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Blanca S. Bayo, Director
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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 Prehearing Statement

as well as a disk containing the Prehearing Statement.

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

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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: June 26, 2000

The Florida Industrial Power Users Group's Prehearing Statement

The Florida Industrial Power Users Group (FIPUG), pursuant to Order No. PSC-00-0169-PCO-EI, files its Prehearing Statement.

A. APPEARANCES:

JOHN W. MCWHIRTER, JR., McWhirter Reeves McGlothlin Davidson Decker Kaufman Arnold & Steen, P.A., 400 North Tampa Street, Suite 2450, Tampa, Florida 33601-33350 and **JOSEPH A. MCGLOTHLIN** and **VICKI GORDON KAUFMAN**, McWhirter Reeves McGlothlin Davidson Decker Kaufman Arnold & Steen, P.A., 117 South Gadsden Street, Tallahassee, Florida 32301

On behalf of the Florida Industrial Power Users Group.

B. WITNESSES:

Witness	Subject Matter	Issues
Mark Cicchetti	FMPA contract, equity ratio, double recovery of expenditures, unexplained entries in surveillance reports	All

C. EXHIBITS:

Exhibit	Witness	Description
Exhibit No. ___ (MAC-1)	Cicchetti	Experience and Qualifications of Mark A. Cicchetti

D. STATEMENT OF BASIC POSITION:

FIPUG's Statement of Basic Position:

In 1995 and 1996 TECo collected $85 million from its customer in excess of the ceiling of its authorized return. In a series of orders and stipulations between parties it was determined that this sum plus interest charged to customers on the sum would be set aside in a fund called "deferred revenues" for the period 1997 through 1999. If during that earnings cap period TECo's earnings provided less than a 12.75% return on equity it could draw down sufficient funds from the deferred revenue account to bring its return on equity up to 12.75%. In 1997 and 1998 TECo tapped the "deferred revenue" account for all but $11.2 million which the Commission ordered it to refund to customers. FIPUG protested the amount of the refund as inadequate on the grounds that TECO's earnings were understated during the control period for the reasons cited below.

A. For the purpose of determining earnings pursuant to the Stipulations, TECo should be required to comply with the Commission's prescription for the treatment of the FMPA wholesale contract as stated in Order No. PSC-97-1273-FOF-EI. TECo had no authority to return the capacity sold to FMPA to the retail rate base.

B. TECo's equity ratio should be reduced to 55% of investor capital because it is currently excessive and is adding unnecessarily to the revenue requirement borne by ratepayers.

C. Under the terms of the stipulation allowing Polk One in the rate base it was limited to $509 million. In 1997 and 1998 TECo exceeded the approved investment limit for this facility. The rate base should be reduced accordingly.

D. Federal income tax charges and penalties for periods in the 1980's were recorded on the books during 1999 when TECo was subject to a revenue cap shifting the cost burden from the utility to its customers. There were other extraordinary unexplained additions to rate base and extraordinary increses to expenses booked during the revenue cap period. TECo has failed to specifically identify or prove that the rate base additions and operating expenses were ordinary and necessary capital and operating expenses attributable to the period under review.

E. Finally, any expenditures in 1997, 1998 and 1999 recovered through a cost recovery clause should be excluded from surveillance for base rate purposes.

The adverse impact on customers of TECo's actions is to reduce the refund due customers by a minimum of $66.2 million in addition to the $11.4 million ordered by the Commission in order PSC 99-194 PAA-EI and Order No. PSC 99-2000-PAA-EI

E. STATEMENT OF ISSUES AND POSITION:

1. **ISSUE:** What is the appropriate regulatory treatment of the Florida Municipal Power Agency (FMPA) and Lakeland wholesale contracts in 1997 and 1998?

FIPUG: The Commission should require that TECo treat the costs and revenues associated with the FMPA and Lakeland contracts as required in Order No. PSC-97-1273-FOF-EI. This order has not been modified or changed in any way and TECo may not unilaterally disregard it. The facilities and corresponding O&M cost removed from the rate base by that order should not have been returned to the retail rate base for the period April 1998 through December 31, 1999. The unauthorized action reduced customers refund by an estimated $29.11 million

2. **ISSUE:** Should Tampa Electric's rate base for 1997 and/or 1998 be adjusted to recognize the effects of AFUDC on CWIP balances below the level included in rate base in the company's last rate case?

FIPUG: Yes.

3. **ISSUE:** Is the amount which TECo has included in rate base for the Polk Power Station project appropriate under the Stipulation for calculating TECo's earnings in 1997 and 1998?

FIPUG: Any amount in excess of $509 million should be removed from the retail rate base. TECo added $17,465,005 after the in service date. The additions claimed by TECo reduce customers refund by $571 thousand in 1997, $2.3 million in 1998 and $2.3 plus authorized return and deprecation expense charged to plant additions in 1999

4. **ISSUE:** Are TECo's 1997, 1998 and 1999 construction expenses added to the retail rate base prudent and used and useful to ratepayers?

