

**ANNA CAM FENTRISS**  
**GOVERNMENTAL RELATIONS**  
**PMB 243**  
**1400 VILLAGE SQUARE BOULEVARD, NUMBER 3**  
**TALLAHASSEE, FLORIDA 32312**  
**TELEPHONE (850) 222-2772 ♦ FACSIMILE (850) 224-0580**  
**PAGER (850) 422-7254**

RECEIVED FPSC  
NOV - 2 AM 9:37  
RECORDS AND REPORTING

November 2, 1999

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

**BY HAND DELIVERY**

**ORIGINAL**

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 Florida IEC (Independent Electrical Contractors), this letter will serve as additional comments to those already made by other segments in the construction industry.

It is the position of Florida IEC that Florida's utility companies engage in cross-subsidization at an increasing rate, causing substantial undue hardship to the electrical construction industry. Such unfair competition by a government-regulated industry has serious consequences, destroys the faith of the public, and jeopardizes the value of the good work of the Public Service Commission.

Florida IEC respectfully requests that the Public Service Commission consider adopting separate and specific rules governing the use of ratepayer funds and assets by utility companies for nonregulated activities. Attached please find proposed language supported by Florida IEC for use in rule or statute.

Florida IEC respectfully requests an opportunity to address the Public Service Commission concerning these issues.

Sincerely,

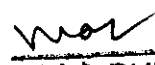


Anna Cam Fentriess  
Governmental Consultant  
To Florida IEC

cc: Cecil Leedy / Alan Sims, Florida IEC  
Members of the Construction Coalition

Attachment: IEC Draft Language for State Legislation

AFA  
APP Helton  
CAF  
CMU  
CTR  
EAG  
LEG  
MAS  
OPC  
PAI  
SEC  
WAW  
OTH

**RECEIVED & FILED**  
  
**FPSC-BUREAU OF RECORDS**

*Done 11/03/99*

DOCUMENT NUMBER-DATE  
~~12102~~ NOV-2 99  
FPSC-RECORDS/REPORTING

# I E C



Independent Electrical  
Contractors, Inc.

## PARTICIPATION BY PUBLIC UTILITIES IN PROVIDING CERTAIN NON-UTILITY SERVICES

*[Draft Language for State Legislation]*

**(a) In General -**

(1) Permitted Activities - Notwithstanding any law to the contrary, any public utility company, subsidiary, affiliate, or associate company of a public-utility company, may engage in, directly or indirectly, any activity, wherever located, necessary or appropriate to the provision of non-utility energy related services as described herein, subject to the provisions of this Act and the jurisdiction of the *[state utility regulatory authority]*.

(2) Non-Utility Services - No public utility company shall engage in the provision of energy services, including but not limited to, the design, sale, distribution, lease, rental, installation, construction, modernization, retrofit, maintenance or repair of energy related systems, products or equipment, including household appliances, except as permitted under this section. .

(A) Exceptions. The provisions of this section shall not be applicable in instances of emergency or to protect the life, health, or safety of any customer or property; or where the utility is the sole source of such systems, products, equipment or services.

**(b) Prohibition of Cross-Subsidization -**

The *[state utility regulatory authority]* shall exercise its jurisdiction pursuant to this Act and to the extent otherwise authorized under applicable law with respect to prohibiting the cross subsidization of the activities described in subsection (a) by a public-utility company in its rates for electric or gas services, and to make appropriate rate adjustments, disallow any cost recovery, or make any determination regarding the allocation of charges, to eliminate the effects of any cross-subsidization or to prohibit any unjust, unreasonable, preferential or discriminatory rate. A public utility company shall not directly or indirectly include in regulated rates or charges any costs or expenses of an affiliate, subsidiary, or associate company engaged in any business other than a utility business unless the affiliate, subsidiary or associate company provides goods or services to the utility. Any included costs shall be reasonably necessary and appropriate for a utility business, and directly related to such goods or services provided. A public utility company shall only provide non-utility services in a manner that prevents the possibility of cross-subsidization, cross-shifting, or unfair competitive advantage.

**(c) Establishment of Competitive Markets -**

The *[state utility regulatory authority]* is authorized and directed to initiate any investigation, respond to any complaint, promulgate such rules, issue such orders and to take such actions as may be necessary to assure compliance with this Act and to establish, preserve and enhance fair, open and competitive markets for the provision of energy and energy related services.

**(d) Structural and Transactional Requirements. -**

Any activity authorized under subsection (a) shall only be conducted under a subsidiary, affiliate, or associate company which is separate from any public utility company engaged in the generation, transmission, or distribution of electric power or gas.

**(1) Such separate company, affiliate, or associate company –**

**(A) shall maintain books, records, and accounts in the manner prescribed by the state public utility commission which shall be separate from the books, records, and accounts maintained by the public utility company of which it is an associate or affiliate company and any other subsidiary or affiliate of such public utility company; shall maintain proper internal cost-allocation procedures as prescribed by the [state utility regulatory authority],**

**(B) shall have separate officers, directors, and employees from the public utility company;**

**(C) may not obtain credit under any arrangement that would permit a creditor, upon default, to have**

**recourse to the assets of a public utility company; and**

**(D) shall conduct all transactions with the public utility company of which it is an associate or affiliate on an arm's length basis with any such transactions reduced to writing and available for public inspection.**

