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August 3, 1999

VIA HAND-DELIVERY

Blanca S. Bayo, Director
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4075 Esplanade Way
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Re: Docket Numbers 990724-EI and 990037-EI

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and fifteen photocopies of Florida Industrial Power Users Group's Position Statement.

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

Yours truly,

Vicki Gordon Kaufman

Vicki Gordon Kaufman

VGK/bje

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Tampa Electric Company to close Rate Schedules IS-3 and IST-3.	)	DOCKET NO. 990037-EI
In re Petition of Tampa Electric for Clarification of Rate Schedules IS-1; IST-1; SBT-1; IS-3; IST-3; and SBT-3.	)	DOCKET NO. 990724-EI FILED: August 3, 1999

FLORIDA INDUSTRIAL POWER USERS GROUP'S POSITION STATEMENT

The above-styled dockets and Docket No. 990644-EI (Order No. PSC-99-1414-TRF-EI) all relate to the same general subject matter. They should be considered in concert. This position statement is for the purpose of allaying the assumption that nonfirm customers who have benefitted from lower rates relative to TECO's firm customers have no standing to complain when they begin to receive frequent interruptions and surcharges for purchased power during price spike periods.

These conclusions are based on information and belief grounded in Commission orders and rules, TECO filings and customer experience. This document contains FIPUG's analysis of the circumstances and its suggestions for solutions that give weight to customer considerations.

1. TECO's methodology for determining the target amount of nonfirm load was established by Order No. 22231 in Docket 870408-EI. The Commission approved the methodology presented by TECO's John B. Ramil which it summarized:

> The first step is to determine the practical maximum non-firm load. *It is assumed that the sum of the firm load which can be reliably served* ***and*** *the maximum non-firm load at the time of peak should not exceed the capacity of the generating system.*

> With this restriction, and using a 20 percent winter peak reserve margin, the practical maximum nonfirm load can be calculated to be 512 MW. (emphasis and underlining supplied)

Mr Ramil's testimony made it clear **that the sum of firm load at peak plus the maximum nonfirm load could not exceed <u>installed</u> capacity under the TECO methodology.** *Machines not people were the first line of defense.* In Order No. 22231, using the TECO method, the Commission determined that TECO's target interruptible nonfirm load for 1995 was 278 MW. The second step in the nonfirm methodology process is to determine the amount of "cost effective" interruptible load that could be served. This step will be discussed below.

2. When the 1995 target year was reached, TECO had 3197 MW of installed capacity[1]. The peak demand that year was 2946. That year TECO had 252 MW of load management and 152 MW of interruptible service. The 1995 installed capacity was 153 MW less than TECO's nonfirm methodology mandated. The installed capacity was 338 MW short of the 3535 MW of capacity a 20% reserve margin that had been promised.

3. The purchase of 69 MW of firm cogeneration and the subsequent construction of the 250 MW Polk Power Station have not cured the problem. The capacity shortfall has deteriorated further since 1995. A review of the 1999 Ten Year Site Plan in combination with the cost effectiveness study filed in Docket 990037-EI in June 1999 show that the reserve margin over firm service including installed plus purchased capacity will fall to 12% in the year 2000. The actual situation is worse than projected. In 1998, the peak occurred in the summer, not the winter. In the summer, capacity is derated and falls to 3447 MW. It will not be the 3587 MW projected unless the

[1] Ten Year Site Plan, dated April 1, 1999; IS-3 cost effectiveness study filed January 1999, amended June 18, 1999.

peak demand occurs in the winter time. The last recorded total system peak demand was 3266 MW in August 1998. It would have been higher had interruption and load management not been activated at the time. For the year 2000, the projected firm demand will be 3293 MW. The nonfirm programs will add another 479 MW for a total of 3772 MW. This is 325 MW less than installed capacity should the peak occur in the summertime. 200 MW of the installed capacity comes from the aged and infirm Hooker's point station that is 50 years old and scheduled for late retirement in 2003. *Today people, not machines, constitute TECO's reserve margin.*

4. Under the TECO nonfirm methodology approved by the Commission, it appears TECO is correct, the IS-3 rate schedule should be closed to new customers. It also follows that new major firm sales, wholesale sales and nonfirm service of all types should be discontinued until additional capacity has been installed, if machines, rather than people, are to be the first line of defense. The Commission has stated on numerous occasions that reliability is its primary customer concern. Based on this policy and TECO's past representations, FIPUG's interruptible customers believed that they were entitled to the modicum of reliability advocated by TECO when they signed up for IS-3 service. They still believe it.

