

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
ORDER NO. PSC-97-0653-PHO-EU
ISSUED: June 9, 1997

Pursuant to Notice, a Prehearing Conference was held on May 29, 1997, in Tallahassee, Florida, before Commissioner J. Terry Deason, as Prehearing Officer.

APPEARANCES:

Mr. Gary Lawrence, 501 East Lemon Street, Lakeland, Florida 33801-5079
On behalf of the City of Lakeland.

Fred Bryant, Esquire, 7201 Lake Ellinor Drive, Orlando, Florida 32809.
On behalf of the Florida Municipal Power Agency.

Lee L. Willis, Esquire, James D. Beasley, Esquire, Kenneth R. Hart, Esquire, Ausley & McMullen, Post Office Box 391, Tallahassee, Florida 32302.
On behalf of Tampa Electric Company.

Harry W. Long, Jr., TECO Energy, Inc., Post Office Box 111, Tampa, Florida 33601-0111.
On behalf of Tampa Electric Company.

John W. McWhirter, Jr., Esquire; McWhirter, Reeves, McGlothlin, Davidson, Rief & Bakas, 100 North Tampa Street, Suite 2800, Tampa, Florida 33602-5125; Joseph A. McGlothlin, Esquire, Vicki Gordon Kaufman, Esquire, McWhirter, Reeves, McGlothlin, Davidson, Rief & Bakas, 117 South Gadsden Street, Tallahassee, Florida 32301.
On behalf of the Florida Industrial Power Users Group.

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PHO-REGULATORY REPORTING

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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.

Leslie J. Paugh, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

On behalf of the Commission Staff.

PREHEARING ORDER

I. CASE BACKGROUND

The purpose of this docket is to establish the retail regulatory treatment of costs and revenues associated with wholesale sales of energy and capacity to The City of Lakeland(Lakeland) and the Florida Municipal Power Agency(FMPA) by Tampa Electric Company(TECO). In general, wholesale sales may be nonseparated or separated. Nonseparated sales historically have been defined as sales which are non-firm or which are expected to last for less than one year. The costs of non-separated sales are allocated to the retail jurisdiction and all revenues derived from those sales are credited back through the Fuel and Capacity Cost Recovery Clauses. Separated sales are generally defined as firm sales lasting longer than one year. The non-fuel costs and revenues from separated sales are removed from retail rate and earnings calculations. In TECO's last rate case, Docket No. 920324-EI, the Commission removed costs associated with all existing long term wholesale firm sales from retail rate base at average system cost (Order PSC-93-0165-FOF-EI, page 13). TECO maintains that the sales agreements with Lakeland and FMPA should not be treated as separated sales. The parties and staff held several informal meetings to discuss alternative regulatory treatment of these sales, but were unable to reach agreement.

During the March fuel hearings in Docket No. 960001-EI, the Office of Public Counsel (OPC) asked the Commission to establish a generic policy statement on whether a utility could recover any revenue shortfall arising from the difference between the actual

fuel revenues the utility receives from a wholesale sale and system average fuel costs, where wholesale revenues were less than system average cost. The issue was deferred to the August fuel hearings to allow all parties the opportunity to present testimony. After considering Staff's recommendation at the February 4, 1997 Agenda Conference, the Commission issued Order No. PSC-97-0262-FOF-EI to establish the policy to be applied to the treatment of fuel for new separated wholesale sales. This new policy requires the utility to credit to the retail ratepayers an amount equal to the system average fuel cost for separated sales, regardless of the actual fuel revenues from the sales. The Commission will consider alternatives to this treatment, provided the utility can demonstrate that the sales provide net benefits to the retail ratepayers.

In response to Order No. PSC-97-0262-FOF-EI, and as a result of issues regarding the treatment of the FMPA and Lakeland sales raised in the February 19, 1997 fuel adjustment proceeding, staff initiated Docket No. 970171-EU. This docket will address the treatment of both fuel and non-fuel revenues associated with these sales.

