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AUSLEY & McMULLEN

ATTORNEYS AND COUNSELORS AT LAW

227 SOUTH CALHOUN STREET
P.O. BOX 391 (ZIP 32302)
TALLAHASSEE, FLORIDA 32301
(850) 224-9115 FAX (850) 222-7560

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RECORDS AND REPORTING

May 25, 2000

HAND DELIVERED

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor; FPSC Docket No. 000001-EI

Dear Ms. Bayo:

Enclosed for filing on behalf of Tampa Electric Company are the original and ten (10) copies of Tampa Electric Company's Response in Opposition to the Florida Industrial Power User Group's Motion for Mid-Course Protection.

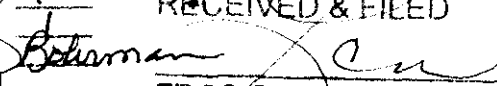
Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,


James D. Beasley

JDB/pp
Enclosures

APP	_____
CAF	_____
CMP	cc: All parties of record (w/enc.)
COM	3
CTR	_____
ECR	2
LEG	1
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FPSC-RECORDS/REPORTING

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power Cost Recovery)
Clause with Generating Performance Incentive) DOCKET NO. 000001-EI
Factor.) FILED: May 25, 2000
_____)

**TAMPA ELECTRIC COMPANY'S RESPONSE IN OPPOSITION
TO THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
MOTION FOR MID-COURSE PROTECTION**

Tampa Electric Company ("Tampa Electric" or "the company") responds as follows to the "Motion for Mid-Course Protection" filed in this docket on May 18, 2000 by the Florida Industrial Power Users Group ("FIPUG"):

Preliminary Statement

While FIPUG's filing is entitled a "Motion", its pleading states that it is filed pursuant to Rules 25-22.036 and 28-106.201, Florida Administrative Code. The first of these rules is the Commission rule governing the initiation of formal proceedings and covers the filing of applications and complaints. The second rule cited by FIPUG is the uniform rule governing the initiation of proceedings. That rule states that, unless otherwise provided by statute, an initiation of proceedings shall be made by written petition.

The normal response time to applications, complaints and petitions is 20 days from the date of service. It appears FIPUG intended for its motion to serve the role of a petition given its reference to "material issues of disputed fact" in its pleading.

Neither of the rules cited by FIPUG pertains to motions. Rule 28-106.303, Florida Administrative Code, governs motions and states that parties may file a response in opposition to a motion within seven days. Given the fact that FIPUG's pleading is entitled a "motion" but in

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reality should be entitled a “petition,” Tampa Electric is submitting this preliminary response within the seven day time period for responding to a motion, but reserves the right to submit a more developed responsive pleading within the 20-day time frame allowed for responding to petitions.

As to the Merits of FIPUG’s Motion

1. The gist of the grievances contained in FIPUG’s motion is that FIPUG’s members who take interruptible service from Tampa Electric either are being interrupted or are being billed for third party, or “buy-through” power under the provisions of the interruptible service tariff, to avoid being interrupted. FIPUG wants to avoid the interruptions and dislikes what it considers to be high priced buy-through power. In an effort to avoid interruptions and higher buy-through power costs, FIPUG erroneously attacks Tampa Electric’s wholesale power sales, apparently in hopes of having Tampa Electric’s generating resources become less utilized and, thus, more available to provide FIPUG’s members with essentially firm service at interruptible prices.

2. Tampa Electric, like virtually all retail electric utilities, sells available power at wholesale to optimize the use of its generating resources for the direct economic benefit of its retail customers, including those who take interruptible service. If Tampa Electric were to abandon its efforts to make wholesale sales, all of its retail customers would suffer significantly. Contrary to the allegations in FIPUG’s Motion, Tampa Electric has administered its wholesale sales program in a way which provides direct economic benefits to all of its retail customers without unduly disadvantaging its interruptible customers.

FIPUG's Motion Fails to Properly Characterize the Nature of Interruptible Service

3. The accusations contained in FIPUG's Motion must be considered in the context of the nature of interruptible service. Customers served on Tampa Electric's IS-1 and IS-3 interruptible rate schedules receive deep discounts compared to rates for firm service, even though the rates under which they are served have been found by this Commission to no longer be cost-effective. Interruptible rates in 1999 were approximately 46% of residential rates, and 54% of average retail rates. Even including buy-through purchases, interruptible customers benefited from a 21% discount from firm service in 1999 and a 30% discount for the last six years.

4. The deeply discounted interruptible rates have been justified by the fact that those who volunteer to be interrupted provide an operating margin for the benefit of firm customers and that utilities do not plan to serve the capacity needs of those customers. The capacity needs of interruptible customers are part of the reserves available to continue to provide service to firm customers at times when the utility's generating capacity is less than its firm load.

