ORIGINAL

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October 23, 2000

HAND DELIVERED

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

Re: Review of the appropriate application of incentives to wholesale power sales by investor-owned electric utilities; FPSC Docket No. 991779-EI

Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa Electric Company's Response to the Florida Industrial Power Users Group's Motion for Clarification of Points I and II and Protest to Part III of Order No. PSC-00-1744-PAA-EI.

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

cc: All Parties of Record (w/enc.)

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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 Utilities.	))))	DOCKET NO. 991779-EI FILED: October 23, 2000

TAMPA ELECTRIC COMPANY'S RESPONSE TO THE FLORIDA INDUSTRIAL POWER USERS GROUP'S MOTION FOR CLARIFICATION OF POINTS I AND II AND PROTEST TO PART III OF ORDER NO. PSC-00-1744-PAA-EI

Tampa Electric Company ("Tampa Electric" or "the company") responds as follows to the Motion for Clarification of Parts I and II and protest of Part III of Order No. PSC-00-1744-PAA-EI ("Order No. 00-1744"):

FIPUG's Motion is not for Clarification

While titled a Motion for Clarification, FIPUG's Motion is anything but that. Instead, it is an effort by FIPUG to have the Commission impose new substantive restrictions on utility wholesales sales which the Commission chose not to include in Order No. 00-1744. The new prohibitions FIPUG seeks are set forth in the argument portion of the Motion. On page 8 of the Motion, FIPUG requests the Commission to impose the following restrictions:

1. Utilities are prohibited from making non-separated wholesale sales at any time it will be necessary to interrupt retail customers.

2. Utilities are prohibited from making non-separated wholesale sales any time it will be necessary to purchase wholesale power to serve the retail customer unless the price for replacement wholesale power is less than the price of wholesale power sold.

While FIPUG's Motion purports to seek protection of "retail customers," each of the proposed prohibitions is designed solely to give interruptible customers a better deal than they

bargained for when they signed up for interruptible service. FIPUG's novel reference to "retail customers" is nothing more than a transparent effort on the part of FIPUG's interruptible customers to "blend in with the crowd" of the vast majority of Tampa Electric's customers who take firm service.

The point here is that FIPUG does not seek clarification of Order No. 00-1744 but, instead, seeks to have it rewritten in a manner that subsidizes interruptible customers at the expense of Tampa Electric's remaining body of ratepayers.

FIPUG's Effort Should be Rejected as Inappropriate Re-argument

Because FIPUG does not seek clarification but, instead, reargues positions that it has argued over and over again in this proceeding and in prior proceedings, these efforts should be rejected out of hand under the authority of the very case cited in FIPUG's Motion, Diamond Cab Company of Miami v. King, 146 So.2d 889 (Fla. 1962). That often cited decision stands for the proposition that a petition for rehearing is not a proper vehicle for rearguing positions previously urged by a litigant. As described below this is exactly what FIPUG attempts in its motion for "clarification."

FIPUG'S Motion Should be Rejected Based on Recent Commission Precedent

FIPUG's current effort to bestow an undue advantage on interruptible customers at the expense of Tampa Electric's other ratepayers is the same FIPUG argument the Commission has considered and soundly rejected in recent decisions, most recently on July 11 of this year in the fuel adjustment docket. There, FIPUG, in a "Motion for Mid-Course Protection" sought similar "relief", or to use a more accurate term "subsidy" for interruptible customers. In that proceeding FIPUG asked that Tampa Electric be required to curtail any wholesale sale if such sale would occur during the same hour in which the company planned to interrupt interruptible customers.

This is the same type of subsidy which FIPUG's currently proposed prohibition No. I would effect. In its mid-course correction initiative, FIPUG also requested the Commission to direct Tampa Electric to reduce the buy-through power rate by the amount included in base rates for generating capacity – a similar effort to achieve the type of buy-through power price subsidy FIPUG now seeks in its second proposed prohibition.