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 366.093(2), Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

Post-hearing procedures

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. The Prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

III. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

IV. ORDER OF WITNESSES

<u>Witness</u>	<u>Appearing For</u>	<u>Issue #</u>
<u>Direct</u>		
Douglas R. Bohi	TECO	1, 2, 3, 4, 5, 6, 7
John B. Ramil	TECO	1, 2, 3, 4, 5, 6, 7, 8
Karen A. Branick	TECO	1, 2, 3, 4, 5, 6, 7, 8
Jeffry Pollock*	FIPUG	1, 2, 3, 4, 5, 6, 7, 8,
Hugh Larkin, Jr.	OPC	1, 2, 3, 4, 5, 6, 7, 8
David Wheeler	FPSC	1, 2, 3, 4, 5, 6, 7, 8
<u>Rebuttal</u>		
Douglas R. Bohi	TECO	1, 2, 3, 4, 5, 6, 7
John B. Ramil	TECO	1, 2, 3, 4, 5, 6, 7, 8

*By agreement of the parties, Mr. Pollock will testify at such time as is necessary to assure that his testimony is concluded by 5:00 p.m.

V. BASIC POSITIONS

TECO:

The overarching policy issue before the Commission in this proceeding is quite simple: Should the retail regulatory treatment of the Florida Municipal Power Agency (FMPA) and City of Lakeland

(Lakeland) wholesale sales be structured in a manner which insures that sales of this nature will continue to be made for the benefit of the general body of ratepayers or should the regulatory treatment be based on a disregard of basic economic theory and prevailing wholesale market conditions, thereby insuring that wholesale sales which benefit ratepayers and which have been encouraged by this Commission will not be made? Tampa Electric Respectfully suggests that the answer is obvious. In cases where wholesale sales are proven to yield net benefits to ratepayers the Commission should vigorously support such transactions through the regulatory treatment afforded.

Tampa Electric proposes that the wholesale sales to FMPA and Lakeland not be separated for retail rate making purposes. Instead, the Company suggests:

- A. That the costs associated with these sales remain with the retail jurisdiction;
- B. That the Fuel And Purchased Power Cost Recovery Clause ("Fuel Clause") be credited with revenues equal to system incremental fuel cost and the Environmental Cost Recovery Clause ("Environmental Clause") be credited with revenue equal to incremental SO₂ allowance costs from contract revenues;
- C. That contract revenues associated with variable O&M expense and transmission be credited to operating revenue, above the line; and
- D. That 50% of the remaining contract be credited to operating revenue, above the line, and 50% is flowed back to the ratepayers through the Fuel Clause.

If, as Tampa Electric will demonstrate, these sales are projected to produce net benefits to the general body of ratepayers and, that under the Company's proposal, the variable costs associated with these incremental opportunity sales will be covered, then the Commission should embrace the Company's proposal. To impute average cost to these sales as Intervenor's suggest, when the wholesale market price for power is below Tampa Electric's average embedded cost, would create an insurmountable disincentive to an aggressive search for these kinds of market opportunities. As Staff witness Wheeler points out in his direct testimony, the regulatory treatment afforded the FMPA and Lakeland sales should not create a disincentive for Tampa Electric.

The Sales Produce Net Benefits

There is no question that the ratepayers are better off with the FMPA and Lakeland sales than they would be without them, which, when all is said and done, is one of the key issues in this proceeding. The total revenues associated with these sales will cover the total costs properly allocable to those sales and will help defray some of the fixed cost already being borne by retail ratepayers. There is no question that the revenues associated with these sales will not cover the average costs which might be allocated under the Intervenor's view of the world. However, this observation is of no consequence since these sales generate incremental rather than average costs and reflect the prices dictated by the competitive market for wholesale power in Florida.

