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June 24, 1999

HAND DELIVERED

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

Re: FPSC Docket No. 980569-PU

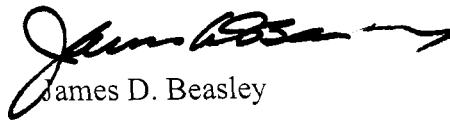
Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa Electric Company's Written Comments on Proposed Rule Changes.

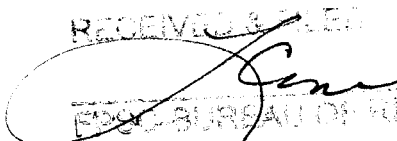
Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,


James D. Beasley

AFA 1
APP Moore
CAF IDB/pp
CMU 1 Enclosures
CTR
EAG 2
LEG cc: All Parties of Record (w/enc.)
MAS 5
OPC
RRR 1
SEC 1
WAW 1
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FPSC BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

07673 JUN 24 1999

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Amendments to Rule)
 25-4.002, F.A.C., Application and Scope;)
 25-4.141, Minimum Filing Requirements)
 for Rate of Return Regulated Local)
 Exchange Companies; Commission)
 Designee; 25-4.202, Construction and)
 Waivers; 25-24.455, Scope and Waiver;)
 25-6.002, Application and Scope; 25-6.043,)
 Investor-Owned Electric Utility Minimum)
 Filing Requirements; Commission Designee;)
 25-6.0438, Non-Firm Electric Service – Terms)
 and Conditions; 25-17.087, Interconnection)
 and Standards; 25-30.010, Rules for General)
 Application; 25-30.011, Application and Scope;)
 25-30.436, General Information and Instructions)
 Required of Class A and B Water and Wastewater)
 Utilities in an Application for Rate Increase;)
 25-30.450, Burden of Proof and Audit Provisions;)
 25-30.455, Staff Assistance in Rate Cases;)
 25-30.456, Staff Assistance in Alternative Rate)
 Setting; 25-30.570, Imputation of Contributions-)
 In-Aid-of-Construction; and 25-30.580,)
 Guidelines for Designing Service Availability.)
 _____)

DOCKET NO. 980569-PU
 FILED: June 24, 1999

**TAMPA ELECTRIC COMPANY'S
 WRITTEN COMMENTS ON PROPOSED RULE CHANGES**

Tampa Electric Company ("Tampa Electric" or "the company"), pursuant to the Order Establishing Procedures dated May 13, 1999,¹ submits the following written comments relative to the proposed rule changes in this docket:

General Comments

1. The Legislature's recent amendments to the Administrative Procedure Act specifically state that strict application of uniformly applicable rule requirements can lead to

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REGISTRATION REPORTING

unreasonable, unfair and unintended results in particular instances and that in such cases it is appropriate to have a procedure for agencies to provide relief to persons subject to regulation. This Commission has traditionally recognized the need for flexibility in its regulatory requirements so as to avoid uneconomic, unfair, and undesirable results. These comments are submitted in recognition of the benefits inherent in regulatory flexibility.

2. Of the rule proposals set forth in the Notice of Rulemaking in this docket, Tampa Electric's principle concerns have to do with proposed repeal of the following rule provisions:

(a) Rule 25-6.002(2) and (4). The subsections in question provide for modification or exemption from rule requirements in cases of unusual hardship or difficulty or under exceptional conditions.

(b) Rule 25-6.043(3). This subsection states that the Commission will waive the Commission's Minimum Filing Requirement ("MFR") rule for investor-owned electric utilities upon a showing that data production would be impractical or impose an excessive economic burden on the utility.

(c) Rule 25-6.0438(9). This subsection provides that the Commission may waive any provision of its rule concerning non-firm electric service after notice to all affected customers.

3. Repeal of the above-listed rule provisions by definition would adversely affect the substantial interests of Tampa Electric and other Commission regulated investor-owned utilities. Repeal of Rule 25-6.002(2) and (4) would mandate an investor-owned utility's compliance with a rule even in cases of unusual hardship or difficulty or when exceptional conditions would otherwise warrant a modification or exemption of the rule requirement. Repeal of Rule 25-6.043(3) would require an investor-owned electric utility to produce MFR data even in situations

¹ Order No. PSC-99-0968-PCO-EU

where it would be impractical or when such production would impose an excessive economic burden on the utility. Finally, repeal of Rule 25-6.0438(9) would disallow waivers of the Commission's non-firm electric service rule even in situations where the same might be shown to be clearly justified. All of these results would adversely impact Tampa Electric, drive up its cost of providing electric service and, in the process, be harmful to Tampa Electric's customers. Set forth below are Tampa Electric's specific comments regarding each of the three proposed rule revisions in question.

