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Deputy General Counsel

September 26, 2023

VIA ELECTRONIC FILING

Adam J. Teitzman, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Amendment of Rule 25-14.004, Florida Administrative Code, Effect of
Parent Debt on Federal Corporate Income Tax; Docket No. 20230000-OT

Dear Mr. Teitzman:

On behalf of Duke Energy Florida, LLC ("DEF"), please find enclosed for electronic filing in the above-referenced Docket, DEF's Post-Workshop Comments re. Staff's Developmental Rulemaking Workshop that took place on August 15, 2023.

Thank you for your assistance in this matter. If you have any questions, please feel free to contact me at (727) 820-4692.

Respectfully,

/s/ Dianne M. Triplett

Dianne M. Triplett

DMT/clg
Enclosure

cc: All parties

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Amendment of Rule 25-14.004, F.A.C.,
Effect of Parent Debt on Federal Corporate Income Tax

Docket No. 20230000-OT

Filed: September 26, 2023

POST-WORKSHOP COMMENTS FROM DUKE ENERGY FLORIDA, LLC

Duke Energy Florida, LLC (“DEF”), appreciates this opportunity to submit written comments regarding the Florida Public Service Commission (“Commission”) Staff’s proposed amendment to Rule 25-14.004, F.A.C. The Commission Staff hosted a Rulemaking Workshop on August 15, 2023, at the request of the Office of Public Counsel (“OPC”). DEF offers the following post workshop comments for Commission consideration.

I. DEF Generally Supports the Proposed Rule Amendment

DEF appreciates the Commission Staff’s efforts to update and modernize Rule 25-14.004, in particular the calculation of federal income tax expense for regulated utility companies. DEF fully supports and agrees with Mr. Mark Cicchetti’s comments, made during the Workshop, in which he explained the purpose of the proposed rule amendment and concluded that the Rule was obsolete. Specifically, Mr. Cicchetti noted the following:

- The Rule had its roots in the Commission’s efforts to combat “double leverage,” a concept which was thoroughly debated in the 1970’s and early 1980’s and led to the creation of the Rule’s parent debt adjustment.
- Since its promulgation, however, the theory underpinning the Rule has been discredited, and the practice of most utility commissions is to regulate subsidiary utility operating companies on a stand-alone basis. In particular, FERC, which had

also required a parent debt adjustment in the past, changed its practice in light of the fact that most utility operating companies now raise capital on their own and are separately rated by credit rating agencies.

- The modern trend allows a commission to assess a utility operating company's cost of capital based on the specific risks to which that utility operating company is exposed.
- As a result, the double leverage adjustment now results in rates that are not compensatory, and price signals that are inappropriate.
- Application of the double leverage adjustment embedded in the Rule as currently promulgated results in the utility operating company not being allowed the opportunity to recover its costs and earn its authorized ROE.
- The Commission should have policies and practices in place that allow the utilities regulated by it to earn their authorized ROEs.

DEF agrees with the Commission Staff that the better approach now is to compute the regulated utility's tax expense on a stand-alone basis without making the adjustment currently called for in the Rule. Indeed, DEF makes an interest reconciliation adjustment to recognize the interest that is inherent in the utility's FPSC-adjusted capital structure. This provides a match between capital structure interest and the tax effect considered in the regulated utility's cost of service. Because DEF's capital structure is always determined in a base rate proceeding, the Commission is assured that DEF's capital structure has been properly set. DEF therefore supports the Commission Staff's proposal to amend the rule to remove this adjustment, subject to the clarifying edits proposed below.

II. DEF's Suggested Clarifying Changes

To better clarify what DEF understands to be Commission Staff's intent with these rule changes, DEF respectfully offers the following suggested changes to accurately depict the calculation of total income tax expense for a regulated utility like DEF on a stand-alone basis, which includes current and deferred federal and state income taxes and other items impacting income tax expense, like investment tax credits.

25-14.004 Determination of ~~Federal~~ Total Corporate Income Tax Expense.