Non-Requirements wholesale sales, in general, and the FMPA and Lakeland sales, in particular, are discretionary sales which can not be forecasted with any precision before the fact. The Company has no obligation to make new wholesale sales and wholesale customers have no obligation to buy from the Company. Retail sales, on the other hand, are non-discretionary and must be planned for and served. These sales can be forecasted with reasonable precision because retail customers must look to the Company to satisfy their electric power needs. This distinction is of critical importance in understanding how basic economic principals should be applied in determining whether the FMPA and Lakeland wholesale sales produce net benefits to ratepayers.

Because non-requirements wholesale sales are discretionary and impossible to forecast with precision, there is no reasonable basis for allocating cost to these sales before the fact. To the extent that these potential sales are ignored in the retail cost allocation process which is based on average cost, no cost will be allocated to them. Therefore, to the extent that these potential non-requirements sales become actual sales subsequent to the retail cost allocation process, they become incremental sales which produce incremental revenue. It would make no sense to impute average embedded cost to these sales which, by definition, create only incremental costs. In the limited context of assessing the benefits of an incremental wholesale sale, the average embedded costs already being borne by the general body of ratepayers must be viewed as sunk costs and should not be factored into the assessment.

As Tampa Electric witness Bohi explains in his testimony, it is axiomatic, as a matter of basic economic theory, that such incremental sales produce net benefits to the general body of ratepayers if the incremental revenues received are sufficient to cover the incremental costs associated with the sale and contribute to defraying the fixed costs already being borne by the general body of ratepayers. As Tampa Electric witnesses Bohi, Ramil and Branick demonstrate in their direct and rebuttal testimony, the incremental FMPA and Lakeland sales will generate sufficient revenue to cover the variable costs associated with the sales and reduce the fixed cost burden being borne by the general body of ratepayers by \$9.9 million, net present value, over the term of the contracts.

There Are Significant Net Benefits Associated With The FMPA and Lakeland Sales Which Flow To Ratepayers Under Tampa Electric's Proposal

As explained by Tampa Electric witness Branick, the variable costs associated with the FMPA transaction consist of incremental fuel cost, SO₂ allowance cost and O&M expense. Contract revenues above this amount represent a contribution to fixed cost. Under Tampa Electric's proposal FMPA and Lakeland contract revenues would be applied in the following sequence: system incremental fuel cost and SO₂ cost credited to the Fuel Clause and the Environmental Clause; O&M expense, credited to operating revenue above the line; transmission revenue, credited to operating revenue above the line; the remainder split equally, with half credited to the retail customer through the appropriate clauses and the other half credited to operating revenue above the line.

Tampa Electric proposes to credit the Fuel and Environmental Clauses with revenues equal to system incremental fuel cost and actual incremental SO₂ allowance costs, regardless of the level of contract revenues. Therefore, as Dr. Bohi and Mr. Ramil explain, regardless of the unit or units which generate the electrons actually received by FMPA and Lakeland and regardless of the fuel used for generation at any particular plant on the system and regardless of Tampa Electric's level of average fuel cost, the ratepayers will feel no Fuel Clause or Environmental Clause impact as the result of these sales. As Dr. Bohi explains, so long as you are crediting revenues equal to system incremental fuel cost to the fuel clause for incremental sales, the average fuel cost borne by the other ratepayers will not change as the result of the incremental sale.

Fifty percent of the residual revenue under the Company's proposal would be credited to ratepayers on a more immediate basis through the appropriate adjustment clauses. The revenue credited to operating revenue above the line in Tampa Electric's proposal would inure eventually to the benefit of retail ratepayers in at least two ways. First, the credit to above the line operating revenue will either defer the need for a general rate case or serve to lower Tampa Electric's revenue requirement in its next general rate adjustment filing. Second, under the current rate stipulation which extends through 1999, these revenues would increase the potential for additional deferred revenues and the potential for additional refunds in 1999 and 2000 beyond the \$50 million in refunds and credits which Tampa Electric will already provide during the stipulation period.

It would be artificial and seriously misleading to suggest that the Company's shareholders are somehow unjustly enriched by the company's proposed treatment of expected benefits. The proposal does provide an enhanced opportunity for the Company to earn its authorized rate of return. However, the reasonable opportunity to earn the authorized rate of return is a right guaranteed by law not a benefit or a matter of unjust enrichment.

