

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of : DOCKET NO. 991779-EI
:
REVIEW OF THE APPROPRIATE :
APPLICATION OF INCENTIVES TO :
WHOLESALE POWER SALES BY :
INVESTOR-OWNED ELECTRIC :
UTILITIES. :

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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER SUSAN F. CLARK
Prehearing Officer

DATE: Monday, May 1, 2000

TIME: Commenced at 1:30 p.m.
Concluded at 1:50 p.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
FPSC Division of Records & Reporting
Chief, Bureau of Reporting
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1 APPEARANCES:

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3 Pensacola, Florida 32576-2950, representing Gulf Power
4 Company.

5 MATTHEW M. CHILDS, Steel Hector & Davis, 215
6 South Monroe Street, Tallahassee, Florida 32301, appearing
7 on behalf of Florida Power & Light Company.

8 JAMES D. BEASLEY, Ausley & McMullen, Post Office
9 Box 391, Tallahassee, Florida 32302, appearing on behalf
10 of Tampa Electric.

11 VICKI GORDON KAUFMAN, McWhirter, Reeves,
12 McGlothlin, Dekker, Kaufman, Arnold & Steen, 117 South
13 Calhoun Street, Suite 716, Tallahassee, Florida 32301,
14 appearing on behalf of Florida Industrial Power Users
15 Group (FIPUG).

16 JAMES A. MCGEE, P.O. Box 14042, St. Petersburg,
17 Florida 33733-4042, appearing on behalf of Florida Power
18 Corporation.

19 STEPHEN C. BURGESS, Office of Public Counsel, 111
20 West Madison Street, Room 812, Tallahassee, Florida
21 32399-1400, appearing on behalf of the Citizens of the
22 State of Florida.

23 COCHRAN KEATING, Florida Public Service Commission,
24 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0850,
25 appearing on behalf of the Commission Staff.

P R O C E E D I N G S

1
2 COMMISSIONER CLARK: Let's call the prehearing
3 to order.

4 Would you please read the notice.

5 MR. KEATING: Pursuant to notice issued March
6 7th, 2000, this time and place have been set for a
7 prehearing conference in Docket Number 991779-EI, review
8 of the appropriate application of incentives to wholesale
9 power sales by investor-owned electric utilities.

10 COMMISSIONER CLARK: We'll take appearances.

11 MR. BURGESS: Commissioner, I'm Steve Burgess
12 here for the Public Counsel's Office representing the
13 Citizens of the State of Florida.

14 MR. BEASLEY: Commissioner, James D. Beasley of
15 the law firm of Ausley and McMullen, P.O. Box 391,
16 Tallahassee, Florida 32302. I'm representing Tampa
17 Electric Company.

18 MR. MCGEE: Good afternoon. James McGee, Post
19 Office Box 14042, St. Petersburg 33733, on behalf of
20 Florida Power Corporation.

21 MR. STONE: Jeffrey A. Stone of Beggs and Lane,
22 P.O. Box 12950, Pensacola, Florida 32576, representing
23 Gulf Power Company.

24 MR. CHILDS: Matthew Childs of the firm Steel,
25 Hector, and Davis, appearing on behalf of Florida Power &

1 Light Company.

2 MS. KAUFMAN: Vicki Gordon Kaufman of the
3 McWhirter Reeves law firm on behalf of the Florida
4 Industrial Power Users Group.

5 MR. KEATING: Cochran Keating on behalf of
6 Commission staff.

7 COMMISSIONER CLARK: Mr. Keating, how do you
8 want to proceed?

9 MR. KEATING: I don't believe that there are any
10 preliminary matters to cover. I think unless the parties
11 have something to raise, we could go through the
12 prehearing order.

13 COMMISSIONER CLARK: I have read the prehearing
14 order. Why don't we just go through and see if there are
15 any changes to the prehearing order.

16 Mr. Burgess, do you have any changes?

17 MR. BURGESS: Yes. There was a position on the
18 central issue that was not picked up. We are satisfied
19 with the listing of our basic position. With regard to
20 Issue 1, our position in response to Issue 1 could be the
21 same as that listed for our basic position.

