

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Amendment of Rule)	DOCKET NO. 861190-PU
25-14.003, FAC, Corporate)	
Income Tax Expense Adjustment.)	ORDER NO. 22313
)	
)	ISSUED: 12-13-89

NOTICE OF ADOPTION OF RULE AMENDMENT

NOTICE is hereby given that the Commission, pursuant to Section 120.54, Florida Statutes, has adopted the amendments to Rule 25-14.003, F.A.C., relating to repeal of the rule for water and wastewater companies and a change in the reporting date for all utilities.

The rule amendment was filed with the Secretary of State on December 12, 1989, and will be effective on January 1, 1990. A copy of the relevant portions of the certification filed with the Secretary of State is attached to this Notice.

This docket is closed upon issuance of this notice.

By Direction of the Florida Public Service Commission,
this 13th day of DECEMBER, 1989.



STEVE TRIBBLE, Director
Division of Records & Reporting

(S E A L)

CBM

3485G

DOCUMENT NUMBER-DATE
11958 DEC 13 1989
FPSC-RECORDS/REPORTING

ORDER NO. 22313
DOCKET NO. 861190-PU
PAGE 2

25-14.003 Corporate Income Tax Expense Adjustments.

(1) This rule shall not apply to water and wastewater utilities, as defined in Chapter 367, Florida Statutes.

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

(a) "Tax Savings." The difference between the tax expenses for a utility 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 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 revenue expansion factor to a tax savings or tax deficiency.

(d) "Previously Effective." Refers to the corporate income tax rate used in a utility's last rate case or 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 income, including any surcharges, minimum taxes, and other adjustments to the basic percentage tax rates.

ORDER NO. 22313
DOCKET NO. 861190-PU
PAGE 3

(f) "Midpoint." The midpoint of the range 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.

(3)~~(2)~~ Tax Savings Refunds. In accordance with subsection (6)~~(5)~~ of this rule and using a calendar year as the basis of the calculation:

(a) When, during the reporting period described in paragraph (6)~~(5)~~(a) below, a utility is earning a rate of return which is at or above the midpoint of its authorized range computed without consideration of a tax rate reduction, the utility shall refund all associated revenues as described in paragraph 65(c).

(b) When, during the reporting period described in paragraph 65(a) below, a utility is earning a rate of return which is below the midpoint of its authorized range computed without consideration of a tax rate reduction, the utility shall refund only those associated revenues which cause the utility to earn in excess of that midpoint, as described in paragraph 65(c).

(4)~~(3)~~ Tax Deficiency Collections. In accordance with subsection (6)~~(5)~~ of this rule and using a calendar year as the basis of the calculation:

(a) When, during the reporting period described in 65(a) below, a utility is earning a rate of return which is at or below the midpoint of its authorized range computed without

ORDER NO. 22313
DOCKET NO. 861190-PU
PAGE 4

consideration of a tax rate increase, the utility shall collect all associated revenues, as described in paragraph 65(c).

(b) When, during the reporting period described in 65(a) below, a utility is earning a rate of return which is above the midpoint of its authorized range computed without consideration of a tax rate increase, the utility shall collect only those revenues which cause the utility to earn below that midpoint, as described in paragraph 65(c).

(5)(4) Reporting Requirements. Fifteen days after the due date, including authorized extensions, of the annual report, on or before March 1st of every year following a tax rate change, each utility shall furnish a final report, in the form prescribed by the Commission. The report shall cover only the prior calendar year during which the tax rate change was effective.

(6)(5) Procedures.

(a) Refunds or collections 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 shall be calculated in accordance with the utility's customary accounting treatment as authorized by the federal or state taxing authority for tax rate changes which occur during a tax year.

(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 already in progress pursuant to this rule.

ORDER NO. 22313
DOCKET NO. 861190-PU
PAGE 5

(c) Together with the final report described in subsection (5) ~~(4)~~ of this rule, each utility shall file a petition containing a calculation of and the method for refunding or collecting any tax savings or deficiency for the tax year of the report. The Commission will review the petition 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 utility shall either make the refund to or collect the deficiency from its existing customers in accordance with paragraphs (e) and (f) of this subsection.

(d) Upon its own or other motion, the Commission may determine that a refund or collection for a particular year is impractical because its amount will not warrant the expense of making the refund or collecting the deficiency. In such an event, no refund or collection will be made for that year.

(e) The utility 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 or collections shall be made to or from current customers of the utility at the time that such refunds or collections are to be effected. In either event, the utility 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.

ORDER NO. 22313
DOCKET NO. 861190-PU
PAGE 6

(f) An electric utility shall determine each customer's share of refund or collection 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 petition and approved by the Commission.

(7)~~(6)~~ Effect of Rate Case or Show Cause Proceeding. A tax savings refund or tax deficiency collection shall be consistent with this rule except that:

(a) The issue of a tax savings refund or tax deficiency collection shall be decided in the course of rate cases and show cause proceedings that are pending when a tax rate change becomes law, or that commence prior to the close of the tax year in which a tax rate change becomes effective.

