BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Calculation of gains and appropriate regulatory treatment for non-separated wholesale energy sales by investor-owned electric utilities.	DOCKET NO. 010283-EI ORDER NO. PSC-01-1547-PHO-EI ISSUED: July 26, 2001

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on July 13, 2001, in Tallahassee, Florida, before Commissioner Lila A. Jaber, as Prehearing Officer.

APPEARANCES:

JAMES A. McGEE, ESQUIRE, Post Office Box 14042, St. Petersburg, FL 33733
On behalf of Florida Power Corporation ("FPC").

MATTHEW M. CHILDS, ESQUIRE, Steel, Hector & Davis, 215 South Monroe Street, Suite 601, Tallahassee, FL 32301
On behalf of Florida Power & Light Company ("FPL").

RUSSELL A. BADDERS, ESQUIRE, and JEFFREY A. STONE, ESQUIRE, Beggs and Lane Law Firm, 700 Blount Building, 3 West Garden Street, Post Office Box 12950, Pensacola, FL 32576-2950
On behalf of Gulf Power Company ("Gulf").

JAMES D. BEASLEY, ESQUIRE, Ausley & McMullen Law Firm, 227 South Calhoun Street, Tallahassee, FL 32301
On behalf of Tampa Electric Company ("TECO").

VICKI GORDON KAUFMAN, ESQUIRE, McWhirter Reeves Davidson Decker Kaufman Arnold & Steen, P.A., 117 South Gadsden Street, Tallahassee, FL 32301 and JOHN W. McWHIRTER, JR., ESQUIRE, McWhirter Reeves Davidson Decker Kaufman Arnold & Steen, P. A., 400 North Tampa Street, Suite 2450, Tampa, FL 33601-3350
On behalf of Florida Industrial Power Users Group ("FIPUG").

STEPHEN C. BURGESS, ESQUIRE, and ROBERT VANDIVER, ESQUIRE, Office of Public Counsel ("OPC"), 111 West Madison Street, #812, Tallahassee, FL 32399
On behalf of the Citizens of the State of Florida.

ROBERT V. ELIAS, 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

In part III of Order No. PSC-00-1744-PAA-EI, issued September 26, 2000, in Docket No. 991779-EI, the Commission approved, as proposed agency action, a method for calculating gains on non-separated wholesale power sales and the appropriate regulatory treatment of the revenues and expenses associated with those sales. The Florida Industrial Power Users Group and Gulf Power Company, in separate filings, protested specific portions of the action proposed by the Commission in part III of the Order. Pursuant to these protests, this matter is currently set for an administrative hearing in this docket. Jurisdiction over this matter is vested in the Commission through several provisions of Chapter 366, Florida Statutes, including Sections 366.04, 366.05, and 366.06, Florida Statutes.

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 the Commission Clerk and Administrative Services' 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. Summaries of testimony shall be limited to five minutes. 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

Witness	Proffered By	Issues #
Direct		
Javier Portuondo	FPC	2, 3, 4
K. M. Dubin	FPL	2, 3, 4
Susan D. Ritenour	GULF	1, 4
J. Denise Jordan	TECO	2, 3, 4
W. Lynn Brown	TECO	2, 3
Gerard J. Kordecki	FIPUG	2, 3, 4, 5

Witness	Proffered By	Issues #
Rebuttal		
J. Denise Jordan	TECO	2, 3, 4

VII. BASIC POSITIONS

FPC: The modification to Item 1 in Part III of Order No. PSC-00-1744-PAA-EI proposed in FIPUG's protest of the order is completely unworkable and, in fact, counterproductive to the objective of properly recognizing the incremental cost of non-separated wholesale energy sales. Any uncertainty as to whether the incremental costs referred to in Item 1 include incremental costs associated with purchased power can be resolved by a simple amendment to that effect.

FPL: FPL believes that the Commission's actions taken in Part III of Order No. PSC-00-1744-PAA-EI regarding the method for calculating gains on non-separated wholesale power sales and the regulatory treatment for revenues and expenses associated with non-separated wholesale power sales are reasonable, appropriate and consistent with historic treatment.

GULF: It is the basic position of Gulf Power Company that the Commission should allow Gulf to credit the fuel cost recovery clause for the SO_2 emission allowance component of non-separated wholesale energy sales.

TECO: The Commission should adhere to the regulatory treatment of revenues and expenses associated with non-separated wholesale power sales as set forth in Part III of Order No. PSC-00-1744-PAA-EI ("Order No. 00-1744"), issued September 26, 2000 in Docket No. 991779-EI. The shareholder incentive approved in Order No. 00-1744 should be implemented in the manner described in Staff's memorandum dated September 20, 2000 in Docket No. 000001-EI.

FIPUG: In this docket, the Commission is concerned with implementing the new incentive mechanism it adopted in

Order No. PSC-00-1744-PAA-EI. In that order, the Commission adopted a shareholder incentive mechanism applicable to all "gains" from all non-separated wholesale power sales (other than emergency sales) based on a three year moving average of "gains". FIPUG protested that order as it relates to two aspects of the calculation. First, it protested the calculation of "incremental cost", which is an important in-put to the gain calculation. Second, it protested the portion of the calculation related to O & M costs.

