

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of : DOCKET NO. 980643-EI
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PROPOSED AMENDMENTS TO RULES :
25-6.135, F.A.C, ANNUAL REPORTS; :
25-6.1351, F.A.C., COST :
ALLOCATION AND AFFILIATE :
TRANSACTIONS; AND 25-6.0436, :
F.A.C., DEPRECIATION. :

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PROCEEDINGS: RULE HEARING

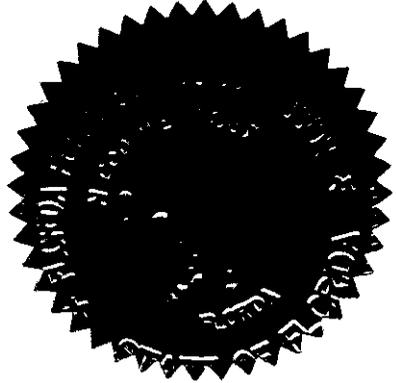
CONDUCTED BY: CHRISTIANA T. MOORE

DATE: Thursday, June 22, 2000

TIME: Commenced at 9:30 a.m.
Concluded at 11:45 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
FPSC Division of Records & Reporting
Chief, Bureau of Reporting
(850) 413-6732



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1 **IN ATTENDANCE:**

2 MARY ANNE HELTON, Florida Public Service
3 Commission, Division of Appeals, 2540 Shumard Oak
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5 appearing on behalf of the Commission Staff.

6 HARRY LONG, 702 North Franklin Street,
7 Tampa, Florida 33602, appearing on behalf of TECO
8 Energy.

9 RUSSELL BADDERS, Beggs and Lane, 3 West Garden
10 Street, Suite 700, Pensacola, Florida 32576, appearing on
11 behalf of Gulf Power.

12 CHARLES A. GUYTON, Steel, Hector and Davis, 215
13 South Monroe Street, Suite 601, Tallahassee, Florida
14 32301-1804, appearing on behalf of Florida Power and Light
15 Company.

16 JIM MCGEE, 3201 34th Street South, St.
17 Petersburg, Florida 33711, appearing on behalf of
18 Florida Power Corporation.

19 ANNA CAM FENTRISS, Governmental Relations
20 PMB 243, 1400 Village Square Boulevard, No. 3,
21 Tallahassee, Florida 32312, appearing on behalf of
22 Refrigeration and Air Conditional Contractors
23 Association, Inc. (RACCA), and Florida Independent
24 Electrical Contractors (IEC).

25

1 **APPEARANCES CONTINUED:**

2 RICHARD WATSON, 108 East Jefferson Street,
3 Suite C, Tallahassee, Florida 32301, appearing on
4 behalf of Florida Air Conditionng Contractors
5 Association, Florida Association of Plumbing,
6 Heating and Cooling Contractors, and Florida
7 Association of Electrical Contractors,

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9

10 **ALSO PRESENT:**

11 TIM DEVLIN, DALE MAILHOT, BETH SALAK,
12 CRAIG HEWITT and PAT LEE, FPSC Division of Economic
13 Regulation.

14 JOSEPH McCORMICK, TECO Energy Regulatory
15 Affairs Department.

16 RICHARD McMILLAN, Gulf Power Company.

17 DON BABKA, Director of Regulatory and Tax
18 Accounting, Florida Power and Light Company.

19 JAVIER PORTUONDO, Manager of Regulatory
20 Accounting, Florida Power Corporation.

21 LARRY HOUFF, Governmental Relations.

22 CECIL LEEDY, Leedy Electric.

23 LARRY COX, Cox Electric.

24 PAUL STEHLE, Manasota Air Conditioning
25 Contractors.

1 ALSO PRESENT (Continued):

2 KEANE BISMARCK, Refrigeration, Air
3 Conditioning Association (RACCA.)

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PRESENTATIONS BY:

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EXHIBITS

NUMBER:

1	FPSC Composite Exhibit No. 1	9
2	Revisions to Rule 25-6.1351	11
3	Letter from Anna Cam Fentriss to Mary Anne Helton, Dated 6-22-00	27
4	FPL's Suggested Revision to Rule 25-6.1351	50
5	Transcript of Item #3 of 4-18-00 Agenda Conference	51

CERTIFICATE OF REPORTER

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P R O C E E D I N G S

THE HEARING OFFICER: Good morning. My name is Christiana Moore, and I am an Associate General Counsel with the Commission, and I will be the hearing officer today.

The hearing will be conducted to the rulemaking -- according to the rulemaking provisions of Section 120.54, Florida Statutes. The proposed rules that we are concerned with today are Rules 25-6.135, 25-6.135(1), and 25-6.0436. The amendments to the rules were proposed in a notice published in the Florida Administrative Weekly on May 5th, 2000.

The purpose of the hearing is to allow the Commission to inform itself of matters bearing on the proposed rule amendments by giving affected persons an opportunity to present evidence and argument on the merits of the amendments.

First, I would like to take appearances, and introduce yourselves and anyone who will be participating in the hearing, please, also.

Staff, would you like to begin?

MS. HELTON: I'm Mary Anne Helton, an attorney here with the Commission staff. And also participating will be Tim Devlin, who is the Director of the Division of

1 Economic Regulation, Dale Mailhot, Beth Salak, Craig
2 Hewitt and Pat Lee.

3 THE HEARING OFFICER: Thank you. Could you
4 please continue.

5 MR. LONG: Yes. My name is Harry Long. I'm an
6 attorney for TECO Energy, and with me is Mr. Joseph
7 McCormick of our Regulatory Affairs Department.

8 MR. BADDERS: Russell Badders of the law firm of
9 Beggs and Lane here on behalf of Gulf Power Company. With
10 me today is Richard McMillan of Gulf Power.

11 MR. GUYTON: Charles Guyton with the law firm of
12 Steel, Hector, and Davis appearing on behalf of Florida
13 Power and Light Company. With me here is Don Babka, who
14 is the Director of Regulatory and Tax Accounting for
15 Florida Power and Light.

16 THE HEARING OFFICER: Thank you. Did you say
17 Don Babcock?

18 MR. GUYTON: Babka, I'm sorry.

19 THE HEARING OFFICER: Thank you.

20 MR. MCGEE: Jim McGee on behalf of Florida Power
21 Corporation. With me is Javier Portuondo, who is Manager
22 of Regulatory Accounting for Florida Power.

23 THE HEARING OFFICER: Anyone else?

24 MS. FENTRISS: My name is Cam Fentriss, and I am
25 here on behalf of RACCA and IEC Florida. And with me

1 today I have Larry Houff, who is a CPA who is working with
2 us. I also have Mr. Cecil Leedy, who is with Leedy
3 Electric; Mr. Larry Cox, who is with Cox Electric; I have
4 Paul Stehle, who is here on behalf of MACCA, which is
5 Manasota Air Conditioning Contractors; and Keane Bismarck
6 who is here for RACCA, which is a
7 Hillsborough/Pinellas-based association of air
8 conditioning contractors.

9 THE HEARING OFFICER: Thank you. One more.

10 MR. WATSON: Richard Watson for Florida Air
11 Conditioning Contractors Association, Florida Association
12 of Plumbing, Heating, and Cooling Contractors, and Florida
13 Association of Electrical Contractors.

14 THE HEARING OFFICER: Okay. If that is all,
15 then in a rulemaking proceeding any person may present
16 comments or make suggestions concerning the rules. Those
17 making presentations are subject to questioning from other
18 participants. We will proceed informally without swearing
19 witnesses. The Commission staff will make its
20 presentation first, and then answer any questions from
21 other participants who may make their presentations and
22 receive questions after the staff. And we will have brief
23 rebuttal responses to any comments that you wish to make.

24 But before we begin with that, I will introduce
25 -- identify and introduce into the record the Composite

1 Exhibit 1 that I believe most people have a copy of. It
2 includes the following materials: A copy of the FAW
3 notice, a copy of the materials presented to the Joint
4 Administrative Procedures Committee, a copy of the
5 comments or requests for hearing filed by RACCA, the
6 Florida Association of Plumbing, Heating, and Cooling
7 Contractors, Florida Power and Light Company, Tampa
8 Electric Company, Florida Power Corporation, and Gulf
9 Power Company.

10 (Exhibit 1 marked for identification and
11 admitted into the record.)

12 MS. HELTON: Madam Hearing Officer, I learned
13 this morning that there is a request for hearing that is
14 missing in the composite exhibit that I would like to add
15 as an addendum.

16 Ms. Fentriss, could you help me out, which one
17 is missing?

18 MS. FENTRISS: It is an identical request to
19 that that was put forth by RACCA, but it is for IEC,
20 Florida, which is Independent Electrical Contractors of
21 Florida.

22 THE HEARING OFFICER: And that was filed with
23 Records and Reporting?

24 MS. FENTRISS: Yes.

25 THE HEARING OFFICER: All right. Staff, would

1 you proceed, then.

2 MS. HELTON: Mr. Devlin, with the Division of
3 Economic Regulation will make staff's presentation.

4 MR. DEVLIN: The reason for the rules was to
5 establish guidelines parameters for the handling of
6 affiliate transactions and cost allocations. Most
7 importantly, the pricing, transfer pricing between
8 regulated utilities and its affiliates. The emphasis is
9 on regulated/nonregulated transactions because of the cost
10 shifting potential of such transactions. Other parts of
11 the rule involve record keeping requirements, such as the
12 cost allocations manual.

13 Now, we have passed out changes, suggested
14 changes, and I'm not sure how you want to --

15 MS. HELTON: Can we have them marked as Exhibit
16 Number 2. Everybody should have a copy of what -- on the
17 last page -- it doesn't have it -- which is a 17-page
18 version of the rule that has redlined changes in Sections
19 (3)(a), (3)(b), and -- excuse me, just (3)(a) and (3)(b).
20 And I will bring one to the court reporter.

21 THE HEARING OFFICER: That will be Exhibit 2,
22 then.

23 MS. HELTON: And (3)(d).

24 THE HEARING OFFICER: Excuse me?
25

1 (Exhibit 2 marked for identification and
2 admitted into the record.)

3 MR. DEVLIN: I would like to point out that
4 these kind of issues were normally dealt with in rate
5 cases in the past. But we haven't had an electric rate
6 case since 1992, so that is one of the reasons we felt
7 like we needed to have these rules. Another reason is
8 nonregulated activity has been on the rise in recent years
9 as utilities find new ways to grow revenue.

10 Now, what I would want to do with these
11 suggested changes, Madam Hearing Officer, is perhaps have
12 the companies give a quick overview of their positions and
13 then I would like to be able to explain what suggested
14 changes we would proffer in reaction to the companies'
15 positions.

16 Before we get to that point, though, I would
17 like to briefly address the request for hearing from the
18 competitive interests. And the staff held two or three
19 workshops on this matter, all going back a year or so, and
20 many issues were discussed at those workshops.

21 Staff decided to keep this project manageable to
22 bifurcate the accounting type of issues which we now have
23 before us from the codes of conduct type issues, which I
24 believe the competitive interests are interested in
25 pursuing. So I would like to point out for their benefit

1 that what we have also begun is an investigation into
2 codes of conduct for an electric utility, which is a
3 separate informal, at this point, investigation.

4 The staff issued a strawman type codes of
5 conduct back in April. We received comment from the
6 electric utilities. And as a consequence of their
7 comments, I requested the general counsel, as of June
8 19th, to look into the Commission's authority to
9 promulgate codes of conduct type rules.

10 I thought that might be of interest to some of
11 the parties here. Because we have not forgotten those
12 kinds of issues that were brought up at the workshops, we
13 are simply bifurcating those issues.

14 Again, at this point probably the way to proceed
15 is to have each party give an overview, and then I could
16 talk about what staff did in response to the companies'
17 comments.

18 THE HEARING OFFICER: All right. Let's proceed
19 with -- Mr. Long, would you like to begin, and just go
20 down the table.

21 MR. LONG: Yes. Mr. McCormick is going to offer
22 initial comments.

23 MR. McCORMICK: Good morning, Madam Hearing
24 Officer, staff. We appreciate the opportunity to provide
25 comments at this hearing. Some of those comments will

1 change a bit, so I will have to do some self-editing based
2 upon what I see in the staff modification.

3 Tampa Electric continues to urge the Commission
4 to close this docket without adopting a rule. Affiliate
5 data are provided now, a rule is not needed. There is no
6 evidence of harm to ratepayers, nor is there evidence of
7 harm to other parties. In essence, nothing has changed to
8 warrant such significant rulemaking.

9 That said, Tampa Electric commends the
10 Commission and staff on changes adopted thus far in the
11 rulemaking proceeding. Earlier versions of the proposed
12 rule were exceedingly stringent. They would have denied
13 the Commission the discretion to look at individual cases
14 and determine whether prices and specific transactions
15 provide a benefit to ratepayers.

16 If the Commission does continue with this
17 rulemaking, the company strongly recommends that the
18 flexibility resulting from changes made during and
19 following the April 18th, 2000 agenda conference, and I
20 should add the changes that are in this draft, remain.

21 Among changes made since the agenda conference,
22 one clause added to the rule imposes a very high cost
23 burden on Tampa Electric Company and its ratepayers
24 without a compensating benefit. That is the final
25 sentence of Paragraph (3) (b). And even with the

1 modifications, this change would remain.

2 Before the modification this read, "If a utility
3 charges less than market price, the utility must notify
4 the Division of Auditing and Financial Analysis within 30
5 days of the transaction." It is the portion of the
6 notification in 30 days that creates the problem so that
7 remains. Tampa Electric urges that the Commission strike
8 that sentence from its proposed rule.

9 That seemingly simple reporting requirement,
10 notifying staff, quote, if a utility charges less than
11 market price, requires that the utility must first know
12 the market price of each transaction entered into to know
13 whether the transaction is, in fact, below market price.
14 Even if Tampa Electric were to choose to conduct all
15 transactions at fully allocated costs, we would still have
16 to gather information and maintain data bases of market
17 prices. That means a great deal of money must be spent
18 and the benefit is limited.

19 To minimize costs, Tampa Electric recommends
20 first that the sentence be stricken. The Commission has
21 authority to review affiliate transactions in regular
22 periodic audits now. If the sentence is not stricken in
23 its entirety, at a minimum two changes should be made to
24 the proposed rule to exclude certain transactions from its
25 application.

1 To deviate from my prepared remarks here, one of
2 those that were in the written comments filed by Tampa
3 Electric has been picked up by staff, and that is that the
4 rule not apply to allocation of costs for services between
5 the utility and its parent company or between the utility
6 and its regulated utility affiliates -- these are changes
7 to (3)(a) -- or to services received by a utility from an
8 affiliate that exists solely to provide services to
9 members of the utility's corporate family. Those portions
10 take care of one of my concerns.

11 The second concern with this is the rule should
12 include a threshold so that utilities are not required to
13 waste ratepayers' money to determine market prices on
14 numerous transactions that do not have significant impact
15 on rates. The potential benefit should exceed the
16 probable cost of data collection and maintenance.

17 These recommended changes were more fully
18 discussed in Tampa Electric's written comments filed May
19 25th, 2000. At that time we suggested a threshold of
20 \$500,000. We would propose instead a threshold of
21 \$100,000. Tampa Electric's current administrative
22 policies require that projects or purchases in excess of
23 \$100,000 be competitively bid or justification for not
24 competitively bidding be clearly documented.

25 In summary, the rule as proposed would increase

1 costs to ratepayers that outweighs probable benefits. And
2 rather than being designed to protect ratepayers, the
3 proposed rule seems in part designed to protect
4 competition and competitors which should not be the
5 Commission's primary concern. Finally, Tampa Electric
6 again urges the Commission close this docket without
7 adopting this unneeded rule.

8 We thank you for the opportunity to comment, and
9 we will be available to answer questions throughout the
10 morning.

11 THE HEARING OFFICER: Thank you, Mr. McCormick.
12 Mr. Badders.

13 MR. BADDERS: Mr. McMillan will provide some
14 comments.

15 THE HEARING OFFICER: Excuse me, did anybody
16 have questions of Mr. McCormick, or would you like to wait
17 until later?

18 MR. DEVLIN: No questions.

19 THE HEARING OFFICER: Go ahead.

20 MR. McMILLAN: Thank you. I'm Richard McMillan
21 with Gulf Power. I will make my comments short and sweet.

22 Most of my comments were pretty much in the same
23 line as Tampa's. We didn't really feel a rule was
24 necessary, but going beyond that, we had our major concern
25 with the latest draft of the rule that was proposed at the

1 agenda included the 30-day reporting requirement, and as
2 amended still has that as a reporting requirement.

3 The other major concern we had was that the vast
4 majority of our transactions being part of a holding
5 company with numerous utilities were utility-related
6 transactions, and they have excluded those in (3)(a) under
7 the proposed draft, which seems to cover the vast majority
8 of our affiliate transactions today.

9 The one statement I would -- they did add, and
10 I'm not sure -- I'm sure staff will explain that to us,
11 they added a statement in here under the thirty-day
12 requirement not only to notify them if it was less than
13 market, but to show that the transaction would otherwise
14 be foregone. I'm not sure where they are headed with that
15 and what exactly that would entail. So they have added a
16 little bit of an additional filing requirement of some
17 sort there which would probably need a little explanation.

18 But I still think what you are going to run
19 into, as was stated earlier, is a lot of the things do not
20 have ready market prices. It is going to be an
21 administrative burden. And they need to somehow -- even
22 if they wanted something notified them, it should not be
23 an on-going thirty-day requirement. If you have a
24 specific service or transaction that will be an on-going
25 transaction, hopefully at the minimum they could say that

1 this would only be the first time a specific type of
2 transaction or a different transaction should be notified
3 just for their information. And I guess that would sort
4 of get them in the loop on the front. But you wouldn't
5 want to be filing that every thirty days if they are
6 happening continuously.

7 So that would be the only real comment I would
8 have there. And I appreciate the opportunity to give my
9 comments and be available for any questions. Thank you.

10 THE HEARING OFFICER: Thank you. Mr. Guyton.

11 MR. GUYTON: I am going to ask Mr. Babka to make
12 some initial comments, and I will have a few observations,
13 as well.

14 MR. BABKA: Florida Power and Light Company
15 certainly agrees with staff's changes made on Page 3.
16 Those changes will help to reduce the burden of complying
17 with this rule. Florida Power and Light continues to be
18 very concerned with the last sentence of Section (3) (b)
19 and 3(d). And we certainly agree with the comments made
20 by Gulf and TECO, so I won't go back into those.

21 We believe that if the reporting requirement is
22 necessary, those items that we do on an on-going basis
23 month-to-month could be reported only once, and then not
24 again until something changes. That would significantly
25 reduce the burden of this rule on the reporting

1 requirements as they are written right now. We do have
2 some proposed revised language if you want to look at that
3 later on, but I think it would be very helpful for the
4 parties involved to reduce the reporting burden.

5 THE HEARING OFFICER: Perhaps during a break you
6 could share that with staff.

7 MR. GUYTON: I would be happy to, or I could
8 hand it out now. I will do it at the break, that would be
9 fine.

10 If I might follow up just a little bit on this
11 comment. We are somewhat concerned by the language that
12 staff has added to the last sentence of (3) (b) and 3(d),
13 and we are really somewhat puzzled by it.

14 We understand that this language came into
15 existence at the suggestion of Commissioner Deason at the
16 agenda conference where the rule was proposed. The rule
17 as proposed by staff didn't have this notification
18 requirement. There was discussion by the bench, and
19 Commission Deason asked that there be a notice provision.

20 This sentence now goes much beyond the notice
21 provision that Commissioner Deason asked for, and puts a
22 burden on the utility to show that the transaction would
23 have otherwise been foregone, something that Commissioner
24 Deason had not asked for. And we are, quite frankly,
25 puzzled as to why the language is here. We certainly

1 think it goes beyond what Commissioner Deason asked for.

2 But probably equally concerned about that is
3 that I'm not sure how one goes about proving a negative.
4 And this is -- it would be problematic in virtually any
5 scenario. How one proves what would have happened if
6 something else -- if what had not actually happened,
7 trying to prove what would have happened is virtually
8 impossible. And I'm not sure how one would ever satisfy
9 that standard. And we think the standard is probably very
10 difficult, if not impossible, to prove. So from a legal
11 perspective of burden of proof we find it quite
12 problematic.

13 We do have the language, though, that would
14 address, perhaps, the recurring notice requirement and
15 avoiding filing reams of paper with staff on a periodic or
16 monthly basis, but instead giving them notice when we
17 initially engage in a product or service that is less than
18 market price, or at the time the rule is adopted if we are
19 doing that we could report anything that is happening at
20 the present time that would fit within that category and
21 then not have to file that on a recurring basis. We have
22 that language and we will be happy to share that with
23 staff and the other parties here at the break. Thank you.

24 THE HEARING OFFICER: Thank you. Mr. McGee.

25 MR. MCGEE: Mr. Portuondo will make Florida

1 Power's comments.

2 MR. PORTUONDO: Good morning. I would like to
3 thank staff for taking into consideration the suggestions
4 of Florida Power Corporation. We were pleased to see the
5 additional language to account for service company related
6 or utility-to-utility related transactions. I reiterate
7 the comments of the other companies, that does minimize
8 the administrative burden on the company. And also the
9 incorporation of the language to (3)(b).

10 As Mr. Guyton was explaining earlier, the
11 additional language made to (3)(b) requiring the
12 demonstration that the transaction would otherwise have
13 been foregone, I believe that in the earlier sentence
14 staff is already requiring documentation be maintained to
15 support and justify the benefits to the regulated
16 operations. I would have expected that that would be
17 sufficient, and that could be reviewed upon their periodic
18 audits.

19 Apart from that particular comment or that
20 specific comment, we are relatively pleased with the
21 version currently before us. Thank you.

22 THE HEARING OFFICER: Thank you. Ms. Fentriss.
23 Could you also please tell me how your
24 organization is affected by this rule?

25 MS. FENTRISS: I will be more than happy to. I

1 have a handout that I brought, and I've got a number of
2 copies, and I have distributed it to some of the people
3 who were here a little bit earlier. If anybody would like
4 one, we would be happy to get it to you. That will
5 explain at least as a written submission how we are
6 affected. We are primarily concerned with the issue of
7 cross-subsidization, and that --

8 THE HEARING OFFICER: Excuse me, I'm sorry. If
9 you want that in the record, though, you will need to give
10 me a copy and the court reporter a copy.

11 MS. FENTRISS: Okay. Thank you. I will do
12 that. I have given one to the court reporter already, and
13 I'm sorry, I distributed them before you got here.

14 THE HEARING OFFICER: Okay.

15 MS. FENTRISS: I have a cover letter with this
16 particular piece here that is addressed to Ms. Mary Anne
17 Helton, and I hope that that describes adequately what our
18 concerns are. We are primarily concerned with the issue
19 of cross-subsidization. And that is, I guess, a broader
20 topic area than some of the more detailed discussion and
21 comments that you have heard from the previous speakers.

22 What we are concerned about is when utility
23 companies engage in nonregulated activities and they do it
24 without having a clear line drawn in terms of start-up
25 costs and expenses, allocation of staff, labor, equipment,

1 whatever else between their regulated function and their
2 nonregulated function. We take a very strict view of
3 this, largely because the people that I am here on behalf
4 of today are people who are in businesses that are in
5 competition with the utility companies with respect to
6 some of these nonregulated activities. An example is you
7 have a utility company that is offering a home warranty
8 service program to come in and repair certain home
9 appliances or something like air conditioning units.

10 Another example on the commercial side of it is
11 where you have the utility company in competition with
12 some of these businesses to do projects like install
13 parking lot lighting or something like that that is not a
14 regulated activity, it is a nonregulated activity.

15 Typically what we find is the utility companies come in
16 and they do a lot of underbidding in some cases. And some
17 of this material is in what I have submitted to be part of
18 the record.

19 We find that what they are bidding is, we feel,
20 under cost, not just underbidding us in terms of the
21 profit that is associated with a project, but under cost.
22 It is something that we cannot do for our costs. And we
23 are concerned about that.

24 We have some comments to make with respect to
25 the rule, the proposed rule changes as published in the

1 Florida Administrative Weekly. We have some comments, and
2 I have made some specific comments in my cover letter with
3 respect to one of the comments that I received by mail
4 which was from Mr. Charles Guyton for Florida Power and
5 Light, I believe. And our comment on that is -- well, let
6 me read from my letter here. Florida Power and Light
7 expressed in a letter that they provided to you -- let me
8 see, sorry, bear with me just a second -- on May 26th.
9 They commented that experience has demonstrated that the
10 existing rules are more than sufficient to protect utility
11 customers from cross-subsidization. He also said there
12 has been no history of utility abuse that gives rise to a
13 need for the rule amendments. We don't agree with that.
14 We think that that is a conclusion that is based on an
15 issue or a number of issues that has really not been
16 researched well enough because there just hasn't been
17 occasion to research that.

18 And we would like you to consider the
19 documentation that we have provided in taking a look at
20 whether or not there has or has not been
21 cross-subsidization. We continue to believe that there
22 has been cross-subsidization. We do believe that there is
23 a history. I wouldn't say it was a history of abuse, but
24 we do believe that the rules need to be stronger, even
25 stronger than they are as they are written in the proposed

1 changes. We would be very concerned if the Public Service
2 Commission were to take any more -- I guess if they were
3 to loosen up the rules any more than they already are as
4 they are proposed.

5 We think some of the terms still are not well
6 enough defined. For instance, we are very unclear as to
7 what the term incremental cost means. We are not very
8 clear as to what exactly is meant by market price. We are
9 concerned, also, in the proposed rule -- let me see -- it
10 is Rule 25-6.1351 under Subsection 6 for the cost
11 allocation manual, we are very concerned that there seems
12 to be no oversight by the Public Service Commission. It
13 is a directive to the utility company to maintain a cost
14 allocation manual, but do nothing with it. There are no
15 standards. The utility company is allowed to come up with
16 their own standards.

17 I have heard a number of people here this
18 morning express concerns about the burden that this would
19 impose on the utility companies to do this level of
20 bookkeeping. As far as we are concerned, that is a burden
21 that we think as a normal big business practice they may
22 be undertaking anyway, at least to some level. I don't
23 think it is that unusual, if you will, for a utility
24 company or any other company to not know the market price
25 of certain transactions if they are trying to determine

1 whether or not they want to buy some component of
2 something that they manufacture from one business entity
3 or another.

4 I think they typically have more information
5 than the average person does on that. I don't know that
6 the burden is as great. We do agree that in some cases
7 you may not know, but I don't think that across-the-board
8 they wouldn't know what a market price was. They wouldn't
9 know whether or not they could get it less expensively
10 someplace else.

11 In addition to that, if these companies are
12 engaging in these nonregulated activities to try to sort
13 of diversify their sources of revenue, they -- I think as
14 long as they are doing it, as long as they are a regulated
15 utility and as long as the public views them as that, and
16 as long as there is some potential that they may be using
17 ratepayer funds, or goodwill, or anything else to engage
18 in these types of business activities, we believe they
19 should have a higher burden, they should meet that higher
20 burden unquestionably.

21 THE HEARING OFFICER: Thank you. Let me
22 clarify, though, that this rule does not impose any
23 requirements on your members or your association, is that
24 correct?

25 MS. FENTRISS: That is correct, as far as I can

1 read.

2 THE HEARING OFFICER: Second, has everyone had a
3 chance to look at the handout? You probably have not had
4 a chance to look at it, perhaps you can respond to it in
5 post-hearing comments if you feel necessary. And would
6 that be Exhibit 3, identified as Exhibit 3? It is a
7 letter from Anna Cam Fentriss to Ms. Helton. All right,
8 that will be entered.

9 (Exhibit 3 marked for identification and
10 admitted into the record.)

11 THE HEARING OFFICER: Okay. Mr. Watson.

12 MR. WATSON: Thank you. Rick Watson, again
13 representing air conditioning contractors, plumbing
14 contractors, and electrical contractors. We support the
15 comments of Ms. Fentriss. I would like to make an
16 additional few general comments. We support the
17 recommendation of staff that the Public Service Commission
18 review their authority to adopt a code of conduct.

19 In many other states that have considered
20 deregulation, a code of conduct has been passed
21 legislatively or by the public service commissions. What
22 this code of conduct does is provide a level playing field
23 for utilities when they compete in nonregulated areas with
24 small business. We have seen it in small ways begin in
25 Florida with the utilities offering home warranty service

1 contracts for air conditioning, plumbing, and electrical.

2 We support the rules that are offered with the
3 changes recommended by staff. We don't think that it
4 reaches the extent that we need, but this is an on-going
5 issue that is unfolding, both legislatively and before the
6 regulatory body. I do question some of the comments, with
7 all respect to the utility witnesses, about the burden of
8 providing the information that is suggested by the rules.

9 Thank you.

10 THE HEARING OFFICER: Thank you. Okay. I'm
11 sorry, I probably got your name, but I wasn't sure who
12 Ms. Fentriss was introducing at the time.

13 MR. LEEDY: Okay. My name is Cecil Leedy of
14 Leedy Electric Corporation out of Mulberry. I am an
15 electrical contractor.

16 THE HEARING OFFICER: Go ahead.

17 MR. LEEDY: I appreciate the opportunity to
18 speak here this morning. And I will be honest with you,
19 as an electrical contractor I am absolutely overwhelmed by
20 what is going on here and the requirements and things like
21 that. I would like to give you a little simple
22 explanation as to what we go through as an electrical
23 contractor.

24 As far as these cost allocation requirements, I
25 assure you we go through these every day. There is a

1 market price for everything that you can think of. The
2 market is changing every day. And whatever we, as
3 electrical contractors, or in the electrical business
4 need, it is out there and it is for sale or rent, I can
5 assure you. We go through these on a daily basis. Every
6 product we buy, we issue purchase orders, we arrange for
7 shipment, delivery, we go through administrative processes
8 of paying invoices and things like that. So there is a
9 lot of administrative details that we do on a daily basis
10 that amount to no more than what these gentlemen are
11 offering.

12 I would also like to just take a few minutes to
13 let you know what an electrical contractor goes through.
14 By nature of being an electrical contractor, we don't
15 manufacture a product, we sell labor and materials.
16 Therefore we work very hard keeping our people assigned.
17 Manpower is our most important asset. The most important
18 job I do is to be able to make sure my people are assigned
19 to a job and I am able to invoice for their labor. If
20 they are not working on the job, then it is costing me
21 money.

22 If a utility is able to -- or, I'm sorry, a
23 utility affiliate is able to reach into the utility
24 company and grab people and put them on a job, and then
25 when that job is over return them back to the utility,

1 that is a tremendous advantage they have over private
2 industry.

3 The next most important thing is tools and
4 equipment. I assure you I have to buy all of my tools and
5 equipment. What I don't have, I rent. If an affiliate is
6 able to use utility-owned tools and equipment, they must
7 pay market price. I can see no advantage to the ratepayer
8 by loaning out tools and equipment to affiliate
9 operations.

10 The third most important asset is our customers.
11 Utilities have a big advantage there. They automatically
12 have all of my customers as their customers. They have
13 name recognition and very deep pockets. They can offer
14 leasing of lighting equipment, equipment such as UPS
15 systems and generators, and they also tie these services
16 into their regular billings, which is a major advantage.
17 And they are doing this and have been doing this, I know,
18 for the past 15 years, especially in my area.

19 Another important asset is office supplies. I
20 mean everything from computers, to copiers, to pens and
21 pencils. That is something if they are obtaining items
22 like that from the utility, that is another major
23 advantage. And the list goes on and on. Even my time
24 here today. My time is being paid for by my company. Are
25 these affiliates paying for the lawyers attending here

1 today or are the ratepayers?

2 We do need a clear line drawn between regulated
3 activities and nonregulated activities. As I said, I have
4 been competing against Tampa Electric and Florida Power
5 for the past 15 years on jobs that fall in a gray area.
6 They are not producing electrical energy, they are working
7 in industry doing the same work that I offer, sometimes
8 for free, and I have proof of that.

9 There was a job at Mulberry Phosphate on
10 December 5th, 1997, where my job cost was \$4,700. My sale
11 price was 6,500. I had eight men, one bucket truck, one
12 crane, and my bid was not accepted. And the man who
13 was -- the maintenance foreman or superintendent that was
14 working there was a very good friend for mine, he said
15 TECO had a lower price than I, and they got the job.

16 And we were there working. And when I saw TECO
17 there they had 12 men, three bucket trucks, a much larger
18 crane, two utility trucks, and two pick-up trucks there
19 working about the same amount of hours that I had planned
20 on the job. And I know for a fact their cost had to be
21 more than my sale price.

22 One of the most eye-opening experiences I had is
23 when we purchased an infrared scanner for the price of
24 \$70,000. This is a top-of-the-line infrared scanner that
25 detects hot spots on electrical systems; power poles,

1 motor control centers, things like that. And, you know,
2 you can imagine for \$70,000 you have to keep that piece of
3 equipment very busy.

4 I called Albertson's Distribution Center in
5 Plant City, another very good friend of mine, Chuck
6 Hartman (phonetic), who is the maintenance manager there,
7 and I reminded him that we had given him a proposal for
8 infrared scanning as he requested a year before, then I
9 reminded him about a year later, and he said TECO had come
10 in and done it for free. Had gone through all of their
11 switch gear. And, I mean, I was just flabbergasted.

12 I have another incident just recently at a
13 building of Hillsborough County where TECO had gone in and
14 done infrared scanning for free. We mentioned this to an
15 advisory committee meeting we had with TECO. And one of
16 the vice presidents of TECO was there, and he is in charge
17 of the affiliate operation. He had no recollection of the
18 jobs, and I find that hard to believe.

19 Another instance is APG Electric. They had a
20 job where a 500 kW generator was being used and Florida
21 Power got the job and could not complete the job. APG had
22 to go in and make the system work. They could not offer
23 the products that they proposed. My feeling is that they
24 are just not experienced in that market to supply these
25 types of products.

1 And one of the most recent, just Tuesday, June
2 20th, my brother -- we are just completing a project, a
3 \$400,000 design built project for Ashland Chemicals in
4 Bartow. And my brother was over there talking to Ben
5 Marino, the plant engineer, about his generator. It is
6 old and unreliable. Ben commented that Tampa Electric had
7 offered him a new generator to go with their plan to offer
8 Ashland a secure power plan to eliminate any power
9 outages, and that the generator would be provided for
10 free.

11 My question is how can we compete with these
12 utility companies when they are giving their work away.
13 One of the comments from TECO was that, well, when
14 deregulation comes all of this goes away. Well, the
15 problem we are having right now is we are competing
16 against large utility companies with very deep pockets and
17 they are giving away items right now. My impression is
18 that they are trying to chum the market out there, trying
19 to -- they see deregulation coming, and they are trying to
20 open up avenues of business for them in the future by
21 giving away product for free right now. My question is
22 how can we compete?

23 Another question we have is what is the
24 difference? We do need a definite line drawn between
25 regulated and nonregulated activities.

1 THE HEARING OFFICER: Are you saying that --
2 excuse me, are you saying that there is something
3 inadequate in the rule to address that?

4 MR. LEEDY: Absolutely. Again, we compete with
5 them on a constant basis. My office is in Mulberry,
6 Florida, which is the phosphate capital of the world. I
7 do a lot of work in the phosphate industry. And TECO has
8 come in and done lots of work, sometimes for free, and it
9 is installing lights and things like that that have
10 nothing to do with supplying electrical power. And I have
11 competed against them continuously, I know, for the past
12 15 years, probably longer.

13 THE HEARING OFFICER: Well, within the -- as
14 staff explained, the purpose of this rule, and that there
15 would be a bifurcated -- another proceeding to address
16 some of your concerns. Did you have specific changes to
17 this rule in keeping with the purpose of the rule that
18 would address that?

