

ORIGINAL



July 20, 2000

VIA FEDERAL EXPRESS

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

980643-EI

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

Dear Ms. Bayo:

Enclosed for filing is the original and 15 copies of the Tampa Electric post-hearing comments in the above mentioned proceeding.

Please acknowledge receipt and filing of the above by stamping a duplicate copy of this letter and returning same to me in the enclosed, self-addressed envelope.

Sincerely,

Harry W. Long, Jr.  
Chief Counsel

APP None Enclosures

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cc: All Parties of Record (w/encl.)

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## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Proposed Amendments to Rules 25-6.135, )  
 F.A.C., Annual Reports; 25-6.1351, F.A.C., ) DOCKET NO. 980643-EI  
 Cost Allocation and Affiliate Transactions; and ) FILED: July 21, 2000  
 25-6.0436, F.A.C., Depreciation )

**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.

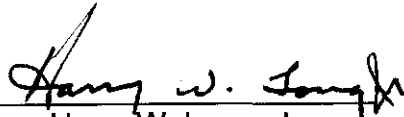
Tampa Electric appreciates the opportunity to participate in this rule making process and in having the opportunity to provide these final comments on this proposed rule.

Respectfully submitted,

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By:   
Harry W. Long, Jr.

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**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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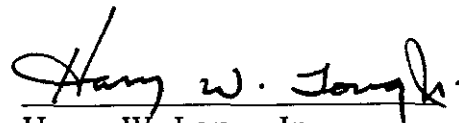
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