In the "Mid-Course Protection" Order[1] the Commission first soundly rejected FIPUG's attempted reliance on Northern States Power Co. v. Federal Energy Regulatory Commission, 176 F.3d 1090 (8th Cir. 1999) to support FIPUG's quest for an interruptible customer subsidy. It is difficult to comprehend that FIPUG, only three months after the Mid-Course Protection Order, is back before the Commission attempting to have the Commission rely on the same irrelevant Northern States Power decision as justification for granting the same unfair subsidy FIPUG sought but failed to achieve with its Motion for Mid-Course Protection.

With respect to non-separated wholesale sales (the only type of sales addressed in FIPUG's two proposed prohibitions at issue here), the Mid-Course Protection Order observed that FIPUG's greatest concern appeared to be with the impact on its members when Tampa Electric sells wholesale energy to the Florida Municipal Power Agency ("FMPA") under a contract scheduled to expired March 15, 2001. The Commission noted that it had twice considered the appropriate cost recovery mechanism for the FMPA sale most recently in December of 1999 in the fuel adjustment docket. The Commission stated that it approved the FMPA sale as a non-separated sale because Tampa Electric demonstrated net benefits. The Commission stated:

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[1] Order No. PSC-00-1266-PAA-EI issued July 11, 2000 in Docket No. 000001-EI (the "Mid-Course Protection Order"), a copy of which is attached hereto as Exhibit "A".

> With respect to the FMPA sale, it appears that FIPUG is attempting to reargue the position it expressed at hearing in Docket No. 990001-EI. We have already reaffirmed our decision in that docket by denying FIPUG's Motion for Reconsideration of the portion of Order No. PSC-99-2512-FOF-EI concerning the regulatory treatment of the FMPA Sale (Order No. PSC-00-0911-FOF-EI, issued May 8, 2000, in Docket No. 000001-EI).

As discussed in the Mid-Course Protection Order, Tampa Electric has a company policy of not making non-firm wholesale energy sales while simultaneously making buy-through purchases to serve the company's non-firm retail customers. Tampa Electric did note, as reflected in the Mid-Course Protection Order, that, as buy-through purchases first occur, a brief period of time may be needed to conclude any preexisting non-separated, non-firm wholesale energy sale, but that is done promptly with minimal and unintentional effect on non-firm retail customers. In its answer to Staff's Interrogatory No. 22 Tampa Electric made it clear that the only overlap of making buy-through purchases at the same time the company is making non-separated non-firm wholesale sales is when the company is "ramping out of," or shutting down those sales.

Several other aspects of the Mid-Course Protection Order apply with equal force here. First, in analyzing the Northern States Power case, relied upon by FIPUG, the Commission in the Mid-Course Protection Order said that decision suggests that the Commission's analysis should rest on Tampa Electric's obligations under the laws of Florida and its Commission approved tariffs. After making that analysis, the Commission concluded:

> FIPUG has provided no factual support for a finding that TECO has made wholesale energy sales in violation of its interruptible service tariffs or applicable law. Thus, we cannot find, based on FIPUG's motion alone, that TECO has violated the provisions of its interruptible service tariffs which prohibit 'economic interruptions.' Further, curtailment of a lawful, firm wholesale transaction may not be the appropriate remedy for any proven violation of the tariffs' prohibition or 'economic interruptions.'

> Therefore, we deny FIPUG's request to impose a requirement on TECO to curtail any wholesale sale if such sale would occur during the same hour in which TECO plans to interrupt its non-firm retail customers. (Mid-Course Protection Order, at page 6)

Tampa Electric submits that the very same conclusion applies with respect to FIPUG's current effort to garner a subsidy for interruptible customers.

