BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Fuel and Purchased Power Cost Recovery Clauses and Generating Performance Incentive Factor	Docket No. 960001-EI Filed: November 14, 1996

POSTHEARING BRIEF OF GULF POWER COMPANY

Gulf Power Company, ("Gulf Power". "Gulf", or "the Company"), by and through its undersigned attorneys, and pursuant to Order Nos. PSC-96-1100-PHO-EI and PSC-96-1285-PCO-EI files this posthearing brief in support of its position stated herein.

ISSUE AND POSITION

ISSUE 9[1] : Should an electric utility be permitted to include, for retail fuel cost recovery purposes, fuel costs of generation at any of its units which exceed, on a cents-per-kilowatt-hour basis, the average fuel costs of total generation (wholesale plus retail) out of those same units?

GULF: Yes. The Commission should follow a policy which looks at the total net benefits to the retail customer with regard to off-system sales. This policy permits utilities to continue making off-system sales which benefit the retail customers.

INTRODUCTION

The issue of how to treat off-system sales has been before this Commission on several occasions. The policy developed through the previous proceedings has been to view the total net benefits to retail customers from off-system sales rather than to focus on the fuel cost recovery or any other one component of the transaction. Gulf believes, for the reasons stated herein, that the

[1]Issue number take from Order No. PSC-96-1100-PHO-Ei

Commission should continue to follow a policy that looks at the total net benefits of off-system sales. Moreover, Gulf believes that the positions taken by the Office of Public Counsel and Florida Power Corporation do not provide a reasonable basis upon which to base a Commission policy.

DISCUSSION

The position asserted by the Office of Public Counsel (" OPC"), is not in the best interest of the electric utility customers of Florida and is not a sound basis for policy of the Florida Public Service Commission. First, the position does not clearly exclude from its coverage the short-term sales made through the Florida Brokers' System which benefit all electric utility customers in Florida. While this concern can be addressed through a careful wording of any policy adopted by the Commission, Gulf's primary concern, and the one which most negatively impacts the customer's best interests, is OPC's position that incremental fuel pricing is inappropriate for off-system sales other than "economy" or "short-term" sales. OPC's proposed policy would, if adopted by the Commission, provide a strong disincentive to the utility's entering into off-system sales and therefore would lead to fewer off-system sales. The result would be that the customers would not realize the potential benefits they could receive as a result of the utility's entering into off-system sales.

Gulf's first concern with the position that the OPC wants the Commission to adopt is that the wording offered by OPC is too ambiguous and arbitrary to be adopted as the policy of this Commission. The OPC's position does not, on its face, limit which off-system sales will fall under its direction. [TR 223] This policy seems to encompass sales made through the Florida

Broker System, which have amounted to approximately $800 million dollars since the system's inception, as well as other "short-term" sales. [TR 225] OPC's witness, Hugh Larkin, Jr., testified to the opposite of the position taken by his sponsor, saying that "short-term" sales and sales through the Florida Broker System should not be affected by or included in a policy adopted by the Commission. [TR 310-12, 325] Moreover, Larkin testified that the use of incremental fuel pricing is appropriate for broker and short-term sales. [TR 310-12, 325] At a minimum, the OPC's position is confusing and ambiguous and is not a sound basis for a policy of the Commission.

