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November 14, 1996

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RE: Docket No. 960001-EI

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of Citizens' Post-Hearing Statement of Issues and Positions for filing in the above-referenced docket.

Also enclosed is a 3.5 inch diskette containing the Citizens' Post-Hearing Statement of Issues and Positions 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

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power Cost Recovery Clause and Generating Performance Incentive Factor.	))))	Docket No. 960001-EI Filed: November 14, 1996

CITIZENS' POST-HEARING STATEMENT OF ISSUES AND POSITIONS

ISSUE 9: 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 cost of total generation (wholesale plus retail) out of those same units?

POSITION: No. A utility's decision to offer wholesale customers less-than-average fuel costs on longer term sales (i.e., other than economy sales transactions) out of a single or multiple generating units should not cause the fuel cost responsibility of the retail jurisdiction to be greater than the average.

DISCUSSION

INTRODUCTION

The issue before the Commission is whether an electric utility's decision to offer less-than-average fuel costs to a wholesale customer, for other than a short-term economy transaction, should be allowed to have an adverse effect on retail customers in the calculation of the retail fuel cost recovery factor, where the utility has not sought advance approval nor demonstrated the existence of an overall benefit to retail customers.

FPC and OPC took the position through prefiled testimony that the Commission should, as a matter of policy, announce that

wholesale fuel discounts should not result in retail fuel premiums. [T.155, 311] If one utility is allowed to use the retail fuel cost recovery procedures to underwrite bargains for the wholesale jurisdiction, it is inevitable in today's competitive environment that other utilities will be forced to act the same way. [T.155, 157, 169, 177-80, 316]

Tampa Electric, through its witness, Mr. Ramil, took the position that Tampa Electric was granted the discretion by prior Commission decisions to enter into wholesale contracts which require revenue support from the retail customers. [T.207-11, 221-22] Since the issue, in Tampa Electric's estimation, has already been addressed and resolved in its favor, there is no need for the Commission to announce its policy again. Gulf Power's position was not so clear cut, having been transmitted through Mr. Stone's friendly cross-examination of Mr. Ramil, but Gulf Power apparently believes that an electric utility should not suffer the consequences of its own actions when it negotiates less-than-compensatory rates in the wholesale arena.

THE PURPOSE OF THE FUEL COST RECOVERY DOCKET

The current fuel cost recovery procedures were implemented in 1980 to allow electric utilities a dollar-for-dollar recovery of their retail fuel costs. Under Tampa Electric's approach to the fuel proceedings, however, utilities would be able to recover whatever fuel costs were not recovered from the wholesale jurisdiction in addition to those costs properly assignable to the retail jurisdiction. The vehicle for this slight-of-hand is

the Commission's own "A" schedules. Instead of deducting wholesale fuel costs from total fuel costs to arrive at retail fuel cost responsibility, Tampa Electric deducts wholesale fuel revenues received from certain of its wholesale customers. [T.253] Retail customers are thus made responsible for their own cost of service as well as any amounts not recovered from wholesale customers. Instead of a retail fuel cost recovery mechanism, Tampa Electric would make it into an unrecovered fuel revenue recovery mechanism.

An unintended consequence of the reporting format has apparently allowed Tampa Electric to increase its retail customers' fuel cost responsibility. The Commission, however, must have assumed that, by starting with the total cost of fuel expensed on a weighted-average inventory basis on the "A" schedules and subtracting wholesale fuel costs (or applying the appropriate jurisdictional separation factor), only actual retail costs would be left for fuel cost recovery purposes. The result would be the same if the Commission required the reporting only of the fuel cost of generation used to meet retail load. Tampa Electric, however, has apparently exploited the format itself to achieve an unintended result. The Commission, therefore, must ask whether working from the top down should be allowed to lead to a higher fuel adjustment charge than would result from working from the bottom up to arrive at retail jurisdictional fuel cost responsibility.

