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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In The Matter of	:	
	:	
Amendment of Rule 25-14.003.	:	DOCKET NO. 891278-PU
F.A.C., Corporate Income Tax	:	
Expense Adjustment: Midpoint and	:	<u>RULE HEARING</u>
Additional Changes.	:	

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FPSC Hearing Room 106
Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0871

Florida Public Service Commission Monday, January 29, 1990

Met pursuant to notice at 9:30 a.m.

BEFORE: COMMISSIONER GERALD L. GUNTER
 COMMISSIONER JOHN T. HERNDON
 COMMISSIONER THOMAS M. BEARD
 COMMISSIONER BETTY EASLEY

DOCUMENT NO.
01038-90

APPEARANCES:

VICKI GORDON KAUFMAN, of the firm Lawson, McWhirter,
Grandoff and Reeves. 522 East Park Avenue, Suite 200,
Tallahassee, Florida 32301, Telephone No. (904) 222-2525,
appearing on behalf of Florida Industrial Power Users Group.

MATTHEW M. CHILDS, of the firm Steel, Hector and Davis,
310 West College Avenue, Tallahassee, Florida 32301, Telephone
No. (904) 222-2300, appearing on behalf of Florida Power and
Light Company.

1 APPEARANCES CONTINUED:

2 LEE L. WILLIS, of the firm Ausley, McMullen, McGehee,
3 Carothers and Proctor, Post Office Box 391, Tallahassee, Florida,
4 32302, Telephone No. (904) 224-9115, appearing on behalf of Tampa
5 Electric Company and Central Telephone Company of Florida.

6 NORMAN H. HORTON, of the firm, Mason, Erwin and Horton,
7 Suite 202, 1020 East Lafayette Street, Tallahassee, Florida
8 32301, Telephone No. (904) 878-7138, appearing on behalf of
9 ALLTEL Florida Incorporated, Indiantown Telephone System, Quincy
10 Telephone Company and Southland Telephone Company.

11 JEFFREY A. STONE, of the firm Beggs and Lane, Post
12 Office Box 12950, Pensacola, Florida 32576, Telephone No. (904)
13 432-2451, appearing on behalf of Gulf Power Company.

14 ANSLEY WATSON, Jr., of the firm MacFarlane, Ferguson,
15 Allison and Kelly, Post Office Box 1531, Tampa, Florida 33601,
16 Telephone No. (813) 223-2411, appearing on behalf of Peoples Gas
17 System.

18 THOMAS PARKER, Post Office Box 110, Mail Code 7, Tampa,
19 Florida 33601, Telephone No. (813) 224-4001, appearing on behalf
20 of GTE Florida Incorporated.

21 JACK SHREVE, CHARLES BECK and TERRY DEASON, Office of
22 Public Counsel, Claude Pepper Building, 111 West Madison Street,
23 Room 812, Tallahassee, Florida 32399-1400, Telephone No. (904)
24 488-9330, appearing on behalf of the Citizens of the State of
25 Florida.

1 APPEARANCES CONTINUED:

2 CINDY MILLER, FPSC Division of Legal Services, 101 East
3 Gaines Street, Tallahassee, Florida 32399, Telephone No. (904)
4 487-2740, appearing on behalf of the Commission Staff.

5 DEBRA SCHIRO and PRENTICE P. PRUITT, FPSC Office of
6 General Counsel, 101 East Gaines Street, Tallahassee, Florida
7 32399, Telephone No. (904) 488-7463, appearing as Counsel to the
8 Commissioners.

9 ALSO PRESENT:

10 ANN CAUSSEAU, FPSC Division of Auditing and Financial
11 Analysis.

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18 REPORTED BY:

JOY KELLY, CSR, RPR
Official Commission Reporter

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EXHIBITS:

PAGE

1 (Staff) Composite of Requests for Hearing,
Notice of Hearing, Company Comments, et cetera. 9

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PROCEEDINGS

(Hearing convened at 9:30 a.m.)

COMMISSIONER GUNTER: Let's call the hearing to order. Counsel, read the notice.

MS. MILLER: Pursuant to notice issued December 29, 1989, Order No. 22354, in Docket 891278. This is in rulemaking hearing in accordance with Section 120.54, Florida Statutes. The proposing rule revisions are to Rule 25-14.003, the corporate income tax expense adjustment rule. The revisions relate to the definition of midpoint and additional changes.

The purposes of a Section 120.54 hearing is to give affected persons an opportunity to present argument on all issues under consideration appropriate to inform the Commission of their contentions.

COMMISSIONER GUNTER: All right. Let's take appearances.

MS. KAUFMAN: Good morning, Commissioners. Vicki Gordon Kaufman from the law firm of Lawson, McWhirter, Grandoff and Reeves, 522 East Park Avenue, Suite 200, Tallahassee 32301, appearing on behalf of the Florida Industrial Power Users Group.

MR. CHILDS: My name is Matthew M. Childs, of the firm of Steel, Hector and Davis, appearing on behalf of Florida Power and Light.

MR. WILLIS: I am Lee L. Willis, Post Office Box 391, Tallahassee, 32302, appearing on behalf of Tampa Electric Company

1 and Central Telephone Company of Florida.

2 MR. HORTON: Norman H. Horton, Jr., of Mason, Erwin and
3 Horton, 1020 East Lafayette Street, Tallahassee, Florida, on
4 behalf of ALLTEL Florida, Inc., Indiantown Telephone System,
5 Quincy Telephone Company and Southland Telephone Company.

6 MR. STONE: Jeffrey A. Stone, of the law firm of Beggs
7 and Lane, Pensacola, P. O. Box 12950, on appearing on behalf of
8 Gulf Power Company.

9 MR. WATSON: Ansley Watson, Jr., of the law firm of
10 MacFarlane, Ferguson, Allison and Kelly, P. O. Box 1531, Tampa,
11 Florida 33601, appearing for Peoples Gas System, Inc.

12 MR. PARKER: Thomas R. Parker, P. O. Box 110, Mail Code
13 7, Tampa, Florida 33601, on behalf of GTE Florida Incorporated.

14 MR. BECK: Jack Shreve, Charles Beck, and Terry Deason,
15 Office of Public Counsel, 111 West Madison Street, Tallahassee,
16 Florida, appearing on behalf of the State Citizens.

17 MS. MILLER: Cindy Miller, Florida Public Service
18 Commission.

19 MS. SCHIRO: Debra Schiro, Florida Public Service
20 Commission, appearing as advisor to the Commission, same address
21 as Ms. Miller.

22 COMMISSIONER GUNTER: All right. I want to ask the
23 court reporter a question: Do you need people to identify
24 themselves before they start asking any questions or making any
25 comments?

1 THE REPORTER: Just those from the audience.

2 COMMISSIONER GUNTER: All right. Anyone other than
3 counsel, which the court reporter is familiar with, if there is
4 anyone other than that that makes any comments, please identify
5 yourself.

6 This is going to be an informal session this morning.
7 Such as we have had in rulemakings, in comments that have been --
8 that are made or any quasi testimony that is given, all parties
9 certainly have the opportunity to cross examine, but let's make
10 sure, for the benefit of the court reporter, that we only speak
11 one at time. Let's don't get ourselves carried away, because she
12 flat cannot pick up two simultaneous conversations.

13 Counselor, are you ready?

14 MS. MILLER: Yes. We would recommend that the way we
15 proceed is that each participant be allowed to have some comments
16 at the start. I gather perhaps, one participant might have quite
17 extensive ones and that's fine, and then the people be allowed to
18 ask questions or have follow-up comments. And then, if we could
19 after that, perhaps go back and focus a little bit more detailed
20 on the key issues.

21 The issues that we've seen identified are relating to
22 the investment tax credit, the return on equity, nonrecurring
23 expenses and the O&M benchmark.

24 Primarily, all the participants have addressed the
25 issue of whether assigning a zero cost to the investment tax

1 credit for the calculation of the weighted average cost of
2 capital in the midpoint definition violates the normalization
3 provisions of the Internal Revenue Code. That's the primary
4 issue we've seen. But again, if we could start with Staff and
5 have initial comments and questions, and then go back
6 individually to those issues.

7 COMMISSIONER GUNTER: Let me ask you a question. When
8 I was trying to prepare for this, we have one piece of prefiled
9 testimony.

10 MS. MILLER: We have Composite Exhibit 1 that has in it
11 all of the -- that's correct.

12 COMMISSIONER GUNTER: We have company statements, but
13 we have one piece of prefiled testimony.

14 MS. MILLER: That's correct. Testimony in the sense of
15 that word, yes.

16 COMMISSIONER GUNTER: Do we just take -- when we get to
17 the company that has made comments and has that testimony, would
18 that be the appropriate time to have that testimony given?

19 MR. WILLIS: That's what we propose, Commissioner.

20 COMMISSIONER GUNTER: Okay.

21 MS. MILLER: Sounds fine.

22 COMMISSIONER GUNTER: I'm just trying to get a
23 procedure. Because folks have their comments, but then you have
24 a piece --

25 MS. MILLER: Right.

1 COMMISSIONER GUNTEP: -- that's different.

2 MS. MILLER: Right. That sounds fine. And, if we
3 could, go ahead and introduce into the record Composite Exhibit
4 No. 1. We have provided a copy of the index on the table there,
5 and will be glad to make copies of anything if anyone is missing
6 --

7 COMMISSIONER GUNTER: We'll do that, unless there is an
8 objection. All right.

9 (Composite Exhibit No. 1 admitted into the record.)

10 COMMISSIONER GUNTER: Yeah, it is No. 1.

11 MS. CAUSSEAU: Commissioners, Staff has for sometime
12 proposed repeal of the rule, or in the alternative that certain
13 changes be made to make the application of the rule more
14 equitable and easier. Those changes essentially deal with the
15 insertion of "regulated company", as well as "utility" changing
16 some of the language to specifically recognize earnings reviews
17 instead of Show Cause proceedings; to make a new reporting date;
18 to provide flexibility in lieu of refunds; to clarify the
19 language in regard to interest; to clarify the intention of the
20 Commission to evaluate the report that is submitted by the
21 utility; to use a current equity return applicable to each
22 utility, and to assign a zero cost rate to investment tax
23 credits. (Pause)

24 COMMISSIONER HERNDON: Is that it? All right. Cindy,
25 how are we going to proceed? Do we want to have counsel ask

1 Staff --

2 MS. MILLER: That's the way thought it would be best,
3 if we could proceed left to right, and with questions of the --

4 COMMISSIONER HERNDON: Okay. Ms. Kaufman, I guess
5 that's you.

6 MS. KAUFMAN: I have no questions.

7 COMMISSIONER HERNDON: All right.

8 MR. CHILDS: Left to right. Facing which direction?
9 I have several questions on ITC, and that's what I
10 really want to focus on.

11 Under the definition of the proposed rule, the midpoint
12 term is redefined so that investment tax credit is assigned to
13 zero cost. Is the cost assigned to ITC affected by applicable
14 federal and state income tax rates?

15 MS. CAUSSEAU: Is the cost assigned to the investment
16 credit affected by the rates?

17 MR. CHILDS: Yes.

18 MS. CAUSSEAU: No.

19 MR. CHILDS: Would you agree that the proposed change
20 to the definition of midpoint does not affect the defined terms
21 "tax savings" or "tax deficiencies?"

22 MS. CAUSSEAU: It doesn't affect the defined terms.
23 It just simply affects the amount of the defined term that will
24 be treated under the rule.

25 MR. CHILDS: Would you agree that the expense

1 associated with federal and state income tax is treated like
2 other expenses in determining a utility's revenue requirements?

3 MS. CAUSSEAUX: In determining a utility's revenue
4 requirement it is basically treated like other expenses.
5 However, the Commission has chosen to single it out for separate
6 and different treatment under the rule.

7 MR. CHILDS: Okay. But whether the Commission has
8 chosen to single it out under the rule, in setting rates it is
9 treated like any other type of expense?

