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LAW OFFICES
McWHIRTER, REEVES, McGLOTHLIN, DAVIDSON, RIEF & BAKAS, P.A.

LYNWOOD F. ARNOLD, JR.
JOHN W. BAKAS, JR.
HARRY LEE COE, IV
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C. THOMAS DAVIDSON
STEPHEN O. DECKER
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JOSEPH A. McGLOTHLIN
JOHN W. McWHIRTER, JR.
RICHARD W. REEVES
FRANK J. RIEF, III
DAVID W. STEEN
PAUL A. STRASKE

100 NORTH TAMPA STREET, SUITE 2800
TAMPA, FLORIDA 33602-5126

MAILING ADDRESS: TAMPA
P.O. BOX 3350, TAMPA, FLORIDA 33601-3350

TELEPHONE (813) 224-0866
FAX (813) 221-1854
CABLE GRANDLAW

PLEASE REPLY TO:
TALLAHASSEE

TALLAHASSEE OFFICE
117 S. GADSDEN
TALLAHASSEE, FLORIDA 32301

TELEPHONE (904) 222-2525
FAX (904) 22[illegible]-5606

July 7, 1997

VIA HAND DELIVERY

Blanca S. Bayo, Director
Florida Public Service Commission
Division of Records and Reporting
2540 Shumard Oak Drive
Gerald L. Gunter Building
Tallahassee, Florida 32399-0850

Re: FMPA/Lakeland - Docket No. 970171-EU

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and fifteen copies of the Florida Industrial Power Users Group's Post-Hearing Statement and Post-Hearing Brief in the above docket. I have also enclosed a disk containing the brief in WordPerfect 5.1 format. It is entitled FIPUG.BRF.

Please acknowledge receipt of the above on the extra copy enclosed herein and return it to me. Thank you for your assistance.

Sincerely,

Vicki Gordon Kaufman

Vicki Gordon Kaufman

VGK/pw
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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 wholesales to Florida Municipal Power Agency and City of Lakeland by Tampa Electric Company.	Docket No. 970171-EU Filed: July 7, 1997

POST-HEARING STATEMENT
AND
POST-HEARING BRIEF
OF
FLORIDA INDUSTRIAL POWER USERS GROUP

John W. McWhirter, Jr.
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
100 North Tampa Street, Suite 2800
Post Office Box 3350
Tampa, Florida 33601-3350
Telephone: (813) 224-0866

Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
Telephone: (904) 222-2525

Attorneys for Florida Industrial
Power Users Group

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John W. McWhirter, Jr.
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
100 North Tampa Street, Suite 2800
Post Office Box 3350
Tampa, Florida 33601-3350
Telephone: (813) 224-0866

Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
Telephone: (904) 222-2525

Attorneys for Florida Industrial
Power Users Group

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PRELIMINARY STATEMENT

Pursuant to rule 25-22.056, Florida Administrative Code, the Florida Industrial Power Users Group files its Post-Hearing Statement of Issues and Positions and its Post-Hearing Brief.[1] To the extent that the issues are the same but relate to two different transactions, FIPUG has combined them below for purposes of discussion.

SUMMARY AND OVERVIEW OF ARGUMENT

As an initial matter, it is FIPUG's position that the treatment TECO seeks for the FMPA and Lakeland sales violates the overearnings Stipulation approved by this Commission. The Stipulation, at the Commission Staff's behest, provides that future wholesale sales must be separated as in TECO's last rate case. TECO should be bound by its agreement with the retail customers and the Commission.

Further, it is important to bear in mind what is and is not the subject of this hearing. The subject of this hearing is not whether TECO should enter into wholesale sales transactions with FMPA, Lakeland or any other wholesale customer. TECO's participation in the wholesale market, to what extent and at what price, is TECO's decision. The subject of this hearing is the Commission's obligation to ensure that the retail ratepayers, who have funded the carrying costs of TECO's generating plants and transmission lines for their useful life to date be relieved of the obligation to continue funding that portion of the plants that are now dedicated to the exclusive use of

[1] The following abbreviations are used in this brief. The Florida Industrial Power Users Group is referred to as FIPUG. The Office of Public Counsel is OPC. Tampa Electric Company is referred to as TECO. The Florida Public Service Commission is called the Commission. The Florida Municipal Power Agency is referred to as FMPA and the City of Lakeland is called Lakeland.

others. The statutory prohibition against unjust rates should encourage the Commission to ensure that the customers the Commission has sworn to protect are not harmed by, and do not subsidize, these wholesale transactions. It is the retail ratepayers who are this Commission's responsibility and it is the retail ratepayers who the Commission must insulate from such transactions.

The time-honored way to protect retail ratepayers is to require TECO to separate these long-term sales, just as it separates its other long-term and Schedule D sales. Retail customers should be relieved from the cost responsibility for assets used to serve the wholesale jurisdiction. If separation is not ordered, a less acceptable compromise that would leave retail customers with primary cost responsibility, would be to require TECO to flow through to retail customers, through the adjustment clauses, 100% of all revenues received from the wholesale sales.

Retail customers would prefer separation to the $2 million discount TECO offers on the $71.1 million cost Mr. Ramil says customers will be required to pay over the term of the contracts to support the wholesale assets. (Tr. 4?). If retail customers receive credit for the embedded fuel costs related to the wholesale sales and all the non-fuel revenues, they will still be worse off than if the assets are separated. TECO Energy, the sole shareholder of TECO, will be better off due to the sales because of the profits it will make from its transportation, fuel and IPP subsidiaries.

This case specifically involves two contracts which TECO has already entered into and which it is already serving. However, it is clear that the policy decision in this case will have broad ranging implications, not only for TECO[2], but for other Florida investor-owned utilities as well.

ARGUMENT

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?

FIPUG's Position: *No. Retail ratepayers will suffer a $69.1 million loss if they are compelled to pay the carrying costs on assets exclusively dedicated to wholesale sales. Further, even if captive retail customers had first call on the assets, TECO has reversed the traditional 80/20 sharing concept by giving 80% to TECO).*

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?

