how much, if any, of a rate increase the Company needs in this docket. The facts are that Tampa Electric did not seek increases in its base rates because it didn't need them and couldn't justify them. In fact, the Company's earnings were so high during nearly all of the period 1993-2008 that it had to give money back and had to agree to a settlement that reduced its authorized rate of return on equity for this period. Some relevant facts:

- In 1985, Tampa Electric requested a total rate increase of approximately $136.5MM per year. The Commission awarded the Company only $63.7MM a year, **including** two subsequent-year step increases. In Re: Petition of Tampa Electric Co. to Increase Its Rates and Charges, FPSC Docket No. 850050-EI, Order 15451 at 2. Thus, the Commission CUT the Company's request by more than 53%.

- In the 1985 case, Tampa Electric requested a return on common equity of 16.0%, but the Commission only awarded the Company rates based on an ROE of 14.5%. Order 15451 at 2.

- In 1992, Tampa Electric requested a total increase in base rates, spread over 2 years, of about $97.9MM per year. The Commission initially awarded the Company increases, to be implemented over 1993 and 1994, totaling $18,575,000 per year. The Commission CUT the Company's request by 81%. In Re: Application for a Rate Increase by Tampa Electric Company, FPSC Docket No. 920324-EI, Order No. PSC-93-0165-FOF-EI at 3, 10.

- Also in the 1992 case, the Company requested an ROE of 13.75%, below its previously awarded 14.5% from the 1985 rate case. The 1993 Commission, however, CUT the Company's request by 175 basis points, and set revenues and rates based on a 12.0% ROE. Id. at 10.

- A crucial fact here is that, despite the Commission's setting the Company's revenue requirement, and its rates, and its ROE, at levels dramatically less than the Company requested, the Company fared very, very well over the ensuing 15

years:

- From 1993 through 2001, the Company first proposed, and then agreed to, lower ROEs that resulted in its authorized ROE being set at 11.75%, where it is today. The Company also entered into settlement agreements with Public Counsel and FIPUG that produced approximately $63MM in refunds, and was also ordered by the Commission to refund an additional $6.3 MM, because it was overearning during this time period. In Re: Investigation Into Earnings for 1995 and 1996 of Tampa Electric Company, FPSC Docket No. 950379-EI, Order No. PSC-95-0580-FOF-EI at 2; Order No. PSC-96-0670-S-EI at 3 (same docket); Order No. PSC-00-1441-AS-EI at 5 (same docket); Order No. PSC-01-2515-FOF-EI at 2 (same docket); In Re: Prudence Review to Determine the Regulatory Treatment of Tampa Electric Company's Polk Unit, FPSC Docket No. 960409-EI, Order No. PSC-96-1300-S-EI at 3.

This evidence, demonstrated by the Commission's own orders, is clear as to several points: First, Tampa Electric Company has a proven track record of asking for far more than it needs, as proven by the Commission's decisions in its last 2 general rate cases. This is further proven by the facts (1) that, after its last general rate case, the Company has agreed to ADDITIONAL reductions to its authorized ROE to a level that is a **full 200 basis points BELOW** what it asked for in 1992 and (2) that, in the 9 years following its request (1993 through 2001) it was earning so much that it either agreed to, or was ordered by this Commission to, refund an additional $69.3 million. It is also clear from the orders cited above that the Company, despite the Commission's dramatic cuts from its 1992 requests, was doing just fine throughout this period, earning above its authorized rate of return for most of the period and not having any difficulty raising capital for its regulated operations.

The Company would have the Commission and its customers believe that it was only through its "numerous efforts and initiatives" that it has avoided requesting base rate increases for the past 16 years. The Company's claim -- that it hasn't requested a base rate increase in 16 years -- is true, but it is specious: the real reason is that the Company has been the beneficiary of very strong customer growth and declining generation costs.

## THE FLORIDA RETAIL FEDERATION'S BRIEF ON SPECIFIC ISSUES

### Introduction – The Statutory Context and Standard of Proof

The standard of proof for the Commission's decisions in this case is a preponderance of the evidence. In Re: Petition of Florida Power & Light Co. for Authority to Increase Its Rates and Charges, FPSC Docket No. 810002-EU, Order No. 10306, 1981 WL 634490 at 7. The Commission's decisions must be supported by competent substantial evidence of record, but once thus supported, they are not subject to reversal on factual grounds. United Telephone Co. v. Mayo, 345 So. 2d 640, 654 (Fla. 1977). Where there is competent substantial evidence of record supporting different positions, the Commission has discretion to decide on either position or, at least generally, on any position intermediate between the competing ends of a continuum. Id.; Gulf Power Co. v. Wilson, 597 So. 2d 270, 273 (Fla. 1992); In Re: Application of Gulf Power Company for Authority to Increase Its Rates and Charges, FPSC Docket No. 800001-EU, Order No. 9852, 1981 WL 634110 at 4.

### Quality of Service

**Issue 3:** Is the quality of electric service provided by TECO adequate?

**FRF Position:** *No.*

**Discussion**

Although only 40 customers testified at the customer service hearings, 30 in Tampa and 10 in Winter Haven, a number of those customers testified that the Company's service is not adequate, citing frequent momentary outages; other outages and voltage problems; poor, non-responsive, or "nonexistent" customer service; difficulty reaching customer service representatives; difficulty paying their bills; and inadequate streetlighting service and maintenance. See, e.g., Transcript of October 21, 2008 Customer Service Hearing in Tampa at 49, 62-63, 67-68, 79, 83, 98, 101, 131, 134, 136, 149, and 151; Transcript of October 22, 2008 Customer Service Hearing in Winter Haven at 47, 56, 79, and 85. Combined with the fact that

the Company's incentive pay proposals (see Issue 52) do not reward employees for improving reliability or reducing costs to customers, the Commission should find that the Company's service is no better than adequate.

**Rate Base Issues**

**Issue 5**: Is the pro forma adjustment related to the annualization of five simple cycle combustion turbine units to be placed in service in 2009 appropriate?

**FRF Position**: *No. TECO's proposed annualization is not appropriate because it would, at best, cause customers to pay the entire year's revenue requirement for assets that are only used and useful for part of the test year, and 3 of the CTs may not be in service during 2009 at all.*

**Discussion**

Allowing the Company to annualize the rate base costs of its proposed CTs would violate one of the fundamental principles of rate regulation, namely that facilities must be used and useful in providing public utility service in order to be eligible for cost recovery. See Fla. Stat. § 366.06(1). Here, Tampa Electric is asking the Commission to allow it to recover for its 2 CTs planned to come on-line in May as though they would be used and useful for all of 2009, and also asking the Commission to allow it to recover for its 3CTs planned to come on-line in September as though they would be used and useful for all of 2009, when neither is true. At most, Tampa Electric is entitled to 8 months of revenue requirements associated with the May CTs and 4 months of revenue requirements associated with the September CTs.

Accordingly, the Commission should at a minimum adjust the Company's requested rate base to remove the Company's requests for inclusion of these units for the entire test year. Larkin, TR 2017. These adjustments reduce the Company's requested test year rate base by $130,687,000 on a jurisdictional basis. See Larkin, TR 2016-17; EXH 50, Schedule B-1, page 2.

Moreover, the Commission should remove all rate base costs associated with the 3 September CTs from the test year, because the Company's president has testified that the Company is presently reconsidering whether to bring those units on line during the 2009 test year. Black, TR 106-107; Larkin, TR 2010-14, 2016-17. This reduces the Company's original request to at best an outdated projection that has been overtaken by events. An earlier projection of these 3 CTs coming on line, in the face of the Company's president's own testimony, is not competent, substantial evidence that these 3 CTs should be included in the Company's rate base for ratemaking purposes in the Company's requested 2009 test year.

Accordingly, the Commission should remove additional rate base amounts associated with the 3 September CTs on a proportionate basis. Removing the May CTs and the September CTs for the parts of the test year for which they were originally not expected to be in service reduces rate base by $130,687,000. Larkin, EXH 50, Schedule B-1, page 2. Assuming reasonably that the five CTs are similar and thus that they have similar costs, the original adjustments reflect the removal of a total of 32 unit-months from the test year: the 2 May CTs removed for 4 months each (2 units x 4 months = 8 unit-months removed), and the 3 September CTs removed for 8 months each (3 units x 8 months = 24 unit-months removed). Making the logical adjustment to remove the 3 September CTs for the entire test year would result in a total of 44 unit-months being removed ((2 x 4) + (3 x 12) = 44). The ratio of 44 to 32 is simply 1.375, so the effect of removing these units is to remove an additional $49,007,625 from the Company's test year rate base. (.375 x $130,687,000 = $49,007,625 for a total rate base reduction of $179,694,625).

Of course, Tampa Electric could have requested a 2010 test year, but it did not make such a request. The Commission cannot allow the Company's customers to be burdened with costs for

facilities that are not in service for the test year, and the Company's original projection, countermanded by Witness Black's testimony, is not competent, substantial evidence to support including the September CTs in rate base during the 2009 test year.

**Issue 7**: Is the pro forma adjustment related to the annualization of the Big Bend Rail Project to be placed into service in December 2009 appropriate?

**FRF Position**: *No. TECO's proposed annualization is not appropriate because it would require the Company's captive customers to pay an entire year's worth of costs for an asset that will only be in service for one month of the Company's requested 2009 test year.*

**Discussion**

For the same reasons discussed with regard to the CTs in the preceding discussion, the Commission should not – the FRF would urge cannot reasonably – allow the Company to annualize the costs of the rail facilities, which will only be in service for one month of the 2009 test year. Properly allowing the Company recovery for that one month's worth of rate base investment results in a reduction to test year rate base of $44,754,000. Larkin, TR 2016-17; EXH 50, Schedule B-1, page 2.

**Issue 8**: Should any adjustments be made to TECO's projected level of plant in service?

**FRF Position**: *Yes. The FRF agrees with OPC that jurisdictional Plant in Service should be reduced by $51,969,000 (total Company reduction of $53,958,000). Correspondingly, jurisdictional depreciation and amortization should be reduced by $8,187,000.*

**Discussion**

These adjustments to Plant in Service and thus rate base are for Accounts 101 and 106 and are shown in Mr. Larkin's testimony, TR 2020-21, and Exhibit 50, Schedule B-1, page 2.