Repeals Unnecessary

4. At the outset the Commission should consider whether any action is dictated by the 1996 amendments to the Administrative Procedure Act and the adoption of the Uniform Rules of Procedure. Each of the waiver/modification provisions identified in paragraph 2 is a substantive provision of the rule in which it appears, and may be applied uniformly to all who are subject to the rule. Anyone desiring to demonstrate why the otherwise applicable provisions of the rule should not be applicable in a given situation is free to avail itself of the opportunity, and that opportunity was afforded when the rules were adopted.

5. The 1996 Amendment to the Administrative Procedure Act reflected in Section 120.542, Florida Statutes, appears to be intended to allow for variances and waivers with respect to rules not containing such substantive provisions. This does not appear to require any repeal of the substantive waiver provisions contained in the rules identified in paragraph 2 above.

Proposed Repeal of Rule 25-6.002(2) and (4)

6. The proposed repeal of Rule 25-6.002(2) does not appear to be necessary or required by the new rulemaking standard in Section 120.536, Florida Statutes. Subsection (2) does not effect a waiver or variance but simply states the Commission's willingness to entertain

requests for modification of a rule or for temporary exemption from its requirements. Any party should at any time be authorized to petition for the modification or amendment of a rule. Nowhere in the revised APA is there a prohibition against any affected person petitioning an agency to modify a rule.

7. Subsection (2), likewise, does not offend the provisions of Section 120.542 concerning the procedures for obtaining variances and waivers. Subsection (2) simply states that a temporary exemption can be available. Read along side Section 120.542, Florida Statutes, this would mean that a temporary exemption can be available provided the requesting party complies with uniform procedures contained in Chapter 28-104, Florida Administrative Code. In summary, there is no demonstrated need to repeal Subsection (2) of Rule 25-6.002.

8. The same can be said for Subsection (4) of this rule. That subsection authorizes the Commission to alter or amend rules in whole or in part upon request made or upon its own motion. Again, the APA does not preclude the Commission from altering or amending rules provided that the proper procedures are followed. Subsection (4) of the rule does not require or condone the pursuit of improper procedures for altering or amending a rule.

9. Subsection (4) of the rule also allows the Commission to require “any other or additional service, equipment, facility, or standard, or for making such modification with respect to their application as may be found necessary to meet exceptional conditions.” Given the nature of the provision of electric service, this type of flexibility is inherently essential. Rules should not stand in the way of safety or reliability.

Proposed Repeal of Rule 25-6.043(3)

10. Repeal of Rule 25-6.043(3) would require an investor-owned electric utility to produce MFR data even in situations where it would be impractical or when such production

would impose an excessive economic cost on the utility without any improvement to the regulatory process.

11. There is a way to amend the MFR rule to preserve the Commission's regulatory flexibility and yet avoid conflicts with Chapter 28-104 concerning procedures relative to a variance or waiver. Attached hereto is a markup of the existing Rule 25-6.043 showing in legislative format the changes that can be made in order to ensure that the appropriate MFR schedules are completed by a particular electric utility applicant. This would be an improvement over the existing rule in that it would prescribe a procedure for determining which MFR schedules are truly applicable and necessary for a particular utility.

12. The effect of Tampa Electric's proposed changes to Rule 25-6.043, Florida Administrative Code, would be as follows:

(a) The changes would ensure a uniform process, applicable to each investor-owned electric utility, for fine tuning the appropriate MFR schedules for each utility. This would avoid the delay and burdening nature of the waiver and variance requirements of the uniform rules.

(b) These changes would provide a process to ensure that necessary and applicable MFR schedules are included in a utility's filing and that unnecessary, inapplicable or superfluous schedules are omitted from the outset.

(c) The proposed changes would avoid unnecessary regulatory efforts by all involved.

13. The existing rule recognizes that MFRs need to be "custom fit" for each new proceeding and that the appropriateness of schedules may be affected by the utility's last case as well as more recent proceedings of other utilities where the structure and content of MFRs has

been more refined. Tampa Electric's proposed revision to the rule will provide the flexibility needed to facilitate a balancing of the appropriateness of the schedules used in the utility's most recent case with the scope and content of schedules used in more recent cases of other utilities to ensure that an adequate and user friendly set of MFR schedules is presented.

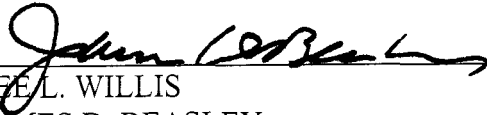
Proposed Repeal of Rule 25-6.0438(9)

14. Tampa Electric does not oppose the repeal of subsection (9) of Rule 25-6.0438 provided the underscored language below is added to subsection (8) of the rule. This additional language will clarify the availability of tariff provisions of the type already approved by the Commission.

