

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of the appropriate application of incentives to wholesale power sales by investor-owned electric utilities.

DOCKET NO. 991779-EI  
ORDER NO. PSC-00-0888-PHO-EI  
ISSUED: May 5, 2000

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on May 1, 2000, in Tallahassee, Florida, before Commissioner Susan F. Clark, as Prehearing Officer.

APPEARANCES:

JAMES D. BEASLEY, Esquire, Ausley & McMullen, P. O. Box 391, Tallahassee, Florida, 32302,  
On behalf of Tampa Electric Company (TECO).

JAMES A. MCGEE, Esquire, P.O. Box 14042, St. Petersburg, Florida 33733-4042,  
On behalf of Florida Power Corporation (FPC).

JEFFREY A. STONE, Esquire, Beggs & Lane Law Firm, 700 Blount Building, 3 West Garden Street, P.O. Box 12950, Pensacola, Florida 32576-2950,  
On behalf of Gulf Power Company (GULF).

MATTHEW M. CHILDS, Esquire, Steel Hector & Davis LLP, 215 South Monroe Street, Suite 601, Tallahassee, Florida 32301-1804,  
On behalf of Florida Power & Light Company (FPL).

STEPHEN C. BURGESS, Esquire, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400.  
On behalf of the Citizens of the State of Florida (OPC).

VICKI GORDON KAUFMAN, Esquire, McWhirter Reeves McGlothlin Davidson Decker Kaufman Arnold & Steen, P.A., 117 South Gadsden Street, Tallahassee, Florida 32301  
On behalf of Florida Industrial Power Users Group (FIPUG).

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

WM. COCHRAN KEATING, IV, Esquire, Florida Public Service  
Commission, 2540 Shumard Oak Boulevard, Tallahassee,  
Florida 32399-0850  
On behalf of the Commission Staff (STAFF).

### PREHEARING ORDER

#### I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

#### II. CASE BACKGROUND

By Order No. 12923, issued January 24, 1984, in Docket No. 830001-EU-B, the Commission established an incentive mechanism to encourage investor-owned electric utilities to make economy energy transactions. At its November 22-23 hearing in Docket No. 990001-EI, the Commission heard arguments about whether this incentive mechanism is still necessary or appropriate and whether it should be eliminated. By Order No. PSC-99-2512-FOF-EI, issued December 22, 1999, the Commission ordered that an appropriate proceeding be instituted so that the full Commission could hear this matter and explore it more thoroughly. Accordingly, this matter has been scheduled for an administrative hearing.

#### III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 366.093, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way

that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.

- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

#### IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

#### V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other

exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Karl H. Wieland	FPC	1,2,3
J. P. Stepenovitch	FPL	1,2,3
K. M. Dubin	FPL	1,2,3
M. W. Howell	GULF	1,2,3
Deirdre A. Brown	TECO	1,2,3
W. Lynn Brown	TECO	1,2,3
David E. Dismukes, Ph.D.	OPC	1,2,3
<u>Rebuttal</u>		
M. W. Howell	GULF	1,2,3
W. Lynn Brown	TECO	1,2,3

VII. BASIC POSITIONS

**FPC:** When the Commission adopted the current 80/20 incentive for broker sales in 1984 it recognized that, in moving the treatment of economy sales out of base rates where utilities retained 100% of the gain, establishment of an

incentive through the fuel adjustment clause was desirable to preserve the then-current level of economy sales and encourage additional sales. Now that the vast majority of economy sales have shifted off-broker and the incentive from retention of transmission revenues associated with these sales has recently been removed, a replacement incentive is needed - as it was in 1984 - to encourage off-broker economy sales for the benefit of ratepayers.

**FPL:** The 20% shareholder incentive approved by the Commission on January 24, 1984, Order No. 12923, should be continued and expanded to all opportunity sales.

**GULF:** It is the basic position of Gulf Power Company that the Commission should continue its policy of allowing the 20 percent shareholder incentive set forth in Order No. 12923, issued January 24, 1984, in Docket No. 830001-EU-B. The 20 percent shareholder incentive for economy energy sales should be applied to all non-separated wholesale economy energy sales regardless of whether they are made "off-broker" or through the EBN.

