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August 11, 1999

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
4075 Esplanada Way, Room 110
Tallahassee, FL 32399

Re: Docket No. 980643-EI - Generic investigation of cost allocation and affiliated transactions for electric utilities

Dear Ms. Bayo:

Enclosed for filing please find the original and fifteen (15) copies of Florida & Light Company's comments which address the proposed rules in the above referenced docket.

Very truly yours,

Kirk Gillen

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Florida Power & Light Company

Comments on the July 8, 1999 Notice of Proposed Rule Development in Docket No. 980643-EI

General Comments

There is no compelling need for the proposed rules. The Commission may safely make case by case adjudications based on an evidentiary record without promulgating a rule. There has been no documented abuse that needs to be corrected. The Uniform System of Accounts, an extensive set of regulations, is already in place. Rulemaking to force uniformity when there are valid reasons for differences serves no rational purpose. Absent a demonstrated need for a rule, the cost and expenditure of resources necessary for a rulemaking procedure should be avoided.

However, if Staff believes that a rule is necessary FPL offers the following comments on the draft rule as proposed in the July 8, 1999 Notice of Proposed Rulemaking:

Rule 25-6.1351 Cost Allocation and Affiliate Transactions

SubSection (2)(a)

FPL proposes to strike the last sentence in the definition of "Affiliate." Control of an entity is not always established with only five-percent ownership. FPL suggests that the definition of control contained in the Uniform System of Accounts prescribed for public utilities be utilized.

Subsection (2)(f) and (g).

The proposed definitions of "regulated" and "nonregulated" do not work. When used in context later in the draft rules, the terms refer to activities that are either subject to Commission regulation (approval of securities, approval of rates and terms and quality of service for electric service or approval of DSM programs and plans) or are not subject to Commission regulation (for instance, appliance sales). However, the definition does not refer to activities, it refers to components of financial statements.

The approach in the draft rule is that if the Commission takes into account in establishing rates the revenues and expenses associated with an activity, regardless of whether the activity is subject to regulation by the Commission, then it is "regulated" within the meaning of the rule. It is confusing, at best, to label activities that are beyond the Commission's jurisdiction to regulate as "regulated" activities.

When placed in context of the rules, the definitions do not work as intended. For instance, subsection (3)(c) refers to "regulated operations." As defined in the draft rule, it does not refer just to the utility's operations that are subject to the Commission regulation; it also includes operations over which the Commission has no regulatory authority but which the Commission, nonetheless,

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reflects on financial statements when setting rates for services subject to the Commission's jurisdiction. If a utility is purchasing a service from an affiliate which it plans to resell and the Commission does not have jurisdiction over the resale, why should the Commission care what the utility pays for the service? Should the utility's customers be apportioned any costs for a service that is not subject to Commission regulation?

Additionally, the definitions included in the draft can be very difficult to apply in practice. For example, how will the determination be made of whether an activity is taken into account when determining fair, just and reasonable rates for utility services? Would that be the utility's last rate case? Would that be how a matter is treated on Surveillance Reports? Would this even be utility specific or would this be a generic determination? Would a disallowance of an expense be considered to be a matter "taken into account?" If a type of activity was included for some but not all utilities when setting rates, how would that activity be treated? If the utility's last rate case were used, then how would new activities that emerge subsequent to the rate case be treated under this rule provision?

Subsection (2)

There are several terms used in the rules that are not defined and that people could disagree as to their intended meaning. For instance, the term "incremental cost" is used. How is that intended to be defined. The term "fully allocated costs" is used. What does that mean? In the definition of "subsidize" there is a reference to "their share of costs." What does that mean? There is a reference to "market price." What does that term mean?

Section (3) Non-Tariffed Affiliate Transactions

As stated above, the potential application of this draft rule is too broad. Is this rule supposed to apply to all non-tariffed affiliated transactions or just to non-tariffed affiliated transactions that relate to regulated services that the utility provides? Use appliance sales as an example. Assume FPL buys appliances from an affiliate. As long as the revenues, expenses and investment of appliance sales are separated from FPL expenses, revenues and investments for the delivery of electricity, why does the Commission have concern or jurisdiction over what FPL pays its affiliate for appliances? Why should the Commission be able to require competitive bidding? Does the Commission even have jurisdiction in such a circumstance?

There are numerous references to cost in this subsection of the rule; fully allocated costs, incremental costs, and market price. Do the terms "cost" and "price" include an element of profit? It should, but unless so stated, it may be construed not to include such an element?

