

A REPORT ON INDUSTRY CONCERNS REGARDING UNFAIR UTILITY COMPETITION

Prepared by :

**THE FLORIDA ALLIANCE FOR
FAIR COMPETITION**

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THE FLORIDA ALLIANCE FOR FAIR COMPETITION

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(RACCA)**

THE ISSUE: UTILITY DEREGULATION

Everyone should be aware that, by the turn of the century, utility deregulation will dramatically change how America's regulated monopolies do business.

Congress and a majority of the states have already decided that deregulation will be in the best interests of consumers of power. Just as we have seen with telephone and cable services, the generation and distribution of power will be exposed to a free-market system.

All of us, as consumers, probably welcome the thoughts of having a choice of how we wish to purchase our power. The introduction of competition is expected to produce lower rates for consumers.

The franchising and restricted geographical areas that protected utilities, in the past, will be gone. The guaranteed return on investment for utility stockholders will be gone. The regulated rates paid by consumers, whether justified or artificially set, will be gone. Once localized utilities will be able to sell their power across a state or, perhaps, the nation; we should expect plenty of the telephone solicitations and junk mail that we have already experienced with telephone deregulation.

In the end, the utilities will look for programs, services and other value-added gimmicks in order to separate themselves from their competition. Having enjoyed protection in the past - this will be a new era.

In the past, the regulated utilities have had the ability to operate programs that extended outside of their granted authority to generate and distribute power. These programs are best known as demand-side management (DSM). In most cases, these DSM programs were sanctioned or even required by the state's Public Service or Utility Commissions - who are charged with the responsibility to oversee the operation of utilities.

Typical DSM programs included rebates and incentives offered by the utility to induce power consumers to purchase products or services from private industry that would result in less power consumption or lower power usage during peak demand periods. Good examples of these types of programs would be utility provided cash rebates or subsidies for installing high efficiency heating and cooling equipment or repairing a leaking air duct system. Some programs offered incentives for using energy efficient lighting for homes and businesses. Other programs allowed the utility to interrupt service to a household, during peak conditions, in exchange for discount rates.

The revenue to operate these DSM programs was derived from the utilities base of ratepayers. The theory of DSM is that, if the ratepayers share in a little of this cost they will avoid future significant rate increases. This is accomplished when a consumer uses the utility-provided rebate to offset the higher cost of more energy efficient equipment than they would have been inclined to purchase. This small investment by the utility (its ratepayers) would result in less electrical demand by a newly installed or replaced system. The net result is that millions of dollars may be spent now to induce efficiency so that billions will not be spent in the near future for utility infrastructure such as power plants. Public Service Commissions have seen this as a wise investment for holding down ratepayer costs.

Private industry and small business have enjoyed years of cooperative relationships with their local utilities, where DSM programs are concerned. The Electrical Contracting Industry and the Heating, Air Conditioning, Ventilation and Refrigeration (HVACR) Contracting Industry have established partnerships with utilities that have led to very successful DSM programs. The contractors conduct business with their own customer base and promote the value of the utilities incentive programs. The incentive or subsidy helps the contractor to up-sell or add value, thereby increasing business. The utility (and its ratepayers) benefit because the reduced electrical demand holds down and stabilizes rates. The contractor's customer benefits in that they have high-efficiency equipment (less cost to operate) and the utility helped defray the additional purchase price.

The Electrical and HVACR Contracting Industry has supported and promoted DSM programs because of the mutual benefits enjoyed by all. Contractors were allowed to develop and maintain their customer base in a fair and competitive atmosphere as provided by a free-market system.

THE PROBLEM: UNFAIR COMPETITION

Utilities are preparing for the competition, they believe, will occur as a result of deregulation. Many utilities with higher rates than a neighboring utility, or one located in another part of a state or the country, worry that they will not be able to compete. If they lose ratepayers they may also lose investing stockholders. Since return on investment will no longer be a guarantee, investors will surely shop around. Consequently, most utilities are developing programs that will insure their continuation in spite of rates charged for delivery of energy.

While the DSM programs of the past were considered revenue neutral by Public Service Commissions and business friendly by contractors, the new programs are something entirely different. The utilities readily admit that the new "ventures" are designed to capture and retain ratepayers and produce "profits".

These new programs seem harmless enough at first glance, but may portend a catastrophe for small contracting business owners in the future.

In 1996, Florida Power Corporation (FPC), which primarily services the West Coast of Florida from Tampa Bay and above, instituted a pilot program for maintenance on heating and air conditioning equipment. This program provided an annual or semiannual preventative maintenance inspection on equipment. The ratepayers that sign on to this program pay a small additional fee each month on their electric bill. This service, directly, competes with private industry.

Even though private contractors are invited to participate by supplying the inspectional service, itself, the utility becomes the "broker" or third party agent. In many instances the PM inspection agreement may end up supplanting the contractor's agreements. Initially, contractors are asked to bid for the opportunity to be on the utilities list of "authorized service providers". However, contractors worry that eventually the utility will set the price they will pay. The concern is that the consumer's price will be artificially low because the utility will subsidize part of the cost through its ratepayer base.

In 1997, Florida Power and Light Corporation (FPL), which serves the southern part of the state, is expected to introduce the "Appliance Guard Program". This is a full-scale appliance "warranty" program which insures or indemnifies equipment. Again, the contractors have the same cross-subsidization concerns as were previously stated with the FPC maintenance program.

This issue of unfair competition is not new. Some examples of unfair utility competition in recent years around the country are as follows: Minnegasco (Minnesota) offered inspection and repair services directly to its ratepayer customer base using utility employees. The price for these services was well below the trade market-value of private industry, because the service was cross-subsidized by Minnegasco's entire ratepayer base. After an Industry Alliance brought suit, the Minnesota Public Utility Commission forced the utility to make changes in the program.

Baltimore Gas & Electric purchased one of the largest mechanical contracting firms in Maryland, in order to carry out its in-house operations in direct competition with the contracting industry. The purchase and ongoing operations are, to this day, cross-subsidized by B G & E ratepayers.

Kansas City Power & Light has developed the "Worry Free" program that is very much like the proposed FPL "Appliance Guard" program. The utility, in this case, worked out a deal with a select group of local contractors to perform the services. Many of us, in the industry, view this sort of an arrangement as a restraint of trade issue.

The reader should be aware that utilities, all across the country, have engaged in similar programs for some time now and they are still regulated monopolies. Their base of ratepayers have been "footing the bill" for research, consumer sampling, planning, marketing and implementation.

Florida's Public Service Commission has long required that utilities keep a separate accounting function to prove that the sales of service and products does not increase the ratepayers cost.

Private industry contends that, while energy rates may not have increased as a result of these activities, there is every reason to believe that rates would have been reduced had the utilities not engaged in these programs. Cross-subsidization has and already is occurring.

THE UNFAIRNESS

Let us take, for example, the FPC and FPL programs previously mentioned. The two utilities have invested at least one and perhaps a couple of years in researching the ideas behind these programs. They have contributed the time of senior management, public relations and marketing staff employed by the utility. They have paid untold dollars to outside consultants and to corporate attorney's. They have conducted consumer research and focus groups. They have developed slick campaigns to sell the contracting industry on their ideas. All of this activity in research and development has surely cost significant dollars. Marketing and program implementation, as well as, program administration will cost a lot more.

There is no "kitty" or "slush fund" for the sole purpose of developing these programs. The ratepayer is subsidizing the development of these programs because utility employees and utility assets are involved in the process.

If a utility wishes to venture from its traditional role, as a regulated monopoly - then its shareholder/investors should make the necessary capital investments . . . not the ratepayers.

THE SOLUTION: LEGISLATION

The legislature must consider enacting some rules that will enable the industry small business owner to continue to compete. The independent contractors do not have a deep well of ratepayers to help finance a business start-up or expansion.

Some industry associations have attempted to negotiate the "best deal" they can get, for their members, with the utility. In our opinion this tactic is flawed. With a dozen or more utilities and cooperatives around the state - associations will spend the next decade negotiating with every utility about every new program they design. In the end, industry will have nothing more than a gentlemen's agreement and a promise that the utility will not unfairly compete. Associations may strike deals with a utility that would encompass only their members and preclude independent contractors who have no affiliation. This is wrong, as well.

The legislation should consider the following points:

1. Logo and Name Recognition - Any utility wishing to operate a for-profit business should not be able to rely on its name, logo or corporate identity that was established as a regulated business. Ask any contractor what his legal chances (of avoiding a lawsuit) would be if his company name or logo were similar to the power company. This identity was bought and paid for by ratepayers.
2. Human Resources - Utility employees whose wages and benefits are paid by ratepayers should not be allowed to work the for-profit business.
3. Utility Assets - Infrastructure, buildings, furnishings, equipment, vehicles and all other physical assets were gained through the revenue generated by a captive ratepayer base. No independent contractor can compete with or have access to this sort of immediate capitalization. These assets should not be available on the for-profit side.
4. Marketing and Promotion - The utility owns an insurmountable advantage. Everyone who uses electricity or gas is known to the utility and is communicated to once a month, through the billing process. Already, a utility includes promotional and marketing material in with their bill. This can not be allowed. The independent contractor could neither duplicate nor afford the cost of such a campaign. Again, ratepayer revenue funds the cost of this unfair competition.
5. Purchasing Power and Credit Lines - Imagine the utility striking a deal with a major air conditioning equipment manufacturer for the purchase of tens of thousands of units. The price advantage gained from such a transaction could severely undermine private industry ability to compete. Some utilities in other parts of the country are already developing programs that would allow ratepayers to finance new equipment (on their utility bill) through ten-year leasing programs. These long-term leasing programs are designed to lock-in consumers to that utility, for a period of time, regardless of rates. This is exactly opposite of what deregulation is intended to do.

The point is that independent contractors can't compete against the utilities purchasing power and lines of credit - all of which resulted from its regulated activities.

Private industry believes that the utilities enjoy some unique and protected (past or present) advantages over the common business owner. These advantages should be stripped away. If a utility wishes to enter the free market system and assume the risks that accompany the opportunity to make a profit, its stockholders should make the investment - not the ratepayers.

POSITION STATEMENT

The Florida Alliance For Fair Competition objects to and does not support the actions of any regulated utility (under Fl. statutes and regulated by the PSC) or its holding corporation(s) that engages or attempts to engage in unfair competition with an already established free-enterprise industry.

The Alliance identifies and defines unfair competition as:

1. The utilities use of its corporate name recognition, corporate logo or other such identity that has been established during the time period in which the utility was a regulated monopoly with the principal purpose of generating and distributing electric power or gas, and now intends to use that identity in order to enter the non-regulated business sector.

2. The utilities use of its banking and credit lines and other financial advantages that it may have developed as a regulated monopoly in order to enter the non-regulated business sector.

3. The utilities use of facilities, structures, furnishings, equipment, vehicles and other tangible property that was acquired while the utility was regulated and serving its ratepayers, for the purpose of entering the non-regulated business sector.

4. The utilities use of its own personnel, insurance plans, benefit and pension plans and other areas of human resources that were developed as a regulated monopoly and in which it now intends to use these assets for the purpose of entering the non-regulated business sector.

5. The utilities use of customer base information, demographics, mailing lists, postage and mailing systems that were developed as a regulated monopoly and in which it now intends to use for the purpose of entering the non-regulated business sector.

6. The utilities use of purchasing power, that was developed while it was a regulated monopoly, which it now intends to use in purchasing equipment, products, parts and other services to compete with the non-regulated business sector.

The Alliance of Associations recognize that any individual or corporate entity has the right to enter our industry and operate a business under the law. The Alliance also recognizes that most business owners have toiled to make their businesses grow and become successful. They were not allowed to monopolize a market with a captive ratepayer base, guaranteed revenue and fixed prices that eventually lead to assets in the billions. To enter the free-enterprise system with this sort of "headstart" can only be described as unfair competition.

UTILITY DEREGULATION: *Cross-Subsidization*

We have been asked why it is "unfair" for utilities like FPL to enter the HVACR contracting industry. The answer is that it isn't unfair unless they engage in "cross-subsidization." When a utility cross-subsidizes a non-utility business, it uses some of the phenomenal advantages it has gained by being a government-sanctioned monopoly for so long.

For example, if FPL used its huge customer lists to market a non-utility business, that would be cross-subsidization. This would be "unfair" to HVACR contractors, because a contractor

would have to pay huge sums to buy the same list from a list company. There are many other advantages that would also fall into this category: truck fleets, discounted advertising rates, billing inserts, and special marketing arrangements.

As Congress considers options in opening utility markets to fair competition, it must ensure that the resulting markets operate openly and fairly. This means eliminating cross-subsidization so that monopoly assets cannot be misappropriated to reduce marketplace competition.

When utilities fail to charge the full and fair market price for offered services to non-regulated subsidiaries, it amounts to taking money out of utility consumers' hands in order to defer the costs of entering and operating in a competitive market. You as a contractor cannot subsidize your business expenses from "free" outside sources, so this activity is "unfair." As long as utility and non-utility functions are maintained within the same organization, illegal value transfers will continue to be hidden. Structural restrictions or special trading arrangements are the only way to ensure non-regulated subsidiaries earn no unfair advantage in the marketplace.

For further information regarding this aspect of utility deregulation, please call Angie Conway at ACCA National at (202) 483-9370. ▲

EDITORIAL PAGE



GUEST EDITORIAL

Maryland governor signs bill to help prevent utility cross-subsidization

The following was submitted by the Maryland Alliance for Fair Competition. For more information, call 800-498-6232.

The Maryland Alliance for Fair Competition has scored a significant victory this past legislative session of the Maryland General Assembly. In his final bill signing ceremony of the year, Governor Paris Glendening gave his approval for legislation aggressively supported by the Alliance, which specifically is aimed at protecting the small independent contracting industry in Maryland.

House Bill 1149, legislation regarding the cost allocation manual process, sponsored by Delegates Katherine Klausmeir of Perry Hall and Donald Hughes of Salisbury, would require public utilities to essentially monitor how they allocate resources to their non-regulated business affiliates, such as various heating, ventilation, and air conditioning businesses that are competing with private independent contractors throughout Maryland.

This legislation, which oppo-

nents state will "stymie the utilities' diversification efforts," aims to prevent cross-subsidization of a public utility's for-profit subsidiaries.

Former Baltimore county executive Dennis Rasmussen, now an Annapolis lobbyist who represents the Maryland Alliance for Fair Competition, believes that this new law aims to not only create a level playing field for all independent contractors, but also acts to the benefit of all ratepayers throughout Maryland.

According to Rasmussen, "House Bill 1149 ensures that utilities do not utilize ratepayers' money to support their for-profit subsidiaries. Utilities have proved in the past that they cannot be trusted to self-regulate their cost allocation manuals."

In 1992, the staff of the Public Service Commission identified that Baltimore Gas & Electric (BGE) used at least \$550,000 of ratepayer money to subsidize its non-regulated affiliates.

Larry LeDoyen, Alliance board member, stated that "subsequent studies would reveal that an even greater amount of ratepayers' money

"The governor and the General Assembly have finally acknowledged the serious issues confronting the independent contractor industry. House Bill 1149 is a step in the right direction. However, there is much left to accomplish before the Public Service Commission."

***— Alliance lobbyist
Dennis Rasmussen***

may have been used to finance the utilities' subsidiaries."

Supporters of the Maryland Alliance for Fair Competition, an organization which represents over one thousand independent contractor businesses throughout the state, contends that for years they have been subjected to unfair competition stem-

ming from the unfair utility intrusion into the marketplace.

After several unsuccessful attempts in previous legislative sessions to enact legislation, the Alliance was successful this year.

"The governor and the General Assembly have finally acknowledged the serious issues confronting the independent contractor industry. House Bill 1149 is a step in the right direction. However, there is much left to accomplish before the Public Service Commission," stated Rasmussen.

Recent orders instituted by chairman Russell Frisbee, of the Maryland State Public Service Commission, regarding the recent developments applying to the pending merger between BGE and the Potomac Edition Power Company, as well as the pending merger between the DelMarva Power, and Light Company and Atlantic Energy, continue to be controversial issues.

Next week: Proposed "Standards of Conduct" for utility companies and their affiliates, submitted by the Maryland Alliance to the state Public Utilities Commission.



EDITORIAL PAGE



F R O M T H E E D I T O R

Rules of the road: How a utility company can compete fairly

The Maryland Alliance for Fair Competition has submitted the following "Proposed Standards of Conduct" for utility companies that also own and operate contracting affiliates. Many of the provisions are already in effect in other states. All of the provisions appear eminently reasonable to us (except for the tattoo ban, but there's probably a good reason for that, too). — *The News*

- The affiliate and the utility shall operate from physically separate locations. The affiliate must maintain inventory and equipment separately from the utility parent's inventory and equipment.

- The utility must perform competitive solicitations to select contractors for the implementation of utility-sponsored DSM programs and other resource acquisition solicitations. The affiliate may submit a proposal, but will receive no preferential treatment evaluation and contracting terms as a non-affiliated bidder. The utility shall not purchase from the affiliate or provide the affiliate with any non-tariff services.

- Utility personnel and assets, including corporate officers and directors, and equipment, shall not be used

to perform analyses or provide other services for the affiliate, unless the affiliate is charged the full fair market value cost of the analysis or service, and similar services are offered to non-affiliates at similar terms.

- The utility may not disclose to its affiliate any information obtained in connection with providing utility services to a customer or potential customer (i.e., usage information, special circumstances, mailing lists, etc.).

- The utility must offer the same discounts, rebates, fee waivers, penalty waivers, or guarantees to all non-utility affiliated suppliers or customers that it offers to its affiliate or customers of its affiliate (i.e., heat pump rebates, maintenance contracts).

- The utility shall process all similar requests for regulated utility services in the same manner and within the same period of time, whether requested on behalf of competitive activities or a third party; provided that this provision shall not in any manner be construed to limit the utility's ability to carry out its public service obligation as it deems necessary.

- Joint calls of any sort are forbidden. A customer may arrange to have a utility representative call separately to advise on technical matters unrelated

to sales, but such representatives may not make joint sales calls with affiliate representatives.

- Joint promotions between the utility and the affiliate are prohibited, such as inclusion of flyers for the affiliate in the utility's bills or any similar access to billing information. The utility shall not allow its affiliates to utilize its name in any manner such that customers can reasonably imply that: the distribution services provided by the company are of a superior quality when power is purchased from an affiliate; and/or the merchant services are being provided by the distribution company rather than the affiliate; and/or the power purchased from a competitive supplier may not be reliably delivered. This prohibits the display of the utility's brand name logo on personnel uniforms, company vehicles, or in body tattoos of affiliate personnel. Promotional material may not allow the affiliate to be identified as an affiliate of the utility.

- The utility shall not provide sales leads to its affiliate and must refrain from giving the appearance that the utility speaks on behalf of its affiliate. If a customer requests information about equipment suppliers or providers of conservation or other

services sold by affiliates, to the extent the utility responds to the request, the utility shall provide a list to all suppliers in the area and shall not promote the affiliate. Furthermore, no employee of a public utility who has responsibilities in the areas of system planning, system operation, power services, and/or customer services shall also be an employee of any affiliated company, or serve in any capacity therefor.

- Nonregulated affiliates should not be allowed to market the benefit of buying their products through financing provided by their utility parent. Financing of purchases in the competitive marketplace on the utility bill shall be made available to all qualified competitors and their customers, if such services are made available to any affiliate, at the same terms and rates.

- All transactions between regulated utility activities and competitive activities shall be accounted for in accordance with the utility's cost allocation manual. Any transaction or activity offered by the utility to the affiliate must be offered to all competitors under the same terms and conditions. Any transaction or activity offered by the affiliate to the utility must be offered to all competitors under the same terms and conditions.



O F F T H E C H E S T

Missouri electric utility

Continued from Page 1

The Missouri Coalition for Fair Competition, which fought for enactment of the fair competition law (*The News*, Aug. 10, 1998), had filed a complaint with the Missouri PSC. The hvac contractors complained that AmerenUE had misled consumers in their advertising, which implied that the utility would perform repairs on furnaces, air conditioners, and hot water heaters.

AmerenUE did not perform the repairs, but instead turned the work over to "unknown" contractors.

"They [Ameren] never told the public who was performing the repairs," said the Coalition's Perry Moore. "One of our sponsors asked Ameren for a list of the names but they refused to give it to us. Maybe the utility thought they were protecting someone. I really don't know why they wouldn't reveal the names."

The utility was found in violation of Section 386.756 of the Revised Statutes of Missouri. The section said that a utility shall not allow any affiliate or utility contractor to use the name of the utility unless the utility, affiliate, or utility contractor disclosed on all advertising that the services provided were not regulated by the Missouri PSC.

The fines for violating the statute could have exceeded millions of dollars, according to Terry Allen, a Jefferson City, Mo. attorney who handled the complaint for the Coalition. He added that Ameren, the state's largest electric provider and third-largest distributor of natural gas, "misled consumers with advertising in violation of the same law they purported to support."

BETTER THAN FINE

So what's better, termination of the On-Call service plan, or a whopping fine for the utility?

"We prefer what we got," said Moore. "The settlement was negotiated by several groups including the Coalition. If Ameren had been fined, we would have still been fighting them in 2001."

Moore, whose background is in the wholesale supply business, said that his group won the battle because of a unified front.

"We refused to let ACCA or other mechanical contractors take to the forefront of the effort," he said. "We all worked under one umbrella and we eventually got support from the AFL-CIO and the AARP, to name two."

"We ran this as a political campaign, which is the only way to win a battle like this."

"THEY [AMEREN] NEVER TOLD THE PUBLIC WHO WAS PERFORMING THE REPAIRS."

Missouri electric utility ordered to stop appliance repair service

BY JOHN R. HALL

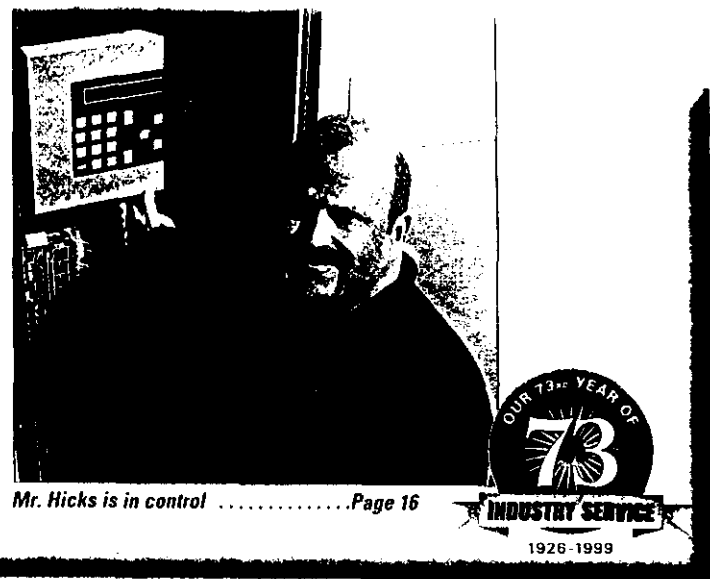
An association of independent Missouri hvac contractors has won a major battle in the fight for fair competition between themselves and a utility company.

The Missouri Public Service Commission (PSC) has ruled that AmerenUE, formerly known as Union Electric, is in violation of Mis-

souri's fair competition laws involving their "On-Call Appliance Plan." The utility will terminate its repair service plan to avoid paying penalties of up to \$12,500 per violation, and will not institute any similar plan through Dec. 31, 2001.