10 MS. CAUSSEAUX: Yes.

11 MR. CHILDS: Okay. In the Staff comments there is the
12 phrase "Self-imposed limitation" used in several places. Let me
13 ask you, is it your position that the Commission, in looking at
14 utility operations, could require a refund even where the result
15 would be that the utility would fail to earn a fair return on
16 equity?

17 MS. CAUSSEAUX: I believe that there have been some
18 instances where the Commission has used a flow-through, if you
19 will, method of adjusting for changes that did not consider the
20 level of earnings that the utility had achieved, and the utility
21 was left in the same position after the adjustment, that it was
22 in before the adjustment. And so I think that that has been
23 done, at least in one industry.

24 MR. CHILDS: Okay. But here, if the result was to
25 flow-through tax savings, the amount of which was affected by the

1 treatment given to ITC, the utility in that instance would not be
2 -- would not have been left in the same position that it would
3 have been before, would it?

4 MS. CAUSSEAUX: No. It would not. However, if it was
5 left -- if the Commission chose to leave it in the same position,
6 and there was no problem with flowing through the entire amount
7 of tax savings or collecting the entire amount of deficiency,
8 whether it was underearning or overearning, depending on whether
9 it was a deficiency or an excess, simply arbitrarily limiting the
10 amount of change should not cause any problems.

11 MR. CHILDS: Well, it could cause a result -- whether
12 you call it a problem or not, it could cause a result that for
13 the year for which there was a tax savings refund required, that
14 after the refund the utility did not earn even the bottom of the
15 zone of reasonableness on a return on equity; isn't that correct?

16 MS. CAUSSEAUX: Yes.

17 MR. CHILDS: Is it intended that using the midpoint as
18 redefined, is to produce evenhanded results in the sense of when
19 taxes increase or when taxes decrease? (Pause)

20 MS. CAUSSEAUX: Would you restate the question?

21 MR. CHILDS: I'll try. Was the -- is it intended that
22 the redefinition of midpoint, in the tax savings rule, would
23 produce evenhanded results with respect to tax increases and tax
24 decreases?

25 MS. CAUSSEAUX: The change in midpoint, both the

1 investment credit aspect of it, and the equity return aspect of
2 it were intended to one, recognize changes in the capital market,
3 and two, recognize that Staff does not believe that this
4 treatment of the investment credit would violate the provisions
5 of the Code.

6 MR. CHILDS: I'm really not trying to focus on the --
7 and maybe I didn't phrase the question properly -- on the return
8 on equity feature of the rule, or whether -- the Staff's opinion
9 as to what's required by the Code. I'm simply trying to find out
10 whether when it is intended -- when you redefine midpoint in the
11 rule, it is intended or expected that there will be evenhanded
12 results when there is an increase in tax, and when there is a
13 decrease in the tax rate.

14 MS. CAUSSEAU: If you mean did we intend it to be used
15 in either case, yes.

16 MR. CHILDS: Okay. Would you agree that when you
17 redefine midpoint by including ITC at zero cost, that when the
18 federal income tax or the state income tax rate is reduced, the
19 potential for there being a tax savings refund is increased?

20 MS. CAUSSEAU: The potential to adjust more of any
21 existing amount exists, yes.

22 MR. CHILDS: Well, when you redefine midpoint as you
23 have, by putting in ITC at zero cost, in effect that reduces the
24 midpoint to the extent of the weighted cost of the ITC in the
25 capital structure, doesn't it?

1 MS. CAUSSEAU: Yes.

2 MR. CHILDS: And so, therefore, the closer a utility is
3 in terms of actual earnings to this redefined midpoint, the
4 greater the potential for it to make a tax savings refund, and
5 would you agree as well, the greater amount of the potential tax
6 savings refund?

7 MS. CAUSSEAU: Sure.

8 MR. CHILDS: Okay. Now, let's look at the other side,
9 that is where the tax rates are increased.

10 Whether federal and state income tax rates are
11 increased, would you agree that a potential for an utility to
12 collect a tax deficiency is lessened? (Pause)

13 MS. CAUSSEAU: Yes.

14 MR. CHILDS: Okay. So when the Staff comments speak to
15 self-imposed limitation in the amount of tax savings or
16 deficiencies, isn't what is meant is the intent to the maximize
17 tax refunds and minimize tax deficiency collections?

18 MS. CAUSSEAU: That was not the intent, no. That may
19 be the way it works, but that was not the intent.

20 MR. CHILDS: All right. Would you agree that the
21 Commission, under the applicable code and regulations, could not
22 simply say, "Independent of anything else, we're going to assign
23 ITC a zero cost rate for setting revenue requirements for an
24 utility." (Pause) Without violating the Code?

25 MS. CAUSSEAU: In a full revenue requirements

1 proceeding, yes.

2 MR. CHILDS: They could not do that?

3 MS. CAUSSEAUX: That's correct.

4 MR. CHILDS: Okay. Would you agree that this
5 Commission routinely considers financial integrity and the impact
6 on financial indicators for a utility of its decisions with
7 respect to allowed rate of return, and particularly return on
8 equity?

9 MS. CAUSSEAUX: Yes.

10 MR. CHILDS: Thank you. That's all I have.

11 MR. WILLIS: Ms. Causseaux, I'm Lee Willis,
12 representing Tampa Electric and Central Telephone Company of
13 Florida.

14 I would like to ask you with regard to the rule and the
15 changes that you have made or suggested in the procedures
16 section, Section 5, which says "Refunds, collections or other
17 adjustments approved by the Commission." Would such other
18 adjustments approved by the Commission include changes in rates?

19 MS. CAUSSEAUX: They might include restructuring of
20 specific rates.

21 MR. WILLIS: So that if you found that -- a refund of X
22 amount was appropriate, you may also find that a rate reduction
23 in that same amount would be appropriate?

24 MS. CAUSSEAUX: Or a rate increase.

25 MR. WILLIS: Okay. Ms. Causseaux, would you agree with

1 me that the Commission in the past has been cautious in taking
2 positions that may be in conflict with the IRS Code?

3 MS. CAUSSEAUX: Yes.

4 MR. WILLIS: And the approach has been that where there
5 has been a risk of loss of a tax benefit due to a Commission
6 action, the Commission has required that the company file a
7 letter with the IRS requesting a letter ruling prior to the
8 implementation of a proposed change; isn't that true?

9 MS. CAUSSEAUX: Yes.

10 MR. WILLIS: That approach was illustrated, was it not,
11 that, for example, in Tampa Electric's last rate case where the
12 issue of interest synchronization arose?

13 MS. CAUSSEAUX: Yes.

14 MR. WILLIS: In that order the Commission said, "In
15 this case, as in the past, Public Counsel has proposed that for
16 the purpose of calculating taxes, a portion of the investment tax
17 credit should be treated as though it were interest-bearing
18 debt." And then a little bit further on in the order it says,
19 "Out of a sense of caution, we have in past cases declined to
20 adopt Public Counsel's proposal for fear that it would jeopardize
21 the utility's ability to use these credits. We did, however,
22 recognize that Public Counsel's proposed treatment was more
23 beneficial to the ratepayers and directed several utilities to
24 submit revenue ruling requests to the Internal Revenue Service."

25 Ms. Causseaux, wouldn't it -- this particular rule does

1 not provide for such a procedure, does it?

2 MS. CAUSSEAUX: No, this rule does not provide that
3 procedure. That procedure was provided in the AFUDC rule, that
4 also changed to zero the cost rate attached to ITCs.

5 MR. WILLIS: Wouldn't you agree that just out of common
6 sense prudence that where there is doubt, such as has been raised
7 here, that it would make sense to require an opinion of the IRS
8 prior to the actual implementation of the provisions that are at
9 issue here?

10 MS. CAUSSEAUX: Out of an overabundance of caution, I
11 think that could be done.

12 COMMISSIONER GUNTER: Did you agree or disagree?

13 MS. CAUSSEAUX: I said, "Out of an overabundance of
14 caution I think that could be done." I agreed.

15 COMMISSIONER GUNTER: Okay.

16 COMMISSIONER EASLEY: Mr. Willis, how long does it take
17 to get an IRS ruling like that?

18 MR. WILLIS: Well, as in a lot of things, it varies
19 over time. I think that the -- this particular order that I was
20 reading you was in 1985. The ruling, the IRS ruling came down, I
21 think, a couple of years after that.

22 MS. CAUSSEAUX: I think that's correct. The AFUDC
23 process was somewhat shorter. And in the AFUDC process, as I
24 recall, the Company has also agreed to an effective date, I
25 believe, as of the date of the agenda, I think it was, where the

1 proposal had been made, and the proposed change to the rule had
2 been adopted.

3 MR. PARKER: In the AFUDC proceeding, Commissioners,
4 four months, at least in the case of General Telephone, the
5 request for a letter ruling went out December 9th and we received
6 a response from the Department of Treasury on March 31st, 1989.

7 COMMISSIONER EASLEY: Did you send up a ballon or a
8 flare in celebration?

9 MR. WILLIS: Commissioner Easley, the Order resolving
10 the issue in the 1985 Tampa Electric case was issued by the
11 Commission on June 19th, 1986. That same order resolved the same
12 issue that had been outstanding in five or six other rate cases.

13 MS. CAUSSEAU: Commissioner Easley, General had the
14 good fortune, if you will, to be possibly the fourth or fifth
15 company to file, so their's was received somewhat more rapidly
16 than the very first.

17 MR. WILLIS: I'd like to discuss with you, a minute,
18 the extent of the risk that's involved here.

19 Would you agree that if the treatment that you propose
20 is found to be violative to the normalization requirements, that
21 it places at risk the benefit of all unamortized tax credits of
22 the utility?

23 MS. CAUSSEAU: With a slight qualification. I think
24 that when the tax law changed there was a little kick that gave
25 you the greater of the unamortized balance or some other item,

1 which I'm just blank on at the moment.

2 MR. WILLIS: You would agree, there are hundreds of
3 millions of dollars at stake here.

4 MS. CAUSSEAU: Yes.

5 MR. WILLIS: Thank you, I have nothing futher.

6 MR. HORTON: No questions.

7 MR. STONE: No questions.

8 MR. WATSON: No questions.

9 MR. PARKER: Based on the period --

10 COMMISSIONER GUNTER: Let me ask one question: Do we
11 find ourselves in the same potential that we found previously and
12 was experienced in California with PacBell, where they made a
13 change in the affect that they -- that the tax consequences -- it
14 was in the billions; do we have that same potential?

15 MS. CAUSSEAU: We have a potential liability out here.
16 It's the same potential that existed in the AFUDC rule.

17 COMMISSIONER GUNTER: All right. So that in the
18 PacBell one, it took a public law change by Congress to keep them
19 from incurring that substantial loss; wasn't that correct?

20 MS. CAUSSEAU: Well, they still incurred a loss.

21 COMMISSIONER GUNTER: I understand, but not to the
22 degree.

23 MS. CAUSSEAU: Not the degree that was contemplated
24 initially.

25 COMMISSIONER GUNTER: So the California regulatory body

1 made a change subject to the ratepayers and the company with a
2 substantial loss that they still suffered a piece of it and it
3 took public law on the part of Congress to keep them from
4 suffering at all; isn't that correct?

5 MS. CAUSSEAU: Yes.

6 MR. PARKER: Based on the previous cross examination,
7 just one question. Are you aware of what the amount of
8 unamortized ITC for GTE of Florida is, Ms. Causseaux?

9 MS. CAUSSEAU: Not off the top of my head, no. It
10 runs somewhere in the -- on companies as a whole, it runs between
11 2-1/2 or 7 or 8% of total capitalization.

12 MR. PARKER: If General's amount was around 44
13 million, would that be a reason to exercise caution?

14 MS. CAUSSEAU: Sure.

15 MR. PARKER: Thank you.

16 COMMISSIONER GUNTER: Mr. Beck?

17 MR. BECK: Ms. Causseaux, you're using the zero cost
18 for ITC in the proposed rule; is that right?

19 MS. CAUSSEAU: Yes.

20 MR. BECK: And is that the actual cost of ITC to the
21 company?

22 MS. CAUSSEAU: The actual cost to the company is zero,
23 yes. However, Congress has limited our ability to use that cost.

