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May 19, 1997

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

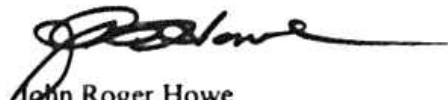
RE: Docket No. 970171-EU

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of the Prehearing Statement of the Office of Public Counsel for filing in the above referenced docket.

Also Enclosed is a 3.5 inch diskette containing the Prehearing Statement of the Office of Public Counsel in WordPerfect for Windows 6.1 format. 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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Enclosures

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER - DATE

05004 MAY 19 97

FPSC-RECORDS/REPORTING

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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: May 19, 1997

PREHEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to the Order Establishing Procedure in this docket, Order No. PSC-97-0350-PCO-EU, issued March 27, 1997, submit this Prehearing Statement.

APPEARANCES

JOHN ROGER HOWE, Esquire
Deputy Public Counsel
Office of the Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida

A. WITNESSES:

HUGH LARKIN, JR.
Larkin & Associates
15728 Farmington Road
Livonia, MI 48154

B. EXHIBITS:

Appendix I to the Direct Testimony of Hugh Larkin, Jr
(Qualifications of Hugh Larkin, Jr.)

C. STATEMENT OF BASIC POSITION

The wholesale contracts at issue in this proceeding were submitted to, and approved by, the Federal Energy Regulatory Commission (FERC), the only agency authorized to decide whether the revenues Tampa Electric Company receives from the wholesale jurisdiction are adequate. Since

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Tampa Electric has decided unilaterally, and for its own purposes, that assets previously available to serve residential customers should now be committed to the wholesale jurisdiction, the Public Service Commission's job is to assure, to the extent possible, that none of the wholesale costs are borne by, and no return on wholesale assets is earned from, the retail jurisdiction

D. STATEMENT OF FACTUAL ISSUES AND POSITIONS.

ISSUE 1: Does the off-system sale agreement to the Florida Municipal Power Agency provide net benefits to Tampa Electric Company's general body of rate payers?

OPC: No. Retail customers receive no benefit from supporting assets or paying for fuel used by wholesale customers.

ISSUE 2: How should the non-fuel revenues and costs associated with Tampa Electric Company's wholesale schedule D sales to the Florida Municipal Power Agency be treated for retail regulatory purposes?

OPC: If the Commission determines that the FMPA sales are similar to sales which were separated in Tampa Electric's last rate case, then all non-fuel revenues and costs associated with the FMPA sales should also be fully separated. If, however, the Commission concludes that these sales are not of a type separated in the last case, then all non-fuel revenues should be flowed back to retail customers through the fuel adjustment mechanism.

ISSUE 3: How should the fuel revenues and costs associated with Tampa Electric Company's wholesale schedule D sales to the Florida Municipal Power Agency be treated for retail regulatory purposes?

OPC: To the extent that fuel revenues are less than average fuel cost, the Commission should impute the difference in calculating retail fuel cost responsibility

ISSUE 4: Does the off-system sale agreement to the City of Lakeand provide net benefits to Tampa Electric Company's general body of rate payers?

OPC: No. Retail customers receive no benefit from supporting assets or paying for fuel used by wholesale customers.

ISSUE 5: How should the non-fuel revenues and costs associated with Tampa Electric Company's wholesale schedule D sales to the City of Lakeland be treated for retail regulatory purposes?

OPC: If the Commission determines that the City of Lakeland sales are similar to sales which were separated in Tampa Electric's last rate case, then all non-fuel revenues and costs associated with the City of Lakeland sales should also be fully separated. If, however, the Commission concludes that these sales are not of a type separated in the last case, then all non-fuel revenues should be flowed back to retail customers through the fuel adjustment mechanism.

ISSUE 6: How should the fuel revenues and costs associated with Tampa Electric Company's wholesale schedule D sales to the City of Lakeland be treated for retail regulatory purposes?

OPC: To the extent that fuel revenues are less than average fuel cost, the Commission should impute the difference in calculating retail fuel cost responsibility.

ISSUE 7: How should the transmission revenues and costs associated with Tampa Electric Company's wholesale sales to the Florida Municipal Power Agency and the City of Lakeland be treated for retail regulatory purposes?

OPC: All revenues should be flowed through to the retail customer.

ISSUE 8: Will the Commission's treatment of the City of Lakeland and Florida Municipal Power Agency wholesale sales have an impact on Tampa Electric Company's refund obligation under the stipulation in Docket No. 950379-EI, Order No. PSC 96-0670-S-EI, approved by the Commission?

OPC: No.

E. STATEMENT OF LEGAL ISSUES AND POSITIONS.

ISSUE 9: Would the Commission exceed its jurisdiction if it were to allow Tampa Electric Company to earn a return through retail rates for its wholesale sales to the Florida Municipal Power Agency 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 Public Service 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.")

E. STATEMENT OF POLICY ISSUES AND POSITIONS: None.

G. STIPULATED ISSUES: None.

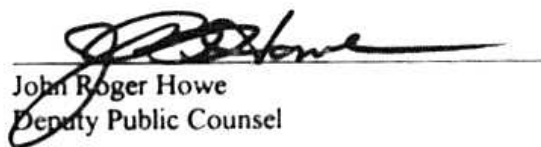
H. PENDING MOTIONS: None.

I. STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE.

There are no requirements of the Order Establishing Procedure with which the Office of Public Counsel cannot comply.

Respectfully submitted,

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Public Counsel


John Roger Howe
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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 PREHEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL has been served by *hand delivery or U S Mail to the following parties of record on this 19th day of May, 1997

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