5. In order to avoid the inconvenience of an actual interruption for interruptible customers, the company has included in its tariff an optional provision for buy-through power purchases. This provision enables its interruptible customers to avoid most interruptions at their discretion, not Tampa Electric's. All of Tampa Electric's interruptible customers have opted for this buy-through provision.

6. Tampa Electric's IS-1 rate was closed to new customers in 1985 on the basis that it was no longer cost-effective and the IS-3 rate was then opened. In 2000, following FIPUG's protest of a Commission order finding the IS-3 rate to not be cost-effective, the Commission approved a stipulation which, in part, closed Tampa Electric's IS-3 rate to new customers.

Tampa Electric filed and received approval for the GSLM rates which are cost-effective for customers who desire a rate discount in return for allowing themselves to be curtailed to meet reliability needs of firm customers.

7. Tampa Electric's present 33 interruptible customers, thus, continue to enjoy, on a grandfathered basis, the deep discounts that are no longer cost-effective and are no longer available to others. On an overall basis these interruptible customers received an approximate 30% discount for the last 6 years from what they would otherwise have paid for an equivalent level of firm service. With that discount, they received a 99.4% service reliability in 1999.

FIPUG's Interests are Not Abridged by Tampa Electric's Wholesale Sales

8. One difficulty inherent in FIPUG's motion is its failure to differentiate between separated and non-separated wholesale transactions as well as those that are firm in nature as opposed to non-firm. The Motion does not make any clear differentiation as to whether, in various allegations throughout the Motion, FIPUG is referring to separated versus non-separated wholesale sales or firm versus as-available wholesale transactions. These types of distinctions are vitally important and FIPUG's failure to make them makes a response to the Motion difficult.

9. Tampa Electric has had in place for a number of years certain Federal Energy Regulatory Commission approved firm, long-term separated wholesale sales, the carrying costs of which its retail customers are not required to pay. Tampa Electric has not entered into any new separated, firm sales recently, contrary to the notion of urgency that characterizes FIPUG's Motion. Nor has FIPUG stated any legal basis to claim that these separated sales should, in any way, be affected because of the concerns expressed in FIPUG's Motion.

10. With respect to its non-separated, firm sale to the Florida Municipal Power Agency, the current regulatory treatment of that sale was approved by the Commission in its

most recent fuel adjustment order.¹ FIPUG petitioned for reconsideration of the December 22, 1999 fuel adjustment order and that petition was denied.² FIPUG's Motion for Reconsideration of the fuel adjustment order contained many of the same types of allegations set forth in FIPUG's present Motion. To the extent that FIPUG's current Motion is an attempt to readdress the FMPA sales treatment adjudicated in the December fuel adjustment order, the Motion constitutes an inappropriate and belated second petition for reconsideration.

11. FIPUG's members are not disadvantaged by Tampa Electric's administration of its non-separated, non-firm wholesale sales. Instead, like all retail customers, they receive significant benefits from the contributions these sales make to Tampa Electric's fixed cost of providing retail electric service. As a Tampa Electric witness testified in a recent Commission proceeding where FIPUG was an active party,³ Tampa Electric has, to the witness's knowledge, never made non-firm, non-separated wholesale sales while interrupting interruptible customers. Moreover the company has a policy of not making non-separated, non-firm wholesale sales at times when it is making buy-through purchases to serve its interruptible customers. As buy-through transactions first occur, there is occasionally a brief period of time needed to "ramp out" of, or conclude, any preexisting non-separated, non-firm sales, but that is done promptly and any effect on interruptible customers is minimal and unintentional.

12. FIPUG's Motion includes some fairly harsh accusations that Tampa Electric has cavalierly interrupted its interruptible customers or exposed them to high cost buy-through power for the purpose of pursuing "opportunistic" wholesale transactions. This is simply not the case.

¹ Order No. PSC-99-2512-FOF-EI, issued December 22, 1999 in Docket No. 990001-EI.

² Order No. PSC-00-0911-FOF-EI, issued May 8, 2000 in Docket No. 000001-EI.

³ In the matter of review of the appropriate application of incentives to wholesale power sales by investor-owned electric utilities; Docket No. 991779-EI, hearing conducted May 10, 2000.

