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November 14, 1996

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. 960001-EI

Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Brief of Tampa Electric Company.

Also enclosed is the a 3.5" diskette containing the above document which was generated in WordPerfect 5.1 format.

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

In Re: Fuel and Purchased Power Cost Recovery Clause and Generating Performance Incentive Factor.	DOCKET NO. 960001-EI FILED: November 14, 1996

BRIEF OF TAMPA ELECTRIC COMPANY

I. Introduction

Tampa Electric hereby submits its brief addressing Issue 9, as set forth in Order No. PSC-96-1100-PHO-EI and further defined in prepared testimony filed in this proceeding. The matter at issue is whether discretionary wholesale power sales made on the basis of unit-specific incremental fuel costs should be credited to the fuel clause at unit specific average fuel costs. Tampa Electric respectfully submits that, where such sales create net benefits to ratepayers, the answer is no. Imputing recovery of average fuel cost to such incremental fuel cost sales would reduce the volume of such sales, thereby depriving retail customers of both the buying and selling utilities of the financial benefits associated with these transactions (tr. 217, 11-13).[1] Off-system sales priced on the basis of average fuel costs would not dispatch favorably from the perspective of many buyers, resulting in few, if any, actual

[1]References to the transcript of the hearing conducted in this docket on August 29, 1996, will be designated by page and line number, e.g. (tr. 217, 11-13) refers to page 217, lines 11-13.

sales (tr. 217, 1-13).

As discussed in more detail below, this Commission has repeatedly considered and approved Tampa Electric's use of incremental fuel pricing for discretionary unit power sales where the transaction yields a net benefit to retail customers. In particular, this Commission has expressly approved Tampa Electric's reflection of such sales in the fuel clause at the cost of incremental rather than average fuel.

Some of the net benefits associated with Tampa Electric's incremental fuel-based unit power sales have already been captured through lower permanent base rates when the treatment of off-system sales was examined in Tampa Electric's last rate case. In addition, there are effective procedures already in place which allow the Commission and Staff to monitor these transactions. There is no evidence of changed material circumstances which would warrant Commission reconsideration of the issue at this time. In light of the above-mentioned circumstances, Tampa Electric respectfully suggests that there is no need for the Commission to take any action at this time with regard to Issue 9.

II.

The Matters Raised By Issue 9 Have Already Been Considered And Decided By The Commission And No New Evidence Has Been Adduced Which Would Warrant Commission Reconsideration.

The question of how unit power sales based on incremental fuel cost

should be treated for fuel cost recovery purposes is, by no means, a matter of first impression for this Commission. In the 1987 fuel adjustment proceeding, Docket No. 870001-EI, this Commission reviewed and found reasonable an amendment to an agreement between Tampa Electric and Florida Power & Light Company for the sale of energy and capacity from Big Bend Unit 4. The original agreement contained a fuel charge based on the average cost of fuel for the unit. The amendment allowed Tampa Electric to charge the incremental cost of fuel for the unit, which was lower than the average fuel cost for the unit (tr. 209, 18-25).

In its review of the proposed amendment during the 1987 fuel proceeding, the Staff raised the question of whether any increased fuel cost resulting from the off-system sale of capacity should be recovered through the fuel cost recovery factor - precisely the question presented by Issue 9 in this proceeding. The Staff was apparently concerned that crediting the incremental cost of fuel through the fuel clause would cause an increase in fuel costs for retail customers since the proposed incremental cost would be based on the price of spot market coal which was lower than the average fuel cost for the unit in question (tr. 210, 1-26). In concluding that incremental fuel cost pricing and revenue crediting of incremental revenues was appropriate in light of the resulting net benefits to ratepayers, this Commission stated that:

> *"TECO defended its action by stating that had it not made the price concession to FP&L, FP&L would have purchased*

virtually no energy pursuant to the contract. With the revision to the contract, FP&L is taking BB4 energy at approximately a 70% capacity factor. We find for the Company on this issue." See FPSC Order No. 18136 issued in Docket No. 870001-EI.

In that same proceeding, the Commission found that the cost of spot coal was the proper cost to assign to incremental generation, for such purposes as making off-system sales, generation dispatch, payments to Qualifying Facilities and for economy broker transactions by all utilities. The Commission also specifically reviewed and approved pricing based on incremental costs in two of Tampa Electric's other then existing power sales agreements (tr. 209, 6-13).

Several years later, in Tampa Electric's 1992 rate case, Docket No. 920324-EI, the Commission carefully considered how the revenue associated with each type of Tampa Electric discretionary sale, including those based on incremental fuel cost, should be treated. The Commission required separation of rate base and expenses from the retail jurisdiction for the incremental fuel priced sales of capacity and energy from Big Bend Station. This separation guaranteed that retail customers received full and permanent benefit from those sales. Ultimately, the Commission left intact the treatment approved in 1987 for fuel revenues associated with discretionary sales based on incremental fuel pricing.

