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ORIGINAL

September 22, 1999

Ms. Mary Anne Helton, Esquire
Associate General Counsel
Public Service Commission
4075 Esplanade Way
Tallahassee, Florida 32399

BY HAND DELIVERY

Re: Docket Number 980643-EI – Proposed Amendments to Rules 25-6.1351, 25-6.135, and 25-6.0436, Florida Administrative Code

Dear Ms. Helton:

On behalf of R.A.C.C.A., Inc., this letter will serve as follow up comments to the August 24, 1999 rule development workshop relating to the above referenced rules. We very much appreciate the time and opportunity provided for comment at the workshop, and we hope these additional comments will be useful to you.

As you may recall, those of us in the construction industry generally express concern about cross-subsidization by utility companies with respect to business activities not regulated by the Public Service Commission. It is our position that utility companies should not use <u>any</u> ratepayer monies for any business expense that is not directly related to the provision of the specific utility product or service. It is also our position that there should be very strict accounting requirements in place to show unequivocally that no part of ratepayer funds, whether or not tangible, are used in the activities of unregulated affiliates of utility companies.

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This is of great concern to the construction industry because we know of many ventures by utility companies into the construction, maintenance, and repair business. While we do not object to fair competition, we consider the use of

Done 10/11/99

advantages such as established utility company name recognition, monthly invoice mailings for stuffers on additional nonregulated products or services, and existing utility company assets (such as trucks, office space, and management) as an unfair way to enter into a new market.

We look for the support of the Public Service Commission in ensuring that utility companies enter into new business areas the same way anyone else must – by use of business capital that was not obtained through a regulated monopoly intended to serve a necessary public purpose.

We express some concern with the definition of the term "affiliate." Based on points raised by utility company representatives at the workshop, it is clear that some affiliates are used for the purpose of supplying products or services used directly in the utility's regulated product. Both by definition and rules for accounting and conduct, we believe this type of affiliate should be differentiated from an affiliate that is owned for the purpose of diversifying and increasing the business interests of the utility company.

At the workshop, there was extensive discussion and consideration of cost allocation and "market" value of services, products, and assets that may be transferred between the regulated utility company and its unregulated affiliate. In order to have fair competition, we believe there is no question but that the valuation must be "fair market value" under all circumstances. However, this may not be necessary or desirable for transfers between the regulated utility and an affiliate supplying direct materials or labor for the generation or distribution of power. A distinction needs to be made in rule.

A specific example of our concern over determination of value is the use of a stuffer advertising the availability of an unregulated service provided by a start-up affiliate of a utility company (copy of a stuffer enclosed). In this case, if the stuffer does not increase the cost of postage per piece, it can be argued that there is no use of ratepayer monies beyond the cost of copying and additional labor. However, this does not take into account the use of goodwill, even if only implied, of the established utility company. It would be almost impossible for a customer to fail to see the endorsement of the utility company with this type of a stuffer. It also does not account for the perception to the utility customer that purchase of this affiliate's product or service is risk free because it also comes under the jurisdiction of the Public Service Commission.

This type of bill stuffer gives an affiliate an unfair advantage in use of goodwill (the response rate is probably much higher than for an unknown start-up

business) as well as all other costs associated with a mass mailing. This is the precise problem with cross-subsidization. We believe that, under the current rules and given the expressed interests of utility companies, the potential for cross-subsidy is enormous and has already taken place for a number of years.

For transactions between a regulated utility and an unregulated affiliate, we believe the rules for accounting must be specific and rigorous, despite the concerns over additional costs for accounting raised by utility company representatives at the workshop. These companies cannot deny the tremendous advantage they have had in using the utility company's presence to diversify and venture into unregulated areas. Additional and strict accounting is a small price to pay for the ability to use goodwill and other assets without having to provide ratepayers with a return on what amounts to their investment.