22 COMMISSIONER CLARK: Why don't we just reprint
23 it from the basic position. Okay.

24 MR. BURGESS: And what I would like to be able
25 to do, if I could, is perhaps provide Mr. Keating by fax

1 either this afternoon or whenever a timely response is,
2 responses to the positions of -- responses for our
3 position in the other issues. Alternatively, I could
4 simply state approximately what they would be orally
5 today.

6 COMMISSIONER CLARK: Unless there are other
7 parties that need to know that right now, we will let him
8 fax them. Okay. Anything else, Mr. Burgess?

9 MR. BURGESS: Yes. We have a motion to strike
10 testimony, and I don't know whether you would like for it
11 to -- me to address that now, or to wait until the rest of
12 the parties --

13 COMMISSIONER CLARK: Let's get the prehearing
14 order correct, and then we will go back to a motion to
15 strike.

16 MR. BURGESS: Thank you.

17 COMMISSIONER CLARK: Mr. Beasley.

18 MR. BEASLEY: I think our positions are
19 appropriately stated. I did have one inquiry about the
20 order of witnesses, Commissioner Clark. Since Doctor
21 Dismukes is the witness that is advocating change here, I
22 wondered if it might be appropriate to have him speak
23 first on direct testimony. It would also probably
24 facilitate his travel plans to be first.

25 COMMISSIONER CLARK: Mr. Burgess.

1 MR. BURGESS: As far as his travel plans, I
2 don't know, I haven't spoken with him as to any problem on
3 that. One of the things that concerns me as far as the
4 order of witnesses is that he does recommend a change, but
5 every other witness recommends a change from the status
6 quo, as well. In fact, as I understand it, the status quo
7 has pretty much slipped out from under us just as a matter
8 of the evolution or devolution of the broker network.

9 COMMISSIONER CLARK: What did you say at the
10 end?

11 MR. BURGESS: As I understand it, there has been
12 major significant change to the broker network, and that
13 that has changed things for everybody, and that therefore
14 all witnesses -- irrespective of that, all witnesses have
15 sought a change. And in addition to that, by the nature
16 of the change in the economy sales broker network.

17 COMMISSIONER CLARK: Mr. Burgess, then you would
18 not agree to move Mr. Dismukes, is that correct?

19 MR. BURGESS: I don't have any reason to think
20 that -- I would not acquiesce to that.

21 COMMISSIONER CLARK: Okay. Mr. Beasley.

22 MR. BEASLEY: I wasn't aware that there was any
23 preassignment other than just the luck of the draw that
24 the names came up in the order in which they did.

25 COMMISSIONER CLARK: Okay. We usually do the

1 companies first. I think that is probably why it resulted
2 that way.

3 Anything else?

4 MR. BEASLEY: None from me.

5 COMMISSIONER CLARK: Mr. McGee.

6 MR. MCGEE: We have no changes to the draft
7 prehearing order.

8 COMMISSIONER CLARK: Okay.

9 Mr. Stone.

10 MR. STONE: Commissioner Clark, the positions
11 that we filed in this docket were positions on the issues
12 that were identified in the prehearing conference for the
13 fuel hearing. They were the issues that the Commission
14 voted to send to the full -- the fuel panel voted to send
15 to the full Commission. And we believe that the wording
16 of the issues as they were presented in that docket is the
17 more appropriate wording for this proceeding.

18 That wording recognizes the fact that the status
19 quo is the existing shareholder incentive of an
20 80 percent/20 percent split between the ratepayers and the
21 shareholders. And notwithstanding Mr. Burgess' comments
22 that everyone up here is advocating a change, quite to the
23 contrary, Gulf's position is maintain the status quo.

24 And so I really believe that the more appropriate
25 wording of the issues as is stated in our prehearing

1 statement, which is taken from the Commission's own
2 prehearing order back in 990001 as noted in our footnote
3 to our prehearing statement.

