

State of Florida

Commissioners:
MICHAEL McK. WILSON, CHAIRMAN
THOMAS M. BEARD
BETTY EASLEY
GERALD L. (JERRY) GUNTER
JOHN T. HERNDON



Division of Appeals
David E. Smith, Director
(904) 488-7464

Public Service Commission

September 13, 1990

Mr. Carroll Webb
Joint Administrative Procedures
Committee
120 Holland Building
Tallahassee, Florida 32399

Re: ~~DOCKET NO.~~ 891278-PU, RULE 25-14.003

Dear Mr. Webb:

The Commission has approved the amendment of Rule 25-14.003 with changes. The Commission voted to repeal the language in the rule rather than to incorporate language reflecting the Commission's action after repeal.

The revision does have potential impact on small business and the Small and Minority Business Advocate, the Division of Economic Development and the Minority Business Enterprise Assistance Office have not offered alternatives regarding the impact of the rule on small business.

Please call if you have any questions.

Sincerely,

Cynthia B. Miller
Associate General Counsel

- ACK _____
- AFA _____
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- CTR _____
- EAG _____
- LEG _____
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- OPC _____
- RCH _____
- SEC 1
- WAS _____
- OTH _____

CBM:prl
Enclosure
cc: Steve Tribble, Director,
Div. Records & Reporting
4204G

DOCUMENT NUMBER-DATE
08223 SEP 14 1990
FSC-RECORDS/REPORTING

STATEMENT OF CHANGES

Since June 15, 1990

Florida Administrative Weekly Notice

All language in the proposal has been struck.

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

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1 by the Commission in the utility's last rate case, adjusted for
2 the cost of any debt issued subsequent to the rate case and prior
3 to the commencement of a tax savings refund or tax deficiency
4 collection.

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

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

13 (b) When, during the reporting period described in paragraph
14 6(a) below, a utility is earning a rate of return which is below
15 the midpoint of its authorized range computed without
16 consideration of a tax rate reduction, the utility shall refund
17 only those associated revenues which cause the utility to earn in
18 excess of that midpoint, as described in paragraph 6(c).

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

22 (a) When, during the reporting period described in 6(a)
23 below, a utility is earning a rate of return which is at or below
24 the midpoint of its authorized range computed without
25 consideration of a tax rate increase, the utility shall collect

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5 a tax rate increase, the utility shall collect only those revenues
6 which cause the utility to earn below that midpoint, as described
7 in paragraph 6(c).

8 (5) Reporting Requirements. Fifteen days after the due date,
9 including authorized extensions, of the annual report, of every
10 year following a tax rate change, each utility shall furnish a
11 final report, in the form prescribed by the Commission. The
12 report shall cover only the prior calendar year during which the
13 tax rate change was effective.

14 (6) Procedures.

15 (a) Refunds or collections shall be calculated from the
16 effective date of any tax rate change through the end of the
17 calendar year. If the tax rate change is in effect for only part
18 of a tax year, the refund or collection shall be calculated in
19 accordance with the utility's customary accounting treatment as
20 authorized by the federal or state taxing authority for tax rate
21 changes which occur during a tax year.

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 already in progress pursuant to this rule.

25 (c) Together with the final report described in subsection

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1 (5) of this rule, each utility shall file a petition containing a
2 calculation of and the method for refunding or collecting any tax
3 savings or deficiency for the tax year of the report. The
4 Commission will review the petition and either approve it, approve
5 it with modification, or deny it; an opportunity for a hearing on
6 the Commission's decision will then be provided, if requested.
7 Thereafter, the utility shall either make the refund to or collect
8 the deficiency from its existing customers in accordance with
9 paragraphs (e) and (f) of this subsection.