19 MR. LEEDY: No, ma'am.

20 THE HEARING OFFICER: Okay. Thank you. Ms.
21 Fentriss.

22 MS. FENTRISS: The only thing I would like to
23 add to that is in my comments I think I made some specific
24 points with respect to the rule, that we had difficulty
25 understanding the concept of incremental cost and market

1 price. We also would like to urge that nothing be done to
2 take the rule to a lesser standard than what is proposed
3 here. Absolutely we still think it should be stricter
4 than what it is, but this is much better. We have heard
5 the utility companies urge that the rule changes are not
6 needed, that this is not as big of a problem. We do think
7 it is a big problem. We would very much like to see that
8 the Public Service Commission take a very, very strict
9 view about accounting and separating out regulated versus
10 nonregulated affiliate transactions. And that the utility
11 companies should be required to prove that there is a
12 ratepayer benefit, not just a commercial ratepayer
13 benefit, but a residential -- across the board there
14 should be a ratepayer benefit, not a benefit to the
15 company primarily.

16 THE HEARING OFFICER: Thank you. I was provided
17 definitions of the market price and incremental cost. I
18 think they are commonly accepted, but let me make sure
19 that there is no confusion. And everybody else, if you
20 will let me know that these are the commonly accepted
21 definitions. Market price being the price at which bona
22 fide arms-length sales have been consummated for products
23 and services of like type, quality and quantity in a
24 particular market at any moment of time. That is from a
25 dictionary for accountants, just to let you know.

1 And incremental costs are the change in
2 aggregate costs that a company's the addition or
3 subtraction of the unit of output or a change in factors
4 affecting costs such as style, size, or area of
5 distribution. Marginal costs.

6 MS. HELTON: If I could speak to that for a
7 minute. The reason why we did not include those
8 definitions in the rule is because we believe those are
9 generally accepted definitions. And the practice of the
10 Commission has pretty much been that we don't include
11 definitions that are generally known.

12 THE HEARING OFFICER: Yes, Ms. Fentriss.

13 MS. FENTRISS: Thank you very much, that helps.
14 We really weren't sure if you had adopted a normal or a
15 usual definition for it. And I think you have just
16 clarified that. We just didn't see it defined in the rule
17 and we wanted to make sure we knew what definition you
18 were following. Thanks.

19 THE HEARING OFFICER: Thank you. Staff, would
20 you at this time address your proposed changes? Because
21 several of the participants have commented on them, and it
22 might help if you explain them first and then we can
23 discuss them.

24 MR. DEVLIN: Certainly. First of all, the
25 general comment is the rule necessary? I might have

1 addressed that in my initial comments, I can't recall.
2 But it definitely is necessary, staff believes, because
3 affiliate transactions involving regulated and
4 nonregulated operations deserve special intense scrutiny.
5 I think that is a generally accepted outlook. Because of
6 the natural, again, cost incentive to move costs from a
7 competitive area to a monopoly operation where it is
8 easier and recovery is more assured. So staff feels very
9 strong that these rules are necessary. Our past avenue of
10 rate cases, I mentioned earlier, we don't have rate cases
11 anymore.

12 With the particular suggested changes, maybe it
13 would be best to walk through them one-by-one. The first
14 one would be on Page 3, Line 12, and we made this
15 suggested change basically to simplify and somewhat
16 restrict our application of the rule in response to
17 comments from Gulf Power and TECO.

18 Again, the reason for our suggested change is
19 that our rule is targeted to the nonregulated/regulated
20 relationships. And what we are trying to address here in
21 our suggested change is to cull out those allocations and
22 transactions that really don't relate to nonregulated,
23 they are just allocations from a services company to an
24 operating company, or a parent company to an operating
25 company, or between utility affiliates like Mississippi

1 Power and Gulf Power. Those kind of allocations are still
2 important and they still deserve regulatory scrutiny, as
3 we noted here, but we think they don't belong in this
4 particular rule. So that should help ease some of the
5 concerns.

6 Moving on down the page, on Line 23 and Line 24.

7 We tried to address an ambiguity that Power Corp pointed
8 out to us, and I think that is somewhat noncontroversial
9 that we wanted to just clarify that could be under certain
10 conditions an exception where transfer price could be
11 below both fully allocated costs and market price. So we
12 tried to clarify that, and I think that is somewhat
13 noncontroversial.

14 Now, the controversial one, apparently. And
15 there was a lot of discussion earlier about holding
16 utilities to a market standard when they do business with
17 affiliates who are in competitive areas. And I fully
18 agree with that, and I also fully agree with the gentleman
19 that was talking about there is a market value for just
20 about everything or there should be. What we tried to do
21 here with this phrase, show that the transaction would
22 otherwise be foregone, I believe that was the intent of
23 the Commission in making -- and this is just my view of
24 the Commission's decision -- that the Commission believed
25 that market price should be the standard, should be the

1 floor when there is a transaction from a utility to an
2 affiliate. But there was a concern that there could be a
3 situation where the utility, if they are held to a market
4 standard may forgo a transaction and thereby the ratepayer
5 and utility would lose any contribution to common cost.
6 Nobody could think of an example where that could happen.
7 But that was why we tried to articulate a very strong
8 standard or threshold of when a utility can go below
9 market when they conduct business with an affiliate. It
10 is a burden of proof; they would have to show that to go
11 market they would otherwise forgo the transaction.

12 The same kind of concept and wording we used on
13 Page 5, Lines 6 and 7, regarding asset transfers. The
14 same kind of theory. Counsel mentioned to me there was a
15 comment about the cost allocations manual. And we weren't
16 too prescriptive in how that should be put together. And
17 our intention was that the companies, and I'm sure they
18 are doing this anyway internally, should have an
19 accounting system that outlines how affiliate transactions
20 and allocations work. And then our job would be to go
21 into a company on an audited basis and review those
22 manuals and ensure compliance and reasonableness, as
23 opposed to prescribing the actual methodology, you know,
24 account-by-account.

25 We have one question, actually, for TECO, and we

1 thought we had met their concern in that earlier language
2 about allocations between services companies and holding
3 companies. But TECO had mentioned a dollar threshold
4 where there would not have to be justification or
5 reporting of, I think, \$100,000. And we were thinking
6 that our suggested language would placate TECO in that
7 respect, and that there would no longer a need for any
8 dollar threshold. And maybe you could elaborate on that.

9 MR. McCORMICK: This is Joe McCormick for Tampa
10 Electric. Our concern is when you read just what is in
11 the rule, there is room for interpretation. I think that
12 does take care of most of the concern the way the wording
13 is changed, but one of the questions we have on market
14 pricing is how often market prices have to be looked at.
15 What exactly encompasses or comprises a transaction; is it
16 the incremental pieces of it? Some of those issues can
17 get to a very significant data handling cost just to get
18 and maintain data.

19 We do know the market prices of transactions we
20 enter into, but we don't know that the data that we
21 maintain is sufficient to meet the standard the Commission
22 auditors may use when they come in to look at what we
23 have. So those questions are the things that really get
24 involved. Transactions less than \$100,000 are the
25 normally recurring kinds of transactions that could

1 probably be -- the problem there could probably be
2 alleviated somewhat by the comments that Florida Power and
3 Light and Florida Power Corporation have suggested that
4 recurring types not require reporting every thirty days.

5 It is just simply to establish a level at which
6 we don't have to account for buying a \$100 item, and we
7 have to spend \$300 in staff time and computer time and
8 everything else to develop a market price to document how
9 we develop that market price. That is really the cost
10 that hits us is the cost to document something can exceed
11 the cost of the transaction, and we don't want that to
12 occur. And the \$100,000 fits into the level that we use
13 administratively. I don't know what the other companies
14 may use.

15 THE HEARING OFFICER: Could you respond,
16 Mr. Devlin.

17 MR. DEVLIN: Well, our position at this point,
18 again, is that when a utility is doing business with an
19 affiliate, the minimum should be a market value, and this
20 reporting only relates to situations where a utility
21 transacts at less than market value. And that should be
22 rare. In fact, we can't even dream of a situation where
23 that would ever occur.

24 MR. McCORMICK: If I could respond to that. In
25 my opening comments I mentioned that even if we do

1 everything at fully allocated cost, we have to know the
2 market price of each of those transactions to know whether
3 we have to report to the Public Service Commission within
4 thirty days. We have to maintain the data, we have to
5 maintain the justification regardless. And that is where
6 the cost factor hits us without what we see as a
7 corresponding benefit.

8 THE HEARING OFFICER: Staff, I think Mr.
9 McCormick mentioned his concern about what staff would
10 consider adequate data to establish a market price. Could
11 you address that?

12 MR. DEVLIN: Well, again, I think the gentleman
13 at the end of the table I thought was very eloquent in
14 stating that every product and service has a market. I
15 mean, you are in business, you ought to know what the
16 value of a particular transaction is.

17 We are sort of at a loss to see this as a
18 problem. We think that it should not be difficult for the
19 utilities to know what the market value of any particular
20 service or product that they are providing to an
21 affiliate.

22 MS. HELTON: Madam Hearing Officer, some other
23 staff members have questions for some of the utilities, I
24 think. Would this be an appropriate time for them to ask
25 questions?

1 THE HEARING OFFICER: Just a minute, I had one
2 question to follow-up I wanted to ask. Perhaps Mr.
3 McCormick can answer, you could give me some examples of
4 some items that might not have -- that don't have a market
5 price. I am having some difficulty understanding -- or
6 that you would have to put out to bid to find out a market
7 price.

8 MR. McCORMICK: In response to that question, I
9 don't have the page number right offhand, but in the
10 transcript of the agenda conference, Commissioner Deason
11 mentioned the fact that market prices move around
12 day-to-day and that is just one of the issues.

13 If we buy something through an affiliate or from
14 an affiliate, whichever way the transaction goes, and on
15 that day it is at market price, but a week later or a week
16 earlier the market price was different, do we have to
17 maintain daily price data? If we have a single staff
18 member from the utility that is for some reason
19 transferred or providing services to one of the other
20 companies, and there is some changes in the allocations of
21 those costs, what has to be justified on that particular
22 day of the transaction.

23 And it is highly possible to justify all of
24 that, it is also very expensive to justify all of that.
25 And our concern is more with the documentation than the

1 reality of the problem.

2 We know we have to keep price data because we
3 are not going to be in business if we don't. We have to
4 know the costs and prices of transactions. But the cost
5 of maintaining the data and the documentation is a part of
6 it, there are other services that may be without a
7 threshold that may be something that has gone out for bid.
8 Determining the exact item is difficult. The bid process
9 often works out that information is let for the bid, the
10 RFP goes out, bids come back. That gives you a market
11 price. And sometimes they are low prices, sometimes they
12 are high prices. Which of those is the market price?

13 Also, if you have ever been involved in a
14 contracting transaction, you know that the initial bid up
15 front is usually the subject of negotiation until you get
16 to what exactly the product is going to be because there
17 is not complete and clear understanding.

18 So, again, if we have a series of five bids in
19 front of us and one is high and one is low, and three of
20 them are somewhere in the middle, which one of those is
21 the market price? And what exactly is the quality? The
22 quality can vary. We don't want to go with lowest bidder
23 on most things because we don't think our system would
24 work. So those are the issues that get involved, and
25 those are the issues that we feel would be very expensive

1 to document.

2 Some of the other utility people may have other
3 comments on that same issue, but those are our concerns.
4 The nature of a specific transaction, I can't really tell
5 you, but that is the overall concern.

6 MR. McMILLAN: I would make one comment. Like I
7 said, I appreciate the change they made in (3)(a) because
8 that covers the bulk of ours today. But in Southern --
9 Gulf Power, as a member of the Southern Company, we do
10 have some type of energy services company in periodically.
11 We may provide services assistance. That is done at a
12 fully allocated basis.

13 The FCC requires all of our affiliate
14 transactions to be fully allocated. As far as we are
15 concerned it is market at that time, but we are not
16 necessarily the ones out doing the bids. You are going to
17 run into the companies that are still governed under
18 PUHCA, they are pretty much -- we can't charge market, we
19 don't have that option. The FCC says we are going to
20 charge cost. And the only exception to that are the
21 telecom type businesses where the FCC has pretty much
22 opened that up.

23 But I think the thirty-day notification, again,
24 if they still felt like they needed that, if there was
25 some way to say, you know, you come in for specific type

1 transactions one time, but every time, you know, I just
2 think it is going to become an administrative burden. And
3 maybe some of the other companies are into it more than we
4 are. I could see that growing. You know, it is just hard
5 to say where that is going, but I just think trying to do
6 that every thirty days, if it is the same type of thing as
7 was mentioned earlier, what is the market price? The
8 first time you went into the deal, or is it every month
9 you have got to go out there and rebid stuff? Right now
10 the way it is set up it implies you have to do it every
11 time you do a transaction. I think that is too often.

12 You know, it ought to be an annual type thing or
13 the first time a specific type of service is being
14 provided to an affiliate. And in the audit, Commission
15 auditors could check on that on their periodic audits to
16 make sure the conditions haven't changed.

17 I haven't seen the language that FP&L said they
18 had, maybe that will address that particular issue. But
19 that is the only thing that I still see as an
20 administrative cost that is really going to have no
21 benefit to anybody other than keeping a lot of paper and,
22 I guess, sending it over here. I'm not sure what the
23 notification officially means, if we have to actually file
24 something or just make a phone call. But I'm sure that
25 will become clearer as we move down trying to implement

1 this thing.

2 THE HEARING OFFICER: Staff, did you want to ask
3 your questions, or would it be helpful for you to look at
4 the proposed language, take a break now and do that or --

5 MR. DEVLIN: That may be wise to take a break
6 and look at the language.

7 THE HEARING OFFICER: All right. How long do
8 you think would be adequate, 10 or 15 minutes?

9 MR. DEVLIN: Yes.

10 THE HEARING OFFICER: All right. Fifteen
11 minutes, then. We will be back at 10:50.

12 (Recess.)

13 THE HEARING OFFICER: Go back on the record. I
14 think when we took a break, Mr. Guyton had language
15 revising, I believe it is -- would it be 25-6.131(3)(b).
16 Would you like to discuss that and then perhaps staff can
17 respond to it?

18 MR. GUYTON: Thank you. What we have done with
19 this language is tried to address the situation of
20 recurring reporting and trying to avoid recurring
21 reporting. If you have a transaction of a type that is
22 recurring in nature it would be reported, and it is
23 between the utility and its affiliate and it is at less
24 than market price it would be reported either the first
25 time it was undertaken by the utility, or in the case of

1 when the rule was adopted within 30 days of adoption of
2 the rule. If there are any currently existing
3 transactions of that nature, they would be reported within
4 thirty days of the rules effective date.

5 I think this provision would go a long way
6 towards easing some of the administrative burden of
7 reporting that some of the other utilities have noted this
8 morning. We have offered it in that vein.

9 I don't know that it would ease all of the
10 concerns about the administrative burden of the notice in
11 as much as there are changes in market price over time or
12 the fact that you have a series of bids, the low price
13 doesn't necessarily reflect the market price. The choice
14 of the contractor you choose often reflects more than
15 market. And so I think there probably continues to be a
16 concern about how one goes about documenting market price
17 and the extent to which a utility would have to do that on
18 a recurring basis. But at least as to the reporting
19 requirement, I think this language would -- at least it is
20 designed to address that.

21 This would be in lieu of the last sentence that
22 staff proposed in Exhibit 2 for Subsection (3)(b) of the
23 rule. And it does not have the language that staff added
24 there about showing the transaction would otherwise have
25 been foregone.

1 And I would encourage the Hearing Examiner to go
2 back and take a look at the agenda conference transcript
3 when this rule was proposed, and specifically at the
4 portion of it that addresses this notice provision. The
5 notice provision, the discussion begins around Page 60 of
6 the transcript and it runs through about Page 70 of that
7 transcript.

8 But I would read to you, in particular, an
9 exchange between Ms. Helton and Commissioner Deason and
10 myself beginning at Page 68 of the transcript. There
11 Commissioner Deason says, "Right. Staff wants to have
12 notice that a transaction took place at less than market
13 and the requirement to justify it is still there," that
14 meaning the requirement that it be justified in the prior
15 sentence. Ms. Helton says, "So the notice requirement
16 openly comes in if the utility charges less than market?"
17 Commissioner Deason, "That's correct."

18 It is pretty clear that we are talking about a
19 notice requirement and nothing more. I then suggested
20 that instead of it being incorporated into what was then
21 the last sentence of the paragraph, that another sentence
22 be added. Commissioner Deason says he agrees. I think
23 for Paragraph (3) (b) we have inserted the word price after
24 market on Line 18. I believe that we should probably put
25 a period after the word cost on Line 21. And that we

1 should add language concerning notice to staff when a
2 transaction takes place at less than market.

3 I think it is pretty clear from the exchange
4 that what Commissioner Deason was looking for here and
5 instructing staff was simply a notice requirement, not
6 establishing an additional burden of proof, but just
7 simply a notice requirement.

8 THE HEARING OFFICER: You are addressing the
9 additional language in staff's Exhibit 2, the foregone
10 language?

11 MR. GUYTON: Yes.

12 THE HEARING OFFICER: And your handout is
13 identified as Exhibit 4, that will be entered into the
14 record.

15 (Exhibit 4 marked for identification and
16 admitted into the record.)

17 MS. HELTON: Could I make one comment about the
18 transcript from the agenda conference. I'm not sure that
19 that is on record here at the Commission. Is that
20 something that you requested from the court reporter, Mr.
21 Guyton, do you know? Because we don't normally transcribe
22 items at agenda, and that doesn't normally get filed in
23 the Clerk's Office.

24 MR. GUYTON: It probably is, Mary Anne. I thank
25 you for asking that question. I will undertake to get a

1 copy of that. And I would ask that it be identified as
2 Exhibit 5, if we may. And I will be glad to provide a
3 copy to the court reporter.

4 THE HEARING OFFICER: That's fine. It will be
5 Exhibit 5. It will be admitted.

6 (Exhibit 5 marked for identification and
7 admitted into the record.)

8 THE HEARING OFFICER: Staff, would you like to
9 respond to the Exhibit 4 language.

10 MR. DEVLIN: Yes. First of all, again, it is my
11 view, personal view, and I think staff's view that the
12 reason for that last line, that exception where utilities
13 could charge below market was put in there by the
14 Commission for the sole purpose of safeguarding a
15 situation where the company would forgo a transaction if
16 they were held to a market standard. And that is my
17 belief, I don't have the transcript in front of me.

18 But the Commission, I believe, showed a strong
19 preference for a standard for transactions of greater cost
20 to market when it goes from the utility to the affiliate.
21 And the only time that it would be acceptable to go below
22 market is if the company could show that to go market they
23 would forgo the transaction. So I think it is still very
24 important to keep that phrase in there.

25 As far as the other part of the proposal from

1 Florida Power and Light, we haven't fully thought this
2 through, but there may be some way of using a contract
3 basis as a means of identifying the market value if there
4 is recurring transactions as opposed to having to do this
5 on a daily basis. There may be some way of coming up with
6 a reasonable way of reporting.

7 But, again, we must stress that we are talking
8 about non-tariffed affiliate transactions. We expect them
9 to be very limited when it goes from the utility to the
10 affiliate.

11 THE HEARING OFFICER: Do you mean a limited
12 number?

13 MR. DEVLIN: A limited number. So we are at a
14 little bit of a loss why this would be so burdensome from
15 a cost standpoint. And if it is recurring and it is a
16 high number of transactions, we would have to question why
17 is the utility providing these services to the affiliate,
18 why isn't the affiliate doing it themselves. The primary
19 purpose of the utility is to provide utility service, not
20 to provide services to affiliates in competitive ventures.

21 THE HEARING OFFICER: Did you have questions of
22 the utilities or other participants?

23 MR. DEVLIN: Well, I guess we were wondering
24 what exactly kind of transactions are we talking about
25 that would be of such a routine numerous nature that this

1 would cause such a reporting burden?

2 MR. BABKA: Tim, one example that we have is
3 fossil power plant operations. The operations of all of
4 our fossil plants. The Florida Power and Light group is
5 handled by one group who takes care of the regulated
6 assets here in Florida, and they also take care of the
7 nonregulated assets for FPL Energy, Inc. All of their
8 costs are allocated to FPL Energy, Inc. or the utility
9 based on installed megawatt hours that they would have.
10 That is labor, fully loaded labor.

11 I don't know if there is a way to determine what
12 market is for that. They do such things as study boiler
13 modifications, what is the best way to do a boiler
14 modification. They also build the power plants, the new
15 power plants. They look at the maintenance schedules to
16 determine what maintenance needs to be done during the
17 overhaul.

18 I don't know how you could get a market price on
19 that. The reason we do this is because it is far cheaper
20 for our ratepayers to do this. We could have our own
21 engineering group that just runs the fossil units for FPL,
22 the utility. It would cost us much more than having the
23 group work on both sides. That is the reason for this.
24 If it wasn't cheaper for the ratepayer, we wouldn't be
25 doing it. I think that is probably the best example I

1 have.

2 But if we were to report those transactions to
3 you every month, we would be sending you maybe as much as
4 a foot of paper. And I honestly don't know what you would
5 do with all of that paper. And it would be very difficult
6 for us to take care of that every month. And if we could
7 report it just once -- it is an on-going transaction. We
8 have had that group now for at least two to three years,
9 and they will probably continue on.

10 So if we reported that, showed you what we were
11 doing once, and as long as it continues in the same
12 fashion it seems like that would be sufficient. That is
13 the type of thing we are talking about.

14 THE HEARING OFFICER: Staff, before we go to
15 some other references.

16 MR. DEVLIN: I guess, if I understand what
17 Mr. Babka is saying, is that that particular situation,
18 the fully allocated costs would be less than market.
19 Because the only time you have to report to the
20 Commission, to this division is when you go below market.
21 Is that what I understand, that that particular scenario
22 you laid out would be one where you would be charging the
23 affiliate below market?

24 MR. BABKA: That I don't know, you would have to
25 do the research to determine what market is, if you could

1 do that. What we have is salaries that are based on
2 market or a little bit above. The employee benefits are
3 based on market so we can attract employees, so those are
4 all loaded on there. Of course, supervision is loaded on
5 there. You have the buildings that they occupy which
6 would include a return on that, profits and so forth. So
7 fully allocated costs, I guess, would be as close to the
8 market as you could possibly get.

9 To do other than that without reporting it, I
10 guess we would report it in an abundance of caution, is
11 somebody would say that maybe that isn't market. But it
12 probably is as close to market as you can get. And I
13 don't know how you would go about determining what all of
14 these various pieces, you know, what market is. Because
15 I'm not sure if there is a market for a lot of those type
16 functions.

17 THE HEARING OFFICER: Mr. McCormick.

18 MR. McCORMICK: In the wording Tampa Electric
19 had supplied in its written comments we included an
20 exclusion, I guess that doesn't make a whole lot of sense,
21 but where we said -- where the staff has put the wording
22 in the subsection does not apply to allocation of costs,
23 and we had one additional piece in there that we had said
24 it would also not apply to administrative services
25 provided by the utility to its affiliates. That could be

1 something like if the accounting function is within Tampa
2 Electric, and Tampa Electric bills out the accounting
3 function to its affiliates or to the parent company. That
4 is not covered by the exclusion staff has put in.

5 Again, there are market values for all of that.
6 It goes through the same calculations as Mr. Babka just
7 went through on how we determine salaries and all of that
8 information. But the problem there is that we will have
9 to meet the provisions of this rule. We almost have to
10 update all of our salary information every 30 days. We
11 have to do a whole lot of things over and over and over
12 that are not things you do over and over. You enter a
13 contract, if it is for information processing services or
14 accounting services, those may be housed in the utility,
15 they may be housed in a parent company depending on the
16 way the utilities has formed its corporation, the parent
17 corporation has formed itself and the utilities.

18 So those are the kind of things that can come
19 into play. That is also why we had urged that those
20 administrative type services be excluded along with what
21 staff has chosen to exclude. And those are the examples
22 that we would have.

23 THE HEARING OFFICER: Staff, would you address
24 that? It is your comment that it was filed earlier, the
25 overhead expenses, it is still not taken care of.

1 MR. McCORMICK: The comment we had filed earlier
2 we had suggested a change to the language. The first part
3 is very much incorporated by the change staff made to
4 Paragraph (3) (a) on Page 3. That is the transactions
5 between the parent and the utility. But we also had
6 another exclusion, and that was that it should not apply
7 to the provision of administrative services, including but
8 not limited to shared administrative functions such as
9 accounting, tax, and information technology services.

10 That is not captured by the wording that staff
11 has put in, and, again, that is another example of the
12 kind of transaction. It is not that we are going to be
13 pricing below market, it is that we have to know market
14 almost on a daily basis to know if within thirty days we
15 have gone against something that is not at a market,
16 because that is the standard we will be held to later
17 during the period of an audit.

18 THE HEARING OFFICER: Mr. Devlin.

19 MR. DEVLIN: We may be at an agree to disagree
20 point. But, again, we are trying to -- we think this rule
21 is very restrictive. We are only talking about
22 transactions between the utility and an affiliate who is
23 in a non-tariffed nonregulated area. So it should be --
24 and we can cull out all the other transactions between
25 utility and services company, so we are talking about

1 hopefully a minority of transactions.

2 And we also believe that the utility should know
3 the market value of any service or product they provide to
4 an affiliate. Now, whether it has to be done on a daily
5 basis, monitored on a daily basis, or a monthly basis, or
6 whether they could use a contract, a year or two-year
7 contract that could be looked upon and a market valuation
8 conducted, that may be reasonable. You know, we haven't
9 worked out the detail there. But I think by and large I
10 think that the burden should be on the utility to know
11 what market value is when they do business with an
12 affiliate who is in, perhaps, a competitive area. And
13 that should be the threshold of transfer pricing.

14 MR. GUYTON: I don't mean to suggest otherwise.
15 I don't think we necessarily disagree with that
16 observation. The question is whether you just keep
17 reporting it on a monthly, monthly, monthly basis once you
18 have given staff notice of the transactions occurring and
19 recurring. That is what we are trying to avoid, at least
20 as to the reporting.

21 MS. SALAK: Could I ask a question?

22 THE HEARING OFFICER: If it goes to this.

23 MS. SALAK: It does. For each of these
24 recurring, and recurring, and recurring items that you are
25 speaking of, what kind of arrangement do you have set up?

1 Is it a contractual arrangement or is it just procedures
2 on paper, or how do you have that documented, what is
3 going to go between the affiliate and the utility?

4 MR. McCORMICK: In Tampa Electric and TECO
5 Energies, it would vary depending upon the nature of it.
6 Some of it is contractual, some of it is in policy and
7 procedure.

8 MS. SALAK: And how do you decide which is
9 which?

10 MR. McCORMICK: I can't answer that right now.
11 I don't have that information.

12 MR. BADDERS: The same would be true for Gulf
13 Power Company, case-by-case. I mean, sometimes you will
14 have a contract, other times you will not. They are just
15 internal procedures that are followed.

16 MS. SALAK: And how do you differentiate? Do
17 you know how you differentiate?

18 MR. BADDERS: I'm not sure.

19 MR. McMILLAN: I think a lot of it would depend
20 on the nature of the job and the significance of the
21 contract. If you are going to just -- someone, a
22 nonregulated affiliate calls and asks if you have got an
23 available engineer that could be shared or used on a
24 project, you know, basically we would fully allocate the
25 cost. As mentioned earlier, they are full salary. Any

1 incremental expenses and related overheads; payroll and
2 occupancy, et cetera. So that --

3 MS. SALAK: Is that an example of something
4 occurring? I mean, that would be an event where somebody
5 called and asked for an employee?

6 MR. McMILLAN: Uh-huh.

7 MS. SALAK: So is that a recurring item? I'm
8 trying to get a feel for -- you are speaking about
9 recurring items that happen over and over again. And Mr.
10 Babka mentioned an example. I'm trying to get a feel for
11 what else might be out there that is recurring over, and
12 over, and over again.

13 MR. McMILLAN: We do have a group called Energy
14 Solutions. And essentially we do provide them some labor
15 assistance, maybe even some equipment, and it is
16 recurring. It may not be daily, but it is the same type
17 of work. If they are working on military bases, you know,
18 they can -- our utility crews can work on those bases.
19 And we have pretty much of an agreement with them that we
20 charge them fully allocated costs.

21 So, I mean, that is -- like I said, it may not
22 be every day, it is just in our down times where we have
23 available crews, or a crew or something, they can use
24 those. They have to ask, and we have to evaluate our
25 utility operations to determine if anything is available.

1 But you might have that. They might have a big job going
2 on that, you know, we may have people in and out of there
3 over the course of a couple of months and then nothing for
4 several months. That is the type of work with an
5 affiliate and the types of labor or services that would be
6 provided under what -- like I said, we could draft up a
7 contract if that would help, you know, solve this
8 reporting where every time we sent somebody out there to
9 do a test for them, we didn't have to report that.

10 So, I mean, it is hard to pin it down today. I
11 will say I don't have anything right now that is
12 full-time. Obviously they would work for the affiliate if
13 it was full-time, like Tim related to. These are periodic
14 sharing of resources which benefits the ratepayer by us
15 being able to charge these costs to an affiliate versus to
16 our utility operations. And it is only when and if we
17 have got resources available.

18 MS. SALAK: And in your comments what I heard
19 you talk about is labor. And the rule amendment is
20 speaking to product and services from FPL. Are we talking
21 mostly labor and service type things or are we talking
22 products, too?

23 MR. McCORMICK: Well, I mean, it would be labor
24 and equipment potentially. You know, a bucket truck or
25 something like that. We charge them for anything that we

1 utilize to another affiliate. We charge them for every
2 bit of that. So it could be services mostly. You know,
3 you typically are going to have labor involved, but there
4 would be other equipment, materials, et cetera, that may
5 be consumed during that job.

6 THE HEARING OFFICER: Mr. Babka.

7 MR. BABKA: We have service agreements between
8 our company and the affiliate on the services we do
9 provide. The bulk of the service is labor.

10 MS. SALAK: And the arrangements that you are
11 referring to earlier about -- the group that you are
12 referring to earlier about how you split it between your
13 nonreg operations and your regulated operations, the
14 example that you gave a little while ago that you have for
15 two or three years, the operation and maintenance of those
16 plants, is that an agreement?

17 MR. BABKA: I'm sorry. Yes, we have service
18 agreements between the utility and the affiliate as to
19 what type of services we will be providing.

20 MS. SALAK: Okay.

21 MR. GUYTON: I want to make sure that I have not
22 misled staff here. I don't think -- and, Tim, I think you
23 are right, I don't think there are many transactions that
24 are below market price, and I don't want to give you the
25 impression that there are and that this is a huge burden.

1 Our suggestion with this language is very simple. If one
2 occurs, we would like to report it once rather than every
3 month if it is a recurring -- if it is a recurring
4 incidence. And it is real simple in that regard. Are
5 there many now? No. In the future, maybe. But if so,
6 let's just report it once rather than a number of times.
7 That is the simple thrust of this.

8 MS. HELTON: Would it be reasonable if you were
9 to do that, to put in your notification to the division
10 that this will be a recurring cost and how often you
11 expect for it to recur?

12 MR. GUYTON: I don't see a reason why not or
13 something to that effect. If we expect it to be
14 recurring, that is fine. I mean, the whole point of this,
15 Mary Anne, was simply to try to avoid having you to look
16 at something twelve times rather than one timing during
17 the course of the year if it arose.

18 THE HEARING OFFICER: Does FPC have a comment?

19 MR. PORTUONDO: Well, Florida Power uses the
20 service level agreement for the more -- I don't want to
21 say mundane, like payroll services, things like that,
22 accounting services. For other projects it would be on a
23 contract basis with that affiliate for a specific scope of
24 service.

25 MS. SALAK: Who do you provide payroll services

1 for?

2 MR. PORTUONDO: Currently we provide it for
3 electric fuels, progress telecommunications, a parent
4 company. So we provide it for most of the affiliated
5 group.

6 MS. SALAK: Can I just ask why you all do it
7 instead of the parent?

8 MR. PORTUONDO: Because it facilitates full
9 utilization of the department. It helps reduce costs to
10 the ratepayer. Those people need to be there. They have
11 the ability to take on additional work load, therefore, we
12 could take advantage of reducing the cost to the customers
13 by providing that service to the parent and the affiliated
14 group.

15 I had one question with regard to FP&L's
16 scenario. Wouldn't the added language in (3)(a) cover
17 that affiliate providing the maintenance service to the
18 utility and, therefore, would not require the
19 notification? I just want to make sure I am
20 understanding.

21 THE HEARING OFFICER: You are addressing FPL's
22 language or staff?

23 MR. PORTUONDO: No, the scenario. Staff's
24 language in (3)(a), I guess it starts at Line 15, services
25 received by a utility from an affiliate that exists solely

1 to provide services to members of the utility's corporate
2 family. Which is I think is what this affiliate, if I
3 understand Mr. Babka's scenario, provides services to the
4 corporate family. It sounds like -- am I understanding
5 the intent of the language here?

6 MR. DEVLIN: Our intent with (3)(a) was to cover
7 transactions or allocations between utilities without
8 touching upon the nonregulated activities, if you will. I
9 mean, between a services company and the utility, or
10 between a holding company and the utility, or between
11 utility affiliates. I don't believe that is pertinent to
12 the example that Don talked about.

13 MR. PORTUONDO: But wouldn't a service company
14 be providing those services to the entire corporate
15 family, which would include utilities as well as
16 nonregulated entities? So, therefore, I guess -- I mean,
17 the service company is not solely going to provide
18 services to the utility. The purpose of the service
19 company is to provide it for the entire holding company
20 and corporate family as it is phrased here. So I just
21 wanted to make sure I was clear.

22 MR. DEVLIN: I think that would be true with a
23 services company providing services to the operating
24 company, that is what we are trying to cover here. But I
25 think Don's example was the utility providing services to

1 an affiliate, a nonregulated affiliate.

2 MR. PORTUONDO: Okay. I'm mistaken.

3 (Simultaneous conversation.)

4 MR. DEVLIN: -- misunderstood his scenario.

5 THE HEARING OFFICER: Ms. Fentriss, do you have
6 a question?

7 MS. FENTRISS: Excuse me. Mr. Houff would like
8 to pose a question. He is a certified public accountant
9 who is here on behalf of RACCA and IEC, and he would like
10 to pose a question, if that is okay.

11 THE HEARING OFFICER: Go ahead.

12 MR. HOUFF: Thank you. I just wanted to jump
13 back, if we could, to the discussion that we had just a
14 few minutes ago just dealing with some of the affiliate
15 transactions that occur. And you will have to forgive me,
16 I'm not an expert in utility accounting, and so I tend to
17 look at things in a more broad general standpoint, which I
18 think is just fine for purposes of these discussions.

19 But it seems -- we had a discussion here a
20 little bit about using the concept of fully allocated
21 costs to spread the costs that a utility incurs over to
22 some other type of a nonregulated transaction. The way I
23 would look at that is so that the utility is made whole,
24 they are put back in the position of being reimbursed for
25 their costs and not having to go out-of-pocket to provide

1 services that are being provided on a nonregulated
2 fashion. And then we also had a discussion about market
3 value and how difficult sometimes that is to come up with.

4 But it seems to me that there is a difference
5 between fully allocated costs and market value, and that
6 difference is a profit element. So that typically if a
7 utility has to go out and obtain services from the general
8 public, whether that be in helping them to do their
9 payroll for affiliated companies or other organizations
10 that are connected with the parent, or so on and so forth,
11 these services that are provided by the utility because
12 they have the staff and the facilities and so on and so
13 forth need to be allocated in such a way that they
14 encompass not only the direct costs and the indirect costs
15 and so on and so forth, but perhaps a profit element.

16 And maybe there is a way to determine a market
17 value by somehow incorporating a profit element into those
18 costs that are being measured by what you are actually
19 going out of pocket to provide that service for. And I
20 don't know whether that is -- I don't see anything in any
21 of these -- in the rule that talks about a profit element.
22 I see the concept of incremental cost, which is not
23 defined, and I appreciate the definition I got earlier.

24 There are a lot of definitions of costs in here.
25 Direct cost is defined, and that is pretty commonly known

1 what that is. And indirect cost is defined. There are a
2 lot of definitions in here about what things mean. But
3 incremental cost wasn't defined, and I just had some
4 concerns because that is in the rules, also.