**Issue 9**: Should TECO's requested increase in plant in service for the customer information system be approved?

**FRF Position:** *No. TECO's request should be denied, reducing rate base by $2,445,000 (and correspondingly reducing depreciation expense by $558,000 for the test year).*

**Discussion**

This adjustment to Plant in Service and thus rate base is shown in Mr. Larkin's testimony, TR 2020-21, and Exhibit 50, Schedule B-1, page 2.

**Issue 14**: Is TECO's requested level of Property Held for Future Use in the amount of $37,330,000 for the 2009 projected test year appropriate?

**FRF Position:** *No. Agree with OPC that PHFFU should be decreased by $2,328,354 on a jurisdictional basis.*

**Discussion**

The adjustment to Property Held for Future Use is explained by Witness Larkin. TR 2026-28

**Issue 18**: Should an adjustment be made to working capital related to Account 143-Other Accounts Receivable?

**FRF Position:** *Yes. Agree with OPC that $10,959,000 should be removed on a jurisdictional basis.*

**Discussion**

This adjustment to working capital for other Accounts Receivable is explained by Witness Larkin. TR 2029-30

**Issue 19**: Should an adjustment be made to working capital related to Account 146-Accounts Receivable from Associated Companies?

**FRF Position:** *Yes. Agree with OPC that the entire balance of $6,309,000 in Account 146 should be excluded.*

**Discussion**

This adjustment to working capital for Accounts Receivable from Associated Companies is explained by Witness Larkin. TR 2030.

**Fuel Inventories**

**Issue 21**: Should an adjustment be made to TECO's coal inventories?

**Issue 22**: Should an adjustment be made to TECO's residual oil inventories?

**Issue 23**: Should an adjustment be made to TECO's distillate oil inventories?

**Issue 24**: Should an adjustment be made to TECO's natural gas and propane inventories?

**FRF Position**: *Yes. The cost value of the Company's fuel stock should be reduced by 10% to reflect reductions in coal, oil, and other fuel prices that have likely occurred since the Company filed its case.*

**Discussion**

The Company filed its testimony and exhibits in the rate case docket in August 2008. Since that time, fuel costs declined significantly, leading Tampa Electric and other utilities to re-project their fuel costs for 2009 in Docket No. 080001-EI, the Fuel Cost Recovery Docket. Statements by Tampa Electric's attorney, Lee Willis, at pages 95-96 of the Tampa Customer Service Hearing Transcript, October 21, 2008. However, Tampa Electric did not re-project its fuel costs for its inventories in the rate case docket. This likely resulted in overstated fuel inventory costs in rate base, and the Commission should attempt to correct for this by reducing the inventory values by 10% as recommended by Citizens' Witness Hugh Larkin. TR 2030-31. Perhaps not coincidentally, Mr. Willis stated that the Company's initial proposed Fuel Charge increase was to be 22%, but that it was reduced to 12%. Tampa Service Hearing Transcript at 95-96. A reasonable estimate of this reduction is thus 10% of the Company's Fuel Stock balance, shown as $98,437,000 on MFR B-3, page 1 of 9. Failure to make this adjustment will

likely result in overstated fuel costs being embedded in Tampa Electric's rates until the next rate case.

**Issue 27**: Is TECO's requested level of Working Capital in the amount of ($30,586,000) for the 2009 projected test year appropriate?

**FRF Position**: *No. Working Capital should reflect the adjustments recommended by the Citizens in this proceeding.*

**Discussion**

The Commission should reduce the Company's requested Working Capital by a total of $22,030,000 as explained in Mr. Larkin's testimony and exhibits. Larkin, TR 2029-31, EXH 50, Schedules B-5 and B-1, page 2.

## Cost of Capital & Capital Structure

**Issue 32**: Should TECO's requested pro forma adjustment to equity to offset off-balance sheet purchased power obligations be approved?

**FRF Position**: *No. The Company's imputed debt adjustment for power purchase agreements is speculative, is not based on any realistic risk, and is not supported by any witness who testified to the methodology or its alleged reasonableness. The Commission should reject it and reduce the Company's revenues by $5 million per year.*

**Discussion**

The Company's imputed debt adjustment purports to follow the methodology of just one rating agency, Standard & Poor, which apparently treats a portion of capacity payments under power purchase agreements ("PPAs") as debt-like. However, no witness from Standard & Poor or from any other rating agency testified in this case to support this claim, leaving the Company's witness Gillette attempting to defend it. Although Mr. Gillette testified that Fitch's and Moody's, two other rating agencies, consider capacity payments in their evaluations, they employ no set methodology by which they suggest adjusting a utility's capital structure. Thus, the Company

has asked the Commission to let Standard & Poor's hearsay methodology, which is not supported or explained by any rating agency, drive the Commission's decision to give the Company $5,000,000 per year of customers' money. This is not supported and the Commission should reject it.

After declaring that it has been some time since he was even involved with power purchase agreements, Witness Gillette admitted that the Company has "to pay the capacity charge so long as the capacity is available. TR 396. He could not say that the Company has to pay the capacity charges if the capacity is not available, and he acknowledged that if the seller makes the capacity available, then the seller has performed its obligations. TF 396. Over several pages and minutes of questioning, TR 396-399, Mr. Gillette tried to claim that somehow, the Company might have to pay capacity payments even if the seller under a PPA didn't perform. Finally, upon questioning by Commissioner Skop, he acknowledged that if the seller didn't perform, the Company could discontinue capacity payments and also acknowledged that PPAs contain performance requirements. TR 399.

Mr. Gillette also tried to claim that there is a regulatory lag between contract execution and recovery, but then acknowledged that the Commission provides for advance approval of PPAs for cost recovery purposes before payments are required. TR 400.

Mr. Gillette further tried to claim that there is a risk that a seller could fail to perform and then sue the Company for capacity payments, TR 407, but he had to admit that he is not aware of any court in Florida or anywhere in the United States ordering a utility to make payments to sellers where the seller had failed to perform. TR 407.

He also acknowledged that he is not aware of any state utility regulatory authority recognizing the Company's proposed imputed debt adjustment in rate cases. TR 409 Incredibly,

meaning without credibility, he testified that "there is a risk" that the Florida Public Service Commission "would not allow full recovery of capacity payments under a contract that it had previously approved under" a final Commission order. TR 413. In sum, there is no credible basis for letting the Standard & Poor "tail" wag the Commission's or the customers' "dog" so as to shake $5,000,000 a year out of customers' pockets and into Tampa Electric's coffers. The Commission must reject the Company's imputed debt adjustment proposal.

**Issue 34**: What is the appropriate capital structure for the 2009 projected test year?

**FRF Position**: *The appropriate structure for the 2009 test year is 44.43% Long-Term Debt, 44.00% Common Equity, 8.28% Deferred Income Taxes, 0.22% Short-Term Debt, 2.84% Customer Deposits, and 0.24% Tax Credits, as indicated in Mr. Kevin O'Donnell's testimony and exhibits.*

**Discussion**

The term "capital structure" refers to the relative percentage of debt, equity, and other financial components that are used to finance a company's investments. The components of capital structure include common equity, long-term and short-term debt, preferred stock (not used by Tampa Electric), customer deposits, tax credits, and deferred income taxes. O'Donnell, TR 2365-66.

FRF Witness Kevin O'Donnell testified that the appropriate capital structure for the Company is 44.43% Long-Term Debt, 44.00% Common Equity, 8.28% Deferred Income Taxes, 0.22% Short-Term Debt, 2.84% Customer Deposits, and 0.24% Tax Credits. EXH 78. As Mr. O'Donnell explained, the Company's requested capital structure is not representative of the manner in which Tampa Electric finances its rate base investment and is therefore improper for use in this proceeding. O'Donnell, TR 2367. The capital structure that best reflects Tampa Electric's actual rate base investment is the Company's 13-month average capital structure

adjusted for the proportionate use of the parent company's debt as equity in the subsidiary's capital structure. O'Donnell, TR 2372.

If the Commission accepts Mr. O'Donnell's analysis and positions, no parent debt adjustment is necessary. If, however, the Commission does not accept Mr. O'Donnell's analysis and positions, then a parent debt adjustment is necessary, and the Commission should use the capital structure recommended by Citizens' Witness Randy Woolridge. According to Prof. Woolridge, the appropriate capital structure for the Company is very similar to Mr. O'Donnell's: Long-Term Debt – 43.80%, Common Equity – 42.48%, Short-Term Debt – 0.60%, Customer Deposits – 2.82%, Deferred Income Taxes – 9.97%, and Tax Credits – 0.33%. TR 1865-67 EXH 36. Using Prof. Woolridge's capital structure results in a slightly lower overall cost of capital, 7.33% as opposed to Mr. O'Donnell's 7.52%. EXH 36 at 1.

In contrast, the Company's proposed capital structure is unrealistically and unnecessarily equity-weighted: Long-Term Debt - 38.22%, Common Equity - 50.21%, Short-Term Debt - 0.22%, Customer Deposits - 2.84%, Tax Credits - 0.24%, and Deferred Income Taxes - 8.28%. O'Donnell, TR 2367. And, not surprisingly, the Company's capital structure, combined with its high ROE, results in a significantly higher overall cost of capital, 8.82%. Allowing Tampa Electric's rates to be set using this capital structure would cause customers to over-pay for Tampa Electric's true cost of capital by forcing captive customers to pay for a hypothetical, non-existent capital structure that does not, in Witness O'Donnell's opinion, accurately reflect the way the Company finances its rate base investment. The use of the Company's proposed capital structure would result in Tampa Electric's rates being grossly unfair, unjust, and unreasonable. O'Donnell, TR 2367.

Tampa Electric is a wholly-owned subsidiary of TECO Energy. Due to the parent/subsidiary relationship, there are no market forces that influence the shape of Tampa Electric's capital structure. As a result, TECO Energy can issue long-term debt on its consolidated balance sheet and then invest the funds into Tampa Electric and call it common equity. By doing so, TECO Energy can effectively create whatever capital structure it desires for Tampa Electric and its other subsidiaries. O'Donnell, TR 2368. Tellingly and significantly, the decisions as to the Company's raising capital by equity infusions from Tampa Electric's parent, TECO Energy, Inc., or by issuing bonds, are made by the boards of these two affiliated entities, which consist of the same individuals. See Gillette, TR 477-79.

