

State of Florida



# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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RECORDS AND REPORTING

**DATE:** 8/24/00

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

**FROM:** DIVISION OF APPEALS (MOORE, HEARING OFFICER) *JM*

**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.

**AGENDA:** 9/5/00 - REGULAR AGENDA - RULE ADOPTION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

**RULE STATUS:** ADOPTION SHOULD NOT BE DEFERRED

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\APP\WP\980643-2.RCM

### CASE BACKGROUND

On April 18, 2000, the Commission voted to propose amendments to Florida Administrative Code Rules 25-6.1351, Diversification Reports, 25-6.135, Annual Reports, and 25-6.0436, Depreciation. Rule 25-6.1351 currently requires investor owned electric utilities to file information on their affiliates and affiliated transactions with their annual reports to the Commission. The amendments proposed by the Commission to Rule 25-6.1351 establish cost allocation requirements for affiliate transactions and utility nonregulated activities and require notice to the Commission of certain transactions. The amendments to Rule 25-6.135 merge the diversification report with the annual report form and add a schedule that requires a utility to report information about all non-tariffed services and products it provides. Rule 25-6.0436 is amended to add definitions and impose requirements on the treatment of depreciation reserve accounts associated with transfers of property between affiliates.

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FPSC-RECORDS/REPORTING

DOCKET NO. 980643-EI  
DATE: 8/24/00

The intent of the proposed amendments to the rules is to enable closer scrutiny of affiliate transactions to ensure that ratepayers do not subsidize nonregulated operations. The Commission historically has reviewed these transactions during rate cases or as part of its surveillance program. With fewer rate cases, if any, and more affiliate transactions and non-tariffed services, however, additional guidelines and reporting requirements are believed to be necessary.

A notice of rulemaking was published in the Florida Administrative Weekly on May 5, 2000. A hearing was requested by Refrigeration and Air Conditioning Contractors Association, Inc. (RACCA) and Florida Association of Plumbing, Heating and Cooling Contractors (FAPHCC). Florida Power & Light Company (FPL), Florida Power Corporation (FPC), Tampa Electric Company (TECO), and Gulf Power Company (Gulf Power) filed comments on the rules. A hearing was conducted by a Division of Appeals hearing officer on June 22, 2000. Participating at the hearing in addition to the associations and companies listed above were the Florida Independent Electrical Contractors (IEC), Gulf Coast Air Conditioning Contractors Association, Florida Air Conditioning Contractors Association, Florida Association of Electrical Contractors, and Commission staff. Commission Staff, FPC, FPL, TECO, RACCA and IEC, and FAPHCC filed post-hearing comments.

Commission staff worked with the parties to resolve their concerns and to reach a consensus where possible. As a result, Staff presented several changes to the proposed rule amendments at the hearing and in their post-hearing comments. Although FPL, TECO, and Gulf Power continue to question the necessity for the rule amendments and are concerned with the burden of determining and documenting market price, with the exception of an issue raised by TECO, and one staff recommended addition to the rule that the utilities disagree with, staff's recommended changes resolve the major concerns raised at the hearing and in the comments that were filed.

**The Hearing Officer's recommended rules are on pages 9 - 25. Changes to the rule as proposed by the Commission are shown in shaded text. Following the rule are the post-hearing comments. (Attachment 1)**

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission adopt proposed Rule 25-6.1351, Florida Administrative Code, Cost Allocation and Affiliate Transactions; Rule 25-6.135, Annual Reports; and Rule 25-6.0436, Depreciation?

**RECOMMENDATION:** No. The Commission should adopt changes to Rules 25-6.1351, 25-6.135, and 25-6.0436, Florida Administrative Code, as recommended by the Hearing Officer.

**HEARING OFFICER'S ANALYSIS:** In their comments and at hearing, the issues raised by the participants concerned provisions of Rule 25-6.1351. Of particular concern were which transactions are subject to the rule, when they must be reported, and what justification the companies will have to provide in order to charge below market price or fully allocated cost for the applicable transactions.

**Applicability of the rule to transactions between a utility and its affiliated service company, utility affiliates, or a parent company:**

Paragraph (3)(a) of Rule 6.1351 as proposed provides that the purpose of subsection (3) is to establish requirements for non-tariffed affiliate transactions impacting regulated activities. Gulf Power commented that the requirements should not apply to transactions between a utility and its affiliated service company or its utility affiliates. Gulf Power asserted that most of its affiliated transactions are with the service company and other utility affiliates and are related to providing regulated utility services as opposed to venturing into unregulated enterprises. It further asserted that the pricing of these transactions is regulated by the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935, and that related regulations require these transactions to be made at cost. In addition, TECO commented that a regulated utility's parent should not be regarded as an affiliate of the utility for purposes of the rule so long as the parent is not itself directly engaged in the sale of goods or services to the public.

In response to Gulf Power and TECO's comments, staff recommended adding an exception to subsection (3)(a)'s cost allocation requirements for non-tariffed affiliate transactions between a utility and its 1) parent company; 2) regulated utility affiliates; or 3) services received by a utility from an affiliate that exists solely to provide services to members of the utility's corporate family. These transactions would still be subject to

regulatory review and approval, but would not be subject to the reporting requirements or the pricing requirements.

This change addresses Gulf Power's concern, but TECO asserts in its post-hearing comments that in addition, administrative services provided by a utility to its unregulated affiliates should be excluded. Staff, however, believes that these transactions between the utility and affiliates that are not in the utility business warrant enhanced regulatory scrutiny; that there is greater potential for cost-shifting with these transactions; and that the exception should only apply to those allocations and transactions that are less likely to cause the ratepayers harm.

Based upon the record, the Hearing Officer recommends the Commission adopt staff's recommended change to paragraph (3)(a).

**Establishing a dollar threshold before cost allocation restrictions and notice requirements apply:**

TECO initially commented that the rule should not apply to transactions valued at less than \$500,000. TECO asserted that unless that exception is included, the rule will cover thousands of transactions, causing it to create and maintain an elaborate database of market pricing for an array of goods and services in order to constantly compare market prices against fully allocated and incremental costs. TECO asserted that for small, routine transactions, the cost would not justify the benefit. In its post-hearing comments, TECO stated that it was still concerned with the potential time, difficulty and expense it may incur to document market pricing for each and every transaction and updating its market price database, because it is uncertain what data will be sufficient. It suggests that the rule should not apply to transactions valued at less than \$100,000 in order to reduce the administrative burden. In addition, it asserts that such transactions are not large enough to have an impact on rates. Depending upon how a transaction is defined, however, the cumulative effect could be significant.

Staff's response to TECO's claim was that the reporting requirement only applies to transactions that are below market price. Since most transactions should be, at the minimum, at market price, there should be few transactions that must be reported. In addition, the recommended changes to the rule that exclude transactions between the utility and its parent company, regulated utility affiliates, and affiliate service companies will reduce the administrative burden of complying with the rule. A recommended change to the notification requirement for ongoing

transactions, discussed later in this recommendation, should further reduce the utility's administrative burden.

Based upon the record, the Hearing officer does not recommend excluding transactions valued at less than \$100,000 from the requirements of subsection (3) of the rule.

