

FLORIDA PUBLIC SERVICE COMMISSION

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M E M O R A N D U M

April 5, 1990

TO : DIRECTOR OF RECORDS AND REPORTING

FROM : DIVISION OF APPEALS (MILLER) *CM*  
DIVISION OF AUDITING AND FINANCIAL ANALYSIS (DEVLIN, CAUSSEAUX) *apc*  
DIVISION OF COMMUNICATIONS (MAILHOT) *JS*  
DIVISION OF ELECTRIC AND GAS (MCCORMICK, SLEMKEWICZ) *JS*  
DIVISION OF RESEARCH (HOPPE, HEWITT) *CBH*

RE : DOCKET NO.: 891278-PU

CASE: AMENDMENT OF RULE 25-14.003, F.A.C., CORPORATE INCOME TAX  
EXPENSE ADJUSTMENT: MIDPOINT AND ADDITIONAL CHANGES

AGENDA: 4/17/90 - CONTROVERSIAL AGENDA - PARTIES MAY NOT PARTICIPATE

PANEL : FULL COMMISSION

CRITICAL DATES: NONE

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ISSUE AND RECOMMENDATION SUMMARY

ISSUE 1: Should the Commission make revisions to Rule 25-14.003, F.A.C.?

RECOMMENDATION: Staff recommends Alternative B, repeal of the rule. If, however, the Commission wishes to retain the rule, staff recommends Alternative A.

Alternative A: Yes. The Commission should make the revisions proposed in the Florida Administrative Weekly, plus make use of the zero cost investment tax

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credits (ITC), contingent on a private letter Internal Revenue Service (IRS) ruling and add the word "annually" to the return on equity determination. The form is incorporated by reference.

Alternative B: Yes. The Commission should revise the rule by repealing it.

Alternative C: Yes. The Commission should revise the rule by requiring a direct flow-through based on the Federal Energy Regulatory Commission (FERC) model.

ISSUE 2: After the rule revision becomes effective, may this docket be closed?

RECOMMENDATION: Yes. The docket should be closed after the revised rule is filed with the Department of State and becomes effective.

#### CASE BACKGROUND

In Docket No. 861190-PU, the tax rule was repealed as to application to the water and wastewater industries. This repeal became effective January 1, 1990.

In Docket No. 891296-PU, an emergency tax rule was adopted. It became effective January 1, 1990, and terminated after 90 days. The emergency tax rule contained the identical language to that in Alternative A, before the addition that the zero cost ITC should be made contingent on an IRS private letter ruling, and the word "annually" to the return on equity (ROE) determination.

In Docket No. 891278, the Commission voted to initiate rulemaking; and the Notice of Rulemaking was published in the December 1, 1989, Florida Administrative Weekly. The Commission received requests for a rule hearing

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from Tampa Electric Company (TECO), Central Telephone Company (Central), Gulf Power Company (Gulf), Florida Power and Light Company (FPL), and GTE Florida (GTEFL). The rule hearing was held before the Commission January 29, 1990. The issues primarily related to the zero cost investment tax credit (ITC), the return on equity established outside of a rate case, and the options of repeal or a direct flow-through. The detailed description of the comments is provided in the next 12 pages. (The staff discussion resumes on page 14.)

#### Prehearing Comments

In prehearing comments, Gulf stated that the proposal to assign a zero cost to the company's investment tax credit, would violate the normalization provisions of Internal Revenue Code section 36 and underlying Regulation section 1.46-6, thereby subjecting the utility to the recapture of all unamortized investment tax credits. Gulf recommended that such a revision not be implemented, or in the alternative that a private letter ruling be requested from the IRS prior to subjecting any company being subjected to the provision of the proposed rule.

FPL and TECO filed the testimony of Hugh Gower which stated that it is inappropriate to assign zero cost for all investment credits; that it is inappropriate to use the most recent Commission-approved return on common equity in the calculation of the weighted average cost of capital; that it is improper and inconsistent with the intent of the rule to exclude nonrecurring operations and maintenance (O&M) expenses from the earnings calculation; and that it is inappropriate to incorporate the O&M expense benchmark methodology as a component of the rule. Gower acknowledged that the rule has not operated as originally intended. Yet, he questioned the addition of new issues in the 3952G

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rule. "Critical issues such as the proper level of return on common equity have not previously been subject to annual adjustment based on limited scope hearings." He suggested that inclusion of other issues in a limited scope proceeding like the tax rule "creates a real risk of inconsistent application of Commission ratemaking policy." He lists several reasons that consistency in ratemaking procedures is necessary. One reason is that "because the rule involves adjusting rates for prior periods, consistency in its application is essential to avoid undue financial risk from retroactive ratemaking and so that utilities can properly account for the expected effect in the applicable year and fulfill their external reporting obligations."

Regarding the return on equity, Mr. Gower stated that it would be difficult to successfully take sufficient evidence to set appropriate common equity return within the confines of a limited scope proceeding. He states that the issue is "uniquely complex, interrelated with and affected by many other mandates."

Finally, Mr. Gower disagreed with the proposed exclusion of nonrecurring elements from the earnings calculation. He says it ignores the difference between a general rate case which is designed to establish future rates based on total revenue requirements and a limited scope proceeding such as the tax rule which is "designed to approve a refund or to collect a shortfall of actual prior periods' base rates attributable to one specific element of cost of service." If nonrecurring expenses, says Mr. Gower, are always excluded for ratemaking purposes, utilities would never earn their authorized returns.

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Mr. Gower also addressed the form which was incorporated by reference into the rule. He objected to the calculation of the O&M benchmark in the form. He said that such codification of the O&M benchmark tool would provide an implication that Commission policy had changed to use the O&M benchmark as more than just an analytical tool.

After endorsing the current rule, Mr. Gower did suggest improvements. He said the rule should be amended so that rate increases or decreases would be coincident with the date income tax rate increases or decreases are effective, rather than after the year in which the change occurs. Second, he recommended that the rule be changed so that the previously determined revenue effect of tax increases or decreases being passed on to ratepayers are included in utilities rate base after a period of time, i.e., one year, rather than continuing to be passed on through the operation of the rule until the affected utilities undergo another general rate proceeding.

Central, in prehearing comments, stated that applying a zero cost of capital to the ITC in the capital structure for the purposes of the proposed rule achieves the same result as reducing the rate base by the ITC, and therefore runs a high risk of being in violation of Section 46(f)(2) of the Code. Central stated, "No matter what face is put on this activity, it is ratemaking; a company's rates are impacted by this procedure."

GTEFL sent similar prehearing comments on the ITC provision and requested that the FPSC hold in abeyance any decision on the adoption of the rule, at least until the time a private letter ruling is obtained from the IRS that the new policy does not violate the normalization procedures of the IRS.

