FILED 6/8/2026
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FPSC - COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendment of Rule 25-14.004, F.A.C., Effect of Parent Debt on Federal Corporate Income Tax.	DOCKET NO. 20240019-PU FILED: June 08, 2026

POST- APRIL 22, 2026 WORKSHOP COMMENTS OF THE CITIZENS OF THE STATE OF FLORIDA

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COMMENTS

I. Introduction.

The Citizens of the State of Florida through the Office of Public Counsel ("OPC") appreciate the opportunity to provide these final comments to the Florida Public Service Commission ("Commission" or "FPSC") on this extensive and protracted effort to repeal a bedrock consumer protection measure found in the Parent Debt Adjustment ("PDA") that is codified in Rule 25-14.004, Florida Administrative Code ("PDA Rule").[1] Despite the OPC's frustration with the repeated attempts to further raise customer bills, we recognize that this undertaking is part of the open democratic process that the citizens of our state and country enjoy. To this end, the OPC is participating once more to urge the abandonment of this repeal effort. A repeal would only serve to line the pockets of shareholders at the expense of affordability challenges that many utility customers are suffering. Florida utility profits, rates and bills are already among the highest in the country. The Commissioners should resist the Staff invitation to make them even higher.

As has been noted repeatedly and consistently in the comments of the OPC dating back to 2023, when this latest of several repeal efforts was initiated, the customers are resolutely in favor of retention of this rule that contains a rebuttable presumption about the parent's tax-deductible debt embedded in the regulated capital structure. The previous comments offered by the OPC on (1) September 26, 2023 (written comments); (2) March 5, 2024 (Agenda remarks); (3) July 9, 2024 (Agenda remarks); (4) April 15, 2026 (written comments); and (5) April 22, 2026 (workshop comments) are incorporated herein by reference.[2] Rather than repeat them for the umpteenth time, the OPC commends them to the Commissioners for overall consideration and here will focus on

[1] The PDA and the PDA Rule will be referred to interchangeably herein by either term.
[2] See Appendix pages 7-203.

three elements of the comments that were offered in the April 22, 2026 workshop: (A) the recently concocted notion that rule is somehow outdated despite the acknowledged operation of the rebuttable presumption, (B) the long ago Court-rejected notion that the PDA rule somehow deprives the utility of an opportunity to earn its authorized rate of return, and (C) comments associated with the American Water Works Corporation ("AWWC").

II. Argument.

A. The PDA Rule is well conceived and thoroughly modern and still relevant in its operation with the availability of the rebuttable presumption.

On April 22, 2026, the FPSC held a workshop where the Commissioners were present. The process was robust. The Commission heard from three segments of the utility industry – electric, gas, and water and wastewater.[3] Duke Energy Florida ("DEF" or "Duke") claimed "as a side note" that the PDA was outdated and old fashioned[4] and seemed to complain that that the rule's exclusion of retained earnings in the formula for making the adjustment was perhaps unfairly impacting DEF[5].

Throughout all the modernity complaining, DEF nevertheless asserted that it could rebut the presumption that parent debt was embedded in the subsidiary equity balance. DEF noted that it had filed testimony to this effect in the most recent rate case in Docket No. 20240025-EI. It is true that the testimony was filed, and Duke made that claim. It is also true that Duke made parent debt adjustments for the revenue requirements supporting the rate increases that were negotiated

[3] Jared Deason entered an appearance on behalf of American Water Works Corporation. On May 7, 2026, Mr. Deason filed post-workshop comments on his own behalf without mentioning American Water Works Corporation.

[4] DEF representative Marcia Olivier claimed that the PDA is "no longer appropriate, necessary or consistent with modern ratemaking principles." April 22, 2026 workshop transcript at 27.

[5] April 22, 2026 workshop transcript at 30-31.

in that very docket as a part of the settlement approved in Order No. PSC-2024-0472-AS-EI.[6] The OPC fully recognizes that the inclusion of the contested PDA adjustment in a negotiated settlement is non-precedential and that the nature of that negotiated settlement among the parties was that each side is free to advocate differently in the next base rates proceeding. The 2024 settlement is mentioned here by the OPC as a counter to the notion that because DEF filed testimony in that last proceeding purporting to rebut the adjustment that it succeeded. This 2026 testimony about that 2024 testimony proves nothing relevant here except that even Duke believes that the opportunity to rebut the presumption is an option that is both viable and available to them and further that they have availed themselves of that aspect of the PDA Rule. This is clear evidence that the rule was well conceived and is fully modern in the sense that it is adaptable to current conditions. This evidence alone mitigates the need to repeal the rule.

Despite the assertions of some in the process, the PDA is just as relevant today as it was when it was implemented first by practice in the 1970s and by rule in the 1980s. It was aggressively challenged in both instances by the shareholders of the utilities who wanted to earn a full pretax equity return on the cheap tax-deductible debt they invested in their subsidiaries. The Commission and the OPC successfully defended the practice and rule in court, before the Treasury/ IRA and Congress. The fundamentals of the financing of the utility business have not changed. Income taxes are calculated the same way. Holding companies exist the same today as they did 40-50 years ago. A parent still issues debt, and comingled with other available funds, they invest it in their regulated subsidiary. This fundamental affiliate transaction activity still occurs today. To the extent that borrowed funds can be isolated and proven to NOT be invested in the subsidiary's equity, the adjustment is not made. This has always been the case under the rule.

[6] Order No. PSC-2024-0472-AS-EI, issued November 12, 2024 at 26, 79 (line 8).

The customers say let the PDA Rule operate as intended and let the utilities meet their burden of proof to demonstrate the correct level of income tax expense as has always been required.[7] OPC invites the Commissioners to reject the advice of Staff that the Commissioners simply hand the utilities a guaranteed increase in rates by summarily relieving them of their fundamental burden to prove entitlement to recover the true income tax expense costs they incur as discussed in more detail in Section II.B.

B. As found by the Florida Supreme Court, the rule does not deprive shareholders of earning the authorized return but instead provides some protection to customers from completely overpaying an equity return (and the associated income taxes) on debt that is disguised as equity.

The PDA rule equitably apportions between shareholders and customers the tax benefit that the investing parent receives in the form of a tax deduction on the interest associated with the debt invested in the form of equity upon which customers pay a return. The associated affiliate transaction between the parent and subsidiary related to equity investments (and associated upstreaming of dividends) is well within the Commission's jurisdiction to regulate for the protection of customers through a reasonable and fair apportionment of the benefits with the costs that are incurred.[8] The Staff's shareholder advocacy now digs up a long-buried notion that application of the adjustment deprives the utility of the opportunity to earn its authorized return on equity. More on this long debunked notion below, but it must be said that this is a pure smokescreen designed to take the Commissioners' eyes off the ball of the potential affiliate abuse

[7] The burden of demonstrating the appropriate level of income tax expense rest squarely on the utility. The operation of the rule, including the rebuttable presumption, is well-aligned with this burden of proof. *Fla. Power Corp. v. Cresse*, 413 So. 2d 1187 (Fla. 1982).

[8] The parent's infusion of equity and subsidiary's payment of dividends to the parent are deemed reportable affiliate transactions and treated as such by the required Annual Report filed pursuant to Rule 25-6.135. F.A.C. (Electric IOUs) and Rule 25-7.135, F.A.C. (Gas IOUs). See, for example, attached as Exhibit B the highlighted excerpt from the 2023 Annual Report of Florida City Gas. Exhibit A, Appendix pages 4-5.

that the rule is positioned to reign in. While the shareholder advocates among Staff claim to be concerned about stockholder under recovery, the real issue is that, absent the rule, shareholders will be positioned to ***over*** recover a return on the equity recorded on the subsidiary balance sheet. To the extent that the parent's tax deductible borrowed funds make up a portion of the equity balance upon which the Commission sets rates, customers will overpay the affiliated owners. While perhaps not fully correcting this inequity, the PDA moderates this over payment by imputing the tax deduction benefit that the parent enjoys on its investment that earns a pretax equity return at the Commission. For a half century this affiliate transaction regulation has been accepted by customers as fair enough, even if not perfect. Now the Staff wants to regressively take even that crumb of a protection away and award additional corporate welfare for engorged utility shareholder bank accounts.

Decades earlier in 1984 the Florida Supreme Court addressed this, same now supposedly newly found argument, in *General Tel. Co. v. Florida Public Service Com*, 446 So. 2d 1063 (Fla 1984). In rebuffing a challenge to the PDA Rule based in part on this very notion now advanced in 2026 by a surprisingly and disappointingly pliant Staff, the court noted that :

> Appellants challenge the rule itself on two substantive grounds, the first being that ***use of the rule would deny a utility the opportunity to earn a fair rate of return*** as required by section 364.14, Florida Statutes (1981). Specifically, they claim the adjustment to a utility's income tax expense figure, said figure having already been calculated from the utility's revenue and expenses, would result in an improperly low final income tax expense figure.[9]

(Emphasis added.)

This is the very argument that Staff advanced on April 22, 2026 over 42 years after the settled precedent in the February 2, 1984 decision of the Florida Supreme Court. The Court went

[9] *General Tel.*, 446 So. 2d at 1067-68.

to great pains to carefully dismantle this utility claim that the Staff now has lovingly adopted. In rejecting the notion that "use of the rule would deny a utility the opportunity to earn a fair rate of return," the Court instead found that the subsidiary collects the more accurate income tax expense under the rule by stating:

> We find that the adjustment implemented by the rule in question and the resulting income tax expense attributed to the utility are more representative of the economic realities of a parent-subsidiary consolidated tax liability than is an expense figure calculated as if the subsidiary utility had filed a separate return.[10]

The Court explained this finding by noting that:

> [i]n the normal course of a parent-subsidiary relationship, the parent issues debt in order to acquire capital to support the operations of its subsidiaries. The capital is transferred to the subsidiary in exchange for stock in the subsidiary. As a practical matter, the equity of the subsidiary is thus directly supported by the debt of the parent. The debt of the parent used to support the subsidiary generates interest expense for the parent, which in turn is tax deductible. Although the capital is passed on through to the subsidiary, there is no corresponding pass-through of interest expense because the parent passes on the capital to acquire an ownership interest in the subsidiary as opposed to a creditor's interest. Therefore, the nature of the acquired capital changes from debt to equity at the point the capital passes from parent to subsidiary.
>
> ***
>
> If the parent and subsidiary had chosen to maintain their separate tax identities, the distinction between the capital acquired through debt by the parent and through equity by the subsidiary would have been valid. By filing a consolidated return, however, the entities have removed the separation between parent and subsidiary for tax purposes. No longer is it realistic to treat transactions between parent and subsidiary as transactions between separate entities. Parent and subsidiary are now components of the consolidated entity and the debt issued by the parent component supports the capital structure of the subsidiary component. The pragmatic result is that the consolidated entity has issued debt to support its overall capital structure and the interest paid on the debt goes toward reducing the tax liability of the consolidated entity, therefore benefiting each component member. The adjustment implemented by the rule in question merely allocates to the subsidiary component the interest expense deduction generated by the proportion of the consolidated debt that is used to support the subsidiary component's capital structure.

[10] *Id.* at 1068-69.

> ***
> Since the adjusted figure accurately represents the income tax expense, revenue requirements based on that expense figure would not be set incorrectly and the utility therefore is not denied a fair rate of return on investment.[11]

If this were a basketball game this unanimous Court precedent would be considered a slam dunk; game over, but this is a serious business that affects the pocketbooks of millions of Floridians at a time of severe affordability stress and basketball analogies are inadequate to describe how incredibly disturbing this repeal effort is. In these times it truly offends the sense of fairness and equity that the Staff is continuing in its singular mission of pursuing the repeal of this rule to further increase the extravagant profits of Florida utilities. At the time of the 1984 litigation and Court opinion, both the ***Commission Staff*** and the OPC[12] supported the rule and assumedly advanced the arguments that supported the Court's opinion. The OPC finds it troubling that Commission Staff now seeks to ask the Commissioners to raise customer rates by abruptly and unilaterally reversing a unanimous decision of the Florida Supreme Court and a PDA Rule that the Commission has also vigorously defended before the United States Department of the Treasury[13] and the United States Congress.[14]

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[11] *Id.* at 1069.
[12] The opinion noted these parties defending the rule as Appellees: William S. Bilenky, General Counsel; Patrick K. Wiggins, Deputy General Counsel; and Jose A. Diez-Arguelles, Associate General Counsel, Tallahassee, Florida, for Appellee, Florida Public Service Commission. Jack Shreve, Public Counsel; and Kenneth A. Hoffman, Associate Public Counsel, Tallahassee, Florida, for Appellee, The Citizens of the State of Florida.
[13] See Exhibit B, Appendix pages 204, 226-227. The included Commission Order No. 24985 shows that the Treasury Department withdrew a proposed Treasury Regulation that potentially could have invalidated the PDA Rule on the theory that it would cause a normalization violation if it was deemed a consolidated tax savings adjustment.
[14] Appendix page 22.

The OPC ask the Commissioners to join it in rejecting the sophistry[15] underlying the suggestion of certain elements of Staff that the implementation of the PDA Rule effectively deprives the shareholders of the poor PDA-saddled utilities of an opportunity to earn their authorized rate of return. Apart from the rock-solid support that the Supreme Court has given the rule, the Commission's own website provides strong refutation of this ridiculous notion that Staff offers about the inability to earn its rate of return. A bedrock principle of utility ratemaking is enshrined on the front page of the Commission's website and it recognizes that non-recovery of a disallowed expense is not a deprivation of the shareholders' ability to earn the allowed return. The agency unequivocally says:

> [t]he utility is required to justify all of its expenses for the operations of the utility. An expense that the Commission determines to be improper, imprudent, or unnecessary is disallowed and is excluded from the amount the utility is allowed to collect from customers.

As the Court notes, the unrebutted PDA-driven income tax expense is "more representative of the economic realities" and that the "***adjusted figure accurately represents the income tax expense***." (Emphasis added.) The bogus "stand-alone" income tax expense that fails to recognize the unrebutted quantity of debt embedded in the "booked" equity is exactly what the PDA Rule effectively disallows as described in the Commission's quote above. It is not in the utility's cost of service and any barred recovery of it cannot be a shareholder deprivation.

[15] Sophistry is "1: subtly deceptive reasoning or argumentation; 2: an argument apparently correct in form but actually invalid; *especially*: such an argument used to deceive . . . . 'Sophistry' is reasoning that seems plausible on a superficial level but is actually unsound, or reasoning that is used to deceive." *Sophistry*, MERRIAM-WEBSTER (Aug. 26, 2008), **https://www.merriam-webster.com/word-of-the-day/sophistry-2008-08-26**.

The affiliated over-recovery of the so-called stand-alone income tax expense, calculated without regard to the tax deductions available to the parent related to its debt masquerading as equity, is something that the Commission is obligated to moderate if not to outright correct. The Commission has vigilantly guarded this henhouse for 50 years. Now Staff wants the Commissioners, through PDA Rule repeal, to throw open the doors and let the foxes in and in doing so, to effectively raise rates and further increase utility profits, already among the highest in the nation. It bears repeating that the Staff effort to characterize the PDA as causing an ROE underrecovery, like the stockholders unsuccessfully attempted to do in 1984, is an invitation to the Commissioners to take their eyes off the ball. In reality, absent the rule and through a resulting failure to properly regulate this affiliate transaction, customers will overpay shareholders by paying an equity return (and the associated income taxes) on debt that is disguised as equity. At least with respect to the income tax expense, this circumstance involves fairly addressing one of those "improper, imprudent, or unnecessary" expenses that the Commission has, on the front page of its website, publicly pledged to protect the customers from paying. Leaving the PDA Rule intact will help the agency to continue to fulfill that commitment for utility customers.

C. A brief note on the Comments offered at the workshop on behalf of American Water Works Corporation and follow up written remarks of the AWWC representative.

The Commission heard from the AWWC representative whose company has no customers in Florida and what essentially sounded like a threat that his company – with no identified Florida plans or acquisitions announced – would not invest in Florida utilities unless the PDA Rule was repealed. Specifically he stated:

> So I think this debt rule that we are talking about, in the long run, it can raise a company who is operating in Florida's cost of capital. It also chases capital away.

> A rule like this keeps my company from coming to Florida, and other utilities as well, which I think is a detriment to the citizens of the state of Florida.[16]

This claim was not repeated in the personal written comments Mr. Deason filed on May 7, 2026. It is disappointing that a utility like AWWC which has the mother of all incentives in the newly available 2023 Fair Market Value ("FMV") statute (section 367.0811, Florida Statutes) which provides an overabundance of incentive in the form of substituting FMV rate base valuation for the traditional original cost method advances such a petty objection. The OPC submits that if FMV alone is not enough to incent a company like AWWC from entering the market and it needs to hide debt in the subsidiary equity in order to siphon off customer-entitled tax deductions for its shareholders, perhaps they are not as financially sound as they need to be to serve Florida customers. A heavy handed threat to withhold entry into the state unless the PDA Rule is repealed is also certainly not a good look for out-of-state AWWC.

OPC would note that in the May 7th comments, Mr. Deason appears to have misunderstood the OPC testimony. The OPC never advocated for use of "double leverage." The comments attributed to the OPC at page 2 of Mr. Deason's written filing were not even remotely the OPC advocating for double leverage. The OPC was simply *contrasting* the misguided assertion by staff and others that the PDA Rule somehow implements a double leverage adjustment, which is a capital structure adjustment, against the nature of the PDA which is solely an income statement adjustment.[17] Changes in the national landscape of the related to double leverage have zero

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[16] April 22, 20026 Workshop Transcript at 66, Appendix at page 72.

[17] The Iowa and Tennessee cases cited by Mr. Deason illustrate the totally misplaced nature of the failed effort to link the PDA with the discarded "double leverage" *capital structure* adjustment. A straightforward reading of the two orders demonstrates how the PDA could not be more dissimilar to the double leverage adjustment's wholesale changeout of the subsidiary capital structure. Final Order, *In Re:* Iowa-American Water Company*,* Docket No. RPU 2016-0002, Iowa PUC LEXIS 125, at *51-52 (Iowa Util. Bd. Feb. 27, 2017); Amended Order, *In Re:* Petition of Chattanooga Gas Company for Approval of An Adjustment in Rates and Tariff; The Termination of The AUA

relevance to the operation or viability of the PDA Rule in Florida. The OPC was only pointing out that the Staff was making an apples-to-golf balls comparison – both items are round and you can throw them or hit them, but they are completely different in make-up and serve completely different purposes.

Mr. Deason's May 7th filing only serves to unhelpfully continue the obfuscation and confusion Staff initiated. The OPC's remarks were simply misunderstood by the AWWC representative on this point. The OPC never said the PDA itself is an "affiliate transaction." What the OPC *did* say was that the PDA Rule was: (1) an "affiliate transaction protection" (TR[18]14), (2) an "affiliate transaction adjustment" (TR18, Appendix page 24), (3) "[a Commission measure to] address this unfair affiliate transaction" (TR 20, Appendix page 26), (4) a "consumer protection against affiliate transaction abuse" (TR 21, Appendix page 27), (5) "an affiliate transaction rule" (TR 46, Appendix page 52), (6) "an affiliate transaction correction to this affiliates relationship" (TR 47, Appendix page 53), and (7) "an affiliate transaction oversight [mechanism]" (TR 50, Appendix page 56). The AWWC is simply wrong in attempting to equate the PDA with the double leverage adjustment that involves a wholesale substitution of one entity's capital structure for that of another. As noted about the income tax expense adjustment in the PDA, when unrebutted, it provides the customers some indirect relief from the overpayments they make to shareholders (in the form of the ROE return on debt disguised as equity and ultimately dividend payments) through the PDA Rule's reduction to income tax expense. It is not a capital structure adjustment.

Mechanism and the Related Tariff Changes and Revenue Deficiency Recovery; and an Annual Rate Review Mechanism, Docket No. 18-00017, 2019 Tenn. PUC LEXIS 5, at *106-13 (Tenn. Reg. Util. Comm'n Jan. 15, 2019) .

[18] "TR" citations are to the transcript of the April 22, 2026, workshop.

III. Conclusion

The OPC urges that the Commissioners reject the mysteriously new-found criticisms of the PDA Rule that were rejected by the Florida Supreme Court 42 years ago. If anything, the Staff and shareholder criticisms offered on April 22nd (and previously) are themselves old fashioned, dated, and should be ignored as they were back in the old days. The evidence and the comments demonstrate that the rebuttable presumption is available to keep the PDA Rule relevant and adaptable to any changing circumstances. The red-herring of the attempt at associating the income statement PDA with the notion of the capital structure based "double leverage" adjustment should be rejected. The facts are that an ill-advised repeal of the rule will raise customer rates.[19] As mentioned at the beginning of these final comments, a repeal would only serve to line the pockets of shareholders at the expense of affordability challenges that many utility customers are suffering. Florida utility profits, rates and bills are already among the highest in the country. The Commissioners should resist the Staff invitation to make them even higher.

Respectfully submitted,

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[19] Appendix pages 61-62.

CERTIFICATE OF SERVICE
DOCKET NO. 20240019-PU

I HEREBY CERTIFY that a true copy and correct copy of the foregoing was served on this 8th day of June, 2026, via electronic mail on:

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APPENDIX

Appendix

EXHIBIT A

ANNUAL REPORT OF

NATURAL GAS UTILITIES

PIVOTAL UTILITY HOLDINGS, INC. D/B/A
Florida City Gas

(EXACT NAME OF RESPONDENT)

208 Wildlight Avenue
Yulee, FL 32097

(ADDRESS OF RESPONDENT)

TO THE

FLORIDA PUBLIC SERVICE COMMISSION

FOR THE

YEAR ENDED DECEMBER 31, 2023

Officer or other person to whom correspondence should be addressed concerning this report:

Name: Michael D. Cassel	Title: Vice President, Government and Regulatory Affairs	
Address: 208 Wildlight Ave	City: Yulee	State: FL
Telephone No.: (561) 252-0250		PSC/ECR 020-G (12/03)

Name of Respondent	For the Year Ended
PIVOTAL UTILITY HOLDINGS, INC.	
D/B/A FLORIDA CITY GAS	December 31, 2023

INDIVIDUAL AFFILIATED TRANSACTIONS IN EXCESS OF $25,000

Provide information regarding individual affiliated transactions in excess of $25,000. Recurring monthly affiliated transactions which exceed $25,000 per month should be reported annually in the aggregate. However, each land or property sales transaction even though similar sales recur, should be reported as a "non-recurring" item for the period in which it occurs.

Name of Affiliate	Description of Transaction	Dollar Amount
Peninsula Pipeline Company, Inc.	Firm Transportation Service Agreement (Indian River Company) between FCG and PPC	$70,000
Peninsula Pipeline Company, Inc.	Firm Transportation Service Agreement (Vero Beaches) between FCG and PPC	$201,141
Florida Public Utilities	FCG purchased gas from FPU in December.	$26,771
Florida Power & Light	Equity Contribution from Affiliate	$80,000,000
Florida Power & Light	Loan from Affiliate	$35,000,000
Florida Power & Light	Dividend Distribution to Parent	14,400,000
Florida Power & Light	Purchases of Natural Gas from Affiliate	13,176,638
Florida Power & Light	Loan Interest Payments to Affiliate	5,497,858
Florida Power & Light	Information Technology Capital Support Provided by Affiliate	1,351,604
Florida Power & Light	Corporate Service Charges From Affiliate	1,106,700
Florida Power & Light	Integrated Supply Chain Capital Support Provided by Affiliate	$623,156
Florida Power & Light	Corporate Real Estate Services Provided by Affiliate	$411,448
Florida Power & Light	Information Technology Services Provided by Affiliate	$345,834
Florida Power & Light	Fleet Services Provided by Affiliate	$226,236
Florida Power & Light	Transfer of 2022 Performance Incentive to Affiliate	$216,883
Florida Power & Light	Reimburse Affiliate for Benefit Expenses	164,887
Florida Power & Light	Integrated Supply Chain Services Provided by Affiliate	133,335
Florida Power & Light	Corporate Real Estate Capital Support Provided by Affiliate	87,046
Florida Power & Light	Transfer of Expenses to Affiliate	44,340
Florida Power & Light	Accounting & Finance Support Provided by Affiliate	41,483
Florida Power & Light	Customer Service Capital Support Provided by Affiliate	33,786
Florida Power & Light	Reimbursement to Affiliate for Insurance Premiums	30,363
Florida Power & Light	Integrated Supply Chain Services Provided by Affiliate	26,284
NextEra Energy Pipeline Services,LLC	Pipeline Services Provided by Affiliate	$265,639
NextEra Energy Resources LLC	Information Technology Capital Support Provided by Affiliate	$351,467
NextEra Energy Resources LLC	Integrated Supply Chain Capital Support Provided by Affiliate	$204,376
NextEra Energy Resources LLC	Information Technology Services Provided by Affiliate	176,202
NextEra Energy, Inc.	Transfer of 2022 Performance Incentive from Affiliate	51,305

EXHIBIT B

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20240019-PU

PROPOSED AMENDMENT OF RULE 25-14.004,
F.A.C., EFFECT OF PARENT DEBT ON
FEDERAL CORPORATE INCOME TAX.
_____________________________________/

PROCEEDINGS: COMMISSION WORKSHOP

COMMISSIONERS PARTICIPATING:
CHAIRMAN GABRIELLA PASSIDOMO SMITH
COMMISSIONER GARY F. CLARK
COMMISSIONER MIKE LA ROSA
COMMISSIONER BOBBY PAYNE
COMMISSIONER ANA ORTEGA

DATE: Wednesday, April 22, 2026

TIME: Commenced: 9:30 a.m.
Concluded: 11:28 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: DEBRA R. KRICK
Court Reporter and
Notary Public in and for
the State of Florida at Large

PREMIER REPORTING
TALLAHASSEE, FLORIDA
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APPEARANCES:

CHRISTOPHER T. WRIGHT - Florida Power & Light Company

STEPHANIE CUELLO and MARCIA OLIVIER - Duke Energy Florida, LLC

BETH KEATING - Florida City Gas and Florida Public Utilities Company

J. JEFFREY WAHLEN - Tampa Electric Company, Peoples Gas Company & Sunshine Water Services

JARED DEASON - American Water Works

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BRADLEY MARSHALL and JORDAN LUEBKEMANN - Florida Rising Inc.