FIPUG's Position: *No. Retail ratepayers will suffer a $69.1 million loss if they are compelled to pay the carrying costs on assets exclusively dedicated to wholesale sales. Further, even if captive retail customers had first call on the assets, TECO has reversed the traditional 80/20 sharing concept by giving 80% to TECO).*

The Stipulation Forbids the Treatment TECO Seeks

In Order No. PSC-96-1300-S-EI, Exhibit No. 1, the Commission approved a comprehensive Stipulation between TECO, OPC, and FIPUG addressing TECO's overearnings. That Stipulation addressed the treatment of wholesale sales. Paragraph 5F provides:

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[2]TECO is currently considering other wholesale transactions. (Tr. 169).

> The separation procedure to be used to separate capital and O & M which was approved in the Company's last rate case, Docket No. 920324-EI, shall continue to be used to separate any current and <u>future</u> wholesale sales from the retail jurisdiction.

Emphasis supplied. TECO agreed to separate future wholesale sales, like the FMPA and Lakeland sales. It should not be allowed to breach the Commission-sanctioned Stipulation which settled the over-earnings case with significant benefits to TECO.

The Stipulation further provides the following in paragraph 15:

> . . . The parties agree not to protest, seek reconsideration or judicial review of the Commission's approval of this Stipulation <u>or to seek modification of this settlement and Stipulation subsequent to final Commission approval, except by mutual agreement</u>.

Emphasis supplied. The language in paragraph 15 clearly states that no change in the terms of the Stipulation (including the treatment of wholesale sales described in paragraph 5F) may be made without the mutual consent of the parties to the Stipulation.[3] Clearly, there is no such mutual agreement in this case. The other parties have protested TECO's unilateral disavowal of its promise. The proposal TECO has made violates the Stipulation and the order approving it and should be rejected[4] on that basis. Though it is FIPUG's view that TECO has failed to make its case from a factual perspective (which failure is discussed below in detail), TECO's proposal

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[3]There was an amendment to the Stipulation permitting the Commission to review a wholesale sale from the Polk Station. However, the sales at issue here have nothing to do with the Polk Station and thus the subsequent amendment is irrelevant to the issues in this case.

[4]Mr. Ramil testified that TECO's proposal "considers" the earnings Stipulation (Tr. 51); TECO has, in fact, ignored it.

must be rejected on the legal basis that it patently violates a Commission order TECO supported and promised to follow.

The Burden of Proof

TECO asks the Commission in this docket to approve an alternative retail regulatory treatment for two wholesale contracts--a treatment that is a significant departure from this Commission's established policy. As this Commission has determined: ". . . a utility bears the burden of showing that deviation from established policy is in the public interest." Exhibit No. 1, Order No. PSC-97-0262-FOF-EI at 4. TECO has failed to meet that burden.

The Wholesale Contracts

TECO's sale to Lakeland began on October 19, 1996 and ends on September 30, 2006. It is a firm sale for 10 MW from TECO's system generating assets. TECO's sale to FMPA began on December 16, 1996 and ends on March 15, 2001. It is a firm Schedule D[5] sale from Big Bend 2 and 3 and Gannon 5 and 6. The sale begins at 35 MW and increases to 150 MW. (Tr. 458). Both contracts involve the sale of firm capacity to wholesale customers who have first call on that capacity ahead of retail ratepayers. Mr. Ramil admitted that if the FMPA sale were separated, revenues from the sale would not cover the costs of the assets committed. (Tr. 70-71). Mr. Ramil further admitted that what TECO has done is take "the sunk costs of the assets corresponding to those sunk costs previously committed to the retail

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[5]Since TECO's last rate case it has entered into a Schedule D sale with Reedy Creek. That sale was separated at average cost. (Tr. 68).

jurisdiction and sold them and committed them on a priority generation basis in the wholesale jurisdiction . . . ." (Tr. 76).

TECO is currently providing service to these wholesale customers. The FMPA contract has already been approved by the Federal Energy Regulatory Commission. (Tr. 67). Its approval was not contingent on a certain regulatory treatment from the Florida Commission. (Tr. 67, 85). Though TECO implies otherwise[6], it seems clear TECO is obligated to provide service under the terms of the FMPA and Lakeland contracts and that this provision of service is not contingent on approval of TECO's request for a particular type of regulatory treatment in the retail sector. Thus, TECO voluntarily entered into these contracts, with no incentive (such as it seeks here) and no ability to void the contracts based on the Commission's decision in this case.

Historical Perspective

The issue which TECO presents to the Commission in this case is not a new or novel one. To the contrary, TECO has attempted to persuade the Commission to adopt its "incentive/sharing" view on several previous occasions. In at least two other dockets, TECO argued (unsuccessfully) that it should be permitted to retain revenues collected as the result of wholesale sales made from assets supported by retail customers. In each instance, the Commission rejected TECO's arguments and it should do so again--finally and definitively in this case.

[6] Mr. Ramil said TECO would consider all its options. However, the only option he could think of was assignment to a power marketer. Given that FMPA would have to agree to such an assignment and that contract performance would be tied to TECO's plants, such an assignment seems unlikely. (Tr. 85-88).

In TECO's last rate case[7], the Commission dealt with long term sales from TECO's Big Bend unit. Those sales are almost identical progenitors to the long-term sales at issue here. (Tr. 456). In that case, the Commission found it appropriate to separate those sales from the retail jurisdiction. The Commission said:

> All revenues and expenses associated with the firm Schedule D sales for the cities of New Smyrna Beach, St. Cloud and Wauchula, the Reedy Creek Improvement District and the Florida Municipal Power Association have been removed from the retail jurisdiction in the stipulated jurisdictional separation study.

Exhibit No. 1, Order No. PSC-93-0165-FOF-EI at 86. The Commission then based TECO's retail rates on the remaining assets used to serve retail customers. TECO was directed to credit fuel revenues to the retail jurisdiction. TECO's proposal to require retail customers to bear 100% of the carrying costs for the assets and allow it to retain 60% of the non-fuel revenues from these transactions was not adopted -- TECO got to keep 100% of the non-fuel revenues from the sale, but captive customers were relieved from the obligation to support the assets used to serve others. (Tr. 458).[8]

More recently, this Commission discussed separation of long term sales in the generic fuel docket.[9] As to long-term sales (the kind at issue here), the Commission said:

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[7] Docket No. 920324-EI.

