

RECEIVED-FPSC

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

09 JUL - 3 PM 3:10

In re: Complaint No. 694187E by Cutrale)
Citrus Juices USA, Inc. against Tampa)
Electric Company for refusing to provide)
transformer ownership discount for electrical)
service provided through Minute Maid substation.)
_____)
_____)

COMMISSION
CLERK

DOCKET NO. 070733-EI
FILED: July 3, 2008

09 JUL - 3 PM 11:38

**CUTRALE CITRUS JUICES USA, INC.'S
REQUEST FOR A FLA. STAT § 120.57 HEARING**

COMES NOW, CUTRALE CITRUS JUICES USA, INC. ("Cutrale"), and pursuant to *Fla. Admin. Code R. 25-22.029*, requests that the Florida Public Service Commission (the "Commission") grant this request for a *Fla. Stat § 120.57* hearing, and for grounds states:

THE PARTIES

1. Cutrale is a manufacturer of orange juice and producer of various other fruit and vegetable juice products, headquartered in Auburndale, Florida, whose mailing address is 602 McKean Street, Auburndale, Florida 33843, and whose phone number is (863) 965-500. Cutrale is a customer of TECO.

2. TAMPA ELECTRIC COMPANY ("TECO") is an electric utility company located in Tampa, Florida, servicing the Tampa Bay area, and whose mailing address is P.O. Box 31318, Tampa, Florida 33631-3318. TECO's West Central Florida service area covers 2,000 square miles, including all of Hillsborough County and parts of Polk, Pasco, and Pinellas counties.

3. The Commission is a Florida regulatory agency, located at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, whose goal is to expedite resolution of disputes between consumers and utilities.

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THE AGENCY DECISION

A. The Informal Complaint

4. On January 26, 2006 representatives of Cutrale met with representatives of TECO in Tampa, Florida to discuss Cutrale's claim of entitlement to the Transformer Ownership Discount ("TOD"), contained in the Standby and Supplemental Service (SBFT-358) rate schedule (the "Tariff") which governs TECO's contracts with a number of its customers, including Cutrale. At that meeting, representatives of TECO agreed that Cutrale qualified for the TOD, and agreed to credit Cutrale's account accordingly. Following the meeting, TECO sent a bill to Cutrale which reflected the application of the TOD for electric service provided to Cutrale through the Minute Maid substation. However, TECO subsequently reneged on its agreement and refused to provide the TOD to Cutrale for electrical service provided through the Minute Maid substation.

5. On or about early April, 2006, Edward R. Hart, energy consultant for Cutrale, contacted the Commission to request a staff meeting to address Cutrale's complaint that TECO had refused, after previously agreeing, to grant to Cutrale the TOD. The Commission agreed to meet, and did meet, with Cutrale's representatives regarding its complaint later in April, 2006.

6. On April 21, 2006, following – and in response to – that meeting, Elisabeth Draper, on behalf of the Commission, wrote to Mr. Hart and informed him that the Commission staff did not believe that Cutrale was entitled to the TOD under the Tariff (the "Draper Letter," attached as Exhibit A).

7. On July 18, 2006, in response to the Draper Letter, the undersigned counsel for Cutrale wrote to Ms. Draper and requested further review of Cutrale's complaint pursuant to *Fla. Admin. Code R. 25-22.032(6)(d)*, (the "Major Letter," attached as Exhibit B).

8. On July 24, 2006, Carmen Peña, Regulatory Program Administrator on the Process Review Group, on behalf of the Commission, responded to the Major Letter and informed Cutrale that its Complaint had been assigned to the Commission's Process Review Group, whereby a full review of the Complaint would be made (the "Peña Letter," attached as Exhibit C).

9. Sixteen months later, on November 28, 2007, Martha Carter Brown wrote to the undersigned on behalf of the Commission to render the Process Review Team's decision concerning Cutrale's complaint (the "Brown Letter," attached as Exhibit D). Ms. Brown stated that it did not appear that TECO had violated the Tariff by refusing to provide to Cutrale the TOD, and that the staff could not provide any additional assistance in this matter under the Commission's informal complaint resolution process.

B. The Formal Petition for Relief

10. On December 18, 2007, Cutrale filed its Formal Petition for Relief (the "Formal Petition," attached as Exhibit E) with the Commission, requesting that the Commission: (1) find that Cutrale, including its predecessor in interest Coca-Cola Foods/Minute Maid, is, and at all material times has been, entitled to the TOD for electric service received through the Minute Maid Substation, pursuant to the terms of the Tariff; (2) order that TECO, in the future, apply the TOD to Cutrale's bills for electricity provided through the Substation; and (3) order that TECO furnish a credit or refund to Cutrale in the amount which Cutrale (and its predecessor in interest, Coca-Cola Foods' Minute Maid division), has overpaid TECO due to TECO's refusal to apply the TOD, plus interest from the date such over-charges were paid by Cutrale and its predecessor to TECO.

11. On May 21, 2008, the Office of General Counsel of the Commission issued its Staff Recommendation that Cutrale's Formal Petition be denied.

12. On June 3, 2008, the Commission held its Agenda Conference on the Formal Petition.

13. On June 16, 2008, the Commission filed its Proposed Agency Action Order Denying Cutrale Citrus Juices USA, Inc.'s Request to Find Tampa Electric Company in Violation of Tariff (the "PAA," attached as Exhibit F). Cutrale received written notice of the Commission's decision by e-mail on June 16, 2008. The PAA was also made available via the Commission's electronic docket detail on June 16, 2008.

SUBSTANTIAL INTERESTS

14. Cutrale's substantial interests will be affected by the PAA because Cutrale will be denied a credit or refund in an amount in excess of \$400,000.00 to which it is entitled, and will be forced to continue paying a higher rate for electric service than is required under the Tariff. Cutrale will therefore suffer injury in fact that is of sufficient immediacy to entitle it to an agency hearing, and Cutrale's substantial injury is of a type or nature that the proceeding is designed to protect. See *Ybor III, Ltd. v. Florida Housing Finance Corp.*, 843 So. 2d 344 (Fla. 1st DCA 2003).

IDENTIFICATION OF ISSUES IN PROPOSED AGENCY ACTION DISPUTED BY CUTRALE

15. Cutrale and TECO are in general agreement concerning the material facts of this matter, such as the number and location of transformers owned by Cutrale, the nature and content of the documents which set forth the contractual obligations of the parties, the fact that Cutrale takes service at 13 kV "primary voltage" from TECO's Minute Maid Substation, and related factual matters. The dispute here instead essentially involves a purely legal question of contract interpretation, concerning whether, in light of the undisputed material facts, Cutrale is entitled as a matter of law to receive the TOD granted by the applicable Tariff.

16. On April 12, 1988, Cutrale's predecessor, Coca-Cola Foods, entered into the Tariff Agreement for the Purchase of Firm Standby and Supplemental Service with TECO ("the Agreement," attached as Exhibit G hereto). That Agreement, at paragraph 1, incorporated TECO's SBF 358-359 rate schedule for Firm Standby and Supplemental Service (the "Tariff," which is attached as Exhibit A to the Agreement), which provides a Transformer Ownership Discount to customers meeting the specific criteria spelled out in the Tariff. Cutrale contends, based on the undisputed facts, that it meets those criteria, and thus is entitled to the discount. TECO disagrees. In its PAA, the Commission denied Cutrale's Formal Petition, and determined that Cutrale is not entitled to the TOD. However, the Commission's decision rests upon a flawed rationale, which finds no support in the parties' Agreement, nor in the Tariff itself, nor in Florida law.

17. A formal hearing is thus necessary to resolve what is essentially a mixed question of fact and law, to wit: whether, in light of the undisputed facts, Cutrale is legally entitled to receive the transformer ownership discount provided for in the Tariff, which Tariff is expressly incorporated into Cutrale's Agreement with TECO. *See Iazzo v. Department of Professional Regulation, Bd. of Psychological Examiners*, 638 So. 2d 583 (Fla. 1st DCA 1994) (a party requesting a formal adjudicatory hearing on agency action determining substantial interests need not specifically identify and separately dispute each factual allegation of the agency in order to be entitled to a formal hearing).

ULTIMATE FACTS ALLEGED
(Including Specific Facts Warranting Reversal of the PAA)

18. Cutrale contracts for electric service from, *inter alia*, TECO's Minute Maid substation (the "Substation"), which transforms 69 kV transmission voltage to 13 kV primary voltage, and

delivers electric service to Cutrale at that 13 kV voltage. TECO owns, operates, and maintains the substation, which serves only Cutrale. Cutrale-owned transformers then further transform the 13 kV primary voltage to 4 kV and lower secondary voltages, for use in various applications within Cutrale's manufacturing plant.

19. TECO's service to Cutrale is governed by the Agreement between the parties, which, at paragraph 1, specifically incorporates the Tariff. The pertinent Tariff provision at issue in this dispute states:

TRANSFORMER OWNERSHIP DISCOUNT: When a customer furnishes and installs all primary voltage to secondary voltage line transformation from a primary voltage distribution feeder, a discount of 36¢ per KW of Supplemental Demand and 32¢ per KW of Standby Demand will apply.

20. Based on defined terms in the Tariff and other industry publications, the Substation constitutes a "primary voltage distribution feeder" within the meaning of the Tariff. Moreover, because Cutrale furnishes the transformers which provide "all primary voltage to secondary voltage line transformation from a primary voltage distribution feeder," Cutrale contends it is entitled to the TOD, based upon the plain language of the Tariff itself.

21. In the PAA, however, the Commission rejected Cutrale's contention. The starting point for the Commission's rationale was its incorrect statement that the term "primary voltage distribution feeder" – which is an element of the criteria for TOD eligibility set forth in the Tariff – "is specifically defined by the Authoritative Dictionary of IEEE Standard Terms, which dictionary has been incorporated into Chapter 25-6 of the Florida Administrative Code." See PAA, page 5. This statement by the Commission is plainly in error. The actual term defined in that dictionary is the term "*primary distribution feeder*," which is obviously not the same as the term "*primary*

voltage distribution feeder,” which is the term that actually appears in the Tariff. The Commission, however, pointedly ignores the difference between the terms by asserting – without citing any legal or technical authority for the proposition – that the terms are “interchangeable.” See PAA, p. 5.

22. Building upon this error, the Commission then relied upon an interpretive note accompanying the dictionary’s definition of the word “distribution,”¹ – as that word is used in a technical term which does not even appear in the Tariff – to manufacture (and to retroactively impose upon Cutrale) an eligibility requirement for the TOD which cannot be found in the Tariff itself. This eligibility requirement, which the Commission has simply invented here, is that Cutrale must place one of its transformers “between the Minute Maid Substation and the point of delivery” in order to qualify for the TOD. Then, because none of Cutrale’s many transformers are located between the Substation and the point of delivery, the Commission held Cutrale ineligible for the discount.

23. This newly-created eligibility requirement, fashioned here by the Commission, is nowhere to be found in the Tariff, nor in the Agreement, nor otherwise in Florida law. It is, moreover, flatly contradicted by the express purpose and “justification” behind the Tariff’s Transformer Ownership Discount. That purpose, ironically, is expressly acknowledged by the Commission in the PAA at page 6, footnote 1:

¹ The note in question states, in pertinent part: “1. From the standpoint of a utility system, the area described is between the generating source or intervening substations and the customer’s entrance equipment.” This language correctly and appropriately describes the location – within the power generation and distribution system involved here – of the “primary voltage *distribution feeder,*” which in this case is the Minute Maid substation. There is, however, absolutely no legal or technical basis for the Commission’s determination that this language is somehow intended to describe *where the customer’s transformers are required to be placed*, in order for the customer to qualify for the Transformer Ownership Discount under the Tariff.