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P R O C E E D I N G S

CHAIRMAN SMITH: Okay. Good morning, everyone. Today is Wednesday, April 22nd, 2026. It is 9:32 a.m. I will now convene this rule development workshop.

Staff, will you please read the notice?

MR. BLOOM: By notice dated April 2nd, 2026, this time and place has been set for the Commission workshop on Docket No. 20240019-PU. The purpose of this workshop is to gather more information on the potential amendments to Rule 25-14.004, Florida Administrative Code, which addresses calculating the income tax expense of a regulated utility and which currently requires using the income tax expense of debt its parent company has invested in it.

CHAIRMAN SMITH: Thank you, Mr. Bloom.

Yeah, as Mr. Bloom stated, today's workshop we will be gathering stakeholder comments regarding potential amendments to Rule 25-14.001. For those watching on-line, a copy of the draft amendments and materials for today's workshop are on the Commission's website under the rule development tab.

Today's workshop will be structured as

follows: First, we are going to take appearances. Then we will -- staff will give a formal presentation on the history, current impact of and suggested amendments to the parent debt rule. Certain stakeholders have requested to give formal presentations as well, and those will take place after staff's.

Next we will move to our third agenda item, Topics for Discussion. During this portion of the workshop, each stakeholder will address the nine questions that were included as part of the agenda for this workshop. After all stakeholders have made -- had an opportunity to respond to the Commission's questions, staff will outline the next steps in the rulemaking process.

Does anyone have any questions before we get started? Okay. Seeing none, let's move to -- let's take appearances. We are going to start just like how we usually do, just down the line, so, Mr. Wright.

MR. WRIGHT: Good morning, Madam Chair and Commissioners. Christopher Wright on behalf of Florida Power & Light.

MS. CUELLO: Good morning. Stephanie Cuello on behalf of Duke Energy.

MS. OLIVIER: Good morning. Marcia Olivier on behalf of Duke Energy.

MS. KEATING: Good morning. Beth Keating with the Gunster firm here for FPUC and Florida City Gas.

MR. WAHLEN: Good morning. Jeff Wahlen, Ausley McMullen law firm, for Tampa Electric, Peoples Gas and Sunshine Water.

MR. DEASON: Jared Deason on behalf of American Water Works Corporation.

MR. MARSHALL: Good morning. Bradley Marshall and Jordan Luebkemann on behalf of Florida Rising.

MR. REHWINKEL: Good morning, Charles Rehwinkel with the Office of Public Counsel on behalf of the customers of the investor-owned utilities. Walt Trierweiler, the Public Counsel is also in the room. Thank you.

MR. BLOOM: And Susan Sapoznikoff, Zachary Bloom and Mark Cicchetti on behalf of staff.

CHAIRMAN SMITH: Thank you.

Is there anyone else in attendance that would like to introduce themselves and then present? Okay. All right, seeing none.

We are going to move to the formal presentations. We will start with staff's presentation, which will be given by Mark Cicchetti.

Mr. Cicchetti, you are -- you may begin whenever you are ready.

MR. CICCHETTI: Good morning, Madam Chair and Commissioners, Rule 24-14.004, the Effect of Parent Debt on Federal Corporate Income Taxes adjusts a utility's income tax expense based on debt at the parent company level.

The rule is a variant of double leverage, and I will explain more what double leverage is as we get into the presentation. But double leverage has largely disappeared from regulatory practice. It was a big issue back in the '70s and the '80s, but regulation both at the federal and state level has moved to the stand-alone methodology of setting utility rates. And I will explain what stand-alone is also as we move on.

But first, this slide is the rule as it currently exists, and I only point it out here because I want to direct your attention to a couple of sections of the rule.

In the second paragraph, under one, the second part of that sentence is: The income tax effect of the parent's debt invested in the equity of the subsidiary shall reduce the income tax expense of the utility. And I just want to keep that in mind when we talk about stand-alone regulation.

The second thing I want to point out is in section four, the next to the last sentence says: This result shall be multiplied by the equity dollars of the subsidiary, excluding its retained earnings. And I point that out because this is going to support why the double leve -- or why the parent debt adjustment is a variant of double leverage.

So what is the stand-alone approach to setting utility rates? Well, it's basically to target just the revenues and expenses associated with the regulated utility. And the principle is to avoid the utility either subsidizing nonregulated investment or being subsidized by nonregulated investment.

So think of two utilities that are exactly the same, the same revenues, expenses, the same cost of service, the same capital structure, the same risk and, therefore, the same required return, except one has individual shareholders and the other is owned by a parent company.

Well, because of the parent debt rule, the

Commission would set the rates for those exactly the same utilities that have the exact cost of service differently. And why is that? Because we are -- the parent has debt on its balance sheet, the rule requires that that, through the calculation, reduce the income tax expense of the utility that has a parent company, which is discriminatory, for one thing, between individual shareholders and a parent held company. But why -- what's the basis of that adjustment?

And the whole theory about behind double leverage was that the cost to the parent company having that debt and investing it into the utility is actually lower than the cost of just the utility's weighted average cost of capital.

So in a classic double leverage investment, the weighted average cost of capital of the parent company would be used as the return on equity for the utility. And once that got, you know, academic scrutiny, the fallacy of that was that the return on equity of the utility should be based on the risk that that capital is exposed to, and how the Commission sets rates is that allowed return on equity should be the same as allowed return for comparable companies of similar risk. And so the cost is based on the risk that the capital is exposed to, not where the source of the funds came from.

For example, if you took out a second mortgage or a first mortgage in order to invest in this utility, would you want someone saying, well, you can't deduct that income tax expense or interest expense on your federal tax return because we are going to give that to the utility. So we wouldn't consider taking the income tax benefit of the interest expense for the utility and giving it to the parent company. But the same logic prevails, we shouldn't take the parent company's tax benefit and give it to the regulated utility. So even if they were the same in every instance with the parent debt adjustment, we would set different rates.

So let's talk about what exactly double leverage is. The double leverage approach traces the operating utility's equity capital to its ultimate source, the parent's debt and equity. And this approach has several variants, including the parent debt adjustment.

Now, I am quoting here from a book by Roger Moore, Modern Regulatory Finance, and there is a modified double leverage approach. And what the modified double leverage approach says is: One refinement to the double leverage method is to recognize that the parent's weighted cost of capital should only be imputed to the portion of equity actually contributed by the parent. The subsidiary's retained earnings should be removed from the double leverage imputation since none of the subsidiary's retained earnings are traceable to the capital raised by the parent.

So if we go back to the first slide with the rule, and in section four there, the rule says the results shall be multiplied by the equity dollars of the subsidiary excluding its retained earnings. So when we are looking at the parent debt adjustment, we are looking to the debt at the parent level and capital structure of the utility. And so it's a version of the double leverage approach. And the required return on equity, as I said, is a function of the risk that the assets are exposed to and not just the sources of the capital.

So the history of the rule is such that prior to the rule, the Commission typically relied on the stand-alone method. And in Citizens/Hawkins, the Supreme Court first addressed the stand-alone method versus the double leverage method, and the only testimony filed in the case was filed in support of the double leverage methodology. And so the court ruled that the Commission had jurisdiction and the only evidence was supporting the double leverage adjustment. There was no ruling on the merits of the parent debt adjustment or double leverage, just that the Commission had jurisdiction and that was the evidence in the record.

Also, the rule was challenged in General Telephone Company of Florida versus the Florida Public Service Commission and, again, it was a similar situation. So there are no court rulings that have weighed in -- Florida Supreme Court rulings that have weighed in on the merits of the adjustment, just that the Commission has the discretion to make that adjustment.

And so what are the arguments against the parent debt adjustment? Well, the utility will not recover its actual cost of service. Think back to when we talked about two exact utilities. One is going to have a higher revenue requirement than the other because the rule reaches out and takes debt at the parent level and uses it, that tax benefit, to reduce the income tax expense of the utility.

So, in essence, it's an adjustment to the allowed return, and this is not good from the Commission's perspective from an investment standpoint, because it's a situation where the Commission allows a return and then has a rule that says, well, we are going to limit your ability to earn that return.

So also consider that in a rate case, the utility's capital structure is before the Commission. The Commission looks that a utility has issued its own debt. We have the percentages of debt and equity in the capital structure. The Commission rules on those, and so we have a weighted average cost of capital for the regulated utility. Why, then, do we reach back to the parent and then use that amount to reduce? That violates the stand-alone amendment. It violates the financial theory that the return should be a function of the risk that the capital is exposed to and not the source of the funds.

So in the long run, having utilities under-recover their cost of service will lead to higher risk and, therefore, a higher required return. Because think about it, if you could just reduce their cost of service by one or two percent and there were no consequences, why stop at one or two percent? Let's reduce them 20 percent, or 40 percent. No, when you don't allow the utility to recover its cost of service, it eventually will increase the risk of the utility and the overall cost of funds, and potentially their ability to attract capital if it's a large enough investment.

So finally, the provisions that we are -- the amendments that we are recommending calculate the income tax expense as we normally would for a company that has individual shareholders. And that would be doing the income tax expense on a stand-alone basis, and we would just no longer make the parent debt adjustment.

So the rule, the final few slides here, are the changes that would need to be made to the rule so that it makes explicitly, you have the revenues minus expenses, so, therefore, you have your profit. That profit is going to be taxed at the state and the corporate -- at the state and the federal level, and that's the cost of service that will be passed on to customers.

And that concludes my presentation.

CHAIRMAN SMITH: All right. Thank you Mr.

Cicchetti.

Do any of the stakeholders have any comments regarding staff's presentation?

Okay. So now we are going to move to stakeholder presentations. We will start with OPC.

So, Mr. Rehwinkel, you are recognized whenever you are ready.

MR. REHWINKEL: Thank you, Madam Chairman. And I may emesh some comments in my comments here about staff presentation here today.

I am Charles Rehwinkel. I am here on behalf of the Office of Public Counsel representing the ratepayers of Florida's investor-owned electric, gas and water utilities.

Commissioners, this is usually the place where I would thank you for the opportunity to make these remarks. However, if you saw our comments that we filed last week, the essence and the tone of our remarks, we don't really appreciate having to appear here at all. And once again, fight off and keep a bedrock battle-tested nearly half-century old affiliate transaction protection that has saved customers hundreds of millions of dollars since at least the late 1970s.

The customers are, likewise, battle-tested, but we are also battle-weary from continually fighting off this, what seems to us, to be an antagonistic repeal effort alongside base rate increases, excessive profits, ever creative clause increases, increase shareholder extractions on asset gains funded by customers, and extra revenue, even, that the company did not even ask for in their filings. Increasingly to us, the headline is, heads, the shareholder wins, tails, the customer loses.

I am not going to belabor and repeat the written remarks we filed last week. I would commend them to you if you have not seen them. We would have preferred to see that the staff generated effort brought to an agenda to be terminated, not workshopped. To us, the workshop is a strong signal that the goalpost will be yet again moved, and the recent fourth, fifth or sixth iterations of tried to eliminate this consumer protection rule will not be the last.

Let me briefly review the long struggle to raise customer bills in this repeal effort.

No. 1, in 1988, your staff had proposed repeal, but that went nowhere. The Commission voted them down. Now, staff has said, that wasn't voted down. It was deferred. That -- we will take another 33-year deferral if that's what it takes. To us, 33-year deferral means rejected.

The second repeal effort in 1990, some utilities took a run at the rule by claiming that it was a potential normalization violation arising out of a proposed treasury regulation that was directed at cracking down on consolidated tax return adjustments in other states, not Florida.

The Public Counsel, your legal director, your director of tax, went to Washington. We defended the PDA in testimony before the Treasury Department. The OPC and the Commission tax director later also testified before Congress supporting this rule.

The upshot, Treasury withdrew the proposed regulation for other reasons, and also indicated to us in that original testimony session that the PDA was not a consolidated tax savings and was not a normalization violation. They were actually quite baffled at why this Florida rule was even tangled up in that regulation process.

No. 3, 33 years passed, as mentioned in our comments in 2023, the staff held a workshop and proposed repeal, and cited some so-called new information. We did some digging and discovered that the new information was neither new, it was public knowledge as far back as 1983 contemporaneous with the public -- with the PDA rule's challenge in the courts, nor was that relevant to this rule. And it was pushed by a treatise by a biased utility centric source. That aspect of the effort was addressed in our September 2023 comments, which we have attached to our comments from last week.

Nos. 4 and 5; in 2024 in the midst of several parallel rate case proceedings, the repeal effort came to Agenda and was argued and deferred, and then argued and deferred again. That was in March and July of 2024. The transcripts of our remarks are found in this docket at documents 01222-2024, beginning at page three -- page four, and 07705-2024 beginning at page three. Concerns about rate impacts appear, to us, to cause those two deferrals that we are here today.

In the sixth repeal effort, at weigh station six now. Just like in August of 2023, we had another workshop. New goalpost is on the move. Staff now says it's definitely something called double leverage, as you have heard today.

As we pointed out many times in this process, this is an affiliate transaction adjustment where the double leverage adjustment -- while the double leverage adjustment is a balance sheet adjustment that is directed at the capital structure and it affects the WACC, the PDA rule does not address either one of these things. I commend to you our previous comments on the double leverage red herring, if you will.

I want to provide a note about staff's assertion that this adjustment does not allow the regulated subsidiary to earn a rate of return that you authorize. I think this is wrong. It's a misdirection from the facts and the history of this rule, and why it came to be in place.

This is really an affiliate transaction, and the Commission is making an adjustment to correct an excessive cost on the books of the regulated utility based on an affiliate relationship. There is no their when it comes to the costs that are booked on the regulated utility's books. A regulated subsidiary has affiliate costs in their balance sheet and on their income statement from the parent and service company's incentive compensation to capitalize allocations of A and G.

These costs are booked and become the regulated subsidiary's costs. But disallowances or adjustments to those costs don't mean that they can't earn their rate of return. You are exercising organic fundamental ratemaking oversight when you make disallowances based on imprudent affiliate costs.

So I think that's a total red herring to suggest that this rule, and any other affiliate transaction adjustment that the Commission would make, is a denial of the utility's ability to earn the rate of return that you have authorized them to earn.

The notion that the Commission cannot make an adjustment on the regulated books because the disallowance will not allow them to recover their costs, or their true costs -- however Mr. Cicchetti phrased it -- is absurd, in our opinion.

Furthermore, the superficial notion about earning a fair rate of return would bar the Commission from ever adjusting an excessive allocation from an affiliate, or a charge from an affiliate for correcting a transfer of an asset to an affiliate at an imprudently low cost.

The tax deductible interest on the debt that is invested in the subsidiary creates an unfair benefit to shareholders when the customers pay a grossed-up equity return on it. The Commission decided many decades ago to address this unfair affiliate transaction by imputing the tax benefit received by the parent, and, in some cases, the grandparent, to the benefit of the customers. This is no different from adjusting an excessive or imprudent cost charged from an affiliate, or imputing unrecognized or underpaid revenue attributable to an asset or a benefit provided by the subsidiary and paid for by customers through that parent or affiliate.

The Florida Supreme Court recent -- not recently, upheld the Commission's authority to do just this, by approving the Public Service Commission's imposition and, thus, imputation on the regulated company's books of a royalty payment by a PSC certificated affiliate of United Telephone Company to compensate it and the customers for the startup long distance affiliate's uncompensated use of name, image, likeness, good will and avoided training costs provided to them by the monopoly phone company's ubiquitous name and logo. And that's United Telephone Company Long Distance, Inc., V Nichols, 546 So.2d 717, Florida 1989.

The Commission required this fee to be paid by the affiliate, but the effect in reality was to impute the revenue for earnings surveillance and ratemaking purposes on the regulated books.

The PDA adjustment, as I call the parent debt adjustment, is no different. In United, the Court recognized the Commission's authority to compensate customers for benefits they provided to the affiliate, saying, in effect, the Commission found that substantial resources developed by local telephone exchange ratepayers should not be utilized without compensation by the long distance service. That same cite, but at 720.

These well-settled principles of consumer protection against affiliate transaction abuse, or the potential for abuse, found in the PDA and found in the royalty case should be preserved and not abandoned here.

To conclude, it seems like every time that we make a field goal, or made a field goal, the posts were being moved while the ball was in the air. The crew is out there yet again, once again poised to move the post. After these many decades of successful field goals, we just want the posts removed and the hostilities to cease. We ask you to please put an end to this madness.

I would note that if there is any talk about Florida being the only state to make this PDA adjustment, and that there is some sort of national standard, we would ask you convene a workshop, or expand this one, to combine discussions about why Florida is the only state awarding outlandish ROEs that are 75, 100 or more basis points above those awarded in most, if not all of the other 47 in the lower 48. That might be a fair apples to apples exercise.

We affirm and incorporate by reference our written comments from last week, and the comments we filed on September 26th, 2023, and the remarks made on March 5th, '24 and July 9, '24. I am happy to against any questions in the session that follows later, but I urge you to reject this effort to, yet again, repeal the parent debt rule. There is nothing new. You are squarely within your rights and your obligation to protect customers against affiliate abuses, and that's all this rule is.

Thank you.

CHAIRMAN SMITH: Thank you, Mr. Rehwinkel.

Next we will move to Florida Rising. Mr. Marshall.

MR. MARSHALL: Thank you, Commissioners, for the opportunity to address you today. My name is Bradley Marshall. I am here on behalf of Florida Rising.

Commissioners, we fully degree with the points that the Office of Public Counsel has raised regarding why the effective repeal of the parent debt adjustment rule is a bad idea and will not repeat them in-depth.

Suffice it to say, we are in an extended period of affordability crisis in the state with residential investor-owned utility electric bills from. From 2013, the average residential investor-owned utility electric bill in this state has gone from just above $120 per month to over $162 for FPL in 2025, to over $185 for Duke in 2025, and over $193 for TECO in 2025.

There were multiple months in 2025 where TECO residential customers had the highest or second highest electric bill in the nation for any electric utility with more than 100,000 customers.

Since 2009, we have seen the return on equity per customer increase from a little over $212 per customer for TECO to over $581 per year. For Duke, about $166 per customer to over $457. And for FPL, from $167 to over $678.

The residential bills for the IOUs have long exceeded that of the munis and national averages, but since 2017, the all-in kilowatt hour rate for the IOUs has exceeded that of the munis. And now the IOU residential bills and all-in kilowatt hour rates also exceed that of the rural cooperatives of this state, which were originally set up to serve the hardest and most expensive to serve areas.

Recent reporting shows that Florida is number two in the nation disconnections, with millions of Floridians being disconnected for being unable to afford their electric bills every year. This is a crisis.

We would hope that this Commission would be looking to make rules and policies rein in the highest utility profits in the nation and make electricity more affordable in the state. Instead, we see this, along with the asset optimization mechanism expansion, for example, which only promised to raise bills and rates to shift even more profits to the utilities.

We know from TECO's and Duke's responses to the staff data requests in this docket that the effective repeal of this rule will only add to revenue requirements, that is higher rates and higher bills.

We heard during staff's presentation that this rule effectively discriminates against parent companies, and ensures that they can't earn a fair return in Florida. If that was true, we wouldn't see from these parent companies on their investor calls bragging about how much they are able to invest in this state, and how much they are able to make on their returns here. This is where they go to invest and make returns. I would posit that it's kind of -- would be an absurd argument to say that Florida is the state where the investor-owned utilities aren't able to make a fair return on their investments.

We also heard that the -- that this rule is leading to -- is one of the reasons that we might be seeing higher returns on equity in this state, and that we might be seeing more frequent rate increases. If that was true, then I would also say that FPL, which hasn't seen any revenue requirements increase as a result of this rule, would have -- should have the lowest ROE of the investor-owned electric utilities, and should not be having annual rate increases. Instead, we see the opposite, that they have, by far, the higher ROE of the regulated investor-owned electric utilities in the state.

We also heard about the stand-alone approach that we would posit that that's never been true, that we can truly look at the regulated electric utilities in isolation. We have always looked at affiliate transactions. We have always looked at what direction they are receiving from their parent company. However much we would like, the subsidiaries that are regulated by this commission are not islands. They are impacts both direction.

So we ask you to say no, and to please keep this consumer protective rule in place, and allow ratepayers to deduct the interest on debt embedded in the equity infusion in the regulated subsidiaries from their parent company. As shown by OPC, this has been battle-tested for almost 50 years now. There is no reason to change course to shift even more profits to shareholders at this point.

Thank you.

CHAIRMAN SMITH: Thank you, Mr. Marshall.

Okay. Next, Ms. Olivier from Duke.

MS. OLIVIER: Good morning. Good morning, Commissioners.

I have about seven points I would like to read. So I am going to explain why the parent debt adjustment is no longer appropriate, necessary or consistent with modern ratemaking principles. And I will explain that no other state in the nation possess such a rule, nor does the FERC have such a requirement.

So point No. 1. The rule was adopted to address concerns that no longer exist in their original form. My research shows that the rule was adopted in 1983, when there were different corporate structures and limited access to detailed financial information regarding intercompany financing.

So in the 1980s, when the rule was adopted, utility parents frequently issued debt directly to fund subsidiary capital investments, and proceeds were frequently downstreamed to utilities through equity contributions. So in other words, capital was fungible across corporate groups as utilities often lacked independent market access. This supported the rebuttable presumption embedded in the rule that the parent investments mirrored the parent's overall capital structure.

Today, parent level debt is typically issued solely for holding company purposes, and utilities issue their own debt debit and possess independent credit ratings. Today, utilities routinely employ bankruptcy remote provisions isolating utility assets from parent creditors. If parent creditors cannot access utility assets, it is illogical to assume that parent debt is used to finance utility equity.

Point No. 2. The rule is based on a rebuttable presumption that parent investments are made in proportion to the parent's overall capital structure. In practice, however, parent level debt is often used for nonregulated or nonutility purposes. Subsidiaries frequently fund capital expenditures through retained earnings or utility specific debt issuances, and holding company capital structures may not reflect the financing of regulated assets at all.

Point No. 3. The adjustment distorts cost of service results and conflicts with Commission-approved capital structure. The Commission routinely determines an appropriate capital structure for ratemaking purposes based on the utility's risk profile and financing characteristics. Imposing an additional parent level debt adjustment can undermine the Commission's own capital structure determinations and double count leverage effects already reflected in authorized returns, as we've discussed.

I have found no other -- this is point No. 4. I have found no other state in the nation with a comparable administrative rule that operates like the one in Florida, and the FERC has had no such requirement that I could find since as far back as the early 1990s.

Common approaches outside of Florida include the stand-alone or separate corporate taxable income method, which independent -- incidentally, is how we calculate and report our income taxes. I was not able to find a state that has a rule that resumes parent debt was invested in utility equity that mandates a parent capital structure based tax adjustment, or that has a mechanical formula comparable to Rule 25-14.004(4).

In accounting interpretation AI93-5 in from April 23rd, 1993, the FERC reaffirmed that jurisdictional rates must reflect fully normalized income taxes consistent with FAS 109, and tied tax expense to the utility's recorded transactions, not hypothetical financing at the parent level.

Point No. 5. Nothing in the rule's history requires that the adjustment remain mandatory into perpetuity. Revising the rule would align the rule with contemporary regulatory practices, emphasizing evidence-based determinations rather than irrebuttable mechanical adjustments. The Commission retains ample discretion to address legitimate tax and capital structure issues on a case specific basis without a rigid rule-based mandate.

No. 6. We will argue in our next rate case that, as we did in direct testimony in our 2024 rate case, that the parent debt tax adjustment does not apply to Duke. So Duke Energy Florida's parent hasn't invested equity into Duke Energy Florida since 2009, and those bonds matured in 2014 and 2019. So Duke Energy Florida has been funding its own operations with retained earnings and debt issuances recorded on our books and records.

No. 7. Just a side point, incidentally, excluding retained earnings from the formula creates an ever-increasing parent debt adjustment that was never intended by the rule. So over time, regulated utilities routinely distribute earnings to parents in the form of dividends.

When retained earnings are excluded, while dividend distributions persist, common equity can be driven to zero or negative values, and the debt ratio can approach or exceed 100 percent. This outcome is a formulaic artifact, not an economic reality, because a parent company with sustained negative economic equity could not continue to access capital markets. Excluding retained earnings produces mathematically unstable and unrealistic results that were not contemplated when the rule was adopted. And we actually demonstrated that in our minimum filing requirements in our last rate case.

In conclusion, the Commission already possesses broad authority to disallow unreasonable or unsupported expenses. A rule mandated adjustment reduces regulatory flexibility by requiring an outcome regardless of evidentiary context.

The parent debt adjustment rule was upheld as a valid exercise of authority when adopted, but nothing in its history requires that the adjustment remain mandatory in perpetuity. Revising or repealing the requirement would remain consistent with the Commission's ratemaking authority and align the rule with contemporary regulatory practices emphasizing evidence-based determinations, rather than irrebuttable mechanical adjustments.

Revising the rule to eliminate the required debt -- parent debt adjustment would improve accuracy in cost of service analysis, enhance regulatory flexibility and better align ratemaking outcomes with actual utility financing.

