

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 891278-PU

RULE TITLE:

Corporate Income Tax Expense Adjustment:

25-14.003

Midpoint and Additional Changes

PURPOSE AND EFFECT: To ensure use of the most recently authorized rate of return on equity in determination of tax savings, refunds, or deficiency collections; and to allow adjustments other than refunds or collections.

SUMMARY: Rule 25-14.003, F.A.C., establishes policy and procedures for adjusting utility income tax expense when there are revisions in federal or state corporate income tax rates. Adjustments, in the form of customer refunds or additional collections, would generally be sufficient to adjust the rate of return (ROR) to the midpoint of the allowed range when the rate change causes the earnings to move through the midpoint. Exceptions would be when a utility is earning above the midpoint of its ROR range before a tax decrease or below the midpoint before a tax increase. Then, the adjustment would return it to the original ROR.

The intent of the proposed rule revisions are to clarify rule requirements, streamline the reporting procedures, and to ensure use of the most recently authorized rate of return on equity in determinations of tax savings refunds or deficiency collections. To this end, the proposed revisions of Rule 25-14.003 would add

ACK — clarifying language to definitions and procedures. In particular,

AFA — clarifying language would be added to the definitions of

APP — "associated revenues" and "midpoint." The definition of the

CMU — midpoint "range of return" would be clarified as the midpoint of

CTR — the "range of rate of return." Additionally, "and regulated

EAG — company" would be added in references to utilities and "earnings

LIN — review proceedings" would be substituted for show cause

OPC — proceedings. The word "final" has been deleted from the phrase

RCH —

SEC — 1 "final report" in these proposed rule changes.

WAS — As an alternative to the current use of refunds or collections

WTH — when tax rates change, other adjustments approved by the Commission would be expressly allowed following rule revision. Explicitly

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included in the proposed rule revisions is the specification that the date of overcollections or undercollections phased in over time be the later of the date the tax rate change was effective or the date the company recognizes the effect of the tax rate change by use of a blended tax rate. This change merely codifies existing Commission and utility practice pursuant to negotiation and litigation.

Following rule revision, the utility midpoint rate of return would be calculated using its most recently authorized rate of return on equity instead of the one determined in the utility's last rate case, zero cost for investment tax credits and actual costs for other components. These rates will be applied to the company's actual capital structure adjusted to reflect all regulatory adjustments. The proposed rule revisions would clarify the basis and the accrual date of interest charges and also require that refunds and interest on refunds be calculated pursuant to the detailed methods currently established in Rules 25-4.114, 25-6.109, 25-7.091, and 25-30.360. Proposed revisions to Section (5)(f) would require use of a basis that "fairly and equitably" determines each electric customer class's share of tax-related refunds or collections. Included within this definition may be the current practice of using kilowatt-hours consumed as a basis.

Finally with regard to reporting requirements, the proposed revisions clarify that: (1) a subsequent tax rate change will end one compliance period and begin another; (2) a report would be filed annually until rates and charges reflect the appropriate tax rate; (3) the referenced report forms can be obtained from the Division of Auditing and Financial Analysis; (4) the tax report filing date would be changed from March 1 to fifteen days after the due date of annual reports; (5) all resulting tax calculations and earnings levels will be tested and verified.

RULEMAKING AUTHORITY: 350.127(2), F.S.

LAW IMPLEMENTED: 364.01, 364.035, 364.05, 366.05, 366.06, 366.076, 367.121, 367.081, 367.0822, F.S.

SUMMARY OF THE ESTIMATE OF ECONOMIC IMPACT OF THESE RULES:

The proposed rule changes should not add any agency costs or paperwork.

Ratepayers could benefit from having tax change adjustments based on the latest authorized rate of return on equity and most recent cost of capital rather than older, potentially outdated, and higher cost bases. In addition, the use of zero cost for investment tax credits would reduce the ROR for a utility to the benefit of the customers.