**Issue 37**: What is the appropriate return on common equity for the 2009 projected test year?

**FRF Position:** *No greater than 9.75%.*

**Discussion**

A. Financial Analyses.

FRF Witness O'Donnell used the Discounted Cash Flow ("DCF") method and the comparable earnings method to evaluate the appropriate ROE for Tampa Electric, as compared to an extensive group of comparable companies. O'Donnell, TR 2350-51, EXH 74 & 75. The Citizens' Witness Woolridge used the DCF method and the CAPM method. Woolridge, TR 1856, 1880, EXH 42, 43. Coming at the issue using all 3 methodologies, both witnesses concluded that the appropriate ROE for Tampa Electric in this case, and in today's real-world financial markets, is 9.75%. O'Donnell, TR 2263, Woolridge, TR 1907.

B. The Risks Faced by the Company are Minimal and Warrant an ROE Much Lower Than the Company's Request.

Tampa Electric Company is a monopoly provider of a necessity. O'Donnell, TR 2342-43.

As of 2007, according to a report prepared by the Commission using data from Tampa Electric's earnings surveillance reports, the Company was recovering nearly three-fifths of its total revenues, and nearly two-thirds of its expenses, through cost recovery clauses, demonstrating the very low revenue risk that the Company faces. O'Donnell, TR 2364; EXH 98 at 15, 16.

Even the Company's Witness Susan Abbott acknowledges that the Company has an "excellent business risk profile." Abbott, TR 575; see also Gillette, TR 426.

C. The Acid Test: Tampa Electric Can Raise Needed Equity and Debt Capital with an ROE Equal to or Less Than 9.75%.

In the final analysis, the Company is obligated to provide safe, adequate, sufficient, and reliable service at the lowest possible cost; this cost-effectiveness standard is the standard to which the Commission holds all utilities under its jurisdiction. To provide adequate service, the Company obviously needs to be able to raise sufficient capital to support its plant and equipment investments.

Thus, the "acid test" questions relative to the Commission's decision on the proper ROE for Tampa Electric are these:

1. If the Commission sets Tampa Electric's ROE at 9.75%, or at a lower or higher rate, will the Company be able to obtain needed equity and debt capital sufficient to finance the investments needed to provide adequate service?

2. Is the ROE determined by the Commission as low as possible, consistent with the Company's need for capital and also consistent with the Company's obligation to provide service in the most cost-effective manner possible?

In this case, the answers to these questions by the FRF's witness O'Donnell is clearly that Tampa Electric can raise needed equity capital and needed debt capital if its ROE is set at 9.75%. O'Donnell, TR 2364. Witness Herndon also testified that the Company can raise needed capital if its ROE is set at 7.5%. Herndon, TR 2164-65. As discussed elsewhere, the Commission may not agree with Mr. Herndon's analysis or conclusions, but his testimony – as a former Public

Service Commissioner, as the former Executive Director of the Florida Statement Board of Administration, and as an institutional investor – must be regarded as competent and substantial.

D. The Company's "Access to Capital" Argument is Misplaced.

Gillette's Exhibit 80, Document No. 2, shows information for a number of utility bond issues from August 2008 until December 2008. The data show that, for a period of 17 days, from September 8-25, 2008, apparently no utility bonds were sold during the "credit meltdown" that occurred in U.S. and international financial markets. Mr. Gillette attempts to parlay this fact into the conclusion that Tampa Electric has to have a single-A bond rating in order to have access to capital markets. His own exhibit disproves his hypothesis. Before the credit meltdown, utilities with both single-A-rated and BBB-rated issued bonds. After the credit meltdown, i.e., after September 25, many utilities with both ratings issued bonds. Exhibit 99, a Wall Street Journal article from January 13, 2009, shows that utilities have been a bright spot in bond issuances, and in fact shows that BBB-rated utilities have been able to issue bonds, including some at favorable rates. For example, the article states that Progress Energy, Inc., a BBB+ rate utility, sold a substantial amount of ten-year bonds - $600 million - on January 8 at the favorable interest rate of 5.3%. Although Mr. Gillette testified that this was a Progress Energy Carolinas issue, the point does not avail: Progress Energy Carolinas, like its parent Progress Energy, Inc., and like its sister company, Progress Energy Florida, is rated BBB+. Woolridge, TR 1979 (from his personal observation of ratings on the Standard & Poor website).

E. "Bang for the Buck": Higher Equity Costs Vastly Outweigh Hypothetical Lower Interest Costs.

From the perspective of customers, and especially where the equity and debt percentages are approximately equal (as they will be for Tampa Electric under either Mr. O'Donnell's or Prof. Woolridge's capital structures), costs are minimized by having more debt, because debt costs are

less than the cost of equity capital. EXH 50, Schedule D-1; MFR D-1a. Even the Company's Witness Gillette acknowledges this. Gillette, TR 436. This issue was debated at some length in the hearing, ultimately resulting in the request from the bench for Late-Filed Exhibit 123, which all parties were offered the opportunity to provide. These exhibits are referred to as the "Bang for the Buck" exhibits and are intended to address the question whether a higher ROE will result in sufficient reductions in debt costs to provide a lower overall cost of capital for Tampa Electric's customers.

Mr. O'Donnell provided evidence showing that the Company's claim of lower customer costs due to lower interest rate costs at the expense of a higher ROE is false. See O'Donnell, TR 2382-83. This argument, espoused by Tampa Electric in this case, was debunked by Mr. O'Donnell in his testimony and, subsequent to the hearing, in the FRF's Late-Filed Exhibit 123. The Commission should not be tricked by Tampa Electric's hollow promises. It is an undisputed fact that the cost to ratepayers for the higher cost of equity will far outweigh whatever small benefits that may inure to them in the form of lower interest costs.

The FRF's Late-Filed Exhibit 123 addresses several sensitivity cases, all compiled using cited evidence in the record. The competing positions on this issue are these: the Company claims that a higher ROE may result in sufficient reductions in bond interest to result in a lower overall cost of capital, while the Consumers' witnesses believe that the higher ROE will simply result in overall higher rates to customers. To address this, the FRF's Exhibit 123 evaluates several cases:

> An ROE of 12.0% with long-term interest costs at 6.80%, which is the Company's proposal, compared to:
>
> 1. An ROE of 9.75% and the same interest rate of 6.80%
> 2. An ROE of 9.75% and an interest rate of 7.3% (50 basis point premium for BBB bonds)

3. An ROE of 9.75% and an interest rate of 7.8% (100 basis point premium for BBB bonds)
4. An ROE of 9.75% and an interest rate of 8.8% (200 basis point premium for BBB bonds)

All of the FRF's Exhibit 123 analyses assume that, if the ROE is set at 9.75%, the Company's entire outstanding debt is refinanced instantly at the assumed interest rates. The first case is reasonable because the Company cannot confirm that its bond rating, and thus its interest cost, will change even if the Commission grants it an ROE of 12%. The other three cases all address assumed interest rate differentials: 50 basis points (reasonable per Mr. O'Donnell); 100 basis points (reasonable per the Company's Witness Abbott), and 200 basis points (the high end of the range of 100-200 basis points quoted by Company Witness Gillette).

The only differences in the results of these analyses are in how much money customers save with the lower ROE. With no change in bond rating or the interest rate (Case 1 above), the annual savings for 2009 alone are $67.3 million, and the 5-year savings over the 2009-2013 period (selected because the Company stated that it anticipated its next rate case in 5 years), are $288 million (NPV discounted using the Company's proposed weighted average cost of capital). For the 50-basis-point-premium case, the savings are $60.4 million for 2009 and approximately $257 million (NPV) for 2009-2013. For the 100-basis-point-premium case, the savings are $53.4 million for 2009 and approximately $227.3 million (NPV) for 2009-2013. Finally, for the 200-basis-point-premium case, the savings are $39.5 million for 2009 and $166.7 million (NPV) for 2009-2013.

These results clearly confirm that, in terms of providing customers with adequate, safe, sufficient, and reliable service at the lowest reasonable cost, using the lower ROE value, even making assumptions that are favorable to the Company's position (e.g., instant refinancing of the Company's entire outstanding bonded indebtedness or assuming "instant rate cases" every year),

customers get the most "bang for the buck" from the lower ROE. Together with the Consumers' witnesses' consistent testimony that the lower ROE is sufficient to enable the Company to raise needed capital, see O'Donnell, TR 2364; Herndon, TR 2164-65, and also with Gillette's Exhibit 80 and cross-examination Exhibit 99, which show that utilities with BBB bond ratings have been able to access capital markets about as easily (though at higher interest rates) as those with single-A ratings, it is clear that the Company can raise capital and provide adequate, reliable service with an ROE of 9.75%. See also the Late-Filed Exhibit 123 filed by FIPUG, which shows even more dramatic savings when an ROE of 7.5% is used in the analysis.

The Commission must also recognize that it is inherent in the nature of rule-making that the benefits of lower interest costs, if realized, flow only to the Company until the next rate case. In other words, if the interest rate were to stay at 6.8% as claimed by the Company, the benefit of the lower rate would accrue only to the Company until it has another rate case (which could be another 16 years). And, even if the interest rate increases by 50, 100, or 200 basis points, and even if the Company has a rate case every year for the next 5 years, the extra interest cost would not come close to offsetting the extra equity cost. The customers get the maximum "bang for the buck" from the lower ROE.

F. The Preponderance of the Evidence Supports An ROE At Or Below 9.75%.

Three witnesses, Kevin O'Donnell, a Chartered Financial Analyst with significant real-world money management experience, Randy Woolridge, a distinguished Finance Professor at the Pennsylvania State University, and Tom Herndon, a former member of the Commission and also formerly the Executive Director of the Florida State Board of Administration, addressing the ROE issue differently, all conclude that the appropriate ROE is no greater than 9.75%. Mr. O'Donnell and Prof. Woolridge utilized conventional analytical methods, including the

Discounted Cash Flow method (both), the comparable earnings method (Mr. O'Donnell), and the Capital Asset Pricing Model (Prof. Woolridge) to conclude that the appropriate ROE for Tampa Electric in this case is 9.75%. Mr. Herndon, the only institutional investor testifying in this case, used a more common-sense approach to conclude that an ROE of 7.5% would be adequate to enable the Company to raise needed equity and debt capital.

Other evidence in the case indicates that other utility regulatory commissions – EXH 93 – have recently – in 2008 – been setting rates on the basis of ROEs in the range of 9.75% to 10.25%, with one as low as 9.1%. Whatever else may be true, not merely the preponderance of the evidence, but the vast majority of the competent, substantial evidence in this case supports an ROE for Tampa Electric that is far less than the Company's requested 12.0% after-tax return.