**TECO:** When the Commission adopted the current 80%/20% sharing of gains on economy sales, it correctly concluded that positive incentives preserve current levels of economy sales and may result in increased sales and that a 20% incentive is appropriately sized to maximize the amount of economy sales and provide net benefits to ratepayers. It was clear then, as it is now, that positive incentives play an important role in maximizing economy sales to provide net benefits to ratepayers. The beneficial role of positive incentives is even more important now than when first adopted by the Commission. No party has demonstrated any basis for reducing or eliminating the current incentive sharing mechanism, although there are important considerations suggesting the need to increase the utilities' 20% share to 40% for sales made in this state and retaining the current 20% incentive for sales made outside Florida. The positive incentives should be applicable to all non-separated, non-firm wholesale sales.

**OPC:** The Citizen's basic position in this proceeding is that the one-sided 80/20 "share-the-gain" incentive is not appropriate and should be discontinued.

**FIPUG:** Utilities should not be provided with an additional incentive to do what they are required to do pursuant to statute and Commission rules and orders. FIPUG believes additional compensation for a specific utility management responsibility should not be permitted. As a fundamental proposition, utilities should prudently manage all aspects of their business and be willing to do so in return for regulated returns.

**STAFF:** Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions stated herein.

#### VIII. ISSUES AND POSITIONS

**ISSUE 1:** Should the Commission eliminate the 20 percent shareholder incentive set forth in Order No. 12923, issued January 24, 1984, in Docket No. 830001-EU-B?

#### POSITIONS

**FPC:** No. The Commission should continue its existing policy of providing stockholder incentives to encourage non-separated, non-firm wholesale sales. Now that the vast majority of these sales have shifted from broker to off-broker markets, the Commission's incentive policy should be updated accordingly. (Wieland)

**FPL:** No. The Commission provided for stockholder incentives to encourage non-separated, non-firm wholesale sales.

**GULF:** No. The Commission should not take any action to remove or reduce the existing 20 percent shareholder incentive available to utilities making economy energy sales. By establishing in 1984 the existing incentive mechanism applicable to economy energy sales, the Commission recognized the need for and overall benefit of increased

sales of economy energy. The existing system has well served the customers of Florida's investor owned electric utilities for over 15 years. The competitive market changes that have recently occurred have only increased the importance of this incentive mechanism as a means to encourage continued participation in the economy energy market for the immediate benefit of customers and shareholders alike. (Howell)

**TECO:** No. The Commission should adhere to its existing policy of providing stockholder incentives to encourage non-separated, non-firm wholesale sales. Such incentives may provide greater benefits to ratepayers now than when they were first adopted by the Commission. No party has provided any basis for abandoning the Commission's present policy regarding incentives. (Deirdre A. Brown, W. Lynn Brown)

**OPC:** Yes. Natural market incentives and other factors encourage Florida I.O.U.'s to maximize their wholesale sales, without the need for exploitation of retail ratepayers. The 20 percent simply requires consumers to pay a second time for services for which they are already paying full costs. (Dismukes)

**FIPUG:** Yes. No additional incentive should be provided in order for utilities to perform their required managerial duties.

**STAFF:** No position pending further discovery and evidence adduced at hearing.

**ISSUE 2:** If the Commission decides to maintain the 20 percent shareholder incentive in Issue 1 or approves a new incentive, what types of non-separated, non-firm, wholesale sales should be eligible to receive the shareholder incentive?

**POSITIONS**

**FPC:** In order to qualify for an incentive, a sale should meet three simple tests:

1. The sale is not separated, i.e., less than one year in duration.



2. The sale is profitable (revenues exceed incremental fuel costs), i.e., provides a net benefit to ratepayers.

3. The seller must be able to influence whether or not the sale takes place and the transaction price.

In the case of FPC's interchange schedules, all sales reported on Fuel Adjustment Schedule A-6 should qualify, with the exception of Schedule A (emergency), and Schedule B (short-term firm). Schedules A and B meet criteria 1 and 2 above, but are made upon request by a buyer, not marketed by the seller. (Wieland)

**FPL:** These incentives should be expanded. All opportunity sales should be eligible for a shareholder incentive.

**GULF:** At a minimum, the 20 shareholder incentive for economy energy sales should be applied to all non-separated wholesale economy energy sales regardless of whether they are made "off-broker" or through the EBN. Gulf Power Company's non-separated wholesale economy energy sales are categorized for internal purposes as "economy" sales and "external" sales to differentiate the sales based on whether they are made to non-affiliated utilities that are directly interconnected to the Southern electric system ("economy") or to non-affiliated utilities and power marketers that are not directly interconnected to the Southern electric system ("external"). Regardless of internal designation, the 20 percent shareholder incentive should be applied to all of Gulf's non-separated wholesale economy energy sales. (Howell)

**TECO:** All non-separated, non-firm, wholesale sales should qualify for the stockholder incentives. (Witnesses: Deirdre A. Brown; W. Lynn Brown)

**OPC:** None. Because the Florida EBN - as formerly constituted - has ceased operations, there are no wholesale sales to which the 20 percent incentive should apply. (Dismukes)

**FIPUG:** No incentive should be provided; however, if the Commission does provide an incentive it should apply *only* to broker sales as is supposed to be the current practice.