5 But I guess what I'm trying to say is that the
6 difference for me between fully allocated costs and market
7 costs is a profit element. And I was wondering if staff
8 took that into consideration in any way in trying to
9 determine how costs should be charged back and forth
10 between regulated and nonregulated functions.

11 THE HEARING OFFICER: Staff.

12 MR. DEVLIN: We understand, we think we
13 understand the difference between fully allocated costs as
14 maybe you would look at it in the real world and maybe how
15 we look at it in the regulatory world. And the profit
16 element when it comes to labor or expense items would not
17 be included in a fully allocated cost allocation. So I
18 think that could be -- that could explain why we are
19 spending an hour and a half here trying to figure out what
20 the difference between market and fully allocated cost is.
21 It could be that profit element.

22 Some aspects of fully allocated costs would
23 include a profit element, when it includes an allocation
24 of land and buildings or something like that, but that
25 would be probably immaterial. So, I think -- I don't know

1 where I'm going with this other than I think I understand
2 your point that fully allocated cost as we defined it is
3 sort of a regulatory definition. And most labor costs are
4 expensed, so they wouldn't have a profit element included.
5 And that may explain why we have a controversy here that
6 fully allocated costs could very well be less than market.

7 MS. SALAK: Could the utilities comment on that?
8 I would like to hear their thoughts on what the gentleman
9 said.

10 THE HEARING OFFICER: Go ahead, whoever is
11 ready. Mr. McCormick.

12 MR. McCORMICK: Racing for the microphones. In
13 my opening comments, I commented that the Commission's --
14 and I don't remember exactly how I put it, but that
15 basically the Commission's role is to protect the
16 ratepayers from harm. That means that a fully allocated
17 cost is a cost -- when it is allocated out to an affiliate
18 is a cost that the regulated ratepayer is not going to
19 have to pay. And that is what the Commission represents
20 is the ratepayer.

21 Utilities have engaged in growing their
22 businesses. They benefit from the economies of scale.
23 And what we are talking about here are very much in the
24 economies of scope rather than scale. That is a benefit
25 to the ratepayers. And that is where the Commission's

1 regulation, I believe, I'm not speaking for a lawyer, but
2 that seems to me where it stops. The other areas are
3 outside regulation. If an affiliate gets a good deal on
4 something, I don't know that that is the Commission's
5 purview.

6 In telecommunications, for example, when
7 telephone companies began to put extra services on such as
8 call waiting, call forwarding, voice mail, and all that
9 sort of thing, I believe it was the position of the
10 Florida Commission at that time to move all of that
11 outside rate base. They wanted to protect the ratepayers'
12 cost for plain old telephone service. And if the utility,
13 if the telecommunications company was able to charge more
14 for something else and there was a benefit that flowed
15 back to the ratepayer and kept their cost of service low,
16 that is exactly what the Commission wanted. And that is
17 the economies of scope that are developed because we have
18 other businesses, and that is a benefit.

19 MR. McMILLAN: I guess I would just say that the
20 fully allocated costs in our case, because of our
21 situation, or our federal law requires us to charge costs.
22 We are not allowed to charge profits between the
23 affiliates. Obviously if the Commission would like us to,
24 we could file with the FCC and try to do that. But, I
25 mean, it is to the benefit of our ratepayers to charge for

1 any services we receive at cost and any services we
2 provide to another affiliate are at cost.

3 And I think over time it has been proven and
4 would be proven that that is to the benefit of our utility
5 ratepayers. And certainly we think that that is going to
6 catch us in most cases. Like I said, other than in
7 telecom which was legislated, we do provide -- they
8 provide services to us at market. Which the Commission,
9 we petitioned them and they are aware of that. But all
10 the rest of our affiliate transactions are at cost.

11 So we would certainly have to report them all
12 and just explain why they are different than cost. And we
13 would just reference the public utility and PUHCA and FCC
14 regulations. So otherwise they would be foregone. So it
15 looks to me like that pretty well meets their criteria.

16 But fully allocated cost does protect the
17 customer from any cross-subsidization. And, in fact, it
18 is to their benefit. If we started trying to charge --
19 the whole reason that was put in place was to avoid
20 daisy-chain type situations where you are charging profits
21 back and forth between affiliates.

22 And it is definitely because of size, sharing of
23 services that can allow you to -- it does result in
24 benefits to the ratepayer. And that burden has been
25 placed on the utilities to basically present that case

1 when they make the filings. The only issue we have with
2 the thirty day, as FPL mentioned, is not having to report
3 that. Report it once, and unless something had changed,
4 let's not keep sending the same piece of paper over here
5 month after month.

6 THE HEARING OFFICER: And do you have a lot of
7 transactions that you think are going to be --

8 MR. McMILLAN: They come up periodically, and it
9 may be like FPL said, we could just -- because they are
10 not necessarily high volume, but they are the same type of
11 services we are providing; engineering assistance going
12 out, maybe a relay man going out and doing some relaying
13 on a military base, that we could just come up with some
14 service contracts if we could get something like that
15 agreed to versus every time we go out and do a relay
16 service, having to call over here and tell them we were
17 doing it again type of thing. Because it would all be
18 done today at fully allocated cost.

19 THE HEARING OFFICER: Staff, if there were a
20 service contract that covered that engineer going out,
21 say, twice a month or whatever, it would be the market
22 price at the time the contract is entered, is that right?
23 And would that -- if they notified you once of that, do
24 you anticipate that that would comply with the rule?

25 MR. DEVLIN: That could very well be reasonable,

1 some kind of periodic reporting, especially if there is a
2 contract. What we have been talking about a little bit
3 here is maybe we could think about everything that has
4 been discussed this morning. And since it looks like we
5 have one narrow provision that we have been just talking
6 about, maybe we could try to put together our own proposal
7 or maybe even agree with some of the words that the
8 companies have proposed. But we would like to have a
9 little bit of time to collaborate.

10 And then we were thinking maybe if this is
11 acceptable, we could have some sort of a process where we
12 could share some of our thoughts with the people here at
13 the table before we would submit any comments.

14 THE HEARING OFFICER: Certainly.

15 MR. DEVLIN: Is that acceptable?

16 MR. LONG: That is fine with us.

17 MR. BADDERS: No objection from Gulf Power.

18 MR. MCGEE: Fine.

19 THE HEARING OFFICER: All right. I just want to
20 make sure here that everyone has answered all the
21 questions, or had the opportunity to ask all the questions
22 so the record is developed and everyone has the
23 information they need.

24 MR. GUYTON: I apologize. I think my microphone
25 was off. I said that is fine with Florida Power and

1 Light.

2 THE HEARING OFFICER: Thank you. Ms. Fentriss.

3 MS. FENTRISS: On behalf of RACCA and IEC and
4 the construction interest here, I don't think we have any
5 objection to that. We would like to study this a little
6 bit further, possibly pose some more questions. Because I
7 believe we do have questions not only with the language as
8 proposed, but also with a number of the comments that we
9 have heard here. Specifically we keep hearing a
10 discussion about allocation of cost, allocation of
11 profits.

12 But one of the areas that I think is left out
13 here is what happens when the cost incurred in a start-up
14 type situation where the business doesn't go as planned,
15 they don't realize a profit and the cost or the start-up
16 costs are coming from the ratepayers, we are concerned
17 about that aspect of it, too. And I don't feel like that
18 has really been addressed here. But if we could discuss
19 this more, the whole issue, and evaluate it from a number
20 of angles, I think that would be helpful.

21 THE HEARING OFFICER: Are you asking --

22 MS. FENTRISS: I'm not asking for anything any
23 different than what has been agreed to here, I just wanted
24 to go ahead and make the comment that it seems to me that
25 there is a lot of discussion on allocation of cost, and

1 there has also been some discussion about the profit
2 aspect of it. But one of the things that we find so
3 troubling about cross-subsidization is that the utility
4 company has an opportunity to be in a start-up position,
5 start a whole new business using ratepayer money, we
6 believe. And if that business is not a success, then the
7 ratepayer suffers.

8 But at least if I am understanding some of the
9 comments correctly, if the business is a success I'm not
10 sure the money is going back to the ratepayer, even if the
11 money has been taken from the ratepayer. And I have to
12 say I think that adds a little bit different angle from
13 some of the things that we have been considering up until
14 today.

15 Am I not making sense?

16 MS. HELTON: Do you have an example?

17 MS. FENTRISS: Well, actually, no, I don't.
18 Because it is really based on the comments that I have
19 heard some of the utility company representatives say
20 today.

21 MR. PORTUONDO: If I could interject, I think I
22 can show how Florida Power has dealt with these types of
23 start-up. With a lot of our non-tariffed nonregulated
24 products and services, any and all costs associated with
25 research, development, and final launch and on-going

1 expenses associated with those products have been charged
2 to the shareholder. The ratepayer has not absorbed any of
3 those costs. They have been accounted for in the
4 regulatory terms below-the-line. And as my legal counsel
5 indicates, that is what the rule requires, that that is
6 the treatment that we should have.

7 THE HEARING OFFICER: Yes, sir.

8 MR. BISMARCK: Yes. Keane Bismarck, Executive
9 Director with RACCA in Tampa. While I was pleased to hear
10 that previous comment, because that has not been explained
11 to us in the past and it has not been explained in that
12 sort of detail, we recently met with TECO/Peoples Gas
13 representatives about a program called TECO Guard that is
14 supposed to be offered at this point or shortly. And it
15 is a full warranty appliance service program for
16 homeowners that the ratepayers can pay on their monthly
17 statements.

18 Obviously, TECO has spent a great deal of time
19 on this issue. They have had a great number of people
20 involved in putting the program together and promoting it.
21 Obviously, they have had attorneys, obviously they have
22 been before the Insurance Commission.

23 They have expended quite a bit of money to start
24 up a program in which they haven't garnered the first
25 premium dollar yet. And I have not had a utility -- and

1 the TECO people said that the shareholders weren't paying
2 for this. And I would like to know what magic tree the
3 utilities have out there in which they pay for these types
4 of operations.

5 I know that the gentleman from Florida Power
6 just talked about how they handle this. I know that three
7 years ago you all started a pilot program on inspections,
8 HVAC inspections that was started on the west coast here
9 down in the Pinellas County area. I never heard any more
10 about that program. I'm not sure if it has been shut down
11 or whether it enjoyed any kind of success. I have not
12 heard much about it at all. But I know a great deal of
13 time and marketing and other things were spent on that
14 program.

15 And to be very honest with you, I just don't
16 trust the fact that all the accounting numbers are there.
17 It would be easy to say that it cost us so much for paper
18 stock and marketing materials and things like that, but I
19 don't know about all the costs, legal costs, all of the
20 overhead costs, the direct labor costs, because this had
21 obviously Florida Power marketing representatives working
22 on it. I mean, they even brought the contractors to lunch
23 and paid for the lunch and woo them into trying to
24 participate in the program. Who paid for that lunch?

25 I don't want to get down to pennies, but I'm

1 just saying that this has been our problem all along with
2 the development of programs and then on-going programs.
3 We just -- we don't believe that the accounting and the
4 proper procedures have been there to determine that the
5 ratepayer hasn't subsidized this. Thank you.

6 THE HEARING OFFICER: Mr. Devlin, is that not
7 what -- if, in fact, that was going on, is that not what
8 our auditors are --

9 MR. DEVLIN: Correct. And the Uniform System of
10 Accounts lays out what was referred to as below-the-line
11 accounts that should track any kind of nonregulated
12 activity that the utility is involved in, including
13 allocations. And, of course, it is incumbent upon us to
14 ferret that out sometimes. And that is part of this rule
15 that we are requiring a cost allocations manual, it should
16 help facilitate to make sure that the attorney's salary,
17 if an attorney is involved in some start-up operation,
18 part of his salary gets allocated to the below-the-line
19 account.

20 THE HEARING OFFICER: Thank you.

21 MR. DEVLIN: Though we will definitely check on
22 this project here.

23 THE HEARING OFFICER: Are there any more
24 comments or questions?

25 MS. SALAK: I have a question. It had to do

1 with the language that was added about transactions that
2 would have otherwise been foregone. And the statement is,
3 or what it is looking for is if it is less than market,
4 then the utility has to show that the transaction would be
5 foregone, meaning if you can't charge below market then
6 you wouldn't have done it. Do you have situations where
7 that occurred? If you can't go below market, you wouldn't
8 do it?

9 MR. McMILLAN: Well, in our case we would
10 because we have to do it at cost by FCC regulation. So we
11 don't have the option of being able to charge market or
12 cost, we have to charge cost unless we get specific
13 exemption from the legislation with the FCC. And at this
14 point the only thing that they have exempted for Southern
15 Company is our telecom businesses. So in our case that
16 would be -- you know, we couldn't do any other affiliate
17 transactions.

18 MS. SALAK: Mr. McCormick, do you know of any
19 examples?

20 MR. McCORMICK: I would be winging it making up
21 one at the moment. I think I could come up with it, but I
22 would rather not because I haven't had a chance to think
23 through all the possibilities in it.

24 MS. SALAK: Okay. Mr. Babka.

25 MR. BABKA: We haven't done a great deal of

1 research on it. But the few items that we have looked at,
2 computer equipment is an example. In transferring some of
3 that we found that net book value is higher than market.
4 So I think a lot of times you will find that fully
5 allocated cost is higher than market, because our loadings
6 are quite high.

7 MS. SALAK: Okay. Mr. Portuondo.

8 MR. PORTUONDO: No, I can't think of any
9 examples.

10 THE HEARING OFFICER: Mr. Devlin.

11 MR. DEVLIN: If we are starting to wind down,
12 you know, I just wanted -- what I proposed earlier, I
13 don't want to belabor or continue a workshop type of
14 environment with this rule. I mean, we have had two or
15 three workshops. What I was proposing is to just isolate
16 this one area of the rule for further deliberation and
17 comment, if that is okay, Madam Hearing Officer.

18 The area that we are talking about is, you know,
19 Page 4, the last line where we were talking about going
20 below market. And that is really what we want to pursue a
21 little bit. The rest of the rule we don't plan on -- at
22 least from my viewpoint -- any further discussion. So to
23 try to bring closure to this.

24 MS. HELTON: Well, let me ask this. Is everyone
25 comfortable with the other changes made by staff, meaning

1 the changes to (3) (a) and adding market price -- or market
2 price twice to (3) (b)?

3 MR. PORTUONDO: Florida Power is comfortable
4 with the other changes. I would just like to bring up a
5 point that the language for further consideration is both
6 in part (3) (b) and also in 3(d).

7 THE HEARING OFFICER: That being similar, the
8 same language, yes.

9 MR. McCORMICK: Tampa Electric. As an
10 observation just here today, we think we agree with the
11 language that has been put in. We still would refer the
12 staff to the language provided by Tampa Electric in its
13 written comments, and that would be the other portion
14 which is the administrative services provided by the
15 utility to its parent or affiliate, because we think that
16 is another recurring kind of circumstance.

17 But otherwise I believe the market price is
18 not -- where the market price is added on Page 3 is not a
19 problem. But we would have the question with the foregone
20 pricing, and we still have our concern about the thirty
21 day reporting requirement.

22 THE HEARING OFFICER: Anyone else? And I assume
23 the, except for the thirty and the foregone, that the
24 other language as to market prices and to (3) (a) is
25 acceptable, with TECO's comment on administrative expenses

1 accepted.

2 MR. McCORMICK: Yes.

3 THE HEARING OFFICER: All right. One other
4 thing, I didn't notice a change to the name of the
5 division. That should be changed?

6 MS. HELTON: Right. And we plan on doing that.
7 That also involves getting some forms updated and such,
8 and we just have not taken care of that as of yet. I
9 suspect that by the time we file our comments we will have
10 done all of that.

11 THE HEARING OFFICER: Okay, thank you. The
12 schedule, the proposed schedule that I have, I believe the
13 transcript takes one to two weeks, is that correct? Then
14 post-hearing filings due July 21st, which is four weeks
15 from today. Is that adequate? Does anybody -- I assume
16 that you will be able to converse and meet and discuss any
17 further changes in each other's positions during that time
18 and still have time for filing.

19 MR. GUYTON: I think so. Is staff going to take
20 the lead in terms of trying to get something out? Say,
21 two weeks or so, would that be enough time?

22 MR. DEVLIN: Yes.

23 MR. GUYTON: Okay. Then I don't think we would
24 have any problem with four weeks from today.

25 THE HEARING OFFICER: All right. There is -- I

1 think I anticipate having a recommendation by August 17th.
2 There is no agenda conference between September 5th and --
3 let's see, and I think October. There is a September 5th
4 agenda conference and then one on the 29th. I thought if
5 we could go to agenda on August 29th, because there is not
6 an agenda conference between September 5th and October
7 17th.

8 In any event, If your post-hearing filings are
9 in by July 21th that will allow enough time, and also
10 allow time, if I have questions, to write you and ask that
11 you respond to some questions. Because after I review all
12 the material, I may discover that I don't understand it as
13 well as I need to.

14 Anything further?

15 MS. HELTON: Maybe if after the hearing if
16 everyone could come -- each of the utilities and
17 Ms. Fentriss and Mr. Watson could come up and provide me
18 with an E-mail address, then we could E-mail them what
19 language we come up with and also use that as a means to
20 figure out how we are going to get together.

21 THE HEARING OFFICER: If everyone will please do
22 that. Thank you.

23 Then if there is nothing further, the hearing is
24 adjourned.

25 (The Rule Hearing concluded at 11:45 a.m.)

1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4

5 I, JANE FAUROT, RPR, Chief, FPSC Bureau of Reporting
6 Official Commission Reporter, do hereby certify that the
7 Rule Hearing in Docket No. 980643-EI was heard by the
8 Staff of the Florida Public Service Commission at the time
9 and place herein stated.

7

8 It is further certified that I stenographically
9 reported the said proceedings; that the same has been
10 transcribed under my direct supervision; and that this
11 transcript, consisting of 83 pages, constitutes a true
12 transcription of my notes of said proceedings.

10

11 I FURTHER CERTIFY that I am not a relative, employee,
12 attorney or counsel of any of the parties, nor am I a
13 relative or employee of any of the parties' attorneys or
14 counsel connected with the action, nor am I financially
15 interested in the action.

13

14 DATED THIS 28TH DAY OF JUNE, 2000.

14

15



16

JANE FAUROT, RPR
FPSC Division of Records & Reporting
Chief, Bureau of Reporting
(850) 413-6732

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COMPOSITE EXHIBIT NO. 1

DOCKET NO. 980643-EI

In re: Proposed Amendments to Rules 25-6.135, F.A.C., Annual Reports;
25-6.1351, F.A.C., Cost Allocation and Affiliate Transactions;
and 25-6.0436, F.A.C., Depreciation.

June 22, 2000

9:30 a.m.

Betty Easley Conference Center
Room 148, 4075 Esplanade Way
Tallahassee, FL

- 1.) Florida Administrative Weekly notice and proposed rules 25-6.135, 25-6.1351, and 25-6.0436 submitted April 26, 2000, and published May 5, 2000.
- 2.) Rules 25-6.135, 25-6.1351, and 25-6.0436; Statement of Facts and Circumstances Justifying Rule; Statement on Federal Standards; Statement of Estimated Regulatory Costs; as provided to the Joint Administrative Procedures Committee on May 1, 2000.
- 3.) R.A.C.C.A, Inc.'s Request for Hearing, filed May 18, 2000.
- 4.) Florida Association of Plumbing, Heating, Cooling Contractors's Request for Hearing, filed May 24, 2000.
- 5.) Florida Power & Light Company's Comments, filed May 26, 2000.
- 6.) Tampa Electric Company's Comments, filed May 26, 2000.
- 7.) Florida Power Corporation's Comments, filed May 25, 2000.
- 8.) Gulf Power Company's Comments, May 25, 2000.

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET

NO. 980643-EI EXHIBIT NO. 1

COMPANY/

WITNESS: Staff (FPSC)

DATE: 6-22-00

NOTICE OF PROPOSED RULEMAKING

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 980643-EI

RULE TITLE:	RULE NO.:
ANNUAL REPORTS	25-6.135
COST ALLOCATION AND AFFILIATE TRANSACTIONS	25-6.1351
DEPRECIATION	25-6.0436

PURPOSE AND EFFECT: The purpose of the amendments is to prescribe procedures utilities must follow when allocating costs between utilities and affiliates. The intent is to ensure that ratepayers do not subsidize nonregulated operations.

SUMMARY: The amendments to Rule 25-6.1351 prescribe the procedures utilities must follow when accounting for affiliate transactions and utility nonregulated activities. The amendments to Rule 25-6.1351 require utilities to file an updated annual report form on an annual basis. The amendments to Rule 25-6.0436 concern the treatment of depreciation reserve accounts associated with transfers of property between affiliates.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: All five of Florida's investor-owned electric utilities would be affected by the proposed amendments. There should be no impact on the Commission or local government entities other than the Commission's rulemaking costs. Ratepayers, including small businesses, small cities, and small counties, should benefit if

they do not subsidize utility affiliates. Several utilities expressed concerns that the rule amendments are unnecessary and the costs prohibitive. Florida Power & Light Company stated that it could not estimate the costs of complying with the rule because the rule applies to future transactions. Florida Power Corporation stated that the cost of compliance would be negligible. Tampa Electric Company estimated a start-up cost of \$35 million and ongoing O&M costs of \$2 million per year. Gulf Power Company stated that it would cost \$50,000 to \$100,000 to administer the rule on an annual basis, and that the start-up costs would be greater than the annual cost. Florida Public Utilities Company stated that it would cost \$2,600 initially, and \$500 annually to comply with the rule.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 366.05(1), 350.127(2), FS.

LAW IMPLEMENTED: 350.115, 366.04(2)(a), (f), 366.05(1), (2), and (9), 366.093(1), 366.04(2)(f), 366.05(1), (2)(a), FS.

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULES MAY BE SUBMITTED TO THE FPSC, DIVISION OF RECORDS AND REPORTING, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.

A HEARING WILL BE HELD AT THE TIME, DATE, AND PLACE SHOWN BELOW:

TIME AND DATE: 9:30 A.M., June 22, 2000.

PLACE: Room 148, Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES ARE:

Director of Appeals, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862, (850) 413-6245.

THE FULL TEXT OF THE PROPOSED RULES ARE:

25-6.1351 Cost Allocation and Affiliate Transactions
~~Diversification Reports.~~

(1) Purpose. The purpose of this rule is to establish cost allocation requirements to ensure proper accounting for affiliate transactions and utility nonregulated activities so that these transactions and activities are not subsidized by utility ratepayers. This rule is not applicable to affiliate transactions for purchase of fuel and related transportation services that are subject to Commission review and approval in cost recovery proceedings.

~~(1) Each investor owned electric utility shall file information on its affiliates and affiliated transactions on Commission Form PSC/AFA 16 (12/94) which is incorporated into this rule by reference. Form PSC/AFA 16, entitled "Analysis of Diversification Activities", may be obtained from the~~

~~Commission's Division of Auditing and Financial Analysis.~~

(2) Definitions

(a) Affiliate -- Any entity that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with ~~a the~~ utility. As used herein, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement, and whether such power is established through a majority or minority ownership or voting of securities, common directors, officers or stockholders, voting trusts, holding trusts, associated companies, contracts or any other direct or indirect means. Ownership of ~~five~~ 5 percent or more of the voting securities of an entity shall be conclusively deemed to constitute the control thereof.

(b) ~~Affiliated~~ Transaction -- Any transaction in which both a utility and an affiliate ~~thereof~~ are each participants, except other than transactions related solely to the filing of consolidated tax returns.

(c) Cost Allocation Manual (CAM) - The manual that sets out a utility's cost allocation policies and related procedures.

(d) Direct Costs - Costs that can be specifically identified with a particular service or product.

(e) Fully Allocated Costs - The sum of direct costs plus a fair and reasonable share of indirect costs.

(f) Indirect Costs - Costs, including all overheads, that cannot be identified with a particular service or product.

(g) Nonregulated - Refers to services or products that are not subject to price regulation by the Commission or not included for ratemaking purposes and not reported in surveillance.

(h) Prevailing Price Valuation - Refers to the price an affiliate charges a regulated utility for products and services, which equates to that charged by the affiliate to third parties. To qualify for this treatment, sales of a particular asset or service to third parties must encompass more than 50 percent of the total quantity of the product or service sold by the entity. The 50 percent threshold is applied on an asset-by-asset and service-by-service basis, rather than on a product line or service line basis.

(i) Regulated - Refers to services or products that are subject to price regulation by the Commission or included for ratemaking purposes and reported in surveillance.

(3) Non-Tariffed Affiliate Transactions

(a) The purpose of subsection (3) is to establish requirements for non-tariffed affiliate transactions impacting regulated activities.

(b) A utility must charge an affiliate the higher of fully

allocated costs or market price for all non-tariffed services and products purchased by the affiliate from the utility. Except, a utility may charge an affiliate less than fully allocated costs if the charge is above incremental cost. If a utility charges less than fully allocated costs, the utility must maintain documentation to support and justify how doing so benefits regulated operations. If a utility charges less than market price, the utility must notify the Division of Auditing and Financial Analysis within 30 days of the transaction.

(c) When a utility purchases services and products from an affiliate and applies the cost to regulated operations, the utility shall apportion to regulated operations the lesser of fully allocated costs or market price. Except, a utility may apportion to regulated operations more than fully allocated costs if the charge is less than or equal to the market price. If a utility apportions to regulated operations more than fully allocated costs, the utility must maintain documentation to support and justify how doing so benefits regulated operations and would be based on prevailing price valuation.

(d) When an asset used in regulated operations is transferred from a utility to a nonregulated affiliate, the utility must charge the affiliate the greater of market price or net book value. Except, a utility may charge the affiliate either the market price or net book value if the utility maintains

documentation to support and justify that such a transaction benefits regulated operations. When an asset to be used in regulated operations is transferred from a nonregulated affiliate to a utility, the utility must record the asset at the lower of market price or net book value. Except, a utility may record the asset at either market price or net book value if the utility maintains documentation to support and justify that such a transaction benefits regulated operations. An independent appraiser must verify the market value of a transferred asset with a net book value greater than \$1,000,000. If a utility charges less than market price, the utility must notify the Division of Auditing and Financial Analysis within 30 days of the transaction.

(e) Each affiliate involved in affiliate transactions must maintain all underlying data concerning the affiliate transaction for at least three years after the affiliate transaction is complete. This paragraph does not relieve a regulated affiliate from maintaining records under otherwise applicable record retention requirements.

(4) Cost Allocation Principles

(a) Utility accounting records must show whether each transaction involves a product or service that is regulated or nonregulated. A utility that identifies these transactions by the use of subaccounts meets the requirements of this paragraph.

(b) Direct costs shall be assigned to each non-tariffed service and product provided by the utility.

(c) Indirect costs shall be distributed to each non-tariffed service and product provided by the utility on a fully allocated cost basis. Except, a utility may distribute indirect costs on an incremental or market basis if the utility can demonstrate that its ratepayers will benefit. If a utility distributes indirect costs on less than a fully allocated basis, the utility must maintain documentation to support doing so.

(d) Each utility must maintain a listing of revenues and expenses for all non-tariffed products and services.

(5) Reporting Requirements. Each utility shall file information concerning its affiliates, affiliate transactions, and nonregulated activities on Form PSC/AFA 19 (xx/xx) which is incorporated by reference into this rule. Form PSC/AFA 19, entitled "Annual Report of Major Electric Utilities," may be obtained from the Commission's Division of Auditing and Financial Analysis.

(6) Cost Allocation Manual. Each utility involved in affiliate transactions or in nonregulated activities must maintain a Cost Allocation Manual (CAM). The CAM must be organized and indexed so that the information contained therein can be easily accessed.

~~(3) Within 45 days of coming under the jurisdiction of the~~

~~Commission, each investor owned electric utility shall file Schedules 1, 7, and 8 of Form PSC/AFA 16 with the Division of Auditing and Financial Analysis.~~

~~(4) Each investor owned electric utility shall file Schedules 1 — 6 of Form PSC/AFA 16 as an attachment to its annual report.~~

~~(5) Each investor owned electric utility shall keep a detailed backup report of the summary report to facilitate auditing and analysis. Each investor owned electric utility shall maintain a clear audit trail from the summary report through the general ledger to the source documents supporting the transaction.~~

Specific Authority 366.05(1), 350.127(2) FS.

Law Implemented 350.115, 366.04(2)(a) and, (f), 366.041(1), 366.05(1), (2), and (9), 366.06(1), 366.093(1) FS.

History--New 12-27-94, Amended _____.

25-6.135 Annual Reports.

(1) Each investor-owned electric utility shall file annual reports with the Commission on Commission Form PSC/AFA 19 (xx/xx 12/94) which is incorporated by reference into this rule. Form PSC/AFA 19, entitled "Annual Report of Major Electric Utilities", may be obtained from the Commission's Division of Auditing and Financial Analysis. These reports shall be verified by a responsible accounting officer of the utility making the report

and shall be due on or before April 30 for the preceding calendar year. A utility may file a written request for an extension of time with the Division of Auditing and Financial Analysis no later than April 30. One extension of 31 days will be granted upon request. A request for a longer extension must be accompanied by a statement of good cause and shall specify the date by which the report will be filed.

(2) No Change.

Specific Authority 366.05(1), 350.127(2) FS.

Law Implemented 350.115, 366.04(2)(f), 366.05(1), (2)(a) FS.

History--New 12-27-94, amended.

25-6.0436 Depreciation.

(1) For the purposes of this part, the following definitions shall apply:

(a) - (c)4. No Change.

(d) Net Book Value - The book cost of an asset or group of assets minus the accumulated depreciation or amortization reserve associated with those assets.

(e) (d) Remaining Life Method -- The method of calculating a depreciation rate based on the unrecovered plant balance, less average future net salvage and the average remaining life. The formula for calculating a Remaining Life Rate (RLR) is:

$$\text{RLR} = \frac{100\% - \text{Reserve \%} - \text{Average Future Net Salvage \%}}{\text{Average Remaining Life in Years}}$$

(f) Reserve (Accumulated Depreciation) - The amount of depreciation/amortization expense, salvage, cost of removal, adjustments, transfers, and reclassifications accumulated to date.

(g)~~(e)~~ (e) through (k) renumbered to (g) through (m).

(2) (a) No utility shall ~~may~~ change any existing depreciation rate or initiate any new depreciation rate without prior Commission approval.

(b) No utility shall ~~may~~ reallocate accumulated depreciation reserves among any primary accounts and sub-accounts without prior Commission approval.

(c) When plant investment is booked as a transfer from a regulated utility depreciable account to another or from a regulated company to an affiliate, an appropriate reserve amount shall also be booked as a transfer. When plant investment is sold from one regulated utility to an affiliate, an appropriate associated reserve amount shall also be determined to calculate the net book value of the utility investment being sold. Appropriate methods for determining the appropriate reserve amount associated with plant transferred or sold are as follows:

1. Where vintage reserves are not maintained, synthesization using the currently prescribed curve shape may be required. The same reserve percent associated with the original placement vintage of the

related investment shall then be used in determining the appropriate amount of reserve to transfer.

2. Where the original placement vintage of the investment being transferred is unknown, the reserve percent applicable to the account in which the investment being transferred resides may be assumed as appropriate for determining the reserve amount to transfer.

3. Where the age of the investment being transferred is known and a history of the prescribed depreciation rates is known, a reserve can be determined by multiplying the age times the investment times the applicable depreciation rate(s).

4. The Commission shall consider any additional methods submitted by the utilities for determining the appropriate reserve amounts to transfer.

(3) (a) - (4) No Change.

(5) Upon Commission approval by order establishing an effective date, the utility shall ~~may~~ reflect on its books and records the implementation of the proposed rates, subject to adjustment when final depreciation rates are approved.

(6) - (9) No Change.

(10) For any category where current conditions indicate a need for revision of depreciation rates, amortization or capital recovery schedules and no revision is sought, the report shall

explain why no revision is requested.

~~(10)~~(a) Prior to the date of retirement of major installations, the Commission shall ~~may~~ approve capital recovery schedules to correct associated calculated deficiencies where a utility demonstrates that (1) replacement of an installation or group of installations is prudent and (2) the associated investment will not be recovered by the time of retirement through the normal depreciation process.

(b) The Commission shall ~~may~~ approve a special capital recovery schedule when an installation is designed for a specific purpose or for a limited duration.

(c) No Change.

Specific Authority 350.127(2), 366.05(1) FS.

Law Implemented 350.115, 366.04(2)(f), 366.06(1) FS.

History--New 11-11-82, 1-6-85, Formerly 25-6.436, Amended 4-27-88, 12-12-91, _____.

NAME OF PERSON ORIGINATING PROPOSED RULES: Jay Revell, Division of Auditing and Financial Analysis.

NAME OF SUPERVISOR OR PERSONS WHO APPROVED THE PROPOSED RULES: Florida Public Service Commission.

DATE PROPOSED RULES APPROVED: April 18, 2000.

DATE NOTICE OF PROPOSED RULES DEVELOPMENT PUBLISHED IN FAW: Volume 25, Number 28, July 16, 1999.

If any person decides to appeal any decision of the Commission

with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of Records and Reporting at (850) 413-6770 at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1-800-955-8771 (TDD).

1 25-6.1351 Cost Allocation and Affiliate Transactions

2 ~~Diversification Reports.~~

3 (1) Purpose. The purpose of this rule is to establish cost
4 allocation requirements to ensure proper accounting for affiliate
5 transactions and utility nonregulated activities so that these
6 transactions and activities are not subsidized by utility
7 ratepayers. This rule is not applicable to affiliate
8 transactions for purchase of fuel and related transportation
9 services that are subject to Commission review and approval in
10 cost recovery proceedings.

11 ~~(1) Each investor owned electric utility shall file~~
12 ~~information on its affiliates and affiliated transactions on~~
13 ~~Commission Form PSC/AFA 16 (12/94) which is incorporated into~~
14 ~~this rule by reference. Form PSC/AFA 16, entitled "Analysis of~~
15 ~~Diversification Activities", may be obtained from the~~
16 ~~Commission's Division of Auditing and Financial Analysis.~~

17 (2) Definitions

18 (a) Affiliate -- Any entity that directly or indirectly
19 through one or more intermediaries, controls, is controlled by,
20 or is under common control with a ~~the~~ utility. As used herein,
21 "control" means the possession, directly or indirectly, of the
22 power to direct or cause the direction of the management and
23 policies of a company, whether such power is exercised through
24 one or more intermediary companies, or alone, or in conjunction
25 with, or pursuant to an agreement, and whether such power is

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1 established through a majority or minority ownership or voting of
2 securities, common directors, officers or stockholders, voting
3 trusts, holding trusts, associated companies, contracts or any
4 other direct or indirect means. Ownership of ~~five~~ 5 percent or
5 more of the voting securities of an entity shall be conclusively
6 deemed to constitute the control thereof.

7 (b) Affiliated Transaction -- Any transaction in which both
8 a utility and an affiliate thereof are each participants, except
9 other than transactions related solely to the filing of
10 consolidated tax returns.

11 (c) Cost Allocation Manual (CAM) - The manual that sets out
12 a utility's cost allocation policies and related procedures.

13 (d) Direct Costs - Costs that can be specifically
14 identified with a particular service or product.

15 (e) Fully Allocated Costs - The sum of direct costs plus a
16 fair and reasonable share of indirect costs.

17 (f) Indirect Costs - Costs, including all overheads, that
18 cannot be identified with a particular service or product.

19 (g) Nonregulated - Refers to services or products that are
20 not subject to price regulation by the Commission or not included
21 for ratemaking purposes and not reported in surveillance.

22 (h) Prevailing Price Valuation - Refers to the price an
23 affiliate charges a regulated utility for products and services,
24 which equates to that charged by the affiliate to third parties.
25 To qualify for this treatment, sales of a particular asset or

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1 service to third parties must encompass more than 50 percent of
2 the total quantity of the product or service sold by the entity.
3 The 50 percent threshold is applied on an asset-by-asset and
4 service-by-service basis, rather than on a product line or
5 service line basis.

6 (i) Regulated - Refers to services or products that are
7 subject to price regulation by the Commission or included for
8 ratemaking purposes and reported in surveillance.