Moreover, while the Commission may ultimately disagree with former Commissioner Herndon's position and analysis, it is not reasonable or credible to suggest that Mr. Herndon's testimony is not "competent and substantial." Mr. Herndon is a uniquely qualified professional, who formerly served as a member of this Commission and as the Executive Director of the Florida State Board of Administration, responsible for managing billions of dollars in state pension funds and other state investments. Herndon, TR 2158-60. Mr. Herndon is also the only "institutional investor" to testify in this case. While Tampa Electric obviously doesn't like his testimony, and while the Commission may give more weight to the other witnesses in this case, Mr. Herndon's testimony must be recognized as competent, substantial evidence.

The Commission has discretion to set an ROE rate between Mr. Herndon's 7.5% and the 9.75% recommended by FRF's Witness O'Donnell and the Citizens' Witness Woolridge. See In Re: Application of Gulf Power Company for Authority to Increase its Rates, 1981 WL 634110 (Docket No. 800001-EU, Order No. 9852) (Mar. 5, 1981). The Commission could set the ROE

at 9.0% or at 8.5%, or at 9.25%, or anywhere else in between.

A 12.0% ROE in today's economy would be contrary to the public interest in that it would harm Tampa Electric's customers by making them pay far more than necessary for the Company to obtain needed capital. Accordingly, rates set on such a high return would be unfair, unjust, and unreasonable, and not supported by the preponderance of the evidence in this case. See O'Donnell, TR 2367, 2385. The Commission should set an ROE for Tampa Electric at or below 9.75%.

**Issue 38**: What is the appropriate weighted average cost of capital for the 2009 projected test year?

**FRF Position**: *No greater than 7.52%.*

**Discussion**

As with ROE, there are different positions on the overall cost of capital, or overall rate of return. The Company wants an 8.82% overall rate of return, including its proposed before-tax return on equity of 19.6%. Mr. O'Donnell recommends an overall rate of return of 7.52%, based on his recommended 9.75% ROE and his recommended capital structure (Issue 34 above). O'Donnell, TR 2372, EXH 78. Prof. Woolridge recommends an overall rate of return of 7.33%, also based on his recommended 9.75% ROE but based on his slightly more debt-weighted capital structure. Woolridge, TR 1856-57. If the Commission were to set Tampa Electric's ROE at 7.5% as recommended by Mr. Herndon, see Herndon, TR 2170, the resulting overall rate of return/cost of capital would be 6.38%. If the Commission were to split the difference between Mr. O'Donnell and Prof. Woolridge in favor of the Company, e.g., at 8.75%, which is more than halfway from Mr. Herndon's primary recommendation to the 9.75% recommended by Mr. O'Donnell and Mr. Woolridge, the resulting overall rate of return would be 6.91%. These values

are calculated by simply substituting the 7.5% and 8.75% values into Mr. Larkin's Exhibit 50, Schedule D-1. These calculations are shown in Exhibit A to this Brief (attached).

**Net Operating Income Including O&M Expenses**

**Storm Reserve Accrual (Issues 16 & 59)**

**Issue 16**: Should an adjustment be made to TECO's requested storm damage reserve, annual accrual and target level?

**Issue 59**: Should an adjustment be made to the accrual for property damage for the 2009 projected test year?

**FRF Position**: *Yes. TECO's requested 400% increase in annual accrual from $4 million to $20 million per year is unnecessary and unreasonable. TECO's accrual should remain at $4 million per year. No increase in the Company's target level for its storm reserve should be allowed.*

**Discussion**

Tampa Electric's request is predicated on and calculated based on the Company's request for a 400% increase in its storm damage accrual, from $4,000,000 per year to $20,000,000 per year, despite the fact that in the 16 years that the Company has had a storm reserve, that storm reserve has never gone negative. Adjusting the Company's request to keep the storm reserve accrual at its current reasonable level of $4,000,000 per year reduces the Company's request by $16,000,000 per year. Larkin, TR 2031-35, 2038

Tampa Electric first implemented a storm reserve in 1994. Carlson, TR 1237. Since that time, the Company's storm reserve has never gone negative. Carlson, TR 1244. The Company presented the testimony of Steven Harris, who endeavored to model what might happen in the event that a hurricane were to strike Tampa Electric's service area. Mr. Harris's model purports to show that the probability is greater than 50-50 that a storm would strike Tampa Electric's service area in any 5-year period with sufficient force to cause the storm reserve to go negative. Unfortunately for Mr. Harris's efforts, the 15-year history of Tampa Electric's storm reserve proves the relative ineffectiveness of his model. Mr. Harris testified that the starting time for the

current cycle of increased tropical activity is 1995. Harris, TR 1308-09. Depending on how one counts, there have been at least three 5-year periods since then, 1995-1999, 1999-2003, and 2003-2007, or as many as ten 5-year periods, i.e., a series of periods beginning with 1995-1999 and continuing through 2004-2008. However, out of all of these periods, and despite Mr. Harris's modeling results, the Company's storm reserve has never gone negative in its history. Carlson, TR 1244. Thus, it is fair to conclude that real world experience indicates that Mr. Harris's model results are shaky at best, and not worthy for the Commission to rely on.

The Company ignored, or at best downplayed, the availability of securitization, which was used successfully by Florida Power & Light Company to finance more than $1 billion of storm restoration costs following the unprecedented 2004 and 2005 storm seasons (during which Tampa Electric's storm reserve did not even go negative). The Company similarly ignored or downplayed the Commission's prompt action in approving "non-securitized" storm surcharges for FPL, Progress Energy Florida, and Gulf Power Company following storms in 2004 and 2005. The Company downplayed – or at best gave little credence to – the clear fact that the Commission has consistently acted to ensure both that Florida utilities impacted by hurricanes and tropical storms have the capacity to restore service and also to ensure that the utilities under the Commission's jurisdiction timely recover their reasonable and prudent costs of restoring service following a major storm.

From the perspective of customers, the Company's claim that it doesn't want to have to seek a surcharge after a hurricane or tropical storm strike, because it doesn't want to impose that burden on customers who are already reeling from the storm's impact, see Carlson, TR 1210-11, simply doesn't hold water. This argument - from a Company that is seeking an increase in its base rates, on top of substantial recent increases in its Fuel Cost Recovery Charges and other surcharges (EXH 92) – is belied by the Company's disregard for the fact that its customers are presently hurting from the economic turmoil afflicting the nation, all of Florida, and Tampa Electric's service area in particular: Hillsborough County ranks 13th among metropolitan areas in the country in home foreclosures. EXH 91. Its customers are surely hurting now, but Tampa

Electric feels no compunction about raising its rates significantly in January 2009 (EXH 92: the Company's basic residential 1,000 kWh/month bill increased by 12.3% in January) and now, on the heels of those increases, proposing to pile on additional increases in May 2009. Tampa Electric's claim to be concerned about "customers hurting after a storm" is simply not credible.

**Incentive Compensation Plan**

**Issue 52**: Should operating expense be reduced to remove the cost of TECO's incentive compensation plan?

**FRF Position**: *Yes. Agree with OPC that TECO's incentive compensation plan is not structured to ensure that it benefits TECO's captive customers, and accordingly, the entire $11,233,952 (jurisdictional) should be removed.*

**Discussion**

The Company has asked its customers to foot an $11.2 million a year bill for an incentive compensation plan that does not benefit customers, and that is not structured to benefit customers. Accordingly, the Commission should reject the Company's proposal. In addition to preventing customers from paying for something that provides them no value, which would obviously result in rates being unfair, unjust, and unreasonable, it would send a clear policy message to other Florida utilities that they need to run their companies to serve customers.

The Company's Witness Dianne Merrill testified that, under the Company's plan, the Company's management and officers would not receive any incentive pay on the basis of the Company reducing its retail rates. TR 1186-87. She further testified that she is not aware of the Company having any corporate goals to be among the lower rate charging investor-owned utilities in Florida. TR 1187. Although the Company zeroes out all bonuses if TECO Energy's income threshold for a given year is not achieved, TR 1187-88, there is no corresponding zeroing out of incentive pay (bonuses) if Tampa Electric has the highest rates of any utility in Florida, or if the Company fails to meet any reliability target. TR 1188-89.

The Citizens' Witness Helmuth Schultz also testified extensively as to the shortcomings of the Company's incentive pay program from the perspective of serving customers' needs. TR 2076-2084. As one example, in 2005, the Company's results showed that the Company failed to meet five out of seven targets – the safety target, the environmental target, the SAIDI target (a reliability measure), the cost recovery clause target, and Tampa Electric's net income target – but still recorded incentive compensation expense that was 49 percent greater than the target incentive amount for the year. TR 2080. This is contrary to the public interest and to the interests of Tampa Electric's customers, and the Commission should deny recovery of the Company's incentive compensation expense: if the Company wants to reward its employees for making the Company profitable, that is surely its prerogative, but it would be bad public policy to force customers to bear those costs.

**Rate Case Expense**

**Issue 63**: What is the appropriate amount and amortization period for TECO's rate case expense for the 2009 projected test year?

**FRF Position:** *The appropriate amount of rate case expense is $1,905,000, which reflects the effects of removing the costs for J.M. Cannell and Susan Abbott, and the difference between the Huron Consulting contract amount of $468,000 and the $1.31 million requested by TECO. Especially in light of the relative infrequency of TECO's general rate cases, the appropriate amortization period is five years.*

**Discussion**

Mr. O'Donnell recommended that the Commission disallow the $290,000 in rate case expenses sought for Ms. Abbott's services in this case. O'Donnell, TR 2383-84. As Mr. O'Donnell testified, Ms. Abbott does not provide a rate of return or capital structure recommendation in this case. Ms. Abbott's testimony is nothing more than window dressing to support the Company's requested return on equity of 12.0%. O'Donnell, TR 2383-84.