FIPUG's current efforts are afflicted by many of the same deficiencies discussed in the Mid-Course Protection Order. These include the fact that non-firm retail customers have volunteered to be interrupted in return for significantly lower rates. All of Tampa Electric's non-firm retail customers have directed the company to provide them buy-through power to avoid interruptions. Moreover, the Commission closed Tampa Electric's IS-1 rate in 1985 and the company's IS-3 rate in 2000 to new customers because these rates are no longer cost-effective. Tampa Electric has attached a copy of the Commission's Mid-Course Protection Order as an exhibit to this response to avoid having to restate, once again, all of the factors which call for an outright rejection of FIPUG's latest effort to obtain a subsidy for interruptible customers.

As to FIPUG's Protest to Part III of Order No. 00-1744

FIPUG's protest of Order No. 00-1744 should be stricken by the Commission on its own motion as constituting an abuse of process. It does not raise a legitimate factual issue regarding the calculation of gains on wholesale sales but, instead, is a re-packaged version of FIPUG's recurring argument that its interruptible customers should be guaranteed the equivalent of firm electric service at significantly lower and non-cost-effective interruptible rates. Processing FIPUG's latest reargument will impose undue effort and expense on everyone else involved, including this Commission, the investor-owned utilities it regulates and all other customers of those utilities.

FIPUG's protest of Part III of Order No. 00-1744 is governed by the law of the case established in the Mid-Course Protection Order for all of the reasons set forth above and in response to FIPUG's misnamed Motion for Clarification of Parts I and II of such order. Res judicata dictates that such loss be avoided by the striking of FIPUG's protest.

The flimsiness and redundancy of FIPUG's argument, the typographical and/or word choice ambiguity of FIPUG's proposed rewrite of "Item I," as set forth on page 10 of FIPUG's motion/protest, and the fact that FIPUG's "Protest" is just one more attempt by FIPUG to re-argue a flawed argument, all suggest that FIPUG's Protest should be stricken.

Conclusion

FIPUG's Motion for Clarification is anything but an effort to obtain clarification of what this Commission decided in Order No. 00-1744. Instead, it is a re-argument of positions argued over and over again by FIPUG in this proceeding and in other recent dockets. FIPUG's Motion re-packages all of the spurious arguments presented to and rejected by this Commission as recently as three months ago in response to FIPUG's Motion for Mid-Course Correction in the fuel adjustment docket. At some point in time FIPUG must accept and abide by this Commission's rejection of arguments put forth time and again by FIPUG. Otherwise, the Commission, its Staff and parties to Commission proceedings in which FIPUG is an intervenor will remain "gerbils in the wheel," having to respond over and over again to the same flawed arguments. Based on the foregoing, the Commission should reject out of hand FIPUG's Motion for Clarification of Parts I and II of Order No. 00-1744.

Additionally, the Commission should on its own motion strike FIPUG's protest of Part III of Order No. 00-1744 as constituting an abuse of process.

DATED this 25th day of October 2000.

Respectfully submitted,

LEE L. WILLIS
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(850)224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Response to FIPUG's Motion for Clarification of Points I and II and Protest to Part III of Order No. PSC-00-1744-PAA-EI, filed on behalf of Tampa Electric Company, has been furnished by hand delivery (*) or U. S. Mail on this 23rd day of October 2000 to the following:

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause and generating performance incentive factor.	DOCKET NO. 000001-EI ORDER NO. PSC-00-1266-PAA-EI ISSUED: July 11, 2000

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION
ORDER ON MOTION FOR MID-COURSE PROTECTION

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On May 18, 2000, the Florida Industrial Power Users Group (FIPUG) filed a Motion for Mid-Course Protection (motion) seeking emergency relief from Tampa Electric Company (TECO) with respect to "continuing and on-going power supply interruptions and excessive costs for replacement power." Although FIPUG's pleading was styled as a motion, it has been handled as a petition for practical purposes. TECO filed a response to FIPUG's motion on May 25, 2000. On May 26, 2000, a meeting was held among the parties and staff to discuss FIPUG's motion and TECO's subsequent response. In response to questions raised by our staff during this meeting, FIPUG submitted supplemental information to staff regarding its motion on May 30, 2000, and June 5, 2000.