For these reasons, Duke Energy Florida supports revising the parent debt adjustment rule to remove the required parent debt adjustment.

Thank you.

CHAIRMAN SMITH: Thank you.

Okay. Next we are going to move to the topics for discussion portion. So the way we are going to do this is we have nine questions that each stakeholder will be called upon to answer. Some questions may not be relevant to all stakeholders, and if so, please let us know it's not applicable to your organization. We can just keep moving on.

Commissioners, what I am going to do, once --

you are welcome to jump in at any point to ask questions, and then I will also circle back at the end to make sure that if any ideas or thoughts come up, that you have another opportunity to ask those questions.

So I will ask the first question, and then I will just go down the line as how we took appearances. Again, if it doesn't apply, just we can keep moving on, but we will kind of do it that way, and hope that will keep the record a little bit clearer.

So the first question is: What the stand-alone approach of public utilities regulation?

Mr. Wright, you are first.

MR. WRIGHT: Thank you, Madam Chair.

The purple of stand-alone methodology is to match the regulatory treatment of a tax benefit with the regulatory treatment of the underlying expense item that gives rise to that benefit, thereby, treating an expense and its resulting tax destruction in a consistent manner.

Under this approach, only the utility's own jurisdictional operations, costs, capital structure and tax attributes are considered for ratemaking purposes, consistent with how other cost of service components are established in base rate proceedings.

CHAIRMAN SMITH: Thank you.

Ms. Cuello.

MS. CUELLO: Good morning. I will keep this brief just so we are not muddying -- taking up a lot of time, but we would agree with FPL's definition of that.

CHAIRMAN SMITH: Thank you.

Ms. Keating.

MS. KEATING: FPUC and FCG would, likewise, agree.

CHAIRMAN SMITH: Thank you.

And, Mr. Wahlen, I think when you are -- you have different responses for the different organizations that you are representing.

MR. WAHLEN: Well, I was just going to say in general that this is a very esoteric topic, and we came today to learn more than talk and listen, and didn't really come prepared with prepared answers for these things, but we don't have anything to add beyond what FPL and staff provided in their presentation. And you may hear that from me again as we go down the list.

MR. DEASON: American Water would agree with FPL and staff's interpretation of the stand-alone approach.

CHAIRMAN SMITH: Mr. Marshall.

MR. MARSHALL: I don't think we have anything to add to the technical definition, but I think we will have something to add about the facts of how it's applied in the next question.

Thank you.

CHAIRMAN SMITH: Sure.

Mr. Rehwinkel.

MR. REHWINKEL: I don't really have anything to add, but I do think it is a misdirection and a myth that there is such a thing called stand-alone approach to utility regulation.

The Commission has rules about the deferred taxes on intercompany profits. There is issues where you have adjusted the gross profit embedded in rate base before, so I don't think that's something that exists, so that's our position on that.

CHAIRMAN SMITH: Okay. Thank you.

And, again, I will reiterate. Commissioners, if you have questions regarding -- a specific question, jump in any time, and then when we get to the end, you will also have another opportunity to ask questions.

Okay. Question No. 2: In what insurances does the Florida Public Service Commission rely on the stand-alone approach on setting utility rates?

MR. WRIGHT: To FPL's knowledge, unless there is a rule otherwise, such as the parent debt adjustment rule, the Commission relies on the stand-alone approach when establishing a utility's revenue requirements in base rate and other cost recovery proceedings.

CHAIRMAN SMITH: Ms. Cuello.

MS. CUELLO: That is Duke's understanding as well, that the PSC uses the stand-alone approach in ratemaking, with the exception of the parent debt adjustment.

MS. KEATING: That's my take on the orders, at least as they apply to FPUC and FCG, as well.

CHAIRMAN SMITH: Mr. Wahlen.

MR. WAHLEN: Same response. Thank you.

CHAIRMAN SMITH: Thank you.

MR. DEASON: I would agree that the Commission uses the stand-alone approach other than the parent debt adjustment.

CHAIRMAN SMITH: Mr. Marshall.

MR. MARSHALL: I think philosophically, the Commission tries to, as it should, look at the regulated utility as a regulated utility, but that regulated utility has a lot of interactions with their parent utility, and those are, you know, those are affiliate transactions, which are, of course, are they relevant, that we go through, we look at, we make sure that the ones that are being charged are prudent.

And so subsidiaries are not islands, and, you know, I would say that it's also, when we have looked at cost of service and return on equity, and then putting aside the second parent debt adjustment, we have looked at parent companies and what they are directing their subsidiaries to do. Those have always been relevant information in rate cases. We have -- you know, I have personally crossed witnesses on what the parent companies are expecting of their subsidiaries, and why, you know, how is it that beneficial to Florida ratepayers.

I don't think, in the world we live in with the parent companies that we have, that we can exactly isolate the subsidiaries in Florida, and sort of put blinders on as to what the parent companies are expecting out of their subsidiaries, what directions that they are going.

And, you know, just for an example, as, you know, the parent, for example, directs its subsidiary to, you know, invest in a certain type of energy resources. That can be relevant information as to whether that is actually prudent and used and useful for Florida ratepayers. You know, maybe that direction is for a reason that isn't for Florida ratepayers, and that would be relevant information to be considered in a rate case proceeding.

And so it's a complicated -- I think it's a complicated question, because, I -- you know, I think the ideas there is that we do want to look at the regulated utility, but to the extent that a parent's operations are impacting that regulated utility, that is relevant information that we want to consider when looking at that regulated utility, and I think, you know, the parent debt adjustment is part of that.

Thank you.

CHAIRMAN SMITH: Thank you.

Mr. Rehwinkel.

MR. REHWINKEL: Yes, I think -- I agree with everything Mr. Marshall said is very on point, and

I believe that it's almost impossible to say that the Commission does rely on the stand-alone approach when setting rates.

I mean, you take Duke. The vast majority of the employees that you might see before the Commission belong to something called DEBS, the Duke Energy Businesses. They have a service company that is intertwined with the regulated entity that you regulate.

So I don't think you can parse it out. I don't think you can separate it. I don't really think the stand-alone approach applies, except maybe in some very small water, mom and pop water companies.

CHAIRMAN SMITH: Okay. Question three: Are there any instances where the FPSC does not rely on the stand-alone? We already touched on that, but does --

MR. WRIGHT: Yeah, our response would be the same for No. 2.

MS. CUELLO: Same for Duke Energy, the response to No. 2.

MS. KEATING: Same as far as I know.

MR. WAHLEN: Same as my previous response. Thank you.

MR. DEASON: Same as my previous response.

MR. MARSHALL: I will go with same as my previous response. Thank you.

MR. REHWINKEL: I will give it what I consider an example of not, which is the asset optimization mechanism that takes gains based on profits that are generated by utility -- utility customer funded assets and it transfers them to the shareholders, and so I think that's a good example. It's one of many I could sit here and regale you with today, but I know that you don't want that. That's my main example. Thank you.

CHAIRMAN SMITH: Thank you.

COMMISSIONER LA ROSA: Question.

CHAIRMAN SMITH: Yes, Commissioner La Rosa.

COMMISSIONER LA ROSA: Quick follow-up, maybe not necessarily to that point, but maybe to the point in the previous question. And you brought up, I thought, or you went down an alley that I think maybe strikes a little bit of a cord.

Do you feel that maybe there is a spot or a consideration where smaller utilities might have a possibly separate rule when it comes to what we are discussing today, when it talks about the parent debt, where maybe the parent debt isn't applicable?

OPC, sorry. I am happy to hear from Florida Rising as well, because I think you guys are maybe conjoined in the direction and the thoughts on this.

MR. REHWINKEL: Commissioner, I had not considered that. I think the rebuttable presumption element of the rule would cover that. I have seen small -- smaller utilities meet the presumption. I have seen larger utilities not meet it. I certainly would need to think about that more.

I think -- as I have said, I think the rule, would fine, and I think the rebuttable presumption is a safety net that the utility industry and the Commission are able to rely on.

COMMISSIONER LA ROSA: And the reason I asked that question is I think the landscape is changing a little bit when it comes to smaller utilities, specifically water utilities, but I -- you just kind of of struck a cord. And I am happy to hear from Florida Rising if you would love to weigh in.

MR. MARSHALL: I don't think I have -- we have anything to add. As you can probably tell from our remarks, our focus has been on the electric and investor-owned utilities. And I realize this rule applies to all utilities subject to utilities jurisdiction, but water utilities is just something we, Florida Rising hasn't really looked at, so I don't have a good answer you for.

COMMISSIONER LA ROSA: Thank you. And maybe a little bit to my point is I kind of feel like sometimes maybe they are left out, and obviously still a substantial ratepayer and a substantial utility in our state.

Thank you, Madam Chair.

CHAIRMAN SMITH: Thank you.

Yeah, and I will just, before I move to the next question, just remind y'all that if there are follow-up questions from the, you know, that we have from the bench, you can always put those in the postworkshop comments, it just gives you a little bit more time to think through things. So there is still more opportunity to work through this.

Okay. Question 4: What is double leverage? It sounds like an exam. I am putting you all on the line, yeah, I am cold calling all of you.

Mr. Wright, you are up first.

MR. WRIGHT: Thanks, Madam Chair.

We agree with staff's description of double leverage. It's a financial concept rather than a required accounting treatment. And the concept is often raised in ratemaking discussions to argue that parent level financing should affect a utility's allowed return on tax treatment.

MS. CUELLO: Duke would also agree with staff's definition of double leverage. It's essentially where the parent raises debt and invests the money and equity into a subsidiary.

MS. KEATING: I couldn't personally explain it myself, but I agree with staff's interpretation as well.

MR. WAHLEN: We agree with staff's definition.

MR. DEASON: I agree with staff's definition.

MR. MARSHALL: I don't have anything to add to the technical financial definition, but regarding the next question, we will have -- you know, how it applies here, and we have thoughts that apply.

CHAIRMAN SMITH: Sure.

MR. REHWINKEL: Yes. I think it's -- I don't have a disagreement. I thought Mr. Wright said at the end about tax treatment, but it's a financial principle that applies to capital structure and capitalization, and the WACC, or the weighted overall cost of capital. I don't think it applies to the parent debt adjustment, so -- but I do agree that it is a balance sheet issue.

CHAIRMAN SMITH: All right. Question 5: How does double leverage relate to the parent debt adjustment.

MR. WRIGHT: I hope I listened correctly. I am going to get this one right.

CHAIRMAN SMITH: Sorry, you get to go first.

MR. WRIGHT: When a parent company uses debt to invest in a regulated subsidiary and files a consolidated income tax return, the interest expense on the parent's debt produces a consolidated tax liability.

The current parent debt adjustment rule continues to apply a limited consolidated tax adjustment to impute the tax savings realized in the consolidated tax return from the interest expense on a parent debt's -- on a parent's debt to the regulated utility.

CHAIRMAN SMITH: Thank you.

MS. CUELLO: The PDA rule applies if a parent issues debt for the purpose of downstreaming that money to the subsidiary utility.

CHAIRMAN SMITH: Ms. Keating.

MS. KEATING: Same response as before.

CHAIRMAN SMITH: Thank you.

MR. WAHLEN: And me as well. Thank you.

MR. DEASON: I am going to stay away from the technical definitions that we just heard. Me, speaking as -- and I am not an attorney, by the way, so I think I am the only one down here that's not an attorney. I just want to make that clarification. I am actually an economist by trade, and a cost of capital witness for my company.

On a very high level, I consider this to be kind of a backdoor approach to a double leverage adjustment. It's not your textbook double leverage adjustment that you typically see in other jurisdictions that have tried this and now completely rejected, where you are basically changing a operating subsidiary's capital structure to be more in line with the parent's capital structure irrespective of the risk that is being taken by, and the exposure of risk by the equity of the operating subsidiary.

Essentially, instead of doing it that way, you are just making adjustments on the income tax. You are basically running it through the income taxes instead of reflecting it on the capital structure in a regulatory rate proceeding. That's probably the best way I can describe it.

CHAIRMAN SMITH: Thank you, Mr. Deason.

Mr. Marshall.

MR. MARSHALL: I think that's far better than I would be able to describe it. It's not technically -- it's not double leverage. I mean, what it is, is who gets to take the deduction of the debt, the interest on the debt. And since it is -- you know, the presumption of the parent debt adjustment rule is that if it's being invested in the subsidiary, so it's part of the subsidiary's capital structure, you know, rebuttably presumed to be there, that the subsidiary -- that it's the ratepayers who are funding that subsidiary that are going to be able to take advantage of that deduction and not the shareholder. So it's not double leverage.

CHAIRMAN SMITH: Okay. Mr. Rehwinkel.

MR. REHWINKEL: I think I agreed with everything that Mr. Wright said about the mechanics, but I want to reiterate that Public Counsel believes that, strongly, that this is an affiliate transaction rule. The way we look at it is the customers provide a pretax return on the equity component of the capital structure, and the rate -- the investor at the parent level funds a part of that, absent the rebuttable presumption being made, with debt that's tax deductible. So your giving a equity return to the parent on a cost that is tax deductible. So that's why we say it is an affiliate transaction correction to this affiliates relationship that provides investment support to the utility operations.

So I just don't see it -- I mean, strictly speaking, if double leverage is just putting the parent's debt into the equity of the subsidiary, technically it meets that test. But the essence of the transaction and the essence of the rule is to protect against an affiliate transaction overpayment.

Thank you.

CHAIRMAN SMITH: Commissioner Ortega.

COMMISSIONER ORTEGA: Yeah. Thank you. I actually had a question for Duke, but that prompted another question.

I like the way you described it as -- not for Ms. Cuello, for Ms. Olivier -- as a downstream flow to the subsidiary, but I thought you heard you earlier saying that that's not applicable to Duke because Duke has its own financing. Could you elaborate a little bit on that for me?

MS. OLIVIER: Sure. So the -- so Duke has a parent, and we have multiple subsidiaries. And so the parent, you know, could issue debt to, downstream, to a particular utility, maybe it's to purchase a utility. That's what happened to us back in the, I guess it was the 2000s, when Progress Energy bought Florida Power with virtually all debt, and so there was -- there was a time when they had issued some bonds, downstreamed it to Duke Energy Florida as equity, and in the 2009 rate case, the Commission voted to have us make that parent debt adjustment.

Well, those bonds all matured, and since then, Duke Energy purchased Progress Energy, and has multiple other subsidiaries. They did not downstream that -- any debt to us at that point. Those bonds matured in 2014 and 2019, so we are going to argue that we don't have a parent issuing debt to infuse into the utility. Since then, we have been dividending money up to the parent. And so I hope that answered that question.

COMMISSIONER ORTEGA: Yeah. And just a quick follow-up.

So in -- when you file your MFRs, with the current rule, you also file testimony and evidence to exempt yourself from the rule, is that fair to say, or --

MS. OLIVIER: That's right.

COMMISSIONER ORTEGA: -- why it may not apply to you?

MS. OLIVIER: That's exactly right. That's what we will say. Now, we are required to provide an MFR that does that calculation on one of the C schedules. I can't remember if it's C-24. But one of those schedules requires us to make that calculation.

And if you look at our parent debt, because we have to exclude retained earnings at the parent level, the debt is just -- it just goes up, up and up every year, and it's not realistic that we would have that much debt in that calculation. So we feel like the calculation is flawed to begin with, but we also feel like it does not apply to us going forward.

COMMISSIONER ORTEGA: Thank you.

And if I can, just another question.

Could you help me, OPC, understand why the distinction of affiliate transaction is so important? I keep hearing you reference the rule in that way, and I just want to understand why that distinction.

MR. REHWINKEL: Yes. Thank you.

Well, we think it's the bedrock for why the Commission made this adjustment in that there is a level of unfairness, that the customers provide an equity return on a cost that is, absent the rebuttal, a tax deductible expense and not a taxable cost. So that's why we feel like it's an affiliate transaction oversight in its broader sense. So that's why it's important to us.

And if I could say one more thing about -- to the Duke situation. I -- Ms. Olivier is absolutely right about the facts of what happened in the last case. I just want to make sure that everybody understands that we settled that case. We have some language in the settlement agreement that covers this situation. So everybody kept their powder dry and we will address it in the next case.

So they have their point. We have our point about how facts layout and the rule applies. But she is absolutely right about the testimony they filed and how they presented the MFRs, but there is a little bit different story that's in the

settlement, so we just kept our powder dry.
Thank you.
COMMISSIONER ORTEGA: Thank you.
CHAIRMAN SMITH: Okay. Good.
The next question you lawyers will like, so it won't be as technical.
Do either of the cases cited in the agenda, that's Hawkins or General Telephone, preclude the PSC from amending the rule to discontinue using the parent debt adjustment? If so, which one and why?
MR. WRIGHT: Thank you, Commissioner.
Short answer from FPL's perspective is no. In Citizens versus Hawkins, I would direct your attention to pages 259 and 260 of that order. The Court concluded that each determination must be based on specific independent findings supported by substantial evidence.
The Court did not mandate the application of a consolidated tax adjustment approach, and, instead, found that such an approach was appropriate because it was the only approach supported by the evidence of record in that case.
In General Telephone versus Florida Public Service Commission, I would direct your attention to page 1060. The Court held there that the parent

debt adjustment is not the only correct method for determining a utility's income tax expense, and that the limited consolidated tax adjustment adopted in Rule 25-14.004 was a discretionary policy choice for the Commission.

I would also direct your attention to page 1068 of that same order, where the Court explained that the Commission, quote, "is not bound to any predetermined formula for calculating any cost of service expense, but is, instead, free to use any method which will enable it to ascertain the actual cost to the utility."

So I think under both those holdings, when those orders are read and not relying on dicta, I think the short answer to question No. 6 is, no, the Commission is not precluded from amending the rule to discontinue the parent debt adjustment.

CHAIRMAN SMITH: Thank you.

MS. CUELLO: Duke will take the same position, that we don't believe either one of these cases precludes the Commission from amending the rule to discontinue the use of the parent tax adjustment.

MS. KEATING: FPUC and FCG agree as well.

MR. WAHLEN: I guess I am open to being persuaded otherwise, but we tend to agree with FPL.

MR. DEASON: In my professional opinion, those cases do not preclude the Commission from changing those rules if they deem that appropriate.

CHAIRMAN SMITH: Mr. Marshall.

MR. MARSHALL: The two questions -- the two cases were in different procedural postures, and there was no rule at stake in Citizens V Hawkins, so I -- you know, certainly good support in that case for the approach that the Commission did take in adopting the rule that it did, which, you know, obviously the Court then upheld in General Telephone Company V Florida Public Service Commission. There were a lot of well supported findings that the Court agreed with as to why the rule should be the way it is in that case.

Now, does that legally preclude as a bar from this commission attempting to repeal that rule if there is a well-developed record? I mean, I don't think it procedurally bars the Commission from going down that road, but I also don't think we would be barred from using that case to argue why the existing rule is well-founded and supported by the law.

CHAIRMAN SMITH: Thank you.

Mr. Rehwinkel.

MR. REHWINKEL: Thank you.

I agree with Mr. Marshall, of course. But to me, the issue isn't can you do it, it's should you? You know, what does the Commission want its legacy to be? Do you want it to be that we went out of our way to repeal a rule that keeps customer rates down?

I -- you know, the United Telephone case I commend to you, because I think that is a third case that strongly supports your authority. I have heard in my 40 years practicing before this commission that the Commission has broad authority. I think the Legislature asked you to exercise that for the good of the public and in the public interest. So we would urge you not to recede from the rule and to rely on the Supreme Court's well-reasoned support for this adjustment.

Thank you.

CHAIRMAN SMITH: Thank you.

Okay. Next question: Does the parent debt -- does the parent debt adjustment increase or decrease rates in the short-term or in the long-term?

MR. WRIGHT: This question is not applicable to FPL. FPL issues its own debt. Its parent, NextEra Energy, does not issue debt to invest in FPL.

MS. CUELLO: The PAA has the effect of decreasing rates, and the impact to DEF residential customers is about a quarter per month.

MS. KEATING: I think the effect is to reduce rates, but the Commission hasn't applied the parent debt adjustment, or hasn't required an adjustment for FPUC or FCG in the past several cases.

MR. WAHLEN: Peoples and Tampa Electric both explained the effect in their responsive data request. It does reduce the revenue requirement.

CHAIRMAN SMITH: Mr. Deason.

MR. DEASON: In my professional opinion, in this short run, it can lower rates, but in the long run, I think it would increase rates through higher cost overall cost of capital that would be placed upon the utility.

CHAIRMAN SMITH: Mr. Marshall.

MR. MARSHALL: As we heard for the -- just focusing on the investor-owned electric utilities -- that the, you know, for Duke it is a -- it does decrease rates. Although, it sounds like, you know, whether the long-term impact of that will be an issue in the next rate case as to the applicability of the rule.

For TECO, it is a sizeably bigger impact on decreasing rates under the parent debt adjustment rule, and based on -- I have it here somewhere, that it's over a dollar per thousand kilowatt hours per month for the average residential customer, that adjustment for TECO which is considerable.

On the long-term side, we have seen -- at least in my rate case experience, I have seen no evidence going through these rate cases that the parent debt adjustment rule is -- has been pushing upward pressure on the return on equities in Florida.

When we hear about why ROEs in Florida need to be higher than they are nationally, it's because of, you know, we are hit by storms. We have a long coastline, and, therefore, are subject to different risks than other states and other utilities throughout the nation are. We have not heard that the reason is because of the parent debt adjustment rule as to why ROEs are high in Florida.

And again, I would point to FPL as the one that has gone to this commission and been awarded the highest ROE of any regulated investor-owned utility, electric utility, in the lower 48 states, receives the highest ROE isn't being subject to this rule. They have -- as you heard, they issue their own debt, so there isn't that increase.

And so the idea that, in the long-term, this is going to push return on equities even higher in the state, I just don't think there has been any evidence presented to that effect.

Thank you.

CHAIRMAN SMITH: Mr. Rehwinkel.

MR. REHWINKEL: Yes. I agree with Duke and Mr. Wahlen for the Emera companies.

I will say this, we alluded to it, or maybe more than alluded in our comments last week that if this rule repeal goes forward, we intend to ask for a draw-out, an evidentiary hearing to determine things like what Mr. Deason referred to, which is are there facts on the ground that demonstrate that the long-term ramifications of applying this rule is to increase costs. We think you should take evidence on that rather than hear speculation about it.

I am not aware in the cases that I have been involved in where a credit rating agency has weighed in and said, man, this is killing the cost of capital or the debt rating for this company because you have had this rule down in Florida. They were much more concerned about PPAs and this phantom equity issue that the Commission finally disposed of in the early 2000s -- or the late 2000 -- late -- in the 2009 timeframe.

So we think you should take evidence on that, not speculate about whether there is any long-term impact of this rule on the cost of capital -- I mean the revenue requirements of a utility.

Thank you.

CHAIRMAN SMITH: Commissioner Clark.

COMMISSIONER CLARK: Yeah, Madam Chair, I just would -- I want to make sure we have Florida Rising and OPC on the record. You don't have an opinion as to whether or not this will increase or decrease customer rates?

MR. REHWINKEL: Well, I said I agreed with Duke and --

COMMISSIONER CLARK: That it will decrease customer rates by adopting the rule?

MR. REHWINKEL: By keeping the rule the way it is. If you repeal the rule, it will cause rates for certain utilities that can't meet the rebuttable presumption, it should have upward pressure on the revenue requirement and on rates.

COMMISSIONER CLARK: By adopting the rule?
MR. REHWINKEL: No, by -- yeah, by amending the rule, or repealing the adjustment as we have known it for 50 years.
COMMISSIONER CLARK: Okay.
MR. REHWINKEL: Yeah, I am sorry for the confusion.
COMMISSIONER CLARK: Florida Rising.
MR. MARSHALL: Yeah, I am sorry, Commissioner Clark, for the confusion. But, yes, we know from TECO's response that if the amendment to the rule was adopted that rates would go up by -- and the impact would be expected to be over a dollar per month for a thousand kilowatt hour bill, so --
And for Duke, I think it depends on the future of what their next rate case looks like, and the facts as to whether the current rule would apply or not to Duke as to whether those short-term impacts.
And the long-term impacts, we think that the short-term impact would just be amplified over the long-term. That is our expectation, and so, therefore, long-term, if the amendment process was to move forward, rates would be increased, especially for TECO's residential customers. And, you know, we have heard arguments to the contrary

as to what the long-term impacts would be, and that's what we just don't think there is any evidence for.

CHAIRMAN SMITH: And I just -- I mean, so you just said a dollar per month thinking -- I just -- I think we got from those data requests, those amounts from Duke, TECO and PGS are a little bit lower than that. Can you reconcile those numbers?

MR. MARSHALL: Yeah. I am just looking at the latest data why to TECO, request number two filed April 2nd, 2026. It was estimated, based on the last rate case, that the current rule reduced the monthly bill for residential customer on a thousand kilowatt hour basis per month by $1.12. That's where I got the over dollar impact from, you know, presuming that the impact would be of similar magnitude moving forward.

CHAIRMAN SMITH: Okay. And you don't -- and for the other companies -- I guess I am just looking. The other companies would be a little bit less -- would be less than a dollar, but --

MR. MARSHALL: Right, that's why --

CHAIRMAN SMITH: -- still, yeah.

MR. MARSHALL: Yes.

CHAIRMAN SMITH: Okay. Commissioners, other

-- Commissioner Ortega.

COMMISSIONER ORTEGA: Thank you.