At the present time, an updated ROE would shift many companies' allowed rates of return downward, all other things remaining equal. This would generally decrease the proportion of tax savings utilities would be allowed to keep and increase the amount of tax savings refunded to ratepayers (or otherwise adjusted).

In summary, to the extent that the adoption of the proposed rule revision allows the Commission to more easily designate more accurate and updated ROE's for tax savings refunds or tax deficiency collections, benefits may accrue to the affected utility ratepayers. The extent and magnitude of these benefits cannot be established with accuracy since further ROE movements in response to changing market conditions cannot be estimated with accuracy.

Many of the water and wastewater companies under the purview of the Commission are small businesses and thus would be affected by any revisions.

The impact on competition should be negligible. However, there may be some interindustry effects due to the proposed language mandating electric use of a fair and reasonable basis for tax rate adjustments instead of a KWH basis.

In the short term, if the proposed rule revisions engender larger tax savings or shifting refund proportions among electric utility ratepayers, there may be effects on employment in Florida.

The methodology included discussions with Commission staff. Rate of return and refund data for tax reports submitted by utilities were used in reviewing potential effects of this rule. Cost-benefit analysis was applied to determine effects of the proposed revisions. Partial equilibrium analysis was used to

determine the effects on competition and effects on employment.

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF RECORDS AND REPORTING, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING. IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE AND PLACE SHOWN BELOW:
TIME AND DATE: January 29, ¹⁹⁷⁸~~1969~~, 9:30 A.M.

PLACE: Room 106, 101 East Gaines Street, Tallahassee, Florida.

THE PERSON TO BE CONTACTED REGARDING THESE RULES AND THE ECONOMIC IMPACT STATEMENT IS: Director of Appeals, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399

THE FULL TEXT OF THE RULES IS:

25-14.003 Corporate Income Tax Expense Adjustments.

(1) Definitions. For the purposes of this rule, the following definitions shall apply:

(a) "Tax Savings." The difference between the tax expenses for a utility or regulated company calculated under the previously effective corporate income tax rates and those calculated under newly effective, reduced corporate income tax rates.

(b) "Tax Deficiency." The difference between the tax expenses for a utility or regulated company calculated under newly effective, higher corporate income tax rates and those calculated under the previously effective corporate income tax rates.

(c) "Associated Revenues." Those revenues resulting from the application of a utility's or regulated company's revenue expansion factor to a tax savings or tax deficiency. The tax rate to be used in calculating the revenue expansion factor shall reflect the tax rate at which the utility or regulated company recognizes the effect of the refund, collection or other adjustment on its tax return.

(d) "Previously Effective." Refers to the corporate income tax rate used in a utility's or regulated company's last rate case or earnings review [show cause] proceeding, or used in the last tax expense adjustment by the Commission, whichever occurred most recently.

(e) "Tax Rate." The statutory tax rates, both federal and state, applicable to utility or regulated company income, including any surcharges, minimum taxes, and other adjustments to the basic percentage tax rates.

(f) "Midpoint." The midpoint of the range of rate of return calculated as the weighted average cost of capital for the period of time covered by the tax adjustment report required in subsection (4). The weighted average cost of capital shall be calculated using the current embedded cost of fixed rate capital, the actual cost of short term debt, zero cost for all investment tax credits, the cost of common equity that is the most recent Commission approved return on equity, and the actual cost of other sources of capital. The capital structure used shall be the company's actual capital structure adjusted to reflect all regulatory adjustments. [of return approved by the Commission in the utility's last rate case, adjusted for the cost of any debt issued subsequent to the rate case and prior to the commencement of a tax savings refund or tax deficiency collection.]

(2) Tax Savings Refunds or Other Adjustments Approved by the Commission. In accordance with subsection (5) of this rule and using a calendar year as the basis of the calculation:

(a) When, during the reporting period described in paragraph (5)(a) below, a utility or regulated company is earning a rate of return which is at or above the midpoint of its authorized range computed in accordance with subsection (1)(f) and without consideration of a tax rate reduction, the utility or regulated company shall make an adjustment approved by the Commission or refund all associated revenues as described in paragraph 5(c).

