BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of a new pilot Commercial/Industrial Service Rider to replace existing Economic Development Rider by Florida Power Corporation.	DOCKET NO. 010876-EI ORDER NO. PSC-01-1789-TRF-EI ISSUED: September 4, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER GRANTING PETITION FOR PILOT COMMERCIAL/INDUSTRIAL SERVICE RIDER AND APPROVING WITHDRAWAL OF ECONOMIC DEVELOPMENT RIDER

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On June 25, 2001, Florida Power Corporation (FPC) filed a Petition for approval of a new pilot Commercial/Industrial Service Rider (CISR) to replace its existing Economic Development Rider. The proposed CISR rate allows FPC to negotiate a discount on the base energy and/or base demand charges with commercial/industrial customers who can show that they have viable alternatives to taking electric service from FPC.

FPC's proposed CISR tariff is very similar to those approved for Gulf Power Company (Gulf) and Tampa Electric Company (TECO). Gulf's CISR tariff was approved in Order No. PSC-96-1219-FOF-EI, issued September 24, 1996. TECO's CISR tariff was approved in Order No. PSC-98-1081-FOF-EI, issued August 10, 1998.

We have jurisdiction over the subject matter pursuant to Sections 366.04 and 366.06, Florida Statutes.

PILOT COMMERCIAL/INDUSTRIAL SERVICE RIDER

FPC's proposed CISR tariff allows FPC to negotiate a discount on the base energy and/or base demand charges with commercial/industrial customers who can show that they have viable alternatives to taking electric service from FPC (at-risk load). The CISR is available to new customers (new load) who are qualified to take firm service and existing customers (retained load) receiving firm service.

Customers must make a written request to FPC for service under the CISR and provide certain documentation. First, the customer must provide a legal attestation or affidavit stating that, but for the application of the CISR rate, the new or retained load would not be served by FPC. Second, the customer must provide documentation to show that there is a viable lower cost alternative to taking service from FPC. Finally, existing customers must either provide FPC with the results of a recent energy audit or request that FPC conduct such an audit.

For customers meeting the eligibility criteria described above, FPC seeks approval to negotiate the rate, the term of the contract, and other conditions. The rate must cover the incremental cost to serve the CISR load plus a contribution to fixed costs. If the customer and FPC agree on the rate, term, and other conditions, the customer will be required to execute a Contract Service Agreement (CSA) with FPC.

The negotiated discount only applies to base energy and/or base demand charges. To ensure that the general body of ratepayers is not harmed through the adjustment clauses, FPC proposes to allocate the revenues received from the CISR customers first to all applicable cost recovery clauses at the rate at which the customer would have been charged in the absence of the CISR. The CISR customer will also pay the otherwise applicable customer charge plus an additional $250 customer charge to cover incremental CISR customer-related costs.

In addition to the CISR tariff, FPC submitted a Pilot Study Implementation Plan. The Implementation Plan sets out additional conditions of the tariff, which are described below.

FPC proposes to offer the CISR to eligible customers until any one of three events has occurred: (1) the total capacity subject to executed CSAs reaches 300 megawatts of connected load; (2) FPC has executed 25 CSAs; or (3) 48 months have passed from the tariff's effective date. The implementation plan further states that FPC will not use the CISR to attract existing load currently served by another Florida electric utility to FPC's service territory.

FPC's proposed tariff does not require that the Commission approve each CSA. FPC proposes, however, to include in its monthly surveillance reports the difference between the revenues which would have been received under the otherwise applicable tariff rate and the CISR rate. In addition, FPC proposes to file quarterly reports that will provide information regarding the executed CSA's. The Implementation Plan states the information that will be shown in the quarterly reports. FPC will file the quarterly reports whether it executed any CSAs or not.

We can fully review each executed CSA to evaluate its prudence upon a request by FPC, or upon our own motion. In addition, the Implementation Plan sets forth two conditions which would trigger a review of the CSAs: (1) a request by FPC for a base rate increase; and, (2) information in the monthly surveillance reports indicating that the difference in revenues resulting from the CSAs, when added to FPC's actual revenues, cause FPC's achieved jurisdictional return on equity to exceed the top of the Company's authorized range. We note that nothing precludes us from initiating a prudence review at any time on our own motion. See Section 366.06(2), Florida Statutes.

FPC states that it will have the burden of proof that its decision to enter into a particular CSA was in the best interests of the ratepayers. FPC proposes that if a particular CSA is found not prudent, then the revenue difference between the standard rate and the CISR rate will be imputed.

FPC's proposed CISR tariff does not affect the adjustment clauses and does not affect base rates between rate cases. The proposal may affect FPC's reported earnings and return on equity on the monthly surveillance report. However, if a customer is truly at risk, and if the CSA revenues exceed the incremental cost to serve, then the general body of ratepayers will benefit from FPC's proposed CISR tariff.