Coronet Industries, Inc. ("Coronet") filed a petition to intervene and comments in support of FIPUG's motion on June 5, 2000. Coronet is an existing TECO customer under Rate Schedule IS-3 (Interruptible Service-3). No ruling has been made yet on Coronet's petition.

In its motion, FIPUG asserts that TECO has entered into wholesale power supply agreements and continues to manage its daily power supply in a manner that is detrimental to its retail

customers in general and economically devastating to its non-firm industrial customers. FIPUG further asserts that TECO diverts the electricity produced by installed generating capacity away from retail customers and sells it in the wholesale market on a daily basis. According to FIPUG, on most days, the electric power is replaced by more expensive power that TECO purchases in the wholesale market. When TECO is unable to find replacement power, its non-firm retail customers are interrupted. FIPUG contends that these interruptions and high cost replacement power substitutions affect TECO's non-firm retail customers by increasing their production costs and impairing their ability to compete in their markets.

Accordingly, by its motion, FIPUG requests the following substantive relief:

> (1) Require TECO to curtail any wholesale sale if such sale would occur during the same hour in which TECO plans to interrupt [non-firm retail] customers;
>
> (2) Enable TECO to avoid peak period emergency power purchases and other costly short-term purchases by adding a rider to the tariffs which contain buy-through provisions authorizing TECO's industrial customers receiving service under such tariffs to be relieved of the obligation to use TECO as their exclusive agent for buying power. Allow [these customers] to enter into contracts with other Florida utilities and suppliers to purchase electric power to be wheeled to the customer and delivered by TECO. The purchased power contracts could be for periods up to January 1, 2004 when TECO promises to have a reserve margin of 20%. Industrial customers entering into such short-term contracts would continue to pay TECO for transmission service, general service and other ancillary services provided by TECO and can return to TECO's interruptible generation service when the reserve margin is more favorable;
>
> (3) Authorize customers which produce power from self-generation plants in Florida, [within and] outside of TECO's service area, to wheel power to their own sites within TECO's service area; and
>
> (4) Direct TECO to reduce the buy-through power rate by the amount included in base rates for generating capacity.

Each of these specific, substantive requests for relief is addressed separately below. Based on the analysis set forth below,

we find that FIPUG's motion should be denied as to the relief requested in paragraphs (1), (2), and (4) above, and granted to the extent that the relief requested in paragraph (3) above is already provided by Commission rule.

We note that FIPUG, in its motion, requests "an expedited order based on the filing made by TECO in this docket using the same quantum of proof that the Commission used in granting TECO's request for a mid-course correction of its fuel surcharges." We have addressed FIPUG's motion on an expedited basis. We find, however, that FIPUG's motion is not due the same "quantum of proof" that was applied to TECO's request for mid-course correction. FIPUG's motion requests substantially different relief than TECO's recent request for a mid-course correction. TECO's request for a mid-course correction sought interim relief subject to a later prudence review by this Commission. FIPUG's motion requests more permanent relief. Given the distinct substance of FIPUG's motion, it is not due the same "quantum of proof."

Curtailment of Wholesale Sales

FIPUG requests that we require TECO to curtail any wholesale sale if such sale would occur during the same hour in which TECO plans to interrupt its non-firm retail customers. In support of its request, FIPUG asserts that TECO's non-firm retail customers have experienced numerous, excessive, and unnecessary interruptions during the past twelve months. In 1999, TECO interrupted these customers on 16 occasions and purchased emergency power on their behalf on the peak period spot market on another 139 occasions at prices up to $3,400 per megawatt-hour (MWH). TECO's tariffs allow TECO to interrupt these non-firm retail customers when the reliability of TECO's firm retail customers is threatened. However, TECO's tariffs do not specifically allow for interruptions for "economic" reasons. FIPUG alleges that TECO has interrupted its non-firm retail customers or bought high-priced emergency power on these customers' behalf to pursue more profitable opportunities in the wholesale energy market.

