

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: May 21, 2008

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Bennett, Klancke)
Division of Economic Regulation (Colson, Kummer)

RE: Docket No. 070733-EI – Complaint No. 694187E by Cutrale Citrus Juices USA, Inc. against Tampa Electric Company for refusing to provide transformer ownership discount for electrical service provided through Minute Maid substation.

AGENDA: 06/03/08 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Argenziano

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\070733.RCM.DOC

Case Background

In April 2006, Cutrale Citrus Juices USA, Inc. (Cutrale) filed an informal complaint with the Public Service Commission's Bureau of Complaint Resolution. Cutrale is a manufacturer of orange juice and also produces other fruit and vegetable products. Cutrale's facility is located in Auburndale, FL. Cutrale complained that Tampa Electric Company (TECO) refused to grant Cutrale a Transformer Ownership Discount for transformers located at Cutrale's Auburndale facility. The transformers are part of a distribution system on the Auburndale facility served by TECO from TECO's Minute Maid Substation.

The Transformer Ownership Discount is described in TECO's Firm Standby and Supplemental Service, Fourth Revised Tariff Sheet No. 6.608. Cutrale alleges TECO's refusal to grant the discount to Cutrale is a violation of TECO's tariff. According to Cutrale, the violation began when the prior owner of the Auburndale facility, Coca Cola Foods (Coca Cola), owned the Auburndale facility.

Originally TECO served Coca Cola's operations at the Auburndale facility from Ariana Circuit 13279, a 13 kV line which served other customers as well. In 1984, TECO constructed the Minute Maid Substation with a 14 megavolt ampere (MVA) substation transformer that was dedicated to Coca Cola. In 1985, the 14 MVA transformer was replaced by TECO with a 22.4 MVA transformer. The purpose for the substation and upgrade, according to TECO, was to maintain reliability and provide additional capacity for the Auburndale facility, which was rapidly expanding under Coca Cola's ownership. The Minute Maid Substation and the line to the meter at the Auburndale facility served only Coca Cola. It currently serves only Cutrale. TECO owns the transformer at the Minute Maid Substation. Cutrale is not claiming a Transformer Ownership Discount for the transformer located at the Minute Maid Substation.

The Minute Maid Substation transforms electricity from 69 kV to 13 kV for Cutrale. The 13 kV of TECO generated electricity is provided by TECO through its meter to Cutrale's distribution system at the Auburndale facility. The point of delivery is at TECO's meter. Cutrale owns the distribution system from the meter throughout its property. Included on the property as part of Cutrale's distribution system are two cogenerators, which generate 13 kV of electricity. Prior to Cutrale using the 13kV of electricity it generates or the 13 kV of electricity it purchases from TECO, Cutrale transforms the energy to different kVs throughout the site, depending on Cutrale's need. The transformers convert the electricity from 13 kV to 2.4 kV or lower. There are 27 different transformers on Cutrale's property which step down the electricity to 2.4 kV, 480 volt, 120/240 volt and 120/208 volt circuits. It is this transformation owned by Cutrale for which Cutrale claims the Transformer Ownership Discount.

TECO did credit Coca Cola for a Transformer Ownership Discount for the years 1984 to 1987 for electricity purchased by Coca Cola from the Minute Maid Substation. In 1987 TECO stopped crediting Coca Cola for the Transformer Ownership Discount. In response to staff's data request, TECO states that it erroneously credited Coca Cola for the Transformer Ownership Discount for the years 1984 to 1987.

In 1987, Coca Cola began generating its own electricity and became a Qualified Facility under Chapter 25-17, Florida Administrative Code (F.A.C.). TECO made modifications to the Minute Maid Substation to accommodate the interconnection of Coca Cola's generating plant to the Minute Maid Substation. Coca Cola reimbursed TECO for the modifications. TECO and Coca Cola entered into an Interconnection Agreement, dated November 1, 1987. On April 12, 1988, Coca Cola also entered into a Tariff Agreement for the Purchase of Firm Standby and Supplemental Service from TECO.

Cutrale purchased the Auburndale facility from Coca Cola in 1996. The purchase included the cogeneration plant located at the Auburndale facility. Coca Cola assigned both its Interconnection Agreement and its Tariff Agreement for the Purchase of Firm Standby and Supplemental Service with TECO to Cutrale.