TAMPA ELECTRIC WAS NEVER GIVEN THE AUTHORITY TO FORCE RETAIL CUSTOMERS TO PROVIDE REIMBURSEMENT FOR WHOLESALE DISCOUNTS

Tampa Electric's witness, Mr. Ramil, testified that the Commission gave its stamp of approval to such an approach in the company's last rate case where the Commission purportedly considered all facets of the company's off-system sales. [T.211, 221] There is, of course, no language in the rate case order to buttress this position. Consistent with past practices, appropriate adjustments were made in the rate case to assure that over- or underrecoveries in the fuel docket could not affect base rate calculations. Notably, the Commission addressed the reasonableness of Tampa Electric's proposal to separate its rate base in a manner that burdened retail customers with a portion of the assets committed to wholesale customers with these words:

> We do not believe it is fair or appropriate for nonretail customers to be buying firm capacity, particularly when the nonretail customers have first call for that capacity, at a rate which is not compensatory or cost-based, which means the retail customers are responsible for part of the revenue requirement for the plant serving the nonretail customers.
>
> The parties have stipulated to the use of the separation studies provided which separate the cost of the four firm Schedule D customers on the basis of all generating plant. The 1994 study will be revised to include the St. Cloud contract (LF Exhibit 98). [Service to the City of St. Cloud was to begin in 1994 under terms similar to Schedule D sales to other municipalities.] We accept and approve the stipulation.
>
> Order No. PSC-93-0165-FOF-EI, issued February 2, 1993, in Docket No. 920324-EI, at page 13.

Mr. Ramil also said that the Commission has approved Tampa Electric's approach in the fuel dockets since its last rate case

by not contesting the company's treatment of the fuel cost of off-system sales. [T.211, 228] But there is no obligation imposed on the Commission or upon other parties to the docket to divine that Tampa Electric has been deducting off-system fuel revenues on forms which direct it to deduct off-system fuel costs.

All of Tampa Electric's arguments are similarly transparent. Mr. Ramil invoked a couple of decisions from the 1987 docket in which the Commission addressed other matters to support the Company's position here. [T.208] He cited to the fact that, in 1987, the Commission approved the use of spot pricing for dispatch purposes. [T.209] The dispatch decision, however, is completely independent of the fuel cost recovery mechanism. Both before and after the 1987 dispatch decision, the fuel Tampa Electric burned to generate electricity for both its retail and wholesale customers was taken out of inventory and expensed on its books and records on a weighted-average-inventory basis. [T.252] This is the "cost" Tampa Electric and the other utilities are allowed to recover in this docket. Tampa Electric, however, has found a way to make the retail customers responsible for their "cost" as well as the excess of "cost" above revenues received from certain wholesale customers.

Mr. Ramil also testified that the concessions the Commission made in 1987 to assist the sale of capacity out of Big Bend 4 in the wholesale market somehow opened the door for Tampa Electric to price wholesale transactions based on incremental fuel cost as the company saw fit and recover any shortfall from retail

customers. [T.209-10, 217, 227-28] Big Bend 4 was excess capacity on Tampa Electric's system. In the company's 1984 rate case, the Commission imputed significant wholesale revenue to Big Bend 4 in lieu of requiring a jurisdictional separation study. Effectively, much of Big Bend 4 was removed from Tampa Electric's retail rate base. To earn a return on that asset, Tampa Electric had to sell it in the wholesale jurisdiction, specifically to FPL. But since the price of coal had risen in relation to the price of oil, FPL was not willing to take capacity or energy out of the unit. The only way Tampa Electric could market Big Bend 4 outside the retail jurisdiction was to reduce its price. The Commission bailed the company out by allowing it to recover the difference between incremental and average fuel cost from retail customers. Order No. 18136 (September 10, 1987), Docket No. 870001-EG, at p. 10.

This was an isolated incident in which the Commission decided it was best for all concerned if the retail jurisdiction backstopped wholesale sales out of this specific unit. Clearly, Tampa Electric was not given blanket authorization to use its retail customers as guarantors for discounts offered to wholesale customers.

Interestingly, the Big Bend situation in 1987 serves to distinguish most of the arguments raised by Tampa Electric in favor of incremental fuel pricing for some wholesale customers. For example, Mr. Ramil said the Commission should look at the big picture, the interplay of base rates and fuel costs, which

benefits retail customers with contributions to fixed costs from another source. [T.220] But Big Bend was already effectively out of the retail rate base. Retail customers received no benefit from selling wholesale energy out of that unit at incremental fuel cost. The only beneficiary was Tampa Electric which, otherwise, would not have had a contribution from either jurisdiction.

The difference between the Big Bend situation and Tampa Electric's current treatment of off-system sales is that the Commission granted the company specific authority for a specific purpose after a record showing of compelling circumstances. Tampa Electric was not given a license to determine what was in the retail customers' "best interest" in the future.

