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November 15, 2000

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

RE: Docket No. 950379-EI

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of Public Counsel's Statement of Position on Appropriate Treatment of Interest Expense on Tax Deficiencies Pursuant to Staff's Request on November 9, 2000 for filing in the above referenced file.

Also enclosed is a 3.5 inch diskette containing Public Counsel's Statement of Position on Appropriate Treatment of Interest Expense on Tax Deficiencies Pursuant to Staff's Request on November 9, 2000 in WordPerfect for Windows 6.1. Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

John Roger Howe
Deputy Public Counsel

JRH/dsb
Enclosures

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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: November 15, 2000

PUBLIC COUNSEL'S STATEMENT OF POSITION ON APPROPRIATE TREATMENT OF INTEREST EXPENSE ON TAX DEFICIENCIES PURSUANT TO STAFF'S REQUEST ON NOVEMBER 9, 2000

The two stipulations approved by the Commission in 1996 should determine whether and to what extent interest on income tax deficiencies can be included as an expense to calculate Tampa Electric's earnings for 1999.[1] The stipulations did not ignore the subject of interest expense on income tax deficiencies. To the contrary, Paragraph 10 of the First Stipulation provides that interest expense on an income tax deficiency related to the Polk Power Station will be considered a prudent expense in deriving Tampa Electric's ROE. Paragraph 11 provides that the ROE calculation for 1999 will be on an "FPSC Adjusted Basis" using appropriate adjustments consistent with those used in the company's last rate case. Tampa Electric's attempt to claim interest expense on tax deficiencies should be rejected because it is not related to the Polk Power Station. This should be the end of the matter. However, even if Paragraph 10 were not dispositive, the interest on tax deficiencies claimed by Tampa Electric is not an adjustment consistent with the last rate case and should therefore be

[1]The First Stipulation is dated March 25, 1996. It was approved by Order No. PSC-96-0670-S-EI, issued May 20, 1996, in Docket No. 950379-EI. The Second Stipulation, dated September 26, 1996, was approved by Order No. PSC-96-1300-S-EI, issued October 24, 1996, in Docket No. 960409-EI. Paragraph 14 of the Second Stipulation provided that "[t]he First Stipulation is hereby ratified and continued except as specifically modified herein." Provisions of the First Stipulation which were not altered by the Second Stipulation are therefore applicable to the calculation of the ROE for 1999.

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rejected pursuant to the first sentence of Paragraph 11. Staff's recommendation to allow Tampa Electric to treat interest on tax deficiencies as an expense was based upon acceptance of the company's cost/benefit analysis. But if the stipulations allowed for all interest expense on tax deficiencies (not just Polk-related), no cost/benefit analysis would have been prepared. There would have been no need because Tampa Electric would then have been entitled to claim the expense even if costs exceeded benefits. A cost/benefit analysis is only meaningful as a device to circumvent the terms of the stipulations. The terms of the stipulations, however, must control over an inconsistent, irrelevant and factually incorrect cost/benefit analysis.

Tampa Electric argued at the October 17th agenda conference and again at the November 9th meeting that the specific allowance in Paragraph 10 for interest expense on any tax deficiency related to the Polk Power Station should not mean Tampa Electric cannot claim interest on other, unrelated tax deficiencies. But the fact remains that the parties recognized that any allowance for interest expense on tax deficiencies would be an unusual event which could not affect ROE (as an "adjustment," as a "reasonable and prudent expense," or otherwise) unless they specifically allowed for it. Paragraph 10 allowed for recovery of a narrowly defined potential future expense not contemplated at the time rates were set which would not otherwise be recoverable as either an adjustment consistent with the last rate case or as a reasonable and prudent expense. If the parties had intended a broader definition they would have said so, perhaps by saying: "The Parties agree that all interest expense on income tax deficiencies, including any related to the Polk Power Station, will be considered a prudent expense." Instead, the parties said: "The Parties agree that any interest expense that might be incurred as the result of a Polk Power Station related tax deficiency assessment will be considered a prudent expense for ratemaking purposes and will support this position in any

proceeding before the FPSC." [Emphasis added.] Clearly, the parties intended that the only interest on tax deficiencies which could affect the calculation of Tampa Electric's ROE for 1999 must be related to the Polk Power Station. Tampa Electric wants to treat Paragraph 10 as a hurdle easily cleared, but it should, in fact, be a barrier to further inquiry.