Transformer ownership discounts are given when a customer takes service at primary or sub transmission voltage and provides his own transformation. *These discounts are justified because the demand charge includes costs associated with [TECO's] cost of transformation. Thus, customers who take service at higher voltage levels should get a credit to recover the costs included in the rates which are related to transformations not required.* Order No. 11307, issued November 10, 1982, in Docket No. 820007-EU, In re: Petition of Tampa Electric Company for an increase in rates and charges, p. 47. (italics added)

The above quoted language, which explains why – and under what circumstances – the discount applies, *exactly describes Cutrale's situation*: (1) Cutrale takes service from TECO at “primary voltage”; (2) Cutrale provides its own transformation of that primary voltage to secondary voltage, using transformers Cutrale owns; (3) yet Cutrale pays demand charges to TECO at rates which include within them the costs associated with TECO's “cost of transformation” – but which “transformation cost” TECO has not incurred here, because it is Cutrale, not TECO, which supplies the transformation, using its own transformers. This is, in short, the precise circumstance in which the TOD is intended to apply, according to the Commission's description of its purpose.

24. The remainder of the Commission's flawed rationale for its decision denying Cutrale's Formal Petition can be summed up in the following three arguments: (1) TECO is responsible only for delivering electricity at 13 kV to Cutrale, and since it charges Cutrale only for the cost of electricity delivered at that voltage, Cutrale is simply getting what it pays for; (2) Cutrale's turbine co-generates its own power at 13 kV, thus Cutrale needs its own transformers to reduce that voltage anyway, so it should get no credit for owning them; and (3) Cutrale has gone without the discount for many years without complaint, so it should not be complaining now. These arguments are meritless.

25. The first argument completely ignores two critical facts: (a) that the rates the customer pays are the same, regardless of the voltage at which TECO delivers the electricity, and (b) that the

demand charges Cutrale pays to TECO *include charges for TECO's "transformation costs,"* even though TECO performs no transformations to secondary voltage for Cutrale. In short, Cutrale is paying for "more than" Cutrale receives from TECO, because Cutrale pays TECO for transformations which Cutrale itself performs. Cutrale is thus entitled to be refunded the difference by way of the Transformer Ownership Discount.

26. The second argument – that Cutrale should not receive the TOD because Cutrale needs its transformers for its own co-generated electricity anyway – simply ignores the fact that Cutrale continues to receive significant amounts of TECO generated electricity, for which it pays demand charges at a rate that compensates TECO for transmission costs that TECO did not incur.

27. The third argument – that because Cutrale has not previously complained, it cannot be heard to complain now – essentially suggests that an injustice should be allowed to continue after it has been discovered, provided it went undiscovered for a long period of time. Moreover, it ignores that fact that Cutrale's contract with TECO incorporates a public Tariff, which grants legal rights to Cutrale, which rights Cutrale has never knowingly waived, and which rights cannot be waived by either inaction on Cutrale's part, or by Cutrale's temporary ignorance of their applicability.

28. In sum, Cutrale meets the technical criteria expressly imposed by the Tariff to be eligible for the Transformer Ownership Discount. Moreover, the application of the discount to Cutrale is entirely consistent with the purpose and "justification" for the discount. As the Commission itself has stated, "[C]ustomers who take service at higher voltage levels should get a credit to recover the costs included in the rates which are related to transformations not required." PAA, p. 6, n.1. Cutrale is just such a customer, and its entitlement to the discount is abundantly clear.

RELIEF SOUGHT

29. As outlined above, the Commission clearly erred, as a matter of fact and law, in holding that Cutrale is not entitled to the TOD. Accordingly, Cutrale seeks a Section 120.57 hearing, in which a legal determination can be made that (1) Cutrale, including its predecessor in interest Coca-Cola Foods/Minute Maid, is, and at all material times has been, entitled to the TOD for electric service received through the Minute Maid Substation, pursuant to the terms of the Tariff; (2) that TECO, in the future, must apply the TOD to Cutrale's bills for electricity provided through the Substation; and (3) that TECO must furnish a credit or refund to Cutrale in the amount which Cutrale (and its predecessor in interest, Coca-Cola Foods' Minute Maid division), has overpaid TECO due to TECO's refusal to apply the TOD, plus interest from the date such overcharges were paid by Cutrale and its predecessor to TECO.

WHEREFORE, Cutrale respectfully requests that the Commission grant the above requested hearing and relief.

DATED this 2nd day of July, 2008

Respectfully submitted,

**WINDERWEEDLE, HAINES, WARD
& WOODMAN, P.A.**

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Attorneys for Cutrale

By: _____

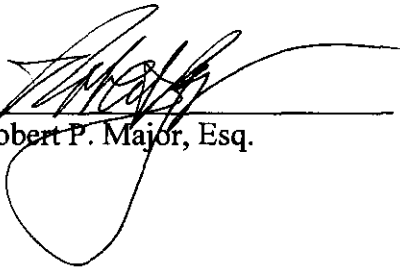
Robert P. Major, Esq.

Florida Bar/No.:0501115

E-mail: rmajor@whww.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document and its Exhibits were provided by regular mail to James D. Beasley, Esq., Ausley & McMullen, P.O. Box 391, Tallahassee, FL 32302, and to Lisa C. Bennett, Esq., Public Service Commission, Capital Circle Office Center, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, this 2nd day of July, 2008.


Robert P. Major, Esq.

COMMISSIONERS:
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ISILIO ARRIAGA
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KATRINA J. TEW

STATE OF FLORIDA



TIMOTHY DEVLIN, DIRECTOR
DIVISION OF ECONOMIC REGULATION
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Public Service Commission

April 21, 2006

Edward Hart
Encore Energy Solutions
P.O. Box 271737
Tampa, FL 33688-1727

RE: Cutrale Citrus Juices, Complaint No. 694187E

Dear Mr. Hart:

This letter is in response to our recent meeting with Cutrale Citrus Juices (Cutrale) to discuss Tampa Electric Company's (TECO) Standby and Supplemental Service (SBFT) rate schedule. Specifically, Cutrale believes that it is entitled to a transformer ownership discount specified in the standby tariff.

Based on the information provided by you and TECO, staff does not believe that Cutrale is entitled to a transformer ownership discount. As shown in the interconnection diagram (Exhibit B of the Interconnection Agreement between Coca Cola Foods and TECO) Cutrale takes service at primary voltage (13 kV). That service is provided by TECO through the Minute Maid substation that transforms electric service from transmission voltage (69 kV) to the 13 kV primary voltage required by Cutrale. TECO installed and owns this substation to exclusively serve Coca Cola Foods, now Cutrale. Cutrale's wastewater account is not served from the dedicated Minute Maid substation and therefore may be eligible for the transformation discount.

As the diagram shows, the primary meter is installed after the Minute Maid substation, indicating that TECO owns the substation. The diagram further shows that Cutrale owns all facilities, including transformation equipment to further reduce the 13 kV voltage, behind the ownership line.

TECO's SBFT rate schedule states:

When the customer furnishes and installs all primary voltage to secondary voltage line transformation **from a primary voltage distribution feeder**, a discount of 36 cents per KW of Supplemental Demand and 32 cents per KW of Standby Demand will apply.

As stated above, in order to receive a transformation credit, the customer must be served from a primary voltage distribution feeder, i.e., a feeder line serving multiple customers. If a customer contracts for service at secondary voltage from a primary feeder, TECO has the obligation to provide service at secondary voltage. It may do so either through a utility-owned transformer, or through a customer-owned transformer. If the customer chooses to install the transformer, the customer

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Edward Hart
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receives a transformation credit for providing a transformer that the utility would otherwise be required to install to provide the voltage contracted for by the customer.

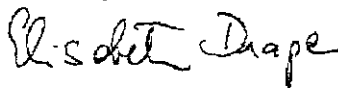
Cutrale, however, is served by a dedicated substation and a dedicated line, which TECO installed, not a primary feeder which serves other customers. The substation transforms voltage from 69 kV to 13 kV, which is the level of service requested by the customer. Since TECO did not avoid the transformation cost to provide Cutrale the requested 13 kV level of service, and Cutrale contracted for service at 13 kV, Cutrale is not eligible for credit for further transformation to voltages below 13 kV behind the customer's meter.

With respect to the costs incurred by Coca Cola to modify the substation noted in the 1987 interconnection agreement, TECO clarified that modifications were made to allow for the installation of cogeneration metering and protection devices. Customers who plan to cogenerate power are required to pay for all costs of interconnection with the utility's system. Those changes did not affect the transformation arrangement from 69 kV to 13 kV established several years earlier when the substation was first constructed.

During our meeting, you indicated that TECO did not provide sufficient documentation showing TECO's agreement with Coca Cola Foods to discontinue the transformation discount, which TECO erroneously applied until 1987. TECO provided to staff a memorandum from Mr. Meyer to Mr. Mangione, dated May 18, 1978, which is attached. I do not believe this memorandum was included in the documentation you provided. In addition to explaining why Coca Cola Foods does not qualify for the transformation credit, Mr. Meyer also stated that in order to receive the credit, Coca Cola Foods would have to buy or lease the Minute Maid substation.

I hope this discussion is responsive to your concerns. If you have any additional questions or concerns, please do not hesitate to contact me at (850) 413-6706 or edraper@psc.state.fl.us.

Sincerely,



Elisabeth Draper
Economic Analyst
Bureau of Certification, Economics & Tariffs

ED:kb
Enclosure: Memorandum from Mr. Meyer
Cc: Tampa Electric Company

WINDERWEEDLE, HAINES,
WARD & WOODMAN, P.A.

ATTORNEYS AT LAW

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July 18, 2006

Ms. Elisabeth Draper
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Via Certified Mail

Re: Our Client: Cutrale Citrus Juices USA, Inc.
PSC Complaint: No. 694187E

Dear Ms. Draper:

This firm is counsel to Cutrale Citrus Juices USA, Inc. ("Cutrale"), which has filed the above Complaint with the Commission, arising out of the refusal by Tampa Electric Company ("TECO") to provide to Cutrale the Transformer Ownership Discount ("TOD") to which Cutrale is entitled under the terms of TECO's Standby and Supplemental Service (SBFT) rate schedule ("the tariff"). This letter responds, on behalf of Cutrale, to your letter dated April 21, 2006 to Edward Hart – Cutrale's energy consultant – which set forth your view that Cutrale is not entitled to the TOD. Please consider this letter Cutrale's request, pursuant to FAC §25-22.032 (6)(d), for further review of Cutrale's complaint by Commission staff, in light of the following considerations.

1. Definition of "Primary Voltage Distribution Feeder"

As you point out in your letter, TECO's SBFT rate schedule states:

When the customer furnishes and installs all primary voltage to secondary voltage line transformation from a **primary voltage distribution feeder**, a discount of 36 cents per KW of Supplemental Demand and 32 cents per KW of Standby Demand will apply. (emphasis added).

The explanation offered by TECO, and adopted by you in your letter, for why Cutrale has been determined to be ineligible for the TOD, is that Cutrale is not served from a "primary voltage distribution feeder," which your letter defines as "a feeder line serving multiple customers." There is, however, absolutely nothing in the Tariff, nor in standard industry literature, which provides such a definition of the term "primary voltage distribution feeder." In fact, although the Tariff defines various technical terms, it offers no definition whatsoever of the term "primary voltage distribution feeder." However, the Tariff, as well as other industry publications, do define the

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Re: *Cutrale Citrus Juices USA, Inc. adv. TECO*
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various words contained in the undefined term "primary voltage distribution feeder." These definitions do not in any way support the "multiple customers" interpretation of that term which TECO – and your letter – seeks to apply to it.

For example, the term "primary service voltage" is defined in the tariff, at Third Revised Sheet No. 4.010, as:

The voltage level in a local geographic area which is available after the company has provided one transformation from the transmission system. *For service taken at primary voltage all additional transformations shall be customer owned.* (emphasis added)

The term "distribution system" is defined in the tariff, at Fifth Revised Sheet No. 4.040, as:

Electric service facilities consisting of primary and secondary conductors, service laterals, transformers and necessary accessories and appurtenances for the furnishing of electric power at utilization voltage (13kV and below on the Company's system).

