



JACK SHREVE
PUBLIC COUNSEL

STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL

ORIGINAL

c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, Florida 32399-1400
904-488-9330

November 6, 1997

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

RE: Docket No. ~~970171~~-EU

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of the Response in Opposition to Tampa Electric Company's Motion for Expedited Clarification or Reconsideration of Order No PSC-97-1273-FOF-EU for filing in the above referenced docket.

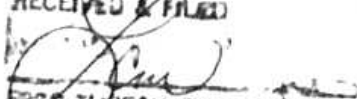
Also Enclosed is a 3.5 inch diskette containing the Response in WordPerfect for Windows 6.1 format. Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,


John Roger Howe
Deputy Public Counsel

ACK
AFA 3
APP _____
CAF _____
CEN _____
CIR _____
CTA _____
EAG Lead
LEA 1
LIR 5
OIC _____
RCH _____
SEC 1
WAS _____
OTH _____

JRH/dsb
Enclosures

RECEIVED & FILED

FPC-BUREAU OF RECORDS

DOCUMENT NUMBER - DATE

11484 NOV-6 97

FPC-BUREAU OF RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Determination of appropriate)
 cost allocation and regulatory)
 treatment of total revenues associated)
 with wholesale sales to Florida)
 Municipal Power Agency and City of)
 Lakeland by Tampa Electric Company)

Docket No 970171-EU
 Filed November 6, 1997

**RESPONSE IN OPPOSITION TO TAMPA ELECTRIC
 COMPANY'S MOTION FOR EXPEDITED CLARIFICATION OR
 RECONSIDERATION OF ORDER NO. PSC-97-1273-FOF-EU**

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to Rule 25-22.037(2)(b), Florida Administrative Code, respond in opposition to Tampa Electric Company's motion for expedited clarification or reconsideration of Order No. PSC-97-1273-FOF-EU, which should be denied for the following reasons:

1. In this case, the Commission was presented with three disparate positions from the parties on the issue of whether wholesale sales to the Florida Municipal Power Agency (FMPA) and the City of Lakeland should be separated for retail regulatory purposes. Tampa Electric's position was to not separate at all. The Office of Public Counsel said use a jurisdictional separation for the firm portions of the sales and flow back 100% of the nonfuel revenues through the fuel clause for the nonfirm portion of the sales. The Florida Industrial Users Group (FIPUG), in its brief, advocated fully separating the sales or, if no separation was done, flowing all the non-fuel revenues through the fuel clause.

2. These positions were accurately recited in the Staff recommendations addressing Issues 2 and 5 at the September 23, 1997, agenda conference. After considering briefs from the parties and recommendations from Staff, the Commission ordered a full separation for all aspects of the sales consistent with FIPUG's approach. Since the Commission was fully informed in the first

DOCUMENT NUMBER-DATE

11484 NOV-6 97

FPSC-RECORDS/REPORTING

instance, it must be presumed that if the Commission had wanted to treat the supplemental portion of these sales differently from the firm portion, it would have said so in the order.

3. In its motion, Tampa Electric creates the impression the Commission failed to address how supplemental sales should be treated, stating at page 1 that "Order No. 97-1273, as written, leaves unclear which portions of the contracts are to be separated." Tampa Electric then quotes the following sentence from page 8 of the order:

We find that the FMPA and Lakeland sales fall within the category of sales contemplated by the Stipulation, and the capital and O&M costs associated with these sales shall be separated from the retail jurisdiction at average imbedded cost.

The essence of Tampa Electric's pleading is that the company needs clarification of the order because it is unsure whether the Commission meant to address both firm and supplemental sales when it said "these sales shall be separated."

4. The quoted sentence, however, was taken out of context. The complete paragraph shows that the Commission first considered the potential for supplemental sales before deciding to separate the sales in the manner used for firm sales in the last rate case.

At the September 23, 1997, Agenda Conference, TECO argued that the FMPA and Lakeland sales are unique because they contained the provision for supplemental sales. The ability to purchase supplemental capacity does not change the fact that the firm portion of the contract is for a period exceeding one year and requires a commitment of capacity. This is a difference without a distinction [sic] Order No. PSC-93-0165-FOF-EI, Docket No. 920324-EI, required TECO's long term wholesale sales to be separated at average embedded cost based on the separation studies filed in those proceedings. We find that the FMPA and Lakeland sales fall within the category of sales contemplated by the Stipulation, and the capital and O&M costs associated with these sales shall be separated from the retail jurisdiction at average embedded cost. This procedure is consistent with the procedure approved in Docket No. 920324-EI. We note that the Stipulation is silent as to the treatment of fuel costs for these types of sales.

5. The paragraph quoted above clearly demonstrates that the Commission (1) considered the provisions for supplemental sales; (2) dismissed the supplemental sale provisions as a basis for distinguishing the FMPA and Lakeland transactions; and (3) ultimately concluded that the FMPA and Lakeland sales, while providing for supplemental service, were more in the nature of firm wholesale contracts and should be separated as such.