Under these particular circumstances, it is imperative that the definition and treatment of "affiliate" distinguish between:

a. affiliates related to the regulated activity (such as coal plants or other businesses that may provide products or services included in the manufacture and sale of the regulated industry), and

b. affiliates engaged in nonregulated activity (such as appliance warranty programs, home repair services, appliance sales, or any other product or service that is not included in or a part of the manufacture and sale of the regulated industry).

A good example of a specific area that calls for distinction is the definition of "subsidize." Where it may be acceptable to attribute some subsidy to a ratepayer for affiliate transactions that are directly associated with generating or providing power, this is not at all acceptable for indirect unregulated affiliate transactions. For the latter case, the proposed rule definition of the term "subsidize" should be amended to read (words underlined are added, words ~~strickenthrough~~ are deleted):

(i) Subsidize – The act of utility ratepayers paying any ~~more than their~~ share of costs associated with ~~affiliate transactions and~~ utility nonregulated activities.

We note that a number of Florida's utility companies each sent one to three representatives to the August 24 workshop, and a fair amount of the workshop involved raising points and discussing issues relating to cross-subsidization. This, in and of itself, may be cross-subsidization. In any event, engaging in nonregulated

activities is clearly an area considered profitable by utility companies. If utility companies see additional accounting requirements and costs as too burdensome, they will confine themselves to regulated activities.

By this letter, we respectfully request that the Public Service Commission adopt two sets of rules that properly distinguish between these two types of affiliate transactions.

Your favorable consideration of these issues will be greatly appreciated. If you have any questions or would like any additional information, please do not hesitate to contact me as indicated above.

Sincerely,

Anna Cam Fentriss
Governmental Consultant
to R.A.C.C.A., Inc.

cc: Keane Bismarck, Executive Director, R.A.C.C.A., Inc.
Members of the Construction Coalition

Enclosures: Article from Gold Coast Newsletter, August 1999
Florida Power Home Wiring Service Utility Bill Stuffer

UTILITY DEREGULATION UPDATE

Draft Utility Deregulation Legislation Introduced

Representatives Tom Biley (R-VA), Chairman of the House Commerce Committee, and Joe Barton (R-TX) Chairman of the Subcommittee on Energy and Power, released the major elements of the "Electricity Competition and Reliability Act" on July 15.

One key provision directs the Federal Trade Commission to issue rules preventing utilities from cross-subsidizing services that are subject to competition, such as HVAC/R.

The legislation also mandates access to holding company books and records and expands the existing Federal Energy Regulatory Commission's (FERC) authority to impose civil penalties. An Office of Consumer Counsel at FERC is established to represent the interests of electric consumers in proceedings before FERC.

Grassroots involvement is crucial to reach our goal: passage of a federal restructuring bill including provisions prohibiting cross-subsidization. Because there is movement, NOW is the time to put pressure on members of the Commerce Committee to add language ensuring fair competition for services in affiliate operations.

Please contact your members of Congress. Tell them that, for competition to truly work in a market increasingly dominated by multi-state holding companies, we must have federal legislation to help the states provide for a level playing field. This means federally mandated open access to books and records and an enforcement mechanism. Urge your member of Congress on the Commerce Committee to ensure fair competition by prohibiting cross-subsidization in federal legislation restructuring the electric utility industry. Please send a copy of your letters, faxes or e-mail to the National ACCA Office. We'll put them in a packet for Capitol Hill visits. If you need help identifying your Member of Congress, use ACCA's Legislation Action Center at **www.acca.org** or contact Cher Coker at 202/483-9370 ext. 217.

We're at the point where Members of Congress now recognize the negative impact of cross-subsidization on small business. Unfortunately, many still feel the states can handle it alone. We know they can't. Yet Congress is shy of mandating anything on the states so they are reluctant to go much further. You need to convince them otherwise. ▲

Introducing Home Wiring Service

from Florida Power Corporation

If only your wires could talk. Then maybe they'd alert you to impending electrical problems. But, of course they can't. Which is why Florida Power developed Home Wiring Service. A service that protects you from the sometimes steep costs associated with unexpected electrical repairs.