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The Air Conditioning, Heating and Refrigeration NEWS®



Mr. Hicks is in control Page 16

BNP BUSINESS NEWS PUBLISHING CO.

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Orlando utility wants a bigger slice of the commercial a/c business

ORLANDO, Fla. — The Orlando Utilities Commission (OUC) recently unveiled plans to convince owners of downtown businesses to purchase air conditioning and the power to supply it through them.

The OUC plans to offer air condi-

tioning directly from the city-owned water and electric company. Its \$4 million gamble is designed to tie up commercial customers for the next 20 years.

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Orlando utility wants more

Continued from Page 1

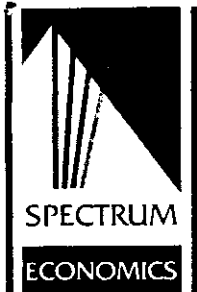
According to a story in *The Orlando Sentinel*, OUC and partner Trigen-Cinergy Solutions, Cincinnati, are planning to construct a 3,800-sq-ft chiller plant in a former downtown Orlando parking lot. The utility plans to cool water to as low as 37°F and pump it through underground pipes to buildings signed up by OUC and Trigen-Energy. Air will be blown over the water to cool the buildings through equipment owned by the partners.

The OUC's goal is to pick up 20,000 tons of the 100,000-ton demand for air conditioning in the downtown district. It also is

looking to more chiller plant construction if businesses outside of the downtown area buy into the plan.

A utility spokesperson said in the *Sentinel* that the plan means business owners will be free from spending hundreds of thousands of dollars on equipment maintenance and replacement.

Keith Rice, manager of OUC's chilled-water development, said the new plant would provide every service needed under one roof. "One stop shopping," he added, "is what a utility can provide."



IMPACTS OF UTILITY ENTRY INTO
AIR CONDITIONING INSTALLATION AND MAINTENANCE
FOR
THE AIR-CONDITIONING CONTRACTORS ASSOCIATION

BY
RICHARD C. CARLSON
CHAIRMAN, SPECTRUM ECONOMICS

MAY 6, 1998

SPECTRUM ECONOMICS INC.

EXECUTIVE SUMMARY

If done properly, electric deregulation promises to create a competitive market for retail sales of electricity which should lead to substantial energy cost savings for most consumers. However, early experience with deregulation has demonstrated that there are several substantial, unexpected problems. One such problem is the cross-subsidization of utility affiliates in unregulated service industries which threatens to undermine competition in these service industries as well as to reduce cost savings to consumers of electricity. The current pattern of electric deregulation creates strong economic incentives for such cross-subsidized market entry.

The most obvious example of cross-subsidized utility entry into new markets is the move of several utilities into the heating, ventilation, air-conditioning and refrigeration (HVACR) market. Members of the HVACR service industry have witnessed an unprecedented and growing incursion into the HVACR service market by utility affiliates in recent years. In a few states, such as Delaware and Maryland, utility affiliates have used their market power and cross-subsidies to suddenly gain over a 20% share of the HVACR market. These affiliates have enjoyed substantial cross-subsidies from their related utilities in the form of free advertising, free marketing, free customer information, free or reduced cost employees and free equipment. These cross-subsidies impose costs on the electric consumer and are contrary to the goals of open competition on which deregulation is premised.

This report, prepared by Spectrum Economics of Palo Alto, California examines the issue of cross-subsidization of utility affiliates in the HVACR market and its potential implications for deregulation of the electric power industry. The key issues explored and conclusions reached are as follows:

- o **Deregulation and Cross-Subsidization:** This section reviews the long history of the problems of cross-subsidization created by earlier deregulation of other industries such as natural gas and long-distance service. In all of these industries, strict safeguards against cross-subsidization were required.
- o **Cross-Subsidization Defined:** The National Regulatory Research Institute has defined cross-subsidization and demonstrated how regulation creates incentives for cross-subsidization.
- o **Utility Cross-Subsidization of HVACR Affiliates and Its Public Policy Implications:** Examines why deregulation creates incentives to cross-subsidize unregulated affiliates and the forms of cross-subsidization. Partial deregulation encourages cross-subsidization because subsidy costs can be hidden in regulated operations and passed on to consumers. Such subsidies both increase costs to electric consumers and in the long run would lead to high price monopolies in the unregulated HVACR business.

- o **Utility Entrants into HVACR Markets and Regulatory Responses:** Surveys the entry of utility affiliates into the HVACR market as well as regulatory responses in seven key states: New York, Nevada, Colorado, Maryland, Virginia, Ohio and Michigan. Among these states, the strongest utility HVACR programs are in Maryland and Ohio. Many states are considering tough rules to prohibit cross-subsidies, but Minnesota has enacted the toughest regulations.
- o **Impacts of Cross-Subsidization on Competition:** The California PUC has found that cross-subsidies in California alone are approaching over \$100 million per year. This would translate into a national consumer loss of over \$2 billion per year. Short term job loss to existing workers could reach 60,000.

The report concludes that legislation to deregulate electric generation must address the issue of cross-subsidization in order to avoid substantial harm to competition and consumers.

I. INTRODUCTION

The U.S. heating, ventilation, air conditioning and refrigeration (HVACR) industry has revenues of over \$67 billion per year and employs over 530,000 people.^{1 2} About 70% of the employees work for small contractors who employ less than 50 people, and almost half work for employers with less than 10 employees.³ The industry pays high wages to its employees, who average about \$17 per hour and provides independent livelihood to over 53,000 small business owners and their families.^{4 5}

Increasingly, the future of these independent contractors is threatened by anticompetitive practices associated with the entry of large electric and gas utilities into the HVACR industry through unregulated affiliates. About 42% of utilities are now active in the HVACR business, but most of their activity is recent.⁶ In the early 1990s only two major utilities, Consumer's Power of Michigan and Public Service of Colorado, had major HVACR businesses. By 1997, the number of utilities in the HVACR market had grown to over 50. The change in utility participation in the HVACR business is shown in Chart 1. This report examines some of the reasons for utility entry into the HVACR market, the potential for cross-subsidization of unregulated affiliates in the HVACR market, how this development threatens to reduce consumer savings in the soon-to-be deregulated electric power market, and utility actions and regulatory responses in seven states: Nevada, Colorado, Ohio, Michigan, New York, Maryland and Virginia.

II. DEREGULATION AND CROSS-SUBSIDIZATION

Recent U.S. efforts to deregulate major industries such as airlines, trucking, railroads and natural gas have by and large led to more competition and lower prices for most consumers. It is

¹Projected from 1992 Census of Construction Industries output of \$41 billion, based on recently released 6 digit SIC detail. HVACR includes SIC 17111, SIC 171116 (mechanical), SIC 171118 (Refrigeration), SIC 171122 (Combination), and N.S.K (Other). Projection based on growth in earnings and employment through 1997.

²Employment and Earnings, Nov. 1997, Table B-12, HVACR is 66% of SIC 171, Plumbing, Heating and Air-Conditioning.

³U.S. Bureau of the Census, County Business Patterns, U.S. Summary, 1995, p.7

⁴ Employment and Earnings, Nov. 1997, Table B-15, data is for SIC 171

⁵ Op.cit., County Business Patterns, p.7

⁶ 1996 data from Energy Users News, July 1997.

anticipated that deregulation of electric generation will produce many of the same benefits for consumers of electric power. However, if the transition to competition is not properly handled, deregulation could result in new economic inefficiencies both in the market for electric power and in related markets such as HVACR services. The recent and sudden expansion of electric utilities into the HVACR business is the leading edge of the potential for large energy supply and service conglomerates that could achieve near monopoly status in some industries. While integrated conglomerates are not in themselves problematic, the potential for anticompetitive impacts contrary to the intent of deregulation arises from the potential for utilities to use cross-subsidies from their regulated business to enter into and unfairly dominate other related but unregulated industries.

In contrast to European and Asian encouragement of industrial consolidation, the United States has historically sought to prevent monopolies. When industrial consolidation went too far, the government broke up such near monopolies as Standard Oil, IBM and AT&T. Today Microsoft has come under increasing government scrutiny for allegedly monopolistic actions. Active U.S. enforcement of antitrust laws, in contrast to European and Asian protection of inefficient industrial giants, is one of several reasons for the relatively greater economic success of the United States. Where monopoly was thought to be inevitable, the U.S. has traditionally regulated such "natural monopolies" as water, electricity, gas and communications. Through regulation, monopolies prices were constrained, but they were also protected against competition. Thus regulated monopolies were both restricted and protected by their regulators.

Regulated firms generally were subject to another restriction: they were rarely allowed to enter unregulated businesses. This restriction was put in place to prevent these regulated monopolies from subsidizing their entry into new businesses using assets paid for by the ratepayers or from shifting part of that cost to consumers in the regulated industry. However, changing telecommunications and energy markets have led to partial deregulation first of natural gas and long-distance service, then of electricity generation. Partial deregulation of these industries has led to a "mixed-market" environment in which portions of the industry have been opened to competition while other portions have remained subject to regulation.

As part of this deregulation process, utilities have been allowed to establish unregulated subsidiaries, but initially only under carefully controlled conditions. The first major utility deregulation effort, that of long-distance rates, required AT&T to divest its regulated regional

Bell operating companies (RBOC's) and limited its entry into a variety of information publishing sectors.^{7 8}

III. WHAT IS CROSS-SUBSIDIZATION?

Cross-subsidization is one of the key problems created by a mixed market environment. Concern about the potential for cross-subsidization prompted many of the restrictions described above and has posed a persistent problem for regulators. Cross-subsidization occurs when an affiliate in an unregulated market is able to price its product or services below cost due to its relationship with a regulated entity. Whether this cross-subsidy takes the form of covering the affiliates losses with revenues from the regulated utility or arises from the use of assets of the regulated entity to reduce the cost of providing service, the unregulated affiliate enjoys a competitive advantage due to its relationship with the regulated monopoly. This internal subsidy is borne, directly or indirectly, by the consumers of the regulated entity.

The result of this cross-subsidy is both inefficiency in the regulated market and a skewing of competition in the unregulated market as the affiliate is able to drive out otherwise efficient rivals through below cost pricing. The cross-subsidy enjoyed by the affiliate may allow the affiliate to offer prices far enough below its cost to allow it not only to drive out competitors but to prevent new entrants into the market. Once competition is eliminated, prices in the unregulated market will rise and the threat of predatory pricing will be sufficient to dissuade potential new entrants. Obviously, cross-subsidies pose adverse consequences for consumers and competitors alike.

IV. UTILITY CROSS-SUBSIDIZATION OF HVACR AFFILIATES AND ITS PUBLIC POLICY IMPLICATIONS

A. Why Deregulation Creates Incentives For Utilities To Cross-Subsidize Their Entry Into The Market for HVACR Services

The utility industry is a huge industry undergoing the stress of market change and deregulation. The \$213 billion electric utility industry dwarfs the \$67 billion air conditioning

⁷See 47 U.S.C., Sections 272 (separate affiliates for competitive activities, 274 (separate affiliate for electronic publishing), 275 (delayed entry into alarm monitoring services).

⁸ For an excellent discussion of the economic theory of why regulated firms should be kept out of unregulated markets, see Timothy Brennan, "Why Regulated Firms should be Kept Out of Unregulated Markets: Understanding the Divestiture in United States v. AT&T, The Antitrust Bulletin, Fall 1987, P. 741 to 793.

installation and maintenance business.⁹ Several individual electric utilities are larger than an entire state's HVACR industry. Natural gas utilities are "only" a \$60 billion industry. The relative sizes of the HVACR, Electric Utility and Gas Utility industries are shown in Chart 2.

Deregulation creates powerful incentives for gas and electric utilities to move into HVACR installation and service. The key incentive shared by all utilities and created by deregulation is the search for long-range profits. By hiding part of the costs of establishing themselves in the unregulated HVACR business, utilities can force their electric customers to help finance corporate expansion. In the long-run, after competitors are driven out by predatory pricing unregulated monopoly profits can be earned in the new business.¹⁰

The second reason is bundling: using service contracts bundled with gas or electric purchases to encourage customers not to shift to new, more cost-competitive energy supplies. Fearful that they will be unable to compete on price alone due to stranded costs and other factors, utilities are hoping to retain customers by offering services like HVACR installation and service along with the base gas or electric service as a single package. Alternate suppliers of cheap gas and electricity can compete on price more easily than they can compete on service. Many utilities believe that they have a better chance of retaining consumer loyalty for their base electric and gas products by providing a bundle of energy services, including HVACR and appliance services, at a single package price. These utilities are deliberately under-pricing service contracts as loss leaders, to convince customers to accept long-term electric or gas purchase contracts. The main incentive to do this is that many utility costs are largely fixed, so that the loss of a small number of customers can significantly reduce profits.

Under deregulation both electric and gas utilities share another powerful reason for diversifying into HVACR installation and service: institutional survival. Their existing businesses are slow growing, and new competitors will almost surely take some of that current business. Established organizations generally try to avoid staff cuts. Most utilities must cut staff to remain competitive in their core business, but they are desperate to shift these workers to new business to avoid the organizational morale and political problems of significant layoffs. Many utilities will grasp at any possibility to maintain the size of the organization, even if it will not be immediately profitable. Regulatory politics encourages such investments. Electric deregulation and general rate freezes are occurring at a time of declining interest rates and declining fuel prices. These fortuitous circumstances make many utilities potentially so profitable that they risk a political backlash against deregulation. After languishing for most of the last five years, utility earnings per share growth rates are expected to more than double from 2.5% per year to almost

⁹Monthly energy review, December 1997, KWH sales times average price.

¹⁰ For an analysis of the economic and regulatory incentives for cross-subsidies see Jaison Abel, *An Economic Analysis of Marketing Affiliates in a Deregulated Electric Power Industry*, National Regulatory Research Institute, Ohio State University, Feb. 1998

6% per year in the next five years under deregulation.¹¹ The decision facing utility executives is simple: If they don't take the diversification risk, their own jobs are at risk, and the profits saved from utility staff cuts may be recaptured by regulators in any case. If utility executives do invest in risky, initially money losing diversification, their jobs are saved and they are effectively risking the money of their regulated customers, not their shareholders.

Avoiding layoffs through diversification only works if the utility can be cost competitive in the new business or if it can use cross-subsidization to kill competitors. Utilities cannot be cost competitive in the HVACR business with their existing staff -- their wages are too high. Thus, utilities must either cross-subsidize or use non-union contractor personnel in the new HVACR enterprises: They must choose between an economic problem and a political one. However, many utilities are doing so by utilizing their ratepayer-based assets to cross-subsidize their entry into the market for HVACR services. Through cross-subsidization, the affiliate's costs are lower than other participants in the market for HVACR services and are able to use their cost difference to force out current HVACR service providers and discourage new market entrants. Thus, while the initial result of cross-subsidization may be to lower the cost of HVACR services, these prices will surely rise as competition is eliminated. In addition, the cost of providing these below-cost services is actually being paid by the customers of the regulated part of the utility.

B. Utility Cross-Subsidization and Public Policy

Both gas and electric utilities have many ways to cross-subsidize their HVACR affiliates. Some key cross-subsidies include providing the following services to unregulated affiliates at low or no cost:

- o **Customer Data:** Utilities have amassed large volumes of information on their customers and those customers' usage patterns during their tenure as monopoly utility service providers. Obviously, this type of information becomes extremely valuable in a competitive marketplace. By sharing this data with its unregulated affiliate, the utility provides the affiliate with a substantial competitive advantage.
- o **Employees and Employee Benefits:** Costs associated with employees and employee benefits are substantial, and the potential for cross-subsidization arises when employees are shared between the utility and its affiliate.
- o **Finance:** Regulated entities generally receive a lower costs of capital than firms in competitive markets. If this advantage is passed on to the unregulated affiliate, that entity enjoys lower costs of capital than similarly placed independent firms solely by virtue of its relationship with the utility. Borrowing for these

¹¹ Zack's Earnings forecasts, April 24, 1998

unregulated subsidiaries raises interest costs paid by general utility customers.

- o **Shared Logos or Trademarks:** The “name brand” recognition possessed by utility logos and trademarks is the result of their monopoly status and should be considered to be a ratepayer asset in a competitive environment. Allowing unregulated affiliates to advertise, trade upon, or promote their affiliation with the utility through the use of shared logos or trademarks results in a ratepayer asset being used to create an unfair competitive advantage in the market for HVACR services.
- o **Bill Inserts:** Direct mail advertising is expensive. Many utilities provide free advertising to their affiliates by allowing them to insert advertising in the utility’s monthly billings.
- o **Preferential Referrals:** Many consumers call their utility when they experience problems with major appliances or HVACR systems. Often utilities refer these callers only to their unregulated affiliate rather than informing them of the existence of numerous qualified service providers.

While requesting the freedom to subsidize their own entry into the HVACR business through their affiliates, electric utilities have at the same time opposed subsidies to their competitors. Investor owned utilities have spent over 50 years fighting subsidized public power projects. They objected to the public power industry receiving subsidies from taxpayers in form of below market interest rates, low or no taxes and free administrative support. The Edison Electric Institute, a coalition of investor-owned utilities, was formed over 50 years ago to fight public power subsidies. These public power subsidies are similar to the utility’s cross-subsidies of their unregulated affiliates.

Many of these same utilities are currently proposing new subsidies to themselves. These proposed subsidies would require customer payment for so-called “stranded costs” (e.g., unsuccessful past investments which firms in normal competitive industries would be forced to write off). These proposed stranded cost assessments amount to a subsidy to electric utilities of between \$100 and \$160 billion.¹² While the utilities plead financial necessity to obtain stranded cost recovery, many of these same utilities are pouring tens of millions of dollars into entering the HVACR business.

The economic and public policy reasons for limiting cross-subsidization of unregulated affiliates in the HVACR industry are well described in a recent report issued by the National Regulatory Research Institute entitled, “The Problem of Regulating Utility Affiliate Interactions

¹²A. Thierer, “Electricity Deregulation: Separating Fact From Fiction in the Debate Over Stranded Cost Recovery”, March 1997, The Heritage Foundation, Washington D. C.

in a Mixed Market Environment” by Kenneth Costello and Robert Graniere.¹³ The Institute is supported by the National Association of Regulatory Utility Commissioners (NARUC). The report makes the following key points:

- o Cost shifting from unregulated affiliate to regulated utility can be accomplished in myriad ways;
- o Cost based regulation provides a substantial economic incentive for such cost shifting;
- o The regulatory challenge of reviewing such cost shifting is difficult, if not impossible;
- o Cost shifting is economically inefficient: it taxes utility customers to finance unfair competition by the unregulated affiliate; and
- o In the long run, the potential for cost-shifting limits competition in the industry entered by the utility’s unregulated affiliate.

The ability of regulated utilities to leverage their market power into closely related sectors such as HVACR service through cross-subsidization of unregulated affiliates presents significant problems for both regulators and competitors in these unregulated industries. Even Robert Pitofsky, Chairman of the Federal Trade Commission and one of the top government officials charged with enforcing the antitrust laws, concedes: “[cross-subsidization] is one of the most difficult issues to deal with in antitrust enforcement, because the books are in the hands of the person who is doing the cross-subsidizing, and the allocation problems are enormously difficult.”¹⁴ Even where regulators have attempted to maintain effective regulations against subsidized utility entry into new market, detailed controls against cross-subsidies have been difficult to implement. California has imposed stringent controls on utilities’ affiliate transactions, including corporate separation, and has tried to closely monitor these relationships for such giant utilities as Pacific Gas and Electric. Nevertheless, a late 1997 audit of PG&E’s subsidiaries found cross-subsidiaries amounting to \$33.7 million dollars. California PUC staff projected that PG&E subsidies to its unregulated subsidiaries were growing at such a rate that they could amount to \$300 million over the next three years. Unfortunately, no other PUC has

¹³For a detailed review of how utilities can cross subsidize, see Costello and Graniere, “The Problem of Regulating Utility-Affiliate Interactions in a Mixed Market Environment, National Regulatory Research Institute, April 1997.

¹⁴Antitrust Aspects of Electricity Deregulation before the House Committee on the Judiciary, 105th Congress, 1st Session, at 68 (1997) (statement of the Honorable Robert Pitofsky, Chairman, Federal Trade Commission).

completed such a study of the actual costs of cross-subsidies. Projecting the California PUC results for PG&E to a national level, however, the annual national cost for these cross-subsidies would amount to approximately \$2 billion per year. The estimated cross-subsidy cost to utility consumers by state is shown in Table 1.

V. A SAMPLING OF UTILITY ENTRANTS INTO THE HVACR MARKET AND REGULATORY RESPONSES IN MAJOR STATES

A. Overview

Utility participation in the HVACR market has taken a variety of forms, including:

- o contractor certification programs;
- o sales of referrals for customers seeking HVACR service;
- o sales of HVACR maintenance plans (either directly or through an affiliate); and
- o general HVACR maintenance and contracting.

In response to this development, many state regulatory commissions have begun crafting standards of conduct to govern utility affiliate transactions, particularly those states moving towards a deregulated market. Among these states, many are moving towards stricter requirements of physical and financial separation for electric utilities and their non-regulated affiliates. New Hampshire and California have required that the utilities and their affiliates be separate corporate entities. Iowa, while not requiring complete separation, has prohibited the sharing of vehicles, service tools and other assets between the utility and its unregulated affiliates. Minnesota probably enacted the strictest rules: it required that unregulated affiliates pay a 1% of revenues franchise fee to the regulated utility. (This was later overturned by state courts.) Many other states are currently considering similar rules including charges for shared data processing and administrative support, permitting sharing of marketing and other data only if it is available to all competitors on a nondiscriminatory basis, and other rules to prevent abuse of utility market power. The degree to which such rules are enacted and effectively enforced will determine whether HVACR service remains a bastion of small business.

B. Status In Key States

The nation's most aggressive utility moves into air-conditioning installation and maintenance are in Maryland, Virginia, and Colorado.

Maryland -- Baltimore Gas and Electric is moving aggressively into the HVACR business. Through their Home Products and Services division, formed in 1994, BG&E sells HVACR and

appliance service contracts, repairs and installs HVACR systems, and sells appliances. BG&E's Commercial Building Systems division designs, finances and supervises the installation of commercial HVACR systems. BG&E clearly cross-subsidizes its affiliates, which pay nothing for such vital services as advertising, data or customer referrals from the regulated utility.

Delmarva Power (recently renamed Connectiv), which supplies electricity to Delaware and Eastern Maryland, has been even more aggressive in the HVACR area. Delmarva/Connectiv has purchased several electrical contractors and now sells, finances and installs residential and commercial central air conditioning systems. Connectiv recently announced that its HVACR business tripled to \$95 million in 1997. This amounts to a market share of over 20% in Connectiv's territory.

The Washington, D.C., area gas utility, Washington Gas, is also aggressively selling HVACR services. Its HVACR service programs go back at least to the early 1980's. They sell appliance and HVACR service contracts and finance purchases through a "Thrift Purchase Plan". The actual service work is done by a combination of Washington Gas staff and "Trade Associate" contractors. Washington Gas also operates a contractor referral program.

Several Maryland area utilities are not entering the HVACR business, as of late 1997. Allegheny Power, which services western Maryland, is not pursuing air conditioning installation and maintenance. Columbia Gas also has no major programs.