24 MR. BECK: Do IRS regulations allow circumstances when
25 you're allowed to use the zero cost for ITC?

1 MS. CAUSSEAU: Staff believes that they provide some
2 flexibility.

3 MR. BECK: Don't the regulations state that when you
4 are considering a company's financial condition, but not in the
5 rate setting, then it's allow to use a zero cost?

6 MS. CAUSSEAU: Yes.

7 MR. BECK: I have no other questions.

8 COMMISSIONER GUNTER: Anyone else? Go ahead.

9 COMMISSIONER BEARD: Help me, if you can. I just
10 scanned back through, because I didn't remember seeing it
11 anywhere. I don't see any comments, I don't think, on anybody's
12 part on repeal of the rule.

13 MS. CAUSSEAU: No. No one commented on repeal. That
14 was Staff's recommendation when we went to agenda and we had as
15 an alternative some administrative changes and the changes to the
16 midpoint language, and at that point in time there were still
17 some companies with their tax savings in litigation that repeal
18 of the rule appeared to jeopardize.

19 COMMISSIONER BEARD: That was a short-term problem, was
20 it not?

21 MS. CAUSSEAU: It was a short-term problem. I think
22 that we have all those companies either with rate changes in
23 progress, or with rate cases, or with MMFR reviews in progress.

24 COMMISSIONER EASLEY: Commissioner, doesn't Mr. Gower
25 in his testimony, at least, indirectly deal with repeal.

1 COMMISSIONER BEARD: If he did, I missed it.

2 COMMISSIONER EASLEY: I think it's more in the line of
3 "yeah, the tax rule is a good idea provided."

4 COMMISSIONER BEARD: Well, my problem is that this
5 record is -- with that potential exception -- void. And how
6 about commenting for me, if you would.

7 MS. CAUSSEAU: All right. Repeal would allow you to
8 treat the change in tax expense, if you will, as you would any
9 other change in any other expense: Wages, salary, depreciation,
10 O&M, any portion of O&M, changes in interest expense or whatever.

11 You would be measuring the effect of a change in tax
12 rate through surveillance or rate case proceedings. You would be
13 looking at it in terms of the range as opposed to a midpoint.
14 You could make any adjustments that you would make in any rate
15 case or surveillance earnings proceeding that you normally would
16 make. Rate restructurings, whatever. It would be the normal
17 course of business.

18 COMMISSIONER BEARD: You've given me a historical
19 perspective but you've dodged the question. Good, bad?

20 MS. CAUSSEAU: Good, bad? Staff believes that it is
21 good in that it does not single out one expense for special
22 treatment; it uses the processes that are in place.

23 COMMISSIONER BEARD: In other words, you wouldn't
24 recommend a special rule for changes in salary of personnel?

25 MS. CAUSSEAU: No.

1 COMMISSIONER BEARD: Okay.

2 COMMISSIONER GUNTER: Commissioners, any other
3 questions?

4 COMMISSIONER BEARD: All right, I guess we move down
5 the comment line.

6 MS. KAUFMAN: Commissioners, FIPUG has two comments in
7 regard to the procedural section of the rule, which is Section 5,
8 and it's on Page 4 of the rule.

9 The first was alluded to by Staff, and that is the
10 change that would permit refunds, collections and the new
11 language or other adjustments approved by the Commission.

12 If you're looking at the Staff recommendation of
13 September 25, 1989 -- I don't know what you have -- it's on Page
14 32. Stamped 32. It's on Page 4.

15 MS. MILLER: Page 4. That's right.

16 COMMISSIONER GUNTER: On Page 4 beginning on --
17 comments after Line 6; is that correct?

18 MS. KAUFMAN: Uh-huh. The new language that's been
19 inserted would allow the Commission to make other adjustments
20 other than refunds or collections.

21 FIPUG would submit that it's equitable and fair that
22 when customers have overpaid a utility due to a change in the tax
23 rates, that that money be flowed back to them in the form of a
24 refund just as they have paid it in, rather than permitting some
25 kind of other adjustment, which is not clear from the rule what

1 sort of adjustments are contemplated, though Ms. Causseaux
2 commented on at least one that she would think would be included
3 in there.

4 COMMISSIONER BEARD: Can I ask a question?

5 MS. KAUFMAN: Certainly.

6 COMMISSIONER BEARD: You said "refund." Can I read
7 that refund/rate reduction or just refund?

8 MS. KAUFMAN: I think as long as the rule remains in
9 place -- are you talking about a permanent base rate reduction?

10 COMMISSIONER BEARD: Yeah.

11 MS. KAUFMAN: I think that we would be in fair of that
12 as well. That goes into the second part of the comment.

13 COMMISSIONER BEARD: I just wanted to be clear, if
14 you're proposing if we had a tax rate reduction that we continue
15 to get to play these annual games.

16 MS. KAUFMAN: No, we're not advocating that at all. I
17 think our concern with the other adjustment would be using a tax
18 savings refund as a credit against some other expense.

19 The second part of the procedure that we would like to
20 comment on is 5(f) which appears on Page 6, beginning at Line 7.
21 This provision here speaks to the way a refund would be
22 distributed, assuming that a refund were ordered. It changes the
23 current rule, which provides for a refund on a kWh basis, to a
24 refund on a basis that fairly and equitably reflects the income
25 taxes embodied in the rates for the various customer classes.

1 FIPUG is not adverse to some sort of different analysis
2 for distribution of any tax savings refunds, but we would say
3 that in order to do what I think the rule is contemplating here,
4 this fair and equitable distribution among customer classes, that
5 it would be desirable, and perhaps even necessary, to have some
6 kind of a cost of service study to determine how the refund is
7 going to be distributed.

8 This goes somewhat to what Commissioner Beard was
9 saying. This is expensive and perhaps a burdensome exercise to
10 go through on a yearly basis as you're applying this rule, and we
11 would say that it's better done within the parameters of a base
12 rate reduction in perhaps a rate case.

13 If the Commission decides to go forward with this rule
14 and leave this fair and equitable standard in here, we would
15 suggest that the standard for distribution should be more clearly
16 defined so that as the parties go into a rate case, they will
17 know what the distribution standard or methodology is going to
18 be, so that they can prepare their testimony on their evidence in
19 light of the rule. I think the way the rule is now, it's fairly
20 vague in regard to how any distribution is going to be handled in
21 the context of this proceeding.

22 COMMISSIONER EASLEY: Could I just ask you a question?
23 It's really joint on both the issues you raised, but mainly on
24 the first part having to do with taking out the other adjustment
25 language.

1 Have you been here when we we've heard the arguments
2 that refund menas refund and you can't reduce rates under the tax
3 rule?

4 MS. KAUFMAN: I'm not sure specifically what you're
5 referring to, but I have heard that, yes, ma'am.

6 COMMISSIONER EASLEY: Would you not -- if you favor any
7 kind of rate adjustment, would you not want the broader language
8 of "other adjustments" rather than leaving it to just the word
9 "refund," unless you say "refund/rate reduction" or "rate
10 change?"

11 MS. KAUFMAN: I think that our concern with the other
12 adjustment is what I articulated, I think, to Commissioner Beard,
13 and that is that we do not want to see a refund applied as
14 offsetting some other expense or reserve. If we had refund/rate
15 reduction, I think that would be acceptable.

16 COMMISSIONER EASLEY: Okay. The only trouble is it
17 doesn't solve the problem of refund still be interpreted at a
18 credit, if that is indeed a problem, because refund has become
19 whatever we decide it is apparently, which doesn't help meters
20 much.

21 Under fair and equitable, again, the language in the
22 current rule is reasonably restrictive if you read it the way it
23 is written. If you read it the way it's been used, it's not
24 restrictive at all. Would you not see a better rule if we had
25 the flexibility to, on a case-by-case or company-by-company

1 basis, do whatever appears to be the most fair and equitable for
2 that particular group of customers?

3 MS. KAUFMAN: I think we have some concern knowing what
4 fair and equitable would be going into the case. And what we're
5 talking about in subsection (f) is basically the distribution
6 methodology. How the refund is going to be parceled out among
7 the customer classes, and we think that that requires some kind
8 of a cost of service study. And as I said alternatively, we'd
9 like to see the standards in the rule so that going into a tax
10 savings hearing we're on notice. I think if you leave the rule
11 this way, I guess the parties would come in and one party might
12 propose a methodology and a party might propose a different
13 methodology and the Commission might --

14 COMMISSIONER EASLEY: Kind of like ROE.

15 MS. KAUFMAN: -- have a middle ground, kind of like
16 that.

17 COMMISSIONER BEARD: What is your position on simple
18 repeal of the rule?

19 MS. KAUFMAN: Simple repeal? I think if we could see
20 these tax savings integrate into base rate reductions we would be
21 happy with that.

22 COMMISSIONER BEARD: Well, I'm not -- if you answered
23 the question then I didn't understand it.

24 Would you oppose or support repeal of the rule?

25 MS. KAUFMAN: By that you mean, as Ms. Causseaux was

1 saying, these tax savings would be treated as any other expenses?

2 COMMISSIONER BEARD: Just like any other expense; like
3 before we had the rule, I assume we did.

4 MS. KAUFMAN: I think unless it was clear that these
5 adjustments were going to be incorporated into base rates, that
6 we would not be in favor of repeal.

7 COMMISSIONER BEARD: If you go to a ratemaking
8 procedure and you don't have the rule, what else would you do but
9 incorporate into the ratemaking procedure the appropriate tax
10 structure?

11 MS. KAUFMAN: I'm not sure. I think if that's the
12 underlying premise of your question, then we would agree with
13 repeal.

14 COMMISSIONER BEARD: Okay. To the extent the rule is
15 not repealed -- you know, we talk a lot about refunds and rate
16 reductions, but we don't talk about the opposite scenario. What
17 happens if we had today a tax increase from 34 to 48%? How would
18 that apply in this rule?

19 MS. KAUFMAN: If this rule --

20 COMMISSIONER BEARD: Was intact as is or as
21 recommended, what would we do?

22 MS. KAUFMAN: I think that the rule would be applied
23 and the Commission would have the authority to permit the
24 utilities to collect the difference between the change in the tax
25 rate.

1 COMMISSIONER BEARD: And you would support that under
2 this current rule?

3 MS. KAUFMAN: If there were an increase in the tax
4 rate?

5 COMMISSIONER BEARD: Uh-huh.

6 MS. KAUFMAN: And this rule were in place, I think that
7 would be how you would have to apply it.

8 COMMISSIONER BEARD: Okay.

9 MR. WILLIS: I want to follow up on one point that you
10 made.

11 With regard to the cost of service studies on the one
12 hand, and just treating the difference in rates on a
13 kilowatt-hour basis on the other hand, isn't it true that the
14 cost of service issues are highly controversial issues that take
15 a considerable amount of time in a rate proceeding?

16 MS. KAUFMAN: I don't think I could disagree with that,
17 but I don't think that's a reason not to take a look at them as
18 they affect how the refund is going to be distributed.

19 MR. WILLIS: Well, if the rule were -- I'm trying to
20 agree with you, I think, so listen to me.

21 As I took it, you were concerned about the complexity
22 that would be infused in the proceeding by the cost of service
23 issue as opposed to just treating this on a kilowatt-hour basis,
24 and I'm agreeing with that and asking you to agree with me that
25 this would require a number of experts, a considerable amount of

1 controversy and take a great deal of the Commission's time in
2 sorting out that type of issue.