5. The nonfirm customer's plight has been exacerbated by the competitive wholesale market. TECO has sold capacity it said was needed to meet the needs of its retail customers in the wholesale market. In its 1993 rate case, TECO began to charge customers for the Hardee Power Station owned by its affiliated company, TECO Power Services, but this power plant was committed first to Seminole Electric Cooperative. In addition, Seminole has call rights on 145 MW of Big Bend. Another 100 MW of Big Bend has been sold to other utilities and is no longer available for the retail load. Nonfirm customers were never told that their contracts could be subjugated to wholesale sales

of this nature.

6. Over the years, TECO promised nonfirm customers that they would be interrupted only to serve the demand of TECO's firm customers. Commission Rule 25-6.035, F.A.C., establishes the adequacy of capacity. It was amended in September 1996. Prior to that date the rule provided:

> The generating capacity of the utility's plant, supplemented by the electric power regularly available from other sources, must be sufficiently large to meet all reasonable demands for service and provide a reasonable reserve for emergencies.

A reasonable nonfirm customer would construe this rule to require that its demand as well as firm demand was contemplated in the phrase "all reasonable demands for service." It is also reasonable to believe that the rule would be read in *para materia* with Commission Order No. 22231 requiring a 20% reserve margin and sufficient installed plant to meet the combined firm and nonfirm demand. The 1996 rule revision changed the playing field. It was a triple whammy for IS customers: a) reserve margin was reduced to 15%; b) the Commission allowed each utility to count nonfirm customers as "operating reserve" (if TECO chose to treat nonfirm customers as operating reserve they could be interrupted to serve the firm demands of any firm customer in the state); c) on the other hand, if TECO experiences a forced outage of a generating plant affecting service to nonfirm customers, it is not considered an emergency. Other Florida utilities with excess power don't have to sell power at the cost of production. The price can be marked up to the sum the market will bear.

7. Today if a TECO nonfirm customer has elected to purchase power in lieu of interruption, its exclusive purchasing agent is TECO. TECO does not tell the customer the price TECO will pay for the power nor the source of the power. The surprise comes several months later without explanation. With prior knowledge, the customer might elect to shut down rather than buy, but the

choice is not available. If power is purchased, customers should be entitled to assurance that its agent is securing the lowest available price.

8. Other new facets have been added to utility operations and the nonfirm customer's burdens in recent years. Historically, utilities file for rate cases when they add a new power plant. Today, TECO is earning in excess of the ceiling of its last authorized return. That return is higher than today's financial markets would require according to recent Commission findings for other Florida utilities. For the last few years, TECO could add new power plants without raising rates, but to do so would restrict the capital available to its holding company for opportunities that might generate a higher return. There was no incentive to build power plants. If the affiliated companies sell fuel to the utility there is no incentive to build more efficient power plants. The Power Plant Siting act is cited as authority for keeping independent power producers from building economical and environmentally friendly merchant plants in Florida.

9. The cost effectiveness rule should be used to trigger new construction, but it is being used in this docket to trigger higher rates. This rule is flawed in FIPUG's view because it doesn't give sufficient credence to price elasticity. It presumes customers will pay the rates charged for firm service rather than migrate to another location or commence less expensive self generation. It also assumes that customers can be attracted to nonfirm service when the public interest might require new construction. When the cost effectiveness rule is combined with the conservation rule, we find that a utility can charge firm rates for nonfirm service. By imposing a surcharge on firm customers to recover the difference between firm rates, and nonfirm rates, the utility gets a superb windfall. It can meet customer growth and the revenue that comes from that growth without building new facilities.

10. Cost effectiveness analyses are flexible. The one TECO filed in January 1999 found IS-

3 no longer cost effective within 5 years after it was found to be cost effective for 30 years. The situation deteriorated further in the new report filed in June 1999. The choice of the generating plant used in the test is the critical factor. If the last generating plant TECO actually built (Polk Unit 1) was used to measure cost effectiveness instead of the hypothetical plant used in the study, both IS-1 & IS-3 would be cost effective beyond the thirty year planning horizon and perhaps to the end of the 21st century.

11. Commission precedent prohibits increasing the IS-3 rate to make it "cost effective." Order No. 22231, *supra.* TECO met the dilemma of how to offer more nonfirm service at higher rates on June 18th by supplementing its request to close IS-3 with a request to create new load control rate schedules with the same characteristics. Interestingly, under the newly proposed load management schedules, it only takes TECO 3 years instead of 5 to build a new plant should customers opt for firm service. If the new rate schedule is approved, TECO will be able to increase firm rates through the conservation cost recovery clause without a rate case in which its return on equity would be questioned. In addition, it will be able to sell more lower quality nonfirm service at the price of firm. The end result of this approach is to keep $18.6 million in present excessive earnings. If IS-3 customers can be persuaded to move to load management, it will add a $15 million conservation surcharge to firm customers.[2] Docket No. 990037 is not about whether nonfirm load is no longer needed. It is a question of price the utility receives for it.