9 (3) Non-Tariffed Affiliate Transactions

10 (a) The purpose of subsection (3) is to establish
11 requirements for non-tariffed affiliate transactions impacting
12 regulated activities.

13 (b) A utility must charge an affiliate the higher of fully
14 allocated costs or market price for all non-tariffed services and
15 products purchased by the affiliate from the utility. Except, a
16 utility may charge an affiliate less than fully allocated costs
17 if the charge is above incremental cost. If a utility charges
18 less than fully allocated costs, the utility must maintain
19 documentation to support and justify how doing so benefits
20 regulated operations. If a utility charges less than market
21 price, the utility must notify the Division of Auditing and
22 Financial Analysis within 30 days of the transaction.

23 (c) When a utility purchases services and products from an
24 affiliate and applies the cost to regulated operations, the
25 utility shall apportion to regulated operations the lesser of

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1 fully allocated costs or market price. Except, a utility may
2 apportion to regulated operations more than fully allocated costs
3 if the charge is less than or equal to the market price. If a
4 utility apportions to regulated operations more than fully
5 allocated costs, the utility must maintain documentation to
6 support and justify how doing so benefits regulated operations
7 and would be based on prevailing price valuation.

8 (d) When an asset used in regulated operations is
9 transferred from a utility to a nonregulated affiliate, the
10 utility must charge the affiliate the greater of market price or
11 net book value. Except, a utility may charge the affiliate
12 either the market price or net book value if the utility
13 maintains documentation to support and justify that such a
14 transaction benefits regulated operations. When an asset to be
15 used in regulated operations is transferred from a nonregulated
16 affiliate to a utility, the utility must record the asset at the
17 lower of market price or net book value. Except, a utility may
18 record the asset at either market price or net book value if the
19 utility maintains documentation to support and justify that such
20 a transaction benefits regulated operations. An independent
21 appraiser must verify the market value of a transferred asset
22 with a net book value greater than \$1,000,000. If a utility
23 charges less than market price, the utility must notify the
24 Division of Auditing and Financial Analysis within 30 days of the
25 transaction.

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1 (e) Each affiliate involved in affiliate transactions must
2 maintain all underlying data concerning the affiliate transaction
3 for at least three years after the affiliate transaction is
4 complete. This paragraph does not relieve a regulated affiliate
5 from maintaining records under otherwise applicable record
6 retention requirements.

7 (4) Cost Allocation Principles

8 (a) Utility accounting records must show whether each
9 transaction involves a product or service that is regulated or
10 nonregulated. A utility that identifies these transactions by
11 the use of subaccounts meets the requirements of this paragraph.

12 (b) Direct costs shall be assigned to each non-tariffed
13 service and product provided by the utility.

14 (c) Indirect costs shall be distributed to each non-
15 tariffed service and product provided by the utility on a fully
16 allocated cost basis. Except, a utility may distribute indirect
17 costs on an incremental or market basis if the utility can
18 demonstrate that its ratepayers will benefit. If a utility
19 distributes indirect costs on less than a fully allocated basis,
20 the utility must maintain documentation to support doing so.

21 (d) Each utility must maintain a listing of revenues and
22 expenses for all non-tariffed products and services.

23 (5) Reporting Requirements. Each utility shall file
24 information concerning its affiliates, affiliate transactions,
25 and nonregulated activities on Form PSC/AFA 19 (xx/xx) which is

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1 incorporated by reference into this rule. Form PSC/AFA 19,
2 entitled "Annual Report of Major Electric Utilities," may be
3 obtained from the Commission's Division of Auditing and Financial
4 Analysis.

5 (6) Cost Allocation Manual. Each utility involved in
6 affiliate transactions or in nonregulated activities must
7 maintain a Cost Allocation Manual (CAM). The CAM must be
8 organized and indexed so that the information contained therein
9 can be easily accessed.

10 ~~(3) Within 45 days of coming under the jurisdiction of the~~
11 ~~Commission, each investor owned electric utility shall file~~
12 ~~Schedules 1, 7, and 8 of Form PSC/AFA 16 with the Division of~~
13 ~~Auditing and Financial Analysis.~~

14 ~~(4) Each investor owned electric utility shall file~~
15 ~~Schedules 1-6 of Form PSC/AFA 16 as an attachment to its~~
16 ~~annual report.~~

17 ~~(5) Each investor owned electric utility shall keep a~~
18 ~~detailed backup report of the summary report to facilitate~~
19 ~~auditing and analysis. Each investor owned electric utility shall~~
20 ~~maintain a clear audit trail from the summary report through the~~
21 ~~general ledger to the source documents supporting the~~
22 ~~transaction.~~

23 Specific Authority: 366.05(1), 350.127(2) F.S.

24 Law Implemented: 350.115, 366.04(2)(a) ~~and~~ (f), 366.041(1),

25 366.05(1), (2), and (9), 366.06(1), 366.093(1) F.S.

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1 | History--New 12-27-94, Amended

2 | 25-6.135 Annual Reports.

3 | (1) Each investor-owned electric utility shall file annual
4 | reports with the Commission on Commission Form PSC/AFA 19 (xx/xx
5 | ~~12/94~~) which is incorporated by reference into this rule. Form
6 | PSC/AFA 19, entitled "Annual Report of Major Electric Utilities",
7 | may be obtained from the Commission's Division of Auditing and
8 | Financial Analysis. These reports shall be verified by a
9 | responsible accounting officer of the utility making the report
10 | and shall be due on or before April 30 for the preceding calendar
11 | year. A utility may file a written request for an extension of
12 | time with the Division of Auditing and Financial Analysis no
13 | later than April 30. One extension of 31 days will be granted
14 | upon request. A request for a longer extension must be
15 | accompanied by a statement of good cause and shall specify the
16 | date by which the report will be filed.

17 | (2) The utility shall also file with the original and each
18 | copy of the annual report form, or separately within 30 days, a
19 | letter or report, signed by an independent certified public
20 | accountant, attesting to the conformity in all material respects
21 | of the schedules and their applicable notes listed on the general
22 | information page of Form PSC/AFA 19 with the Commission's
23 | applicable uniform system of accounts and published accounting
24 | releases.

25 | Specific Authority: 366.05(1), 350.127(2) F.S.

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1 Law Implemented: 350.115, 366.04(2)(f), 366.05(1), (2)(a) F.S.

2 History--New 12-27-94, Amended.

3 25-6.0436 Depreciation.

4 (1) For the purposes of this part, the following
5 definitions shall apply:

6 (a) Category or Category of Depreciable Plant -- A grouping
7 of plant for which a depreciation rate is prescribed. At a
8 minimum it should include each plant account prescribed in Rule
9 25-6.014(1), F.A.C.

10 (b) Embedded Vintage -- A vintage of plant in service as of
11 the date of study or implementation of proposed rates.

12 (c) Mortality Data -- Historical data by study category
13 showing plant balances, additions, adjustments and retirements,
14 used in analyses for life indications or calculations of realized
15 life. Preferably, this is aged data in accord with the
16 following:

- 17 1. The number of plant items or equivalent units (usually
18 expressed in dollars) added each calendar year.
- 19 2. The number of plant items retired (usually expressed in
20 dollars) each year and the distribution by years of
21 placing of such retirements.
- 22 3. The net increase or decrease resulting from purchases,
23 sales or adjustments and the distribution by years of
24 placing of such amounts.
- 25 4. The number that remains in service (usually expressed

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1 in dollars) at the end of each year and the
2 distribution by years of placing of such amounts.

3 (d) Net Book Value - The book cost of an asset or group of
4 assets minus the accumulated depreciation or amortization reserve
5 associated with those assets.

6 (e)(d) Remaining Life Method -- The method of calculating
7 a depreciation rate based on the unrecovered plant balance, less
8 average future net salvage and the average remaining life. The
9 formula for calculating a Remaining Life Rate (RLR) is:

$$10 \quad RLR = \frac{100\% - \text{Reserve \%} - \text{Average Future Net Salvage \%}}{\text{Average Remaining Life in Years}}$$

12 (f) Reserve (Accumulated Depreciation) - The amount of
13 depreciation/amortization expense, salvage, cost of removal,
14 adjustments, transfers, and reclassifications accumulated to
15 date.

16 (g)(e) Reserve Data -- Historical data by study category
17 showing reserve balances, debits and credits such as booked
18 depreciation, expense, salvage and cost of removal and
19 adjustments to the reserve utilized in monitoring reserve
20 activity and position.

21 (h)(f) Reserve Deficiency -- An inadequacy in the reserve
22 of a category as evidenced by a comparison of that reserve
23 indicated as necessary under current projections of life and
24 salvage with that reserve historically accrued. The latter
25 figure may be available from the utility's records or may require

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1 (2) (a) No utility shall ~~may~~ change any existing
2 depreciation rate or initiate any new depreciation rate without
3 prior Commission approval.

4 (b) No utility shall ~~may~~ reallocate accumulated
5 depreciation reserves among any primary accounts and sub-accounts
6 without prior Commission approval.

7 (c) When plant investment is booked as a transfer from a
8 regulated utility depreciable account to another or from a
9 regulated company to an affiliate, an appropriate reserve amount
10 shall also be booked as a transfer. When plant investment is
11 sold from one regulated utility to an affiliate, an appropriate
12 associated reserve amount shall also be determined to calculate
13 the net book value of the utility investment being sold.
14 Appropriate methods for determining the appropriate reserve
15 amount associated with plant transferred or sold are as follows:

- 16 1. Where vintage reserves are not maintained,
17 synthesization using the currently prescribed curve
18 shape may be required. The same reserve percent
19 associated with the original placement vintage of the
20 related investment shall then be used in determining
21 the appropriate amount of reserve to transfer.
22 2. Where the original placement vintage of the investment
23 being transferred is unknown, the reserve percent
24 applicable to the account in which the investment being
25 transferred resides may be assumed as appropriate for

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1 determining the reserve amount to transfer.

2 3. Where the age of the investment being transferred is
3 known and a history of the prescribed depreciation
4 rates is known, a reserve can be determined by
5 multiplying the age times the investment times the
6 applicable depreciation rate(s).

7 4. The Commission shall consider any additional methods
8 submitted by the utilities for determining the
9 appropriate reserve amounts to transfer.

10 (3) (a) Each utility shall maintain depreciation rates and
11 accumulated depreciation reserves in accounts or subaccounts as
12 prescribed by Rule 25-6.014(1), F.A.C. Utilities may maintain
13 further sub-categorization.

14 (b) Upon establishing a new account or subaccount
15 classification, each utility shall request Commission approval of
16 a depreciation rate for the new plant category.

17 (4) A utility filing a depreciation study, regardless if a
18 change in rates is being requested or not, shall submit to the
19 Commission Clerk's office fifteen copies of the information
20 required by paragraphs (6) (a) through (6) (f) and (6) (h) of this
21 rule and at least three copies of the information required by
22 paragraph (6) (g).

23 (5) Upon Commission approval by order establishing an
24 effective date, the utility shall ~~may~~ reflect on its books and
25 records the implementation of the proposed rates, subject to

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1 adjustment when final depreciation rates are approved.

2 (6) A depreciation study shall include:

3 (a) A comparison of current and proposed depreciation rates
4 and components for each category of depreciable plant. Current
5 rates shall be identified as to the effective date and proposed
6 rates as to the proposed effective date.

7 (b) A comparison of annual depreciation expense as of the
8 proposed effective date, resulting from current rates with those
9 produced by the proposed rates for each category of depreciable
10 plant. The plant balances may involve estimates. Submitted data
11 including plant and reserve balances or company planning
12 involving estimates shall be brought to the effective date of the
13 proposed rates.

14 (c) Each recovery and amortization schedule currently in
15 effect should be included with any new filing showing total
16 amount amortized, effective date, length of schedule, annual
17 amount amortized and reason for the schedule.

18 (d) A comparison of the accumulated book reserve to the
19 prospective theoretical reserve based on proposed rates and
20 components for each category of depreciable plant to which
21 depreciation rates are to be applied.

22 (e) A general narrative describing the service environment
23 of the applicant company and the factors, e.g., growth,
24 technology, physical conditions, necessitating a revision in
25 rates.

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1 (f) An explanation and justification for each study
2 category of depreciable plant defining the specific factors that
3 justify the life and salvage components and rates being proposed.
4 Each explanation and justification shall include substantiating
5 factors utilized by the utility in the design of depreciation
6 rates for the specific category, e.g., company planning, growth,
7 technology, physical conditions, trends. The explanation and
8 justification shall discuss any proposed transfers of reserve
9 between categories or accounts intended to correct deficient or
10 surplus reserve balances. It should also state any statistical
11 or mathematical methods of analysis or calculation used in design
12 of the category rate.

13 (g) The filing shall contain all calculations, analysis and
14 numerical basic data used in the design of the depreciation rate
15 for each category of depreciable plant. Numerical data shall
16 include plant activity (gross additions, adjustments,
17 retirements, and plant balance at end of year) as well as reserve
18 activity (retirements, accruals for depreciation expense,
19 salvage, cost of removal, adjustments, or transfers and
20 reclassifications and reserve balance at end of year) for each
21 year of activity from the date of the last submitted study to the
22 date of the present study. To the degree possible, data
23 involving retirements should be aged.

24 (h) The mortality and salvage data used by the company in
25 the depreciation rate design must agree with activity booked by

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1 the utility. Unusual transactions not included in life or
2 salvage studies, e.g., sales or extraordinary retirements, must
3 be specifically enumerated and explained.

4 (7) (a) Utilities shall provide calculations of
5 depreciation rates using both the whole life method and the
6 remaining life method. The use of these methods is required for
7 all depreciable categories. Utilities may submit additional
8 studies or methods for consideration by the Commission.

9 (b) The possibility of corrective reserve transfers shall
10 be investigated by the Commission prior to changing depreciation
11 rates.

12 (8) (a) Each company shall file a study for each category
13 of depreciable property for Commission review at least once every
14 four years from the submission date of the previous study unless
15 otherwise required by the Commission.

16 (b) A utility proposing an effective date of the beginning
17 of its fiscal year shall submit its depreciation study no later
18 than the mid-point of that fiscal year.

19 (c) A utility proposing an effective date coinciding with
20 the expected date of additional revenues initiated through a rate
21 case proceeding shall submit its depreciation study no later than
22 the filing date of its Minimum Filing Requirements.

23 (9) As part of the filing of the annual report pursuant to
24 Rule 25-6.014(3), F.A.C., each utility shall include an annual
25 status report. The report shall include booked plant activity

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1 (plant balance at the beginning of the year, additions,
2 adjustments, transfers, reclassifications, retirements and plant
3 balance at year end) and reserve activity (reserve balance at the
4 beginning of the year, retirements, accruals, salvage, cost of
5 removal, adjustments, transfers, reclassifications and reserve
6 balance at end of year) for each category of investment for which
7 a depreciation rate, amortization, or capital recovery schedule
8 has been approved. The report shall indicate for each category
9 that:

10 (a) There has been no change of plans or utility experience
11 requiring a revision of rates, amortization or capital recovery
12 schedules; or

13 (b) There has been a change requiring a revision of rates,
14 amortization or capital recovery schedules.

15 (10) For any category where current conditions indicate a
16 need for revision of depreciation rates, amortization or capital
17 recovery schedules and no revision is sought, the report shall
18 explain why no revision is requested.

19 ~~(10)~~(a) Prior to the date of retirement of major
20 installations, the Commission shall ~~may~~ approve capital recovery
21 schedules to correct associated calculated deficiencies where a
22 utility demonstrates that (1) replacement of an installation or
23 group of installations is prudent and (2) the associated
24 investment will not be recovered by the time of retirement
25 through the normal depreciation process.

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1 (b) The Commission shall ~~may~~ approve a special capital
2 recovery schedule when an installation is designed for a specific
3 purpose or for a limited duration.

4 (c) Associated plant and reserve activity, balances and the
5 annual capital recovery schedule expense must be maintained as
6 subsidiary records.

7 Specific Authority: 350.127(2), 366.05(1) F.S.

8 Law Implemented: 350.115; 366.04(2)(f), 366.06(1) F.S.

9 History--New 11-11-82, 1-6-85, Formerly 25-6.436, Amended
10 4-27-88, 12-12-91, _____.

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Rules 6.135, 25-6.1351, and
25-6.0436,
Docket No. 980643-EI

**STATEMENT OF FACTS AND CIRCUMSTANCES
JUSTIFYING RULE**

Affiliate transactions should be closely scrutinized. The Commission has historically reviewed affiliate transactions during rate cases or as a part of the Commission's surveillance program. However, today rate cases for the large electric companies are virtually nonexistent. As the electric industry evolves, affiliate transactions and nontariffed services are becoming more prevalent. The proposed amendments are necessary to ensure that affiliate transactions are treated consistently and to follow the mandate of the Florida Legislature to ensure that the ratepayers do not subsidize nonutility operations. In addition, the proposed amendments will provide the utilities with clear guidelines to follow when deliberating with affiliates.

STATEMENT ON FEDERAL STANDARDS

The proposed rule is no more restrictive than federal standards.

M E M O R A N D U M

March 23, 2000

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TO: DIVISION OF APPEALS (HELTON) FLORIDA PUBLIC SERVICE COMM.
DIVISION OF APPEALS

FROM: DIVISION OF AUDITING AND FINANCIAL ANALYSIS (HEWITT) DM
GRA
JN

SUBJECT: STATEMENT OF ESTIMATED REGULATORY COSTS FOR DOCKET NO. 980643-EI, PROPOSED AMENDMENTS TO RULES: 25-6.135, F.A.C., ANNUAL REPORTS; RULE 25-6.1351, F.A.C., DIVERSIFICATION REPORTS [COST ALLOCATION AND AFFILIATE TRANSACTIONS]; AND RULE 25-6.0436, F.A.C., DEPRECIATION

SUMMARY OF THE RULES

Currently, the above-referenced rules address the requirements for investor-owned electric utility companies (IOUs) to file annual reports and information on its affiliates and affiliated transactions, and requirements for depreciation accounts.

The proposed rule changes would further define and expand the requirements for IOUs' depreciation and affiliate transaction accounting and reporting.

The annual report Form PSC/AFA 19 would be updated and would include the schedules that are a part of PSC/AFA 16. An additional schedule would be added to the annual report to insure that transactions with affiliates are reported in a uniform manner.

ESTIMATED NUMBER OF ENTITIES REQUIRED TO COMPLY AND
GENERAL DESCRIPTION OF INDIVIDUALS AFFECTED

There are five investor-owned electric utility companies operating in Florida, all of which have affiliated companies. The ratepayers of the IOUs should benefit if they do not have to subsidize affiliates of the utilities through electricity payments.

RULE IMPLEMENTATION AND ENFORCEMENT COST AND IMPACT ON REVENUES
FOR THE AGENCY AND OTHER STATE AND LOCAL GOVERNMENT ENTITIES

The Public Service Commission and other local government entities are not expected to experience implementation costs other than the costs associated with promulgating a proposed rule.

Existing Commission staff would handle the monitoring and review of additional information provided by the new rule requirements.

ESTIMATED TRANSACTIONAL COSTS TO INDIVIDUALS AND ENTITIES

Several IOUs expressed concern that the proposed rule changes were unnecessary and that the costs could be prohibitive.

Tampa Electric Company stated that its current accounting system only allows for a 13-digit account identifier. Mandating a regulated or non-regulated classification in Rule 25-6.1351(4)(a) would require a new system to allow for such flexibility. The initial start-up cost to implement a new system to comply with the proposed rule would be an estimated \$35 million. The ongoing O&M costs and the time and effort to individually code and input each affiliate transaction would be an estimated \$2 million per year.

Florida Power & Light (FPL) said that it could not estimate the total costs that could result from the proposed rule changes because the rule applies to future transactions. Also, FPL pointed out the disparity in the pricing policy for the transfer of assets between the utility and an affiliate. The proposed rule would require that the utility transfer assets to an affiliate at the higher of cost or market but when assets are transferred from an affiliate they would be at the lower of cost or market. FPL stated this disparity could result in a detriment to the ratepayers.

Gulf Power Company (Gulf) estimated the on-going cost to administer the proposed rule changes would be \$50,000 to \$100,000 annually. Gulf stated that the initial implementation costs would be greater than on-going costs because of the amount of resources required to implement changes in policies and procedures, train company employees, and develop and maintain the Cost Allocation Manual. The Public Utility Holding Company Act of 1935 requires a holding company affiliate (Gulf) to price affiliated transactions at cost. Requiring Gulf to use two different pricing rules would

be burdensome. There would be additional costs to include market studies and appraisals and increased legal fees associated with confidentiality filings.

Florida Public Utilities Company estimated that additional accounting labor to comply with the affiliated transactions rule would cost \$500 annually. To comply with the requirements for the cost allocation manual would cost \$2,600 initially, and \$500 recurring for accounting labor and overhead.

Florida Power Company determined that the cost to comply with the new requirements would be negligible and that all the newly required information is currently available.

IMPACT ON SMALL BUSINESSES, SMALL CITIES, OR SMALL COUNTIES

Small businesses, small cities, and small counties that are IOU customers would benefit from the proposed rule changes if subsidization of IOU affiliates is prevented.

REASONABLE ALTERNATIVE METHODS

Some of the IOUs have submitted suggested alternative rule language during the draft rule development period. Staff has considered the suggestions and the proposed rule amendments reflect consideration of those suggestions.

FPL stated that the proposed rule changes are unnecessary and there that there is no compelling need for change.

Gulf stated that the proposed rule changes are unnecessary, would increase administrative costs, and in many cases would require utilities to follow two separate pricing policies. Also, Gulf believes that existing regulations and review power are adequate to ensure no cross-subsidization.

camserc.cbh

App/Helton

ANNA CAM FENTRISS
GOVERNMENTAL RELATIONS
PMB 243
1400 VILLAGE SQUARE BOULEVARD, NUMBER 3
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TELEPHONE 850-222-2772 ♦ FACSIMILE 850-224-0580
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00 MAY 18 PM 3:45
FLORIDA PUBLIC SERVICE COMMISSION
DIVISION OF APPEALS

May 18, 2000

Ms. Mary Anne Helton, Esquire
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

BY HAND DELIVERY

Re: Docket Number 980643-EI – In re: Proposed amendments to
Rules 25-6.135, F.A.C., Annual Reports; 25-6.1351, F.A.C., Cost
Allocation and Affiliate Transactions; and 25-6.0436, F.A.C.,
Depreciation
Order Number: PSC-00-0832-NOR-EI Issued: April 27, 2000

Dear Ms. Helton:

On behalf of R.A.C.C.A., Inc., I respectfully request a hearing to consider matters relating to affiliate transactions by utility companies. Specifically, it is our belief that utility companies are not properly segregating nonregulated affiliate transactions which result in "cross-subsidization" or inappropriate use of ratepayer monies in the pursuit of nonregulated activities intended to capture or ensure market share.

We believe the current rules of the Public Service Commission should be more stringent and more specific. We are concerned that ratepayer funds are being used to convince the very same ratepayers to enter into nonregulated contracts that will tie these customers to particular utility companies in the event of utility deregulation. To the extent that this may not have already taken place, we believe utility companies have invested regulated funds in preparing to engage in this activity. We are also concerned that ratepayer funds are being used to engage in commercial activities that are not regulated by the Public Service Commission.

DOCUMENT NUMBER-DATE
~~06144 MAY 18 8~~

Ms. Mary Anne Helton
May 18, 2000
Page Two

We do not believe that Florida law or administrative rule allow for use of ratepayer or regulated funds to increase nonregulated market share, especially with products or services intended to tie utility customers to specific utility companies.

I would appreciate your favorable consideration in this matter. It is my understanding that there is a public hearing already scheduled on this to be held June 22, 2000 at 9:30 a.m. at the Public Service Commission, Betty Easley Conference Center, Room 148, 4075 Esplanade Way, Tallahassee, Florida. If this information is not correct, please let me know what is the correct information in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Anna Cam Fentriss".

Anna Cam Fentriss

cc: Keane Bismarck, Executive Director, R.A.C.C.A., Inc.



**FLORIDA ASSOCIATION OF
PLUMBING • HEATING • COOLING CONTRACTORS**

APP / Helton

P.O. Box 947599 • Maitland, Florida 32794

INDUSTRIAL RELATIONS COMMITTEE

Charles Vaughn, Chairman

1461 Stamford St., Port Charlotte, Fl. 33952

Telephone: 941/625-0003 or 941/625-6994, Fax: 941/624-2300.

RECEIVED
00 MAY 25 AM 11:01
FLORIDA PUBLIC SERVICE COM.
DIVISION OF AFFAIRS

May 24, 2000

Re: Docket Number 980643-EI – In re: Proposed amendments to Rules 25-6. 1998 F.A.C., Annual Reports; 25-6. 1351, F.A.C., Cost Allocation and Affiliate Transactions and 25-6. 0436, F.A.C., Depreciation
Order Number: PSC-00-0832-NOR-EI Issued: April 27, 2000

Dear Ms. Helton:

On behalf of the Florida Association of Plumbing, Heating & Cooling Contractors (FAPHCC), I formally request a hearing considering affiliate transactions by utility companies. FAPHCC believes that utility companies are not properly separating non-regulated affiliate transactions. This results in inappropriate use of ratepayer monies (or "cross-subsidization") in the pursuit of non-regulated activities intended to capture of ensure market share.

The current rules of the Public Service Commission should be more specific and stricter on this matter. We are concerned that, in the event of utility deregulation, customers will be monetarily tied to particular utility companies by non-regulated contracts. We believe that these utility companies have already begun investing regulated funds for this purpose. It is also a concern of the FAPHCC that ratepayer funds are being used for commercial activities not regulated by the Public Service Commission.

It is not our belief that Florida law nor administrative rule allow the use of ratepayer or regulated funds for the increase of non-regulated market share, specifically tying certain products or services to other certain utility companies.

We appreciate your favorable consideration in this matter. We understand that there is to be a public hearing scheduled to be held on June 22, 2000 at 9:30am at the Public Service Commission, Betty Easley Conference Center, Room 148, 4075 Esplanade Way, Tallahassee, Florida. If this is incorrect, please advise me.

Sincerely,

Charles Vaughn, Chairman
Industrial Relations Committee

DOCUMENT NUMBER-DATE

06411 MAY 24 00

PSC-RECORDS/REPORTING

App/ Helton

STEEL
HECTOR
DAVIS

Steel Hector & Davis LLP
215 South Monroe, Suite 601
Tallahassee, Florida 32301-1804
850.222.2300
850.222.8410 Fax
www.steelhector.com

May 26, 2000

Charles A. Guyton
850.222.3423

By Hand Delivery

Blanca S. Bayó, Director
Records and Reporting
Florida Public Service Commission
4075 Esplanade Way, Room 110
Tallahassee, Florida 32399-0850

**Re: Comments of Florida Power & Light
Company in Docket No. 980643-EI**

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company (FPL) are the original and fifteen (15) copies of FPL's Comments in Docket No. 980643-EI.

If you or your Staff have any questions regarding this filing, please contact me.

Very truly yours,



Charles A. Guyton

CAG/ld
cc: Mary Anne Helton, Esq.
Parties of Record

TAL_1998/34382-1

RECEIVED
00 MAY 26 PM 3:38
FLORIDA PUBLIC SERVICE COM.
DIVISION OF APPEALS

DOCUMENT NUMBER-DATE

06542 MAY 26 8

**FLORIDA POWER & LIGHT COMPANY'S
COMMENTS ON PROPOSED AMENDMENTS
TO RULES 25-6.135, 25-6.1351 AND 25-6.0436
DOCKET NO. 980643-EI
MAY 26, 2000**

Florida Power & Light Company ("FPL") respectfully submits that there is no need for the proposed rule amendments. Experience has demonstrated that the existing rules are more than sufficient to protect utility customers from cross-subsidization. There has been no history of utility abuse that gives rise to a need for the rule amendments. Therefore, the Commission should reconsider whether any of the proposed amendments are necessary.

If the Commission proceeds with the proposed amendments, FPL has two concerns with Rule 25-6.1351(3)(b). This subsection was amended at the Agenda Conference where the rule was proposed, and as a result, it could use some clarifying amendments. More importantly, the rule presents a significant cost impact, some of which was not captured in the economic impact analysis because it is associated with a rule amendment made at the recent Agenda. To address these concerns, FPL offers several amendments to the proposed rule.

For ease of reference, FPL's comments suggesting specific language and related comments are attached in a two column format. The first column has the language of the proposed rule. FPL's suggested revisions are in legislative format with new language underlined and language to be removed with a strike through it. The second column has explanatory language addressing each of FPL's proposed changes.

)

)

)

FPL'S SUGGESTED REVISIONS TO RULE 25-6.1351(3)(b)

Draft Rule

(b) Generally, a ~~A~~ utility should ~~must~~ charge an affiliate the higher of fully allocated costs or a readily determinable market price for all non-tariffed services and products purchased by the affiliate from the utility. Except, a utility may charge an affiliate less than fully allocated costs or a readily determinable market price if the charge is above incremental cost. If a utility charges less than fully allocated costs, the utility must maintain documentation to support and justify how doing so benefits regulated operations. If a utility charges less than a readily determinable market price, the utility must notify the Division of Auditing and Financial Analysis within 30 days of the transaction.

Comments

The first sentence sets forth a general rule that has several exceptions set forth in the three subsequent sentences. With the various exceptions, it would be clearer to make it less absolute.

In the second sentence it is noted that when a utility charges an affiliate less than fully allocated costs, it must at least charge incremental costs. That same minimum should be applicable when a utility charges less than market price. In other words, the utility should never charge an affiliate less than incremental costs.

In several sentences in the rule, there are references to "market price." FPL is concerned that for many transactions there is not a readily determinable market price, and FPL encourages the Commission not to create a requirement of seeking out or attempting to determine a market price where one is not readily apparent. If there is not a readily determinable market price for a product or service, then the rule could be construed as requiring FPL to undertake an effort to determine the market price. This would be costly and time consuming. For instance, bidding might be undertaken or a third party might be retained to provide a market assessment. The costs associated with such efforts are difficult to justify, particularly when the alternative of fully allocated costs assures customers that they are not subsidizing the offering of the product or service. Thus, FPL suggests that all

)))
references in the rule to market price be changed to read "a readily determinable market price."

Finally, the last sentence added to the rule at the Agenda Conference adds a significant reporting requirement that was not addressed in the economic impact statement. There are a number of transactions between utilities and their affiliates. Some are difficult to even determine whether they are at or below market. For instance, FPL pays its employees wages or salaries based upon market prices. When it shares those employees with affiliates, it does so at fully allocated costs. Those fully allocated costs include labor costs at market prices, but it does not have a profit mark up for FPL. In that situation is the cost at or below market price? FPL would suggest that it is at market, but one might argue that the absence of a profit to FPL makes it below market. FPL should not have to report such a transaction. If the last sentence is modified to make the reporting requirement limited to instances where market price is "readily determinable," then this additional reporting requirement is not too onerous, but if it is left as requiring FPL to not only report but also determine every transaction potentially below market, this could be a very costly requirement.

App/ Detton

AUSLEY & McMULLEN

ATTORNEYS AND COUNSELORS AT LAW

227 SOUTH CALHOUN STREET
P.O. BOX 391 (ZIP 32302)
TALLAHASSEE, FLORIDA 32301
(850) 224-9115 FAX (850) 222-7560

May 26, 2000

HAND DELIVERED

RECEIVED
00 MAY 26 PM 3:35
FLORIDA PUBLIC SERVICE COM. DIVISION OF APPEALS

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
Room 215J - Gerald L. Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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

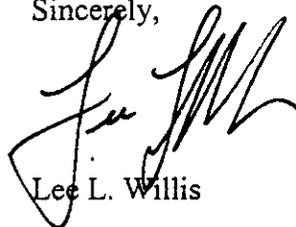
Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa Electric Company's Comments on the proposed rule amendments.

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/enc.)

DOCUMENT NUMBER-DATE

06537 MAY 26 8

TAMPA ELECTRIC COMPANY'S COMMENTS
DOCKET NO. 980643-EI

Tampa Electric requests that the matter underlined below be added to the proposed rule:

(3) Non-Tariffed Affiliate Transactions

(A) The purpose of subsection (3) is to establish requirements for non-tariffed affiliate transactions impacting regulated activities. The requirements in this subsection do not apply to allocations of corporate overhead between a regulated utility and its parent company; to the provision of administrative services, including, but not limited to shared administrative functions such as accounting, tax and information technology services; or to transactions valued at less than \$500,000.

Comments

As written, the proposed rule can be interpreted to require each overhead allocation and each administrative service to be compared to market prices, and also to require each transaction, regardless of the relevance of the price of the transaction to be compared to market price. As proposed, the rule creates an administrative and cost burden for utilities, without considering whether there is commensurate offsetting benefit to ratepayers. Tampa Electric's modifications clarify that the company would not be required to maintain databases of market pricing for overhead allocations provided by or to TECO Energy, Inc. for transactions involving the provision of administrative services or for transactions that would not significantly impact rates.

The parent of a regulated company should not be regarded as an "affiliate" of the regulated company for purposes of the proposed rule as long as the parent is not, itself directly engaged in the sale of goods or services to the public. Treating a regulated utility's parent as an "affiliate" for purposes of the proposed rule, under the circumstances described above, would needlessly deprive ratepayers of the cost savings associated with the synergies and the economies of scale resulting from the exchange of services between the holding company and its regulated subsidiary. This principal has been recognized in California and other states.

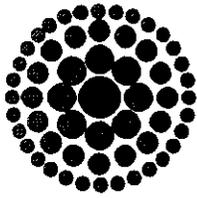
Furthermore, as currently drafted, the proposed rule apparently would require Tampa Electric to determine a market price for each and every transaction regardless of whether a market actually exists for that product or service. In order to conduct this analysis for each of the thousands of transactions that would be covered under the unnecessarily broad sweep of the current version of the proposed rule, Tampa Electric would need to create and maintain an elaborate database of market pricing for a staggering array of goods and services in order to constantly compare market prices against fully allocated and incremental costs. For small, routine transactions, the cost of developing and maintaining the required database would not be justified on a cost/benefit basis.

There are costs associated with gathering market-pricing data. For large projects, for example, above the \$500,000 threshold suggested by Tampa Electric, spending significant dollars on a bid and application process can be expected to result in several competing bids within a relatively small range of prices. However, it is more difficult to find meaningful pricing data for smaller expenditures. On small contracts for services, relatively firm price data simply does not exist. If requests for proposals have been issued, prices sometimes vary by orders of magnitude and lower bids do not necessarily meet acceptable quality standards.

Even on larger projects, initial bid information is often revised over the life of the project. Bidders sometimes intentionally submit bids that are lower than expected actual costs, with the intent of effectively raising prices later as adjustments are made in deliverables under a contract. More often, there is simply incomplete understanding of the nature of a project and bid, which requires later modifications to deliverables, with concomitant changes in price. Therefore, even in larger projects, bids do not necessarily represent a true market price of the service being bid upon.

Tampa Electric and TECO Energy have made significant capital investment in information technology equipment and applications software, for example, investments that support administrative services over time. That investment is balanced against a useful life of the equipment and software, reflecting the fundamental accounting concept of matching. Tampa Electric cannot determine from the proposed rule whether the Company would be required to reassess long-term decisions each year or even more often. Finally, market pricing information will be difficult to gather for many services without issuing requests for a proposal from several vendors. Tampa Electric does not want to abuse its relationship with its vendors merely so the Company can appropriately benchmark its internal transfer prices.

Unless clarified, the proposed rule, as currently drafted, will increase costs to ratepayers without any appreciable offsetting benefit. The modifications to the rule proposed by Tampa Electric will provide the Commission with the information that it needs to assure itself that the interests of ratepayers are adequately protected without unnecessarily creating significant additional ratepayer cost.



**Florida
Power**
CORPORATION

RECEIVED

00 MAY 26 PM 1:56

FLORIDA PUBLIC SERVICE COMM.
DIVISION OF APPEALS

JAMES A. MCGEE
SENIOR COUNSEL

May 25, 2000

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 980643-EI

Dear Ms. Bayó:

In accordance with the Commission's Notice of Rulemaking, Order No. PSC-00-0832-NOR-EI, issued April 27, 2000 in the subject docket, enclosed for filing are an original and fifteen copies of Florida Power Corporation's comments on the proposed rule amendments set forth in the Notice.