3 MS. KAUFMAN: I agree with you on that.

4 MR. WILLIS: Okay. Thank you.

5 COMMISSIONER GUNTER: Anything further? All right.

6 MR. WILLIS: We would call Mr. Hugh -- excuse me. Are
7 there any more questions?

8 COMMISSIONER GUNTER: Does Florida Power and Light have
9 any, or is he finished?

10 COMMISSIONER GUNTER: Mr. Gower is the only person with
11 prefiled testimony.

12 MS. MILLER: Also, if I could add here, in posthearing
13 filings, if there are any helpful suggestions on alternative
14 wording, we would appreciate seeing them.

15 COMMISSIONER GUNTER: Yes. Part of my problem, Mr.
16 Willis, is we received Mr. Gower's; even though it's filed on
17 behalf of Tampa Electric, the transmittal letter came from Matt
18 Childs.

19 MR. WILLIS: I understand.

20 COMMISSIONER GUNTER: Okay.

21 MR. WILLIS: It had to come from one of us.

22 COMMISSIONER GUNTER: I wasn't sure who was going to do
23 what.

24 MR. WILLIS: Mr. Chairman, I believe that Mr. Gower's
25 testimony has been inserted in the record in Exhibit No. 1.

1 I'd like to begin by asking you, please state your name
2 and address.

3 MR. GOWER: My name is Hugh Gower. Business address,
4 133 Peachtree Street, Northeast, Atlanta, Georgia.

5 MR. WILLIS: And on whose behalf do you appear here
6 today?

7 MR. GOWER: On behalf of Florida Power and Light
8 Company and Tampa Electric Company.

9 MR. WILLIS: Mr. Gower, will you please summarize the
10 testimony that has been inserted into the record?

11 MR. GOWER: My testimony covers several points with
12 regard to the proposals to amend the rule.

13 The first is that I believe the rule, as it is
14 presently written, is a reasonable and fair manner for the
15 Commission to give effect to changes in income tax rates. I do
16 believe there are ways in way which the rule can be improved.

17 I believe that in applying the rule it's very important
18 for the Commission to exercise care and caution because as it is
19 presently operative, it deals with prior periods, and, therefore,
20 has the potential of being applied in a way which would be
21 improper retroactive ratemaking. I don't believe it has been
22 applied that way, but I just urge care and caution.

23 A number of participants have expressed some degree of
24 frustration with the rule, and I have read a number of those
25 comments and I understand those. The difficulty is in developing

1 a limited scope rule that could deal with any eventuality, and I
2 just don't think that's really possible short of a full
3 cost-of-service tariff, which I don't think would be appropriate.

4 The second area deals with my comments on the
5 investment tax credit. And I think it's very clear that the
6 regulations, however they may be viewed by the participants, do
7 require that the Commission allow a return on the plant financed
8 with investment tax credits at no less than the overall cost of
9 capital. In earlier comments today, no one seems to dispute the
10 notion that that is a requirement when rates are being increased,
11 and I think it is patently obvious on the face that the result is
12 identical when rates are decreased. And I think that with nearly
13 three-quarters of a billion dollars of tax credit benefits
14 available for just the electric companies in Florida, that an
15 awful lot of caution needs to be exercised before running the
16 risk of violating the Internal Revenue Code.

17 With respect to the establishment of the return on
18 common equity in a limited scope proceeding, my comment is that's
19 a very difficult task at best, and it's important that when those
20 rates are set and determined, that all relevant factors be
21 considered, all the relevant variables. Just for example, what
22 would be the ratemaking treatment of investment tax credit, among
23 others.

24 I just feel like the tax savings rule can't deal with
25 all the regulatory problems because it is a limited scope

1 proceeding.

2 Insofar as nonrecurring expenses are concerned and the
3 proposal to eliminate nonrecurring expenses, I believe that's in
4 conflict with the original intent of the rule, which was to
5 identify actual tax savings or increases in, if nonrecurring
6 expenses are eliminated, it would not accomplish that goal. And
7 I remind the Commission that because this rule looks back to
8 prior periods for that purpose, that it is unlike a normal rate
9 case which looks to future periods. I see the potential for a
10 rather endless debate on what is recurring and nonrecurring.

11 And just one final point is that if nonrecurring
12 expenses are always eliminated, no utility would ever be able to
13 earn their authorized rate of return. It simply would not have a
14 chance.

15 Finally, insofar as the O&M benchmark is concerned,
16 essentially, I disagree with institutionalizing that as part of
17 the rule. It is not relevant when rate decreases are being
18 considered because the purpose of this rule is to identify actual
19 tax changes, and to pass on the income tax decrease or increase
20 as the case may be, and eliminating expenses on the basis of that
21 benchmark does not accomplish that objective. I think it is
22 already fairly evident what kind of a reporting burden would be
23 imposed on a company and the Commission and the Staff and all
24 others to review that level of detail; and that is in conflict
25 with the goal of the rule to be administratively efficient.

1 The suggestions that I have with regard to the rule are
2 change it in such a way that rates and charges to customers could
3 be reduced or increased if that's the appropriate thing, at a
4 date coincident with the change in tax rates, rather than waiting
5 for a year or longer to settle the issue. That would avoid the
6 rather excessive cost of continual annual hearings to apply the
7 rule. It would be necessary to use an historic period to do
8 that, obviously, but I think that's possible. I also think that
9 to avoid the annual filings under the rule between rate cases,
10 those changes having previously been identified could be rolled
11 into base rates. And it's true that that may mean that any given
12 company may be overearning or underearning, but I think the
13 appropriate place to address that is in a rate proceeding,
14 including that change in the company's base rates, after a period
15 of time, would also allow Staff and other intervenors adequate
16 time to review the company's filing, conduct field audits, raise
17 issues, which may be appropriate for the Commission's
18 consideration. But it would get rid of the undue regulatory lag
19 and associated administrative costs, which are now attendant on
20 the annual filings to calculate the refunds, which we've seen
21 over the last several years. It won't deal with over- or
22 underearnings; it just won't. And I suggest that the rule is
23 good, but it cannot be designed in a way to deal with any and
24 every eventuality. That concludes my summary.

25 MR. WILLIS: We tender Mr. Gower.

1 COMMISSIONER EASLEY: Mr. Gower, I didn't get it as
2 strongly reading your testimony as I did from your summary. But
3 I gather that unless the rule is prospective and is -- that you
4 feel that unless we can time it with a change in a tax rate,
5 whether up or down on a prospective basis, and that we are now
6 looking at the situation where there is no longer an opportunity
7 to deal with it prospectively -- that what you're saying is about
8 the only way to deal with it is a full rate case.

9 MR. GOWER: If I created that impression, perhaps I
10 didn't -- it's not what I intended to say.

11 The rule can continue to operate as it presently has.
12 I think it would be improved if it operated in such a way that
13 the changes in rates and charges were made coincident with the
14 change in tax rates. I see that as an improvement.

15 COMMISSIONER EASLEY: No argument. But we're not where
16 we can do that unless they try to change them again. We're
17 dealing with a retroactive situation regardless of how we'd like
18 to do it.

19 Did you have any specific thoughts as to how this rule
20 could work, or would you think that repeal and the limited scope
21 proceeding would be preferable to a retroactive consideration?

22 MR. GOWER: Commissioner, I would rank several
23 possibilities. I would think that the changes that I have
24 recommended would be the number-one preference. No. 2 would be
25 to leave the rule as it is and as it has been applied. And the

1 other two alternatives are outright repeal versus the changes
2 that Staff has recommended. And I guess I would have to come
3 down on the side of repeal being preferable to the changes that
4 Staff recommends because of the problems with investment tax
5 credit.

6 COMMISSIONER EASLEY: Okay. Thank you.

7 COMMISSIONER GUNTER: But let me -- excuse me
8 Commissioner, I'm sorry --

9 COMMISSIONER BEARD: Go ahead.

10 COMMISSIONER GUNTER: Let me ask you, Mr. Gower. The
11 last part of your summary you cautioned about looking at what we
12 have characterized as an earnings test, so it would be your
13 recommendation and observation that we should not use an earnings
14 test when we're trying to make a determination of tax refunds; is
15 that correct?

16 MR. GOWER: No, sir. If I created that impression, I
17 didn't intend to.

18 There were comments earlier about the fact that income
19 tax expenses, like all other expenses, had to be considered in
20 the aggregate, and it would have to be determined whether or not
21 whatever change being looked at caused an overearnings or
22 underearnings. I didn't mean to imply that that approach should
23 be changed at all. I think that is the appropriate approach.

24 COMMISSIONER GUNTER: Second piece. We have been
25 growling around about this proceeding for a long time, you know,

1 the effects of the '86 tax change. And everybody is trying to
2 find a way to do it. You know, back the first time that we
3 passed this rule it was because of the change from 48 to 46 and
4 that 2% change and put the rule out with the economic conditions
5 that existed at that time.

6 Now, what if the Commission in its benevolence, were to
7 say, "A simple way to handle this thing is if the tax rate
8 increases, we just go through and look at everybody." The last
9 time when their rates changed, we changed that multiplier; sink
10 or swim, up or down. And those are the taxes that you're either
11 overpaying or underpaying, and you go forward and if there is a
12 revenue deficiency on the part of the company, they can come in
13 for a rate case. And if there is an increase, they can refund it
14 -- on a straight flow through the day it happens -- because you
15 know about it ahead of time. Now what's wrong with that sort of
16 philosophy, up or down? Go through and change the multiplier
17 based on, you know-- everything in this Commission, on
18 Surveillance Reports and what have you, is all based on where you
19 were at the last -- in the last revenue requirements proceeding
20 that you had. What would be wrong with just changing the
21 effective tax rate on the day it happened?

22 MR. GOWER: Well --

23 COMMISSIONER GUNTER: That way, you know, you should be
24 in a situation -- you know, I made that suggestion one time, and
25 it sort of -- you know, I did that just to belly-twitch kind of

1 thing on some folks just to see how they'd respond to it. You
2 know, they gasped, and I guess everybody's had their nitro pills
3 today, but back then they didn't have them. But what's really
4 wrong with applying the effective tax rate and the gross-up at
5 the time it occurs?

6 MR. GOWER: All based on the prior rate case filing?

7 COMMISSIONER GUNTER: Yes.

8 MR. GOWER: Conceptually, there is absolutely nothing
9 wrong with that. We'd have to acknowledge that from the time
10 when the rule was adopted to the present day, there have been
11 pretty significant changes in the economy and capital cost rates.

12 COMMISSIONER GUNTER: I'm talking about from now
13 forward.

14 MR. GOWER: From now forward, conceptually there is
15 nothing wrong with it unless there are big swings in capital
16 markets that influence capital costs. If you expect those to be
17 fairly stable -- and everything I've read, which is, as you would
18 note, worth exactly what it cost me to read it because we can't
19 see the future -- there is nothing wrong with that.

20 COMMISSIONER GUNTER: What effect would that have
21 regardless of what the capital market was because income tax is
22 an expense item just the same as depreciation or -- you know, we
23 change depreciation regardless of what the capital market is, and
24 we have other expenses that change regardless of what the capital
25 market is.

1 MR. GOWER: There is nothing wrong with it. It would
2 isolate the effect of the changes in income tax rates on base
3 rates. It would do that.

4 COMMISSIONER GUNTER: Okay. Well, if you carried it to
5 extreme, a change in depreciation would do the same thing?

6 MR. GOWER: Sure. It's possible to design a special
7 clause to deal with each element of cost of service.

8 COMMISSIONER GUNTER: No, just talking about taxes. We
9 haven't been having a big folderol about anything else. But just
10 income taxes -- the day it became effective, for instance, in one
11 year in 1986 you had a blended rate of 40%. It would be 40% for
12 that year. The next year it went down to 34. You just go
13 through and it requires a simple calculation -- I think simple --
14 on the part of Staff -- to go back and change that multiplier,
15 and those are the rates that you were allowed. You know, there
16 is some subsequent little problems that could occur after that.
17 But as far as just addressing the tax rate, trying to find out,
18 you know, and I'll be honest with you, I said the first time as a
19 joke, but the more complex we get into as we move down the way,
20 the more complexities that bubble in. I'm trying to really think
21 what the problem is.