The Earnings Of The Tampa Electric Affiliates From Whom Tampa Electric Buys Fuel And Transportation Service, At Prices Found Reasonable By The Commission, Should Not Be Used As A Basis For Denying Tampa Electric Fair Regulatory Treatment

Staff and Intervenors imply in their testimony that the Commission should consider revenues earned by the Company's unregulated parent and affiliates in fashioning the regulatory treatment to be afforded the FMPA and Lakeland sales. The Commission has satisfied itself that the prices paid by Tampa Electric to its affiliates for fuel and transportation services are just and reasonable. Therefore, the level of earnings enjoyed by those affiliates is irrelevant to a determination of the proper rate treatment to be afforded the FMPA and Lakeland sales. Independent of the finances of its parent or affiliates, Tampa Electric has a right to an opportunity to earn its authorized rate of return. Tampa Electric's parent and unregulated affiliates have a right to their earnings. Their earnings should not be subject to the kind of expropriation that Staff and Intervenors suggest.

It is against this background that Tampa Electric bases its position on the individual issues set forth below.

LAKELAND:

No position at this time.

FMPA:

No position.

FIPUG:

TECO's proposed treatment of its new wholesale sales should not be approved. TECO has not demonstrated that retail ratepayers will receive benefits commensurate with the adverse impact they will experience from this treatment. These longer term wholesale sales should be separated in accordance with Commission standard policy because retail ratepayers are paying 100% of the embedded costs of the resources used for the sales and because separation will prevent cost shifting and subsidization of the wholesale jurisdiction by the retail jurisdiction.

OPC:

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 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.

STAFF:

Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions stated herein. Staff with Wheeler testifies that historically long term firm sales have been separated. For these sales, average system fuel costs shall be credited to the fuel and capacity cost recovery clauses

unless the utility demonstrates that these sales generate net benefits to the retail ratepayers.

VI. 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?

POSITIONS:

TECO:

Yes. The net benefits from the FMPA sale are projected to be \$9.0 million Net Present Value. The total revenue from this sale are projected to be \$77.2 million Net Present Value and the total costs associated with this sale are projected to be \$68.2 million dollars Net Present Value. (Bohi, Branck, Ramil)

LAKELAND:

No position at this time.

FMPA:

No position.

FIPUG:

No. TECO has not demonstrated that the retail ratepayers will receive any benefits from this transaction. Further, TECO has reversed the traditional 80/20 sharing concept (with 80% going to ratepayers) to 78/22 sharing (with 78% going to TECO).

OPC:

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

STAFF:

No position pending receipt of outstanding discovery and evidence adduced at hearing.

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?

POSITIONS:

TECO:

Tampa Electric proposes the following regulatory treatment for this sale:

- These sales should not be separated and should remain in the retail jurisdiction;
- The Fuel and Purchased Power Cost Recovery Clause should be credited with an amount equal to system incremental fuel cost, eliminating any fuel clause impact associated with making this sale.
- The Environmental Cost Recovery Clause should be credited with an amount equal to incremental costs for SO₂ allowances;
- Revenues associated with variable operating and maintenance costs should be credited above the line to operating revenues.
- Transmission revenues should be credited to the company's operating revenues above the line.
- The remaining sale proceeds should be divided 50/50, with 50% credited through the Fuel Clause and 50% credited to operating revenues. (Bohi, Branick, Ramil)

LAKELAND:

No position at this time.

FMPA:

No position.

FIPUG:

The non-fuel revenues and costs should be separated for 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.

STAFF:

Historically long term firm sales have been separated. For these sales, non-fuel costs should be separated at system average cost.

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?