Gulf's next concern is with OPC's and Florida Power Corporation's ("FPC") attempt at having the Commission treat off-system sales differently based on arbitrary, unreasonable criteria. Gulf agrees with the testimony offered by OPC and FPC that supports using incremental fuel pricing for sales through the Florida Broker System. [TR 311-12, 325] However, Gulf disagrees with OPC and FPC in regard to other off-system sales. Gulf finds no reasonable basis in the record to support OPC's and FPC's desire to treat various off-system sales differently. OPC witness Larkin attempts to separate off-system sales into two categories while giving no clear or reasonable basis for the separation. [TR 312-13, 325-330] One category created by Larkin includes sales through the Florida Broker System which are referred to as "short-term" or "economy" sales. [TR 311] The other category created by Larkin includes all other off-system sales. [TR 311-12] Interestingly, when asked to explain how he would delineate which sales could use incremental pricing and which could not, Larkin stated that any delineation would be arbitrary if based on the length of time of the sales contract. [TR 335] Further, in trying to delineate the off-system sales under OPC's proposed policy, OPC's witness Larkin testified that the presence of competition for the broker sales separates them for different treatment. He then testified that competition exists for all of the off-system sales. [TR 329-30] Thus, contrary to OPC's pre-filed testimony, competition for a sale is not a characteristic from which one could draw a line between sales available to incremental pricing and those that are not. In fact, none of OPC's and FPC's witnesses could draw a logical distinction between the various off-system sales. OPC has not presented testimony from which the Commission could draw any reasonable conclusions as to treating off-system sales differently based on the term of the contract of the transaction or any other criteria. OPC's proposed policy is ambiguous and arbitrary, lacking any reasonable basis for Commission action.

The OPC's proposed policy is contrary to the customer's best interest in that it fails to account for and has the result of diminishing the net benefits from off-system sales that are enjoyed by all retail customers. The greatest concern that Gulf has with regard to the OPC's proposed policy is that OPC has focused exclusively on fuel cost recovery in isolation without proper regard for the total cost/benefit to retail customers. It is Gulf's position that the entire economic benefits of off-system sales to the retail customer should be the focus of any policy adopted by the Commission with regard to off-system sales. Moreover, focusing only on the fuel cost recovery part of the transaction disregards the true impact of off-system sales on the retail customer by ignoring the remaining components of an off-system sale. [TR 337] An off-system sale includes, in addition to a fuel cost recovery component, non-fuel energy components and the capacity payments. These non-fuel energy components and the capacity payments provide substantial benefits to the retail customers in excess of the costs associated with the fuel cost recovery clause. A policy allowing the total net economic benefits to be the basis for making off-system sales would capture the true costs and benefits associated with such sales and should be the policy of this Commission. [TR 272-73, 280-281]

The Commission and the Federal Energy Regulatory Commission ("FERC"), in the past, have looked at the total economic benefits of off-system sales and have permitted a utility to use incremental pricing in off-system sales. [TR 207-12, 216, 246-48] For example, Tampa Electric Company ("TECO") presented testimony that in TECO's last rate case, the Commission examined the company's off-system sales and followed a net benefits policy. [TR 207-12, 246] Again in 1987, the Commission reviewed the issue of pricing of off-system sales. In that proceeding, the impact of incremental pricing on the fuel clause was visited by the Commission and the Commission found that it was appropriate to use incremental pricing for off-system sales. [TR 208-09] Another instance in which the Commission agreed that incremental pricing was appropriate for pricing off-system sales was in regard to Gulf Power Company's "Schedule R". See 88 FPSC 3:249 (1988); 89 FPSC 1:71 (1989)(denying reconsideration) Therein the Commission was asked to determine whether the "Schedule R" contracts caused the retail ratepayers to bear inappropriate fuel charges through the fuel cost recovery clause. 88 FPSC 3:249 at 260. The "Schedule R" off-system sales were priced based on incremental cost. The ultimate conclusion reached by the Commission was that the off-system sales through "Schedule R" benefitted all customers through lower fuel costs and did not force the retail customers to bear inappropriate fuel costs. The Commission's order was ultimately appealed to and upheld by the Supreme Court of Florida. Monsanto Co. V. McK. Wilson, 555 So.2d 855 (Fla. 1990). Thus, the Commission has followed a sound policy of looking at the total economic benefits of off-system sales and Gulf believes it should continue its existing policy.

Finally, the FERC has addressed the issue of incremental pricing. Tampa Electric Co., 71 FERC ¶61,245 (1995)(reh'g pending); See North Little Rock Cogeneration, L.P. v. Entergy Services, Inc., 72 FERC ¶61,263 at 62,173 n. 8 (1995). In Tampa Electric Co., the FERC found that focusing solely on the fuel component failed to capture the entire economic effects of the off-system sale and that the contribution to the recovery of fixed costs through the demand charge revenues creates benefits to retail customers that exceed the impact on the fuel clause. [Tr. 216, 246] Thus, both the Commission and the FERC have seen the wisdom of looking at all of the components associated with an off-system sale and have not focused on any one part of the equation. They have both agreed that the best course is a policy that looks at the total benefits of an off-system sale.