(8) Minimum Notice to Transfer from Non-Firm to Firm Service. Each utility that offers non-firm service shall include a specific provision in its tariff that requires a customer to provide the utility with at least five years advance written notice in order for the customer to be eligible to transfer from interruptible to firm service. A utility may apply to the Commission for approval of a different minimum notice requirement if it can demonstrate that a different notice requirement is necessary or appropriate, either for all or any individual non-firm service offerings. The utility may file tariff provisions that allow transfers from non-firm to firm service on less than the required notice period if the transferring party pays an appropriate compensating penalty and the utility determines that such early transfer will not harm its ability to provide adequate and reliable service to its general body of ratepayers.

DATED this 24th day of June, 1999.

Respectfully submitted,



LEE L. WILLIS
JAMES D. BEASLEY
Ausley & McMullen
Post Office Box 391
Tallahassee, FL 32302
(850) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Comments, filed on behalf of Tampa Electric Company, has been forwarded by U. S. Mail or hand delivery(*) on this 24th day of June 1999 to the following:

Ms. Christiana Moore*
Staff Counsel
Division of Appeals
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

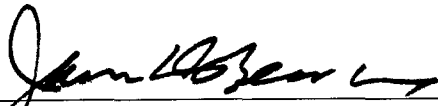
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Senior Counsel
Florida Power Corporation
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ATTORNEY

**25-6.043 Investor-Owned Electric Utility Minimum Filing Requirements;
Commission Designee.**

(1) General Filing Instructions

(a) The petition under section 366.06 and Section 366.071, Florida Statutes, for adjustment of rates must include or be accompanied by:

1. All schedules ~~The information required by~~ listed in Commission Form PSC/EAG/11 (), entitled "Minimum Filing Requirements for Investor-Owned Electric Utilities" (the "MFR Form") that are applicable to the utility, which MFR Form is incorporated into this rule by reference.

The MFR Form may be obtained from the Commission's Division of Electric and Gas.

2. The exact name of the applicant and the address of the applicant's principal place of business.
3. Copies of prepared direct testimony and exhibits for each witness testifying on behalf of the Company.

(b) In determining which of the items listed in the MFR Form are applicable to the utility and in compiling the required such schedules, a company shall follow the policies,

procedures and guidelines prescribed by the Commission in relevant rules and in the company's last rate case or in a more recent rate case involving a comparable utility. These schedules shall be identified appropriately (e.g., Schedule B-1 would be designated Company Schedule B-1 – Company basis). Prior to completing the applicable schedules from the MFR Form, the utility shall furnish the Commission's Staff a list of the schedules from the MFR Form and from utility's last rate case and any subsequent cases of other comparable utilities that the utility considers applicable to its filing. The Staff will thereafter review the utility's supplied list and notify the company as to whether (a) the Staff agrees with the utility, (b) the Staff feels that additional schedules not identified by the utility are applicable and necessary, or (c) the Staff identifies the schedules listed by the utility that the Staff believes are not applicable or necessary. If the Staff and the utility cannot after due diligence reconcile the appropriate list, they shall present the matter to the prehearing officers for resolution.

(c) Each schedule shall be cross-referenced to identify related schedules as either supporting schedules and/or recap schedules.

(d) Each page of the filing shall be numbered on 8 ½ x 11 inch paper. Each witness' prefiled testimony and exhibits shall be on numbered pages and all exhibits shall be attached to the proponent's testimony.

(e) Except for handwritten official company records, all data in the petition, testimony, exhibits and minimum filing requirements shall be typed.

(f) Each schedule shall indicate the name of the witness responsible for its presentation.

(g) All schedules involving investment data shall be completed on an average investment basis. Unless a specific schedule requests otherwise, average is defined as the average of thirteen (13) monthly balances.

(h) Twenty-one (21) copies of the filing, consisting of the petition and its supporting attachments, testimony, and exhibits, shall be filed with the Division of Records and Reporting.

(i) Whenever the company proposes any corrections, updates or other changes to the originally filed data, twenty-one (21) copies shall be filed with the Division of Records and Reporting with copies also served on all parties at the same time.

(2) Commission Designee: The Director of the Division of Electric and Gas shall be the designee of the Commission for purposes of determining whether the utility has met the minimum filing requirements imposed by this rule.

~~(3) Waiver of Minimum Filing Requirements. The Commission may grant a waiver with respect to specific data required by this rule upon a showing that production of the data would be impractical or impose an excessive economic burden upon the company.~~

Specific Authority: 366.05(1),(2), 366.06(3), F.S.

Law Implemented: 366.06(1), (2), (3), (4), 366.04(2) (f), 366.071, F.S.

History: New 5/27/81, formerly 25-6.43, AMENDED 7/5/90.

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