Any formula for calculating "gains" on non-separated wholesale sales should consider all the costs of the sales. As to the calculation of incremental fuel costs related to generating the energy for wholesale sales, it is FIPUG's position that the cost of power purchases must be considered in that calculation. When a utility has sold power in the wholesale market which could have been used to serve its retail rate payers and is then forced to purchase other power to serve the retail customers, the costs of the purchased power must be factored into incremental costs. Therefore, when purchased power cost is the highest cost power on the utility system, it is the incremental cost. This cost should be used as the cost of the non-separated wholesale sale and must not be directly reflected in the retail fuel clause or buy through power.

As to O & M costs, it is FIPUG's position that all O & M expenses related to a wholesale sale should be credited 100% to the appropriate recovery clause. If the utility incurs a specific and identifiable out of pocket non fuel O & M expense attributable to the sale, it may retain the revenue collected to recover that expense unless the expense is already being recovered from retail customers through base rates. There should be no double collection of costs. All revenue collected from wholesale transactions must be credited to retail customers through cost recovery clauses less the sum authorized as an incentive to make the sale. For example, no portion of the revenue received from a wholesale transaction may be retained below the line by the utility to recover the wages, salaries and general overhead costs attributable

to the wholesale sale because these expenses are covered by base rates. The wholesale revenue should be credited to retail customers through cost recovery clauses.

Any change made to the methodology or calculation must be made retroactive to January 1, 2001.

OPC: Retail customers are supporting all the assets used for non-separated wholesale sales and are thus entitled to the proceeds from such sales. The Commission has adopted a formula to split the gains between the IOU's and their customers, but the split was adopted only for the explicit purpose of maximizing the off-system sales for the benefit of the retail ratepayers. Accordingly, any implementation procedure must be consistent with the stated purpose of benefitting the retail customers.

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.

VIII. ISSUES AND POSITIONS

ISSUE 1: What is the appropriate regulatory treatment for SO_2 emission allowances associated with non-separated wholesale energy sales?

The parties have stipulated to the appropriate resolution of this issue, as set forth in Section X of this Order.

ISSUE 2: What is the appropriate regulatory treatment for the cost of fuel and purchased power associated with non-separated wholesale energy sales?

POSITIONS

FPC: Item 1 in Part III of Order No. PSC-00-1744-PAA-EI describes the appropriate treatment of incremental costs in calculating the gain on non-separated wholesale energy

sales. However, if the Commission should conclude that the phrase "the incremental fuel cost of generating the energy" in Item 1 may not be understood to encompass the incremental cost of energy generated either by the utility or by another and then purchased by the utility, a simple modification of the phrase to read "the incremental energy cost of generating or purchasing the energy" would be sufficient. The modification proposed by FIPUG to correct this possible ambiguity is unworkable and actually counterproductive to the objective of properly recognizing the incremental cost of non-separated wholesale sales. (Portuondo)

FPL: Consistent with Commission Order No. PSC-00-1744-PAA-EI in Docket No. 991779 dated September 26, 2000, which states, "Each IOU shall credit its fuel and purchased power cost recovery clause for an amount equal to incremental fuel cost of generating the energy for each such sale".

GULF: The fuel and purchased power cost recovery clause should be credited for an amount equal to the incremental fuel cost of generating the energy for non-separated wholesale energy sales.

TECO: Each IOU should credit its fuel and purchased power cost recovery clause for an amount equal to the incremental fuel cost of generating the energy for each such sale. (Jordan; Brown)

FIPUG: The Commission should consider a utility's purchased power costs in the incremental cost calculation. If there are any purchased power costs which are higher than the marginal generating costs of a utility's own units, such cost shall be included as the cost of a non-separated sale. When purchased power cost is the highest cost power on a utility's system, it is the incremental cost.

When a utility sells power from its generating units in the wholesale market and then purchases higher priced power to serve its retail customers, the higher priced purchased power should be used as the cost associated

with the sale and should not be allocated to retail or buy through customers. (Kordecki)

OPC: The treatment should assure that retail customers will never incur financial disadvantages from transactions involving retail assets. To achieve this end, the cost of non-separated wholesale sales should be removed from the retail cost recovery clause(s) on an incremental basis. For this purpose "incremental" should be considered as the highest cost fuel burned or power purchased during the hour that the respective wholesale sale was transacted.

STAFF: No position pending evidence adduced at hearing.

ISSUE 3: What is the appropriate regulatory treatment for the operation and maintenance (O&M) expenses associated with non-separated wholesale energy sales?

POSITIONS

FPC: Item 3 in Part III of Order No. PSC-00-1744-PAA-EI describes the appropriate treatment of incremental costs in calculating the gain on non-separated wholesale energy sales. Incremental O&M expense is a base rate component and should therefore be excluded from the calculation of the gain on non-separated wholesale energy sales for fuel adjustment purposes. (Portuondo)

FPL: Consistent with Commission Order No. PSC-00-1744-PAA-EI in Docket No. 991779 dated September 26, 2000, which states, "Each IOU shall credit its operating revenues for an amount equal to the incremental Operating and Maintenance (O&M) cost of generating the energy for each such sale".

