

FLORIDA PUBLIC SERVICE COMMISSION

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Tallahassee, Florida 32399-0850

MEMORANDUM

AUGUST 22, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF ELECTRIC & GAS (BERG) *WBA* *JDJ*
DIVISION OF LEGAL SERVICES (ERS/LING) *ERS* *LDJ*

RE: DOCKET NO. 960874-EI - PETITION FOR APPROVAL OF TARIFF
CONTRACT FORM FOR DEPARTMENT OF TRANSPORTATION TRI-
PARTITE LIGHTING PROJECTS

AGENDA: SEPTEMBER 3, 1996 - REGULAR AGENDA - TARIFF FILING -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: 60 DAY SUSPENSION DATE - SEPTEMBER 30, 1996

SPECIAL INSTRUCTIONS: S:\PSC\EAG\WP\960874EI.RCM

CASE BACKGROUND

On July 31, 1996, Tampa Electric Company (TECO) petitioned the Commission for approval of a tariff contract form for Department of Transportation (DOT) Tri-Partite lighting projects. The contract will be used in situations where a right-of-way is shared between a state highway road widening project and the local electric utility. The contract will provide a mutually beneficial solution to the provision of lighting along state maintained roadways. In the past, if the DOT widened a roadway, the existing utility poles would have to be moved at the utility's expense. In addition, the right-of-way along a road could be too narrow to provide sufficient space for both the DOT street lighting and utility distribution poles. Road widening could force the utility to obtain an additional right-of-way for its distribution poles at the utility's expense. A related issue of concern dealt with the payment of the monthly tariffed rates for energy and maintenance of the lights. The DOT has no budgetary mechanism for making such monthly payments and assigns responsibility for these payments to the local governing agency. The local governing agency, however, often was not equipped to make the payments out of its existing budget.

DOCUMENT NUMBER-DATE

08901 AUG 22 96

FPSC-RECORDS/REPORTING

In 1995, Section 337.11 (13), Florida Statutes was amended to allow, in limited situations, street lighting service to be provided to the DOT on power-line poles without going through a competitive bidding process. The situations are limited to right-of-way conflicts and the street lighting service is cost-effective for the taxpayers. The DOT and TECO have developed a cost-effective process to provide street lighting in situations where there is a right-of-way conflict (the Tri-Partite Contract Form) that meets the concerns of all parties. Under the contract form, TECO will be able to share whatever right-of-way is available and potentially avoid relocating its poles by allowing the DOT to place streetlights on TECO distribution poles. In addition, it clearly establishes the monthly rate responsibility of the local government to pay for the energy and maintenance costs of the lighting project. This provision gives the local government an opportunity to make any necessary budgetary adjustments before the lights are constructed and service begins.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve TECO's tariff contract form for the Department of Transportation Tri-Partite Lighting Projects?

RECOMMENDATION: Yes.

STAFF ANALYSIS: Staff's analysis of the proposed contract form has focused on the effect that the contract has on TECO's general body of ratepayers. Under the contract form, TECO is responsible for the design and construction of the lighting system project. TECO is also responsible for providing maintenance and energy for the lighting system. TECO will own the lighting system. In exchange for the services that TECO provides pursuant to the contract form, TECO will be reimbursed as follows:

The Department of Transportation provides TECO with the capital funding needed to design and construct the lighting system. The price paid by the DOT will fully cover TECO's cost of constructing the lighting system. Tampa Electric asserts that there will be no dollar impact to plant in service or rate base since the cost is fully reimbursed by the DOT's payment.

The local governing agency provides TECO with the money needed for the maintenance, energy and fuel for the operation of the lighting system, under tariffed rates.

The Tri-Partite Joint Project Agreement leaves open the name of the local governing agency, the location of the stretch of state highway system to be lit and the capital cost of the work to be performed, which will be specific to each project undertaken. Staff, however, feels that the general body of ratepayers are adequately protected because of the clear assignment of cost responsibility.

ISSUE 2: What is the appropriate effective date for the tariff contract form for Department of Transportation Tri-Partite Lighting Projects?

RECOMMENDATION: September 3, 1996.

STAFF ANALYSIS: If the Commission approves the proposed tariff, it should become effective immediately.

ISSUE 3: Should the docket be closed?

RECOMMENDATION: Yes, if no protest is filed within 21 days of the issuance of this order.

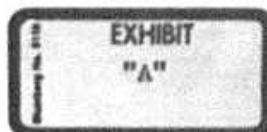
STAFF ANALYSIS: If a protest is filed within 21 days of the Commission order approving the tariff, the tariff should remain in effect pending resolution of the protest, with any increase held subject to refund. If no protest is timely filed, this docket may be closed.