Maryland regulators and the Maryland legislature are currently debating how to regulate these utility programs. The staff of the Maryland PSC has recommended strict separation between BG&E and its affiliates, including open competitive bidding for all utility contracts and open purchase of all utility services such as customer data. The legislature passed tight cost allocation rules for utility subsidiaries.

In nearby Delaware, the State Legislature passed a Joint Resolution establishing Fair Conduct rules for utility subsidiaries. Delmarva Power had bought several HVACR contractors and the utility was referring customers to these unregulated subsidiaries without informing the customers of the corporate relationship. The Delaware Public Service Commission examiner found Delmarva Power's actions to be in clear violation of the Code Of Conduct.¹⁵

Virginia -- Virginia Power (VEPCO) had an aggressive HVACR program but is pulling back from this business as of late 1997. VEPCO designs, builds and manages commercial HVACR systems. It created a "Comfort Assured" Preferred Dealer Network to install and service residential heat pump systems and provides low interest loans through these contractors. VEPCO also bought an appliance and HVACR service contract and warranty business. Under significant legal and political pressure, VEPCO is now selling the warranty business and is

¹⁵ State News, October 19,1997

reducing its other HVACR service business. Under intense pressure, VEPCO signed an agreement with the Virginia Coalition for Fair Competition to follow strict "standards of Conduct."¹⁶

Colorado -- Public Service of Colorado both services air conditioning systems and appliances and is constructing a large chilled water plant to provide cooling to downtown Denver. The plant will use off-peak power in the evening to chill water for day time use. PSC has reduced its once aggressive appliance service business to cover the Denver area only.

The most aggressive utility provider of HVACR services in Colorado and several nearby states is KN Energy, once mainly a gas transmission and distribution company. KN Energy provides appliance service (including HVACR), and appliance warranties along with a wide variety of gas and telecommunications services.

A nearby utility, NorAmEnergy, now part of Houston Industries, is aggressively expanding its appliance and air conditioning service business in Texas, Oklahoma, Arkansas, Louisiana and Minnesota and may soon enter the Colorado market.

Colorado's Public Utilities Commission is finalizing a modestly strict code of conduct rules for unregulated affiliates which require full payment to the utility for all data and other services.

New York -- New York utilities are discussing providing a variety of HVACR services but relatively few programs are being implemented as of late 1997. The most active program is that of Brooklyn Union Gas and their merger partner Long Island Lighting (LILCO) -- now Keyspan Energy. Brooklyn Union sells and installs gas air conditioning and sells gas appliance maintenance contracts. Any further Keyspan entry into the HVACR business is being held up by negotiations surrounding the merger.

The other major New York utilities, Niagra Mohawk, Consolidated Edison, Rochester Gas and Electric and New York State Electric and Gas are not aggressively pursuing the HVACR business.

The New York PUC has ordered all state utilities, including Brooklyn Union/Keyspan out of the HVACR business by 2000, unless the utilities can prove they are not cross-subsidizing. The April 4, 1997 PSC order requires that all utility HVACR services be provided by separate subsidiaries, that past expenditures be refunded to customers and that HVACR service prices be immediately raised to unsubsidized levels.

Michigan -- Consumers Power has been aggressively trying to enter the HVACR business for 15

¹⁶Lawrence DeSimone, Senior Vice President of Virginia Power, letter of Nov. 4, 1997

years, but they have been held up by litigation and the Michigan Coalition for Fair Competition has continued to fight these utility HVACR programs. Consumers Power sells appliance and HVACR service contracts for residences and is discussing broader HVACR services. Consumers Power also has a referral program which includes a 10% kickback from the contractor.

Detroit Edison sells appliance and HVACR service contracts. Detroit Edison is also installing its Liquid Pressure Amplification Pump as part of commercial refrigeration and air conditioning systems.

Michigan Consolidated Gas (part of MCN Energy) has expanded from servicing gas appliances to selling service contracts for central air conditioning systems in the Detroit and Grand Rapids areas. Michigan Consolidated advertises its "100 years of gas appliance service experience."

These utility programs and potential cross-subsidy problems would be severely limited, if not killed by pending Michigan legislation enacting utility standards of conduct. The proposed Michigan standards would prohibit unregulated subsidiaries using the utility's name, staff or data bases. The Michigan Alliance for Fair Competition has repeatedly sued successfully to limit regulated utility provision of HVACR services.

Ohio -- Ohio utilities are discussing entering many aspects of the HVACR business, but no programs were actively implemented until 1997. In 1997, Ohio Edison (now part of First Energy which includes Toledo Edison and Cleveland Electric Illuminating) bought two of the nation's largest mechanical contractors, Roth Brothers and RPC Mechanical, with combined revenues of over \$90 million. Ohio Edison has announced that through these contractors it will supply the full spectrum of HVACR, roofing, and building services primarily to commercial and industrial customers. They are also starting a "one call" appliance service program. This dramatic move makes Ohio Edison/First Energy a major HVACR player.

American Electric Power is indirectly entering the HVACR business through its proposed 10 year guaranteed savings programs. For large customers willing to contract for buying electricity for 10 years, AEP guarantees cost savings and installs energy saving equipment, including HVACR equipment, for free. It is unclear how extensive these new power contracts will be and what their impacts will be on existing HVACR contractors.

Columbia Gas has an appliance warranty program in Ohio. Consolidated Natural Gas is experimenting with an appliance warranty program in nearby Pennsylvania, which may be extended to the territory of CNG's East Ohio Gas.

Neither of Ohio's other major electric utilities, Cincinnati Gas and Electric (now Cinergy) and Dayton Power and Light, are actively pushing air conditioning installation and maintenance programs.

The Ohio legislature is considering utility standards of conduct which would control these programs, but passage is uncertain.

Nevada -- Nevada Power proposed a preferred dealer network where it would sell referrals to selected contractors, but this program was effectively killed by PSC action. They are also planning a central chilled water cooling system for the Las Vegas "Strip." Having lost the dealer referral battle, Nevada Power is now entering the home and appliance warranty business (including HVACR) through an insurance affiliate, First Choice Insurance. This program is running into problems with the contractor's licensing board, as is a similar insurance program run by Old Republic. Sierra Pacific has no similar programs.

Southwest Gas has some contractor referral programs, but these are operated in cooperation with existing contractor organizations.

The Nevada Legislature passed a new law requiring that all unregulated work be run through separate affiliates, but the standards of conduct for these affiliates will be established as part of complex new laws and new rules for de-regulating electric power generation.

VI. POTENTIAL IMPACTS OF CROSS-SUBSIDIZATION ON LONG-TERM COMPETITION

Since electric and gas markets will continue to be partially regulated, the opportunities and incentives for cross-subsidization will also continue. The market power of existing regulated electric and gas monopolies may decline, but will not disappear. Therefore, careful regulation to prevent unfair cross-subsidization will continue to be necessary in order to prevent diverting consumer savings from the electricity markets and causing substantial disruptions in unregulated markets such as HVACR services.

Consumers are harmed by cross-subsidization both in the market for electricity and in markets served by unregulated utility affiliates. The harm to the utility's customers lies in the fact that they bear, whether directly or indirectly, the cost of the internal subsidy to the utility's unregulated affiliate. The harm to consumers in the market for HVACR services arises from the inefficient skewing of that market caused by the cross-subsidy. Again, the utility affiliate's ability to price its services at below cost in order to gain market share allows it to drive other competitors from the market. New competitors will be discouraged from entry by the affiliate's ability to incur short-term losses to eliminate competition. Therefore, while consumers may initially benefit from lower prices, these prices will rise rapidly once long term competition has been reduced.

Utility takeover of the HVACR business would be disruptive to the lives of both existing contractors and their workers. Delmarva/Connectiv's gaining of over a 20% market share in less than five years demonstrates how a large utility with unlimited funds can quickly dominate the

HVACR industry. If utilities takeover only 10% of the existing market, total national job loss among existing workers would be 60,000 jobs. About 5,000 existing contractors would close down at this level of utility expansion.

Utilities have argued against restrictions on affiliate cross-subsidies on the grounds that they should be allowed to achieve economies of scale like other large integrated entities. There is inevitably a tension in deregulating monopolies between allowing realization of the benefits of economies of scale and creating an environment in which the benefits of market competition can be fully realized. However, past deregulation efforts demonstrate that legislators and regulators have seen fit to balance these interests by imposing at least some restrictions on the incumbent monopolists' ability to utilize their accumulated market power. These restrictions are necessary in order to create a marketplace in which open competition can flourish.

In the long run, without restrictions, energy utilities will be able to gain monopoly level profits in related, unregulated service industries. Once cross-subsidies have been used to drive out existing competitors, prices can be raised to high levels, generating monopoly profits for the unregulated subsidiaries of the utilities. These high prices and profits can be maintained because potential new entrants will be frightened off by the risk of predatory low prices charged by the utilities.

Finally, allowing cross-subsidization of utility affiliates represents an unwise investment for utilities themselves. Utilities will face extremely difficult competitive forces in their core business in the coming years. Cross-subsidization diverts needed resources, that could be devoted to providing core utility services in the new competitive environment, to side ventures subsidized by the utility's customers.

**CHART 1
UTILITIES IN HVACR BUSINESS**

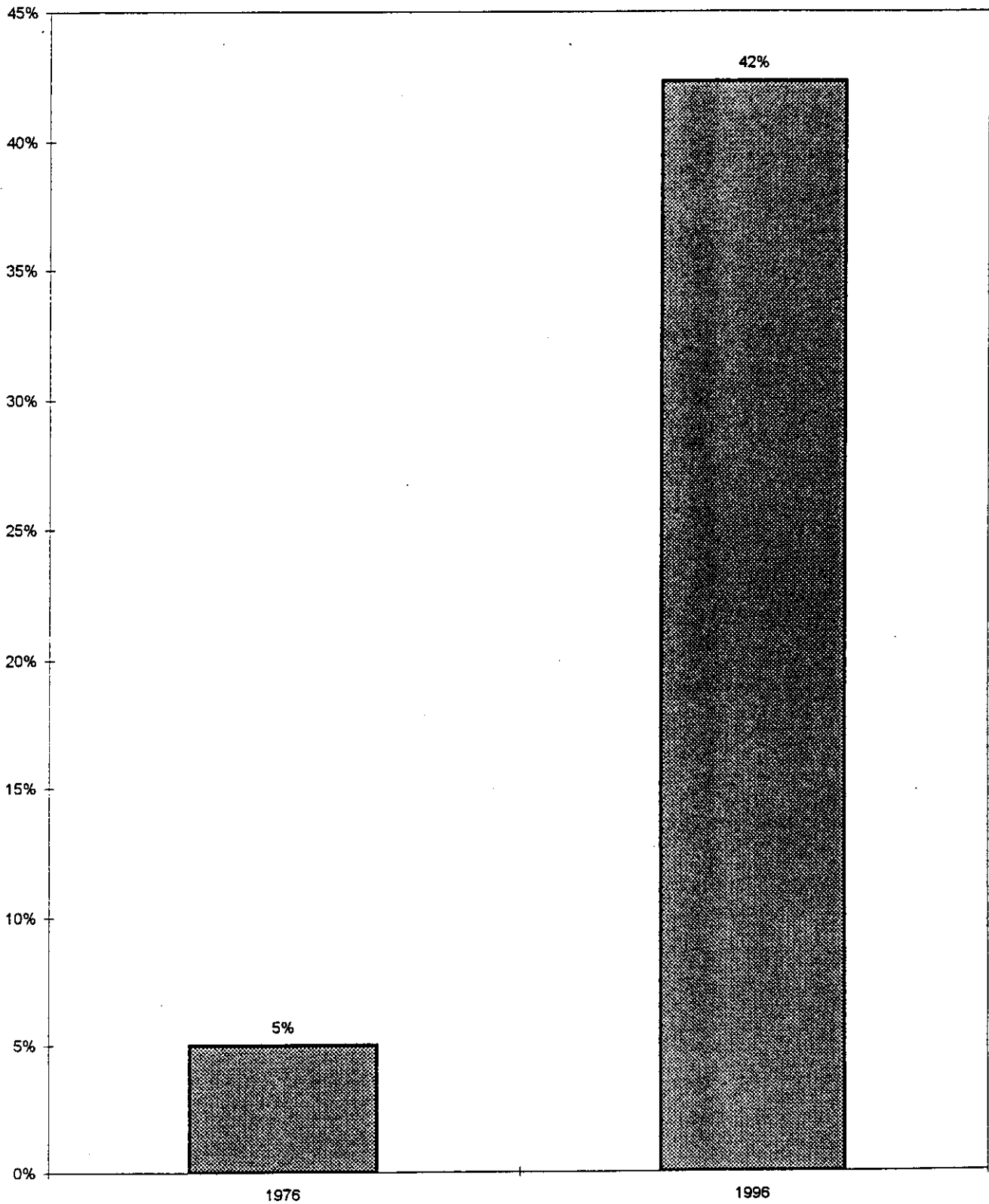
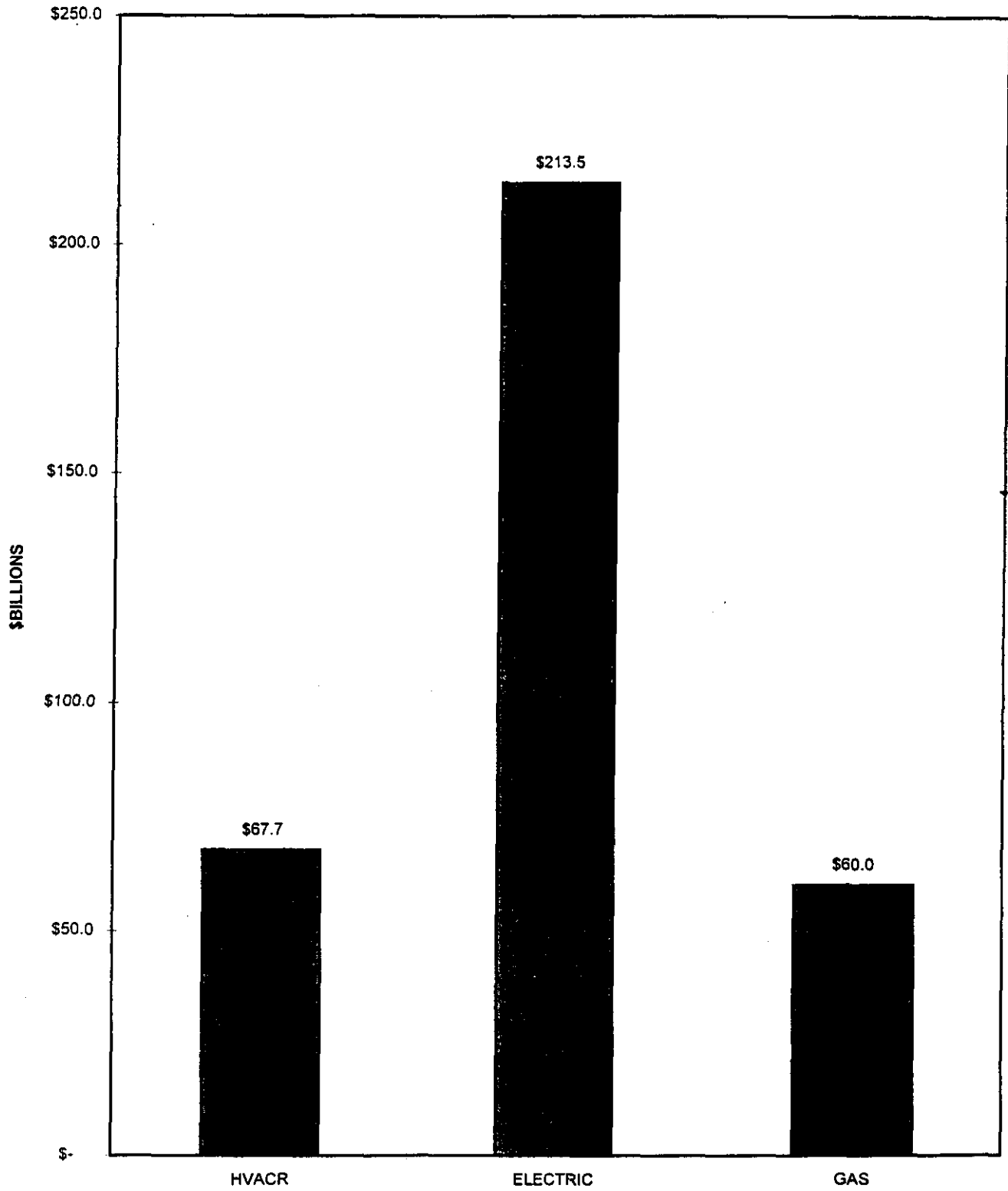


CHART 2
RELATIVE SIZE 1997



Spectrum Economics, Inc.
550 Hamilton Avenue, Ste. 307, Palo Alto, CA 94301

TABLE 1

POTENTIAL ANNUAL CROSS-SUBSIDIES BY STATE
(\$ IN MILLIONS)

COLORADO	\$	28.7
MARYLAND	\$	38.5
MICHIGAN	\$	72.5
OHIO	\$	84.5
NEW YORK	\$	137.4
VIRGINIA	\$	50.6
U.S. TOTAL	\$	1,000.0

Electric Utility Entry into the Appliance Warranty and Repair Business



**FOR YOUR INFORMATION
FROM CAM FENTRISS**

**The Honorable Mark Ogles, Chairman
By the Staff of
Committee on Business Regulation and Consumer Affairs
Becky Everhart, Staff Director
December 1998**

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I. Introduction and Executive Summary

During the 1998 Regular Session of the Florida Legislature, representatives of several air-conditioning contractor associations requested and received a hearing before the Committee on Business Regulation and Consumer Affairs. At that hearing, they expressed their concern that electric power utilities, spurred by the prospect of deregulation at some point in the next several years, would likely enter the field of major electrical appliance warranty and repair, and would furthermore be in a position to engage in unfair competition.

At the heart of the contractor's concern regarding unfair competition is the specter of cross-subsidization. Cross-subsidization is an "internal subsidy." In the instance of a regulated utility, its most direct form would occur if revenues collected by a utility from its electric power rate-payers were used to pay some of the costs of developing and sustaining a warranty and appliance repair business. More indirect forms of cross-subsidization would consist of: logo and name recognition; marketing and promotion; and purchasing power and credit lines.

According to the contractors, this cross-subsidization would allow the utilities to charge warranty and repair rates that would undercut the fair market price that businesses without such subsidization would need to charge. The result, according to the contractors, would be that utilities would be enabled to rapidly acquire market share, and would eventually -- having eliminated its small business competitors -- be in a position to charge consumers higher rates than before.

This is known as "predatory pricing." Predatory pricing occurs when a business entity sets its prices for goods or services at a level which actually loses money initially. This is a viable strategy when a business has a large revenue base in a separate -- though often closely related -- area. Therefore, such a strategy is generally only available to very large businesses with sufficient revenue to lose money in a small segment of its business, over the short term. The purpose of such a strategy is to seize control over (monopolize) a market.

Predatory pricing is illegal under federal and state antitrust laws. However, *proving* predatory pricing is a very "fact specific" exercise. This means that the laws against predatory pricing (antitrust laws) are not -- and possibly *cannot be* -- written in such a fashion that it is immediately and indubitably clear whether any particular activity actually constitutes a violation in each specific context. In order to make a determination, it is necessary to examine a multitude of facts that are specific to the case in question. Consequently, in any instance of business practice, it is easily and legitimately a matter of differing opinion as to whether such specific practice amounts to predatory pricing -- up until the point a court or regulatory agency makes its ruling.¹

¹ A current case-in-point to illustrate this is the ongoing dispute between the Federal Justice Department and Microsoft Corporation. Microsoft produces the "Windows 95" operating systems for personal computers. This operating system is used in almost 90% of personal computers.

Up until a couple of years ago, Netscape Communications possessed a similar near-monopoly with its Internet "browser" product. Netscape currently alleges that Microsoft is violating Federal Antitrust laws by engaging in predatory pricing by *giving away free* its own Internet browser (Internet Explorer). Netscape essentially contends that Microsoft is doing this with the intent of absorbing its losses up to the point that it drives Netscape out of business, at which point Microsoft would be free to raise its prices.

Naturally, Microsoft disputes this, and maintains that it is competing -- legitimately -- in the competitive business environment. So, what you have here is a situation in which the facts are not in dispute, yet it may take years of legal process to determine whether the specific facts of the case constitute an antitrust violation.

In the case of electric power utilities, there is -- in addition to the general laws against predatory pricing -- the fact that the funds that would be used for any cross-subsidization would be coming from utility rate-payers. Power utilities currently derive their revenue in a monopoly environment. That is, they are granted a geographical jurisdiction within which they face no competition. All consumers within that area have no choice regarding from whom they will purchase electrical power or the price they will be charged.

The Florida Public Service Commission (PSC) approves these jurisdictional monopolies, as well as the prices which consumers are charged. With regard to the investor-owned utilities, the PSC is charged with assuring that rates charged by utilities are set *at the lowest reasonable rate that is fair to both the ratepayer and the utility*. Pursuant to this responsibility, the PSC is called upon to assess the utilities' legitimate costs of doing business and then factor in a reasonable rate of profit in determining the rates the utility may charge the consumer. Consequently, as a question quite separate from the predatory pricing issue, there is the issue of the propriety of a regulated utility diverting revenues gained pursuant to the argument that these rates are only so high as are found to be *necessary* to conduct that regulated activity (plus a small profit).

The contractors contend that the potential of such an internal subsidy, with some of the overall costs of doing business as an appliance warranty/repair business being paid by electric utility rate-payers, would amount to granting the utility an unfair competitive advantage. And, depending on the degree of market share this subsidy allowed the utility to gain, could even amount to an antitrust violation.

Staff queried the PSC regarding the electric power utility industry in Florida, and then surveyed each of the regulated electric utilities. There are five investor-owned electric utilities, 33 municipally-operated electric utilities, and 17 electric cooperatives. According to the responses received, none of the 33 municipally-operated electric utilities or 17 electric cooperatives engage in any appliance warranty or repair business. Of the four investor-owned utilities which responded to our survey, three (Tampa Electric Company [TECO], Florida Power, and Florida Power and Light [FPL]) also do not engage in any appliance warranty or repair business.

The only electric utility which does engage in appliance warranty or repair in Florida is Gulf Power. Gulf Power uses General Electric for the appliance repair service. General Electric uses local contractors to do the actual repairs. Their warranty program has approximately 5,000 clients.

Florida utility companies queried by staff dispute the contention that their entry into the warranty/repair field does -- or will -- involve unfair competition. Response from the electric power utilities may generally be summarized as asserting that:

- 1) Many of the potential activities the contractors object to may legitimately be seen as an "advantage," but cannot be fairly characterized as amounting to "unfair" competition. Advantages utility companies might possess, such as name recognition, use of logo, or benefits derived from purchasing power and credit lines, amount to advantages any established business legitimately possesses when considering expanding their operations. The utilities point out that such advantages are also possessed by businesses such as Sears or K-Mart.
- 2) Other activities, such as using the employees, infrastructure, buildings, furnishings, equipment, vehicles, or any other physical assets of the regulated activity do amount to

unfair competition (in the form of cross-subsidization), but the utilities deny they would attempt to act in such a manner, and point out that the Florida Public Service Commission – under current law -- is already charged with preventing such cross-subsidization.

