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Blanca S. Bayo, Director
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Re: Docket No. 991779-EI

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and 15 copies of:

- Post-Hearing Statement of Issues and Positions and Post-Hearing Brief of The Florida Industrial Power Users Group.

A disk is also enclosed containing this filing. Please acknowledge receipt of the above on the extra copy enclosed herein and return it to me. Thank you for your assistance.

Yours truly,

Vicki Gordon Kaufman

Vicki Gordon Kaufman

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In re: Review of the appropriate application of incentives to wholesale power sales by investor-owned electric utilities. /	Docket No. 991779-EI Filed: May 31, 2000

Post-Hearing Statement of Issues and Positions and

Post-Hearing Brief

of

The Florida Industrial Power Users Group

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PRELIMINARY STATEMENT

Pursuant to rule 28-106.215, Florida Administrative Code, the Florida Industrial Power Users Group files its Joint Post-Hearing Statement of Issues and Positions and its Post-Hearing Brief.[1]

INTRODUCTION

It is FIPUG's basic position that *additional* compensation (that is, compensation in addition to the monopoly's guaranteed rate of return and protection from competition) for a clear and specific management responsibility should not be permitted. Appropriate resource management, just like many other management activities utilities undertake, is a part of the monopoly utilities' obligations to ratepayers. Retail ratepayers have already paid once, and continue to pay, for the assets used to make the sales at issue in this docket; they should not have to pay again through some sort of "incentive program."

As part of the regulatory bargain between captive ratepayers, the utilities and this Commission, utilities have a management obligation to conduct all the affairs of their business prudently and reasonably. There is no reason to single out one aspect of the utility's business (economy sales) involving the prudent management of its assets for an "incentive."

Rather than approving an incentive for engaging in appropriate and required regulatory behavior, FIPUG suggests that to the extent that a utility does *not* aggressively pursue overall cost reduction strategies for captive customers, that would be cause for Commission investigation and sanctions against any offending utility. FIPUG strongly advocates that the current incentive on

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[1]The following abbreviations are used in this brief. The Florida Industrial Power Users Group is called FIPUG. The Florida Public Service Commission is referred to as the Commission. Florida Power & Light Company is designated FPL. Florida Power Corporation is called FPC. Tampa Electric Company is referred to as TECo. Gulf Power Company is called Gulf.

Broker sales be eliminated and that no new or expanded incentive be approved.

ARGUMENT

ISSUE 1

SHOULD THE COMMISSION ELIMINATE THE 20 PERCENT SHAREHOLDER INCENTIVE SET FORTH IN ORDER NO. 12923, ISSUED JANUARY 24, 1984, IN DOCKET NO. 830001-EU-B?

FIPUG:* Yes. The Commission should not provide an additional incentive, beyond the current incentive of a guaranteed return and a captive customer base, for utilities to perform their required managerial duties.*

Essentially, the utilities' argument on the issue of incentives is this: "incentives are good and influence behavior; therefore, the Commission should provide us with an incentive to make wholesale sales because retail ratepayers will benefit." Not only have the utilities provided no proof of this assumption, but this argument overlooks several key points.

First, the utilities *already* have incentives to enter into the economy sales when retail ratepayers will benefit. The utilities candidly admit that they have an obligation to provide efficient, cost-effective service to their retail customers. The utilities *admit* that they have an incentive to keep retail rates as low as possible and to reduce their costs. (Tr. 48, 104, 124, 210, 303; Exh. 2, p. 17; Exh. 10, p. 14). They need no additional incentive to do so.

Second, the utilities admit that *currently* they are engaging in beneficial economy sales with no incentive. This is because, as originally envisioned, the incentive applied only to Broker sales.[2] Today Broker sales have declined and the Broker system has fallen into disuse.