Although the tariff does not define the term "feeder," a definition of that term is provided by OSHA:

A circuit, such as conductors in conduit or a busway run, which carries a large block of power from the service equipment to a sub-feeder panel or a branch circuit panel or to some point at which the block power is broken into smaller circuits.

OSHA further defines "distribution feeder circuits" as:

[T]he connections between the output terminals of a distribution substation and the input terminals of primary circuits. The distribution feeder circuit conductors leave the substation from a circuit breaker or circuit recloser via underground cables, called substation exit cables.

It is thus apparent – from the express definitions of the key words contained in the term "primary voltage distribution feeder" supplied by both the Tariff itself and by OSHA – that the term merely describes the technical mechanism for the provision of electric service to the customer at primary voltage (which, in this case, is 13 kV), and *has nothing whatsoever to do with the "number of customers" served by a particular substation.* Indeed, the Tariff's definition of "primary service voltage" contains within it an express recognition that, when a customer (such as Cutrale) takes electrical service at primary voltage (as Cutrale does), all additional transformations "shall be customer owned," which Cutrale also does. The implication is clear: Where such customers take service at primary voltage, and also own the "additional transformations" needed for further voltage transformation, such customers are then entitled to the "transformer ownership discount."

Ms. Elisabeth Draper

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2. TECO's May 18, 1987 Memorandum.

It appears that your letter, in advancing the unsupported "multiple customers" definition of the term "primary voltage distribution feeder," relies solely on certain verbiage contained in a TECO memorandum dated May 18, 1987, authored by a person named W. Meyer. We have the following observations and criticisms of that memorandum:

- a. Neither TECO's April 19, 2006 Response to PSC Staff Questions, nor your letter, offer any information concerning the identity, authority, or qualifications of the author of the May 18, 1987 memorandum, nor otherwise offer any authentication of it. The memorandum is not part of the Tariff nor of Cutrale's Interconnection Agreement, and cannot take precedence over those documents with respect to Cutrale's rights. There is, moreover, no evidence that the author is qualified to speak on behalf of TECO in regard to the alleged "rationale" or "policy" behind the transformation ownership discount, which discount is not even the stated subject of the memorandum itself. Moreover, the memorandum was never provided by TECO to Coca Cola Foods nor to Cutrale, and we suspect it was never submitted to the Commission in connection with the approval of the Tariff.
- b. Contrary to your assertion that, in the memorandum, Mr. Meyer "stated that in order to receive the credit, Coca Cola Foods would have to buy or lease the Minute Maid substation," the memorandum actually says no such thing. Indeed, it does not even mention Coca Cola Foods, nor does it mention The Minute Maid Company.
- c. The stated subject of the memorandum was "Meter Discounts Without Ownership," and the stated purpose of the memorandum was to "clarify the conditions that allow the primary voltage discount for metering of 1%." Such metering discounts – the express subject of this memorandum – are different than "transformer ownership discounts," and have nothing to do with the present dispute. The mere fact that the memorandum also contains some gratuitous, off-topic discussion concerning what the author believed were eligibility requirements for "transformation ownership discount" does not make this memorandum authoritative on that issue.
- d. The Memorandum contains the statement, "[t]ransformation ownership discount is based on Tampa Electric's avoidance of all identifiable transformation expenses. This means that unless the Customer is served from a distribution feeder (circuit, or lines serving at least two classes of Customers), the Customer is ineligible." While this statement may indeed express the personal opinion of the author of the memorandum, it is not supported by any language in the governing tariff, and is in fact contradicted by the Tariff's and OSHA's definitions of the relevant terms, as

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discussed in Section 1 above. Indeed, nothing in the Tariff defines or describes a "distribution feeder" as a "circuit or lines serving at least two classes of Customers." Nor can that definition be found in the industry literature; the author of the memorandum appears to have simply made it up out of whole cloth, in an attempt to limit the availability of the discount by unilaterally imposing eligibility criteria not found in the tariff nor approved by the Public Service Commission.

- e. The last sentence of the summary section of the memorandum, ironically, correctly states Cutrale's case: "*Ownership discount of \$.32/kW for primary delivery voltage; and \$.42/kW for 69 kV delivery voltage are available to any Customer owning all the transformation directly identifiable to the service ahead or behind the meter.*" This statement is completely consistent with the Tariff's definition of "primary service voltage" discussed in Section 1 above, which recognizes that, for service taken at primary voltage, all additional transformations shall be Customer owned. Cutrale takes service at primary voltage, owns the additional transformers, and is therefore entitled to the discount provided in the Tariff for such transformer ownership.

3. General Industry Practice in Florida Concerning Transformer Ownership Discounts

Neither Florida Power & Light Company nor Gulf Power attempt to limit transformer ownership discounts in the manner which TECO seeks to do here. For example, FPL's Tariff provides:

Monthly Credit: The Company, at its option, will either provide and maintain transformation facilities equivalent to the capacity that would be provided if the load were served at a secondary voltage from transformers at one location or, when Customer furnishes transformers, the Company will allow a monthly credit of \$0.36 per kw of Billing Demand...

See FPL Transformer Rider - TR, Seventh Revised Sheet No. 8.820 (attached). Similarly, Gulf Power's tariff provides:

Transformer Ownership Discount and Primary Metering Voltage Discounts: When the Company renders service under this Rate Schedule at the local primary distribution voltage and any transformers required are furnished by the Customer, the monthly rate will be subject to a discount of: twenty-seven (27) cents per month per kilowatt (KW) of the Customer's demand used in the calculation of the Local Facilities Charge for those customers which are billed under the 100 to 499 KW demand range; or forty-one (41) cents per month per kilowatt (KW) of the Customer's demand used in the calculation of the Local Facilities Charge for those customers which are billed under the 500 to 7,499 KW demand range; and an additional discount of one percent (1%) of the Energy Charge and one percent (1%) of the Demand Charge.

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See Gulf Power Rate Schedule SBS, Section No. VI, First Revised Sheet No. 6.62 (attached).

4. TECO's Responses to FPSC Staff's Questions

TECO's Responses to the questions posed by Commission staff appear to have been accepted uncritically by PSC staff as correct and accurate, when in fact TECO's responses were neither:

- a. TECO's explanation for why it is not in violation of the Standby Tariff provision regarding transformer credit advances the erroneous argument – in light of the Tariff's own definition of the terms involved – that because Cutrale is served by a dedicated substation owned by TECO, Cutrale therefore, by definition, *is not* served by a "primary voltage distribution feeder." TECO does this by inventing a definition for that term requiring that "multiple customers" be served from the substation, which definition is inconsistent with the actual definitions supplied by the Tariff, by OSHA, and generally accepted within the industry. In actual fact, Cutrale is indeed served by a "primary voltage distribution feeder" as those terms are correctly defined, even though that service comes to Cutrale through a dedicated substation.
- b. TECO's "documentation" to support the existence of an alleged "Agreement" between TECO and Coke not to provide the transformer ownership discount to Coke consisted of: (a) the May 18, 1987 memorandum (described above in Section 2), and (b) an internal TECO memorandum dated June 26, 1987, authored by a TECO employee named Randy Stevens and directed to a TECO employee named Hank Bentranger, which purports to "confirm our joint agreement to cease the transformer ownership discount..." In fact there was no such "joint agreement" between TECO and Coke. The June 26, 1987 memorandum, like the May 18, 1987 memorandum, was not directed to, nor provided to, anyone at Cutrale's predecessor, Coca Cola Foods, but rather was an internal TECO memorandum between two TECO employees, whose authority to speak for TECO on these matters has not been authenticated. Moreover, any "joint agreement" *between two TECO employees* concerning the improper termination of Coke's transformer ownership discount could not affect Coke's rights under the Tariff in any event.

5. The "Avoidance of Identifiable Transformation Expenses" Argument

Finally, your April 21, 2006 letter embraces TECO's argument – which argument is unsupported by any language in the Tariff – that the transformer ownership discount is only available if TECO has achieved the "avoidance of all identifiable transformation expenses." This undocumented requirement for TOD eligibility appears in the May 18, 1987 memorandum previously discussed in Section 2. In the later June 26, 1987 memorandum, that argument took the form of requiring that

Ms. Elisabeth Draper
Re: *Cutrale Citrus Juices USA, Inc. adv. TECO*
July 18, 2006
Page 6

TECO "avoid a dedicated substation." A slightly modified version of this same argument was expressed in your letter of April 21, 2006, in which you state, "Since TECO did not avoid the transformation cost to provide Cutrale the requested 13 KV level of service¹, and Cutrale contracted for service at 13 kV, Cutrale is not eligible for credit for further transformation to voltages below 13 kV behind the customer's meter."

This argument, particularly as expressed in your April 21, 2006 letter, is flatly contradicted by the Tariff itself, which provides that the Customer will be eligible for the discount any time the customer furnishes and installs all "primary voltage to secondary voltage line transformation," when that primary voltage comes to the Customer from a "primary voltage distribution feeder." It is undisputed that Cutrale receives electric service from TECO at the 13 kV "primary voltage" level, and that Cutrale's own transformers provide further transformation of that primary voltage to secondary voltage for use in the Cutrale plant. It is also undisputable, in light of the definitions supplied by the tariff and by OSHA, that TECO provides this 13 kV primary voltage to Cutrale from a "primary voltage distribution feeder," *i.e.*, the line to Cutrale from the Minute Maid substation.² Accordingly, Cutrale is eligible for the discount.

Moreover, to the extent that TECO did in fact incur some nominal amount of "identifiable transformation expenses" associated with Minute Maid substation, such expenses have long since been repaid by Coke and Cutrale through their payment of 19 years of demand charges. It defies logic and common sense to suggest that, because TECO incurred a nominal amount of "transformation expense" associated with the Minute Maid substation many years ago, Cutrale will forever be denied the transformer ownership discount, even though Cutrale clearly meets the criteria set forth in the Tariff to be eligible for that discount.

For all the foregoing reasons, we respectfully request that the Commission further review Cutrale's Complaint in this matter.

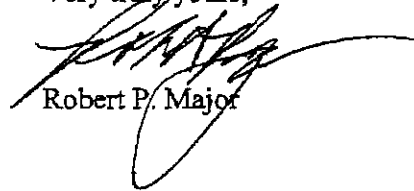
¹ Your statement suggests that, merely because TECO incurred the cost of converting transmission voltage to primary voltage prior to reaching Cutrale, Cutrale is – by that fact alone – somehow ineligible for the transformer ownership discount. This statement is contradicted by the Tariff, and would, if adopted, make the discount unavailable to TECO's customers in almost every case, since at least one instance of voltage transformation (*i.e.*, from transmission voltage to primary voltage) occurs prior to electricity reaching TECO's industrial customers

² As explained previously, both the Tariff and standard industry definitions of the relevant terms contradict TECO's assertion that a substation serving only one customer, "by definition," cannot be a "primary voltage distribution feeder." To the contrary, any substation providing service to a customer at primary voltage – regardless of the number of customers served by that substation – is a "primary voltage distribution feeder."

Ms. Elisabeth Draper
Re: *Cutrale Citrus Juices USA, Inc. adv. TECO*
July 18, 2006
Page 7

Thank you for your kind consideration of this matter. Please contact me if you require any additional information from Cutrale to assist in the requested review.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. Major', with a long, sweeping underline that extends to the right.