Please acknowledge your receipt of the above filing on the enclosed copy of this letter and return to the undersigned. Also enclosed is a 3.5 inch diskette containing the above-referenced document in WordPerfect format. Thank you for your assistance in this matter.

Very truly yours,

James A. McGee

JAM/kbd
Enclosure

cc: Mary Anne Helton, Esquire
Mr. Tim Devlin
Mr. Jay Revell

Proposed Amendment of Rule 25-6.1351, F.A.C.
Cost Allocation and Affiliate Transactions

COMMENTS OF FLORIDA POWER CORPORATION

As the Commission was previously informed at Agenda Conference, Florida Power Corporation supports the proposed rule amendments recommended by Staff. However, the Company is concerned about the wording of revisions made at the Agenda Conference intended to provide an exception to the requirement that utilities charge an affiliate the higher of fully allocated costs or market price for non-tariffed services and products. As currently proposed, the exception allows a utility to charge less than *fully allocated costs* if the charge is above incremental cost and properly justified, but does not provide a comparable exception allowing the utility to charge less than *market price* where the market price is higher than fully allocated costs. Florida Power does not believe the Commission intended to create an exception for only one of the two possible pricing standards applicable to any given affiliated transaction, and on that basis, offers the following corrective language to the currently proposed wording.

25-6.1351 Cost Allocation and Affiliate Transactions.

* * *

(3) Non-Tariffed Affiliate Transactions

* * *

(b) A utility must charge an affiliate the higher of fully allocated costs or market price for all non-tariffed services and products purchased by the affiliate from the utility. Except, a utility may charge an affiliate the lesser of less than fully allocated costs or market price if the charge is above incremental cost. If a utility charges less than fully allocated costs or market price, the utility must maintain documentation to support and justify how doing so benefits regulated operations. If a utility charges less than both fully allocated costs and market price the utility must notify the Division of Auditing and Financial Analysis within 30 days of the transaction.

* * *

(d) When an asset used in regulated operations is transferred from a utility to a nonregulated affiliate, the utility must charge the affiliate the greater of market price or net book value. Except, a utility may charge the affiliate either the market price or net book value if the utility maintains documentation to support and justify that such a transaction benefits regulated operations. When an asset to be used in regulated operations is transferred from a nonregulated affiliate to a utility, the utility must record the asset at the lower of market price or net book value. Except, a utility may record the asset at either market price or net book value if the utility maintains documentation to support and justify that such a transaction benefits regulated operations. An independent appraiser must verify the market value of a transferred asset with a net book value greater than \$1,000,000. If a utility charges less than both net book value and market price, the utility must notify the Division of Auditing and Financial Analysis within 30 days of the transaction.

Appeal Helton

One Energy Place
Pensacola, Florida 32520

850 444 6111



May 25, 2000

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee FL 32399-0870

RECEIVED
00 MAY 26 PM 1:55
FLORIDA PUBLIC SERVICE COMMISSION
DIVISION OF APPEALS

Dear Ms. Bayo:

RE: Docket No. 980643-EI

Enclosed are an original and fifteen copies of Gulf Power Company's Comments regarding Notice of Rulemaking.

Also enclosed is a 3.5 inch double sided, high density diskette containing the Comments in WordPerfect for Windows 6.1 format as prepared on a Windows NT based computer.

Sincerely,

Susan D. Ritenour

Susan D. Ritenour
Assistant Secretary and Assistant Treasurer

lw

cc: Ausley & McMullen
Lee L. Willis, Esquire
Beggs and Lane
Jeffrey A. Stone, Esquire
Florida Power Corporation
James McGee, Esquire
Florida Public Service Commission
Mary Anne Helton, Esquire
Steel, Hector & Davis
Matthew M. Childs, Esquire

~~DOCUMENT NUMBER-DATE~~
~~06522 MAY 26 8~~

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendments to Rules 25-6.135, F.A.C., Annual Reports; 25-6.1351, F.A.C., Cost Allocation and Affiliate Transactions; and 25-6.0436, F.A.C., Depreciation.

Docket No. 980643-EI
Filed: May 26, 2000

GULF POWER COMPANY'S COMMENTS REGARDING NOTICE OF RULEMAKING

GULF POWER COMPANY ("Gulf Power", "Gulf", or "the Company"), by and through its undersigned counsel, and pursuant to Order No. PSC-00-0832-NOR-EI issued April 27, 2000 by the Florida Public Service Commission ("Commission"), hereby submits the following written comments or suggestions on the rules to the Director, Division of Records and Reporting, for consideration by the Commission prior to issuing a final rule in this matter.

As stated in the Company's prior comments in this docket, Gulf Power does not believe additional rules and requirements related to affiliate transactions are needed. Although Gulf will not reiterate all of its previous comments at this time, it is important to call the Commission's attention to several changes which were added in the current proposed rule that will result in a rule that is not feasible for Gulf or the Commission to reasonably administer. Gulf has stated in its prior comments and reaffirms in these comments the Company's position that any added rules regarding this subject should not apply to transactions between a utility and its affiliated service company or its utility affiliates. The vast majority of Gulf's affiliated transactions are with the service company and the other utility affiliates of the Southern electric system and are related to providing regulated utility services (as opposed to venturing into unregulated enterprises). As such, these transactions are conducted to benefit the utility ratepayer. The pricing of these transactions are regulated on a federal level by the Securities and Exchange Commission ("SEC") under the Public Utility Holding Company Act of 1935. This federal legislation and

related regulations require these transactions to be made at cost. Gulf's utility ratepayers would be harmed by requiring these type transactions to be provided at market.

The proposed rule set forth in the notice of rulemaking differs from previous drafts. The current version added the requirement (in subparagraphs 3b and 3d) to notify the Division of Auditing and Financial Analysis within 30 days of any transaction in which the utility charges less than market price. It would not make sense and would be cost prohibitive for Gulf to establish a system and process to repeatedly make market evaluations and commission filings for transactions which are required by federal law to be priced at cost. Furthermore, it would be costly and difficult to track and make repeated notifications related to the various transactions within 30 days as required by the proposed rule.

For the reasons stated above, Gulf again requests that the Commission consider excluding affiliate transactions between a utility and its service company or between a utility and its other regulated utility affiliates. Alternatively, the requirement to notify the Commission within 30 days of each transaction should be eliminated. Although Gulf is not requesting a formal hearing, Gulf does intend to participate in a hearing if one is held pursuant to a request submitted by other interested parties.

Respectfully submitted the 25th day of May, 2000.



JEFFREY A. STONE
Florida Bar No. 325963

RUSSELL A. BADDERS
Florida Bar No. 7455

Beggs & Lane
P. O. Box 12950
Pensacola, Florida 32576-2950
(850) 432-2451

Attorneys for Gulf Power Company

1 25-6.1351 Cost Allocation and Affiliate Transactions

2 ~~Diversification Reports.~~

3 (1) Purpose. The purpose of this rule is to establish cost
4 allocation requirements to ensure proper accounting for affiliate
5 transactions and utility nonregulated activities so that these
6 transactions and activities are not subsidized by utility
7 ratepayers. This rule is not applicable to affiliate
8 transactions for purchase of fuel and related transportation
9 services that are subject to Commission review and approval in
10 cost recovery proceedings.

11 ~~(1) Each investor owned electric utility shall file~~
12 ~~information on its affiliates and affiliated transactions on~~
13 ~~Commission Form PSC/AFA 16 (12/94) which is incorporated into~~
14 ~~this rule by reference. Form PSC/AFA 16, entitled "Analysis of~~
15 ~~Diversification Activities", may be obtained from the~~
16 ~~Commission's Division of Auditing and Financial Analysis.~~

17 (2) Definitions

18 (a) Affiliate -- Any entity that directly or indirectly
19 through one or more intermediaries, controls, is controlled by,
20 or is under common control with a the utility. As used herein,
21 "control" means the possession, directly or indirectly, of the
22 power to direct or cause the direction of the management and
23 policies of a company, whether such power is exercised through
24 one or more intermediary companies, or alone, or in conjunction
25 with, or pursuant to an agreement, and whether such power is

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~~struck-through~~ type are deletions from existing law.

- 1 -

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET

NO. 980643-ET EXHIBIT NO. 2

COMPANY/

WITNESS: EPSC Staff

DATE: 6-22-00

1 established through a majority or minority ownership or voting of
2 securities, common directors, officers or stockholders, voting
3 trusts, holding trusts, associated companies, contracts or any
4 other direct or indirect means. Ownership of ~~five~~ 5 percent or
5 more of the voting securities of an entity shall be conclusively
6 deemed to constitute the control thereof.

7 (b) Affiliated Transaction -- Any transaction in which both
8 a utility and an affiliate thereof are each participants, except
9 other than transactions related solely to the filing of
10 consolidated tax returns.

11 (c) Cost Allocation Manual (CAM) - The manual that sets out
12 a utility's cost allocation policies and related procedures.

13 (d) Direct Costs - Costs that can be specifically
14 identified with a particular service or product.

15 (e) Fully Allocated Costs - The sum of direct costs plus a
16 fair and reasonable share of indirect costs.

17 (f) Indirect Costs - Costs, including all overheads, that
18 cannot be identified with a particular service or product.

19 (g) Nonregulated - Refers to services or products that are
20 not subject to price regulation by the Commission or not included
21 for ratemaking purposes and not reported in surveillance.

22 (h) Prevailing Price Valuation - Refers to the price an
23 affiliate charges a regulated utility for products and services,
24 which equates to that charged by the affiliate to third parties.
25 To qualify for this treatment, sales of a particular asset or

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1 service to third parties must encompass more than 50 percent of
2 the total quantity of the product or service sold by the entity.
3 The 50 percent threshold is applied on an asset-by-asset and
4 service-by-service basis, rather than on a product line or
5 service line basis.

6 (i) Regulated - Refers to services or products that are
7 subject to price regulation by the Commission or included for
8 ratemaking purposes and reported in surveillance.

9 (3) Non-Tariffed Affiliate Transactions

10 (a) The purpose of subsection (3) is to establish
11 requirements for non-tariffed affiliate transactions impacting
12 regulated activities. ~~This subsection does not apply to the~~
13 ~~allocation of costs for services between a utility and its parent~~
14 ~~company or between a utility and its regulated utility affiliates~~
15 ~~or to services received by a utility from an affiliate that~~
16 ~~exists solely to provide services to members of the utility's~~
17 ~~corporate family. All affiliate transactions, however, are~~
18 ~~subject to regulatory review and approval.~~

19 (b) A utility must charge an affiliate the higher of fully
20 allocated costs or market price for all non-tariffed services and
21 products purchased by the affiliate from the utility. Except, a
22 utility may charge an affiliate less than fully allocated costs
23 ~~or market price~~ if the charge is above incremental cost. If a
24 utility charges less than fully allocated costs ~~or market price,~~
25 the utility must maintain documentation to support and justify

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1 | how doing so benefits regulated operations. If a utility charges
2 | less than market price, the utility must ~~show that the~~
3 | ~~transaction would have otherwise been forgone and~~ notify the
4 | Division of Auditing and Financial Analysis within 30 days of the
5 | transaction.

6 | (c) When a utility purchases services and products from an
7 | affiliate and applies the cost to regulated operations, the
8 | utility shall apportion to regulated operations the lesser of
9 | fully allocated costs or market price. Except, a utility may
10 | apportion to regulated operations more than fully allocated costs
11 | if the charge is less than or equal to the market price. If a
12 | utility apportions to regulated operations more than fully
13 | allocated costs, the utility must maintain documentation to
14 | support and justify how doing so benefits regulated operations
15 | and would be based on prevailing price valuation.

16 | (d) When an asset used in regulated operations is
17 | transferred from a utility to a nonregulated affiliate, the
18 | utility must charge the affiliate the greater of market price or
19 | net book value. Except, a utility may charge the affiliate
20 | either the market price or net book value if the utility
21 | maintains documentation to support and justify that such a
22 | transaction benefits regulated operations. When an asset to be
23 | used in regulated operations is transferred from a nonregulated
24 | affiliate to a utility, the utility must record the asset at the
25 | lower of market price or net book value. Except, a utility may

CODING: Words underlined are additions; words in
~~struck-through~~ type are deletions from existing law.

1 record the asset at either market price or net book value if the
2 utility maintains documentation to support and justify that such
3 a transaction benefits regulated operations. An independent
4 appraiser must verify the market value of a transferred asset
5 with a net book value greater than \$1,000,000. If a utility
6 charges less than market price, the utility must ~~show that the~~
7 ~~transaction would have otherwise been forgone and~~ notify the
8 Division of Auditing and Financial Analysis within 30 days of the
9 transaction.

10 (e) Each affiliate involved in affiliate transactions must
11 maintain all underlying data concerning the affiliate transaction
12 for at least three years after the affiliate transaction is
13 complete. This paragraph does not relieve a regulated affiliate
14 from maintaining records under otherwise applicable record
15 retention requirements.

16 (4) Cost Allocation Principles

17 (a) Utility accounting records must show whether each
18 transaction involves a product or service that is regulated or
19 nonregulated. A utility that identifies these transactions by
20 the use of subaccounts meets the requirements of this paragraph.

21 (b) Direct costs shall be assigned to each non-tariffed
22 service and product provided by the utility.

23 (c) Indirect costs shall be distributed to each non-
24 tariffed service and product provided by the utility on a fully
25 allocated cost basis. Except, a utility may distribute indirect

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~~struck through~~ type are deletions from existing law.

1 costs on an incremental or market basis if the utility can
2 demonstrate that its ratepayers will benefit. If a utility
3 distributes indirect costs on less than a fully allocated basis,
4 the utility must maintain documentation to support doing so.

5 (d) Each utility must maintain a listing of revenues and
6 expenses for all non-tariffed products and services.

7 (5) Reporting Requirements. Each utility shall file
8 information concerning its affiliates, affiliate transactions,
9 and nonregulated activities on Form PSC/AFA 19 (xx/xx) which is
10 incorporated by reference into this rule. Form PSC/AFA 19,
11 entitled "Annual Report of Major Electric Utilities," may be
12 obtained from the Commission's Division of Auditing and Financial
13 Analysis.

14 (6) Cost Allocation Manual. Each utility involved in
15 affiliate transactions or in nonregulated activities must
16 maintain a Cost Allocation Manual (CAM). The CAM must be
17 organized and indexed so that the information contained therein
18 can be easily accessed.

19 ~~(3) Within 45 days of coming under the jurisdiction of the~~
20 ~~Commission, each investor owned electric utility shall file~~
21 ~~Schedules 1, 7, and 8 of Form PSC/AFA 16 with the Division of~~
22 ~~Auditing and Financial Analysis.~~

23 ~~(4) Each investor owned electric utility shall file~~
24 ~~Schedules 1 — 6 of Form PSC/AFA 16 as an attachment to its~~
25 ~~annual report.~~

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1 ~~(5) Each investor owned electric utility shall keep a~~
2 ~~detailed backup report of the summary report to facilitate~~
3 ~~auditing and analysis. Each investor owned electric utility shall~~
4 ~~maintain a clear audit trail from the summary report through the~~
5 ~~general ledger to the source documents supporting the~~
6 ~~transaction.~~

7 Specific Authority: 366.05(1), 350.127(2) F.S.

8 Law Implemented: 350.115, 366.04(2)(a) and (f), 366.041(1),
9 366.05(1), (2), and (9), 366.06(1), 366.093(1) F.S.

10 History--New 12-27-94, Amended _____.

11 25-6.135 Annual Reports.

12 (1) Each investor-owned electric utility shall file annual
13 reports with the Commission on Commission Form PSC/AFA 19 (xx/xx
14 12/94) which is incorporated by reference into this rule. Form
15 PSC/AFA 19, entitled "Annual Report of Major Electric Utilities",
16 may be obtained from the Commission's Division of Auditing and
17 Financial Analysis. These reports shall be verified by a
18 responsible accounting officer of the utility making the report
19 and shall be due on or before April 30 for the preceding calendar
20 year. A utility may file a written request for an extension of
21 time with the Division of Auditing and Financial Analysis no
22 later than April 30. One extension of 31 days will be granted
23 upon request. A request for a longer extension must be
24 accompanied by a statement of good cause and shall specify the
25 date by which the report will be filed.

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1 (2) The utility shall also file with the original and each
2 copy of the annual report form, or separately within 30 days, a
3 letter or report, signed by an independent certified public
4 accountant, attesting to the conformity in all material respects
5 of the schedules and their applicable notes listed on the general
6 information page of Form PSC/AFA 19 with the Commission's
7 applicable uniform system of accounts and published accounting
8 releases.

9 Specific Authority: 366.05(1), 350.127(2) F.S.

10 Law Implemented: 350.115, 366.04(2)(f), 366.05(1), (2)(a) F.S.

11 History--New 12-27-94, Amended _____.

12 **25-6.0436 Depreciation.**

13 (1) For the purposes of this part, the following
14 definitions shall apply:

15 (a) Category or Category of Depreciable Plant -- A grouping
16 of plant for which a depreciation rate is prescribed. At a
17 minimum it should include each plant account prescribed in Rule
18 25-6.014(1), F.A.C.

19 (b) Embedded Vintage -- A vintage of plant in service as of
20 the date of study or implementation of proposed rates.

21 (c) Mortality Data -- Historical data by study category
22 showing plant balances, additions, adjustments and retirements,
23 used in analyses for life indications or calculations of realized
24 life. Preferably, this is aged data in accord with the
25 following:

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- 1 1. The number of plant items or equivalent units (usually
2 expressed in dollars) added each calendar year.
- 3 2. The number of plant items retired (usually expressed in
4 dollars) each year and the distribution by years of
5 placing of such retirements.
- 6 3. The net increase or decrease resulting from purchases,
7 sales or adjustments and the distribution by years of
8 placing of such amounts.
- 9 4. The number that remains in service (usually expressed
10 in dollars) at the end of each year and the
11 distribution by years of placing of such amounts.

12 (d) Net Book Value - The book cost of an asset or group of
13 assets minus the accumulated depreciation or amortization reserve
14 associated with those assets.

15 (e)-(d) Remaining Life Method -- The method of calculating
16 a depreciation rate based on the unrecovered plant balance, less
17 average future net salvage and the average remaining life. The
18 formula for calculating a Remaining Life Rate (RLR) is:

$$19 \quad \text{RLR} = \frac{100\% - \text{Reserve \%} - \text{Average Future Net Salvage \%}}{20 \quad \text{Average Remaining Life in Years}}$$

21 (f) Reserve (Accumulated Depreciation) - The amount of
22 depreciation/amortization expense, salvage, cost of removal,
23 adjustments, transfers, and reclassifications accumulated to
24 date.

25 (g)-(e) Reserve Data -- Historical data by study category

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1 showing reserve balances, debits and credits such as booked
2 depreciation, expense, salvage and cost of removal and
3 adjustments to the reserve utilized in monitoring reserve
4 activity and position.

5 (h)~~(f)~~ Reserve Deficiency -- An inadequacy in the reserve
6 of a category as evidenced by a comparison of that reserve
7 indicated as necessary under current projections of life and
8 salvage with that reserve historically accrued. The latter
9 figure may be available from the utility's records or may require
10 retrospective calculation.

11 (i)~~(g)~~ Reserve Surplus -- An excess in the reserve of a
12 category as evidenced by a comparison of that reserve indicated
13 as necessary under current projections of life and salvage with
14 that reserve historically accrued. The latter figure may be
15 available from the utility's records or may require retrospective
16 calculation.

17 (j)~~(h)~~ Salvage Data -- Historical data by study category
18 showing bookings of retirements, gross salvage and cost of
19 removal used in analysis of trends in gross salvage and cost of
20 removal or for calculations of realized salvage.

21 (k)~~(i)~~ Theoretical Reserve or Prospective Theoretical
22 Reserve -- A calculated reserve based on components of the
23 proposed rate using the formula:

24 Theoretical Reserve = Book Investment - Future Accruals - Future
25 Net Salvage

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1 ~~(l)~~(j) Vintage -- The year of placement of a group of
2 plant items or investment under study.

3 ~~(m)~~(k) Whole Life Method -- The method of calculating a
4 depreciation rate based on the Whole Life (Average Service Life)
5 and the Average Net Salvage. Both life and salvage components
6 are the estimated or calculated composite of realized experience
7 and expected activity. The formula is:

$$\begin{aligned} 8 \quad \text{Whole Life Rate} &= \frac{100\% - \text{Average Net Salvage } \%}{9 \quad \text{Average Service Life in Years}} \end{aligned}$$

10
11 (2) (a) No utility shall ~~may~~ change any existing
12 depreciation rate or initiate any new depreciation rate without
13 prior Commission approval.

14 (b) No utility shall ~~may~~ reallocate accumulated
15 depreciation reserves among any primary accounts and sub-accounts
16 without prior Commission approval.

17 (c) When plant investment is booked as a transfer from a
18 regulated utility depreciable account to another or from a
19 regulated company to an affiliate, an appropriate reserve amount
20 shall also be booked as a transfer. When plant investment is
21 sold from one regulated utility to an affiliate, an appropriate
22 associated reserve amount shall also be determined to calculate
23 the net book value of the utility investment being sold.
24 Appropriate methods for determining the appropriate reserve
25 amount associated with plant transferred or sold are as follows:

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- 1 1. Where vintage reserves are not maintained,
2 synthesization using the currently prescribed curve
3 shape may be required. The same reserve percent
4 associated with the original placement vintage of the
5 related investment shall then be used in determining
6 the appropriate amount of reserve to transfer.
- 7 2. Where the original placement vintage of the investment
8 being transferred is unknown, the reserve percent
9 applicable to the account in which the investment being
10 transferred resides may be assumed as appropriate for
11 determining the reserve amount to transfer.
- 12 3. Where the age of the investment being transferred is
13 known and a history of the prescribed depreciation
14 rates is known, a reserve can be determined by
15 multiplying the age times the investment times the
16 applicable depreciation rate(s).
- 17 4. The Commission shall consider any additional methods
18 submitted by the utilities for determining the
19 appropriate reserve amounts to transfer.

20 (3) (a) Each utility shall maintain depreciation rates and
21 accumulated depreciation reserves in accounts or subaccounts as
22 prescribed by Rule 25-6.014(1), F.A.C. Utilities may maintain
23 further sub-categorization.

24 (b) Upon establishing a new account or subaccount
25 classification, each utility shall request Commission approval of

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1 a depreciation rate for the new plant category.

2 (4) A utility filing a depreciation study, regardless if a
3 change in rates is being requested or not, shall submit to the
4 Commission Clerk's office fifteen copies of the information
5 required by paragraphs (6) (a) through (6) (f) and (6) (h) of this
6 rule and at least three copies of the information required by
7 paragraph (6) (g).

8 (5) Upon Commission approval by order establishing an
9 effective date, the utility shall ~~may~~ reflect on its books and
10 records the implementation of the proposed rates, subject to
11 adjustment when final depreciation rates are approved.

12 (6) A depreciation study shall include:

13 (a) A comparison of current and proposed depreciation rates
14 and components for each category of depreciable plant. Current
15 rates shall be identified as to the effective date and proposed
16 rates as to the proposed effective date.

17 (b) A comparison of annual depreciation expense as of the
18 proposed effective date, resulting from current rates with those
19 produced by the proposed rates for each category of depreciable
20 plant. The plant balances may involve estimates. Submitted data
21 including plant and reserve balances or company planning
22 involving estimates shall be brought to the effective date of the
23 proposed rates.

24 (c) Each recovery and amortization schedule currently in
25 effect should be included with any new filing showing total

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1 amount amortized, effective date, length of schedule, annual
2 amount amortized and reason for the schedule.

3 (d) A comparison of the accumulated book reserve to the
4 prospective theoretical reserve based on proposed rates and
5 components for each category of depreciable plant to which
6 depreciation rates are to be applied.

7 (e) A general narrative describing the service environment
8 of the applicant company and the factors, e.g., growth,
9 technology, physical conditions, necessitating a revision in
10 rates.

11 (f) An explanation and justification for each study
12 category of depreciable plant defining the specific factors that
13 justify the life and salvage components and rates being proposed.
14 Each explanation and justification shall include substantiating
15 factors utilized by the utility in the design of depreciation
16 rates for the specific category, e.g., company planning, growth,
17 technology, physical conditions, trends. The explanation and
18 justification shall discuss any proposed transfers of reserve
19 between categories or accounts intended to correct deficient or
20 surplus reserve balances. It should also state any statistical
21 or mathematical methods of analysis or calculation used in design
22 of the category rate.

23 (g) The filing shall contain all calculations, analysis and
24 numerical basic data used in the design of the depreciation rate
25 for each category of depreciable plant. Numerical data shall

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1 include plant activity (gross additions, adjustments,
2 retirements, and plant balance at end of year) as well as reserve
3 activity (retirements, accruals for depreciation expense,
4 salvage, cost of removal, adjustments, or transfers and
5 reclassifications and reserve balance at end of year) for each
6 year of activity from the date of the last submitted study to the
7 date of the present study. To the degree possible, data
8 involving retirements should be aged.

9 (h) The mortality and salvage data used by the company in
10 the depreciation rate design must agree with activity booked by
11 the utility. Unusual transactions not included in life or
12 salvage studies, e.g., sales or extraordinary retirements, must
13 be specifically enumerated and explained.

14 (7) (a) Utilities shall provide calculations of
15 depreciation rates using both the whole life method and the
16 remaining life method. The use of these methods is required for
17 all depreciable categories. Utilities may submit additional
18 studies or methods for consideration by the Commission.

19 (b) The possibility of corrective reserve transfers shall
20 be investigated by the Commission prior to changing depreciation
21 rates.

22 (8) (a) Each company shall file a study for each category
23 of depreciable property for Commission review at least once every
24 four years from the submission date of the previous study unless
25 otherwise required by the Commission.

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1 (b) A utility proposing an effective date of the beginning
2 of its fiscal year shall submit its depreciation study no later
3 than the mid-point of that fiscal year.

4 (c) A utility proposing an effective date coinciding with
5 the expected date of additional revenues initiated through a rate
6 case proceeding shall submit its depreciation study no later than
7 the filing date of its Minimum Filing Requirements.

8 (9) As part of the filing of the annual report pursuant to
9 Rule 25-6.014(3), F.A.C., each utility shall include an annual
10 status report. The report shall include booked plant activity
11 (plant balance at the beginning of the year, additions,
12 adjustments, transfers, reclassifications, retirements and plant
13 balance at year end) and reserve activity (reserve balance at the
14 beginning of the year, retirements, accruals, salvage, cost of
15 removal, adjustments, transfers, reclassifications and reserve
16 balance at end of year) for each category of investment for which
17 a depreciation rate, amortization, or capital recovery schedule
18 has been approved. The report shall indicate for each category
19 that:

20 (a) There has been no change of plans or utility experience
21 requiring a revision of rates, amortization or capital recovery
22 schedules; or

23 (b) There has been a change requiring a revision of rates,
24 amortization or capital recovery schedules.

25 (10) For any category where current conditions indicate a

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1 need for revision of depreciation rates, amortization or capital
2 recovery schedules and no revision is sought, the report shall
3 explain why no revision is requested.

4 ~~(10)~~(a) Prior to the date of retirement of major
5 installations, the Commission shall ~~may~~ approve capital recovery
6 schedules to correct associated calculated deficiencies where a
7 utility demonstrates that (1) replacement of an installation or
8 group of installations is prudent and (2) the associated
9 investment will not be recovered by the time of retirement
10 through the normal depreciation process.

11 (b) The Commission shall ~~may~~ approve a special capital
12 recovery schedule when an installation is designed for a specific
13 purpose or for a limited duration.

14 (c) Associated plant and reserve activity, balances and the
15 annual capital recovery schedule expense must be maintained as
16 subsidiary records.

17 Specific Authority: 350.127(2), 366.05(1) F.S.

18 Law Implemented: 350.115, 366.04(2)(f), 366.06(1) F.S.

19 History--New 11-11-82, 1-6-85, Formerly 25-6.436, Amended
20 4-27-88, 12-12-91, _____.

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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

June 22, 2000

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 – In re: Proposed amendments to Rules 25-6.135, F. A. C., Annual Reports; 25-6.1351, F. A. C., Cost Allocation and Affiliate Transactions; and 25-6.0436, F. A. C., Depreciation

Dear Ms. Helton:

On behalf of R.A.C.C.A., Inc. and IEC Florida, please consider this letter and attachments as written comments submitted as part of the record on the above referenced rule hearing as noticed in *Florida Administrative Weekly*, Volume 26, Number 18, May 5, 2000, page 2084.

As you know, the construction industry continues to express concern that there may be a widespread practice of using ratepayer funds to subsidize nonregulated business activities by a number of Florida's regulated utility companies. A number of examples are attached for your consideration and discussion. In many cases, it is nearly impossible for anyone outside of the Public Service Commission or the utility company itself to know whether or not these activities, their costs, and any other allocations are properly segregated from regulated activities.

In the attachments, you will find a number of questions posed by individuals in the construction industry relating to either specific incidents or general practices. At the very least, both R.A.C.C.A. and IEC Florida would like to know that any rule adopted by the Public Service Commission ensures that these and other situations are clearly covered and that utility companies are required to use funds other than ratepayer funds to engage in these and like activities.

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET
NO. 980643-EI EXHIBIT NO. 3
COMPANY/
WITNESS: R.A.C.C.A. + IEC
DATE: 6-22-00

Ms. Mary Anne Helton
June 22, 2000
Page Two

In keeping with this, both R.A.C.C.A. and IEC Florida are very concerned with the requested changes proposed by Mr. Charles A. Guyton, Esquire, on behalf of *Florida Power & Light* to change rule 25-6.1351(3)(b), Florida Administrative Code. It is our position that Mr. Guyton's proposed changes will allow regulated utility companies to be even less accountable than they are under current law and rule. We believe this is the exact opposite direction than what should be taken in the best interest of the public.

In addition, R.A.C.C.A. and IEC Florida take issue with the attachment entitled "*Florida Power & Light Company's Comments*" included with Mr. Guyton's letter where this piece states the following:

"Experience has demonstrated that the existing rules are more than sufficient to protect utility customers from cross-subsidization. There has been no history of utility abuse that gives rise to a need for the rule amendments."

Before this conclusion is accepted, we would like to see documentation that all of the attached examples of nonregulated activities by utility companies are properly and strictly accounted for as nonregulated activities that do nothing to reduce the costs to ratepayers and that no ratepayer funds were used to subsidize these business ventures.

We respectfully request that the Public Service Commission take the strictest possible approach to ensure that cross-subsidization does not occur.

We also respectfully request that the Public Service Commission adopt a Code of Conduct identical or similar to the one that is included in the attachments. We believe this issue becomes more and more important and pressing as there is continued talk of utility deregulation. The public will be best served if rules are in place *before* any damage is done that could substantially impact public confidence.

We appreciate the opportunity to express our comments and concerns here and during the hearing. If you have any questions or would like any additional information, please do not hesitate to contact me.

Sincerely,



Anna Cam Fentriss

Attachments – Listing immediately following this letter

LISTING OF ATTACHMENTS TO JUNE 22, 2000 LETTER

- November 2, 1999 letter to Mary Anne Helton from Anna Cam Fentriss with attachment IEC draft language for state legislation (5 pages)
- AARP flyer on electric utility restructuring (2 pages)
- June 13, 2000 letter to Anna Cam Fentriss from Cox Electric with attachments as follows (7 pages):
 - February 21, 1997 letter from Cox Electric to Kenyon Dodge
 - February 21, 1997 agreement between TECO and Kenyon Dodge
 - February 19, 1997 memorandum to Mark Carlson from Arthur Bullard
 - TECO Bright Choices advertisement
- November 5, 1999 letter to Mary Anne Helton from Leedy Electric Corp. (2 pages)
- September 22, 1999 letter to Mary Anne Helton from A. C. Fentriss (4 pages)
- March 3, 2000 letter to Anna Cam Fentriss from All Phase Electric (1 page)
- May, 2000 piece titled "Apparent Cross-Subsidization by Tampa Electric" (1 page)
- June 13, 2000 letter to Anna Cam Fentriss from IEC Florida West Coast Chapter with attachment copy of TECO Bright Choices advertisement (2 pages)
- June 2, 2000 letter to IEC Florida West Coast Chapter from APG Electric (1 page)
- July 19, 1999 mailer to Cox Electric from TECO (1 page)
- June 14, 2000 letter to Jay Revell from RACCA with attachment of March 14, 1999 letter to Cam Fentriss from RACCA (6 pages)
- April 28, 2000 fax piece to Cam Fentriss from Tom Schulz re TECOGuard (1 page)
- May 16, 2000 letter to Anna Cam Fentriss from IEC Florida West Coast Chapter with attachment of Florida Power flyer in monthly utility bill (3 pages)

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RECORDS AND
REPORTING

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November 2, 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 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

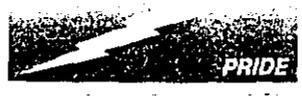
Attachment: IEC Draft Language for State Legislation

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mas

FLORIDA BUREAU OF RECORDS

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.

Is Electric Utility Restructuring a Bright Idea for Consumers?



AARP is the nation's leading organization for people age 50 and older. It serves their needs and interests through information and education, advocacy, and community services provided by a network of local chapters and experienced volunteers throughout the country. The organization also offers members a wide range of special benefits and services, including *Modern Maturity* magazine and the monthly *Bulletin*.

Copyright 1997.
American Association of
Retired Persons.

AARP
State Legislation Department
Utility Issues Team
601 E Street, NW
Washington, DC 20049

D116534 • SL35208(097)

A Consumer Perspective on Electric Utility Restructuring

Consumer Protections in Electric Utility Restructuring

Basic Service

All consumers should have access to basic service offered at competitive and affordable rates. If, for any reason, they do not choose an alternative supplier, are disconnected by a supplier, or if the supplier does not provide adequate service, a supplier of last resort must be in place.

Affordable Service

All low-income consumers should have access to programs to assist them in obtaining electric service.

Service Quality

All suppliers and providers of service should be required to meet service quality standards, and should be assessed significant penalties for not meeting these standards.

Consumer Protection Statutes

All suppliers and providers should be required to abide by the state's consumer protection statutes and prohibited from engaging in unfair or deceptive acts and practices.

Billing

All providers should be required to disclose information such as the price per kilowatt hour of electricity and its generation sources.

Privacy

All consumers should be protected against unauthorized access to or use of personal information such as usage, billing, and payment information.

Credit and Collection

All providers must adhere to strict credit and collection standards that ensure consumers are not disconnected from their basic service for failure to pay for deregulated services.

Licensing/Standards

All providers and suppliers of service should be licensed to do business in the state in which they operate and should be required to meet minimum market standards of conduct.

Education/Public Participation

All customers should have access to information and education to assist them in understanding their rights and responsibilities. Residential consumers should be included in any decisions on electric utility restructuring.

AARP Utility Staff Contacts:

State Legislation	202-434-3950
Federal Affairs	202-434-3800
Public Policy Institute	202-434-3910

For state-specific information, contact:

Public Interest Principles in Electric Utility Restructuring

For the average consumer to benefit from deregulation of electricity, policy makers must have a clear set of goals and be guided by specific principles. Seven general principles are outlined below.

Universal Service

Electricity is almost universally available in our society because costs have been shared by all utility customer classes. Restructuring undermines that arrangement by forcing customers to shop for their own power. A clear public policy to ensure affordability must be put in place. Policies must also ensure that people with low incomes or who live in high-cost areas be able to afford service. Specific programs must be created to ensure services to all people, with particular attention to preventing service cut-offs, discounts for households in need, and low-income weatherization.

Competition First for Residential Consumers

There must be institutions and mechanisms in place to ensure that residential ratepayers can purchase low-cost power. Residential customers are the least likely to benefit from competition. They need a head start, or large corporations and institutional users will use the lower-priced power.