EXHIBIT 37 SHOWS HOW RETAIL IS UNDERWRITING WHOLESALE DISCOUNTS

The hypothetical case introduced by Gulf Power's attorney, Mr. Stone, when he questioned Tampa Electric's witness, Mr. Ramil, was obviously intended to support Tampa Electric's position and to highlight the harm Gulf Power believes an electric utility's stockholders would experience if Public Counsel's proposal were accepted. [T.230-248; Ex. 37] In fact, Mr. Stone's hypothetical shows no harm will be imposed by the retail jurisdiction, and any harm experienced in the wholesale jurisdiction will be of the company's own making.

In the hypothetical, it was assumed that 100 kWh were sold at a fuel cost of 22 mils to retail customers and 25 kWh were sold to a wholesale customer (an "opportunity sale") at a fuel

cost of 12 mils. The total fuel cost was $2500 (125 kWh at an average fuel cost of 20 mils). [Ex. 37, p.2] Mr. Stone's example shows that, under the current system, a utility's stockholders would earn $25 from the retail jurisdiction.

But where does this $25 come from? If fuel costs equal fuel revenues, there should be no profit. The difference, of course, is attributable to the Commission's treatment of economy sales. In his example, Mr. Stone had total economy sales fuel costs of $300 and an economy sales gain of $125, for a total of $425. The hypothetical, however, only deducted $400 ($300 of fuel + $100 (i.e., 80%) of the gain) in calculating retail fuel cost responsibility. The $25 going to the stockholder is the 20% gain on economy sales the utility is allowed to earn from the retail jurisdiction in addition to the split-the-savings profit of $125 allowed by FERC (an amount above the $300 fuel cost which will actually be billed to, and collected from, the wholesale customer). Total profits to the company from both the retail and wholesale jurisdiction for the economy sale will be $150.

Under Mr. Stone's hypothetical, retail customers pay $200 above average fuel cost (100 kWh at 22 mils instead of at 20 mils), and an additional $25 retail profit on a wholesale sale to boot.[1] Public Counsel, however, is not challenging the treatment

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[1]Adjustments for economy sales revenues used to be made in base rate cases. The Commission realized, however, that the volatility of economy sales from year to year reduced the projections to guesswork. If economy sales were actually higher than projected, customers would suffer by paying base rates which were too high. On the other hand, if economy sales

(continued...)

of fuel costs under this economy sales scenario because it is an economic transaction in which the wholesale sale is truly incremental.

Mr. Stone compared this "Current System" versus an alternative he labeled "OPC Proposal". [Ex. 37, p.2] Under this latter example, the utility's stockholders would lose $75. Is this unfair? Note that this is Public Counsel's non-economy-sale situation. Retail customers, in this example, pay an average fuel cost of 20 mils, for a total retail fuel cost of $2,000. The wholesale customer pays 17 mils for its 25 kWh (this is 3 mils less than the average fuel cost); the utility only collects $425 in total from the wholesale customer instead of the $500 needed just to cover fuel.

The $75 "burden" on the stockholders is solely attributable to the utility's sale of electricity in the wholesale jurisdiction below cost. There is no loss of earnings in the retail jurisdiction where fuel revenues equal fuel expenses. Why shouldn't a utility's stockholders lose money from wholesale operations under the FERC's jurisdiction if revenues won't even

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[1](...continued)
were less than projected, the company's base rates would be inadequate to provide a fair return. The solution was to adjust for economy sales as part of the fuel adjustment process. The $100 adjustment in the hypothetical for 80% of the gain on economy sales reduces fuel costs, but it is really an indirect way of reducing base rates which are overstated to the extent they provide a return on assets used to make wholesale (i.e. economy) sales. In other words, retail customers actually pay $2,200 for fuel but also receive a $100 base rate credit which reduces the total the utility is allowed to recover to $2,100. Basically, the company overcollects $125 from the retail jurisdiction through base rates and collects another $125 from the wholesale customer as an economy sales gain, for a total of $250. Returning 100% of the gain to retail would still leave the company with $125. Returning 80% of the gain leaves the company with a total of $150.

cover the average cost of fuel? Why should retail customers make up the difference by paying higher than average fuel costs? Mr. Larkin noted that, even though the wholesale customer is charged an incremental price, "the Company in total is no worse off than if it had charged average [fuel] cost on that sale. Because instead of getting it from the wholesale customer, he's gotten it from the retail customer." [T.333] A utility's voluntary decision to make a wholesale sale below cost should not have any adverse consequences for the retail jurisdiction.