Robert P. Major

RPM/et
Enclosures

cc: Alberto Moyano
R. Edward Hart
Hugh Thompson



Section No. VI
First Revised Sheet No. 6.62
Canceling Original Sheet No. 6.62

PAGE 6 of 8	EFFECTIVE DATE June 7, 2002
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(Continued from Rate Schedule SBS, Sheet No. 6.61)

TRANSFORMER OWNERSHIP DISCOUNT AND PRIMARY METERING VOLTAGE DISCOUNTS:

When the Company renders service under this Rate Schedule at the local primary distribution voltage and any transformers required are furnished by the Customer, the monthly rate will be subject to a discount of: twenty-seven (27) cents per month per kilowatt (KW) of the Customer's demand used in the calculation of the Local Facilities Charge for those customers which are billed under the 100 to 499 KW demand range; or forty-one (41) cents per month per kilowatt (KW) of the Customer's demand used in the calculation of the Local Facilities Charge for those customers which are billed under the 500 to 7,499 KW demand range; and an additional discount of one percent (1%) of the Energy Charge and one percent (1%) of the Demand Charge.

TRANSFORMER OWNERSHIP DISCOUNT AND TRANSMISSION METERING VOLTAGE DISCOUNTS:

When the Company renders service under this Rate Schedule from an available transmission line of 46,000 volts or higher and the Customer furnishes, operates, and maintains the complete step-down transformer substation necessary to receive and use such service, the monthly rate will be subject to a discount of forty-eight (48) cents per month per kilowatt (KW) of the Customer's demand used in the calculation of the Local Facilities Charge for those customers which are billed under the 500 to 7,499 KW demand range and an additional discount of two percent (2%) of the Energy Charge and two percent (2%) of the Demand Charge. The monthly rate will be subject to a discount of seven (7) cents per kilowatt (KW) of the demand used in the calculation of the Local Facilities Charge for those customers which are billed under the above 7,499 KW demand range and an additional discount of one percent (1%) of the Energy Charge and one percent (1%) of the Demand Charge.

TERM OF CONTRACT:

Service under this rate schedule shall be for a minimum period of five (5) years and shall continue thereafter from year to year until terminated by either party upon twenty-four (24) months written notice to the other.

DEPOSIT:

A deposit amounting to twice the estimated average monthly bill may be required before service is connected at designated premises. The deposit may be applied to any final bills against the Customer for service.

ISSUED BY: Travis Bowden

TRANSFORMATION RIDER - TR

AVAILABLE:

In all territory served.

APPLICATION:

In conjunction with any commercial or industrial rate schedule specifying delivery of service at any available standard voltage when Customer takes service from available primary lines of 2400 volts or higher at a single point of delivery.

MONTHLY CREDIT:

The Company, at its option, will either provide and maintain transformation facilities equivalent to the capacity that would be provided if the load were served at a secondary voltage from transformers at one location or, when Customer furnishes transformers, the Company will allow a monthly credit of \$0.36 per kw of Billing Demand. Any transformer capacity required by the Customer in excess of that provided by the Company hereunder may be rented by the Customer at the Company's standard rental charge.

The credit will be deducted from the monthly bill as computed in accordance with the provisions of the Monthly Rate section of the applicable Rate Schedule before application of any discounts or adjustments. No monthly bill will be rendered for an amount less than the minimum monthly bill called for by the Agreement for Service.

SPECIAL CONDITIONS:

The Company may change its primary voltage at any time after reasonable advance notice to any Customer receiving credit hereunder and affected by such change, and the Customer then has the option of changing its system so as to receive service at the new line voltage or of accepting service (without the benefit of this rider) through transformers supplied by the Company.

RULES AND REGULATIONS:

Service under this schedule is subject to orders of governmental bodies having jurisdiction and to the currently effective "General Rules and Regulations for Electric Service" on file with the Florida Public Service Commission. In case of conflict between any provision of this schedule and said "General Rules and Regulations for Electric Service" the provision of this schedule shall apply.

COMMISSIONERS:
LISA POLAK EDGAR, CHAIRMAN
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW

STATE OF FLORIDA



DIVISION OF REGULATORY
COMPLIANCE AND CONSUMER
ASSISTANCE
DANIEL M. HOPPE, DIRECTOR
(850) 413-6480

Public Service Commission

July 24, 2006

Robert P. Major, Esquire
Winderweedel, Haines, Ward & Woodman
Attorneys at Law
1500 Bank of America Center
P. O. Box 1391
390 North Orange Avenue
Orlando, FL 32802-1391

Re: FPSC Inquiry No. 694187E

Dear Mr. Major:

Thank you for contacting the Florida Public Service Commission (PSC) about Tampa Electric Company. We appreciate the opportunity to help you.

Your complaint has been escalated to the Process Review Group. Ms. Kate Smith has been assigned to perform a full review of your complaint. During our investigation, we may request additional information or documentation from you. If you fail to respond to our request within 15 calendar days, your complaint may be closed without resolution.

I hope this information is helpful. If you have any concerns or questions, please contact Ms. Smith at (850) 413-6105, by fax at (850) 413-6106, or by e-mail at ksmith@psc.state.fl.us.

Sincerely,

A handwritten signature in cursive that reads "Kate Smith for".

Carmen Peña
Regulatory Program Administrator
Process Review Group
BCR/RCCA

CP:kes



COMMISSIONERS:
LISA POLAK EDGAR, CHAIRMAN
MATTHEW M. CARTER II
KATRINA J. MCMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

STATE OF FLORIDA



GENERAL COUNSEL
MICHAEL G. COOKE
(850) 413-6248

Public Service Commission

November 28, 2007

Robert P. Major, Esq.
1500 Bank of America Center
390 North Orange Avenue
Orlando, FL 32801

Re: Complaint No. 694187E - Cutrale Citrus Juices USA, Inc.

Dear Mr. Major:

This letter is in reference to your objection to the Commission staff's proposed resolution of Cutrale Citrus Juices' (Cutrale) complaint against Tampa Electric Company (TECO) for failure to comply with its tariff governing "Transformer Ownership Discounts." The Commission's customer complaint rules are designed to provide a process for informal staff resolution of complaints that cannot be resolved by the company and the customer. Rule 25-22.032(7), Florida Administrative Code, provides that a staff Process Review Team will review a complaint to determine further handling if there is an objection to the staff's proposed resolution.

In accordance with the rule, a Process Review Team reviewed your complaint and all information provided by you and TECO. Based on that review, we believe that, as Ms. Draper explained in her April 21, 2006 letter to you, it does not appear that TECO violated its tariff by refusing to provide your client a transformer ownership discount for electric service provided to its citrus processing and cogeneration plant from TECO's Minute Maid substation. Our analysis is based upon our belief that this matter is resolved most clearly as a rate issue.

The facts indicate that Cutrale contracts for electric service from TECO's Minute Maid substation at a 13 kV voltage level. TECO owns, operates and maintains the substation, which transforms 69 kV transmission voltage to the 13 kV voltage and serves only the Cutrale facility. TECO's rates for the electric service provided to Cutrale reflect the costs that TECO incurs to provide service to Cutrale at the 13kV level. Any further transformation from 13 kV to 4kV that Cutrale performs on the customer side of the substation meter is Cutrale's responsibility, because Cutrale has not contracted for service at the lower voltage level. If TECO were obligated to provide electric service at the lower voltage to Cutrale, thereby requiring an additional step-down transformer on the 13 kV line, and Cutrale owned, operated and maintained the additional transformer, Cutrale would be

CAPITAL CIRCLE OFFICE CENTER

An Aff

PSC Website: <http://www.floridapsc.com>



WARD • TALLAHASSEE, FL 32399-0850

Employer

Internet E-mail: contact@psc.state.fl.us

November 28, 2007

Page two of two

entitled to receive TECO's tariffed transformer discount because TECO's rates for the lower voltage service would include the costs of the additional transformer that Cutrale was actually incurring. Here, however, Cutrale's contract for service is at the 13 kV level provided by TECO from its dedicated Minute Maid substation, and any further transformation is not reflected in the rates TECO charges for service to the Cutrale facility. For these reasons, the staff believes that TECO is properly complying with its tariff, and Cutrale is not entitled to a transformer discount.

Because the facts in this case indicate that TECO has not violated any applicable statutes, rules, company tariffs, or orders of the Commission, the staff cannot provide any additional assistance in this matter under the Commission's informal complaint resolution process. Therefore, your Customer Complaint No. 694187E will be closed.

We would point out that this is the staff's informal opinion only. If you disagree with this resolution of the complaint, you may file a formal petition for relief against TECO with the Office of the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850. The formal petition must be filed pursuant to the provisions of Chapter 120, Florida Statutes, the Uniform Rules of Administrative Procedure found in Chapter 28-106, Florida Administrative Code, and the Commission's procedural rules, in particular, Rule 25-22.036, Florida Administrative Code. TECO will have the opportunity to respond to your petition, which would be addressed by the Commission pursuant to the statutes and rules cited above.

If you have any questions regarding this letter, please call me at (850) 413-6187.

Sincerely,

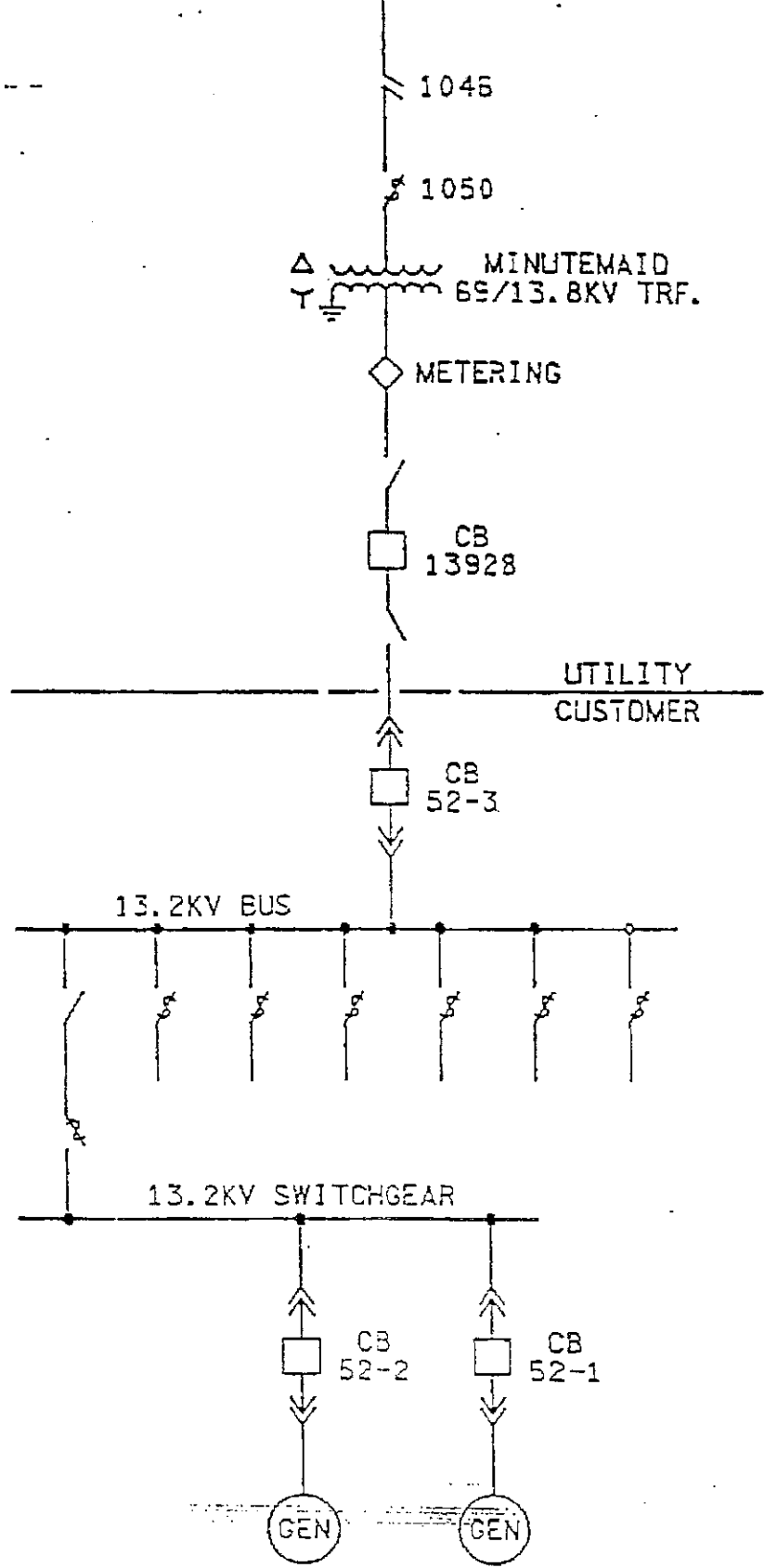


Martha Carter Brown
Senior Attorney

MCB/tfw
Attachment

Cc: Barbara Benton, Tampa Electric Company
James Beasley, Ausley Law Firm
Bureau of Complaint Resolution (Hicks)
Connie Kummer, ECR

TO ARIANA ← 66832 1045 1044 66832 → TO LAKE SILVER 89



STATE OF FLORIDA PUBLIC SERVICE COMMISSION

CUTRALE CITRUS JUICES USA, INC.,

PSC Complaint No.: 694187E

Petitioner,

vs.