Finally, it is important to note that the fuel clause treatment of incremental fuel-based discretionary sales has been examined in each biannual fuel clause hearing since 1987 (tr. 211, 4-6; 293, 1-9). Most recently, in the 1995 fuel clause proceeding, Docket No. 950001-EI, the Commission examined Tampa Electric's new discretionary sales made since the 1992 rate case. Since these sales were deemed to be, in effect, replacements for sales considered in the 1992 rate case which were no longer in effect, the Commission concluded that the new sales should be separated and treated in the fuel clause in the same way that the sales considered in the 1992 rate case had been separated (tr. 278, 14-23).

The Commission has repeatedly examined and approved Tampa Electric's discretionary sales, including those based on incremental fuel pricing. In particular, the Commission has definitively addressed and resolved the question now raised again under Issue 9 in this proceeding. There is no evidence in this proceeding that the sales in question are uneconomic when all relevant costs and revenues are considered. There is no evidence in this proceeding to suggest that any relevant circumstances have changed in a manner which would warrant reconsideration of this issue by the Commission. To the contrary, as discussed in more detail below, there is ample evidence in the record to show that the net ratepayer benefits anticipated by the Commission in Tampa Electric's 1992 rate case continue to accrue to ratepayers.

Therefore, it is difficult to understand why the issue is being re-litigated in this proceeding.

III.

Tampa Electric's Discretionary Wholesale Sales, Including Those Based On Incremental Fuel Costs, Yield Net Benefits To Ratepayers Which Are Already Reflected In Current Rates.

The net retail customer benefits associated with discretionary sales based on incremental fuel prices are neither speculative nor theoretical. These benefits are being passed through to customers and are reflected in Tampa Electric's current base rates (tr. 221, 6-11). In Tampa Electric's 1992 rate case, the annual retail revenue requirement used to set base rates was decreased by $34 million, reflecting the separation of off-system sales. Of the $34 million retail revenue requirement reduction, $9 million was associated with discretionary sales based on incremental fuel pricing (tr. 283, 13-24). If one were to look at the fuel impact of these incremental fuel price sales in 1995, for example, the increase in retail fuel prices was only $1.1 million. When the $9 million revenue requirement reduction already built into retail base rates is offset against the $1.1 million fuel clause impact, it is beyond reasonable dispute that ratepayers continue to enjoy significant and direct net benefits from these transactions (tr. 284, 11-19; tr.358, 5-11). The average retail customer using 1000 kWh per month is, in effect, spending 10 cents, in terms of net fuel effect, to obtain 63 cents in base rate savings (see Exhibit 39).

Once off-system sales are separated and the resulting base rates set, the utility bears the risk that the projected level of sales will materialize on an annual basis. As demonstrated in Exhibit 40, the actual level of MWHs and non-fuel revenues from separated sales for 1994, 1995 and the first half of 1996 were below the levels on which the separation was based in Tampa Electric's 1992 rate case.

Besides the benefits currently being enjoyed by retail customers, there are future potential benefits as well. Additional sales help to delay, or reduce, potential rate increases. In Tampa Electric's current regulatory position, additional sales provide the potential for increased deferred revenues and refunds in 1999 and 2000.

The bottom line is that there are no changed circumstances with regard to the net ratepayer benefits associated with Tampa Electric's separated sales which suggest the need for reconsideration of the matters raised by Issue 9. Retail customers have lower base rates as the result of incremental fuel priced off-system sales. They get a portion of the benefit from additional off-system sales through the rate stipulation approved by the Commission and a deferral in the need for rate increases. Finally, as discussed below, there are effective procedures in place which allow the Commission and Staff to monitor and examine off-system sales.

IV.

The Commission Currently Has In Place Adequate And Effective Procedures For Monitoring And Addressing, As Necessary, The Treatment Of Off-System Sales For Retail Ratemaking Purposes.

As discussed in Section II above, the Commission has taken the opportunity to monitor and examine off-system sales both in Tampa Electric's general rate cases and in the course of the biannual fuel clause proceedings. Tampa Electric provides the Commission Staff with a copy of each new off-system sale agreement without relying on the FERC to send copies of such contracts to the Commission as part of the FERC review process (tr. 302, 21-25; 303, 1-7). Through this process, the Commission and Staff are assured of the means to examine Tampa Electric's off-system sales agreements in a timely manner.