22 MR. GOWER: The only potential problem that I see with
23 it is that because of changes in the level of revenues, expenses,
24 and investment, going back to a prior period and adjusting rates,
25 which could be done, might, when it is applied to any given

1 company, produce an over- or underearnings.

2 COMMISSIONER GUNTER: I understand. Underearnings, the
3 company has an opportunity to come in and ask for increased
4 revenues.

5 MR. GOWER: That's correct.

6 COMMISSIONER GUNTER: Overearnings, you can take a
7 limited or a reverse make-whole situation and, you know, at the
8 time that you change your tax rates with the calculations and go
9 forward from there.

10 MR. GOWER: That one point, Commissioner, is really the
11 only difference between the proposition that you just stated and
12 what my proposal is, which is to use a very recent period. It's
13 the degree to which an over- or underearnings situation might be
14 caused, and I underscore "might."

15 COMMISSIONER GUNTER: Okay. I'm just kind of warming
16 up to that just personally.

17 COMMISSIONER BEARD: Let me, if I can, Commissioner
18 Easley pointed out that you answer the -- or I guess
19 left-handedly, at least, answered the question about whether the
20 rule is good or bad with the general term "yes." Then I get into
21 your testimony and you talk about how the rule hasn't operated as
22 intended, some of the rationale behind that. And then I hear you
23 say that the rule as it currently exists is preferable -- is
24 actually the second preferable option; the first being as you
25 would modify it.

1 MR. GOWER: Yes, sir.

2 COMMISSIONER BEARD: And I struggle because if the
3 current rule as it currently exists is preferable to repeal and
4 Staff proposals, God help me with what we've gone through with
5 it. And I don't understand that at all. I mean, at least from a
6 simplistic standpoint, Commissioner Gunter's suggestion or repeal
7 -- repeal, I know what to do. You underearn, you come in and
8 ask; you overearn, you get drug in and talked to. And I treat it
9 just like I do any other expense. And I don't understand your
10 thought process behind current rules as they currently exist and
11 has operated.

12 MR. GOWER: Okay. Well, the current rule as it
13 currently exists, does provide a way to make appropriate
14 adjustments in a company's rates and charges for changes in
15 income tax rates. And I think that is a reasonable thing to do.
16 As I say, I could see improvements, but I think that that
17 provides both the Commission and the regulated companies an
18 opportunity to avoid filing a general rate case. On the
19 Commission's side, the Commission knows that if tax rates go
20 down, then there is a way to capture an appropriate amount, the
21 revenue effect of that change, and make sure that it goes back to
22 consumers. And on the other side, if there is a tax rate
23 increase, then what's fair is fair. The companies know that they
24 can calculate the appropriate revenue effect and get that
25 adjusted. So I think that's preferable to relying totally on

1 filing a general rate case. That was where I was coming from.

2 COMMISSIONER GUNTER: Yeah, but my problem comes in
3 with that because I made no secret over the years that I'm for
4 rate stability for the customers, as nearly as you can do within
5 acceptable bounds. But I guess one of the reasons that crazy
6 thought that I have about changing it with the effective date, it
7 seems as though in -- both in the near term and short term, that
8 it would not be terribly detrimental to the customers and/or the
9 company; because it lays out that expense item specifically,
10 whereas today, you know, it's sort of like Jello wrestling --
11 trying to catch the snake in the Jello. You know, it's there and
12 it isn't there. As my old granddaddy used to say, "Eating Jello
13 was like riding down the road in your car about 60 miles an hour,
14 and you put your head out the window getting you a bite," because
15 there wasn't anything to chew on. You know, you put it in your
16 mouth and it disappears. And that's kind of the way this tax
17 things is to you. You know, I can stick my head out and open my
18 mouth and get me a bite and I still haven't got anything. And
19 I'm trying to get something I can get my hands on.

20 MR. GOWER: Well, when you explain it in terms of
21 Jello, I understand exactly where you're coming from.

22 COMMISSIONER GUNTER: Can our last couple of years of
23 experience be characterized otherwise?

24 MR. GOWER: Oh, I expect other folks can come up with
25 different analogies, but I think yours is appropriate.

1 COMMISSIONER GUNTER: But it all goes back to Jello.
2 It all goes back to something that doesn't have solid consistency
3 on whoever is making it.

4 COMMISSIONER BEARD: You know why there is always room
5 for Jello?

6 COMMISSIONER GUNTER: Let me ask you one further
7 question: Do you have any specific recommended language as to --
8 like going through the rule and -- you know, your two clients --
9 I guess there are two -- your two clients recommended changes in
10 add and strike?

11 MR. GOWER: Yes, sir. We have developed that. And we
12 can provide that.

13 COMMISSIONER GUNTER: I would like to see that.
14 Because I read your testimony and I see what you're saying, but
15 I'm trying to get back to lay the two down side by side. And I
16 can't see specifically where those comments -- you know, what
17 specific language we talked about.

18 MR. WILLIS: I understand. We will provide that to
19 you.

20 COMMISSIONER GUNTER: Okay. Staff.

21 MS. MILLER: We just have a couple of questions. I
22 think they've almost been handled.

23 I noticed in your testimony that in various places you
24 say that what we're now suggesting would not be with the original
25 intent of the rule. I just wanted to make clear, you don't

1 believe that we're tied to the original intent of the rule, do
2 you?

3 MR. GOWER: Well, obviously the Commission can change
4 its focus and objectives at any time it feels appropriate, and
5 perhaps I laid too much at the altar of the original intent.

6 However, let me just explain that I assumed that, and
7 perhaps this was incorrect, but I did assume that it was still
8 Staff's intent in making the suggestions, which it has, to
9 isolate the effect of changes in the income tax rates on an
10 actual basis. And that was the original intent that I was
11 referring to.

12 MS. MILLER: Also I noticed you referred to a case in
13 here, United Telephone versus Mann. I thought it might be good,
14 though, to also just point out the Reedy Creek Utilities case,
15 which came after that, emphasized that a windfall should go to
16 the consumer, and I guess the difficulty that we have been having
17 with making that happen.

18 MR. GOWER: I'm not familiar with the Reedy Creek case.
19 But -- so I don't know what the comments are to which you refer,
20 but I would think it would be fair that neither the companies nor
21 the ratepayers got a windfall, so to speak. They ought to be
22 treated fairly.

23 MS. MILLER: Right. Maybe I should be more specific.
24 It's the Reedy Creek Utilities versus Florida Public Service
25 Commission case, and it just says that "a change in the tax law

1 should not result in a windfall to a utility, but in a refund to
2 the customer who paid the revenue that translated into the tax
3 saving."

4 MR. GOWER: I certainly would agree with that as a
5 general proposition.

6 MR. PARKER: Just for clarity of the record, and I
7 admit to Alzheimer's and my memory isn't very good, but wasn't
8 that particular case on a miscalculation? That they were going
9 back to change. It was an outright math bust?

10 MS. MILLER: I have copies of the cases here, and I'd
11 be glad to get that and we could discuss it further, or I'd be
12 glad to brief it more. But basically it involved a change in tax
13 and then there was an agreement reached as to how that should be
14 translated to the consumer.

15 At the appropriate time Staff has suggested some
16 alternative language on the ITC about the seeking of the letter
17 -- the private letter ruling from the IRS.

18 COMMISSIONER GUNTER: It's probably appropriate now.
19 Everybody is going to be talking about it rather than pass it
20 after we talked about it; then we'd have to go back and talk
21 about it.

22 MS. MILLER: I agree. And see if that might answer
23 some of the concerns on the ITC language.

24 COMMISSIONER EASLEY: Is this the same two pages?

25 MS. MILLER: Yes, it's --

1 COMMISSIONER GUNTER: While she's handing that out, why
2 don't we break for five minutes.

3 (Brief recess.)

4 COMMISSIONER GUNTER: All right. Let's get started.
5 You passed out one page?

6 MS. MILLER: That's correct. This would be -- we would
7 hope this would address asking the IRS for the letter rulings for
8 each company on this issue, and whether this would address the
9 primary concern that people have raised on this issue.

10 COMMISSIONER GUNTER: All right.

11 MS. MILLER: Mr. Gower, perhaps -- I don't know if you
12 have had a chance to read it. Would this handle your concern on
13 the risk that you were discussing?

14 MR. WILLIS: Mr. Gower, perhaps -- if you could explain
15 why you believe that the proposed treatment is a violation of the
16 normalization requirements and relate it to this request, that
17 would help.

18 MR. GOWER: Well, okay.

19 I think in my mind it's fairly clear that there would
20 be a violation because the tax rule operates to retroactively
21 adjust a company's base rates. Base rates, just in general,
22 cover the nonfuel operations and maintenance expenses,
23 depreciation, return and the income taxes on return.

24 Now, everyone, I think, has agreed that when the
25 Company's base rates were set in their last case, that insofar as

1 that plant financed with investment tax credit is concerned,
2 there had to be a return allowed at the overall cost of capital
3 rate. If the rule were changed to use a zero cost for ITC, what
4 that would do is retroactively reverse what had previously been
5 allowed for the return on investment tax credit in accordance
6 with the IRS regulations, and I think that is just so clear that
7 something must be allowed when rates go up it can't be taken away
8 in another fashion. So that was the basis for my position on the
9 violation.

10 COMMISSIONER HERNDON: Mr. Gower, let me ask you a
11 question on this proposal. Do I read this correctly to say that
12 upon receipt of a ruling, the ruling would apply prospectively
13 only, and not retroactively, or how do you intend it to apply?

14 MS. CAUSSEAU: Commissioner, when we had the AFUDC
15 rule changed to do very much the same thing. The companies
16 agreed to a date, say, today, that once a ruling was received,
17 the change would be made at the point in time, or say the future
18 agenda, that the Commission chose to treat it that way, and the
19 companies verbally agreed during that rule hearing to apply it
20 from that rule hearing, I think it was, forward, or from the
21 agenda when the Commission chose to do it forward.

22 So I would hope that it would be an agreement by the
23 company that they would apply it from some point in time forward
24 when you -- if you did chose to do that, you know, said, "At this
25 agenda we choose to do it at a zero cost if it does not violate

1 --" and they would go to that date.

2 COMMISSIONER EASLEY: How would the calculation then
3 for the dollar amount, for either refund or rate reduction or
4 whatever, then be made, in a two stage -- what would be the
5 change, assuming IRS gave you the ruling you expected to get?

6 MS. CAUSSEAU: Actually, come to think of it -- wait
7 just a second. (Pause)

8 I think Public Counsel's emergency rule would make it
9 effective January some point in time. Actually, maybe the
10 calculation would be based on that date. That has been
11 challenged. But if that challenge fails, and if the IRS says
12 it's okay, then the date that the emergency rule became effective
13 would be the date that this would be effective.

14 COMMISSIONER EASLEY: Let me ask that a different way.

15 COMMISSIONER HERNDON: I didn't understand that answer.

16 COMMISSIONER EASLEY: I didn't either.

17 COMMISSIONER HERNDON: Even though it wasn't the answer
18 to the question, I still didn't understand it.

19 COMMISSIONER EASLEY: I may need to ask another
20 question to find out what you said, but let's say that we decided
21 there was \$35 million at issue. If you use a zero tax, the zero
22 cost rate on the ITC, that would affect the 35 million.

23 MS. CAUSSEAU: If the tax savings is \$35 million, the
24 use of the ITC cost rate would determine how much of the 35
25 million would be --

1 COMMISSIONER EASLEY: All right. Would you ahead of
2 time say, "Okay, we'll figure it out all three ways. We'll
3 figure it out based on zero cost rate; we'll figure it out based
4 on IRS saying, "No, you can't use a zero cost rate," and then
5 pending receipt of the ruling, we're going to be using a weighted
6 average overall cost, so we'll figure it out that way in case."