Nonetheless, the evidence shows that the utilities are vigorously pursuing economy sales. For

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[2]Though the current incentive is supposed to apply only to Broker sales, some utilities appear to be applying it to other types of sales also. For example, Gulf, who does not participate in the Broker system is apparently retaining an incentive for economy sales off the Broker.

example, FPL's Mr. Stenovitch testified that after 1994, Broker sales for FPL declined greatly. Over the last several years, FPL has traded almost entirely off the Broker. (Tr. 45-46). If an incentive were necessary to "force" this behavior, FPL's non-Broker transactions should have declined. But just the opposite has occurred; FPL's sales have increased dramatically. In fact, as FPL testified, in 1996 its gains on economy transactions off Broker were $5.5 million. In 1998, such gains were $62 million; in 1999, they were $59 million. In just three years, FPL testified that it had increased the number of wholesale contracts it had entered into from 63 contracts to 400 contracts. (Tr. 47). These are transactions in which 100% of the gain was returned to retail ratepayers. The increase in economy transactions, when there is *no* incentive, is a clear indication that it is not an incentive that is driving these sales but the marketplace itself.

And, in fact, when questioned, the utilities touted their marketing departments and lauded their excellent work. (Tr. 46, 137). Without exception, the utilities said these departments are doing a good job in the wholesale market and will continue to do so, regardless of the outcome of this case. Thus, the utilities admit that even without an incentive, they will not cease their wholesale sale activities nor direct their marketing departments to act differently. (Tr. 47-48, 180).

Third, and perhaps most telling, the utilities ask this Commission to take *on faith* the premise that if incentives are in place and if they are increased beyond their current level, retail benefits will also increase. Not one of the utilities provided *any* evidence to support this premise. (Exhibit 5, pp

8-9[3]; Exhibit 8, p. 14[4]; Exhibit 10, p. 17[5]; Exhibit 11, p. 11[6]). That is, astonishingly, there has been *no* information provided to indicate what the results of the current incentive program have been nor what the changes suggested will do in the future[7] (other than increase retail ratepayers' fuel costs).[8]

What the evidence does show, however, it that the utilities' proposals will take money away

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[3]The following exchange occurred at the deposition of FPL's Ms. Dubin:

Q. Did FPL perform any study in the development of the proposal, which would indicate the benefit to ratepayers of using that sliding scale [proposed by FPL]?
A. No.

[4]The following exchange occurred at the deposition of Gulf's Mr. Howell:

Q. Does Gulf have any evidence or has it performed any analyses to show that 20 percent stockholder incentive encourages sales to such a degree that ratepayers receive a net benefit?
A. We have not done any analysis, no. It is a judgment call.

[5]The following exchange occurred at the deposition of TECo's Mr. Brown:

Q. Does TECO have any evidence that increasing the stockholder incentive will encourage the sales that you wish to apply the incentive to, to such a degree that ratepayers will receive a net benefit?
A. We have not done any calculations to the effect.

[6] The following exchange occurred at the deposition of TECo's Ms. Brown:

Q. Has TECO performed any research or analysis that has determined that the incentive it's proposed would provide a net benefit to ratepayers?
A. TECO has not performed any type of quantitative analysis or detailed analysis to make that determination.

[7]The utilities already have in place the GPIF incentive program which provides an incentive for them to run their plants more efficiently. Having been paid an additional incentive to do this, IOUs now want *another* incentive to sell the energy generated by those efficient plants on the wholesale market. Thus, retail ratepayers would get to pay for such efficiency three times--in rate base, through the GPIF and through the increased wholesale sale incentive.

[8]It should be noted, however, that the utilities did admit that there can be a *loss* on the transactions at issue in this proceeding. (Tr. 140; Exh. 8, Interrogatory No. 33).

from ratepayers and put it in shareholders' pockets. Just a brief review of the change in shareholder profits (at the expense of retail ratepayers) if the various incentive plans are implemented as proffered by the utilities[9] reveals the dramatic nature of the utilities' various suggestions. In FPL's case, if its plan had applied in the years 1994 to 1999, the incentive retail ratepayers would have paid to shareholders would have increased from $4.8 million to $54.6 million, over an 11-fold increase. In FPC's case, the payment would have increased form $1.3 million to $7.5 million. And in TECo's case, it would have increased from $7.5 million to $16.2 million. (Exh. 4). What the Commission must remember is that these are funds which should be used to reduce customers' fuel costs which would have gone instead to shareholders.