Public Counsel filed prehearing comments which argue that the tax savings refund is not a ratemaking process and that the ITC can be assigned a zero cost. This would not violate normalization requirements, said the OPC, who also stated that the FPSC could instruct the parties to seek private letter rulings and react to the results in the following manner. If the IRS agrees that zero cost ITC's for the tax savings refund calculation would not violate normalization, then zero cost would be used. If the IRS asserts that it would violate normalization, the PSC would require refunds of the full amount of any tax savings or disallow any collection of any tax deficiency.

#### The Rulemaking Hearing

At the January 29 rule hearing, before the Commission, the same points were made by the participants.

Staff presented comments first. In response to questions from FPL, staff acknowledged that the proposed rule could cause a result in which, after the required refund, the utility would not earn even the bottom of the zone of reasonableness on a return on equity (TR 12). Staff, upon questioning, also acknowledged that when midpoint is redefined by including ITC at zero cost, and the federal or state income tax rate is reduced, the potential for there being a tax savings refund is increased (TR 13-14). Also, the potential for a utility to collect a tax deficiency is lessened (TR 14). Staff said that while it was not the intent of the proposed revisions, the changes may work to maximize tax refunds and minimize tax deficiency collections.

In response to questions about the phrase "refunds, collections, or other adjustments approved by the Commission", staff acknowledged such other adjustments might include restructuring of specific rates.

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In response to questions from OPC, staff said the actual cost of ITC to the individual company is zero (TR 20).

In response to questions from the Commissioners, staff discussed the alternative of repeal of the rule (TR 21, 22). Staff said that repeal would allow the Commission to treat the change in tax expense as a change in any other expenses, such as wages, depreciation, O&M, or interest expenses. The Commission would measure the effect of a change in tax rate through surveillance or rate case proceedings. This would be looked at in terms of the range as opposed to the midpoint. Staff said this is good in that it does not single out one expense for special treatment and it uses the processes that are in place.

Florida Industrial Power Users Group (FIPUG) spoke against the use of the phrase "or other adjustment" (TR 23). When customers have overpaid a utility due to a change in the tax rates, the money should be flowed back to them in the form of a refund rather than permitting some other adjustment, said FIPUG. FIPUG would be concerned with an adjustment using a tax savings refund as a credit against some other expense.

Also, FIPUG objected to a change in subparagraph 5(f). Currently, the proposed rule changes from a refund on a KWH basis, to a refund on a basis that fairly and equitably reflects the income taxes embodied in the rates for the various customer classes. FIPUG was concerned that an expensive and burdensome cost of service study would be necessary to determine how such a refund would be distributed. FIPUG suggested the standard for distribution should be better defined (TR 25).

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When asked about a position on repeal of the rule, FIPUG said, "I think that if we could see these tax savings integrate into base rate reductions we would be happy with that" (TR 27). However, it would need to be clear that such would happen before FIPUG would favor repeal (TR 28).

Hugh Gower, on behalf of TECO and FPL, said the rule as currently written is reasonable and fair (TR 31). He warned that it's important for the Commission to exercise caution in applying the rule "because as it is presently operative, it deals with prior periods, and therefore, has the potential of being applied in a way which would be improper retroactive ratemaking." He said he does not think it's possible to develop a limited scope rule which could deal with any eventuality and he doesn't think it's appropriate.

He opposed the ITC being placed at zero cost for purpose of the rule. He said he believes an awful lot of caution needs to be exercised before running the risk of violating the Internal Revenue Code. He opposed the establishment of the return on common equity being established in a limited scope proceeding (TR 32). Also, he disagreed with institutionalizing the O&M benchmark as part of the rule. He described the reporting burden.

He proposed changes to the rule which would adjust rates and charges to customers on the date of the change in tax rates rather than waiting for a year or longer to settle the issue (TR 34). He acknowledged that it would be necessary to use an historic period to do that, "and it's true that that may mean that any given company may be overearning or underearning, but I think the appropriate place to address that is in a rate proceeding." He concluded  
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that the rule cannot be designed in a way to deal with any and every eventuality.

Commissioner Gunter raised the option of a flow-through model. If such a model resulted in a revenue deficiency for a company, they could come in for a rate case. In response, Mr. Gower was concerned that such a model would produce an over- or under-earnings. There was lengthy discussion on the option.

Staff presented a proposed addition to the rule which would make use of the zero cost ITC be contingent on a private letter IRS ruling. Companies agreed that would be an improvement.

The Commissioners raised concerns about determining which data to use in a limited scope tax rule proceeding -- "things that may or may not have anything to do with the rule (TR 60-61).

OPC's comments supported the use of a current return on equity instead of the last rate case return on equity, and the use of ITC at zero cost (TR 64-65). They had no objection to seeking the ruling from the IRS. However, OPC said the money must be put subject to refund using a zero cost ITC to ensure that customers are protected while the process goes forward.

On the flow-through model, OPC said they favored it in 1986, yet now had concerns.

FPL counsel, in a summary statement at the end of the hearing, urged the Commission to look to the overall impact of the adjustment up or down. He added, "you have a procedure in place, through a tax rule, which would reflect on a retroactive basis the impact of changes in the tax rates so you can go

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back and reach prior period. You have no such mechanisms with respect to a change in rates."

Post-hearing Comments

In post-hearing comments, TECO reiterated its earlier points about the ITC issue and the ROE issue. TECO cites the United Telephone Company v. Mann case, 403 So.2d 962 (Fla. 1981), for the proposition that changes in the cost of equity are not easily calculable and are not proper subjects for an interim hearing. TECO urges that the scope of the rule be limited in order to avoid greater complexity and controversy and. Also, TECO argued again that any attempt to exclude nonrecurring cost of service items is not appropriate and not administratively efficient. TECO also opposed the use of the O&M benchmark analysis in that it would create "an enormous unnecessary reporting burden which would frustrate the administrative efficiency of the rule." TECO says "infusion of the O&M issues within the operation of the rule injects further controversy and endless debate." TECO opposed the proposed rate design requirements in paragraph 5(f) in that it would create cost of service study issues "within this already overburdened, so-called limited-scope proceeding."

TECO also objected to a flow-through model, stating that its last rate case was based on a 1984 test year. Therefore, use of the billing determinants from a prior proceeding can significantly distort the amount of the rate increase or decrease, said TECO.

In conclusion, TECO urged the Commission to either adopt the revisions suggested by Mr. Gower or leave the rule in its present form. In  
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the alternative rule repeal would be more appropriate than the proposed revisions.

Central reiterated earlier points which are similar to the above comments by TECO.