More importantly, it is doubtful the Commission has the authority to allow an electric utility under its jurisdiction to recoup a foregone return on a wholesale transaction from retail customers. Standing alone, the wholesale transaction approved by FERC (in response, no doubt, to the utility's petition seeking that result) causes a net loss to the utility. The $75 loss arises solely from a conscious decision on the utility's part to make a wholesale sale at a less-than-compensatory rate. It is not a cost incurred for, or assignable to, the retail jurisdiction. Even though the loss is attributable to fuel cost, it is really the stockholders return which suffers when revenues are inadequate to cover the actual cost of fuel and provide the intended return on equity. The Commission, however, has no authority whatsoever to allow an electric utility to earn more from such a wholesale transaction than has been approved by FERC.

THE WHOLESALE CUSTOMERS ARE NOT "INCREMENTAL"

When comparing Tampa Electric to competing suppliers, a wholesale customer is not concerned with the question of average versus incremental fuel pricing. If another supplier's average cost is less than Tampa Electric's incremental cost, a prospective wholesale customer will choose Tampa Electric's competitor simply because the price is lower.

Mr. Ramil acknowledged that Tampa Electric resorts to incremental fuel pricing only when it must do so to get the business. [T.228-29, 296] Evidently, the wholesale customer would not be overcharged using average fuel cost if the sale could be made on that basis. But if the use of average fuel cost would be a fair way to price the sale, the customer is not truly "incremental" on Tampa Electric's system. Thus, as Mr. Larkin noted, "absent competition for the customer, no fuel concession would have been made by the selling utility. . . .It is the presence of competition for this customer that has instigated the fuel concession by the selling utility and not the economics of the transaction." [T.313] Mr. Wieland, for FPC, testified that it was the advent of competition in the electric utility industry which gave rise to this issue. [T.153, 170]

Tampa Electric's approach to these sales shows that it is only after Tampa Electric has cut a deal on fuel costs that the rationales that make it "for the customers' benefit" come into play. It is only at this stage that the wholesale customer is

portrayed as being the incremental customer on Tampa Electric's system.

To support this rationale, Mr. Ramil testified that coal is purchased under long-term contracts to support the company's native retail load. [T.258] Spot purchases are purportedly made for incremental wholesale customers. This argument is refuted, however, by Mr. Ramil's concession that TECO Power Services has a priority claim to 145 MW out of Big Bend 4 and the Schedule D wholesale customers have a priority claim to the remaining generation out of Big Bend Station. [T.260-68] Since service to firm retail customers would be interrupted before these wholesale customers if generation out of these units were inadequate, the wholesale customers cannot logically be characterized as "incremental" on Tampa Electric's system.

CONCLUSION

Tampa Electric suggests additional retail fuel costs should be tolerated if the decision to enter into the wholesale transaction, overall, inures to the retail customers' benefit. The Citizens would suggest, however, that this approach begs the question. It assumes a net benefit even though retail customers see nothing but inflated fuel charges. Higher retail earnings on an electric utility's surveillance reports don't help retail customers pay their bills, but lower fuel adjustment charges do.

If Tampa Electric wants to sell the Commission on some novel rate making treatment, on some plan to increase retail fuel costs for the greater good, it knows the drill. It should file a

petition, make whatever factual and legal allegations it deems appropriate, and ask the Commission for approval. Other parties can participate in the process if they choose. The one thing regulation in Florida does not countenance is a utility's unilateral decision to deviate from established policies without prior approval. Should the Commission decide some of Tampa Electric's wholesale contracts based on incremental fuel pricing do, in fact, provide an overall retail benefit, such a decision should only be given prospective effect.

The four criteria identified by Mr. Wieland [T.150-51] and endorsed by Mr. Larkin should be adopted by the Commission as its statement of policy.

Respectfully submitted,

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CERTIFICATE OF SERVICE
DOCKET NO. 960001-EI

I HEREBY CERTIFY that a copy of the foregoing Citizens' Post-Hearing Statement of Issues and Positions has been served by *hand delivery or U.S. Mail to the following parties of record on this 14th day of November, 1996:

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