**Clarification of exception to 6.1351(3)(b):**

Paragraph (4)(b) provides an exception to the requirement that a utility must charge an affiliate the higher of fully allocated costs or market price for all non-tariffed services and products. That exception permits the utility to charge less than fully allocated costs as long as the charge is above incremental cost and is justified. At the April 18th agenda conference, the Commission decided that the utilities should not be absolutely precluded from charging below market price, as long as the charge is above incremental cost and is beneficial to regulated operations. (Exh. 5: Agenda Tr. 49, 65-72) The rule language was changed to delete the requirement that the charge must be equivalent to market price although it may be less than fully allocated cost.

FPC commented that this change to the rule resulted in an unintended provision that limits the applicability of the exception to only one of the two pricing standards. That is, a utility may charge below fully allocated costs, but may not charge below market price. Staff agreed with FPC and recommended that the term "market price" be added to subsection (3)(b). This change acknowledges that the amount a utility charges an affiliate could be less than fully allocated costs or market price, but must be above incremental cost. (T. 38) In either case, the rule requires the utility to maintain documentation to support and justify how doing so benefits regulated operations.

Based upon the record and the agreement of staff and the utilities, the hearing officer recommends adding the term "market price" to the second and third sentences of paragraph (3)(b).

**Justification for Going Below Market Price or Fully Allocated Cost/Forgone Transactions:** At the hearing, staff recommended adding the following shaded language to paragraph (3)(b) of Rule 6.1351:

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 and that the transaction would have otherwise been forgone.

Staff's position is that this language is needed to clarify the change made by the Commission at the April 18th agenda conference to add an exception permitting a utility to charge an affiliate less than market price. The discussion at the agenda conference in this regard was that such transactions should occur very rarely and that it would be a difficult burden for the utility to show that a transaction at less than market price would benefit regulated operations. (Exh. 5: Agenda Tr. 50, 52) Nonetheless, the Commission decided a utility should have the opportunity to make that showing rather than requiring it to forego the transaction or "give up the benefit of a transaction" because it is not permitted to go below market price in any circumstance. (Exh. 5: Agenda Tr. 48)

At the hearing and in their post-hearing comments, the utilities assert that they will be required to prove a negative. They further assert that the requirement is unnecessary in addition to being required to document how regulated operations benefit from such a transaction.

There are no examples or other information in the record about how a transaction below market price would benefit regulated operations, or how a utility would go about satisfying the additional requirement to show that a transaction would otherwise be forgone. Although showing that the transaction would have otherwise been forgone could be a factor justifying a benefit to regulated operations, and may be the only way to justify going below market price or fully allocated cost, it should not be a separate, additional requirement; nor should showing a benefit in another manner be per se insufficient. For these reasons, the Hearing Officer does not recommend adding the requirement that a utility must document that the affiliate would have forgone the transaction unless the utility charges less than fully allocated costs or market price, in addition to requiring it to justify how doing so benefits regulated operation.

Staff proposed the same requirement to document that the transaction would otherwise have been forgone be added to (3)(d), applicable to asset transfers from a utility to a nonregulated affiliate at the lower of market price or net book value; or from a nonregulated affiliate to a utility at the greater of market price or net book value. For the same reasons stated above with regard to section (3)(b), the Hearing Officer does not recommend this addition.

**Notification Requirement:** Paragraphs (3)(b) and (3)(d) of proposed Rule 25-6.1351 require a utility that charges certain affiliates less than market price to notify the Commission within 30 days of the transaction. This provision was added by the Commission at the April 18th agenda conference in conjunction with adding the exception so that utilities are not absolutely precluded from going below market price. (Exh. 5: Agenda Tr. 60-66) The utilities had no objection to this requirement at the agenda conference, however, FPL subsequently proposed a change to the rule so that multiple notifications would not be required for the same or recurring transactions. (Exh. 4) Staff and the hearing participants agree that the following shaded language should be added:

If a utility charges less than market price, the utility must notify the Division of Economic Regulation in writing within 30 days of the utility initiating, or changing any of the terms or conditions, for the provision of a product or service. In the case of products or services currently being provided, a utility must notify the Division within 30 days of the rule's effective date.

This change will reduce the burden on the utilities while ensuring that staff gets timely notice of certain transactions. Based upon the record and the agreement of staff and the utilities, the hearing officer recommends the Commission adopt these further changes to Rule 25-6.1351 (3)(b) and (3)(d).

RACCA and IEC suggest in their joint post-hearing comments that the rule impose a time limit on the notices for recurring transactions. Thus, for these transactions, utilities would notify the Commission at least once a year, even if there are no changes in the terms or conditions for the transaction. This change was not specifically addressed at the hearing, although staff did state that utilities are always expected to follow prudent business practices with regard to monitoring their contracts and the terms of their ongoing or recurring transactions. The suggested change is not recommended.

**Other Issues:** RACCA and IEC ask that the rule include definitions of "market price" and "incremental cost." At the hearing, staff stated that those terms were not defined primarily because the terms have generally accepted definitions. (Tr. 35-36) In addition, the companies that are subject to the requirements of the rules did not express any uncertainty about the meaning of the terms or disagreement with the definitions as stated in "A

Dictionary for Accountants." Because those parties directly affected by the rule and the staff responsible for ensuring compliance have a clear understanding of their meaning, no additional definitions are recommended.

RACCA and IEC also request in their joint posthearing comments that Rule 25-6.1351(3)(d) should require the utility to transfer an asset at market value when an asset used in regulated operations is transferred to a nonregulated affiliate. As proposed, the rule requires the transfer to be made at the higher of market price or net book value. RAACA's change was not raised at or before the hearing and the participants have not had an opportunity to respond. In addition, the market value may be lower than the net book value of an asset, and in that case the rule requires transferring it at the higher amount, unless a benefit to regulated operations is documented. No change is recommended.

Finally, RACCA's question about the Commission's jurisdiction over various utility or affiliate activities that is posed in the last paragraph of its post-hearing comments is more appropriately the subject of a complaint, or perhaps a petition for declaratory statement, and not this rulemaking proceeding.

**Miscellaneous changes:** The remaining recommended changes to the rules are to update the division name to the Division of Economic Regulation (ECR), correct the form number, correct a cross-referenced rule number, and to change the reference from the Clerk's office to the Division of Records and Reporting.

**ISSUE 2:** Should the rules be filed for adoption with the Secretary of State and the docket be closed?

**RECOMMENDATION:** Yes. The rules with the changes recommended by the Hearing Officer should be filed for adoption with the Secretary of State and the docket should be closed.

**HEARING OFFICER'S ANALYSIS:** If the Commission approves the changes to Rules 25-6.1351, 25-6.135, and 25-6.0436, a notice of change must be published. After the notice is published or if the rules are adopted without changes, the rules may be filed for adoption with the Secretary of State and the docket may then be closed.



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. ~~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 notify the Division of  
3 Economic Regulation in writing within 30 days of the utility  
4 initiating, or changing any of the terms or conditions, for the  
5 provision of a product or service. In the case of products or  
6 services currently being provided, a utility must notify the  
7 Division within 30 days of the rule's effective date.

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

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

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1 affiliate to a utility, the utility must record the asset at the  
2 lower of market price or net book value. Except, a utility may  
3 record the asset at either market price or net book value if the  
4 utility maintains documentation to support and justify that such  
5 a transaction benefits regulated operations. An independent  
6 appraiser must verify the market value of a transferred asset  
7 with a net book value greater than \$1,000,000. If a utility  
8 charges less than market price, the utility must notify the  
9 Division of Economic Regulation in writing within 30 days of the  
10 transfer.