Staff issued several sets of data requests to which the parties responded. Staff also conducted an informal meeting with both parties and their representatives. In response to staff data requests, Cutrale provided a diagram showing the Minute Maid Substation, the meter, the point of delivery from TECO to Cutrale, and the electric distribution system serving Cutrale's property. The diagram shows, and TECO concurs, that the point of delivery for Cutrale is immediately after the TECO-owned meter on the distribution side of the Minute Maid Substation. Cutrale's ownership of the distribution system begins on the distribution side of TECO's meter and continues to a 13.2 kV Switch and Fuse Assembly located on the Auburndale facility. The Switch and Fuse Assembly is also owned by Cutrale. According to the diagram, Cutrale's facilities include two generators that generate 13 kV of electricity. The 13 kV of Cutrale-generated electricity is sent to the 13.2 kV Switch and Fuse Assembly. From the Switch and Fuse Assembly, the Cutrale-generated electricity is distributed along Cutrale's distribution system to other sites within the Auburndale facility, including other Switch and Fuse Assemblies, and several transformers, all designed to provide energy for Cutrale's own use. Cutrale's distribution system and TECO's Minute Maid Substation are also designed so that Cutrale's generated electricity can be sent through a Cutrale-owned meter to the Minute Maid Substation to be sold to the grid, if Cutrale becomes an exporter of generated electricity (Cutrale currently uses all its generated energy and does not sell any to the grid).

Upon receipt of Cutrale's informal complaint, the Commission's Complaint Bureau requested technical assistance from the Division of Economic Regulation (ECR). ECR staff analyzed Cutrale's and TECO's positions and determined that TECO had not violated its tariff in refusing to grant Cutrale a Transformer Ownership Discount. Cutrale disagreed and requested that the Process Review Team review the decision. The Process Review Team reached the same conclusion as ECR, that TECO had not violated its tariff and that Cutrale was not entitled to a Transformer Ownership Discount.

Cutrale disagrees with the conclusions reached by ECR and the Process Review Team, and on December 18, 2007, Cutrale filed a Formal Petition for Relief against Tampa Electric Company (TECO). In its petition, Cutrale asserts that it is entitled to a Transformer Ownership Discount as set forth in TECO's tariff. Cutrale requests that the Commission find that TECO is in violation of its tariff, require TECO to apply the transformer ownership discount to Cutrale, and require TECO to refund the alleged overpayments both Cutrale and Coca Cola made to TECO. On January 14, 2008, TECO answered the Cutrale complaint stating that Cutrale is not entitled to the Transformer Ownership Discount.

The Commission has jurisdiction pursuant to Sections 366.03, 366.04, 366.041, and 366.05, Florida Statutes.

Discussion of Issues

Issue 1: Is Cutrale Citrus Juices USA, Inc. entitled to the Transformer Ownership Discount as described in Tampa Electric Company's Firm Standby and Supplemental Service, Fourth Revised Tariff Sheet No. 6.608?

Recommendation: No. Cutrale Citrus Juices USA, Inc. does not qualify for the discount to its rates as set out in Tampa Electric Company's Firm Standby and Supplemental Service, Fourth Revised Tariff 6.608 Transformer Ownership Discount. The transformers owned by Cutrale do not meet the requirements of the tariff. Cutrale's position on how to determine a transformer ownership discount does not conform to the stated regulatory policy established by the Commission and the legislature. The interpretation of the agreement which adopted the tariff has consistently been that the discount does not apply to Cutrale's Auburndale facility. (Bennett, Kummer, Colson)

Staff Analysis:

Cutrale's Petition

Cutrale states that it contracts for electric service from TECO. TECO's Minute Maid Substation transforms 69 kV to 13 kV voltage. TECO owns, operates, and maintains the substation, which serves Cutrale. Cutrale states that it owns and operates other transformers, which transform electricity from 13 kV to lower voltages. Cutrale argues that TECO's tariff requires TECO to give a transformer discount to Cutrale. The language Cutrale argues is applicable is as follows:

Transformer Ownership Discount: When a customer furnishes and installs all primary voltage to secondary voltage line transformation from a primary voltage distribution feeder, a discount of 36¢ per KW of Supplemental Demand and 32¢ per KW of Standby Demand will apply.