FIPUG states that this Commission has an obligation to ensure the reliability and adequacy of the state's power supply for native retail customers under Chapter 366, Florida Statutes, (i.e., the Grid Bill). When native retail customers receive an inferior quality of service to allow TECO to serve wholesale load, FIPUG argues, this Commission has the authority to instruct TECO to cease such behavior. FIPUG cites Northern States Power Co. v. Federal Energy Regulatory Commission, 176 F.3d 1090 (8th Cir. 1999), for the proposition that states retain authority in periods of curtailment to give preferential treatment to the retail customers over wholesale sales. FIPUG posits that we have broad statutory

authority to provide customer relief on rate issues and experimental rate designs to address the situation at issue. Coronet supports FIPUG's comments on this issue.

TECO disagrees with FIPUG's presentation of the relevant facts. First, TECO states that its non-firm retail customers have volunteered to be interrupted in return for deeply discounted rates (54 percent of the average retail rates). The capacity needs of these non-firm retail customers are part of the reserves available to continue to provide service to firm customers when the utility's generating capacity is less than its firm and non-firm load. However, TECO has included in its tariffs an optional provision for buy-through power purchases to avoid an actual interruption for these non-firm retail customers. This provision is exercised at the customer's discretion, not TECO's. All 33 of TECO's non-firm retail customers which receive service under either the IS-1 or IS-3 rate schedule have exercised this option.

Second, TECO notes that this Commission closed TECO's IS-1 rate in 1985 and TECO's IS-3 rate in 2000 to new customers because these rates are no longer cost-effective. Subsequently, we approved TECO's request for a General Service Load Management (GSLM) rate schedule which is cost-effective for customers who receive a rate discount in return for allowing their electrical service to be curtailed to meet the reliability needs of TECO's firm customers.

Third, TECO disputes FIPUG's accusation that TECO has interrupted its non-firm retail customers or exposed them to high priced buy-through emergency power to pursue opportunities in the wholesale energy market. TECO asserts that, according to company policy, TECO does not sell non-separated, non-firm wholesale energy sales while simultaneously making buy-through purchases to serve its non-firm retail customers. However, as buy-through purchases first occur, a brief period of time may be needed to conclude any pre-existing non-separated, non-firm wholesale energy sale, but that is done promptly with minimal and unintentional effect on non-firm retail customers. Moreover, TECO asserts, FIPUG does not state any specific action that would warrant any change to how TECO participates in the wholesale energy market. According to TECO, the situation that FIPUG describes is more attributable to the current, tight wholesale energy market, the corresponding higher cost of energy under tight market conditions, and the occasional non-availability of buy-through power.

TECO disagrees with FIPUG's interpretation of our authority to provide the relief requested. TECO believes that FIPUG's reference to the Northern States Power case is misplaced. According to TECO, that decision did not turn on the considerations quoted in FIPUG's

motion. TECO asserts that the court made no decision on the curtailment policy issue, but reversed and remanded on the grounds that FERC had transgressed its Congressional authority which limits its authority to interstate transactions. TECO further asserts that the portion of that decision quoted by FIPUG is simply the court's recitation of arguments by Northern States Power, not the Court's reliance upon those arguments as the basis for the Court's decision. TECO notes that Northern States Power (NSP) argued that a pro rata curtailment requirement for both native retail customers and wholesale customers would force the utility to provide interruptible service to its native retail customers. TECO points out that in the instant case, FIPUG's members have voluntarily elected to take interruptible service.

At the outset, we find that the Northern States Power case provides little aid in our analysis of FIPUG's request. The issue on appeal in that case was whether FERC could require a public utility to curtail electrical transmission to its wholesale customers on a comparable basis with its "native/retail" customers when it experiences transmission constraints. The more fundamental issue involved, according to the Court, was whether FERC had jurisdiction to affect the curtailment practices of a public utility with respect to its native/retail customers. Noting the arguments of NSP that FERC's requirement for *pro rata* curtailment of power to wholesale and retail customers was inconsistent with NSP's obligations under state law and its state-approved tariffs to serve its native/retail customers, the Court found that FERC's curtailment requirements were unlawful because they exceeded FERC's specific grant of authority and encroached upon the authority of the states. The Court made no decision as to the appropriate curtailment policy, but instead reversed and remanded the case to FERC to amend its curtailment requirements so as not to encroach upon the states' regulatory authority.