7 MS. CAUSSEAU: The weighted average overall cost would
8 be what would happen if the IRS said "No."

9 COMMISSIONER EASLEY: So there is only two. But would
10 we do that ahead of time so we would know, pending whatever that
11 date is, so that everybody would know what it's going to be?

12 MS. CAUSSEAU: I don't think it would matter whether
13 you did it ahead of time or after the fact.

14 COMMISSIONER EASLEY: Is it clear that you could?

15 MS. CAUSSEAU: Yes, you could calculate it ahead of
16 time under both methods, and they could have the contingent
17 liability to refund the additional amount.

18 COMMISSIONER EASLEY: Okay. Thank you. I don't know
19 how to ask her the question about the other answer.

20 MS. CAUSSEAU: I think what I just said was the
21 contingent liability -- would be the start date of the contingent
22 liability; whether that starts with Public Counsel's emergency
23 rule or with something you do in the future.

24 COMMISSIONER EASLEY: Got it.

25 COMMISSIONER GUNTER: Mr. Gower, let me ask you one

1 additional piece based on your response to Mr. Willis' question.

2 If there was -- understand the risk, but with Staff's
3 proposed language on the Internal Revenue Ruling Request, assume
4 that the request -- you went in and you asked and they said, "No,
5 it has to carry the overall cost." Haven't you eliminated the
6 risk with the addition of eight, the risk of loss?

7 MR. GOWER: Yes, I think it would.

8 COMMISSIONER GUNTER: Okay. All right. I think we
9 understood the first piece about the risk. But I don't think you
10 carried forward into your observations on Staff's proposed
11 addition. Wouldn't that sort of eliminate your belly-twitch?

12 MR. GOWER: Yes. You're correct. I never got to
13 responding to the original question.

14 COMMISSIONER GUNTER: Okay. Go ahead.

15 MS. MILLER: Our only other question is how Mr. Gower
16 would calculate the tax savings under his proposed method.

17 MR. GOWER: Would you like for me to elaborate on that?

18 MS. MILLER: Please.

19 MR. GOWER: The basic mechanics of the calculation that
20 I envision would be the same as they are now, except that instead
21 of waiting until a year has closed, a filing would be made based
22 on the most recent 12-month data that is reasonably available,
23 and when I say reasonably available, that may vary from one
24 company to another. If the Commission were holding a hearing in
25 July, it would not be reasonable to have 12 months ended June

1 data. It might be some date earlier than that.

2 Based on that 12 months ended data, the calculation
3 would be made the same as it is now. In other words, before the
4 tax rate change, after the tax rate change, the affect on
5 realized returns would be calculated and that would be translated
6 into a revenue number. Is that responsive to what you're asking?

7 MS. MILLER: Yes, I believe so. Also Commissioner
8 Gunter's concept on a more direct flow-through. How would the
9 calculation work under that method?

10 MR. GOWER: As I understood Commissioner Gunter's
11 question, it was posed in the context of going back to the
12 exhibits in the most recent rate case for each company,
13 recalculating revenue requirements, old tax rate versus new tax
14 rate. That then would be translated into the affect on earnings,
15 and if that produced a figure different from the allowed return
16 in the previous case, then the revenue effect of that would be
17 calculated. The difference is between the proposition that
18 Commissioner Gunter stated, and the proposition that I put forth
19 is how fresh the data is.

20 COMMISSIONER BEARD: I understood what you said is what
21 he said, up to a point. Once you went back to the last rate case
22 and calculated the revenue difference, either greater or smaller,
23 then you either reduced or increased rates appropriately at that
24 point. Then if there were an underearning or overearning
25 posture, then the company or the Commission or Public Counsel

1 would have a decision to make.

2 MR. GOWER: Yes, sir.

3 COMMISSIONER BEARD: I thought I heard you say that you
4 would take a look at what a reduction in rates or an increase in
5 rates would do to you, and if you were in an overearning or
6 underearning posture you would do something. Maybe it's
7 semantics.

8 MR. GOWER: I believe it's the later, Commissioner. I
9 did not intend to imply that under my proposal it would a
10 dollar-for-dollar pass-through. You'd have to run it through the
11 earnings test.

12 COMMISSIONER BEARD: We're talking about Commissioner
13 Gunter's proposal.

14 MR. GOWER: Well, and in stating my understanding of
15 Commissioner Gunter's proposition I understood it to be that same
16 kind of test, except that it would be based on the earlier rate
17 case data.

18 COMMISSIONER BEARD: To me there is a significant
19 difference between reducing rates or increasing rates and then
20 somebody has got a decision to make, or you look at what that
21 reduction or increase would do against earnings and then make
22 some decisions.

23 MR. GOWER: Well, I think that's inherent in either
24 Commissioner Gunter's proposition, or the suggestions which I
25 make.

1 The idea is to shift the regulatory lag, if you will,
2 from the income tax calculation to the all-other-issues area, and
3 as I stated Commissioner Gunter's calculation would work. The
4 degree to which an over-or underearnings situation might be
5 increased would be based on how many changes have occurred since
6 that last rate case.

7 COMMISSIONER BEARD: Well, therein lies my problem.
8 Let's hold tax rates constant for a moment, and you have these
9 potential changes that occur. If you have inflation or deflation
10 in large degrees, or you have changes, significant changes in
11 equity requirements and these kind of things, what happens?

12 MR. GOWER: Well, then it's incumbent upon the company
13 or the Commission to file a general rate application.

14 COMMISSIONER BEARD: Exactly. And that's independent
15 of any change in expenses, whatever it maybe; personnel expenses.
16 I mean if you had a large enough increase in expenses, then you'll
17 have the same thing.

18 MR. GOWER: Yes, sir. (Pause)

19 MS. MILLER: No further questions.

20 MS. KAUFMAN: No questions.

21 MR. HORTON: No questions.

22 MR. WATSON: I have one. And since we're informal
23 here I might ask Commissioner Gunter first to indicate whether
24 Mr. Gower's understanding of your proposal was correct.

25 COMMISSIONER GUNTER: He was close. Because if you

1 recall, when I asked the what if, said, you know, if you were
2 overearning and one of the pieces I put in there -- now, assume
3 you were running along and you changed the tax rate and that put
4 you in overearnings; I did say, you know, that one of the options
5 that would be available to the Commission would be a reverse
6 make-whole; if in fact, a change in the tax rate, automatically
7 the day it happened you went in and calculated it, and if it put
8 the company in underearnings, they could come in and ask for a
9 revenue requirements proceeding. That's the reason I say we're
10 pretty close in understanding, because I think then the burden is
11 on both parties; on the downside, it's on the company, and on the
12 up side, to make sure that there is a revenue if there is an
13 overearning, that you -- a lot of options are available and the
14 calculation -- see, one of the things I'm trying to think about
15 is to simplify this process just in my head, and Staff could
16 calculate, could go back and calculate every company we regulate,
17 with the exception of water and sewer, in half a day. And the
18 next agenda it came to them, you can either protect money based
19 on the last Surveillance Report. From that point forward if you
20 found it necessary to go forward, with a reverse make-whole, or
21 the company is put on notice at that agenda conference, if they
22 are not willing to live with what they have got, they can come in
23 on a revenue requirement proceeding. You can do that all day.
24 It might take a little longer with 700-odd companies in water and
25 sewer, it's a doable proposition. I was just trying to think

1 about the alternative things. I think that's what we're here
2 about.

3 MR. WATSON: Your proposal would basically go back to
4 the last rate case and plug in a different --

5 COMMISSIONER GUNTER: Correct.

6 MR. WATSON: -- rate for taxes, recalculate everything
7 and implement a rate reduction based on the numbers you came up
8 with?

9 COMMISSIONER GUNTER: Sure.

10 MR. WATSON: Straight raw difference in tax expense.

11 COMMISSIONER GUNTER: Raw difference in taxes. Taxes
12 are an individual component. You come out with your revenue
13 requirement and then you gross up.

14 MR. WATSON: Right. And the only earnings test under
15 your method would be the earnings test in the rate case itself
16 used to determine revenue requirements.

17 COMMISSIONER GUNTER: Yeah. You met the burden at that
18 time period as far as that went. You had a revenue requirement,
19 obviously if you -- that's one of the pieces, that's one of the
20 reasons that doesn't trouble me, is you determined what the
21 revenue requirement would be that the company would live with
22 until those rates were changed; until that revenue was changed
23 and hopefully, in the electric business or your business, you
24 would have made a determination that your billing determinants
25 were reasonably close and that your projections were reasonably

1 close for the time period those rates were supposed to be in
2 effect. After then, after that process, is when you gross up for
3 taxes. So there's where I look at -- you'd have minimal harm to
4 the company. And I say minimal, because I think it is relatively
5 minimal. Is that the day they became effective you just change
6 that multiplier. Then if you found because of that multiplier
7 the company was in an overearning situation, it seems very simple
8 to me that you could put on notice that hey, prospectively from
9 this point forward, you know, you've got the burden to prove it
10 would not put you in an overearning situation. To me that's --
11 it may be radical as the devil, but it's the simple process of
12 getting through. You haven't changed that revenue requirements
13 piece. The only piece you're talking about is those taxes.

14 MR. WATSON: That's right. But this subsequent review
15 you're talking about, where you'd look at overearnings or
16 underearnings immediately after you had made that change, that
17 would be true even under Mr. Gower's scenario.

18 COMMISSIONER GUNTER: That's true.

19 COMMISSIONER BEARD: Let me run some simple math. I
20 have been struggling with this all morning.

21 If I have a company out there and they're earning
22 within their range, and I reduce a portion of their cost and
23 simultaneously reduce dollar for dollar the exact same amount of
24 revenue, how do I change their earnings posture? (Pause) I
25 don't know how. You were either already overearning, already

1 underearning, or you were earning within your range. If the math
2 -- and I'm trying to think if I missed a piece of that, I reduced
3 costs because I reduced the amount of taxes required to be paid.
4 Dollar for dollar I reduced revenue associated with that
5 simultaneously. I've reduced both sides of the equation
6 simultaneously equally; how do I change your earnings posture?

7 MR. GOWER: Could I respond to that, Commissioner?

8 COMMISSIONER BEARD: Please. I thought somewhere --
9 one time I thought I had in my mind how I could do it, but I
10 can't put it back together.

11 MR. GOWER: I think the reason is, that either under
12 Commissioner Gunter's proposal or mine, the calculation of the
13 revenue effect to the tax change would be based on some prior
14 period; perhaps recent, perhaps not so recent. And let's just
15 say we come up with a \$50 million change, up or down, and that
16 change were made to increase or decrease revenues, then in the
17 current situation, maybe immediately, maybe six months later, as
18 the company looks at the changes in the rate base investments,
19 the operating expense levels and so and so on, it may find
20 the \$50 million change, which was calculated and put into effect,
21 influences whether or not it is then currently earning over or
22 under the authorized return.

23 COMMISSIONER BEARD: What you're telling me is it was
24 probably time for a rate case anyway?

25 MR. GOWER: Yes.

1 COMMISSIONER BEARD: In all degree of probability,
2 within a gnat's hair of being slightly at the very bottom of an
3 earnings bracket and slipping into underearnings, or generally
4 speaking, you were very close.

5 MR. GOWER: Yes, assuming the effect of the tax rate
6 change is not a blockbuster, that yes, they were probably already
7 pretty close, I would agree with that.

8 COMMISSIONER EASLEY: Let me be sure I understand that,
9 because I think the light just dawned a little bit.

10 If the tax rate changed, say, in 1988, and you did the
11 calculation as Commissioner Gunter has explained, for 1988
12 Commissioner Beard would probably be right. There would probably
13 be little impact on earnings, but in 1989 there may be an impact
14 depending on other sets of circumstances, with or without a rate
15 case.

16 MR. GOWER: Exactly. And further, as I understood
17 Commissioner Gunter's proposal, the company's previous rate case
18 may have been 1985.