Tampa Electric's separated wholesale sales are not market based and the company's administration and regulatory treatment of its FMPA sale has been approved by the Commission. That leaves non-separated, non-firm wholesale sales. As stated above, Tampa Electric has provisions in place to protect its interruptible customers with respect to those sales. Although clearly accusatorial, FIPUG's Motion fails to state any specific claims warranting any change to the manner in which Tampa Electric participates in the wholesale power market. Instead, the problems FIPUG describes are more attributable to the nature of the current, tight wholesale power market and the corresponding higher cost, and occasioned non-availability, of optional buy-through power. The concerns FIPUG expresses in its Motion were the subject of extensive discussion in the Commission's reserve margin docket.⁴ Hopefully, the commitments made in that proceeding by the three peninsular Florida investor-owned electric utilities, including Tampa Electric, to move to a 20% planning reserve margin criterion, will go a long way toward resolving those concerns. In the meantime interruptible customers should be held to the bargain they struck when they volunteered to be interruptible customers. Tampa Electric has also committed to a 7% summer supply side reserve margin of which interruptible customers do not contribute to the supply side capacity. To the extent this additional 7% is comprised of firm purchased power, interruptible customers' contribution to the cost will be negligible.

Higher Buy-Through Costs are Not the Fault of Tampa Electric

13. FIPUG's Motion expresses concern over the cost of third party or buy-through purchased power costs. As stated above, all of Tampa Electric's interruptible customers have requested that Tampa Electric purchase third party supplied buy-through power rather than

⁴ In re: Generic investigation into the aggregate electric utility reserve margins planned for Peninsular Florida, Docket No. 981890-EU

interrupt their service. The higher cost of buy-through power is clearly driven by a higher cost energy market that affects all purchased power, not just buy-through power.

14. Some of the higher market prices are driven by Florida utilities opting to sell excess power outside of the state and Tampa Electric has taken steps to encourage Florida utilities to retain that energy within the state.

15. In spite of the higher cost of third party purchased power to avoid interruptions and an increased frequency of interruptions in 1999, interruptible customers have still enjoyed an effective discount from firm service rates of about 21% including the cost of buy-through power. Moreover, in spite of the interruptions in 1999, only one customer has requested to transfer to firm service. Clearly it is an economic decision to stay on interruptible rates.

The Relief Alluded to in Paragraph 18 of FIPUG's Motion is Inappropriate and Unjustified

16. In paragraph 18 of its petition, FIPUG first mentions the various types of relief it may be seeking. First, FIPUG urges that Tampa Electric be allowed to interrupt only if it experiences a capacity shortage created by the needs of its native firm customers. This request fails to consider Rule 25-6.035(4), F.A.C., which requires utilities to interrupt their interruptible customers to serve the firm customers of another utility. That decision was opposed by Tampa Electric and was adopted over Tampa Electric's objection. Tampa Electric has made it clear that it does not interrupt interruptible customers in order to make non-separated, non-firm wholesale sales. Thus, FIPUG's suggestion that Tampa Electric pursues "opportunistic" deals to the detriment of its interruptible customers has no merit.

17. The second form of relief mentioned in paragraph 18 of FIPUG's Motion (to "order a utility to avoid the additional expense by curtailing an imprudent wholesale transaction") is totally unsupported and unwarranted in that FIPUG has failed to allege the

imprudence of any particular wholesale transaction. Instead, FIPUG condemns all wholesale transactions, notwithstanding the benefits they provide to a utility's general body of ratepayers, including interruptible customers. This Commission has reviewed Tampa Electric's wholesale transactions on numerous occasions and has never found any of its wholesale transactions to be imprudent. In fact, the Commission has found on two occasions that the FMPA contract provides net benefits to customers.

18. The third form of relief mentioned in paragraph 18 of FIPUG's Motion (separating the portion of the rate base dedicated to any firm wholesale sales and contemporaneously reducing base rates attributable to that portion of the rate base) has already been done in the case of Tampa Electric's long-term firm wholesale transactions with the exception of the wholesale sale to FMPA, the current regulatory treatment of which the Commission has recently approved.

FIPUG's Reliance on the Northern States Power Company Decision is Misplaced

19. FIPUG's reference to Northern States Power Company v. Federal Energy Regulatory Commission, 176 F.3d 1090 (8th Cir. 1999) is misplaced. That decision involved transmission constraints and the question of whether native/retail customers should be curtailed on a pro rata basis with wholesale users. The decision in Northern States Power Company did not turn on the considerations quoted in FIPUG's Motion. The court made no decision on the curtailment policy issue, but, instead, reversed and remanded on the grounds that FERC had transgressed its Congressional authority which limits its jurisdiction to interstate transactions. The portion of the decision quoted by FIPUG is simply the Court's recitation of arguments advanced by Northern States Power, not the Court's reliance upon those arguments as the basis for the Court's decision.

20. It is interesting to note that Northern States Power argued that a pro rata curtailment requirement as to native/retail customers and wholesale users would force the utility to provide interruptible service to its native/retail customers. In the instant case, FIPUG's members have voluntarily elected to take interruptible service.

