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Matthew M. Childs, P.A.

May 31, 2000

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

RE: DOCKET NO. 991779-EI

Dear Ms. Bayó:

Enclosed for filing please find the original and fifteen (15) copies of Florida Power & Light Company's Brief and Post-Hearing Statement in the above referenced docket.

Very truly yours,

Matthew M. Childs, P.A.

MMC/eg
Enclosure

cc: Parties of Record

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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 Electric Utilities)

DOCKET NO. 991779-EI
FILED: MAY 31, 2000

FLORIDA POWER & LIGHT COMPANY'S BRIEF AND POST-HEARING STATEMENT

Florida Power & Light Company, pursuant to the instructions in Order No. PSC-00-0888-PHO-EI hereby submits its Brief and Post-Hearing filing (including a Post-Hearing Statement of Issues and Positions).

Development Of The Issues On Incentive For Off System Sales In This Docket

The basis for the issues being addressed by the Commission in this docket is the issues raised by the Commission staff in Docket No. 990001-EI, as set forth in Order No. PSC-99-2271-PHO-EI, issued November 18, 1999,

> Issue 10: What is the appropriate regulatory treatment for the generation - related gain on non-separated wholesale energy sales not made through the EBN [Energy Broker Network]?
>
> Issue 11: Should the Commission eliminate the 20% shareholder incentive set forth in Order Number 12923, issued January 24, 1984, in Docket Number 830001-EU-B?

> Issue 12: If the Commission should decide to maintain the 20% shareholder incentive set forth in Order No. 12923, issued January 24, 1984, in Docket No.830001-EU-B, what types of economy energy sales should be eligible for the 20% shareholder incentive?

The staff's position was that all generation related gain from economy wholesale sales should be flowed back to the ratepayers through the Fuel and Purchased Power Cost Recovery Clause.

After presentation of evidence addressing these issues at the hearing held in the fuel adjustment docket, the Commission among other findings related to this subject, concluded that the decision to be made should be made by the "full commission" stating:

> Eliminating the 20% shareholder incentive would represent a major shift in this commission's policy. We believe that such a policy shift would more appropriately be decided by the full Commission, rather than the three-commissioner panel assigned to this proceeding.

Thus, the Commission expressed that it was taking no action and instructed the staff to institute a proceeding by which the full commission may more thoroughly explore the issue. In addressing this matter, the commission also made an observation concerning the "types of economy sales" eligible for the 20% shareholder incentive. The observation in order no. PSC-99--2512-FOF-EI was that there was a lack of uniformity among the IOUs relative to the types of economy energy transactions to which the 20% shareholder incentive was applied. The Commission observed that the incentives should be applied uniformly absent justification for different treatment. See Order No. PSC-99-2512-FOF-EI.

The utilities were directed then to maintain the status quo in this regard. Florida Power & Light Company has applied the 20% incentive feature more restrictively than some other utilities. Thus, the Commission's decision to "maintain the status quo" has suspended FPL's ability to apply

the 20% incentive more expansively for transactions in prior years. FPL does not believe that this suspension was intended to be permanent.

As directed by the Commission, a separate docket was initiated, and, hearing was held on May 10, 2000. At this time, FPL offered the testimony of it's witnesses Joseph Stepenovitch and Korel M. Dubin.

Commission History Concerning The Incentives For Off System Sales By Regulated Electric Utilities.

Although the Commission's December order in the fuel adjustment docket recites some history concerning the Commission's decisions on incentives for off system sales, it omits certain information that is relevant to this proceeding. For instance, Order No. 13092 entered in Dockets Nos. 830001-EU and 840001-EI on March 16, 1984, reflected the Commission's decision in Order No. 12923 to remove economy energy sales from base rates and instead include them as part of the fuel and purchased power cost recovery clause. In addition, the Commission adjusted base rates of the effected utilities to reflect the removal of economy energy sales from base rates. See Schedule C to order no. 13092.

As pointed out in Commission Order 12923 which was entered in Docket No.830001-EU-B on January 24, 1984, the Commission staff proposed that "...gain on economy energy sales be transferred from general rate proceedings to the fuel adjustment docket and be transferred from the base rates to the fuel and purchased power cost recovery clause."

In stating the history of this matter, Order No. PSC-99-2512 at page 4 reflects that the Commission in Order No. 12923 stated:

> "...that the 20% incentive was large enough to maximize the amount of economy sales and provide a net benefit to ratepayers."