Other states have wrestled with this problem. This report sets forth those states' experiences in some detail. Several of those states have chosen to enact "Codes of Conduct" (either statutorily or through administrative action) to prevent unfair competition.

This report makes the following conclusions:

- Currently, the utilities in Florida are not entering the fields of appliance service warranty and repair to any *significant* extent. Only Gulf Power actually engages in this business. However, Florida Power is conducting an "inside wiring *pilot project*" to determine whether they will enter this field.²
- Utility entry into the fields of appliance service warranty and repair has occurred in other states, and several states have set forth (either statutorily or by administrative action) "Codes of Conduct" and other cross-subsidization controls which must be observed by utilities entering these fields.
- Contractor arguments that deregulation -- should it occur -- will provide impetus for utility entry into the fields of appliance service warranty and repair appear to make sense. Competition can logically be expected to spur a search for more ways to service and expand a customer base. However, there is actually *no bar* to utilities proceeding prior to any deregulation. Therefore, it would not be correct to see this issue as either *contingent* upon deregulation or *necessarily linked* to deregulation.
- The appropriate executive agency to consider a Code of Conduct or other controls on utility entry into the fields of appliance service warranty and repair would be the Public Service Commission.
- What the contractor representatives appear to be seeking (besides the general goal of "raising the consciousness" of the Legislature on this issue) is to have the Legislature *place in statute guidelines* for such controls. Such guidelines would clearly designate which activities would be considered to be cross-subsidization or some other type of "unfair" competition. Without such a Code of Conduct, it is left to administrative hearings and litigation to determine permissible and impermissible virtually activities on a case-by-case basis.
- The ultimate issue is whether the existing laws -- as adjudicated through PSC hearings and litigation -- are sufficient to fairly and efficiently assure the utilities will not unfairly compete, or whether these laws should be supplemented with a Code of Conduct (developed either statutorily or through administrative agency action) in order to clearly delineate what activities and actions constitute unfair competition.

² "Inside wiring" refers to the electrical wiring that runs from the outside meter to each of the outlets within the house. Such work would compete with electrical contractors, but does not involve *electrical appliance* work, which is the focus of this report.

The policy options available to the Legislature are:

- 1) The Legislature could conclude that no action is needed as far as statutory changes are concerned, that existing state and federal laws are adequate to address the situation. Disputes between contractors and utility companies engaged in appliance service and repair would be resolved administratively through hearings before the PSC or through litigation.

Under this option the Legislature could hold hearings to be certain that existing laws are indeed adequate.

- 2) The Legislature could conclude that no action is needed as far as statutory changes are concerned, but could direct the PSC to hold hearings with the goal of determining if it needs to adopt a Code of Conduct to set forth allowable and prohibited activities with regard to electric utilities engaging in appliance warranty and repair work. Such a Code of Conduct could, for instance, settle such questions as whether the use of the logo by repair affiliates should be prohibited, and under what circumstances and controls advertisements urging consumers to use these affiliates for their repair work would be allowed to be included in the electric utility's monthly billings.
- 3) The Legislature could hold hearings and enact a Code of Conduct, statutorily.

II. Regulation of Power Utilities in Florida

As in other states, an executive agency in Florida -- the Public Service Commission (PSC) -- is empowered to regulate electric utilities. The five-member PSC is created in s. 350.031, F.S. Its members are appointed by the Governor to 4-year terms, subject to confirmation by the Senate. Chapter 366, F.S., sets forth the regulation of public utilities, including electric power utilities.

In Florida, three types of utilities provide electricity: investor-owned utilities; rural electric cooperatives; and municipally-owned systems. In certain circumstances, these utilities are treated in varying fashions under Florida law. The PSC exercises a greater degree of control over investor-owned utilities, with such control extending to holding "rate cases," in which the actual dollar figure they may charge for a unit of electricity (a kilowatt hour) is set. The rates charged by the municipal electric companies and electric cooperatives are not set by the PSC. Instead -- for those types of entities -- the PSC exercises authority regarding such things as resolving territorial disputes, and requiring electric power and conservation and reliability within a coordinated grid.

The area in which an electric utility may provide service is defined through territorial agreements between utilities and approved by the PSC. Additionally, the agency has authority to resolve territorial disputes where they arise. These agreements are negotiated as growth occurs and utilities seek to serve the newly-developed areas. Thus, the exclusive service area of a particular utility, be it an investor-owned, municipal or rural cooperative utility system, develops over time, in response to the growth patterns of the area. It is defined by territorial agreements or dispute resolutions between the utility and adjacent utilities over a number of years.

The three "core" functions of an electric utility are generation, transmission³, and distribution.⁴ However, not all utilities perform each of the three functions. Each of the five investor-owned utilities generates electricity, as do 16 of the 33 municipal systems and two of the 17 electric cooperatives. In 1998, investor-owned utilities owned 78% of the generating capacity in the state, a reduction from a level of 85.8% in 1984 (with municipals, rural electric cooperatives, and federally-owned generation accounting for the remaining portion). In 1998, Florida's utilities generated 176,286 gigawatts of electricity and served 7,435,789 customers.

Electric utilities in Florida are subject to what is known as "economic regulation." Economic regulation is essentially a reasoned, "Faustian" bargain between government (concerned for providing essential services to citizens) and the business entity (concerned for its own legitimate profits in an environment free from competition). In this bargain, the regulated entity agrees to offer its service to every applicable citizen or business, and also agrees to accept government intervention in setting its prices. What the *regulated entity* receives in return for its concessions is freedom from open competition. This freedom comes in the form of a geographic monopoly in which to operate. What *the state* receives in return for its concessions is an assurance that those citizens within that monopoly will all be offered service, and at the lowest (as determined by the government body) reasonable price.

Other examples of instances in which the government establishes economic regulation (the business entity agreeing to service all applicants at a regulated price in return for freedom from competition within a geographical monopoly) include: harbor pilots;⁵ emergency medical services (ambulances); nursing homes; and hospitals.⁶

The table that follows outlines a number of the regulatory objectives established in the Florida Statutes.

³ "Transmission" is the "wheeling" of large amounts of electricity from one part of the state to another.

⁴ "Distribution" is the actual *retail sale* of electricity to consumers.

⁵ Only a limited number of harbor pilot licenses are available, no matter the number of qualified applicants. Also, licensed pilots are obligated to offer their service to all ships which need them, and the rates they may charge are set by the Pilotage Rate Review Board, under the Department of Business and Professional Regulation.

⁶ Regulation of some health fields (hospitals, hospices, nursing homes, and emergency medical services) has limited licensure and provisions which serve to minimize or eliminate competition. A person or group may not build or operate a hospital, hospice, or nursing home within a given health care market simply by virtue of being capable of doing so. A hospital, hospice, or nursing home may not be built, or go into operation, without applying for, and receiving from the Agency for Health Care Administration (AHCA) a "certificate of need." Requiring a certificate of need before issuing a license amounts to a regulatory effort to prevent costly duplication or harmful competition. Similarly, emergency medical services are granted jurisdictional monopolies, within which other ambulance services will not be allowed to operate.

**HOW STATUTORY PROVISIONS ESTABLISH
BASIC REGULATORY OBJECTIVES**

Basic Regulatory Objectives	Florida Statutes
A utility shall serve all who apply for service.	Chapter 366.03 provides that each public utility shall furnish to each person reasonably sufficient, adequate, and efficient service upon terms as required by the commission.
A utility shall provide service without discrimination.	Chapter 366.03 provides that 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.
A utility shall provide adequate and reliable service at just and reasonable prices.	Chapter 366.041(2) provides that adequate service be rendered by the public utilities in the state in consideration for rates, charges, tolls, and rentals fixed by said commission and observed by said utilities under its jurisdiction.
A utility is allowed to receive reasonable rates for its services.	Chapter 366.041(1) provides that no public utility shall be denied a reasonable rate of return upon its base in any order entered pursuant to PSC proceedings.
A utility is subject to being assigned duties assisting other public interest objectives.	<p>Chapter 366.04(6) provides that the Commission shall...prescribe and enforce safety standards.</p> <p>Chapter 366.04(5) provides that there be an adequate and reliable source of energy for operational and emergency purposes in Florida.</p> <p>Chapter 366.81 provides that public utilities utilize the most efficient and cost-effective energy conservation systems.</p>

III. The Contractors' Concerns

According to a report prepared by Spectrum Electronics of California for the Air Conditioning Contractors of America, the U.S. heating, ventilation, air conditioning and refrigeration (HVACR) industry has revenues of over \$67 billion per year and employs over 530,000 people. About 70% of the employees work for small contractors who employ less than 50 people, and almost half work for employers with less than 10 employees. The industry pays "high" wages to its employees, who average about \$17 per hour and provides independent livelihood to over 53,000 small business owners and their families. The report states:

Increasingly, the future of these independent contractors is threatened by anticompetitive practices associated with the entry of large electric and gas utilities into the HVACR industry through unregulated affiliates. About 42% of utilities are now active in the HVACR business, but most of their activity is recent. In the early 1990's only two major utilities, Consumer's Power of Michigan and Public Service of Colorado, had major HVACR businesses. By 1997, the number of utilities in the HVACR market had grown to over 50.

At the heart of the contractors' concerns regarding unfair competition is the specter of cross-subsidization. Cross-subsidization is an "internal subsidy." In the instance of a regulated utility, its most direct form would occur if revenues collected by a utility from its electric power rate-payers were used to pay some of the costs of developing and sustaining a warranty and appliance repair business. More indirect forms of cross-subsidization would consist of: logo and name recognition; marketing and promotion; and purchasing power and credit lines.

According to the contractors, this cross-subsidization would allow the utilities to charge warranty and repair rates that would undercut the fair market price that businesses without such subsidization would need to charge. The result, according to the contractors, would be that utilities would be enabled to rapidly acquire market share, and would eventually -- having eliminated its small business competitors -- be in a position to charge consumers higher rates than before.

This is known as "predatory pricing." Predatory pricing occurs when a business entity sets its prices for goods or services at a level which actually loses money initially. This is a viable strategy when a business has a large revenue base in a separate -- though often closely related -- area. Therefore, such a strategy is available only to very large businesses with sufficient revenue to lose money in a small segment of its business, over the short term. The purpose of such a strategy is to seize control over (monopolize) a market.

Predatory pricing is illegal under federal and state antitrust laws. However, in the case of electric power utilities, there is -- in addition to the general laws against predatory pricing -- the fact that the funds used for any cross-subsidization would be coming from utility rate-payers. The contractors contend that the potential of such an internal subsidy, with some of the overall costs of doing business as an appliance warranty/repair business being paid by electric utility rate-payers, would amount to granting the utility an unfair competitive advantage. And, depending on the degree of market share this subsidy allowed the utility to gain, could even amount to an antitrust violation.

This service directly competes with private industry. Even though private contractors are invited to participate by supplying the repair service itself, the utility becomes the "broker"

or third party agent. In many instances, the warranty agreement may end up supplanting the contractors' agreements. Initially, contractors are asked to bid for the opportunity to be on the utility's list of "authorized service providers." However, contractors worry that eventually the utility will set the price they will charge the consumer -- and pay to the contractors -- at a lower level than an open market would produce. The concern, as stated above, is that the consumer's price will be artificially low because the utility will subsidize part of the cost through its rate-payer base.

In addition to concerns regarding *direct* cross-subsidization, the contractors maintain that a pervasive *indirect* subsidization exists. In any instance in which the utility has done preliminary work to determine whether (and how) to enter a market like appliance repair, the contractors contend that such utilities:

... have invested at least one and perhaps a couple of years in researching the ideas behind these programs. They have contributed the time of senior management, public relations and marketing staff employed by the utility. They have paid untold dollars to outside consultants and to corporate attorneys. They have conducted consumer research and focus groups. They have developed campaigns to sell the contracting industry on their ideas. All of this activity in research and development has surely cost significant dollars. Marketing and program implementation as well as program administration will cost a lot more.

The contractors contend that legislation to address their concerns regarding both direct and indirect cross-subsidization should consider the following points:

1. Logo and Name Recognition - Any utility wishing to operate a for-profit business should not be able to rely on the name, logo or corporate identity that was established under a regulated business.
2. Human Resources - Utility employees whose wages and benefits are paid by ratepayers should not allowed to work for the for-profit business.
3. Utility Assets - Infrastructure, buildings, furnishings, equipment, vehicles and all other physical assets were gained through the revenue generated by a captive ratepayer base. These assets should not be available on the for-profit side.
4. Marketing and Promotion - Everyone who uses electricity or gas is known to the utility and is communicated to once a month through the billing process. Already a utility includes promotional and marketing materials with their bill. This should not be allowed with regard to promoting an appliance repair and warranty business, since the ratepayer revenue funds the costs of the mail-out.
5. Purchasing Power and Credit Lines - Some utilities in other parts of the country are already developing programs that would allow rate-payers to finance new equipment (on their utility bill) through ten-year leasing programs. These long-term leasing programs are designed to lock-in consumers to that utility for a period of time, regardless of rates, and would be unfair.

IV. The National Experience

A. Overall

A report titled Impacts of Utility Entry into Air Conditioning Installation and Maintenance, prepared for the national association of HVACR contractors states that cross-subsidization is one of the key problems created by a mixed market environment. It states that concern about the potential for cross-subsidization has prompted restrictions on utilities in other states and has "posed a persistent problem for regulators." According to the report:

Cross-subsidization occurs when an affiliate in an unregulated market is able to price its product or services below cost due to its relationship with a regulated entity. Whether this cross-subsidy takes the form of covering the affiliate's losses with revenues from the regulated utility or arises from the use of assets of the regulated entity to reduce the cost of providing service, the unregulated affiliate enjoys a competitive advantage due to its relationship with the regulated monopoly. This internal subsidy is borne, directly or indirectly, by the consumers of the regulated entity.

According to the report, the result of this cross-subsidy, "...is both inefficiency in the regulated market and a skewing of competition in the unregulated market as the affiliate is able to drive out otherwise efficient rivals through below cost pricing." The cross-subsidy enjoyed by the affiliate may allow the affiliate to offer prices far enough below its cost to allow it not only to drive out competitors, but to prevent new entrants into the market. The report further states:

Once competition is eliminated, prices in the unregulated market will rise and the threat of predatory pricing will be sufficient to dissuade potential new entrants. Obviously, cross-subsidies pose adverse consequences for consumers and competitors alike.

Nationally, utility participation in the HVACR market has taken a variety of forms, including:

- o contractor certification programs;
- o sales of referrals for customers seeking HVACR service;
- o sales of HVACR maintenance plans (either directly or through an affiliate); and
- o general HVACR maintenance and contracting.

B. Status In Specific States

In response to the entry of utilities into the fields of appliance repair and warranty, some state regulatory commissions have begun crafting standards of conduct to govern utility affiliate transactions, particularly those states moving towards a deregulated market.

Among these states, many are moving towards stricter requirements of physical and financial separation for electric utilities and their non-regulated affiliates. Impacts of Utility Entry into Air Conditioning Installation and Maintenance, noted that **New Hampshire** and **California** have required that the utilities and their affiliates be separate corporate entities. **Iowa**, while not requiring complete separation, has prohibited the sharing of vehicles, service tools and other assets between the utility and its unregulated affiliates. **Minnesota** probably enacted the strictest rules. It required that unregulated affiliates pay a 1% of revenues franchise fee to the regulated utility. (This was later overturned by state courts.) Other states are currently considering similar rules including: charges for shared data processing and administrative support; permitting sharing of marketing and other data only if it is available to all competitors on a nondiscriminatory basis; and other rules to prevent abuse of utility market power.

The report made the following findings:

Maryland -- Baltimore Gas and Electric (BG&E) is moving aggressively into the HVACR business. Through their Home Products and Services division, formed in 1994, BG&E sells HVACR and appliance service contracts, repairs and installs HVACR systems, and sells appliances. BG&E's Commercial Building Systems division designs, finances and supervises the installation of commercial HVACR systems. BG&E cross-subsidizes its affiliates, which pay nothing for such vital services as advertising, data or customer referrals from the regulated utility.

Delmarva Power (recently renamed Connectiv), which supplies electricity to Delaware and Eastern Maryland, has been even more aggressive in the HVACR area. Delmarva/Connectiv has purchased several electrical contracting businesses and now sells, finances and installs residential and commercial central air conditioning systems. Connectiv recently announced that its HVACR business tripled to \$95 million in 1997. This amounts to a market share of over 20% in Connectiv's territory.

The Washington, D.C., area gas utility, Washington Gas, is also aggressively selling HVACR services. Its HVACR service programs go back at least to the early 1980's. They sell appliance and HVACR service contracts and finance purchases through a "Thrift Purchase Plan". The actual service work is done by a combination of Washington Gas staff and "trade associate" contractors. Washington Gas also operates a contractor referral program.

Several Maryland area utilities are considering entering the HVACR warranty and repair business. Maryland regulators and the Maryland Legislature are currently debating how to regulate these utility programs. The staff of the Maryland PSC has recommended strict separation between BG&E and its affiliates, including competitive bidding for all utility contracts and open purchase of all utility services such as customer data. The Legislature passed tight cost allocation rules for utility subsidiaries.

Delaware -- In Delaware, the state Legislature passed a Joint Resolution establishing Fair Conduct rules for utility subsidiaries. Delmarva Power had bought several HVACR contracting businesses and the utility was referring customers to these unregulated subsidiaries without informing the customers of the corporate relationship. The Delaware Public Service Commission examiner found Delmarva Power's actions to be in clear violation of the Code Of Conduct.

Virginia -- Virginia Power (VEPCO) had an aggressive HVACR program but was pulling back from this business as of late 1997. VEPCO designs, builds and manages commercial HVACR systems. It created a "Comfort Assured" Preferred Dealer Network to install and service residential heat pump systems and provide low interest loans through these contractors. VEPCO also bought an appliance and HVACR service contract and warranty business. Under significant legal and political pressure, VEPCO is now selling the warranty business and is reducing its other HVACR service business. VEPCO also signed an agreement with the Virginia Coalition for Fair Competition to follow strict standards of conduct.

Colorado -- Public Service of Colorado (PSC) services air conditioning systems and appliances and is also constructing a large chilled water plant to provide cooling to downtown Denver. The plant will use off-peak power in the evening to chill water for day time use. PSC has reduced its once aggressive appliance service business to cover the Denver area only.

The most aggressive utility provider of HVACR services in Colorado and several nearby states is KN Energy, once mainly a gas transmission and distribution company. KN Energy provides appliance service (including HVACR), and appliance warranties along with a wide variety of gas and telecommunications services.

A nearby utility, NorAmEnergy, now part of Houston Industries, is aggressively expanding its appliance and air conditioning service business in **Texas, Oklahoma, Arkansas, Louisiana and Minnesota** and may soon enter the **Colorado** market.

Colorado's Public Utilities Commission is finalizing a modestly strict code of conduct rules for unregulated affiliates which require full payment to the utility for all data and other services.

New York -- New York utilities are discussing providing a variety of HVACR services but relatively few programs are being implemented as of late 1997. The most active program is that of Brooklyn Union Gas and their merger partner Long Island Lighting (LILCO) -- now Keyspan Energy. Brooklyn Union sells and installs gas air conditioning and sells gas appliance maintenance contracts. Any further Keyspan entry into the HVACR business is being held up by negotiations surrounding the merger.

The other major New York utilities, Niagra Mohawk, Consolidated Edison, Rochester Gas and Electric and New York State Electric and Gas are not aggressively pursuing the HVACR business.

The **New York Public Utilities Commission (PUC)** has ordered all state utilities, including Brooklyn Union/Keyspan, out of the HVACR business by 2000, unless the utilities can prove they are not cross-subsidizing. The April 4, 1997, PUC order requires that all utility HVACR services be provided by separate subsidiaries, that past expenditures be refunded to customers, and that HVACR service prices be immediately raised to unsubsidized levels.

Michigan -- Consumers Power has been aggressively trying to enter the HVACR business for 15 years, but they have been held up by litigation and the Michigan Coalition for Fair Competition has continued to fight these utility HVACR programs. Consumers Power sells appliance and HVACR service contracts for residences and

is discussing broader HVACR services. Consumers Power also has a referral program which includes a 10% kickback from the contractor.

Detroit Edison sells appliance and HVACR service contracts. Detroit Edison is also installing its Liquid Pressure Amplification Pump as part of commercial refrigeration and air conditioning systems.

Michigan Consolidated Gas (part of MCN Energy) has expanded from servicing gas appliances to selling service contracts for central air conditioning systems in the Detroit and Grand Rapids areas. Michigan Consolidated advertises its "100 years of gas appliance service experience."

These utility programs and potential cross-subsidy problems would be severely limited, if not killed, by pending Michigan legislation enacting utility standards of conduct. The proposed Michigan standards would prohibit unregulated subsidiaries from using the utility's name, staff or data bases. The Michigan Alliance for Fair Competition has repeatedly sued successfully to limit regulated utility provision of HVACR services.

Ohio -- Ohio utilities entered many the HVACR business, in 1997. When Ohio Edison (now part of First Energy which includes Toledo Edison and Cleveland Electric Illuminating) bought two of the nation's largest mechanical contractors, Roth Brothers and RPC Mechanical, with combined revenues of over \$90 million. Ohio Edison has announced that through these contractors it will supply the full spectrum of HVACR, roofing, and building services primarily to commercial and industrial customers. They are also starting a "one call" appliance service program. This dramatic move makes Ohio Edison/First Energy a major HVACR player.

American Electric Power (AEP) is indirectly entering the HVACR business through its proposed 10 year guaranteed savings programs. For large customers willing to contract for buying electricity for 10 years, AEP guarantees cost savings and installs energy saving equipment, including HVACR equipment, for free. It is unclear how extensive these new power contracts will be and what their impacts will be on existing HVACR contractors.

Columbia Gas has an appliance warranty program in Ohio. Consolidated Natural Gas is experimenting with an appliance warranty program in nearby Pennsylvania, which may be extended to the territory of CNG's East Ohio Gas.

Neither of Ohio's other major electric utilities, Cincinnati Gas and Electric (now Cinergy) and Dayton Power and Light, are actively pushing air conditioning installation and maintenance programs.

The Ohio Legislature is considering utility standards of conduct which would control these programs, but passage is uncertain.

Nevada -- Nevada Power proposed a preferred dealer network where it would sell referrals to selected contractors, but this program was effectively killed by PSC action. They are also planning a central chilled water cooling system for the Las Vegas "Strip." Having lost the dealer referral battle, Nevada Power is now entering the home and appliance warranty business (including HVACR) through an insurance

affiliate, First Choice Insurance. This program is running into problems with the contractor's licensing board, as is a similar insurance program run by Old Republic.

V. The Electric Power Industry in Florida

A. Description of the Electric Power Industry in Florida

1. Overall

Staff surveyed the Florida Public Service Commission, as well as each of the 55 regulated electric utilities in Florida. There are five investor-owned electric utilities, 33 municipally-operated electric utilities, and 17 electric cooperatives. The electric power industry consists of: (1) Generation; (2) Transmission (the "wheeling" of large amounts of electricity from one part of the state to another); and (3) Distribution (the actual *retail sale* of electricity to consumers).

However, not all utilities perform each of the three functions. Each of the five investor-owned utilities generates electricity, as do 16 of the 33 municipal systems and two of the 17 electric cooperatives. The others buy electricity from those who produce it.