Moreover, the Company's prudence in agreeing to pay Ms. Abbott such excessive fees is called into question by evidence of her fees in another recent case: not only is the $290,000 total fee, including at least $225,000 in fees for services plus costs, sought by the Company for Ms. Abbott's services in this case clearly excessive relative to whatever value it provides, but evidence in the record shows that Ms. Abbott's fees for presenting very similar testimony in Oklahoma two years ago was a fraction of what Tampa Electric is seeking in this case, $25,000 plus $4,000 per month for the Oklahoma testimony as compared to $25,000 per month for the Tampa Electric case. Abbott, TR 637-38. The Company should at least have bargained better, and its failure to do so, which resulted in costs that are approximately 4 times as great as Ms. Abbott's charges in the Oklahoma case, was imprudent. (In the Tampa Electric case, 9 months @ $25,000 = $225,000; in the Oklahoma case, $25,000 plus 9 months @ $4,000 = $61,000; $225,000 divided by $61,000 = 3.7 times the cost.)

The rate case expense sought by Tampa Electric for the testimony of Ms. Abbott is symptomatic of its entire request in this case. Ms. Abbott's testimony is unnecessary, lacking of substance, and unreasonably and imprudently expensive.

The Commission should also disallow the costs for Huron Consulting's services above the original contract price of $468,000. Schultz, TR 2102.

On cross-examination, the Company's Witness Alan Felsenthal was asked what he did in connection with this rate case, besides preparing his testimony. His complete answer is reproduced here (TR 1393, lines 12-16):

> A Among other things, I attended meetings, I reviewed the MFRs, I worked with the company on responses to data requests. I, I or Huron helped or discussed various positions or ways to respond to data requests and rebuttal

testimony. An assortment of items.

Mr. Felsenthal went on to testify that he sponsored or co-sponsored a total of seven (7) MFR schedules. Among those, he sponsored the Company's tax returns, although he did not prepare them, and although Huron is not the Company's corporate accounting firm. TR 1393.

The Commission must reach its own conclusions, but this testimony is not competent, substantial evidence to support asking customers to pay Huron $842,000 more than the original contract price. The Commission should only allow the Company to recover from customers the initial contract price of $468,000.

**Annualization of Costs for Facilities That Are Not In Service For the Entire Test Year**

**Issue 71**: Is the pro forma adjustment related to the annualization of five simple cycle combustion turbine units to be placed in service in 2009 appropriate?

**FRF Position:** *No. TECO's proposed annualization is not appropriate because it would require the Company's captive customers to pay an entire year's worth of costs for assets that will be used and useful for only parts of the Company's requested 2009 test year.*

**Discussion**

As discussed above, allowing the Company to annualize the costs of the CTs would violate one of the fundamental principles of rate regulation, namely that facilities must be used and useful in providing public utility service in order to be eligible for cost recovery. See Fla. Stat. § 366.06(1). Accordingly, the Commission should remove the O&M expense, depreciation expense, and Taxes Other Than Income Taxes associated with these CTs. These adjustments, assuming that the units come on line as previously projected, 2 CTs in May and 3 CTs in September, reduce the Company's test year expenses by $11,748,000. Larkin, TR 2010-14, 2016-17; EXH 50, Schedule C-1, page 2.

Moreover, as discussed under Issue 5 above, the Commission should remove all costs

associated with the 3 September CTs from the test year, because the Company's president has testified that the Company is presently reconsidering whether to bring those units on line during the 2009 test year. Black, TR 106-107. This reduces the Company's original request to at best an outdated projection that has been overtaken by events. An earlier projection of these 3 CTs coming on line, in the face of the Company's president's own testimony, is not competent, substantial evidence that these 3 CTs should be included in the Company's rate base for ratemaking purposes in the Company's requested 2009 test year.

Accordingly, the Commission should remove additional O&M costs, depreciation expense, and Taxes Other Than Income Taxes associated with the 3 September CTs on a proportionate basis. Removing the May CTs and the September CTs for the parts of the test year for which they were originally not expected to be in service reduces these expense items by a total of $11,748,000. Larkin, EXH 50, Schedule C-1, page 2. Assuming reasonably that the five CTs are similar and thus that they have similar costs, the original adjustments reflect the removal of a total of 32 unit-months from the test year: the 2 May CTs removed for 4 months each (2 units x 4 months = 8 unit-months removed), and the 3 September CTs removed for 8 months each (3 units x 8 months = 24 unit-months removed). Making the logical adjustment to remove the 3 September CTs for the entire test year would result in a total of 44 unit-months being removed ((2 x 4) + (3 x 12) = 44). The ratio of 44 to 32 is simply 1.375, so the effect of removing these units is to remove an additional $4,405,000 of combined O&M, depreciation, and Taxes Other Than Income Taxes from the Company's test year expenses. (.375 x $11,748,000 = $4,405,500).

**Issue 72**: Is the pro forma adjustment related to the annualization of rail facilities to be placed in service in 2009 appropriate?

**FRF Position**: *No. TECO's proposed annualization is not appropriate because it would require the Company's captive customers to pay an entire year's worth of costs for an asset that will only be in service for one month of the Company's requested 2009 test year.*

**Discussion**

For the same reasons as discussed with regard to the CTs above, the Commission must disallow $1,945,000 of test year expenses - $906,000 of depreciation and $1,036,000 of Taxes Other Than Income Taxes - associated with the rail facilities. Larkin, TR 2014-15. The FRF uses the word "must" advisedly and intentionally, because allowing the Company's annualization would wrongfully require customers to pay an entire year's worth of costs for facilities that are only used and useful for 1 month of the test year.

**REVENUE REQUIREMENTS**

**Issue 80**: Is TECO's requested annual operating revenue increase of $228,167,000 for the 2009 projected test year appropriate?

**FRF Position**: *No. Considering the fair, just, and reasonable rate of return on equity, capital structure, and expenses for the Company, the Commission should not allow TECO to increase its base rates by any more than $39 million, less the appropriate rate base and expense adjustments to remove the 3 September CTs from the Company's revenue requirements altogether.*

The impact of all of the rate base and cost of capital decisions in this case, assuming the rate base reductions demonstrated by the Citizens' witnesses, removing the 3 September CTs from the test year Rate Base altogether, and further making the Citizens' recommended adjustments in expenses, is shown below.

Company – 12.0% ROE, Company capital structure - $107.5 million/year increase
O'Donnell – 9.75% ROE, O'Donnell capital structure - $35.9 million/year increase
Woolridge – 9.75% ROE, Woolridge capital structure - $25.5 million/year increase
Herndon - 7.5% ROE, Woolridge capital structure – $26.7 million/year DECREASE
"Compromise" at 8.75% ROE, Woolridge capital structure – $2.4 million/year increase

Thus, the competent substantial evidence of record would support an actual rate decrease

of more than $25 million per year, as well as increases ranging from $2.4 million per year to $35.9 million per year. The FRF (and, we believe, the other Consumer-Intervenors) strongly believes that the preponderance of the evidence supports all of the rate base and expense adjustments made by the Citizens' witnesses, as well as supporting the Commission's using an ROE no greater than 9.75% for Tampa Electric in this case.

## THE FLORIDA RETAIL FEDERATION'S STATEMENT OF ISSUES AND POSITIONS

### TEST PERIOD

**Issue 1**: Is TECO's projected test period of the 12 months ending December 31, 2009 appropriate?

**FRF Position**: *This issue was stipulated between the Company and the Staff; the FRF does not oppose the stipulation.*

**Issue 2**: Are TECO's forecasts of Customers, KWH, and KW by Rate Class for the 2009 projected test year appropriate?

**FRF Position**: *No position.*

### QUALITY OF SERVICE

**Issue 3**: Is the quality of electric service provided by TECO adequate?

**FRF Position**: *No.*

### RATE BASE

**Issue 4**: Has TECO removed all non-utility activities from rate base?

**FRF Position**: *Agree with OPC.*

**Issue 5**: Is the pro forma adjustment related to the annualization of five simple cycle combustion turbine units to be placed in service in 2009 appropriate?

**FRF Position**: *No. TECO's proposed annualization is not appropriate because it would, at best, cause customers to pay an entire year's revenue requirement for assets that are only used and useful for part of the test year, and 3 of the CTs may not be in service during 2009 at all.*

**Issue 6**: Should an adjustment be made for the credit from CSX for the Big Bend Rail Project?

**FRF Position**: *Yes. Agree with OPC.*

**Issue 7**: Is the pro forma adjustment related to the annualization of the Big Bend Rail Project to be placed into service in December 2009 appropriate?

**FRF Position**: *No. TECO's proposed annualization is not appropriate because it would require the Company's captive customers to pay an entire year's worth of costs for an asset that will only be in service for one month of the Company's requested 2009 test year.*

**Issue 8**: Should any adjustments be made to TECO's projected level of plant in service?

**FRF Position**: *Yes. Pending the development of additional evidence, the FRF agrees with OPC that jurisdictional Plant in Service should be reduced by $51,969,000 (total Company reduction of $53,958,000). Correspondingly, jurisdictional depreciation and amortization should be reduced by $8,187,000.*

**Issue 9**: Should TECO's requested increase in plant in service for the customer information system be approved?

**FRF Position**: *No. TECO's request should be denied, reducing rate base by $2,445,000 (and correspondingly reducing depreciation expense by $558,000 for the test year).*

**Issue 10**: Is TECO's requested level of Plant in Service in the amount of $5,483,474,000 for the 2009 projected test year appropriate?

**FRF Position**: *No. The amount should reflect the adjustments recommended by OPC's witnesses in this case.*

**Issue 11**: Is TECO's requested level of accumulated depreciation in the amount of $1,934,489,000 for the 2009 projected test year appropriate?

**FRF Position**: *No. Agree with OPC that the Company's accumulated depreciation is overstated by $8,187,000 on a jurisdictional basis.*

**Issue 12**: Have all costs recovered through the Environmental Cost Recovery Clause been removed from rate base for the 2009 projected test year?

**FRF Position**: *No. Agree with OPC.*

**Issue 13**: Is TECO's requested level of Construction Work in Progress in the amount of $101,071,000 for the 2009 projected test year appropriate?

**FRF Position**: *No. Agree with OPC.*

**Issue 14**: Is TECO's requested level of Property Held for Future Use in the amount of $37,330,000 for the 2009 projected test year appropriate?