Fourth Revised Tariff Sheet No. 6.608. Cutrale argues that because Cutrale furnishes transformers which provide "primary voltage to secondary voltage line transformation from a primary voltage distribution feeder," Cutrale is entitled to the Transformer Ownership Discount.

Cutrale argues that there is no definition in the tariffs or in standard industry literature that defines "primary voltage distribution feeder." According to Cutrale, the meaning of "primary voltage distribution feeder" can be deduced from definitions of each of the individual words or phrases, as used in TECO's tariffs, industry literature, and OSHA standards. Cutrale asserts that the terms "primary service voltage," and "distribution system" are defined in TECO's tariff. Cutrale also asserts that OSHA defines the terms "feeder" and "distribution circuit feeders." According to Cutrale, TECO's definition of "primary service voltage" in Tariff Sheet No. 4.010 is:

The voltage level in a local geographic area which is available after the company has provided one transformation from the transmission system. For service taken at primary voltage all additional transformations shall be customer owned.

TECO's definition of "distribution system" is defined in Tariff Sheet No. 4.040, as:

Electric service facilities consisting of primary and secondary conductors, service laterals, transformers, and necessary accessories and appurtenances for the furnishing of electric power at utilization voltage (13 kV and below on the Company's system).

Cutrale provided the OSHA definition of "feeder" as:

A circuit, such as conductors in conduit or a busway run, which carries a large block of power from the service equipment to a sub-feeder panel or a branch circuit panel or to some point at which the block power is broken into smaller circuits.

Cutrale also provided an OSHA definition of "distribution feeder circuits" as:

[T]he connections between the output terminals of a distribution substation and the input terminals of primary circuits. The distribution feeder circuit conductors leave the substation from a circuit breaker or circuit recloser via underground cables, called substation exit cables.

Cutrale asserts that these definitions make it clear that it is entitled to the discount. Cutrale argues that the tariff definition of "primary service voltage" makes it clear that a customer who takes electricity at primary voltage must own the additional transformers needed for further transformation. Cutrale contends that because it must provide additional transformation, it must also be entitled to the Transformer Ownership Discount. Cutrale concludes that because it is required to transform the 13 kV primary voltage to secondary voltage, it meets the requirements of the tariff allowing for Transformer Ownership Discounts.

TECO's Response

In response, TECO states that Cutrale is not entitled to the Transformer Ownership Discount and that TECO has not violated any applicable statutes, rules, tariffs, or orders. TECO asserts that Cutrale is not served from a primary voltage distribution feeder and has not avoided all transformation associated with its primary service. TECO states that the Minute Maid Substation serves only the Cutrale facility, and transforms 69 kV transmission voltages to Cutrale's utilization voltage of 13 kV. According to TECO, its rates for the electric service provided to Cutrale reflect the costs incurred to provide service to Cutrale at 13 kV utilization voltages. TECO asserts that granting the transformer ownership discount would give Cutrale an undue or unreasonable preference or advantage.

Analysis

Cutrale's primary argument is that the term "primary voltage distribution feeder" is not defined in the tariff. Staff disagrees. By Rule 25-6.003(1), Florida Administrative Code, the Commission has adopted and incorporated The Authoritative Dictionary of IEEE Standard Terms, 7th edition, published in December 2000 for purposes of Chapter 25-6, "Electric Service

by Electric Public Utilities,” Florida Administrative Code. The Authoritative Dictionary of IEEE Standard Terms defines “primary distribution feeder” (which term is interchangeable with “primary voltage distribution feeder”) as:

A feeder operating at primary voltage supplying a distribution circuit. *Note:* A primary feeder is usually considered as that portion of the primary conductors between the substation or point of supply and the center of distribution.

Distribution is defined by The Authoritative Dictionary of IEEE Standard Terms as:

A general term used, by reason of specific physical or electrical characteristics, to denote application or restriction of the modified term, or both, to that part of an electrical system used for conveying energy to the point of utilization from a source or from one or more main receiving stations. *Notes:* **1. From the standpoint of a utility system, the area described is between the generating source or intervening substations and the customer’s entrance equipment.** 2. From the standpoint of a customer’s internal system, the area described is between a source or receiving station within the customer’s plant and the points of utilization.