Even if Paragraph 10 could be ignored, Tampa Electric is then faced with the first sentence of Paragraph 11 limiting adjustments to those consistent with the last rate case. Tampa Electric tries to avoid this obstacle by saying it isn't there, that interest on income tax deficiencies is not an adjustment at all. At the November 9th meeting, the company suggested that interest on income tax deficiencies could have been reported elsewhere on the surveillance reports thus obviating any inquiry into whether the claimed expense was an adjustment consistent with the last rate case. But the company itself has been reporting this expense as an adjustment on its September - December, 1999, surveillance reports. Another electric utility, Florida Power Corporation, has been reporting this expense as an NOI adjustment on its surveillance reports ever since the Commission specifically allowed FPC to claim the interest expense in its last rate case.[2] Tampa Electric's adjustment appeared for the first time three and one-half years after the First Stipulation was signed in March, 1996, and over six and one-half years after the rate case was decided in early 1993. FPC, on the other hand, has consistently reported this expense as an adjustment on its surveillance reports since its rate case was decided in late 1992. The problem for Tampa Electric is that, unlike FPC, it never asked the Commission for such treatment. Moreover, Paragraph 10 would be completely unnecessary if all

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[2]Order No. PSC-92-1197-FOF-EI, issued October 22, 1992 in Docket No. 910890-EI, pp. 45-48.

interest expense on tax deficiencies, including those related to Polk, were recoverable without regard to the first sentence of Paragraph 11.

Tampa Electric also argued at the October 17th agenda and again at the November 9th meeting that, even if it's not an appropriate adjustment pursuant to the first sentence, interest expense on tax deficiencies qualifies under the second sentence of Paragraph 11 as a reasonable and prudent expense. To accept this view, one would have to conclude that the first sentence was a nullity completely subsumed by the second. Then there would have been no reason to limit adjustments to those allowed in the last rate case. Similarly, there would have been no reason to state that tax deficiency interest related to the Polk Power Station would be recoverable since all such expenses would be allowable pursuant to the second sentence of Paragraph 11. The better approach is to give effect to both sentences in Paragraph 11. After the surveillance report is first limited to adjustments consistent with the last rate case, then no further inquiry should be made into the reasonableness of acceptable categories of expenses. If interest on tax deficiencies is an appropriate adjustment, then no further inquiry should be permitted on the level of expense claimed. (Subject, of course, to Paragraph 8 of the Second Stipulation which provides that "[t]he calendar year 1999 surveillance reports on which potential refunds provided [for] herein will be based are subject to audit by the FPSC staff and true-up.") If, however, interest on tax deficiencies is not properly included as an adjustment, the inquiry is at an end.

There are two problems with the cost benefit analysis: (1) it is irrelevant; and (2) it is wrong. It is irrelevant because one party to a stipulation is in no position to tell the other party it is not entitled to full enforcement of its bargain because other, extraneous "benefits" have been discovered. The only reason for a cost/benefit analysis is to circumvent stipulations which preclude recovery of

such an expense. Public Counsel's calculations show that the customers are entitled to a refund of $14.4 million for 1999 pursuant to the stipulations, $8.3 million of which results from reversing Tampa Electric's unjustified "interest on tax issues" adjustment. Anything less would, by definition, be a harm. There can be no net benefit to customers under the stipulations if they are to receive less than they bargained for in joint negotiations.

