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RECORDS AND
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September 22, 1999

Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

Re: Docket Number 980643-EI

Dear Ms. Bayo:

On behalf of Florida Industrial Power Users Group, enclosed for filing and distribution are the original and 15 copies of the following:

- ▶ Comments of the Florida Industrial Power Users Group

Please acknowledge receipt of the above on the extra copy of each and return the stamped copies to me in the envelope provided. Thank you for your assistance.

Yours truly,

Vicki Gordon Kaufman
Vicki Gordon Kaufman

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EPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION **ORIGINAL**

In the matter of: Proposed Amendments
to Rule 25-6.1351, F.A.C., Cost Allocation
and Affiliate Transactions; Rule 25-6-.135,
F.A.C., and Rule 25-6.0436, F.A.C.,
Depreciation

Docket No. 980643-EI

Filed: September 22, 1999

Comments of the Florida Industrial Power Users Group

The Florida Industrial Power Users Group (FIPUG) hereby files its comments on the proposed rules discussed at the August 24, 1999 Staff workshop.

Introduction

1. FIPUG supports the Staff's efforts to strengthen the affiliate transaction rules in an attempt to ensure that captive ratepayers do not subsidize utilities' transactions with their affiliates.¹ The amount of resistance to the proposed rule changes expressed by the utilities at the workshop is just another indication of how badly strong revisions to the affiliate transaction rules are needed. As was pointed out at the workshop, if a utility finds any part of the rules burdensome or oppressive, it need merely refrain from affiliate transactions to remove itself from the purview of the rules. FIPUG's specific comments on the individual rule changes follows.

Specific Rule Comments

2. Subsection (1) of the rule addresses the purpose of the rule, which is to ensure proper accounting for affiliate transactions and utility non-regulated activities so that such transactions and

¹ FIPUG suggests that an additional way to ensure that ratepayers are not subsidizing utilities' dealings with their affiliates (which is not addressed in the proposed rule changes) is to ensure that *all* information regarding the prices and terms of affiliate transactions is made available to ratepayers who foot the bill for such transactions and should have the opportunity to analyze whether the transactions are in their best interests. When such information is kept from ratepayers it only increases the perception that such transactions are not above board.

activities are not subsidized by ratepayers. This is a goal that FIPUG wholeheartedly supports. However, the rule proposes to create a gaping exception to its laudable purpose. That is, it provides that the rule is *inapplicable* to affiliate transactions for fuel and transportation services which occur in cost recovery proceedings.

3. As the Staff (and the Commission) is well aware, approximately 40% of all revenues the utilities charge to ratepayers flows through the recovery clauses. This amount includes numerous affiliate transactions for fuel and transportation services. Such transactions should be subject to the same affiliate transaction rules as other affiliate transactions. Therefore, FIPUG recommends that the exception in subsection (1) be stricken.²

4. Subsection (2) includes definitions. Subsection (2)(e) defines "fully allocated costs" as "the sum of direct costs plus a *fair and reasonable* share of indirect costs." Term like *fair and reasonable* are certainly in the eye of the beholder. Therefore, FIPUG suggests that the rule define how indirect costs are to be allocated.

5. Subsection (3) addresses the actual pricing of affiliate transactions. Subsection (3)(b) requires a utility to charge an affiliate fully allocated costs for all non-tariffed services and products. However, this portion of the rule contains a huge loophole. It states:

Except, a utility may charge an affiliate less than fully allocated costs *if* the charge is above incremental cost and equivalent to market prices.

Emphasis supplied. This exception permits a utility to stray from charging the fully allocated cost to its affiliate based on a rule with no standards. The rule does not address how incremental cost will

²Some of the utilities suggested that there are "existing orders" which govern these transactions. (Tr. 24). However, there is no reason of which FIPUG is aware that would prohibit the Commission from adopting rules to regulate *any* affiliate transaction, fuel or otherwise.

be determined. And, more importantly, it does not have any standard by which to judge if a transaction is equivalent to market prices.³

6. When this portion of the rule was discussed at the workshop, inquiry was made as to how this exception would work. Staff's initial inclination was to test the utility's use of the exception in an audit. FIPUG strongly objects to such a procedure. Customers have no knowledge of or input into an audit; usually, they are not even aware an audit is taking place and even if they do, information in the audit is often kept secret. FIPUG suggests that if the exception provision remains in the rule that, of course, as the Staff stated the burden is on the utility to demonstrate it has met the requirements of the exception. But further, such showing should be made in a proceeding open to customers, so they have the opportunity to review the information on which the utility relies and challenge it if necessary. After all, it is the customers who pay for these transactions; they should be able to review them. Additionally, some utilities suggested that there be an exception for parent companies or holding companies. (Tr. 81). FIPUG opposes such an exception for the reasons articulated by Mr. Devlin. (Tr. 82). Many affiliate transactions occur between the utility and its parent company because of the unique advantage a utility has in relationship to its parent. Such transactions should be subject to the rule.

7. Subsection (4) addresses cost allocation principles. Subsection (4)(c) deals with indirect costs and states that "indirect costs shall be distributed on a fully allocated cost basis." However, again exception language appears in the rule. The exception states:

Except, a utility may distribute indirect costs on an incremental basis if the utility can

³ The rule does not appear to require a competitive bid, except when the utility plans to spend more than \$500,000 in a calendar year, which is the usual method by which a transaction is compared to market price.

demonstrate that *its ratepayers will benefit*.

Emphasis added. As with the exception in subsection (3)(b), this exception has no standards and creates another loophole in the rule. FIPUG suggests that this exception be deleted; however, if it remains in the rule, as in subsection (3)(b), the utility should be required to make a public showing, where customers can participate, that the transaction *benefits* the ratepayers.⁴

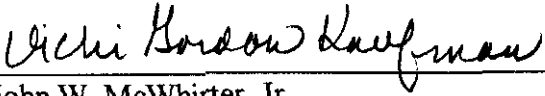
8. Subsection (6) requires each utility engaging in affiliate transactions to file an audit report with the Commission issued by an independent auditor. FIPUG supports such a requirement and further would suggest that such audit report be made available to the public. There was much opposition to this proposal from the utilities. (Tr. 141-142; 149-150). However, as mentioned above, if the utilities object to this requirement all they need do is refrain from affiliate transactions. Some utilities also suggested that while the rule requires the utility to bear the cost of the audit, that the ratepayers should be responsible for the audit's costs. As Mr. Devlin aptly stated, the cost of the audit should be borne by the utility for the privilege of engaging in these types of transactions. (Tr. 143).⁵

⁴ Some utilities suggested that the standard for the exception in this subsection should be that no harm accrues to the ratepayers. (Tr. 135-136). It is FIPUG's position that the standard for the exception, if the exception remains in the rule, is that the ratepayers should *affirmatively benefit* from the affiliate transaction.

⁵ Mr. Devlin also correctly noted that this is no different than what already occurs in the telecommunications industry. (Tr. 143-144).

Conclusion

9. The Staff should go forward with the rules, incorporating the suggestions FIPUG has made herein.



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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Comments of the Florida Industrial Power Users Group have been furnished by (*) hand delivery or U.S. Mail to the following this 22nd day of September, 1999:

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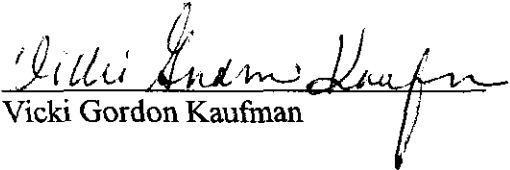
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