State of Florida

# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-



**DATE:** AUGUST 2, 2001

**TO:** DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

**FROM:** DIVISION OF ECONOMIC REGULATION (E. DRAPER) EJD DRW
DIVISION OF LEGAL SERVICES (STERN) MKS RVE

**RE:** DOCKET NO. 010876-EI - PETITION FOR APPROVAL OF A NEW PILOT COMMERCIAL/INDUSTRIAL SERVICE RIDER TO REPLACE EXISTING ECONOMIC DEVELOPMENT RIDER BY FLORIDA POWER CORPORATION.

**AGENDA:** 8/14/01 - REGULAR AGENDA - TARIFF FILING - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** 60-DAY SUSPENSION DATE: 8/24/01

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\010876.RCM

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## CASE BACKGROUND

On June 25, 2001, Florida Power Corporation (FPC) filed a Petition for approval of a new pilot Commercial/Industrial Service Rider (CISR) to replace its existing Economic Development Rider. The proposed CISR rate allows FPC to negotiate a discount on the base energy and/or base demand charges with commercial/industrial customers who can show that they have viable alternatives to taking electric service from FPC.

The Commission has approved essentially the same CISR tariff as proposed by FPC for Gulf Power Company (Gulf) and Tampa Electric Company (TECO). Gulf's CISR tariff was approved in Order No. PSC-96-1219-FOF-EI, issued September 24, 1996. TECO's CISR tariff was approved in Order No. PSC-98-1081-FOF-EI, issued August 10, 1998.

The Commission has jurisdiction over the subject matter pursuant to Sections 366.04 and 366.06, Florida Statutes.

## DISCUSSION OF ISSUES

**ISSUE 1**: Should the Commission approve FPC's proposed Commercial/Industrial Service Rider tariff and Pilot Study Implementation Plan?

**RECOMMENDATION**: Yes. The proposed CISR tariff and Pilot Study Implementation Plan should be approved, provided that FPC develops procedures for evaluating CISR applications from two customers competing in the same industry to ensure that the application of the CISR tariff does not result in undue discrimination. [E. DRAPER, STERN]

**STAFF ANALYSIS**: FPC's proposed CISR tariff allows FPC to negotiate a discount on the base energy and/or base demand charges with commercial/industrial customers who can show that they have viable alternatives to taking electric service from FPC (at-risk load). The CISR is available to new customers (new load) who are qualified to take firm service and existing customers (retained load) receiving firm service.

Customers must make a written request to FPC for service under the CISR and provide certain documentation. First, the customer must provide a legal attestation or affidavit stating that, but for the application of the CISR rate, the new or retained load would not be served by FPC. Second, the customer must provide documentation to show that there is a viable lower cost alternative to taking service from FPC. Finally, existing customers must either provide FPC with the results of a recent energy audit or request that FPC conduct such an audit.

For customers meeting the eligibility criteria described above, FPC seeks approval to negotiate the rate, the term of the contract, and other conditions. The rate must cover the incremental cost to serve the CISR load plus a contribution to fixed costs. If the customer and FPC agree on the rate, term, and other conditions, the customer will be required to execute a Contract Service Agreement (CSA) with FPC.

The negotiated discount only applies to base energy and/or base demand charges. To ensure that the general body of ratepayers is not harmed through the adjustment clauses, FPC proposes to allocate the revenues received from the CISR customers first to all applicable cost recovery clauses at the rate at which the customer would have been charged in the absence of the CISR. The CISR customer will also pay the otherwise applicable customer charge plus an additional $250 customer charge to cover incremental CISR customer-related costs.

In addition to the CISR tariff, FPC submitted a Pilot Study Implementation Plan (implementation plan). See Attachment A. The implementation plan sets out additional conditions of the tariff, which are described below.

FPC proposes to offer the CISR to eligible customers until any one of three events has occurred: (1) the total capacity subject to executed CSAs reaches 300 megawatts of connected load; (2) FPC has executed 25 CSAs; or (3) 48 months have passed from the tariff's effective date. The implementation plan further states that FPC will not use the CISR to attract existing load currently served by another Florida electric utility to FPC's service territory.