I think you guys asked my question, but I wanted to hear it from the utility companies that answered the data request. Can I assume, all things being equal but for the presumption, that if it were to -- if we eliminated the rule, that we would have an increase in the rates similar to what was provided in the data requests from the utility companies? So from TECO, and then from PGS. So I guess just you, Mr. Wahlen, and I have heard from Duke.

MR. WAHLEN: All other things being equal, yes. We took a run at the presumption a while ago, maybe 2008, 2013. I can't remember. Things may have changed. We may have another shot at that in the future. But all other things being equal, as economists say, it would have the effect in the data request.

CHAIRMAN SMITH: Yeah, Commissioner La Rosa.

COMMISSIONER LA ROSA: Can I ask a clarification question of staff?

So there is a chart that was -- that's assembled that comes from the data request that I think is just being referenced, and then it references three dockets. Can I just verify that those numbers are accurate? I heard Duke say a quarter, but, obviously, we talked a little bit about TECO being $1.12.

MR. CICCHETTI: Yeah, the amount on this page came from the responses.

COMMISSIONER LA ROSA: Okay. All right. Just making sure that we are talking about the same thing, and I am at least comparing to what I think I am hearing.

CHAIRMAN SMITH: Sorry. And then more of a clarification. Those are the numbers if the rule is amended, or those are the numbers as current, under the current rule?

MR. CICCHETTI: Those are the amounts of the impact from the last rate case when the adjustment was --

CHAIRMAN SMITH: So we do have the information -- because I think we would be curious to know what the -- if the rule is amended, what the bill impact would be --

MR. CICCHETTI: Well --

CHAIRMAN SMITH: -- under the amended rule.

MR. CICCHETTI: Right. Under the amended rule, the parent debt adjustment wouldn't be made, and so these decreases would not happen.

CHAIRMAN SMITH: But as OPC alluding to, the bills would go up. Do we know by how much? Do we have even an estimate?

MR. CICCHETTI: Yep, by this amount, based on the last rate case.

CHAIRMAN SMITH: Okay. So under the amended -- under the -- this proposed amended rule, that's how much they would go up by?

MR. CICCHETTI: Yes.

CHAIRMAN SMITH: Okay.

MR. REHWINKEL: Madam Chairman, just --

CHAIRMAN SMITH: Let, yeah, Commissioner Clark and then we will go to you.

COMMISSIONER CLARK: That was my point, Madam Chairman, is looking at the handout that we were given. It appears this is under the proposed amendment that it is down. That was what I was trying to get clarification on as well. Thank you for that.

MR. REHWINKEL: I would just ask that -- I don't think we have received the document that Commissioner La Rosa mentioned, and I would just ask that for postworkshop comments, that if that could just be put into the record so we can see it?

CHAIRMAN SMITH: For sure. We will ask staff, they can -- you can put that in the record, right, or into the postworkshop comments? I am getting head nods so --

MR. REHWINKEL: Thank you.

CHAIRMAN SMITH: Okay. We are going to move to question 8. So question 8: What are the arguments for and against the parent debt adjustment?

MR. WRIGHT: Arguments for, it reflects a consolidated tax saving.

Argument against, it continues to apply a limited consolidated tax adjustment, which is entirely inconsistent with this commission's practice of, as well as many and most jurisdictions, of determining the utility's income tax expense on a stand-alone basis.

The true effect of this parent debt adjustment is to reduce the utility's income tax expense below the actual income tax expense reflected on the utility's income statement, which, all things being equal, reduces the utility's ability to earn its authorized rate of return.

MS. CUELLO: Duke Energy has already presented our position on the parent debt adjustment through

Ms. Olivier's comments, so if you have any other questions, I would be happy to answer those.

MS. KEATING: We have also -- FPUC and FCG has also filed joint comments earlier in this proceeding. I would just note that, again, while the rule has been applied to FPUC and FCG, the adjustment has not been made.

COMMISSIONER CLARK: Mr. Wahlen.

MR. WAHLEN: We have heard all of the pros and cons today. I don't have anything else to add.

Thank you.

COMMISSIONER CLARK: Mr. Deason.

MR. DEASON: I would agree with FPL's assessment, that it does artificially bring down your ROE, and makes it very difficult for a utility to achieve that authorized rate of return in your ROE.

Another high level, things that -- repercussions that can occur. If you do have trouble achieving your return, that could potentially lead to a higher cost of debt, which ultimately leads to a higher weighted average cost of capital, which leads to a higher rates for customers.

Additionally, to that, another way to look at it is look at my company, American Water. We are a very large company, 26 to $30 billion market cap. We can achieve -- we can acquire debt lower than any other water company in the country, by far. In fact, I am pretty safe to say that, and I know that we are an A rated company, and recently researched by Dr. Moore out of Georgia State has shown that utilities with an A rated credit rating do provide the lowest cost of capital to their customers, which is a great benefit to all the customer of American Water, but we also don't have any customers in Florida. There are no publicly traded companies in Florida on the water side. Just speaking just for water companies.

So I think this debt rule that we are talking about, in the long run, it can raise a company who is operating in Florida's cost of capital. It also chases capital away. A rule like this keeps my company from coming to Florida, and other utilities as well, which I think is a detriment to the citizens of the state of Florida. You want to be able to attract low forms of capital and low cost of capital, and companies that can acquire that capital at the lowest possible cost, but they are not coming here, at least for water companies, they are not coming here. You are not seeing that at all.

So I will just kind of leave it at that.

CHAIRMAN SMITH: Thank you.

Mr. Marshall.

MR. MARSHALL: Maybe there is a bit of a divide here, but we've seen no evidence that the electric companies are having any trouble finding capital to invest in Florida. We see no evidence that if this rule were to be amended, that somehow returns on equity would go down, or that somehow that, under the current rule, the electric investor-owned utilities are struggling to stay within their, you know, hit minimum bound on their ROE. It's just -- it's not there looking at the earnings surveillance reports. They are earning sufficient returns and a fair return on their investment in the state, and we would argue well beyond what we think is a fair return on their investment in the state.

So we just -- we don't see any reason at this point to change the rule that would have this detrimental rate impact, especially for -- you know, again, just looking at the electric side -- for TECO's customers.

Thank you.

CHAIRMAN SMITH: Mr. Rehwinkel.

MR. REHWINKEL: Thank you, Madam Chairman. I am obviously pro rule. I don't have any arguments against the rule, but I, again, would reiterate that if there are to be facts that bear against the rule, we ought to have an evidentiary hearing on that if we are going to go forward with this repeal. So we would say -- we would hold our opinion about facts against the rule until there has been a draw-out and an evidentiary hearing.

Thank you.

CHAIRMAN SMITH: Thank you.

All right. The final question -- this is kind of a overall: Does any stakeholder have any other questions or concerns that they want to discuss?

MR. WRIGHT: Thank you, Madam Chair.

FPL wishes to thank your staff and your General Counsel for their efforts to provide greater clarity and guidance regarding the determination of regulated utilities' federal income tax expense in Commission proceedings. While the parent debt adjustment is not applicable to FPL because it independently issues its own debt, FPL supports staff's proposal to amend the rule to provide better guidance and clarity, and avoid potential disputes in ratemaking proceedings before this commission.

Thank you.

MS. CUELLO: Duke doesn't have any questions or comments, but we would like to say that we support staff's recommended amendments to this rule, and just want to thank them for all the work they have put into this.

MS. KEATING: FPUC and FCG also want to thank staff for bringing this all together, and we support staff's changes.

MR. WAHLEN: We are happy to be here. We learned a lot, and I assume there might be some post-hearing comments opportunities, so we will --

CHAIRMAN SMITH: Yeah. Yeah. We will have postworkshop comments.

MR. WAHLEN: Yeah, we will reserve our comments until then.

Thank you.

MR. DEASON: I, too, would support staff's recommendation in the repeal of this rule.

MR. MARSHALL: I just wanted to thank you for hearing our concerns on behalf of Florida Rising today, and we look forward to the opportunity to --

appreciate the opportunity to present postworkshop hearing comments.

Thank you.

MR. REHWINKEL: Despite my comments at the beginning about not appreciating being here, I would like to thank the Commissioners especially for your interest in this process and the questions. I have been doing this for 40 years, and I always appreciate when the Commissioners take an interest in a matter and ask thoughtful questions like you have done today, and so I want to thank you for that.

Thank you.

CHAIRMAN SMITH: Thank you.

All right. Commissioners, do y'all have any additional questions or comments here?

Yeah, Commissioner La Rosa. Oh, it is? Okay. I am sorry. I always forget to look.

COMMISSIONER LA ROSA: I forget to press the button.

CHAIRMAN SMITH: I move my head around.

COMMISSIONER LA ROSA: It's just convenient, I can just grab your attention. Thank you, Madam Chair.

I guess this question is he for staff, and then I will make a comment maybe depending on kind of what I hear.

We jumped right in, right. And I appreciate it. We got, like, right into the weeds. That's awesome. But maybe better help me understand, because we started by talking about Florida is not in line kind of with the regulatory world of where things have shifted or where things have altered. I thought I heard some discussion about FERC. I saw -- it certainly was in the presentation about how now FERC's regulatory formula has changed in their approach.

I guess help me better understand where Florida lies in comparison to other states. Have other states made changes? And I guess what I am trying to get to is what is the benefit for our state and our customers? Because I sometimes think we are a little bit different from the rest of the world, or the country.

MR. CICCHETTI: I think in Duke's comments, you heard that no other state makes this type of adjustment.

COMMISSIONER LA ROSA: Has that always been the case?

MR. CICCHETTI: No, that has not always been the case. This issue has evolved over time --

COMMISSIONER LA ROSA: Right.

MR. CICCHETTI: -- and as more academic studies were presented, and as the issue got fleshed out, Commissioners and FERC changed their position on how this should be handled.

COMMISSIONER LA ROSA: I guess where -- are we late to the party? Is that a good answer -- or a good question? Are we late to the party in the sense that has there been a lot of changes? Has there been more recent changes by other states? Or was it a while back, and we are just -- we have just been pushing this off, as I think was spoken a few times, that this is, you know, 40 plus years?

MR. CICCHETTI: I think staff has tried to address this over time over the years. My understanding was recently Iowa and Missouri had a double leverage adjustment, but they no longer do that, so I don't think there is anybody in the country that's making that type of adjustment, or variant of the double leverage adjustment. So I think, you know, for lack of a better term, we are a little late to the party.

COMMISSIONER LA ROSA: Okay. And that's fair. And I appreciate that insight, and kind of what's happening around the country.

Madam Chair, I don't know in if this is a good time just to kind of make a quick comment. I don't know if we have another bite at the apple.

CHAIRMAN SMITH: Oh, yeah. Oh, yeah. You -- it is a workshop, so we are just -- this is --

COMMISSIONER LA ROSA: I love the informality.

CHAIRMAN SMITH: Yeah. Yeah.

COMMISSIONER LA ROSA: That's why I didn't wear a tie today.

CHAIRMAN SMITH: No ties.

COMMISSIONER LA ROSA: Yeah, I'm just kind of winging it a little bit, but I kind of feel like I always do that.

So I will just say this. I am looking forward to hearing the responses. I do think that the conversation was robust. I think this is necessary. I think if anything in the policy-making process, I think you should always be looking at what you are doing, always be looking at challenges, always looking at advancing our state, which is, you know, I believe one of our primary goals here and necessities.

I guess what I would love to see in the briefs is maybe a point to -- and I am looking over at

Florida Rising and OPC, because I probably would expect this and wouldn't have to say this necessarily, but looking at where our rate impacts are and just real world examples of where the benefits or, frankly, the lack of benefits. And I would expect that anyways, but I can't just tell you how important that is at this point in time.

Maybe there is -- maybe there is a timing scenario with this rule change. Maybe it doesn't have to be a whatsoever. I don't know. I am still, I believe, coming to conclusions, and I am looking forward to kind of reading the additional briefs.

And I want to know, is there an opportunity to advance our state? I heard some good discussion, I believe, from the water companies. I would love to hear more about that, and I am happy to give you a chance to respond, and tell us what are those hurdles? Why would a customer benefit?

I think I have isolated maybe water companies certainly here today, and a few times in recent past agendas, because I am concerned about aging infrastructure. I am concerned about customers that are ingesting an element, right, that we regulate, and I just want to make sure that we are doing everything that's possible.

So, Madam Chair, if it's okay just to have maybe --

CHAIRMAN SMITH: Mr. Deason, if you want to respond.

COMMISSIONER LA ROSA: -- Mr. Deason respond to have if that's what you are indicating --

CHAIRMAN SMITH: You can also save for your post-hearing comments.

MR. DEASON: Yeah, I would agree with that. Yes. I mean, there definitely having a better regulatory environment for water companies would be great, because you want to attract that capital, that low cost of capital to come to your state.

I just want to provide a little bit of clarification what Mark was talking about other states, and how they have treated double leverage. If you want to look at some of the recent decisions that address double leverage, I would point you to Iowa American Water Company's docket RPU 2016-002, so 10 years ago. That is one where the Commission had a longstanding practice of accepting double leverage. That specific docket that is the first time they rejected double leverage, and they go into great detail on the justifications for basically taking a 180 on a double leverage adjustment. So I would encourage you to read that order, especially in that docket.

There is another one in Tennessee. This goes to Docket No. 18-00017. And that involved Chattanooga Gas Company. Once again, that's where the Commission basically took a 180 on their longstanding practice of making double leverage -- double leverage adjustments. So that's another good order to read as well.

COMMISSIONER LA ROSA: Thank you.

CHAIRMAN SMITH: Commissioner Ortega.

MR. REHWINKEL: Madam Chairman?

CHAIRMAN SMITH: Do you mind.

COMMISSIONER ORTEGA: Yeah.

CHAIRMAN SMITH: Okay. Go ahead.

MR. REHWINKEL: I just wanted to address this issue about FERC, and we addressed it in our comments in 2023.

The FERC's retreat, if you will, wasn't based on what we are talking about here today. They were concerned about nonregulated affiliates of pipelines weren't in any kind of regulated business that had losses, and those losses were finding their way into reducing income tax expense of the regulated subsidiary. That is not what we've got going here. So I would urge caution about relying on what the FERC has done.

And I also would urge caution is not get it mixed up about double leverage, which affects what the capital structure and the equity ratio that is used for ratemaking purposes and the WACC, the weighted average cost of capital that is used for ratemaking purposes. This is not that.

And then finally, just because other states don't do it doesn't mean anything to the customers in Florida. They are living here and they want their rates to be set based on the true cost of serving them.

If we want to look at what other states do, we can look at the returns on equity that other states do, and that national standard is totally different. But, you know, so I think it's best to leave everything the way it is, but I appreciate we will brief, including the questions that Mr. -- that Commissioner La Rosa has asked us to address.

I just would hope that we don't rush that along. We have other cases and things going on. So we would like to have plenty of time to research some of the new legal precedent that we've heard from other water companies around the state. We would like to have plenty of time to be able to get this --

CHAIRMAN SMITH: We will address that in the next steps portion --

MR. REHWINKEL: Thank you.

CHAIRMAN SMITH: -- as far as timing.

Commissioner Ortega.

COMMISSIONER ORTEGA: Thank you. And just a quick follow-up from Commissioner La Rosa's questions.

As I understand it, we have this rule on the books, but we have an opportunity for people to provide evidence about why we wouldn't apply the rule to their specific companies, and I am curious while you were looking at the other states if they also have -- and, again, this could be filed later -- to Commissioner La Rosa's point, you know, what makes Florida different? Why are we doing it different?

Not that that's a negative. In fact, we do a lot of amazing things here differently, and we are proud of that, but if we could delineate if other states didn't have that opportunity, maybe that's why they changed their rule, but just some understanding around the separation, I think is what he was asking, and I would like to hear some more of too.

CHAIRMAN SMITH: Okay. Other Commissioners?

Okay. I have a couple of questions for staff, and I am going to kind of frame them as, like, you know, we are what a workshop is. We are trying -- like, what's the problem we are trying to solve here, you know? And I am glad that we are doing all of this. And I think we've had a really -- this has been a really thoughtful and important discussion.

Is amending the current rule addressing an actual pattern of over- or under-recovery of income taxes? Are we saying it's largely precautionary?

MR. CICCHETTI: If I am understanding your question, you are asking is the income tax expense of the utility being set correctly?

CHAIRMAN SMITH: Right.

MR. CICCHETTI: Yeah. Under -- with the PDA rule, our position is, no, it's not. We take the revenues, the expenses, we figure out the net operating income, the profits, and then we apply the state and federal tax rates to that to determine income tax expense. And then under the

PDA rule, if there is a parent company and there is any debt on the books, we reduce that income tax expense based on the calculation in the rule.

I take great exception to -- well, the reason is why do we do that? Well, under the rule is the cost to the parent company is actually lower, that tax benefit, than should be, at the parent level, should be used to reduce the income tax expense at the regulated utility.

Why would we do that? The argument that Public Counsel is making is that having debt on the parent's balance sheet is some type of affiliate transaction abuse, and I strongly disagree with that.

The ultimate assumption underlying both the parent debt adjustment and the double leverage adjustment is the debt at the parent level ought to be at the subsidiary level, at the utility level. Well, those arguments are issues in the case. What should the amount of debt be? What should the equity ratio be? But both the double leverage and the parent debt adjustment go outside of the rate setting the cost of service and then reduce the income tax expense for the utility based on the debt at the parent level.

So in the example I gave earlier, if you have two identical utilities, one is going to have lower rates because of the parent debt adjustment simply because the parent had some debt on its balance sheet.

If they are both identical in terms of cost of service, why should they have different rates? What's the justification? So the justification goes back to, well, there is a benefit at the parent level, let's transfer that to the regulated utility. That violates the stand-alone concept.

And the reasoning about, well, the cost is lower because of the source of funds, that violates the principle that the return should be based on companies of comparable risk and what their requirements are.

CHAIRMAN SMITH: And I appreciate that, and I will have a legal question for legal staff as far as the stand-alone principle, but I guess what I am asking is less about theoretical and more about, like, actual data, actual --

And then, so similarly on that sort of question, like, do we have actual evidence that the current PDA rule results in artificially low rates that have increase of frequency of rate cases -- or rate case -- yeah, rate increase requests? Because that's part of the justification for amendment.

MR. CICCHETTI: Yeah. For example, in Tampa Electric's last rate case, the revenue impact -- revenue requirement impact was $15 million. So over four years, that's $60 million dollars of their cost of service that was reduced due to this adjustment.

So, obviously, if they experience any cost pressures, increased investment, not having that $60 million actually, you know, it's going to cause them to come in sooner rather than later.

Did it cause the rate case? Well, maybe not, but obviously having $60 million of their cost of service reduced due to this adjustment is not setting their rates based on their cost of service.

CHAIRMAN SMITH: Did we ask that in data request -- did staff ask that in data requests during the rate case process about, you know, is that, you know, part of the reason that they are coming in at sort of at this time?

MR. CICCHETTI: Well, in the rate cases, there a minimum filing requirement where that, if it applies, that calculation is made --

CHAIRMAN SMITH: Right. We --

MR. CICCHETTI: -- so then this situation is, well, we have this rule, we have to make that adjustment. And so, you know, there may be discovery about how the calculation was made, but basically we have to apply the rule.

CHAIRMAN SMITH: Okay. The last question. Sorry, Mr. Cicchetti. I think you feel like -- I think you might have the best -- and we have talked -- we did talk about it as far as rate impact and stuff. I just -- I really want to be super clear, because we had an Agenda Conference addressing this proposed rule change in 2024, and then specifically, like, I think Commissioner Clark, at that time, I think I asked at that time, about, you know, actual quantifying the magnitude of customer impact under the current rule versus the proposed amendment.

I think what -- when you look at the transcript, what I was envisioning back then, if I can put myself two years ago, is, like, I wanted a -- I wanted a comparative chart of this is what, you know, under the current rule customer bill impact -- the bill impact versus if the rule was changed, what the number would be.

Do we have -- you know, do we actually -- do we have that information? Like, can staff provide that to us and to the stakeholders here?

MR. CICCHETTI: In terms of getting the per bill impact, we would have to get that from the utility. But if we change, alls we would be doing is removing the parent debt adjustment. Whatever that dollar amount is, that would no longer be the case if the rule was amended to what we are recommending, or what's included in the proposal to amend the rule. And so how that affects an individual bill, we would just need to get with the companies and get that information.

CHAIRMAN SMITH: I guess I will reiterate from two years ago that we really want that information to make -- you know, if this rulemaking, either creating a rule, or amending a rule, or, you know, deleting a rule needs to be anchored and, like, demonstrated harm or risk. And without that information, we don't have any way of having actual comparable numbers. So, yeah, that would be really helpful.

I don't -- you know, like, again this is something that you guys can address in post-hearing -- in the postworkshop comments, or if staff, because I don't -- I don't think -- I mean, legal can they -- I think -- the opportunity for asking for data request is probably over for this, correct?

MS. SAPOZNIKOFF: We can either send out another data request, or just based on the discussion that's had here today, you know, request that they include that information in their post-hearing workshop -- postworkshop comments.

CHAIRMAN SMITH: Yeah. I know, I keep calling it hearing too, but it's -- no, thank you.

I mean, if that's -- if that's something that the companies think that they can provide, but I am trying to be, like, flexible here, but, you know, we really need to -- we need this information.

I guess I will just apologize, like, we should already have this because we had asked for this two years ago, but we are -- this is where we are, so that's -- I am just -- yeah, I would imagine that -- yeah, I know Commissioner Clark wants that information.

Okay. I am going to pivot then, because Mr. Cicchetti, I feel like you brought up -- I just want to understand legally, I think you said current -- our current rule, we are in violation of the stand-alone principle in our rate cases, is that accurate?

MR. CICCHETTI: Yes.

CHAIRMAN SMITH: Could I get, like, a legal opinion on that? Because that sounds, to me, dicey.

MS. SAPOZNIKOFF: Our current rule is valid and doesn't violate any legal standard. It was properly promulgated within the statutory authority and range of discretion that the Commission has.

Similarly, if the Commission was to consider some sort of change, that's also within our legislative authority and within your range of discretion. But there is nothing that requires any change to this rule, repeal of the rule, or a change in the policy that the Commission has been applying.

CHAIRMAN SMITH: Okay. And final question that, I guess, on that -- sort of related. Is there any requirement that, any sort of requirement, any statutory change, anything that would make us have to change the rule at this time?

MS. SAPOZNIKOFF: No.

CHAIRMAN SMITH: Thank you.

I am sorry, I just took a lot of time. Commissioners, any other -- anything else?

Okay. So now we have got -- and, again, I would probably just reiterate to the stakeholders here, that kind of back and forth, the questions I asked, feel free to address those in your postworkshop comments.

So we have gone through all of that. Staff, can we go through the next steps for this proposed rulemaking?

MS. SAPOZNIKOFF: Certainly. Thank you, Chairman.

As we've discussed today, we do anticipate having stakeholders filing written comments following this workshop. We had initially anticipated a deadline of doing that of May 6th, 2026, which is two weeks from today. That's our standard practice.

Based on OPC's comment, before we adjourn, I would like to hear from them as to what additional sort of time they would be looking for; also from the other stakeholders of how long it will take for them to get the information that we need to give the Commission the information on the comparison of rate impact.

If we could also clarify, do you just want what it would have been in the last rate case, or the last two rate cases? Or what sort of comparison do you want on that?

So everyone is permitted, and I guess more likely now required to file comments with the information we have requested. Even if you didn't attend, if you are watching this, if you did not attend today and if you want to file written comments, you are permitted to do so.

In responding, if there is any particular rule language that any stakeholder would recommend other than what staff has recommended, we request that you provide that in a type-and-strike format for us to consider. And any postworkshop comments should be filed in this docket, which is 20240019-PU.

Pursuant to Section 120.54(2)(a)2, Florida Statutes, the Commission has until September 30th, 2026, to decide whether or not it wants to propose any amendments to this rule. This docket is tentatively scheduled for the August Agenda Conference, which would give us time before that deadline to reconvene, if necessary. So in deciding when you would want to extend the deadline for postworkshop comments beyond May 6th, please keep that in mind.

Thank you.

CHAIRMAN SMITH: Thank you.

So I should go to Mr. Rehwinkel now. Do you have a suggestion as to --

MR. REHWINKEL: Well, I have already had to change travel plans to be here today. I have travel plans in May to go to New York for family reasons. I don't know what the rush is. Certainly, we've played ball every time this has come up, and we will again.

I would ask that comments be due sometime in June. I mean, we just got a rate case filed Monday. We are under pressure in our office. So if you truly want to hear us address this very informative workshop with postworkshop comments, we will need more time than early May.

MS. SAPOZNIKOFF: Would June 1st be acceptable? And again, just after we get --

MR. REHWINKEL: It would be better.

MS. SAPOZNIKOFF: -- staff is going to need time to consider them and then get the recommendation in time for the Agenda Conference.

CHAIRMAN SMITH: Could we split that and do mid-June? That can give --

MR. REHWINKEL: That would be --

CHAIRMAN SMITH: -- I mean, I am just trying to think maybe of a --

MR. REHWINKEL: Thank you. That would be -- I mean, something like that would be helpful. And again, I think we have established that there is no clock running on this thing, I don't think, is there?

MS. SAPOZNIKOFF: Yes, there is. We need to propose or not propose any amendment by September 30th. That's why it's going to the August Agenda Conference. There were statutory changes to 120.54 last session.

MR. REHWINKEL: But there would be a September Agenda option?

MS. SAPOZNIKOFF: Correct. September 30th is our deadline --

MR. REHWINKEL: Thank you.

MS. SAPOZNIKOFF: -- to file a notice of proposed rule if there is going to be a change, or to decide we are not going to change and then withdraw -- or notify JAPC that we are not going forward with rule development.