[8] As Mr. Wheeler testified, TECO's proposal in this case represents a significant departure from the treatment of these types of sales ordered in TECO's last rate case. (Tr. 465).

[9] Docket No. 970001-EI.

> We have traditionally allowed a sale to be separated if it is a long-term firm sale, greater than one year, that commits production capacity to a wholesale customer. In essence, a sale is separated to remove the production plant and operating expenses associated with the sale from the retail jurisdiction's cost responsibility.
>
> . . .
>
> . . . We have assigned costs to both jurisdictions using average embedded costs for production plant and operating expenses, and have required fuel credits equal to average system costs. <u>This process protects the retail market from subsidizing the competitive wholesale market</u>.

Exhibit No. 1, Order No. PSC-97-0262-FOF-EI at 2-3, emphasis supplied.[10] The Commission's policy as delineated above is the policy that it should continue to apply to TECO's wholesale sales. TECO's persistence on this issue is unparalleled in the recollection of modern man. The horse is dead; the beating should stop.

<u>This Case--the Alleged Benefits</u>

In a tacit admission as to the weakness of its position, TECO made a last minute proposal at hearing in an attempt to salvage its case. TECO offered to "guarantee" that ratepayers would receive at least $2 million over the next two fuel adjustment proceedings. (Tr. 54-55). As FIPUG witness Mr. Pollock said, such an offer is simply "too little, too late." (Tr. 214).

Further, TECO's offer does not change the fact that retail customers are subsidizing these wholesale sales. As Staff witness Wheeler testified:

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[10] TECO's testimony made it clear that it is not following current Commission policy by separating the wholesale sales, despite the fact that its proposal has not been approved by the Commission. Instead, TECO is crediting the fuel revenue to the retail jurisdiction and booking the rest of the revenue above the line. (Tr. 165, 392).

> [S]ince the revenues derived from the sales are less than the embedded average cost of the sales, inclusion of these sales in the retail jurisdiction allows TECO to subsidize its wholesale sales at the expense of the captive retail ratepayers.

(Tr. 459).

Even using TECO's own projections[11] and incorporating TECO's 11th hour offer, retail ratepayers would receive only 20% of the benefit of the transactions, while TECO's shareholder would retain 80% of the benefit. (Tr. 199-200). In actual dollars, this means that of the $9.9 million in projected benefit, TECO will retain all the transmission revenue ($5.9 million) and one-half of the non-fuel revenue ($2.0 million), for a total of $7.9 million. The benefit to retail ratepayers of such a proposal is a minuscule $0.000014 per kWh. (Exhibit No. 7; Tr. 199).

In return for this "benefit," retail ratepayers must support 100% of the assets used to make these sales[12] and must support these assets at average embedded cost. (Tr. 211). The $2 million "benefit" TECO offers must be weighed against the

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[11] FIPUG does not concede that TECO's incremental cost projections are correct. However, due to the prehearing officer's ruling on May 29 (which was not memorialized in writing until June 9, 2 days before the hearing) prohibiting FIPUG's witness and consultant in this case from having access to TECO's incremental cost calculations and the documents supporting those calculations, FIPUG was unable to assess the accuracy of TECO's projections. FIPUG put its objection to this ruling on the record at the outset of the hearing. (Tr. 6-9). FIPUG did not seek reconsideration of the prehearing officer's ruling because such a motion, even if granted, would have been futile given the fact that the hearing was to begin.

[12] There is no dispute that 100% of the fixed costs are being borne by retail ratepayers. (Tr. 71, 211).

$71.1 million[13] benefit of separating the sales. (Tr. 94). Viewed in this light, TECO's proposal is not much of a bargain.[14] TECO entered into the transactions with its eyes open, fully aware of the Commission's policy and its own agreement to abide by that policy executed contemporaneously with the wholesale deals. There is no reason for the Commission to encourage further violations by bailing TECO out from these sales. If the sales are not separated, minimal fairness dictates that all revenues flow back to retail customers in the form of lower rates. (Tr. 211).

<u>Fuel "Benefits"</u>

TECO does not suggest that customers will benefit from the fuel revenues it receives from the new wholesale contracts, but it does promise that retail customers will not be asked to subsidize these contracts as they do the current wholesale contracts. As Ms. Branick acknowledged (Tr. 360), presently the fuel clause is only credited with the revenue TECO receives from wholesale sales. If the cost of wholesale sales exceeds the energy payments under the contracts, the difference is subsidized by the captive retail ratepayers. This long standing inequity was recently addressed by the Commission in Docket No. 970001-EI. The Commission terminated the subsidy prospectively after finding that:

> Whenever a utility credits an amount which is less than average system fuel costs to the fuel adjustment clause for its separated wholesale sales, the retail ratepayers pay

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[13]Mr. Ramil testified that separation would lower retail revenue requirements by $71.1 million. (Tr. 43).

[14]Another way to look at it is the ratepayers would be exchanging $3 million in broker sales for $2 million in benefit. (Tr. 442, 451).

> increased (i.e. above average) fuel costs than they would have paid if fuel revenues were credited through the fuel clause based on average fuel costs. When fuel prices are discounted and that discount is automatically passed through to the retail ratepayer, and the other non-fuel revenues go to the utility's shareholders immediately, there is an increased possibility of gaming the system.

Exhibit No. 1, Order No. PSC-97-0262-FOF-EI at 3.

However, once again, TECO proposes to credit retail customers with "system incremental fuel" (Tr. 33), stating that this will leave retail customers neutral despite the Commission's previous finding to the contrary. TECO says it will credit this amount to the retail jurisdiction using the same method it uses to pay QFs for fuel. (Tr. 364).

The evidence revealed several flaws in TECO's theory that retail ratepayers are not harmed by this fuel transaction. First, it is clear that while TECO charges its retail customers fuel handling charges, it makes no such charges to FMPA and Lakeland. (Tr. 329). Thus, retail ratepayers pick up this cost.

Second, while retail ratepayers pay weighted average inventory fuel costs which includes transportation, FMPA and Lakeland do not. They pay only fuel costs, again leaving the retail jurisdiction to pick up the difference. (Tr. 360, 366). Thus, the retail jurisdiction is far from fuel neutral.