In Commission proceedings to establish revenue requirements or address over-earnings, the ~~federal~~ income tax expense of a regulated utility must be determined using only the income of the regulated utility regardless of any parent-subsidiary relationship that may exist. The regulated utility's stand-alone ~~federal~~ income tax expense will be calculated as follows:

- (1) State corporate current income taxes will be determined by multiplying the regulated utility's ~~net~~ state taxable income before state and federal income taxes by Florida's corporate income tax rate plus or minus any applicable tax adjustments or credits in accordance with applicable state income tax laws and regulations.
- (2) The state corporate current income taxes as calculated above will then be deducted from the regulated utility's ~~net~~ federal taxable income before income taxes to yield the ~~net~~ federal taxable income after state income taxes.
- (3) The ~~net~~ federal taxable income after state current income taxes as calculated above will then be multiplied by the federal corporate income tax rate, plus or minus any applicable tax adjustments or credits in accordance with applicable federal income tax laws and regulations, to yield the federal corporate current income tax for the regulated utility.
- (4) Federal and state deferred income tax expenses for the regulated utility will be determined based on the applicable temporary adjustments to taxable income multiplied by the federal and state corporate income tax rates, respectively, plus or minus any applicable tax adjustments or

credits in accordance with applicable federal and state income tax laws and regulations.

(5) Total income tax expense for the regulated utility will be determined by adding the amounts determined in subsections (1), (3), and (4).

III. Response to Workshop Comments

DEF will briefly respond to the comments made by OPC during the Workshop. First, the Supreme Court case cited numerous times by OPC, *General Telephone of Florida v. Fla. Pub. Svc. Comm'n*, 446 So. 2d 1063 (Fla. 1984) (“*General Telephone*”), supports the Commission Staff’s and DEF’s positions on the need to amend the rule to reflect the actual cost to the utility of providing service to the ratepayers. The Florida Supreme Court upheld the Commission’s quasi-legislative rulemaking authority to adopt the rule because it was more representative of the economic realities of utilities at that time. The Court did not nor could it hold that the Commission must retain the rule in its current form and never change it even when the economic realities of utilities change. Rather, the Court recognized the Commission has the discretion “to use any method which will enable it to ascertain the actual cost to the utility.” That is what the Commission Staff proposes now, an amendment to the rule to ascertain the actual cost to the utility today.

It is certainly within the Commission’s purview to re-examine its policy and rules as needed. The Court in the *General Telephone* case even noted that there are different mechanisms to calculate income tax and left it to the Commission’s discretion to determine the appropriate rule to capture the utilities’ current economic realities with respect to that calculation. For example, *General Telephone* noted that the Federal Energy Regulatory Commission (“FERC”) used a similar method of determining for ratemaking purposes the appropriate income tax expense of a regulated utility which files a consolidated tax return with its parent and affiliates. *Id.* at 14. The

FERC has since changed its methodology, and now uses the capital structure of the regulated utility to compute income tax expense (rather than imputing tax expense in accordance with the parent's capital structure) as long as the standalone utility is separately rated by a rating agency and issues its own debt. *See Constellation Mystic Power, LLC*, 165 F.E.R.C. P61,267 (Dec. 20, 2018) (citing *Transcon. Gas Pipe Line Corp.*, 80 F.E.R.C. P61,157 (Aug. 1, 1997)).

DEF therefore agrees with the Commission Staff that the Rule should be amended, with further modifications proposed by the Company, to calculate income tax expense to reflect the economic realities today of the standalone utility thereby resulting in an accurate cost of service calculation.

IV. Conclusion

DEF appreciates the opportunity to provide these comments and respectfully reserves the right to provide additional comments pending review of comments or changes to the proposed rule filed by the other parties.

Respectfully submitted this 26th day of September, 2023.

/s/ Dianne M. Triplett

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to the following this 26th day of September, 2023

/s/ Dianne M. Triplett

Attorney

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