CHAIRMAN SMITH: I am just going to pause for a second because I see our General Counsel looking at potential calendar --

MS. HARPER: I am looking at the calendar.

Our rec would be due July 23rd.

CHAIRMAN SMITH: Okay.

MS. HARPER: So we would need some time to be able to incorporate the comments into the recommendation.

CHAIRMAN SMITH: Okay. I'm trying to be accommodating here. I understand. I mean, like you said, of course we want -- we want your comments. We want as much as we can here to make the right decision. Even giving one additional week, so that's June 8th, is that a little bit --

MS. SAPOZNIKOFF: That's fine from staff.

MR. REHWINKEL: That would be appreciated, Madam Chairman.

CHAIRMAN SMITH: Yes. Yes. Okay. Good. We have consensus.

Okay. So let's just say that those postworkshop comments, if we could have those submitted by June 8th, 2026.

Any other matters?

MR. WAHLEN: I have a question --

CHAIRMAN SMITH: Yes.

MR. WAHLEN: -- about the post-hearing comments. Tampa Electric and Peoples provided information about the magnitude of the parent debt adjustment in all of their, I think last five right cases, and there seems to be a question about what's the rate impact in the future. I just want to make sure we understand what the expectation is.

Saying what the rate impact in the next rate case that we haven't decided to file yet, and that we hope we don't anytime soon, you know, if the rule is repealed is a tricky thing. We can tell you what the effect of the current rule is, but to say, you know, what it's going to be if it's repealed in the next rate case requires a lot of assumptions, and we are working hard like the other utilities to not come in for a rate case.

So are y'all looking for information that is not already in our data request responses in the post-hearing comments?

MS. SAPOZNIKOFF: I think we are looking for a comparison that we have the information in the data response to what was the parent debt adjustment in your last rate case. And is it fair to say, because of all the discussion of how we calculate the revenue requirement then work back off of it, is it simply going to be a flip that if your reduction, based on the parent debt adjustment, was, say, 25 cents, that the rate impact had it not been applied would have been an increase of 25 cents, or is there not a direct one-for-one correlation? So not looking at prospective cases --

MR. WAHLEN: Okay.

MS. SAPOZNIKOFF: -- just based on past cases, what was the parent debt adjustment that was made, and had that rule not be been in place that the rule that staff has put the suggested amendments to of doing the stand-alone approach, what would the average bill have been without applying a parent debt adjustment?

And then I guess the question is, does the Commission want it just for the last rate case, or do you want some more historical data on that?

CHAIRMAN SMITH: I think just the last rate case --

MR. WAHLEN: Okay.

CHAIRMAN SMITH: -- would be the most --

MR. WAHLEN: All right. I just wanted to understand what the expectation was.

Thank you.

CHAIRMAN SMITH: Thank you. Thanks for that clarification.

Anything else from the Commission?

Okay. We have now reached the end of our workshop. Does anybody else have anything to add before I officially -- all right, so on behalf of the Commission, thank you all for your participation today. This workshop is adjourned.

(Proceedings concluded.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, Court Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 5th day of May, 2026.

Debbie R Krick

DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #HH575054
EXPIRES AUGUST 13, 2028

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Amendment of Rule 25-14.004, Florida Administrative Code, Effect of Parent Debt on Federal Corporate Income Tax	DOCKET NO.: 20240019- PU FILED: April 15, 2026

COMMENTS OF THE CITIZENS OF THE STATE OF FLORIDA FOR THE APRIL 22, 2026 WORKSHOP

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Comments

On behalf of the citizen of Florida and customers statewide, the Office of Public Counsel ("OPC") opposes this latest of a seemingly incessant and endless parade of customer-hostile proposals to repeal the Tax Effect Of Parent Company Debt Rule ("PDA Rule"). The repeal would eliminate a nearly half century Parent Debt Adjustment ("PDA") adjustment that has benefitted customers and been approved by the Florida Supreme Court.

In 1988 the Commission considered repeal and rejected it. In 2023 staff again undertook a protracted effort trying to raise customer rates through repeal. Twice in 2024 the Commission took the matter up and twice it was deferred (on March 5, 2024, and again on July 9, 2024) amid concerns about raising customer rates. Now again, like a bad penny, it returns two years later as the Commission apparently seeks to establish the existence of a non-existent problem in search of a shareholder profit-boosting solution.

The Staff is once again leading the charge to raise some of the highest customer rates and bills in the nation by layering on more affordability destroying costs and shareholder gravy onto long suffering customers. The effort has become so persistent and regular that one can virtually set clocks to it. The OPC requests that this pernicious effort cease once and for all.

The fact that these anti-customer efforts at rule repeal originate time and time again within the agency simply boggles the mind and perhaps warrants a deeper dive to determine the impetus and purpose behind the steady push for reversal. The "public" in Florida Public Service Commission wants to know: "What has changed in the last 2,2.5, or 3 years? Apart from the crushing weight of affordability pressure on consumers, neither the fundamental facts nor the law have changed. Why do we need to take up the same repeal proposal for a pro-customer rule every 6 to 24 months after they are rebuffed? Are we going to relitigate every defeated pro-utility proposal, like the PDAs, Asset Optimization Mechanisms, and Acquisition Adjustments, until shareholder coffers are swollen beyond capacity? Has the Commission not yet tired of the constant bragging at the shareholder analyst calls about record profits and the capex haven that is the Florida Commission? Has administrative finality been suspended? If this whatever number attempt to repeal the PDA ultimately achieves the shareholder windfall that is apparently desired, who then determines if it is appropriate to then entertain a motion to revisit the matter in another six months? Does this door move in both directions? When does the consumer get their coffers filled or get a win?"

The PDA rule has saved customers hundreds of millions of dollars over the past decades by preventing the unwarranted and excessive affiliate transfer of customer dollars to shareholders over the past 40-plus years. To customers throughout Florida, the PDA Rule seems like an exceptionally fine rule – its working well. Staff has failed to provide adequate justification to wipe-out this longstanding, pro-consumer rule. Customers remain unconvinced by the suggestion that the rule plays any role in the Commission's awarding the highest authorized profit levels, as there has been no demonstration by the Commission or the utilities that the rule played any such role. There is zero evidence that the overall Weighted Cost of Capital or WACC would be any lower if the rule were to be repealed. A case in point: FPL took steps many years ago to relieve themselves of the impact of the rule in the Commission's eyes, yet they have the highest percentage of Commission-awarded profit embedded in customer bills in the at least the lower 48 states, if not the nation.[1] Any assertion that the existence of the rule is creating higher costs of capital is belied by the facts.

Questions recently posed by the staff seem to continue to advance the erroneous notion that that the rule is essentially a "double leverage" adjustment. The OPC addressed this red herring in the September 26, 2023 comments. Attachment A.[2] See those comments at pages 5-6. Double leverage adjustments have been implemented elsewhere to apply the parent or consolidated company's capital

[1] Paying for Their Profits: How Ratepayers Foot the Bill for Soaring Utility Profits, Daniel Tait, Shelby Green and Sue Sturgis, Energy & Policy Institute, March 12, 2026. https://energyandpolicy.org/utility-profit-report/#h-section-3-methodology.

[2] The OPC restates and incorporates those September 26, 2023 comments herein by reference.

structure and resulting lower overall rate of return to the regulated subsidiary, regardless of the existence of differing factors affecting the subsidiary. The PDA is not that by any stretch of the imagination.

As the OPC has noted before, even though the PDA effect is recorded as a reduction to current income tax expense, the Parent Debt Rule is also not premised on income tax issues such as the consolidated tax savings. Instead it is a protection from affiliate transaction abuse. It keeps customers from being forced to subsidize the parent's recovery of its own income tax expenses by having to pay a taxable equity return on the amount of debt that makes up the parent's (and, as applicable, grandparent's) investment in the equity recorded on the regulated subsidiary books. In essence the rule appropriately transfers to the subsidiary the effect of the tax deduction benefit that the parent would otherwise realize on the parent's debt that is embedded in the subsidiary's equity balance. It is simple and fair and twice-sanctioned by the Florida Supreme Court, as discussed more fully in the 2023 comments contained in Attachment A. The PDA is a settled ratemaking principle and should not be arbitrarily cast aside just to shovel more profit to the utility shareholders.

This consumer protection rule has been in place for well over 40 years and has withstood two challenges at the Florida Supreme Court and one before the

Internal Revenue Service. This proposed repeal does not address a problem; it only would create yet another windfall for shareholders.

If the Commission proposes to repeal this rule, it could mean that it is creating a tangible future risk to millions of customers of Duke, Tampa Electric and People's Gas and others that they that will be subjected to increased rates and bills versus the murky, difficult to articulate (and even harder to understand) benefits outlined by repeal's proponents.

The staff has served some data requests on the companies to get the bill impacts. The OPC intends to serve discovery in this matter. To that end we request that, in the ill-advised circumstance that the Commission decides to move forward with rulemaking, it should seriously consider conducting a "draw out" pursuant to section 120.54(3)(c)2, Florida Statutes.

If rulemaking goes forward, the OPC expects to make the required filing to demonstrate that the ratepayers' "substantial interests will be affected in the proceeding" and "that the proceeding does not provide adequate opportunity to protect those interests." One such aspect of this showing will be that the ability to conduct discovery and to cross-examine witnesses, including Staff's advocates for repeal, will be essential and that the standard rulemaking process cannot provide that protection to customers.

The OPC urges the Commission to finally reject this effort at repeal just like the commission did in 1988. Maybe in another 38 years, when we are living in an energy utopia, consumer protections such as this rule will have lost their meaning. Today as affordability of the utility bills (electric, gas, water, wastewater), individually and in the aggregate for many, becomes more elusive, this rule does have tangible meaning. Nothing has changed since the rule was adopted and since repeal was rejected over three decades ago – except perhaps that equity ratios have become swollen (in both percentage and size as rate base has exploded far faster than customer growth and inflation) – often with increased amounts of parent infusions of debt capital. The material impact of the adjustment has persisted even as tax rates and the cost of equity might have declined since the 1980s.

Customers throughout the state are really struggling with high bills, fuel surcharges, storm surcharges and additional costs like increasing shareholder extractions of customer provided wholesale sales gains through Asset Optimization Mechanisms. On top of this, customers face a greater threat to affordability as some utilities are seeking and receiving enormous rate increases in unprecedented amounts. Removing the PDA Rule's long-standing customer protection and raising rate accordingly would just be salt in the unaffordability wound at this point.

Conclusion

At this juncture, the OPC's remarks echo those made by the OPC in 2024. Attached also are the Comments provided in a previous workshop in August 2023. The OPC reserves the right to supplement these comments at the workshop and throughout the rulemaking process and any draw out that may result.

We simply ask you to permanently reject the proposal to repeal or gut the impact of this good rule. Please put this repeal effort to rest.

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September 26, 2023

VIA ELECTRONIC FILING

Mr. Adam J. Teitzman
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
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Re: Docket No. 20230000-0T; Amendment of Rule 25-14.004, Florida Administrative Code, Effect of Parent Debt on Federal Corporate Income Tax

Dear Mr. Teitzman:

Attached for filing in the above docket is Office of Public Counsel's Post-Workshop Comments on Proposed Repeal of 25-14.004 - Effect of Parent Debt on Federal Corporate Income Tax.

Thank you for your assistance in this matter.

Sincerely,

s/Charles J Rehwinkel

Charles J. Rehwinkel
Deputy Public Counsel

cc: All Parties

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Amendment of Rule 25-14.004, Florida Administrative Code, Effect of Parent Debt on Federal Corporate Income Tax	DOCKET NO.: 20230000-OT FILED: September 26, 2023

OPC POST-WORKSHOP COMMENTS ON PROPOSED REPEAL OF 25-14.004 - EFFECT OF PARENT DEBT ON FEDERAL CORPORATE INCOME TAX

At the August 15, 2023 workshop, OPC heard for the first time why staff is, in reality, pursuing a repeal of 25-14.004 - Effect of Parent Debt on Federal Corporate Income Tax ("PDA Rule" or "Rule"). We would note that even though the Rule is not being repealed, the essence of the ratepayer protections from affiliate transaction abuse through application of a tax effect of parent debt ("Parent Debt Adjustment" or "PDA") is being completely stripped from the present rule.

The OPC noted that staff had never revealed the reason for the repeal or rule change being presented to the interested parties. Staff's representative then suggested that the Commission was not informed of a 1983 decision[1] by the Federal Energy Regulatory Commission ("FERC") justifying discontinuation of the allocation the consolidated income tax expense (benefits) of an entity to the subsidiary, which he explained could be found in a publication issued by Public Utilities Reports, Inc., Third Edition (1993), entitled "The Regulation of Public Utilities" by Charles F. Phillips, Jr.[2] at pages 288 and 289. Staff then read aloud two paragraphs from the pages referenced. However, this same information quoted by staff was in fact readily available in 1987. The exact language which was read is contained verbatim in the 1984 edition (first printing, May 1984) at pages 272 and 273. See, attachment 1. This information was available well before 1987 when the staff unsuccessfully attempted to persuade the Commission to repeal the Rule. Why this information was not presented at that time, we can only guess. It could very well have been that Commission or its staff found the information or FERC's views to be irrelevant to whether the PDA Rule should be repealed. The Commission does not follow FERC decision-making on ROEs so it is likely that it was unconcerned about that agency's views on how retail customers ought to be protected. Given the summary rejection of the repeal proposal at the time, there is no evidence that the stale information

[1] *In re Columbia Gulf Transp. Co.,* 54 PUR4th 31, 37 (FERC 1983).

[2] Professor Phillips appears to have been a frequent witness appearing around the country on behalf of utilities seeking higher returns on equity in ratemaking during the time the treatise was compiled. See, e.g., *Application of Roanoke Gas Company,* 1978 Va. PUC LEXIS 137; *Illinois Bell Telephone Company: Proposed restructuring and increase of rates,* 1989 Ill. PUC LEXIS 398, *1 (Ill. Comm. Comm'n November 9, 1989).

contained in either the 1984 or 1993 versions of an industry-centric treatise would have impacted any of the Commissioners' opinions at the time. In any event, as discussed below, the PDA Rule is nevertheless consistent with the "new" information from 30 years ago.

It is clear, from the language read by staff, that the then Federal Power Commission ("FPC") (currently FERC) was concerned with passing on the consolidated tax savings created by other subsidiaries to the regulated utility. Instructive is the FERC's rationale for eliminating a consolidated tax savings adjustment after the D.C Circuit Court of Appeals reversed[3] the agency's efforts to overturn its policy of applying such an adjustment. It was precisely this "new" decades old FERC rationale that staff pointed to in support for today scrapping of the customer-benefitting Rule. At the workshop, staff read two paragraphs from the 1993 Phillips document, as principal justification for the repeal of the PDA Rule. It was this information quoted from the 1983 FERC decision (which was issued contemporaneously with the actual adoption of the Rule) that OPC was informed was not presented to the Commission in 1987:

> Because deductions are given for expenses incurred in producing income, the necessary causal link between the ratepayers and the deductions is the expense the company incurs in providing service. Accordingly, the proper way to allocate deductions is to match the deductions with the expenses included in the cost of service. Thus, when an expense is included in the cost of service, the corresponding tax deduction is also allocated to the rate payers. In this way, any tax-reducing benefits or savings the company realizes in providing service are recognized in calculating the tax allowance for the benefit of the ratepayers.
>
> The corollary to this is that when the expense is not included in the cost of service because the company did not incur that expense in providing service, the deduction created by that expense is not allocated to ratepayers. **To do otherwise would result in the tax savings the company realizes from expenses incurred in providing service to other groups in periods for its own benefit being used to reduce the rates for a particular group of ratepayers. Tax allowance would then be lower or higher than is warranted by the profit each group provides to the company.** Since the amount of profit to be provided is the measure of the tax cost the company will incur in providing service, none of the rates for the groups would be cost-justified. Subsidization would inevitably result; one group would bear the burden, but another group would gain the benefit.

Phillips at 289 (1993); 276-277 1984). (Emphasis added).

This language has no bearing on the PDA Rule or the type of affiliated transaction that the Rule is designed to address. From the language highlighted above, and a closer reading of the case, it is obvious that FERC was concerned with the overall tax savings generated by non-jurisdictional, diversified entities being passed on to the Utility. These tax savings were being generated by other subsidiaries ***through losses*** wholly unrelated to services provided to, or burdens placed upon, the unregulated subsidiary. It appears

[3] *City of Charlottesville v. Federal Energy Regulatory Comm. and Columbia Gas Trans. Corp*., 661 F. 2d 945 (D.C. Cir.1981)

that FERC was more concerned with the overall consolidated tax savings than the infusion of debt as equity into a subsidiary. This is better understood when the salient portion of the paragraph preceding the two read by staff is considered:

***

> In a 1972 decision,[4] the commission held that a pipeline company should be permitted to retain the **consolidated tax savings generated by losses incurred by an affiliate** engaged in gas exploration and development. Five years later, the commission adopted a similar treatment in wholesale electric rate cases, holding that the stand-alone policy was appropriate in those situations where jurisdictional customers had **not paid the expenses that generated the consolidated tax savings.**

***

Phillips at 289 (1993); 276 1984). (Emphasis added)

In the cited *Columbia Gulf* decision, FERC distinguished the non-jurisdictional, wholly unrelated activities generating losses, from the highly specific, related tax deduction associated with the investing parent companies' excess interest deductions. The former was not allowed, while the change in policy continued to recognize that the parent's interest expense was properly considered in a "stand-alone" tax allowance determination:

> In setting the return for the pipelines we used the parent's interest expense as the pipelines' cost of debt. Thus, the ratepayers bear the burden of paying the parent's interest expense. That being so, an equal portion of the parent's interest expense deduction must be allocated to the pipelines' ratepayers. Our stand-alone policy does just this.

Columbia Gulf at 1983 FERC LEXIS 2737 **22. In that instance, FERC utilized a consolidated capital structure indicating that there would be an allocation of the parent's debt to the subsidiary income tax calculation. The PDA Rule (that has been excluded from application where the subsidiary capital structure is merely an allocation of the overall consolidated capital structure) when applied when a parent invests debt in the equity of a subsidiary is fully consistent with the *Columbia Gulf* decision in that the subsidiary ratepayers bear the burden of paying a portion of the parent's interest expense through the taxable equity return. The parent's use of debt to make equity infusions in the regulated Florida subsidiary is a transaction directly related to the subsidiary. It is precisely when the parent having a mix of debt and equity in its capital structure makes an equity investment in a subsidiary that the Rule's application becomes mandatory. The

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[4] *Re Florida Gas Transmission Co.,* 47 FPC 341 93 PUR 3d 477 (FPC 1972). Professor Phillips quotes from that decision in explaining that the stand alone method "is one that takes into account the revenues and costs entering into the regulated cost of service without increase or decrease for tax gains or losses related to other activities."

fact of a parent's investment in a subsidiary does not overcome the presumption; it triggers it. Something more, such proof in the form of evidence that dividends from the subsidiary exceeded equity contributions from the parent, has been deemed necessary in the past for the presumption to be met.[5]

The long-standing PDA Rule does not seek to require or even allow losses from non-jurisdictional, diversified operations to offset the tax expense of the regulated, jurisdictional operations in Florida. In supporting the Commission's 40 year-long affiliate transaction protection, OPC is not interested in unfairly passing through to ratepayers any affiliate subsidiary losses or tax savings to the regulated company using the PDA Rule. Likewise, there is no effort or intent to require the use of the consolidated entity's capital structure to artificially lower revenue requirements. This would represent a return to a long-abandoned "double-leverage" adjustment. The current rule as written does none of this; the OPC does not seek such a return. Double-leverage and allusions to it in this repeal process are red herrings.

The essence of the investment by a parent in the regulated subsidiary is an affiliate transaction. This categorization is not in dispute. Utilities routinely report equity infusions, upstream dividend payments, advances to and from subsidiaries (and their subsequent conversions to debt or equity) as affiliate transactions. See, e.g., Florida Power & Light and Florida City Gas Co. examples submitted in Attachment 2.

If the parent allocates debt to the utility or issues third party debt on the subsidiary's behalf, the utility would be required to pay interest to a third party or the parent and as a result would record an interest expense on its own books and take the interest deduction on its standalone tax calculation. The difference from this scenario and the equity infusion from the parent portion of the capitalization is that the source of the funds so invested cannot be traced to equity or debt dollars and are thus presumed to be supported by a mix of debt and equity in the same proportions as contained in the parent's capital structure. Within the PDA Rule, this scenario gives rise to a rebuttable presumption that part of that investment, or equity infusion, is the result of the parent issuing debt in order to effectively fund the operations of the utility subsidiary. Absent rebutting the presumption, the utility is required to recognize the value of the interest deduction on the portion of parent debt embedded in the subsidiary equity (upon which its customers compensate the shareholders for in the form of an equity return on that subsidiary equity) as a reduction to

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[5] *In re: Petition for increase in rates by Gulf Power Company*. Order No. PSC-2012-0179-EI at 115-116. "Since Gulf's last rate case, the record evidence indicates Gulf paid dividends to Southern Company of $196 million more than Southern Company invested in the equity of Gulf."

its standalone taxes. If not for the PDA Rule, this affiliate transaction would create a subsidy flowing from ratepayers to shareholders. This is exactly what the Supreme Court of Florida recognized in its opinion upholding the affiliate transaction protections inherent in the parent debt adjustment when it stated:

> In the normal course of a parent-subsidiary relationship, the parent issues debt in order to acquire capital to support the operations of its subsidiaries. The capital is transferred to the subsidiary in exchange for stock in the subsidiary. As a practical matter, the equity of the subsidiary is thus directly supported by the debt of the parent. The debt of the parent used to support the subsidiary generates interest expense for the parent, which in turn is tax deductible. Although the capital is passed on through to the subsidiary, there is no corresponding pass-through of interest expense because the parent passes the capital to acquire ownership interest in the subsidiary as opposed to a creditor's interest. Therefore, the nature of the acquired capital changes from debt to equity at the point the capital passes from the parent to subsidiary.

General Telephone Company v. Florida Public Service Commission, 446 So.2d 1063, 1069 (Fla. 1984).

Notwithstanding this highly effective specific and limited regulatory safeguard, staff's workshop comments in the workshop erroneously conflated the notion of "double leverage adjustment" with the PDA:

> And so, back in the days of the double leverage adjustment, it was presumed that the return on equity for the utility should be the overall cost of the capital of the parent company. And that theory has pretty much been discredited, and as far as I know, is not followed by any Commission across the country, and so by making a double leverage adjustment, or a parent debt adjustment, the utility will not recover the cost of providing service.

Staff comments, August 15, 2023 workshop (transcribed from FPSC video recording). This conflation is in error.

Double leverage is a financial strategy whereby the parent raises debt but downstreams some or all of the proceeds to its operating subsidiary largely in the form of an equity investment. Therefore, the subsidiary's operations are financed by debt raised at the subsidiary level and by debt financed at the holding-company level. In this way, the subsidiary's equity is leveraged twice, once with the subsidiary debt and once with the holding company debt. The regulatory adjustment was to treat the parent and subsidiary capital structures as the same and give recognition to the lower overall weighted cost of capital caused by the higher parent leverage. This is not what the PDA Rule does.

What the PDA Rule ***does require*** is for the utility to properly recognize the interest deduction benefit related to the amount of debt being infused by the parent through the affiliate transaction of the investment. Inherent in the affiliate transaction is a very real tax benefit that customers provide to shareholders that is encompassed in the nature of the parent's equity investment – in the form of the return on equity (grossed up for income taxes). This benefit would otherwise be transferred to the shareholders without the PDA Rule. This tax effect of parent company debt scenario is not double leverage, it is not consolidated tax savings and it is not a departure from standalone ratemaking. Recognizing and correcting for the effect of an abusive affiliate transaction does not violate any principle of "stand alone ratemaking." The PDA Rule is simply the Commission regulating in the public interest, protecting customers and determining that the standalone, statutory tax rate expense embedded in the revenue requirement is overstated unless the tax benefit that customers provide to shareholders through the equity return (on equity that is effectively partly tax deductible debt) is properly reflected in the interest deductions on a standalone basis.

If this Commission adopts the new proposed rule change eviscerating the PDA Rule, it will insure that a parent issuing debt that supports investments in the regulated subsidiary can engineer the transfer of funds to the sole benefit of the stockholders and at the expense of utility ratepayers. This change in the Rule would effectively allow the utility to charge ratepayers an inflated equity return that ignores the true nature of the investment. This would be inconsistent with the standalone entity treatment. The PDA Rule as currently established is a necessary protection for the ratepayers as it allows the customers to properly receive the benefit of the interest on the infused debt as a reduction in the utility's standalone income tax expense.

It seems that the only change that should be considered in the Rule to fix the problem is to modify paragraph 4 to clarify that the standalone utility's statutory tax rate should be applied. OPC's proposed change is shown below:

> (4) The adjustment shall be made by multiplying the debt ratio of the parent by the debt cost of the parent. This product shall be multiplied by the statutory tax rate applicable to the ~~consolidated entity~~ regulated utility. This result shall be multiplied by the equity dollars of the subsidiary, excluding its retained earnings. The resulting dollar amount shall be used to adjust the income tax expense of the utility.

This clarification to the current rule would prevent any confusion that somehow an effective tax rate of the consolidated entity could be used to pass through to the utility of any consolidated savings through the consolidated tax rate. Since the statutory rate is the same regardless, it would seem that this clarification is not essential, but it can be done in an abundance of caution. Otherwise, there is no basis to change a 40-year old consumer protection rule that has survived challenges in the Florida Supreme Court, the United States Treasury Department and the United States Congress.