Third, FIPUG has attached as an Appendix to this brief Schedules A-1 and A-8 extracted from Ms. Branick's Final True-Up in Docket No. 970001-EI (Exhibit No. 9). These two pages clearly demonstrate that captive retail customers are getting short shrift from the TECO proposed fuel plan. Schedule A-8 is a proxy for incremental fuel costs. If retail customers get a credit of $13.93/mwh (Schedule A-8) against their fuel cost, but are required to pay TECO $21.23/mwh (Schedule A-1, line 26) for the fuel used in these transactions plus line losses and taxes, they will subsidize every mwh sold by $7.30. The modest gain on non-fuel revenues promised by TECO will be quickly subsumed.

The facial logic that customers are held harmless if they receive credit for "incremental" fuel costs is quickly dispelled by the following:

- Incremental costs do not include transportation costs (Tr. 360, contra, Tr. 329);
- Incremental costs do not include fuel handling costs (Tr. 328);
- Incremental costs are not based on actual costs, but a production simulation model (Tr. 325);
- Incremental costs use spot fuel costs depriving retail customers of the price benefit;
- Incremental cost analyzes give wholesale customers the benefit of real time fuel pricing which is denied to retail customers.

Non-Fuel "Benefits"

On the non-fuel side, TECO proposes a "sharing" approach. TECO wants to "share" non-fuel revenues with retail ratepayers. TECO proposes that 50% of non-fuel revenues flow through the fuel clause and that 50% be retained as operating revenues . (Tr. 40). In this way, TECO argues, ratepayers get all the benefit.

Crediting revenues above the line to operating expenses provides no benefit to retail ratepayers. It does, however, provide a benefit to TECO by allowing it to retain and use retail ratepayer money between rate cases.[15] This Commission has recognized that the "benefit" TECO wants to confer is illusory at best:

> This concern [regarding non-fuel revenues being retained by shareholders] is heightened by the fact that the retail ratepayer's cost responsibility is reduced only at the time of the utility's next base rate case or when the utility is over earning and the continued monthly surveillance adjustments generate additional funds subject to Commission disposition. <u>Absent a rate case or overearnings situation, the additional non-fuel revenue flow directly to the company's shareholders</u>.

Exhibit No. 1, Order No. PSC-97-0262-FOF-EI at 3, emphasis added.

The sharing mechanism which TECO has proposed here is totally inappropriate. Retail ratepayers currently support 100% of the cost of TECO system assets (generation and transmission) used to make these wholesale sales. Therefore, (unless the sales are separated), retail ratepayers are entitled to receive all the benefits from the use of the assets for which they pay. (Tr. 205, 461).[16]

<u>**Incentives**</u>

The entire basis for TECO's proposal rests on the premise that it needs an "incentive" to make wholesale sales. Without an incentive, TECO says, wholesale

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[15]Even TECO's Mr. Ramil admitted that the retail ratepayers receive a greater benefit when revenues are flowed through the clauses rather than retained by the company. (Tr. 497).

[16]TECO incorrectly categorizes the transmission revenues from the sales as a cost. TECO does not incur any additional generation or transmission cost to provide service under the contracts. Because retail ratepayers are supporting the transmission system, these revenues should be used to defray fixed costs. (Tr. 203-204).

sales will cease. However, Schedule-A1 in the Appendix to this brief indicates that retail customers might well be better off if the wholesale sales were not made at all; their fuel cost would have been \$19.97/mwh (line 5) or less, instead of the \$21.22/mwh cost (line 26) necessitated by the need to purchase power to meet the combined demand of wholesale and retail customers. TECO's average fuel price of firm power purchased from the Hardee Power Station during the period was \$45.90/mwh (line 6) and its price for "economy" power was \$41.19/mwh (line 7) for the six-month period shown on schedule A-1. The low price purchases from QFs (line 11) could have been used to reduce retail customers' average cost had these purchases not be subsumed by wholesale sales.

TECO's plea for an incentive must also be rejected for the following reasons.[17] First, the Florida Commission has no jurisdiction over the prices at which TECO sells in the wholesale market. (Tr. 265). It cannot tell TECO at what price to sell in the wholesale market. TECO may sell at whatever price it chooses and needs no incentive from this Commission to do so.

Second, a prudently managed utility will use its best efforts to market surplus capacity and energy, regardless of whether it receives an incentive to do so. Maximizing off-system sales enables a utility to minimize retail rates and therefore,

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[17]Certainly, as to the FMPA and Lakeland sales, as pointed out by Commissioner Clark, TECO needs no incentive because its already entered into the contracts. (Tr. 164).

protect its retail customers. (Tr. 209, 461).[18] Further, as pointed out by Commissioner Clark, making off-system sales may help TECO avoid an impudence determination when it is in an excess capacity situation. (Tr. 96).

Finally, TECO (and other investor-owned utilities) should be discouraged from shifting cost responsibility from a competitive arena to the safe harbor of regulation where there is more certainty of cost recovery. (Tr. 213). Cost-shifting of the type suggested by TECO here will force captive retail customers to underwrite competitive ventures. This will give those entities with captive customers an unfair advantage in competitive markets. (Tr. 205-206).[19]

Affiliate Transactions

The evidence made it clear that even separating the FMPA and Lakeland sales will not totally protect retail ratepayers from subsidizing TECO's wholesale activities. In effect, they are already doing so due to the nature of TECO's relationship with its affiliates. TECO buys expensive electricity from its affiliate and charges the full cost of those purchases to retail ratepayers via the fuel adjustment clause. At the same time, TECO purchases expensive power from its own affiliate, Hardee Power, it sells system capacity and lower cost energy resources to the same affiliate and to other

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[18] When Mr. Wheeler was questioned regarding why incentives were appropriate for the broker system but not in this case, he responded that perhaps it would be appropriate to do away with incentives on the broker system. (Tr. 471). FIPUG agrees.

[19] TECO alleges that it will be disadvantaged vis-a-vis other competitors in the wholesale market if its proposed treatment is not approved. (Tr. 273). To the contrary, it is those entities which do not have a captive retail customer base to support their assets who will be disadvantaged. (Tr. 216).

wholesale customers, leaving its higher price power to be paid for by the retail jurisdiction. (Tr. 206-207; Exhibit No. 7). For example, in the case of purchases from the Hardee plant, when TECO buys from Hardee, its retail customers pay average fuel costs, but when TECO sells to wholesale customers, they pay only incremental cost. (Tr. 141-142). This situation is dramatically illustrated in Exhibit 7, Document 2. These affiliate transactions are a further attempt by TECO to shift costs between its competitive and regulated operations. (Tr. 207).