Because of the contention that any incentive should increase the level of sales (it is not clear whether in kilowatt hours or in dollars). FPL believes that the complete finding in Order No. 12923 should be set forth. There, the order stated:

> "We believe that the Staff's witness was correct in stating "a positive incentive will preserve current levels of economy sales and may result in increase sales and that the 20% incentive is large enough to maximize the amount of economy sales and provide a net benefit to the ratepayer"" Order 12923 at page 2.

FPL does not believe that the record established that an incentive for off system sales would increase, in absolute terms, the amount of those sales or the dollars associated with them. It appears that the Commission's 1984 decision was predicated on an assurance that a positive incentive would "preserve current levels" of such sales.

The Present Proceeding

Although the staff has offered various documents purportedly to establish that the wholesale market is more competitive than in 1984 there was no evidence that increased competition in the wholesale market should eliminate the need for an incentive. FPL did not contest the assertion that there is greater competition at the hearing and does not do so now. However, it continues to contest the relevance of this observation and the asymmetrical logic associated with the postulated effect that an increase in competition supports the elimination of an incentive to participate in that more competitive market. It does appear axiomatic however that if competition increases then the potential for off system sales by utilities that will flow the benefits of their off system transactions to their retail customers must, of necessity, decline. Clearly, sales opportunities that they might

otherwise have had will be taken by others and sales opportunities that they formerly had will be displaced by others. Finally, as this Commission well knows, certain of the utilities over which it has retail jurisdiction are not permitted to sell in Florida at "competitive rates" and therefore, the new competition from certain sources may provide pricing levels in the wholesale context which the regulated utilities are precluded by law from matching.

The Issues In This Docket

The Commission's original decision to offer an incentive was based on a staff proposal. FPL submits that the wisdom of the testimony by staff witness C.K. Hvostik at the hearing on December 15, 1983, in support of an incentive for economy sales has not changed and no evidence has been offered in this proceeding that would undermine his conclusion.

In support of its position in this proceeding, FPL offered the testimony of witnesses Stepenovitch and Dubin. Both witnesses Stepenovitch and Dubin testified that the Commission's policy decision in 1984 remained valid in that the incentive provided should be applicable to other economy type sales. (Tr 37 and 102) In addition, Mr. Stepenovitch explained that the wholesale market in Florida had changed since 1984 and that the opening of the transmission system was a principle cause of this change. (Tr 37) The new highly competitive nature of the wholesale market today and the more market based pricing approach (it being remembered that FPL can not use this approach itself in Florida) make the market not only more competitive but more complicated for a participant. (Tr 38). FPL pointed that expensive investment and staff additions are required for FPL to participate in the market but that as a result of its having kept up with the evolution of this competitive market, despite the additional costs, FPL's customers have received substantial benefits from the company's trading activities. For instance, in 1998 and 1999 the "gains on sales" passed

through to customers by FPL were 62 million dollars and 59 million dollars respectively. This compares with gains of only 5.5 million dollars just four years ago. (Tr. 38 and 39). As Mr. Stepenovitch pointed out, the incentive for all sales is fair and equitable as it will tend to offset disincentives borne by stockholders such as increased O&M costs associated with making these off systems sales. (Tr 39). As stated in the prefiled testimony of Mr. Stepenovitch:

"a sharing of non-fuel revenues between retail customers and stockholders is fair, and would provide an incentive for utilities to pursue these sales even further. This will allow the retail customers to more fully realize the benefits of existing generating resources in Florida. Structured properly, incentives will motivate a utility to pursue the maximum amount of savings possible. Incentives will serve to promote management's willingness to allocate additional resources and funds to its energy marketing and trading functions. This in turn will serve to increase the frequency and duration of FPL's opportunity sales, that will ultimately benefit its customers as well as our shareholders."

In compliance with the directions by Order No. PSC-00-0888-PHO-EI, FPL now sets forth it's Post-Hearing Statement of 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?

FPL: No. The Commission provided for stockholder incentives to encourage non-separated, non-firm wholesale sales. The Commission's decision in 1984 was sustained by the Florida Supreme Court. No disputed fact or factual showing has been identified that would sustain the burden of reversing the Commission's policy.

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?

FPL: These incentives should be expanded. All opportunity sales should be eligible for a shareholder incentive. All of these sales, other than emergency, have the same characteristics as the sales under the Energy Broker. The policy established in 1984 continues to apply and there is no basis to discriminate.

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?