Respectfully submitted,

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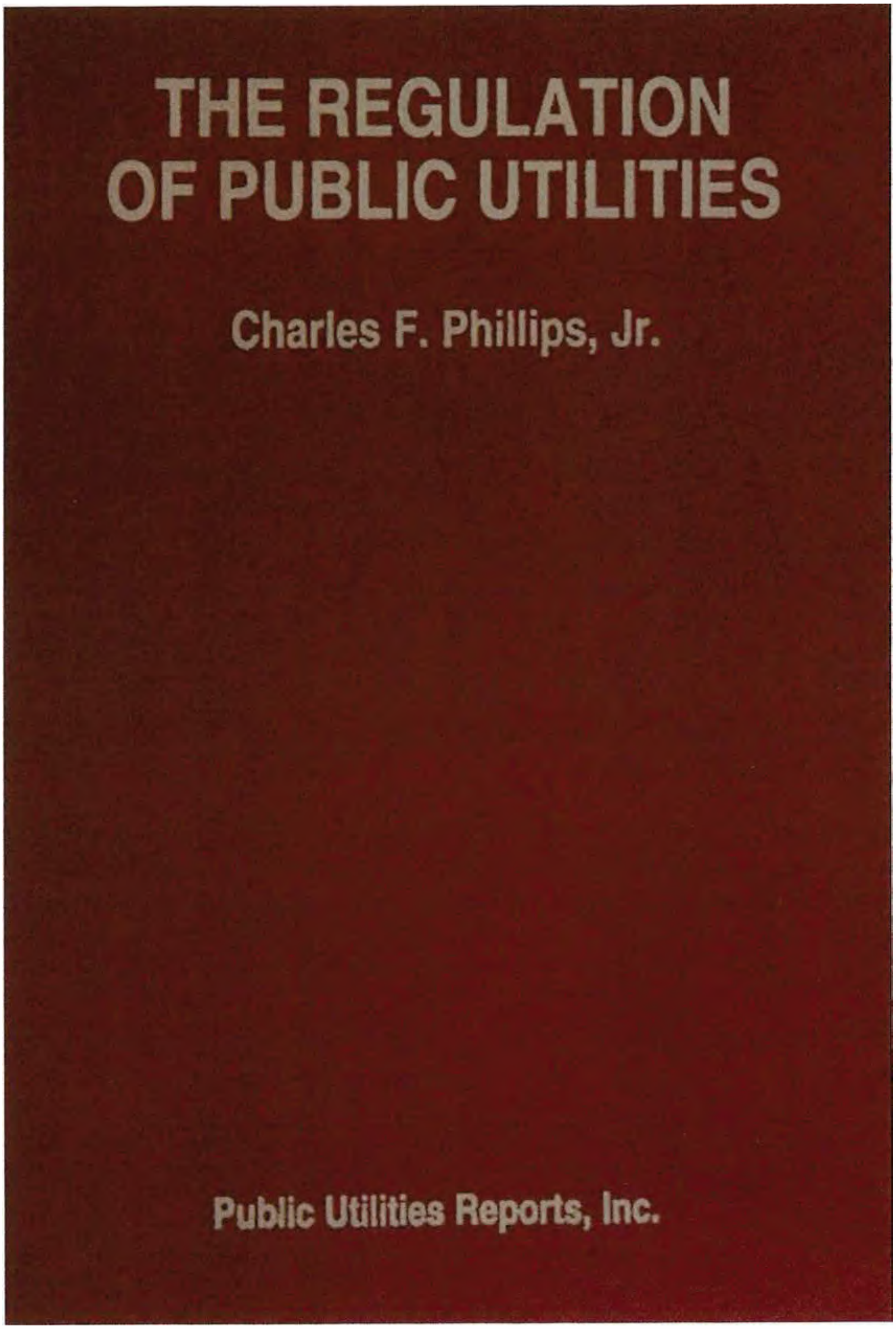
Attachment 1


THE REGULATION
OF PUBLIC UTILITIES

Charles F. Phillips, Jr.

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only affects the time when such depreciation may be used for tax purposes, the investment tax credit resulted in a permanent savings to the utility. The flow through method resulted in the entire tax credit being reflected as an increase in net income (or reduction of taxes) in the year the credit was received, thereby giving all benefits of the tax credit to a utility's customers, while the normalization method resulted in spreading the tax credit over the productive life of the property, thereby sharing the benefits of the tax credit with a utility's shareholders and customers. Normalization was the general practice.[180]

Consolidated Tax Returns. Under the Internal Revenue Code, an affiliated group of companies is permitted to file a consolidated tax return. Certain benefits accrue to companies that file such returns. The losses of any affiliate can be set off against the taxable income of other affiliates in the group;[181] the parent company is freed from paying federal income taxes on dividends from its subsidiaries. In determining a regulated affiliate's cost of service, for rate-making purposes, the common practice is to allocate to that company a share of the consolidated taxes.[182]

When a parent company has both utility and nonutility or jurisdictional and nonjurisdictional affiliates, a question arises as to the proper allocation procedure. A 1964 FPC decision, involving United Gas Pipe Line Company, a subsidiary of United Gas Corporation, is illustrative.[183] United Gas elected to file consolidated federal income tax returns for the years 1957-61. Because its two oil and gas production and exploration affiliates (Union and Overseas) had net losses over the five-year period, the group's tax liability was thereby reduced. In the rate case, United Gas Pipe Line claimed that its allowance for federal income taxes should be the full 52 percent rate (the rate then applicable), or about $12 million for the test year. The FPC rejected this claimed allowance and allocated the actual consolidated taxes paid among the companies in the group, or approximately $9.9 million for United Gas Pipe Line for the test period.[184]

On appeal, the company claimed that the FPC improperly applied nonjurisdictional losses to jurisdictional income. But the Supreme Court upheld the commission, saying in part:

> There is no frustration of the tax laws inherent in the commission's action. The affiliated group may continue to file consolidated returns and through this mechanism set off system losses against system income, including the United's fair return income. The tax law permits this, but it does not seek to control the amount of income which any affiliate will have. Nor does it attempt to set United's rates. This is the function of the commission, a function performed here by rejecting that part of the claimed tax expense which was no expense at all, by reducing cost of service and therefore rates, and by allowing United only a fair return on its investment.[185]

In short, when a group of affiliated companies elects to file a consolidated tax return, a commission *may* pass on to customers — in the form of lower rates — any resulting benefits. But the Court was careful to note that the decision to file such a return belongs to the companies.

However, during the 1970s, the FPC (and later the Federal Energy Regulatory Commission [FERC]) adopted a "stand-alone" policy — that is, the computation of the income tax expense component of the cost of service as if the subsidiaries had filed separate federal income tax returns. In a 1972 decision, the commission held that a pipeline company should be permitted to retain the consolidated tax savings generated by losses incurred by an affiliate engaged in gas exploration and development.[186] Five years later, the commission adopted a similar treatment in wholesale electric rate cases, holding that the stand-alone policy was appropriate in those situations where jurisdictional customers had not paid the expenses that generated the consolidated tax savings.[187] But in a 1981 decision, a court of appeals remanded a case to the FERC, holding that while the commission had legal authority to use a stand-alone policy, its order contained insufficient evidence to support the concept.[188] That support was put forth in a subsequent decision, when the commission held:

> Because deductions are given for expenses incurred in producing income, the necessary causal link between the ratepayers and the deductions is the expense the company incurs in providing service. Accordingly, the proper way to allocate deductions is to match the deductions with the expenses included in the cost of service. Thus, when an expense is included in the cost of service, the corresponding tax deduction is also allocated to the ratepayers. In this way any tax-reducing benefits, or savings, the company realizes in providing the service are recognized in calculating the tax allowance for the benefit of the ratepayers.
>
> The corollary to this is that when an expense is not included in the cost of service (because the company did not incur that expense in providing service), the deduction created by that expense is not allocated to the ratepayers. To do otherwise would result in the tax savings the company realizes from expenses incurred in providing services to other groups and periods or for its own benefit being used to reduce rates for a particular group of ratepayers. The tax allowance would then be lower or higher than is warranted by the profit each group provides the company. Since the amount of profit to be provided is the measure of the tax cost the company will incur in providing service, none of the rates for the groups would be cost justified. Subsidization would inevitably result. One group would bear the burden, but another group would gain the benefit.[189]

[181] A net loss in any year can be carried back to the three preceding years or carried forward to the succeeding five years.

[182] See, e.g., *In re General Tel. Co. of the Southwest*, 29 PUR4th 379 (Ark. 1979); *In re Mid-Carolina Tel. Co.*, 46 PUR4th 575 (N.C. 1982); *General Tel. Co. of Fla. v. Florida Pub. Serv. Comm'n*, 446 So.2d 1063 (1984); *Barasch v. Pennsylvania Pub. Util. Comm'n*, 548 A.2d 1310 (1988); *In re GTE S., Inc.*, 123 PUR4th 257 (W.Va. 1991).

[183] *In re United Gas Pipe Line Co.*, 54 PUR3d 285 (FPC 1964). See also *In re Missouri Cities Water Co.*, 29 PUR4th 1 (Mo. 1979).

[184] The FPC's allocation was based on a formula developed in an earlier decision, whereby (1) the companies are separated into regulated (jurisdictional) and nonregulated (nonjurisdictional) groups, (2) the net aggregate taxable income is determined for each group, and (3) the net total consolidated tax liability is apportioned over a representative period of time between the two groups, and among the companies in the regulated group, on the basis of their respective taxable incomes; "provided that the allowance so computed for the regulated company shall not exceed what its tax liability would be for rate-making purposes, if computed on a separate return basis." *In re Cities Serv. Gas Co.*, 49 PUR3d 229, 236 (FPC 1963).

[185] *Federal Power Comm'n v. United Gas Pipe Line Co.*, 386 U.S. 237, 246-7 (1967). In a dissenting opinion, Justice Harlan (joined by Justices Douglas and Stewart) argued:

> No allocation whatever could be required by the commission in this case because nonjurisdictional income was more than sufficient to absorb all non-jurisdictional losses and there was no showing that jurisdictional activities would actually benefit from nonjurisdictional losses. To permit the FPC in such circumstances to allocate would in effect extend the commission's jurisdiction to areas not encompassed within the authority given the commission by the Natural Gas Act. (Ibid., 256-57 [Harlan, J., dissenting].)

[186] *In re Florida Gas Transp. Co.*, 47 FPC 341, 93 PUR3d 477 (FPC 1972). The stand-alone method "is one that takes into account the revenues and costs entering into the regulated cost of service without increase or decrease for tax gains or losses related to other activities." Ibid., Exhibit 11, 4.

[187] *In re So. Cal. Edison Co.*, 23 PUR4th 44 (FPC 1977). See also "Consolidated Tax Savings and Affiliated Utilities: New Life for an Old Issue," *Public Utilities Fortnightly* 108 (5 November 1981): 62.

[188] *Charlottesville v. Federal Energy Regulatory Comm'n*, 661 F.2d 945 (D.C. Cir. 1981), 48 PUR4th 682 (1982).

[189] *In re Columbia Gulf Transp. Co.*, 54 PUR4th 31, 37 (FERC 1983).

> The mechanics of calculating a stand-alone allowance are as follows: From the total return allowed on rate base are deducted interest expenses (computed by multiplying the rate base by the weighted cost of long-term debt used in determining the rate of return), permanent tax differences, and the effect of the surtax exemption to arrive at the tax base. The tax base is then multiplied by the factor of 48 percent over 52 percent [now 46 percent over 54 percent] to produce the tax allowance, which includes recognition of the fact that the tax allowance itself is subject to tax when received by the utility and is not deductible. The amount so calculated is the tax allowance. (Ibid., 38.)

THE REGULATION OF PUBLIC UTILITIES

Charles F. Phillips, Jr.

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Consolidated Tax Returns. Under the Internal Revenue Code, an affiliated group of companies is permitted to file a consolidated tax return. Certain benefits accrue to companies that file such returns. The losses of any affiliate can be set off against the taxable income of other affiliates in the group;[158] the parent company is freed from paying federal income taxes on dividends from its subsidiaries. In determining a regulated affiliate's cost of service, for rate-making purposes, the common practice is to allocate to that company a share of the consolidated taxes.[159]

When a parent company has both utility and nonutility or jurisdictional and nonjurisdictional affiliates, a question arises as to the proper allocation procedure. A 1964 FPC decision, involving United Gas Pipe Line Company, a subsidiary of United Gas Corporation, is illustrative.[160] United Gas elected to file consolidated federal income tax returns for the years 1957-1961. Because its two oil and gas production and exploration affiliates (Union and Overseas) had net losses over the five-year period, the group's tax liability was thereby reduced. In the rate case, United Gas Pipe Line claimed that its allowance for federal income taxes should be the full 52 percent rate (the rate then applicable) or about $12 million for the test year. The FPC rejected this claimed allowance and allocated the actual consolidated taxes paid among the companies in the group or approximately $9.9 million for United Gas Pipe Line for the test period.[161]

On appeal, the company claimed that the FPC improperly applied nonjurisdictional losses to jurisdictional income. But the Supreme Court upheld the commission, saying in part:

> There is no frustration of the tax laws inherent in the commission's action. The affiliated group may continue to file consolidated returns and through

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commissions permit a utility a return only on the post-1971 investment tax credits. See National Association of Regulatory Utility Commissioners, *1981 Annual Report on Utility and Carrier Regulation, op. cit.*, pp. 541-45.

[158]A net loss in any year can be carried back to the three preceding years or carried forward to the succeeding five years.

[159]See, *e.g.*, *Re South Central Bell Teleph. Co.*, Docket No. U-6402 (Tenn., 1977); *Re West Virginia Water Co.*, Case No. 8634 (W.Va., 1977); and *Re General Teleph. Co. of the Southwest*, 29 PUR 4th 379 (Ark., 1979).

[160]*Re United Gas Pipe Line Co.*, 54 PUR 3d 285 (FPC, 1964). See also *Re Missouri Cities Water Co.*, 29 PUR 4th 1 (Mo., 1979).

[161]The FPC's allocation was based on a formula developed in an earlier decision, whereby (1) the companies are separated into regulated (jurisdictional) and nonregulated (nonjurisdictional) groups, (2) the net aggregate taxable income is determined for each group, and (3) the net total consolidated tax liability is apportioned over a representative period of time between the two groups, and among the companies in the regulated group, on the basis of their respective taxable incomes; "provided that the allowance so computed for the regulated company shall not exceed what its tax liability would be for rate-making purposes, if computed on a separate return basis." *Re Cities Service Gas Co.*, 49 PUR 3d 229, 236 (FPC, 1963).

> this mechanism set off system losses against system income, including the United's fair return income. The tax law permits this, but it does not seek to control the amount of income which any affiliate will have. Nor does it attempt to set United's rates. This is the function of the commission, a function performed here by rejecting that part of the claimed tax expense which was no expense at all, by reducing cost of service and therefore rates, and by allowing United only a fair return on its investment.[162]

In short, when a group of affiliated companies elects to file a consolidated tax return, a commission *may* pass on to customers—in the form of lower rates—any resulting benefits. But the Court was careful to note that the decision to file such a return belongs to the companies.

However, during the 1970s, the FPC (and later the FERC) adopted a "stand-alone" policy; that is, the computation of the income tax expense component of the cost of service as if the subsidiaries had filed separate federal income tax returns. In a 1972 decision, the commission held that a pipeline company should be permitted to retain the consolidated tax savings generated by losses incurred by an affiliate engaged in gas exploration and development.[163] Five years later, the commission adopted a similar treatment in wholesale electric rate cases, holding that the stand-alone policy was appropriate in those situations where jurisdictional customers had not paid the expenses that generated the consolidated tax savings.[164] But in a 1981 decision, a court of appeals remanded a case to the FERC, holding that while the commission had legal authority to use a stand-alone policy, its order contained insufficient evidence to support the concept.[165] That support was put forth in a subsequent decision, when the commission held:

> [2] Because deductions are given for expenses incurred in producing income, the necessary causal link between the ratepayers and the deductions

[162] *Federal Power Comm.* v. *United Gas Pipe Line Co.*, 386 U.S. 237, 246-47 (1967). In a dissenting opinion, Justice Harlan (joined by Justices Douglas and Stewart), argued: "... no allocation whatever could be required by the commission in this case because nonjurisdictional income was more than sufficient to absorb all nonjurisdictional losses and there was no showing that jurisdictional activities would actually benefit from nonjurisdictional losses. To permit the FPC in such circumstances to allocate would in effect extend the commission's jurisdiction to areas not encompassed within the authority given the commission by the Natural Gas Act." Dissenting opinion, *ibid.*, pp. 256-57.

[163] *Re Florida Gas Trans. Co.*, 47 FPC 341, 93 PUR 3d 477 (FPC, 1972). The stand-alone method "is one that takes into account the revenues and costs entering into the regulated cost of service without increase or decrease for tax gains or losses related to other activities." *Ibid.*, Exhibit 11, p. 4.

[164] *Re So. California Edison Co.*, 23 PUR 4th 44 (FPC, 1977). See also "Consolidated Tax Savings and Affiliated Utilities: New Life for an Old Issue," 108 *Public Utilities Fortnightly* 62 (November 5, 1981).

[165] *City of Charlottesville* v. *Federal Energy Regulatory Comm. and Columbia Gas Trans. Corp.*, 661 F. 2d 945 (D.C. Cir. 1981), 48 PUR 4th 682 (1982).

is the expense the company incurs in providing service. Accordingly, the proper way to allocate deductions is to match the deductions with the expenses included in the cost of service. Thus, when an expense is included in the cost of service, the corresponding tax deduction is also allocated to the ratepayers. In this way any tax-reducing benefits, or savings, the company realizes in providing the service are recognized in calculating the tax allowance for the benefit of the ratepayers.

The corollary to this is that when an expense is not included in the cost of service (because the company did not incur that expense in providing service), the deduction created by that expense is not allocated to the ratepayers. To do otherwise would result in the tax savings the company realizes from expenses incurred in providing services to other groups and periods or for its own benefit being used to reduce rates for a particular group of ratepayers. The tax allowance would then be lower or higher than is warranted by the profit each group provides the company. Since the amount of profit to be provided is the measure of the tax cost the company will incur in providing service, none of the rates for the groups would be cost justified. Subsidization would inevitably result. One group would bear the burden, but another group would gain the benefit.[166]

Severance and "First Use" Taxes: A Digression

There are two tax issues that are of particular importance to electric and gas utilities and that require brief discussion. Both affect the prices paid by these utilities for their fuel supplies.

Severance Taxes. Thirty-three states impose severance taxes on depletable resources. In 1981, these taxes generated $6.4 billion in tax revenues, with 80 percent going to just five states (Texas, Alaska, Louisiana, Oklahoma, and New Mexico).[167] Of particular concern in more recent years has been the severance taxes on coal which, with one possible exception (North Dakota's severance tax on lignite), are the highest such taxes in the country. Montana levies a maximum rate of 30 percent of the "contract sales price;" Wyoming a 17 percent rate (including local charges). These two states account for 40 percent of domestic coal reserves and 68 percent of reserves of low-sulfur coal.

[166]*Re Columbia Gulf Trans. Co.*, 54 PUR 4th 31, 37 (FERC, 1983). "The mechanics of calculating a stand-alone allowance are as follows: From the total return allowed on rate base are deducted interest expenses (computed by multiplying the rate base by the weighted cost of long-term debt used in determining the rate of return), permanent tax differences, and the effect of the surtax exemption to arrive at the tax base. The tax base is then multiplied by the factor of 48 percent over 52 percent (now 46 percent over 54 percent) to produce the tax allowance, which includes recognition of the fact that the tax allowance itself is subject to tax when received by the utility and is not deductible. The amount so calculated is the tax allowance." *Ibid.*, p. 38.

[167]Andy Plattner, "Severance Taxes on Energy Seen Widening Gap Between Rich, Poor Areas of Nation," 40 *Congressional Quarterly* 319 (February 20, 1982).

Attachment 2

INDIVIDUAL AFFILIATED TRANSACTIONS IN EXCESS OF $25,000

Company: PIVOTAL UTILITY HOLDINGS, INC. D/B/A FLORIDA CITY GAS
For the Year Ended December 31, 2022

Provide information regarding individual affiliated transactions in excess of $25,000. Recurring monthly affiliated transactions which exceed $25,000 per month should be reported annually in the aggregate. However, each land or property sales transaction even though similar sales recur, should be reported as a "non-recurring" item for the period in which it occurs.

Name of Affiliate (a)	Description of Transaction (b)		Dollar Amount (c)
Florida Power & Light	Business Operations Support Provided by Affiliate	$	365,752
Florida Power & Light	Corporate Real Estate Capital Support Provided by Affiliate	$	442,424
Florida Power & Light	Corporate Real Estate Services Provided by Affiliate	$	27,681
Florida Power & Light	Corporate Service Charges From Affiliate	$	1,803,140
Florida Power & Light	Information Technology Capital Support Provided by Affiliate	$	1,362,345
Florida Power & Light	Information Technology Services Provided by Affiliate	$	400,000
Florida Power & Light	Liquified Natural Gas Project Capital Support Provided by Affiliate	$	55,143
Florida Power & Light	Rate Case Support Provided by Affiliate	$	328,706
Florida Power & Light	Reimbursement to Affiliate for Insurance Premiums	$	1,302,228
Florida Power & Light	Storm Support Provided to Affiliate	$	49,489
Florida Power & Light	Compensation, Deferred Comp, Incentives, Stock Awards, RSA Amortization, Pension & Other	$	54,579
Florida Power & Light	Reclass Loan from Affiliate to Capital Contribution	$	3,100,000
Florida Power & Light	Loan Interest Payments to Affiliate	$	6,106,598
Florida Power & Light	Purchases of Natural Gas from Affiliate	$	25,029,900
Florida Power & Light	Loans from Affiliate	$	31,000,000
Florida Power & Light	Federal Tax Payments to Affiliate	$	3,555,991
NextEra Energy Pipeline Services,LLC	Business Operations Support Provided by Affiliate	$	55,152
NextEra Energy Resources LLC	Information Technology Capital Support Provided by Affiliate	$	922,455
NextEra Energy Resources LLC	Information Technology Services Provided by Affiliate	$	185,314
NextEra Energy, Inc.	Federal Income Taxes Due to Affiliate	$	2,673,354
NextEra Energy, Inc.	State Income Taxes Due to Affiliate	$	459,277
NextEra Energy, Inc.	Transfer of 2021 Performance Incentive from Affiliate	$	30,000

ANALYSIS OF DIVERSIFICATION ACTIVITY
Individual Affiliated Transactions in Excess of $500,000

FLORIDA POWER & LIGHT COMPANY
For the Year Ended December 31, 2022

Provide information regarding individual affiliated transactions in excess of $500,000. Recurring monthly affiliated transactions which exceed $500,000 per month should be reported annually in the aggregate However, each land or property sales transaction even though similar sales recur, should be reported as a "non-recurring" item for the period in which it occurs.

Line No.	Name of Affiliate (a)	Description of Transaction (b)	Dollar Amount (c)
1	Florida City Gas	Federal Tax Payments due from Affiliate	3,196,410
2	Florida City Gas	Information Technology Capital Support to Affiliate	509,196
3	Florida City Gas	Loan Interest Payments from Affiliate	6,035,269
4	Florida City Gas	Loans to Affiliate	31,000,000
5	Florida City Gas	Project Development Support Provided to Affiliate	968,853
6	Florida City Gas	Sale of Natural Gas to Affiliate	25,029,900
7	Florida City Gas	Reclassify Affiliate Loan as an Investment in Subsidiary	3,100,000
8	Florida Renewable Partners, LLC	Project Development Support Provided to Affiliate	564,318
9	Florida Southeast Connection, LLC	Natural Gas Purchases from Affiliate	99,545,086
10	FPL Energy Services, LLC	Federal Tax Payments due from Affiliate	8,409,727
11	FPL Energy Services, LLC	State Tax Payments due from Affiliate	1,492,633
12	FPL Energy Services, LLC	Marketing & Communication Services Provided to Affiliate	1,439,413
13	FPL Energy Services, LLC	Sale of Asset/Inventory to Affiliate	586,476
14	FPL Energy Services, LLC	Sales Program Support Provided to Affiliate	565,078
15	KPB Financial Corporation	Federal Taxes Due from Affiliate	13,974,346
16	KPB Financial Corporation	Non-Qualified Fund Tax Payment Due from Affiliate	20,656,676
17	KPB Financial Corporation	State Taxes Due from Affiliate	2,452,893
18	KPB Financial Corporation	Storm Fund Balance Transfer from Affiliate	73,750,515
19	NextEra Energy Capital Holdings, Inc.	Charge to Affiliate for Share of Insurance Premiums	1,210,030
20	NextEra Energy Capital Holdings, Inc.	Corporate Real Estate Services Provided to Affiliate	500,000
21	NextEra Energy Capital Holdings, Inc.	Reimbursement from Affiliate for Legal Costs	741,129
22	NextEra Energy Capital Holdings, Inc.	State Taxes Due from Affiliate	640,000
23	NextEra Energy Constructors, LLC	Return of Telecommunications Equipment from Affiliate	1,007,091
24	NextEra Energy Foundation, Inc.	2022 Foundation Contribution to Affiliate	30,000,000
25	NextEra Energy Resources, LLC	Allocation of Credit Card Rebate to Affiliate	771,951
26	NextEra Energy Resources, LLC	Charge to Affiliate for Share of Insurance Premiums	3,002,912
27			

ANALYSIS OF DIVERSIFICATION ACTIVITY
Individual Affiliated Transactions in Excess of $500,000

FLORIDA POWER & LIGHT COMPANY
For the Year Ended December 31, 2022

Provide information regarding individual affiliated transactions in excess of $500,000. Recurring monthly affiliated transactions which exceed $500,000 per month should be reported annually in the aggregate. However, each land or property sales transaction even though similar sales recur, should be reported as a "non-recurring" item for the period in which it occurs.

