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COGENERATION & ALTERNATIVE ENERGY
ENERGY REGULATORY LAW

VIA FEDERAL EXPRESS

March 29, 1999

Ms. Blanca S. Bayó, Director
Division of Records & Reporting
Florida Public Service Commission
Capitol Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

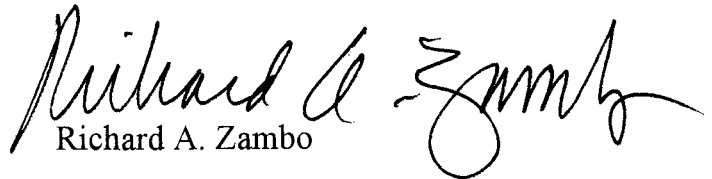
In Re: **FPSC Docket No. 990037-EI**
Petition by Tampa Electric Company to Close Rate Schedules IS-3 and IST-3

Dear Ms. Bayó:

Enclosed for filing in the above Docket please find an original and 7 copies of Preliminary Comments of The Florida Industrial Cogeneration Association. Also enclosed is a double-sided high density 3.5 inch floppy disk containing this document in WordPerfect 6.0 format as prepared on a Windows-based computer.

If you have any questions regarding this filing, please do not hesitate to call.

Sincerely,


Richard A. Zambo

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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

Submitted for Filing
March 29, 1999

PRELIMINARY COMMENTS

OF

THE FLORIDA INDUSTRIAL COGENERATION ASSOCIATION

The Florida Industrial Cogeneration Association (FICA), through its undersigned attorney, submits these preliminary comments in opposition to the Petition of Tampa Electric Company to close certain non-firm rate schedules.

1. Tampa Electric Company (TECO), alleges that Rate Schedules IS-3 and IST-3 are no longer cost-effective, and therefore seeks Commission authorization to:

“ . . . close those rates to new business as of January 1, 1999. Such closure would necessitate a slight modification to Tampa Electric’s Rate Schedule SBI-3¹, to clarify that rate remains applicable only to customers who were taking interruptible service under Rate Schedule IS-3 or IST-3 prior to January 8, 1999. Tampa Electric requests approval of that change as well.”. (E.S.)

2. FICA members own and/or operate cogeneration/self generation facilities in conjunction with industrial operations at various locations in Florida, and purchase interruptible standby and supplemental services from Florida electric utilities, including TECO. FICA objects to TECO’s proposed closure of its non-firm rate schedules - particularly rate schedule SBI-3 - to new customers.

¹ SBI-3 is a TECO rate schedule designated for the provision of interruptible standby and supplemental service to self-generating customers, including cogenerators such as FICA’s members. As discussed more fully herein, the provision of interruptible standby and supplemental service to qualifying facilities such as cogenerators is, with few exceptions, mandatory as a matter of Federal law.

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FPSC - RECORDS/REPORTING

LEGAL CONCERNS

3. The provision of interruptible standby and supplemental services to qualifying facilities is the subject of both Federal and Florida law. A primary purpose of the Public Utilities Regulatory Policies Act of 1978 (PURPA) is to encourage the development and operation of qualifying facilities, including the types of cogeneration facilities owned and/or operated by FICA's members. PURPA, and the regulations of the Federal Energy Regulatory Commission (FERC) implementing PURPA, oblige electric utilities to provide certain retail electric services to qualifying facilities - including interruptible service.

4. This Commission clearly recognized the importance of the federal mandate when it adopted Rule 25-6.0438(4), F.A.C., which provides in pertinent part as follows:

(b) Each utility shall state in its tariff the terms and conditions under which non-firm electric service will be offered. If a utility believes that providing interruptible service or another type of non-firm service to a specific customer who otherwise qualifies for such service under the utility's tariff will not result in benefits accruing to its general body of ratepayers, that utility shall apply to the Commission for authorization to refuse non-firm service to that customer. The provision of non-firm service for standby and supplemental purposes shall be consistent with the Federal Energy Regulatory Commission rule, 18 C.F.R. Sec. 292.305. (Emphasis supplied)

Accordingly, closure of TECO's IS-3 and IST-3 Rate Schedules - which are not subject to federal regulation - have no bearing on, or relationship to, the status of Rate Schedule SBI-3 which is subject to federal law to the extent it is intended to apply to qualifying facilities².

5. This Commission's rule 25-6.0438(4), F.A.C., incorporating by reference the FERC regulations, acknowledges that non-firm service for standby and supplemental purposes must be treated separately and distinctly from other forms of non-firm service. As discussed below, a finding that IS-3 and/or IST-3 are no longer cost-effective as to non-

² TECO's SBI-3 rate schedule is, by its terms, available to "self-generating" customers, including qualifying facilities. To the extent TECO limits the closure of SBI-3 to new self-generating customers who are not qualifying facilities, but leaves it open to qualifying facilities, FICA would withdraw its objection.

qualifying facility customers will not relieve TECO of its obligation to provide interruptible standby and supplemental service to qualifying facilities pursuant to the SBI-3 rate schedule.