For only $2.95 a month, Home Wiring Service provides peace of mind for your home against problems with outlets, switches, fuses, breakers, inside wiring and even your outside meter. Can up to $500 [illegible] a small price to pay when you consider the cost of most home electrical repairs.

To sign up for Home Wiring Service, call toll-free 1-888-999-8856 or send in the attached reply card.

Compare the $2.95 monthly fee to the average cost of most home electrical repairs.

TYPICAL WIRING PROBLEM	POTENTIAL REPAIR COST*	WITH HOME WIRING SERVICE
repair main breaker	*$152.00*	*no charge*
repair interior wiring	*195.00*	*no charge*
repair outlet	*85.00*	*no charge*
repair light switch	*85.00*	*no charge*
electrical service call	*55.00*	*no charge*

* Based on market prices

Also, when you sign up, you can enjoy peace of mind knowing that service requests can be made anytime a problem may arise, 24 hours a day/7 days a week. Repairs will be performed by a qualified, licensed electrical contractor who is pre-approved by Florida Power. And, as an added value to you, if there is ever a problem that's not covered by the service, our certified contractor will provide you with an estimate for the costs at a 15% discount.

Home Wiring Service is a voluntary program that provides Florida Power Corporation's Home Wiring Service. The program does not cover code violation, upgrades, neglect or abuse, lighting, low voltage wiring, appliances, service to obsolete parts. A complete description of the terms and conditions of the Home Wiring Service, including aggregate liability limits, is contained in the Home Wiring Service Contract, a copy of which will be sent to each new subscriber. Please read the Home Wiring Service Contract carefully after you receive it.

YES,
sign me up!

Please enroll me in Florida Power Corporation's Home Wiring Service and include the $2.95 monthly fee on my monthly power bill.

Name (Please Print)