In 1998, investor-owned utilities owned 78% of the generating capacity in the state, a reduction from a level of 85.8% in 1984 (with municipals, rural electric cooperatives, and federally-owned generation accounting for the remaining portion). In 1998, Florida's utilities generated 176,286 gigawatts of electricity, served 7,435,789 customers, with the investor-owned utilities serving 79% of that customer base.

2. Geographical Scope of Service for the Investor-owned Utilities

Of the five investor-owned utilities:

Florida Power and Light (FPL) serves an area of approximately 27,650 square miles in 35 counties located along Florida's east coast from the Keys to Jacksonville and the southwestern coast as far north as Bradenton. FPL served an average of 3.6 million customers during 1997.

Florida Power provides electric service to all or part of 32 counties in west central and north Florida, serving approximately 1.3 million customers.

Tampa Electric Company (TECO) serves over 525,000 residential, commercial and industrial retail customers in west central Florida. Its retail regulated service area consists of about 2,000 square miles, including almost all of Hillsborough County and parts of Pasco, Pinellas and Polk Counties.

Gulf Power serves approximately 350,000 customers in the 10 most western counties in Florida (sometimes referred to as the "Panhandle").

Florida Public Utilities Company is the smallest of the investor-owned utilities. It serves basically Marianna and Fernidina Beach, Florida. It has approximately 24,000 retail customers. It did not respond to our request for information.

3. Do electric power utilities in Florida currently engage in -- or have any plans to engage in -- the business of home appliance warranty or repair?

According to the responses received, none of the 33 municipally-operated electric utilities or 17 electric cooperatives engage in any appliance warranty or repair business. Three of the four responding investor-owned electric utilities (Tampa Electric Company, Florida Power, and Florida Power and Light) also do NOT engage in any appliance warranty or repair business. Florida Power is, however, engaged in an "inside wiring pilot project" to conclude at the end of 1998. This pilot project does not include appliance or air-conditioning system repair. It involves warranty and repair of *inside electrical wiring* (i.e., the electrical wiring contractors install between the electric meter and the electrical outlets inside the home). This pilot project will determine whether Florida Power will engage in electrical wiring warranty and repair work on a widespread basis.

Gulf Power indicated that it has for several years engaged in marketing of extended service warranties on appliances and servicing of appliances under warranties (via third parties). Gulf Power uses General Electric for the appliance repair service. General Electric uses local contractors to do the actual repairs. Their warranty program has approximately 5,000 clients.

B. Power Utilities' Viewpoint on the Contractors' Concerns

The electric power utilities' responses to this committee's questionnaire may be summarized as follows:

1. Many of the potential activities the contractors object to may legitimately be seen as an "advantage," but cannot be fairly characterized as amounting to "unfair" competition. Advantages utility companies might possess such as name recognition, use of logo, or benefits derived from purchasing power and credit lines amount to advantages any established business legitimately possesses when considering expanding their operations. The utilities point out that such advantages are also possessed by businesses such as Sears or K-Mart.
2. Other activities, such as using the employees, infrastructure, buildings, furnishings, equipment, vehicles, or any other physical assets of the regulated activity do amount to unfair competition (in the form of cross-subsidization), but the utilities deny they would attempt to act in such a manner, and point out that the Florida Public Service Commission -- under current law -- is already charged with preventing such cross-subsidization.

As stated by one utility company respondent:

The general thrust [of the contractor assertions is that] utilities have unlimited resources, in the form of captive ratepayers, from which to finance their diversification into the appliance repair/warranty business. There appear to be two derivative concerns resulting from this basic proposition: that utilities' activities will be subsidized by regulated operations; and to a somewhat lesser degree, independent contractors can't compete against large utilities. We should regard the second concern as a subset of the first, since inability to compete against a larger corporate entity that can achieve economies of scale and greater operating efficiencies, both of which serve

to give lower cost and better service to customers, should be recognized as a favorable outcome, not one that should elicit prohibitive legislation. In other words, if utilities can produce goods and services at lower cost and with greater customer satisfaction than other competitors, without "subsidizing" those goods and services from regulated operations, then consumers benefit and the market is working appropriately. After all, large chain grocery stores meet the mass market need more efficiently and at lower cost than the corner market, and while some may yearn for the more nostalgic small store up the street, no one would suggest that legislation should be passed prohibiting the larger chain stores from entering the market. This would only result in economic damages to consumers by restricting competition, quite the opposite effect the contractor associations would suggest. The real purpose of this argument is to create a legislative shelter by prohibiting or handicapping potential new entrants.

Another respondent states:

There is no evidence in Florida to support the claim that electric or gas utilities would subsidize all services provided by the utilities. Accounting rules and continuing audit oversight by the Florida Public Service Commission ensure that no such subsidies are allowed. The Securities and Exchange Commission also has rules which each public corporation must follow, including rules which prohibit subsidization of one business unit by another. The Federal Trade Commission and the United States Department of Justice actively enforce national statutes which prohibit unfair competition. The document makes broad assertions that cross-subsidy has and continues to occur using examples from other utilities in other states as a basis for that assertion. In fact, such violations are the exception, not the rule, and those few who break the rules are subject to penalties.

On the issues of logo usage and credit lines, that respondent goes on to assert:

Good names and logos were not bought and paid for by (utility) ratepayers. Logos were paid for by shareholders. Good names and good reputation were earned by good performance, not provided by ratepayers. No utility should be forced to neuter its identity (good or bad) because another business or group wants to use its own branded name(s) while prohibiting the utilities from using their own branded names. Likewise, a utility owned by shareholders should not be prohibited from utilizing the shareholders' purchasing power or credit line to do business in any area which is legal and as long as it does not unfairly use its efficient resources.

Another respondent states:

The concerns raised by the contractor associations appear to be oriented more toward establishing artificial protection for themselves from competition rather than the preservation of fair competition... Cross-subsidization of competitive initiatives at the expense of the regulated business enterprise must be avoided, but the contractors' concerns that customers of public utilities would cross-subsidize new, competitive business ventures by public utilities are without merit. Electric utilities in Florida have been in the household appliances business for decades.

On the issue of the adequacy of existing laws, a respondent states:

The Florida Public Service Commission and other regulatory bodies have generations of experience in ensuring that the costs of appliance business enterprises be recorded "below the line" and therefore excluded from the

costs used in establishing electric rates. Rate regulation assures that customers are only charged the legitimate cost of electric service and avoids any cross-subsidy of non-utility service. In addition, federal regulations require a public utility to make any sales of goods and services to its affiliates at cost, and affiliates must sell any goods or services to the public utility company or other affiliates at cost (17 CFR 250.90). The regulations also control the determination of cost (17 CFR 250.91). Accordingly, there is no basis to presume the existence of any cross-subsidy.

VI. Conclusions

This report makes the following conclusions:

- Currently, the utilities in Florida are not entering the fields of appliance service warranty and repair to any *significant* extent. Only Gulf Power actually engages in this business.
- Utility entry into the fields of appliance service warranty and repair has occurred in other states, and several states have set forth (either statutorily or by administrative action) "Codes of Conduct" and other cross-subsidization controls on utilities entering these fields.
- Contractor arguments that deregulation – should it occur – will provide impetus for utility entry into the fields of appliance service warranty and repair appear to make sense. Competition (deregulation) can logically be expected to spur a search for more ways to service and expand a customer base. However, there is actually no *bar* to utilities proceeding prior to any deregulation (Gulf Power is doing it now). Therefore, it would not be correct to see this issue as either *contingent* upon deregulation or *necessarily linked* to deregulation.
- The appropriate executive agency to consider Codes of Conduct or other controls on utility entry into the fields of appliance service warranty and repair would be the Public Service Commission.
- What the contractor representatives appear to be seeking (besides the general goal of "raising the consciousness" of the Legislature on this issue) is to have the legislature *place in statute guidelines* for such controls. Such guidelines would clearly designate which activities would be considered to be "cross-subsidization" or some other type of "unfair" competition. Without such Codes of Conduct, it is left to administrative hearings and litigation to determine permissible and impermissible activities on a case-by-case basis.
- The *ultimate* issue is whether the existing laws – as adjudicated through PSC hearings and litigation – are sufficient to fairly and efficiently assure the utilities will not unfairly compete, or whether these laws should be supplemented with Codes of Conduct (developed either statutorily or through administrative agency action) in order to clearly delineate what activities and actions constitute unfair competition.

VII. Policy Options

The policy options available to the legislature are:

1. The legislature could conclude that no action is needed as far as statutory changes are concerned, that existing state and federal laws are adequate to address the situation. Disputes between contractors and utility companies engaged in appliance service and repair would be resolved administratively through hearings before the PSC or through litigation.

Under this option the Legislature could hold hearings to be certain that existing laws are indeed adequate.

2. The Legislature could conclude that no action is needed as far as statutory changes are concerned, but could direct the PSC to hold hearings with the goal of determining if it needs to adopt a "Code of Conduct" to set forth allowable and prohibited activities with regard to electric utilities engaging in appliance warranty and repair work. Such a Code of Conduct could, for instance, settle such questions as whether the use of the logo by repair affiliates should be prohibited, and under what circumstances and controls advertisements urging consumers to use these affiliates for their repair work would be allowed to be included in the electric utility's monthly billings.
3. The legislature could hold hearings and enact the Code of Conduct in the statutes.

1949



1999

1210 N. CLEARVIEW AVE. TAMPA, FLORIDA 33607
(813) 870-2607 FAX: (813) 876-7625

March 19, 1999

The Honorable Mark Ogles, Chairman
Business Regulation and Consumer Affairs Committee
402 House Office Building
402 South Monroe Street
Tallahassee, Fl 32399

Dear Representative Ogles:

A member of our industry association spoke at the workshop/hearing conducted by your Committee last session.

That hearing led to a report to the legislature titled, "Electric Utility Entry into the Appliance Warranty and Repair Business." Your staff deserves praise for the report which we believe accurately expressed the concerns of the HVACR industry.

In the report, the electric utility industry was given the opportunity to comment on and respond to the concerns raised by our industry.

It was evident to us that some of the utility industry comments were inaccurate, less than factual and designed to divert attention from the issues at hand. The purpose of this correspondence is to set the record straight and refocus on the issue of existing and future cross-subsidization.

The utility industry feels that the use of their name and logos are appropriate on the competitive, unregulated side of their business because they have earned the reputation and goodwill of the public over the years. They point to K-Mart and Sears as examples. K-Mart and Sears earned their reputations competing in the open market place against other retail stores and chains. Because they are not regulated monopolies, no one protected them from competition or allowed them a guaranteed profit. To a certain degree this same argument pertains to lines of credit or purchasing power.

The utility industry would like the legislature to believe that the HVACR industry is seeking protective legislation that would prevent the utilities entry into our market. We have stated from the beginning and have written in our positions that we do not object to their competition. We only object to an unfair advantage provided to them through cross-subsidization.

The small businessman does not fear giant competitors as one utility respondent seems to believe. They mention Sears which has been a competitor in our industry for years. Generally, the larger the competitor - the less efficient the service. A great many consumers prefer smaller shops in which they are not a computer number, the service is more personalized and they can even request a favored mechanic. The contention that we fear their fair competition is rubbish. We welcome their competition as long as they make the same investments and take the same risks.

It was heartening to read that the utilities do believe that the use of physical assets and personnel from the regulated side would constitute cross-subsidization. But, the utilities go on to say "they would never do that." We contend that they have been doing this very thing for years. We provide the attached exhibits as proof that the utility industry is less than forthcoming and that adequate safeguards do not presently exist through the Public Service Commission (PSC).

Exhibit A (see attachments)

Tampa Electric Company (TECO) has stated that they do not engage in a Warranty Service Program at present.

Yet, as early as 1997 they contacted our Association about their strategy to enter that market. As of this date, they have not introduced a program. But, because of our objections, they have been silent and we suspect that corporate strategy and planning have continued.

Exhibit B (see attachments)

Florida Power Corporation (FPC) has stated that they do not engage in a Warranty Service Program. The utility does admit to an "inside wiring" pilot project. The electrical contracting industry probably has an issue here.

What Florida Power does not say is they have been conducting an Air Conditioning Maintenance "Pilot" Program that began in the Fall of 1996.

We have included numerous documents demonstrating the time and FPC involvement in this program.

Also note the flyer that was sent as a "stuffer" in the utility ratepayer bill mailings. This goes to the heart of our concerns about cross-subsidization.

Exhibit C (see attachments)

Florida Power & Light (FPL) had plans to introduce a Warranty Service Program in 1997. Much like TECO they decided to postpone and have been quiet since.

Also included in this exhibit is a flyer proving that FPL was involved in commercial system contracting back in 1990. This flyer was a "bill stuffer" in commercial accounts.

Exhibit D (see attachments)

Peoples Gas System (now owned by TECO Energy) is no longer selling or servicing gas appliances. This exhibit, however, demonstrates the concerns that we have regarding unfair competition and many municipal-owned gas systems currently engage in this activity. Clearwater Gas as an example.

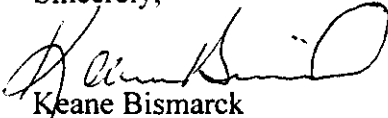
Please note the Public Service Commission response to our complaint in this correspondence. The PSC position is that revenue and expense for unregulated activity is excluded from utility rate calculations. This is a non-answer to the question at hand. It says nothing as to whether the PSC does anything to determine that these companies are not simply blending nonregulated costs into accounting for regulated activities. It would be interesting to see how the following expenses for unregulated activities (excludes demand side management or "DSM" activities) are separated out from regulated costs and expenses:

Wages/salaries (do employees also work the regulated side)	Professional fees
Benefits, insurance, retirement	Promotional material
Automobiles & allowances	Postage and mailing
Offices (rental)	Utilities
Furnishings	Payroll taxes
Business machines	Liability insurance
Communications	Workers Comp Insurance
Office supplies	Bank charges
	Maintenance & repairs

In summary, our industry believes that the legislature should enact statutory guidelines in the form of "standards of conduct". At the very least, the Public Service Commission should be statutorily required to adopt "standards of conduct". We have provided a model copy for your review.

Thank you for the opportunity to share our views.

Sincerely,


Keane Bismarck
Executive Director

Enclosures

EXHIBIT A

TAMPA ELECTRIC COMPANY
(TECO)



TAMPA ELECTRIC

November 05, 1997

Mr. Keane Bismarck, Executive Director
Refrigeration and Air Conditioning Contractors Association, Inc.
1210 North Clearview
Tampa, Florida 33607

Dear Mr. Bismarck,

Thank you for making time to meet with Tom Campbell and me to discuss the idea of a TECO appliance warranty program. The discussion we had will prove valuable in our effort to build a program that will allow our Customers to protect themselves from the unexpected costs of appliance repair and replacement, as well as, help us to build and maintain a profitable relationship between ourselves and the existing HVAC dealers within our service area. We will certainly give careful consideration to your comments and the comments of your members as we design a program that will be beneficial to us all.

Tampa Electric Company sincerely wants to be a partner with RACCA and the reputable HVAC dealers it represents here in the Bay Area. If you wish to express any other ideas on how we can make this work to the best advantage of all concerned, please contact me or Tom Campbell here at Tampa Electric Company.

We enjoyed our visit and wish you the very best in your endeavors. Thank you again for your time.

Sincerely,

Randy Stevens, Consulting Engineer
Phone (813) 228-4514
Fax (813) 228-4140

TAMPA ELECTRIC COMPANY

P.O. BOX 1111

TAMPA, FL 33601-0111

HILLSBOROUGH COUNTY 223-0800

OUTSIDE OF HILLSBOROUGH COUNTY 1-888-223-0800

HTTP: WWW.TECOENERGY.COM

AN EQUAL OPPORTUNITY COMPANY



1210 N. CLEARVIEW TAMPA, FLORIDA 33607
(813) 870-2607

NOVEMBER 11, 1997

MR. RANDY STEVENS
TAMPA ELECTRIC COMPANY
P. O. BOX 111
TAMPA, FL 33601-0111

DEAR MR. STEVENS:

THE BOARD OF DIRECTORS OF RACCA HAS ASKED ME TO CONVEY THEIR OPPOSITION TO TAMPA ELECTRIC COMPANY'S RECENT DECISION TO ENTER THE APPLIANCE SERVICE WARRANTY MARKET.

YOUR DECISION DID NOT COME AS A MAJOR SURPRISE SINCE UTILITIES ALL OVER THE COUNTY (AND IN FLORIDA) HAVE ANNOUNCED OR ENGAGED IN SIMILAR PROGRAMS. UTILITY COMPANIES CITE DEREGULATION AS A MAJOR REASON FOR THEIR MOVES INTO THESE MARKETS. BY OFFERING VALUE-ADDED SERVICES TO THEIR RATEPAYERS, THEY HOPE TO RETAIN CUSTOMERS AS COMPETING UTILITIES OFFER LOWER RATES.

THE BOARD OF DIRECTORS IS NOT CONVINCED THAT DEREGULATION IS IN THE BEST INTERESTS OF THE RATEPAYER, THE UTILITY OR OUR INDUSTRY. DEREGULATION HAS NOT HAD THE INTENDED EFFECT UPON OTHER INDUSTRIES THAT WASHINGTON PROMISED. ONE NEED ONLY LOOK AT THE AIRLINE INDUSTRY, THE TELECOMMUNICATION AND CABLE INDUSTRY AND ESPECIALLY THE BANKING INDUSTRY. IN MOST INSTANCES, THERE IS LESS COMPETITION, HIGHER COSTS AND POORER SERVICE.

RACCA'S BOARD BELIEVES THAT TAMPA ELECTRIC COMPANY SHOULD FOCUS ITS EFFORTS TO FIGHT DEREGULATION RATHER THAN PROMOTING PROGRAMS THAT INTRUDE INTO THE BUSINESS OF AN ALREADY ESTABLISHED INDUSTRY. IF YOU WANT THIS INDUSTRY AS AN ALLY, RATHER THAN AN OPPONENT, START EDUCATING CONSUMERS AND LEGISLATORS ABOUT THE ADVERSE EFFECT OF DEREGULATION.

IT SHOULD COME AS NO SURPRISE THAT OUR INDUSTRY IS EXTREMELY SENSITIVE TO PROGRAMS SUCH AS THE ONE YOU ARE PROPOSING. ON ITS FACE, IT APPEARS ATTRACTIVE. BUT, UNLIKE THE HEATPUMP REBATE PROGRAM, IT IS NOT A DEMAND SIDE PROGRAM. THE TRADITIONAL CONTRACTOR-TO-CUSTOMER RELATIONSHIP WILL NOW BE BROKERED BY THE UTILITY. YOUR ASSURANCES THAT THE CONTRACTOR WILL REMAIN

AUTONOMOUS AND THAT YOU HAVE NO PLANS TO ENTER THE SERVICE AND INSTALLATION MARKET CARRY LITTLE WEIGHT IN LIGHT OF THE ACTIVITIES OF OTHER UTILITIES AROUND THE NATION.

OTHER UTILITIES, AFTER GAINING A SIGNIFICANT MARKET ,HAVE OPTED TO EITHER PURCHASE HVAC FIRMS OR DEVELOP THEIR OWN SERVICE DIVISIONS. YOUR CORPORATE STRATEGY WILL BE BASED ON BUSINESS DECISIONS - NOT ON WORDS OF ASSURANCE.

WHY ARE WE, AS AN INDUSTRY, SO OPPOSED TO YOUR ENTRY INTO OUR MARKET? IN A WORD, THE REASON IS "CROSS-SUBSIDIZATION". IF YOU WERE A TRUE COMPETITOR STARTING UP A BUSINESS (IN THE CONVENTIONAL WAY) WE WOULD ACCEPT THAT. TAMPA ELECTRIC COMPANY AND RACCA HAVE SHARED A GOOD AND COOPERATIVE RELATIONSHIP FOR MANY YEARS. TECO AND RACCA'S CONTRACTOR MEMBERS HAVE SHARED THE SAME CUSTOMER BASE BUT FOR ENTIRELY DIFFERENT REASONS. TECO HAS A CAPTIVE MARKET WHILE OUR CONTRACTORS HAVE HAD TO EARN AND RETAIN THE BUSINESS.

YOUR PAST, PRESENT AND FUTURE USE OF RATEPAYER FUNDING TO RESEARCH, DEVELOP, PROMOTE, IMPLEMENT AND ADMINISTER THESE TYPES OF PROGRAMS IS UNFAIR.

AS AN EXAMPLE; THERE ARE A NUMBER OF HOME WARRANTY INSURANCE CORPORATIONS OFFERING THE TYPE OF PROGRAM YOU PROPOSE. THESE ARE FOR-PROFIT, UNREGULATED CORPORATIONS WHO ARE RISKING THE INVESTOR'S CAPITAL ON THE CHANCE TO SUCCEED. THEY ARE NOT DEPENDENT ON A FRANCHISED, CAPTIVE RATEPAYER BASE, AND ALL THE ATTENDENT ACCUMULATED ASSETS, TO START UP A NEW VENTURE. THE SAME ARGUMENT CAN BE MADE OF ANY FUTURE INTRUSION YOU MAKE IN OUR INDUSTRY. YOUR RATEPAYERS ARE NOT INVESTORS.

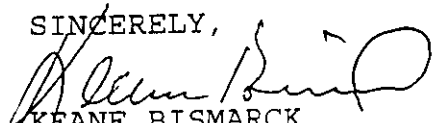
THE FACT THAT YOU HAVE ALREADY DEVOTED TIME AND RESOURCES INTO EXPLORING THIS OPTION MEANS THAT CROSS-SUBSIDIZATION OF RATEPAYER REVENUE HAS ALREADY TAKEN PLACE. IN ESSENCE, YOUR RATEPAYERS ARE PAYING YOU TO FIND WAYS TO KEEP THEM AS PAYING CUSTOMERS. OUR MEMBERS WONDER HOW MUCH OF THE CHECK THEY WRITE EACH MONTH, FOR THEIR ELECTRIC BILL, IS INVESTED INTO EFFORTS TO COMPETE FOR THEIR BUSINESS. CONTRACTORS ARE NOT SUBSIDIZED AND UTILITIES THAT ARE GUARANTEED A PROFIT SHOULD NOT BE SUBSIDIZED.

THE BOARD OF DIRECTORS WISHES YOU TO KNOW THAT RACCA CONDUCTED A SURVEY OF ITS CONTRACTOR MEMBERS EARLIER THIS YEAR. WE ASKED IF OUR MEMBERSHIP SUPPORTED THE BOARD'S OFFICIAL POSITION ON UNFAIR UTILITY COMPETITION (ENCLOSED) AND IF WE SHOULD FIGHT OR NEGOTIATE. NEARLY 60% OF OUR MEMBERS RESPONDED TO THE SURVEY. OF THOSE RESPONDING, 97% SAID THEY SUPPORT THEIR BOARD AND THAT WE SHOULD FIGHT.

THE BOARD ASKS THAT YOU RECONSIDER YOUR DECISION AND FOCUS YOUR EFFORTS ON DEFEATING DEREGULATION. WE VALUE THE MANY YEARS OF SUCCESSFUL INDUSTRY/UTILITY "PARTNERING" ON ENERGY CONSERVATION INCENTIVE PROGRAMS. WE CANNOT ACCEPT PROGRAMS THAT RELEGATE THE INDUSTRY CONTRACTOR TO A SUBCONTRACTOR OF LABOR.

THANK YOU FOR THE OPPORTUNITY TO COMMENT.