The Court's decision suggests that our analysis should rest on TECO's obligations under the laws of Florida and its Commission-approved tariffs. In this case, TECO's non-firm retail service tariffs establish the terms under which TECO provides service to its non-firm retail customers. In its motion, FIPUG alleges, on information and belief, that TECO has interrupted its native, non-firm retail customers and exposed them to high buy-through costs to pursue opportunistic wholesale transactions. FIPUG argues that these "economic interruptions" are not permitted under TECO's interruptible tariffs.

TECO's wholesale energy sales can be generally classified into three groups: separated, non-separated, and TECO's wholesale sale to the Florida Municipal Power Agency (FMPA). First, a separated wholesale energy sale is a long-term (i.e., one year or longer),

firm wholesale energy sale in which TECO has dedicated a portion of its system resources to make that sale. The retail ratepayers do not bear any cost responsibility nor receive any revenue associated with a separated sale. Thus, this separation achieves in part what FIPUG requests in its motion. Second, a non-separated wholesale energy sale is either a short-term sale (i.e., shorter than one year), a non-firm sale, or both, in which TECO does not dedicate a portion of its system resources to make that sale. Retail ratepayers are responsible for the fixed costs associated with making that sale, but receive most, if not all, of the revenues associated with the sale. We re-affirmed our policy regarding separated and non-separated wholesale energy sales in Order No. PSC-97-0262-FOF-EI, issued March 11, 1997, in Docket No. 970001-EI.

It appears that FIPUG's largest concern is the impact on its members when TECO sells wholesale energy to FMPA under a contract scheduled to expire March 15, 2001 (FMPA sale). We have twice considered the appropriate cost recovery mechanism for the FMPA sale, most recently in Order No. PSC-99-2512-FOF-EI, issued December 22, 1999, in Docket No. 990001-EI. In that order, we approved TECO's proposal to classify the FMPA sale as a non-separated sale because TECO could show net ratepayer benefits. For retail ratepayers, our decision means that the plant used to serve the FMPA sale is not available to retail ratepayers in periods of high energy demand. For TECO, the FMPA sale pushed its reserve margin down to near its 15 percent standard. With respect to the FMPA sale, it appears that FIPUG is attempting to reargue the position it expressed at hearing in Docket No. 990001-EI. We have already reaffirmed our decision in that docket by denying FIPUG's motion for reconsideration of the portion of Order No. PSC-99-2512-FOF-EI concerning the regulatory treatment of the FMPA sale. (Order No. PSC-00-0911-FOF-EI, issued May 8, 2000, in Docket No. 000001-EI).

FIPUG has provided no factual support for a finding that TECO has made wholesale energy sales in violation of its interruptible service tariffs or applicable law. Thus, we cannot find, based on FIPUG's motion alone, that TECO has violated the provisions of its interruptible service tariffs which prohibit "economic interruptions." Further, curtailment of a lawful, firm wholesale transaction may not be the appropriate remedy for any proven violation of the tariffs' prohibition on "economic interruptions." Therefore, we deny FIPUG's request to impose a requirement on TECO to curtail any wholesale sale if such sale would occur during the same hour in which TECO plans to interrupt its non-firm retail customers.