(emphasis added). There is no transformer that Cutrale owns which is between the generating source, or substation (Minute Maid Substation), and Cutrale’s entrance equipment (at the meter). Since Cutrale did not furnish and install any transformer between the Minute Maid Substation and the point of delivery (the meter), Cutrale is not entitled to a discount for transformer ownership.

The transformers at issue are part of Cutrale’s distribution system, not TECO’s. Note 2 of the above definition is more applicable to Cutrale’s situation. The transformers are part of the customer’s internal system because they fall in the area between the receiving station (the meter) and the points of utilization (Cutrale’s various buildings). As evidenced by Cutrale’s straight line diagram, Cutrale has engineered an intricate distribution system on its property. That system includes generators, switch and fuse assemblies, transformers, and distribution lines to serve its various needs on the Auburndale facility. Cutrale generates electricity at 13 kV and sends it to its Switch and Fuse Assembly. It also receives electricity from TECO and sends it through that same Switch and Fuse Assembly. From that Switch and Fuse Assembly, Cutrale distributes the energy throughout the site and transforms it to the various levels it needs to support its different operations. Accordingly, it is staff’s opinion that the transformers serving the Auburndale facility from the Minute Maid Substation do not meet the requirements for a Transformer Ownership Discount.

Staff believes the key to understanding the Transformer Ownership Discount subsection of the Firm Standby and Supplemental Service Tariff is understanding the purpose of the discount. The purpose, as stated by the Commission in its Order approving the tariff, is to recompense the transformer owner when the purchase of the transformer allows the utility and

other ratepayers to avoid the costs of transforming energy.¹ Cutrale's distribution system served by the Minute Maid Substation does not meet that purpose.

TECO is responsible for providing service to Cutrale at the meter at Cutrale's property. That meter is the point of delivery. Any transformation of electricity done after the point of delivery is the responsibility of the property owner, not TECO. Since TECO has no responsibility to transform the electricity, TECO has not avoided any costs it would have otherwise been responsible for. The rate structure, including the tariff setting forth Transformer Ownership Discounts, is designed to assign cost responsibility to the end users of electricity. When an end user of electricity defrays some of the costs that TECO is required to bear in providing service to customers, then that customer who helps defray that cost is entitled to a credit or discount. Since TECO was only required to provide service at 13 kV, TECO has no responsibility to transform the energy to lower than 13 kV. Because TECO has no responsibility for costs of transforming energy from 13 kV to 2.4 kV or lower, there are no costs of transformation that Cutrale has defrayed for TECO. Therefore, Cutrale is not entitled to the Transformer Ownership Discount.

Furthermore, once the 13 kV cogenerating units were in place, Coca Cola (now Cutrale) had the need to transform its own cogenerated electricity from 13 kV to lower voltages. Cutrale cannot use the output from its generators unless it transforms its own energy. It is not TECO's responsibility to transform the Cutrale generated energy from 13 kV to lower voltages. Cutrale would have to do so anyway. Therefore, there are no transformation costs that other ratepayers avoid paying.

The Commission's long-standing regulatory philosophy maintains that tariffs are to be designed so that the end user is fairly charged for his service and that the general body of ratepayers does not unduly or unreasonably bear the costs of that service. That philosophy was expressed by the Florida legislature in Section 366.03, Florida Statutes (F.S.).² Therefore, any discount to an individual ratepayer must be based on the premise as stated by the legislature. Staff believes that because the transformation from 13 kV and below does not avoid any costs which would otherwise belong to TECO, granting a Transformer Ownership Discount to Cutrale for the transformers served by the Minute Maid Substation would result in an unjust, unfair, and unreasonable preference to Cutrale.

Finally, the interpretation of the Tariff Agreement for the Purchase of Firm Standby and Supplemental Service, as evidenced by the actions of the original parties to the agreement, is

¹ "Transformer ownership discounts are given when a customer takes service at primary or sub transmission voltage and provides his own transformation. These discounts are justified because the demand charge includes costs associated with the company's cost of transformation. Thus, customers who take service at higher voltage levels should get a credit to recover the costs included in the rates which are related to transformation not required." Order No. 11307, issued November 10, 1982, in Docket No. 820007-EU, In re: Petition of Tampa Electric Company for an increase in rates and charges, p. 47.