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

17 (4) Cost Allocation Principles

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

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

24 (c) Indirect costs shall be distributed to each non-  
25 tariffed service and product provided by the utility on a fully

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

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

8 (5) Reporting Requirements. Each utility shall file  
9 information concerning its affiliates, affiliate transactions,  
10 and nonregulated activities on Form PSC/ECR/101 (xx/xx) which is  
11 incorporated by reference into this rule. Form PSC/ECR/101,  
12 entitled "Annual Report of Major Electric Utilities," may be  
13 obtained from the Commission's Division of Economic Regulation.

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/ECR/101  
14 PSC/AFA-19 (xx/xx 12/94) which is incorporated by reference into  
15 this rule. Form PSC/ECR/101 PSC/AFA-19, entitled "Annual Report  
16 of Major Electric Utilities", may be obtained from the  
17 Commission's Division of Economic Regulation ~~Auditing and~~  
18 ~~Financial Analysis~~. These reports shall be verified by a  
19 responsible accounting officer of the utility making the report  
20 and shall be due on or before April 30 for the preceding calendar  
21 year. A utility may file a written request for an extension of  
22 time with the Division of Economic Regulation ~~Auditing and~~  
23 ~~Financial Analysis~~ no later than April 30. One extension of 31  
24 days will be granted upon request. A request for a longer  
25 extension must be accompanied by a statement of good cause and

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1 shall specify the date by which the report will be filed.

2 (2) The utility shall also file with the original and each  
3 copy of the annual report form, or separately within 30 days, a  
4 letter or report, signed by an independent certified public  
5 accountant, attesting to the conformity in all material respects  
6 of the schedules and their applicable notes listed on the general  
7 information page of ~~Form PSC/ECR/101 PSC/APA-19~~ with the  
8 Commission's applicable uniform system of accounts and published  
9 accounting releases.

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

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

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

13 **25-6.0436 Depreciation.**

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

16 (a) Category or Category of Depreciable Plant -- A grouping  
17 of plant for which a depreciation rate is prescribed. At a  
18 minimum it should include each plant account prescribed in Rule  
19 25-6.014(1), F.A.C.

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

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

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1 following:

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

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

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

$$20 \text{ RLR} = \frac{100\% - \text{Reserve \%} - \text{Average Future Net Salvage \%}}{21 \text{ Average Remaining Life in Years}}$$

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

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1        (g)~~(e)~~        Reserve Data -- Historical data by study category  
2 showing reserve balances, debits and credits such as booked  
3 depreciation, expense, salvage and cost of removal and  
4 adjustments to the reserve utilized in monitoring reserve  
5 activity and position.

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

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

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

22        (k)~~(i)~~        Theoretical Reserve or Prospective Theoretical  
23 Reserve -- A calculated reserve based on components of the  
24 proposed rate using the formula:  
25 Theoretical Reserve = Book Investment - Future Accruals - Future

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1 Net Salvage

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

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

$$9 \quad \text{Whole Life Rate} = \frac{100\% - \text{Average Net Salvage } \%}{10} \\ 10 \quad \text{Average Service Life in Years}$$

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

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

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

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1 amount associated with plant transferred or sold are as follows:

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

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

25 (b) Upon establishing a new account or subaccount

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1 classification, each utility shall request Commission approval of  
2 a depreciation rate for the new plant category.

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

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

13 (6) A depreciation study shall include:

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

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

25 (c) Each recovery and amortization schedule currently in

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1 effect should be included with any new filing showing total  
2 amount amortized, effective date, length of schedule, annual  
3 amount amortized and reason for the schedule.

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

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

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

24 (g) The filing shall contain all calculations, analysis and  
25 numerical basic data used in the design of the depreciation rate

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

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

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

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

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

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1 otherwise required by the Commission.

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

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

9 (9) As part of the filing of the annual report pursuant to  
10 Rule ~~25-6.135 25-6-014(3)~~, F.A.C., each utility shall include an  
11 annual status report. The report shall include booked plant  
12 activity (plant balance at the beginning of the year, additions,  
13 adjustments, transfers, reclassifications, retirements and plant  
14 balance at year end) and reserve activity (reserve balance at the  
15 beginning of the year, retirements, accruals, salvage, cost of  
16 removal, adjustments, transfers, reclassifications and reserve  
17 balance at end of year) for each category of investment for which  
18 a depreciation rate, amortization, or capital recovery schedule  
19 has been approved. The report shall indicate for each category  
20 that:

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

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

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

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

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

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

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

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

20 History--New 11-11-82, 1-6-85, Formerly 25-6.436, Amended  
21 4-27-88, 12-12-91,                     .

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23  
24  
25  
  
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In re: Proposed Amendments to Rules )  
25-6.135, F.A.C., Annual Reports; ) Docket No. 980643-EI  
25-6.1351, F.A.C., Cost Allocation )  
and Affiliate Transactions; and Rule ) Filed: July 21, 2000  
25-6.0436, F.A.C., Depreciation )  
)

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**Commission Staff's Post-Hearing Comments**

As directed, the Florida Public Service Commission staff (staff) files the following post-hearing comments:

Pursuant to Rule 25-6.1351, Florida Administrative Code, the Commission currently requires electric investor-owned utilities to file information concerning their affiliates and affiliate transactions on an annual basis as set out in Schedules 1-6 of Form PSC/AFA 16, entitled "Analysis of Diversification Activities." The proposed amendments prescribe procedures utilities must follow when allocating costs between utilities and affiliates. The intent of the proposed amendments is to ensure that ratepayers do not subsidize nonregulated operations, as directed by the Legislature in Sections 366.05(9) and 366.093(1), Florida Statutes.

Because of their nature, staff believes that affiliated transactions deserve close scrutiny and consideration. Historically, affiliate transactions were reviewed during rate cases or as a part of the Commission's surveillance program. Today rate cases for the large electric utilities are virtually nonexistent. As the electric industry evolves, affiliate transactions and nontariffed services are becoming more prevalent.

Staff believes that rules are necessary to treat affiliate transactions consistently and to follow the mandate of the statutes to ensure that ratepayers are not harmed by affiliate transactions. In addition, the rules are available for the utilities to use in their decision-making deliberations dealing with affiliates.

Staff urges the hearing officer to recommend the proposed amendments with the following changes, which are redlined in the attached version of Rules 25-6.1351, Cost Allocation and Affiliate Transactions; 25-6.135, Annual Reports; and 25-6.0436, Depreciation:

**Exceptions**

Paragraph (3)(a) of Rule 25-6.1351, Florida Administrative Code, provides that the requirements within subsection (3) apply to "non-tariffed affiliate transactions impacting regulated activities." Tampa Electric Company and Gulf Power Company had requested in their comments filed after the rule amendments were proposed that certain types of transactions be excluded from the subsection (3) requirements. Staff agrees that subsection (3) should not apply to:

the allocation of costs for services between a utility and its parent company or between a utility and its regulated utility affiliates or to services received by a utility from an affiliate that exists solely to provide services to members of the utility's corporate family.

Therefore, staff recommends this language be added to Rule 25-6.1351(3)(a). Excluding the subsection's requirements from these

types of transactions will be less burdensome for the utilities and will still allow staff to monitor affiliate transactions that are likely to cause the ratepayers harm. Staff recommends against, however, excluding allocations of costs between utilities and nonregulated affiliates for administrative services as requested by TECO, because these transactions warrant enhanced regulatory scrutiny to protect ratepayers.