Competitive Safeguards for All Customers

Conditions must be established to promote competition and preserve regulation where competition does not become effective. Strict enforcement of anti-trust laws, non-discriminatory access to bottleneck facilities, and clear definitions of what constitutes competition must be enacted before deregulation gets underway.

Users Pay for Facilities

The transmission network was not designed to accommodate the multitude of transactions contemplated by deregulation nor the changes in purchase patterns that will result from it. Transmission rates must reflect a reasonable share of the cost of the facilities and functionalities used between the point of generation and the point of consumption.

Responsible Treatment of Stranded Investment

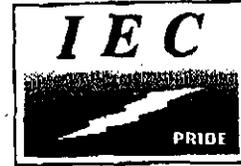
Ratepayers should not have to pay for the mistakes and inefficient actions that utilities have engaged in previously. They earn profits that compensate them for risks, and they should not be compensated twice for the same risk. At the same time, they also have social obligations and make investments for public policy reasons for which they should be compensated. Public policy must identify legal, rational, and socially responsible approaches to analyzing, allocating, and recovering these "stranded" costs.

Environmental Preservation

Restructuring must not cause environmental quality to decline. The costs of environmental protection should fall on the energy suppliers and consumers who seek to profit from new market opportunities.

Consumer Protection

Residential ratepayers have never shopped for electricity service; it has always been provided as a utility. In many states, because electricity is a utility, it is exempt from consumer protection statutes. Policies—including provision of information, minimum quality standards, fair marketing, prevention of fraud, fair billing and collection practices, and dispute resolution—must be put in place to protect consumers from marketplace abuses.



Independent Electrical
Contractors, Inc.

Phone (813)621-1161 • 11611 East Old Hillsborough Ave. • Seffner, Florida 33584-3356
www.coxelectric.com

June 13, 2000

Anna Cam Fentriss
1400 Village Square Blvd., #3-243
Tallahassee, Florida 32312

Dear Cam,

I. The enclosed OUTDOOR LIGHTING AGREEMENT was provided to me by the customer, KENYON DODGE, Inc.

The questions that I have for the PSC concerning this agreement are:

1. What laws are being circumvented as far as easements? Does this "blanket easement", covering the entire property, qualify as a "utility easement"?
2. Item #2. How does the Utility account for assets that are, at their discretion, not removed?
3. Do liquidated damages cover the cost for installation, removal and equipment (10 poles & 16 fixtures)? Eg. 12 months X \$781.48=\$9,377.76-\$4,671.99(electrical consumption)=\$4,705.77.
4. Is it the Rate Payers that pay the difference between installation cost and liquidated damages?
5. How are we, Electrical Contractors, supposed to contact the "Utility" for supply information for a lighting project when this serves as notification for the "Utility" to sell another Outdoor Lighting Agreement? Should the "Utilities" reciprocate by notifying me when they receive an inquiry about Site Lighting?

II. A local business with a freestanding building on a major highway has Leased Lighting installed by TECO. A few months later the business closes and has filed for bankruptcy. As I pass this property month after month I notice that the Site Lights are still burning.

Questions for the PSC:

1. Since the business folded prior to the end of the "primary term" who pays for the installation?
2. Who pays for the energy consumption of the fixtures since the business closure?

The above situation is not isolated and happens every day.

III. I purchased property for my Business as its primary location. I contacted the local utility to have my power turned on. Nothing was said to me about Leased Lighting. When I received my first month's bill I noticed that I was being charged for three lights, two of which were on public property. If these were leased by the previous owner / tenant it should not have been carried over to the new owner.

Questions for the PSC:

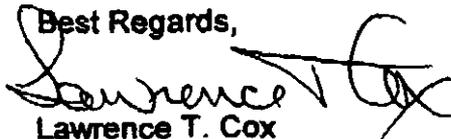
1. How many customers rent or lease a building with the lease lighting and assume its "just part of the electric bill"?
2. What happens to the easement?

IV. During a recent visit to Tallahassee I happened to see a News Report on WCTV Channel 6 on May 18, 2000 at 6:08 p.m. It was a report on the Tallahassee Utilities Department offering surge suppression and interior wiring maintenance. The Utility employee said something like " This is in preparation for de-reg and wanting to compete now".

Question:

1. If the Utilities think they are competing and the contractors think they are competing, why doesn't the PSC think so?
2. If deregulation doesn't come about will the Utilities be allowed to continue cross-subsidization?

Best Regards,


Lawrence T. Cox
COX Electric EC,ES

COPY TO
TOM SCHMID IEC



ELECTRICAL SERVICES

Phone (813) 621-1161 • 11611 East Old Hillsborough Ave. • Seffner, Florida 33584-3356

*APRIL 7th
lost to
TECO!*

Kenyon Dodge
P.O. Drawer 4580
Clearwater, FL 34618

February 21, 1997

Attn: Arthur Bullard

Re: Lighting layout proposal at location: 8805 Adamo Drive, Brandon, FL

Dear Arthur,

Thank you very much for giving us the opportunity to bid on the new lighting system for the area at 8805 Adamo Drive in Brandon and herewith we submit our proposal with the following comments:

As requested we have based our design on pole positions as indicated, using 45' overall height concrete poles. A total of 16 floodlight fixtures, 1000 watt metal halide lamp each, are being used, at 40' mounting height. In view of the size of the area we have selected a floodlight fixture more suitable for this application. Fixtures are to be installed at 20 degree aiming angle to create higher lighting levels and above all better average uniformity. The values as shown are lighting levels in FT/CD maintained.

All wiring is to be buried in the ground, out of sight. Our price is based on the assumption that the distance between main breaker panel and closest light pole is approximately 100'.

All light fixtures will be on a time clock and photocell for economic operations of the system.

Total price, supply of equipment and installation: \$21,995.75

Commercial Terms:

- Price is inclusive of any applicable taxes and permit costs
- Price is valid for a period of 30 days.
- Warranty; The installation will be warranted for a period of 5 years. except lamps are warranted for 2 years.

Cost Comparison Analysis

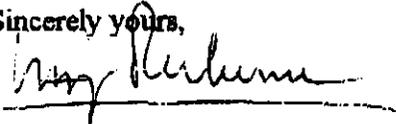
Below we analyze the pro's and con's of leasing or purchasing the lighting system over periods of 5 years and 7 1/2 years.

	<u>BUYING</u>		<u>LEASING</u>	
	5 YR	7 1/2YR	5 YR	7 1/2YR
Initial Cost	\$21,995.75	\$21,995.75	----	----
Maintenance	\$ 1,700.00	\$ 3,400.00	----	----
*Electric Consumption	\$23,360.00	\$35,040.00	Incl.	Incl.
Payment	----	----	\$46,888.80	\$70,333.20
Sales Tax	----	----	\$ 3,282.20	\$ 4,923.32
Total Paid	\$47,055.75	\$60,435.75	\$50,171.00	\$75,256.52

*Electricity consumption based on 10 hours daily operation at \$.08 per KWH.

We trust that the above meets with your approval. However, if there is anything you still feel needs to be addressed don't hesitate to contact the undersigned.

Sincerely yours,



Wim Verberne

Encl: Lighting Design
Fixture Details



OUTDOOR LIGHTING AGREEMENT
OVERHEAD - IES Design
P-1551 R1899

Customer: KENYON DODGE INC.Date: 02/17/97Service Address: 8805 ADAM DR.Meter #: 745872Mailing Address: 19,400 U.S. HIGHWAY #19 NORTH, P.O. DRAWER 4580, CLEARWATER, FL 34616

This Agreement, when signed by the Customer and by an authorized representative of Tampa Electric Company, shall become a contract where the Company agrees to furnish outdoor lighting service indicated below, to the Customer and the Customer agrees to receive and pay for said service in accordance with the terms of Rate Schedule OL-1 or OL-3 and General Rules and Regulations as filed with the FPSC, and subject to modification by the Commission.

1. The Company is hereby granted an easement over the premises upon which the equipment is to be installed for ingress and egress and for the installation, inspection, maintenance, and removal of the Company's equipment. In no event shall the Customer, or anyone acting under authority of the Customer, place upon or attach to any of the Company's equipment any sign or device of any nature whatsoever, or place, install or permit to exist, any thing, including trees or shrubbery, in such close proximity to the Company's equipment as to interfere with such equipment or tend to create a dangerous condition. The Company is hereby granted the right to forthwith remove anything placed, installed or existing in violation of this paragraph.
2. Title to all equipment furnished by the Company shall remain in the name of the Company at all times, and upon expiration or termination of this Agreement, the Company shall have the option to remove all or any part of said equipment within a reasonable time thereafter.
3. Relocation of any equipment done at the Customer's request will be at the Customer's expense.
4. In the event the Customer fails to pay for the services hereinbefore stipulated, or otherwise violates the terms of this Agreement, the Company shall have the option to declare this Agreement terminated. If such termination occurs prior to the expiration of the primary term, the Customer agrees to pay the Company an amount equal to the monthly rate for service for each month of the unexpired primary term as liquidated damages for early termination. Company agrees to give Customer five (5) days written notice before declaring this Agreement terminated.
5. The primary term of this Agreement shall be one year beginning on the date that lights are installed and ready for use and shall continue for successive terms of one year until terminated by either party giving the other party thirty (30) days prior written notice of intention to terminate.
6. The outdoor lighting service requested by the Customer consists of the following:

<u>No. Of Units</u>	<u>Lamp Size/Pole Type</u>	<u>Monthly Charge (ea)</u>	<u>Rate Code</u>
10	1000 W-MH	\$46.58	576
6	1000 W-MH	\$37.53	M 576
10	O.H. 45' CONC POLE	\$9.05	594

The above unit prices shall be increased or decreased by the current fuel charge and any applicable taxes or fees.

7. THE COMPANY MAKES NO WARRANTY, EITHER EXPRESSED OR IMPLIED, INCLUDING AN IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, and neither assumes nor authorizes any other person to assume for it any liability in connection with this Agreement.
8. The Customer's signature indicates agreement with the Outdoor Lighting Equipment Location(s).

Tampa Electric Company

Customer

By: Albert Williams

By: _____

Albert Williams

Feb-19-97 03:56P

DATE: February 19, 1997
 TO: Mark Carlson, VP/GM
 FROM: Arthur Bullard, Jr.
 RE: TECO Proposal - Brandon Location

Tampa Electric Company has submitted a lighting proposal for the Brandon location. The proposal as submitted would make the lot very bright at night ("bright as day by Albert Williams - TECO) and utilizes "metal halide" illumination.

The cost of the proposal is as follows:

No. Of Units	Lamp Size/Pole Type	Monthly Charge(ea)
10	1000 W-MW	\$46.58 (sing + fuel chg)
6	1000 W-MW	\$37.53 (add lt + ")
10	O.H 45' CP	\$ 9.05

Total Cost of proposal = \$781.48 monthly.

10 x 46.58 = 465.80

6 x 37.53 = 225.11

10 x 9.05 = 90.50

Note: The above amount may vary due to increase or decrease in fuel charge, taxes, or fees.

Albert Williams of TECO stated lighting installation time is approximately five to seven days.

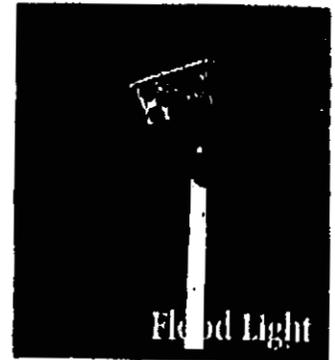
Documents have been attached for review to include an outdoor lighting agreement, diagrams, and photos.

COMMUNITY LUMINAIRES



BRIGHT CHOICES... BRIGHT IDEAS IN OUTDOOR LIGHTING!

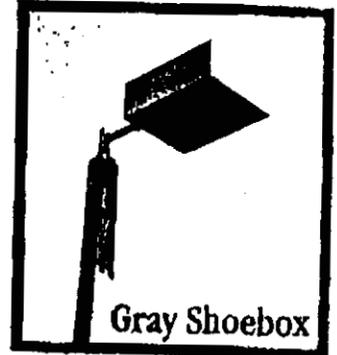
Commercial businesses prefer our Community Luminaires that provide effective overhead lighting for added customer safety and security. These attractive luminaires brighten up parking lots and road ways.



Flood Light



Decorative



Gray Shoebox



813-623-5111
 14000 Thomas Street
 Tampa, FL 33613



Since 1975

November 5, 1999

Electric Corp.

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

Re: Power Company Associate Transactions

Dear Ms. Helton,

This letter is not intended to be filed. But on behalf of IEC Fla. (Independent Electrical Contractors), this letter will serve as additional comments to those already made by other segments in the construction industry.

Here are several True Stories of Tampa Electric Co. (TECO) intrusion into private businesses offering services at below market prices. Sometimes these services are free. This would be acceptable if the tools, equipment, and man power were not being paid for by rate payers Electric Bills.

Mulberry Phosphates December 5 1997

A job to install a 2500 KVA transformer in their substation cost me \$ 4,780.00. I sold it for \$6500.00, and my proposal was not accepted. Below are my costs and the estimated cost for TECO.

My Cost		TECO	
1-Bucket truck	250	3 Bucket trucks	750
1 crane	500	1 Crane much larger	600
1 snorkle lift	350	2 Utility trucks	400
8 Men	1680	12 Men	3600
Material	2000	Material	2000
COS	4780	2 other trucks	100
Sale	6500	COS	7450

There cost were over my sale price. My labor cost plus labor burden for TECO is low at \$30/hr. I am sure it cost them much more.

Albertsons Distribution Plant City Fl

We just purchased the newest Infra Red Camera to detect "hotspots" in Electrical Systems. Cost \$74,000.00

I called a good friend Chuck Hartman (813)757-2591, the Maintenance Manager, to offer the service. He said TECO just did it for "free". It was a public Service! My sale Price for that project would have been \$5000.00

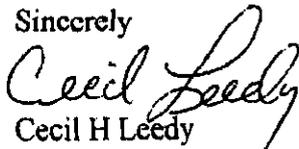
Parking Lot Lighting

The most complaints come from Parking lot lighting, in Malls, Car Dealers, etc. The Power companies are now offering leasing packages for these projects paid for by rate payers profits.

If competition were fair, I would have no problem competing against any Utility Company, on any job. But when they are financed, and have equipment and man power provided by another part of their company, it is devastating to my company. There are many other stories myself and others can tell, and we are most anxious to meet with anyone very soon.

IEC Fla. respectfully requests that the Public service Commission consider adopting separate and specific rules governing the use of rate payer funds and assets used by utility companies for non regulated work.

Sincerely



Cecil H Leedy
Co-Chairman
IEC Florida

Cc: Anna Cam Fentriss Government Relations
Alan Sims IEC Fla.

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

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 any 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.

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

Ms. Mary Anne Helton
September 22, 1999
Page Two

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

Ms. Mary Anne Helton
September 22, 1999
Page Three

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 ~~stricken through~~ 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

Ms. Mary Anne Helton
September 22, 1999
Page Four

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,

COPY

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



March 3, 2000

Ms. Anna Cam Fentriss
Governmental Relations
PMB 243
1400 Village Square Blvd., Number 3
Tallahassee, FL 32312

RE: Legislative Issues

Dear Anna,

Please find listed below, projects where Tampa Electric has supplied and installed the site lighting (pole lights). I believe these are the situations that we discussed where they are getting blanket easements on the property for these types of installations.

1. Bill Currie Ford
5815 N. Dale Mabry Hwy.
Tampa, FL 33614
2. Jerry Ulm Dodge
2966 N. Dale Mabry Hwy.
Tampa, FL 33607
3. Carrollwood Auto Imports
6903 N. Dale Mabry Hwy.
Tampa, FL 33614

If you have any questions, please feel free to contact me.

Sincerely,

Troy Puleo
Vice President

cc: Tom Schmidt/IEC
Cecil Leedy/Leedy Electric

TP:lc

**APPARENT CROSS-SUBSIDIZATION BY TAMPA ELECTRIC
MAY, 2000**

All Phase Electric is currently in the process of renovating a nine-story county building in the City of Tampa, downtown district.

Coincidental to our renovation work, a section of bus duct overheated on a 600 amp, 600 volt bus plug location and tripped the 2000 amp breaker on the first floor. Upon examination of the bus duct and bus plug, it was determined that the section of bus duct and plug on the top floor had to be replaced. The cause was simply electrical fatigue – old age, and lack of owner maintenance on connections. The bus duct is no longer manufactured. A special transition section was made to go from the old duct to the manufactured duct of today. All Phase Electric also recommended to the Owner that infrared scanning should be performed to make sure there are no more hot spots that could cause building down time.

However, it was brought to All Phase Electric's attention that during the week of May 8, 2000, Tampa Electric Company performed the service of infrared scanning throughout the building at no-charge to the owner. This is an example of the type of unethical business practices and cross-subsidization with rate payer dollars that the power companies use to enhance their relationship with the end users, and also train their personnel for specialized jobs (i.e., infrared scanning), ultimately taking work from the legitimate, fairly competing, independent electrical contractor.

**THE POWER COMPANY'S COMMENT WAS, "WHEN
DEREGULATION COMES, ALL OF THIS WILL HAVE TO STOP!!!"**



INDEPENDENT ELECTRICAL CONTRACTORS INC.
Florida West Coast Chapter
9500 Koger Blvd. • Suite 103 • St. Petersburg, FL 33702-2433 • (727) 577-3064

June 13, 2000

Anna Cam Fentriss
1400 Village Square Blvd., Number 3-243
Tallahassee, FL 32312

Dear Cam,

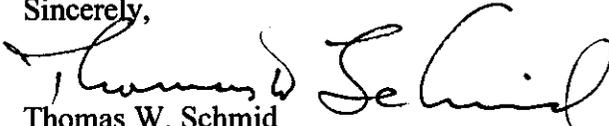
This TECO advertisement in the 1/00 Manufacturers Monthly is another example of unfair utility competition with electrical contractors.

The ad states "... requires no initial capital investment...just an affordable monthly charge that's added to your electric bill...the program includes prompt maintenance for the lifetime of the agreement."

Where do the funds come from for the capital investment and for the maintenance over the lifetime of the contract? Collecting installment payments added to the regulated entity's monthly electric bill is also an unfair advantage that is not available to electric contractors.

Please add this to the other blatant examples of regulated utility use of ratepayer money for non regulated activities in their unfair competition with electrical contractors.

Sincerely,


Thomas W. Schmid

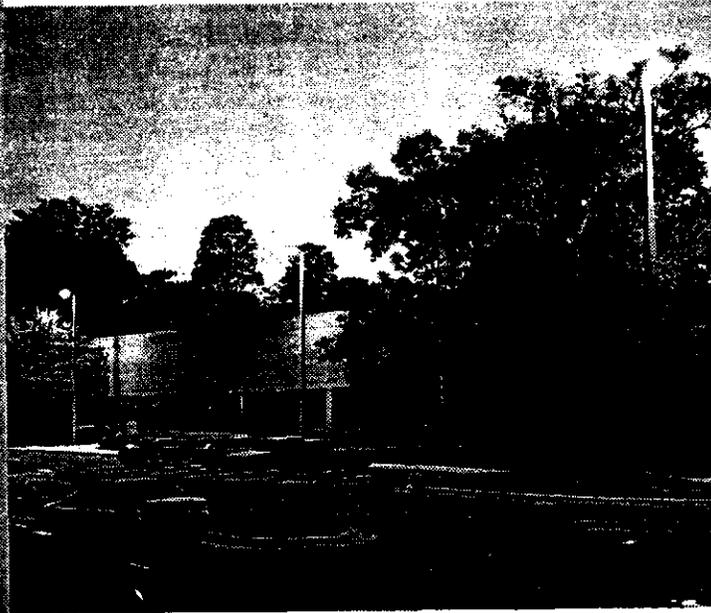
(There's a difference.)

although you are cautioned to avoid acronyms. His e-mail is <jeb@jeb.org>, and he really does answer it.

<www.stores.yahoo.com/midlandexpressmetals> or it can also be reached at <www.midlandaluminum.com>.

Brighten Your Bottom Line

Make sure your facility is effectively illuminated – so you won't leave your customers in the dark.



Tampa Electric Company's Bright Choices® Outdoor Lighting program is a smart solution for your lighting needs.

Affordable: Bright Choices requires no initial capital investment for standard installations; just an affordable monthly charge that's added to your electric bill.

Convenient: Each Bright Choices lighting system includes quality design, engineering and installation. And, you'll have automatic dusk-to-dawn illumination.

Worry-Free: Bright Choices provides a single point of contact for your lighting needs. And, the program includes prompt maintenance for the lifetime of the agreement.

Call Tampa Electric today for more information on this and other smart energy solutions that can help brighten your business.

TECO
TAMPA ELECTRIC

BRIGHT CHOICES™
OUTDOOR LIGHTING

RUN WITH US

1-813-228-1010
toll free **1-877-588-1010**

www.tampaelectric.com

June 2, 2000

Independent Electrical Contractors Association
Florida West Coast Chapter
9500 Koger Boulevard, Suite 103
St. Petersburg, Florida 33702

Attn: Tom Schmid

RE: Western Reserve Insurance Building

Dear Tom,

The following is concerning our recently completed project, (Western Reserve Aegon Insurance Building) at the Carillon Center.

My relocation of the up front negotiations concerning the involvement of Florida Power Corporation and this project is as follows:

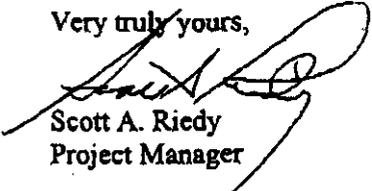
Drawings were issued to APG indicating that the 500 KW Diesel Generator was to be provided by Florida Power Corporation and not to include it in our price. During the progression of the job APG approached the General Contractor for a set of submittals for the Generator so we could stub our conduits into the appropriate area. As time passed, the GC grew concerned and we indicated we could supply the Generator and gave the GC a bid to do so.

To make a long story short Florida Power Corporation did not include everything that was needed for the generator to function properly and we were instructed to furnish and install the Generator.

Later, Florida Power Corporation notified the GC that they could no longer furnish a loop system to this building. They offered to furnish them a Static Transfer Switch to accomplish what they believed the owner wanted.

We offered to price this to them also, but were instructed that the switch and preferred rates were somehow tied into the furnishing of this switch and the GC did not want to jeopardize this between the owner and Florida Power Corporation.

Very truly yours,



Scott A. Riedy
Project Manager

SAT/rlk



Post-it® Fax Note	7671	Date	7/16/99	# of pages	1
To	Cent Fortress	From	Larry Cox		
Co./Dept.		Co.	Cox Electric		
Phone #		Phone #	621-1161		
Fax #	850-224-0580	Fax #	623-5111		

*****AUTO**3-DIGIT 335
 Cox Lawrence T
 Dba Cox Electric
 11611 E Old Hillsborough Ave
 Seffner FL 33584-3356

July 19, 1999



Dear Customer:

Storm season is here once again. And with it comes a greater number of high-voltage surges, especially those caused by lightning. Last storm season alone, Tampa Electric's service area experienced an average of 533 strokes of lightning per day.

Imagine the frustration these high-voltage surges could cause if they damage or destroy your business equipment – downtime, expensive repairs, lost revenue opportunities.

Even though nothing can protect against a direct lightning strike, surge protection makes good business sense year-round. That's why we would like to give you important information about Tampa Electric's Zap Cap System® for Business. Zap Cap is an comprehensive surge protection system that can help:

- Protect your computers and sensitive electronic equipment,
- Prevent costly and frustrating downtime from surge-damaged equipment, and
- Give you peace of mind – so you can focus on successfully running your business.

And, Zap Cap is affordable – starting at just \$30 per month and conveniently added to your electric bill. ←

If you've experience high-voltage surge damage in the past, or if you want to take preventative steps now to help avoid surge damage in the future, please fax back this letter today so we can share this surge solution with you!

Best regards,

Marketing & Sales Deperatment
Tampa Electric Company

Yes! I want to find out how Zap Cap can help protect my business from high-voltage surges.

Please call me to schedule a free analysis of my company's surge protection needs.
 I need more information about Zap Cap. Please call me to discuss.

Name _____ Company _____ Phone _____

Please fax this letter to (813) 228-1640 and we'll promptly contact you!

TAMPA ELECTRIC COMPANY
P.O. BOX 111 TAMPA, FL 33601-0111

(813) 228-4111

AN EQUAL OPPORTUNITY COMPANY
HTTP://WWW.TAMPAELECTRIC.COM

CUSTOMER SERVICE:
HILLSBOROUGH COUNTY (813) 223-0800
OUTSIDE HILLSBOROUGH COUNTY 1 (888) 223-0800



3202 HENDERSON BLVD., SUITE 204 TAMPA, FLORIDA 33609
(813) 870-2607 FAX: (813) 876-7625

June 14, 2000

Mr. Jay Revell
Division of Auditing and Financial Analysis
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Fl 32399-0862

Re: Comments of RACCA, Inc. in Docket #980643-EI

Dear Mr. Revell:

This Association attended the hearing (last Fall) on the proposed rule changes that are intended to prevent ratepayer subsidization of nonregulated utility programs.

At that hearing, the utility representatives opposed many aspects of the new rule. They believed that the new requirements were too stringent and would be too costly. They felt that the present rules provided adequate protection to ratepayers. In subsequent comments to the Commission, their position is unchanged.

On the other hand, we, in the nonregulated private business sector (and we are also ratepayers) objected to portions of the proposed rules. We felt that the definition of nonregulated affiliates was too vague and that cost allocations between regulated utilities and their nonregulated affiliates needed to be recognized at market value.

In that first hearing, it was pointed out that some utility/affiliate transactions may be in the ratepayers best interest even though subsidization might be involved. Examples given were coal mines, transportation systems, etc.

We do not object to forms of ratepayer subsidization of affiliate companies when they are providing products or services essential to the delivery of energy and the ratepayer is benefited. We do object and find unfair, the ratepayer subsidization of nonregulated affiliate companies and utility-run programs that compete with the private business sector.

This concern underscores our problem with the definition of "affiliate". Perhaps a distinction could be made between affiliates that support the delivery of energy and those affiliates involved in enterprises that are unrelated to the delivery of energy. The former being less regulated than the latter. Perhaps the utilities would find this arrangement more palatable.

We have concerns relating to "cost allocations" between utilities and nonregulated affiliates. It is our understanding that, when a utility provides product or services to a nonregulated affiliate, they would prefer less than fully allocated costs or incremental costs versus market price.

To be sure, we in private industry struggle to understand the accounting procedures and terminology of big utility corporations. We use terms such as; direct costs (the actual cost of the product or labor); overhead recovery or burden (the indirect costs of doing business) and; net profit (what we expect to earn after the other costs have been recovered). If a utility only charges its affiliate the direct cost of a product or service it will put competing private industry at a tremendous disadvantage. It will also mean that ratepayers are subsidizing all of the other indirect costs associated with providing that nonregulated product or service.

For the sake of an example, let's assume that a utility has a nonregulated affiliate company or even a division within the utility that installs outdoor security lighting. Let's also assume that the utility is making an effort to segregate the income and expenses required to operate this firm or division from that associated with its ratepayer base. Perhaps the utility provides a couple of its marketing specialists to promote this nonregulated activity and charges the affiliate or division for a portion of their salaries. Our questions:

Who pays for the associated overhead cost of providing these marketers (vacations, insurances, pension/retirement, sick leave, even the payroll accounting costs, etc.)?

Who pays for costs of transportation (vehicle, insurance, gas & oil, repairs, etc.)?

Who pays for the cost of materials used or consumed in the performance of their jobs (promotional advertising, customer lists, administrative paperwork, cost of mailings, etc.)?

Who pays for their office space if they are housed in utility owned buildings with utility owned furnishings?

We have just scratched the surface, but unless these costs are paid by the affiliate or division—the ratepayer is the one who is subsidizing any or all of this. It puts private sector business at a disadvantage.

If a utility wishes to engage in enterprises, other than providing energy, its relationship with an affiliate or internal division must be at "arms length". This relationship must have detailed accounting documentation. If the utilities find this requirement too onerous or costly, then they should not engage in that enterprise.

Not only are we concerned about the possibility of ratepayers subsidizing future programs . . . it is our contention that it is already occurring and has been for some time.

We ask you to review the narrative (enclosed) that was sent to our government relations representative that details a meeting between TECO/Peoples Gas and our Board of Directors.

We respectfully request that our comments and enclosure be made part of the record for the hearing to be held on June 22, 2000.

Sincerely,

A handwritten signature in black ink, appearing to read "Keane Bismarck". The signature is fluid and cursive, with a large loop at the end.

Keane Bismarck
RACCA Executive Director

KB/db
Enclosure



3202 HENDERSON BLVD., SUITE 204 TAMPA, FLORIDA 33609
(813) 870-2607 FAX: (813) 876-7625

March 14, 2000

Cam Fentriss
ACF Governmental Relations
1400 Village Square Blvd., #3
Tallahassee, FL 32312

Subject: "TECO Guard" Warranty Insurance Program

Dear Cam:

As you are aware we began receiving reports, over a month ago, indicating that TECO was preparing to introduce a new program, to its customers, called "TECO Guard".

A number of air conditioning contractors in the West Central Florida area had been contacted by representatives of TECO/Peoples Gas. Although program details were not clear, it was evident that the new program was warranty insurance on appliances and the utility representatives were recruiting potential service contractors. Rumors had it that TECO/Peoples Gas planned to "roll out" the program about mid March. There was also some speculation that the utility had already made some agreements with some large servicing contractors.

As a result of a number of inquiries, made by us, I was contacted by Mr. Al Scarborough, the Marketing Manager for Dealer Services of TECO/Peoples Gas. He indicated that he was the person heading up this program and he wanted to clear up any misconceptions about the program. He explained that they were, indeed, going to offer a Home Appliance Warranty Insurance package to TECO/Peoples Gas customers using industry contractors to perform the services. He said the program would not begin until the second quarter of this year. He talked for several minutes about the perceived advantages of the program and then asked if I thought the contractors would support it. I told him that I could not speak for the contractors on any specific program, but that our industry had not been favorable to these initiatives in the past because of unfair competition and the issues of rate payer cross-subsidization.

I asked him to speak with our Board of Directors on March 9, 2000 at the regularly scheduled meeting in Tampa. Since the Board Members are contractors with businesses to protect and payrolls to meet, they should hear what the utility was planning. He agreed to attend the meeting.

Mr. Scarborough arrived at the meeting along with three other representatives of TECO/Peoples Gas. He explained that, a few years ago, when Peoples Gas dismantled their appliance sales and service division,

they developed a new program called "Gas Advantage Dealers". This program was designed to offer its participating contractors a customer "referencing" program, cooperative advertising and other incentives in exchange for the contractors promotion of gas equipment.

However, with the introduction of their new program "Energy Advantage" Dealers, the old program participants, would no longer receive customer referencing. Only the new program participants would receive this benefit. Additionally, the participating contractors would have to agree to provide gas appliance, air conditioning & heating, plumbing and electrical services all in one. It was pointed out by Board Members that Mr. Scarborough had just eliminated 99% of the air conditioning contractors in the state. Mr. Scarborough said that the contractors had a choice of getting multi-licensure, striking deals with other tradesmen or electing not to participate in the new program.

He went on to explain that TECO wished to become a "one-stop" point of reference for its customers on home appliance repairs and that the centerpiece would be the "TECO Guard" appliance warranty program. It was pointed out that these kinds of programs had been tried in the past (by nonregulated corporations) without a great deal of success.

At this point, Mr. Scarborough was asked what need was not being met that led to TECO's interest in doing this? His answer was that "hundreds of thousands of customers state wide were sitting on gas lines and previous marketing strategies were not increasing their use." He was asked if this program will be available to TECO's electric utility customers as well. He didn't clearly answer this, but the Board had no doubts that the implication was yes.

Board Members, several of which are Gas Advantage Dealers, could not understand the rationale of how a warranty insurance program promotes gas, especially if the electric utility side offers it as well. They felt that TECO/Peoples Gas should stick to the promotion and sale of gas through stronger incentives instead of branching off to other products and services that compete directly with our industry. Mr. Scarborough stated that TECO had no desire to get into our industry or compete with contractors. It was pointed out that a lot of our contractors were either licensed by the Department of Insurance to sell warranties or were already working with national corporations providing the same products. So how can they not be in competition? It was also pointed out that utility corporations (nationally) have a bad track record of starting these types of programs, narrowing the participating dealer field to one or a few large servicers and then buying the servicer as a nonregulated affiliate.

We asked if it was true that TECO/Peoples Gas had already made an agreement with a large warranty service contractor in the area (I shall not use the contractor's name in this narrative). Mr. Scarborough, in my opinion, was reluctant in his answer. He said he was unfamiliar with the firm and would have to research it. I stated that he could have said no or that they do not have any agreements. The fact that he did neither indicates that they probably have, in fact, already made some agreements.

Note - Since the Board Meeting, one of our contractor members contacted his TECO/Peoples Gas representative to inquire if he could sign-up for the program and was told that they have 6 contractors in his area already signed up. He was told that he could not be considered unless one of them dropped out.

It was pointed out that the Home Warranty Association laws in this state are quite stringent. Mr. Scarborough was asked how the program and promotion could be identified as "TECO Guard" when, in fact, the insurer was a national firm called Equiguard? He was also asked how the program could collect

monthly premium installments from ratepayers? Mr. Scarborough stated that these were matters for their attorney.

Mr. Scarborough described the program as a no deductible warranty insurance program covering a variety of appliances. TECO will pay its contractors a 10% commission on the sale of these contracts and assign the contract to the servicer who sells it. TECO will pay the contractor's "street rate" on labor and parts. The estimated monthly premium installment would be about \$25.00 per month on a full package or about \$300.00 per year. Board Members scoffed at the idea that the program could work with these figures.

Mr. Scarborough was asked how the development and start-up of this program is being funded in light of the fact that no premium dollars had yet been collected? One Board Member stated that he saw a lot of salary expense sitting in the room that had nothing to do with providing gas and that he wished he could have had their help and resources when he began his business. Mr. Scarborough was asked if the stockholders of TECO were funding this project and his reply was no. He suggested that TECO Energy the parent holding company was funding the initiative. It was pointed out that if the stockholders were not funding their operation then it must be the ratepayers.

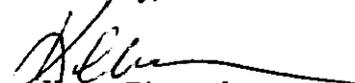
At some point the question of "Why TECO is doing this?" came up again and one of the other TECO/Peoples Gas representatives replied, "We are trying to create another revenue stream."

At times during the meeting emotions ran high. I would characterize the mood of the meeting as somewhat hostile with the utility representatives defensive and somewhat naive regarding contractor concerns and the contractors suspicious of TECO's intentions.

Every Board Member indicated to me that they were suspicious of TECO's motives; that they did not understand the necessity of the program and; that TECO/Peoples Gas should focus their marketing efforts on the virtues of gas rather than unrelated products and services that are financed by their gas customers.

In light of these developments, we believe some HVAC industry action needs to begin. After you have reviewed this narrative please give me a call. I would appreciate your counsel as to what our next step should be.

Sincerely,


Keane Bismarck
Executive Director

KB/db

To: Cam
From: Tom - Schel

Call
me

1-800-441-1233

**TECOGuard
Home Appliance Protection Program**

Program Description:

TECOGuard is a residential service warranty program that provides for the repair of covered parts and labor for mechanical and electrical breakdown of most all home appliances. It is a convenient way for customers to guard against untimely and expensive appliance repairs. It will be marketed through TECO Peoples Gas and underwritten by Virginia Surety Company, a division of Aon, Inc.

Highlights:

- Monthly Premiums are incrementally billed to the customers gas account.
- Customers have a choice of plan packages or they can customize their own package. (See equipment eligible for coverage.)
- There is no deductible to pay.
- Parts and labor are covered 100%.
- Appliances covered can be any age.
- Any additional appliances can be added at any time during the year.
- TECOGuard can be cancelled at any time.
- The program provides a single point contact (Warranty Administrators) for repair through a toll-free hotline. (877-213-8664)
- Aon "Warranty Administrators" will dispatch a GAD/EAD or other qualified technician to provide the appropriate service.