4 COMMISSIONER CLARK: Mr. Keating.

5 MR. KEATING: The issues that are listed in the
6 draft prehearing order, while we didn't have a formal
7 issue identification, I guess it is an informal meeting,
8 regardless, in this docket, we received issue statements
9 from the parties and formulated the three issues that are
10 in the draft prehearing order and, in turn, faxed those
11 back out to the parties to determine whether there was any
12 disagreement with those issues.

13 And we thought that going forward there was
14 agreement on those issues. Besides that point, we believe
15 that the three issues that are identified in the draft
16 prehearing order cover at a minimum what was covered in
17 the two issues from the fuel docket in 1999. They are a
18 little broader.

19 COMMISSIONER CLARK: Which were a little
20 broader?

21 MR. KEATING: The issues that are in this draft
22 prehearing order.

23 COMMISSIONER CLARK: Okay. Mr. Stone, tell me
24 what precisely you don't like and what you want it changed
25 to.

1 MR. STONE: It is primarily on Issue 1. And if
2 you listen to Issue 1 as it was in the fuel prehearing
3 last fall, and as it is articulated in our prehearing
4 statement --

5 COMMISSIONER CLARK: I don't have either of
6 those.

7 MR. STONE: Okay. Then I will read it to you.
8 It is, "Should the Commission eliminate the 20 percent
9 shareholder incentives set forth in Order Number 12923
10 issued January 24, 1984 in Docket Number 830001-EU-B."
11 And the new wording is as you see it in the draft
12 prehearing order, which makes it, "Should the Commission
13 provide for stockholder incentives." That leaves the
14 Commission with the impression that we are talking about
15 creating a new incentive out of whole cloth rather than
16 changing a policy that has an incentive and abolishing the
17 existing policy.

18 COMMISSIONER CLARK: What other changes would
19 you make in 2 and 3?

20 MR. STONE: If we accepted my wording on Issue
21 1, I could probably live with the wording on Issues 2 and
22 3. They were not -- well, 3 I have to give you a position
23 on, because I think our position was contained in our
24 position on Issue 1 and 2 as we word it in our prehearing
25 statement, so I would have to break something out there.

1 But my fundamental concern is the expression of the issue
2 in Issue 1.

3 COMMISSIONER CLARK: Mr. Keating.

4 MR. KEATING: I don't see a whole lot of
5 difference. I mean, I think --

6 COMMISSIONER CLARK: Let me just tell you, I
7 tend to agree with Mr. Stone.

8 MR. KEATING: I mean, I think there is an
9 understanding that the 20 percent shareholder exists.

10 COMMISSIONER CLARK: I appreciate that, but I
11 think it would be -- we need to acknowledge that it exists
12 now, and we are -- the purpose of this docket is to see if
13 we need to change it. I would prefer that it say just
14 that, however it was stated in the fuel docket. Because
15 that is what we are about to consider is we have a policy,
16 should we change it. I think we have to acknowledge in
17 the issue that we do provide a stockholder incentive.
18 What harm is it in changing it back to the way -- what
19 harm is it in acknowledging that?

20 MR. KEATING: I don't see that there is any harm
21 in acknowledging it, we had just taken a little bit
22 broader approach.

23 COMMISSIONER CLARK: Let me just indicate to
24 you. I'm sure Lila is aware of it, but if we had a
25 completely new commissioner, I'm not sure that they would

1 be aware of it just reading the issue. And I think it
2 would be a better practice in this case to make it clear.

3 MR. KEATING: Okay. Yes, I think we are still
4 with Issue 2, addressing the broader question of
5 incentives as they would apply to other types of sales.
6 So I think we would be okay with the change on Issue 1.

7 COMMISSIONER CLARK: Okay.

8 Anything else, Mr. Stone?

9 MR. STONE: With that change, our position on
10 Issue 1 would be the same as it is. I think others may
11 have to change their yeses to nos. I'm not certain on
12 that, but I won't speak for them.

13 With regard to Issue 2, leaving the existing
14 wording, I would just add three words at the beginning of
15 our position, "at a minimum," and then it can be as we
16 have it stated. And I will need to provide a position for
17 Issue 3. And I will be happy to provide that to Mr.
18 Keating.

