

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Amendment of Rule 25-14.003, ) DOCKET NO. 891278-PU  
F.A.C., Corporate Income Tax Expense )  
Adjustment: Midpoint and Additional ) ORDER NO. 22237  
Changes. )  
\_\_\_\_\_ ) ISSUED: 11/29/89

NOTICE OF RULEMAKING

NOTICE is hereby given that the Commission, pursuant to section 120.54, Florida Statutes, has initiated rulemaking to amend Rule 891278-PU relating to corporate income tax expense adjustment: midpoint and additional changes.

The attached Notice of Rulemaking will appear in the December 1, 1989, edition of the Florida Administrative Weekly. If requested, a hearing will be held at the following time and place:

9:30 a.m., Monday, January 29, 1990  
Room 106, Fletcher Building  
101 East Gaines Street  
Tallahassee, Florida

Written requests for hearing and written comments or suggestions on the rule must be received by the Director, Division of Records and Reporting, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, FL, 32399, no later than December 22, 1989.

By Direction of the Florida Public Service Commission,  
this 29th day of NOVEMBER, 1989.

  
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STEVE TRIBBLE, Director  
Division of Records & Reporting

( S E A L )

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FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 891278-PU

RULE TITLE:

RULE NO.:

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

clarifying language to definitions and procedures. In particular, clarifying language would be added to the definitions of "associated revenues" and "midpoint." The definition of the midpoint "range of return" would be clarified as the midpoint of the "range of rate of return." Additionally, "and regulated company" would be added in references to utilities and "earnings review proceedings" would be substituted for show cause proceedings. The word "final" has been deleted from the phrase "final report" in these proposed rule changes.

As an alternative to the current use of refunds or collections when tax rates change, other adjustments approved by the Commission would be expressly allowed following rule revision. Explicitly 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

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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, 1990, 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

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deficiencies approved by the Commission prior to the effective date of this rule.

Specific Authority: 350.127(2), 364.01, 366.05, 367.121, F.S.

Law Implemented: 364.01, 364.035, 364.05, 366.05, 366.06, 366.076, 367.121, 367.081, 367.0822, F.S.

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

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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.

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Rule 25-14.003  
Docket No. 891278-PU

STATEMENT OF FACTS AND CIRCUMSTANCES  
JUSTIFYING RULE

The significant changes brought about by the Tax Reform Act are the primary circumstances which leads to this rule. In addition, the changes in return on equity have led to this amendment.

STATEMENT ON FEDERAL STANDARDS

These revisions should not conflict with any federal standards.

STATEMENT OF IMPACT ON SMALL BUSINESS

Many of the water and wastewater companies under ratemaking purview of the Commission are small businesses as defined in section 120.54, Florida Statutes. A separate rulemaking proceeding is underway to exempt water and wastewater companies from this rule.



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## M E M O R A N D U M

September 25, 1989

TO: DIVISION OF APPEALS (MILLER)

FROM: DIVISION OF RESEARCH (HOPPE, HEWITT) *CH* *YMPB*

SUBJECT: ECONOMIC IMPACT STATEMENT FOR REVISIONS OF RULE 25-14.003,  
FAC, CORPORATE INCOME TAX EXPENSE ADJUSTMENTS

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SUMMARY OF THE RULE

Rule 25-14.003, FAC, 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 clarifying language to definitions and procedures. In particular, clarifying language would be added to the definitions of "associated revenues" and "midpoint." The

definition of the midpoint "range of return" would be clarified as the midpoint of the "range of rate of return." Additionally, "and regulated company" would be added in references to utilities and "earnings review proceedings" would be substituted for show cause proceedings. The word "final" has been deleted from the phrase "final report" in these proposed rule changes.

As an alternative to the current use of refunds or collections when tax rates change, other adjustments approved by the Commission would be expressly allowed following rule revision. Explicitly 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.

