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RECORDS AND REPORTING

August 5, 1999

HAND DELIVERED

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: FPSC Docket No. 980569-PU

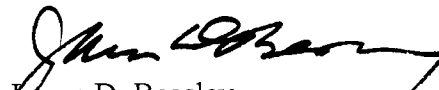
Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa Electric Company's Rebuttal Comments to Staff's Written Comments.


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

Thank you for your assistance in connection with this matter.

Sincerely,


James D. Beasley

AFA	1
APP	1
CAF	JDB/pp
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LES	cc: All Parties of Record (w/enc.)
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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

09377 AUG-5 99

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Amendments to Rule)
 25-4.002, F.A.C., Application and Scope;)
 25-4.141, Minimum Filing Requirements)
 for Rate of Return Regulated Local)
 Exchange Companies; Commission)
 Designee; 25-4.202, Construction and)
 Waivers; 25-24.455, Scope and Waiver;)
 25-6.002, Application and Scope; 25-6.043,)
 Investor-Owned Electric Utility Minimum)
 Filing Requirements; Commission Designee;)
 25-6.0438, Non-Firm Electric Service – Terms)
 and Conditions; 25-17.087, Interconnection)
 and Standards; 25-30.010, Rules for General)
 Application; 25-30.011, Application and Scope;)
 25-30.436, General Information and Instructions)
 Required of Class A and B Water and Wastewater)
 Utilities in an Application for Rate Increase;)
 25-30.450, Burden of Proof and Audit Provisions;)
 25-30.455, Staff Assistance in Rate Cases;)
 25-30.456, Staff Assistance in Alternative Rate)
 Setting; 25-30.570, Imputation of Contributions-)
 In-Aid-of-Construction; and 25-30.580,)
 Guidelines for Designing Service Availability.)
 _____)

DOCKET NO. 980569-PU
 FILED: August 5, 1999

**TAMPA ELECTRIC COMPANY'S
REBUTTAL COMMENTS TO STAFF'S WRITTEN COMMENTS**

Tampa Electric Company ("Tampa Electric" or "the company"), offers the following comments in rebuttal to the written comments filed in this proceeding by the Commission's Staff:

1. Staff initially said it has found no specific variance or waiver provisions in the laws implemented by the rules recommended for appeal in this docket. Tampa Electric submits that Staff's approach fails to recognize the dynamic nature of the Commission's regulation of

investor-owned electric utilities and the need for flexibility that regulation requires. The Legislature clearly recognized this when it authorized the Commission “to prescribe all rules and regulations reasonably necessary and appropriate for the administration and enforcement of this chapter [Chapter 366, Florida Statutes].” Section 366.05(1), Florida Statutes.

2. The waiver provisions referred to in Tampa Electric’s written comments are necessary and appropriate for the administration of Chapter 366, Florida Statutes. Without the flexibility to grant waivers as provided in these rules (separate and apart from the procedures outlined in Section 120.542, Florida Statutes), the Commission would be severely hampered in its ability to carry out its duties under Chapter 366, Florida Statutes. As the Commission well knows, the procedures outlined in Section 120.542, Florida Statutes, are lengthy, time-consuming and, if followed, could grind Commission proceedings to a halt. Given the time frames required for the Commission to act on various regulatory issues, following the procedures in Section 120.542, Florida Statutes, could make the availability of any meaningful waiver or variance unattainable.

3. The Staff’s demand for a specific statutory reference to waiver or variance is overly strict. Many of the Commission’s rules implement statutes that are broadly worded. Terms such as “just and reasonable,” “fair and reasonable,” and the like appear throughout Chapter 366, Florida Statutes. Given the technical nature of regulation the Commission has adopted numerous detailed rules that implement these general statements of authority. The Commission’s ability to include in its technical requirements provisions for waivers of those requirements, likewise, flows from the Commission’s authority to prescribe all rules and regulations reasonably necessary and appropriate for the administration and enforcement of Chapter 366.

4. The minimum filing requirement rule, Rule 25-6.043, Florida Administrative Code, itself recognizes the dynamic nature of rate regulation. This rule in its present form calls for the evolution of MFR preparation by directing utilities to follow guidelines prescribed not only in the Commission's relevant rules but also in the company's last rate case "or in a more recent rate case involving a comparable utility" (emphasis supplied). The underscored language recognizes that some judgment must be involved in deciding what should be included or excluded from MFRs based on changing circumstances.

5. If a specific statutory reference to waivers and variances is required, as suggested by Staff, then many other provisions in the Commission's rules lack the same statutory specificity. For example, there is no specific statutory reference to minimum filing requirements, although the Commission has deemed it reasonably necessary and appropriate to adopt a rule prescribing minimum filing requirements.

6. The Commission's MFR rule purports to implement, among other provisions, Section 366.04(2)(f), Florida Statutes, which authorizes the Commission:

(f) to prescribe and require the filing of periodic reports and other data as may be reasonably available and as necessary to exercise its jurisdiction hereunder.

Note the use of the terms "as may be reasonably available" and "as necessary." When viewed in the context of a rate proceeding, the Legislature's selection of these terms suggests its intent for the Commission to at least have the opportunity to make a determination of what is "reasonably available" and what is "necessary" each time a new proceeding is initiated. This dovetails perfectly with the MFR rule provision allowing the Commission to grant a waiver of a MFR requirement upon proper showing by the utility that "production of the data would be impractical or impose an excessive economic burden upon the company." Rule 25-6.043, Fla. Admin. Code.

7. What data is “reasonably available” to one utility may not be reasonably available to another utility. What data the Commission may deem “necessary” in a particular rate proceeding involving one particular set of issues may not be necessary in a different proceeding where those issues aren’t involved or are stipulated from the outset. To require the Commission and the parties to pursue the procedures set forth in Section 120.542 rather than the existing waiver provision in the Commission’s MFR rule would be time consuming, unnecessarily costly, and totally unworkable.

8. As the Legislature recognized in its 1996 adoption of Section 120.542, Florida Statutes:

Strict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. . . .

Tampa Electric submits that Staff’s approach requiring specific statutory references to the Commission’s ability to include waiver provisions in its rules would lead to unreasonable, unfair and unintended results. The Commission’s statutory authority under Chapter 366.05(1) to prescribe all rules and regulations reasonably necessary and appropriate for the administration and enforcement of Chapter 366 and the Commission’s authority under Section 366.04(2)(f) to require the submission of data “as may be reasonably available” or “as necessary” can be read together to authorize the continued inclusion of waiver provisions in the Commission’s rules notwithstanding the enactment of Section 120.542, Florida Statutes.

9. Finally, Tampa Electric submits that if the waiver provisions of the subject rules are repealed, such action will significantly affect the substance of the rules in which the waiver provisions appear. These waiver provisions are an important part of the rules. Repealing them

would convert the rules from flexible and reasonable into the category of inflexible and potentially unreasonable.

WHEREFORE, Tampa Electric Company submits the foregoing rebuttal comments in response to the written comments filed by Staff in this proceeding.

DATED this 5th day of August 1999.

Respectfully submitted,



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ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Comments, filed on behalf of Tampa Electric Company, has been forwarded by U. S. Mail or hand delivery(*) on this 5th day of August 1999 to the following:

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