FPL, in post-hearing comments, emphasized that the intent of the current tax rule is to apply even-handed results, whether tax rates are increased or decreased. FPL added, "One extremely important facet of the existing rule was the implicit but conscious recognition that retrospective adjustment of revenue recovery would be confined to the factor that changed -- the federal or state corporate income tax rates." FPL states:

This prohibition against the one-sided adjustment for factors other than a change in the corporate income tax rate is very important. Not only does this preserve the balance in the rate setting context, it restricts the prohibited retrospective adjustment to rates.

Thus, FPL is warning that the proposed rule could constitute retroactive ratemaking.

Also, FPL objected to the proposed reporting form stating that it has not been noticed or included as part of the revision to the tax savings rule. The form, however, has been incorporated by reference.

GTEFL, in posthearing comments, supported the staff's proposed addition regarding IRS letter rulings.

FIPUG's posthearing comments suggested that the most equitable way to deal with tax savings, which are the direct result of customer overpayments, is to refund the money directly to customers. Also, FIPUG urged that the current rule should be retained as to the use of a kilowatt hour basis for a refund.

Responses to Staff's Proposed Final Version

In response to staff's proposed final version of the rule, which was sent February 29, participants filed the following comments.

GTEFL objected stating that staff's proposed final Version A and Version C contain new matters which have not been properly noticed and set for hearing. Version C, in particular, has never been subject to comment or hearing, said GTEFL. If Version A or C is favored by the Commission, GTEFL enters its objections to this procedure and requests that a further round of comments and hearings be initiated.

Specifically, GTEFL objects to the addition of the word "annually" in the midpoint definition, wherein the staff proposes that the cost of common equity to be utilized is that approved for the utility annually by the Commission. Such a procedure, said GTEFL, has never been submitted to the Commission or included in the rulemaking process and is therefore inappropriate to be suggested at this time. Furthermore, GTEFL maintains that such an addition would introduce needless complication into the tax rule and "is beyond the jurisdiction of this Commission." The staff did address such a procedure.

GTEFL finds total fault with Version C, in that the formula "would produce a zero answer in every instance." GTEFL states, "Formula inaccuracies aside, GTEFL challenges the wisdom of utilizing a formula for tax rule purposes. It presents needless complications and potential inaccuracies into the process."

Public Counsel expressed a preference for Version A, calling it "fundamentally fair." They urge the Commission to reject Version B, repeal.

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They warn that the flow-through model in Version C would have a potential for severe adverse consequences, considering the possibility of a tax increase in the near future

Southern Bell filed comments in response to staff's proposed final version. It states that the objective of the existing rule was to single out the income tax rate issue for special adjustments between rate cases.

Southern Bell objects to the alternative which treats ITC at zero cost. Using a zero cost for ITC is inconsistent with the regulatory treatment of the ITC in a full rate case proceeding and is not appropriate, says Southern Bell.

Southern Bell supports the repeal alternative because the rule prejudices the appropriate treatment of one issue in the rate setting process without considering the impact of other equally important issues. Southern Bell also says repeal would allow the Commission the flexibility to treat each utility according to its unique situation.

southern Bell says the FERC formula method would be impractical, if not impossible. Also, it would take away any flexibility. For example, the proposed rule would not allow the Commission to implement any alternative treatment to offset the impact of the tax rate change. Also, the method would be difficult to apply and administer and is apparently "just as complicated and complex as the existing rule."

DISCUSSION

ISSUE 1: Should the Commission make revisions to Rule 25-14.003, F.A.C.?

RECOMMENDATION: Staff recommends Alternative B, repeal of the rule. If, however, the Commission wishes to retain the rule, staff recommends Alternative A.

Alternative A: Yes. The Commission should make the revisions proposed in the Florida Administrative Weekly, plus make use of the zero cost investment tax credits (ITC), contingent on a private letter Internal Revenue Service (IRS) ruling and add the word "annually" to the return on equity determination. The form is incorporated by reference.

Alternative B: Yes. The Commission should revise the rule by repealing it.

Alternative C: Yes. The Commission should revise the rule by requiring a direct flow-through based on the Federal Energy Regulatory Commission (FERC) model.

STAFF ANALYSIS: Staff, after reviewing all of the comments received in this docket, recommends Version B, repeal. If, however, the Commission wishes to retain the rule, staff recommends Version A. Version A is basically the version published in the Florida Administrative Weekly, with the addition that use of the zero cost investment tax credit is made contingent on a private letter IRS ruling and the addition of "annually" or the ROE determination.

These issues have been oft debated. There are no simple answers. The debates have been infused with legal issues as well as policy concerns. The Commission is sensitive to the fact that tax rates may as easily go up as down, and to concerns about prohibited retroactive ratemaking, statutory requirements that utilities be allowed the opportunity to earn a fair return,

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case law requirements that an earnings test be applied, the Florida Supreme Court mandate in 1974 against a direct flow-through as inappropriate, and concerns about when a return on equity can be established.

For all of the above reasons, staff believes repeal of the rule probably is most appropriate.

Staff opposes Version C. The opportunity for it to be applied for some tax increase in the future gives us concern. Also, as the Florida Supreme Court held in Gulf Power Co. v. Bevis, 289 So.2d 401 (Fla. 1974), a tax is an expense like any other expense and cannot be singled out for a direct flow-through. The Florida Supreme Court cited the U.S. Supreme Court case of Georgia Railway & Power Co. v. Railway Commission of Georgia, 262 U.S. 625 (1923), for the proposition that taxes are an operating expense to be considered with all other pertinent factors in determining a rate of return for the utility. The Court added:

This application of the tax may not result in a full, dollar for dollar increase in the rate; it is to be considered (as other such expenses are) as another "cost of doing business," and whatever resultant increase thereby results will be reflected in the ultimate rate, the same as other operating expenses will affect the rate which will, however, be limited to whatever is found to be a fair return, here 8.06%.

The Court again emphasized that the tax is an operating expense not be treated separately but to be generally applied with all other expenses and factors involved in determining a fair return to the utility.

Alternative A

Alternative A is the same as that proposed by the Commission December 1, 1989, and enacted as an emergency rule, except for the addition of the private letter IRS rulings and the word "annually" to the ROE determination.

This version includes certain technical changes, as well as substantive ones. The primary change is to the "midpoint" definition in subsection (2)(f). It states:

The midpoint of the range of rate of return calculated as the weighted average cost of capital for the period of time covered by the tax adjustment report required in subsection (5). The weighted average cost of capital shall be calculated using the current embedded cost of fixed rate capital, the actual cost of variable cost debt, the cost of common equity annually approved for the utility by the Commission for purposes of this rule, zero cost for all investment tax credits, and the actual cost of other sources of capital. The capital structure used shall be the company's actual capital structure adjusted to reflect all regulatory adjustments.