SINCERELY,



KEANE BISMARCK
EXECUTIVE DIRECTOR

KB/JLC

ENCLOSURE

EXHIBIT B

FLORIDA POWER CORPORATION
(FPC)

FPC Pilot Program Proposal

May 22, 1996

Program Description:

- Deluxe twice-per-year inspection
- Contractor will perform service points as outlined in the program checklist
- Limited to 600 customers in targeted geographic areas

Assignment of Work:

- randomly assigned to contractors within target areas
- OR-
- to contractor specifically requested by customer
- FPC will generate service order for each account
- service will be scheduled during normal business hours, however, schedules should be flexible to accommodate customer needs

Qualification of Contractors:

- approved via FPC contractor screening process
- pass company background check through:
 - a) PCCLB
 - b) Dept. of Consumer Affairs
- technicians should pass:
 - a) drug testing - *NOT IF ALREADY IN DFWP-*
 - b) criminal background check

Quality Assurance/ Monitoring:

- end of program survey
- post service survey
- 50% auditing of services
- no second opinion offered through ^{PJET} program
- establish policing activity

Program Identity:

- under development - no "preventative" statement or description used

5/22/96

filename: pilotpro.doc

Spring Preventative Maintenance Checklist

Air Handler

- Check thermostat operation (cycle system on/off).
- Inspect filter (replace if provided by customer, wash if washable type).
- Inspect electrical connections (tighten if necessary).
- Inspect coil condition (clean in place if needed and possible).
- Inspect blower wheel for cleanliness.
 - Check and record blower motor amperage.
- Clean drain line, apply algae tabs.
- Check and record supply and return air temperatures.
- Check belt tension and condition (if applicable).

Outdoor Unit

- Check electrical connections (tighten if necessary).
- Check compressor contactor condition.
- Check condition and oil fan motor
- Clean coil if needed.
- Check for obvious refrigerant leaks.
- Check and record refrigerant pressures (add up to 1lb of refrigerant if needed).
- Check and record compressor amperage
- Check and record fan motor amperage

Document and Discuss Findings

- Document inspection results
- Discuss inspection results and any additional service needed with customer.

Fall Preventative Maintenance Checklist

Heating System

Blower Section

- Check thermostat operation (cycle system on/off).
- Inspect filter (replace if provided by customer, wash if washable type).
- Inspect electrical connections (tighten if necessary).
- Inspect blower wheel for cleanliness.
- Check belt tension and condition (if applicable).
- Check and record blower motor amperage.

Heat Strip Systems

- Check and record heat strip amperage.

Heat Pump Systems

- Check auxiliary heat strips.
- Check electrical connections (tighten if necessary).
- Check compressor contactor condition.
- Check condition and oil fan motor
- Clean indoor and outdoor coils if needed.
- Check for obvious refrigerant leaks.
- Check and record refrigerant pressures (add up to 1lb of refrigerant if needed).
- Check and record compressor amperage
- Check and record fan motor amperage

Gas and Oil Furnaces

- Check burner condition.
- Check combustion assembly.
- Check heat exchanger.
- Check flame adjustment on pilot and burners.

Document and Discuss Findings

- Document inspection results
- Discuss inspection results and any additional service needed with customer.

FPC Logo

PLANNED
AC PREVENTATIVE MAINTENANCE

Area: 12

Assigned To:

ORDER NUMBER 123456

Contractor ABC

Account: 12345-12345 Site Name: Mainlands

Date Issued: 2/09/96

Customer: Joe Smith
Address: 1243 Main St St Petersburg FL 33777
Phone: 813 555 1234 Extn: 1234
Alt Phone: 813 111 1234 Extn: 1234

Initial Maintenance: 2/09/94
Last Maintenance: 2/09/95
Contractor: Contractor ABC
Service Person: Joe Employee

Best Time: Mornings after 8
Requested By: Mrs. Smith 813 555 1234

Operating Center: Walsingham
Premise Type: Single Family

Premise US 19 N past Park Blvd overpass
Directions:

Call Dates: 1: _____ 2: _____ 3: _____ 4: _____

Issue Remarks: Remarks recorded by call center rep at time of request from customer. For example, they desire to use Contractor XYZ instead of ABC.

Existing HVAC Equipment ---(please note changes below as appropriate)-----

Usage: Both	Type: Heat Pump	Fuel Source: Electric	Age: 99 years	SEER: 11.5
Usage: Both	Type: Heat Pump	Fuel Source: Electric	Age: 99 years	SEER: 11.5
Usage: Both	Type: Heat Pump	Fuel Source: Electric	Age: 99 years	SEER: 11.5

Note: Premise has more than 3 HVAC units on record.

Completion Information -----

Date: ___/___/___ Arrived Time: ___:___ AM PM Worked By: _____

___ Unable to Complete Departed Time: ___:___ AM PM

Remarks: _____

**MINIMUM GUIDELINES
FOR
DOING BUSINESS
WITH
FLORIDA POWER CORPORATION**

- Be properly licensed, qualified, and capable of providing supplies and performing all necessary duties.
- Possess a record of performance reflecting all work completed on time for the past two (2) years.
- Demonstrate a history of financial stability equivalent to the term that services are required.
- Adequate cash flow to operate sixty (60) days of current activities.
- Company operations shall not be impaired by an unbalanced debt to equity ratio, or any burdensome security agreements with financial institutions.
- Maintain current insurance limits as follows:

Commercial General Liability Insurance

Each Occurance and General Aggregate not less than \$300,000

Products Completed Operations Aggregate not less than \$300,000

Contractual Liability Insurance (this is included in the Commercial General Liability policy)

Automobile Liability

Combined Single Limit not less than \$300,000

Bodily Injury (per person) not less than \$100,000

Bodily Injury (per accident) not less than \$300,000

Property Damage not less than \$100,000

Workers Compensation

Statutory

Employers Liability

Each accident not less than \$100,000



COPY

July 2, 1996

Mr. Glenn Warren
Tack & Warren Services
806 Pierce Street
Clearwater, FL 34616

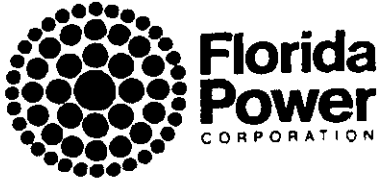
Dear Glenn:

I am writing to inform you that FPC has canceled the next scheduled meeting of the HVAC Planned Maintenance Pilot Program ("Pilot Program") Task Force. The meeting was to have been held on Friday, July 12th at the Largo Office complex. We have cancelled the meeting because FPC can successfully finalize its decisions for the Pilot Program without additional input from the Task Force. Moreover, FPC's going forward alone at this juncture will avoid any possible appearance (however incorrect and unjustified) that a Task Force member or, for that matter, any contractor will derive undue preference from the existence of the Task Force.

The Pilot Program will be opened up to other firms in Pinellas County to gain a better knowledge of pilot operations impacts. You and they will be receiving, in short order, an invitation to participate in the Pilot Program. Accompanying the invitation will be a non-disclosure agreement to execute and return to FPC as a precondition to receiving the complete Pilot Program materials.

FPC has benefited from your input and consultations as it has gone forward in constructing the Pilot Program -- which is important as a preliminary test of the long-term viability of the concept FPC had in mind. We very much appreciate your help and want to thank you. Although you may have disagreement with certain aspects of the Pilot Program as designed by FPC, we believe the Pilot Program which we will shortly unveil will be workable and well received by customers. This, of course, is the most important element in building a successful program. Although, as you appreciate, FPC must proceed in the manner it believes appropriate, and must exercise its own independent judgment in designing the Pilot Program and final programs, FPC would like to reserve the option of consulting with you further. Of course, if you have any questions or wish to provide further input, please do not hesitate to call me at (813) 866-5549. Thanks again for your hard work.

Sincerely,



July 2, 1996

Mr. Keane Bismarck
RACCA
1210 North Clearview
Tampa, FL 33607

Dear Keane,

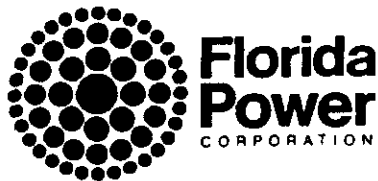
I am writing to inform you that FPC has canceled the scheduled July 12th Task Force meeting of the HVAC Planned Maintenance Pilot Program of which you are a member. As the attached letter more fully explains, the need for such a meeting no longer exists. While we certainly appreciate your comments in previous meetings, a final decision as to the specifics of the program will be made by FPC without any present need for further consultation. However, FPC would appreciate the opportunity to consult with you further on an individual basis should the need ever arise.

Again, thank you for your hard work. If you have any questions, please feel free to call me at (813) 866-5549.

Sincerely,

A handwritten signature in cursive script, appearing to read "Taze E. Lamb".

Taze E. Lamb
Project Engineer



July 31, 1996

Mr. Keane Bismarck
Executive Director
RACCA
1210 N. Clearview
Tampa, FL 33607

Dear Keane,

As we discussed, I am outlining the available information on Florida Power Corporation's (FPC) Heating and Cooling Check-Up Pilot Program.

Enclosed is a sample of the letter which was mailed to the contractors inviting them to participate in the pilot program. The letter outlines some FPC and contractor responsibilities on the pilot which include:

- FPC: sell program, screen customers, provide contact information, pay contractors.
- Contractor: provide service as per program standards, provide preferred service plan as indicated by customer, invoice FPC.

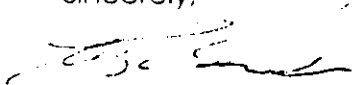
Marketing pieces for the program will be available when mailing commences in late September.

The customers will be given a choice of two plans, annual or bi-annual, for the cleaning. The customer will pay for the service through a monthly charge on the electric bill. The contractor will invoice FPC directly for the service charge. The cost of the service will cover only the check up. Any further repairs will be the responsibility of the customer for payment.

The Standards and Procedures will give an overview of the pilot operation procedures. The Standards specify minimum insurance levels, participation eligibility requirements, service standards, and customer problem resolution protocol. We will entertain industry feedback on these Standards at the conclusion of the pilot.

I appreciate your continued help, and look forward to working with you in the future. If you have any questions, please feel free to call me at (813) 866-5549.

Sincerely,



Taze E. Lamb
Project Engineer



July 25, 1996

Mr. _____
President
_____ Heating & Air

_____, FL _____

Dear Mr. _____,

Florida Power Corporation (FPC) will be offering a HVAC Planned Maintenance Pilot Program (Pilot Program) to our residential customers this fall. The goal will be to provide the customer with a premium service from qualified, reliable firms. The Pilot Program will require that you perform a thorough inspection and cleaning of the customer's HVAC equipment, as per guidelines specified by FPC.

FPC will market the Pilot Program, screen the customers, and then provide you with the contact information to schedule and perform the service. Upon completion of the service, FPC will then remit payment to your firm.

The Program will benefit both your firm and FPC's customers. Should you be interested in participating, please read and execute the attached non-disclosure agreement. The completed agreement should be returned to our office by 08/05/96. Once received, bid packages with specific Pilot Program information will follow.

I appreciate your attention, and look forward to your reply. If you have any questions, please feel free to call me at (813) 866-5549.

Sincerely,

Taze E. Lamb
Project Engineer



October 24, 1996

Larry Renda
400 63rd St. N
St. Petersburg, FL 33710

Acct# 43636-44459

Dear Mr. Renda:

Thank you for your recent inquiry about the **Heating/Cooling CheckUp** program.

The **Heating/Cooling CheckUp** program is an air conditioning maintenance program from Florida Power Corporation. With the Heating/Cooling CheckUp program, a Florida Power approved contractor will thoroughly inspect your system once or twice a year to ensure it is in peak operating condition. The attached lists the participating contractors on the program.

Florida Power's **Heating/Cooling CheckUp** is designed to assure you of trouble-free service from your system year-round. Call us at **823-0701** and we will have one of our approved contractors inspect your system and give you something refreshing- peace of mind.

Sincerely,

Taze E. Lamb
Program Manager



1210 N. CLEARVIEW TAMPA, FLORIDA 33607
(813) 870-2607

OCTOBER 25, 1996

KATHLEEN O'DOWD, SENIOR ATTORNEY
DBPR, BUREAU OF INVESTIGATIVE SERVICES.
19321 U.S. HWY 19 N, SUITE 602
CLEARWATER, FL 34624

DEAR MS. O'DOWD:

EARLIER THIS YEAR YOU CONTACTED ME CONCERNING A PROGRAM THAT FLORIDA POWER CORPORATION WAS CONSIDERING.

THE PROGRAM, IF YOU RECALL, INVOLVED THE UTILITY OFFERING PLANNED MAINTENANCE CONTRACTS TO ITS RATEPAYER BASE AND THEN SUB CONTRACTING THE INSPECTIONAL SERVICES TO CONTRACTORS. AT THAT TIME YOU ASKED THAT I PROVIDE FOLLOW-UP INFORMATION SINCE THERE WAS A CONCERN BY DBPR THAT THE UTILITY WOULD ENGAGE IN UNLICENSED ACTIVITY.

WE (RACCA) SAT IN ON SEVERAL MEETINGS BETWEEN CONTRACTORS AND THE UTILITY. NATURALLY, THE INDUSTRY HAD SOME GRAVE CONCERNS REGARDING THIS PROPOSED PROGRAM. I ADDRESSED THE LICENSING ISSUE EARLY ON WITH FPC OFFICIALS. I WAS TOLD THAT ALL REQUIREMENTS WITH THE LAW WOULD BE MET.

EVENTUALLY FLORIDA POWER DECIDED TO MOVE FORWARD WITH A PILOT PROGRAM IN SPITE OF ANY INDUSTRY CONCERNS. I, ONCE AGAIN, REMINDED FPC OFFICIALS REGARDING CHAPTER 489. I WAS TOLD, AGAIN, THAT THEY WERE COMPLYING.

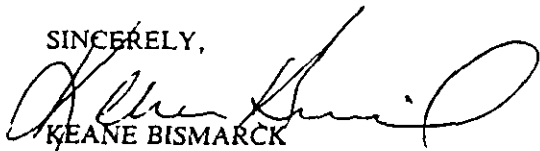
ON OR ABOUT OCTOBER 1ST THE ENCLOSED FLYER WAS MAILED TO A PILOT BASE OF RATEPAYERS. I DO NOT SEE A QUALIFIER'S NUMBER ANYWHERE AND HAVE SERIOUS DOUBTS THAT THEY HAVE COMPLIED WITH THE LAW.

CAN YOU ADVISE US AS TO THEIR COMPLIANCE? IF THEY ARE NOT IN COMPLIANCE, PLEASE ACCEPT THIS LETTER AS AN OFFICIAL COMPLAINT.

WE ALSO UNDERSTAND, FROM AN ASSOCIATION LOCATED IN MANATEE/SARASOTA COUNTY, THAT ANOTHER UTILITY, FLORIDA POWER & LIGHT (F P & L) OFFERED A CONTRACT TO REPLACE A 50 TON CHILLER. YOU MAY WISH TO INVESTIGATE F P & L'S QUALIFICATIONS AS WELL. MORE INFORMATION CAN BE OBTAINED FROM MACCA PRESIDENT, PAUL STEHLE (CLIMATIC CONDITIONING CO.) AT (941)758-3080.

THANK YOU FOR YOUR ASSISTANCE AND INTEREST IN THESE MATTERS.

SINCERELY,



KEANE BISMARCK
EXECUTIVE DIRECTOR

This Is.

HEATING/COOLING CHECKUP

● The Annual Air Conditioning Maintenance Service From Florida Power.

Air conditioning and heating systems always seem to break down at the worst times — when the weather is at its hottest or coldest. Now, with the *Heating/Cooling CheckUp*, Florida Power will help see to it that your system is in peak operating condition.

Depending on the plan you choose, a Florida Power-approved contractor will thoroughly inspect your system once or twice a year. And give you something very refreshing — peace of mind.

The *Heating/Cooling CheckUp*. A Comprehensive Service.

Our maintenance service keeps your air conditioning system running at its full potential. And the more efficiently your system works, the more you get from your heating and cooling energy dollars. Just a few of the items on our checklist include:

- Inspect Air Filters
- Check Thermostat Operation
- Inspect Electrical Connections
- Check Refrigerant Pressures
(Add up to 1 lb. of refrigerant if needed)
- Clean Drain Line & Apply Algae Tabs
- Inspect Evaporator & Condenser Coil
- Inspect Blower Wheel
- Lubricate All Motors

* Additional charge for multiple units.

At Only \$5.95 Monthly, It's Easy To Afford.

With our *Heating/Cooling CheckUp* you never face a big lump-sum payment. We'll bill you as part of your monthly electric bill. It's just \$5.95 per month for the once-yearly service and \$8.95 for twice-yearly service.* Which means the *Heating/Cooling CheckUp* is as hassle-free as it is affordable. Because you'll still have only one monthly check to write.

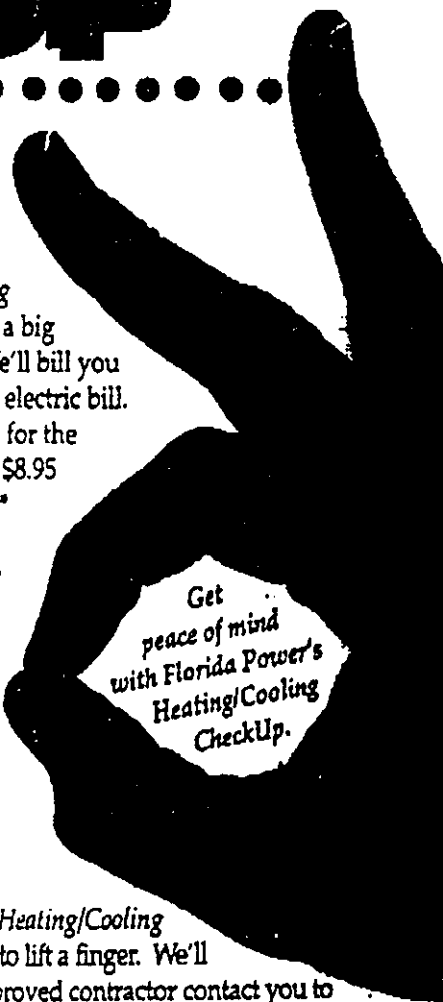
We Make It Easy For You.

Once you sign up for the *Heating/Cooling CheckUp*, you don't have to lift a finger. We'll have a Florida Power-approved contractor contact you to set up an appointment at your convenience during normal business hours. You'll also receive a friendly reminder when it's time to schedule your next service call.

We've even made it easy to join. If you're a homeowner with central heat and air, just fill in and mail back the attached postage-paid card, or give us a call at **823-0701**.

Take care of your air conditioning system the right way.

With Florida Power's *Heating/Cooling CheckUp*.



HEATING/COOLING
CHECKUP
ENERGY SOLUTIONS from
Florida Power

Yes, Tell me more about the *CheckUp*.

Please have a Florida Power Corporation representative contact me. I want Heating/Cooling *CheckUp* service performed:

1x **2x**
once yearly *twice yearly*

Name

Address

City State Zip

Florida Power Account Number

Day Phone

Evening Phone

Best Time To Call



© Florida Power Corporation 896 001701

● you're a homeowner with a central heat and air conditioning system, please fill out the attached postage-paid card.

A Florida Power representative will call you with more information. For even faster service, call:

823 • 0701

Progress

Analysts are skeptical about the short-term potential in energy services because states are slow to embrace competition.

Come January, only four states — California, Massachusetts, New Hampshire and Rhode Island — will have opened their markets. There is little movement to open the Florida market because electric rates hover near the national average. The state also has few large industries, which in other states have been the most aggressive in shopping for bargain-base power.

Some Florida utilities also are fighting rapid change. State lawmakers are responding to the pressure: Last year, they killed an attempt to get the state Public Service Commission to look at retail competition.

With competition coming in fits and starts, utilities are looking for ways to keep the customers they have taken for granted until now. They are coming up with some novel products and services to build that customer loyalty:

■ Edison International in California repairs personal computers

in the home, charging a flat monthly fee of \$10.95. For an additional \$17.95 a month, a customer can get unlimited Internet access.

■ EnergyOne, a company founded in June by Kansas City, Mo.-based UtiliCorp Unified Inc. and PECO Energy Co. of Philadelphia, offers utilities a package of services that they can offer their own customers. The package includes electricity and natural gas, long-distance telephone service and home security.

Florida Power is testing some of these same services in parts of its 32-county service area. For instance, the company offered a surge protection device for \$5.95 a month to households in Orlando this summer. It also plans to test an appliance maintenance program in Pinellas County.

The utility is also installing two-way communication devices in 500 homes in a new subdivision near Kissimmee. The technology allows Florida Power to automatically read meters and measure energy use. Eventually, homeowners will be able to save money by programming the device to run appliances at hours when the cost of electricity is lower.

Korpan is not afraid to criticize his company and the industry. It's

almost like a coming out party for the 55-year-old, who has worked out of the spotlight for much of his tenure at Florida Progress.

Korpan was formally handed the reins to Florida Progress in June. Critchfield remains chairman but plans to retire near the time of his 65th birthday in May.

Korpan grew up playing high school football in rural Illinois, where his parents worked at an Air Force base. The younger Korpan became a lawyer and worked at San Diego Gas & Electric Co. before joining Florida Progress in 1989 as executive vice president and chief financial officer. In 1991, he was named president and chief operating officer.

Florida Power expects to add 22,000 residential customers this year, making it one of the fastest-growing utilities in the nation. That local strength and the slow pace of deregulation in the state give the company distinct advantages. Florida Progress also has an additional security blanket: The state's peninsular shape limits the importing of power from neighboring utilities.

But some companies are trying to dent that armor. Duke Energy predicts there will not be enough electricity to meet the demand in five years. It is seeking state per-

mission to build two power plants in Central Florida.

One of those plants will supply power to IMC-Agrico Co., the giant fertilizer company in Mulberry. If the plant is approved, Florida Power could lose up to \$20-million in annual sales.

Customer growth will offset some of that loss. But Korpan knows more utilities could come in and cherry pick large customers.

That's why he is quickly moving to reshape his company into a more entrepreneurial concern. Although Florida Power has shed some 1,200 jobs over the last five years — cuts Korpan orchestrated — the company recently advertised in the *Wall Street Journal* for market research, pricing and planning analysts — all new positions.

But the biggest obstacle for any utility trying to create a national retail identity is size. "We need more than 1.3-million customers," Korpan said. "We need 10- to 20-million customers."

That kind of scale is necessary to spread the costs of product development, marketing and upgrading computer systems.

The quickest and cheapest way to expand is to form alliances. Florida Progress recently announced a partnership with Cinergy Corp.,

based in Cincinnati, and Denver-based New Century Energies Inc. The two companies bring about 4.4-million customers to the table.

The three formed Cadence marketing alliance that seeks to provide energy management services to companies like Wal-Mart and McDonalds. These large commercial accounts represent about \$60-billion of the energy market. The deal gives Florida Progress some needed national exposure. "What we're finding now is that other utilities are starting call us," Korpan said.

Some of those leads will turn into alliances. Korpan prefers joint ventures over mergers. "A merger is a marriage; a joint venture is more like an engagement," Korpan said. "If it doesn't work out, you can give the rings back and go on."

Eventually, one of these alliances will lead to a merger, analysts predict.