### **Market Price**

The proposed version of paragraph (3)(b) of Rule 25-6.1351 did not include references to market price in the exception language. At the rule hearing, staff recommended adding references to market price after analyzing Florida Power Corporation's comments filed in response to the proposed amendments. Staff agrees that a utility should be allowed to "charge an affiliate less than fully allocated costs or market price if the charge is above incremental cost." If market price is added here, it must also be added to the documentation requirement set out in paragraph (3)(b). Adding market price twice in paragraph (3)(b) as shown in the attached redlined version of Rule 25-6.1351 will clarify that a utility, with appropriate justification, may charge below market price.

### **Foregone Transactions**

Staff recommends that language be added to paragraphs (3)(b) and (3)(d) of Rule 25-6.1351 to require utilities to maintain documentation to show that if a utility seeks to use one of the

exceptions in either of the paragraphs, it must maintain documentation to show that "the transaction would have otherwise been forgone." This requirement clarifies the changes made by the Commission at the April 18, 2000, Agenda Conference to staff's April 6, 2000, recommended version of the rule.

Utilities should receive at least market value for products and services provided to an affiliate. Without this language, utilities would have no incentive to increase prices to affiliates as long as the price covered incremental costs. The addition of this requirement will not be burdensome to the utilities because of the changes staff has recommended to the notice requirement provisions, as described in the next section.

#### **Notice Requirement**

At the rule hearing, Florida Power and Light Company recommended that language be added to paragraphs (3)(b) and (3)(d) to modify the reporting requirement so that multiple notifications would not have to be made for the same types of transactions. Staff agrees with the concept of this change, and recommends the following language for the last two sentences of paragraph (3)(b):

If a utility charges less than market price, the utility must notify the Division of Economic Regulation in writing within 30 days of the utility initiating, or changing any of the terms or conditions, for the provision of a product or service. In the case of products or services currently being provided, a utility must notify the Division within 30 days of the rule's effective date.

In addition, staff recommends that the last sentence of paragraph

(3)(d) should read as follows:

If a utility charges less than market price, the utility must notify the Division of Economic Regulation in writing within 30 days of the transfer.

The redlined version of these changes is attached to staff's comments. These changes should make the rule less burdensome for the utilities and still allow staff to obtain the information it needs to monitor affiliate transactions.

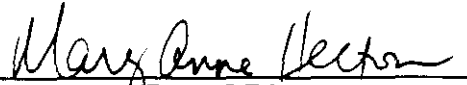
**Form Number, Rule Reference, and Division Names**

Staff has changed the name of the Division of Auditing and Financial Analysis to the Division of Economic Regulation to reflect the recent reorganization at the Commission. This reorganization also necessitates a change in the form number for "Annual Report of Major Electric Utilities" to Form PSC/ECR/101. Staff has redlined these changes in the attached draft.

In addition, two ministerial changes must be made to Rule 25-6.0436, Florida Administrative Code. The reference to the Commission Clerk's office in subsection (4) should be changed to the Division of Records and Reporting as shown in the attached draft. Finally, in subsection (9), the reference to the annual report rule needs to be updated to Rule 25-6.135 as also shown in the attached draft.

WHEREFORE, the staff of the Florida Public Service Commission requests the hearing officer to consider these comments in her recommendation to the Commission concerning changes to Rules 25-6.1351, 25-6.135, and 25-6.0436, Florida Administrative Code.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail this 21st day of July, 2000, to the following:

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\_\_\_\_\_  
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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. 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 and that the  
2 transaction would have otherwise been forgone. If a utility  
3 charges less than market price, the utility must notify the  
4 Division of Economic Regulation in writing within 30 days of the  
5 utility initiating, or changing any of the terms or conditions,  
6 for the provision of a product or service. In the case of  
7 products or services currently being provided, a utility must  
8 notify the Division within 30 days of the rule's effective date.

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

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

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1 transaction would have otherwise been forgone. When an asset to  
2 be used in regulated operations is transferred from a  
3 nonregulated affiliate to a utility, the utility must record the  
4 asset at the lower of market price or net book value. Except, a  
5 utility may record the asset at either market price or net book  
6 value if the utility maintains documentation to support and  
7 justify that such a transaction benefits regulated operations and  
8 that the transaction would have otherwise been forgone. An  
9 independent appraiser must verify the market value of a  
10 transferred asset with a net book value greater than \$1,000,000.  
11 If a utility charges less than market price, the utility must  
12 notify the Division of Economic Regulation in writing within 30  
13 days of the transfer.

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

20 (4) Cost Allocation Principles

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

25 (b) Direct costs shall be assigned to each non-tariffed

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1 service and product provided by the utility.

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

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

11 (5) Reporting Requirements. Each utility shall file  
12 information concerning its affiliates, affiliate transactions,  
13 and nonregulated activities on Form PSC/ECR/101 (xx/xx) which is  
14 incorporated by reference into this rule. Form PSC/ECR/101,  
15 entitled "Annual Report of Major Electric Utilities," may be  
16 obtained from the Commission's Division of Economic Regulation.

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

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

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

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

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

11 Law Implemented: 350.115, 366.04(2)(a) ~~and~~ (f), 366.041(1),  
12 366.05(1), (2), and (9), 366.06(1), 366.093(1) F.S.

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

14 25-6.135 Annual Reports.

15 (1) Each investor-owned electric utility shall file annual  
16 reports with the Commission on Commission Form PSC/ECR/101  
17 PSC/AFA-19 (xx/xx 12/94) which is incorporated by reference into  
18 this rule. Form PSC/ECR/101 PSC/AFA-19, entitled "Annual Report  
19 of Major Electric Utilities", may be obtained from the  
20 Commission's Division of Economic Regulation Auditing and  
21 Financial Analysis. These reports shall be verified by a  
22 responsible accounting officer of the utility making the report  
23 and shall be due on or before April 30 for the preceding calendar  
24 year. A utility may file a written request for an extension of  
25 time with the Division of Economic Regulation Auditing and

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1 ~~Financial Analysis~~ no later than April 30. One extension of 31  
2 days will be granted upon request. A request for a longer  
3 extension must be accompanied by a statement of good cause and  
4 shall specify the date by which the report will be filed.

5 (2) The utility shall also file with the original and each  
6 copy of the annual report form, or separately within 30 days, a  
7 letter or report, signed by an independent certified public  
8 accountant, attesting to the conformity in all material respects  
9 of the schedules and their applicable notes listed on the general  
10 information page of ~~Form PSC/ECR/101 PSC/ARA-19~~ with the  
11 Commission's applicable uniform system of accounts and published  
12 accounting releases.

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

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

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

16 25-6.0436 Depreciation.

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

19 (a) Category or Category of Depreciable Plant -- A grouping  
20 of plant for which a depreciation rate is prescribed. At a  
21 minimum it should include each plant account prescribed in Rule  
22 25-6.014(1), F.A.C.

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

25 (c) Mortality Data -- Historical data by study category

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1 showing plant balances, additions, adjustments and retirements,  
2 used in analyses for life indications or calculations of realized  
3 life. Preferably, this is aged data in accord with the  
4 following:

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

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

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

$$23 \quad \text{RLR} = \frac{100\% - \text{Reserve \%} - \text{Average Future Net Salvage \%}}{24 \quad \text{Average Remaining Life in Years}}$$

25 (f) Reserve (Accumulated Depreciation) - The amount of

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1 depreciation/amortization expense, salvage, cost of removal,  
2 adjustments, transfers, and reclassifications accumulated to  
3 date.

