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May 15, 2009

HAND DELIVERED

Ms. Ann Cole, Director
Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Petition for Rate Increase by Tampa Electric Company
FPSC Docket No. 080317-EI

RECEIVED-FPSC
09 MAY 15 PM 3:00
COMMISSION
CLERK

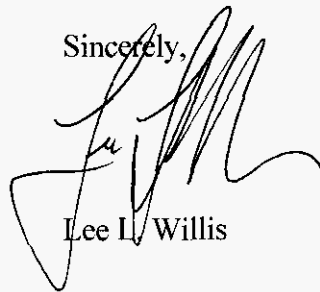
Dear Ms. Cole:

Enclosed for filing in the above docket are the original and twenty (20) copies of Tampa Electric Company's Motion for Reconsideration of Order No. PSC-09-0283-FOF-EI issued April 30, 2009 in the above proceeding.

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,



Lee L. Willis

COM
ECR LLW/pp
Enclosure
GCL 3

OPC cc: All Parties of Record (w/enc.)

BCP 1

SSC 1

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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Rate Increase)
by Tampa Electric Company.)
_____)

DOCKET NO. 080317-EI

FILED: May 15, 2009

**TAMPA ELECTRIC COMPANY'S
MOTION FOR RECONSIDERATION**

Tampa Electric Company ("Tampa Electric" or "the company") pursuant to Rule 25-22.060, Florida Administrative Code moves this Commission to reconsider its Order No. PSC-09-0283-FOF-EI ("Order 09-0283" or "the Order") issued April 30, 2009 in the above-proceeding and, as grounds therefore, says:

Preface

1. Tampa Electric urges this Commission to reconsider its decision in Order No. 09-0283 regarding the calculation of Tampa Electric's revenue requirements. The Order describes a number of adjustments to rate base. In order to balance the rate base to capital structure to reflect these adjustments, the Commission made adjustments to the capital structure as discussed on pages 30 through 48 and calculated in Schedules 1 and 2 on pages 134 and 135 of Order 09-0283. Tampa Electric's concern relates to whether the adjustments necessary to reconcile rate base and capital structure should be made over all sources of capital as the company proposed or over only investor sources of capital as the Commission decided in Order 09-0283.

Nature of Order No. 09-0283

2. Order No. 09-0283 is a final order of the Commission providing for a base rate increase to Tampa Electric effective May 7, 2009. Tampa Electric urges this

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Commission to reconsider only that portion of the Order which reconciles the rate base to capital structure to determine the weighted average cost of capital.

Standard of Review on Reconsideration

3. The purpose of a petition for rehearing or reconsideration is to bring to the attention of the trier of fact some factual or legal point it overlooked or failed to consider when it rendered its order in the first instance. Diamond Cab Company of Miami v. King, 146 So.2d 889 (Fla. 1962). Indeed, this motion identifies factual considerations and Commission precedent overlooked by the Commission. Tampa Electric's basis for reconsideration is failure by the Commission to properly reconcile rate base to capital structure in calculating the weighted average cost of capital.

4. The Commission's calculation of the weighted average cost of capital described on page 48 of Order 09-0283 is incorrect because 1) it is inconsistent with In re: Request for rate increase by Gulf Power, Order No. PSC-02-0787-FOF-EI, issued June 10, 2002 in Docket No. 010949-EI ("Order 02-0787"); and 2) it may violate the normalization rules under former Section 167(l) and Section 168(i)(9)(B) of the Internal Revenue Code ("Code") and Sections 1.167(l)-1(a) and 1.167(a)-11(b)(6) of the Income Tax Regulations.

Inconsistency with Gulf Power Order 02-0787

5. In determining the appropriate weighted average cost of capital for the 2009 projected test year, the Commission approved adjustments to remove the company's initial pro rata adjustment over all sources of capital and replace it with an adjustment over only investor sources of capital (i.e., short term debt, long term debt and common equity). In doing so, the Commission stated that this treatment was consistent with prior

Commission precedent and cited Order 02-0787. This statement is incorrect and overlooks the unambiguous language in that order. Order 02-0787 at page 24 clearly states that replacing Gulf Power's pro rata adjustment with an adjustment over only investor sources of capital is inappropriate and would be unfair saying:

As stated, the company removed all other rate base adjustments on a pro rata basis from all sources of capital. It has been our practice to make specific adjustments where possible and to prorate other rate base adjustments over investor sources only. However, Gulf's per books capital structure includes deferred taxes and investment tax credits that are being considered, along with the related assets, in cost recovery clauses. We believe that it is appropriate for the Company, in this case, to make pro rata adjustments for the remaining rate base items over all sources. This will allow the company to match the related deferred taxes and investment tax credits with the assets being recovered through these clauses. For this reason, it is appropriate to recognize the recovery clause treatment so as not to penalize the Company through the double counting of lower cost of capital items. (Emphasis supplied.)