FPC's proposed tariff does not require that the Commission approve each CSA. FPC proposes, however, to include in its monthly surveillance reports the difference between the revenues which would have been received under the otherwise applicable tariff rate and the CISR rate. In addition, FPC proposes to file quarterly reports that will provide information regarding the executed CSA's. The implementation plan (see Attachment A) states the information that will be shown in the quarterly reports. FPC will file the quarterly reports whether it executed any CSAs or not.

The Commission can fully review each executed CSA to evaluate its prudence upon a request by FPC. In addition, the implementation plan sets forth two conditions which would trigger a review of the CSAs: (1) a request by FPC for a base rate increase; and, (2) information in the monthly surveillance reports indicating that the difference in revenues resulting from the CSAs, when added to FPC's actual revenues, cause FPC's achieved jurisdictional return on equity to exceed the top of the Company's authorized range. Staff notes that nothing precludes the Commission from initiating a prudence review at any time on its own motion. See Section 366.06(2), Florida Statutes.

FPC states that it will have the burden of proof that its decision to enter into a particular CSA was in the best interests of the ratepayers. FPC proposes that if the Commission finds that a particular CSA was not a prudent decision, then the revenue difference between the standard rate and the CISR rate will be imputed.

FPC's proposed CISR tariff does not affect the adjustment clauses and does not affect base rates between rate cases. The proposal may affect FPC's reported earnings and return on equity on the monthly surveillance report. However, if a customer is truly at risk, and if the CSA revenues exceed the incremental cost to serve, then the general body of ratepayers will benefit from FPC's proposed CISR tariff.

Staff recommends approval of FPC's CISR tariff and implementation plan. FPC's filing is essentially the same as the Gulf and TECO CISR tariffs and implementation plans. At staff's request, FPC made one revision to its proposed tariff. The confidentiality provisions in FPC's proposed CISR tariff were initially the same as those in TECO's and Gulf's CISR tariffs. In Docket No. 000061-EI, Complaint by Allied Universal Corporation (Allied) against TECO for violation of Sections 366.03, 366.06(2), and 366.07, with respect to rates offered under the CISR tariff, there was controversy over how to interpret the confidentiality provisions in TECO's CISR tariff. FPC agreed to revise its CISR tariff to clarify that the Commission will review CISR-related documents, such as the CSA, before making a determination on their confidentiality under Section 366.093, Florida Statutes.

As a condition of approval, however, staff recommends that FPC be required to develop procedures for evaluating applications for service under the CISR tariff from two customers competing in the same industry to ensure that the tariff does not result in undue discrimination. Staff believes this requirement is appropriate in light of Docket No. 000061-EI, complaint by Allied against TECO with respect to rates offered under the CISR tariff.

TECO executed a CSA with Odyssey Manufacturing Company (Odyssey) for service to a newly constructed bleach plant in Tampa that uses a new method to produce bleach. In 1999, Allied requested service from TECO under the CISR tariff for a proposed new bleach plant that would use the same production method as Odyssey's plant.

During the CISR negotiations with TECO, Allied requested the same rates, terms, and conditions as those contained in Odyssey's CSA. In October 1999, TECO made Allied a CISR offer. Allied believed that TECO's offer did not contain the same rates, terms, and conditions as those contained in Odyssey's CSA, and filed a formal complaint with the Commission on January 20, 2000. See Docket No. 000061-EI.

In its complaint, Allied alleged that TECO offered Allied discriminatory rates under its CISR tariff. Allied further alleged that TECO had given Odyssey undue and unreasonable preference and advantage. TECO responded by stating that the CISR tariff neither requires nor contemplates that CISR customers be given the same rate. TECO further stated that Odyssey and Allied did not offer comparable ratepayer benefits, and were therefore not entitled to the same rate.

On April 24, 2001, the Commission approved a settlement between TECO and Allied. See Order No. PSC-01-1003-AS-EI. The settlement approved TECO's CSA with Allied, which contains substantially the same rates, terms, and conditions as those contained in Odyssey's CSA.