4 (g)~~(e)~~ Reserve Data -- Historical data by study category  
5 showing reserve balances, debits and credits such as booked  
6 depreciation, expense, salvage and cost of removal and  
7 adjustments to the reserve utilized in monitoring reserve  
8 activity and position.

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

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

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

25 (k)~~(i)~~ Theoretical Reserve or Prospective Theoretical

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1 Reserve -- A calculated reserve based on components of the  
2 proposed rate using the formula:  
3 Theoretical Reserve = Book Investment - Future Accruals - Future  
4 Net Salvage

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

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

$$\text{Whole Life Rate} = \frac{100\% - \text{Average Net Salvage \%}}{\text{Average Service Life in Years}}$$

14  
15 (2) (a) No utility shall ~~may~~ change any existing  
16 depreciation rate or initiate any new depreciation rate without  
17 prior Commission approval.

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

21 (c) When plant investment is booked as a transfer from a  
22 regulated utility depreciable account to another or from a  
23 regulated company to an affiliate, an appropriate reserve amount  
24 shall also be booked as a transfer. When plant investment is  
25 sold from one regulated utility to an affiliate, an appropriate

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1 associated reserve amount shall also be determined to calculate  
2 the net book value of the utility investment being sold.

3 Appropriate methods for determining the appropriate reserve  
4 amount associated with plant transferred or sold are as follows:

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

24 (3) (a) Each utility shall maintain depreciation rates and  
25 accumulated depreciation reserves in accounts or subaccounts as

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1 prescribed by Rule 25-6.014(1), F.A.C. Utilities may maintain  
2 further sub-categorization.

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

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

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

16 (6) A depreciation study shall include:

17 (a) A comparison of current and proposed depreciation rates  
18 and components for each category of depreciable plant. Current  
19 rates shall be identified as to the effective date and proposed  
20 rates as to the proposed effective date.

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

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1 involving estimates shall be brought to the effective date of the  
2 proposed rates.

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

7 (d) A comparison of the accumulated book reserve to the  
8 prospective theoretical reserve based on proposed rates and  
9 components for each category of depreciable plant to which  
10 depreciation rates are to be applied.

11 (e) A general narrative describing the service environment  
12 of the applicant company and the factors, e.g., growth,  
13 technology, physical conditions, necessitating a revision in  
14 rates.

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

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1 | of the category rate.

2 |       (g) The filing shall contain all calculations, analysis and  
3 | numerical basic data used in the design of the depreciation rate  
4 | for each category of depreciable plant. Numerical data shall  
5 | include plant activity (gross additions, adjustments,  
6 | retirements, and plant balance at end of year) as well as reserve  
7 | activity (retirements, accruals for depreciation expense,  
8 | salvage, cost of removal, adjustments, or transfers and  
9 | reclassifications and reserve balance at end of year) for each  
10 | year of activity from the date of the last submitted study to the  
11 | date of the present study. To the degree possible, data  
12 | involving retirements should be aged.

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

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

23 |       (b) The possibility of corrective reserve transfers shall  
24 | be investigated by the Commission prior to changing depreciation  
25 | rates.

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

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

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

12 (9) As part of the filing of the annual report pursuant to  
13 ~~Rule 25-6.014(3)~~ 25-6-014(3), F.A.C., each utility shall include  
14 an annual status report. The report shall include booked plant  
15 activity (plant balance at the beginning of the year, additions,  
16 adjustments, transfers, reclassifications, retirements and plant  
17 balance at year end) and reserve activity (reserve balance at the  
18 beginning of the year; retirements, accruals, salvage, cost of  
19 removal, adjustments, transfers, reclassifications and reserve  
20 balance at end of year) for each category of investment for which  
21 a depreciation rate, amortization, or capital recovery schedule  
22 has been approved. The report shall indicate for each category  
23 that:

24 (a) There has been no change of plans or utility experience  
25 requiring a revision of rates, amortization or capital recovery

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1 schedules; or

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

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

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

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

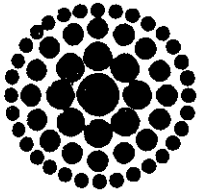
18 (c) Associated plant and reserve activity, balances and the  
19 annual capital recovery schedule expense must be maintained as  
20 subsidiary records.

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

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

23 History--New 11-11-82, 1-6-85, Formerly 25-6.436, Amended  
24 4-27-88, 12-12-91, \_\_\_\_\_.

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**Florida  
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CORPORATION

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DIVISION OF APPEALS

**JAMES A. MCGEE**  
SENIOR COUNSEL

July 20, 2000

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

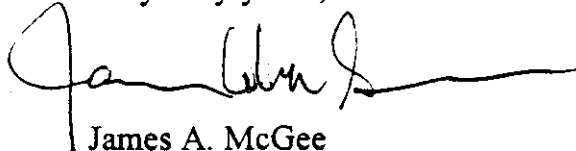
Re: Docket No. 980643-EI

Dear Ms. Bayó:

In accordance with the direction of the Hearing Officer at the rulemaking hearing held June 22, 2000 in the subject docket, enclosed for filing are an original and fifteen copies of Florida Power Corporation's Post-Hearing Comments on the proposed rule amendments.

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

51

DOCKET No. 980643-EI

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

FLORIDA POWER CORPORATION'S  
POST-HEARING COMMENTS

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Florida Power Corporation reiterates its sincere appreciation of Staff's exceptional effort, as reflected in the numerous revisions to the original draft rule amendment, to solicit and seriously consider the parties' input and to seek compromise and consensus wherever possible. As a result of this effort, Florida Power believes the latest draft distributed by Ms. Helton following the hearing reasonably addresses all of its major concerns expressed of the course of this lengthy proceeding.

Florida Power's one remaining reservation to its overall support of the latest draft concerns Staff's recently added language to the exception provided in 25-6.1351(3)(b) and (d) to the otherwise applicable pricing standard for an affiliated transaction. Staff's new language would require a utility that has used the exception to price an affiliated transaction to be able to subsequently demonstrate "that the transaction would have otherwise been foregone." This requirement is in addition to the provision already contained in the rule when proposed by the Commission requiring the utility to show that the transaction "benefits regulated operations." The problem with demonstrating that the transaction would have been foregone if the exception had not been utilized is the inherent difficulty in proving a negative. Florida Power is unsure how, if at all, such a burden of proof could be satisfied.

Furthermore, this problematic proof requirement is unnecessary for several reasons. First, as noted above, the proposed rule already requires a utility that has used the exception to show how the transaction benefits regulated operations. Satisfaction of this requirement, in and of itself, justifies using the exception. In addition, Staff's new proof requirement was included in language that added a notice provision to the rule, which Chairman Deason had requested at the Agenda Conference when the rule was proposed. (*See*, Hearing Exhibit 5.) Chairman Deason did not request or even suggest that the utility's burden of proof be increased. Staff's new proof requirement was simply added gratuitously and is totally unnecessary to meeting Chairman Deason's request for a notification provision.

Florida Power submits that this language suggested by Staff is inappropriate and unnecessary and requests that it be deleted by the Hearing Officer from the rule recommended to the Commission.