6. Tampa Electric's pro rata adjustment in its initial filing is entirely consistent with the pro rata adjustment discussed in Order 02-0787. Since the company's pro rata adjustment includes utility plant related investments that are recoverable through cost recovery clauses, the Commission's decision in Order 09-0283 to change the pro rata adjustment from all sources of capital to investor only sources effectively creates the very inconsistency raised in Order 02-0787. Since no deferred taxes and investment tax credits were removed with the Commission's adjustment over investor sources of capital only, the amounts being excluded are now inconsistent with the amounts being recovered through cost recovery clauses. This results in not only an effective disallowance of the company's full cost of capital but appears to be a violation of normalization under the Code.

Normalization Violation

7. The normalization rules imposed by the Internal Revenue Code employ an accounting and ratemaking concept, normalization, to ensure that the capital subsidies of accelerated depreciation and investment tax credits provide an investment incentive for regulated utilities. They accomplish this by premising the availability of these benefits upon compliance with a set of accounting and ratemaking rules, which prescribe the way in which these tax benefits must be reflected. With regard to depreciation, the rules require the establishment of deferred taxes and establish limits on the amount of accumulated deferred income tax (“ADIT”) that can offset rate base and designate the events that give rise to deferred tax reversals. In short, it is a comprehensive system of control over the reflection of the benefits of accelerated depreciation in ratemaking. As part of these rules, any ratemaking procedure or adjustment with respect to a utility’s tax expense, depreciation expense, or reserve for deferred taxes must also be consistently used with respect to the other two such items and with respect to rate base. The consequences of a depreciation normalization violation are that the taxpayer loses the ability to use accelerated tax methods of depreciation with respect to all of its jurisdictional assets, both those it owns when the violation occurs and those it acquires in the future.

8. Per Order 09-0283, the same ADIT is effectively included in the calculation of the overall cost of capital in both base rates and cost recovery clause rates. Thus, ADIT benefits are being passed through to customers twice. Including the ADIT twice results in an inconsistency between the plant related items and ADIT that the Internal Revenue Service (“IRS”) has ruled is a violation. While Private Letter Rulings

("PLR") are only binding on the company to whom they are issued, their reasoning and conclusions provide guidance for the manner in which the IRS is likely to rule.

Accordingly, PLR 0418001 states:

In the present situation, Taxpayer's rate base, tax expense, and depreciation expense for ratemaking purposes will be determined without the cost of the Excluded Property. If the [ADIT] reserve associated with the Excluded Property is not removed from Taxpayer's regulated books of account and is used to reduce the Taxpayer's rate base, the consistency requirement of section 168(i)(9)(B) will be violated because Taxpayer will not include the cost of the Excluded Property in its rate base or include the amount of related depreciation in its computation of tax expense and depreciation expense for ratemaking purpose.

9. In light of the conclusion reached by the IRS in this PLR, the Commission's overlapping inclusion of the same ADIT in both base rates and cost recovery clause rates appears highly problematic and may violate the normalization rules.

10. On page 31 of Order No. 09-0283, the Commission accurately describes normalization and the penalty for violating the normalization requirements which is the loss of the ability to claim accelerated depreciation for income tax purposes on all assets as of the violation date and on subsequent additions. A violation of normalization under the Code would have serious negative impacts to the company and its customers.

Rate Base Adjustments

11. In Order 09-0283, Schedule 1 on page 134, the Commission reduced the company's jurisdictional rate base of \$3,656,800,000 by \$219,189,164. Several of the rate base reductions are reversals of certain company rate base adjustments of which \$209,866,000 relates to jurisdictional utility plant with associated and specific ADIT of \$3,560,000. As a result of adjusting rate base disallowances across only investor sources of capital as depicted on Schedule 2 of the Order, the Commission has excluded utility

plant from rate base but has not adjusted the related ADIT. In other words, the ADIT included in the capital structure contains amounts related to excluded rate base components.

12. Also on Schedule 2, page 135 of Order 09-0283, the Commission made other "Specific Adjustments" to the company's capital structure. Although not identified in detail, it appears the Commission took the pro rata adjustments as reflected in the company's MFR Schedule D-1a and detailed in Schedule D-1b of \$687,432,000, derived a jurisdictional amount of \$660,177,000 using an average jurisdictional factor of about 96 percent, and then reallocated the adjustments over only investor sources of capital. \$578,377,000 of the jurisdictional pro rata adjustments are related to utility plant with associated ADIT of \$61,425,000. By making adjustments across only investor sources of capital, the Commission has excluded utility plant from rate base but has not adjusted the related ADIT. Fairness, precedent and consistency requires that any ADIT balances related to net plant removed from rate base, such as those items above, should also be removed from the ADIT balances.

13. A detailed spreadsheet depicting the calculation that supports the company's concerns about the Commission's inconsistency with Order 02-0787 and the potential violation of normalization are included as Exhibit A, hereto and made a part hereof. It is important to note that while removing Construction Work In Progress ("CWIP") from rate base without adjusting ADIT is not likely a violation of normalization, CWIP should be removed pro rata over all sources of capital as shown on Exhibit A because 1) it is consistent with Order 02-0787 in that a significant portion of Gulf Power's pro rata adjustment was to remove CWIP earning Allowance for Funds

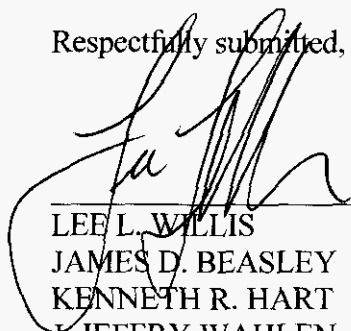
Used During Construction (“AFUDC”), 2) historical regulatory treatment has required CWIP to be adjusted over all sources of capital, and 3) the AFUDC rate which capitalizes the cost of capital associated with the CWIP for future recovery includes all sources of capital including ADIT and investment tax credits.