(b) When, during the reporting period described in paragraph 5(a) below, a utility or regulated company is earning a rate of return which is below the midpoint of its authorized range computed in accordance with subsection (1)(f) and without consideration of a tax rate reduction, the utility or regulated company shall make an adjustment approved by the Commission or refund only those associated revenues which cause the utility or regulated company to earn in excess of that midpoint, as described in paragraph 5(c).

(3) Tax Deficiency Collections or Other Adjustments Approved by the Commission. In accordance with subsection (5) of this rule and using a calendar year as the basis of the calculation:

(a) When, during the reporting period described in 5(a) below, a utility or regulated company is earning a rate of return which is at or below the midpoint of its authorized range computed in accordance with subsection (1)(f) and without consideration of a tax rate increase, the utility or regulated company shall make other adjustments approved by the Commission or collect all associated revenues, as described in paragraph 5(c).

(b) When, during the reporting period described in 5(a) below, a utility or regulated company is earning a rate of return which is above the midpoint of its authorized range computed in accordance with the provision of subsection (1)(f) and without consideration of a tax rate increase, the utility or regulated company shall make other adjustments approved by the Commission or collect only those associated revenues which cause the utility or regulated company to earn below that midpoint, as described in paragraph 5(c).

(4) Reporting Requirements. Following a tax rate change, each utility or regulated company shall furnish a report, on the form prescribed by the Commission, Form PSC/AFA 1 (), which is incorporated into this rule by reference. Form PSC/AFA 1 (), entitled "Rule 25-14.003 Corporate Income Tax Expense Adjustments", was effective () and may be obtained from the Commission's Division of Auditing and Financial Analysis. A utility or regulated company is not precluded from providing tax adjustment information of its choice in addition to that prescribed by Form PSC/AFA 1 (). The report shall be required each year until the utility's or regulated company's rates and charges are adjusted to reflect the newly effective tax rate. [On or before March 1st of every year following a tax rate change, each utility or regulated company shall furnish a final report, in the form prescribed by the Commission.] The report shall cover only the prior calendar year and shall be due on or before fifteen days after the due date, including authorized extensions, of the Annual Report

required by Rules 25-4.018, 25-6.014, 25-7.014, and 25-30.110.
[during which the tax rate change was effective.]

(5) Procedures.

(a) Refunds,[or] collections or other adjustments approved by the Commission shall be calculated from the effective date of any tax rate change through the end of the calendar year. If the tax rate change is in effect for only part of a tax year, the refund,[or] collection or other Commission adjustment shall be calculated in accordance with the utility's or regulated company's customary accounting treatment as authorized by the federal or state taxing authority for tax rate changes which occur during a tax year. For years subsequent to the year in which the tax change became effective, tax savings or tax deficiencies shall be calculated for the entire calendar year or for the portion of the calendar year prior to the effective date of the next tax change.

(b) A further change in the tax rate shall end one period of compliance and initiate a new period but shall not affect any refund,[or] collection or other adjustment approved by the Commission already in progress pursuant to this rule.

(c) Together with the [final] report described in subsection (4) of this rule, each utility or regulated company shall file a petition containing a calculation of and the method for refunding,[or] collecting or otherwise disposing of any tax savings or deficiency for the tax year of the report. The Commission will review and evaluate the petition and supporting data, and either approve it, approve it with modification, or deny it; an opportunity for a hearing on the Commission's decision will then be provided, if requested. [Thereafter, the] The utility or regulated company shall either make the refund to or collect the deficiency from its existing customers in accordance with paragraphs (e) and (f) of this subsection[.] or make another adjustment as directed by this Commission.