(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 tax savings refund or tax deficiency collection for any tax years prior to the year in which a rate case or show cause is initiated. It shall also not prohibit a tax savings refund or tax deficiency collection for any tax year or portion thereof ending prior to the final order in a rate case or show cause proceeding.

ORDER NO. 22313
DOCKET NO. 861190-PU
PAGE 7

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

ORDER NO. 22313
DOCKET NO. 861190-PU
PAGE 8

CERTIFICATION OF
PUBLIC SERVICE COMMISSION ADMINISTRATIVE RULES
FILED WITH THE
DEPARTMENT OF STATE

I do hereby certify:

(1) The time limitations prescribed by paragraph 120.54(11)(a), F.S., have been complied with; and

(2) There is no administrative determination under section 120.54(4), F.S., pending on any rule covered by this certification; and

(3) All rules covered by this certification are filed within the prescribed time limitations of paragraph 120.54(11)(b), F.S. They are filed not less than 28 days after the notice required by subsection 120.54(1), F.S., and;

(a) And are filed not more than 90 days after the notice; or

(b) Are filed not more than 90 days after the notice not including days an administrative determination was pending; or

(c) Are filed within 21 days after the adjournment of the final public hearing on the rule; or

(d) Are filed within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

ORDER NO. 22313
 DOCKET NO. 861190-PU
 PAGE 9

/ (e) Are filed within 21 days after the date the transcript was received by this agency.

Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

<u>Rule No.</u>	<u>Specific Rulemaking Authority</u>	<u>Law Being Implemented, Interpreted or Made Specific</u>
25-14.003	350.127(2)	367.121, 364.01, 366.05

Under the provision of paragraph 120.54(12)(a), F.S., the rules take effect 20 days from the date filed with the Department of State or a later date as set out below:

Effective: _____
 (month) (day) (year)

 Steve Tribble

 Director, Division of Records & Reporting
 Title

 Number of Pages Certified

ORDER NO. 22313
DOCKET NO. 861190-PU
PAGE 10

Rule 25-14.003
Docket No. 861190-PU

SUMMARY OF RULE

Rule 25-14.003, FAC, is intended to establish policy and procedure for adjusting utility income tax expense and its impact on achieved rate of return (ROR) caused by changes in federal and state corporate income tax rates. Under the current rule, adjustments, in the form of customer refunds or additional collections, would generally be an amount sufficient to return the ROR to the midpoint when earnings move through the midpoint. The exceptions would occur when a utility is earning above the midpoint before a tax decrease or below the midpoint before a tax increase: in these cases, the adjustment returns the company to its original ROR.

The proposed revisions to the rule would eliminate use of midpoint earnings benchmarks in income tax expense adjustments for water and wastewater utilities. Tax expense adjustments for changes in tax laws are already incorporated in other Commission rules and procedures, e.g., overearnings cases. These would require refunds or other adjustments, e.g., a change in depreciation, for earnings exceeding allowed ranges, but do not specifically target midpoints. Following exemption, water and wastewater utility refunds would be required only as tax changes moved water and wastewater utility earnings above allowed ranges. Water and wastewater tax deficiency collections would not be

ORDER NO. 22313
DOCKET NO. 861190-PU
PAGE 11

automatic after revision. If tax rates rose, firms would have to petition for a rate case to recover increased expenses and might not recover as much of the increase.

The proposed revisions would also change the tax report filing date for electric, gas, and telecommunications companies from March 1 to fifteen days after the due date (including extensions) of annual reports.

A final public hearing was held December 5, 1989. The Commission addressed the rule at the public agenda.

SUMMARY OF HEARINGS ON THE RULE

General Development Utility (GDU) requested a hearing, as did the Florida Waterworks Association (FWA). The participants at the September 22, 1989, hearing included GDU, FWA, Southern Bell Telephone and Telegraph, Southern States Utilities, Florida Cities Water Co., and the Office of Public Counsel. Comments were also filed by Lehigh Utilities.

Southern States Utilities took the position that the rule revisions would preclude water and wastewater companies from the opportunity to change their rates if the federal tax rates changed, "except through the vehicle of a costly and time consuming general rate increase proceeding."

SSU acknowledged that "there have apparently been some difficulties in getting all the water and wastewater utilities to comply with the rule's reporting requirements." They conceded that there have been quite a few which did not file reports which the Commission felt they were obligated to file under the rule.

ORDER NO. 22313
DOCKET NO. 861190-PU
PAGE 12

SSU suggested several alternatives: include a limit on the rule's applicability to only utilities of a certain size, such as Class A and B utilities only; or make the utilities file a "voluntary election" to be covered; or limit the applicability of the rule to those companies for whom any change in taxes, either up or down, would be material.

Florida Cities Water Company, in a set of prefiled comments, also states that rate cases would result from repeal of the rule if tax rates increase.

Lehigh Utilities, Inc. also stated that more rate cases would result.

The Office of Public Counsel (OPC) filed prehearing comments in support of the Commission's proposal. It recognized that the processing of a vast number of regulated water and wastewater utilities on an annual basis requires an enormous amount of staff time and a drain of PSC resources; and, historically, the benefit to customers has been almost non-existent because only one utility out of several hundred water and sewer companies has been required to refund any tax savings. "Given that dual set of circumstances, it does not seem unreasonable to exempt the water and wastewater utilities from the provisions of this rule" observed OPC.

