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November 3, 1999

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RECORDS AND REPORTING

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ORIGINAL

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
Room 215J - Gerald L. Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Generic investigation of cost allocation and affiliated transactions for electric utilities; FPSC Docket No. 980643-EI

Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa Electric Company's Additional Comments and Language Suggestions.

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

Thank you for your assistance in connection with this matter.

Sincerely,

James D. Beasley

AFA	<u>Levell</u>
APP	_____
CAF	_____
CMU	_____ IDB/pp
CTR	_____ Enclosures
EAG	<u>3</u>
EGG	_____
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FPSC BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

~~1350~~ NOV-3 99

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Generic investigation of)
cost allocation and affiliated)
transactions for electric utilities.)
_____)

DOCKET NO. 980643-EI
FILED: November 3, 1999

**TAMPA ELECTRIC COMPANY'S
ADDITIONAL COMMENTS AND LANGUAGE SUGGESTIONS**

Pursuant to the memorandum to all interested persons dated October 12, 1999 from the Commission's Associate General Counsel, Tampa Electric submits the following additional written comments and language suggestions concerning the Staff's October 12, 1999 draft proposed rule 25-6.135 pertaining to cost allocation and affiliate transactions:

Tampa Electric Company commends the Commission staff on modifications it has made to this draft rule since the August 24, 1999 workshop. Tampa Electric particularly applauds the staff for removing those sections that would have created onerous bidding requirements, mapping requirements for affiliate charts of accounts and duplicative and costly external audits.

We also believe the revised definition of "control" as it relates to affiliated companies more adequately reflects the ability to control the actions of a corporation than the previous, arbitrary designation of five percent ownership.

We applaud staff's recognition of the need for transaction pricing other than the previously limited and restrictive asymmetric pricing requirement. We believe the movement away from the single prescriptive methodology will lead to greater benefit to the ratepayers.

While Tampa Electric recognizes the improvements in the draft rule, we note that the rule still contains limitations and ambiguities that Tampa Electric believes will make implementation difficult and unnecessarily costly.

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FPSC-RECORDS/REPORTING

Rules for cost allocation and affiliate transactions should be designed to protect ratepayers from subsidizing non-regulated business. In doing so, however, the guidelines should not be permitted to create an undue burden on affiliate businesses or on their ability to earn a reasonable return on their business activities.

The limited definition of permissible pricing options for non-tariffed affiliate transactions in Section 3 of staff's draft rule does not provide the opportunity for the nonregulated activities of a utility or its affiliate to earn a reasonable return in transactions with the regulated business. Without an opportunity to earn a reasonable return, transactions that might benefit the ratepayers of the regulated utility will not be made, thus harming the very ratepayers the rule is designed to protect.

If the Commission adopts the staff's recommendation for additional reporting requirements for affiliate transactions, it creates an additional record keeping burden on utilities. The additional burden will create additional costs, which, because they are imposed by the Commission will be passed along to ratepayers.

Tampa Electric Company suggest modifications to clarify certain sections of the October 12, 1999 version of the staff's draft rule. The changes are provided in type-and-strike format.

1. Paragraph (2)(h): Definitions: Prevailing Price Valuation:

~~(2)(h) Prevailing Price Valuation - The occurrence of sales of a particular asset or service to third parties encompassing more than 50 percent of the total quantity of the product or service sold by the entity. The 50 percent threshold is applied on an asset-by-asset and service-by-service basis, rather than on a product line or service line basis.~~

Reason for Change: This definition is unclear, does not clarify pricing, is circular and is internally inconsistent.

If the fifty percent threshold is applied on an asset-by-asset basis, each asset sale, by definition encompasses 100 percent of sales and sets its own “prevailing price valuation.” Likewise, if a nonregulated affiliate sells only to its regulated utility, those sales will set the “prevailing price valuation” and by definition will meet the standard set in paragraph (3)(c) of the draft rule. The concept of market price is a more valid measure than transactions of a particular entity.

2. Paragraph (2)(j) Definitions: Subsidize:

~~(2)(j) Subsidize - The act of regulated utility operations paying more than their fair and reasonable share of costs associated with affiliate transactions and utility non-regulated activities. Allocating more or less cost from one entity to another than the underlying economic transaction supports.~~

Reason for change: The existing definition creates ambiguity in its use of the terms “fair and reasonable share of costs”. Those words do not provide the regulated utility sufficiently clear guidance so as to be reasonably assured that the manner in which it accounts for transactions meets the standard imposed by the rule. We believe the ambiguity will lead parties to resort to litigation to determine what is fair and reasonable.

Tampa Electric’s proposed change is similar to the suggestion we provided prior to the workshop. We believe our proposed wording, taken in conjunction with modified requirements for pricing transactions for non-regulated products and services in paragraphs (3)(b) and (3)(c), provides a clear standard against which utilities can expect to be measured.

3. Paragraph (3)(b): Non -Tariffed Affiliate Transactions

~~(3)(b) A utility must charge an affiliate the higher of fully allocated costs or market for all non-tariffed services and products purchased by the affiliate from the utility. Except, a utility may shall charge an affiliate less than fully allocated costs if the charge is above a price between~~

incremental cost and ~~equivalent to market prices for all non-tariffed services and products purchased by the utility sells to the affiliate.~~ ~~If a utility charges less than fully allocated costs,~~ ~~t~~ The utility must maintain documentation to support and justify ~~doing so would benefit~~ that the transaction price does not harm regulated operations.