(d) Upon its own or other motion, the Commission may determine that a refund,[or] collection or other adjustment for a particular year is impractical because its amount will not warrant the expense of making the refund, [or] collecting the deficiency

or making another adjustment. In such an event, no refund, [or] collection or other adjustment will be made for that year.

(e) The utility or regulated company may make any refund or collection either as a lump sum payment or billing or in monthly installments not to exceed twelve (12) months. Such refunds shall be made in accordance with Rules 25-4.114, 25-6.109, 25-7.091, and 25-30.360. [or] Such collections shall be made to or from current customers of the utility or regulated company at the time that such [refunds or] collections are to be effected. [In either event, the] The utility or regulated company shall refund or collect the amount with interest accruing on any outstanding balance from the date of overcollection or underpayment. [Interest shall be set by the Commission] The date of overcollection or underpayment shall be the later of the date the tax rate change was effective or the first of the year for which the report is being filed. If a tax rate change was phased in over a period of time, then the date of overcollection or underpayment shall be the later of the date when tax rate change was effective or the date the the effect of the tax rate change was recognized as such by use of a blended tax rate. If the utility or regulated company is unable to show when over-collections or underpayments occurred, then the tax savings or tax deficiency shall be assumed to have occurred evenly over the twelve (12) months covered by the tax adjustment report. Interest on refunds, collections, or other Commission approved adjustments shall be calculated in accordance with the interest calculation provisions of Rules 25-4.114, 25-6.109, 25-7.091, and 25-30.076. Interest shall not accrue on franchise fees, utility taxes, sales taxes, or excise taxes.

(f) For[An] an electric utility, other utility, or regulated company, [shall determine] each customer's share of refund or collection shall be determined on a basis that fairly and equitably reflects the income taxes embodied in rates for the utility's or regulated company's various customer classes, or on any other fair and reasonable basis approved by the Commission [on a kilowatt hour basis]. A telephone company shall determine each

customer's share of refund or collection based on existing general residence and business local rate relationships. Other utilities shall determine each customer's share of refund or collection based on consumption or any other reasonable basis specified in the utility's or regulated company's petition and approved by the Commission.

(6) Effect of Rate Case or Earnings Review proceeding [show cause]. A tax savings refund, [or] tax deficiency collection, or other Commission approved adjustment shall be consistent with this rule except that:

(a) When a tax rate change occurs, its effects [The issue of a tax savings refund or tax deficiency collection] shall be addressed [decided] in the course of rate cases and earnings review [show cause] proceedings that are pending when [a] the tax rate change becomes law[.]. If a rate case or earnings review proceeding is begun in [or that commence prior to the close of] the [tax] year in which a tax rate change becomes effective[.], the effects of the tax rate change shall be addressed in such proceedings.

(b) [Nothing in this subsection shall be construed as limiting the operation of the tax expense adjustment process under this rule either in completing a] A tax savings refund,[or] tax deficiency collection or other Commission approved adjustment already in progress for any [tax] years prior to the year in which a rate case or earnings review proceeding [show cause] is initiated[.] shall be completed. This subsection [It] shall [also] not prohibit a tax savings refund, [or] tax deficiency collection or other Commission approved adjustment for any tax year or portion thereof ending prior to the final order in a rate case or earnings review [show cause] proceeding.

(7) The provisions of this rule shall not supersede any disposition of excess tax revenues or collections of tax deficiencies approved by the Commission prior to the effective date of this rule.

Specific Authority: 364.01, 366.05, 367.121, F.S.

Law Implemented: 364.01, 366.05, 367.121, F.S.

History: New 6/22/82, formerly 25-14.03, Amended

NAME OF PERSON ORIGINATING PROPOSED RULE: Ann Causseaux

NAME OF SUPERVISOR OR PERSON(S) WHO APPROVED THE PROPOSED RULES:

Florida Public Service Commission

DATE PROPOSED RULES APPROVED: October 31, 1989

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.