Additionally, Exhibit No. 4 uncovers a very compelling incentive for TECO to enter into more and more wholesale transactions without further encouragement from the Commission. The Hardee Power Station ran at a 20% capacity factor in 1995 and a 15% capacity factor in 1996. It has plenty of power to sell. Apparently it is not as competitive a merchant plant as TECO's parent, TECO Energy, contemplated when Hardee Power was built as an IPP, but if the sales can be filtered through TECO, retail customers will subsidize the difference between its actual operating cost and the wholesale market price. When the market price for electricity improves, the IPP can deal directly in the wholesale market without sharing profits with retail customers.

As Mr. Ramil testified, both the coal company and the transportation company make a profit on the services sold to TECO. (Tr. 105). Further, to the extent that additional generation results in more profit to TECO Energy's transportation and coal company, TECO's officers have the incentive to increase generation. (Tr. 106-107).

Even TECO's own economist, Dr. Bohi, testified that rational business people try to maximize the profits of their affiliate companies. (Tr. 288). There is no reason to expect that TECO Energy (the parent company of TECO and affiliate fuel and transportation companies, Exhibit No. 2[20]) will not pursue the rational business strategy of maximizing its profits. In fact, with no mention of a particular retail regulatory treatment or any caveat at all, TECO Energy stated in its 1996 Annual Report:

> Signing additional longer-term wholesale power sales agreements remains a priority at Tampa Electric, where in recent years 11 bulk power sales contracts of varying size and duration have been added. Competitive pricing of coal-fired generation has allowed Tampa Electric to market available capacity successfully.

Exhibit No. 3 at 22, emphasis supplied.[21] Mr. Ramil agreed that this was a policy statement of his company. (Tr. 112). TECO Energy's many interlocking affiliates profit from TECO's wholesale transactions.

Reserve Margin

It is probably not mere coincidence that TECO has just recently reduced its 20% reserve margin to a 15% margin. Exhibit No. 15. This reduction further jeopardizes service to the retail jurisdiction.

Additionally, by serving Lakeland under the contract at issue in this case, TECO

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[20] Exhibit No. 2 is a diagram of TECO Energy's corporate structure. TECO Energy is the sole shareholder of TECO and it is the company that is publicly traded. (Tr. 59, 102). The president of TECO reports to the president and CEO of TECO Energy. (Tr. 59). Two TECO Energy officers sit on the TECO board. (Tr. 106). Exhibit 2 also shows that TECO Energy has the following affiliates that do business with TECO: TECO Coal Corporation (and its 5 subsidiary companies), TECO Transport and Trade Corporation (and its 5 subsidiary companies) as well as Hardee Power.

[21] This statement should be weighed against Mr. Ramil's unsupported assertion that affiliate sales will not increase due to TECO's wholesale transactions.

has violated its own lowered reserve margin criteria by decreasing it to 14% in 2001. Exhibit No. 15. If Lakeland takes supplemental power from TECO under the contract, TECO's reserve margin will decline even further. (Tr. 406).

The truth is, however, that this is only the tip of the problem iceberg. Exhibit No. 3, TECO Energy's Annual Report, shows (p. 52) that there is only a 9% reserve margin when TECO's non-firm industrial, commercial and load management residential customers are taken into consideration. These wholesale contracts affect system reliability and subject the captive retail customers to the probability that they will of necessity be served by more expensive purchased power.

In 1993, TECO obtained a certificate of need to build the Polk Power Station to meet the forthcoming demands of its retail customers. The Annual Report shows that customer growth has continued unabated since that time and that the reserve margin has narrowed. No dramatic evidence was presented by TECO in this case to rebut its sworn testimony in 1993 that more generation was needed to meet retail demand in the near term. But as pointed out by Mr Ramil, the competitive market has gotten more competitive driving the price for electricity down in that market. TECO can only compete by dedicating its lower cost facilities to that market and serving captive customers with more expensive purchased power. Retail customers pay a conservation surcharge to reduce demand and consumption for their own benefit, not to make the power available for greater profits to TECO's shareholder.

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?

<u>FIPUG's Position</u>: *The non-fuel revenues and costs should be separated for regulatory purposes. If revenues are not separated, they should be flowed back to retail ratepayers based on system average fuel costs.*

ISSUE 5

HOW SHOULD THE NON-FUEL REVENUES AND COSTS ASSOCIATED WITH TAMPA ELECTRIC COMPANY'S SCHEDULE D SALES TO THE CITY OF LAKELAND BE TREATED FOR RETAIL REGULATORY PURPOSES?

<u>FIPUG's Position</u>: *The non-fuel revenues and costs should be separated for regulatory purposes. If revenues are not separated, they should be flowed back to retail ratepayers based on system average fuel costs.*

As discussed in detail above, it is FIPUG's primary recommendation that these wholesale sales be separated. In that event, TECO would be entitled to retain all non-fuel revenues resulting from the sales. Separation is appropriate because retail customers are paying 100% of the embedded costs of the assets being used to make these sales. Separation will also prevent cross-subsidization. (Tr. 197).

If the sales are not separated, all non-fuel revenues should be flowed back to ratepayers through the adjustment clauses. As Staff witness Wheeler explained:

> If the sales remain in the retail jurisdiction, the retail ratepayers are fully supporting the costs associated with these sales through their rates. As a consequence, they should receive the full benefit of all the revenues which result from them. All energy charge revenues, including

> fuel, should be credited to the ratepayers through the Fuel Clause. The capacity charge revenues should be credited through the Capacity Cost Recovery Clause.

(Tr. 461). In no event should TECO be permitted to retain revenues and credit them to operating revenues. Despite TECO's claims, as discussed earlier, retail ratepayers receive no benefit from this treatment; the shareholder (TECO Energy) does.

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?

FIPUG 's Position: *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 absorb the difference between incremental and 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?