Reason for change: Follows next modification.

4. Paragraph 3((c): Non-Tariffed Affiliate Transactions

(3)(c) When a utility purchases services and products from an affiliate and applies the cost to regulated operations, the utility shall apportion to regulated operations ~~the lesser of fully allocated costs or market price.~~ ~~Except, a utility may apportion to regulated operations more than fully allocated costs if the charge is an amount less than or equal to the market price.~~ ~~If a utility apportions to regulated operations more than fully allocated costs,~~ ~~t~~ The utility must maintain documentation to support and justify ~~doing so would benefit~~ that the transaction price is not harmful to regulated operations and ~~would be~~ was based on prevailing market price valuation at the time the transaction took place.

Reason for change: In its written comments filed prior to the workshop, Tampa Electric's suggested wording for this section read, "Regulated utilities shall price transactions with affiliates so as to ensure that utility ratepayers are not harmed by the transactions." We still believe that wording adequately protects ratepayers' interests, but welcome staff's attempt to provide greater flexibility than in its previous draft.

Any required transfer pricing policy should seek to balance objectives of economic efficiency and fairness; that is, the transfer price should encourage the utility and its affiliate to capture economies of scale and scope, while protecting ratepayers from subsidizing an nonregulated activity.

Paragraphs (3)(b) and (3)(c), as currently drafted, conflict internally between rule and exception. Sufficient ambiguity is injected into the draft rule language so that it is not clear to Tampa Electric whether the rule or the exception actually sets the standard for pricing policy. Sufficient ambiguity is also injected that Tampa Electric believes the rules, if implemented as drafted, opens the door to extensive litigation.

Tampa Electric's recommended modifications remove the ambiguity. They avoid unnecessarily high hurdles for the utility to overcome in the forms of a required pricing mechanism based upon fully allocated costs and a showing of benefit to ratepayers. They appropriately vest the utility with the burden of proof for its pricing policies and assure that ratepayers are not worse off because of a transaction.

Tampa Electric's recommended modifications diminish the potential for expensive and needless litigation to determine the correct price. This litigation threat seems particularly true in an affiliate to utility transaction where differences among parties about what comprises fully allocated costs of the unregulated company could most be expected to lead to extensive discovery and costly litigation.

Excessively restrictive rules or rules that create a high probability of litigation will have the effect of stifling utility and affiliate transactions that could truly benefit ratepayers. That is contrary to the stated intent of this rule of protecting ratepayers and should not be the outcome of this rule.

5. Paragraph (3)(e): Non-Tariffed Affiliate Transactions:

~~(3)(e) Each affiliate involved in affiliate transactions must maintain all underlying data concerning the affiliate transaction for at least three years after the affiliate transaction is complete. This paragraph does not relieve a regulated affiliate from maintaining records under otherwise applicable record retention requirements.~~

Reason for Change: Nonregulated affiliates are not subject to Commission jurisdiction. The regulated utility has the burden of proof to support that its transaction meets the provisions of this proposed rule. It is the utility that must maintain adequate records to justify the pricing of affiliate transactions.

If the nonregulated affiliate did not comply with this ruling, the Commission lacks the authority to impose penalties or to enforce compliance on that affiliate. This rule, therefore, seems, on its face, to be not valid.

6. Paragraph (4)(a): Cost Allocation Principles:

(4)(a) Utility accounting records should be maintained for transactions between the utility and affiliates for a period of three years. ~~must show whether each transaction involves a product or service that is regulated or non-regulated.~~

Reason for Change: Most transactions of a regulated utility support the provision of regulated services. The requirement to tag each transaction with a specific identifier for regulated versus nonregulated imposes an excessive reporting burden on the utility for recording routine accounting transactions. The current accounting system is not designed to record events on the basis of each individual transaction. There is no need to add additional complexity and additional cost to utility accounting systems to provide an indicator for each routine regulated transaction.

7. Paragraph (4)(b): Direct costs

Direct costs ~~shall be assigned to each service and product provided by the utility~~ associated with any transactions by a regulated utility with its affiliates shall be identified in the regulated utility's accounting records.

Reason for change: The staff's proposed language creates an unnecessary level of complexity and places unnecessary costs on accounting for transactions that are routine and

that are not associated with an affiliate transaction or with pricing an unregulated product or service.

8. Paragraph (4)(c): Indirect costs


Indirect costs shall normally be distributed on a fully allocated cost basis. Except, a utility may distribute indirect costs on an incremental or market basis if the utility can demonstrate that its ratepayers will benefit not be harmed. If a utility distributes indirect costs on less than a fully allocated basis, the utility must maintain documentation to support doing so.

Reason for change: Tampa Electric is concerned with the conflict between the unambiguous requirement in the first sentence and the clearly stated exception in the second. The first sentence creates an unnecessarily high expectation that must be overcome for a utility to demonstrate the benefit of the exception. Tampa Electric's modification clearly indicates that there are circumstances in which the normal procedure will not apply.

WHEREFORE, Tampa Electric submits the foregoing additional comments and language suggestions.

DATED this 3rd day of November 1999.

Respectfully submitted,



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ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Additional Comments, filed on behalf of Tampa Electric Company, has been furnished by hand delivery* or U. S. Mail on this 3rd day of November 1999 to the following:

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