July 20, 2000

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DIVISION OF APPEALS

July 20, 2000

*APP/Moore*

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**By Hand Delivery**

Blanca S. Bayó, Director  
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4075 Esplanade Way, Room 110  
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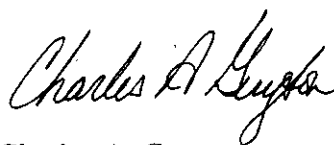
**Re: Posthearing Comments of Florida Power  
& Light Company in Docket No. 980643-EI**

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company (FPL) are the original and fifteen (15) copies of FPL's Posthearing 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

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53

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Miami West Palm Beach Tallahassee Naples Key West London Caracas São Paulo Rio de Janeiro Santo Domingo  
TECHNICAL SUPPORTING

**FLORIDA POWER & LIGHT COMPANY'S  
POSTHEARING COMMENTS  
DOCKET NO. 980643-EI  
July 20, 2000**

**Introduction**

Many parties have devoted substantial time to the development of the proposed rule, and the fruits of these efforts are readily apparent. The parties that have actively worked on language are almost in agreement.

FPL has only one continuing concern. It believes Staff has gone beyond the Commission's intent in a few subsections. That concern is addressed with more specificity in the following comments.

To ease the Hearing Officer's burden of comparing multiple drafts, we have limited our comments to three documents: revisions proposed by the Staff in Exhibit 2; revisions proposed by Staff in their June 29, 2000 revision, a copy of which is attached; and Exhibit 3, written comments and documents presented at the hearing.

**Staff's Suggested Revisions**

**Exhibit 2**

At the hearing Staff proposed several changes to the rule draft proposed by the Commission in Order No. PSC-00-0832-NOR-EI. These changes were introduced as Exhibit 2. Most of Staff's proposed changes were made in response to comments offered by the parties prior to the hearing.

For the most part, FPL agrees with and endorses the amendments to the proposed rule suggested by the Staff on Exhibit 2. In particular, agrees with the additional language suggested by the Staff for Rule 25-6.135(3)(a). See, Exhibit 2, p. 3, lines 12-18. FPL also agrees to the addition of the phrase "or market price" to the second and third sentences of Rule 25-6.135(3)(b). See, Ex. 2, p. 3, l 23. Incremental cost should be the floor for a charge less than not only fully allocated cost but also market price.

However, FPL believes that Staff's proposed changes to the third sentence of Rule 25-6.135(3)(b) and sixth sentence of Rule 25-6.135(d)(d) of adding the language, "show that the transaction would have otherwise been forgone," should not be made for at least four reasons.

First, this language in both of these sentences change the sentences from mere notice provisions to requirements that the utility has to make an affirmative showing. This is inconsistent with what the Commission decided at the Agenda Conference where the rule was

proposed. There the Commission clearly stated it wanted a notice provision. They declined there to adopt Staff's suggestion that the utility be required to provide more than notice. This alternative has been previously considered and rejected by the Commission. (Exhibit 5.)

Second, the demonstration required by this language is not necessary. There is already the requirement in the preceding sentences of both rules that the utility maintain documentation to support and justify that this type of transaction "benefits regulated operations." This is a redundant requirement that is more demanding of utilities. Once again, the Commission has already stated that it is satisfied with the requirement that the utility maintain documentation to show benefits to regulated operations. Staff's recommendation goes beyond and is redundant to the protection the Commission has already found to be appropriate.

Third, the standard proposed by Staff - showing that a transaction would have been foregone - places the utility of having to prove a negative. It does not have to justify what it did, as contemplated by the Commission. It has to prove what would not have happened if a transaction which has occurred had not occurred.

Fourth, Staff's additional requirement contemplates but does not address how or when the utility would make an affirmative showing. This is much more costly to utilities. This is an unnecessary and unwarranted expense. It is not needed because the rule already requires the utility to maintain documentation. It is unwarranted because the Commission has already agreed that all that is necessary to protect customers is notice, not an affirmative showing.

### **Staff's June 2000 Revisions**

In response to comments made at the hearing, Staff forwarded on June 29, 2000, another revision of the proposed rule. In that draft Staff offered comments to the proposed rules with which, for the most part, FPL agrees.

FPL disagrees, however, with the addition of the phrase "and that the transaction would have otherwise been foregone" in Rule 25-6.135(3)(b) and (d). (Staff's June 29, 2000 version at page 4, lines 1-2; page 4, line 25 - page 5, line 1; and page 5, lines 7 and 8.) Staff has simply moved the objectionable language from Exhibit 2 and placed it in a different sentence. The language does relieve utilities from a costly affirmative showing, but several problems remain.

First, the Commission has previously declined to require more than a notice and a documentation that a transaction benefits regulated operations. How a utility documents the benefits should be left to the utility, as the Commission originally envisioned.

Second, documenting that the transaction would have otherwise been foregone is not necessary if the utility is already documenting a benefit to regulated operations. The rule as proposed adequately protected customers without this addition.

Third, the standard requires the proof of a negative - something that would not have happened if what actually happened had not occurred. This will be difficult to document, and it is unnecessary if there is documentation that regulated operations benefit.

### **Exhibit 3**

At the hearing the Refrigeration and Air Condition Contractors Association, Inc. (RACCA) and the Florida Independent Electrical Contractors (IEC) submitted Exhibit 3, although their representative acknowledged that the proposed rule does not impose any requirements on the members of those associations. Tr. 26-27. Given the associations' lack of legal interest in this proceeding, this exhibit should be disregarded, but since the Hearing Officer allowed post hearing comments on Exhibit 3 (Tr. 27), FPL offers the following observations.

Exhibit 3 really does not address the proposed rule. It offers no amendments to the proposed rule and the scope of the comments goes beyond the scope of the docket. There is legislative language proposed. Such language goes beyond the scope of the rule being proposed as well as the Commission's existing statutory authority. To be implemented, it would have to be passed by the Legislature, not the Commission. Exhibit 3 should be disregarded.

### **Conclusion**

We are close to a consensus among the parties who have actively worked on the proposed rule amendments. This speaks well of the entire process. FPL's only continuing concern is being held to a documentation that requires FPL to prove a negative - that if what actually happened had not happened, then a transaction would not have happened at all. This is an unnecessary requirement because the utility must nonetheless document that a transaction benefits regulated operations.



App/Moore

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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: July 21, 2000

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DIVISION OF ADMINISTRATION

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**Post-Hearing Comments of Tampa Electric Company**

Tampa Electric commends the Commission and its staff for changes adopted in this proposed rule during and following the April 18, 2000 Agenda Conference. The wording adopted, which is similar to that suggested in Tampa Electric's May 25, 2000 written comments, excludes from the rule, most routine overhead allocations, services provided to other regulated affiliates and pricing of service company transactions. Those changes will provide Florida ratepayers significant savings.

As we did at the June 22, 2000 rule hearing, however, Tampa Electric continues to urge the Commission to adopt two additional provisions suggested in our May 25 written comments. First, exclude from the effect of this rule, routine administrative services provided by the regulated utility to its corporate parent or affiliates and second, exclude transactions valued at less than \$100,000. Tampa Electric also supports Florida Power and Light Company's position that the wording added by the Commission staff regarding justification that certain transactions would be forgone should be removed from the final rule. Finally, Tampa Electric provides our understanding of the outcome of a conference call held July 7, 2000.

**Exclude from the effect of this rule, routine administrative services provided by the regulated utility to its corporate parent or affiliates.**

Tampa Electric suggested in its May 25 comments that allocations of corporate overhead and the provision of administrative services should be excluded from application of this rule. These transactions are sometimes provided by the parent and sometimes by the regulated utility, but are essentially the same regardless of which entity provides them. Since they are booked at fully allocated costs, the net dollar effect to ratepayers (from the pricing of inter-company transactions) is the same whether the function is housed within the regulated utility or outside.