**FRF Position**: *No. Agree with OPC that PHFFU should be decreased by $2,328,354 on a jurisdictional basis.*

**Issue 15**: Should an adjustment be made to TECO's requested deferred dredging cost?

**FRF Position**: *Yes. Agree with OPC that the Company's deferred dredging cost balance of $2,657,000 (jurisdictional) and related dredging operating expense of $1,330,000 should be removed.*

**Issue 16**: Should an adjustment be made to TECO's requested storm damage reserve, annual accrual and target level?

**FRF Position**: *Yes. TECO's requested 400% increase in annual accrual from $4 million to $20 million per year is unnecessary and unreasonable. TECO's accrual should remain at $4 million per year, and its target level of $55 million should remain unchanged.*

**Issue 17**: Should an adjustment be made to prepaid pension expense in TECO's calculation of working capital?

**FRF Position**: *Yes. Agree with OPC.*

**Issue 18**: Should an adjustment be made to working capital related to Account 143-Other Accounts Receivable?

**FRF Position**: *Yes. Agree with OPC that $10,959,000 should be removed on a jurisdictional basis.*

**Issue 19**: Should an adjustment be made to working capital related to Account 146-Accounts Receivable from Associated Companies?

**FRF Position**: *Yes. Agree with OPC that the entire balance of $6,309,000 in Account 146 should be excluded.*

**Issue 20**: Should an adjustment be made to rate base for unfunded Other Post-retirement Employee Benefit (OPEB) liability?

**FRF Position**: *Yes. Agree with OPC.*

**Issue 21**: Should an adjustment be made to TECO's coal inventories?

**FRF Position**: *Yes. The cost value of the Company's fuel stock should be reduced by 10% to reflect reductions in coal, oil, and other fuel prices that have likely occurred since the Company filed its case.*

**Issue 22**: Should an adjustment be made to TECO's residual oil inventories?

**FRF Position**: *Yes. The cost value of the Company's fuel stock should be reduced by 10% to reflect reductions in coal, oil, and other fuel prices that have likely occurred since the Company filed its case.*

**Issue 23**: Should an adjustment be made to TECO's distillate oil inventories?

**FRF Position**: *Yes. The cost value of the Company's fuel stock should be reduced by 10% to reflect reductions in coal, oil, and other fuel prices that have likely occurred since the Company filed its case.*

**Issue 24**: Should an adjustment be made to TECO's natural gas and propane inventories?

**FRF Position**: *Yes. The cost value of the Company's fuel stock should be reduced by 10% to reflect reductions in coal, oil, and other fuel prices that have likely occurred since the Company filed its case.*

**Issue 25**: Has TECO properly reflected the net overrecoveries or net underrecoveries of fuel and conservation expenses in its calculation of working capital?

**FRF Position**: *This issue was stipulated between the Company and the Staff; the FRF does not oppose the stipulation.*

**Issue 26**: Should unamortized rate case expense be included in Working Capital?

**FRF Position**: *Agree with OPC.*

**Issue 27**: Is TECO's requested level of Working Capital in the amount of ($30,586,000) for the 2009 projected test year appropriate?

**FRF Position**: *No. Working Capital should reflect the adjustments recommended by the Citizens in this proceeding.*

**Issue 28**: Is TECO's requested rate base in the amount of $3,656,800,000 for the 2009 projected test year appropriate?

**FRF Position**: *No. The Company's rate base should reflect the adjustments recommended by the Citizens in this proceeding.*

## COST OF CAPITAL

**Issue 29**: What is the appropriate amount of accumulated deferred taxes to include in the capital structure for the 2009 projected test year?

**FRF Position**: *The appropriate amount of deferred taxes is $302,744,000 per the testimony of FRF witness O'Donnell.*

**Issue 30**: What is the appropriate amount and cost rate of the unamortized investment tax credits to include in the capital structure for the 2009 projected test year?

**FRF Position:** *The appropriate amount of unamortized investment tax credits is $8,780,000 per the testimony of FRF witness O'Donnell, with a cost rate of 8.27%.*

**Issue 31**: What is the appropriate amount and cost rate for short-term debt for the 2009 projected test year?

**FRF Position:** * The appropriate amount of short-term debt is $8,002,000 per the testimony of FRF witness O'Donnell, with a cost rate of 4.63%.*

**Issue 32**: Should TECO's requested pro forma adjustment to equity to offset off-balance sheet purchased power obligations be approved?

**FRF Position:** *No. The Company's imputed debt adjustment for power purchase agreements is speculative, is not based on any realistic risk, and is not supported by any witness who testified to the methodology or its alleged reasonableness. The Commission should reject it and reduce the Company's revenues by $5 million per year.*

**Issue 33**: What is the appropriate amount and cost rate for long-term debt for the 2009 projected test year?

**FRF Position:** *Based on the Company's proposed rate base, the appropriate amount of Long-Term Debt would be $1,624,563,000, and the appropriate cost rate is 6.81%. However, this amount should be reduced to reflect Witness O'Donnell's capital structure and the lower rate base supported by OPC's witnesses and discussed elsewhere herein.*

**Issue 34**: What is the appropriate capital structure for the 2009 projected test year?

**FRF Position:** *The appropriate structure for the 2009 test year is 44.43% Long-Term Debt, 44.00% Common Equity, 8.28% Deferred Income Taxes, 0.22% Short-Term Debt, 2.84% Customer Deposits, and 0.24% Tax Credits, as indicated in Mr. Kevin O'Donnell's testimony and exhibits.*

**Issue 35**: Does TECO's requested return on common equity appropriately consider current economic conditions? [FIPUG Issue]

**This issue has been dropped.**

**Issue 36**: Does TECO's requested return on common equity appropriately consider its recovery of funds via the Commission's various cost recovery clauses? [FIPUG Issue]

**This issue has been dropped.**

**Issue 37**: What is the appropriate return on common equity for the 2009 projected test year?

**FRF Position**: *No greater than 9.75%.* (O'Donnell, Woolridge, Herndon)

**Issue 38**: What is the appropriate weighted average cost of capital for the 2009 projected test year?

**FRF Position**: *No greater than 7.52%.* (O'Donnell)

## NET OPERATING INCOME

**Issue 39**: Is TECO's projected level of Total Operating Revenues in the amount of $865,359,000 for the 2009 projected test year appropriate?

**FRF Position**: *No. The amount should reflect the adjustments recommended by OPC in this case.*

**Issue 40**: What are the appropriate inflation factors for use in forecasting the test year budget?

**FRF Position**: *This issue was stipulated between the Company and the Staff; the FRF does not oppose the stipulation.*

**Issue 41**: Is TECO's requested level of O&M Expense in the amount of $370,934,000 for the 2009 projected test year appropriate?

**FRF Position**: *No. The amount should reflect the adjustments recommended by OPC in this case.*

**Issue 42**: Has TECO made the appropriate test year adjustments to remove fuel and purchased power revenues and expenses recoverable through the Fuel and Purchased Power Cost Recovery Clause?

**FRF Position**: *This issue was stipulated between the Company and the Staff; the FRF does not oppose the stipulation.*

**Issue 43**: Has TECO made the appropriate test year adjustments to remove conservation revenues and expenses recoverable through the Conservation Cost Recovery Clause?

**FRF Position**: *This issue was stipulated between the Company and the Staff; the FRF does not oppose the stipulation.*

**Issue 44**: Has TECO made the appropriate test year adjustments to remove capacity revenues and expenses recoverable through the Capacity Cost Recovery Clause?

**FRF Position**: *This issue was stipulated between the Company and the Staff; the FRF does not oppose the stipulation.*

**Issue 45**: Has TECO made the appropriate test year adjustments to remove environmental revenues and expenses recoverable through the Environmental Cost Recovery Clause?

**FRF Position**: *This issue was stipulated between the Company and the Staff; the FRF does not oppose the stipulation.*

**Issue 46**: Should an adjustment be made to advertising expenses for the 2009 projected test year?

**FRF Position**: *Yes.*

**Issue 47**: Has TECO made the appropriate adjustments to remove lobbying expenses from the 2009 projected test year?

**FRF Position**: *No. The amount should reflect the adjustments recommended by OPC in this case.*

**Issue 48**: Should an adjustment be made to TECO's requested level of Salaries and Employee Benefits for the 2009 projected test year?

**FRF Position**: *Yes. Agree with OPC that TECO's Salaries and Employee Benefits for the test year should be reduced by $6,979,317 on a jurisdictional basis, as

follows: $3,568,109 in payroll, $1,991,000 in 401K plan expense, and $1,420,208 in employee benefits.*

**Issue 49**: Should an adjustment be made to Other Post Employment Benefits Expense for the 2009 projected test year?

**FRF Position:** *Yes. Agree with OPC as to the appropriate amounts of adjustments.*

**Issue 50**: Should operating expense be reduced to take into account budgeted positions that will be vacant?

**FRF Position:** *Yes. Agree with OPC.*

**Issue 51**: Should operating expense be reduced to take into account TECO's initiatives to improve service reliability?

**FRF Position:** *Yes. Agree with OPC.*

**Issue 52**: Should operating expense be reduced to remove the cost of TECO's incentive compensation plan?

**FRF Position:** *Yes. Agree with OPC that TECO's incentive compensation plan is not structured to ensure that it benefits TECO's captive customers, and accordingly, the entire $11,233,952 (jurisdictional) should be removed.*

**Issue 53**: Should operating expense be reduced to take into account new generating units added that are maintained under contractual service agreements?

**FRF Position:** *Yes. Agree with OPC.*

**Issue 54**: Should an adjustment be made to TECO's generation maintenance expense?

**FRF Position:** *Yes. See also Issue 69. The Company's generation maintenance expense should be reduced by between $7,710,000 and $8,173,000 per year on a jurisdictional basis.*

**Issue 55**: Should an adjustment be made to TECO's substation preventive maintenance expense?

**FRF Position**: Yes. The Company's substation preventive maintenance expense should be reduced by $973,201 on a jurisdictional basis.

**Issue 56**: Should an adjustment be made to TECO's request for Dredging expense?

**FRF Position**: *Yes. The Company's operating expenses should be reduced by $1,330,000 (jurisdictional).*

**Issue 57**: Should an adjustment be made to TECO's Economic Development Expense?

**FRF Position**: *Yes.*

**Issue 58**: Should an adjustment be made to Pension Expense for the 2009 projected test year?

**FRF Position**: *Yes.*

**Issue 59**: Should an adjustment be made to the accrual for property damage for the 2009 projected test year?

**FRF Position**: *Yes. See also Issue 16. The Company's storm damage accrual should remain at $4,000,000 per year, and the Company's reserve target level should remain unchanged.*

**Issue 60**: Should an adjustment be made to the accrual for the Injuries & Damages reserve for the 2009 projected test year?