Retail Wheeling for Non-Firm Retail Customers

FIPUG contends that TECO's non-firm retail customers are severely damaged by TECO's wholesale energy market activities. FIPUG states that these customers are obligated to buy exclusively from TECO because this Commission has approved noncompetitive territorial agreements that TECO has entered into with other Florida utilities. However, FIPUG asserts, we have no jurisdiction over the price TECO pays for wholesale energy on the spot market. According to FIPUG, these anti-competitive territorial agreements are exempt from the Sherman Antitrust Act because this Commission actively supervises the agreements. If another utility sought to serve one of TECO's customers, TECO could initiate a territorial dispute to prevent the other utility from providing retail service. FIPUG states that although it may be logical to prevent another utility from duplicating transmission and distribution lines, it sees no logic in prohibiting a customer from acquiring less costly replacement power and requiring the native utility to deliver the replacement power when the native utility has abused its regulatory bargain with the retail customer. Coronet supports FIPUG's comments on this issue.

Accordingly, FIPUG requests that we relieve non-firm retail customers which receive service under TECO's Rate Schedules IS-1 and IS-3 of the obligation to use TECO as their exclusive agent for buying power. Under FIPUG's proposal, these non-firm retail customers could enter into contracts with other Florida utilities and other energy providers to purchase electric power to be wheeled to the customer and delivered by TECO. These purchased power contracts could be for periods up to January 1, 2004, the date by which TECO stipulated in Docket No. 981890-EI to have a reserve margin of 20 percent. Non-firm retail customers who enter into such contracts would continue to pay TECO for transmission service, general service, and other ancillary services provided by TECO. These customers could also return to TECO's non-firm retail service when the reserve margin is more favorable.

TECO asserts that if we grant the relief requested by FIPUG, we would be establishing retail wheeling, which is contrary to the current statutory framework for regulation in this state. TECO contends that we should not grant the relief requested by FIPUG in the absence of any authorizing legislation.

We find that the relief requested by FIPUG is not permitted under current state law. As TECO contends, granting the relief requested by FIPUG would establish retail wheeling for TECO's non-firm retail customers. In PW Ventures v. Nichols, 533 So.2d 281 (Fla. 1988), the Florida Supreme Court held that the sale of electricity to even just a single customer makes the provider of that electricity a "public utility" pursuant to Section 366.02(1), Florida Statutes, and thus subject to the Commission's

jurisdiction. In reaching its decision, the Court noted that its interpretation of the term "public utility" was consistent with the legislative intent of Chapter 366, Florida Statutes, because the regulation of the production and sale of electricity necessarily contemplates the granting of monopolies in the public interest. The Court also noted that allowing unregulated companies to enter into contracts with high-use industrial customers for the sale and purchase of electricity on a one-on-one basis would drastically change Florida's regulatory framework by increasing the burden on remaining customers to provide the regulated utility enough revenue to recover its fixed costs.

Accordingly, we deny FIPUG's request for retail wheeling for its members. We note that an arrangement under which non-firm retail customers would "shop" for power and TECO would take title to that power before selling and delivering the power to the customer may overcome the obstacles that currently exist in the law. However, such an arrangement would require further analysis and input from the parties to identify the economic, legal, regulatory, operational, and financial factors that would come into play to determine the arrangement's feasibility. Of course, neither such an arrangement nor its feasibility is before us at this time.

Self-Service Wheeling for Non-Firm Retail Customers

In lieu of interruption or buy-through, FIPUG requests that we grant TECO's non-firm retail customers the following authority: authorize a non-firm retail customer who can self-generate power at one location (Point A) to wheel surplus energy generated at Point A to another location (Point B) owned by the same customer. Point A may be located within or outside TECO's service area. Point B would be located within TECO's service area. Coronet supports FIPUG's comments on this issue.

TECO asserts that the relief requested may be covered under Rule 25-17.0883, Florida Administrative Code, which provides conditions under which utilities can provide transmission service for self-service wheeling. TECO further asserts that FIPUG has not identified in its motion any non-firm retail customer who would qualify for self-service wheeling under this rule.