Equipment available for coverage:

Clothes Washer	TV less than 40"
Clothes Dryer	VCR
Refrigerator	Camcorder
Range	Fax Machine
Water Heater	Pool/Spa Heater
Dishwasher	Central Heating/Air Conditioning
Freezer	Heat Pump
Microwave	Garbage Disposal

Program Opportunities:

TECOGuard will provide our customers with a simple and cost effective way to protect against unexpected and expensive repair bills. It will assist our GAD/EAD network with an additional value added product to offer our mutual customers.

Program Marketing and Sales

The TECOGuard program introduction will be distributed to potential customers via several channels, which will include, but not limited to:

- Utility bill inserts
- Direct mail to Peoples Gas customers
- Direct mail to non-gas customers
- Through the Gas/Energy Advantage Dealer Network
- Telemarketing through the CRC



INDEPENDENT ELECTRICAL CONTRACTORS INC.

Florida West Coast Chapter

9500 Koger Blvd. • Suite 103 • St. Petersburg, FL 33702-2433 • (727) 577-3064

May 16, 2000

Anna Cam Fentriss
1400 Village Square Blvd., Number 3-243
Tallahassee, FL 32312

Dear Cam,

The enclosure was included with my recent Florida Power monthly bill.

Questions I have of the PSC:

1. What funds were used to pay for the printing of the flyer?
2. Since the PSC indicates flyers such as this can be included with the bills because there is no increase in postage, may an electrical contractor provide flyers to be mailed with utility bills provided additional postage is not needed?
3. If the answer to 2. is NO, why not?

Regards,

A handwritten signature in black ink that reads 'Tom Schmid'. The signature is written in a cursive style with a long horizontal stroke at the end.

Thomas W. Schmid
Executive Director

Enclosure

**FPL's Suggested Revision To
The Last Sentence of Subsection (3)(b)
To Proposed Rule 25-6.1351**

If a utility charges less than market price, the utility must notify the Division of Economic Regulation Auditing and Financial Analysis within 30 days of the transaction utility starting to provide the product or service, or, in the case of products or services being provided when this rule becomes effective, within 30 days of the rule's effective date.

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET
NO. 980643-EI EXHIBIT NO. 4
COMPANY/
WITNESS: Florida Power & Light
DATE: 6-22-00

file

RECEIVED

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION MAY 02 2000

Regulatory Affairs

IN RE: DOCKET NO. 980643-EI - Proposed amendments to
Rules 25-6.135, F.A.C., Annual Reports;
25-6.1351, F.A.C., Cost Allocation and
Affiliate Transactions; and 25-6.0436, F.A.C.,
Depreciation.

BEFORE: CHAIRMAN JOE GARCIA
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER E. LEON JACOBS, JR.
COMMISSIONER LILA A. JABER

PROCEEDINGS: AGENDA CONFERENCE

ITEM NUMBER: 3**

DATE: Tuesday, April 18, 2000

PLACE: 4075 Esplanade Way, Room 148
Tallahassee, Florida

REPORTED BY: MARY ALLEN NEEL
Registered Professional Reporter

COPY

ACCURATE STENOTYPE REPORTERS
100 SALEM COURT
TALLAHASSEE, FLORIDA 32301
(850)878-2221

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET
NO. 980643-EI REPORT NO. 5
COMPANY: Florida Power & Light
WITNESSED: DATE: 6-22-00

PARTICIPANTS:

RUSSELL BADDERS, Gulf Power Corporation.

CHARLES GUYTON, Steel, Hector & Davis, on behalf of Florida Power & Light Company.

MARY ANNE HELTON, Commission Staff.

VICKI GORDON KAUFMAN, McWhirter Reeves, on behalf of Florida Industrial Power Users Group.

PAT LEE, Commission Staff.

HARRY LONG, of Tampa Electric Company.

DALE MAILHOT, Commission Staff.

JAMES MCGEE, Florida Power Corporation.

JAY REVELL, Commission Staff.

BETH SALAK, Commission Staff.

STAFF RECOMMENDATION

Issue 1: Should the Commission propose amendments to Rules 25-6.135, 25-6.1351, and 25-6.0436, Florida Administrative Code?

Recommendation: Yes, the Commission should propose amendments to Rules 25-6.135, 25-6.1351, and 25-6.0436, Florida Administrative Code.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no requests for hearing or comments are filed, the rule amendments as proposed should be filed for adoption with the Secretary of State and the docket closed.

1 CHAIRMAN GARCIA: All right. Item Number
2 3.

3 MS. HELTON: Commissioners, Item Number 3
4 is Staff's recommendation to adopt amendments to
5 Rules 25-6.135, 25-6.1351, and 25-6.0436.

6 The main focus of these rules is to
7 establish cost allocation requirements to ensure
8 proper accounting for affiliate transactions and
9 utility nonregulated activities so that these
10 transactions and activities are not subsidized
11 by utility ratepayers.

12 In the past, Staff has looked closely at
13 these types of costs in rate cases. And since
14 we don't seem to have electric rate cases
15 anymore, also, too, as the market is changing
16 and electric companies are evolving and they are
17 becoming more involved with affiliate type
18 transactions, we believe that this rule is
19 necessary.

20 I believe that there are a couple of
21 corrections to make. First, on page 2 of the
22 rule, which is page 7 of the recommendation, in
23 line 23, we would like to remove any ambiguity
24 that is there and strike the word "may" and add
25 an "s" to charges.

1 COMMISSIONER CLARK: where is that? would
2 you repeat that?

3 MS. HELTON: Sure. On page 7 of the
4 recommendation, which is page 2 of the rule, on
5 line 23, to strike "may," which is the second
6 word in the line, and add an "s" to charge,
7 which is the third word. We believe that
8 removes any ambiguity that may be there.

9 Also, staff inadvertently did not attach
10 the form which is adopted in the rule. This
11 form consists of two parts that are being merged
12 together, the FERC Form 1, and then also the
13 Analysis of Diversification Activities Reports.
14 These in the past had been filed simultaneously,
15 and we are now merging the two together.

16 In addition, on page 460, we are adding a
17 new schedule on nontariffed services and
18 products provided by the utility. I have passed
19 out a copy of the diversification part of that
20 form to the utilities, because I recognize their
21 faces. If there's anyone else that would like
22 to have a copy of that, I have extra copies
23 here.

24 I believe there are persons here to address
25 you on this rule.

1 CHAIRMAN GARCIA: All right. Mr. Guyton.

2 MR. GUYTON: Commissioners, my name is
3 Charles Guyton. I'm appearing on behalf of
4 Florida Power & Light Company.

5 Commissioners, anytime that you contemplate
6 a rule, I think the fundamental question you
7 ought to pose to yourselves is: Do we need it?
8 And I think you ought to ask yourself the
9 question, do you really need the amendments that
10 are being proposed to you today.

11 This Commission has a very long history of
12 having examined affiliated transactions by
13 utilities. You did it for a number of years on
14 a rate-case-by-rate-case basis. And then in the
15 early '90s -- it may have been the late '80s,
16 but I think it was the early '90s, your staff
17 proposed a very detailed, very demanding, very
18 extensive rule on affiliated transactions. You
19 held a very protracted hearing on that rule, and
20 you decided as a result of those hearings that
21 you were going to promulgate a rule, and you
22 did. But you didn't promulgate the detailed and
23 extensive rule that staff proposed to you. You
24 proposed the rule that is currently on your
25 books and that staff is recommending that you

1 amend today.

2 And at that time there had not been many
3 electric utility rate cases, and what you
4 decided was that you needed a rule that required
5 reporting requirements so you could stay abreast
6 of the affiliated transactions that were
7 happening, that you could stay abreast of any
8 diversification activities that were happening.
9 And you decided at that point as a result of the
10 deliberations that the best way to proceed was,
11 as you had in the past, on a case-by-case basis
12 as circumstances arose which suggested you
13 should act.

14 Now, you've followed that for a number of
15 years, and I think the rule has served you quite
16 well. There is not a long history of affiliated
17 transaction abuses in the state. And the few
18 instances where there has been something the
19 Commission has taken a look at, the rule has
20 served you well and has allowed you to address
21 it timely and in an appropriate fashion.

22 So we would submit to you that as a result
23 of your history, where you've been, and without
24 any kind of a demonstration of a compelling need
25 to change, there's no need for you to address or

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promulgate more demanding or extensive rules as are being proposed to you today.

We would encourage you not to initiate this rulemaking. If you choose to initiate this rulemaking -- and we certainly recognize that it's within your prerogative. And we don't disagree with the underlying purpose, and that is to protect utility customers. We just think they're adequately protected by the rules that are already on the book. But if you choose to initiate the rulemaking, there are two specific provisions in the proposed rule that we would like you to consider changing if you do propose.

And the first one is subsection (2)(j) of Rule 25-6.1351, and that is found at page 8 of the staff recommendation and page 3 of the attached rule, and it's the definition of "subsidize."

The definition that's proposed by staff here speaks of customers or the act of regulated utility operations paying more than their fair share, fair and reasonable share of costs. We are somewhat concerned about the nature of the definition here. We think it is -- how can you argue with fair and reasonable? Well, we don't

1 argue with it so much as that fair and
2 reasonable I guess is in the eye of the
3 beholder. If you're looking for a standard,
4 this doesn't give you what we think is a
5 standard any more than saying their share gives
6 you a standard.

7 During the workshops that were held, TECO
8 suggested an alternative definition of
9 "subsidize" which we think would take the
10 value-related terms out of it, would give you a
11 more objective standard, and wouldn't be
12 one-sided. Let me share it with you and give it
13 to you as an alternative.

14 COMMISSIONER CLARK: Before you do that, is
15 "subsidize" used elsewhere in the rule?

16 MS. HELTON: I think it's used just in the
17 first subsection of the rule, which is the
18 purpose section.

19 COMMISSIONER CLARK: Okay. I have two
20 questions then, and it may sort of short-circuit
21 what Mr. Guyton is going to say. Are we
22 proposing a definition that is different than
23 what is commonly understood and is part of a
24 dictionary definition, and if we only use it
25 once, do we really need it? If it is not

1 different, I think the general rule in drafting
2 rules and legislation is that you don't define
3 something that has -- the meaning of it is the
4 same as in common usage or in a dictionary.

5 MS. HELTON: I didn't go back and compare
6 the definition of "subsidize" in the dictionary,
7 so I can't answer the first question.

8 I think I can answer why we have the
9 definition in here. I think that we have the
10 definition in here, it's my recollection,
11 because we were asked to include a definition of
12 "subsidize" by the utilities. We had talked
13 about doing something like nothing more than
14 incremental costs, and the concern there was
15 that there might be times when there is no
16 incremental cost, but it would be fair and
17 reasonable for an affiliate to pay some costs.

18 For instance, say Florida Power & Light has
19 an office suite in its main building that's not
20 currently being used for utility regulations,
21 but it has an affiliate that wants to go in
22 there and use that space, and there's no
23 additional cost to FPL for the affiliate to use
24 that. We think it's a fair and reasonable thing
25 for the affiliate to pay part of the cost for

1 that office space. That's where we're coming
2 from.

3 COMMISSIONER CLARK: Okay.

4 MR. GUYTON: The alternative language that
5 we would propose is one that focuses on the
6 economic basis of a transaction, and we would
7 offer the following language in its entirety as
8 a substitution for subsidy as is set forth in
9 the rule: Accounting for costs by allocating
10 more or less cost from one entity to another
11 than the underlying economic transaction
12 supports.

13 That is no more or no less. It's an
14 evenhanded standard, if you will.

15 The other subsection we would ask you to
16 take a look at is --

17 MS. HELTON: Could I ask Mr. Guyton to
18 repeat that one more time, please?

19 MR. GUYTON: Certainly. Accounting for
20 costs by allocating more or less cost from one
21 entity to another than the underlying economic
22 transaction supports.

23 MS. HELTON: Thank you.

24 MR. GUYTON: Yes, ma'am.

25 COMMISSIONER JACOBS: How will we define --

1 who defines, I guess I should say, what the
2 underlying economics are?

3 MR. GUYTON: Ultimately that will be a
4 standard that is brought to the Commission to
5 resolve. If it doesn't -- if it never rises to
6 that element, it will be one that the utility
7 will have to be in a position to justify,
8 Commissioner.

9 COMMISSIONER DEASON: Mr. Guyton, how does
10 that add any clarity above fair and reasonable?
11 I mean, it seems to me that when you use the
12 terminology "economic transaction," that goes to
13 something that's fair and reasonable. You look
14 at the nature of the transaction, seeing what is
15 being accomplished and the environment in which
16 the transaction takes place. And when you say
17 allocating costs which are more or less than an
18 economic transaction would support, to me that's
19 the same as fair and reasonable.

20 MR. GUYTON: Well, I think the distinction
21 that I would draw, if you go back and take a
22 look at what Staff has proposed here, their
23 standard is one-sided, if you will. It talks
24 about utility operations paying more than their
25 fair and reasonable. The standard that I'm

1 giving to you is more or less. Essentially, you
2 pay what the economic transaction justifies, the
3 value, no more, no less. That's I think the
4 primary distinction between the two
5 alternatives. One is one-sided and one is not.

6 COMMISSIONER DEASON: So you're saying
7 Staff's use of the terminology "fair and
8 reasonable" is not fair and reasonable?

9 MR. GUYTON: Well, it's one-sided, because
10 there's a modifier before you get to fair and
11 reasonable, and it says more than their fair and
12 reasonable.

13 COMMISSIONER CLARK: Well, shouldn't it be
14 one-sided, because -- should I care if your
15 competitive service chooses to subsidize your
16 regulated service?

17 MR. GUYTON: I think the purpose here
18 should be to avoid subsidy one way or the other.

19 COMMISSIONER CLARK: I disagree. I, guess
20 my concern is the regulated entity subsidizing
21 the competitive entity. If you choose to have
22 your competitive entity subsidize your regulated
23 entity, I think I would welcome that. I think
24 it's one-sided for a purpose. We are concerned
25 with subsidization that goes one way. We are

1 not concerned with the other. That's the
2 company's concern, and I think they would take
3 care of that.

4 COMMISSIONER DEASON: Well, I would note
5 this, that the use of the term "subsidy," or
6 "subsidize," rather, if the only place it is
7 used is in paragraph (1) in Rule 25-6.1351, it's
8 used in the context that the purpose of these
9 rules is to prevent subsidy by utility
10 ratepayers. The purpose of the rule is not to
11 prevent subsidy in the opposite direction.

12 COMMISSIONER CLARK: Right.

13 COMMISSIONER DEASON: The purpose of the
14 rule is to prevent subsidy by utility
15 ratepayers. Is that the only place where that
16 term is used in these rules?

17 MS. HELTON: I believe it is.

18 And if I could just interject here, the
19 reason why it's one-sided is because the
20 Legislature used this language twice in Chapter
21 366, that the Commission is to take action, and
22 then I quote, to ensure that a utility's
23 ratepayers do not subsidize nonutility
24 activities, end quote.

25 COMMISSIONER JACOBS: There's a thing that

1 I seem to be picking up. If you look at the
2 language in the proposed rule and contrast it
3 with what you're proposing as a modification, at
4 first blush it would sound that there would be
5 an analysis after you arrive at the point that
6 there is some kind of a technical subsidy
7 according to the proposed definition. Under
8 your analysis, then you would proceed to some
9 kind of evaluation of whether or not there are
10 economic benefits that are derived by allowing
11 that. Is that your interpretation of the
12 language you propose?

13 MR. GUYTON: I don't know that I would see
14 that as a two-step process. I would see the
15 assessment of the benefits being what drives the
16 recording of the cost. I mean, it would be
17 something that would be considered, and prior to
18 engaging in the transaction, one would make the
19 decision of whether there's an economic value
20 before one engaged in the transaction, or if one
21 didn't, one would do it at their risk.

22 COMMISSIONER JACOBS: I can agree with
23 that. But at the point where we want to apply
24 this rule, that's going to be ex post facto.
25 And at that point, what we're going to be

1 Looking at is to what extent that transaction
2 passes muster. And at that point, I think --
3 don't we have to do that two-stage analysis to
4 make the determination of whether or not it
5 passes muster?

6 MR. GUYTON: Yes. I just don't think it
7 comes after the fact. I think it should come
8 before the fact. And then clearly, when you're
9 judging it, you're going to have to address
10 whether or not it measured up to the standard.
11 And that I certainly don't take issue with. You
12 certainly should, Commissioner.

13 COMMISSIONER JACOBS: Thank you.

14 COMMISSIONER JABER: Staff, do you take the
15 position that we have to define "subsidize"?

16 MS. HELTON: No, we don't. I believe that
17 it can be removed.

18 COMMISSIONER DEASON: I'm sorry. You
19 believe it can be what?

20 MS. HELTON: I believe that the definition
21 of "subsidize" could be removed without
22 tampering with the intent of the rule.

23 COMMISSIONER DEASON: Okay.

24 MR. GUYTON: The other language that we
25 would ask you to consider, Commissioners,

1 subsection (3) of the same rule addresses
2 transfer pricing standards, and subsections (b)
3 and (c) address transfer pricings for products
4 and services that are exchanged between a
5 utility and its affiliates. One section
6 addresses them going one way, and the next
7 section addresses the other. But what's common
8 to both of those standards is that the rule
9 establishes a standard, but then it allows an
10 exception or a variance if the utility can
11 justify it.

12 However, when you get down to subsection
13 (d) of the rule, which addresses the transfer of
14 assets, it gives a set standard, but does not
15 allow for any type of a variance or exception
16 under any circumstances. We would suggest to
17 you that subsection (d) should operate as
18 subsections (b) and (c) do, and that is, you
19 ought to set forth a standard, but you ought to
20 allow for exceptions if circumstances can
21 justify them.

22 COMMISSIONER JABER: Don't the uniform
23 rules give you that anyway? Can't you request a
24 variance or a waiver under the uniform rules?

25 MR. GUYTON: Commissioner, you can. That

1 is, we would submit, a very cumbersome and
2 time-consuming process, one that doesn't lend
3 itself to administrative efficiency. And it's
4 also --

5 COMMISSIONER JABER: Yes, I said that too.
6 It didn't work.

7 MR. GUYTON: Well, but on the other hand,
8 here you have the means of addressing it within
9 your rule. And you've already done it in
10 subsections (b) and (c), and we would suggest
11 that adding the flexibility under (d) similar to
12 what you've done in (b) and (c) would allow you
13 to do that.

14 COMMISSIONER JABER: Staff, correct me or
15 remind me on the process. I thought they didn't
16 -- the Administration Commission did not want
17 agencies to put little waiver provisions in
18 their rules because of the uniform rules.

19 MS. HELTON: We can't have a blanket
20 waiver. We can have what I term -- I think is
21 more appropriately termed an exception if the
22 parameters of the exception are clearly defined
23 in the rule, because the exception is the rule,
24 I mean, if you meet those parameters. So I
25 don't think we're in conflict with 120.542 at

1 all.

2 COMMISSIONER CLARK: Well, if we couldn't,
3 we would have to eliminate the exceptions from
4 the others too.

5 MS. HELTON: Correct.

6 MR. GUYTON: And I have alternative
7 language if you're willing to consider that
8 language for the exception in subsection (d).
9 You would add a sentence after the first
10 sentence, between the first and second
11 sentences, which would read as follows: Except,
12 a utility -- I'll read it quickly, and if you
13 want to hear it again, I'll go back slowly.
14 "Except, a utility may charge the affiliate
15 either the market or net book value if the
16 utility maintains documentation to support and
17 justify that such a transaction benefits
18 regulated operations."

19 And then the other change that we would
20 suggest would be between the second and third
21 sentences of the rule at line 16, that you add a
22 very similar sentence after those transactions
23 that would read, "Except that a utility may
24 record the asset at either market or net book
25 value if the utility maintains documentation to

1 support and justify that such a transaction
2 benefits regulated operations." And it just
3 adds the flexibility into (d) that you have in
4 (b) and (c).

5 CHAIRMAN GARCIA: Commissioners, do you
6 have a problem that?

7 COMMISSIONER DEASON: Do I have a problem
8 with that? I don't have a problem with that,
9 no.

10 CHAIRMAN GARCIA: All right. Staff, you
11 don't have a problem with that, do you? Staff?

12 MS. HELTON: The only reason we did not
13 include an exception here is because we believe
14 there would be a limited number of these types
15 of transactions. We don't object to including
16 that language.

17 CHAIRMAN GARCIA: Let's include that one.
18 All right.

19 MS. HELTON: If Mr. Guyton could get with
20 me at the end to --

21 MR. GUYTON: I'll be happy to.

22 CHAIRMAN GARCIA: Great. Is that it?

23 MR. GUYTON: That's the only observations
24 we have, although we would ask you to consider
25 whether you really need the rule.

1 CHAIRMAN GARCIA: All right. Thank you.
2 Mr. Long.

3 MR. LONG: Thank you. Commissioners, I
4 would like to direct your attention to section
5 (4)(a) of the cost allocation and affiliate
6 transactions rule as proposed.

7 Our concern with section (4)(a) is that it
8 requires a tagging, essentially, of every
9 transaction that the utility enters into, and
10 our accounting systems simply aren't equipped to
11 do that in any kind of efficient manner. The
12 vast majority of the transactions are going to
13 be regulated, and to require that every
14 transaction be tagged as regulated or
15 unregulated would create a tremendous burden and
16 a tremendous expense in an attempt to comply.

17 COMMISSIONER DEASON: Do you have a
18 procedure now that you tag unregulated
19 transactions?

20 MR. LONG: We do not. I mean, we account
21 separately for affiliated transactions. And I
22 would propose, as we did in our comments, that
23 the Commission consider revising paragraph
24 (4)(a) to require that accounting records be
25 maintained for transactions between the utility

1 and its affiliates. I think that's in keeping
2 with the spirit of the changes and really
3 eliminates what would otherwise be a significant
4 burden.

5 CHAIRMAN GARCIA: Okay. That's it?

6 MR. LONG: That's our request, yes,
7 Commissioner.

8 CHAIRMAN GARCIA: Okay. Staff.

9 MR. REVELL: Commissioners, I discussed
10 this with Joe McCormick of TECO the last few
11 days, and basically their \$35 million estimate
12 to buy a new computer system to implement these
13 type changes came about because they were
14 literally interpreting that subsection to mean
15 that each particular invoice -- excuse me. Each
16 accounting record would have to figuratively or
17 literally have a box marked. If it's regulated
18 or unregulated, it would have a check mark or
19 not have a check mark.

20 Presently, my understanding is that there
21 are unique accounting numbers which identify
22 affiliated transactions, and he indicated that
23 within a few minutes, they could punch up on the
24 computer and have a printout of every
25 transaction to and from the affiliates.

1 In addition, the present schedule, page
2 457, that's part of the package uses a lot of
3 this information that they gather presently.
4 And they do submit a lot of this to us already.

5 So in this particular case, it is something
6 that all the companies are presently doing and
7 can account for internally. It's just that
8 we're trying to make it in a position where it
9 can be easily auditable by our audit staff.

10 COMMISSIONER DEASON: Well, is the key here
11 identifying transactions between the regulated
12 entity and its affiliates, or is the key trying
13 to identify all transactions and put them in one
14 category or the other, being regulated or
15 unregulated?

16 MR. REVELL: Yes. The key is that we be
17 able to identify transactions between the
18 affiliate and parent company, not tag every
19 accounting record as one way or the other.

20 COMMISSIONER DEASON: Well, then your
21 language in (4)(a) goes beyond that, doesn't
22 it?

23 MR. REVELL: Exactly.

24 COMMISSIONER DEASON: So are you agreeing
25 then to a change in the language?

1 MR. MAILHOT: No. It's supposed to cover
2 regulated and nonregulated, that distinction,
3 not just affiliate transactions.

4 COMMISSIONER DEASON: well, now, if we go
5 back to the purpose of these rules, it's to
6 prevent subsidy. Is it subsidy between
7 regulated and unregulated, or is it subsidy
8 between a regulated utility and its unregulated
9 affiliates?

10 MR. MAILHOT: Both. Section (3) of the
11 rules covers affiliated transactions. Section
12 (4) covers cost allocations between regulated
13 and nonregulated. In that case, it might not be
14 an affiliate. It might just be a division of
15 the company that's -- I don't know,
16 merchandising or something like that, where it's
17 not a separate affiliate, it's just part of the
18 company and they're just doing it. It's
19 nonregulated operations that are a part of the
20 utility company. So that's why there's two
21 sections of the rules, one to cover the two
22 different situations.

23 COMMISSIONER DEASON: well, it seems that
24 you need to identify transactions between
25 regulated and unregulated. Is that correct?

1 MR. MAILHOT: Right. That's what we're
2 trying to do in section (4) of the rules under
3 cost allocations.

4 COMMISSIONER DEASON: But you want to
5 identify every transaction of an unregulated
6 service?

7 MR. MAILHOT: Yes. I mean, somewhat, yes.

8 COMMISSIONER DEASON: I mean, for example,
9 if they're engaged in a business that's
10 unregulated and they sell an unregulated product
11 to a private company, is that any of our
12 business?

13 MR. MAILHOT: No, that's different. That's
14 a separate affiliate. I mean, that's some other
15 corporation. What this covers primarily in
16 section (4) is if a company is selling
17 merchandise as part of -- it's just a division
18 of the company. The transactions are on the
19 utility's books.

20 COMMISSIONER DEASON: Right.

21 MR. MAILHOT: I mean, they're not on
22 somebody else's books. They're on the utility
23 books.

24 COMMISSIONER DEASON: I understand that.
25 And I guess my question is, as I understand the

1 concern, there's literally millions and millions
2 of transactions, and they're going to have to
3 identify -- put something in their computer
4 program to identify every transaction as going
5 into an unregulated pot or a regulated pot. And
6 my concern is, is that an undue burden if what
7 we're concerned about is to make sure there's no
8 subsidy between a regulated company and its
9 affiliates or between regulated and unregulated
10 operations within the regulated entity. So it
11 seems to me we need to identify transactions
12 which affect cost allocations within the company
13 between regulated and unregulated as well as
14 transactions which impact cost allocations
15 between the regulated company and unregulated
16 affiliates.

17 MR. MAILHOT: I think what we're looking at
18 primarily here is just the nonregulated
19 operations within the utility company. And I
20 think what we're -- when we say identify or show
21 each transaction, whether it's regulated or
22 nonregulated, my opinion is that the account
23 number should tell you that, I mean, very
24 simply, you know, if this transaction -- I mean,
25 every transaction has an account number

1 associated with it, and that account number
2 should tell you clearly this is a nonregulated
3 account or this is a regulated account. I think
4 that's really all we're looking for, is
5 essentially --

6 COMMISSIONER DEASON: Well, if it's that
7 easy, why do we even have to have anything in
8 the rule? We already have a rule that says you
9 have to use the Uniform System of Accounts. And
10 if the account numbers designate between
11 regulated and unregulated, the information is
12 already there. So it appears that there is an
13 added burden that this rule is requiring, and my
14 concern is the cost, and is it necessary.

15 MS. SALAK: I believe it is. Before we got
16 started, we did a lot of -- or some analysis on
17 what they were currently recording. And they
18 would have an account not divided into
19 subaccounts. They would have both items that
20 were, in my vernacular, going above the line and
21 below the line, things that they were including
22 in surveillance and things that they weren't
23 including in surveillance. So that distinction
24 isn't there now, and it was actually very
25 difficult to try to weed through it all. So

1 that's not happening now.

2 COMMISSIONER JABER: Do the Uniform System
3 of Accounts require them to use separate account
4 numbers for regulated and unregulated
5 activities?

6 MS. SALAK: We didn't find a violation of
7 the USOA, no.

8 COMMISSIONER JABER: I guess my concern
9 goes to if they are required to do it already,
10 why do you need a -- is there a requirement to
11 show regulated versus unregulated already
12 anywhere?

13 MS. SALAK: No.

14 COMMISSIONER JACOBS: Did I understand that
15 we get access to both regulated versus
16 unregulated and affiliated versus nonaffiliated
17 transactions? We get access to that now?

18 MS. SALAK: Through audit procedures, we
19 can go in and look at it, or through data
20 requests we can get it. But it's not something
21 that -- we'll get the annual report that will
22 include everything, but it won't be broken down
23 the way this would be broken down.

24 COMMISSIONER JACOBS: So this enhances the
25 ability to analyze the information relative to

1 this particular rule?

2 MR. MAILHOT: Yes.

3 COMMISSIONER JACOBS: Would it be more
4 efficient simply then to revise the format of
5 what they file presently to accommodate this as
6 well? Did I hear -- what I'm hearing you say,
7 there are timing issues as well as formatting
8 issues, or aggregation issues. Is that correct?

9 MS. SALAK: Timing issues? I'm sorry.

10 COMMISSIONER JACOBS: You say we get the
11 information now, but it's under the annual
12 reports, as opposed to this, which would be on
13 demand, or I guess at least more frequently than
14 the annual reports.

15 MS. SALAK: Well, actually -- I left my
16 copy back here, but actually, we're just asking
17 for the breakdown. This doesn't mean that we'll
18 necessarily --

19 COMMISSIONER JACOBS: Get it more
20 frequently?

21 MR. MAILHOT: This is just the accounting.

22 MS. SALAK: We'll get it in the -- right.
23 It's just the accounting right here.

24 COMMISSIONER JACOBS: Okay. So it's mainly
25 an aggregation issue.

1 MS. SALAK: Yes.

2 MR. MAILHOT: Right. You know, it
3 specifically addresses their accounting records.
4 It says they have to keep their accounting
5 records somewhat separated between regulated and
6 nonregulated.

7 COMMISSIONER DEASON: And what in addition
8 to the fact that they're using the USOA, which
9 apparently has account numbers which makes that
10 designation, what in addition are we going to
11 require?

12 MR. MAILHOT: The fact is that I don't
13 believe the USOA specifically -- in electric and
14 gas, the USOA is not as specific between
15 regulated and nonregulated in drawing that
16 distinction.

17 COMMISSIONER DEASON: Mr. Long, in your
18 accounting records, how do you distinguish
19 between regulated and unregulated operations?

20 MR. LONG: Well, I think the account
21 numbers allow us to make that separation. You
22 know, we don't have any problem with maintaining
23 records on affiliate transactions and below the
24 line transactions. The problem with the rule is
25 that it says that every single transaction has

1 to be tagged, and that's a much broader
2 requirement. And that's our concern with the
3 rule. It's overbroad.

4 COMMISSIONER JACOBS: But to go back to
5 Commissioner Deason's question, you have a
6 requirement today to distinguish -- to make the
7 distinction in your accounting that essentially
8 we're trying to get at here. How do you do
9 that?

10 MR. LONG: Well, affiliated transactions,
11 again, the Uniform System of Accounts provides a
12 specification for those transactions, and we
13 identify them in the appropriate account, and
14 they're available to the staff whenever audits
15 are done.

16 COMMISSIONER JACOBS: And what I hear you
17 saying, staff, is that what they provide doesn't
18 get you to the level of detail that you would
19 need to evaluate -- in order to assess what?

20 MR. MAILHOT: Well, I believe what we've
21 found through audits and through data requests
22 is that some of the nonregulated services are
23 not in what you might call nonregulated
24 accounts. The transactions and the costs are
25 intermingled in the regular accounts and

1 actually have to be pulled out, you know, by the
2 company. It's not that all the nonregulated is
3 being recorded in one location where you can
4 easily say, "Oh, yeah, this is all the
5 nonregulated." And we've found between the
6 companies even some differences in opinion
7 between companies on where some of these costs
8 should be recorded.

9 COMMISSIONER JACOBS: And the uniform
10 system doesn't adequately address that?

11 MR. MAILHOT: It's not clear. It's not
12 perfectly clear from the uniform system how
13 these things should be recorded. I mean, that's
14 why they're not recorded totally in the system
15 today.

16 COMMISSIONER DEASON: Well, is the problem
17 that you can't agree on what is regulated versus
18 unregulated, or that the records are not kept to
19 where you can even make a distinction to begin
20 with, regardless of whether you agree with the
21 definition of what is regulated or unregulated?

22 MR. MAILHOT: I don't believe the records
23 are kept so you can easily identified what's
24 nonregulated.

25 COMMISSIONER DEASON: Mr. Long, do you keep

1 your records so you can designate what's
2 regulated and unregulated?

3 MR. LONG: Well, one thing that we can do
4 is, within the Uniform System of Accounts, we
5 can create subaccounts, if the staff feels that
6 there's not sufficient clarity, and separate
7 into the subaccounts unregulated matters. I
8 mean, that's one thing that we might be able to
9 do if the staff feels that there's not
10 sufficient clarity. But again, that's far
11 different than requiring that we tag every
12 single transaction.

13 MS. SALAK: And again, I believe that if
14 you put each transaction into its appropriate
15 subaccount or tag it that way that that would
16 cover each transaction, because each transaction
17 has to be recorded to an account. So we're
18 saying the same thing.

19 COMMISSIONER DEASON: Okay.

20 MS. SALAK: But if he's going to accomplish
21 that by putting it into separate subaccounts,
22 then that's a way of accomplishing this section
23 of the rule.

24 COMMISSIONER DEASON: Okay.

25 MR. LONG: We're prepared to do that.

1 COMMISSIONER DEASON: Should we clarify
2 that, or is --

3 MR. MAILHOT: We just didn't feel like we
4 wanted to require subaccounts as the method. I
5 mean, subaccounts is a method for accomplishing
6 this.

7 MS. SALAK: Definitely.

8 MR. MAILHOT: But some companies may not
9 want to have subaccounts. They may want to do
10 something else.

11 MR. LONG: Well, that's fine with us, and
12 that's certainly desirable to the open-ended
13 language that we have in the rule now.

14 COMMISSIONER DEASON: You can live with the
15 language with that clarification, or do you want
16 to modify that language?

17 MR. LONG: Well, if it's convenient, I
18 think it's more appropriate to modify the
19 language, because absent this clarification, I
20 think the language requires something quite
21 different.

22 MS. SALAK: I think we could work on some
23 language which would -- well, leave this here so
24 that not every company is required to do the
25 subaccounts, but to clarify that this language

1 would include subaccounting, more eloquently
2 worded, obviously, but something like that.

3 CHAIRMAN GARCIA: Is that it?

4 MR. LONG: Thank you. Yes.

5 COMMISSIONER DEASON: Mr. McGee.

6 MR. MCGEE: Thank you, Mr. Chairman. I
7 just wanted to say that while we had some
8 questions about the need for the rule in the
9 first place along the lines of Mr. Guyton --

10 MS. PURVIS: Mr. Chairman, over here.
11 Mr. McGee hasn't signed up.

12 COMMISSIONER DEASON: Mr. McGee, why don't
13 you get up and go sign.

14 MR. MCGEE: We simply wanted to say that
15 while we had some initial questions, we support
16 the rule.

17 CHAIRMAN GARCIA: All right.

18 MR. MCGEE: We find that it's workable and
19 that we can live with it. The main thing I
20 wanted to say was that I think Staff deserves to
21 be complimented for a really exceptional job in
22 going through a long, arduous process in a way
23 that generally tried to balance a number of
24 competing positions on a lot of issues.

25 CHAIRMAN GARCIA: Great. Mr. McGee, do me

1 a favor and sign before you leave today, just to
2 make sure we get you on the book.

3 MR. MCGEE: Okay.

4 COMMISSIONER CLARK: We're going to allow
5 duct tape to be put on people's mouths if they
6 didn't sign up.

7 CHAIRMAN GARCIA: We're going to get this
8 right.

9 COMMISSIONER JACOBS: Just turn the mikes
10 off. You've got a button. Just turn the mikes
11 off.

12 CHAIRMAN GARCIA: Hey, that's not a bad
13 idea.

14 Vicki.

15 MS. KAUFMAN: Well, I want to confess right
16 away that I didn't sign up.

17 CHAIRMAN GARCIA: See. They're abusing the
18 system, and we've only gotten started.

19 Go ahead, and then go sign.

20 MS. KAUFMAN: Vicki Gordon Kaufman on
21 behalf of the Florida Industrial Power Users
22 Group. I actually wasn't intending to comment,
23 if that's any excuse. I didn't realize that
24 there was going to be such fervent opposition
25 here to the rule.