**FRF Position**: *Yes.*

**Issue 61**: Should an adjustment be made to remove TECO's requested Director's & Officer's Liability Insurance expense?

**FRF Position**: *Yes. Agree with OPC that this expense is not reasonable or prudent in that it does not provide benefit to TECO's captive customers, but rather only to TECO's shareholders. Agree with OPC that the entire amount of $1,605,815 (jurisdictional) should be removed.*

**Issue 62**: Should an adjustment be made to reduce meter expense (Account 586) and meter reading expense (Account 902)?

**FRF Position**: *Yes.*

**Issue 63**: What is the appropriate amount and amortization period for TECO's rate case expense for the 2009 projected test year?

**FRF Position:** *The appropriate amount of rate case expense is $1,905,000, which reflects the effects of removing the costs for J.M. Cannell and Susan Abbott, and the difference between the Huron Consulting contract amount of $468,000 and the $1.31 million requested by TECO. Especially in light of the relative infrequency of TECO's general rate cases, the appropriate amortization period is five years. The appropriate annual rate case expense is $381,000.*

**Issue 64**: Should an adjustment be made to Bad Debt Expense for the 2009 projected test year?

**FRF Position**: *Yes. The Company's Bad Debt Expense should be reduced by $2,342,000 per year (jurisdictional) as recommended by OPC's witnesses.*

**Issue 65**: Should an adjustment be made to office supplies and expenses for the 2009 projected test year?

**FRF Position**: *Yes. The Company's requested amount should be reduced by $2,295,000 on a jurisdictional basis.*

**Issue 66**: Should an adjustment be made to reduce TECO's tree trimming expense for the 2009 projected test year?

**FRF Position**: *Yes. Agree with OPC and Staff that the Company's requested amount should be reduced by $3,988,568 on a jurisdictional basis.*

**Issue 67**: Should an adjustment be made to reduce TECO's pole inspection expense for the 2009 projected test year?

**FRF Position**: *Yes. The Company's requested amount should be reduced by $236,013 on a jurisdictional basis.*

**Issue 68**: Should an adjustment be made to reduce TECO's transmission inspection expense for the 2009 projected test year?

**FRF Position**: *Yes. The Company's requested amount should be reduced by $268,233 on a jurisdictional basis.*

**Issue 69**: Should an adjustment be made to O&M expenses to normalize the number of outages TECO has included in the 2009 projected test year?

**FRF Position**: *Yes. See also Issue 54. The Company's generation maintenance expense should be reduced by between $7,710,000 and $8,173,000 per year on a jurisdictional basis.*

**Issue 70**: Is the pro forma adjustment related to amortization of CIS costs associated with required rate case modifications appropriate?

**FRF Position**: *No. The Company's proposed CIS upgrade cost of $2,445,000 should be denied and depreciation expense decreased by $558,000.*

**Issue 71**: Is the pro forma adjustment related to the annualization of five simple cycle combustion turbine units to be placed in service in 2009 appropriate?

**FRF Position**: *No. TECO's proposed annualization is not appropriate because it would require the Company's captive customers to pay an entire year's worth of costs for assets that will be used and useful for only parts of the Company's requested 2009 test year, if at all.*

**Issue 72**: Is the pro forma adjustment related to the annualization of rail facilities to be placed in service in 2009 appropriate?

**FRF Position**: *No. TECO's proposed annualization is not appropriate because it would require the Company's captive customers to pay an entire year's worth of costs for an asset that will only be in service for one month of the Company's requested 2009 test year.*

**Issue 73**: Should any adjustments be made to the 2009 test year depreciation expense to reflect the depreciation rates approved by the Commission in Docket No. 070284-EI?

**FRF Position**: *Yes. Although the depreciation rates from Docket No. 070284-EI may not be at issue, the FRF agrees with OPC that depreciation expense should

be reduced by the amounts annualized by the Company (and removed altogether for depreciation associated with the 3 September CTs), the CIS upgrade, and the overstatement of the depreciation reserve.*

**Issue 74**: What is the appropriate amount of Depreciation Expense for the 2009 projected test year?

**FRF Position**: *No position at this time with regards to the specific amount. The appropriate amount of Depreciation Expense must reflect the adjustments recommended by OPC's witnesses in this proceeding.*

**Issue 75**: Should an adjustment be made to Taxes Other Than Income Taxes for the 2009 projected test year?

**FRF Position**: *Yes. Agree with OPC that Taxes Other Than Income Taxes must be adjusted to reflect the removal of the Company's proposed annualization of the 5 CTs and the rail facilities, and further reduced to remove all Taxes Other Than Income Taxes associated with the 3 September CTs because the Company cannot confirm that those units will be in service at all during the 2009 test year.*

**Issue 76**: Is it appropriate to make a parent debt adjustment as per Rule 25-14.004, Florida Administrative Code?

**FRF Position**: *If the Commission adopts the position explained by the FRF's witness Kevin O'Donnell, then no parent debt adjustment is necessary. If the Commission does not approve Mr. O'Donnell's position, then the Commission should make a parent debt adjustment as advocated by the Public Counsel.*

**Issue 77**: Should an adjustment be made to Income Tax expense for the 2009 projected test year?

**FRF Position**: *Yes. Agree with OPC that, while the final amount is subject to the resolution of other issues, the Company's income tax expense should be adjusted by approximately $32,910,000, including an interest synchronization adjustment.*

**Issue 78**: Is TECO's projected Net Operating Income in the amount of $182,970,000 for the 2009 projected test year appropriate?

**FRF Position**: *No. The Company's projected Net Operating Income should be adjusted to reflect all applicable adjustments recommended by OPC's witnesses in this proceeding.*

## REVENUE REQUIREMENTS

**Issue 79**: What is the appropriate 2009 projected test year net operating income multiplier for TECO?

**FRF Position**: *Agree with OPC that the appropriate test year net operating income multiplier is 1.633202.*

**Issue 80**: Is TECO's requested annual operating revenue increase of $228,167,000 for the 2009 projected test year appropriate?

**FRF Position**: *No. Considering the fair, just, and reasonable rate of return on equity, capital structure, and expenses for the Company, the Commission should not allow TECO to increase its base rates by any more than $39 million, less the appropriate rate base and expense adjustments to remove the 3 September CTs from the Company's revenue requirements altogether.*

## RATE ISSUES

**Issue 81**: Did the utility correctly calculate the projected revenues at existing rates?

**FRF Position**: *This issue was stipulated between the Company and the Staff; the FRF does not oppose the stipulation.*

**Issue 82**: Is TECO's proposed Jurisdictional Separation Study appropriate?

**FRF Position**: *This issue was stipulated between the Company and the Staff; the FRF does not oppose the stipulation.*

**Issue 83**: What is the appropriate retail Cost of Service methodology to be used to allocate base rate and cost recovery costs to rate classes?

**FRF Position**: *No position.*

**Issue 84**: Should the investment and expenses related to the Polk Unit 1 gasifier and the environmental costs of the Big Bend Unit scrubber be classified as energy or demand?

**FRF Position**: *No position.*

**Issue 85**: Is TECO's calculation of unbilled revenues correct?

**FRF Position**: *This issue was stipulated between the Company and the Staff; the FRF does not oppose the stipulation.*

**Issue 86**: What is the appropriate allocation of any change in revenue requirements?

**FRF Position**: *Any increase or decrease in base rate revenues should be allocated across-the-board in proportion to base rate revenues.*

**Issue 87**: Should the interruptible rate schedules IS-1, IS-3, IST-1, IST-3, SBI-1 and SBI-3 be eliminated? If so, how should rates for customers currently taking service on interruptible rate schedules be designed, including whether a credit approach is appropriate, and if so, how should such an approach be implemented?

**FRF Position**: *These rate schedules should not be eliminated. No position on design of the rates.*

**Issue 88**: Should the GSD, GSLD and IS rate schedules be combined under a single GSD rate schedule?

**FRF Position**: *No position.*

**Issue 89**: Is the change in the breakpoint from 49 kW to 9,000 kWh between the GS and GSD rate schedules appropriate?

**FRF Position**: *This issue was stipulated between the Company and the Staff; the FRF does not oppose the stipulation.*

**Issue 90**: What is the appropriate meter level discount to be applied for billing, and to what billing charges should that discount be applied?

**FRF Position**: *This issue was stipulated between the Company and the Staff; the FRF does not oppose the stipulation.*

**Issue 91**: Should an inverted base energy rate be approved for the RS rate schedule?

**FRF Position**: *No position.*

**Issue 92**: Should the existing RST rate schedule be eliminated and the customers currently taking service under the schedule be transferred to service under the RS or RSVP rate schedule?

**FRF Position**: *This issue was stipulated between the Company and the Staff; the FRF does not oppose the stipulation.*

**Issue 93**: Should TECO's proposed single lighting schedule, and associated charges, terms, and conditions be approved?

**FRF Position**: *No position.*

**Issue 94**: Are the two new convenience service connection options and associated connection charges appropriate?

**FRF Position**: *No position.*

**Issue 95**: Are TECO's proposed Reconnect after Disconnect charges at the point of metering and at a point distant from the meter appropriate?

**FRF Position**: *No position.*

**Issue 96**: Is the proposed new meter tampering charge appropriate?

**FRF Position**: *This issue was stipulated between the Company and the Staff; the FRF does not oppose the stipulation.*

**Issue 97**: Is the proposed new $5 minimum late payment charge appropriate?

**FRF Position**: *No position.*

**Issue 98**: What are the appropriate service charges (initial connection, normal reconnect subsequent subscriber, field credit visit, return check)?

**FRF Position**: *No position.*

**Issue 99**: What is the appropriate temporary service charge?

**FRF Position:** *No position.*

**Issue 100**: What are the appropriate customer charges?

**FRF Position:** *The appropriate customer charges are the existing charges, adjusted proportionally to any increase or decrease in base rate revenues approved by the Commission in this proceeding.*

**Issue 101**: What are the appropriate demand charges?

**FRF Position:** The appropriate demand charges are the existing charges, adjusted proportionally to any increase or decrease in base rate revenues approved by the Commission in this proceeding.