Line No.	Name of Affiliate (a)	Description of Transaction (b)	Dollar Amount (c)
28	NextEra Energy Resources, LLC	Corporate Real Estate Services Provided to Affiliate	712,500
29	NextEra Energy Resources, LLC	Corporate Services Charge to Affiliate	37,128,465
30	NextEra Energy Resources, LLC	Information Technology Capital Support Provided to Affiliate	696,656
31	NextEra Energy Resources, LLC	Information Technology Services Provided to Affiliate	7,262,128
32	NextEra Energy Resources, LLC	Sale of Asset/Inventory to Affiliate	1,046,580
33	NextEra Energy Resources, LLC	Space & Furniture Billing to Affiliate	9,781,671
34	NextEra Energy, Inc.	401K Forfeitures Reimbursed by Affiliate	964,865
35	NextEra Energy, Inc.	401K Match Activity Reimbursed by FPL to Affiliates	1,189,249
36	NextEra Energy, Inc.	Assignment of Solar Panel Master Agreement from Affiliate	6,118,412
37	NextEra Energy, Inc.	Compensation, Deferred Comp, Incentives, Stock Awards, RSA Amortization, Pension & Other Employee Benefits Plans	14,782,251
38	NextEra Energy, Inc	Equity Contribution from Parent Company	[illegible],000,000
39	NextEra Energy, Inc.	Reimbursement from Parent Company for National Ad Campaign	5,751,929
40	NextEra Energy, Inc.	Reimbursement to Parent Company for Solar Panel Downpayment	141,533,568
41	NextEra Energy, Inc.	Return of Partial Solar Panel Downpayment from Parent Company	6,118,412
42	NextEra Energy, Inc.	Transfer of Employee Incentives to Parent Company	16,389,550
43	NextEra Energy, Inc	Dividend Contribution to Parent Company	2,000,000,000
44	NextEra Energy, Inc.	Federal Tax Payments/Distributions	138,028,512
45	NextEra Energy, Inc.	State Tax Payments/Distributions	9,867,075
46	Palms Insurance Company, Limited	Contractor Workers' Compensation Insurance Premium to Affiliate	7,616,154
47	Palms Insurance Company, Limited	Employee Workers' Compensation Insurance Premium to Affiliate	1,248,738
48	Palms Insurance Company, Limited	Excess Liability Premium to Affiliate	4,986,873
49	Palms Insurance Company, Limited	Fleet Vehicle Liability Insurance Premium to Affiliate	8,008,543
50	Palms Insurance Company, Limited	Allocation of Fleet Insurance Premium to Affiliate	1,173,926
51	Palms Insurance Company, Limited	Reimbursement of Workers Comp Losses from Affiliate	1,516,999
52	Sabal Trail Transmission LLC	Transportation of Natural Gas Provided by Affiliate	314,445,839
53			
54	General Comments		
55	Items exclude payments of cash collected on behalf of Affiliates.		

FILED 7/22/2024
DOCUMENT NO. 07705-2024
FPSC - COMMISSION CLERK

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20240019-PU

Proposed amendment of Rule 25-14.004, F.A.C., Effect of Parent Debt on Federal Corporate Income Tax.
_______________________________________/

PROCEEDINGS: COMMISSION CONFERENCE AGENDA ITEM NO. 2

COMMISSIONERS PARTICIPATING:
CHAIRMAN MIKE LA ROSA
COMMISSIONER ART GRAHAM
COMMISSIONER GARY F. CLARK
COMMISSIONER ANDREW GILES FAY
COMMISSIONER GABRIELLA PASSIDOMO

DATE: Tuesday, July 9, 2024

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: DEBRA R. KRICK
Court Reporter and
Notary Public in and for
the State of Florida at Large

PREMIER REPORTING
TALLAHASSEE, FLORIDA
(850) 894-0828

P R O C E E D I N G S

CHAIRMAN LA ROSA: Okay. We will move to Item No. 2. We will let folks get set and settled here for a few seconds.

Ms. Sapoznikoff, if you are ready, we are ready for you.

MS. SAPOZNIKOFF: Thank you.

Good morning, Mr. Chairman, and Commissioners. I am Susan Sapoznikoff with the Office of General Counsel.

Item 2 is staff's recommendation providing amendment of Florida Administrative Code Rule 25-14.004. The recommended amendments to the rule reflect a change in policy regarding how to calculate the total corporate income tax expense of a regulated utility, and proceedings to establish revenue requirements or to address overearnings.

Currently, when the regulated utility is a subsidiary of one or more parent companies and files a consolidated return with a parent company, the rule adjusts the income tax expense of the regulated utility to reflect the income tax benefit of the parent -- excuse me -- of the parent debt that may be invested in equity of the subsidiary.

Staff recommends amending the rule to

determine the income tax expense of a regulated utility using only the income of that utility regardless of any parent subsidiary relationship that may exist. This policy it would be in accord with current national standards and other Commission practices in determining the cost of service.

The recommended amendments to the rule will ensure that rates are derived from a revenue requirement that is based on tax benefits associated with the debt that is both an expense of the regulated utility and borne bring that utility's customers.

Charles Rehwinkel of the Office of Public Counsel would like to address the Commission regarding the recommended amendment to the rule. Staff is available to answer any questions.

Thank you.

CHAIRMAN LA ROSA: Thank you.

Mr. Rehwinkel, you are recognized.

MR. REHWINKEL: Thank you, Mr. Chairman and Commissioners. My name is Charles Rehwinkel with the Office of Public Counsel.

Commissioners, in March, when we last discussed this matter, the OPC presented you with estimates of the impact of this proposal would have on customers of Tampa Electric Company and Duke Energy Florida. Our numbers were based on estimates derived from surveillance reports.

Better information arrived on April 2nd, 2024, when both of those companies filed petitions, testimony and MFRs setting out their views of the impact of the parent debt adjustment, or PDA as I may refer to it, in their filed cases.

DEF did not make an adjustment for the years 2025 through 2027. But for 2024, it calculated the PDA at $10.3 million jurisdictional retail revenue requirements.

Tampa Electric calculated its PDA impact at $17.4 million revenue requirement for 2025. And I would just like to read from the petition, paragraphs 24 and 25, that the company filed.

Tampa Electric's proposed 2025 revenue increase was calculated by making the parent debt adjustment required by Rule 25-14.004, Florida Administrative Code, which reduced the company's requested 2025 revenue increase by $17,381,381. As of the filing of this petition, the Commission was considering an amendment to Rule 25-14.004 that would eliminate the required parent debt adjustment. If the proposed amendment is adopted while this proceeding is pending, Tampa Electric requests that the income tax expense used to calculate its proposed 2025 base rate increase be calculated in accordance with Rule 25-14.004 as amended, and without a parent debt adjustment.

Commissioners, as you may be aware by now, on Monday, the Public Counsel and DEF filed a motion that notified you of an agreement in principle that the OPC and others have entered into with DEF. If approved, a comprehensive agreement will address the PDA issue within the overall context of the case in that pending DEF case, and the OPC is okay with this.

On the other hand, the Tampa Electric filing speaks for itself. The harm to customers from the proposed repeal is real, and tangible, and material. Repeal would mean an increase of $17.4 million, or $52 million out of the customers' pockets over the next three years.

Commissioners, we believe there is no reason in law or logic or policy for this to occur. Accordingly, our plea to you today on behalf of the customers of Tampa Electric and other utilities is simple. Please scrap this initiative for good.

This proposal is simply a solution looking for a problem. And there is no problem except for high bills getting higher. If you stood in the customers shoes today, you would see that this repeal effort would have to appear to be nothing but anti-customer.

As we have noted before, the concept initially, and then the rule, has been approved by the Florida Supreme Court. It was included in and withstood an investigation by the U.S. Treasury Department and the IRS and the U.S. Congress more than 30 years ago.

This rule has passed muster time and again. It has kept telephone, electric, gas and water utility rates in Florida lower for over 40 years by hundreds of millions of dollars.

You have not been presented with any tangible evidence that there is any meaningful or quantifiable offset that would make customers better off without the rule than with it. The only evidence you have is that Florida customer rates will be higher with the repeal of this bedrock regulatory policy contained in this rule.

The OPC profoundly and vehemently disagrees with the analysis that you are being presented some

30 to 40 years after the Supreme Court and federal action occurred here today. We will not provide that argument today. If this process goes forward, there will be a better time to explore the factual policy and legal aspects of the rules rule's underpinnings, and the basis for the staff to bring this forward at a time when DEF's and Tampa Electric's rates are already increasing.

The customers ask you, please shut this down. Let's let the rule continue to benefit customers.

Thank you.

CHAIRMAN LA ROSA: Commissioners, are there questions? Questions or discussions on this item of staff and/or of OPC?

Commissioner Fay, you are recognized.

COMMISSIONER FAY: Commissioner Clark, you are senior here, if you would like to go first.

COMMISSIONER CLARK: Thank you, Commissioner Fay. I will just make a couple of observations.

When we originally approached this rule back in March, I had some of the same concerns. My biggest concern was the affects on rate. From a rulemaking perspective, and from a ratemaking perspective, I certainly understand the need to get it right. And I would not argue that from a ratemaking perspective, this is probably a logical conclusion.

I do have the concerns about the effects on customers right now at this particular time. To me, this is -- this is kind of an issue of timing as much as it is anything. But I do have a couple of questions, and I guess I will -- Mr. Cicchetti, I will ask -- direct them toward you.

When it comes to effects on customers, are there -- we understood right now specifically in two of our utility cases it would most likely cause an increase. I think that probably a couple of the utilities, it would not -- applying the rule would not have any application toward.

What about water utilities? Have we looked at any of those? Are they going to be basically coming under the same rule?

MR. CICCHETTI: I believe Sunshine Water Services would be subject to the rule.

COMMISSIONER CLARK: Okay.

MR. CICCHETTI: But I would like to point out, at the time you are setting rates, obviously setting them at the cost of service would be more -- require more revenue than not setting them at the cost of service, but over time, that's not true, because the goal is to keep utility within their allowed range of return.

And so in the case of Tampa Electric, $52 million over three years, at the end of three years, that's $52 million that they didn't collect that would probably push them out of the allowed range of return.

So what's going to result is not only are you not setting rates at the cost of service, but you are requiring the utility to come in more often to keep them in the range. So over time, in order to keep them in the range, you are just going to have to have more rate cases to achieve the same goal. So the customers really aren't saving money over time.

COMMISSIONER CLARK: Are there --

MS. CIBULA: And I would like to just jump in -- Samantha here -- to point out that OPC mentioned the existing rate cases. It's legal staff's position that this would not apply to the existing rate cases pending before us at this time, because the rule is not in effect. So this would only affect future rate cases after the rule goes into effect. So I just wanted to make that clear.

COMMISSIONER CLARK: So they would be bound for the entire term of the agreement to the rule as it was written when they filed the case, is that what you are saying?

MS. CIBULA: The Commission's decision would be bound by the -- when the petition was filed and the rule that was in effect at that time. And so this would only apply to future petitions, because the rule is not in effect at this point. So the existing rule would apply right to those rate cases.

MR. HETRICK: Commissioner Clark, the answer to your question is yes.

COMMISSIONER CLARK: Thank you.

Okay. I guess that -- are there any cases where, Mr. Cicchetti, that this would actually decrease customers rates? Are there any instances or -- I realize this has to do with debt and interest expense associated with debt. But are there any reverse scenarios that could occur where actual rates could go down as a result of this rule?

MR. CICCHETTI: Not that I am aware of. But again, over time, it's not going to save customers money, because you will have too have more frequent rate cases in order to keep the utility in its authorized range of return. And the rule is based on a flawed and discredited premise that the allowed return on equity is a function of the cost of the source of funds; when, in reality, the required return on equity is a function of the risk that the capital is exposed to.

For example, if you took out a second mortgage on your home to invest in a risky venture, your required and expected return on that risky venture would be commensurate with the risk of that investment. And if someone told you, well, we are going to limit your return to the cost of your second mortgage because that's the cost of the source of the funds, that would be wrong and contrary to financial theory. And that's what underpins this parent debt rule.

And we know that, because that's what Public Counsel said at the March 5th Agenda. Public Counsel said, and I quote: The parent debt rule is not really based on an income tax issue. It is a protection from affiliate transportation abuse transaction abuse. It keeps customers forced to subsidize the parent's income tax expenses by having to pay a taxable equity return on the amount of debt that makes up the parent and grandparent investment in the equity recorded on the regulated subsidiary's books.

So they are saying they are fine if the parent company issues stock in order to invest in the equity of the utility, but if they issue stock and debt, then the allowed return on equity should be reduced because the debt is less expensive. And that whole theory has been discredited.

COMMISSIONER CLARK: Are there any other advantages to us taking this rule -- or accepting this rule right now, I mean, other than, quote, getting it right? And I realized that's the goal here. And I certainly support the concept and the idea of making sure that the ratemaking process is done correctly. But is there any other real advantage to us supporting the passing this rule amendment other than it just gets rate setting right, even though it does have initially a negative impact on customers?

MR. CICCHETTI: Yes, there are -- there are advantages, because the rule provides a perverse incentive, as Public Counsel claimed, that the issuing debt at the parent level to invest in the utility is affiliate transaction abuse, it's not. There can be times when it's vital to the public interest for the parents company to invest -- to issue debt in invest in the utility.

For example, if some utilities were building nuclear to provide a carbon free generation to support all the other generation being renewable and they ran into problems, we would hope that the parent company could issue debt to invest in the equity of the utility. That would be in the public interest. Or if, God forbid, there was a nuclear accident, and the utility was having financial problems, if the parent company issued debt to invest in the utility's equity, that would be penalized under the parent debt rule.

And so these utilities have gotten much larger than they were when this rule was passed, so the parent debt effects of the rule are becoming larger. And so I would suggest that, going forward, it would be in customers' best interest to not penalize parent companies for investing debt in the utility's equity when that is necessary.

MR. REHWINKEL: Mr. Chairman?

CHAIRMAN LA ROSA: Yes, you are recognized.

MR. REHWINKEL: Yeah, just since my comments have been banded about, I just wanted to say I am going to stick to my commitment not to debate the rule here. If this goes forward, obviously, we will ask for a hearing, and obviously, we will present evidence at that hearing. So I am not going to get into addressing that. I have serious disagreements with what's been said already.

And I will say, despite what your legal staff has said, Tampa Electric has said that they want rates to be higher if the rule is repealed. And whether your staff is legally right, or the company is legally right, and how the Supreme Court would see it if you disregarded what they asked for, I don't know. Can't speculate. But we don't think the risk is worth it.

Thank you.

CHAIRMAN LA ROSA: Understood.

Commissioner Clark.

COMMISSIONER CLARK: Two more quick questions, and I guess I will direct this to Ms. Cibula in terms of the proposed, or potential proposed agreement that OPC and Duke have reached.

Are there -- can there be contemplations in this agreement that would take this item into consideration in the terms of the agreement that would allow them to carry it forward even though it's not technically allowed under the rule? Does

that make any sense whatsoever?
MS. CIBULA: I am not really sure the answer to that question right now because I don't know what the agreement looks like, but --
COMMISSIONER CLARK: Right, and sometimes we --
MS. CIBULA: -- in -- I guess there are -- people can agree to stuff in settlement agreements that might be outside of what the rule contemplates. As long as it's within our jurisdiction, we could make determinations on that. So I can't really comment object what --
COMMISSIONER CLARK: Okay.
MS. CIBULA: -- you know, what's going to be in this agreement and what the Commission's position would be on that.
COMMISSIONER CLARK: That might have been too much of a loaded question.
So and the second part, addressing Mr. Rehwinkel's observation there, if we approve this proposal, the next step in the process would be the hearing. And at that point in time, the Commission would have the right to weigh in, and before the final rule is adopted, we would have some opportunities, or are we proposing a final rule

here? Help me with the question.

MS. CIBULA: Yeah. We will proposal a rule, and then affected persons have 21 days to request a rule hearing in front of the Commission. And at the rule hearing, the subject matter of that hearing is whether we should make changes to the rule based on evidence that is presented at the hearing.

So the rule is a final proposed rule by the Commission. And then someone has to come in with evidence to say this is why we want to make a change to the rule. And then the Commissioners will decide whether or not to make changes to the rule based on the record evidence from the rule hearing.

COMMISSIONER CLARK: That kind of gives us a little more time to look into and dive into this a little bit deeper, based on the evidence presented.

MS. CIBULA: Correct.

COMMISSIONER CLARK: Thank you, Mr. Chairman.

CHAIRMAN LA ROSA: Commissioner Fay, you are recognized.

COMMISSIONER FAY: Thank you, Mr. Chairman.

Commissioner Clark actually touched on some of my questions. I mean, it does appear to me, based on what Mr. Cicchetti is saying, that this is very much a timing issue, and some component of this is paid at one time or another.

I will say that I -- I -- you know I am not necessarily persuaded by this idea that everybody else is doing it, so FERC and all these other commissions have changed structure, I am not sure I find that persuasive in itself. But it does appear that the gap of these adjustments is getting bigger and bigger as the spin gets bigger and bigger, and so I think that probably does call for some review. And I think this addresses that to a certain extent, in that the costs will likely align better with what they actually are in these scenarios.

So I think OPC has stated that they are looking forward to the next process of this, and will engage at that level, and I think that is appropriate in rulemaking. I think that's the nature of the beast.

And I really do think this is unique in the way that it does really touch on every utility, so water, electric, gas, and it's -- a lot of times with this rulemaking, we see these sections and they speak to just one industry.

I asked the same question Commissioner Clark asked in a briefing, we look at the larger utilities, and those are what were brought up today, but what about a parent subsidiary water, what does this mean for them? How does this impact them? And could it potentially have a negative effect on what they would do, or how it would impact those customers? So I think those are all fair questions, and we should, you know, take this decision very seriously.

With all of is that said, I am comfortable with the rule change as proposed. And I think that it does address some of the issues that I found viable. And I can see where OPC is coming from from a consumer protection angle. So when I looked through the precedent and the legal components that apply to this, I don't have any heartburn as far as the change, but I do want to be clear that that's not based on the idea that, you know, everybody else is doing it. It's based on the principles that are built into this, that the adjustment will align better with what the cost spend is for these components, and then the need for adjustment down the road would cause less of a, maybe a jolt at that time when the adjustment would need to be trued up in some format.

So with that, Mr. Chairman, I do support the recommendation in front of me. I am prepared to make a motion on it, but if anybody else -- any of my colleagues want to weigh in, I am happy to wait.

CHAIRMAN LA ROSA: I am going to go back to Mr. Rehwinkel, I see his light on indicating, so --

MR. REHWINKEL: Thank you, Mr. Chairman.

And I would have -- put a simple request to the Commission if you decide to go forward and have a hearing, is it would be our request -- as you know we are embroiled in two major rate cases at this time. If we go to a hearing, you have heard a lot of serious assertions about regulatory policy. We would certainly like to be able to put on a hearing and have plenty of time to do it, to bring an expert, for example, to do that.

So I would just ask that this not be rushed into, you know, as fast as it can be done. I would just ask that if you go forward, that we be given adequate time to be -- this issue is so big. It has been around for so long. It should be taken seriously if there is a hearing.

Thank you.

CHAIRMAN LA ROSA: Thank you. I don't disagree with the intent of that, that this, you know, if considered, needs to be considered deeply, and the timing is key. I think, you know, both my colleagues mentioned that not just in the timing of what's happening, but within the PSC, and what we are considering, and what's before us, but also what's happening in the world and in the economy here in the state.

I want to throw a question back to staff. What would -- would anything preclude us to have a more in-depth presentation, or maybe, you know, digging deeper to understand kind of what the gap is, and the utilities that would be affected, and how, I guess how deep they would be affected before we took a vote on this?

And I guess what I am saying is would there be any -- would it make sense for us to defer -- would there be an advantage, is a better way stating that, would there be an advantage for us to defer this and have staff present to us maybe kind of what some of the questions that we've had already today?

MS. CIBULA: Well, the advantage would be it would be more like a rule workshop. So it would be getting the information before you make your decision to propose. Because once you propose, that is your -- the rule that you proposed. And the hearing that comes after the proposal is just weather to make changes to that rule based on evidence that -- as deduced from the hearing.

And you can have different types of hearings. You can have just a rule hearing like we have done in the past couple of years. But there is also the option to have a 120.569 hearing as well, which is more in-depth, which we haven't done that in, like, 20 years, but that is an option for the rule hearing portion of it.

But the advantage would be, to defer it now, would be it would be more like a workshop, or more informal to gather the information to make a decision as to what rule you want to propose now. So it's just more like information gathering compared to you have made a decision on what rule you want to propose, and then it becomes more limited for the hearing process to just whether or not to make changes to the rule that you proposed.

CHAIRMAN LA ROSA: Okay. If we didn't approve this item today, what would, in fact, happen? Would there anything -- would there be anything stopping us from bringing this item up, or a similar item to a rule change later down the road?

MS. CIBULA: No, there wouldn't be a limit to that. And we -- I guess we could decide whether we wanted to have another workshop, or whether we want to do something more informal, like maybe send out some sort of written ask -- you know, asking about written comments, or staff, itself, could do some sort of informal investigation to see what affect the rule would have based on what questions the Commissioners have.

CHAIRMAN LA ROSA: Okay. Commissioners, any other thoughts?

Commissioner Clark, you are recognized.

COMMISSIONER CLARK: I would just kind of add on to where you at, it seems like where you are at, Mr. Chairman, is extending this a little bit. Giving us some time to do a little more analysis.

And I appreciate staff's work on this. Y'all have done a tremendous job. And I know you have been working on it for quite a long time. But if we did have an opportunity to do a workshop, specifically my interest is in exactly the potential effect on the customers.

Mr. Rehwinkel gave us some numbers, I know staff had asked -- has asked -- has been asked about some potential numbers related to the utilities, exactly it's going to cost the customers on a monthly basis. I mean, that's what it boils down for me, is how is this going to affect the consumer.

But getting some samples from the different affected utilities, I am really interested -- and I am glad you mentioned there is only one water company that's potentially affected. But I would certainly like to see some of the potential numbers from some of the water companies that are going to be affected on how this will affect their consumers.

You know, we deal a lot with electric rates, but water -- water regulation is just as important, and those customers deserve to have the same type of protections that all of our other customers do. So I want to make sure that we are evaluating that very closely.

But if we have that workshop, and we agree that we do want to go forward and then move into, I certainly would support a hearing. I am not familiar with the extended hearing, deeper hearing. But whatever is necessary, I think that that certainly would be an opportune time. If we had a workshop and then -- and looked at the proposed rule, and then went into the hearing, I think that also gets us beyond the two rate cases that we are currently in right now. We will have some more of an idea on what final rates are going to look like for both of those utilities at that time. And that might give us a little bit more lead way into making a final decision on the rule, Mr. Chairman, just my suggestion.

CHAIRMAN LA ROSA: Thank you. And I will clarify, and that is -- I am asking those questions because that is -- I am curious, and that is kind of where I am leaning. I mean, my biggest concerns are customer impact and the impact of future rate cases. So in a similar manner, I appreciate a more informal process in the sense of considering everything that's before us now.

And I know that there is not necessarily a statutory timeline as far as what happens after today if this was approved. But I think that gives us a little bit more to chew on and can, frankly, maybe answer better questions.

That's where I am leaning today, but I don't want to close out the item.

Commissioner Fay, you recognized.

COMMISSIONER FAY: Thank you, Mr. Chairman.

I will just say that I understand sort of the impact numbers, and maybe looking at this more based on the theory and the discussion of how this would be applied one way or another. I feel that I am comfortable with my understanding of it and my position of it.

With that said, I absolutely respect my colleagues as Commissioners. And anytime somebody would like more time to work on something to make sure we get it right, especially when it impacts all across sectors of a utility rule, then I absolutely respect that and would support that deferral.

And I am open to looking at that record and everything that's proposed, which may influence my decision. At the end of the day, I am not foreclosing that information. I just am comfortable at this time moving forward, but respect the process that might give more information to everybody.

CHAIRMAN LA ROSA: Thank you.

Commissioner Passidomo.

COMMISSIONER PASSIDOMO: Thank you, Mr. Chairman.

I had just a few brief comments. Mostly

echoing Commissioner Fay. I wanted to make it clear that I was also -- felt more prepared to push, you know, I -- I -- the way I looked at this was, again, it was not from the perspective of following, you know, the status quo of other states or FERC. It was more about, you know, when we move into the next round of rate cases that we are working with the most up-to-date and true data.

So it seems like, you know, why we are here is basically on that premise of the regulatory compact, meaning that, like, the utilities are afforded an opportunity to earn a fair return on their investments commensurate with the risk of investing in the utility. And if we are not working with the adequate -- the accurate data with that, it would distort those numbers.

I absolutely agree and am okay with moving into maybe a more -- like, into a Commission workshop instead of, like, the previous staff workshops that have been going on if we have a formal Commission workshop, where one or more of us is present.

The thing that I would kind of want to look at is when we say in the staff rec, it's been kind of reiterated several times about lessening the frequency of rate cases. I am obviously in favor of that. I think customers would be in favor of that. There is a lot of expense that goes into it. Rate certainty is really important.

So if we can find a way to be able to have some concrete numbers than just the should lessen the frequency. If there is a way that we could actually compute that and, you know, figure out, okay, well, what would be the difference between sticking with the current rule and moving forward with this proposed rule, then what that would -- how that would actually -- if there is a way to compare those two. I know that might be kind of difficult to work through, but looking at how the difference how other states, when they made that switch, something like that. That's something that I would be interested in if we move forward with a Commission workshop.