**STAFF:** No position pending further discovery and evidence adduced at hearing.

**ISSUE 3:** If the Commission decides to maintain the 20 percent shareholder incentive in Issue 1 or approves a new incentive, how should the incentive be structured?

**POSITIONS**

**FPC:** The Commission should apply the existing 80/20 sharing mechanism to all non-separated economy transactions. FPC proposes a symmetrical treatment for both profitable and unprofitable sales. In the same way that shareholders receive 20% of the gain when sales are profitable, they would absorb 20% of the loss when sales are unprofitable. (Wieland)

**FPL:** FPL believes that consideration should be given to increasing the percentage for shareholder incentives. For example, a sliding scale could be used where the shareholder incentive on the first \$20 million in gains on sales could be shared 80% to retail customers and 20% to shareholders. The next \$20 million could be shared 60% to retail customers and 40% to shareholders, and any gains over \$40 million could be shared 50%/50%. By using a sliding scale, the utility is compensated and the customer benefits by a lower fuel charge.

**GULF:** At a minimum, the Commission should continue its policy of allowing the 20 percent shareholder incentive set forth in Order No. 12923, issued January 24, 1984, in Docket No. 830001-EU-B. The 20 percent shareholder incentive for economy energy sales should be applied to all non-separated wholesale economy energy sales regardless of whether they are made "off-broker" or through the EBN. (Howell)

**TECO:** The incentive should be structured such that it applies to all non-separated, non-firm wholesale sales. It should apply to both demand and energy components of any gain from these transactions. Gains from the transaction should be determined by taking the overall transaction price less incremental fuel costs, which should be credited to the Fuel Clause, less incremental SO<sub>2</sub> costs,

which should be credited to the ECRC, and less O&M costs which should be credited to operating revenues. The remaining amount is comprised of reservation charges, call premiums, and associated transmission revenues ("capacity revenues") and energy revenues. According to Order No. PSC-99-2512-FOF-EI, dated December 22, 1999 for Docket No. 990001-EI, energy revenues for non-separated, non-firm transactions should be credited to the Fuel Clause. The same order acknowledged that if these sales include an identifiable capacity component, the capacity revenue should be credited to retail ratepayers through the Capacity Cost Recovery Clause ("Capacity Clause"). The incentive sharing between customers and shareholders should be on an 80%/20% basis for sales out of state, and on a 60%/40% basis for all sales made within the state. (Witnesses: Deirdre A. Brown; W. Lynn Brown)

**OPC:** Any incentive structure that provides a reward for superior effort should also impose a penalty for substandard performance. Just as the utilities would be offended by a penalty-only incentive plan, the customers should no longer be saddled with the current process that provides a positive reward for even substandard performance. (Dismukes)

**FIPUG:** No incentive should be provided; however, if the Commission does provide an incentive, it should be even-handed; that is there should be a penalty as well as an incentive.

**STAFF:** No position pending further discovery and evidence adduced at hearing.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
W. L. Brown	TECO	_____	
		(WLB-1)	
David E. Dismukes, Ph.D.	OPC	_____	Appendix 1

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Rebuttal</u>			
W. L. Brown	TECO	<u>                    </u> (WLB-R-1)	

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

Gulf is willing to stipulate that the testimony of all witnesses whom no one wishes to cross examine be inserted into the record as though read, cross examination be waived, and the witness's attendance at the hearing be excused.

XI. PENDING MOTIONS

OPC's Motion to Strike or Prohibit Entry of Evidence is pending. FIPUG has joined in OPC's motion.

XII. PENDING CONFIDENTIALITY MATTERS

TECO has filed a Notice of Intent to Request Confidential Classification of certain information produced in response to Staff's Second Set of Interrogatories to TECO (No. 27).

It is therefore,

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 5th day of May, 2000.

  
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SUSAN F. CLARK  
Commissioner and Prehearing Officer

( 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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review 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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.