In the 1995 fuel clause proceeding, the Commission elected to formalize this notice process by requiring Tampa Electric to provide notice of all new contracts to the Commission by certified letter (tr. 303, 8-15). This formalization provided even greater assurance that the Commission and Staff would receive timely and accurate information with regard to off-system sales.

To the extent that the Commission or Staff have questions or concerns with regard to these agreements, the existing process and existing forums, such as rate cases and fuel clause proceedings provide an efficient and effective means of resolving issues which may arise periodically. This approach is extremely efficient from

an administrative perspective since a more formal and detailed review is conducted only when the Commission or Staff have specific concerns as the result of their initial review and analysis. Therefore, Tampa Electric respectfully submits that there is no need for the new proceeding and pre-approval process proposed by the Staff.

Tampa Electric is more than happy to provide any explanation, analysis or justification which might assist the Commission and Staff in their review of off-system sales and has endeavored to do so as a matter of standard practice. In fact, as a matter of standard business practice Tampa Electric has informed interested parties regarding its off-system sales. The institutionalized pre-approval process suggested by the Staff has the potential to create significant competitive harm. The bulk power market has broadened considerably and many of the competitors in the market are not investor-owned utilities who are subject to broad public disclosure and oversight. The creation of a process where competitive information is made even more readily available to potential competitors, both IOU and non-IOU, can only serve to erode the Company's competitive position to the detriment of retail customers (tr. 303, 22-25; 304, 1-14).

V.

Florida Power Corporation's Guidelines Are Self Serving, Arbitrary And Superfluous In Light Of The Existing Discretionary Sales Review Process.

Florida Power Corporation has taken the position that, with certain exceptions, all wholesale sales should be based on average costs and that the Commission should impute average costs to such transactions for ratemaking purposes even if the underlying agreement is based on incremental cost (tr. 149, 24-25; 150, 1-11). FPC would allow the use of incremental fuel prices for fuel clause purposes, where the incremental fuel cost is below average fuel cost, without prior Commission review, in the case of sales on the Florida Broker System and other transactions which meet its proposed guidelines (tr.150,13-24; 151,1-13). However, as discussed below, the guidelines proposed by FPC are self-serving, arbitrary and are premised on the incorrect assumption that there is no existing mechanism in place for the systematic review of off-system sales.

Although Issue 9 has been framed as a generic issue, its only apparent relevance is to Tampa Electric's off-system sales based on incremental fuel costs. It is more than a matter of coincidence that the guidelines proposed by FPC would, if adopted, exempt all of FPC's off-system sales from review (tr. 163, 14-24). This exemption would be made for FPC's off-system sales despite the fact that all wholesale sales, whether priced on the basis of average or incremental fuel, give rise to the same potential fuel impact

issues (tr. 304, 15-23; 173, 19-25). In fact, FPC witness Weiland testified that he was unaware of any investor owned utility in Florida, other than Tampa Electric, whose sales would be subject to review by the Commission under FPC's proposal (tr. 176, 25; 177, 1-6). Mr. Wieland has ignored the fact that FPC's guidelines are based on the treatment of wholesale sales determined in their last rate case. Tampa Electric received different treatment of wholesale sales and, thus, FPC's guidelines are not appropriate for Tampa Electric.

Its protestations to the contrary notwithstanding, FPC's only real concern with regard to Issue 9 is its own competitive position (tr. 169, 16-25; 170, 1-10). It is attempting to use the regulatory process to suppress competition in a way that can only serve to harm ratepayers. To the extent that Tampa Electric is, as a practical matter, foreclosed from making incremental fuel-based discretionary sales, the benefits lost by Tampa Electric's ratepayers will not inure to the benefit of FPC's ratepayers. Instead, these sales will go to unregulated competitors in the bulk power market who remain unfettered by any artificial and unnecessary constraints such as those proposed by FPC and the Office of Public Counsel ("OPC") (tr. 170, 11-25; 171, 1-10).

FPC's proposal is as arbitrary as it is self-serving. First of all, FPC's attempt to distinguish sales on the Florida Broker from other discretionary sales is not sound. The margins and retail

customer benefits associated with Tampa Electric's sales on the Florida Broker are less than the margins and customer benefits associated with its longer term discretionary sales (tr. 256, 8-17). If FPC finds the lower margin Florida Broker sales based on incremental fuel costs to be appropriate as a rule, it is, at best, unclear why it would not grant the same dispensation to longer term discretionary sales which are also based on incremental fuel costs but yield significantly greater retail customer benefits.

