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October 29, 1999  
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RECORDS AND REPORTING

Blanca S. Bayo, Director  
Division of Records and Reporting  
Betty Easley Conference Center  
4075 Esplanade Way  
Tallahassee, Florida 32399-0870

Re: Docket No. 950379-EI

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and 15 copies of the Florida Industrial Power Users Group's Petition for Formal Proceeding on Proposed Action in Order No. PSC-99-1940-PAA-EI and Order No. PSC-99-2000-PAA-EI. On October 22, 1999, FIPUG filed a Protest of Order Nos. PSC-99-1940-PAA-EI and PSC-99-2000-PAA-EI. In that pleading, a scrivener's error in the third line of the pleading resulted in the same order number being recited two times, though both the title and body of the pleading make it clear that both orders are the subject of the protest. In an abundance of caution, FIPUG files this pleading which is identical in all respects to the October 22<sup>nd</sup> pleading with the exception of the correction of the scrivener's error on line 3, the addition of "1998" in paragraph 12.a and correction of the paragraph numbering and subject verb agreement.

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

Yours truly,

*Vicki Gordon Kaufman*  
Vicki Gordon Kaufman

*Stemkenig*  
AFA  
APP  
CAF  
CMU  
CTR  
EAG  
LEG  
MAS  
OPC  
PAI  
SEC  
WAW  
QTH  
Cc: Parties of record

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Determination of regulated earnings of Tampa Electric Company pursuant to stipulations for calendar years 1995 through 1999.

Docket No. 950379-EI

Filed: October 29, 1999

**The Florida Industrial Power Users Group's Petition for Formal Proceeding on Proposed Action in Order No. PSC-99-1940-PAA-EI and Order No. PSC-99-2000-PAA-EI<sup>1</sup>**

The Florida Industrial Power Users Group (FIPUG), pursuant to rule 28-106.201, Florida Administrative Code, files this Petition for Formal Proceeding on Proposed Action in Order No. PSC-99-1940-PAA-EI. and Order No. PSC-99-2000-PAA-EI As grounds therefor, FIPUG states:

**Introduction**

- 1. The name, address and telephone number of Petitioner is:

Florida Industrial Power Users Group  
c/o John W. McWhirter, Jr.  
McWhirter Reeves McGlothlin Davidson Decker Kaufman Arnold & Steen, P.A.  
400 North Tampa Street, Suite 2450  
Tampa, Florida 33601-33350  
1-813-224-0866

Joseph A. McGlothlin  
Vicki Gordon Kaufman  
McWhirter Reeves McGlothlin Davidson Decker Kaufman Arnold & Steen, P.A.  
117 South Gadsden Street

<sup>1</sup>On October 22, 1999, FIPUG filed a Protest of Order Nos. PSC-99-1940-PAA-EI and PSC-99-2000-PAA-EI. In that pleading, a scrivener's error in the third line of the pleading resulted in the same order number being recited two times, though both the title and body of the pleading make it clear that both orders are the subject of the protest. In an abundance of caution, FIPUG files this pleading which is identical in all respects to the October 22<sup>nd</sup> pleading with the exception of the correction of the scrivener's error on line 3, the addition of "1998" in paragraph 12.a and correction of the paragraph numbering and subject verb agreement.

Tallahassee, Florida 32310  
1-850-222-2525

2. Petitioner's representatives, which shall be the be the address for service purposes during the course of the proceeding is:

John W. McWhirter, Jr.  
McWhirter Reeves McGlothlin Davidson  
Decker Kaufman Arnold & Steen, P.A.  
400 North Tampa Street, Suite 2450  
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### **Substantial Interests**

3. In the proposed orders which are the subject of this petition, the Commission proposes to make certain adjustments and approve a rate base for Tampa Electric Company (TECo) for 1997 and 1998. This docket commenced with the rendition of Order No. PSC-95-0580-FOF-EI. By that Order, the Commission determined that for the year 1995 TECo would exceed the 11.35% return on equity allowed in 1994 in Docket No. 920324-EI by more than the 100 basis point range of reasonableness permitted by Commission custom. The Order dealt with the forecasted overearnings by increasing the maximum allowable return on equity to 12.75% and by classifying all earnings in excess of that amount as "deferred revenues." In March 1996, the Commission rendered Order No. PSC-96-0122-FOF-EI which confirmed the higher authorized return on equity and classified 1996 overearnings as "deferred revenues." This Order was protested by the office of Public Counsel (OPC) and FIPUG and resulted in the stipulations referred to in the orders presently proposed. In 1995,

TECo collected \$50.5 million from customers in excess of maximum authorized return on equity. In 1996, TECo collected an additional \$37.1 million from customers in excess of the earnings cap, for total collections from customers over the earnings cap in 1995 and 1996 of \$87.8 million. The Commission authorized TECo to charge customers interest on the excess earnings they had provided. Over the period, TECo collected substantial interest from customers even though it has use of the customers' funds.