Upon review and consideration, we approve FPC's CISR tariff, Implementation Plan, and CSA form. The tariff shall become effective on August 14, 2001. FPC's filing is essentially the same as the Gulf and TECO CISR tariffs and implementation plans. At our request, FPC made one revision to its proposed tariff. The confidentiality provisions in FPC's proposed CISR tariff were initially the same as those in TECO's and Gulf's CISR tariffs. In Docket No. 000061-EI, Complaint by Allied Universal Corporation (Allied) against TECO for violation of Sections 366.03, 366.06(2), and 366.07, with respect to rates offered under the CISR tariff, there was controversy over how to interpret the confidentiality provisions in TECO's CISR tariff. FPC agreed to revise its CISR tariff to clarify that the Commission will review CISR-related documents before making a determination on their confidentiality under Section 366.093, Florida Statutes.

As a condition of approval, however, FPC shall be required to develop and submit procedures for evaluating applications for service under the CISR tariff from two customers competing in the same industry to ensure that the tariff does not result in undue discrimination. This requirement is appropriate in light of Docket No. 000061-EI.

TECO executed a CSA with Odyssey Manufacturing Company (Odyssey) for service to a newly constructed bleach plant in Tampa that uses a new method to produce bleach. In 1999, Allied requested service from TECO under the CISR tariff for a proposed new bleach plant that would use the same production method as Odyssey's plant.

During the CISR negotiations with TECO, Allied requested the same rates, terms, and conditions as those contained in Odyssey's CSA. In October 1999, TECO made Allied a CISR offer. Allied believed that TECO's offer did not contain the same rates, terms, and conditions as those contained in Odyssey's CSA, and filed a formal complaint with the Commission on January 20, 2000. See Docket No. 000061-EI.

In its complaint, Allied alleged that TECO offered Allied discriminatory rates under its CISR tariff. Allied further alleged that TECO had given Odyssey undue and unreasonable preference and advantage. TECO responded by stating that the CISR tariff neither requires nor contemplates that CISR customers be given the same rate. TECO further stated that Odyssey and Allied did not offer comparable ratepayer benefits, and were therefore not entitled to the same rate.

On April 24, 2001, we approved a settlement between TECO and Allied. See Order No. PSC-01-1003-AS-EI. The settlement approved TECO's CSA with Allied, that contains substantially the same rates, terms, and conditions as those contained in Odyssey's CSA.

In light of the allegations made by Allied regarding TECO's CISR application, FPC shall have the burden of proof to demonstrate that, in the event two customers in the same industry request service under the CISR, the rates, terms, and conditions offered to both customers do not result in undue discrimination. To that end, FPC shall submit, for our approval, procedures or guidelines for evaluating CISR applications from two customers competing in the same industry to ensure that the application of the CISR tariff does not result in undue discrimination. The proposed procedures shall be submitted within 30 days of the issuance date of this Order. It should be noted that this Order applies to FPC only, and does not in any way alter the CISR tariffs, already in place, for Gulf and TECO.

WITHDRAWAL OF ECONOMIC DEVELOPMENT RIDER

The Commission approved FPC's Economic Development Rider (ED Rider) in Order No. PSC-98-1222-FOF-EI, issued September 16, 1998. The ED Rider is available to new commercial/industrial customers or to existing customers who add load. The ED Rider allows FPC to negotiate a discount on the base energy and/or base demand charges. The negotiated discount can not exceed 20 percent of the total bill, and the term of the contract is limited to five years.

The eligibility criteria of the ED Rider are patterned after the Qualified Target Industry Tax Refund Program (QTI Program), a statewide economic development initiative. To be eligible for the ED Rider, a customer must be in a target industry as defined in Section 288.106, Florida Statutes. In addition, the customer must provide at least ten new jobs, and the newly created jobs must pay an average annual wage that is equal to at least 115 percent of the state, county, or Standard Metropolitan Statistical area wage.

FPC states that to date it has not entered into any contracts under the ED Rider, primarily because the tariff does not provide for the retention of existing load. Because the CISR can be used to retain existing load, FPC believes it to be a more effective tool than the ED Rider. In addition, FPC states that the CISR has been used successfully by Gulf and TECO, who have each executed two CSAs to date.

For the reasons provided above, the ED shall be closed and replaced with the CISR tariff, which has been demonstrated to be effective in retaining and attracting load.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power Corporation's Petition for approval of a new pilot commercial/industrial rider is granted. It is further

ORDERED that Florida Power Corporation's request to withdraw its Economic Development Rider, Rate Schedule GSED-1, is approved. It is further

ORDERED that the effective date of the pilot commercial/industrial rider is August 14, 2001. It is further

ORDERED that Florida Power Corporation shall submit, for approval, a proposed plan for evaluating commercial/industrial rider applications from customers competing in the same industry to assure that undue discrimination does not occur. The plan shall be submitted within 30 days of the issuance date of this Order. It is further

ORDERED that if a protest is filed within 21 days of the issuance date of this Order, the tariff shall remain in effect pending resolution of the protest, with any charges held subject to refund pending resolution of the protest. If no protest is filed, this docket shall be closed upon the issuance of a Consummating Order.

By ORDER of the Florida Public Service Commission this 4th day of September, 2001.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

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NOTICE OF FURTHER PROCEEDINGS

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The Commission's decision on this tariff is interim in nature and will become final, unless a person whose substantial interests are affected by the proposed action files a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 25, 2001.

In the absence of such a petition, this Order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.