POSITIONS:

TECO:

Tampa Electric proposes the following regulatory treatment for this sale:

- These sales should not be separated and should remain in the retail jurisdiction;

- The Fuel and Purchased Power Cost Recovery Clause should be credited with an amount equal to system incremental fuel cost, eliminating any fuel clause impact associated with making this sale.
- The Environmental Cost Recovery Clause should be credited with an amount equal to incremental costs for SO₂ allowances;
- Revenues associated with variable operating and maintenance costs should be credited above the line to operating revenues.
- Transmission revenues should be credited to the company's operating revenues above the line.
- The remaining sale proceeds should be divided 50/50, with 50% credited through the Fuel Clause and 50% credited to operating revenues. (Bohi, Branick, Ramil)

LAKELAND:

No position at this time.

FMPA:

No position.

FIPUG:

Because the revenues are less than system average for this transaction, system average revenues should be credited to the retail jurisdiction. The power company and its related coal, transportation and exempt wholesale generating companies, which are the primary beneficiaries of the sales, should pay the difference between incremental and average cost.

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.

STAFF:

Historically long term firm sales have been separated. For these sales, average system fuel costs shall be credited to the fuel and capacity cost recovery clauses unless the utility demonstrates that these sales generate net benefits to the retail ratepayers.

ISSUE 4:

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

POSITIONS:

TECO:

Yes. The net benefits from the sale to Lakeland are projected to be \$0.9 million net present value. Total revenues from this sale are projected to be \$4.2 million net present value and the total costs associated with this sale are projected to be \$3.3 million net present value. (Bohi, Branick, Ramil)

LAKELAND:

No position at this time.

FMPA:

No position.

FIPUG:

No. TECO has not demonstrated that the retail ratepayers will receive any benefits from this transaction. Further, TECO has reversed the traditional 80/20 sharing concept (with 80% going to ratepayers) to 78/22 sharing (with 78% going to TECO).

OPC:

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

STAFF:

No position pending receipt of outstanding discovery and evidence adduced at hearing.

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?

POSITIONS:

TECO:

Tampa Electric proposes the following regulatory treatment for this sale:

- These sales should not be separated and should remain in the retail jurisdiction;
- The Fuel and Purchased Power Cost Recovery Clause should be credited with an amount equal to system incremental fuel cost, eliminating any fuel clause impact associated with making this sale.
- The Environmental Cost Recovery Clause should be credited with an amount equal to incremental costs for SO₂ allowances;
- Revenues associated with variable operating and maintenance costs should be credited above the line to operating revenues.
- Transmission revenues should be credited to the company's operating revenues above the line.
- The remaining sale proceeds should be divided 50/50, with 50% credited through the Fuel Clause and 50% credited to operating revenues. (Bohi, Branick, Ramil)

LAKELAND:

No position at this time.

FMPA:

No position.

FIPUG:

The non-fuel revenues and costs should be separated for 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.

STAFF:

Historically long term firm sales have been separated. For these sales, non-fuel costs should be separated at system average cost.

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?

POSITIONS:

TECO:

Tampa Electric proposes the following regulatory treatment for this sale:

- These sales should not be separated and should remain in the retail jurisdiction;

- The Fuel and Purchased Power Cost Recovery Clause should be credited with an amount equal to system incremental fuel cost, eliminating any fuel clause impact associated with making this sale.
- The Environmental Cost Recovery Clause should be credited with an amount equal to incremental costs for SO₂ allowances;
- Revenues associated with variable operating and maintenance costs should be credited above the line to operating revenues.
- Transmission revenues should be credited to the company's operating revenues above the line.
- The remaining sale proceeds should be divided 50/50, with 50% credited through the Fuel Clause and 50% credited to operating revenues. (Bohi, Branick, Ramil)

LAKELAND:

No position at this time.

FMPA:

No position.

FIPUG:

Because the revenues are less than system average for this transaction, system average revenues should be credited to the retail jurisdiction. The power company and its related coal, transportation and exempt wholesale generating companies, which are the primary beneficiaries of the sales, should pay the difference between incremental and average cost.

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.

STAFF:

Historically long term firm sales have been separated. For these sales, average system fuel costs shall be credited to the fuel and capacity cost recovery clauses unless the utility demonstrates that these sales generate net benefits to the retail ratepayers.

