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**ORIGINAL
FILE COPY**

March 21, 1990

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

Docket No. 891278-PU

Dear Mr. Tribble:

Enclosed for filing please find the original and fifteen (15) copies of Florida Power & Light Company's Comments on Staff's Proposed Versions of the Rule in the above referenced docket.

Respectfully submitted,



Matthew M. Childs, P.A.

- ACK
- AFA
- APP
- CAF
- CMU
- CTR
- EAC
- LEGMCC/eg
- LIN cc: All Parties of Record
- OPC
- RCH
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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Amendment of Rule 25-14.003,))
F.A.C., Corporate Income Tax Expense))
Adjustment: Midpoint and Additional))
Changes))

DOCKET NO. 891278-PU
FILED: MARCH 21, 1990

FLORIDA POWER & LIGHT COMPANY'S COMMENTS
ON STAFF PROPOSED RULES

Florida Power & Light Company in accordance with the instructions of Staff's Memorandum dated February 23, 1990, hereby files its Comments on the Proposed Rule in Docket No. 891278-PU.

Company Position

The Company believes that the proposed version of Rule 25-14.003, F.A.C., discussed during the January 29, 1990, hearing by Mr. Gower and provided as Exhibit 1 to the Posthearing Statement of Tampa Electric Company is the most reasonable and fair way for the Commission to give effect to changes in income tax rates. Also, absent implementation of Mr. Gower's proposed rule, the Company would recommend repeal of the Rule as proposed in Staff Version B.

Comments on Staff's Proposal

The following comments relate to Version A as proposed by Staff:

Staff proposes to use a zero cost rate for Investment Tax Credits (ITC) in determining the weighted average cost of capital. Such a change is inappropriate for the following reasons.

It introduces an element that is totally unrelated to the effects of income tax rate changes.

It produces a result that lacks fairness in that it will always be a one-sided adjustment, i.e., it will reduce collections of income tax expense when income tax rates are increased; and will increase tax savings refunds when income tax rates are reduced.

It is likely to result in a violation of the ITC normalization requirements of the Internal Revenue Code.

Staff proposes to use the "cost of common equity annually approved for the utility" in determining the weighted average cost of capital. The establishment of an appropriate cost of common equity is a complex undertaking that should not be determined in a limited scope proceeding. The appropriate cost of common equity for use in determining the weighted average cost of capital for purposes of calculating tax savings is the cost determined in the last general rate proceeding. Moreover, the proposed Rule is silent as to when the annual

determination of the "cost of common equity" will be made and how the determination will be made. This latter defect is particularly important if consistency and due process are to be preserved.

Staff proposes to expand the permitted disposition of Tax Savings Refunds (Deficiencies) to include "Other Adjustments Approved by the Commission." We support giving the Commission flexibility in dealing with the disposition of Tax Savings (Deficiencies); however, the final rule should clearly indicate that the "adjustment" referred to in paragraphs (3)(a) and (3)(b) and the "other adjustments" referred to in paragraphs (4)(a) and (4)(b) refer to the manner in which the Tax Savings (Deficiency) is disposed of versus the manner in which it is determined.

Staff proposed to include under the procedures portion, paragraph (6)(c), a reference to "evaluate" and "supporting data". The final rule should make it clear that the purpose of the proceedings under the Rule is to utilize actual data for a past period to determine the amount of tax savings (deficiencies) actually realized and that the rule does not represent the appropriate forum to introduce issues normally associated with a rate case (e.g. benchmark adjustments, going forward adjustments, nonrecurring expense adjustment, etc.). Otherwise, the administrative convenience of the rule will be lost in lengthy proceedings.

Section 9(a) of the rule may be unworkable without added clarification. There, it is provided that pending receipt of a ruling from the IRS the cost of capital shall be calculated in a manner consistent with IRS Regulation S.1.46-6. Already, however, there has been dispute as to what this Regulation requires. FPL believes the interpretation advanced by the Office of Public Counsel is wrong and the question is the reason for the ruling request from the IRS. Absent revision, however, the Rule would not preserve the status quo; it would only preserve the uncertainty.

The following comments relate to Version C as proposed by Staff:

The calculated base rate change due to a change in income tax rates, is based on the data used when a utility's base rates were last set. This calculation which may be based on very old data, as in the current case of Florida Power & Light Company, could result in a base rate change that has no resemblance to the amount of tax deficiency or savings produced by an income tax rate change on current operating results.

The use of billing units from when base rates were last set would further distort the amount of the current base rate change. The base rate change generated from this calculation could far exceed the actual effect of the change in income tax rates.

The definition of factor "K" in paragraph (4) should be expanded to include reference to a "required rate increase" in addition to the "required rate decrease." Also, the formula for "K" should include reference to the appropriate expansion factor.

Paragraph four (4) only addresses changes in the federal corporate income tax rate. The Rule should be expanded to include both state and federal corporate income tax rate changes.

The version of the Rule proposed by Mr. Gower would produce results that are reasonable and fair. Like Staff's proposed Version C, Mr. Gower's proposal provides for immediate recognition of an income tax rate change in the utility's base rates and thus avoids the regulatory lag and the costs of hearings that result from a Rule that provides for annual refunds or collections. However, unlike Staff's proposal, Mr. Gower's proposal would also provide for more stability in base rates since the calculation is based on current financial data, and 2) would limit the adjustment of base rates solely to the effects of a change in the income tax rates.

Respectfully submitted,

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Attorneys for Florida Power
& Light Company

By: 
Matthew M. Childs, P. A.

CERTIFICATE OF SERVICE
DOCKET NO. 891278-PU

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Comments on Staff's Proposed Version of the Rule in the above referenced docket have been furnished by U. S. Mail and Hand Delivery to the following individuals on the 21st day of March, 1990.

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