1 On behalf of FIPUG, I don't think it's any
2 surprise to the Commissioners that affiliate
3 transactions have long been a concern of FIPUG.
4 The type of reporting and the access to
5 reporting that consumers have is an area that we
6 are greatly interested in. We participated in
7 the rulemaking process, and we suggested a lot
8 of more stringent and detailed reporting
9 requirements than have been adopted in the rule
10 or that have been proposed to you in this rule.
11 But we certainly think that at a minimum, you
12 should go forward with what the Staff has
13 proposed. I think we're going to see more and
14 more affiliate transactions, and it's important
15 that consumers and, obviously, the Commission
16 and the Commission Staff have the information
17 they need to ensure that the regulated captive
18 customers are not subsidizing unregulated
19 transactions.

20 CHAIRMAN GARCIA: Very good. Thank you.

21 MS. KAUFMAN: Thank you.

22 MR. BADDERS: Russell Badders on behalf of
23 Gulf Power Company. In the interest of time,
24 we'll just state that we're in agreement with
25 the comments made here today by Florida Power &

1 Light.

2 CHAIRMAN GARCIA: Great.

3 MR. BADDERS: Thanks.

4 CHAIRMAN GARCIA: All right.

5 Commissioners, what's your pleasure?

6 COMMISSIONER CLARK: I have some questions.

7 CHAIRMAN GARCIA: Okay. Commissioner
8 Clark.

9 COMMISSIONER CLARK: Did we resolve whether
10 or not we need a definition of "subsidize"?

11 COMMISSIONER JABER: I asked whether we
12 needed it. My feeling is I would rather not
13 have a definition, because either way we go, I
14 really don't want to get into a dispute of how
15 you define fair and reasonable share of costs or
16 the economic basis of the transaction. My
17 preference is to not include a definition,
18 especially since Staff is telling us that it's
19 not imperative to have one.

20 COMMISSIONER JACOBS: My concern with not
21 having a subsidy is exactly the discussion that
22 Commissioner Clark had with the company. It
23 sounds like we're going to be absolutely trying
24 to understand both types. If we leave the
25 prospect out there that we're going to have some

1 economic -- basically economic true-up.

2 COMMISSIONER CLARK: I don't think we are.
3 I mean, our only responsibility here is to make
4 sure the regulated entity does not subsidize a
5 competitive entity. If they choose to have the
6 competitive entity subsidize the regulated,
7 please do. I don't know why they would, but
8 it's not a concern of ours.

9 COMMISSIONER JACOBS: Maybe my concern is
10 -- let me ask Staff this. Your concern,
11 obviously, with putting this language in is that
12 the fair and reasonable costs be properly
13 apportioned. If we don't have a definition in
14 the rule, are you able to effectively scrutinize
15 that prospect?

16 MS. SALAK: I think we are.

17 MS. HELTON: Because the real gut of the
18 rule is, you know, what's behind the
19 definitions. And I believe that we only use
20 "subsidize" once, and that's in the purpose
21 section.

22 COMMISSIONER CLARK: I think "subsidize"
23 has a common understanding that we can live with
24 here, and we are only concerned about the
25 subsidization of competitive, unregulated

1 businesses by regulated.

2 COMMISSIONER JACOBS: That's not really my
3 concern. My concern is that once we raise the
4 prospect that a subsidy exists, are we going to
5 have to then fight about the idea of whether or
6 not we should allow that subsidy to continue
7 because of some purported economic benefits. I
8 don't want to be in that debate.

9 COMMISSIONER CLARK: Yes, we are. That's
10 what the rule provides for.

11 MS. HELTON: Yes.

12 COMMISSIONER JACOBS: Then there ought to
13 be public interest issues arise as a result of
14 that. If we're going to say that that subsidy
15 should continue, there ought to be public
16 interests and public benefits that accrue to
17 that prospect as well.

18 COMMISSIONER CLARK: I think that's what's
19 provided in subsection (3). They're required to
20 charge either -- for instance, when the higher
21 of fully allocated costs -- I think you need to
22 say "or market price." I think "market"
23 modifies something, and you need to put "price"
24 or something in there.

25 But if they charge an affiliate less than

1 that, they have to demonstrate that it is
2 beneficial to the regulated operations, so that
3 is the debate we will be involved in. It sets a
4 standard and then says if you want to deviate
5 from that standard, you have to demonstrate why
6 it benefits a regulated company.

7 COMMISSIONER JACOBS: I understand, and I
8 guess I'm prepared today to move forward with
9 that language, with the understanding that in my
10 mind, there is maybe not an absolutely fine
11 line, but there is a distinction between
12 advancing the regulated company and making sure
13 that there are absolute public benefits to the
14 general body of ratepayers. And that comes from
15 my brief experience in seeing all the games we
16 play when we look at the regulatory programs
17 that have been in place with these companies for
18 years and not seeing for a substantial period of
19 time real benefits to consumers.

20 So advancing the regulated companies in my
21 mind has a distinction between having direct
22 benefits to the public, to the ratepaying
23 consumers. And in my mind, if you allow this,
24 there ought to be no question but that there
25 ought to be direct benefits to the ratepaying

1 consumers, and that's what I'll be looking for.
2 If I don't see that, then I'll be looking to
3 come back to this rule.

4 CHAIRMAN GARCIA: Okay.

5 COMMISSIONER CLARK: I just have one
6 suggestion, I guess. I think I would reword the
7 second and third sentences in each of the
8 subsections under (3). I wouldn't start off
9 with "except." I would say, "A utility may
10 charge this," and then at the end, on line 22,
11 instead of having a period, say, comma,
12 "provided, however, if they do charge less, they
13 have to justify it." You know, I just -- can
14 you start a sentence with "except"? I'm not
15 sure you can. It's up to you all to decide what
16 you want to do, but I think you do need to add
17 -- at the end of line 23, I think you have to
18 say, "justify how doing so would benefit
19 regulated operations." I think you do need
20 that.

21 MS. HELTON: And did you say on line 18 to
22 add "price" after "market"?

23 COMMISSIONER CLARK: Yes. I think where
24 you do that, you have to -- I think "market"
25 should be modifying something.

1 COMMISSIONER DEASON: I'm sorry. I didn't
2 catch that change.

3 COMMISSIONER CLARK: On line 18, fully
4 allocated costs or market price.

5 I guess I have one other general question,
6 and it goes along the lines of what was asked by
7 TECO with respect to record keeping. Is there a
8 size limitation, or does everything have to be
9 accounted for? It says on page 10 of the
10 recommendation, and it's 5 of the rules, at the
11 top of the page, "Utility accounting records
12 must show whether each transaction involves a
13 product or service that is regulated or
14 nonregulated." I just had a question as to
15 should there be any size differentiation. Is
16 there a point at which it's too small to account
17 for?

18 MS. SALAK: Well, again, if they do a
19 system such as subaccounts, it's going to end
20 up --

21 COMMISSIONER CLARK: Everything gets
22 accounted for.

23 MS. SALAK: That's just great. They all
24 have a place and a home.

25 COMMISSIONER CLARK: I have a question on

1 page 16. Is everybody going -- and it's line
2 17. Does everyone understand what
3 "synthesization" means?

4 MS. HELTON: I'm sorry. On page 16 of the
5 rec, 11 of the rule?

6 COMMISSIONER CLARK: Right.

7 MS. HELTON: And which line?

8 COMMISSIONER CLARK: Seventeen,
9 synthesization.

10 MS. LEE: It's a general term.

11 COMMISSIONER CLARK: Depreciation experts
12 know what that is?

13 MS. LEE: Yes.

14 COMMISSIONER CLARK: Okay.

15 COMMISSIONER DEASON: Mr. Chairman, I have
16 a couple of questions. On page 3 of the rule,
17 which is page 8 of the recommendation, in
18 paragraph (3)(b), in the middle part of that
19 paragraph, it states -- and I know this language
20 may be subject to change with Commissioner
21 Clark's request, but currently it states,
22 "Except, a utility may charge an affiliate less
23 than fully allocated costs if the charge is
24 above incremental cost and equivalent to market
25 prices." I guess the question I have is the

1 term "and." It says it's got to be above
2 incremental cost and equivalent to market
3 prices.

4 My question is, could there be some unique
5 circumstance where a transaction is to the
6 benefit of customers if it is above incremental
7 cost and perhaps could be below market prices,
8 or does that possibility never exist?

9 MR. MAILHOT: I believe there's a
10 possibility that that could occur. But we were
11 looking at the situation where, you know, at
12 least we wanted to give them the opportunity,
13 you know, to be able to go down to -- I mean, if
14 market was in fact less than fully allocated
15 costs, we wanted to give them the opportunity to
16 charge market. I mean, that would be I guess
17 the main exception to the general rule stated in
18 the first sentence.

19 COMMISSIONER DEASON: Right. And I
20 understand that under a strict economic sense,
21 if it's above incremental cost, that's kind of a
22 threshold. It's got to be above that. But this
23 says above incremental cost and equivalent to
24 market prices. And I agree that in most
25 situations, that should be the standard. I

1 guess my question is, is that too strict of a
2 standard, in that we're precluding them from
3 ever trying to justify a situation where it's
4 above incremental cost, but may be below market
5 prices, and still, because of the unique
6 circumstances, the transaction is still a net
7 benefit to customers.

8 MR. MAILHOT: Yes. I mean, without some
9 further waiver or exception, this is limiting
10 them to that situation. And there could be some
11 very unique transactions out there that may not
12 occur because of this that might be of some
13 benefit to the customers or to the ratepayers.

14 COMMISSIONER CLARK: Then shouldn't we
15 allow for that? Should we simply say, "A
16 utility may charge an affiliate less than fully
17 allocated costs, provided it is above
18 incremental cost," period, and then say,
19 "However, if a utility charges less than fully
20 allocated costs, it must maintain documentation
21 to support and justify how doing so benefits
22 regulated operations." I mean, if that's going
23 to be -- they have to at least meet that
24 threshold, and then they have to justify how
25 what they did charge them benefits.

1 MS. SALAK: A solution of the Commission
2 might be to actually require them to incur
3 market. I mean, as long as we're not precluding
4 the Commission in their decision. Maybe it was
5 a good idea to go to market, but, you know,
6 fully incremental -- just doing incremental
7 wasn't enough. As long as we still leave it to
8 the Commission and we don't preclude them, the
9 --

10 COMMISSIONER CLARK: Well, if they charge
11 less than market, they have to show why that was
12 appropriate. In any case, they're going to have
13 to show why what they did was appropriate,
14 regardless of what standard they use, if it is
15 not the standard in the rule.

16 MR. MAILHOT: Well, all they need to show
17 that's appropriate is that it benefited the
18 regulated operations. They don't need to
19 explain why they charged less than market.

20 COMMISSIONER DEASON: Well, no. See, the
21 way I read this is that they would be precluded
22 from trying to justify any transaction that was
23 above incremental cost if it were less than
24 market. You don't even allow them to try to
25 justify that. I guess you're making a decision

1 that that on its surface cannot be justified,
2 because you don't allow the attempt to even be
3 made under the way I would read this language.

4 MR. MAILHOT: That's correct.

5 COMMISSIONER DEASON: Okay. And is that
6 your intent?

7 MR. MAILHOT: Yes, that's the intent,
8 because, number one, we believe that most of
9 these transactions should occur at the higher of
10 costs or market. If they want an exception, the
11 exception, you know, would --

12 COMMISSIONER DEASON: You think it should
13 be higher than fully allocated costs or market.

14 MR. MAILHOT: Right.

15 COMMISSIONER DEASON: That should be the
16 general standard.

17 MR. MAILHOT: Right. That's --

18 COMMISSIONER DEASON: But you're allowing
19 an exception --

20 MR. MAILHOT: Right. If the market in fact
21 is lower than fully allocated costs, then we
22 would allow the exception, you know, if they can
23 show that, yes, the market is really less than
24 our fully allocated costs, and so this is a good
25 transaction.

1 COMMISSIONER DEASON: I guess my question
2 is this. And here again, it may depend on how
3 you define market, which sometimes is subject to
4 interpretation, which most of the time is
5 subject to interpretation.

6 My concern is, are we precluding a
7 transaction from taking place which conceivably
8 could be to the benefit of customers because it
9 exceeds incremental cost, but it's not
10 equivalent to market? They could not make the
11 transaction to make it equivalent at market,
12 depending on how you define market, and so
13 therefore they give up the benefit of a
14 transaction which exceeds incremental cost
15 because of the way we have our wording here.
16 It's just, "Utility, don't even look at that
17 possibility, because we're not even going to
18 consider it," the way I read the language.

19 MR. MAILHOT: Right. Unless they come in
20 for an additional waiver beyond what's here,
21 that's true.

22 COMMISSIONER CLARK: Why do we want to do
23 that?

24 MR. MAILHOT: Well, our feeling is that --
25 for example, if you look in the telephone rules,

1 you know, the telecommunications industry,
2 there, basically, there is no exception. I
3 mean, the rule reads you do the higher of costs
4 or market. The idea is to -- you know, to
5 prevent any subsidization, without getting into
6 having to analyze and review every transaction
7 that the company has made to determine on every
8 single transaction was there any subsidization
9 or not. I mean, it's an abundance of caution,
10 is what it amounts to.

11 COMMISSIONER CLARK: I guess the question
12 that sort of in my view needs to be answered is
13 that, to the extent it may be beneficial to the
14 regulated operations, why would we want to
15 absolutely preclude it? I agree with you that
16 the likelihood of that -- I can't sitting here
17 think of a situation where that would occur.
18 But why is it necessary to preclude it?

19 MS. SALAK: well, I think it will be an
20 additional burden on staff and people when
21 they're looking at these transactions to say,
22 "well, if you could have gotten market for it if
23 you went outside your affiliates, then why
24 didn't you do that?" It's just an additional
25 hurdle. When you have market right there, it's

1 at least a little cleaner that they're getting
2 -- then you have to prove, well, they couldn't
3 have sold it to anybody else and just make an
4 additional showing.

5 COMMISSIONER DEASON: Yes. And I would
6 agree with you. It would be a difficult burden
7 to show that a transaction benefits customers if
8 it's less than market value. But my concern is,
9 the way this is worded, we're precluding even
10 the attempt to make the showing. It's saying,
11 "Don't even bother, utility, to even consider
12 such a transaction, because under our rule, it's
13 not going to be approved."

14 MS. SALAK: Again, I think what you're
15 talking about is the exception to the rule. I
16 can envision somebody selling at market. Isn't
17 there still a waiver provision for the rule if
18 they want to actually -- I mean, this would be
19 the exception you're talking about, truly the
20 exception. I can't imagine that occurring very
21 often.

22 COMMISSIONER DEASON: So you're saying --

23 MS. SALAK: I think there are other
24 procedures.

25 COMMISSIONER DEASON: If that occurrence

1 were to take place, then they would just have to
2 use the standard waiver procedures, not the
3 exception that is already built into the rule
4 itself?

5 MS. SALAK: To me, this already requires a
6 certain amount of monitoring by staff. I mean,
7 we're going to have to go in and look at -- you
8 know, any exception they have, we're going to be
9 looking at this documentation or trying to keep
10 up with it, so now it's just -- it makes it more
11 difficult to do that.

12 COMMISSIONER JABER: Can I ask a question?
13 In light of the concerns raised -- there is no
14 statutory time frame for this rule, right, for
15 the rule proposal? Is there a benefit to coming
16 back to the Commission with language that
17 incorporates some of the changes we've talked
18 about here and --

19 CHAIRMAN GARCIA: Let's do that.

20 COMMISSIONER JABER: -- might satisfy --

21 CHAIRMAN GARCIA: Commissioners, do you
22 mind if we do that?

23 COMMISSIONER DEASON: I would rather get
24 the thing out myself.

25 COMMISSIONER JABER: Okay.

1 COMMISSIONER DEASON: That's just personal
2 preference.

3 CHAIRMAN GARCIA: All right.

4 COMMISSIONER CLARK: I don't think it's
5 going to occur that often, if at all.

6 MS. SALAK: I guess I think it will occur
7 more often if this language isn't here, I
8 believe.

9 COMMISSIONER JABER: My concern is we're
10 putting Staff on the spot with addressing the
11 concerns. There's something to be said about
12 going back to the office -- and maybe it's my
13 days with Staff. I'm sensitive to it. There's
14 something to be said about going back to the
15 office, putting it down in black and white,
16 thinking through it and coming back. But either
17 way, Commissioner Deason, it's just a
18 suggestion.

19 COMMISSIONER DEASON: Well, I appreciate
20 that. And I suppose if we're saying that -- and
21 I agree, there's probably not going to be very
22 many of these, because it's probably going to be
23 very unique circumstances where there's going to
24 be a transaction below market value which
25 benefits customers.

1 But if such a transaction ever manifests
2 itself and a company can seek the standard
3 waiver procedure, then I suppose -- I guess I'll
4 address that to the utility companies. I notice
5 that none of the companies found this
6 objectionable, and so that -- maybe it's not a
7 concern. But my question to any of the utility
8 companies, do you ever foresee a circumstance
9 where you would like to engage in a transaction
10 which you honestly believe benefits customers
11 which is above incremental cost, but lower than
12 market prices? Has that situation ever arisen?

13 MR. BADDERS: I'm not aware if it has
14 arisen in the past, but it could arise. And if
15 you have to go through the variance procedure,
16 there's a lot more involved in that. Of course,
17 it's a lot more of the Commission's resources
18 and the company's resources. And that cost may
19 outweigh that benefit, so you may just not do
20 it. There would have been a benefit to the
21 regulated side of business. Those costs would
22 outweigh it, so you would just not do it.

23 With the exception in the rule, I think
24 those transaction costs are a little lower, and
25 if that did occur, you would be more likely

1 probably -- or the regulated side would be more
2 likely to realize those benefits.

3 COMMISSIONER DEASON: Any other comments?

4 MR. MCGEE: That was really the concern
5 that was going through my mind as you were
6 having that discussion. The transactions just
7 simply might not take place, because of the
8 unique circumstances that wouldn't justify the
9 transaction at market, yet realizing the
10 difficulty in going through a formal waiver
11 procedure.

12 COMMISSIONER DEASON: Okay. well --

13 MS. SALAK: We recognize that there's costs
14 associated with petitions and waivers, and
15 that's why we put in these exceptions, keeping
16 in mind that every time someone files an
17 exception, we're behind the curve. They've
18 already entered into the transaction, and then
19 we're looking at documentation behind the fact.
20 So we just thought that at some point we needed
21 to cut it off and not be behind the ball, but
22 actually make them come forward.

23 At one point this rule was drafted where
24 for every exception they would file a petition,
25 and there was some support from some of the

1 other -- not the companies, but from other
2 people for that so they could find out too.

3 But we thought that this was a compromise,
4 where we would be behind, but at least it
5 wouldn't be below market.

6 MS. KAUFMAN: Commissioner Deason, I think
7 we were one of the parties that advocated that a
8 lot of the exceptions that are currently in the
9 rule as it's before you not be in there, and
10 that if there was a situation that utilities
11 thought justified a waiver, that they would be
12 required to come forward and make that
13 demonstration to the satisfaction of the
14 Commission and any interested parties.

15 So I guess I would argue against putting
16 any additional exceptions in subsection
17 (3)(b). And I think as Ms. Salak stated, under
18 the very unusual circumstance that this might
19 arise, I think the utility should have the
20 burden to come forward and prove it up under the
21 general waiver provisions that are in place.

22 CHAIRMAN GARCIA: All right.

23 COMMISSIONER DEASON: And the other
24 question I have has to do with pages 16 and 17
25 of the rule. On page 16, we're changing -- on

1 line 20, we're changing "may" to "shall," and
2 likewise on line 1 of page 17 of the rule, we're
3 changing "may" to "shall." why are we making
4 that change?

5 MS. HELTON: Because I think chances are
6 pretty good that JAPC would question the use of
7 the word "may" and whether that gives the
8 Commission unbridled discretion to approve those
9 recovery schedules. Here we've taken away that
10 discretion.

11 COMMISSIONER DEASON: Well, have we
12 historically every time we get one of these
13 situations, that's the action we've taken, is to
14 have a special recovery schedule?

15 MS. LEE: You're talking about (10)(a) and
16 (b); is that correct?

17 COMMISSIONER DEASON: (10)(a) and (b). My
18 concern is, are we eliminating some discretion
19 that we should have and have utilized in the
20 past, or is this just a situation where we've
21 always done this, and so it's appropriate to
22 change "may" to "shall"?

23 MS. LEE: We've always done this,
24 Commissioner.

25 COMMISSIONER CLARK: Have we done it prior

1 to the retirement?

2 MS. LEE: Yes, ma'am. When companies have
3 had a change in plans and they are planning that
4 these things are going to be retired, we do go
5 ahead and set up a recovery schedule, because
6 the ideal situation is that these things would
7 be recovered by the time of retirement.

8 COMMISSIONER DEASON: Okay. Thank you.

9 Back to my previous question on paragraph
10 (3)(b) on page 3 of the rule. What's the
11 necessity of having the second sentence?

12 MS. HELTON: I'm sorry. The necessity of
13 having --

14 COMMISSIONER DEASON: The second sentence
15 of paragraph (3)(b).

16 MR. MAILHOT: Our belief is it that it
17 covers the transactions that are most often
18 mentioned by the company, that it would allow
19 the company to make those transactions, or allow
20 for those transactions to occur without coming
21 in and seeking --

22 COMMISSIONER DEASON: Well, isn't that kind
23 of -- the third sentence, doesn't it say that if
24 there's any transaction that's less than fully
25 allocated costs, then there must be

1 documentation and support, which I would assume
2 that would be -- they would have to have an
3 analysis of incremental cost and market prices
4 and all those other things to justify that, and
5 so Staff would have that information if that
6 were the situation.

7 My concern again is with that second
8 sentence that, the way I read it, it would
9 preclude some perhaps rather unique transactions
10 from ever taking place, without going through
11 all the time and expense of going through the
12 standard waiver provisions as opposed to any
13 exception that's built into the rule itself.

14 COMMISSIONER CLARK: would you want to
15 maintain the incremental cost threshold,
16 though?

17 COMMISSIONER DEASON: Well, you know, I
18 don't have a problem with that, because I cannot
19 see ever a transaction that benefits customers
20 that's below incremental cost. I mean, that
21 seems like the very bottom level that has to be
22 exceeded. I've never known anyone to suggest
23 that a transaction below incremental cost is
24 beneficial. It seems like there may be some
25 unique situation where if it exceeds incremental

1 cost, but for some reason is below market,
2 depending on how you define market, that it
3 still is of a net benefit.

4 COMMISSIONER CLARK: I think you're right.
5 I think the second sentence can be eliminated.

6 MR. GUYTON: Commissioners, if I might be
7 heard on that, I think -- and I'm really
8 addressing somebody else's drafting here, but
9 I'll tell you why I think it's in there. The
10 first sentence sets forth a standard of you must
11 do this, and it looks like you have a choice,
12 and you have to choose the higher of.

13 The second sentence recognizes there may be
14 some exceptions from what seemingly is the
15 absolute standard, and then the third sentence
16 tells you under what circumstances you can
17 justify the exception.

18 If you remove the second sentence, you may
19 create a question in mind as to whether the
20 first and the third sentence can be reconciled.

21 COMMISSIONER CLARK: How about this. How
22 about we change the third sentence to say,
23 "However, a utility may charge less than fully
24 allocated costs if the utility maintains
25 documentation to support and justify how doing

1 so would benefit regulated operations."

2 MR. GUYTON: That I think would address
3 the problem.

4 COMMISSIONER DEASON: I certainly can live
5 with that.

6 MS. SALAK: Could I make two comments? The
7 first suggestion I heard today was that we just
8 strike that piece about market price and that it
9 have to be above incremental.

10 I would think that you would at least want
11 it above incremental, so I would encourage you
12 to at least leave that part. And then in --

13 COMMISSIONER CLARK: Well, I think what
14 Commissioner Deason said is right, that it's an
15 impossibility.

16 COMMISSIONER DEASON: But if Staff is more
17 comfortable with leaving that in there, I
18 suppose I don't have a problem with that. Just
19 striking -- putting a period after "incremental
20 cost"?

21 MS. SALAK: I think that's better than
22 taking it out in its entirety.

23 The second suggestion I would make is that
24 if you're going to take the piece out about
25 market price -- and my concern is timing,

1 obviously -- that perhaps there should be --
2 that should be the one place where they actually
3 have to -- not to the Commission and put a
4 petition, but at least file with the Staff. If
5 it's going to be below market price but above
6 incremental, or hopefully above incremental,
7 that they at least file with Staff some kind of
8 documentation to give us a jump start on it so
9 that if we're going to really disagree with it,
10 then we can bring it to agenda prior to the
11 transaction.

12 COMMISSIONER DEASON: So you're just
13 wanting -- if a transaction takes place which is
14 lower than market prices, you want some type of
15 notice that that transaction is about to take
16 place or has taken place?

17 MS. SALAK: Beforehand, before it takes
18 place, some justification showing that it's in
19 the best interests of the ratepayers.

20 COMMISSIONER DEASON: See, that's the
21 problem I have, is market -- the way you define
22 market and market prices, and depending upon
23 what commodity it is, market prices may be
24 fluctuating. And if they have to come in here
25 and give you notice that they're about to enter

1 a transaction, it could be mooted a day later or
2 a week later, depending on whether the market
3 changes. In some things maybe market doesn't
4 change that rapidly, but in other things market
5 does change. I'm not sure that's workable.

6 MS. SALAK: You're saying if the market
7 changes that much, it will no longer be a wise
8 move for them to take? The market is not going
9 to fluctuate so much that they're not going to
10 want to make the transaction. Or if it does
11 fluctuate that much -- I mean, is that your
12 point?

13 COMMISSIONER DEASON: My point is that
14 management, in trying to determine whether there
15 is or is not to be a transaction, for them to
16 then say, "Well, we better wait and put the PSC
17 on notice and file something with them," and
18 there may be just a window of opportunity to
19 take advantage of the transaction. Maybe
20 there's a transaction that has just got a finite
21 period of time that an offer is made to them,
22 and before they can go through all of the hoops
23 that we set up, the whole opportunity is mooted
24 because the time period has expired or market
25 prices have changed.

1 MS. SALAK: You're talking about an
2 extremely short turnaround time. That's what
3 you're talking about.

4 COMMISSIONER DEASON: That's right.

5 COMMISSIONER CLARK: It may be that you
6 have to enter into the contract -- I don't know.

7 COMMISSIONER JACOBS: You're not going to
8 have to approve the transaction. They can still
9 go through it; correct?

10 MS. SALAK: Pardon me?

11 COMMISSIONER JACOBS: You're not going to
12 be approving or scrutinizing their ability to
13 complete the transaction, are you?

14 MS. SALAK: We would want to see the
15 information. I mean, if the transaction occurs,
16 the Commission had the opportunity or the
17 ability to disallow it if they don't agree with
18 it.

19 COMMISSIONER JACOBS: Right. But you won't
20 need to do that before they do the transaction.

21 MS. SALAK: I think that we would at least
22 be able to give a heads-up on whether or not we
23 were --

24 COMMISSIONER JACOBS: You're going to delay
25 -- I'm sorry. Go ahead and finish what you were

1 saying.

2 MS. SALAK: I was going to say that we
3 would be able to give them a head-ups whether we
4 were in agreement with them or not that it was
5 beneficial to the ratepayers or if there was
6 some kind of flaw in their analysis.

7 COMMISSIONER DEASON: But, you know, if the
8 company wishes to avail itself of staff's
9 judgment on something and they feel like they
10 have the time to do it, they can do that
11 voluntarily.

12 MS. SALAK: They can do that, yes, they
13 can. But I think that, you know, just keeping
14 this focused, the only thing we're talking about
15 are transactions with affiliates. If it's -- I
16 mean, you're talking about someone under the
17 same umbrella, so it's not like they're dealing
18 with someone at arm's length out there per se,
19 and that's why the special precautions, because
20 of the affiliate relationship.

21 COMMISSIONER CLARK: I don't have any
22 objection to the notion of them notifying staff
23 when they are disposing of something at less
24 than market value. I don't think it has --

25 COMMISSIONER DEASON: But it would be just

1 after the fact.

2 COMMISSIONER CLARK: Yes.

3 COMMISSIONER DEASON: It would not be a
4 requirement before a transaction takes place.

5 COMMISSIONER CLARK: No, because if it's
6 not beneficial, then we simply impute the market
7 price or what is appropriate.

8 COMMISSIONER DEASON: Okay. I don't have
9 a problem with that either, as long as it's not
10 going to impede the possibility of a transaction
11 taking place. But after the fact, if there's a
12 requirement to notify staff that a transaction
13 has taken place where the price was lower than
14 the market price, that's fine.

15 COMMISSIONER CLARK: So what we would say
16 is a utility may charge less than fully
17 allocated costs, but not less than incremental
18 cost, and if it charges less than market price,
19 it must notify the Commission.

20 COMMISSIONER DEASON: Yes. I don't have a
21 problem with that concept.

22 COMMISSIONER CLARK: And that it must
23 maintain documentation to support and justify
24 any transaction that is less than fully
25 allocated costs.

1 MS. SALAK: And that's an improvement,
2 because it will at least put us on notice,
3 because otherwise, we'll be in a position of
4 going in after the fact.

5 COMMISSIONER CLARK: I would be comfortable
6 with that, and also deleting the definition of
7 "subsidize."

8 COMMISSIONER DEASON: And we've already
9 made a change, I think, to address Mr. Long's
10 concern with the use of subaccounts as a means
11 of identifying a transaction as regulated or
12 unregulated? We were going to add language, I
13 think, that designated that.

14 MR. GUYTON: And while we're wrapping up,
15 were we going to make the changes to (3)(d) as
16 well, the asset transfer?

17 COMMISSIONER DEASON: Yes.

18 COMMISSIONER CLARK: Yes.

19 COMMISSIONER DEASON: I think we decided to
20 make those changes as well to (3)(d). That was
21 on page 4 of the rule.

22 COMMISSIONER JABER: I have a question for
23 legal staff. With the changes that Commissioner
24 Clark and Commissioner Deason just proposed,
25 specifically the notice, that doesn't result in

1 our exceeding the statutory authority or
2 anything like that, or would JAPC tell us?

3 MS. HELTON: I don't think so. But I would
4 like to go back through, if it's okay, and make
5 sure I understand each of these. I mean, this
6 is your opportunity to propose the rule you
7 want, so you can make changes to what we
8 recommend, if that's your question.

9 COMMISSIONER JABER: No. My question was
10 requiring a notice from the utilities of whether
11 the charges are less than the market price, does
12 that --

13 MS. HELTON: The Commission has authority
14 to require reports and data and things like that
15 from utilities, so I think that would fall
16 within that. I may have to add that authority
17 if it's not already in here, but it should
18 already be in here.

19 COMMISSIONER JABER: Thank you.

20 MS. HELTON: So we are striking the
21 definition of "subsidize" in (2)(j).

22 And (3)(b), I was not clear whether -- and
23 I guess there hasn't really been a motion yet,
24 whether the decision was to strike the second
25 sentence in (3)(b).

1 COMMISSIONER CLARK: Well, here's what I
2 think -- the concept you want to put in this
3 subparagraph is that they shall charge the
4 higher of fully allocated costs or market
5 price. However, if they charge less than
6 that --

7 COMMISSIONER DEASON: I think we wanted to
8 keep the threshold requirement that it's got to
9 exceed incremental. I think Staff is more
10 comfortable with that. I don't have any problem
11 with that.

12 COMMISSIONER CLARK: But it would seem to
13 me that they would have to also charge -- if
14 they charged higher than fully allocated, but it
15 was less than market, we also want to know that;
16 right?

17 COMMISSIONER DEASON: Right. Staff wants
18 to have notice that a transaction took place at
19 less than market, and the requirement to justify
20 it is still there.

21 MS. HELTON: So the notice requirement only
22 comes in if a utility charges less than market?

23 COMMISSIONER DEASON: That's correct.

24 MR. GUYTON: Just as a matter of sentence
25 structure, I would suggest you just add another

1 sentence after the last sentence that addresses
2 that rather than trying incorporate it into the
3 last sentence.

4 COMMISSIONER DEASON: I agree. I think
5 that for paragraph (3)(b), we've inserted the
6 word "price" after "market" on line 18. I
7 believe that we should probably put a period
8 after the word "cost" on line 21, and that we
9 should add the language concerning notice to
10 staff when a transaction takes place at less
11 than market.

12 MS. SALAK: And we would propose if a
13 utility charges less than market price, the
14 utility must notify the Commission Staff of the
15 transaction.

16 COMMISSIONER DEASON: You want to put a
17 time period in there, within 30 days, 60 days,
18 whatever, 90 days? I don't know what's
19 appropriate, but --

20 MS. HELTON: I think a time period would be
21 appropriate. Thirty days?

22 MS. SALAK: Thirty days would be great.

23 COMMISSIONER DEASON: Thirty days? Is
24 there a problem with 30 days? Now's your time
25 to speak up. Is 30 days acceptable?

1 MS. HELTON: okay. I believe those were
2 the only changes to (3)(b). And then --

3 MS. SALAK: Insert the word "how" --

4 COMMISSIONER DEASON: Yes.

5 MS. HELTON: However, if a utility charges
6 -- yes, justify how doing so ---

7 COMMISSIONER CLARK: I don't think we
8 should work on actual language here. I think we
9 should work on the concept more.

10 MS. HELTON: But I just want to make sure I
11 understand everything that you want to do.

12 And then in (4) -- Mr. Guyton, where was it
13 that you wanted your change? (3)(d)?

14 MR. GUYTON: (3)(d). I have that language.

15 MS. HELTON: Mr. Guyton is going to give me
16 that language.

17 And then in (4)(a), we're going to add
18 language to reflect that if a utility chooses to
19 segregate its costs by the use of subaccounts
20 that that will meet the requirements of the
21 rule.

22 Thank you.

23 CHAIRMAN GARCIA: Okay.

24 MR. GUYTON: Commissioners, thank you.

25 COMMISSIONER CLARK: Just right before we

1 take a vote, I have a question. If a utility
2 charges its affiliate more than fully allocated
3 costs, but less than market, they will have to
4 notify us?

5 COMMISSIONER DEASON: I think that is the
6 requirement; right?

7 COMMISSIONER CLARK: Right.

8 MS. SALAK: It was greater than
9 incremental, but less than market.

10 COMMISSIONER DEASON: No, no, no.

11 MS. SALAK: I'm sorry.

12 COMMISSIONER DEASON: If it's greater than
13 fully allocated but less than market, there
14 still would have to be notification that a
15 transaction took place at less than market.

16 COMMISSIONER CLARK: Right. Okay.

17 MS. HELTON: Okay. Thanks.

18 COMMISSIONER DEASON: I think the language
19 as we've contemplated it would accomplish that.

20 COMMISSIONER CLARK: Good. I do too. All
21 right.

22 CHAIRMAN GARCIA: Have we got a motion?

23 COMMISSIONER DEASON: I move adoption --
24 proposal of the rule as modified by the
25 discussion.

1 CHAIRMAN GARCIA: Is there a second?

2 COMMISSIONER CLARK: Second.

3 CHAIRMAN GARCIA: All those in favor
4 signify by saying "aye."

5 COMMISSIONER JABER: Aye.

6 COMMISSIONER DEASON: Aye.

7 COMMISSIONER JACOBS: Aye.

8 COMMISSIONER CLARK: Aye.

9 CHAIRMAN GARCIA: Very good. It passes
10 unanimously.

11 MS. HELTON: Can I ask one further
12 clarifying question?

13 CHAIRMAN GARCIA: No.

14 MS. HELTON: I'm sorry. We made those
15 changes to (3)(b). If similar changes are
16 appropriate for the rest of (3) --

17 COMMISSIONER CLARK: If it's appropriate,
18 you need to make the changes.

19 (Conclusion of consideration of Item 3.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, MARY ALLEN NEEL, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter transcribed under my supervision; and that the foregoing pages numbered 1 through 72 are a true and correct transcription of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, or relative or employee of such attorney or counsel, or financially interested in the action.

DATED THIS 26th day of April, 2000.


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