12. The obvious answer to growing demand and consumption is new construction. As pointed out above, it is better for the holding company to substitute people instead of machines as a

[2] Assume TECO's return on equity is reduced 1%. 1% on an equity investment of $1.15 Billion is $11.5 million. The tax mark up results in a $18.6 million charge to customers for every 1% return on equity. The present differential between IS-3 rates and comparable firm rates according to the latest cost effectiveness study filed in Docket 990037-EI is $15 million.

first line of defense against growing demand. An alternate approach is to have an affiliated company build a power plant off rate base and then sell power to the utility. This way the capacity costs of the plant could be recovered through the capacity cost recovery clause without triggering a rate case. This approach can also avoid the bid rule for new construction. FIPUG abjures this Commission to guard against this possibility unless merchant plants are given the opportunity to offer comparable service to TECO.

13. After the April interruptions following the explosion at the Gannon station, TECO said, "several" IS-3 customers asked to be returned to firm service. TECO met this challenge by filing the petition in Docket No. 990724-EI on June 4th to "clarify" the fact that it can charge a large penalty to nonfirm interruptible customers who wish to recant from their previous nonfirm choice. When there was no capacity crisis, TECO would derive additional revenue from the rate class migration. On the other hand, if generating capacity is short and the law of supply and demand enables a monopoly to get firm prices for nonfirm service, an alternative course suggests itself to utility management. TECO would like to encourage existing IS-3 customers to go to the new more expensive rate. It does so by informing the IS-3 customers of a bleak future of increased interruptions.[3] It also tells these customers that it will soon commence enforcing a draconian penalty on IS-3 customers who may have to switch to firm if the interruption situation deteriorates further or the cost of purchased power destroys the price advantage of nonfirm service. It then offers an alternative opportunity to switch to a new more expensive rate schedule with a less draconian penalty clause for switching to firm service. The new penalty will let the customer switch after three years instead of five. The corresponding monetary penalty is based on three years at higher rates rather than five years at the IS-3 rate.

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[3] This bleak future is not an unanticipated phenomenon. It has been created by the failure to build new power plants and an obdurate stance in opposition to independent merchant plants.

14. The present tariff permits a penalty waiver if "there is sufficient capacity to provide firm service to the customer and allowing the customer to receive firm service will have no adverse effect on the Company's generation expansion plan." It should not be hard for the customer to demonstrate that there must be sufficient capacity when TECO is actively promoting industrial growth and proposed to offer firm service at low priced economic development rates to similar customers in August 1995 (Docket No. 951002). Likewise, it shouldn't be hard for the typical IS-3 customer to show that its load is relatively inconsequential in the planning model.

15. Some FIPUG IS-1 and IS-3 customers have been customers of TECO for over 70 years. They transferred their electric power lines and substations to TECO and departed from the power generation business when TECO promised to provide power from a central station at a lower price than self generation. When Florida Power competed for the load, firm rates were reduced for customers near FPC's power lines to retain the load. A new competitive load retention rate was born, the "favored nations rate." When the law was changed to create territorial service areas so that the utilities no longer competed, these customers were denied firm service for the rates they were paying. Customers had to agree to be interrupted or face large increases that would make them non competitive in their fields of endeavor. Some returned to less expensive self generation, some left the service area, others ceased operations. The remnants of this diminishing class of customers are shocked that they would be asked to pay a penalty to convert their remaining load to firm service in addition to paying higher priced firm rates when TECO's interruptible rates are higher than rates charged by Gulf Power company for firm service. They didn't bargain for interruptible rates, it was forced upon them in lieu of indigestible rate increases.

16. Nonfirm customers believe that if TECO has no obligation to serve them, they should have no obligation to buy exclusively from TECO.

17. High load factor nonfirm customers are overcharged for fuel costs. They buy most of their power off peak. These customers are charged average off peak prices for fuel rather than incrementally priced fuel cost made available to wholesale customers with similar load patterns. Annual fuel charge factors disfavor high load factor commercial and industrial customers whose shoulder month consumption is comparable to peak periods. If fuel were priced monthly it would reduce their costs. When high priced fuel is purchased to avoid interruptions, interruptible customers pay extra. This benefits firm customers and should be taken into consideration when evaluating cost effectiveness and whether penalties should be charged for converting to firm service.