In light of the allegations made by Allied regarding TECO's CISR application, staff believes that FPC should have the burden of proof to demonstrate to the Commission that, in the event two customers in the same industry request service under the CISR, the rates, terms, and conditions offered to both customers do not result in undue discrimination. To that end, staff believes that FPC should be required to develop procedures or guidelines for evaluating CISR applications from two customers competing in the same industry to ensure that the application of the CISR tariff does not result in undue discrimination.

**ISSUE 2**: Should the Commission approve FPC's request to withdraw its Economic Development Rider, Rate Schedule GSED-1?

**RECOMMENDATION**: Yes. If the Commission approves the staff recommendation in Issue 1, Rate Schedule GSED-1 should be closed effective August 14, 2001. If the Commission denies the staff recommendation in Issue 1, Rate Schedule GSED-1 should remain in effect. [E. DRAPER]

**STAFF ANALYSIS**: The Commission approved FPC's Economic Development Rider (ED Rider) in Order No. PSC-98-1222-FOF-EI, issued September 16, 1998. The ED Rider is available to new commercial/industrial customers or to existing customers who add load. The ED Rider allows FPC to negotiate a discount on the base energy and/or base demand charges. The negotiated discount can not exceed 20 percent of the total bill, and the term of the contract is limited to five years.

The eligibility criteria of the ED Rider are patterned after the Qualified Target Industry Tax Refund Program (QTI Program), a statewide economic development initiative. To be eligible for the ED Rider, a customer must be in a target industry as defined in Section 288.106, Florida Statutes. In addition, the customer must provide at least ten new jobs, and the newly created jobs must pay an average annual wage that is equal to at least 115 percent of the state, county, or Standard Metropolitan Statistical area wage.

FPC states that to date it has not entered into any contracts under the ED Rider, primarily because the tariff does not provide for the retention of existing load. Because the CISR can be used to retain existing load, FPC believes it to be a more effective tool than the ED Rider. In addition, FPC states that the CISR has been used successfully by Gulf and TECO, who have each executed two CSAs to date.

Because FPC has not executed any contracts under the ED Rider since it became effective in August 1998, staff believes it should be closed and replaced with the CISR tariff, which has been demonstrated to be effective in retaining and attracting load.

**ISSUE 3**: What is the appropriate effective date for FPC's proposed CISR tariff and Pilot Study Implementation Plan?

**RECOMMENDATION**: The appropriate effective date for FPC's proposed CISR tariff and Pilot Study Implementation Plan is August 14, 2001. [E. DRAPER]

**STAFF ANALYSIS**: If the Commission approves FPC's proposed CISR tariff and Pilot Study Implementation Plan at its August 14, 2001, Agenda Conference, the tariff should become effective on that date.

**ISSUE 4**: Should this docket be closed?

**RECOMMENDATION**: Yes. If no protest is filed within 21 days of the issuance of the order, this docket should be closed upon the issuance of a Consummating Order. [STERN]

**STAFF ANALYSIS**: If a protest is filed within 21 days of the issuance of the Commission order approving this tariff, the tariff should remain in effect pending resolution of the protest, with any charges held subject to refund pending resolution of the protest. If no protest is filed, this docket should be closed upon the issuance of a Consummating Order.

Florida Power
A Progress Energy Company

## CISR PILOT STUDY IMPLEMENTATION PLAN

In order to give the Florida Public Service Commission ("PSC") and Florida Power Corporation ("the Company") the opportunity to study the impacts of a trial implementation of the Company's proposed Commercial and Industrial Service Rider ("CISR") under "real world" conditions, the following conditions would be made part of the Pilot Study Implementation Plan:

**Sunset Provision:**
The CISR would be scheduled to be closed to further subscription by eligible customers when one of three conditions has occurred: (1) the total capacity subject to executed Contract Service Arrangements ("CSAs") reaches 300 megawatts of connected load; or (2) The Company has executed twenty-five (25) CSAs with eligible customers under this rider; or (3) forty-eight months has elapsed from the initial effective date. The period defined by these conditions is the Pilot Study Period. This sunset provision can be removed or revised by the PSC at any time upon good cause having been shown by the Company based on data achieved during the Pilot Study Period.