Other changes include clarification of the "associated revenues" definition, and substitution of the phrase "earnings review" proceedings instead of "show cause" proceedings. The addition of the phrase "or other adjustments approved by the Commission" is intended to provide flexibility beyond that of authorizing refunds or collections. The reporting requirements and the procedures subsection are clarified. The role of the FPSC to "review and evaluate" the company's petition containing a calculation of and the method for refunding, collecting, or otherwise disposing of any tax savings or deficiency, is enhanced. Language is added regarding the date of overcollection or underpayment. In paragraph (6)(f), the revision provides



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that the customer's share of refund or collection should be determined on a basis that fairly and equitably reflects the income taxes embodied in rates for that company's various customer classes, or on any other fair and reasonable basis approved by the Commission. Subsection (8) provides that the rule revisions shall not negate any agreements already approved by the Commission prior to the effective date.

The new subsection (9) provides for Internal Revenue Service ruling requests on the treatment of the ITC. Any such ruling request must be submitted to the Commission by June 15, 1990.

The advantages of this rule proposal are that it enables the Commission to apply an ROE in the earnings test which is not tied to the last rate case but to current financial market conditions; it postpones the imposition of a zero cost rate to the ITC until receipt of IRS private letter rulings; and, it explicitly enables the Commission to apply "other adjustments" rather than seeming to be restricted to refunds or collections.

The disadvantages are those present in the current rule: it is a very complex "limited scope" proceeding; it raises legal issues of confiscation and unfairness if its application results in utilities earning less than fair rates of return; a policy that does not adequately address all aspects of the frequent revisions to the tax laws is perpetuated; a rule stays on the books even after changes in earnings caused by tax rate changes have been addressed; one expense is isolated for special treatment; earnings are measured against the midpoint and not the range which thwarts the purpose of the range which is an incentive to good management and the postponement of

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rate cases and could lead to legal issues of confiscation; and it is reactive and not proactive.

#### Alternative B

This alternative would repeal the entire rule. The advantages are that it would adhere to guidance in case law which states that tax expense is only one expense and is not to be considered in isolation; that it would adhere to statutory guidance which states a utility must not be denied a fair return on its investment; and that it would eliminate a cumbersome process and replace it with rate proceedings. The disadvantage is that it would place our surveillance procedures in the role of a safety net since there would not be an isolated review of tax expense adjustments. Also, it presents some procedural considerations -- i.e., should the Commission publish notice of repeal in the Florida Administrative Weekly and allow a new opportunity for a hearing. There is no legal mandate to do so. However, repeal would be of such a different nature than the rule proposed in the FAW, that a courtesy of another hearing might be needed. Such a hearing could be before a General Counsel attorney rather than the full Commission; there was quite a lengthy discussion at the rule hearing regarding repeal and participants did submit comments on such a proposal. Thus, this should not be a surprise to affected participants. Also, an economic impact statement for repeal has already been prepared.

Repeal was recommended by staff at earlier points. June 29, 1989 and August 25, 1988, recommendations were for repeal; however, the Commission sought more information before taking such a step.

Staff continues to propose repeal for the following reasons:

1. The rule's definition of midpoint regarding "range of return in the utility's last rate case" has been problematic during times of infrequent rate cases. The midpoint is crucial to the measurement of earnings.
2. Tax legislation that markedly changes the tax code has now become a much more frequent affair. The rule contemplated relatively infrequent, uncomplicated tax code changes where the major effect on the utilities would be the infrequent, relatively small, predictable effect of the change in the tax rate. Now, because of the sheer size of the federal budget deficit and federal laws requiring a reduction in that deficit, other changes in the tax code somewhat offset rate reductions. That is, a tax rate reduction must not reduce the revenues flowing into the federal treasury -- an alternative source of matching revenue must be provided. Therefore, the utilities will not always experience a tax savings when there is a reduction in the tax rates applicable to them. For example, the Tax Reduction Act of 1986 (TRA 86) provided a reduction in the corporate tax rates. The tax rate reduction was to be paid for by the elimination of the investment tax credit. The investment tax credit was eliminated in the year before the tax rates were first reduced. This not to say that certain utilities will not experience a tax savings in any given year but it results from the interplay of many variables and not just from the reduction in the tax rates applicable to taxable income for the year.
3. Implementation of the current rule is time consuming for Commission staff in a manner that does not provide equal benefits to the ratepayers. Utilities find the rule confusing, and reporting requirements are not always met.
4. Surveillance by the Commission, rate increase applications by the utilities, or petitions by other parties can achieve essentially the same purpose without the additional burden on Commission staff, intervenors, and the utilities.
5. There is some question as to whether or not application of the rule constitutes retroactive ratemaking and is, therefore, not permissible.
6. There is some question as to the Commission's authority for this rule. The issue has been raised by the

utilities as has the legality of use of the midpoint rather than the range.

7. Intervenors in past dockets have taken the position that the existing procedure for establishing rates of return on equity in rate cases assures consideration of all relevant factors, and allows input by all concerned parties.

They take the position that the utility's allowed return on equity to be used in matters that determine rates or earnings contributions should only be changed within the context of a full revenue requirement proceeding since it is but one of the many factors which enter into the ratemaking process.

The position is that the return on equity should only be addressed when all material components of the ratemaking formula are addressed because the return on equity represents only one piece of the interactive rate setting process.

Surveillance does look at overearnings, which is concerned with earnings "over the high point of the range." The current rule, on the other hand, addresses the midpoint.

The rule is no longer needed to address the effects of the Tax Reform Act of 1986. The rates and charges of the electric companies reflect use of a 34% federal income tax rate. There will be hearings in the next few months to determine whether further adjustments need to be made to the rates and charges of FPL and Gulf. Some of the rates and charges of the telephone companies have been adjusted so that the revenues of these companies reflect a 34% federal income tax rate. The rates and charges of Peoples Gas will be adjusted in the next few months. Then, the rates and charges of the gas companies will either reflect use of the current tax rate or will be producing earnings at such a low level that an adjustment is not warranted.

Alternative C

Alternative C is a flow-through model, based on that used by the Federal Energy Regulatory Commission (FERC). Rule participants have noted that the formula is flawed, and would result in zero every time. In addition, staff questions whether we would have the legal authority to apply such a test when it could result in the utility earning an unreasonably high or low return. Even FERC did not believe it could mandate the flow-through. It instead made it a voluntary system in which utilities that did not participate were subjected to close scrutiny.

On first blush, a flow through has appeal. However, it singles out tax for isolated treatment which contravenes much of the case law; and it creates an automatic increase in rates to utility ratepayers whenever tax rates increase. While there is an appealing symmetry to it, we agree with Public Counsel that it now would be inappropriate in view of the fact that ratepayers did not receive a dollar for dollar decrease when tax rates were adjusted downward.

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ISSUE 2: After the rule revision becomes effective, may this docket be closed?

RECOMMENDATION: Yes. The docket should be closed after the revised rule is filed with the Department of State and becomes effective.