6. FERC's regulations implementing PURPA, at 18 CFR §292.305(2)(b) as referred to above, enumerate additional services to be provided to qualifying facilities.

“(1) Upon request of a qualifying facility, each electric utility shall provide:

- (i) Supplementary power;*
- (ii) Back-up power;*
- (iii) Maintenance power³; and*
- (iv) Interruptible power.*

Clarifying, FERC noted In Oglethorpe Power Corporation, et al., 35 FERC ¶ 61,069 (1986):

“Notwithstanding that the four types of service are separately defined in the regulation, interruptible is not a form of power mutually exclusive with supplementary, back-up and maintenance power.”

7. FERC's regulations provide for waiver of the mandatory provision of the enumerated types of services, but only pursuant to strict procedural requirements.

(2) The State regulatory authority (with respect to any electric utility over which it has ratemaking authority) and the Commission (with respect to any nonregulated electric utility) may waive any requirement of paragraph (b)(1) of this section if, after notice in the area served by the electric utility and after opportunity for public comment, the electric utility demonstrates and the State regulatory authority or Commission, as the case may be, finds that compliance with such requirements will:

- (i) Impair the electric utility's ability to render adequate service to its customers; or*
- (ii) Place an undue burden on the electric utility.*

Absent a waiver of the requirements of 18 CFR §292.305(2)(b)(1) granted pursuant to the procedures set forth above, TECO must offer interruptible standby and supplemental service to qualifying facilities regardless of whether IS-3 and/or IST-3 are cost-effective⁴.

³ This Commission uses the term “standby” to include back-up and maintenance power.

⁴ In Oglethorpe Power Corporation, et al., 35 FERC ¶ 61,069 (1986) the FERC explained the obligations imposed on electric utilities under Section 292.305 of its regulations. In pertinent part, the FERC stated: “In sum, the design of the regulations in this particular regard is that the four services will be offered upon request.” The FERC further stated that: “. . . the fact that utilities may not customarily offer back-up and maintenance power to their

RESERVE MARGIN CONCERNS

8. Non-firm service such as provided under the IS-3, IST-3 and SBI-3 rate schedules, is relied upon by TECO and the state as a whole for purposes of providing "reserves" for electric system reliability during times of high electrical usage and/or unplanned outages of generation resources. Issues regarding the appropriate levels and prices of non-firm service will certainly be integral to the Commission pending investigation into the aggregate electric utility reserve margins in Docket No. 981890-EU, which is scheduled to conclude later this year. Because the Commission will be considering reserves for all of peninsular Florida in that proceeding, it is premature for TECO to declare that its non-firm rate schedules IS-3, IST-3, and SBI-3 are no longer cost-effective based on a view limited to the TECO system. It may be more appropriate to determine cost-effectiveness based on the needs of peninsular Florida. Accordingly, the Commission should seriously consider the deferral of TECO's petition until subsequent to the final disposition in the reserve margin docket.

EARNINGS CONCERNS

9. In the event TECO is permitted to close the IS-3 and IST-3 rate schedules, new customers who otherwise would have applied for one of those rates will be required to take service at the higher priced firm service rates, which will result in an increase in revenue to TECO. Although FICA was not a party to, nor is it familiar with the details of the stipulation entered into among the parties to Docket No. 950379-EI, such an increase in revenue could be construed as a rate increase, and in any event would affect year 1999 earnings which are subject to the stipulation. Whether or not violative of the stipulation, an increase in TECO's

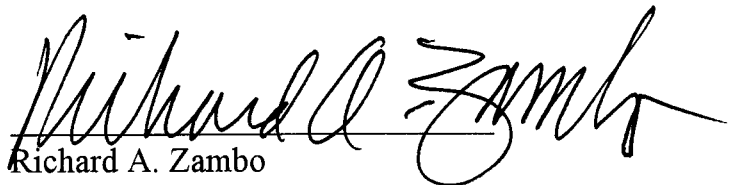
customers on an interruptible basis is not dispositive of whether or not such services should be offered to qualifying facilities. One of the legislative purposes behind Section 210 of PURPA was to cure the problem of utilities frustrating alternative power producers by refusing to sell them power at reasonable prices and on reasonable terms and conditions. Not to offer the specified services on an interruptible basis to those qualifying facilities that request them exceeds the limits of flexible implementation of the Commission's rules; rather, it may have the effect of frustrating development."

revenues would raise issues concerning TECO's earnings which may indicate the need for further investigation.

WHEREFORE, FICA respectfully suggests that the Commission enter an order denying TECO's petition to close rate schedule SBI-3; and, that the commission defer any action on TECO's petition to close rate schedules IS-3 and IST-3, to a future period subsequent to final disposition of the aggregate reserve margin proceedings in Docket No. 981890-EU and investigation of TECO's earnings in Docket No. 950379-EI.

March 29, 1999

Respectfully submitted,



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