TAMPA ELECTRIC COMPANY,

Respondent.

FORMAL PETITION FOR RELIEF

Petitioner, CUTRALE CITRUS JUICES USA, INC. ("Cutrale") requests that the State of Florida Public Service Commission (the "Commission") grant it the relief sought herein against Respondent, TAMPA ELECTRIC COMPANY ("TECO"), and alleges as follows:

The Parties

1. Cutrale is a manufacturer of orange juice and producer of various other fruit and vegetable juice products, headquartered in Auburndale, Florida, whose mailing address is 602 McKean Street, Auburndale, Florida 33843, and whose phone number is (863) 965-500. Cutrale is a customer of TECO.

2. TECO is an electric utility company located in Tampa, Florida, servicing the Tampa Bay area, and whose mailing address is P.O. Box 31318, Tampa, Florida 33631-3318. TECO's West Central Florida service area covers 2,000 square miles, including all of Hillsborough County and parts of Polk, Pasco, and Pinellas counties.

3. The Commission is a Florida regulatory agency, located at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, whose goal is to expedite resolution of disputes between consumers and utilities.



The Informal Complaint

4. On January 26, 2006 representatives of Cutrale met with representatives of TECO in Tampa, Florida to discuss Cutrale's claim of entitlement to the Transformer Ownership Discount ("TOD"), contained in the Standby and Supplemental Service (SBFT) rate schedule (the "Tariff") which governs TECO's contracts with its customers, including Cutrale. At that meeting, representatives of TECO agreed that Cutrale qualified for the TOD, and agreed to credit Cutrale's account accordingly. Following this meeting, TECO sent a bill to Cutrale which reflected the application of the TOD for electric service provided to Cutrale through the Minute Maid substation. TECO, however, subsequently changed its mind and refused to provide the TOD to Cutrale for electrical service provided through the Minute Maid substation.

5. On or about early April, 2006, Edward R. Hart ("Hart"), energy consultant for Cutrale, contacted the Commission to request a staff meeting to address Cutrale's complaint that TECO had refused, after previously agreeing, to grant to Cutrale the Transformer Ownership Discount. The pertinent TOD language is found on Sheet Numbers 6.605-6.609 of the Tariff. A true and correct copy of the Tariff is attached hereto as Exhibit "A." The Commission agreed to meet, and did meet, with Cutrale's representatives regarding its complaint later in April, 2006 (the "Meeting").

Resolution of the Informal Complaint

6. On April 21, 2006, following – and in response to – the Meeting, Elisabeth Draper, on behalf of the Commission, wrote to Mr. Hart and informed him that the Commission staff did not believe that Cutrale was entitled to the TOD under the Tariff (the "Draper Letter"). A true and correct copy of the Draper Letter is attached hereto as Exhibit "B."

7. On July 18, 2006, in response to the Draper Letter, undersigned counsel on behalf of Cutrale wrote to Ms. Draper, refuted the arguments and assertions she had set forth in her April 21st letter, and requested further review of Cutrale's complaint pursuant to Section 25-22.032(6)(d), Florida Administrative Code (the "Major Letter"). A true and correct copy of the Major Letter is attached hereto as Exhibit "C."

8. On July 24, 2006, Carmen Peña, Regulatory Program Administrator on the Process Review Group, on behalf of the Commission, responded to the Major Letter and informed Cutrale that its Complaint had been assigned to the Commission's Process Review Group, whereby a full review of the Complaint would be made (the "Peña Letter"). A true and correct copy of the Peña Letter is attached hereto as Exhibit "D."

9. Sixteen months later, on November 28, 2007, Martha Carter Brown wrote to Mr. Major on behalf of the Commission to render the Process Review Team's decision concerning Cutrale's complaint (the "Brown Letter"). A true and correct copy of the Brown Letter is attached hereto as Exhibit "E". Ms. Brown stated that it did not appear that TECO violated the Tariff by refusing to provide to Cutrale the TOD. Furthermore, the Brown Letter stated that "the facts in this case indicate that TECO has not violated any applicable statutes, rules, company Tariffs, or orders of the Commission," and, as such, "the staff cannot provide any additional assistance in this matter under the Commission's informal complaint resolution process."

Standing

10. As more fully described below, in its refusal to provide to Cutrale the TOD, TECO has violated the terms of the Tariff, which Tariff was approved by the Commission.

11. Pursuant to Section 366.03, Florida Statutes, "[e]ach public utility shall furnish to

each person applying therefor reasonably sufficient, adequate, and efficient service upon terms as required by the commission.” Furthermore, pursuant to Section 366.04, Florida Statutes, “the commission shall have jurisdiction to regulate and supervise each public utility with respect to its rates and service;” As such, the Commission is charged with determining whether Cutrale is entitled to the TOD under the Tariff.

12. Cutrale’s substantial interests will be affected by the Commission’s November 28, 2007 determination of this matter, as a result of which Cutrale will be forced to continue paying a higher rate for electric service than is required under the Tariff. Cutrale will suffer injury in fact that is of sufficient immediacy to entitle it to an agency hearing, and Cutrale’s substantial injury is of a type or nature that the proceeding is designed to protect. *See Ybor III, Ltd. v. Florida Housing Finance Corp.*, 843 So. 2d 344 (Fla. 1st DCA 2003).

Ultimate Facts Alleged

13. Cutrale contracts for electric service from, *inter alia*, TECO’s Minute Maid substation (the “Substation”), which transforms 69 kV transmission voltage to 13 kV primary voltage. TECO owns, operates, and maintains the substation, which serves only Cutrale. Cutrale-owned transformers then further transform the 13 kV primary voltage to 4 kV secondary voltage.

14. TECO’s service to Cutrale is governed by the Tariff. Specifically, with respect to TODs, the Tariff states:

TRANSFORMER OWNERSHIP DISCOUNT: When a customer furnishes and installs all primary voltage to secondary voltage line transformation from a primary voltage distribution feeder, a discount of 36¢ per KW of Supplemental Demand and 32¢ per KW of Standby Demand will apply.

15. Based on defined terms in the Tariff and other industry publications, the Substation constitutes a “primary voltage distribution feeder.” Because Cutrale furnishes transformers which provide “primary voltage to secondary voltage line transformation from a primary voltage distribution feeder,” Cutrale is entitled to the TOD under the plain language of the Tariff.

Disputed Issues of Material Fact

16. In the Draper Letter, which responded on behalf of the Commission to Cutrale’s initial Complaint, the Commission offered various explanations as to why, in the Commission staff’s view, Cutrale was not entitled to the TOD under the Tariff:

A. First, the Commission argued that, because the Minute Maid substation does not serve multiple customers, the substation is not a “primary voltage distribution feeder” within the meaning of the Tariff. The Draper Letter, citing no authority, defined the term “primary voltage distribution feeder” as “*a feeder line serving multiple customers.*” There is, however, nothing in the Tariff, nor in standard industry literature, which requires that “multiple customers” be served by a “primary voltage distribution feeder.” The Tariff offers no such definition of that term. Rather, and to the contrary, industry definitions – including definitions supplied by the Tariff itself¹ – of the words contained in that term compel the conclusion that the term merely refers to the type of electrical equipment used by TECO to provide electric service to the customer at “primary voltage” (*i.e.*, at 13kV), and has nothing whatever to do with whether “multiple customers ” are served by such equipment. Cutrale’s entitlement to the TOD turns on the meaning or correct definition of the

¹ The Tariff defines “primary service voltage” at Third Revised Sheet No. 4.010 as: “The voltage level in a local geographic area which is available after the company has provided one transformation from the transmission system. For service taken at primary voltage all additional transformations shall be customer owned.”

Tariff's undefined term "primary voltage distribution feeder," and the meaning of that term is a disputed issue of material fact in this proceeding.

B. Second, in formulating its initial response to Cutrale's complaint, the Commission relied on verbiage contained in a TECO memorandum dated May 18, 1987, authored by a person named W. Meyer (the "Memorandum"). For the reasons stated in the Major Letter attached hereto as Exhibit "C", the Commission's reliance on the Memorandum in denying the TOD to Cutrale was erroneous. A true and correct copy of the Memorandum is attached hereto as Exhibit "F."

C. Third, general industry practice in Florida concerning the application of transformer ownership discounts is contrary to TECO's refusal to provide to Cutrale the TOD. Specifically, neither Florida Power & Light nor Gulf Power attempt to limit transformer ownership discounts in the manner which TECO seeks to do here.² True and correct copies of the Florida Power & Light and Gulf Power transformer ownership discounts are attached here to as Exhibit "G."

D. Fourth, TECO's responses to questions posed by the Commission to TECO appear to have been accepted uncritically by the Commission staff as accurate and correct, when, in fact, TECO's responses were neither (the "TECO Responses"). A true and correct copy of the TECO Responses is attached hereto as Exhibit "H." For example, TECO has invented a definition for the term "primary voltage distribution feeder" which conveniently serves its own interest, in that it imposes a "multiple customer" qualification which automatically excludes the Minute Maid Substation, since that substation serves only Cutrale. This "multiple customer" definition, which

² For Florida Power & Light and Gulf Power policies on transfer ownership discounts refer to the Major Letter attached hereto as Exhibit "C."

TECO has simply made up, is not supported by the technical definitions of the words within that term which are supplied by the Tariff itself, by OSHA, and by generally accepted defined terms within the industry. Moreover, and contrary to TECO's claim that there is documentary evidence of an "agreement" between TECO and Coke (Cutrale's predecessor in interest) for TECO not to provide the TOD to Coke, the document on which TECO relies for this claim does not support the contention that Coke agreed to waive the TOD.³

E. Fifth, the Commission's argument that the TOD is only available where TECO has "achieved the avoidance of transformation costs" is nowhere stated in the Tariff. To the contrary, the Tariff simply provides that the customer will be eligible for the TOD when the customer furnishes and installs all "primary voltage to secondary voltage line transformation," where such primary voltage comes to the customer from a "primary voltage distribution feeder," and imposes no additional conditions. Cutrale has satisfied the conditions, and is entitled to the TOD.

17. In her November 28, 2007 letter, which set forth the Commission's Process Review Team's explanation for its denial of the TOD to Cutrale, Martha Brown relied on none of the arguments previously asserted by Commission staff in the April 21, 2006 Draper Letter. Instead, according to Ms. Brown, the Process Review Team decided that this matter "is resolved most clearly as a rate issue." The Process Review Team concluded that the rate which TECO charges Cutrale for 13kV service from the Minute Maid substation "reflects the costs that TECO incurs to provide service to Cutrale at the 13kV level," therefore Cutrale, according to the Process Review Team, is not entitled to the TOD. This conclusion, however, completely ignores the language of the Tariff,

³ For a more detailed explanation, refer to the Major Letter attached hereto as Exhibit "C."

which expressly requires that TECO provide a TOD to any customer “when the customer furnishes and installs all primary voltage to secondary voltage line transformation from a primary voltage distribution feeder,” as Cutrale has done here. In addition, TECO presently applies the TOD on its bills to Cutrale for electric service which Cutrale receives at 13kV primary voltage from TECO substations *other than* the Minute Maid substation, thus the Process Review Team’s “rate issue” rationale is also contradicted by TECO’s current billing practices for Cutrale itself.