19 COMMISSIONER CLARK: Mr. Childs.

20 MR. CHILDS: Commissioners, today we filed an
21 amended prehearing statement. The only thing that that
22 does is to pick up a statement of position. Page 6 of the
23 draft prehearing says none provided, we have one. It is
24 two-and-a-half lines. I'm going to give it to the staff,
25 if that is convenient.

1 COMMISSIONER CLARK: Okay. That was it for you,
2 Mr. Childs?

3 MR. CHILDS: Correct.

4 COMMISSIONER CLARK: Ms. Kaufman.

5 MS. KAUFMAN: Commissioner Clark, with the
6 change to Issue 1 that we just made on Page 8, FIPUG would
7 just need to change the no to yes. And the rest of the
8 following sentence can remain.

9 COMMISSIONER CLARK: Nothing else?

10 MS. KAUFMAN: That is all we have.

11 COMMISSIONER CLARK: Why don't we do this.
12 Staff, if you would change the wording to Issue 1, and
13 make sure parties have a copy, and then allow them until
14 the close of business tomorrow to change their positions,
15 the wording of their positions if they need to, okay?

16 MR. KEATING: Okay. And I would suggest, Issue
17 2, the wording of Issue 2 refers back to Issue 1, and
18 says, "If a stockholder incentive is approved in Issue 1,"
19 perhaps that language should change slightly, as well, to
20 "If the Commission should decide to maintain the 20
21 percent shareholder incentive."

22 COMMISSIONER CLARK: Or approve a new incentive.
23 Okay?

24 MR. KEATING: Okay.

25 COMMISSIONER CLARK: If you would make those

1 changes to the wording and then get copies to all the
2 parties so that if they feel they need to change their
3 positions, they can respond to you by close of business
4 tomorrow, okay?

5 MR. KEATING: Okay.

6 MR. BEASLEY: Commissioner Clark, could I
7 inquire, would the language be the same as Gulf has for
8 its Issue 1?

9 COMMISSIONER CLARK: I don't have a copy of
10 Gulf, so I don't know.

11 MR. KEATING: Are you asking if Issue 1 in this
12 docket is going to read exactly as Issue 1 in Gulf's
13 prehearing statement reads?

14 MR. BEASLEY: That's right.

15 MR. KEATING: I believe that is what was agreed.

16 MR. BEASLEY: Okay.

17 MR. STONE: That is what was in the prehearing
18 order last fall.

19 COMMISSIONER CLARK: Okay.

20 MR. BEASLEY: And we would change our position
21 from yes to no with a continuation of the statement.

22 COMMISSIONER CLARK: All right. What we will do
23 we will send out changes to the wording of Issues 1 and 2,
24 and then if you feel like you need to change it, you will
25 have until close of business tomorrow to do that.

1 And with that in mind, Mr. Burgess, you
2 announced that you would fax other responses to other
3 issues to staff. If you would just wait to look at those
4 and fax them by close of business tomorrow.

5 MR. BURGESS: Thank you.

6 COMMISSIONER CLARK: Let's go back to the order
7 of witnesses. Mr. Burgess, you don't care to change
8 Doctor Dismukes to -- do we have to take into
9 consideration any travel constraints, or availability
10 constraints for Doctor Dismukes or anyone else?

11 MR. BURGESS: Not that I am aware of at this
12 point. In other words, one of the things that I am
13 concerned about is if I agreed to that, I've got as much
14 chance to cause a travel problem as I do to solve one.

15 I realize usually at the beginning of the
16 hearing is easier, but what I'm troubled by with that is
17 my recollection of the order of presenting testimony was
18 that the companies filed testimony first, and our
19 testimony was in response to the companies' testimony, and
20 then the companies were given an opportunity for rebuttal.

21 And to now put him first seems like it gives, in
22 effect, two rebuttals, two potential rebuttals to Doctor
23 Dismukes.

24 COMMISSIONER CLARK: Okay. How long is this
25 hearing scheduled for?

1 MR. KEATING: It is scheduled for one day.

2 COMMISSIONER CLARK: Okay. Do we need to make
3 any other changes in the witness order? All right. We
4 will leave it as it is, then.