#### DIRECT COSTS TO THE AGENCY

The proposed rule changes should increase Commission flexibility in administering Rule 25-14.003 without new agency costs or paperwork. The Commission would continue to receive reports from each utility following tax rate changes and companies would still have to petition for Commission approval of the method of refund (or collection) of tax savings (or deficiencies). Staff would continue to monitor utility earnings levels through surveillance reports and bring recommendations to the Commission when a company's actual earned rate of return exceeded its authorized rate of return range. Additional clarification as to when the reports are required, the calculation of over or underrecovery, and the appropriate interest calculation may preclude these items from being issues in future proceedings. This would reduce Commission workload required to address these items on a case-by-case basis. Adoption of the proposed rule revisions may also

reduce workload if requests for extensions and the number of Commission proceedings related to tax rules decreases.

#### COSTS AND BENEFITS TO THOSE PARTIES DIRECTLY AFFECTED BY THE RULE

The proposed revisions to Rule 25-14.003 would directly affect those utilities within the ratemaking scope of the Commission subject to federal or state income tax changes and the customers of those companies. Utilities would benefit from the streamline reporting requirements and could benefit from the use of the most recent capital structure if the trend in costs was downward. 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.

Discussions with Division of Auditing and Financial Analysis (DAFA) staff indicate recent Commission proceedings have resulted in lower rates of return on equity (ROEs) than those authorized in prior rate cases for the majority of affected utilities. All other things remaining equal, lower ROEs result in lower RORs, lower ROR midpoints, and subsequently larger tax savings and refunds for ratepayers of affected utilities when tax rates decrease as in 1986.

Under the current rule, when tax rates decrease as in the Tax Reform Act of 1986, a profitable utility's tax expense decreases all other things being equal. The revenues resulting from a tax savings for a utility already earning above the midpoint must be refunded to the ratepayer. If the tax savings cause a company to move over the midpoint,

the company must refund tax savings revenues back to the midpoint. If the utility is still at or below the midpoint of its allowed ROR after the tax rate change, there would be no refund. Because the Tax Reform Act of 1986 lowered the corporate income tax rate for subsequent years, affected utilities will be required to refund tax savings pursuant to FPSC rules in subsequent years. This practice would continue until each affected utility undergoes rate case setting of new service rates incorporating new tax rates.

The proposed definitional changes in calculating the midpoint of the range of the allowed rate of return could further decrease allowed RORs for some utilities. As time passes and utilities receive more recent ROEs and RORs in FPSC proceedings, the proposed rule revisions would allow use of these ROEs and RORs for purposes of the tax rule. There could be additional tax savings created by decreased RORs for some companies with additional customer refunds. The utilities affected by this rule revision would be ones which are not using the most recently authorized ROE in calculation of tax refunds or which do not have authorized ROEs. For these companies, the proposed rule revisions could act to "level the playing field" between ratepayers and utility shareholders. Updated ROEs reflecting current costs of equity for affected companies would translate into more accurate RORs for these companies, and eliminate potential inequitable transfer from ratepayers paying the costs of equity to shareholders receiving the ROE and ROR. The additional tax savings and refunds resulting from implementation of the proposed rule revisions, if any, would depend on the difference between ROEs established in the last rate case and new ROEs which may be established by the Commission.

After the Tax Reform Act of 1986, most affected utility companies agreed to an ROE for purposes of the tax rules that better reflected the recent cost of equity than that authorized in their last rate case. This practice has continued in subsequent years since revenue requirements for most companies were set based on a higher corporate income tax rate than presently applies to utility income, and refunds of overcollected revenues must be made until all companies undergo rate adjustments incorporating current corporate income tax rates.

Thus, using "the most recently authorized rate of return on equity of the utility or regulated company" in the revised rule would reflect the actual practice of most companies in calculating tax savings refunds and more accurately reflect company ROEs. 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). For future tax rate increases, a tax rate movement in the opposite direction from the Tax Reform Act of 1986, the use of the lower ROE due to rule revisions would again lower the authorized ROR and, thus, should decrease tax deficiencies and collections. If the most recent ROE was higher, refunds would be smaller and any collections larger.

As noted in the rule summary, following adoption of the revised rule, the tax adjustment report would have to be filed within fifteen days after the due date of the annual report with allowed extensions, rather than by March 1. Allowing the filing of the tax report after the annual report is due, rather than before, could streamline tax reporting



procedures. Companies could avoid the potential costs of acquiring tax data early, which would eventually be contained in the annual report, or of filing tax reports late. These proposed revisions could generate savings for affected companies, but amounts are likely to be minimal. Subsequent to the rule revision, discrepancies arising between actual and reported amounts of tax refunds or collections would be corrected with subsequent refunds, collections, or other adjustments.

