

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Amendment of Rule)	DOCKET NO. 891278-PU
25-14.003, F.A.C., pertaining)	
to corporate income tax expense)	ORDER NO. 23570
adjustments.)	
)	ISSUED: 10-02-90
)	

NOTICE OF ADOPTION OF RULE AMENDMENT

NOTICE is hereby given that the Commission, pursuant to section 120.54, Florida Statutes, has adopted a repeal of Rule 25-14.003, F.A.C.

The rule repeal was filed with the Secretary of State on September 24, 1990, and will be effective on October 14, 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 2nd day of OCTOBER, 1990.

STEVE TRIBBLE, Director
Division of Records & Reporting

(S E A L)
CBM
4204G

by: Kay J. [Signature]
Chief, Bureau of Records

DOCUMENT NUMBER-DATE
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ORDER NO. 23570
DOCKET NO. 891278-PU
PAGE 2

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. 23570
DOCKET NO. 891278-PU
PAGE 3

 / (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 rule repeal is 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), 364.01, 366.05, 366.06(3), 367.121, F.S.	364.01, 364.035, 364.05, 366.05, 366.06, 366.076, 367.121, 367.81, 367.0822, F.S.

Under the provision of paragraph 120.54(12)(a), F.S., the repeal takes 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. 23570
DOCKET NO. 891278-PU
PAGE 4

~~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. 23570
DOCKET NO. 891278-PU
PAGE 5

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

(a) When, during the reporting period described in paragraph (6)(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 6(c).

(b) When, during the reporting period described in paragraph 6(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 6(c).

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

(a) When, during the reporting period described in 6(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. 23570
DOCKET NO. 891278-PU
PAGE 6

consideration of a tax rate increase, the utility shall collect all associated revenues, as described in paragraph 6(c).

(b) When, during the reporting period described in 6(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 6(c).

(5) Reporting Requirements. Fifteen days after the due date, including authorized extensions, of the annual report, 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) 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. 23570
DOCKET NO. 891278-PU
PAGE 7

(c) Together with the final report described in subsection (5) 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. 23570
DOCKET NO. 891278-PU
PAGE 8

(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) 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. 23570
DOCKET NO. 891278-PU
PAGE 9

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 1/1/90,

Repealed _____.

ORDER NO. 23570
DOCKET NO. 891278-PU
PAGE 10

Rule 25-14.003
Docket No. 891278-PU

SUMMARY OF RULE

The rule repeal eliminates the existing cumbersome mechanism for the treatment of corporate income tax expense changes. Regular statutory requirements for earnings reviews and rate case and limited proceedings would be applicable instead.

SUMMARY OF HEARINGS ON THE RULE

The following public hearings were held on this rulemaking. In this docket, Docket No. 891278-PU, the Commission voted, at public agenda, to initiate the rulemaking almost a year ago. The notice of rulemaking was published in the December 1, 1989, Florida Administrative Weekly. The requested 120.54 hearing was held January 29, 1990. The issues discussed at that hearing were primarily related to the use of a zero cost investment tax credit (ITC), the return on equity established outside of a rate case, and the options of repeal or a direct-flow-through.

On May 15, 1990, the Commission voted to withdraw the initial proposal and propose a new revision to the rule, which was the equivalent of a total repeal. That proposal replaced the original rule proposal with language reflecting the Commission's regular practices in reviewing all expenses -- an ongoing earnings review. After that notice was published, no requests for a

ORDER NO. 23570
DOCKET NO. 891278-PU
PAGE 11

hearing were received, yet comments were submitted. As a result of reviewing those comments, the FPSC staff recommended absolute repeal of the rule.

At the final public hearing held September 11, 1990, the Commission voted to delete the rule altogether rather than attempt to express, in the rule, language reflecting repeal. Thus, the language delineating the regular earnings review mechanism and rate case or limited proceedings was deleted. The Commission voted to repeal the rule altogether.

FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

The current mechanism for addressing corporate income tax expense adjustments has been cumbersome and ineffective. This repeal is intended to replace that mechanism with the current Commission practices regarding the monitoring of companies' earnings.