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# Public Service Commission

July 30, 2018

Trenton H. Cotney  
Cotney Construction Law, LLP  
8621 E. Dr. Martin Luther King, Jr. Boulevard  
Tampa, Florida 33610

**Re: April 18, 2018 Letter concerning Florida Power & Light Company and Jupiter Tequesta A/C, Plumbing and Electric, LLC.**

Mr. Cotney:

In response to your April 18, 2018, letter to Chairman Graham, the Public Service Commission staff performed a review of the relationships between Florida Power & Light (FPL), its affiliate companies, and its HVAC Demand-Side Management (DSM) program's preferred independent contractors. Commission staff requested information from FPL addressing the points raised in your letter to ensure FPL's actions are in accordance with state regulatory requirements. FPL Energy Services, Inc. (FPLES) and FPL are subsidiaries of NextEra Energy, Inc. These two companies are affiliates, but each operate independently of the other—with solely FPL under the jurisdiction of the Florida Public Service Commission.

As part of our review, FPL provided staff with copies of the initial application and required contract necessary to operate as a preferred independent contractor in its DSM HVAC rebate process. The applicant is not required to submit equipment pricing information during the application and selection process. However, FPL states that all contractors must provide this information during the rebate reimbursement process, as a verification method to ensure the HVAC unit qualifies in accordance with FPL's DSM program standards.

As a practice, FPL states it does not share independent contractor pricing or customer information concerning DSM-related activities with parties outside FPL, including affiliates. In addition, FPL does not provide customer energy usage patterns with outside parties, including affiliates. For FPL to release this information to a third-party, a customer must contact FPL to complete, sign and notarize a Letter of Authorization consenting to the release of information. As such, staff found no indication that an affiliate would have a competitive advantage in these areas over another independent contractor.

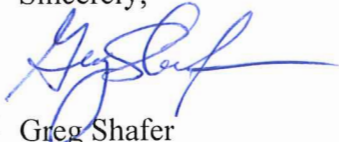
In regards to the use of an FPL facility by an affiliate, FPL has a Corporate Real Estate department that monitors and ensures usage of space by affiliates is properly recorded and billed

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to the regulated company. The job fair events in question were handled using FPL's corporate Real Estate process.

Staff concludes from its review into this matter that it does not appear FPLES's acquisition of Jupiter Tequesta A/C, Plumbing and Electric, LLC results in an improper subsidization of non-utility activities by FPL's ratepayers, pursuant to Section 366.05, Florida Statutes, or Rule 25-6.1351, Florida Administrative Code (see attachment). We appreciate you bringing this matter to the Commission's attention. If you have any additional questions concerning this review, please contact Tripp Coston at [tcoston@psc.state.fl.us](mailto:tcoston@psc.state.fl.us).

Sincerely,



Greg Shafer  
Director, Division of Economics

Enclosure

CC: Office of Chairman Graham  
Keith Hetrick, General Counsel  
Mark Futrell, Deputy Executive Director

### **25-6.1351 Cost Allocation and Affiliate Transactions.**

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

#### **(2) Definitions.**

(a) Affiliate – Any entity that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a utility. As used herein, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement, and whether such power is established through a majority or minority ownership or voting of securities, common directors, officers or stockholders, voting trusts, holding trusts, associated companies, contracts or any other direct or indirect means.

(b) Affiliate Transaction – Any transaction in which both a utility and an affiliate are each participants, except transactions related solely to the filing of consolidated tax returns.

(c) Cost Allocation Manual (CAM) – The manual that sets out a utility’s cost allocation policies and related procedures.

(d) Direct Costs – Costs that can be specifically identified with a particular service or product.

(e) Fully Allocated Costs – The sum of direct costs plus a fair and reasonable share of indirect costs.

(f) Indirect Costs – Costs, including all overheads, that cannot be identified with a particular service or product.

(g) Nonregulated – Refers to services or products that are not subject to price regulation by the Commission or not included for ratemaking purposes and not reported in surveillance.