Pursuant to Rule 25-17.0883, Florida Administrative Code, a retail customer is eligible for self-service wheeling under the following conditions:

> Public utilities are required to provide transmission and distribution services to enable a retail customer to transmit electrical power generated at one location to

> the customer's facilities at another location when the provision of such service and its associated charges, terms, and other conditions are not reasonably projected to result in higher cost electric service to the utility's general body of retail and wholesale customers or adversely affect the adequacy or reliability of electric service to all customers. The determination of whether transmission service for self service is likely to result in higher cost electric service may be made by using cost effectiveness methodology employed by the Commission in evaluating conservation programs of the utility, adjusted as appropriate to reflect the qualifying facility's contribution to the utility for standby service and wheeling charges, other utility program costs, the fact that qualifying facility self-service performance can be precisely metered and monitored, and taking into consideration the unique load characteristics of the qualifying facility compared to other conservation programs.

We find that this rule provides the relief requested by FIPUG. If a non-firm retail customer meets the conditions set forth in Rule 25-17.0883, Florida Administrative Code, then the customer may request transmission and distribution services from TECO in order to transmit electrical power generated at one location to the customer's facilities at another location. If TECO does not provide transmission and distribution services to the customer pursuant to such request, the customer may petition the Commission for relief.

Reduction of Buy-Through Rates by Base Rate Charges for Generation

In its motion, FIPUG argues that the amount paid by non-firm retail customers for buy-through power should be reduced by an amount equal to the base rate charges paid by non-firm retail customers that support TECO's generating plants. Coronet supports FIPUG's comments on this issue.

TECO believes that the relief requested has no foundation in fact or law. TECO asserts that if we grant the relief requested, we would be giving non-firm retail customers more benefits than what these customers have bargained for and bestow an undue advantage on these customers at the expense of TECO's shareholders and other customers.

This issue addresses the operation of the "optional provision" (sometimes referred to as a "buy-through" provision) contained in TECO's non-firm retail rate schedules. The optional provision allows non-firm retail customers to maintain service during periods

when they would otherwise be interrupted pursuant to the tariff. During these periods, TECO attempts to make off-system purchases that will allow them to continue serving non-firm retail customers.

We do not believe it is appropriate to require TECO to reduce the charges paid by non-firm retail customers during buy-through periods. Customers who have opted to be served under the optional provision have agreed to pay the actual cost of these purchases, plus an additional fee of $.002 per kWh. Non-firm retail customers pay these charges in lieu of the otherwise applicable per kWh charges associated with non-firm retail service. Thus during those hours TECO is providing them buy-through power, non-firm retail customers do not pay the tariffed base rate non-fuel energy charge, nor do they pay any adjustment clause charges (i.e., the fuel, capacity, environmental, and energy conservation charges). Thus, during buy-through periods, these customers are not paying twice for the same power.

Accordingly, we find that it is not appropriate to further excuse non-firm retail customers from their obligation to pay the base rate charges related to generation costs. In TECO's last rate case (Docket No. 920324-EI), we accepted a Cost of Service and Rate Design Stipulation signed by the parties (including FIPUG) that stated the method to be used to allocate costs to TECO's rate classes, and to design rates to recover those costs by Order Nos. PSC-93-0664-FOF-EI and PSC-93-0758-FOF-EI, issued April 28, 1993, and May 19, 1993, respectively. Non-firm retail customers were allocated only those generation costs that were deemed to be related to energy (kWh) consumption. They were not allocated any demand-related production costs, because the demands of the non-firm retail classes are not considered when TECO plans its generation needs. FIPUG has provided no compelling reason for us to relieve non-firm retail customers of their obligation to pay the rates contained in TECO's tariff. Therefore, we deny FIPUG's request that we direct TECO to reduce the buy-through power rate by the amount included in base rates for generating capacity.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Florida Industrial Power Users Group's Motion for Mid-Course Protection is denied in part and granted in part as set forth in the body of this Order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 11th day of July, 2000.

/s/ Blanca S. Bayó
BLANCA S. BAYÓ, Director
Division of Records and Reporting

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding,

in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 1, 2000.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.