Tampa Electric's position is that deferred taxes in its capital structure since the last rate case were greater than they otherwise would have been because of positions taken on its tax returns. The increase in zero-cost capital purportedly increased the amount of revenues deferred and the amount of refunds calculated pursuant to the terms of the stipulations. In the company's view, the customers should be willing to pay $8.3 million in the form of reduced refunds because matters not addressed in the stipulations increased the refunds under the stipulations. But this is an impossibility; the stipulations are what they are, nothing more and nothing less. Nothing outside the stipulations can be relevant to calculations consistent with the stipulations. Amounts deferred were neither greater nor lesser than the stipulations required by their own terms. The company's position is tantamount to saying the customers received extraneous benefits from something the company never asked for, the Commission never granted, and the customers never bargained for.

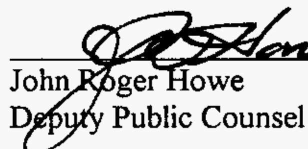
The company's analysis is also wrong on the facts. For one thing, Tampa Electric assumes that any increase (as Tampa Electric uses the term) in deferred revenues would go 100% to customers. But, in fact, the company would retain 100% to the extent necessary to raise its ROE to 11.75% in earlier years or 12% for 1999. Customers might very well have gotten nothing and, as it is, only get 60% of the excess above 12%.

More importantly, under the company's analysis as shown on its "Yearly Benefit/Impact to Customers" dated July 27, 2000, the $4.37 million of total "Deferred revenue benefits/(costs)" for the years 1993-1999 is more than offset by the $7.54 million of "Tax deficiency interest expense at 60%." The net "benefit" to the customers from the stipulations is a negative $3.17 million. The only way Tampa Electric gets to its purported total benefit of $11.09 million is by claiming $14.26 million of "Rate case benefits." Ratepayers, however, can only receive tangible benefits in the form of refunds or reduced rates. As such, after a rate case customers cannot receive any current benefits from tax strategies which increase deferred taxes in the capital structure. And the prohibition against retroactive ratemaking would preclude the Commission from passing any past benefits on to customers in future rate cases. (This is not to say the Commission would not allow for recovery through rates of interest expense on tax deficiencies as it did in the FPC rate case based on expected future benefits during the time new rates will be in effect.)

Tampa Electric, however, thinks it has found a way to recover a future award of interest expense on income tax deficiencies (in the form of reduced refunds) justified by past benefits which do not exist between rate cases. Tampa Electric portrays the stipulations as a mechanism which already recognized these "benefits" in the form of greater deferred revenues. But something not contemplated by the stipulations could not have any effect, positive or negative, on the amounts deferred pursuant to the stipulations' explicit terms. If, for example, the company had booked interest expense in prior years, the prior years' refunds would not have been less because the adjustment reflecting the expense would have been excluded pursuant to Paragraph 10 (or Paragraph 11) of the First Stipulation. On this point, we disagree with the Staff's statement at page 11 of the October 5, 2000, recommendation that "had the company recorded the interest expense in prior years when it

was actually accruing, then the prior years' refunds that have already been distributed would have been less." Staff apparently failed to consider that the stipulations preclude recognition of interest expense on tax deficiencies not related to the Polk Power Station. Tampa Electric cannot use the stipulations to put itself in a position as if the Commission in its last rate case had allowed it to recover interest expense on tax deficiencies. Nor can Tampa Electric use the fact the Commission did not allow it to recover interest expense in rates to impute a "benefit" which does not exist under the stipulations. The purported "Rate case benefits" do not exist and should be excluded from the cost/benefit calculation.

Respectfully submitted,



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Attorneys for the Citizens
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CERTIFICATE OF SERVICE
DOCKET NO. 950379-EI

I HEREBY certify that a copy of the foregoing PUBLIC COUNSEL'S STATEMENT OF POSITION ON TREATMENT OF INTEREST EXPENSE ON TAX DEFICIENCIES PURSUANT TO STAFF'S REQUEST ON NOVEMBER 9, 2000 has been served by *hand delivery or U.S. Mail to the following parties of record on this 15th day of November, 2000.

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