Modification of the Commission’s Proposed Action

18. As outlined above, the Commission has wrongly closed Cutrale’s Customer Complaint No. 69187E under the Commission’s informal complaint resolution process by finding, erroneously, that Cutrale is not entitled to the TOD. Accordingly, Cutrale seeks a formal review of its Complaint.

Relief Sought By Cutrale

19. Cutrale respectfully requests that the Commission grant the following relief: (a) Find that Cutrale, including its predecessor in interest Coca-Cola Foods/Minute Maid, is, and at all material times has been, entitled to the TOD for electric service received through the Minute Maid Substation, pursuant to the terms of the Tariff; (b) Order that TECO, in the future, apply the TOD to Cutrale’s bills for electricity provided through the Substation; and (c) Order that TECO furnish a credit or refund to Cutrale in the amount which Cutrale (and its predecessor in interest, Coca-Cola Foods’ Minute Maid division), has overpaid TECO due to TECO’s refusal to apply the TOD, plus interest from the date such charges were paid by Cutrale and its predecessor to TECO.

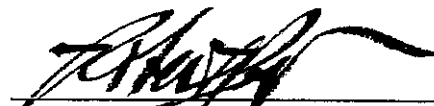
DATED this 17th day of December, 2007

Respectfully submitted,

**WINDERWEEDLE, HAINES, WARD
& WOODMAN, P.A.**

390 N. Orange Avenue, Suite 1500
Post Office Box 1391
Orlando, FL 32802-1391
(407) 423-4246
(407) 423-7014 (Fax)
Attorneys for Cutrale

By:


Robert P. Major, Esq.
Florida Bar No. 0501115
E-mail: rmajor@whww.com

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint No. 694187E by Cutrale
Citrus Juices USA, Inc. against Tampa Electric
Company for refusing to provide transformer
ownership discount for electrical service
provided through Minute Maid substation.

DOCKET NO. 070733-EI
ORDER NO. PSC-08-0397-PAA-EI
ISSUED: June 16, 2008

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

PROPOSED AGENCY ACTION
ORDER DENYING CUTRALE CITRUS JUICES USA, INC.'S
REQUEST TO FIND TAMPA ELECTRIC COMPANY IN VIOLATION
OF TARIFF

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Background

In April 2006, Cutrale Citrus Juices USA, Inc. (Cutrale) filed an informal complaint with our Bureau of Complaint Resolution. Cutrale is a manufacturer of orange juice and also produces other fruit and vegetable products. Cutrale's facility is located in Auburndale, FL. Cutrale complained that Tampa Electric Company (TECO) refused to grant Cutrale a Transformer Ownership Discount for transformers located at Cutrale's Auburndale facility. The transformers are part of a distribution system on the Auburndale facility served by TECO from TECO's Minute Maid Substation.

The Transformer Ownership Discount is described in TECO's Firm Standby and Supplemental Service, Fourth Revised Tariff Sheet No. 6.608. Cutrale alleges TECO's refusal to grant the discount to Cutrale is a violation of TECO's tariff. According to Cutrale, the violation began when the prior owner of the Auburndale facility, Coca Cola Foods (Coca Cola), owned the Auburndale facility.



Originally TECO served Coca Cola's operations at the Auburndale facility from Ariana Circuit 13279, a 13 kV line which served other customers as well. In 1984, TECO constructed the Minute Maid Substation with a 14 megavolt ampere (MVA) substation transformer that was dedicated to Coca Cola. In 1985, the 14 MVA transformer was replaced by TECO with a 22.4 MVA transformer. The purpose for the substation and upgrade, according to TECO, was to maintain reliability and provide additional capacity for the Auburndale facility, which was rapidly expanding under Coca Cola's ownership. The Minute Maid Substation and the line to the meter at the Auburndale facility served only Coca Cola. It currently serves only Cutrale. TECO owns the transformer at the Minute Maid Substation. Cutrale is not claiming a Transformer Ownership Discount for the transformer located at the Minute Maid Substation.

The Minute Maid Substation transforms electricity from 69 kV to 13 kV for Cutrale. The 13 kV of TECO generated electricity is provided by TECO through its meter to Cutrale's distribution system at the Auburndale facility. The point of delivery is at TECO's meter. Cutrale owns the distribution system from the meter throughout its property. Included on the property as part of Cutrale's distribution system are two cogenerators, which generate 13 kV of electricity. Prior to Cutrale using the 13kV of electricity it generates or the 13 kV of electricity it purchases from TECO, Cutrale transforms the energy to different kVs throughout the site, depending on Cutrale's need. The transformers convert the electricity from 13 kV to 2.4 kV or lower. There are 27 different transformers on Cutrale's property which step down the electricity to 2.4 kV, 480 volt, 120/240 volt and 120/208 volt circuits. It is this transformation owned by Cutrale for which Cutrale claims the Transformer Ownership Discount.

TECO did credit Coca Cola for a Transformer Ownership Discount for the years 1984 to 1987 for electricity purchased by Coca Cola from the Minute Maid Substation. In 1987 TECO stopped crediting Coca Cola for the Transformer Ownership Discount. In response to our staff's data request, TECO states that it erroneously credited Coca Cola for the Transformer Ownership Discount for the years 1984 to 1987.

In 1987, Coca Cola began generating its own electricity and became a Qualified Facility under Chapter 25-17, Florida Administrative Code (F.A.C.). TECO made modifications to the Minute Maid Substation to accommodate the interconnection of Coca Cola's generating plant to the Minute Maid Substation. Coca Cola reimbursed TECO for the modifications. TECO and Coca Cola entered into an Interconnection Agreement, dated November 1, 1987. On April 12, 1988, Coca Cola also entered into a Tariff Agreement for the Purchase of Firm Standby and Supplemental Service from TECO.

Cutrale purchased the Auburndale facility from Coca Cola in 1996. The purchase included the cogeneration plant located at the Auburndale facility. Coca Cola assigned both its Interconnection Agreement and its Tariff Agreement for the Purchase of Firm Standby and Supplemental Service with TECO to Cutrale.

Our staff issued several sets of data requests to which the parties responded. Our staff also conducted an informal meeting with both parties and their representatives. In response to the data requests, Cutrale provided a diagram showing the Minute Maid Substation, the meter, the point of delivery from TECO to Cutrale, and the electric distribution system serving

Cutrale's property. The diagram shows, and TECO concurs, that the point of delivery for Cutrale is immediately after the TECO-owned meter on the distribution side of the Minute Maid Substation. Cutrale's ownership of the distribution system begins on the distribution side of TECO's meter and continues to a 13.2 kV Switch and Fuse Assembly located on the Auburndale facility. The Switch and Fuse Assembly is also owned by Cutrale. According to the diagram, Cutrale's facilities include two generators that generate 13 kV of electricity. The 13 kV of Cutrale-generated electricity is sent to the 13.2 kV Switch and Fuse Assembly. From the Switch and Fuse Assembly, the Cutrale-generated electricity is distributed along Cutrale's distribution system to other sites within the Auburndale facility, including other Switch and Fuse Assemblies, and several transformers, all designed to provide energy for Cutrale's own use. Cutrale's distribution system and TECO's Minute Maid Substation are also designed so that Cutrale's generated electricity can be sent through a Cutrale-owned meter to the Minute Maid Substation to be sold to the grid, if Cutrale becomes an exporter of generated electricity (Cutrale currently uses all its generated energy and does not sell any to the grid).

Upon receipt of Cutrale's informal complaint, our Complaint Bureau requested technical assistance from the Division of Economic Regulation (ECR). ECR staff analyzed Cutrale's and TECO's positions and determined that TECO had not violated its tariff in refusing to grant Cutrale a Transformer Ownership Discount. Cutrale disagreed and requested that the Process Review Team review the decision. The Process Review Team reached the same conclusion as ECR, that TECO had not violated its tariff and that Cutrale was not entitled to a Transformer Ownership Discount.

Cutrale disagrees with the conclusions reached by ECR and the Process Review Team, and on December 18, 2007, Cutrale filed a Formal Petition for Relief against Tampa Electric Company (TECO). In its petition, Cutrale asserts that it is entitled to a Transformer Ownership Discount as set forth in TECO's tariff. Cutrale requests that we find that TECO is in violation of its tariff, require TECO to apply the transformer ownership discount to Cutrale, and require TECO to refund the alleged overpayments both Cutrale and Coca Cola made to TECO. On January 14, 2008, TECO answered the Cutrale complaint stating that Cutrale is not entitled to the Transformer Ownership Discount. We have jurisdiction pursuant to Sections 366.03, 366.04, 366.041, and 366.05, Florida Statutes.

Cutrale's Petition

Cutrale states that it contracts for electric service from TECO. TECO's Minute Maid Substation transforms 69 kV to 13 kV voltage. TECO owns, operates, and maintains the substation, which serves Cutrale. Cutrale states that it owns and operates other transformers, which transform electricity from 13 kV to lower voltages. Cutrale argues that TECO's tariff requires TECO to give a transformer discount to Cutrale. The language Cutrale argues is applicable is as follows:

Transformer Ownership Discount: When a customer furnishes and installs all primary voltage to secondary voltage line transformation from a primary voltage distribution feeder, a discount of 36¢ per KW of Supplemental Demand and 32¢ per KW of Standby Demand will apply.

Fourth Revised Tariff Sheet No. 6.608. Cutrale argues that because Cutrale furnishes transformers which provide “primary voltage to secondary voltage line transformation from a primary voltage distribution feeder,” Cutrale is entitled to the Transformer Ownership Discount.

Cutrale argues that there is no definition in the tariffs or in standard industry literature that defines “primary voltage distribution feeder.” According to Cutrale, the meaning of “primary voltage distribution feeder” can be deduced from definitions of each of the individual words or phrases, as used in TECO’s tariffs, industry literature, and OSHA standards. Cutrale asserts that the terms “primary service voltage,” and “distribution system” are defined in TECO’s tariff. Cutrale also asserts that OSHA defines the terms “feeder” and “distribution circuit feeders.” According to Cutrale, TECO’s definition of “primary service voltage” in Tariff Sheet No. 4.010 is:

The voltage level in a local geographic area which is available after the company has provided one transformation from the transmission system. For service taken at primary voltage all additional transformations shall be customer owned.

TECO’s definition of “distribution system” is defined in Tariff Sheet No. 4.040, as:

Electric service facilities consisting of primary and secondary conductors, service laterals, transformers, and necessary accessories and appurtenances for the furnishing of electric power at utilization voltage (13 kV and below on the Company’s system).

Cutrale provided the OSHA definition of “feeder” as:

A circuit, such as conductors in conduit or a busway run, which carries a large block of power from the service equipment to a sub-feeder panel or a branch circuit panel or to some point at which the block power is broken into smaller circuits.

Cutrale also provided an OSHA definition of “distribution feeder circuits” as:

[T]he connections between the output terminals of a distribution substation and the input terminals of primary circuits. The distribution feeder circuit conductors leave the substation from a circuit breaker or circuit recloser via underground cables, called substation exit cables.

Cutrale asserts that these definitions make it clear that it is entitled to the discount. Cutrale argues that the tariff definition of “primary service voltage” makes it clear that a customer who takes electricity at primary voltage must own the additional transformers needed for further transformation. Cutrale contends that because it must provide additional transformation, it must also be entitled to the Transformer Ownership Discount. Cutrale concludes that because it is required to transform the 13 kV primary voltage to secondary voltage, it meets the requirements of the tariff allowing for Transformer Ownership Discounts.