Address

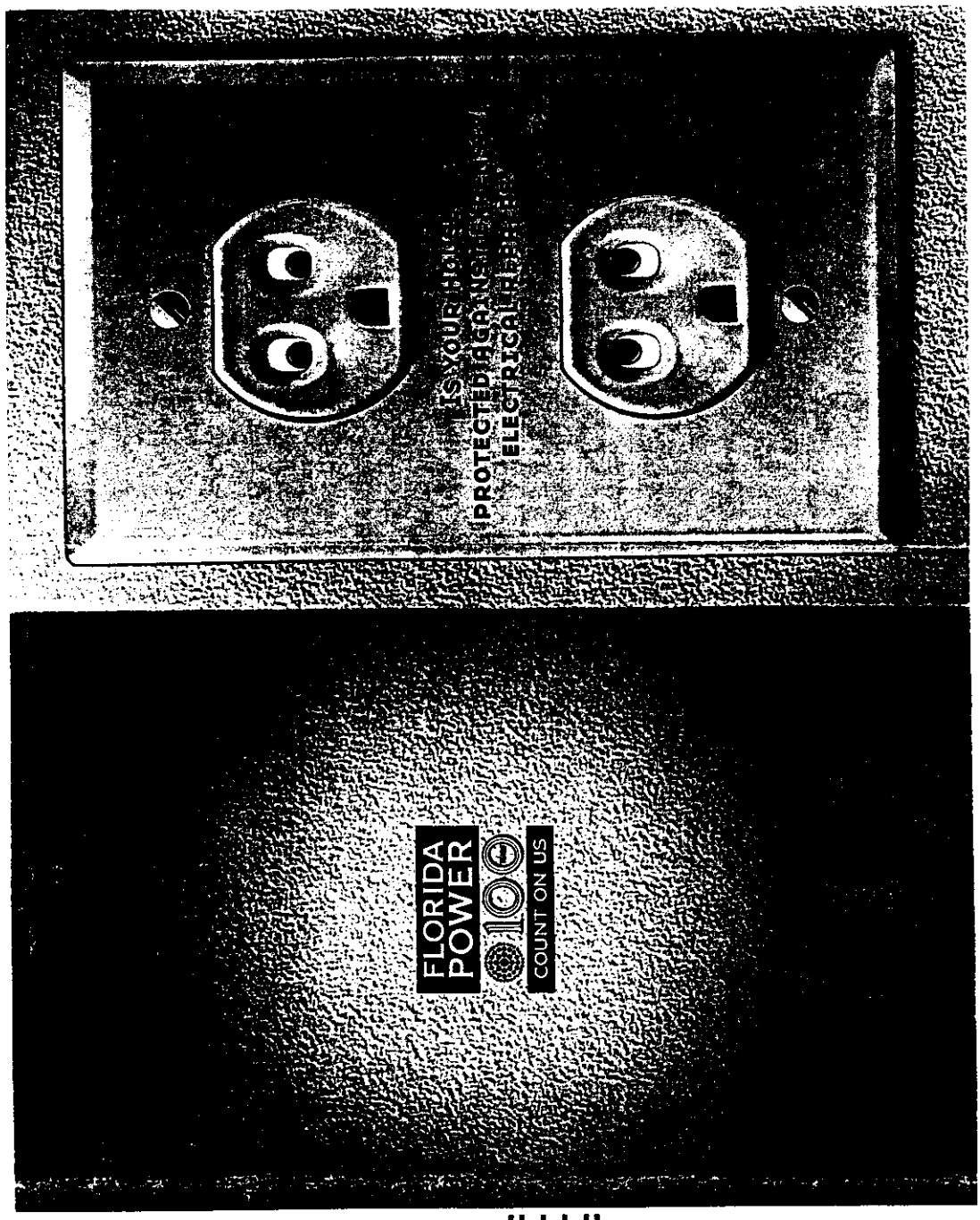
City State Zip

Florida Power Account Number

FLORIDA POWER 100 COUNT ON US

FL License #EC0001658

5/99 921416



FLORIDA POWER 100 COUNT ON US

NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES

BUSINESS REPLY MAIL

FIRST CLASS MAIL PERMIT NO. 292 ST. PETERSBURG, FL

POSTAGE WILL BE PAID BY ADDRESSEE

ENERGY SOLUTIONS℠ SP56
FLORIDA POWER CORPORATION
P O BOX 14042
ST PETERSBURG FL 33733-9836

FLORIDA ASSOCIATION OF
PLUMBING • HEATING • COOLING CONTRACTORS

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INDUSTRIAL RELATIONS COMMITTEE
1461 Stamford St., Port Charlotte, Fl. 33952
Telephone: 941/625-0003 or 941/625-6994

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941/624-2300

DATE: September 21, 1999.

TRANSMISSION: Cover plus: 3 page(s).

TO: Florida PSC
2540 Shumard Oak Blvd.
Tallahassee, Fl.
Tel.: 850/413-6425.
Fax: 850/487-1716.

ATTENTION: Joe Garcia, Chairman

REGARDING: Docket #980643-EI, i.e. Rules 25-6.135, 25-6.1351 and 25-6.0436.

MESSAGE: The enclosed materials are in response to the Docket mentioned above in regards to the hearing that was held at the PSC on August 17, 1999.

It is our belief that the best way to ensure that cross-subsidization does not occur is to completely segregate public-sector (utility) and private-sector (business) operations.

Knowing that the PSC is responsible to ensure that ratepayers are fairly charged, and that your resources and efficiency could be taxed by ambiguous or non-existent data from utilities, it only seems reasonable that if a utility should want to venture into the private-sector that it should "pay" for that privilege.

Please inform me of the next hearing re: this subject. Thank you.

Sincerely,

Chuck Vaughn, Chairman
Industrial Relations Committee

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Page 1: (1) PURPOSE.
The purpose of this rule is to establish cost allocation requirements to ensure proper accounting for affiliate transactions and utility regulated and non-regulated activities so that these transactions and activities are not subsidized by utility ratepayers.