14. For the reasons cited above, the company requests that the Commission reconsider its reversal of the company’s initial pro rata adjustment to be consistent with Order 02-0787 and to avoid a potential violation of normalization. Tampa Electric believes that the IRS would conclude that the consistency provisions as set forth in Code Section 168 have not been employed appropriately in the Order. Specifically, Tampa Electric believes that rate base has not been computed in a manner that is consistent with ADIT. The rate base reductions discussed above took place without a corresponding and consistent reduction in ADIT. Should the Commission agree with the company’s position and recommended changes, Tampa Electric’s weighted average cost of capital and revenue requirements should be adjusted and the ongoing surveillance report calculations should reflect the pro rata adjustment over all sources of capital.

WHEREFORE, Tampa Electric respectfully urges that the Commission reconsider its Order No. 09-0283 and recognize that the foregoing matters call for a recalculation of Tampa Electric Company’s weighted average cost of capital and revenue requirements calculated by such order.

DATED this 15th day of May, 2009.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lee L. Willis", is written over a horizontal line. The signature is stylized and somewhat cursive.

LEE L. WILLIS
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KENNETH R. HART
J. JEFFRY WAHLEN
Ausley & McMullen
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(850) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Reconsideration, filed on behalf of Tampa Electric Company, has been furnished by U. S.

Mail or hand delivery (*) on this 15th of May 2009 to the following:

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J. R. Kelly/Patricia A. Christensen
Office of Public Counsel
c/o The Florida Legislature
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Tallahassee, FL 32399-1400

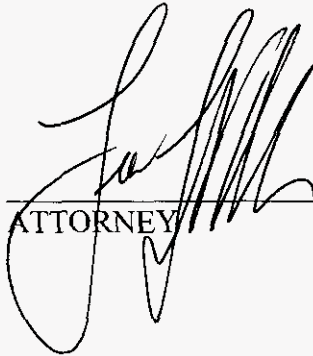
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ATTORNEY

**TAMPA ELECTRIC COMPANY
DOCKET NO. 080317-EI**

**TAMPA ELECTRIC COMPANY
MOTION FOR RECONSIDERATION
EXHIBIT A
FILED: MAY 15, 2009**

Tampa Electric Company
\$(000's)

	Pro Rata Adjustments Per MFR D-1b	Jurisdictional Effect ⁽¹⁾	Utility Plant Related	Jurisdictional Plant Items	Associated ADIT ⁽²⁾
Commission Reversal of Company Pro Rata:					
Other Return Provided	\$ (2,175)	\$ (2,089)	No	\$ -	\$ -
Non- Utility - Accrued Taxes / Deferred Credits	363	349	No	-	-
Non-Utility Plant	(4,199)	(4,032)	No	-	-
ECRC	(302,132)	(290,153)	Yes	(290,153)	(30,815)
Construction Work In Process (earning interest)	(262,078)	(251,687)	Yes	(251,687)	(26,730)
Job Order Receivables	(1,717)	(1,649)	No	-	-
OUC Transmission Line	(3,660)	(3,515)	Yes	(3,515)	(373)
FPL Transmission Line Acquisition Adjustment	(727)	(698)	Yes	(698)	(74)
Deferred Tax / ITC Non Utility	(450)	(432)	No	-	-
CIS Upgrade Amortization	2,512	2,413	Yes	2,413	256
PPA Adjustment	(77,000)	(73,947)	No	-	-
Removal of CWIP in rate base	(36,171)	(34,737)	No	(34,737)	(3,689)
Total	<u>\$ (687,432)</u>	<u>\$ (660,177)</u>		<u>\$ (578,377)</u>	<u>\$ (61,425)</u>
Commission Adjustments to Rate Base (Per Schedule 1 of Final Order)					
Combustion Turbine Annualization		\$ (130,689)	Yes	\$ (130,689)	\$ (1,278)
Big Bend Rail Project Annualization		(44,754)	Yes	(44,754)	(1,945)
Plant in Service Amount		(34,423)	Yes	(34,423)	(337)
Deferred Dredging Costs		(1,347)	No	-	-
Storm Damage Reserve		6,000	No	-	-
Other Accounts Receivable (143)		(10,959)	No	-	-
Accounts Receivable - Associated Cos (146)		(390)	No	-	-
Rate Case Expense		(2,628)	No	-	-
Total		<u>\$ (219,189)</u>		<u>\$ (209,866)</u>	<u>\$ (3,560)</u>

(1) Average capital structure jurisdictional factor of 0.960352

(2) Offset to the reduction in ADIT would be allocated across pro rata sources of capital