The recognized date of over- or undercollection of tax expense would be the effective date of the tax rate change pursuant to rule revision. Explicit use of a blended tax rate for a tax rate change phased in over a period of time would also be required. These clarifications should not create any significant new costs since these practices are now generally being followed.

The specification of a kilowatt-hour basis for electric utility refunds or collections would be replaced in the revised rule by a basis that "fairly and equitably" reflects the income taxes embodied in the rates for the various customer classes; or electric utilities could propose any other "fair and reasonable basis" for a tax refund or collection method. The proposed method would subsequently have to be approved by the Commission. As noted above, subsequent to adoption of the proposed rule the Commission could still allow refunds or collections on a KWH basis. This would occur if such a method were deemed appropriate pursuant to the provisions specifying a basis that "fairly and equitably" reflects embodied income taxes or is deemed to be "fair and reasonable" by the FPSC. However, there could be recurring and nonrecurring programming or accounting costs associated with this change in Rule 25-14.003 should other methods be chosen for subsequent tax

refunds or collections. These costs are not quantifiable at this time and no attempt has been made to estimate them here. The proposed change in basis for refunds or collections could also cause a shift between customer classes in relative shares of net taxes paid depending on the method chosen for adjustment. Costs or benefits to particular customer classes are not estimable until the direction and magnitude of a shift is known.

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

#### IMPACT ON SMALL BUSINESSES

Many of the water and wastewater companies under ratemaking purview of the Commission are small businesses as defined in Chapter 120.54, Florida Statutes (1987). Many are already exempt from the rule because they are not subject to the corporate income tax or changes in corporate income tax rates. In addition, proceedings are underway to exempt water and wastewater companies from this rule. Affected small companies responding to a survey on the effects of the Tax Reform Act of 1986 were below their allowed range of return and would not be affected by the proposed rule changes at the present time. Agreements have been made by the Commission with many small businesses to adjust their returns

on equity and this practice would be likely to continue if proposed changes would disproportionately affect small businesses.

#### IMPACT ON COMPETITION

Short-term effects on interfirm or interindustry competition should be negligible since the proposed rule revisions essentially codify current Commission and utility practice. Therefore, the proposed revisions would be unlikely to change the relative competitive positions of the companies. However, to the extent that the proposed language mandating electric utility use of a fair and reasonable basis for tax rate change adjustments alters the current practice of using a KWH basis, interindustry effects may result. For instance, if a method other than KWH usage was chosen subsequent rule revision and if industrial customers were to subsequently face relatively higher electric energy costs, some may substitute competitive energy sources: for example, cogeneration or natural gas usage. These alternative energy sources would thus have enhanced competitive positions relative to affected electric utilities. The magnitude of such changes cannot be measured with accuracy, however, it is unlikely that the effect would be large, given the tax dollar amounts involved relative to overall company sizes.

#### IMPACT ON EMPLOYMENT

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

To the extent that adoption of the proposed rule revisions act to transfer larger sums from affected companies to ratepayers as a result of tax savings accruing due to the Tax Reform Act of 1986, subsequent increases in ratepayer expenditures would be likely to occur. In general, utility expenditures are made on relatively more capital-intensive goods and services than are consumer expenditures. Should consumers use the larger refunds to increase expenditures on relatively more labor-intensive goods and services subsequent adoption of the proposed rule revisions, employment would likely increase due such adoption.

To the extent that the proposed rule revisions mitigate tax expense deficiencies due to future increases in tax rates, the proposed revisions could lead to lower decreases in employment than would be the case under the current rule, all other things equal. This result would depend on the affected utility's pre-tax rate change level of earnings, last authorized vs. most recently authorized ROE, and post-change tax expense deficiency since collections would only be allowed up to the midpoint of its ROR. These variables and subsequent effects on employment are not quantifiable and no attempt has been made to quantify them here.