(1)(a) RULE INTENT.
In consideration of the purpose of this rule, it is the intent of this rule to ensure that the following requirements are maintained at all times:
(1) a utility and its affiliate(s) shall be separate corporate entities;
(2) a utility and its affiliate(s) shall keep separate books and records;
(3) a utility shall not share space, equipment, services and systems with its affiliate(s); and
(4) a utility shall not allow its affiliate(s) to access its computer or information systems.
It is the intent of this rule to completely separate the utility and its affiliate(s), and to require such documentation so as to ensure maintaining that segregation.

Page 2: (2)(b) AFFILIATED TRANSACTION.
Any transaction in which both a utility and an affiliate are each participants.

Page 2: (2)(e) FULLY ALLOCATED COSTS.
The sum of all direct and indirect costs.

Page 3: (3)(b)
A utility must charge an affiliate, or any other entity, fully allocated charges for all non-tariffed services and products purchased by the affiliate or entity from the utility. Rule 25-6.014(3), FAC shall not apply in this instance.

Page 3: (3)©
A utility shall not apportion to regulated operations the lesser of fully allocated costs or market price when purchasing services or products from an affiliate.
A utility can not employ any products or services from an affiliate that have not not been established and advertised by that affiliate.

Page 3: (3)(d)
A utility asset can not be transferred from a utility to another utility or a regulated or non-regulated affiliate, but rather must be purchased after it has been openly advertised to all potential bidders. An asset of a regulated or non-regulated affiliate can not be transferred to a utility, but rather must be purchased after it has been openly advertised to all potential bidders. Minimum allowable bids must be based on a price not less than the market value as established by an independent appraiser, or net book value as applicable.

Page 4: (3)(e)
Rule 25-6.014 does not apply in this instance.

Page 4: (3)(f)
Asset transactions between affiliates can not be transferred, but rather must be purchased after the asset(s) have been openly advertised to all potential purchasers. Minimum allowable bids must be based on a price not less than market value as established by an independent appraiser, or net book value as applicable. Such assets transactions, when occurring between affiliates, must:
(1) be held by the purchasing affiliate for a minimum of two years;
(2) records be kept by the selling affiliate for a period of not less than three years [refer to (6)(b) Audit Requirements] after the sale, and shall indicate any payment relative to taxes, etc. on monies received from the sale of such asset(s); and
(3) records be kept by the purchasing affiliate for a period of not less than three years [refer to (6)(b) Audit Requirements] after the sale, and shall indicate the addition of the asset(s) to the affiliate's inventory and an accounting of all costs incurred in the purchase and inventory of the asset(s).

Page 4: (4) COST ALLOCATION PRINCIPLES.
Omit all sections.

Page 5: (5) REPORTING REQUIREMENTS.
Each utility shall file such information concerning its operations, its affiliates and their operations, any and all transactions between same, any non-regulated activities, and any other such information as required by the Florida Public Service Commission (PSC) on such forms as provided by the PSC.

Page 5: (6)(a)
Omit.

Page 5: (6)(b)
Each utility shall file with the Commission an audit report issued by an independent auditor reporting on the utility's operation and compliance with PSC rules. Beginning with the first compliance audit due on January 1, 2001, the compliance audit shall be performed no less than every three years. An audit report shall be filed with the annual report or within thirty days of filing the annual report required by Rule 25-6.135.

Page 5: (6)(c)
Each utility shall file, along with the audit report, a list of all errors, irregularities, and incidents of non-compliance with PSC rules as detected by the independent auditor during the audit, regardless of materiality.

Page 11: (2)(c)
Omit.

Page 11: (2)(c) 1.
Omit.

Page 12: (2)(c) 2.
Omit.

Page 12: (2)(c) 3.
Omit.

Page 12: (2)(c) 4.
Omit.