Commission staff, in its modified proposed rule, presented at the rule hearing, has excluded "the allocation of costs for services between a utility and its parent company or between a utility and its regulated utility affiliates or to services received by a utility from an affiliate that exists solely to provide services to members of the utility's corporate family." (Exhibit 2, p. 3, lines 12-18). That leaves administrative functions provided by a utility to its unregulated affiliates subject to this rule, while the same or similar transactions provided by any other combination have been excluded.

This position seems counterintuitive. The transactions provided by the utility have the most readily available audit trail of any of the transactions. Tampa Electric recommends that administrative services provided by the regulated utility to its unregulated affiliates also be excluded.

Tampa Electric provides administrative services, such as payroll and information technology services, to its affiliates at fully allocated cost. The audit trail is sufficient to verify the appropriateness of these allocations. Spreading fixed costs, such as computer hardware and software, over additional billable transactions reduces the cost per transaction. Also, every dollar billed to affiliates is a direct reduction of costs to the regulated operations.

In addition, if Tampa Electric chooses to do so, it can avoid the notification requirements of this rule, as currently proposed, by transferring shared services to the parent company or to a separate corporate service company. The very same types of transactions would then be excluded from the effect of this rule. If administrative services were moved out of the regulated utility, however, the effect would be to lower costs because the regulated utility would then no longer have the cost of gathering and maintaining documentation and databases just to meet reporting requirements.

Tampa Electric and its parent company have designed a corporate structure to maximize overall administrative efficiencies so that customers of both regulated and unregulated services can be best and most economically served. Utilities and their affiliates should not have to redesign their corporate structures just so they can save ratepayers money by alleviating the need to meet a Commission reporting requirement.

#### **Exclude transactions valued at less than \$100,000.**

The parties at the rule hearing seemed to define the question of burden differently. The Refrigeration and Air Conditioning Contractors Association (RACCA) and the Independent Electrical Contractors (IEC) held the position that determining market prices is easy, cheap and just a regular part of doing business. The Commission staff held that there will be very few transactions below market price. Tampa Electric does not disagree with either position.

Tampa Electric's concern with paragraph (3)(b) of this proposed rule continues to be with the time, difficulty and unnecessary expense associated with documenting market pricing for each and every transaction and for creating and continually updating databases of frequently changing market prices. For the majority of transactions, without some exclusion for *de minimus* transactions, the cost of compliance will almost certainly dwarf the benefits the Commission seeks to capture through the proposed rule.

Tampa Electric representative, Joseph McCormick stated the problem at the rule hearing: "We do know the market prices of transactions we enter into, but we don't know that the data that we maintain is sufficient to meet the standard the Commission's auditors may use

when they come in to look at what we have.” (TR p. 41, lines 19-23) “That is really the cost that hits us is the cost to document something can exceed the cost of the transaction, and we don't want that to occur.” (TR, p. 41, lines 9 - 12) “In my opening comments I mentioned that even if we do everything at fully-allocated costs, we have to know the market price of each of those transactions to know whether we have to report to the Public Service Commission within thirty days. We have to maintain the data, we have to maintain the justification regardless. And that is where the cost factor hits us without what we see as a corresponding benefit.” (TR p. 41, line 24 through p. 42, line 7)

In response to the hearing officer's request that staff address Tampa Electric's "concern about what staff would consider adequate data to establish a market price." (TR, p. 42, lines 8-11) Mr. Devlin's response did not adequately address the problem. His response was, "... the gentleman at the end of the table I thought was very eloquent in stating that every product and service has a market. I mean, you are in business, you ought to know what the value of particular transaction is. We are sort of at a loss to see this as a problem. We think it should not be difficult for the utilities to know what the market value of any particular service or product that they are providing to an affiliate." (Tr. p. 43, lines 12-21)

Tampa Electric knows the market prices of products and services. We do not know what data we will need to maintain to comply with this rule. We do not know how often we will need to update databases of information to comply with this rule and we do not know how many file cabinets of supporting documentation we will need to maintain to provide "adequate data to establish a market price."

At the June 22 rule hearing Ms. Moore, the hearing officer asked, "... Perhaps Mr. McCormick can answer, you could give me some examples of some items that might not have – that don't have a market price. I am having some difficulty understanding – or that you would have to put out to bid to find out a market price." (TR p. 43, lines 1-7)

"Mr. McCormick: In response to that question, I don't have the page number offhand, but in the transcript of the agenda conference, Commissioner Deason mentioned the fact that market prices move around day-to-day and that is just one of the issues.

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

'And it is highly possible to justify all of that, it is also very expensive to justify all of that. And our concern is more with the documentation than the reality of the (pricing) problem.

'We know we have to keep price data because we are not going to be in business if we don't. We have to know the costs and prices of transactions. But the cost of maintaining the data and the documentation is a part of it, ... . Determining the exact item is difficult. The bid process often works out that information is let for the bid, the RFP goes out, bids come back. That gives you a market price. And sometimes they are low prices, sometimes they are high prices. Which of those is the market price?

'Also, if you have ever been involved in a contracting transaction, you know that the initial bid up front is usually the subject of negotiation until you get to what exactly the product is going to be because there is no complete and clear understanding.

'So, again, if we have a series of five bids in front of us and one is high and one is low, and three of them are somewhere in the middle, which one of those is the market price? And what exactly is the quality? The quality can vary. We don't want to go with the lowest bidder on most things because we don't think our system would work. So those are the issues that get involved, and those are the issues that we feel would be very expensive to document."  
(TR, p. 43, line 8 through p. 45, line 1.)

It is Tampa Electric's position that the interests of ratepayers will be harmed by the unnecessary imposition of costs of amassing storehouses of data just to support company decisions after-the-fact, particularly for transactions that are not large enough to have an impact on rates. The result will either be that utilities amass the data, diluting, if not destroying, any potential cost savings in affiliate transactions or that utilities simply cease looking to affiliates at all, because the cost of compliance with this rule is excessive. Either outcome results in loss of economies of scope and scale that have, for decades, served to reduce costs to ratepayers.

Tampa Electric urges the Commission to adopt a reasonable threshold for this rule and suggests that \$100,000 is reasonable.

**Tampa Electric also shares the concern expressed at the June 26 hearing by Mr. Guyton of Florida Power and Light Company regarding justification that certain transactions would be forgone.**

The issue here is with the wording the Commission staff added to (3)(b) of the rule requiring that, besides filing notice within thirty days, the utility must provide justification that shows that a transaction would have been forgone if not priced below market.

FPL's representative, Mr. Guyton said, "This sentence now goes much beyond the notice provision that Commissioner Deason asked for, and puts a burden on the utility to show that the transaction would have otherwise been foregone, something that Commissioner Deason had not asked for." (TR, p 19, lines 20-24)

Mr. Guyton: "... I'm not sure how one goes about proving a negative. ... How one proves what would have happened if something else -- if what had not actually happened, trying to prove what would have happened is virtually impossible. And I'm not sure one would ever satisfy that standard. And we think the standard is probably very difficult, if not impossible, to prove. So from a legal perspective of burden of proof we find it quite problematic." (TR, p 20, lines 2-12)

Tampa Electric agrees with Florida Power and Light. This language should be removed.