The effect on employment of the potential change in mechanism by which electric utilities make tax rate change adjustments is not clear. The mechanism chosen would be utility specific and may, in fact, remain unchanged subsequent adoption of rule revisions for some utilities. If the basis for refunds, collections, or adjustments remains unchanged, no effect on employment would result specifically from this change in Rule 25-14.003. However, to the extent that a new mechanism

for refund, collection, or adjustment was chosen that would result in larger residential ratepayer adjustments than under the current KWH basis, employment may increase (decrease) with tax rate decreases (increases). This would occur since residential consumer expenditures are generally made on more labor-intensive goods and services than are utility or industrial consumer expenditures. The magnitude of tax rate changes and the subsequent magnitude of changes in employment caused by the tax rate change and adoption of this proposed change cannot be measured with accuracy and no attempt has been made to do so here.

#### METHODOLOGY

Discussions were held with personnel from the Division of Auditing and Financial Analysis concerning the practices and conditions in the tax accounting of the affected businesses under the current rule and the consequences of revision; also staff from the various industry divisions were consulted. Rate of return and refund data from 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 rule revisions. Partial equilibrium analysis was used to determine the effects on competition and effects on employment.

DH:jn/3502R

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INDEXED 12-30-89

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E. Bryan Wilson, III

December 20, 1989

HAND DELIVERY

Mr. Steve C. Tribble, Director  
Division of Records and Reporting  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, Florida 32301

Re: Corporate Income Tax Expense Adjustment; Midpoint  
and Additional Changes; Docket No. 891278-PU

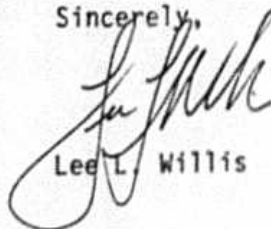
Dear Mr. Tribble:

Enclosed for filing on behalf of Tampa Electric Company are fifteen copies of a Request for Hearing in the above-styled docket.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,



Lee L. Willis

LLW/bjm

Enclosures

cc: All Parties of Record (w/encs.)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Corporate Income Tax Expense )  
Adjustment; Midpoint and Additional )  
Changes )  
\_\_\_\_\_ )

Docket No. 891278-PU  
Filed: 12/20/89

REQUEST FOR HEARING

Tampa Electric Company ("Tampa Electric" or the "Company") submits this its request that a formal hearing pursuant to Section 120.54, Fla. Stat. be convened in the above-styled docket and in support thereof says:

1. Tampa Electric is a Commission regulated electric utility whose principal office is located at:

702 North Franklin  
Post Office Box 111  
Tampa, Florida 33601

2. The individuals to receive all notices, orders, pleadings and other communications on behalf of Tampa Electric are as follows:

Russell D. Chapman  
Tampa Electric Company  
Post Office Box 111  
Tampa, Florida 33601

Lee L. Willis  
Ausley, McMullen, McGehee,  
Carothers & Proctor  
Post Office Box 391  
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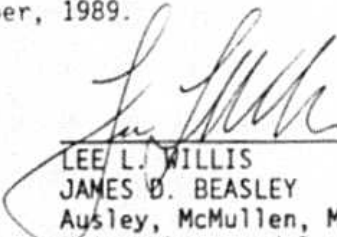
3. The rule revisions proposed in this docket could substantially affect the interest of Tampa Electric.

4. Tampa Electric wishes to present evidence regarding the substance of the proposed rule.

5. The FAW Notice in this proceeding indicates that if requested within twenty-one days of the date of this Notice, a hearing will be held at 9:30 a.m. on January 29, 1990.

WHEREFORE, Tampa Electric submits the foregoing as its request for a hearing in the above docket.

DATED this 20th day of December, 1989.



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LEE L. WILLIS  
JAMES D. BEASLEY  
Ausley, McMullen, McGehee,  
Carothers and Proctor  
Post Office Box 391  
Tallahassee, Florida 32301  
(904) 224-9115

Attorneys for Tampa Electric Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a correct copy of the foregoing Request for Hearing has been furnished by U.S. Mail to the following this 20th day of December, 1989.

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Florida Public Service Commission  
101 East Gaines Street  
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ATTORNEY

\*By Hand Delivery