4. In late 1996, TECo brought the 250MW Polk 1 power plant into service at a cost of over \$630 million. Part of the cost was reduced through a contribution from the US Department of Energy. TECo sought to rate base the balance. The prudence of the investment was challenged, but by the stipulation referred to in the orders under scrutiny, TECo was authorized to rate base \$506 million. This large addition to rate base had a significant impact on earnings. Under the Commission proposed orders, TECo used \$27.056 million of the "deferred revenues" to improve its 1997 earnings reports and \$34.069 million to improve its 1998 earnings, leaving \$11,226,598 available for refund to customers in 1999 from 1995 and 1996 overearnings.

5. The amount of the refund is affected by numerous accounting adjustments, such as, the size of the rate base, the amount of CWIP included in rate base, the flow of funds between the regulated utility and its unregulated holding company, the amount of income taxes that must be paid, among other matters. The information available to the public upon which the Commission bases its decision is a gross amount. TECo has objected to providing the details underlying the gross amounts.

6. The gross increases in rate base serve to reduce the refund due customers under the stipulation. For example, TECo has increased its retail rate base by \$327 million during 1997 and 1998. Every \$10 million increase in borrowed funds reduces the refund to customers by

approximately \$.7 million. Every \$10 million in equity capital reduces the refund by \$1.8 million. The debt equity ratio of the regulated utility is controlled by the unregulated holding company. The Commission-approved capital structure for 1994 allowed 54.8% equity. The current orders allow 58.7%. This Commission action reduces the refund available to customers by approximately \$12 million dollars. All sums paid to affiliated companies in excess of competitive prices reduces the refund \$1 for each \$1 spent.

7. As a signatory to the stipulation, FIPUG's substantial interests are affected by any action the Commission takes to interpret or implement the stipulation.

#### **How Notice of Agency Action was Received**

8. FIPUG received notice of the Commission's proposed action when the proposed orders were received by mail.

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

9. Facts in dispute include, but are not limited to, the following:
- a. Whether TECo's 1997 and 1998 construction expenses are prudent and used and useful;
  - b. Whether TECo's transactions with its affiliated companies are prudent and in the best interests of ratepayers or are made to benefit TECo's parent company, TECo Energy;
  - c. Whether TECo has properly included certain projects in Construction Work in Progress (CWIP) and whether the amounts included are prudent and reasonable;
  - d. Whether TECo's debt/equity ratio is appropriate;
  - e. Whether the rate base includes an amount for Polk 1 in excess of the \$506 million stipulated amount;

- f. Whether TECo has appropriately credited all relevant recovery clauses;
- g. Was TECo in compliance with the Commission mandate to remove the generating plant dedicated to serving FMPA and Lakeland from the rate base;
- h. Has TECo included in its rate base amounts expended for items that it is seeking to include as investments under recovery clauses;
- i. Are TECo customers providing revenue to TECo for income taxes that it does not have to pay.

**Ultimate Facts Alleged and Rules and Statutes Entitling Petitioner to Relief**

- 10. Ultimate facts alleged include, but are not limited to, the following:
  - a. Whether the amount of deferred revenues for 1997 calculated by the Commission is correct.
- 11. Rules and statutes entitling Petitioner to relief include, but are not limited to, the following:
  - a. Section, 366.041, Florida Statutes;
  - b. Section 366.06, Florida Statutes;
  - c. Rule 28-106.201, Florida Administrative Code.

**Demand for Relief**

- 12. FIPUG demands the following relief:
  - a. That the amount of deferred revenue for 1997 and 1998 be increased;
  - b. That the Commission provide such other relief as it deems appropriate.

**WHEREFORE**, FIPUG requests that the Commission schedule a hearing on this matter; permit discovery by the adverse parties; and require TECo to meet the burden of justifying the increased investment in rate base, its debt equity ratio and the prudence of expenditures with affiliated companies in addition to the other matters described above.



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Attorneys for the Florida Industrial Power Users  
Group

## CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Florida Industrial Power Users Group's Petition for Formal Proceeding on Proposed Action in Order No. PSC-99-1940-PAA-EI and Order No. PSC-99-2000-PAA-EI has been furnished by (\*) hand delivery or U.S. Mail this 29<sup>th</sup> day of October 1999 to the following:

(\*)Robert V. Elias  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

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