18. Some IS-3 customers have increased their load since 1996. At the time, these customers held discussions with TECO regarding expansion plans. They could have chosen firm service for the new load but were not told of the change in nonfirm methodology, that the nonfirm rates were no longer "cost effective" nor that there was a forthcoming capacity crisis. It is unfair to impose a penalty on this new load which would have been requested as firm service had the customer received full and fair disclosure from TECO.

19. Today a nonfirm cogeneration customer of TECO can sell power to a power marketer to be resold to utilities anywhere in the United States at market prices, but the customer cannot wheel the power to its own facilities outside the fence. If TECO is purchasing market power, the customer's self generated power may be marked up and delivered to the customer's other site for far more than its production cost. It is questionable whether other retail customers benefit from this transaction.

FIPUG SUGGESTED CUSTOMER ORIENTED SOLUTIONS TO THE TARIFF ISSUES:

1. Because TECO has failed to build adequate capacity and has no obligation to serve nonfirm customers, a §366.075, *Florida Statutes,* experimental conservation rate should be approved similar to the natural gas transportation rate. Let large nonfirm customers contract with off system electric producers and pay TECO a transportation rate for the use of its transmission wires.

2. The provisions of §366.051, *Florida Statutes,* allow cogeneration customers to transmit their energy to other facilities owned by that customer (self service wheeling). When there is no general rate case in the offing by TECO, other customers will not be affected adversely by self service wheeling. Firm customers will benefit if a load management customer is allowed to engage in self service wheeling. They will be relieved of all or part of the conservation surcharge imposed upon them now in order to give a nonfirm credit to the load management customer. FIPUG requests the Commission to make the following finding in this docket,

> **Self service wheeling is not likely to result in higher cost electric service to the utility's general body of retail and wholesale customers or adversely affect the adequacy or reliability of electric service to all customers.**

3. If additional nonfirm service is required because TECO has failed to timely construct new power plants, do not close rate schedule IS-3. Its continuation is less costly to other customers than TECO's proposed commercial-industrial load management schedules.

4. Determine that it is arbitrary and capricious to impose a penalty on nonfirm customers migrating to firm service because the bargain has changed for interruptible customers through TECO's actions, not the fault of the customers.

5. Eliminate the penalty for rate migration any time TECO bids for firm wholesale service at lower prices than it charges for retail industrial service or holds itself out to be able to serve a new customer of comparable size with firm service.

6. Clarify the fact that an IS customer with mobile facilities can move its load from one site to another without losing entitlement to IS rates or facing the prospect of being confronted with the challenge that it is now a firm customer subject to the firm rate switch penalty.

7. If an IS customer can find a comparably sized firm customer willing to trade rate schedules, permit it to happen without penalty.

8. If a penalty is imposed, the revenue should be flowed to the firm customers rather than to greater profits for TECO.

9. If a penalty is imposed, give the penalized customer credit for the additional fuel surcharges paid for purchased power due to the fact that other customers benefitted from reduced fuel costs as a result of the direct imposition.

10. Restrict wholesale sales any time TECO's installed generating capacity is inadequate to meet the aggregate demand of the firm and nonfirm customers. Reserve margin is to be composed of machines not people.

11. Require TECO to purchase power from competitive sources when it is available at lower prices than its affiliated company charges.

12. Reduce the nonfirm to firm waiting period to 18 months if the new power can be supplied by a combustion turbine on an approved power plant site. Eliminate it if an independent power supplier is ready willing and able to provide immediate service.

13. If TECO cannot supply power, let the customer use agents other than TECO to purchase power for the customer's load.

14. Allow customers to enter into electric futures contracts with other utilities and IPPs to hedge against unanticipated interruptions or purchased power price spikes during peak months.

15. Use standard ratemaking criteria for evaluating leased substations if the proposed load

management tariff is approved. Give customers the option to buy the substations for original cost less depreciation.

16. Direct the FRCC to provide an open access information system bulletin board available to customers so that they can prepare for price spikes or interruptions.

17. Provide a price incentive to nonutility cogenerators to encourage them to sell power to alleviate power capacity shortages.

18. The order clarifying the tariff should provide that as long as generating capacity sold at wholesale remains in the retail rate base the wholesale sale shall be nonfirm and recallable in the event TECO has a forced outage.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Florida Industrial Power Users Group's Position Statement has been furnished by U.S. Mail or hand delivery* to the following parties of record, this 3rd day of August 1999.

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