(h) Prevailing Price Valuation – Refers to the price an affiliate charges a regulated utility for products and services, which equates to that charged by the affiliate to third parties. To qualify for this treatment, sales of a particular asset or service to third parties must encompass more than 50 percent of the total quantity of the product or service sold by the entity. The 50 percent threshold is applied on an asset-by-asset and service-by-service basis, rather than on a product line or service line basis.

(i) Regulated – Refers to services or products that are subject to price regulation by the Commission or included for ratemaking purposes and reported in surveillance.

#### **(3) Non-Tariffed Affiliate Transactions.**

(a) The purpose of subsection (3) is to establish requirements for non-tariffed affiliate transactions impacting regulated activities. This subsection does not apply to the allocation of costs for services between a utility and its parent company or between a utility and its regulated utility affiliates or to services received by a utility from an affiliate that exists solely to provide services to members of the utility’s corporate family. All affiliate transactions, however, are subject to regulatory review and approval.

(b) A utility must charge an affiliate the higher of fully allocated costs or market price for all non-tariffed services and products purchased by the affiliate from the utility. Except, a utility may charge an affiliate less than fully allocated costs or market price if the charge is above incremental cost. If a utility charges less than fully allocated costs or market price, the utility must maintain documentation to support and justify how doing so benefits regulated operations. If a utility charges less than market price, the utility must notify the Commission Clerk in writing within 30 days of the utility initiating, or changing any of the terms or conditions, for the provision of a product or service. In the case of products or services currently being provided, a utility must notify the Division within 30 days of the rule’s effective date.

(c) When a utility purchases services and products from an affiliate and applies the cost to regulated operations, the utility shall apportion to regulated operations the lesser of fully allocated costs or market price. Except, a utility may apportion to regulated operations more than fully allocated costs if the charge is less than or equal to the market price. If a utility apportions to regulated operations more than fully allocated costs, the utility must maintain documentation to support and justify how doing so benefits regulated operations and would be based on prevailing price valuation.

(d) When an asset used in regulated operations is transferred from a utility to a nonregulated affiliate, the utility must charge the affiliate the greater of market price or net book value. Except, a utility may charge the affiliate either the market price or net book value if the utility maintains documentation to support and justify that such a transaction benefits regulated operations. When an asset to be used in regulated operations is transferred from a nonregulated affiliate to a utility, the utility must record the asset at the lower of market price or net book value. Except, a utility may record the asset at either market price or net book value if the utility maintains documentation to support and justify that such a transaction benefits regulated operations. An independent appraiser must

verify the market value of a transferred asset with a net book value greater than \$1,000,000. If a utility charges less than market price, the utility must notify the Commission Clerk in writing within 30 days of the transfer.

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

(4) Cost Allocation Principles.

(a) Utility accounting records must show whether each transaction involves a product or service that is regulated or nonregulated. A utility that identifies these transactions by the use of subaccounts meets the requirements of this paragraph.

(b) Direct costs shall be assigned to each non-tariffed service and product provided by the utility.

(c) Indirect costs shall be distributed to each non-tariffed service and product provided by the utility on a fully allocated cost basis. Except, a utility may distribute indirect costs on an incremental or market basis if the utility can demonstrate that its ratepayers will benefit. If a utility distributes indirect costs on less than a fully allocated basis, the utility must maintain documentation to support doing so.

(d) Each utility must maintain a listing of revenues and expenses for all non-tariffed products and services.

(5) Reporting Requirements. Each utility shall file information concerning its affiliates, affiliate transactions, and nonregulated activities on Form PSC/AFD/101 (3/04) which is incorporated by reference into Rule 25-6.135, F.A.C. Form PSC/AFD/101, entitled "Annual Report of Major Electric Utilities," may be obtained from the Commission's Division of Accounting and Finance.

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

*Rulemaking Authority 350.127(2), 366.05(1) FS. Law Implemented 350.115, 366.04(2)(a), (f), 366.041(1), 366.05(1), (2), (9), 366.06(1), 366.093(1) FS. History—New 12-27-94, Amended 12-11-00, 3-30-04.*