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November 3, 1999

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Blanca S. Bayó, Director
Records and Reporting
Florida Public Service Commission
4075 Esplanade Way, Room 110
Tallahassee, Florida 32399-0850

RE: Comments of Florida Power & Light Company in Docket No. 980643-EI

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company (FPL) are the original and fifteen (15) copies of FPL's Comments in Docket No. 980643-EI.

If you or your Staff have any questions regarding this filing, please contact me.

Very truly yours,

Charles A. Guyton

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Florida Power & Light Company

Comments on the October 12, 1999 Draft of Proposed Rule
Docket No. 980643-EI

General Comments

Florida Power & Light Company ("FPL") is pleased to see that Staff has adopted many of its comments that were filed on September 22, 1999. However, FPL continues to believe that the proposed rule is unnecessary and that there is no compelling need for it. Nonetheless, FPL offers the following comments on Staff's draft proposed rule dated October 12, 1999. These do not reflect all of FPL's differences with Staff's draft, and the absence of a comment should not be perceived as an endorsement of the proposed language. Also, some of the comments are related to each other. For instance, if some provisions are not dropped as suggested by FPL, then some of FPL's proposed language changes may not be appropriate or FPL may suggest different language at a later stage of the proceeding, if it progresses.

Specific Comments

25-6.1351 Cost Allocation and Affiliate Transactions

(1) Purpose. The purpose of this rule is to establish cost allocation requirements to ensure proper accounting for affiliate transactions and utility nonregulated activities so that these transactions and activities are not subsidized by utility ratepayers. This rule is not applicable to affiliate transactions for purchase of fuel and related transportation services which are subject to Commission review and approval in cost recovery proceedings.

(2) Definitions
(a) Affiliate – Any entity that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a utility. As used herein, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement, and whether such power is established through a majority or minority ownership or voting of securities, common directors, officers or stockholders, voting trusts, holding trusts, associated companies, contracts or any other direct or indirect means.
(b) Affiliated Transaction – Any transaction in which both a utility and an affiliate are each participants, except transactions related solely to the filing of consolidated tax returns.

(c) Cost Allocation Manual (CAM) – The manual that sets out a utility's cost allocation policies and related procedures.
(d) Direct Costs – Costs that can be specifically identified with a particular service or product.
(e) Fully Allocated Costs – The sum of direct costs plus a fair and reasonable share of indirect costs.
(f) Indirect Costs – Costs, including all overheads, that cannot be identified with a particular service or product.
(g) Nonregulated – Refers to services or products that are not subject to price regulation by the Commission or not included for ratemaking purposes and not reported in surveillance.
(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~~.
(i) Regulated – Refers to services or products that are subject to price regulation by the Commission or included for ratemaking purposes and reported in surveillance.
(j) Subsidize - ~~The act of regulated utility operations paying more than their fair and reasonable share of costs associated with affiliate transactions and utility nonregulated activities.~~ <u>Accounting for costs by allocating more or less cost from one entity to another than the underlying economic transaction supports.</u>

The definition of Prevailing Price Valuation is confusing and FPL is unclear as to how this definition is used later on in the draft.

FPL's proposed language regarding the definition of subsidize applies a more evenhanded definition, in that it addresses subsidies that may run in either direction. This is in accord with the NARUC approach. The rule should not suggest by implication that it is appropriate for customers or any other entity to pay less than their fair share of costs. Moreover, Staff's definition fails to define subsidy because it failed to define the operative phrase "their share of costs."

(3) Non-Tariffed Affiliate-Transactions

(a) The purpose of subsection (3) is to establish requirements for non-tariffed affiliate transactions impacting regulated activities.

(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, <u>(1)</u> a utility may charge an affiliate less than fully allocated costs if the charge is above incremental cost and equivalent to market prices <u>or (2) the utility may charge an affiliate less than market if the charge is equivalent to fully allocated costs.</u> If a utility ~~charges less than fully allocated costs~~ <u>follows one of these exceptions</u>, the utility must maintain documentation to support and justify doing so would benefit regulated operations.