STAFF ANALYSIS: This docket, in various forms, has been open for many years. It would be excellent to make a determination and close it once a decision is made -- either to file a rule revision with the Department of State or to live with the present rule.

If the Commission votes for repeal or for a flow-through, the Commission has the option to allow one more hearing due to the radical change from the form of the proposed rule. There is no legal mandate to do so.

CBM:pr1  
Attachments

ALTERNATIVE A

1 25-14.003 Corporate Income Tax Expense Adjustments.

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

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

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

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

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

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

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

30 (f) "Midpoint." The midpoint of the range of rate of return  
31 calculated as the weighted average cost of capital for the period

CODING: Words underlined are additions; words in  
struck-through type are deletions from existing law.

1 of time covered by the tax adjustment report required in  
2 subsection (5). The weighted average cost of capital shall be  
3 calculated using the current embedded cost of fixed rate capital,  
4 the actual cost of variable cost debt, the cost of common equity  
5 annually approved for the utility by the Commission for purposes  
6 of this rule, zero cost for all investment tax credits, and the  
7 actual cost of other sources of capital. The capital structure  
8 used shall be the company's actual capital structure adjusted to  
9 reflect all regulatory adjustments. ~~of-return-approved-by-the~~  
10 ~~Commission-in-the-utility's-last-rate-case-adjusted-for-the-cost~~  
11 ~~of-any-debt-issued-subsequent-to-the-rate-case-and-prior-to-the~~  
12 ~~commencement-of-a-tax-savings-refund-of-tax-deficiency-elimination~~

13 (3) Tax Savings Refunds or Other Adjustments Approved by the  
14 Commission. In accordance with subsection (6) of this rule and  
15 using a calendar year as the basis of the calculation:

16 (a) When, during the reporting period described in paragraph  
17 (6)(a) below, a utility or regulated company is earning a rate of  
18 return which is at or above the midpoint of its authorized range  
19 computed in accordance with subsection (2)(f) and without  
20 consideration of a tax rate reduction, the utility or regulated  
21 company shall make an adjustment approved by the Commission or  
22 refund all associated revenues as described in paragraph 6(c).

23 (b) When, during the reporting period described in paragraph  
24 6(a) below, a utility or regulated company is earning a rate of  
25 return which is below the midpoint of its authorized range  
26 computed in accordance with subsection (2)(f) and without  
27 consideration of a tax rate reduction, the utility or regulated  
28 company shall make an adjustment approved by the Commission or  
29 refund only those associated revenues which cause the utility or  
30 regulated company to earn in excess of that midpoint, as described  
31 in paragraph 6(c).

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1 (4) Tax Deficiency Collections or Other Adjustments Approved  
2 by the Commission. In accordance with subsection (6) of this rule  
3 and using a calendar year as the basis of the calculation:

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

11 (b) When, during the reporting period described in 6(a)  
12 below, a utility or regulated company is earning a rate of return  
13 which is above the midpoint of its authorized range computed in  
14 accordance with the provision of subsection (2)(f) and without  
15 consideration of a tax rate increase, the utility or regulated  
16 company shall make other adjustments approved by the Commission or  
17 collect only those associated revenues which cause the utility or  
18 regulated company to earn below that midpoint, as described in  
19 paragraph 6(c).

20 (5) Reporting Requirements. Following a tax rate change,  
21 each utility or regulated company shall furnish a report, on the  
22 form prescribed by the Commission. Form PSC/APA 1 ( ), entitled  
23 "Rule 25-14.003 Corporate Income tax Expense Adjustments," was  
24 effective ( ) and may be obtained from the Commission's Division  
25 of Auditing and Financial Analysis. A utility or regulated  
26 company is not precluded from providing tax adjustment information  
27 of its choice in addition to that prescribed by Form PSC/APA 1  
28 ( ). The report shall be required each year until the utility's  
29 or regulated company's rates and charges are adjusted to reflect  
30 the newly effective tax rate. The report shall be due on or  
31 before fifteen days after the due date, including authorized

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1 extensions, of the Annual Report required by Rules 25-4.018,  
2 25-6.014, and 25-7.014. Fifteen-days-after-the-due-date,  
3 including-authorized-extensions, of the annual report, of every  
4 year following a tax rate change, each utility shall furnish a  
5 final report, in the form prescribed by the Commission. The  
6 report shall cover only the prior calendar year during which the  
7 tax rate change was effective.

8 (6) Procedures.

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

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

26 (c) Together with the ~~final~~ report described in subsection  
27 (5) of this rule, each utility or regulated company shall file a  
28 petition containing a calculation of and the method for  
29 refunding, or collecting or otherwise disposing of any tax  
30 savings or deficiency for the tax year of the report. The  
31 Commission will review and evaluate the petition and supporting

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1 data, and either approve it, approve it with modification, or deny  
2 it; an opportunity for a hearing on the Commission's decision will  
3 then be provided, if requested. ~~Thereafter, the~~ The utility or  
4 regulated company shall either make the refund to or collect the  
5 deficiency from its existing customers in accordance with  
6 paragraphs (e) and (f) of this subsection, or make another  
7 adjustment as directed by this Commission.

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

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

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

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

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

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

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1 effective., the effects of the tax rate change shall be  
2 addressed in such proceedings.

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

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

19 (9) Internal Revenue Service Ruling Request.

20 (a) The treatment by the Commission of all investment tax  
21 credits at a zero cost rate shall be contingent upon a ruling from  
22 the Internal Revenue Service that such treatment will not, for  
23 companies which elected to be treated under s. 46(f)(2) of the  
24 Internal Revenue Code, result in the forfeiture of the investment  
25 tax credits. Pending receipt of such a ruling, each utility or  
26 regulated company shall continue to use the weighted average cost  
27 of capital calculated in a manner consistent with the final IRS  
28 Regulation s. 1.46-6 published May 22, 1986, as the cost rate of  
29 utility's 4% and 10% investment tax credits.

30 (b) Any such ruling request must be submitted to the  
31 Commission by June 15, 1990. The cost rate for the investment tax

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1 credits for any company which failed to submit its own letter  
2 ruling request to the IRS shall be governed by the first letter  
3 ruling issued by the IRS in response to a request submitted  
4 pursuant to subsection 9(a) of this rule.

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

6 Law Implemented: 364.01, 364.035, 364.05, 366.05, 366.06,

7 366.076, 367.121, 367.081, 367.0822, F.S.