### **Treatment of regularly recurring transactions**

Finally, Tampa Electric articulates its understanding of the outcome of a meeting and conference call held on Friday, July 7, 2000. The meeting was attended by the Commission staff and, we believe, all parties from the hearing, either in person, or by telephone. The stated purpose of the meeting was to develop consensus wording to append to paragraph (3)(b) of the rule to clarify notification requirements for regularly recurring transactions or to develop a common understanding of requirements, absent additional wording.

It is Tampa Electric's understanding that utilities must notify the Commission staff within thirty days of the effective date of this rule, regarding pricing and supporting documentation for regularly recurring transactions that would otherwise require notification to the staff under the requirements of paragraph (3)(b). After the initial notification, no further notification is required unless there are changes in the price, terms or conditions of the agreement governing the transactions. In the future, if regularly recurring transactions are begun, initial notification is again required, but no further notification is required unless there are changes in the price, terms or conditions of the agreement governing the transactions. Our comments in this filing are based upon this understanding.

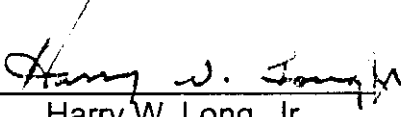
Tampa Electric appreciates the opportunity to participate in this rule making process and in having the opportunity to provide these final comments on this proposed rule.

Respectfully submitted,

HARRY W. LONG, JR.  
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And

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By:   
Harry W. Long, Jr.

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing Post-Hearing Comments, filed on behalf of Tampa Electric Company, has been furnished by U S. Mail on this 20 day of July, 2000, to the following:

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Florida Public Service Commission  
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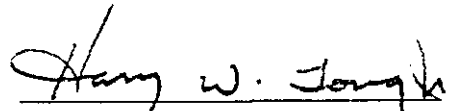
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DIVISION OF APPEALS

July 19, 2000

The Honorable Christiana T. Moore  
Hearing Officer  
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 Hearing Officer Moore:

On behalf of R.A.C.C.A., Inc., and IEC Florida, I respectfully submit this letter as  
written comments following the rule hearing held on the above referenced rules on June  
22, 2000.

We understand and appreciate the Public Service Commission's focus on whether  
subsidization affects the regulated utility company, and, if subsidization does affect a  
regulated utility company, whether the activity has a positive or negative impact on  
ratepayers. Our understanding of your position is that, once the Public Service  
Commission is satisfied that the activity benefits ratepayers, the concern stops here. On  
the other hand, if the Public Service Commission determines that the activity constitutes  
either a cost or a detriment to the ratepayer, then the Public Service Commission has,  
not only the authority, but a duty to require that the utility company take the necessary  
steps to ensure that the interests of ratepayers are protected and that these ratepayers  
do not inadvertently subsidize business risks where the benefit will inure to the  
company, its shareholders, or any of its affiliates.

With this as our understanding, we submit the following additional comments.

DOCUMENT NUMBER-DATE  
~~08723 JUL 19 8~~  
REG-REGISTRY REPORTING



Based upon past transactions, we believe that the Public Service Commission has every reason to adopt the most stringent rule possible to make sure that transactions between regulated utilities and affiliated companies are conducted in good faith, reported as fairly as possible, and subject to the accounting standards proper under these particular circumstances.

We respectfully request that the proposed rule include a definition of "market price" for clarity. Although this is a commonly used term, there are different "textbook" and common definitions for the term, and it is beneficial to spell out the one applicable here. We propose the use of the following definition:

"Market price means the price at which a bonafide, arms-length sale of a product or service would take place between an unrelated willing buyer and seller with both parties being under no compulsion to buy or sell and both being aware of all relevant facts regarding the transaction."

This is a definition commonly used to define the concept of fair market value.

Proposed Rule 25-6.1351(3)(d) refers to the transfer of an asset to an affiliate and imposes the requirement that the utility must charge the greater of market price or "net book value" (NBV). Net book value is defined in proposed rule 25-6.0436(1)(d) as the book cost of an asset minus the accumulated depreciation associated with that asset. Accordingly, when an asset has been written off or depreciated for book purposes to its salvage value, it may be transferred to an affiliate at that value even if it is below market price.

We respectfully request a change in the rule to require the utility to transfer the asset at market value if that is readily obtainable. If the utility company does transfer the asset at the lower of market value or book value, it must report this to the Public Service Commission. This may prevent the utility from transferring assets such as bucket trucks to an affiliate at net book value when the fair market value is substantially higher and readily obtainable for this asset.

Proposed rule 25-6.1351(3)(b) also requires the utility company to notify the Public Service Commission within 30 days of any change of terms or conditions surrounding the provision of a product or service. We do not support an interpretation that would require a utility company to endure daily, weekly, or even monthly reporting so long as the transaction is either routine or on-going. However, we do support the inclusion of language that specifies that there is a time limit (possibly one year) to the validity of such a filing. Perhaps the best solution is to require a report if there is any

The Honorable Christiana T. Moore  
July 19, 2000  
Page Three

change in the pricing or value, and, if not, at least annually from the date of the most recent report.

We strongly support the Public Service Commission's proposed rule language as presented and discussed at the July 6, 2000 informal meeting as follows:

[from 25-6.1351(3)(b)] 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 and that the transaction would have otherwise been forgone.

and

[from 25-6.1351(3)(d)] Except, a utility may charge the affiliate either the market price or net book value if they utility maintains documentation to support and justify that such a transaction benefits regulated operations and that the transaction would have otherwise been forgone.

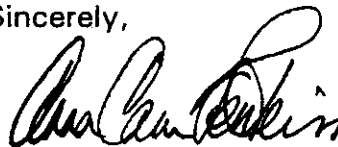
and

[from 25-6.1351(3)(d)] 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 and that the transaction would have otherwise been forgone.

We remain very unclear as to the meaning and impact of the use of the term "incremental costs." We respectfully request that there be further discussion on this matter as we are concerned that, without more, the use of this term may either create a substantial loophole or unduly restrict matters for utility companies.

With respect to material relating to a 1997 contract between Kenyon Dodge and Tampa Electric Company included in the package I submitted at the June 22, 2000 rule hearing, we would like to pose a very specific question as follows: Does a transaction that, on its face, is not a regulated activity, become tied to regulated activity when the agreement includes the provision of energy – the regulated utility itself – as part of the contract? If the answer to this question is yes, does the entire transaction then come under the jurisdiction of the Public Service Commission as a regulated activity?

Sincerely,



Anna Cam Fentriss

APP Moore



# FLORIDA ASSOCIATION OF PLUMBING • HEATING • COOLING CONTRACTORS

P.O. Box 947599 • Maitland, Florida 32794 • (800) 735-2640 • (407) 599-2155 • Fax (407) 599-7299

July 19, 2000

The Honorable Christiana T. Moore  
Hearing Officer  
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 25-60436, F. A. C., Depreciation

Dear Hearing Officer Moore:

On behalf of the Florida Association of Plumbing Heating & Cooling  
Contractors (FAPHCC), the following comments are submitted following the rule  
hearing held on June 22, 2000.

1. FAPHCC supports the rule changes.
2. The rule changes are necessary as utilities expand into non-regulated activities. The testimony provided by the construction contractors at the hearing underscore the gray area which now exists between regulated activities and non-regulated activities. The rules begin to clarify the responsibilities of regulated utilities as this expansion occurs.

Sincerely,

Richard Watson  
Legislative Counsel

Cc: FAPHCC Distribution List

RECEIVED  
00 JUL 20 AM 10:15  
FLORIDA ASSOCIATION OF PLUMBING HEATING & COOLING CONTRACTORS  
DIVISION OF AFFAIRS