5 MR. STONE: Commissioner, for the record, Mr.
6 Howell will be on all three issues, if there are three
7 issues.

8 COMMISSIONER CLARK: Okay. Mr. Burgess, you had
9 a motion to strike testimony. Are there any other motions
10 or items that we have to take up?

11 MR. STONE: Commissioner Clark, I'm not aware of
12 Mr. Burgess' motion to strike testimony. If it is not
13 directed at my witness, I may not have any concerns about
14 it, but I had not received notice of this motion prior to
15 this moment.

16 MR. BEASLEY: I heard about it just prior to the
17 beginning of the prehearing conference.

18 COMMISSIONER CLARK: Mr. Burgess, when did you
19 file it?

20 MR. BURGESS: I have not filed it. We have a
21 pending motion section or a pending matters section.

22 COMMISSIONER CLARK: And you're just telling me
23 that?

24 MR. BURGESS: And I'm letting you know, yes, as
25 a matter of -- I do have the motions to file with me. I

1 also would like the Commission to be aware of them at the
2 earliest possible opportunity. It is something I
3 considered simply delivering orally, but then I thought,
4 well, if you preferred I would put them on file with the
5 Commission Clerk.

6 COMMISSIONER CLARK: When is the hearing?

7 MR. KEATING: The hearing is the 10th, so we
8 still have, I believe, time for a response by Tampa
9 Electric Company to the motion.

10 COMMISSIONER CLARK: Okay. I guess I would
11 prefer you file it today and hand-deliver it to everybody
12 so we don't have to wait for the mailing, and then I will
13 want it after we get the responses. To which witnesses --

14 MR. BURGESS: It is exclusively to TECO witness
15 Lynn Brown's rebuttal testimony, and the exhibit --
16 specifically the exhibit attached thereto. No objections
17 to the body of his testimony, but rather to the inclusion
18 as an exhibit of the testimony filed by Tom Hernandez by
19 TECO in another docket.

20 COMMISSIONER CLARK: Okay. Maybe you can work
21 that out. If not, we will rule on that motion when it is
22 ripe. Anything else?

23 MR. KEATING: I think we need to make a change
24 to the language in Issue 3 to be consistent with what we
25 have done in Issue 2, as well. It starts with the same

1 clause. And I would propose that we insert -- replace the
2 clause "if a stockholder incentive is improved in Issue 1"
3 to "if the Commission should decide to maintain the 20
4 percent shareholder incentive or approve a new incentive."

5 COMMISSIONER CLARK: Good. But we will still
6 deliver those changes to everybody and give them until
7 tomorrow afternoon?

8 MR. KEATING: Yes.

9 COMMISSIONER CLARK: Is there anything else we
10 need to take up? Thank you very much. We will adjourn
11 the prehearing.

12 (The prehearing conference adjourned at
13 1:50 p.m.)

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

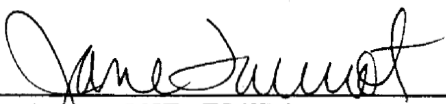
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4
5 I, JANE FAUROT, RPR, Chief, FPSC Bureau of Reporting
6 Official Commission Reporter, do hereby certify that the
7 Prehearing Conference in Docket No. 991779-EI was heard by
8 the Prehearing Officer at the time and place herein
9 stated.

10
11 It is further certified that I stenographically
12 reported the said proceedings; that the same has been
13 transcribed under my direct supervision; and that this
14 transcript, consisting of 17 pages, constitutes a true
15 transcription of my notes of said proceedings.

16
17 I FURTHER CERTIFY that I am not a relative, employee,
18 attorney or counsel of any of the parties, nor am I a
19 relative or employee of any of the parties' attorneys or
20 counsel connected with the action, nor am I financially
21 interested in the action.

22
23 DATED THIS 4TH DAY OF MAY, 2000.

24
25


26 JANE FAUROT, RPR
27 FPSC Division of Records & Reporting
28 Chief, Bureau of Reporting
29 (850) 413-6732