² Section 366.03, Florida Statutes, in part provides that "All rates and charges made, demanded, or received by any public utility for any service rendered, or to be rendered by it, and each rule and regulation of such public utility, shall be fair and reasonable. No public utility shall make or give any undue or unreasonable preference or advantage to any person or locality, or subject the same to any undue or unreasonable prejudice or disadvantage in any respect."

proof that Cutrale is not entitled to the Transformer Ownership Discount. That agreement for service was memorialized by TECO and Coca Cola in 1988. From 1988 to 1996 when the agreement was assigned to Cutrale, there was no credit given. By their actions, neither Coca Cola nor TECO interpreted the Tariff Agreement to include a discount for a transformer. From 1996 until 2005 when this dispute arose between Cutrale and TECO, the parties did not interpret the Tariff Agreement to include a discount for transformer ownership for those transformers located on the Auburndale facility. Therefore, for 17 years the parties to the Tariff Agreement have interpreted, correctly in staff's opinion, that the Tariff Agreement for the Purchase of Firm Standby and Supplemental Service precludes any discount for ownership of the transformers located within Cutrale's distribution system served by the Minute Maid Substation.

Conclusion

Cutrale Citrus Juices USA, Inc. does not qualify for the discount to its rates as set out in Tampa Electric Company's Firm Standby and Supplemental Service, Fourth Revised Tariff 6.608 Transformer Ownership Discount. The point of delivery (or point of service) is the determining factor for entitlement for a Transformer Ownership Discount. The point of delivery in this circumstance is at TECO's meter which is prior to the Cutrale distribution system. TECO delivers electricity to Cutrale at TECO's meter at a 13 kV level of service. TECO's responsibility for providing service to Cutrale ends at its meter. Cutrale's responsibility for the distribution of services begins at the meter. The transformers for which Cutrale claims entitlement to the Transformer Ownership Discount are part of Cutrale's distribution system, not TECO's distribution system. The transformers transform electricity generated by Cutrale as well as that provided by TECO. Because the transformers are part of the distribution system of Cutrale, the transformers do not allow the utility to avoid the costs of transformation, which is the intent of the Commission's Order approving the tariff. By their conduct, the parties to the Tariff Agreement have, for the past 17 years, agreed that the transformers located on the Auburndale facility and served by the Minute Maid Substation are not entitled to a Transformer Ownership Discount.

Issue 2: Should Tampa Electric Company be required to refund Cutrale Citrus Juices USA, Inc. for Transformer Ownership Discounts?

Recommendation: No. If the Commission agrees with staff's recommendation in Issue 1, the Commission should not order Tampa Electric Company to refund Cutrale Citrus Juices USA, Inc. for Transformer Ownership Discounts. (Bennett, Kummer, Colson)

Staff Analysis: If the Commission agrees with staff's recommendation in Issue 1, the Commission should not order Tampa Electric Company to refund Cutrale Citrus Juices USA, Inc. for Transformer Ownership Discounts. Cutrale is not entitled to Transformer Ownership Discounts under TECO's tariff for the service Cutrale takes from TECO's Minute Maid Substation.

If the Commission disagrees with staff's recommendation in Issue 1, Cutrale should only be refunded for the amounts the Commission finds that Cutrale overpaid from 1996 to present. In its petition, Cutrale requests that the Commission require TECO to refund to Cutrale not only the overpayments Cutrale made, but also any overpayments made by Coca Cola. Coca Cola owned the Auburndale facility from 1987 to 1996. Cutrale only owned the Auburndale facility from 1996 to present. Staff was provided a copy of the Assignment of Contracts and Equipment Leases and Acceptance and Assumption Agreement between Coca Cola and Cutrale. This assignment does not clearly provide for assignment of contractual rights accruing prior to the 1996 assignment date. For any amount that Cutrale claims on behalf of Coca Cola, Cutrale should be required to provide proof that Coca Cola assigned Cutrale its rights to that refund.

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Date: May 21, 2008

Issue 3: Should this docket be closed?

Recommendation: Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order. (Bennett)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order.