Is this rule supposed to give guidance as to leases, assignments. It seems to be limited to purchases and sales of services and transfers of assets (presumably ownership transfers). If it is meant to give guidance for lease terms, what are the provisions that are applicable?

Section (3)(c)

Does the $500,000 relate only to services or products purchased from an affiliate and not to parent company charges? For example, if a holding company expects to allocate more than $500,000 in costs to a rate regulated utility, should the utility go out for bids to see if there is a cheaper holding company with which to affiliate? Would the $500,000 limit also be valid for a service company? How is the term "service" to be employed for purposes of this section? This could be interpreted in different ways.

The requirement for competitive bidding seems to imply that the lowest bid should be awarded the project. FPL believes that factors other than price (e.g. quality of the product or service, financial stability of the company providing the product or service, etc.) should also be considered. Would there be a violation of this rule if the lowest bidder is not selected?

Section (3)(d)

The transfer pricing policy for any transfer for assets should seek to satisfy the goals of economic efficiency and fairness to ratepayers. Transfer prices set within the range of fully allocated cost and market fulfill both the customer protection and efficiency goals regardless of the direction of the transfer.

Section (3)(e)

FPL does not understand why it is necessary for either the affiliate to maintain its accounting records in accordance with the USOA or for the utility to maintain a mapping system that reconciles the affiliate's accounts to the USOA. A cost benefit analysis should be performed to determine if this requirement is cost effective. No other supplier of the utility has such record keeping requirements. Therefore, the rule puts an affiliate at a competitive disadvantage. Similarly, a utility does not have to have a mapping system for non-affiliates. Thus, the rule gives non-affiliates an advantage.

Section (3)(f)

The utility should be responsible for maintaining details associated with affiliate transactions. Nonregulated affiliates should only keep the details required for their operations and not be bound by regulatory record keeping requirements.

Section (4)(a)(b)(d)

The requirements of these sections are not clear. How should a utility "show whether the transaction involves a product or service that is regulated or nonregulated?" Is this requirement to be applied to every transaction that is performed by the utility? Is this done by having separate point accounts; flagging the transaction by some way; or by some other method? How are direct costs "classified" for each service and product provided by the utility? FPL is not sure what is meant by the term "classified" used in subsection (b) or the phrase "maintaining a list of revenues and expenses" used in subsection (d). Depending on the intent and implementation of these sections of the rule,

considerable administrative burden may be imposed. It could potentially require significant enhancements/modifications to FPL's accounting systems.

Section (4)(c)

The words "will benefit" in the second sentence should be changed to "not be harmed." As long as there is no detrimental impact to the utility's ratepayers, the utility should not be forced to provide a benefit to the ratepayers as a condition of entering a transaction with an affiliate. If there is no detrimental impact on the ratepayers, they should be indifferent.

Section (6) Audit Requirements

FPL is concerned about the increased costs that will result from an independent audit of compliance with the CAM. The FPSC should utilize its existing staff to conduct these audits as they do for any other utility transactions.

Section (6)(b)

This section is not clear. When is the first audit report due? 2001 or 2004? When the compliance audit report is filed, what period does it cover – one year, all three years? What is the annual report referred to in the Rule? There are a number of reports the Company must file every year. There needs to be a more specific reference to the report in question.

Section (6)(c)

Requiring a report of every incident of non-compliance is unreasonable. The requirement is not even limited to errors discovered in the audit, thus, requiring the Company to conduct its own continuing review. Moreover, requiring a reporting of nonmaterial errors and irregularities is unjustifiable.

Section (6)(d)

There is no justification for imposing regulatory costs on a utility and then prohibiting the utility from recovering such costs as is proposed in the draft rule. Previous FPSC policy has been to allow government imposed costs in rates. The purpose of the rule is to ensure that ratepayers do not subsidize nonregulated operations. Since the rule is intended to protect the ratepayers, utilities should be allowed to recover the total costs of any required audits.

Rule 25-6.0436 Depreciation

Section (1) (f) It appears that this definition is missing the effects of salvage and cost of removal and amortization.

Section (2) (c) When plant investment is transferred to an affiliated company, FPL is not certain how a transfer of a reserve amount would comply with the USOA or GAAP.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Comments in Docket No. 980643-EI was served by Hand Delivery (when indicated with an *) or mailed this 11th day of August, 1999 to the following:

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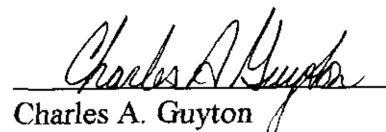

Charles A. Guyton