19 COMMISSIONER EASLEY: Exactly.

20 MR. GOWER: So circumstances would likely have changed
21 to some degree from 1985 to '88 or '89.

22 COMMISSIONER EASLEY: But the tax rate didn't change to
23 '88 so you would not go back to '85 -- well, even having said
24 that, you would be using the original tax case, 1985 figures, to
25 calculate the rate of tax in 1988 prior to the tax change, if I

1 say that right.

2 MR. GOWER: Perhaps if I restate that.

3 COMMISSIONER EASLEY: The taxable income that you're
4 going to be paying 46% on, was the taxable income based on the
5 parameters of the original rate case in 1985?

6 MR. GOWER: Correct.

7 COMMISSIONER EASLEY: So prior to the tax change it
8 really, in a way, doesn't make any difference when the last rate
9 case was as long as what I just said was true; that your taxable
10 income was based on that original rate case?

11 MR. GOWER: That's my understanding. That's correct.

12 COMMISSIONER EASLEY: So any change after the tax rate
13 change would have to have taken place either because of limited
14 proceedings or some kind of flow-through or some other change
15 from the original rate case.

16 MR. GOWER: Perhaps if I respond this way: If the
17 effect of the change in taxes, tax rates, is calculated based on,
18 let's say, 1985 data, an amount of revenue deficiency or excess
19 is calculated, between 1985 and today there obviously are changes
20 in the level of plant investments, it may be up or down;
21 operating expenses and so on. Now, whether that produces a
22 current earnings deficiency or excess depends upon the degree of
23 change.

24 COMMISSIONER EASLEY: But that's what the tax was based
25 on, was the taxable income at that point.

1 MR. GOWER: That's correct.

2 COMMISSIONER BEARD: You can go further than that. In
3 expanding -- in a grow state like Florida where you have
4 typically an expanding rate base, if you have a decrease in the
5 tax rate, then you are in the posture of most likely overearning
6 and vice versa; if you have an increase in taxes, you're more
7 likely to drive it to underearnings.

8 MR. GOWER: Yes, I think all those things being equal
9 that would likely be the result.

10 COMMISSIONER BEARD: In an expansion state.

11 MR. GOWER: Likely, that would be the result, depending
12 on how far back one went to make the calculation.

13 COMMISSIONER BEARD: Length of time and changes
14 associated with that.

15 MR. GOWER: And I guess I would just add that -- just
16 on that premise, using the more recent data, may be more
17 attractive because it would tend to produce less of an over-or
18 underearning.

19 COMMISSIONER BEARD: The problem when you introduce
20 more recent data, which data do you introduce? And that's what
21 we have been going through with the current rule is we not only
22 debate the data, we debate what data to use.

23 MR. GOWER: I understand.

24 COMMISSIONER EASLEY: Well, the big problem with the
25 current rule as I see it is we try to use it to adjust other

1 things that may or may not have anything to do with the rule.

2 MR. GOWER: Exactly.

3 MR. WATSON: Having clarified Commissioner Gunter's
4 proposal, I was going to ask another question based on that
5 clarification. I've decided not to ask it because I think it
6 might create even more confusion, so I have no further questions.

7 (Laughter)

8 COMMISSIONER GUNTER: Mr. Beck?

9 MR. BECK: No questions.

10 COMMISSIONER GUNTER: Commissioners. Thank you, sir.
11 Appreciate it.

12 COMMISSIONER BEARD: You didn't want to create more
13 confusion but you certainly stimulated more debate.

14 COMMISSIONER GUNTER: Mr. Horton, have you got anymore?
15 Mr. Willis?

16 MR. WILLIS: No.

17 MR. HORTON: We have none.

18 MR. STONE: Nothing.

19 COMMISSIONER GUNTER: Have you got any comments you
20 want to make?

21 MR. STONE: Our comments on the investment tax credit
22 are pretty well set forth in our written comments, and we support
23 Mr. Gower's testimony in that regard. We also feel that the
24 other aspects of the rule that Mr. Gower has commented on, we're
25 supportive of that.

1 Our main concern with the present rule -- the problem
2 with the present rule is the fact that people have been trying to
3 advocate uses of mechanisms that go beyond the tax effects, and
4 on a retroactive basis. And we think that any movement to -- in
5 that regard would just create further problems and would detract
6 from the original intent of the rule and what we think the
7 Commission's proper intent behind the limited scope proceeding of
8 this tax savings docket would be. That's all we have at this
9 point.

10 COMMISSIONER GUNTER: What's Gulf's feelings about the
11 proposed amendment that Staff passed out, the one page?

12 MR. STONE: Are you talking about Paragraph 8(a) and
13 (b)?

14 COMMISSIONER GUNTER: Yeah.

15 MR. STONE: We believe that would accomplish the intent
16 we were asking for in terms of the letter ruling.

17 COMMISSIONER GUNTER: All right.

18 MR. WATSON: Except for the portions of Mr. Gower's
19 testimony dealing with the rule's proposed assignment of a zero
20 cost rate to ITC, Peoples Gas System's positions on the issues
21 would be basically the same as those expressed in Mr. Gower's
22 testimony. We have no position on the ITC issue because we're an
23 Option 1 rather than an Option 2 company. It has no affect on
24 us. We would also endorse Mr. Gower's suggestions for
25 improvement of the rule that are set forth at the end of his

1 testimony.

2 COMMISSIONER GUNTER: Mr. Willis, when are we going to
3 get the specific wordage changes that you all would recommend to
4 the rule?

5 MR. WILLIS: I just proposed to send it in our
6 posthearing statement.

7 COMMISSIONER GUNTER: Is that all right?

8 MS. MILLER: That sounds very good. That will be
9 helpful.

10 COMMISSIONER EASLEY: Mr. Watson, would your Company
11 also subscribe to Mr. Gower's position that first, leave the rule
12 the way it is; two, repeal the rule; three, write it the way
13 Staff has recommended it? In that order.

14 MR. WATSON: I think his first preference was to --

15 COMMISSIONER EASLEY: Well, with certain changes.

16 MR. WATSON: -- take the rule as it with the suggested
17 changes. Second, leave it alone. Yes. We would subscribe to
18 his order of priority in terms of what to do.

19 COMMISSIONER EASLEY: You'd rather have repeal than the
20 recommended version?

21 MR. WATSON: I don't believe Peoples could subscribe to
22 that portion of it, but again that ranking by Mr. Gower, if I
23 recall his testimony correctly, was because of the suggested
24 changes in treatment of the ITC and that does not impact Peoples
25 Gas. We like the rule as it is. I think the Commission needs a

1 tax rule that works the way this one has worked. I think you had
2 some other things other than taxes that have --

3 COMMISSIONER EASLEY: Which working of the rule now are
4 you endorsing? Has it worked the same way two times running?

5 MR. WATSON: I think the rule would work well the way
6 it is currently written, but for changes in other areas besides
7 taxes that have had an impact on the calculations required by the
8 rule.

9 COMMISSIONER EASLEY: Okay.

10 MR. WATSON: And I think the Commission has the power,
11 and has always had the power, to deal with those other
12 circumstances, whether you had a tax rule or not. I think you've
13 started doing that.

14 MR. PARKER: Commissioners, GTE Florida's concern also
15 is the investment tax credit aspect of the proposed rule
16 amendment, and the handout which the Staff gave out at the recess
17 for the private letter rulings resolves our concerns if that's
18 the way the Commission is going to go. Thank you.

19 COMMISSIONER GUNTER: All right. Mr. Beck?

20 MR. BECK: Thank you, Mr. Chairman.

21 We submitted comments on January 19th setting forth our
22 proposals.

23 We agree with the use of a current return on equity
24 instead of the last rate case return on equity. We also believe
25 and agree with Staff that ITC should be carried at zero cost

1 because that's the company's actual cost, and feel that is
2 consistent with IRS regulations. I believe it treats the
3 companies fairly and even-handedly in both an upside and downside
4 direction, because it uses the company's actual cost of capital
5 to determine the consequences in either direction.

6 We support FIPUG's comments concerning the use of the
7 term "refund" in the rule as well.

8 COMMISSIONER GUNTER: Mr. Beck -- and I know that
9 Public Counsel's position has been consistent on the return on
10 the ITC -- do you feel that -- what do you feel about the
11 proposed amendment that was handed out prior to break? Wouldn't
12 that put that question to bed once and for all, one way or
13 another?

14 MR. BECK: We have no objection at all to seeking the
15 ruling from the Internal Revenue Service. There is two concerns,
16 though. First of all, we need to put the money subject to refund
17 using a zero cost ITC to ensure that customers are protected
18 while this process goes forward.

19 COMMISSIONER GUNTER: That way neither party could be
20 harmed regardless of what the IRS did.

21 MR. BECK: More than that, it's our position, and it's
22 in our prefiled comments, that if the ruling came back from the
23 IRS saying that you could not use a zero cost, that we believe
24 the tax savings ought to be refunded in full, as I think
25 everybody has, you know, conceded you have that authority, and

1 that the companies not be allowed to collect any tax savings
2 deficiency. And the reason for that is that if the IRS did this,
3 they would be prohibiting you from using the company's actual
4 cost of equity or overall cost of capital to determine the
5 appropriate safety net for the companies. We think if they came
6 back on that, that would be fair to do.

7 COMMISSIONER BEARD: What about repeal of the rule?

8 (Pause)

9 MR. BECK: We're not in favor of repealing the rule.

10 COMMISSIONER BEARD: What about Commissioner Gunter's
11 -- as I understood his proposal -- or either I'm modifying it
12 that you go back to the last rate case, calculate the tax change,
13 dollar for dollar, and adjust rates accordingly, and then if they
14 are underearning they can file; if they are overearning, we take
15 them to court.

16 MR. BECK: Had that happened back on July 1, 1986, and
17 was applied equally at that time and going forward to everybody,
18 I don't think we'd have much of a problem with it. But it hasn't
19 been, and I think given that, we would prefer the proposed rule
20 rather than that.

21 COMMISSIONER BEARD: If I translate that correctly that
22 translates to you think there is a greater chance of a tax
23 increase than a tax decrease in the near-term future?

24 MR. BECK: Obviously that's on everybody's mind. But
25 on the other hand, Commissioner Gunter's as we think would be

1 fair, I believe, at least would be our position, it would be
2 fair, but it would have to apply in both directions. And it
3 wasn't on the big one going down, and that it wouldn't be fair at
4 this point now that that's happened and we're a number of years
5 since then to apply it if it should go up.

6 COMMISSIONER GUNTER: I thought about that, Mr. Beck,
7 and one of the things where I take some exception to is, I'm
8 sitting and I'll say something public that I had in my head, you
9 know, it's kind of an offset, because if the companies found
10 themselves in a revenue deficiency kind of situation, regulatory
11 alacrity -- regulatory alacrity -- I always heard of regulatory
12 lag -- regulatory alacrity would mean that that revenue would
13 take at least seven months. The law gives you eight months.
14 Would take you at least seven months to get it. So yeah, I
15 thought about that. I tried to think through that process and
16 say, you know, how does that work? So, you know, there is lag
17 and alacrity. I like to think that we move with alacrity. You
18 all think we move with lag.

19 COMMISSIONER EASLEY: Mr. Beck, on adopting FIPUG's
20 position on refunds, and not using the other language, "other
21 adjustments," do you also take refunds to mean refunds/rate
22 reduction?

23 MR. BECK: I believe our position on that is that
24 again, had that happened back in January or July of '86, we'd
25 have no problem with that. I believe Jack generally favors that,

1 that a rate reduction would be sufficient as well.

2 COMMISSIONER EASLEY: But only if we had done it in
3 July of '86?

4 MR. BECK: Wait a second. We'll get the real scoop
5 here. I believe so.

6 COMMISSIONER EASLEY: But as I understood FIPUG's
7 position, it was refund/rate adjustment was what they read into
8 the word "refund", even who it doesn't say that.

9 The question from Mr. Shreve was: Mr. Beck indicated
10 you adopted FIPUG's position on the rule change in not using the
11 language "other adjustments," and I was asking that if you don't
12 put the words "other adjustments" in the rule, do you also adopt
13 FIPUG's position that refund means refund/rate reduction?