FIPUG 's Position: *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 absorb the difference between incremental and average cost.*

TECO proposes to credit the retail ratepayers with "system incremental" fuel cost. (Tr. 39). However, as discussed above, the Commission has very recently addressed the issue of the treatment of fuel revenues associated with wholesale sales. Exhibit No. 1, Order No. PSC-97-0262-FOF-EI at 3.

FIPUG supports, and urges the Commission to continue, the policy expressed in Order No. PSC-97-0262-FOF-EI:

> . . .[W]e find that, as a generic policy, there shall be uniform cost allocation between the wholesale and retail markets for all prospective separable sales. Thus, we shall impute revenues in the fuel adjustment clause in the event the actual fuel revenues a utility receives from a separable sale are less than average system fuel costs. A utility's shareholders will, in effect, be required to pay for any shortfall associated with fuel revenues if the actual fuel revenues the utility collects are less than the average system fuel cost we impute. Imputation of fuel revenues will protect the retail ratepayer from automatic increases in fuel cost responsibility.

Id., emphasis supplied.

Finally, as noted in Staff witness Wheeler's testimony, (Tr. 461-462), and as discussed earlier, TECO's parent company, TECO Energy, Inc., stands to benefit greatly from TECO's participation in these wholesale transactions. TECO Energy, the parent company of TECO, has wholly-owned subsidiaries which provide coal and transportation services to TECO. To the extent that TECO's sales increase, these subsidiaries will increase their revenue. Thus, any fuel shortfall should be absorbed by TECO, TECO Energy and their related entities.

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?

FIPUG's Position: *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. Otherwise, retail customers will be subsidizing TECO's wholesale activities.*

Currently, the cost of the existing transmission facilities are supported by base rates. At the time of TECO's last rate case, the total transmission cost was included in base rates at average cost. (Tr. 401).

As discussed above, it is FIPUG's position that these wholesale sales should be separated. Such an approach will ensure that there is no subsidization of these wholesale transactions by retail customers. If the Commission follows the separation approach, the retail ratepayers will not bear the cost of supporting that portion of the transmission lines utilized to make these sales and TECO will be entitled to the revenue.

However, if the Commission does not separate the sales, the retail customers should be credited (through the appropriate adjustment clauses) with all revenue which TECO derives from the use of these lines which the retail ratepayers support. TECO's argument that retail ratepayers receive some sort of "benefit" from revenues which TECO retains has been addressed above in Issues 1 and 4, above.

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?

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

TECO, FIPUG and OPC entered into a comprehensive Stipulation[22] to address the regulatory treatment of TECO's new Polk unit as well as its overearnings posture. Exhibit No. 1, Order No. PSC-96-1300-S-EI. The order provides for TECO to make refunds to customers if it exceeds the 12.75% return on equity level. To the extent that the assets used to serve wholesale customers are not separated, TECO's expenses will increase. That increase in retail expenses will depress TECO's earnings and decrease the likelihood that retail customers will receive a refund pursuant to the order. (Tr. 209). In other words, retaining in the retail jurisdiction plant used to serve wholesale customers will lower TECO's earnings and make a refund to the retail jurisdiction unlikely.

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[22]FIPUG has addressed earlier in this brief the way in which TECO's proposal violates the Stipulation and the Commission order approving it.

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?

FIPUG's Position: *The Commission has jurisdiction to, and should, prohibit TECO from requiring retail customers to pay a return on a plant dedicated to wholesale sales.*

This Commission has no jurisdiction over what types of sales TECO makes in the wholesale market or over the prices TECO decides to charge its wholesale customers; those matters are left to the Federal Energy Regulatory Commission. This Commission does have jurisdiction over how such wholesale sales impact retail customers. In this case, as discussed above, TECO seeks to have its retail customers subsidize its excursions into the wholesale market. The Commission has the authority to, and should, prohibit this subsidization by requiring TECO to separate these wholesale sales. In that way, retail ratepayers will not be responsible for supporting assets that are dedicated to serving the wholesale jurisdiction.

CONCLUSION

The treatment TECO seeks for the FMPA and Lakeland sales is barred by this Commission's order approving the overearnings Stipulation. In addition, TECO has not shown that retail ratepayers will benefit from the wholesale sales which TECO is making from plants which the retail ratepayers support through the rates they pay based on average embedded costs. Therefore, the Commission should follow its generic policy which is clearly set out in Order No. PSC-97-0262-FOF-EI and require TECO to separate the FMPA and Lakeland sales. In this way, the Commission will relieve the retail ratepayers of the burden of supporting assets used to serve wholesale customers.

If the Commission does not require separation of the FMPA and Lakeland wholesale sales, it should ensure that retail ratepayers receive all the benefit from the use of plants for which they are paying. This should be done by flowing back[23] to retail ratepayers, through the appropriate adjustment clauses, 100% of all non-fuel revenues, including all transmission and ancillary service charge revenues. Fuel should

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[23] FIPUG wants to be clear on this point--the revenues should be returned to ratepayers through the appropriate adjustment clauses so that retail customers' rates are reduced. They should not be retained by TECO as operating revenue, in which case ratepayers receive no benefit from the revenues.

be credited to the retail ratepayers through the fuel adjustment clause based on system average fuel costs.

Vicki Gordon Kaufman

John W. McWhirter, Jr.
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
100 North Tampa Street, Suite 2800
Tampa, Florida 33602-5125

Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301

Attorneys for the Florida Industrial
Power Users Group

APPENDIX

EXCERPTS FROM EXHIBIT NO. 9

(Schedules A-1 and A-8 from Branick True-Up Testimony in Docket No. 970001-EI)

