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July 16, 1997

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: Determination of appropriate cost allocation and regulatory treatment of total revenues associated with wholesale sales to Florida Municipal Power Agency and City of Lakeland by Tampa Electric Company;
FPSC Docket No. 970171-EU

Dear Ms. Bayo:

Enclosed for filing in the above docket, on behalf of Tampa Electric Company, are the original and fifteen (15) copies of each of the following:

1. Motion for Leave to File Supplemental Brief.
2. Tampa Electric Company's Supplemental Brief.

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,

Lee L. Willis

LLW/pp
Enclosures

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

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Determination of appropriate cost allocation and regulatory treatment of total revenues associated with wholesale sales to Florida Municipal Power Agency and City of Lakeland by Tampa Electric Company.	DOCKET NO. 970171-EU FILED: July 16, 1997

TAMPA ELECTRIC COMPANY'S SUPPLEMENTAL BRIEF

Tampa Electric Company ("Tampa Electric" or "the company") hereby supplements its brief of July 7, 1997 in this proceeding for the limited purpose of addressing cases and arguments presented for the first time in Office of Public Counsel's ("OPC") July 7, 1997 brief with respect to the legal issue identified as Issue 9 in this proceeding.

In its brief (at 16-26), OPC argues that federal law prohibits the Commission from adopting Tampa Electric's proposed treatment of the costs and revenues associated with wholesale sales. While acknowledging that its research disclosed no cases that "deal with the precise factual situation we have here," OPC argues that cases such as Narragansett Electric Company v. Burke, 381 A. 2d 1358 (R.I. 1977), cert. denied, 435 U.S. 972 (1978), compel state commissions to follow the same ratemaking methods as the Federal Energy Regulatory Commission ("FERC") when recognizing the costs and revenues of FERC-jurisdictional services for the purposes of setting retail rates.

OPC's federal contention is incorrect. The decisions cited by OPC dealt with state attempts to directly or indirectly regulate

interstate rates and services, of with state attempts to deny retail flowthrough of purchased power costs incurred under a FERC-approved contract or rate. Such activities are federally preempted. Here, however, the state Commission would not be setting wholesale rates or disregarding FERC-approved rates. It would merely be setting retail rates pursuant to a state-determined ratemaking method -- a matter clearly within this Commission's own jurisdiction.

Controlling federal precedents -- not cited by OPC -- confirm that federal law does not require this Commission in setting retail rates to follow FERC's lead when it comes to apportioning costs between state-regulated services and FERC-regulated services. For example, FERC has specifically held that its allocation of a given level of costs to wholesale sales service did not in any way preempt the states from allocating a different level of costs to that service in the development of retail electric rates. E.g., Houlton Water Co., 60 F.E.R.C. ¶61,141, at p. 61,515 (1992) ("[T]he allocation of a share of Maine Public's costs by this Commission to wholesale requirements customers does not preclude any particular allocation of a share of Maine Public's costs by the Maine Commission to retail customers."); Utah Power & Light Co., 45 F.E.R.C. ¶61,095 (1988) ("[W]holesale rate determinations by this Commission based on a particular assignment or allocation of costs . . . would not preempt a retail rate determination based on a contrary assignment or allocation. The . . . states would be free to adopt different (and presumably inconsistent) cost allocation

schemes."). See also Public Service Company of Indiana, Inc. v. FERC, 575 F.2d 1204, 1218-19 (7th Cir. 1978) (FERC was not bound to follow state ratemaking method in setting rates for wholesale sales.).

More recently, FERC explicitly acknowledged a state commissions' right to use a revenue crediting mechanism not unlike the one at issue here as an alternative to the traditional method of directly allocating costs to wholesale services:

> The Villages further contend that Citizens uses different cost allocation methods when designing wholesale rates than in designing retail rates that are filed with Vermont Service Board (Vermont Commission). As a result, according to these customers, Citizens will recover more in revenues than its total system costs. The Villages argue that Citizens should be required to use consistent cost allocation methods or, alternatively, the Commission should convene a joint board with the Vermont Commission so that Federal and state regulators can ensure that Citizens does not exploit any regulatory gaps.
>
> Citizens, in response, points out that in its retail proceedings it allocates no fixed costs to wholesale service at all. Citizens explains that this is because it assigns all costs to retail customers and treats the revenues from wholesale services as revenue credits. Citizens adds that, even if it had adopted different cost allocation methods for retail and wholesale rate services, this would not be uncommon.
>
> We will deny the Villages' request in this regard. Just as state commissions are not obligated to follow this Commission's ratemaking methods, we are not obligated to follow the ratemaking determinations of state commissions or to convene joint boards to ensure consistency. In light of this longstanding dual system of regulation, we do not perceive any regulatory gap that Citizens can exploit.

Barton Village, Inc. v. Citizens Utility Company, 68 F.E.R.C. ¶61,005, at p. 61,033 (1994) (footnote omitted; emphasis added).

As the cases cited herein show, the state Commission has wide latitude to choose its own ratemaking methods, without interference by FERC. OPC has cited no contrary authority, and Tampa Electric is aware of none.

DATED this 16th day of July, 1997.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the Supplemental Brief, filed on behalf of Tampa Electric Company, has been furnished by U. S. Mail or hand delivery (*) on this 16th day of July 1997 to the following:

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