TAMPA ELECTRIC COMPANY

ELEVENTH REVISED SHEET NO. 7.010
CANCELS TENTH REVISED SHEET NO. 7.010

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ORIGINAL SHEET NO. 7.700

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
TRI-PARTITE JOINT PROJECT AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 19____, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter called the DEPARTMENT, TAMPA ELECTRIC COMPANY, a corporation organized and existing under the laws of the State of Florida with its principal place of business in the City of Tampa, County of Hillsborough, State of Florida, hereinafter called the COMPANY, and _____, a political subdivision of the State of Florida hereinafter called _____.

WITNESSETH:

WHEREAS, the DEPARTMENT is constructing, reconstructing or otherwise changing a portion of the State Highway System, designated by the DEPARTMENT as Job No. _____ on State Road No. _____ between _____ and _____, hereinafter referred to as the PROJECT, which shall call for the installation of utilities within the right of way of said highway; and

WHEREAS, the COMPANY presently owns and operates certain utility facilities located within the right of way of said highway which will pose a conflict to construction of a new stand alone lighting utility system; and

WHEREAS, rather than relocating the existing utility facilities outside of the right of way, the DEPARTMENT and the COMPANY have determined that it would be cost effective and in the best interest of the general public for the COMPANY to attach arms and luminaires, to set mid-span poles, and/or upgrade existing poles, as needed, to its existing infrastructure located in the right of way and, in appropriate instances, to install a stand alone system in the right of way on the opposite side of said highway all at a mutually agreed upon cost; and

WHEREAS, the plans and specifications for the proposed installation and attachment, as above described, have been approved by the DEPARTMENT and the COMPANY and said above described work shall hereinafter be referred to as Utility Work; and

WHEREAS, upon the DEPARTMENT's final acceptance of the Utility Work, the COMPANY shall maintain such facilities and _____ shall bear the cost of said maintenance through payment of a monthly tariff rate; and

NOW THEREFORE, in consideration of the mutual undertaking as herein set forth, the parties hereto agree as follows:

1. The DEPARTMENT, the COMPANY and _____ shall participate in this Joint Project Agreement (JPA), the scope of which will cover only the Utility Work and maintenance of Utility Work within the limits of the PROJECT.

2. All of the work performed under this JPA shall be done in accordance with the National Electric Safety Code ("NESC") and the plans and specifications for the Utility Work as prepared by COMPANY and approved by DEPARTMENT, which plans and specifications are by

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reference hereto made a part of hereof. The COMPANY will be responsible for verifying the accuracy of the DEPARTMENT's underground survey information, and will also be responsible for any changes to the plans and specifications made necessary by error or omission in the DEPARTMENT's survey information as furnished to the COMPANY. All errors, omissions and changes in the design of the Utility Work will be the sole responsibility of the COMPANY. In any conflict between the COMPANY and DEPARTMENT specifications, the DEPARTMENT's specifications govern, provided, however, that the NESC shall be adhered to at all times. Any changes to the design plans and specifications for the Utility Work must be approved by the DEPARTMENT.

3. All adjustments, relocations, repairs, and incidentals required to be performed to the existing COMPANY utilities within the Project, not included in the JPA, will be sole responsibility of the COMPANY. All such work is to be coordinated with the construction of the PROJECT and in a manner that will not cause delay to the DEPARTMENT's highway contractor.

4. All services and work under the construction contract for Utility Work shall be performed to the satisfaction of the DEPARTMENT's Director, Division of Operations, and he shall decide all questions, difficulties and disputes of whatever nature, which may arise under or by reason of such contract for Utility Work the prosecution and fulfillment of the services thereunder, and the character, quality, amount and value thereof, and his decision upon all claims, questions and disputes thereunder shall be final and conclusive upon the parties hereto.

5. The COMPANY agrees to perform the Utility Work in accordance with the provisions of Rule 14.46.001 (2) and (3), Railroads/Utilities Installation or Adjustment, Florida Administrative Code, and any supplements or revisions thereto, which, by reference hereto are made a part of this JPA.

6. The COMPANY further agrees to fully comply with the provisions of Title VI of the Civil Rights Act of 1964 in connection with the Utility Work covered by this JPA, and such compliance will be governed by the method checked and described hereafter:

_____(a) The COMPANY will perform all or part of such Utility Work by a Contractor paid under a contract let by the COMPANY, and the Appendix "A" of Assurances attached to this agreement will be included in said contract let by the COMPANY.

_____(b) The COMPANY will perform all of such Utility Work entirely with COMPANY's forces, and Appendix "A" of Assurances is not required.

_____(c) The Utility Work involved is agreed to by way of just compensation for the taking of COMPANY's facilities located on right of way in which the COMPANY holds a compensable interest, and Appendix "A" of Assurances is not required.

_____(d) The COMPANY will perform such Utility Work entirely by continuing contract, which contract to perform all future Relocation Work was executed with COMPANY's Contractor prior to August 3, 1965, and Appendix "A" of Assurances is not required.