FUEL AND PURCHASED POWER COST RECOVERY FACTOR
TAMPA ELECTRIC COMPANY
PERIOD TO DATE THROUGH: MARCH, 1997

	$ ACTUAL	$ ESTIMATED	$ DIFFERENCE AMOUNT	$ DIFFERENCE %	KWH ACTUAL	KWH ESTIMATED	KWH DIFFERENCE AMOUNT	KWH DIFFERENCE %	cents/KWH ACTUAL	cents/KWH ESTIMATED	cents/KWH DIFFERENCE AMOUNT	cents/KWH DIFFERENCE %
1. Fuel Cost of System Net Generation (A3)	172,073,345	174,456,221	(2,382,876)	(1.4)	8,660,978	8,236,818	424,160	5.1	1.98677	2.11801	(0.13124)	(6.2)
2. Spent Nuclear Fuel Disposal Cost	0	0	0	0.0	0	0	0	0.0	0.00000	0.00000	0.00000	0.0
3. Coal Car Investment	0	0	0	0.0	0	0	0	0.0	0.00000	0.00000	0.00000	0.0
4a. Adj. to Fuel Cost (Ft. Meade/Wauch. Wheeling Losses)	(12,678)	(18,000)	5,322	(29.6)	8,660,978 (a)	8,236,818 (a)	424,160	5.1	(0.00015)	(0.00022)	0.00007	(31.8)
4b. Adjustments to Fuel Cost (Allow.)	994,942	368,077	626,865	170.3	8,660,978 (a)	8,236,818 (a)	424,160	5.1	0.01145	0.00443	0.00702	158.5
4c. Adjustments to Fuel Cost (Polk Proj. Reserve)	(170)	0	(170)	0.0	8,660,978 (a)	8,236,818 (a)	424,160	5.1	0.00000	0.00000	0.00000	0.0
4d. Adj. to Fuel Cost (Oil Below Dischg. Valve Phillips)	(58,528)	0	(58,528)	0.0	8,660,978 (a)	8,236,818 (a)	424,160	5.1	(0.00062)	0.00000	(0.00062)	0.0
5. TOTAL COST OF GENERATED POWER (LINES 1 THROUGH 4d)	172,996,911	174,806,298	(1,809,387)	(1.0)	8,660,978	8,236,818	424,160	5.1	1.99743	2.12226	(0.12483)	(5.9)
6. Fuel Cost of Purchased Power - Firm (A7)	4,390,193	2,400,600	1,989,593	82.9	95,636	57,249	38,387	67.1	4.59052	4.19326	0.39726	9.5
7. Energy Cost of Sch C,X Economy Purchases (Broker) (A9)	870,700	124,800	745,900	597.7	20,769	3,418	17,351	507.6	4.1923	3.65126	0.54105	14.8
8. Energy Cost of Other Economy Purchases (Non-Broker) (A9)	0	0	0	0.0	0	0	0	0.0	0.00000	0.00000	0.00000	0.0
9. Energy Cost of Sch E Economy Purchases (A9)	0	0	0	0.0	0	0	0	0.0	0.00000	0.00000	0.00000	0.0
10. Capacity Cost of Sch. E Economy Purchases	0	0	0	0.0	0	0 (a)	0	0.0	0.00000	0.00000	0.00000	0.0
11. Payments to Qualifying Facilities (A8)	3,063,396	3,557,700	(494,304)	(13.9)	219,349	238,766	(19,417)	(7.9)	1.39278	1.49004	(0.09726)	(6.5)
12. TOTAL COST OF PURCHASED POWER (LINES 6 THROUGH 11)	8,324,289	6,083,100	2,241,189	36.8	336,354	299,433	36,921	12.3	2.47106	2.03154	0.44332	21.8
13. TOTAL AVAILABLE KWH (LINE 5 + LINE 12)					8,997,332	8,536,251	461,081	5.4				
14. Fuel Cost of Economy Sales (A6)	16,464,668	15,534,600	930,068	6.0	1,243,916	1,099,890	144,026	13.1	1.32360	1.41236	(0.08876)	(6.3)
15. Gain on Economy Sales - 80% (A6)	4,551,026	2,924,880	1,626,146	55.6	1,243,916	1,099,890 (a)	144,026	13.1	0.36586	0.26592	0.09994	37.6
16. Fuel Cost of Sch. D Separ. Sales (A6)	3,071,806	2,871,200	200,606	7.0	231,709	198,007	33,702	17.0	1.32569	1.45005	(0.12436)	(8.6)
17. Fuel Cost of Sch. D Jurisd. Sales (A6)	650,687	941,700	(291,013)	(30.9)	49,215	63,560	(14,345)	(22.6)	1.32213	1.48159	(0.15946)	(10.8)
18. Fuel Cost of Sch. G Jurisd. Sales (A6)	0	0	0	0.0	0	0	0	0.0	0.00000	0.00000	0.00000	0.0
19. Fuel Cost of Sch. J Jurisd. Sales (A6)	2,177,489	191,200	1,986,289	1,038.9	119,491	12,128	107,363	885.2	1.82230	1.57652	0.24578	15.6
20. Fuel Cost of OPP Sch. D Separ. Sales (A6)	1,379,325	997,800	381,525	38.2	70,177	42,702	27,475	64.3	1.96406	2.33666	(0.37260)	(15.9)
21. Fuel Cost of Other Power Sales (A6)	1,621,530	0	1,621,530	0.0	118,637	0	118,637	0.0	1.36680	0.00000	1.36680	0.0
22. TOTAL FUEL COST AND GAINS OF POWER SALES (LINE 14 + 15 + 16 + 17 + 18 + 19 + 20 + 21)	29,916,311	23,461,100	6,455,531	27.5	1,833,165	1,416,287	416,878	29.4	1.63195	1.65653	(0.02458)	(1.5)
23. Net Inadvertent Interchange					475	0	475	0.0				
24. Wheeling Rec'd. less Wheeling Delv'd.					1,503	0	1,503	0.0				
25. Interchange and Wheeling Losses					34,364	25,700	8,664	33.7				
26. TOTAL FUEL AND NET POWER TRANSACTIONS (LINE 5 + 12 - 22 + 23 + 24 - 25)	151,404,489	157,428,218	(6,023,729)	(3.8)	7,131,761	7,094,264	37,497	0.5	2.12296	2.21909	(0.09613)	(4.3)
27. Net Unbilled	(2,551,213) (a)	(3,526,045) (a)	974,832	(27.6)	(120,196)	(150,896)	30,700	(20.4)	(0.03665)	(0.05127)	0.01462	(28.3)
28. Company Use	402,747 (a)	381,462 (a)	21,285	5.6	18,971	17,190	1,781	10.4	0.00582	0.00556	0.00026	4.7
29. T & D Losses	6,539,884 (a)	8,252,862 (a)	(1,712,978)	(20.8)	308,055	371,903	(63,848)	(17.2)	0.09444	0.12023	(0.02579)	(21.5)
30. System KWH Sales	151,404,489	157,428,218	(6,023,729)	(3.8)	6,924,931	6,864,067	60,864	0.9	2.18637	2.29351	(0.10714)	(4.7)
31. Wholesale KWH Sales	(1,279,934)	(282,785)	(997,149)	352.6	(58,599)	(12,335)	(46,264)	375.1	2.18422	2.29254	(0.10832)	(4.7)
32. Jurisdictional KWH Sales	150,124,555	157,145,433	(7,020,878)	(4.5)	6,866,332	6,851,732	14,600	0.2	2.18639	2.29351	(0.10712)	(4.7)
33. Jurisdictional Loss Multiplier - 1.00013												
34. Jurisdictional KWH Sales Adjusted for Line Losses	150,144,071	157,165,861	(7,021,790)	(4.5)	6,866,332	6,851,732	14,600	0.2	2.18667	2.29381	(0.10714)	(4.7)
35. Peabody Coal Contract Buy-Out Amort. Jurisdictionalized	2,786,335	2,805,039	(19,704)	(0.7)	6,866,332	6,851,732	14,600	0.2	0.04058	0.04094	(0.00036)	(0.9)
36. True up *	4,519,107	4,519,107	0	0.0	6,866,332	6,851,732	14,600	0.2	0.06582	0.06596	(0.00014)	(0.2)
37. Total Jurisdictional Fuel Cost (Excl. GPIF)	157,449,513	164,490,007	(7,040,494)	(4.3)	6,866,332	6,851,732	14,600	0.2	2.29307	2.40071	(0.10764)	(4.5)
38. Revenue Tax Factor									1.00083	1.00083	0.00000	0.0
39. Fuel Cost Adjusted for Taxes (Excl. GPIF)									2.29497	2.40270	(0.10773)	(4.5)
40. GPIF * (Already Adjusted for Taxes)	(103,927)	(103,927)	0	0.0	6,866,332	6,851,732	14,600	0.2	(0.00151)	(0.00152)	0.00001	(0.7)
41. Fuel Cost Adjusted for Taxes (Incl. GPIF)	157,345,586	164,386,080	(7,040,494)	(4.3)	6,866,332	6,851,732	14,600	0.2	2.29346	2.40118	(0.10772)	(4.5)
42. Fuel FAC Rounded to the Nearest .001 cents per KWH									2.293	2.401	(0.108)	(4.5)