14 MR. SHREVE: I would prefer to leave the words "other
15 adjustments" out. I wouldn't have a problem if you put in the
16 rate reduction in there.

17 COMMISSIONER BEARD: A rate change?

18 COMMISSIONER EASLEY: Well, refund and rate reduction
19 would go together.

20 MR. SHREVE: I see what you're saying, if it went the
21 other way what would you do. But refund and rate reduction would
22 be the two terms. The refund wouldn't fit if you were going up,
23 but -- which is what you're saying.

24 COMMISSIONER EASLEY: Yeah. But you have no problem
25 having refund and rate reduction being almost interchangeable to

1 the decision making process?

2 MR. SHREVE: No. As long as we're talking about doing
3 it on a prospective basis, then we could talk rate reductions.

4 COMMISSIONER EASLEY: I understand.

5 MR. SHREVE: The problem we have had in the past, we
6 weren't talking about a prospective basis; we were talking about
7 things that had gone by, and we were in the position of having to
8 make refunds.

9 As far as there being a rate reduction of an equivalent
10 amount, I wouldn't have a problem with it.

11 COMMISSIONER EASLEY: Okay. Thank you.

12 COMMISSIONER GUNTER: All right. Staff?

13 MS. MILLER: We don't have anything further.

14 COMMISSIONER GUNTER: I'm going to run down the road.
15 Public Counsel. Have you got any questions of Public Counsel's
16 comments?

17 MS. MILLER: No questions.

18 MS. KAUFMAN: No questions.

19 MR. CHILDS: I have no questions, but I have a few
20 comments when it's appropriate.

21 COMMISSIONER GUNTER: I'll give you opportunity to make
22 a closing statement, is that how you're going to characterize it?

23 MR. CHILDS: No, sir, it really is not a closing
24 statement, but I think there was a statement that I believe that
25 Public Counsel said that --

1 COMMISSIONER BEARD: Not suttlely placed either.

2 (Laughter)

3 MR. CHILDS: I even missed the question or the hint.

4 I think there was a statement, Commissioners, that
5 everyone concedes the Commission has the authority to refund in
6 full. Just so the record is clear, we don't, and we don't simply
7 because what we're suggesting, what I was trying to suggest in
8 questions to Staff, is that it seems that you should look to the
9 overall impact of the adjustment up or down. And Commissioner
10 Beard asked some questions, and I think they are on point, that
11 to the effect that you might end up earning at that level anyway,
12 what is the result of the tax savings refund? And what I would
13 like this Commission to understand is, is that you have a
14 procedure in place, through the tax rule, which would reflect on
15 a retroactive basis the impact of changes in the tax rates so
16 that you can go back and reach prior period. You have no such
17 mechanisms with respect to a change in rates. That means that,
18 for example, under your interim rate statute, that if you chose
19 to apply the rule this way, for tax savings you could go back to
20 the prior period a the utility could not. All it could do is to
21 attempt to reflect a going-forward change, reflecting the results
22 of the prior year. So it's got a year where its results would be
23 impacted, and it couldn't do anything about it.

24 COMMISSIONER GUNTER: All right. Cindy?

25 MS. MILLER: I had originally suggested that we, after

1 initial statements, go issue by issue. I think we've covered
2 everything, unless anyone disagrees.

3 We have several other opportunities for people to file
4 additional points. The posthearing filings are due February
5 19th. Staff will come out with a proposed final version, and
6 people will have another opportunity to file comments and then we
7 come back to you at agenda, if all goes as planned, on April 17th
8 for final agency action.

9 MR. WILLIS: One thing, Cindy, that you should take
10 into account is the date you have in your language, March 15th.

11 MS. MILLER: Yes.

12 MR. WILLIS: It should come after the rule's adopted
13 rather than before.

14 MS. MILLER: I see your point. If this rule and this
15 language does not take effect until -- essentially we're looking
16 at May 14th, okay, we will take that into consideration.

17 MR. WILLIS: Okay.

18 COMMISSIONER GUNTER: Thank you. All right. Thank you
19 all for coming.

20 (The hearing concluded at 11:35 a.m.)

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Company/witness: staff

Date: 2/1/90

DOCKET NO. 891278-PU
COMPOSITE EXHIBIT NO. 1

INDEX

1. Proposed Rule 25-14.003.
2. Order No. 22237, Notice of Rulemaking. Issued November 30, 1989.
3. Statement of facts and circumstances justifying the rule; statement of federal standards; and statement of impact on small business, as provided to the Joint Administrative Procedures Committee.
4. Memorandum from Division of Research to Appeals. Re: Economic Impact Statement, dated September 25, 1989.
5. Tampa Electric Company's Request for Hearing. Filed December 20, 1989.
6. Central Telephone Company's Request for Hearing. Filed December 21, 1989.
7. Gulf Power Company's Request for Hearing. Filed December 22, 1989.
8. Florida Power and Light Company's Request for Hearing. Filed December 22, 1989.
9. GTEFL's Request for Hearing. Filed December 22, 1989.
10. Order No. 22354, Notice of Procedures to be Followed at Rulemaking Hearing. Issued December 29, 1989.
11. Florida Industrial Power Users Group (FIPUG) Notice of Appearance. Filed January 5, 1990.
12. Hugh A. Gower testimony, on behalf of Florida Power and Light Company and Tampa Electric Company. Filed January 19, 1990.
13. Central Telephone Comments. Filed January 19, 1990.
14. GTEFL's Comments. Filed January 19, 1990.
15. Citizens of the State of Florida Comments. Filed January 19, 1990.
16. FPSC Staff Comments. Filed January 19, 1990.

1 25-14.003 Corporate Income Tax Expense Adjustments.

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

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

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

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

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

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

28 (f) "Midpoint." The midpoint of the range of rate of return
29 calculated as the weighted average cost of capital for the period
30 of time covered by the tax adjustment report required in
31 subsection (4). The weighted average cost of capital shall be

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1 calculated using the current embedded cost of fixed rate capit...
2 the actual cost of short term debt, zero cost for all investment
3 tax credits, the cost of common equity that is the most recent
4 Commission approved return on equity, and the actual cost of other
5 sources of capital. The capital structure used shall be the
6 company's actual capital structure adjusted to reflect all
7 regulatory adjustments. ~~of return approved by the Commission in~~
8 ~~the utility's last rate case, adjusted for the cost of any debt~~
9 ~~issued subsequent to the rate case and prior to the commencement~~
10 ~~of a tax savings refund or tax deficiency collection.~~

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

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

21 (b) When, during the reporting period described in paragraph
22 5(a) below, a utility or regulated company is earning a rate of
23 return which is below the midpoint of its authorized range
24 computed in accordance with subsection (1)(f) and without
25 consideration of a tax rate reduction, the utility or regulated
26 company shall make an adjustment approved by the Commission or
27 refund only those associated revenues which cause the utility or
28 regulated company to earn in excess of that midpoint, as described
29 in paragraph 5(c).

30 (3) Tax Deficiency Collections or Other Adjustments Approved
31 by the Commission. In accordance with subsection (5) of this rule

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1 and using a calendar year as the basis of the calculation:

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

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

18 (4) Reporting Requirements. Following a tax rate change,
19 each utility or regulated company shall furnish a report, on the
20 form prescribed by the Commission, Form PSC/AFA 1 (), which is
21 incorporated into this rule by reference. Form PSC/AFA 1 (),
22 entitled "Rule 25-14.003 Corporate Income Tax Expense Adjustments",
23 was effective () and may be obtained from the Commission's
24 Division of Auditing and Financial Analysis. A utility or
25 regulated company is not precluded from providing tax adjustment
26 information of its choice in addition to that prescribed by Form
27 PSC/AFA 1 (). The report shall be required each year until the
28 utility's or regulated company's rates and charges are adjusted to
29 reflect the newly effective tax rate. On-or-before-March-1st-of
30 every-year-following-a-tax-rate-change,-each-utility-or-regulated
31 company-shall-furnish-a-final-report,-in-the-form-prescribed-by-

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1 ~~the Commission.~~ The report shall cover only the prior calendar
2 year and shall be due on or before fifteen days after the due
3 date, including authorized extensions, of the Annual Report
4 required by Rules 25-4.018, 25-6.014, 25-7.014, and 25-30.110.
5 ~~during which the tax rate change was effective:~~

6 (5) Procedures.

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

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

23 (c) Together with the final report described in subsection
24 (4) of this rule, each utility or regulated company shall file a
25 petition containing a calculation of and the method for
26 refunding, ~~or~~ collecting or otherwise disposing of any tax
27 savings or deficiency for the tax year of the report. The
28 Commission will review and evaluate the petition and supporting
29 data, and either approve it, approve it with modification, or deny
30 it; an opportunity for a hearing on the Commission's decision will
31 then be provided, if requested. ~~Thereafter, the~~ The utility or

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1 regulated company shall either make the refund to or collect the
2 deficiency from its existing customers in accordance with
3 paragraphs (e) and (f) of this subsection, or make another
4 adjustment as directed by this Commission.

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

11 (e) The utility or regulated company may make any refund or
12 collection either as a lump sum payment or billing or in monthly
13 installments not to exceed twelve (12) months. Such refunds shall
14 be made in accordance with Rules 25-4.114, 25-6.109, 25-7.091, and
15 25-30.360. or Such collections shall be made to or from current
16 customers of the utility or regulated company at the time that
17 such refunds--or collections are to be effected. In--either
18 event--the The utility or regulated company shall refund or
19 collect the amount with interest accruing on any outstanding
20 balance from the date of overcollection or underpayment.
21 ~~Interest--shall--be--set--by--the--Commission~~ The date of
22 overcollection or underpayment shall be the later of the date the
23 tax rate change was effective or the first of the year for which
24 the report is being filed. If a tax rate change was phased in
25 over a period of time, then the date of overcollection or
26 underpayment shall be the later of the date when tax rate change
27 was effective or the date the the effect of the tax rate change
28 was recognized as such by use of a blended tax rate. If the
29 utility or regulated company is unable to show when over-
30 collections or underpayments occurred, then the tax savings or tax
31 deficiency shall be assumed to have occurred evenly over the

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1 twelve (12) months covered by the tax adjustment report. Interest
2 on refunds, collections, or other Commission approved adjustments
3 shall be calculated in accordance with the interest calculation
4 provisions of Rules 25-4.114, 25-6.109, 25-7.091, and 25-30.076.
5 Interest shall not accrue on franchise fees, utility taxes, sales
6 taxes, or excise taxes.

7 (f) For an electric utility, other utility, or regulated
8 company, shall--determine each customer's share of refund or
9 collection shall be determined on a basis that fairly and
10 equitably reflects the income taxes embodied in rates for the
11 utility's or regulated company's various customer classes, or on
12 any other fair and reasonable basis approved by the Commission on
13 a-kilowatt-hour-basis. A telephone company shall determine each
14 customer's share of refund or collection based on existing general
15 residence and business local rate relationships. Other utilities
16 shall determine each customer's share of refund or collection
17 based on consumption or any other reasonable basis specified in
18 the utility's or regulated company's petition and approved by the
19 Commission.

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

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

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1 addressed in such proceedings.

2 ~~(D) Nothing in this subsection shall be construed as~~
3 ~~limiting the operation of the tax expense adjustment process~~
4 ~~under this rule either in completing a~~ A ~~tax savings~~
5 ~~refund, or tax deficiency collection or other Commission~~
6 ~~approved adjustment already in progress for any tax years prior~~
7 ~~to the year in which a rate case or earnings review proceeding~~
8 ~~show--cause is initiated; shall be completed. This~~
9 ~~subsection~~ It shall also not prohibit a tax savings refund,
10 or tax deficiency collection or other Commission approved
11 adjustment for any tax year or portion thereof ending prior to the
12 final order in a rate case or earnings review ~~show--cause~~
13 proceeding.

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

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

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

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

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