TECO's Response

In response, TECO states that Cutrale is not entitled to the Transformer Ownership Discount and that TECO has not violated any applicable statutes, rules, tariffs, or orders. TECO asserts that Cutrale is not served from a primary voltage distribution feeder and has not avoided all transformation associated with its primary service. TECO states that the Minute Maid Substation serves only the Cutrale facility, and transforms 69 kV transmission voltages to Cutrale's utilization voltage of 13 kV. According to TECO, its rates for the electric service provided to Cutrale reflect the costs incurred to provide service to Cutrale at 13 kV utilization voltages. TECO asserts that granting the transformer ownership discount would give Cutrale an undue or unreasonable preference or advantage.

Analysis

Cutrale's primary argument is that the term "primary voltage distribution feeder" is not defined in the tariff. We disagree. By Rule 25-6.003(1), Florida Administrative Code, this Commission has adopted and incorporated The Authoritative Dictionary of IEEE Standard Terms, 7th edition, published in December 2000 for purposes of Chapter 25-6, "Electric Service by Electric Public Utilities," Florida Administrative Code. The Authoritative Dictionary of IEEE Standard Terms defines "primary distribution feeder" (which term is interchangeable with "primary voltage distribution feeder") as:

A feeder operating at primary voltage supplying a distribution circuit. *Note:* A primary feeder is usually considered as that portion of the primary conductors between the substation or point of supply and the center of distribution.

Distribution is defined by The Authoritative Dictionary of IEEE Standard Terms as:

A general term used, by reason of specific physical or electrical characteristics, to denote application or restriction of the modified term, or both, to that part of an electrical system used for conveying energy to the point of utilization from a source or from one or more main receiving stations. *Notes:* 1. From the standpoint of a utility system, the area described is between the generating source or intervening substations and the customer's entrance equipment. 2. From the standpoint of a customer's internal system, the area described is between a source or receiving station within the customer's plant and the points of utilization.

(emphasis added). There is no transformer that Cutrale owns which is between the generating source, or substation (Minute Maid Substation), and Cutrale's entrance equipment (at the meter). Since Cutrale did not furnish and install any transformer between the Minute Maid Substation and the point of delivery (the meter), Cutrale is not entitled to a discount for transformer ownership.

The transformers at issue are part of Cutrale's distribution system, not TECO's. Note 2 of the above definition is more applicable to Cutrale's situation. The transformers are part of the customer's internal system because they fall in the area between the receiving station (the meter)

and the points of utilization (Cutrale's various buildings). As evidenced by Cutrale's straight line diagram, Cutrale has engineered an intricate distribution system on its property. That system includes generators, switch and fuse assemblies, transformers, and distribution lines to serve its various needs on the Auburndale facility. Cutrale generates electricity at 13 kV and sends it to its Switch and Fuse Assembly. It also receives electricity from TECO and sends it through that same Switch and Fuse Assembly. From that Switch and Fuse Assembly, Cutrale distributes the energy throughout the site and transforms it to the various levels it needs to support its different operations. Accordingly, we find that the transformers serving the Auburndale facility from the Minute Maid Substation do not meet the requirements for a Transformer Ownership Discount.

We find that the key to understanding the Transformer Ownership Discount subsection of the Firm Standby and Supplemental Service Tariff is understanding the purpose of the discount. The purpose, as stated by us in our Order approving the tariff, is to recompense the transformer owner when the purchase of the transformer allows the utility and other ratepayers to avoid the costs of transforming energy.¹ Cutrale's distribution system served by the Minute Maid Substation does not meet that purpose.

TECO is responsible for providing service to Cutrale at the meter at Cutrale's property. That meter is the point of delivery. Any transformation of electricity done after the point of delivery is the responsibility of the property owner, not TECO. Since TECO has no responsibility to transform the electricity, TECO has not avoided any costs it would have otherwise been responsible for. The rate structure, including the tariff setting forth Transformer Ownership Discounts, is designed to assign cost responsibility to the end users of electricity. When an end user of electricity defrays some of the costs that TECO is required to bear in providing service to customers, then that customer who helps defray that cost is entitled to a credit or discount. Since TECO was only required to provide service at 13 kV, TECO has no responsibility to transform the energy to lower than 13 kV. Because TECO has no responsibility for costs of transforming energy from 13 kV to 2.4 kV or lower, there are no costs of transformation that Cutrale has defrayed for TECO. Therefore, Cutrale is not entitled to the Transformer Ownership Discount.

Furthermore, once the 13 kV cogenerating units were in place, Coca Cola (now Cutrale) had the need to transform its own cogenerated electricity from 13 kV to lower voltages. Cutrale cannot use the output from its generators unless it transforms its own energy. It is not TECO's responsibility to transform the Cutrale generated energy from 13 kV to lower voltages. Cutrale would have to do so anyway. Therefore, there are no transformation costs that other ratepayers avoid paying.

Our long-standing regulatory philosophy maintains that tariffs are to be designed so that the end user is fairly charged for his service and that the general body of ratepayers does not

¹ "Transformer ownership discounts are given when a customer takes service at primary or sub transmission voltage and provides his own transformation. These discounts are justified because the demand charge includes costs associated with the company's cost of transformation. Thus, customers who take service at higher voltage levels should get a credit to recover the costs included in the rates which are related to transformation not required." Order No. 11307, issued November 10, 1982, in Docket No. 820007-EU, In re: Petition of Tampa Electric Company for an increase in rates and charges, p. 47.

unduly or unreasonably bear the costs of that service. That philosophy was expressed by the Florida legislature in Section 366.03, Florida Statutes (F.S.).² Therefore, any discount to an individual ratepayer must be based on the premise as stated by the legislature. We find that because the transformation from 13 kV and below does not avoid any costs which would otherwise belong to TECO, granting a Transformer Ownership Discount to Cutrale for the transformers served by the Minute Maid Substation would result in an unjust, unfair, and unreasonable preference to Cutrale.

Finally, the interpretation of the Tariff Agreement for the Purchase of Firm Standby and Supplemental Service, as evidenced by the actions of the original parties to the agreement, is proof that Cutrale is not entitled to the Transformer Ownership Discount. That agreement for service was memorialized by TECO and Coca Cola in 1988. From 1988 to 1996 when the agreement was assigned to Cutrale, there was no credit given. By their actions, neither Coca Cola nor TECO interpreted the Tariff Agreement to include a discount for a transformer. From 1996 until 2005 when this dispute arose between Cutrale and TECO, the parties did not interpret the Tariff Agreement to include a discount for transformer ownership for those transformers located on the Auburndale facility. Therefore, for 17 years the parties to the Tariff Agreement have interpreted that the Tariff Agreement for the Purchase of Firm Standby and Supplemental Service precludes any discount for ownership of the transformers located within Cutrale's distribution system served by the Minute Maid Substation.

Conclusion

Cutrale Citrus Juices USA, Inc. does not qualify for the discount to its rates as set out in Tampa Electric Company's Firm Standby and Supplemental Service, Fourth Revised Tariff 6.608 Transformer Ownership Discount. The point of delivery (or point of service) is the determining factor for entitlement for a Transformer Ownership Discount. The point of delivery in this circumstance is at TECO's meter which is prior to the Cutrale distribution system. TECO delivers electricity to Cutrale at TECO's meter at a 13 kV level of service. TECO's responsibility for providing service to Cutrale ends at its meter. Cutrale's responsibility for the distribution of services begins at the meter. The transformers for which Cutrale claims entitlement to the Transformer Ownership Discount are part of Cutrale's distribution system, not TECO's distribution system. The transformers transform electricity generated by Cutrale as well as that provided by TECO. Because the transformers are part of the distribution system of Cutrale, the transformers do not allow the utility to avoid the costs of transformation, which is the intent of our Order approving the tariff. By their conduct, the parties to the Tariff Agreement have, for the past 17 years, agreed that the transformers located on the Auburndale facility and served by the Minute Maid Substation are not entitled to a Transformer Ownership Discount. Because we find that TECO has not violated its Firm Supplemental and Standby Service Tariff

² Section 366.03, Florida Statutes, in part provides that "All rates and charges made, demanded, or received by any public utility for any service rendered, or to be rendered by it, and each rule and regulation of such public utility, shall be fair and reasonable. 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."

by refusing to grant a Transformer Ownership discount to Cutrale at its Auburndale facility, we also find that Cutrale is not entitled to a refund.

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that Tampa Electric Company is not in violation of its Firm Supplemental and Standby Service Tariff by refusing to grant a Transformer Ownership Discount to Cutrale Citrus Juices USA, Inc. It is further

ORDERED that Cutrale Citrus Juices USA, Inc is not entitled to a refund from Tampa Electric Company for Tampa Electric Company's denial of a Transformer Ownership Discount at the Auburndale facility. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 16th day of June, 2008.

/s/ Ann Cole

ANN COLE

Commission Clerk

This is an electronic transmission. A copy of the original signature is available from the Commission's website, www.floridapsc.com, or by faxing a request to the Office of Commission Clerk at 1-850-413-7118.

(S E A L)

LCB

TARIFF AGREEMENT FOR THE PURCHASE OF
FIRM STANDBY AND SUPPLEMENTAL SERVICE

This agreement is made and entered into this 12 day of April,
1988, by and between Coca-Cola Foods

(hereinafter called the Customer) and Tampa Electric Company, a corporation organized in and existing under the laws of the State of Florida, (hereinafter called the Company).

W I T N E S S E T H:

WHEREAS, firm standby and/or supplemental service is supplied to Customers whose electric energy requirements are normally supplied or supplemented from sources other than the Company, and who require standby and/or supplemental service from the Company.

NOW, THEREFORE, in consideration of the mutual covenants expressed herein, the Company and the Customer agree as follows:

1. The Company agrees to furnish and the Customer agrees to take power pursuant to the terms and conditions of rate schedule SBF, as currently approved by the Florida Public Service Commission (hereinafter called the Commission) or as said rate schedule may be modified in the future and approved by the Commission.

The Customer further agrees to abide by all applicable requirements of said rate schedule. A copy of the Company's presently approved rate schedule SBF is attached hereto as "Exhibit "A" and made a part hereof.

2. Standby service will be furnished by the Company to a Customer requiring Back up Power or Maintenance Power or both, which are defined as follows:

a. Back up Power. Electric energy or capacity supplied by the utility to replace energy or capacity ordinarily generated by a Customer's own generation equipment during an unscheduled outage of the Customer's generation.



b. Maintenance Power. Electric energy or capacity supplied by the utility to replace energy or capacity ordinarily generated by a Customer's own generation equipment during a scheduled outage of the Customer's generation.

3. Supplemental service will be furnished by the Company to a Customer requiring Supplementary Power, which is defined as follows:

a. Supplementary Power. Electric energy or capacity supplied by the utility in addition to that which is normally provided by the Customer's own generation equipment.