**Availability**:
In addition to other limitations on availability contained in the CISR, the Company would limit its use of the CISR so that a CSA will not be knowingly offered to a customer in order to shift existing load currently being served by a Florida electric utility away from that utility to service by Florida Power under the CISR.

**Approval Level**:
Before any CISR can be executed by the Company, it must first be reviewed and approved by a standing committee of Florida Power officers. Prior to execution, each CSA must be shown to produce a positive contribution to the Company's fixed costs. The incremental costs on which each CSA is evaluated shall be determined in a manner consistent with the method for identification and quantification of such costs for use in both the Company's evaluation of conservation and demand side management programs for cost effectiveness and the Company's selection of cost-effective supply side resources.

**Revenue Allocation**:
Any revenues received by the Company pursuant to a CSA shall be allocated first to the various applicable cost-specific cost recovery clauses so that the revenues associated with the respective cost recovery clauses for true-up purposes will be the same with the CSA as they would be without the CSA.

**Required Reports**:
The Company would be required to file the following information with the PSC in accordance with the PSC's procedures for handling confidential information:

- Quarterly:
  - The number of CSAs requested;
  - The number of CSA prices quoted;
  - The number of CSA requests which were canceled by a customer prior to price quotation;
  - The number of CSA offers accepted;
  - The number of CSA offers rejected;
  - The number of CSA offers awaiting decision by customers;

- A brief description of all CSAs executed during the quarter; including the applicable rates, charges and contract period;
- For each CSA executed during the quarter, a summary of the justification for the offering; and
- Annually:
  - The cumulative total of revenues associated with all CSAs executed by the Company.

**Regulatory Review:**
Each executed CSA shall be fully reviewed by the PSC, either upon request of the Company or when either of two Triggering Events occur. One Triggering Event would be a request by the Company for a base rate increase. Another Triggering Event would be a review by the PSC resulting from the PSC's monthly surveillance reporting system discussed more fully in the following paragraph. This PSC review is to commence as soon as practicable following the request of the Company for review or the occurrence of a Triggering Event. In commencing its review, the PSC shall provide the Company or the customer subject to the CSA the opportunity to seek protection of confidential, proprietary business information in accordance with the PSC's confidentiality rules. The period for review shall be as long as necessary for the PSC's staff to conduct all reasonable discovery needed to evaluate the prudence of the Company's execution of each CSA then in existence. For this review by the PSC, the Company will continue to have the burden of proof. At the conclusion of the regulatory review, if the Company has not demonstrated to the PSC's satisfaction that the Company's decision to enter into any particular CSA under review was a prudent choice made in the best interests of the Company's general body of customers, then the difference between the revenues that would have been produced by the Company's standard tariff rates and the amount of the revenues that will be produced by the CSA which were deemed imprudent will be imputed to the Company as though this amount was actually received by the Company from the CSA customer and will be taken into account by the PSC with regards to any adjustment in the Company's base rates, whether in a rate case or in an over-earnings review as noted below. If the review results in the CSA being found prudent by the PSC, then no imputation will be made during the course of the period of the CSA.

Upon the execution of a CSA, the PSC's monthly surveillance reporting system will be enhanced to include a requirement that the Company shall identify and report, for all executed CSAs, the difference between the revenues that would have been produced by the Company's standard tariff rates and the revenues that are produced by each executed CSA. This additional information would be set forth on a separate page so that the information can be filed subject to the PSC's procedures for handling confidential and proprietary information. If the difference so reported, when added to the Company's actual revenues, would cause the Company's achieved jurisdictional return on equity ("ROE") to exceed the top of the Company's authorized range, the review of the PSC discussed above of the as yet unreviewed CSA's will be triggered. The amount of such identified difference that would cause the Company's achieved jurisdictional ROE to exceed the top of the Company's authorized range will be held subject to refund as possible over-earnings pending completion of the PSC's review.