Finally, the current incentive, as well as the changes the utilities suggest, pose a special danger to interruptible customers. To the extent that incentives are provided to remove power from the retail jurisdiction and sell it to wholesale customers, the number of interruptions will increase, particularly during peak periods. This circumstance has already occurred in TECo's and may occur on the part of other utilities as well. In 1998 and 1999, TECo interrupted interruptible customers 20 times while at the same time it sold power on the wholesale market. (Exh. 10, Interrogatory No. 22). Given the number and duration of the interruptions on TECo's system (Exh. 10, Interrogatory Nos. 20, 21), this situation will be exacerbated if TECo, as it has proposed, is permitted to retain for shareholders *40%* of the gain on wholesale sales. Particularly during peak summer months, interruptible customers will find the power which should have been available to serve them sold on the wholesale market to

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[9]Each utility suggests a *different* incentive plan. For example, TECo wants to earn a higher incentive on in-state sales. FPL wants a sliding scale which will provide it with a higher incentive as sales increase. FIPUG suggests that each utility has tailored its proposal not to provide an additional incentive to maximize beneficial sales but to increase its shareholders' profits. (*See*, Exhibit 3).

inure to the benefit of TECo shareholders.[10]

The IOUs make several arguments to support their claim that they need an additional incentive to engage in economy transactions. The first argument seems to be "it's always been this way." FIPUG suggests that circumstances today are *very* different than the circumstances at the time of Order No. 12923, entered over 16 years ago. Utilities should not be looking for additional regulatory protections but should rather be doing all they can to keep costs low and to improve efficiency. Further, just because it "has always been" is not a sufficient justification to continue a practice which has not been demonstrated to benefit retail ratepayers. And as mentioned above, no evidence has been provided that the current incentive program or an expansion thereof would inure to retail ratepayers' benefit.

Another argument made by the utilities is that while IOUs keep "only" 20% of the profit from a Broker transaction (or some other amount based on the Commission's decision in this docket), non- IOU providers keep 100% of the profit they make and somehow that makes the playing field less than level for IOUs. (Tr. 185-186). This argument ignores the obvious fact that while non-IOUs retain their profit, they also retain *100%* of the risk of every transaction into which they enter. Non-IOUs have no captive customers who fund the assets used to make wholesale sales; non-IOUs

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[10] On a daily basis, TECo diverts the electricity produced by installed generating capacity away from retail customers and sells it below cost in the wholesale market. This electric power is replaced by more expensive power that TECo purchases in the wholesale market. When TECo is unable to find replacement power, non firm customers are interrupted. These interruptions and high cost replacement power substitutions affect the ability of non firm customers to deliver their products in a timely and competitive manner. They also cause work curtailments and stoppages to the detriment of FIPUG employees. Incentives will only aggravate this already intolerable situation. Further, TECo received a mid-course increase at the May 16 Agenda Conference, which is due in large measure to TECo's sale of less expensive power on the wholesale market while it sells more expensive power to captive retail customers. FIPUG has filed a motion in the fuel docket in an attempt to address this issue.

have *no* guaranteed rate of return set by this Commission; non-IOUs have *no* monopoly service territory; and non-IOUs have *significant and highly expensive legal and regulatory barriers to entry*. If the playing field is tilted, it is certainly tilted in the IOUs' direction and they need no incentive to tilt it further.

The utilities also argue that it is expensive to run a power marketing department and that such costs have increased and will continue to increase in the future. (Tr. 38). Again, the utilities have left out an important part of the equation--the costs of the personnel, equipment . . . in these departments is being paid for by retail ratepayers and is covered in the return the utilities earn. All of the expenses incurred for these activities are recorded above the line as an expense charged to retail ratepayers. (Tr. 103-104).[11] Since it has been many, many years since any utility has come to this Commission and filed a rate case seeking an increase, one can only assume that such expenses are being fully recovered in base rates.

Finally, even if one were to assume that some sort of an incentive were needed (which FIPUG disputes), certainly the one-sided incentive most of the utilities suggest is inappropriate. What the utilities appear to want (with the exception of FPC) is all the reward but none of the risk. They cannot have it both ways. At the very least, while FIPUG opposes any incentive, if the Commission permits one it must be even-handed.