GULF: Operating revenues should be credited for an amount equal to the incremental O&M expenses related to generating the energy for non-separated wholesale energy sales.

TECO: Each IOU should credit its operating revenues for an amount equal to the incremental O&M cost of generating the energy for each such sale. (Jordan; Brown)

FIPUG: Because it is very difficult to quantify O & M costs that are not already being collected in base rates, the burden, as with all other costs a utility seeks to recover, should be on the utility. All O & M expenses related to a wholesale transaction should be credited back 100% to the applicable recovery clause even when they exceed the wholesale revenue unless the utility collects revenue from the wholesale customer to cover the cost and can demonstrate that the O & M cost would not exist without the sale. (Kordecki)

OPC: Any such incremental O&M expense is a base rate component and should therefore be excluded from the calculation of the gain on non-separated wholesale energy sales for fuel adjustment purposes.

STAFF: No position pending evidence adduced at hearing.

ISSUE 4: How should the Commission implement Part II of Order No. PSC-00-1744-PAA-EI, in Docket No. 991779-EI, issued September 26, 2000, concerning the application of incentives to wholesale energy sales?

POSITIONS

FPC: Part II of the order should be implemented in a manner consistent with Staff's memorandum dated September 20, 2000. (Portuondo)

FPL: In Order No. PSC-00-1744-PAA-EI the Commission decided to allow the utilities to split (80% to customers and 20% to shareholders) any gains on non-separated wholesale power sales that exceed a threshold based on a three-year average of gains. Consistent with our position presented in the Fuel Docket, FPL believes that the Commission's decision should be implemented by using the methodology proposed by Staff in their memorandum dated September 20, 2000. Staff proposes that the first two and one half

years used in the calculation of the average would be the actual gains for those years and the final six months would be estimated. This data is to be supplied with the utilities' fuel projection filings. Later, the threshold of gains on off system sales is to be updated with actual gains for the balance of the third year and filed as part of the fuel true up testimony. Gains on sales are to be measured against this three-year average threshold. FPL believes this approach is appropriate. (Dubin)

GULF: Gulf agrees with the stipulation proposed in Staff's revised preliminary list of issues dated June 20, 2001. In the event that the parties are unable to stipulate to Staff's language, Gulf reserves the right to take an alternate position on this issue at the prehearing conference in this docket. (Ritenour)

TECO: Tampa Electric agrees with the implementation methodology set forth in the Commission Staff's September 20, 2000 memorandum issued in Docket No. 000001-EI. (Jordan)

FIPUG: The changes set out in Issue Nos. 2 and 3 above should be incorporated in the calculation of any incentive. Any change, pursuant to Commission Order No. PSC-00-2385-FOF-EI, shall be effective January 1, 2001. (Kordecki)

OPC: The benchmark should be based exclusively on historic data, rather than a blend that includes projected data. Additionally, the initial three-year average should act as a perpetual floor of expectation, such that no future rewards should not be granted unless the gains exceed the original three-year average benchmark, as well as the rolling average.

STAFF: The shareholder incentive mechanism approved in Order No. PSC-00-1744-PAA-EI should be implemented as set forth in Staff's memorandum to the parties dated September 20, 2000. Consistent with the parties' agreement previously approved by the Commission, this methodology should be made effective as of January 1, 2001.

IX. EXHIBIT LIST

Witness	Proffered By	I.D. No.	Description
Direct			
K. M. Dubin	FPL	(KMD - 1)	Appendix A - Order No. PSC-00-1744-PAA-EI

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

X. PROPOSED STIPULATIONS

The parties have stipulated to the appropriate resolution of Issue 1, as follows, which is proposed for the Commission's consideration:

> For non-separated wholesale energy sales that contain an SO_2 emission allowance component, that portion of the sales price associated with the SO_2 emission allowance should be credited to either the fuel cost recovery clause or the environmental cost recovery clause.

XI. PENDING MOTIONS

No motions are pending at this time.

XII. PENDING CONFIDENTIALITY MATTERS

No confidentiality matters are pending at this time.

XIII. RULINGS

1. The Order Establishing Procedure for this docket, Order No. PSC-01-0517-PCO-EI, issued March 5, 2001, states that a hearing in this docket is set for August 2, 2001. The hearing has since been rescheduled for August 31, 2001. By this Order, Order No. PSC-01-0517-PCO-EI is revised to reflect the new hearing date of August 31, 2001. In addition, the deadline for completion of discovery set forth in Order No.

PSC-01-0517-PCO-EI is extended to August 24, 2001. All other matters set forth in Order No. PSC-01-0517-PCO-EI are reaffirmed.

2. Opening statements, if any, shall not exceed ten minutes per party.

It is therefore,

ORDERED by Commissioner Lila A. Jaber, 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 Lila A. Jaber, as Prehearing Officer, this 26th day of July, 2001.

LILA A. JABER
Commissioner and Prehearing Officer

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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 the Commission Clerk and Administrative Services, 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.