GDU states the rule is beneficial because it allows all parties -- the utilities, ratepayers, and the FPSC -- to avoid full rate case proceedings to reflect the impact of tax rate changes.

ORDER NO. 22313
DOCKET NO. 861190-PU
PAGE 13

All commenters supported the change in the reporting date.

FPSC staff filed comments that state, for the water and sewer industry, administration of the tax rule has not been cost effective. First, there is a problem with addresses of the many companies. Second, many of the reports that are returned by the utilities have incorrect or irrelevant information. For this reason, it is necessary to request additional information through audits, interrogatories, depositions, etc.

Staff noted that many of the water and sewer utilities are organized as entities that are not taxable under either federal or state law. Of those that are taxable entities, many have never reported taxable income on either a book or tax return basis. Therefore, these utilities do not normally have a tax expense component embedded in their revenue requirements and so would experience neither a tax savings nor a tax deficiency.

Also, because of more frequent rate cases, these utilities are more likely to have current tax rates reflected in any tax expenses that are allowed and thus be less likely to experience a tax savings. Because many are less likely to have tax expense embedded in their revenue requirements, they are less likely to experience tax deficiencies. Further, the availability of indices and pass-through to this industry means that there would be no tax deficiency for others because they did not file a rate case after the tax rates were reduced.

ORDER NO. 22313
DOCKET NO. 861190-PU
PAGE 14

At the September 22, 1989, rulemaking hearing, the participants in the rulemaking docket reiterated their points filed in the comments described above. In addition, there was a discussion about direct pass-throughs of tax rate changes, both increases and reductions; about the regulatory philosophy of an earnings test; about the use of limited proceedings to make adjustments if the rule were repealed for these utilities.

AFAD staff, in response to questions from the Public Counsel, said that there are approximately 375 water and wastewater utilities regulated by the FPSC. Of those, only one has been affected by application of the tax rule.

The Southern States Utilities witness acknowledged that there is a "spectrum of from zero to 48%" of tax rates embedded in the rates and charges of SSU systems. He said SSU has approximately 120 utilities regulated by the FPSC.

The voluntary election for application of the tax rule was critically assessed. As OPC noted, it would simply become a vehicle for benefit of the utilities and their shareholders and not the ratepayers.

The Florida Cities Water Company witness voiced their greatest concern as the fact that if tax rates increase, they will have to file a rate case. Eventually, they said, the customers are going to have to bear the cost of those rate cases; the shareholders and the utility will not want to absorb the additional increase.

ORDER NO. 22313
DOCKET NO. 861190-PU
PAGE 15

The GDU witness said repeal of the rule would lead to a greater number of rate cases and show cause proceedings.

The OPC witness opposed the concept of a voluntary election by the utility for coverage by the rule. He said someplace along the line the FPSC would be faced with somebody asking to be let out of their voluntary election.

The OPC filed Post-hearing comments which stated that "the Public Service Commission presented cogent and compelling reasons to exclude water and wastewater utilities from the provisions of the tax rule."

As explained in the Economic Report Estimate and further emphasized by Mr. Larkin, the application has been nonexistent for all practical purposes. Although 375 water and wastewater companies are regulated by the PSC, only one company will produce refunds for its customers. Notwithstanding those minimal results, "200-600 hours of staff time is required for every review that is made necessary by Rule 25-14.003." Given this indefensible cost/benefit ratio, the Public Service Commission should carry out the proposed amendments to Rule 25-14.003, F.A.C.

The OPC concludes that the rule repeal will not result in unfairness to the utilities. First, OPC says it is far from conclusive that the tax rates will increase. Second, even in the event of a tax increase, the only utilities which would be eligible to collect a deficiency would be those whose permanent rates had been established at the lower 34% tax rate. By their own testimony, very few of the objecting utilities fit into that category. Third, if a utility never paid a tax savings refund, then it was never "harmed" by the rule. If so, the utility cannot

ORDER NO. 22313
DOCKET NO. 861190-PU
PAGE 16

claim unfair treatment when the amendment precludes a potential gain later.

Finally, Florida Waterworks Association submitted post-hearing comments. They state that there is no logical reason for elimination of the water and sewer companies from the rule's coverage, except staff's suggestion of the excessive time used in view of the benefits rendered.

FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

The proposed revisions would exempt water and wastewater utilities from application of the Corporate Income Tax Expense Adjustment rule.

Tax expense adjustments for changes in tax laws are already incorporated in other Commission rules and procedures, e.g., overearnings cases.

Substantial staff time would be saved with revisions of the current rule. Presently, depending on the company, an estimated 200-600 hours of staff time is required for audits made necessary by the rule. This labor expense would be saved, with no expected loss of earnings surveillance.

Electric and gas utilities and regulated telephone companies would benefit from the proposed change in the filing date of the tax report from March 1 to fifteen days after the annual report is due. Because some of the required information is not usually generated until the annual report is prepared, this rule revision is needed so that utilities would not have to divert resources to prepare the tax report first.