(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, (1) a utility may apportion to regulated operations more than fully allocated costs if the charge is less than or equal to the market price or (2) a utility may apportion to regulated operations more than market price if the charge is no greater than fully allocated costs. If a utility apportions to regulated operations ~~more than fully allocated costs~~ based on one of the exceptions, the utility must maintain documentation to support and justify doing so would benefit regulated operations ~~and would be based on prevailing price valuation~~.

FPL does not understand how "prevailing price valuation" is being used in the proposed rule. It is not clear if this is an attempt to define how the market price is to be determined or if it is some limitation on when it is appropriate to use the market price. FPL believes that a limitation on the use of the market price or fully allocated costs when the transaction benefits the ratepayers is not appropriate. The rule could discourage transactions with an affiliate if a fair pricing policy can not be established. The transaction could be the most advantageous alternative to the ratepayers. Eliminating these limitations would allow the flexibility for favorable transactions to take place and the burden would still be on the utility to show that the transaction was a benefit to the ratepayers.

(d) When an asset used or to be used in regulated operations is transferred from a utility to a nonregulated affiliate, the utility must charge the affiliate the greater of market or net book value. Except, (1) a utility may charge an affiliate less than net book value if the charge is equivalent to market or (2) the utility may charge an affiliate less than market if the charge is equivalent to net book value. When an asset to be used in regulated operations is transferred from a nonregulated affiliate to a utility, the utility must record the asset at the lower of market or net book value. Except, (1) a utility may record the asset at an amount greater than net book value if the amount is less than or equal to market or (2) a utility may record the asset at an amount greater than market if the amount does not exceed net book value. If a utility transfers or records the asset at an amount based on one of the exceptions above, the utility must maintain documentation to support and justify that by doing so would benefit regulated operations. An independent appraiser must verify the market value of a transferred asset with a net book value greater than $1,000,000.

The pricing policy for the transfer of any asset related to the provision of regulated service should be the same for affiliates as it is for non-affiliates. The draft rule as written could discourage certain transfers of assets between a utility and an affiliate. This could result in a detriment to the ratepayers if the transaction is not consummated. The requirement for an independent appraisal for transfers should be limited to land or the dollar limit should be raised to at least $5 million. This would still provide adequate protection for the ratepayers without unduly punishing the affiliate.

~~(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.~~

The utility should be responsible for maintaining details associated with affiliate transactions. Nonregulated affiliates should only keep the details required for their operations and not be bound by regulatory record keeping requirements.

(4) Cost Allocation Principles

(a) Utility accounting records must show whether each transaction involves a product or service that is regulated or nonregulated.

(b) Direct costs shall be assigned to each <u>nonregulated</u> service and product provided by the utility.

(c) Indirect costs shall be distributed <u>to nonregulated services and products provided by the utility</u> 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. If a utility distributes indirect costs on less than a fully allocated basis, the utility must maintain documentation to support doing so.

(d) Each utility must maintain a listing of revenues and expenses for all ~~non-tariffed~~ <u>nonregulated</u> products and services.

Having this section apply to only nonregulated activities makes it more consistent with the intent of the proposed rule and other sections. FPL does not currently maintain the detail accounting records that would be required by this section for all of its activities that meet the definition of "regulated" within this proposed rule, nor does it feel that there would be any benefit in doing so.

(5) Reporting Requirements. Each utility shall file information concerning its affiliates, affiliate transactions, and nonregulated activities on Form PSC/AFA 19 (xx/xx) which is incorporated by reference into this rule. Form PSC/AFA 19, entitled, "Annual Report of Major Electric Utilities," may be obtained from the Commission's Division of Auditing and Financial Analysis.

(6) Cost Allocation Manual. Each utility involved in affiliate transactions or in nonregulated activities must maintain a Cost Allocation Manual (CAM). The CAM must be organized and indexed so that the information contained therein can be easily accessed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Comments in Docket No. 980643-EI was served by U.S. mail this 3rd day of November, 1999 to the following:

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