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

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COMPANY NAME \_\_\_\_\_

RULE 25-14.003 CORPORATE INCOME  
TAX EXPENSE ADJUSTMENTS  
12 MONTHS ENDED DECEMBER 31, 1989

	(A)	(B)	(C)	(D)
	Old Tax Rate	New Tax Rate	Saving (Deficiency) (A) - (B)	
<b>SECTION I: TAX SAVING (DEFICIENCY)</b>				
1. Taxable income, operations	\$ _____	\$ _____		
2. Tax rate	X _____	X _____		
3. Current taxes	\$ _____	\$ _____	\$ _____	
4. Book-tax timing differences, operations	\$ _____	\$ _____		
5. Tax rate	X _____	X _____		
6. Deferred taxes, operations	\$ _____	\$ _____	\$ _____	
7. Total lines (3) and (7)	\$ _____	\$ _____	\$ _____	
8. Investment tax credits, net	\$ _____	\$ _____	\$ _____	
9. Total lines (8) and (9)	\$ _____	\$ _____	\$ _____	
	<u>Total Company</u>	<u>Total Fla. Jurisdict.</u>	<u>Rate Making Adjustments</u>	<u>*Fully Adj. Jurisdict.</u>
<b>SECTION II: NET OPERATING INCOME</b>				
11. <u>Booked operating revenues</u>				
12. Service revenues	\$ _____	\$ _____	\$ _____	\$ _____
13. Other revenues	_____	_____	_____	_____
14. Total operating revenues	\$ _____	\$ _____	\$ _____	\$ _____
15. <u>Operating expenses</u>				
16. O & M**	\$ _____	\$ _____	\$ _____	\$ _____
17. Depreciation & amortization				
18. Taxes other than income				
19. Other				
20. <u>Operating taxes, old rate</u> (line 10)	\$ _____	\$ _____	\$ _____	\$ _____
21. Total operating expense and taxes (total lines 16-20)	\$ _____	\$ _____	\$ _____	\$ _____
22. <u>NOI</u> (line 14 - line 22)	\$ _____	\$ _____	\$ _____	\$ _____
<b>SECTION III: DESCRIPTION OF NOI ADJUSTMENTS</b>				
24.	\$ _____	\$ _____	\$ _____	\$ _____
25. Total adjustments	\$ _____	\$ _____	\$ _____	\$ _____

\* Those adjustments necessary to reflect Commission policy enumerated in last rate case.

\*\* Provide a calculation of the O&M benchmark starting with your last RATE CASE. Use tax savings/deficiency year as test year.

COMPANY NAME \_\_\_\_\_

RULE 25-14.003 CORPORATE INCOME  
TAX EXPENSE ADJUSTMENTS  
12 MONTHS ENDED DECEMBER 31, 1989

	(A) Total Company	(B) Total Fla. Jurisdict.	(C) Rate Making Adjustments	(D) *Fully Adj. Jurisdict.
<b>SECTION IV: ADJUSTED NOI</b>				
1. At old rate				\$ _____
2. At new rate				\$ _____
3. Difference due to tax rate (line 1 - line 2)				\$ _____
<b>SECTION V: AVERAGE RATE BASE</b>				
4. Plant in service	\$ _____	\$ _____	\$ _____	\$ _____
5. Leased to others				
6. Plant held for future use				
7. CWIP				
8. Acquisition adjustments				
9. Accumulated depreciation				
10. Other	_____	_____	_____	_____
11. Rate Base	\$ _____	\$ _____	\$ _____	\$ _____
<b>SECTION VI: DESCRIPTION OF RATE BASE ADJUSTMENTS</b>				
12.	\$ _____	\$ _____	\$ _____	\$ _____
13. Total adjustments	\$ _____	\$ _____	\$ _____	\$ _____
14. Adjusted average rate base	\$ _____	\$ _____	\$ _____	\$ _____
<b>SECTION VII</b>				
15. ADJUSTED YEAR END RATE BASE	\$ _____	\$ _____	\$ _____	\$ _____
<b>SECTION VIII: ACHIEVED RATE OF RETURN</b>				
16. <u>Average rate base</u>				
17. Before tax rate change				_____ %
18. After tax rate change				_____ %
19. <u>Year end rate base</u>				
20. Before tax rate change				_____ %
21. After tax rate change				_____ %

\* Those adjustments necessary to reflect Commission policy enumerated in last rate case.



COMPANY NAME \_\_\_\_\_

RULE 25-14.003 CORPORATE INCOME  
TAX EXPENSE ADJUSTMENTS  
12 MONTHS ENDED DECEMBER 31, 1989

	(A) Amount	(B) Ratio	(C) Cost Rate	(D) Weighted Cost Rate
<b>SECTION IX: COST OF CAPITAL</b>				
1. <u>13 Month Average*</u>				
2. Long term debt	\$	%	%	%
3. Short term debt			%	
4. Cost free			0.00%	
5. Customer deposits			%	
6. ITC-weighted cost			%	
7. Preferred			%	
8. Common			%	
9. Total capital	\$ _____	<u>100.00%</u>		_____ %
10. <u>Year End</u>				
11. Long term debt	\$	%	%	%
12. Short term debt			%	
13. Cost free			0.00%	
14. Customer deposits			%	
15. ITC-weighted cost			%	
16. Preferred			%	
17. Common*			%	
18. Total capital	\$ _____	_____ %		_____ %

**SECTION X: NOI EXCESS (DEFICIENCY)**

	Average Rate Base	Year End Rate Base
19. A. <u>Tax rate decrease</u>		
20. Authorized NOI at midpoint	\$ _____	\$ _____
21. Achieved NOI	( _____ )	( _____ )
22. Difference	\$ _____	\$ _____
23. NOI difference due to tax rate change		
24. Tax savings over midpoint	\$ _____	\$ _____
25. B. <u>Tax rate increase</u>		
26. Authorized NOI at midpoint	\$ _____	\$ _____
27. Achieved NOI	( _____ )	( _____ )
28. Difference	_____	_____
29. NOI difference due to tax rate change	_____	_____
30. Tax Deficiency under Midpoint	\$ _____	\$ _____

\* Midpoint last authorized in rate case unless otherwise changed by Commission Order Number \_\_\_\_\_.

COMPANY NAME \_\_\_\_\_

RULE 25-14.003 CORPORATE INCOME  
TAX EXPENSE ADJUSTMENTS  
12 MONTHS ENDED DECEMBER 31, 1989

SECTION XI: ASSOCIATED REVENUES

- |                            |         |
|----------------------------|---------|
| 1. NOI excess (deficiency) | \$      |
| 2. Expansion factor        | _____   |
| 3. Associated revenues     | \$_____ |

SECTION XII: EXPANSION FACTOR

Provide detail of expansion factor calculation below using the tax rate at which refund or collection will be recognized on the utility's or regulated company's tax return.

NOTE: Include and describe adjustments necessary to reflect current Commission policy excluding going-forward and annualized adjustments. Going-forward adjustments should be excluded because the purpose of this form is to display earnings for a specific past period unlike a rate case which looks to future earnings.