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

15 (e) The utility may make any refund or collection either as a
16 lump sum payment or billing or in monthly installments not to
17 exceed twelve (12) months. Such refunds or collections shall be
18 made to or from current customers of the utility at the time that
19 such refunds or collections are to be effected. In either event,
20 the utility shall refund or collect the amount with interest
21 accruing on any outstanding balance from the date of
22 overcollection or underpayment. Interest shall be set by the
23 Commission.

24 (f) An electric utility shall determine each customer's share
25 of refund or collection on a kilowatt hour basis. A telephone

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1 company shall determine each customer's share of refund or
2 collection based on existing general residence and business local
3 rate relationships. Other utilities shall determine each
4 customer's share of refund or collection based on consumption or
5 any other reasonable basis specified in the utility's petition and
6 approved by the Commission.

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

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

15 (b) Nothing in this subsection shall be construed as limiting
16 the operation of the tax expense adjustment process under this
17 rule either in completing a tax savings refund or tax deficiency
18 collection for any tax years prior to the year in which a rate
19 case or show cause is initiated. It shall also not prohibit a tax
20 savings refund or tax deficiency collection for any tax year or
21 portion thereof ending prior to the final order in a rate case or
22 show cause proceeding.

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

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

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

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ORIGINAL
FILE COPY

CERTIFICATION OF
PUBLIC SERVICE COMMISSION ADMINISTRATIVE RULES
FILED WITH THE
DEPARTMENT OF STATE

I do hereby certify:

/x/ (1) The time limitations prescribed by paragraph 120.54(11)(a), F.S., have been complied with; and

/x/ (2) There is no administrative determination under section 120.54(4), F.S., pending on any rule covered by this certification; and

/x/ (3) All rules covered by this certification are filed within the prescribed time limitations of paragraph 120.54(11)(b), F.S. They are filed not less than 28 days after the notice required by subsection 120.54(1), F.S., and;

/ / (a) And are filed not more than 90 days after the notice; or

/ / (b) Are filed not more than 90 days after the notice not including days an administrative determination was pending; or

- ACK _____
- AFA _____
- APP _____
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- LIN _____
- OPC _____
- RCH / / _____
- SEC / / _____
- WAS _____
- OTH _____

(c) Are filed within 21 days after the adjournment of the final public hearing on the rule; or

(d) Are filed within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

(e) Are filed within 21 days after the date the transcript was received by this agency.

FILED
SEP 27 11 30 AM '89
STATE DEPT. RECORDS

Attached are the original and two copies of each rule covered by this certification. The rule repeal is hereby adopted by the undersigned agency by and upon their filing with the Department of State.

<u>Rule No.</u>	<u>Specific Rulemaking Authority</u>	<u>Law Being Implemented, Interpreted or Made Specific</u>
25-14.003	350.127(2), 364.01, 366.05, 366.06(3), 367.121, F.S.	364.01, 364.035, 364.05, 366.05, 366.06, 366.076, 367.121, 367.81, 367.0822, F.S.

Under the provision of paragraph 120.54(12)(a), F.S., the repeal takes effect 20 days from the date filed with the Department of State or a later date as set out below:

Effective: _____
(month) (day) (year)



Steve Tribble

Director, Division of Records & Reporting
Title

Number of Pages Certified

FILED
90 SEP 24 AM 9:05
TALLAHASSEE, FLORIDA

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SUMMARY OF RULE

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

SUMMARY OF HEARINGS ON THE RULE

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

On May 15, 1990, the Commission voted to withdraw the initial proposal and propose a new revision to the rule, which was the equivalent of a total repeal. That proposal replaced the original rule proposal with language reflecting the Commission's regular practices in reviewing all expenses -- an ongoing earnings review. After that notice was published, no requests for a hearing were received, yet comments were submitted. As a result of reviewing those comments, the FPSC staff recommended absolute repeal of the rule.

FILED
90 SEP 24 4 31 PM '90
FLORIDA PUBLIC SERVICE COMMISSION

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

FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

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

FILED
90 SEP 26 AM 3:55
TALLAHASSEE, FLORIDA