The Commission, as well as the FERC, has followed a policy that looks at the total economic benefits of a transaction and captures the total costs and benefits of an off-system sale. The total economic benefit approach recognizes that the amount of revenues from a sale priced in excess of incremental cost results in an additional contribution to the fixed costs of the utility which, in the absence of such a sale, the retail customers would bear. [TR 212] The contribution to fixed costs exceeds the magnitude of any effect of incremental fuel pricing on the fuel costs and the fuel adjustment clause. [TR 213] The result is that a net economic benefit inures to the retail customer that would not have been present but for the ability of the utility to price the off-system sale on the basis of incremental pricing. [TR 212-13] The bottom line is that the retail customers see a reduction in their total bills that would not have occurred otherwise. Thus, setting a policy based solely on the impact on fuel recovery would be unreasonable and not in the retail customers' best interests. Any such policy that discourages off-system sales would be denying the retail customers an opportunity to see economic benefits rather than protecting them from unreasonable expense. It is undisputed in the testimony offered in this docket that the policy OPC wants the Commission to adopt would have the ultimate effect of discouraging off-system sales. In fact, "pricing sales at station average fuel (rather than at incremental) would likely eliminate, or greatly reduce, off-system sales and the corresponding benefit to retail customers." [TR 217]

CONCLUSION

The total economic benefits of an off-system sale should be the focus of any Commission policy. Such a policy captures the true impact on retail customers and allows utilities to enter into off-system sales to the benefit of both the utility and the retail customers. Adoption of a policy following the Office of Public Counsel or Florida Power Corporation's positions would have the net effect of diminishing or eliminating off-system sales and the accompanying benefits to the retail customers. Utilities should be encouraged to enter into off-system sales where doing so results in a net benefit to the retail customers and the utility.

Respectfully submitted this 13th day of November, 1996.

Russell A. Badders

JEFFREY A. STONE
Florida Bar No. 325953
RUSSELL A. BADDERS
Florida Bar No. 7455
Beggs & Lane
P. O. Box 12950
(700 Blount Building)
Pensacola, FL 32576-2950
(904) 432-2451
Attorneys for Gulf Power Company

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Fuel and Purchased Power Cost	)	
Recovery Clause with Generating	)	
Performance Incentive Factor	)	Docket No. 960001-EI
	)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished by hand delivery or the U.S. Mail this 13th day of November, 1996.

Vicki D. Johnson, Esquire
FL Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0863

Jack Shreve, Esquire
Office of Public Counsel
111 West Madison St. Suite 812
Tallahassee, FL 32399-1400

James McGee, Esquire
Florida Power Corporation
P.O. Box 14042
St. Petersburg, FL 33733-4042

Matthew M. Childs, Esquire
Steel, Hector & Davis
215 South Monroe, Suite 601
Tallahassee, FL 32301-1804

Suzanne Brownless, Esquire
1311-B Paul Russell Road
Suite 202
Tallahassee, FL 32301

Lee L. Willis Esquire
James D. Beasley, Esquire
Macfarlane, Ausley, Ferguson
& McMullen
P.O. Box 391
Tallahassee, FL 32302

Floyd R. Self, Esquire
Messer, Vickers, Caparello
French & Madison
P.O. Box 1876
Tallahassee, FL 32302-1876

John W. McWhirter, Jr., Esq.
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
P.O. Box 3350
Tampa, FL 33601-3350

Joseph A. McGlothlin, Esquire
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
117 S. Gadsden Street
Tallahassee, FL 32301

Russell A Badders

JEFFREY A. STONE
Florida Bar No. 325953
RUSSELL A. BADDERS
Florida Bar No. 7455
BEGGS & LANE
P.O. Box 12950
Pensacola, FL 32576
(904)432-2451
Attorneys for Gulf Power Company