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OFFICE OF THE PUBLIC COUNSEL

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April 7, 1997

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. 970171-EU

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of a Notice of Intervention and Public Counsel's Preliminary List of Issues and Positions for filing in the above-referenced docket

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
John Roger Howe
Deputy Public Counsel

- ACK
- AF
- APP
- CAF
- CMU
- CTR IRH/dsb
- EAG Enclosures
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<i>Issues</i>	<i>Interventor</i>
DOCUMENT NUMBER-DATE	DOCUMENT NUMBER-DATE
03589 APR-75	03588 APR-75
FPSC-RECORDS/REPORTING	FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Determination of appropriate)
cost allocation and regulatory treatment)
of total revenues associated with wholesale)
sales to Florida Municipal Power Agency)
and City of Lakeland by Tampa Electric)
Company.)

DOCKET NO. 970171-EU
FILED: April 7, 1997

**PUBLIC COUNSEL'S PRELIMINARY LIST OF
ISSUES AND POSITIONS**

The Office of Public Counsel hereby submits its preliminary list of issues and positions pursuant to Order No. PSC-97-0350-PCO-EU:

ISSUE: Would the Commission exceed its jurisdiction if it were to allow Tampa Electric to earn a return through retail rates for its wholesale sales to the Florida Municipal Power Agency (FMPA) and to the City of Lakeland?

OPC: Yes. The Federal Power Act, 16 USC §§ 824, et seq., was enacted in 1935 to provide the federal regulation of electric utilities found to be outside the domain of state regulators in the case of Public Utilities Commission of Rhode Island v. Attleboro Steam & Electric Co., 273 U.S. 83, 71 L.Ed.549, 47 S.Ct. 294 (1927). The Commission cannot invade FERC's jurisdiction even if it believes doing so will provide an incentive for electric utilities to provide retail service at the lowest reasonable cost. The Commission cannot cross the "bright line" drawn by Congress between state and federal jurisdiction. Federal Power Commission v. Southern California Edison Co., 376 U.S. 205, 215-216 (1964) ("... Congress [in the Federal Power Act] meant to draw a bright line easily ascertained, between state and federal jurisdiction, making unnecessary [] case-by-case analysis ")

Respectfully submitted,

Jack Shreve
Public Counsel


John Roger Howe
Deputy Public Counsel

DOCUMENT NUMBER-DATE

03589 APR-75

FPSC-RECORDS/REPORTING

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Attorneys for the Citizens
of the State of Florida

**CERTIFICATE OF SERVICE
DOCKET NO. 970171-EU**

I HEREBY certify that a copy of the foregoing PUBLIC COUNSEL'S PRELIMINARY LIST OF ISSUES AND POSITIONS has been served by *hand delivery or U.S. Mail to the following parties of record on this 7th day of April, 1997.

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