"There will be companies interested in Florida Progress, and the company will also be looking for buying opportunities," said Ronald S. Tanner, an analyst with Ley Mason Wood Walker Inc. in Baltimore. "Either way, Florida Progress is going to be a part of a much bigger company. You have to get bigger in order to compete."

ST. PETERSBURG TIMES NOV. 10, 1997

Career Spotlight

HIGH-TECH EMPLOYMENT

Engineering • Technical • Computers • Information Services

ELECTRONIC TECHNICIAN

Fast-growing mid-Pinellas manufacturer of proprietary line of 3 phase, motor and power controls has immediate requirement for two full-time experienced technicians for production test, trouble shooting and repair of production units. Must be competent and

SENIOR PROGRAMMER/ANALYST

Manufacturer of consumer products seeking AS400 senior analyst/programmer proficient in RPGIII/IV & CL. MRPII experience is required. PRMS software highly desirable. Opportunities and challenges to grow with expanding company. Ideal candidate will have minimum 5 yrs. experience in pro-

NETWORK TECHNICIAN

Configure, install, troubleshoot & support PC hardware & Windows based applications in a network environment. Requires broad based knowledge of PC h/w/sw, good diagnostics & customer skills.

AEROSONIC CORPORATION

Aircraft Instrument Manufacturing Company in Pinellas County is currently accepting applications for the following positions:
O.A. Technicians: To perform failure analysis/problem investigation of complex mechanical assemblies. Candidate must have strong mechanical aptitude and working knowledge of SPC, ISO 9001 or MIL-Q-9858A.
Workmaker: To perform assembly, calibration, and repair of clock movements. Individual must have a minimum of 3 to 4 years of hands on knowledge regarding clock

COMING
NOVEMBER
16th

Professional/Managerial
Career Spotlight





STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Lawton Chiles
Governor

Richard T. Farrell
Secretary

January 16, 1997

Keane Bismarck
Executive Director
RACCA
1210 N. Clearview
Tampa, FL 33607

RE: Florida Power Corporation

Dear Mr. Bismarck:

I hereby acknowledge receipt of your correspondence dated October 25, 1996, with regard to the referenced matter. Please accept my apologies in responding in such an untimely manner. Between Board meetings, a change in office location and the holidays, I have been delayed in handling some matters.

In response to your inquiry regarding licensure status for Florida Power Corporation, our records disclose that the company is qualified by the following individuals/license numbers:

Robert Whetstine	PE 0045120	Professional Engineer
Eric G. Major	CG C058825	General Contractor
M. Carroll Buchanan	CM CA43830	Mechanical Contractor
Lawrence Schweitzer	EC 0001657	Electrical Contractor
Danny Tucker	EC 0001658	Electrical Contractor
Eric G. Major	EC 0001656	Electrical Contractor

All of the above licensees have active licenses and qualify Florida Power Corporation.

With regard to possible contracting activities by Florida Power & Light, I am not able to determine its licensure status without knowing the full corporate name. Our records show licensure status for Florida Power & Light, Florida Power & Light Co., and Florida Power & Light Corporation. I would ask that Paul Stehle, MACCA President, contact my office directly if he feels an investigation is warranted.

I hope I have addressed your concerns. Please do not hesitate to contact me if I can be of additional assistance.

Sincerely,

Cathleen E. O'Dowd

Cathleen E. O'Dowd
Senior Construction Attorney



1210 N. CLEARVIEW TAMPA, FLORIDA 33607
(813) 870-2607

JANUARY 27, 1997

MS. CATHLEEN O'DOWD, SENIOR ATTORNEY
DEPT. OF BUSINESS & PROFESSIONAL REGULATION
9325 BAY PLAZA BLVD., STE 210
TAMPA, FL 33619

DEAR MS. O'DOWD:

THANK YOU FOR YOUR LETTER (OF 1/16/97) ACKNOWLEDGING OUR INQUIRY IN THE MATTER OF A QUALIFIER FOR FLORIDA POWER CORPORATION.

WE APPRECIATE YOUR TAKING THE TIME TO INVESTIGATE AND PROVIDE THE INFORMATION ON VARIOUS INDIVIDUALS WHO HAVE QUALIFIED THAT CORPORATION.

ANOTHER CONCERN, IN OUR ORIGINAL CORRESPONDENCE, WAS THE LACK OF QUALIFIER COMPETENCY NUMBERS ON THE PROMOTIONAL/ADVERTISING MATERIAL MAILED OUT BY THE CORPORATION.

SINCE IT IS CLEAR TO ME THAT FLORIDA POWER IS ADVERTISING, CONTRACTING WITH CONSUMERS AND ACCEPTING PAYMENTS VIA ELECTRIC BILLS - THEY ARE VIOLATING CHAPTER 489, ADVERTISING REQUIREMENTS.

I HAVE TAKEN THE LIBERTY OF ENCLOSING MATERIAL SENT DIRECTLY TO MY HOME.

THANK YOU FOR YOUR CONTINUED INTEREST IN THIS MATTER.

SINCERELY,

A handwritten signature in cursive script, appearing to read "Keane Bismarck".

KEANE BISMARCK
EXECUTIVE DIRECTOR

KB/JLC

ENCLOSURE

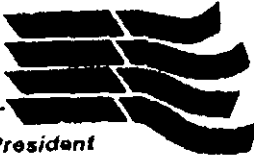
EXHIBIT C

FLORIDA POWER & LIGHT
(FPL)

MAR 17 1997

222-0000

Florida



Air Conditioning Contractors Association

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Tom McGuire, Jr
Port Orange, FL
(904) 767-3900

President-Elect

Elliot Sokolow
Margate, FL
(305) 973-0900

Vice President

Rudy Vivona
Winter Park, FL
(407) 678-5410

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Melbourne, FL
(407) 259-0100

Treasurer

Joe Mudden
Jacksonville, FL
(904) 781-8080

Past President

Ray Taylor
Lantanna, FL
(407) 585-0342

March 13, 1997

The Honorable Lisa Carlton
202 House Office Building
Tallahassee, FL 32399

Dear Representative Carlton,

You may have received correspondence from small business service contractors who are concerned about utilities venturing into appliance warranty programs. This letter is intended to bring you up to date concerning this issue.

The Florida Air Conditioning Contractors Association (FACCA) Utility intrusion Committee, FACCA's Executive Director and several of FACCA's Executive Officers met with a representative from FP&L to discuss their proposed "Applianceguard Program". Many issues were discussed at this meeting including the major concern our membership has regarding utility companies entering into our industry's service warranty business. Alternative programs were also presented at this meeting .

FP&L has decided to temporarily postpone their initial pilot program of the Applianceguard Program. A follow up meeting has been planned for the first week in April.

FACCA still maintains a concern regarding utility deregulation, in general, and the effects on small business and the free enterprise system as regulated utilities venture into non-utility businesses.

Will the use of utility assets create an unfair advantage in the market place?

We will keep you informed as to developments regarding this issue.

Sincerely,

Tom McGuire, Jr.
President

"Serving The Air Conditioning Industry Since 1967"

EXECUTIVE DIRECTOR • Janice Ficarroto • PO Box 180458 • Casselberry, FL 32718-0458
(407) 260 2212 • (800) 226-0600 • Fax (407) 260-5732



Oscar E. Gans
Senior Product Manager
Product Development

August 1, 1997

VIA FAX

Ms. Janice Ficaroto - Executive Director
FACCA
P.O. Box 180458
Casselberry, FL 32718-0458

Re: Status Update on Appliance Warranty Concept

Dear Janice,

In response to your request for information for the FACCA board of directors, I have prepared the following synopsis of where the appliance warranty concept has been and the current status.

Background:

- Appliance warranty is one of many concepts being evaluated by FPL. This concept involves offering consumers an opportunity to plan for appliance repair and replacement by participating in a structured program and making monthly payments.
- Fall and 1996 discussions are held with a steering committee of several contractors to conduct a limited market test of the concept in southern Broward county.
- Presentations are made by Ms. H. Duquette during January and February to explain program concept and clear up the misinformation regarding "program specifics" and other rumors spreads throughout the contractor community.
- 1st meeting with FACCA utilities intrusion board held on February 27, 1997. Issues with the program concept were discussed in detail to gain full understanding. Possible solutions for issues were presented.
- FACCA proposed solutions were discussed internally within FPL and original program administrator.
- Discussion with additional potential program administrators have been initiated and are ongoing.
- 2nd meeting with FACCA utilities intrusion board held on April 2, 1997. The revised potential process was discussed with regard to how FACCA concerns were addressed. The following are some key parameters.
 - ◊ Contractors will be able to retain their existing customers by referring them to the program and being listed as the customers relationship contractor.
 - ◊ Customers must be able to contact their relationship contractor directly. In the case that the customer does not have a relationship contractor they can call an 800# customer service number and be given the names of 3 to 5 participating contractors in their area.
 - ◊ Maintenance will be included with all HVAC unit service contracts. In order to avoid unnecessary approvals, all common procedures will be included in a pre-set price schedule which will be regionalized.
 - ◊ Speed of payment to contractors after the service call is of prime importance. Work will be done to optimize the payment processing system to offer the fastest possible payment.
- Further concept development is on hold until different program concepts and designs presented by potential administrators are fully investigated. All program designs and concepts currently under evaluation integrate the agreed upon parameters.
- Once concepts are fully understood, meetings will be held with FACCA's utility intrusion board.

If you need further explanation or if any of your board has questions, please call me at (305) 552-2779.

Sincerely,

A handwritten signature in black ink, appearing to be "Oscar E. Gans", written over a horizontal line.

Copy To: C. Deaver

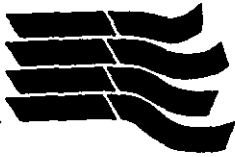


FEDERAL WARRANTY SERVICE CORPORATION

ApplianceGard

■ 7000 Village Drive, Suite 200 ■ Buena Park, California 90621 ■
■ (714) 736-3636 ■ FAX (714) 736-3700 ■

Florida



Air Conditioning Contractors Association

PRESIDENT	PRESIDENT ELECT	VICE PRESIDENT	SECRETARY	TREASURER	PAST PRESIDENT
BILL SIMMS Ft. Lauderdale, FL (305) 561-6700	BRIAN FLYNN Palm City, FL (407) 283-4114	RAY YOUNG Plant City, FL (813) 754-1955	ELLIOT SOKOLOW Pompano Beach, FL (305) 873-0900	CHARLES LOCKE Tallahassee, FL (904) 375-2187	LOU SELMAN Jupiter, FL (407) 747-7888

DIRECTORS

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(407) 644-8952

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Jacksonville, FL
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BOB DAVIS
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(407) 585-0342

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KEN HASTINGS
Orlando, FL
(407) 295-9231

CHARLES KING
W. Palm Beach, FL
(407) 658-4900

ALBERT TORCHIA
Clearwater, FL
(813) 447-4525

March 15, 1990

MEMORANDUM

TO: ALL FACCA MEMBERS

FROM: JANICE FICAROTTO, EXECUTIVE DIRECTOR

RE: ATTACHED FLYER ON SERVICES PROVIDED VIA UTILITY COMPANIES

Dear Member:

Attached is a copy of a flyer used as an insert with billing information and mailed to consumers around the State.

Please contact the FACCA office with any like practices you may find in your area. This information would be very helpful to some of our committees!

Thank You,

HVAC SYSTEMS:

ENERGY COSTS

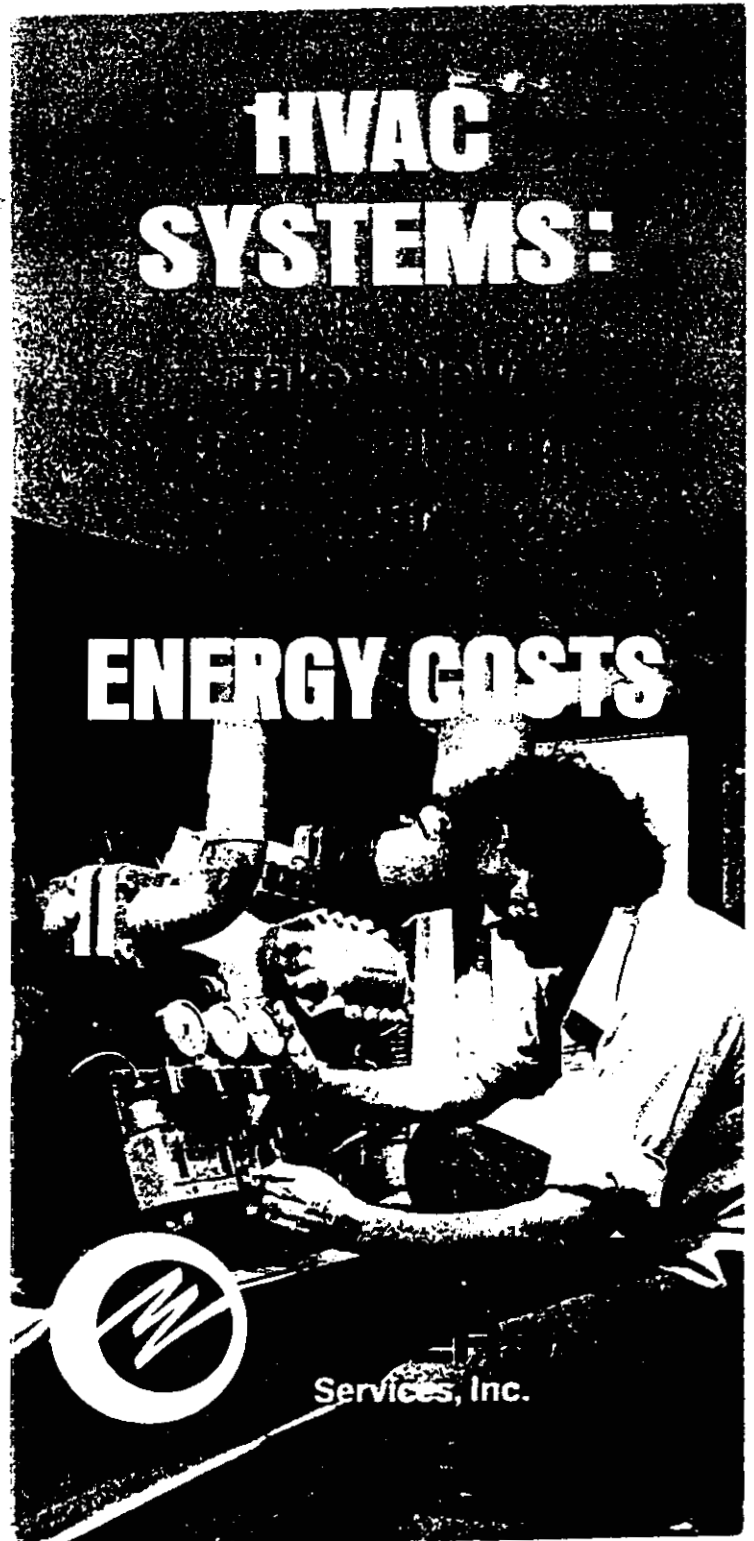
Call the
**FPL ENERSYS
SERVICES**

Office Nearest You

W. PALM BEACH	(407) 683-9600
MIAMI	(305) 443-2596
ORLANDO	(407) 679-1777
TAMPA	(813) 885-8860
JACKSONVILLE	(904) 733-5436



**FPL
ENERSYS**
Services, Inc.



Services, Inc.

Start Today with the No-Risk Enersys Services Plan

Let FPL Enersys Services get you started today on reducing operating expenses with *no-risk*.

Enersys Services has the knowledge to address the technical challenges of energy management projects. We also have the experience to address the financial and operational issues of maintaining these projects.

As you may guess, electricity is the primary source of fuel in Florida. In fact, it accounts for nearly 89% of all fuel used in educational, health care, residential and building sectors in the Sunshine State. The biggest single consumer of electricity is your Heating, Ventilation and Air Conditioning (HVAC) system. You are wasting energy and money if your HVAC system is not running at peak efficiency.

Our goal at Energy Services is to implement quality systems suited for your individual long-term needs. Depending on those needs, Enersys Services will evaluate a variety of energy management strategies including:

- Replace and/or modify existing chiller(s)
- Replace and/or modify existing boiler
- Install energy efficient pumps and motors
- Rebuild or replace air handling units
- Handle cooling tower replacements
- Install waste heat recovery units
- Design piping modifications for plant optimization
- Implement and/or enhance an energy management control system (EMCS)

DON'T HESITATE . . . CONTACT US TODAY.

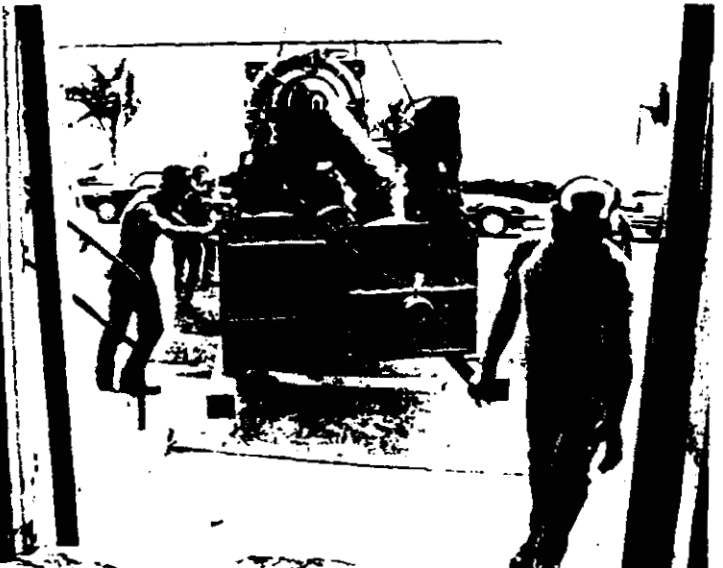
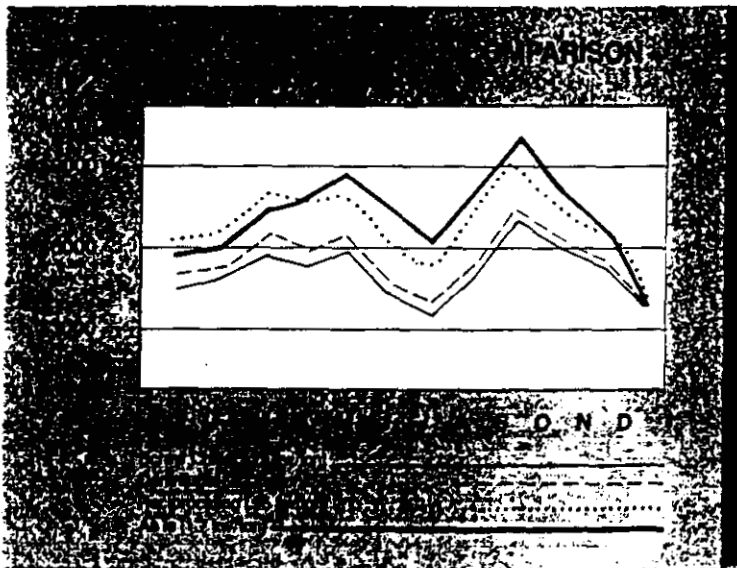


EXHIBIT D

PEOPLES GAS SYSTEM (PSG)

File
State of Florida

Commissioners:
KATIE NICHOLS, CHAIRMAN
THOMAS M. BEARD
GERALD L. (JERRY) GUNTER
JOHN T. HERNDON
MICHAEL McK. WILSON



JOSEPH D. JENKINS
Director
Division of Electric and Gas
(904) 488-8501

Public Service Commission

May 19, 1988

Mr. Keane Bismarck, Executive Director
Refrigeration and Air Conditioning Contractors Association
1210 N. Clearview
Tampa, Florida 33607

Re: Peoples Gas System appliance sales and installation

Dear Mr. Bismarck:

This is in response to your May 10 letter in which you asked us to investigate the appliance sales practices of Peoples Gas System.

We are precluded from jurisdiction over activities related to sales of appliances by a regulated utility (see Subchapter 366.05 (2), Florida Statutes - copy attached). In utility rate cases, we separate out all revenues and expenses from appliance-related activities so they have no effect on utility rates, either up or down.

However, a utility may legally sell, install and service appliances as an unregulated business activity. If they choose to do so, they are subject to the same requirements as anyone else in your industry.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joseph W. McCormick".

Joseph W. McCormick
Chief, Bureau of Gas Regulation

Attachment: Subchapter 366.05(2), F.S.

cc: Charles Dubs, Professional Heating and Air Conditioning
Joe Jenkins, Director, Division of Electric and Gas
Bob Trapp, Assistant Director, Division of Electric and Gas
George Hanna, Director, Division of Consumer Affairs

able rates and charges, classifications, standards of quality and measurements, and service rules and regulations to be observed by each public utility; to require repairs, improvements, additions, and extensions to the plant and equipment of any public utility when reasonably necessary to promote the convenience and welfare of the public and secure adequate service or facilities for those reasonably entitled thereto; to employ and fix the compensation for such examiners and technical, legal, and clerical employees as it deems necessary to carry out the provisions of this chapter; and to prescribe all rules and regulations reasonably necessary and appropriate for the administration and enforcement of this chapter.

(2) Every public utility, as defined in s. 366.02, which in addition to the production, transmission, delivery or furnishing of heat, light, or power also sells appliances or other merchandise shall keep separate and individual accounts for the sale and profit deriving from such sales. No profit or loss shall be taken into consideration by the commission from the sale of such items in arriving at any rate to be charged for service by any public utility.

(3) The commission shall provide for the examination and testing of all meters used for measuring any product or service of a public utility.

(4) Any consumer or user may have any such meter tested upon payment of the fees fixed by the commission.

(5) The commission shall establish reasonable fees to be paid for testing such meters on the request of the consumers or users, the fee to be paid by the consumer or user at the time of his request, but to be paid by the public utility and repaid to the consumer or user if the meter is found defective or incorrect to the disadvantage of the consumer or user, in excess of the degree or amount of tolerance customarily allowed for such meters, or as may be provided for in rules and regulations of the commission.

(6) The commission may purchase materials, apparatus, and standard measuring instruments for such examination and tests.

(7) The commission shall have the power to require reports from all electric utilities to assure the development of adequate and reliable energy grids.

(8) If the commission determines that there is probable cause to believe that inadequacies exist with respect to the energy grids developed by the electric utility industry, it shall have the power, after proceedings as provided by law, and after a finding that mutual benefits will accrue to the public utilities involved, to require installation or repair of necessary facilities, including generating plants and transmission facilities, with the costs to be distributed in proportion to the benefits received, and to take all necessary steps to insure compliance. The electric utilities involved in any action taken or orders issued pursuant to this subsection shall have full power and authority, notwithstanding any general or special laws to the contrary, to jointly plan, finance, build, operate, or lease generating and transmission facilities and shall be further authorized to exercise the powers granted to corporations in chapter 361. This subsection shall not supersede or control any provision of the Electric Power Plant Siting Act, ss. 403.501-403.515.

(9) The commission may establish guidelines relating to the purchase of power or energy by public utilities from cogenerators or small power producers and may set the rates at which a public utility shall purchase power or energy from a cogenerator or small power producer.

*History.—*s. 3, ch. 25545, 1951; s. 2, ch. 74-196; s. 3, ch. 75-168; s. 1, ch. 77-437; s. 57, ch. 78-99; s. 3, 16, ch. 80-33; s. 1, ch. 81-131; s. 2, ch. 81-318.