Cost rates and capital structure should be the average for the period covered by this report and reflect current Commission policy. Provide detail of adjustments used to reconcile rate base to capital structure.

REPEAL  
ALTERNATIVE B

1 25-14.003 Corporate Income Tax Expense Adjustments.

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

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

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

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

14 (c) "Associated Revenues." Those revenues resulting from the  
15 application of a utility's revenue expansion factor to a tax  
16 savings or tax deficiency.

17 (d) "Previously Effective." Refers to the corporate income  
18 tax rate used in a utility's last rate case or show cause  
19 proceeding, or used in the last tax expense adjustment by the  
20 Commission, whichever occurred most recently.

21 (e) "Tax Rate." The statutory tax rates, both federal and  
22 state, applicable to utility income, including any surcharges,  
23 minimum taxes, and other adjustments to the basic percentage tax  
24 rates.

25 (f) "Midpoint." The midpoint of the range of return approved  
26 by the Commission in the utility's last rate case, adjusted for  
27 the cost of any debt issued subsequent to the rate case and prior  
28 to the commencement of a tax savings refund or tax deficiency  
29 collection.

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

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1 calculation:

2 (a) When, during the reporting period described in paragraph  
3 6(a) below, a utility is earning a rate of return which is at or  
4 above the midpoint of its authorized range computed without  
5 consideration of a tax rate reduction, the utility shall refund  
6 all associated revenues as described in paragraph 6(c).

7 (b) When, during the reporting period described in paragraph  
8 6(a) below, a utility is earning a rate of return which is below  
9 the midpoint of its authorized range computed without  
10 consideration of a tax rate reduction, the utility shall refund  
11 only those associated revenues which cause the utility to earn in  
12 excess of that midpoint, as described in paragraph 6(c).

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

16 (a) When, during the reporting period described in 6(a)  
17 below, a utility is earning a rate of return which is at or below  
18 the midpoint of its authorized range computed without  
19 consideration of a tax rate increase, the utility shall collect  
20 all associated revenues, as described in paragraph 6(c).

21 (b) When, during the reporting period described in 6(a)  
22 below, a utility is earning a rate of return which is above the  
23 midpoint of its authorized range computed without consideration of  
24 a tax rate increase, the utility shall collect only those revenues  
25 which cause the utility to earn below that midpoint, as described  
26 in paragraph 6(c).

27 (5) Reporting Requirements. Fifteen days after the due date,  
28 including authorized extensions, of the annual report, of every  
29 year following a tax rate change, each utility shall furnish a  
30 final report, in the form prescribed by the Commission. The  
31 report shall cover only the prior calendar year during which the

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1 tax rate change was effective.

2 (6) Procedures.

3 (a) Refunds or collections shall be calculated from the  
4 effective date of any tax rate change through the end of the  
5 calendar year. If the tax rate change is in effect for only part  
6 of a tax year, the refund or collection shall be calculated in  
7 accordance with the utility's customary accounting treatment as  
8 authorized by the federal or state taxing authority for tax rate  
9 changes which occur during a tax year.

10 (b) A further change in the tax rate shall end one period of  
11 compliance and initiate a new period but shall not affect any  
12 refund or collection already in progress pursuant to this rule.

13 (c) Together with the final report described in subsection  
14 (5) of this rule, each utility shall file a petition containing a  
15 calculation of and the method for refunding or collecting any tax  
16 savings or deficiency for the tax year of the report. The  
17 Commission will review the petition and either approve it, approve  
18 it with modification, or deny it; an opportunity for a hearing on  
19 the Commission's decision will then be provided, if requested.  
20 Thereafter, the utility shall either make the refund to or collect  
21 the deficiency from its existing customers in accordance with  
22 paragraphs (e) and (f) of this subsection.

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

28 (e) The utility may make any refund or collection either as a  
29 lump sum payment or billing or in monthly installments not to  
30 exceed twelve (12) months. Such refunds or collections shall be  
31 made to or from current customers of the utility at the time that

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1 such refunds or collections are to be effected. In either event,  
2 the utility shall refund or collect the amount with interest  
3 accruing on any outstanding balance from the date of  
4 overcollection or underpayment. Interest shall be set by the  
5 Commission.

6 (f) An electric utility shall determine each customer's share  
7 of refund or collection on a kilowatt hour basis. A telephone  
8 company shall determine each customer's share of refund or  
9 collection based on existing general residence and business local  
10 rate relationships. Other utilities shall determine each  
11 customer's share of refund or collection based on consumption or  
12 any other reasonable basis specified in the utility's petition and  
13 approved by the Commission.

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

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

22 (b) Nothing in this subsection shall be construed as limiting  
23 the operation of the tax expense adjustment process under this  
24 rule either in completing a tax savings refund or tax deficiency  
25 collection for any tax years prior to the year in which a rate  
26 case or show cause is initiated. It shall also not prohibit a tax  
27 savings refund or tax deficiency collection for any tax year or  
28 portion thereof ending prior to the final order in a rate case or  
29 show cause proceeding.

30 Specific Authority: 364.01, 366.05, 367.121, P.S.

31 Law Implemented: 364.01, 366.05, 367.121, P.S.

History: New 6/22/82, formerly 25-14.03, Amended 1/1/90,

Repealed \_\_\_\_\_.

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## ALTERNATIVE C

1 25-14.003 Corporate Income Tax Expense Adjustments.

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

4 (2) When Congress or the Legislature changes the tax rates  
5 applicable to corporations, each utility or regulated company  
6 affected by the change and subject to the jurisdiction of the  
7 Florida Public Service Commission shall, on or before sixty days  
8 prior to the effective date of the tax rate change, file with this  
9 Commission amended tariffs reflecting new rates which incorporate  
10 the revenue effect of the tax rate change.

11 (3) The effective date of the new rates shall be the same as  
12 the effective date of the tax rate change.

13 (4) Each utility or regulated company shall, when it files  
14 its revised tariffs, file its calculation of the revenue effect of  
15 the tax rate change using the following formula:

$$16 \quad K = \frac{D-D(E/F)}{I}$$

17 Where

18 D Composite income taxes allowable included in rates in  
19 effect on the date that the change in the Federal  
20 corporate income tax rate becomes effective.

21 E Composite income tax factor using the new Federal  
22 corporate income tax rate and the effective state income  
23 tax rate from the rate application docket upon which  
24 existing rates are based. This is computed by the  
25 following formula:

26 composite marginal income tax rate  
27 - composite marginal income tax rate

28 F Composite income tax factor using the old Federal  
29 corporate income tax rate. This is computed by the same  
30 formula used for determining E.

31 I Test period billing units from the rate application.

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1 docket upon which the rates that are in effect are  
2 based. Absent extraordinary circumstances a public  
3 utility shall use demand billing units.