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[11]The gain is recorded below the line. (Tr. 110).

ISSUE 2

IF THE COMMISSION DECIDES TO MAINTAIN THE 20 PERCENT SHAREHOLDER INCENTIVE IN ISSUE 1 OR APPROVE A NEW INCENTIVE, WHAT TYPES OF NON-SEPARATED, NON-FIRM WHOLESALE SALES SHOULD BE ELIGIBLE TO RECEIVE THE SHAREHOLDER INCENTIVE?

> **FIPUG**:*The current incentive should be eliminated. If an incentive is permitted (which FIPUG disputes), it should apply *only* to Broker sales, as this Commission originally ordered.*

If the Commission does not eliminate the 20% incentive as FIPUG suggests, it should *not* be expanded as the utilities maintain. It should remain limited to Broker sales which is the concept embodied in the original order on which the utilities rely.

FIPUG quotes the Commission's own prior order entered when FPC sought to expand the current incentive to Schedule D, F and J sales. The Commission denied the FPC's request to expand the incentive and said:

> As noted by the parties opposing FPC's requested incentive treatment, a utility plans and builds plant to serve its jurisdictional customers, who then pay rates designed to provide to the utility the legitimate revenue requirement associated with owning and operating that plant. They maintain, correctly, that the utility has the responsibility of operating that plant as efficiently and economically as possible for the benefit of the customers who are carrying the system's costs. The opposing parties argue that, to the extent the utility plant can be utilized to bring in revenues from other sources, those revenues should be used to defray the expenses borne by the utility's retail customers. To do otherwise, they say, would allow the utility to be compensated twice for the same investment.

Order No. 20271, Docket No. 880001-EI.

FIPUG noted its opposition to the proposal in the following terms and its opposition remains just as valid today.

1. The measure will divert to stockholders revenues to which ratepayers are entitled.

2. FPC has failed to demonstrate that the 20% "incentive" will result in better performance by the utility or increased benefits to ratepayers.

3. The scope of FPC's proposal is ambiguous and ill-defined.

4. Granting the proposal would invite other utilities to claim entitlement to similar incentives under a myriad of transactions.

5. The Commission's treatment of economy broker sales does not warrant extension of the 80%/20% division sought by Florida Power Corporation.

The Commission agreed with FIPUG and denied FPC's request to expand the incentive. Order No. 20271 at 3. It should do so again in this case.

ISSUE 3

IF THE COMMISSION DECIDES TO MAINTAIN THE 20 PERCENT SHAREHOLDER INCENTIVE IN ISSUE 1 OR APPROVES A NEW INCENTIVE, HOW SHOULD THE INCENTIVE BE STRUCTURED?

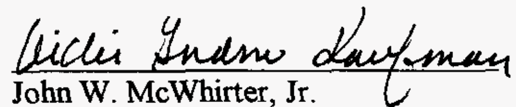
FIPUG:* It is FIPUG's position that the 20% incentive should be eliminated; no incentive should be provided. If the Commission approves an incentive, it should be even-handed and provide for a penalty as well as a reward. Otherwise, the utilities receive all the benefit with no risk if they do not provide ratepayer benefits.*

As noted earlier, FIPUG proposes that the current incentive be eliminated and that there be no expanded incentive. However, if the Commission either maintains or expands the incentive, it should ensure that it is even-handed. That is, the utility's should be at risk for unprofitable transactions as well as rewarded for profitable ones. Further, some standard level of performance should be required *before* any incentive is applied. Otherwise, even minimal or substandard "effort" will be rewarded. Under the current system, a utility receives a reward on the *first* Mwh of power sold as well as each successive Mwh though it may have put forth *no* effort to make the sales. If an incentive is approved by this Commission, some standard level of performance should be required

before any reward is given.

CONCLUSION

The Commission should eliminate the 20% shareholder incentive. It should not be the Commission's policy to provide an additional incentive to a utility to do what prudent management requires.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Joint Post-Hearing Statement of Issues and Positions and Post-Hearing Brief of the Florida Industrial Power Users Group has been furnished by (*) hand delivery or U.S. Mail this 31st day of May 2000 to the following:

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