FPL: FPL believes that consideration should be given to increasing the percentage for shareholder incentives. For example, a sliding scale such as outlined in FPL's testimony could be used. By using a sliding scale, the utility is compensated and the customer benefits by a lower fuel charge.

The Evidence Against The Commission Policy

The only evidence offered in this proceeding against the Commission policy of providing an incentive for economy type sales was that offered by OPC witness Dr. Dismukes. The Commission staff had no position on any issue and offered no testimony in opposition to the policy of incentives.

FPL submits that the retention of a portion of revenues from off system sales as an incentive to make those sales is no different than the impact from an improvement in the efficiency of a utility's operation which provides it with the opportunity to achieve higher earnings. Dr. Dismukes acknowledged this when, in responding to questions on cross examination about the impact of efforts by a utility to improve it's efficiency, stated that if the utility increased its efficiency and therefore was cheaper in operation that would give the utility the ability to achieve higher earnings. (Tr 275). It is not FPL's position that improvements in efficiency are not to be recognized in the setting of rates. It is FPL's position however that the ability of the utility to retain the results of efficiency improvements until rates are next set is not contrary to appropriate rate making principles.

Although Dr. Dismukes was offered as a witness in opposition to the incentive for off system

sales, he was careful to note that he did not oppose incentives but simply believed that "other factors have put pressure on utilities to participate in the wholesale market and therefore the utilities don't need the additional incentive of a part of the gain." (Tr 273). Consistently Dr. Dismukes acknowledged that "the sum and substance" of his answer to the question of "why should the Commission remove the 20% incentive return?" was that "no utility today can afford to not participate aggressively in wholesale markets."

Interestingly, although Dr. Dismukes has offered this broad based testimony, on the Florida wholesale market he acknowledged that he had not made "any independent evaluation of the wholesale market in Florida in preparing [his] testimony". (Tr 278). Thus, the only testimony offered in opposition to incentives is to the effect that there already exists sufficient incentives for off system sales.

Respectively, FPL submits that this judgment by Dr. Dismukes has little merit particularly in view of his acknowledgment that he has made no study of the very wholesale market on which his testimony is based. In addition, some of the "incentives" that are suggested by Dr. Dismukes testimony concerning other incentives appear to be somewhat illusory. First, Dr. Dismukes has spoken of the benefits of reducing the bill to customers because of the competitive environment being faced. This conveniently ignores the fact that the bill to customers is being reduced as a result initially of the company's being encouraged to aggressively participate in the wholesale sales market so as to produce gains to pass through to their customers. Second, he has failed to even quantify the impact of this alternative incentive. The impact in 1998 and 1999 of providing a 20% incentive from the gain of 50 and 60 million dollars realized by FPL in those years instead of passing the 20% along to customers is only fourteen hundredths of a cent (0.014) per kilowatt hour per month. In addition,

the data would reflect (see interrogatory response Nos. 10 and 17) that wholesale sales by FPL are a very small percent of its total sales to customers. Thus, the potential or the practicality of looking to the gains on these off system sales as providing the engine for substantial response to competitive pressures is somewhat illusory. The ability to make off system sales does in fact have real benefits for FPL customers. FPL intends to pursue these sales aggressively but realizes that it cannot continue to make expenditures for an aggressive participation in the wholesale market that produces nothing more than the potential for generating gains to pass through to customers.

One of the aspects that has not been addressed by those who have opposed an incentive in this proceeding is that the benefits of off system sales by utilities flow not only to the customers of the "selling utility" but also to the customers of the "purchasing utility". In this proceeding, it does not appear that any of the questions or concern has been associated with the potential lessening of the benefits to the customers of utilities that find lower costs off system energy available to them through purchases. It is clear however that when a regulated utility makes those sales that there is the reality of customers of both the purchasing and the selling utility benefitting where when those sales are not made by such a utility then the benefit is confined to the customers of the purchasing utility. This type of activity by those electric utilities subject to the jurisdiction of the Commission should be promoted, works to the benefit of all, and is not in conflict with appropriate ratemaking in Florida.

Conclusion

For these reasons, FPL respectfully maintains that the Commission should continue the incentives already available for off system sales and clearly establish that those incentives are available for other off system opportunity type sales in the future.

DATED this 31st day of May, 2000.

Respectfully submitted,

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Attorneys for Florida Power
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BY: _____
Matthew M. Childs, P.A.

CERTIFICATE OF SERVICE
DOCKET NO. 991779-EI

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Brief and Post-Hearing Statement has been furnished by Hand Delivery,** or U.S. Mail this 31st day of May, 2000 to the following:

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