4. The Customer and the Company mutually agree to the following demand billing basis upon which the rates will be applied (and as further described in Exhibit "A"):

a. The Supplemental Demand Charge will be applied to each KW of Actual Supplemental Billing Demand. To assist in the calculation of Actual Supplemental Billing Demands a monthly Scheduled Supplemental Billing Demand will be initially defined herein as the KW demand which is normally supplied by the Company to the Customer for supplemental service and is mutually agreed to be 6,000 KW. This demand represents normal supplemental service to the Customer. Any demand taken in excess of the Scheduled Supplemental Billing Demand plus Contract Standby Billing Demand (see Section 4, Part b), is considered Excess Supplemental Billing Demand (see Exhibit "A").

b. The Local Facilities Reservation Charge will be applied to each KW of Contract Standby Billing Demand. This contract demand is initially defined herein as the appropriate amount of backup (in total) which will be provided by the Company for the Customer and is mutually agreed to be 8,000 KW. This demand represents total backup service to the Customer and the charge is set to recover the cost of local facilities (subtransmission and distribution equipment) built and standing ready to serve.

c. The Power Supply Reservation Charge will be applied to each KW of Contract Standby Billing Demand (as set in Section 4, Part b). This demand represents backup service to the Customer and the charge is set to recover the minimum cost of power supply facilities (power plants and transmission lines) built and standing ready to serve. This demand represents the minimum recovery for power supply cost and it will be netted against any charge in excess calculated in Section 4, Part d.

d. The Power Supply Demand Charge will be applied to each KW of Actual Standby Billing Demand. This total of the daily actual standby demands for the billing period is calculated using the highest daily difference between the Actual Supplemental Billing Demand (Section 4, Part a) and the highest 30 minute integrated KW demand read through the service meter for each day with on-peak periods (as defined in tariff Sheet No. 6.601). This demand represents actual use of power supply facilities over and above expected (reservation) use.

e. The Customer opts to take Supplementary Power under the TOD (TOD or non-TOD) billing basis and shall have the right to transfer to the other option at any time without additional charge. If the Customer requests to change a second time, the Customer will be required to sign a contract to remain on that option for at least one year.

5. The minimum charge will never be less than the Standby Local Facilities Charge plus the Power Supply Reservation Charge plus the Customer Facilities Charge from schedule SBF. The first billing period for standby and supplemental service will begin January, 19 88.

6. The Scheduled Supplemental Billing Demand can be increased or decreased by the Customer on a billing period basis. Whenever the Customer determines that an adjustment in the Scheduled Supplemental Billing Demand for a subsequent billing period is appropriate, the Company requires notice in writing three (3) days prior to the beginning of the billing period. This written notice must contain the appropriate Scheduled Supplemental Billing Demand, and will automatically be considered by the Company as an Amendment to the Tariff Agreement for the Purchase of Firm Standby and Supplemental Service. This demand will represent normal supplemental service to the Customer as defined in Section 4, Part a, and will continue in force until again revised by the Customer.

7. The Contract Standby Billing Demand may be increased in a subsequent billing period, whenever there has been Excess Supplemental Billing Demand (see Exhibit "A") and there is sufficient net dependable capability which requires additional standby demand. This contract demand may also be decreased by mutual consent, providing the Customer has sufficiently demonstrated that his backup requirements no longer equal the contract demand amount. If it is determined by the Company through review of metered data that Excess Supplemental Billing Demand is continually being imposed as a result of generator outages, the Company shall require that the Contract Standby Billing Demand be increased to better reflect the true amount of standby being supplied.

8. If the Customer's Contract Standby Billing Demand has been decreased (as provided for in Section 7) and he subsequently increases it again within 24 months of the original agreed upon change, the Company will immediately bill the Customer for the difference between what was collected during the elapsed time as a demand charge, and what would have been paid by the Customer at the previous higher contract demand.

9. The Company is under no obligation to supply the Customer more Contract Standby Billing Demand than the net effective capability of the Customer's generating equipment.

Term of Agreement

10. The initial term of this agreement shall be the same five (5) years minimum notice the Customer is required to give the Company in advance of transferring to a firm non-standby rate as specified in Exhibit "A."

Other Provisions

11. The Customer agrees to provide space for and pay the appropriate cost of any additional metering equipment required by the Company (including metering of the Customer's generator) necessitated by this agreement. Metering will meet standards as required by the Company.

12. This Agreement supersedes all previous agreements and representations either written or verbal heretofore made between the Company and the Customer with respect to matters herein contained. This Agreement, when duly executed, constitutes the only Agreement between parties hereto relative to the matters herein described.

13. This Agreement shall inure to the benefit of and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto. If this agreement is assigned, the Customer will notify the Company prior to the effective date of the assignment.

14. To the extent any provision is added to, modified within or deleted from the rate schedule attached hereto as Exhibit "A" and the same is approved by the Commission, said addition, modification or deletion shall thereafter apply and govern the dealings between the Company and the Customer as if the same were contained in the present rate schedule identified as Exhibit "A" and attached hereto.

IN WITNESS WHEREOF, the Customer and the Company have executed this Agreement the day and year first above written.

Witnesses:

[Signature]

[Signature]

COCA-COLA FOODS

(Supplemental, Standby Service Customer)

by:

[Signature]

OK
JLS

Its VICE PRESIDENT

Attest:

[Signature]

Witnesses:

[Signature]

[Signature]

TAMPA ELECTRIC COMPANY

by:

[Signature]

Its Vice President Regulatory Affairs

Attest:

[Signature]
Secretary

EXHIBIT A

TAMPA ELECTRIC COMPANY

ORIGINAL SHEET NO. 6.600

FIRM STANDBY AND SUPPLEMENTAL SERVICE

SCHEDULE: SBF

RATE CODE: 358 - 359

AVAILABLE: Entire service area.

APPLICABLE: To any customer when all light and power requirements are not taken from the utility but where customer generating capacity exceeds 20% of on-site load requirements (except emergency generation equipment) and who requires firm supplemental and/or firm standby service from the utility. Also available to self-generating customers who do not exceed the 20% limit but who wish to take service under this schedule and will agree to all its terms and conditions. Resale not permitted.

CHARACTER OF SERVICE: A-C; 60 cycles; 3 phase; at any standard Company voltage.

LIMITATION OF SERVICE: A customer taking service under this tariff must sign a Tariff Agreement for the Purchase of Firm Standby and Supplemental Service. (See Sheet No. 7.600)

MONTHLY RATE:

Customer Facilities Charge:
\$195.00

Demand Charge:

- \$ 6.75 per KW-Month of Actual Supplemental Billing Demand (Supplemental Demand Charge) (On-Peak KW if TOD selected)
- \$ 6.75 per KW-Month of Excess Supplemental Billing Demand (Supplemental Demand Charge) (On-Peak KW if TOD selected)
- \$ 2.03 per KW-Month of Contract Standby Billing Demand (Local Facilities Reservation Charge)

plus the greater of:

- \$.62 per KW-Month of Contract Standby Billing Demand (Power Supply Reservation Charge); or
- \$.30 per KW-Day of Actual Standby Billing Demand (Power Supply Demand Charge)

Energy Charge:

- 2.883¢ per Standby KWH during peak hours
- 1.109¢ per Standby KWH during off-peak hours
- 1.597¢ per Supplemental KWH; or
- 2.883¢ per Supplemental KWH during peak hours (if TOD selected)
- 1.109¢ per Supplemental KWH during off-peak hours (if TOD selected)

Continued to Sheet No. 6.601

Continued from Sheet No. 6.600

Fuel Charge:

As of October 1, 1986, the amount for fuel is 2.536¢ per KWH during peak hours, 2.307¢ per KWH during off-peak hours and 2.371¢ per KWH for non-TOD hours. Fuel charges are adjusted biannually by the Florida Public Service Commission, normally in April and October. The current fuel charge included in this tariff is shown on Sheet No. 6.020.

DEFINITIONS OF THE USE PERIODS: All time periods stated in clock time. (Meters are programmed to automatically adjust for changes from standard to daylight saving time and vice-versa.)

	<u>April 1 - October 31</u>	<u>November 1 - March 31</u>
Peak Hours:	12:00 Noon - 9:00 PM	6:00 AM - 10:00 AM
(Monday-Friday)		and
		6:00 PM - 10:00 PM

Off-Peak Hours: All other weekday hours, and all hours on Saturdays, Sundays, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day shall be off-peak.

BILLING UNITS:

Demand Units: Scheduled Supplemental Billing Demand - As established at least 3 days prior to the beginning of a billing period pursuant to the Tariff Agreement for the Purchase of Firm Standby and Supplemental Service. This level is a maximum, meaning that customers will be billed actual registered demand if it is less than the Scheduled Supplemental Billing Demand. This level is not ratcheted, and may be reestablished by the customer for any or all subsequent billing periods.

Contract Standby Billing Demand - As established pursuant to the Tariff Agreement for the Purchase of Firm Standby and Supplemental Service. This level may not exceed the net dependable capability of the customer's generating equipment and may not be reduced once set by the customer, except by mutual consent as provided for in the tariff agreement. This level may be increased by the customer, subject to the net dependable capability constraint, in any period following the registering of Excess Supplemental Billing Demand.

Actual Supplemental Billing Demand - The highest 30 minute integrated metered monthly demand (during the on-peak period if TOD option is selected) registered at the point of delivery to the customer, not to exceed the level of the Scheduled Supplemental Billing Demand.

Continued to Sheet No. 6.602

Continued from Sheet No. 6.601

Actual Standby Billing Demand - Sum of the difference between the highest 30 minute integrated metered daily demand during the on-peak periods registered at the point of delivery to the customer less the Actual Supplemental Billing Demand for the concurrent 30 minute integrated period (but never less than zero), but limited to a maximum of the Contract Standby Billing Demand.

Excess Supplemental Billing Demand - Registered only when the highest 30 minute integrated metered monthly demand (during the on-peak period if TOD option is selected) exceeds the sum of the Scheduled Supplemental Billing Demand and the Contract Standby Billing Demand. The difference becomes the Excess Supplemental Billing Demand for that billing period.

Energy Units: KWH consumed during each 30 minute period will be billed based on the applicable time differentiated period and applicable charges. The difference between Supplemental KWH and Standby KWH will be calculated based on the demand split for each 30 minute period as defined above.

MINIMUM CHARGE: The Customer Facilities Charge, Local Facilities Reservation Charge, and Power Supply Reservation Charge.

TERM OF SERVICE: Any customer receiving service under this schedule will be required to give the Company written notice at least 60 months prior to transferring to a firm non-standby schedule. Such notice shall be irrevocable unless the Company and the customer should mutually agree to void the notice.

TEMPORARY DISCONTINUANCE OF SERVICE: Where the use of energy is seasonal or intermittent, no adjustments will be made for a temporary discontinuance of service. Any customer prior to resuming service within 12 months after such service was discontinued will be required to pay all charges which would have been billed if service had not been discontinued.

POWER FACTOR: When the power factor is less than 85% at the time of either the measured 30-minute interval KW demand or the measured 30-minute interval KVA demand, the billing demand may be taken as 85% of the measured 30-minute interval KVA demand. When the power factor at the time of the measured 30-minute interval KW demand is greater than 85%, the customer shall receive a credit of 2.5¢ per KW of billing demand for each 1% increase in power factor above 85%. Power factor credit/penalty will affect the supplemental billing demands only.

Continued to Sheet No. 6.603

Continued from Sheet No. 6.602

METERING LEVEL DISCOUNT: When the customer takes energy metered at primary voltage, a discount of 1% of the energy and demand charges will apply.

When the customer takes energy metered at subtransmission voltage, a discount of 2% of the energy and demand charges will apply.

TRANSFORMER OWNERSHIP DISCOUNT: When the customer furnishes and installs all subtransmission voltage to utilization voltage substation transformation, a discount of 32¢ per KW of Actual and Excess Supplemental Billing Demand and 27¢ per KW of Contract Standby Billing Demand will apply.

When the customer furnishes and installs all subtransmission voltage to utilization voltage substation transformation, a discount of 42¢ per KW of Actual and Excess Supplemental Billing Demand and 35¢ per KW of Contract Standby Billing Demand will apply.

EMERGENCY RELAY POWER SUPPLY CHARGE: The monthly charge for emergency relay power supply service shall be 50¢ per KW of Actual Supplemental Billing Demand, Excess Supplemental Billing Demand, and Contract Standby Billing Demand. This charge is in addition to the compensation the customer must make to the Company as a contribution-in-aid of construction.

FUEL CHARGE: See Sheet No. 6.020.

ENERGY CONSERVATION CHARGE: See Sheet No. 6.020.

FRANCHISE FEE CHARGE: See Sheet No. 6.020.

OIL BACKOUT CHARGE: See Sheet No. 6.021.

PAYMENT OF BILLS: See Sheet No. 6.025.