**Issue 102**: What are the appropriate Standby Service charges?

**FRF Position:** *The appropriate Standby Service charges are the existing charges, adjusted proportionally to any increase or decrease in base rate revenues approved by the Commission in this proceeding.*

**Issue 103**: Is TECO's proposed change in the application of the transformer ownership discount appropriate?

**FRF Position:** *Agree with FIPUG.*

**Issue 104**: What is the appropriate transformer ownership discount to be applied for billing?

**FRF Position:** *Agree with FIPUG.*

**Issue 105**: What are the appropriate emergency relay service charges?

**FRF Position:** *No position at this time.*

**Issue 106**: What are the appropriate contributions in aid for time of use rate customers opting to make a lump sum payment for a time-of-use meter in lieu of a higher time-of-use customer charge?

**FRF Position**: *This issue was stipulated between the Company and the Staff; the FRF does not oppose the stipulation.*

**Issue 107**: What are the appropriate energy charges?

**FRF Position**: *The appropriate energy charges are the existing charges, adjusted proportionally to any increase or decrease in base rate revenues approved by the Commission in this proceeding.*

**Issue 108**: What changes in allocation and rate design should be made to TECO's rates established in Docket Nos. 080001-EI, 080002-EG, and 080007-EI to recognize the decisions in various cost of service rate design issues in this docket?

**FRF Position**: *This issue was stipulated between the Company and the Staff; the FRF does not oppose the stipulation.*

**Issue 109**: What are the appropriate monthly rental factor and termination factors to be approved for the Facilities Rental Agreement, Appendix A?

**FRF Position**: *No position.*

**Issue 110**: Is it appropriate to establish a customer specific rate schedule for county (K-12) public schools in this proceeding?

**FRF Position**: *No position.*

**Issue 111**: What is the appropriate effective date for the rates and charges established in this proceeding?

**FRF Position**: *This issue was stipulated between the Company and the Staff; the FRF does not oppose the stipulation.*

## OTHER ISSUES

**Issue 112**: Should TECO's request to establish a Transmission Base Rate Adjustment mechanism be approved?

**FRF Position**: *No. Transmission-related costs are base rate-type costs that should be incorporated into, and recovered through, base rates. Particularly in light of the long time frame required to plan and construct transmission facilities, these costs should be recovered through base rates after all relevant factors are considered in a base rate proceeding.*

**Issue 113**: Should TECO be required to file, within 90 days after the date of the final order in this docket, a description of all entries or adjustments to its annual report, rate of return reports, and books and records which will be required as a result of the Commission's findings in this rate case?

**FRF Position**: *This issue was stipulated between the Company and the Staff; the FRF does not oppose the stipulation.*

**Issue 114**: Should this docket be closed?

**FRF Position**: *Yes.*

Respectfully submitted this 17th day of February 2009.

S/Robert Scheffel Wright
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PSC DOCKET NO. 080317-EI
TAMPA ELECTRIC RATE CASE

BRIEF OF THE
FLORIDA RETAIL FEDERATION

EXHIBIT A

Exhibit A to FRF's Brief
Page 1, Replication of Exhibit 50, Schedule A

(Dollars in Thousands)

| Line No. | Description | Per Company Amount | Per OPC Amount | Column B Reference |
|---|---|---|---|---|
| 1 | Jurisdictional Adjusted Rate Base | $3,656,800 | $3,413,382 | Schedule B-1, p. 1 |
| 2 | Required Rate of Return | 8.82% | 7.33% | Schedule D-1 |
| 3 | Jurisdictional Income Required | $322,530 | $250,280 | Line 1 x Line 2 |
| 4 | Jurisdictional Adj. Net Operating Income | $182.970 | $226,591 | Schedule C-1, p. 1 |
| 5 | Income Deficiency (Sufficiency) | $139,560 | $23,689 | Line 3 – Line 4 |
| 6 | Earned Rate of Return | 5.00% | 6.64% | Line 4/Line 1 |
| 7 | Net Operating Income Multiplier | 1.634900 | 1.633202 | Schedule A-1 |
| 8 | Revenue Deficiency (Sufficiency) | $228,167 | $38,689 | Line 8/Sch. C-1, Line 4 |
| 9 | Percentage Revenue Increase (Decrease) | 26.37% | 4.47% | |

NOTE: The schedule references in the right-hand column are to Larkin's Exhibit 50.

Exhibit A to FRF's Brief
Page 2, Replication of Exhibit 50, Schedule A
with Adjustments for 3 September CTs

(Dollars in Thousands)

| Line No. | Description | Per Company Amount | Per OPC Amount | Column B Reference |
|---|---|---|---|---|
| 1 | Jurisdictional Adjusted Rate Base | $3,656,800 | $3,364,375 | See Notes |
| 2 | Required Rate of Return | 8.82% | 7.33% | Schedule D-1 |
| 3 | Jurisdictional Income Required | $322,530 | $246,609 | Line 1 x Line 2 |
| 4 | Jurisdictional Adj. Net Operating Income | $182.970 | $230,996 | See Notes |
| 5 | Income Deficiency (Sufficiency) | $139,560 | $15,613 | Line 3 – Line 4 |
| 6 | Earned Rate of Return | 5.00% | 6.87% | Line 4/Line 1 |
| 7 | Net Operating Income Multiplier | 1.634900 | 1.633202 | Schedule A-1 |
| 8 | Revenue Deficiency (Sufficiency) | $228,167 | $25,499 | Line 8/Sch. C-1, Line 4 |
| 9 | Percentage Revenue Increase (Decrease) | 26.37% | 2.95% | |

NOTES: The values shown reflect the removal of $49,000,000 of rate base to correct for the fact that the Company's 3 September CTs are not confirmed for service during 2009, and also the effects of removing additional O&M, depreciation, and Taxes Other Than Income Taxes in the amount of $4,405,000 associated with these CTs.

Exhibit A to FRF's Brief
Page 3, Replication of Exhibit 50, Schedule A
with Adjustments for 3 September CTs & O'Donnell Overall Rate of Return

(Dollars in Thousands)

| Line No. | Description | Per Company Amount | Per OPC Amount | Column B Reference |
|---|---|---|---|---|
| 1 | Jurisdictional Adjusted Rate Base | $3,656,800 | $3,364,375 | See Notes |
| 2 | Required Rate of Return | 8.82% | 7.52% | Exhibit 78 |
| 3 | Jurisdictional Income Required | $322,530 | $253,001 | Line 1 x Line 2 |
| 4 | Jurisdictional Adj. Net Operating Income | $182.970 | $230,996 | See Notes |
| 5 | Income Deficiency (Sufficiency) | $139,560 | $22,005 | Line 3 – Line 4 |
| 6 | Earned Rate of Return | 5.00% | 6.87% | Line 4/Line 1 |
| 7 | Net Operating Income Multiplier | 1.634900 | 1.633202 | Schedule A-1 |
| 8 | Revenue Deficiency (Sufficiency) | $228,167 | $35,939 | Line 8/Sch. C-1, Line 4 |
| 9 | Percentage Revenue Increase (Decrease) | 26.37% | 4.15% | |

NOTES: The values shown reflect the removal of $49,000,000 of rate base to correct for the fact that the Company's 3 September CTs are not confirmed for service during 2009, and also the effects of removing additional O&M, depreciation, and Taxes Other Than Income Taxes in the amount of $4,405,000 associated with these CTs.

Exhibit A to FRF's Brief
Page 4, Replication of Exhibit 50, Schedule A
with Adjustments for 3 September CTs & Herndon Overall Rate of Return

(Dollars in Thousands)

| Line No. | Description | Per Company Amount | Per OPC Amount | Column B Reference |
|---|---|---|---|---|
| 1 | Jurisdictional Adjusted Rate Base | $3,656,800 | $3,364,375 | See Notes |
| 2 | Required Rate of Return | 8.82% | 6.38% | See Notes |
| 3 | Jurisdictional Income Required | $322,530 | $214,647 | Line 1 x Line 2 |
| 4 | Jurisdictional Adj. Net Operating Income | $182.970 | $230,996 | See Notes |
| 5 | Income Deficiency (Sufficiency) | $139,560 | -$16,349 | Line 3 – Line 4 |
| 6 | Earned Rate of Return | 5.00% | 6.87% | Line 4/Line 1 |
| 7 | Net Operating Income Multiplier | 1.634900 | 1.633202 | Schedule A-1 |
| 8 | Revenue Deficiency (Sufficiency) | $228,167 | -$26,701 | Line 8/Sch. C-1, Line 4 |
| 9 | Percentage Revenue Increase (Decrease) | 26.37% | -3.09% | |

NOTES: The values shown reflect the removal of $49,000,000 of rate base to correct for the fact that the Company's 3 September CTs are not confirmed for service during 2009, and also the effects of removing additional O&M, depreciation, and Taxes Other Than Income Taxes in the amount of $4,405,000 associated with these CTs. ROR calculated by substituting 7.5% ROE into Exh. 50, Sch. D-1.

Exhibit A to FRF's Brief
Page 5, Replication of Exhibit 50, Schedule A with Adjustments for 3 September CTs & Overall Rate of Return Based On Compromise ROE of 8.75%.

(Dollars in Thousands)

| Line No. | Description | Per Company Amount | Per OPC Amount | Column B Reference |
|---|---|---|---|---|
| 1 | Jurisdictional Adjusted Rate Base | $3,656,800 | $3,364,375 | See Notes |
| 2 | Required Rate of Return | 8.82% | 6.91% | See Notes |
| 3 | Jurisdictional Income Required | $322,530 | $232,478 | Line 1 x Line 2 |
| 4 | Jurisdictional Adj. Net Operating Income | $182.970 | $230,996 | See Notes |
| 5 | Income Deficiency (Sufficiency) | $139,560 | $1,482 | Line 3 – Line 4 |
| 6 | Earned Rate of Return | 5.00% | 6.87% | Line 4/Line 1 |
| 7 | Net Operating Income Multiplier | 1.634900 | 1.633202 | Schedule A-1 |
| 8 | Revenue Deficiency (Sufficiency) | $228,167 | $2,421 | Line 8/Sch. C-1, Line 4 |
| 9 | Percentage Revenue Increase (Decrease) | 26.37% | 0.28% | |

NOTES: The values shown reflect the removal of $49,000,000 of rate base to correct for the fact that the Company's 3 September CTs are not confirmed for service during 2009, and also the effects of removing additional O&M, depreciation, and Taxes Other Than Income Taxes in the amount of $4,405,000 associated with these CTs. ROR calculated by substituting 8.75% ROE into Exh. 50, Sch. D-1.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 17th day of February 2009, to the following:

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