4 K Required rate reduction per billing demand unit.

5 This formula may be broken down into the following four-step

6 process:

7 (1) A x (B/C) = D

8 (2) D x (E/F) = G

9 (3) D - G = H

10 (4) H/I = K

11 Where

12 A = Income taxes allowable (exclusive of deferred tax make-up  
13 provisions, i.e., "South Georgia" provisions, and  
14 investment tax credit amortizations) included in the  
15 revenue requirement of the public utility's rate  
16 application docket upon which the rates in effect on the  
17 date the Federal corporate income tax rate change becomes  
18 effective were finally accepted or approved.

19 B = Revenue level in effect on the date the change in Federal  
20 corporate income tax rate becomes effective using test  
21 period billing determinants.

22 C = Revenue requirement from the rate application docket  
23 which includes A.

24 G = Income taxes allowable at the new Federal corporate  
25 income tax rate.

26 H = Difference between income taxes allowable at the new  
27 Federal corporate income tax rate, and at the old Federal  
28 corporate income tax rate. This is the revenue change  
29 required to reflect the change in the Federal corporate  
30 income tax rate.

31 (5) The Commission shall review the tariffs and calculations.

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1 and approve them, approve them with modification, or deny them.

2 An opportunity for a hearing on the Commission's decision will  
3 then be provided, if requested.

4 (i) ~~--This rule shall not apply to water and wastewater~~  
5 ~~utilities, as defined in Chapter 367, Florida Statutes.~~

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

8 (a) ~~"Tax Savings."~~ ~~The difference between the tax expenses~~  
9 ~~for a utility calculated under the previously effective corporate~~  
10 ~~income tax rates and those calculated under newly effective,~~  
11 ~~reduced corporate income tax rates.~~

12 (b) ~~"Tax Deficiency."~~ ~~The difference between the tax~~  
13 ~~expenses for a utility calculated under newly effective, higher~~  
14 ~~corporate income tax rates and those calculated under the~~  
15 ~~previously effective corporate income tax rates.~~

16 (c) ~~"Associated Revenues."~~ ~~Those revenues resulting from~~  
17 ~~the application of a utility's revenue expansion factor to a tax~~  
18 ~~savings or tax deficiency.~~

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

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

27 (f) ~~"Midpoint."~~ ~~The midpoint of the range of return~~  
28 ~~approved by the Commission in the utility's last rate case,~~  
29 ~~adjusted for the cost of any debt issued subsequent to the rate~~  
30 ~~case and prior to the commencement of a tax savings refund or tax~~  
31 ~~deficiency collection.~~

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1 131--Tax-Savings-Retender--in accordance with subsection 61  
2 of this title and using a calendar year as the basis of the  
3 calculation  
4 141--When during the reporting period described in paragraph  
5 1611a1 below a unitary to earnings a case of such a which is as  
6 as above the midpoint of the authorized range composed of those  
7 consideration of a tax case reduction the unitary shall refund  
8 six assessed revenues as described in paragraph 61c1  
9 141--When during the reporting period described in paragraph  
10 61a1 below a unitary to earnings a case of such a which is below  
11 the midpoint of the authorized range composed of those  
12 consideration of a tax case reduction the unitary shall refund  
13 only those assessed revenues which case the unitary to each in  
14 excess of the midpoint as described in paragraph 61c1  
15 141--Tax Deficiency Certificates--in accordance with  
16 subsection 61 of the title and using a calendar year as the  
17 basis of the calculation  
18 141--When during the reporting period described in 61a1  
19 below a unitary to earnings a case of such a which is as or below  
20 the midpoint of the authorized range composed of those  
21 consideration of a tax case reduction the unitary shall collect  
22 six assessed revenues as described in paragraph 61c1  
23 141--When during the reporting period described in 61a1  
24 below a unitary to earnings a case of such a which is above the  
25 midpoint of the authorized range composed of those considered  
26 of a tax case reduction the unitary shall collect only those  
27 revenues which case the unitary to each below the midpoint as  
28 described in paragraph 61c1  
29 151--Reporting Requirements--in ten days after the due  
30 date of the filing authorized extensions of the annual report of  
31 every year following a tax case change each unitary shall

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1 furnish a final report in the form prescribed by the  
2 Commission. The report shall cover only the prior calendar year  
3 during which the tax rate change was effective.

4 (b) Procedures:

5 (a) Refunds or collections shall be calculated from the  
6 effective date of any tax rate change through the end of the  
7 calendar year. If the tax rate change is in effect for only part  
8 of a tax year, the refund or collection shall be calculated in  
9 accordance with the utility's customary accounting treatment as  
10 authorized by the federal or state taxing authority for tax rate  
11 changes which occur during a tax year.

12 (b) A further change in the tax rate shall end one period of  
13 compliance and initiate a new period but shall not affect any  
14 refund or collection already in progress pursuant to this rule.

15 (c) Together with the final report described in subsection  
16 (b) of this rule, each utility shall file a petition containing a  
17 calculation of and the method for refunding or collecting any tax  
18 savings or deficiency for the tax year of the report. The  
19 Commission will review the petition and either approve it,  
20 approve it with modification, or deny it, an opportunity for a  
21 hearing on the Commission's decision will then be provided, if  
22 requested. Thereafter, the utility shall either make the refund  
23 or collect the deficiency from its existing customers in  
24 accordance with paragraphs (e) and (f) of this subsection.

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

30 (e) The utility may make any refund or collection either as  
31 a lump sum payment or billing or in monthly installments not to

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1 exceed twelve (12) months. -- Such refunds or collections shall be  
2 made to or from current customers of the utility at the time that  
3 such refunds or collections are to be effected. -- In either event,  
4 the utility shall refund or collect the amount with interest  
5 accruing on any outstanding balance from the date of  
6 overcollection or underpayment. -- Interest shall be set by the  
7 Commission.

8 (f) -- An electric utility shall determine each customer's  
9 share of refund or collection on a kilowatt-hour basis. -- A  
10 telephone company shall determine each customer's share of refund  
11 or collection based on existing general residence and business  
12 local rate relationships. -- Other utilities shall determine each  
13 customer's share of refund or collection based on consumption or  
14 any other reasonable basis specified in the utility's petition  
15 and approved by the Commission.

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

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

24 (b) -- Nothing in this subsection shall be construed as  
25 limiting the operation of the tax expense adjustment process  
26 under this rule either in completing a tax savings refund or tax  
27 deficiency collection for any tax years prior to the year in  
28 which a rate case or show cause is initiated. -- It shall also not  
29 prohibit a tax savings refund or tax deficiency collection for  
30 any tax year or portion thereof ending prior to the final order  
31 in a rate case or show cause proceeding.

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

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

History: New 6/22/82, formerly 25-14.03, Amended 1/1/90.

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