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?

POSITIONS:

TECO:

Pursuant to Federal Energy Regulatory Commission Order 888 and 889, the company is required to charge itself for the use of its transmission system the same as it would charge a third party user. Tampa Electric must credit the transmission revenues associated with the wholesale sales to FMPA and Lakeland to operating revenues. These revenues will serve to offset transmission revenue requirements in a future rate case. Traditionally, transmission revenues have been credited against the Tampa Electric retail cost of service during base rate cases and Tampa Electric will continue the current treatment of such revenues. (Bohi, Branick, Ramil)

LAKELAND:

No position at this time.

FMPA:

No position.

FIPUG:

If the wholesale sales are not separated, retail customers are entitled to receive all the benefits derived from the use of the transmission facilities for which they are paying the entire cost. Such benefits should be used to reduce TECO's retail rates.

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Otherwise, retail customers would be subsidizing TECO's wholesale activities.

OPC:

All revenues should be flowed through the fuel adjustment clause to the retail customer.

STAFF:

Historically long term firm sales have been separated. For these sales, non-fuel revenues and costs should be separated at system average.

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?

POSITIONS:

TECO:

No. As per the above referenced Order, Tampa Electric's commitment to refunds to the retail ratepayers remains unchanged under this proposal. (Branick, Ramil)

LAKELAND:

No position at this time.

FMPA:

No position.

FIPUG:

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Yes. If these transactions are not jurisdictionally separated, TECO's earnings will be artificially depressed and the potential for a refund will be reduced.

OPC:

No.

STAFF:

There are too many variables to determine at this point what, if any, impact the proposed treatment of these sales will have on the stipulation in Docket No. 950379-EI.

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?

POSITIONS:

TECO:

The FERC and the FPSC act independently in regulating the matters subject to respective jurisdictions. The FPSC certainly has the power to determine how Tampa Electric Company's wholesale sales will be reflected in retail rates. The issues in this proceeding have nothing to do with Tampa Electric earning a wholesale return on its wholesale sales. To the extent that the issue, as stated, represents an effort to relitigate the issue of whether average or incremental fuel cost should be credited to the fuel clause which was addressed in Order No. PSC-97-0262-FOF-EI, issued March 11, 1997, it should be dismissed as an untimely application for rehearing of that Order.

LAKELAND:

No position at this time.

FMPA:

No position.

FIPUG:

The Commission has jurisdiction to prohibit TECO from requiring retail customers to pay a return on a plant dedicated to wholesale sales.

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.")

STAFF:

Staff takes no position at this time, pending the evidence and legal arguments of the parties.

VII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Douglas R. Bohi	TECO	_____ (DRB - 1)	Appendix 1 to testimony
Karen A. Branick	TECO	_____ (KAB - 1)	Exhibit of Karen A. Branick

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Jeffry Pollock	FIPUG	<u> </u> (JP - 1)	Document 1: Analysis of TECO proposed regulatory treatment
			Document 2: Comparison of Retail & Purchased Power Costs
Hugh Larkin, Jr.	OPC	<u> </u> (HL - 1)	Appendix I to the Direct Testimony of Hugh Larkin, Jr.
John B. Ramil	TECO	<u> </u> (JBR - 1)	Rebuttal Exhibit of John B. Ramil

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

VIII. PROPOSED STIPULATIONS

There are no stipulations at this time.

IX. PENDING MOTIONS

1. Tampa Electric's Company Motion for Protective Order.

X. RULINGS

Tampa Electric Company's Objection To Discovery and Motion For Protective Order, filed May 19, 1997, is hereby GRANTED.

Ruling on Tampa Electric Company's Motion For Temporary Protective Order, filed May 29, 1997, is RESERVED

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pending a showing that the arrangement offered by Tampa Electric Company is not satisfactory.

It is therefore,

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 9th day of June, 1997.



J. Terry Deason, Commissioner
and Prehearing Officer

(S E A L)

LJP

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.