FPC's apparent attempt in its proposed guidelines to distinguish short term sales on the broker from longer term discretionary sales has no rational basis. By FPC's and OPC's separate admissions, the short term (less than one year) criteria in the FPC guidelines is completely arbitrary and not relevant to the fuel clause questions under consideration (tr. 166, 18; 334, 25; 335, 1-13). Both sales on the broker and other discretionary sales are made in a competitive environment (tr. 171, 16-19) and both types of sales can be made on an incremental fuel cost basis. In short, there is no relevant difference between the sales that FPC would exempt from its guidelines and those which would not be exempt.

Perhaps the strongest rebuttal to FPC's insistence on the use of average cost pricing is its concern for its own competitive position in the bulk power market. While it is certainly possible to discount the fixed charge portion of a discretionary sale as FPC asserts is its practice (tr. 184, 2-5), the market reality is that

the level of variable charge (including fuel) has a direct bearing on whether or not sales will actually be made.

As Tampa Electric found in its sale of Big Bend Power Station Unit 4 (BB4) capacity and energy to FP&L in 1987, and as this Commission has recognized, the dispatchability of an off-system sale is critical to making the sale attractive to the purchaser (tr. 217, 1-4). The decision to buy power under a given discretionary sale agreement is generally driven by a comparison of the contract price with the incremental price of the potential buyer's alternative resources. Bulk power based on incremental fuel costs will often be more dispatchable than power based on average fuel costs. Enhanced dispatchability increases the likelihood that the customer will be able to use the power around the clock, thereby allowing the selling utility to charge a higher margin on the total sale (tr. 247, 23-25; 248, 1-13).

Although FPC claims that its goal is to establish a level playing field to allow themselves to take advantage of the dynamics described above (tr. 155, 9-13), the record in this proceeding is devoid of any evidence that FPC is precluded legally or otherwise from pricing its discretionary sales on the basis of incremental fuel costs. FPC must only demonstrate that its system economics will result in net benefits to its ratepayers, as Tampa Electric has done repeatedly with regard to its discretionary sales. Indeed, given FPC witness Weiland's opinion that it would be

imprudent for a utility not to pursue such sales (tr. 160, 15-23), it is difficult to understand why FPC has not attempted to make the incremental fuel cost priced sales which it asserts that its system could economically support (tr. 169, 16-25; 170, 1-3). In this case, the field is already level.

VI.

The Office of Public Counsel's Position Suffers From The Same Flaws Identified Above In FPC's Position And Focuses Only On Fuel Costs And Revenues To The Exclusion Of The Significant Non-Fuel Ratepayer Benefits Associated With The Transactions At Issue.

The fatal flaw in OPC witness Larkin's position on Issue 9 is his intentional exclusion of non-fuel costs and revenues from the assessment of net benefits to ratepayers resulting from discretionary sales based on incremental fuel costs (tr.337,19-25; 338, 1-3; 354, 18-25; 355,1-8; 211,24-25; 212,1-3). OPC has offered no credible rebuttal to the facts set forth in Section III above which establish that the reduction in the retail revenue requirement resulting from the separation of Tampa Electric's discretionary sales created a continuing net retail customer benefit.

OPC witness Larkin's assertion (tr. 321, 4-19) that these revenue requirement reductions do not represent ratepayer benefits cannot stand against even the most casual scrutiny. New generation facilities are sized to meet both the existing and foreseeable future demands of the retail customers that the utility is

obligated to serve. This means that new generation capacity unavoidably contains some increment of capacity which exceeds existing demands but will soon be needed to meet load growth. Mr. Larkin's assertion that such temporary surplus capacity must either be removed from rate base or separated through an off-system sale has no support in law or Commission precedent (339, 14-25; 340, 1-18). Effectively, Mr. Larkin has requested a policy ruling for a problem that does not exist. Mr. Larkin's claim is based on a narrow view of economics that is in error.

VII.

Conclusion

Tampa Electric shares the view of the Commission Staff and FPC that discretionary sales based on incremental fuel costs should be reflected in the fuel clause on the basis of incremental fuel cost where the transaction yields net benefits to the ratepayers. The Company agrees that the Staff and Commission should have, as it does currently, the opportunity to monitor and review these agreements for retail ratemaking purposes in a timely and effective manner. Tampa Electric's point is that its agreements have been reviewed by the Commission and the associated net ratepayer benefits have been established. This review has been carried out in the context of an existing process which is both efficient and effective. Neither the Staff nor the parties to this proceeding have presented any evidence suggesting that the transactions at issue are uneconomic. Therefore, the Company respectfully suggests

that there is no reason for the Commission to take any action with regard to issue 9 at this time.

DATED this 14th day of November, 1996

Respectfully submitted,

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CERTIFICATE OF SERVICE

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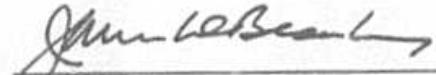

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