6. There is no question but that paragraph 5F of the Second Stipulation approved in Order No. PSC-96-1300-S-EI requires separation of all wholesale contracts consistent with the procedures used in Tampa Electric's last rate case. There is also no question that, in the rate case, long-term firm sales were separated on both the income statement and balance sheet while shorter term sales were subject to a revenue flow-back through the fuel clause. Compliance with paragraph 5F, however, might be obtained either by: (1) treating the firm and supplemental portions of the FMPA and Lakeland transactions as if they were two different sales, as Public Counsel proposed, or (2) by determining whether the sales were, overall, more in the nature of long-term firm or short-term sales and treating them accordingly. The Commission chose this latter course, and Tampa Electric has not shown any real need for clarification or reconsideration because of that decision.

7. Indeed, Tampa Electric's witness at the hearing did not recognize a distinction between the firm and supplemental aspects of these sales for purposes of separation. Mr. Ramil discussed the supplemental portion of these sales in his prefiled direct testimony at page 38 of the hearing transcript. One page later, at page 39, while arguing against separation, it is evident that Mr. Ramil did not distinguish between firm and supplemental for purposes of separations.

These sales should not be separated either in the traditional system average cost manner or in a manner which recognizes market pricing as it has been done before.

Mr. Ramil attempted, at transcript page 43, to distinguish the FMPA and Lakeland sales from the Big Bend sales (which were separated in the company's last rate case) solely on the basis that the new sales were opportunity sales and that separation would provide a disincentive for these types of sales. He made no attempt to distinguish them on the basis that some of the sales would be supplemental. At page 44 (still in his prefiled direct testimony), Mr. Ramil was asked directly how the FMPA and Lakeland sales should be treated under the stipulation:

- Q. In the September 25, 1996, stipulation between Tampa Electric, Office of Public Counsel and FIPUG, reference is made to the regulatory treatment of existing and wholesale sales. What is the impact of this reference on the treatment of the FMPA and Lakeland agreements?

If the company was going to draw a distinction between the firm and supplemental aspects of the sales, you would expect to see it in the response to this question. But Mr. Ramil did not mention any distinction between the two types of sales in his response on pages 44-45. Mr. Ramil also referred to jurisdictional separation at average cost at pages 49-50 without drawing any distinction between firm and supplemental sales.

8. Although Tampa Electric's motion is based on Public Counsel's brief, the company would have a stronger argument if Public Counsel's statement of position had not placed the issue of dissimilar treatment for firm and supplemental sales squarely before the Commission. As it is, Tampa Electric is unable to show that the Commission failed to consider a revenue flow-back for the supplemental portion of the sales because the order implicitly rejected Public Counsel's position, as well as the company's position, in favor of FIPUG's alternative.


9. Clarification is not appropriate where the moving party is asking the Commission to look at the same information which was before it all along in a different light. The same is true for

reconsideration. The Commission did not fail to consider the effects of supplemental sales on the appropriate separation methodology; it is addressed in detail at pages 7-8 of the order

WHEREFORE the Citizens of the State of Florida, through the Office of Public Counsel, urge the Florida Public Service Commission to deny Tampa Electric Company's motion for expedited clarification or reconsideration of Order No. PSC-97-1273-FOF-EU

Respectfully submitted,

JACK SHREVE
Public Counsel


John Roger Howe
Deputy Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400

(850) 488-9330

Attorneys for the Citizens of
the State of Florida

**CERTIFICATE OF SERVICE
DOCKET NO. 970171-EU**

I HEREBY CERTIFY that a true and correct copy of this Response in Opposition to Tampa Electric Company's Motion for Expedited Clarification or Reconsideration of Order No PSC-97-1273-FOF-EU has been sent by *Hand-delivery or U.S. Mail this 6th day of November, 1997 to the following:

Gary Lawrence, Esquire
501 East Lemon Street
Lakeland, Florida 33801-5079

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

Robert Williams, Esquire
7201 Lake Ellionor Drive
Orlando, Florida 32809

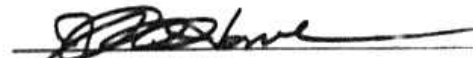
Lee L. Willis, Esquire
James D. Beasley, Esquire
Ausley & McMullen
227 South Calhoun Street
Post Office Box 391
Tallahassee, Florida 32302

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

John W. McWhirter, Jr., Esquire
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
Post Office Box 3350
Tampa, Florida 33601

Angela Llewellyn, Esquire
Regulatory and Business Strategy
Post Office Box 111
Tampa, Florida 33601-0111

Harry W. Long, Jr., Esquire
TECO Energy, Inc
Post Office Box 111
Tampa, Florida 33601-0111


John Roger Howe
Deputy Public Counsel