* Based on Jurisdictional Sales (a) included for informational purposes only

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ENERGY PAYMENT TO QUALIFYING FACILITIES
TAMPA ELECTRIC COMPANY
FOR THE MONTHS OF OCTOBER, 1996 THRU MARCH, 1997

(1) PURCHASED FROM	(2) TYPE & SCHEDULE	(3) TOTAL MWH PURCHASED	(4) MWH FOR OTHER UTILITIES	(5) MWH FOR INTERRUP-TIBLE	(6) MWH FOR FIRM	(7) CENTS/KWH (A) FUEL COST	(7) CENTS/KWH (B) TOTAL COST	(8) TOTAL $ FOR FUEL ADJUSTMENT (6)X(7)(A)
ESTIMATED:								
VARIOUS	COGEN.	238,766.0	0.0	0.0	238,766.0	1.490	1.490	3,557,700.00
TOTAL	-	238,766.0	0.0	0.0	238,766.0	1.490	1.490	3,557,700.00
ACTUAL:								
IMC-AGRICO-NICHOLS	COGEN.	318.0	0.0	0.0	318.0	1.332	1.332	4,235.43
McKAY BAY REFUSE	COGEN.	64,290.0	0.0	0.0	64,290.0	1.377	1.377	885,238.28
MULBERRY PHOSPHATES INC.	COGEN.	0.0	0.0	0.0	0.0	0.000	0.000	0.00
CARGILL RIDGEWOOD	COGEN.	0.0	0.0	0.0	0.0	0.000	0.000	0.00
IMC-AGRICO-NEW WALES	COGEN.	1,118.0	0.0	0.0	1,118.0	1.488	1.488	16,640.46
HILLSBOROUGH COUNTY	COGEN.	107,626.0	0.0	0.0	107,626.0	1.376	1.376	1,481,058.31
CARGILL MILLPOINT	COGEN.	0.0	0.0	0.0	0.0	0.000	0.000	0.00
CF INDUSTRIES INC.	COGEN.	3,623.0	0.0	0.0	3,623.0	1.594	1.594	57,765.66
FARMLAND HYDRO LP	COGEN.	3,930.0	0.0	0.0	3,930.0	1.747	1.747	68,659.36
IMC-AGRICO-S. PIERCE	COGEN.	5,222.0	0.0	0.0	5,222.0	1.729	1.729	90,277.17
AUBURNDALE POWER PARTNERS	COGEN.	164.0	0.0	0.0	164.0	1.306	1.306	2,142.26
ORANGE COGENERATION L.P.	COGEN.	33,765.0	0.0	0.0	33,765.0	1.368	1.368	462,047.49
AS AVAILABLE ASSIGNMENT	COGEN.	0.0	0.0	107.0	(107.0)	4.364	4.364	(4,669.03)
TOTAL	-	220,056.0	0.0	107.0	219,949.0	1.393	1.393	3,063,395.39
DIFFERENCE	-	(18,710.0)	0.0	107.0	(18,817.0)	(0.097)	(0.097)	(494,304.61)
DIFFERENCE %	-	(7.8)	0.0	0.0	(7.9)	(6.5)	(6.5)	(13.9)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of **FIPUG's Post-Hearing Statement of Issues and Positions and Post-Hearing Brief** has been furnished by U.S. Mail or by (*) hand delivery to the following parties of record this 7th day of July, 1997:

*Leslie Paugh
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Gunter Building, Room 370
Tallahassee, Florida 32399-0850

Lee L. Willis
James D. Beasley
Ausley & McMullen
Post Office Box 391
227 South Calhoun Street
Tallahassee, Florida 32302

John Roger Howe
Office of Public Counsel
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400

Vicki Gordon Kaufman
Vicki Gordon Kaufman