**(e) Independent Audit Authority for State Commissions; Books and Records -**

**The [state utility regulatory authority] of Public Utilities may request that any public utility company or its associate, subsidiary or affiliate company engaging in activities covered by the provisions of this Act have performed, no more frequently than on an biannual basis, an independent audit of transactions between such public-utility company, its affiliates, subsidiaries, or associates companies.. If such an audit is ordered, the State Commission shall select and supervise an independent management or other accounting firm to perform the audit. The company shall bear the costs of performing such an audit. The audit report shall be provided to the State commission within 6 months of the audit request.**

**(1) Every public utility company and affiliate, subsidiary or associate company shall provide the [state utility regulatory authority] with access to books, records, accounts, documents and other data and information which the [state utility regulatory authority] finds necessary to effectively implement and effectuate the provisions of this Act.**

**(2) The [state utility regulatory authority] may inquire as to and prescribe, for ratemaking purposes, the allocation of capitalization, earnings, debts, and expenses related to ownership, operation or management of affiliates, subsidiaries or associate companies.**

**(f) Fair Competition -**

**In its dealings with its subsidiary or affiliate as described in subsection (a):**

**(1) a public utility company -**

**(A) may not unfairly discriminate in favor of its subsidiaries or affiliates, or any other entity in the provision or procurement of, or access to, or charges for, goods, services, facilities or systems, information or data, or in the establishment of any standards or criteria, or in the referral of customers;**

**(B) may not provide information, including marketing leads, to such company, its subsidiaries or affiliates, unless such information is made available to other persons on reasonable and non-discriminatory terms and conditions; nor shall any utility provide, transfer, or permit the use of, or access to, tangible or intangible assets of the utility which were acquired with ratepayer funds unless such transfer, provision, or other use of such assets is fully compensated by the subsidiary, associate, or affiliated company and shall not result in the conference of any unfair or uncompetitive advantage or result;**

**(C) shall account for all transactions with a subsidiary, affiliate or associate company in accordance with generally accepted accounting principles and shall fully value any assets, tangible or intangible, that are transferred directly or indirectly from the public utility company to its affiliates, subsidiaries or associate companies, and shall record such transactions, in accordance with such regulations as may be prescribed**

by the *[state utility regulatory authority]* to prevent improper cross subsidies.

(D) the name, logo, service mark, trademark, or trade name of the separate subsidiary or affiliate of a public utility company shall not resemble the name, logo, service mark, trademark or trade name of the public utility company and neither the public utility company nor the separate subsidiary or affiliate may trade upon, promote, or advertise their affiliate or related status.

(2) An affiliate, associate company or subsidiary of a public utility company may not use the vehicles, service tools and instruments, or employees the costs, salaries, or benefits of which are recoverable in the regulated rates of any public utility company. This section shall not be construed to prohibit a public utility company from using its vehicles, tools and instruments or employees to provide utility services or to eliminate a customer emergency or threat to public health or safety.

(g) Proprietary Information. -

(1) In complying with the requirements of this section, each public utility company and any subsidiary, affiliate, or associate company of such public utility company shall have a duty to protect the confidentiality of propriety information of competitors and customers. A public utility may not share customer proprietary information in aggregate form with its subsidiaries, affiliates or associate companies unless such aggregate information is available to other competitors or persons under the same terms and conditions. Individually identifiable customer proprietary information and other proprietary information may be -

(A) shared only with the knowledgeable, written consent of the person to which such information relates or from which it was obtained; or

(B) disclosed to appropriate authorities pursuant to court order.

(2) Exceptions. - Paragraph (1) does not limit the disclosure of individually identifiable customer proprietary information by each public utility as necessary -

(A) to initiate, render, bill, and collect for the service or products requested by a customer; or

(B) to protect the rights or property of the public utility, or to protect users of any of those services from fraudulent, abusive, or unlawful use of any such service.

(h) Implementation -

The *[state utility regulatory authority]*, for each public utility company under its jurisdiction, either singularly or through a generic proceeding affecting all such public utilities, shall:

(1) Hold a hearing and make a determination based on evidence presented in the record as to what rules, procedures, or other actions are necessary to implement the safeguards set forth in subsections (a) - (g) of this Section;

(2) promulgate any regulations, standards or codes necessary to implement the provisions of this Act (which shall be equally applicable to the provisions of any competitively available service or product) within one year from the date of enactment of this Act, and

(3) shall report to the State Assembly as to the actions taken and the results thereof pursuant to the provisions of this Act within two years from the date of enactment.

(i) Enforcement -

(A) Any person may file a written complaint with the *[state utility regulatory authority]* requesting the *[state utility regulatory authority]* to determine compliance by a rate-regulated public utility company with the provisions of this Act or any validly promulgated rules,

orders so issued, or other actions approved by the *[state utility regulatory authority]* to implement the provisions of this Act. If the *[state utility regulatory authority]* determines there is reasonable grounds to investigate the complaint, the *[state utility regulatory authority]* shall promptly initiate formal complaint proceedings. Such proceedings may be initiated by the *[state utility regulatory authority]* at any time upon its own motion. If the *[state utility regulatory authority]* determines that there is no reasonable basis for initiating an investigation or initiating a formal complaint proceeding, it shall so advise, in writing, the person filing such written complaint within 90 days.

(B) The *[state utility regulatory authority]* may establish such civil penalties as may be necessary to assure compliance, including the imposition of fines not to exceed \$50,000 for each violation of the provisions of this Act.

(C) Any person filing a complaint and any person subject to any fine, penalty or other enforcement action of the *[state utility regulatory authority]* shall have the right of judicial review in the appropriate court of this State. For the purpose of such review, the denial of the *[state utility regulatory authority]* to investigate or to commence a formal complaint procedure within 90 days shall be considered final agency action.