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July 19, 2000

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FLORIDA PUBLIC SERVICE COMM.  
DIVISION OF APPEALS

The Honorable Christiana T. Moore  
Hearing Officer  
Public Service Commission  
4075 Esplanade Way  
Tallahassee, Florida 32399

BY HAND DELIVERY

Re: Docket Number 980643-EI – In re: Proposed amendments to Rules 25-6.135, F. A. C., Annual Reports; 25-6.1351, F. A. C., Cost Allocation and Affiliate Transactions; and 25-6.0436, F. A. C., Depreciation

Dear Hearing Officer Moore:

On behalf of R.A.C.C.A., Inc., and IEC Florida, I respectfully submit this letter as written comments following the rule hearing held on the above referenced rules on June 22, 2000.

We understand and appreciate the Public Service Commission's focus on whether subsidization affects the regulated utility company, and, if subsidization does affect a regulated utility company, whether the activity has a positive or negative impact on ratepayers. Our understanding of your position is that, once the Public Service Commission is satisfied that the activity benefits ratepayers, the concern stops here. On the other hand, if the Public Service Commission determines that the activity constitutes either a cost or a detriment to the ratepayer, then the Public Service Commission has, not only the authority, but a duty to require that the utility company take the necessary steps to ensure that the interests of ratepayers are protected and that these ratepayers do not inadvertently subsidize business risks where the benefit will inure to the company, its shareholders, or any of its affiliates.

With this as our understanding, we submit the following additional comments.

APP Moore  
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FPSC-RECORDS/REPORTING

Based upon past transactions, we believe that the Public Service Commission has every reason to adopt the most stringent rule possible to make sure that transactions between regulated utilities and affiliated companies are conducted in good faith, reported as fairly as possible, and subject to the accounting standards proper under these particular circumstances.

We respectfully request that the proposed rule include a definition of "market price" for clarity. Although this is a commonly used term, there are different "textbook" and common definitions for the term, and it is beneficial to spell out the one applicable here. We propose the use of the following definition:

"Market price means the price at which a bonafide, arms-length sale of a product or service would take place between an unrelated willing buyer and seller with both parties being under no compulsion to buy or sell and both being aware of all relevant facts regarding the transaction."

This is a definition commonly used to define the concept of fair market value.

Proposed Rule 25-6.1351(3)(d) refers to the transfer of an asset to an affiliate and imposes the requirement that the utility must charge the greater of market price or "net book value" (NBV). Net book value is defined in proposed rule 25-6.0436(1)(d) as the book cost of an asset minus the accumulated depreciation associated with that asset. Accordingly, when an asset has been written off or depreciated for book purposes to its salvage value, it may be transferred to an affiliate at that value even if it is below market price.

We respectfully request a change in the rule to require the utility to transfer the asset at market value if that is readily obtainable. If the utility company does transfer the asset at the lower of market value or book value, it must report this to the Public Service Commission. This may prevent the utility from transferring assets such as bucket trucks to an affiliate at net book value when the fair market value is substantially higher and readily obtainable for this asset.

Proposed rule 25-6.1351(3)(b) also requires the utility company to notify the Public Service Commission within 30 days of any change of terms or conditions surrounding the provision of a product or service. We do not support an interpretation that would require a utility company to endure daily, weekly, or even monthly reporting so long as the transaction is either routine or on-going. However, we do support the inclusion of language that specifies that there is a time limit (possibly one year) to the validity of such a filing. Perhaps the best solution is to require a report if there is any

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change in the pricing or value, and, if not, at least annually from the date of the most recent report.

We strongly support the Public Service Commission's proposed rule language as presented and discussed at the July 6, 2000 informal meeting as follows:

[from 25-6.1351(3)(b)] If a utility charges less than fully allocated costs or market price, the utility must maintain documentation to support and justify how doing so benefits regulated operations and that the transaction would have otherwise been forgone.

and

[from 25-6.1351(3)(d)] Except, a utility may charge the affiliate either the market price or net book value if they utility maintains documentation to support and justify that such a transaction benefits regulated operations and that the transaction would have otherwise been forgone.


and

[from 25-6.1351(3)(d)] Except, a utility may record the asset at either market price or net book value if the utility maintains documentation to support and justify that such a transaction benefits regulated operations and that the transaction would have otherwise been forgone.

We remain very unclear as to the meaning and impact of the use of the term "incremental costs." We respectfully request that there be further discussion on this matter as we are concerned that, without more, the use of this term may either create a substantial loophole or unduly restrict matters for utility companies.

With respect to material relating to a 1997 contract between Kenyon Dodge and Tampa Electric Company included in the package I submitted at the June 22, 2000 rule hearing, we would like to pose a very specific question as follows: Does a transaction that, on its face, is not a regulated activity, become tied to regulated activity when the agreement includes the provision of energy – the regulated utility itself – as part of the contract? If the answer to this question is yes, does the entire transaction then come under the jurisdiction of the Public Service Commission as a regulated activity?

Sincerely,



Anna Cam Fentriss