FIPUG: It is unknown at this time. Construction expenses in 1998 and 1999 increased by $44 million and $97 million, respectively over 1997 amounts. Only a small fraction of this increase has been justified by TECo. TECo has the burden of proof to demonstrate that these additions were ordinary and prudent additions to rate base. The extraordinary additions to rate base impact the refund due customers by $5.7 million in 1998 and $12.6 million in 1999.

5. **ISSUE:** Has TECo justified the substantial increases in its 1997, 1998 and 1999 O & M expenses?

FIPUG: No. As the expenses in Issue No. 4, TECo's O & M expenses have dramatically increased. The Commission allowed an annual increase of $20.6 million to cover the costs of Polk 1 in 1997, but non fuel expenses increased $46.8 million that year over 1996. In 1998 they increased $75 million over 1996 and in 1999 they were $77 million greater than the year before the earnings cap commenced. As the entity in control of all the relevant information as well as the party who wants to offset these amounts against the refunds due to customers, TECo must justify these increases and to date has not done so. For the three year period expenses increase a total of $137 million over the sum authorized for additional Polk 1 expenses. FIPUG believes that expenses have been shifted to the control period to artificially depress earnings. For example in 1999 TECo charged earnings with delinquent income taxes, interest and penalties on those taxes for taxes that had been due and owing for the period between 1986 and 1994. This out of period charge of $12.3 million shifted the cost from the utility to its customers. It is estimated that the excessive O&M charges during the control period have reduced the refund due customers by at least $25 million.

6. **ISSUE:** Has TECo properly included certain projects in Construction Work in Progress (CWIP) and are the amounts included prudent and reasonable?

FIPUG: It is unknown at this time. As the entity in control of all the relevant information as well as the party who wants to offset these amounts against the refunds due to customers, TECo must justify these increases and to date has not done so.

7. **ISSUE:** Has TECo included in its rate base amounts expended for items that it is seeking to also recover through the recovery clauses?

FIPUG: It is unclear whether all expenditures associated with the scrubbers for Big Bend 1 are included in the earnings determination and also being recovered either partially or fully in the environmental cost recovery clause. The Commission should ensure that no expenditures allowed for determining earnings have been recovered twice.

8. **ISSUE:** Are TECo's transactions with its affiliate companies prudent and in the best interest of ratepayers or are they made to benefit TECo's parent company, TECo Energy?

FIPUG: No. During the control period TECo paid its affiliated companies $502 million. It has not provided proof that the prices charged were comparable to the market rate for competitive services during the period.

9. **ISSUE:** What is the appropriate rate base for 1997, 1998 and 1999?

FIPUG: This is dependant upon the resolution of the issues in this case.

10. **ISSUE:** What is the appropriate debt/equity ratio for TECo?

FIPUG: TECo's debt/equity ratio of 59% is excessive and well above that of comparable companies, the industry average and the minimum requirement in the Standard and Poor's benchmark for similar utilities. Ratepayers should only have to fund the reasonable and prudent costs associated with the provision of utility service. Therefore, the appropriate equity ratio for TECo is 55% of investor capital for purpose for purposes of determining regulated earnings pursuant to the Stipulations.

11. **ISSUE:** What is the appropriate capital structure for purposes of measuring earnings for 1997, 1998 and 1999?

FIPUG: The appropriate capital structure for TECo is an equity ratio of 55%.

12. **ISSUE:** Are TECo customers providing revenue to TECo for income taxes it does not have to pay?

FIPUG: TECo is a subsidiary of an Electric Utility Holding Company. The holding company files a consolidated tax return based on the combined operations of numerous affiliated entities which are partially funded from utility cash flow. The utility's pro rata share of the consolidated tax bill is less than the tax bill the utility charges its customers treating the utility as a stand alone entity. For example in 1999 the operating revenues of the holding company were $1.99 billion. The utility's contribution to these revenues was $ 1.20 billion or 60% of the total revenue. The holding company's provision for income taxes was $87 million. The electric company's customers were charged $85.7 million of this amount or 98.5% of the total income tax charge. Electric customers of a utility holding company should not be required to pay a fictional tax rate based on the stand alone operations of the utility whose books are controlled by the holding company. The customer should only be required to pay a pro rata share of the taxes based on the holding company's total operations. To rule otherwise requires customers to provide revenue for taxes in excess of the actual taxes due.

13. **ISSUE:** What is the appropriate net operating income for 1997 and 1998?

FIPUG: This is a fall out issue based on the resolution of other issues.

14. **ISSUE:** What is the maximum amount of deferred revenues that can be reversed in 1997's and 1998's earnings, and what amount should be refunded for 1999 excess earnings?

FIPUG: This is a fall out issue dependant upon the determination of the other issues.

15. **ISSUE:** What is the amount to be refunded?

FIPUG: On information and belief the sum is $77.61 million pus interest on the deferred refund.

F. STIPULATED ISSUES:

None.

G. PENDING MOTIONS:

None at this time.

H. OTHER MATTERS:

None at this time.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **FIPUG Prehearing Statement** has been provided by (*) hand delivery or U.S. Mail to the following parties of record this 26th day of June 2000:

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