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7. Attached hereto, and by reference made a part of hereof, as Exhibit "A" is a detailed analysis of the estimated cost of the Utility Work. The COMPANY and the DEPARTMENT have agreed that payment for the Utility Work shall be _____, subject to paragraph nine (9) hereunder.

8. The COMPANY shall obtain written approval from the DEPARTMENT prior to performing work which exceeds the estimated costs set out in paragraph seven (7) above. The provisions of subsection 339.135(6)(a), Florida Statutes, are made a part of this contract. The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsections is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of \$25,000 and which have a term for a period of more than one (1) year.

9. The COMPANY should be aware of the following time frames. Upon receipt, the DEPARTMENT has five working days to inspect and approve the goods and services, unless the Agreement specifies otherwise. The DEPARTMENT has 20 days to deliver a request for payment (voucher) to the Department of Banking and Finance. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.

If payment is not available within 40 days, a separate interest penalty at a rate specified in Section 55.03, Florida Statutes, will be due and payable, in addition to the invoice amount. Interest penalties of less than one (1) dollar will not be enforced unless the COMPANY requests payment. Invoices which have to be returned to the COMPANY because of COMPANY preparation errors will result in a delay in payment. The invoice payment requirements do not start until a properly completed invoice is provided to the DEPARTMENT.

10. The provisions subsection 287.133(2)(a), Florida Statutes, are made a part of this contract. A person affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in s.287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

11. The provisions of Section 287.0582, Florida Statutes are made part of this contract. No executive branch public officer or employee shall enter into any contract on behalf of the state, which contract binds the state or its executive agencies for the purchase of services or tangible personal property for a period in excess of 1 fiscal year, unless the following statement is included in the contract: "The State of Florida's performance and

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obligation to pay under this contract is contingent upon an annual appropriation by the Legislature".

12. After the DEPARTMENT's final acceptance of the Utility Work, and for the 20 year life of such Utility Work, the COMPANY shall own, control, maintain and be responsible for all Utility Work in accordance with the terms of the standard permit required by Florida Law for occupancy of public rights of way, and the COMPANY shall comply with all provisions of law and with the DEPARTMENT's manual for traffic control routing and parking and with all other applicable regulations of the DEPARTMENT pertaining thereto.

13. For the 20 year life of Utility Work, _____ agrees to be responsible for the payment of all maintenance costs associated with the Utility Work. The COMPANY shall perform all maintenance of Utility Work on an as needed basis, which maintenance shall include all items set forth in Exhibit "B" attached hereto and by reference made a part hereof as well as perform all relocation of Utility Work required by the DEPARTMENT for its construction projects in a timely manner so as not to delay such projects. All such relocation shall be in accordance with the provisions of Rule 14.46.001, Railroads/Utilities Installation or Adjustment, Florida Administrative Code and any supplements or revisions thereto. The maintenance costs which _____ agrees to be responsible for shall also include payment of all costs for electrical energy and any other related charges incurred in connection with the operation of the completed lighting system associated with the Utility Work. The COMPANY shall invoice _____ for those maintenance costs as itemized in Exhibit "B" on the _____ day of each month for the 20 year life of this JPA.

14. The COMPANY hereby agrees to indemnify, defend, save and hold harmless the DEPARTMENT for all claims, demands, liabilities and suit of any nature whatsoever arising out of, because of, or due to the breach of this JPA by the COMPANY, its agents or employees, or due to any act or occurrence or omission or commission of the COMPANY, its agents or employees. It is specifically understood and agreed that this indemnification agreement does not cover or indemnify the DEPARTMENT, or its agents or employees, for its own negligence or breach of contract.

15. This JPA shall automatically terminate twenty (20) years from the date of the DEPARTMENT's final acceptance of the Utility Work. Upon said termination, the DEPARTMENT will determine, in its sole discretion, if the Utility Work shall be recapitalized or if the DEPARTMENT shall include a build out of facilities in its Five Year Work Program.

16. In the event this agreement is terminated pursuant to paragraph 17 hereunder, COMPANY agrees to perform all relocation of Utility Work required by the DEPARTMENT for its construction projects in a timely manner so as not to delay such projects and all in accordance with the provisions of Rule 14.46.001 and Section 337.403 and 337.404, Florida Statutes, as applicable.

17. This Contract shall not become effective unless and until it has been executed by all the parties. The parties understand and agree that Tampa Electric's obligations hereunder are subject to the FPSC's approval of this Contract remaining in full force and effect and the Contract may be terminated without liability in order to comply with regulatory rulings.

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IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers, and their official seals hereto affixed, the day and year first above written.

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

BY: _____ (SEAL) _____
District Secretary District Utility Engineer

ATTEST: _____
Executive Secretary Approved to as Form, Legality
and Execution

BY: _____ (SEAL)

ATTEST: _____

COMPANY: _____

BY: _____ (SEAL)

Title: _____

ATTEST: _____