The Commission Should Deny the Relief Requested in FIPUG's Motion

21. In its request for relief, beginning on page 11 of its Motion, FIPUG first asks the Commission to require Tampa Electric to curtail any wholesale sale if such sale would occur during the same hour in which Tampa Electric plans to interrupt interruptible customers. FIPUG's Motion states no ground for such action. FIPUG does not differentiate between separated and non-separated wholesale sales, nor does FIPUG establish any entitlement to the generating capacity used to serve separated wholesale sales. With respect to non-separated, non-firm wholesale sales, Tampa Electric has indicated that as a matter of policy it does not interrupt interruptible customers to make such sales. Finally, the regulatory treatment of the FMPA sales has been approved by the Commission after finding that the FMPA contract provides net benefits to customers. This contract is a firm FERC approved contract which cannot be abrogated by this Commission. Clearly, the relief requested is unwarranted.

22. The second relief sought by FIPUG would establish retail wheeling, contrary to the current statutory framework for regulation in this state. Such would require legislation and should not be approved as a matter of agency action in the absence of legislation.

23. FIPUG's third relief sought (self-service wheeling) may be covered under Rule 25-17.0883, Florida Administrative Code, discussing conditions requiring transmission service for self service. However, FIPUG's Motion does not set forth any specific facts establishing any of FIPUG members' entitlement to self-service wheeling under this rule.

24. The fourth requested relief (directing Tampa Electric to reduce the buy-through power rate by the amount included in base rates for generating capacity) has no foundation whatsoever, in fact or in law. It would give interruptible customers greater than what they have bargained for. It would bestow an undue advantage on interruptible customers and it would be confiscatory in the sense that Tampa Electric's other ratepayers or its shareholders would be subsidizing interruptible customers. This request, perhaps better than any other contained in FIPUG's Motion, demonstrates that what FIPUG really wants is firm service at interruptible prices.

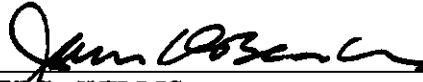
25. Next FIPUG asks for an expedited ruling on its Motion. However, FIPUG has stated no grounds for expedited treatment. In large part its Motion is a repackaged version of the same arguments FIPUG has made over and over again in the past, both in the fuel adjustment docket and in other proceedings.

26. Finally, in paragraph 6 of its request for relief, FIPUG asks the Commission to take administrative notice of testimony offered during non-firm workshop hearings conducted in February and March of 2000. Clearly FIPUG must understand that factual statements in other proceedings are not appropriate for inclusion in the record of a proceeding involving disputed issues of material fact, particularly when the comments presented were unsworn and not subject to cross-examination.

WHEREFORE, Tampa Electric urges the Commission to forthwith deny FIPUG's Motion filed in this proceeding on May 18, 2000. Tampa Electric further reserves its right to submit a more developed responsive pleading to FIPUG's Motion within the time frame allowed for responding to a petition.

DATED this 25th day of May, 2000.

Respectfully submitted,



LEE L. WILLIS
JAMES D. BEASLEY
Ausley & McMullen
Post Office Box 391
Tallahassee, FL 32302
(850) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Response in Opposition to FIPUG's Motion for Mid-Course Protection, filed on behalf of Tampa Electric Company, has been served by hand delivery (*) or U. S. Mail on this 25th day of May 2000 to the following:

Mr. Wm. Cochran Keating, IV*
Staff Counsel
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Mr. James A. McGee
Senior Counsel
Florida Power Corporation
Post Office Box 14042
St. Petersburg, FL 33733

Mr. Joseph A. McGlothlin
Ms. Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman, Arnold & Steen, P.A.
117 S. Gadsden Street
Tallahassee, FL 32301

Mr. Kenneth A. Hoffman
Mr. William B. Willingham
Rutledge, Ecenia, Underwood,
Purnell & Hoffman
Post Office Box 551
Tallahassee, FL 32302-0551

Mr. Stephen Burgess
Deputy Public Counsel
Office of Public Counsel
111 West Madison Street – Suite 812
Tallahassee, FL 32399-1400

Mr. Matthew M. Childs
Steel Hector & Davis
215 South Monroe Street – Suite 601
Tallahassee, FL 32301

Mr. John W. McWhirter, Jr.
McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman, Arnold & Steen, P.A.
Post Office Box 3350
Tampa, FL 33601

Ms. Susan Ritenour
Gulf Power Company
One Energy Place
Pensacola, FL 32520

Mr. Jeffrey A. Stone
Beggs & Lane
Post Office Box 12950
Pensacola, FL 32576

Mr. Norman Horton
Messer Caparello & Self
Post Office Box 1876
Tallahassee, FL 32302



ATTORNEY

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fipug's mot. for mid-course protection.doc