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June 30, 1998

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RECORDS AND REPORTING

VIA HAND DELIVERY

Blanca S. Bayo, Director  
Florida Public Service Commission  
Division of Records and Reporting  
Gunter Building  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0870

Re: Docket No. 950379-EI

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and fifteen copies of the Florida Industrial Power Users Group's Petition On Proposed Agency Action in the above docket.

Please acknowledge receipt of the above on the extra copy enclosed herein and return it to me. Thank you for your assistance.

Sincerely,

ACK  
FA  
APP  
CAF  
CMU  
CTR  
EAG  
LEG  
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DPC  
RCH  
SEC  
WAS  
OTH

*Vicki Gordon Kaufman*  
Vicki Gordon Kaufman

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

06887 JUN 30 88

FPSC-BUREAU OF RECORDS

ORIGINAL

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Investigation into Earnings	)	
for 1995 and 1996 of Tampa Electric	)	Docket No. 950379-EI
Company.	)	
<hr/>		Filed: June 30, 1998

**FIPUG'S PETITION ON PROPOSED AGENCY ACTION**

The Florida Industrial Power Users Group (FIPUG), pursuant to rule 25-22.036, Florida Administrative Code, files this Petition challenging Proposed Agency Action Order No. PSC-98-0802-FOF-EI. As grounds therefor, FIPUG states:

**Identification of Petitioner**

1. The name and address of Petitioner is:

Florida Industrial Power Users Group  
 c/o John W. McWhirter, Jr.  
 McWhirter, Reeves, McGlothlin, Davidson, Rief & Bakas, P.A.  
 100 North Tampa Street, Suite 2800  
 Tampa, Florida 33602-5126

Joseph A. McGlothlin  
 Vicki Gordon Kaufman  
 McWhirter, Reeves, McGlothlin, Davidson, Rief & Bakas, P.A.  
 117 South Gadsden Street  
 Tallahassee, Florida 32301

2. All pleadings, orders and correspondence should be directed to:

John W. McWhirter, Jr.  
 McWhirter, Reeves, McGlothlin, Davidson, Rief & Bakas, P.A.  
 Post Office Box 3350  
 Tampa, Florida 33601-3350

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 Tallahassee, Florida 32301

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REG. NO. CASE NO. REPORTING

### **FIPUG's Substantial Interest**

3. FIPUG is an organization of large industrial consumers, many of whom are located in the service area of Tampa Electric Company (TECO). FIPUG members purchase a substantial amount of electricity from TECO and the cost of electricity constitutes one of FIPUG's members' largest variable costs.

4. Order No. PSC-98-0802-FOF-EI involves the implementation of two Stipulations between FIPUG, the Office of Public Counsel (OPC) and TECO dealing with the disposition of TECO's overearnings for the period 1995 through 1998. These Stipulations were the result of detailed negotiations between the parties. The Stipulations were approved by the Commission in Order No. PSC-96-0670-S-EI and Order No. PSC-96-1300-S-EI.

5. In Order No. 98-0802-FOF-EI, the Commission has proposed to implement portions of the Stipulations in a manner injurious to FIPUG and all other TECO customers. The Commission's decision in this matter will adversely affect FIPUG's substantial interests.

### **Undisputed Issues of Material Fact**

6. As of December 31, 1995, TECO had collected from customers \$50,800,000.00 in excess of its authorized return. This sum is called "funds subject to refund" by customers and "deferred revenues" by TECO and the Commission.

7. On December 31, 1996, the over collections from customers had grown to \$77,670,075.00 according to calculations prepared by the Commission Staff or to \$68,815,000.00 according to calculations by TECO.

8. The Commission-approved Stipulations call for a refund of \$50,000,000.00 to customers in the period October 1996 through October 1998.

9. Over collections from customers, like deferred taxes, are cost-free capital unless they are refunded to customers and the utility pays customers the interest called for in the Stipulations. In its December 1997 surveillance report, TECO reports that after making the first \$25,000,000.00 refund, it used \$30,450,000 of the 1995/1996 over collections to enhance its 1997 revenues. It charged customers 5.46% interest on the money it retained in addition to \$18,750,000.00 for income taxes. It appears that TECO does not intend to refund the money and if so will not have to pay any interest cost.

10. It is unclear whether TECO booked 60% of the revenue it used to bring its return on equity up to 12.75% to 1997 deferred revenue.

#### **Disputed Issues of Material Fact**

11. Disputed issues of fact include, but are not limited to, the following:

a. Whether it is reasonable to conclude from the Stipulations that the parties intended that TECO would use ratepayer money to fund income taxes plus interest charges on overearnings that will never be refunded to customers;

b. FIPUG disputes that the Stipulations require customers to pay interest on their money which would be refunded to them. The Stipulations called for interest to come from below the line not above the line;

c. Whether the separation of the plant used for wholesale transactions (including plant used for back-up wholesale power) has been implemented in accordance with Order No. PSC-97-1273-FOF-EU.

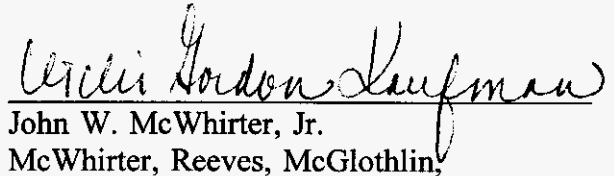
### **Ultimate Facts Alleged**

12. Ultimate facts alleged include, but are not limited to, the following:
  - a. Parties to the Stipulations contemplated that TECO stockholders would be responsible for the payment of interest to customers on any deferred revenues which it refunds;
  - b. TECO's use of the deferred revenue during the time it holds such revenues for customers does not have a cost rate, rather customers provide a benefit to TECO by allowing TECO the use of such funds;
  - c. Deferred revenues should be reflected at 0 cost in TECO's capital structure;
  - d. The record in this docket lacks a detailed explanation as to the method used for separating the wholesale rate base from the retail rate base;
  - e. Wholesale plant should be separated as required in Order No. PSC-97-1273-FOF-EU.

#### **WHEREFORE, FIPUG requests that:**

1. The Commission conduct an evidentiary hearing on the matters in dispute;
2. The Commission find that TECO is responsible for paying interest to customers on any refund out of stockholder funds;
3. The Commission find that deferred revenues should be reflected in TECO's capital structure at 0 cost;
4. The Commission ensure that wholesale plant is appropriately separated;

5. The Commission grant such other relief as necessary.



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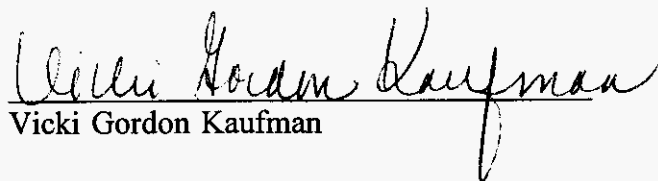
**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of **FIPUG's Petition on Proposed Agency Action** was furnished by hand delivery (\*) or U.S. Mail to the following parties of record this **30th** day of **June, 1998**:

Bob Elias\*  
Florida Public Service Commission  
Division of Legal Services  
Gerald L. Gunter Building, Room 370N  
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111 West Madison Street, Room 812  
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