*Note.—*Repealed effective October 1, 1989, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

'366.055 Availability of, and payment for, energy reserves.—

(1) Energy reserves of all utilities in the Florida energy grid shall be available at all times to ensure that grid reliability and integrity are maintained. The commission is authorized to take such action as is necessary to assure compliance. However, prior commitments as to energy use:

(a) In interstate commerce, as approved by the Federal Energy Regulatory Commission;

(b) Between one electric utility and another, which have been approved by the Federal Energy Regulatory Commission; or

(c) Between an electric utility which is a part of the energy grid created herein and another energy grid

shall not be abridged or altered except during an energy emergency as declared by the Governor and Cabinet.

(2)(a) When the energy produced by one electric utility is transferred to another or others through the energy grid and under the powers granted by this section, the commission shall direct the appropriate recipient utility or utilities to reimburse the producing utility in accordance with the latest wholesale electric rates approved for the producing utility by the Federal Energy Regulatory Commission for such purposes.

(b) Any utility which provides a portion of those transmission facilities involved in the transfer of energy from a producing utility to a recipient utility or utilities shall be entitled to receive an appropriate reimbursement commensurate with the transmission facilities and services provided. However, no utility shall be required to sell purchased power to a recipient utility or utilities at a rate lower than the rate at which the power is purchased from a producing utility.

(3) To assure efficient and reliable operation of a state energy grid, the commission shall have the power to require any electric utility to transmit electrical energy over its transmission lines from one utility to another or as a part of the total energy supply of the entire grid, subject to the provisions hereof.

*History.—*s. 1, ch. 74-196; s. 2, ch. 75-168; s. 1, ch. 77-437; s. 9, 16, ch. 80-33; s. 2, ch. 81-318.

*Note.—*Repealed effective October 1, 1989, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

'366.06 Rates; procedure for fixing and changing.—

(1) A public utility shall not, directly or indirectly, charge or receive any rate not on file with the commission for the particular class of service involved, and no change shall be made in any schedule. All applications for changes in rates shall be made to the

TACK & WARREN INC.

806 PIERCE STREET, CLEARWATER, FLORIDA 34616 - PHONE 461-5014

CONTRACTORS IN ROOFING, SHEET METAL, HEATING AND AIR CONDITIONING



February 14, 1990

RACCA
1210 North Clearview
Tampa, Florida 33607

Mr. Keane Bismarck:

This letter needs to go on file in reference to Utility Companies sales practices in the HVAC industry.

On February 06, 1990 Tack and Warren, Inc. quoted a job at 275 Rafael Blvd. N.E. St. Petersburg. Upon equipment determination, I called People's Gas to determine if natural gas was available at the above address. Natural gas was available, so I quoted a Lennox upflow furnace, a Ruud Gas hot water heater and a new "A" Coil.

On February 14, 1990, the customer called to let me know that he had awarded the contract to People's Gas.

The price difference was a staggering \$798.00.

How can a Utility Company cut the price so drastically? Will the utility company pull a permit for this job? The last and final question, is the utility company licensed to do a HVAC job?

A closer look at the utility companies practices should be investigated by FFFUP.

Sincerely yours,

A handwritten signature in cursive script that reads "David Riedinger".

David Riedinger
Office Manager

PEOPLES CHOICE, a Peoples Sales and Service Company is a fully licensed state contractor specializing in the sale, installation, and service of heat pumps, electric air conditioners, and hydro-heating, as well as gas heating equipment.

Now we can supply the same dependable service you have come to expect from Peoples Gas on your electric air conditioning equipment, too!

• We specialize in a full line of highly efficient RHEEM replacement air conditioners, heat pumps, and gas furnaces.

• Other energy efficient equipment available through Peoples Gas includes:

- Water Heaters
- Pool/Spa Heaters
- Ranges
- Refrigerators
- Washer/Dryers
- Gas Grills
- Fish Cookers
- Dishwashers

PEOPLES CHOICE
AIR CONDITIONING AND REFRIGERATION
A Peoples Sales and Service Company
1800 Ninth Avenue North
St. Petersburg, FL 33713
Lic.#CACO 45869



1800 Ninth Avenue North
St. Petersburg, FL 33713

BULK RATE
PAID
TAMPA, FL
PERMIT #2656

CAR RT SORT **WS CR16
RESIDENT
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ST PETERSBURG FL 33705

SEASONAL SPECIALS

Air Conditioning Tune-Up

KEEP YOUR
Cool!



10% OFF
Regular
\$49.95 Value

Peoples Choice
A Service of Peoples Gas System

Air Conditioning and Refrigeration



Tune-Up Includes the following system checks:

- ✓ Compressor pressure
- ✓ Proper refrigerant
- ✓ Motors & lubricate
- ✓ Proper voltage
- ✓ Electrical connections
- ✓ Safety of system
- ✓ Clean filters
- ✓ Pulley & belts
- ✓ Clean condenser coil
- ✓ Condensate drains
- ✓ Vibration noise
- ✓ Thermostat
- ✓ Electrical strip heaters
- ✓ Blower assembly
- ✓ Check air flow across coil

Save 4 Ways
with Tune-Up Special



- Act now and **SAVE \$5.00** on the Tune-Up.
- Reduce repair cost by preventing unexpected and expensive breakdowns.
- Periodic tune-ups extend the life of your A/C equipment.
- Preventive maintenance improves equipment efficiency and reduces electricity costs.

SEASONAL SPECIALS

Save on your energy bill!

PROGRAMMABLE ELECTRONIC THERMOSTAT

Special Offer
\$75.00

includes installation

10% OFF
YOUR NEXT CLEAN & CHECK

REGULAR \$49.95
15 POINT CHECK

Expires August 15, 1991

FREE

30 GALLON NATURAL GAS WATER HEATER, INSTALLED IF

you will change out your electric water heater on PgS natural gas lines

PROFESSIONAL REPAIR SERVICE

Our professionals are specialists in all phases of air conditioning and heating.

We are able to gain volume purchase pricing and savings are passed on to YOU.

\$10.00 OFF

DUST FREE ELECTROSTATIC FILTER

REMOVES POLLEN, FUNGUS, MILDEW, DUST
REPLACES YOUR OLD FILTER

FREE

BARBEQUE GRILL WITH THE PURCHASE OF RHEEM HIGH EFFICIENCY CENTRAL SYSTEM

Expires August 15, 1991

\$10.00 OFF
YEARLY SCHEDULED MAINTENANCE AGREEMENT

We tune-up your system and give you 15% off any repair labor.

High efficiency central system cuts operating costs.

.....
VISA and MASTERCARD AVCO FINANCE

100% FINANCING AVAILABLE

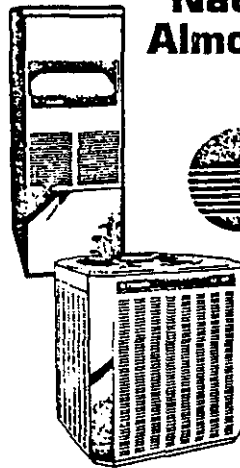
CENTRAL AIR CONDITIONING AND HEATING

**10% DISCOUNT
ON ALL EQUIPMENT
UNTIL MAY 31, 1990.**

Save Energy and Money Two Ways

The **Trane XE 70** Gas Furnace has an electric spark ignition. It lights the pilot electrically — so the pilot burns only when the furnace is running. A wasteful constantly burning pilot is eliminated forever, saving you money on your energy bills.

Combine the **XE 70** with a **XE 900** high efficiency air conditioner to rescue you from heat, humidity and high cooling bills. The **XE 900** air conditioner brings you long life reliability, efficient use of your energy dollars and comfort for your home.



**Natural Gas Heat Costs
Almost 2/3 Less to Operate
Than Electric**



TRANE™

**FREE ESTIMATES
COMPLETE INSTALLATION
CALL TODAY!**

ART MARTIN
Central Air Conditioning
and Heating Specialist!!

1800 9th Avenue North - St. Petersburg, FL 33713

ENERGY CONVERSION ALLOWANCES ...	
OIL TO NATURAL GAS	\$330⁰⁰
ELECTRIC TO NATURAL GAS	\$440⁰⁰
	CALL FOR DETAILS

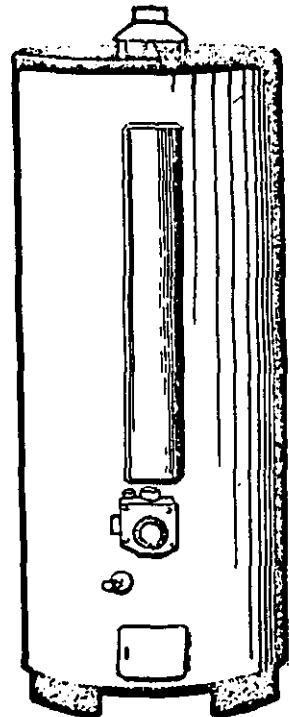
FREE WATER HEATER

If you have an electric water heater, call us. We'll replace it with a brand-new 30-gallon energy-efficient natural gas water heater. Best of all, it's free... as long as the total cost of the appliance and its installation is \$400 or less.

More than 14,200 Peoples Gas customers in Florida have taken advantage of our free water heater program in the past year, and now enjoy water heating bills that are as much as 50 percent less than they had with their electric water heaters.

You can too. CALL TODAY!!

★ 5-Year Limited Warranty on Tank ★ 2-Year Limited Warranty on Parts



Peoples
GAS SYSTEM, Inc.
894-2560

Standards of Conduct are rules that govern the relationship between a utility and its affiliated companies. The following set of standards is an outline that lists the important issues that need to be addressed as a comprehensive set of standards is developed. In addition to the standards, there should also be statutory language giving the Public Utility Commission (or other regulatory body) clear jurisdiction over these matters and statutory language providing mechanisms to enforcement these standards.

Model Standards of Conduct for Affiliate Transactions

The following set of standards will apply to all competitive services offered by all utilities and all utility affiliated companies in this state.

1) Operational Separation

- A) A utility and its affiliates shall keep separate accounting books and records. The books and records of affiliates shall be open for examination by the commission.
- B) A utility can not transfer any assets, either tangible or intangible, that were created or purchased with rate-payer funds to its affiliated companies, unless such assets are also offered to non-affiliated companies under the same terms and conditions as they are offered to the affiliate.
- C) The affiliate and the utility shall operate from physically separate locations to avoid potential inadvertent sharing of information or resources.
- D) All affiliate purchases of goods and services must be made separately from any purchases the utility makes of similar goods and services.

2) Prohibition on Self-Dealing & Discrimination

- A) If a utility makes any goods or services available to its affiliate, then the utility must offer the same goods or services at the same price to non-affiliated companies under the same terms and conditions.
- B) The utility may not disclose to its affiliate any information obtained in connection with providing regulated utility services to a customer or a potential customer (i.e. usage information, special circumstances) without disclosing information to all non-affiliated companies under the same terms and conditions as the affiliate.
- C) The utility shall process all requests for regulated utility services in the same manner and within the same period of time, whether requested on behalf of non-affiliated companies or by a third party; provided that this provision shall not in any manner be construed to limit the utility's ability to carry out its public service obligation as it deems necessary.

D) Joint marketing and advertising of any sort is forbidden to avoid the appearance of favoritism between the affiliate and the utility. Specifically:

a) A utility and its affiliated companies can not participate in joint sales calls or jointly advertise, market, communicate, or correspond with any existing or potential customer. Utilities and their affiliates can not appear in trade shows, conferences, or other marketing events.

b) A customer may arrange to have a utility representative call separately to advise on technical matters unrelated to sales, but such representatives may not make joint sales calls with affiliate representatives.

c) A utility can not condition providing any regulated utility services to a customer with the requirement that the customer also purchase any good or service from the utility's affiliate. Neither the utility nor the affiliate may represent that any advantage accrues to customers or others in the use of utility services as a result of that customer or other dealing with the affiliate. The utility must refrain from giving any appearance that the utility speaks on behalf of its affiliate.

d) If a customer requests information about equipment suppliers or providers of conservation or other services sold by affiliates, to the extent the utility responds to the request, the utility should provide a list of all suppliers providing similar goods and services in the area and should not solely promote the affiliate.

E) All affiliates and affiliate personnel must comply with all local, state, and federal occupational and business licensing requirements.

3) Regulatory Oversight

A) The commission has jurisdiction over all competitive services offered by a utility or its affiliate in the state. Any utility or affiliate offering competitive services in the state must make any and all accounting information available to the commission regardless of its physical location.

B) Each utility offering competitive services in the state shall file a compliance plan with the commission. The plan will demonstrate to the commission that there are adequate procedures in place that will preclude the improper sharing of information and assets with the utility's affiliates as prohibited by these standards. The plan must be approved by the commission.

C) The utility and its affiliates will undergo an audit to determine if the utility and its affiliates have complied with the plan and are operationally separate. The commission will then certify that the utility and its affiliates are operationally separate. This certification must be made before the commission allows the utility and its affiliates to participate in a competitive market.

4) Open Access

Both utility affiliated companies and non-affiliated companies will have access to incumbent architecture, facilities, and systems on an equal and non-discriminatory basis.

5) Definitions

A) **"Affiliate"** means any person, corporation, utility, partnership, or other entity 5 per cent or more of whose outstanding securities are owned, controlled, or held with power to vote, directly or indirectly either by a utility or any of its subsidiaries, or by that utility's controlling corporation and/or any of its subsidiaries as well as any company in which the utility, its controlling corporation, or any of the utility's affiliates exert substantial control over the operation of the company and/or indirectly have substantial financial interests in the company exercised through means other than ownership. For purposes of these Rules, "substantial control" includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A direct or indirect voting interest of 5% or more by the utility in an entity's company creates a rebuttable presumption of control.

B) **"Commission"** means the Public Utilities Commission or its succeeding state regulatory body.

C) **"Customer"** means any person or corporation, that is the ultimate consumer of goods and services.

D) **"Customer Information"** means non-public information and data specific to a utility customer that the utility acquired or developed in the course of its provision of regulated utility services.

E) **"Non-Affiliated Company"** means any business entity that is not a utility affiliate, as defined above.

F) **"Utility"** means any utility subject to the jurisdiction of the Commission.

G) **"Regulated Utility Services"** means the transmission and distribution of electricity, water, propane, oil or natural gas.

H) **"Competitive Services"** means any product or service that is not electricity, water, propane, oil, or natural gas.

Keane Bismarck
1261 Stoneybrook Lane
Dunedin, FL 34698

July 23, 1999

Mr. Jack Shreve, Public Counsel
812 Pepper Building
111 West Madison Street
Tallahassee, FL 32399-1400

Dear Mr. Shreve:

I am writing this letter of complaint concerning Florida Power Corporation and the programs that they are developing as a regulated utility.

I am a Florida Power customer and I can't help but wonder, each month when I write my check, just how much of my electric utility costs are attributed to programs that have nothing to do with generation and distribution of electricity.

Please find enclosed, a recent bill stuffer for a warranty insurance program on home wiring. Florida Power also introduced a planned-maintenance program for air conditioning equipment a couple of years ago. At a recent meeting of the Pinellas County Cooperative Extension Agency a utility representative spoke of a future program to test the refrigerant charge on air conditioning equipment. There have been rumors, for some time, that the utility is considering a full-scale appliance warranty program.

I would like to know where the money comes from to research, develop, administer and promote these programs which have nothing to do with demand side management. The utility apparently has a significant number of people and resources devoted to these efforts. I seriously doubt that the stockholders have "bellied-up" to the bar with donations or have accepted reduced dividends in order to finance these ventures.

I realize that I don't have to purchase these services and I won't. However, I still think an in-depth investigation should be done on how these ventures are paid for in advance of any customers signing up.

I am sure that private contractors have access to similar insurance programs. Has anyone checked to see if the offer by the utilities amounts to predatory pricing? If it is below market value . . . are we ratepayers helping to subsidize the program on a continuing basis?

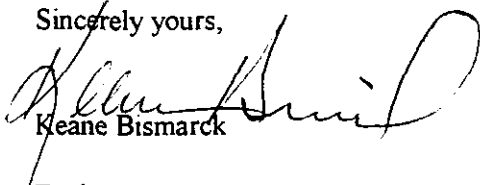
The Public Service Commission requires utilities to separate ventures such as this from the utilities regulated operations so that the ratepayer is not impacted. We have all seen glaring examples of "creative accounting" by utilities, over the years, on other issues. I see utility employees, housed in utility-owned buildings, using utility-owned equipment, mailing promotional material in utility paid for mailings.

It seems to me that if all this activity were to stop, many of these resources, including utility employees and outside agencies would no longer be required. Would this not reduce the cost to deliver electricity to my home?

I think it is time that the Public Service Commission consider these programs. A serious investigation of the costs to develop, start-up and administer these programs should begin. We should know the true impact on the ratepayer.

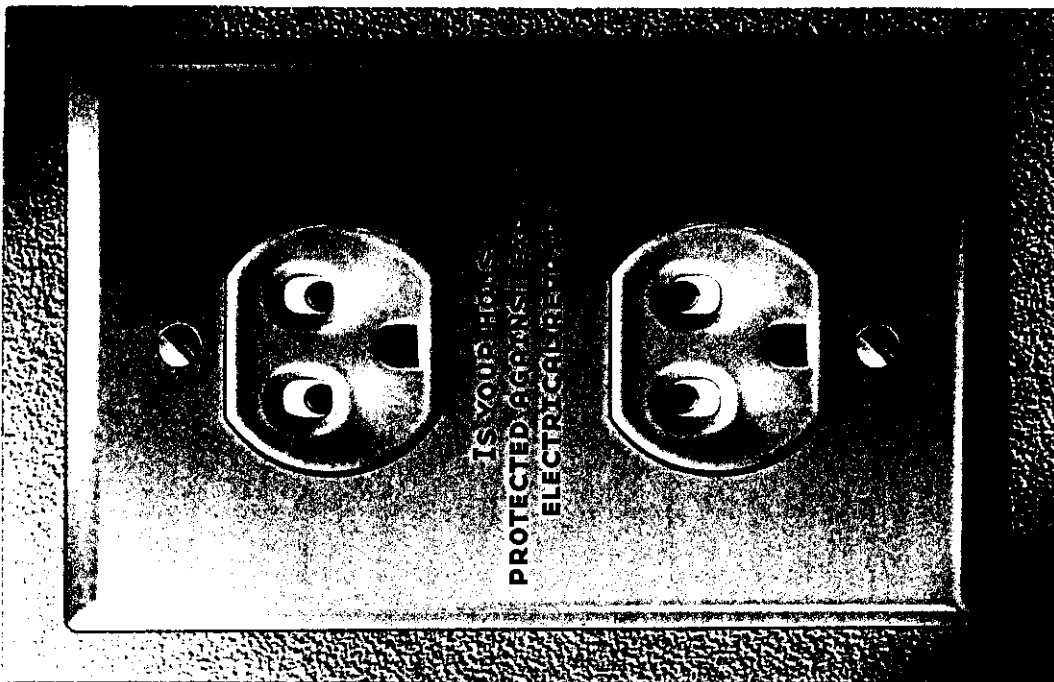
At the very least, I would like to know that when I sign my check to Florida Power I have not in some way paid for the electrical or air conditioning repair of a neighbor.

Sincerely yours,

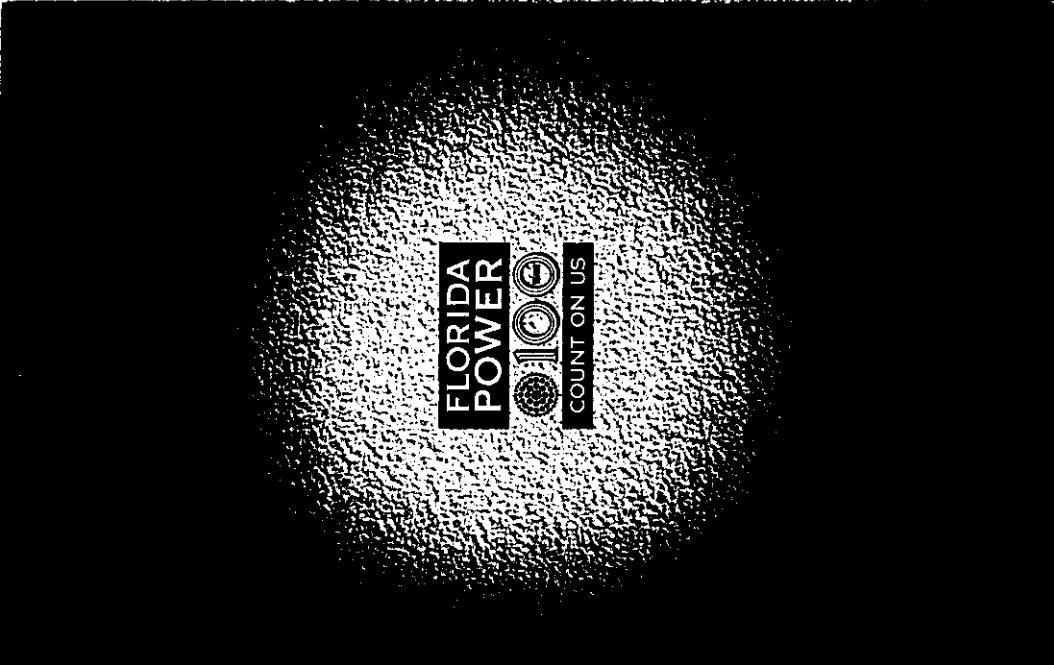
A handwritten signature in black ink, appearing to read "Keane Bismarck". The signature is fluid and cursive, with a large loop at the end.

Keane Bismarck

Enclosure



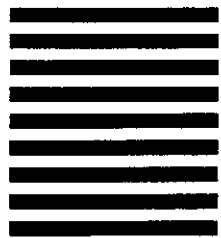
IS YOUR HOME'S
PROTECTED AGAINST
ELECTRICAL FIRE?



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UNITED STATES

BUSINESS REPLY MAIL
FIRST CLASS MAIL PERMIT NO. 292 ST. PETERSBURG, FL

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INTRODUCING HOME WIRING SERVICE

from Florida Power Corporation

Compare the \$2.95 monthly fee to the average cost of most home electrical repairs.

TYPICAL WIRING PROBLEM	POTENTIAL REPAIR COST*	WITH HOME WIRING SERVICE
repair main breaker	\$152.00	no charge
repair interior wiring	195.00	no charge
repair outlet	85.00	no charge
repair light switch	85.00	no charge
electrical service call	55.00	no charge

* Based on market prices

Now when you sign up, you can enjoy peace of mind knowing that service requests can be made anytime a problem may arise - 24 hours a day/7 days a week. Repairs will be performed by a qualified, licensed electrical contractor who is pre-approved by Florida Power. And, as an added value to you, if there is ever a problem that's not covered by the service, our certified contractor will provide you with an estimate for the costs at a 15% discount.

Call Florida Power at 1-888-899-8856 or send in the attached reply card.

Florida Power Corporation reserves the right to change terms, conditions, coverage, exclusions, limitations, subgrades, neglect or abuse, lighting, low voltage and other details of this Home Wiring Service, including aggregate liability limits, is contained in the Home Wiring Service Contract carefully after you receive it.

YES, sign me up!

Please enroll me in Florida Power Corporation's Home Wiring Service and include the \$2.95 monthly fee on my monthly power bill.

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State Zip

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