Thank you.

CHAIRMAN LA ROSA: Thank you.

Any further Commissioners?

Okay, so seeing none, so I am going to look to staff on this. I would like to defer this item. Do I need to take a formal vote on this?

MS. CIBULA: Not for a deferral.

CHAIRMAN LA ROSA: Okay. So I am going to offer a deferral. Just for the record, I don't see any opposition. I think the comments are public, and request that we do have a formal workshop in the sense that Commissioners are present, and we can flesh out some of our thoughts and questions in more detail. So thank you.

MR. REHWINKEL: Thank you.

CHAIRMAN LA ROSA: No, thank you.

And I do really appreciate staff's time and energy on this, and it's certainly presented well, and I understand that there is kind of a lot of moving parts within it, so thank you.

(Agenda item concluded.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, Court Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 22nd day of July, 2024.

Debbie R Krick

DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #HH31926
EXPIRES AUGUST 13, 2024

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20240019-PU

Proposed amendment of Rule 25-14.004, F.A.C., Effect of Parent Debt on Federal Corporate Income Tax.
_______________________________________/

PROCEEDINGS: COMMISSION CONFERENCE AGENDA ITEM NO. 1

COMMISSIONERS PARTICIPATING: CHAIRMAN MIKE LA ROSA
COMMISSIONER ART GRAHAM
COMMISSIONER GARY F. CLARK
COMMISSIONER ANDREW GILES FAY
COMMISSIONER GABRIELLA PASSIDOMO

DATE: Tuesday, March 5, 2024

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: DEBRA R. KRICK
Court Reporter and
Notary Public in and for
the State of Florida at Large

PREMIER REPORTING
TALLAHASSEE, FLORIDA
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P R O C E E D I N G S

CHAIRMAN LA ROSA: All right. So let's move back to the top of the order here with our discussion items starting with Item No. 1. I will allow folks to get situated.

Ms. Sapznikoff, you are recognized when you are situated --

MS. SAPOZNIKOFF: Thank you.

CHAIRMAN LA ROSA: -- but I will let you have a few more seconds as needed, so -- I know there is also parties that may want to speak on the items before us, so obviously feel free to come take a seat. I see OPC there waiting. Thank you.

MS. SAPOZNIKOFF: Good morning, Mr. Chairman and Commissioners. I am Susan Sapoznikoff from the Office of General Counsel.

Item 1 is staff's recommendation regarding proposed amendment of Rule 25-14.004, Florida Administrative Code.

The recommended amendments to the rule reflect a change in policy regarding how to calculate the total corporate income tax expense of a regulated utility in proceedings to establish revenue requirements or address overearnings.

Currently, when the regulated utility is a subsidiary of one or more parent companies and files a consolidated return with the parent company, the rule adjusts the income tax expense of the regulated utility to reflect the income tax benefit of the parent that may be invested in the equity of the subsidiary.

Staff's recommendation proposes amending the rule to reflect that the income tax expense of the regulated utility must be determined using only the income of the regulated utility regardless of any parent subsidiary that may exist.

This policy would be in accord with the current national standard. Moreover, staff believes the recommended amendments to the rule will assure that rates are derived from a revenue requirement that is based on tax benefits associated with the debt of both -- excuse me -- associated with the debt that is both an expense of the regulated utility and borne been that utility's customers.

Office of Public Counsel would like to address the Commission regarding the recommended amendments to the rule. Utility representatives are present to answer any questions the Commission may have. Staff is also available to answer any questions.

Thank you.

CHAIRMAN LA ROSA: Thank you.

Mr. Rehwinkel, with OPC, you are recognized.

MR. REHWINKEL: Thank you, Mr. Chairman, Commissioners. My name is Charles Rehwinkel, Deputy Public Counsel, and I am here on behalf of the Public Counsel and customers statewide.

We oppose this proposal to repeal the tax effective parent company debt rule and to raise Floridians' rates by a combined $30 million annually. This rule has saved customers hundreds of millions of dollars by preventing the unwarranted and excessive affiliate transfer of customer dollars to shareholders over the past 40 to 45 years.

This sounds like an exceptionally fine rule to customers everywhere. Staff, in our view, has failed to provide adequate justification to wipe out this longstanding pro consumer rule. So we say why now? Why this? What problem or need does the proposal address that offsets the protections that it has provided customers for these last 45 years? The impact of the proposal is to raise customers rates. We don't think there is any good answer to these questions.

The parent debt rule is not really based on an income tax issue. It is a protection from affiliate transaction abuse. It keeps customers from being forced to subsidize the parents' income tax expenses by having to pay a taxable equity return on the amount of debt that makes up the parent and grandparent investment in the equity recorded on the regulated subsidiary's books.

This consumer protection and the rule have been in place, as I said, for well over 40 years, and it has withstood two challenges at the Florida Supreme Court and one before the Internal Revenue Service. The proposed repeal does not address a problem, it only would create yet another windfall for shareholders.

If you propose to repeal this rule, it could mean that you are creating a direct and immediate risk to up to three million customers of Duke, Tampa Electric and Peoples Gas that they will immediately be subjected to increased rates and bills to the tune of $30 million for the three -- three companies combined. $30 million in annual customer savings, which would be over $100 million out of customers' pockets in the conventional four-year rate setting period, versus the murky difficult to articulate and even harder to understand benefits outlined by the repeal's proponents.

Although the Public Counsel contends that the rule in effect at the time of a petition and MFR filing governs the way you must resolve any issue in a rate case, one utility has already urged you to disregard the rule merely because of the existence that the propose -- that there was a proposal to roll back this customer protection before it was even repealed.

The Public Counsel urges you to reject this effort at repeal just like the Commission did in 1988. Maybe in another 36 years, when we are living in an energy utopia consumer protection such as rules like this will have lost their meaning, but not today.

Nothing has changed since the rule was adopted and since repeal was rejected over three decades ago, except perhaps that equity rates -- ratios have become swollen and the material impact of the adjustment has persisted even as tax rates and the cost of equity might have gone down since 1980s.

Customers throughout the states, Commissioners, are really struggling with high bills, fuel surcharges, storm surcharges, additional clause costs like the SPP costs. On top of this, they phase face a greater threat to affordability as some utilities are seeking enormous rate increases in unprecedented amounts.

Removing the longstanding customer protection and raising rates accordingly would just be salt in the wounds at this time. So accordingly, we ask you to reject the proposal to repeal, or gut the impact of this rule that has benefited customers all these years.

Thank you.

CHAIRMAN LA ROSA: Thank you.

Commissioners, questions or comments?

Commissioner Clark.

COMMISSIONER CLARK: I will take the first stab at it.

I would love to hear any opinion related to Mr. Rehwinkel's assertion that the rates are going to go up, as my initial questions -- my assumption was that we would actually be able to see decreases in rates based on the implementation of this rule.

Mr. Cicchetti, any comments or thoughts on what actually happens? I know he quoted specifically from Duke's customers might see an increase here. Will other customers see a decrease as a result of the rule?

MR. CICCHETTI: Well, Commissioners, the adjustment artificially decreases the cost of service of the utilities. Once we calculate the overall cost of service and then apply the parent debt adjustment, it then reduces the tax expense of the utility, and we think inappropriately.

Two of the major things that Wall Street looks at when they are evaluating a commission is the return that the Commission allows on equity, and second, its policies and practices to determine whether or not the company can actually earn that return. And the parent debt adjustment is a classic example of a policy that doesn't allow the company to earn the return that the Commission allows.

This rule is a remnant of years ago. It had its genesis when a consolidated tax return was allocated to the various subsidiaries, so if a nonregulated subsidiary had a loss, customers got the benefit of that lower tax rate, which sent the wrong price signals and didn't have cost-based rates.

And so the Commission looked at this in the past and said they didn't choose to amend the rule at that time, we think the time has come. It will lower the chance of more rate cases because they will have the full cost of service allowed in their rates.

COMMISSIONER CLARK: But net effect, is this going to increase costs for consumers?

MR. CICCHETTI: Well, it won't -- in the next rate case that comes up, it won't artificially reduce the rates. We are saying the rates should be based on the cost of service and it shouldn't be artificially reduced by the tax benefit at the parent company level, which is then going to be given to the subsidiary.

COMMISSIONER CLARK: Okay. So how does this affect each utility differently? Can you give me any idea of how the varying utilities -- I mean, we are talking about 100 -- we are not just talking about electric, we are talking about basically all utilities, is that correct?

MR. CICCHETTI: That is correct, all that have a parent company where they file a consolidated return.

COMMISSIONER CLARK: Yes.

MR. CICCHETTI: And the effect will be based on the size of the utility. The bigger the utility, the more impact this has.

COMMISSIONER CLARK: And I just want to be very clear, the impact -- you are agreeing that the impact will be increased costs for consumers. I get that it's going to cost-based, but that is an increase in the cost.

MR. CICCHETTI: As applying the parent debt versus not applying the parent company debt, yes.

COMMISSIONER CLARK: Can you give us any idea of how many -- I kind of keep going back to this -- how many utilities we are going back to out of the, what do we have? A couple hundred utilities? How many is this going to apply to that would --

MR. CICCHETTI: It would apply to very few water and wastewater companies. And it would apply to most, if not all, of the electric and most of the natural gas, if not all of them in natural gas.

MR. REHWINKEL: Mr. Chairman, may I just briefly address that?

CHAIRMAN LA ROSA: Can I -- yes, but I have a quick follow-up.

If I am hearing that correctly, we are talking about a majority of ratepayers across the state on all utilities, electric, wastewater --

MR. CICCHETTI: All of the electric and most of the natural gas. Very few of the water and wastewater.

And with regard to applying the parent debt versus not applying it, whether it will increase rates, you have the effect, all other things being equal, of a company having to come in sooner for a rate case, so rate case expense should decline over time by not applying it, and that would offset the effect of the increase in rates of not applying the parent debt adjustment.

COMMISSIONER CLARK: Does this also assume that the parent company has a tax liability? I am assuming that there were no tax liabilities, that the opposite, it would actually lower the cost, correct, if it was a loss, if it was a loss shared like the gain is?

MR. CICCHETTI: Yes.

COMMISSIONER CLARK: Okay. Okay. Mr. Chairman, this is a very, very complicated subject. It is -- I will be the first to acknowledge, it's way beyond me to understand all of the tax implications and how this is calculated, and I think I may have been a little under the presumption that this was an item that was going to be in the benefit of all consumers immediately.

I understand getting to cost-based service, and I am not opposed to that by any means, but I would -- I would personally like to take a little more time. I am at full discretion of the Commission, but if I had a little more time to digest this -- and my apologies, I should have been better prepared on this, but I think I came in with some presumptions that may not have been accurate, but I will defer to whatever the Commission wants -- however the Commission wants to handle it.

CHAIRMAN LA ROSA: I tell you, I also agree in the sense that when I looked at this, I realized that there are some complications, and I know that there is a history.

Members, if you are okay, I am going to go to Mr. Rehwinkel. I heard you loud and clear on the comments, and we will come back to chat about it as a commission.

Mr. Rehwinkel, you are recognized.

MR. REHWINKEL: Yes. Just a couple of clarifications.

Florida Power & Light does not have this adjustment because of the way they are organized. They issue their own debt, so they don't have a parent above them that is investing in their equity using debt. Their debt is ringfenced, if you will, is my term. They might say that they use a different term. So FPL, this is an adjustment that they haven't applied for years because of the way they are capitalized.

Just -- and just -- and FPUC and FCG do not also -- they also do not use this because of recent Commission decisions and the way they are organized.

In our view, it's Duke, it's Tampa Electric, and it's Peoples Gas are the largest investor-owned utilities that this applies to.

With respect to the question that Commissioner Clark asked about losses at the parent impacting this, that would have been perhaps an issue if will there had been a consolidated tax savings adjustments, which was all in the vogue in the early '80s. This has nothing to do with the tax position of the painter. It only has to do with the amount of debt and equity there at the parent level, and that is a presumed to be the -- the pro -- the proration of debt and equity in the equity of the subsidiary. So gains and losses at the parent level are not impacted by this.

CHAIRMAN LA ROSA: Thank you.

Ms. Moncada, I noticed that you had your hand up, so you are recognized.

MS. MONCADA: He said what I was going to say, which was to clarify on the record for Mr. Chairman and all the Commissioners, that this rule does not impact FPL or all of its customers. I heard a lot of discussion about how many bills were going to be impacted, and so I thought it was an important clarification to make. Thank you, Mr. Rehwinkel.

CHAIRMAN LA ROSA: Okay. Commissioners, are there any other quick comments, and I will come right back to us?

COMMISSIONER PASSIDOMO: Thank you, Mr. Chair, I might have just a quick comment.

I kind of want to just clarify, you know, some -- I appreciate Mr. Rehwinkel's points, and I think it's given us a lot to think about, as Commissioner Clark has alluded to.

When we are talking about -- I mean, I am not going to even pretend to be a tax attorney. I might be an attorney, but that doesn't mean I know much about the tax code, and it keeps changing. But if we are talking about precedent when the Florida Supreme Court, when I read our cases, the cases that the court has said, yes, they have affirmed that this -- that the current rule of the parent adjustment is valid, that doesn't -- I did not see any tacit endorsement, or that that was the only method that was needed. That I think that we have the discretion to align our rule with the majority of how the country operates, how FERC operates doing the stand-alone basis.

The way I kind of looked at it, I think most of what we do, you know, costs are associated with the provision of providing utility service of that jurisdictional utility -- of the regulated utility, and this is just another cost.

So I am -- I am willing to entertain Commissioner Clark's idea of maybe giving us some more time to think about it. I am not sure if that's going to go change my perspective, but I am always willing to hear more information, so --

CHAIRMAN LA ROSA: Okay. Question on the legal side, any concerns if we defer this item?

MS. SAPOZNIKOFF: No. Commissioner Passidomo was absolutely correct. The Florida Supreme Court has not affirmatively endorsed this rule. It did uphold it to challenge, but that was only looking at things about whether we follow procedure to enact it, whether it was arbitrary, capricious or vague. The Court specifically made the statement that there is no single correct method of dealing with the income tax expense.

So the fact that we had previously done it one way, now that circumstances have changed in the corporate world, what other courts are doing, there is no legal impediment to this commission deciding to make a policy change.

I also want to clarify that this commission has not previously rejected the repeal or affirmatively upheld this rule in the past, but the matter came before the Commission on a repeal shortly after the rule was enacted, and it simply said that we don't want to revisit it at this time. It was affirmative rejection or acceptance one way or the other.

And contrary to the prior case before the Commission, this is not seeking a repeal, but rather, to bring forth an additional alternative procedure.

CHAIRMAN LA ROSA: Is there any Commission business that this would interfere with if this was deferred?

MS. SAPOZNIKOFF: No, sir.

CHAIRMAN LA ROSA: Commissioners, any other questions or comments?

Is there any opposition if we defer this item?

So my suggestion is that we defer this item until next month, and then we can readdress it.

MS. SAPOZNIKOFF: Certainly. And there is no impediment to that. We are not under any statutory rulemaking guidelines on this.

CHAIRMAN LA ROSA: Thank you. Good questions.

All right. So show officially Item No. 1 deferred. So let's move on to -- and thank you all for commenting.

(Agenda item concluded.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, Court Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 19th day of March, 2024.

Debbie R Krick

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COMMISSION #HH31926
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President of the Senate

PAUL RENNER
Speaker of the House of Representatives

September 26, 2023

VIA ELECTRONIC FILING

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

Re: Docket No. 20230000-0T; Amendment of Rule 25-14.004, Florida Administrative Code, Effect of Parent Debt on Federal Corporate Income Tax

Dear Mr. Teitzman:

Attached for filing in the above docket is Office of Public Counsel's Post-Workshop Comments on Proposed Repeal of 25-14.004 - Effect of Parent Debt on Federal Corporate Income Tax.

Thank you for your assistance in this matter.

Sincerely,

s/Charles J Rehwinkel

Charles J. Rehwinkel
Deputy Public Counsel

cc: All Parties

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Amendment of Rule 25-14.004, Florida Administrative Code, Effect of Parent Debt on Federal Corporate Income Tax	DOCKET NO.: 20230000-OT FILED: September 26, 2023

OPC POST-WORKSHOP COMMENTS ON PROPOSED REPEAL OF 25-14.004 - EFFECT OF PARENT DEBT ON FEDERAL CORPORATE INCOME TAX

At the August 15, 2023 workshop, OPC heard for the first time why staff is, in reality, pursuing a repeal of 25-14.004 - Effect of Parent Debt on Federal Corporate Income Tax ("PDA Rule" or "Rule"). We would note that even though the Rule is not being repealed, the essence of the ratepayer protections from affiliate transaction abuse through application of a tax effect of parent debt ("Parent Debt Adjustment" or "PDA") is being completely stripped from the present rule.

The OPC noted that staff had never revealed the reason for the repeal or rule change being presented to the interested parties. Staff's representative then suggested that the Commission was not informed of a 1983 decision[1] by the Federal Energy Regulatory Commission ("FERC") justifying discontinuation of the allocation the consolidated income tax expense (benefits) of an entity to the subsidiary, which he explained could be found in a publication issued by Public Utilities Reports, Inc., Third Edition (1993), entitled "The Regulation of Public Utilities" by Charles F. Phillips, Jr.[2] at pages 288 and 289. Staff then read aloud two paragraphs from the pages referenced. However, this same information quoted by staff was in fact readily available in 1987. The exact language which was read is contained verbatim in the 1984 edition (first printing, May 1984) at pages 272 and 273. See, attachment 1. This information was available well before 1987 when the staff unsuccessfully attempted to persuade the Commission to repeal the Rule. Why this information was not presented at that time, we can only guess. It could very well have been that Commission or its staff found the information or FERC's views to be irrelevant to whether the PDA Rule should be repealed. The Commission does not follow FERC decision-making on ROEs so it is likely that it was unconcerned about that agency's views on how retail customers ought to be protected. Given the summary rejection of the repeal proposal at the time, there is no evidence that the stale information

[1] *In re Columbia Gulf Transp. Co.,* 54 PUR4th 31, 37 (FERC 1983).

[2] Professor Phillips appears to have been a frequent witness appearing around the country on behalf of utilities seeking higher returns on equity in ratemaking during the time the treatise was compiled. See, e.g., *Application of Roanoke Gas Company,* 1978 Va. PUC LEXIS 137; *Illinois Bell Telephone Company: Proposed restructuring and increase of rates,*1989 Ill. PUC LEXIS 398, *1 (Ill. Comm. Comm'n November 9, 1989).

contained in either the 1984 or 1993 versions of an industry-centric treatise would have impacted any of the Commissioners' opinions at the time. In any event, as discussed below, the PDA Rule is nevertheless consistent with the "new" information from 30 years ago.

It is clear, from the language read by staff, that the then Federal Power Commission ("FPC") (currently FERC) was concerned with passing on the consolidated tax savings created by other subsidiaries to the regulated utility. Instructive is the FERC's rationale for eliminating a consolidated tax savings adjustment after the D.C Circuit Court of Appeals reversed[3] the agency's efforts to overturn its policy of applying such an adjustment. It was precisely this "new" decades old FERC rationale that staff pointed to in support for today scrapping of the customer-benefitting Rule. At the workshop, staff read two paragraphs from the 1993 Phillips document, as principal justification for the repeal of the PDA Rule. It was this information quoted from the 1983 FERC decision (which was issued contemporaneously with the actual adoption of the Rule) that OPC was informed was not presented to the Commission in 1987:

> Because deductions are given for expenses incurred in producing income, the necessary causal link between the ratepayers and the deductions is the expense the company incurs in providing service. Accordingly, the proper way to allocate deductions is to match the deductions with the expenses included in the cost of service. Thus, when an expense is included in the cost of service, the corresponding tax deduction is also allocated to the rate payers. In this way, any tax-reducing benefits or savings the company realizes in providing service are recognized in calculating the tax allowance for the benefit of the ratepayers.
>
> The corollary to this is that when the expense is not included in the cost of service because the company did not incur that expense in providing service, the deduction created by that expense is not allocated to ratepayers. **To do otherwise would result in the tax savings the company realizes from expenses incurred in providing service to other groups in periods for its own benefit being used to reduce the rates for a particular group of ratepayers. Tax allowance would then be lower or higher than is warranted by the profit each group provides to the company.** Since the amount of profit to be provided is the measure of the tax cost the company will incur in providing service, none of the rates for the groups would be cost-justified. Subsidization would inevitably result; one group would bear the burden, but another group would gain the benefit.

Phillips at 289 (1993); 276-277 1984). (Emphasis added).

This language has no bearing on the PDA Rule or the type of affiliated transaction that the Rule is designed to address. From the language highlighted above, and a closer reading of the case, it is obvious that FERC was concerned with the overall tax savings generated by non-jurisdictional, diversified entities being passed on to the Utility. These tax savings were being generated by other subsidiaries ***through losses*** wholly unrelated to services provided to, or burdens placed upon, the unregulated subsidiary. It appears

[3] *City of Charlottesville v. Federal Energy Regulatory Comm. and Columbia Gas Trans. Corp.*, 661 F. 2d 945 (D.C. Cir.1981)

that FERC was more concerned with the overall consolidated tax savings than the infusion of debt as equity into a subsidiary. This is better understood when the salient portion of the paragraph preceding the two read by staff is considered:

***

> In a 1972 decision,[4] the commission held that a pipeline company should be permitted to retain the **consolidated tax savings generated by losses incurred by an affiliate** engaged in gas exploration and development. Five years later, the commission adopted a similar treatment in wholesale electric rate cases, holding that the stand-alone policy was appropriate in those situations where jurisdictional customers had **not paid the expenses that generated the consolidated tax savings.**

***

Phillips at 289 (1993); 276 1984). (Emphasis added)

In the cited *Columbia Gulf* decision, FERC distinguished the non-jurisdictional, wholly unrelated activities generating losses, from the highly specific, related tax deduction associated with the investing parent companies' excess interest deductions. The former was not allowed, while the change in policy continued to recognize that the parent's interest expense was properly considered in a "stand-alone" tax allowance determination:

> In setting the return for the pipelines we used the parent's interest expense as the pipelines' cost of debt. Thus, the ratepayers bear the burden of paying the parent's interest expense. That being so, an equal portion of the parent's interest expense deduction must be allocated to the pipelines' ratepayers. Our stand-alone policy does just this.

Columbia Gulf at 1983 FERC LEXIS 2737 **22. In that instance, FERC utilized a consolidated capital structure indicating that there would be an allocation of the parent's debt to the subsidiary income tax calculation. The PDA Rule (that has been excluded from application where the subsidiary capital structure is merely an allocation of the overall consolidated capital structure) when applied when a parent invests debt in the equity of a subsidiary is fully consistent with the *Columbia Gulf* decision in that the subsidiary ratepayers bear the burden of paying a portion of the parent's interest expense through the taxable equity return. The parent's use of debt to make equity infusions in the regulated Florida subsidiary is a transaction directly related to the subsidiary. It is precisely when the parent having a mix of debt and equity in its capital structure makes an equity investment in a subsidiary that the Rule's application becomes mandatory. The

[4] *Re Florida Gas Transmission Co.*, 47 FPC 341 93 PUR 3d 477 (FPC 1972). Professor Phillips quotes from that decision in explaining that the stand alone method "is one that takes into account the revenues and costs entering into the regulated cost of service without increase or decrease for tax gains or losses related to other activities."

fact of a parent's investment in a subsidiary does not overcome the presumption; it triggers it. Something more, such proof in the form of evidence that dividends from the subsidiary exceeded equity contributions from the parent, has been deemed necessary in the past for the presumption to be met.[5]

The long-standing PDA Rule does not seek to require or even allow losses from non-jurisdictional, diversified operations to offset the tax expense of the regulated, jurisdictional operations in Florida. In supporting the Commission's 40 year-long affiliate transaction protection, OPC is not interested in unfairly passing through to ratepayers any affiliate subsidiary losses or tax savings to the regulated company using the PDA Rule. Likewise, there is no effort or intent to require the use of the consolidated entity's capital structure to artificially lower revenue requirements. This would represent a return to a long-abandoned "double-leverage" adjustment. The current rule as written does none of this; the OPC does not seek such a return. Double-leverage and allusions to it in this repeal process are red herrings.

The essence of the investment by a parent in the regulated subsidiary is an affiliate transaction. This categorization is not in dispute. Utilities routinely report equity infusions, upstream dividend payments, advances to and from subsidiaries (and their subsequent conversions to debt or equity) as affiliate transactions. See, e.g., Florida Power & Light and Florida City Gas Co. examples submitted in Attachment 2.

If the parent allocates debt to the utility or issues third party debt on the subsidiary's behalf, the utility would be required to pay interest to a third party or the parent and as a result would record an interest expense on its own books and take the interest deduction on its standalone tax calculation. The difference from this scenario and the equity infusion from the parent portion of the capitalization is that the source of the funds so invested cannot be traced to equity or debt dollars and are thus presumed to be supported by a mix of debt and equity in the same proportions as contained in the parent's capital structure. Within the PDA Rule, this scenario gives rise to a rebuttable presumption that part of that investment, or equity infusion, is the result of the parent issuing debt in order to effectively fund the operations of the utility subsidiary. Absent rebutting the presumption, the utility is required to recognize the value of the interest deduction on the portion of parent debt embedded in the subsidiary equity (upon which its customers compensate the shareholders for in the form of an equity return on that subsidiary equity) as a reduction to

[5] *In re: Petition for increase in rates by Gulf Power Company*. Order No. PSC-2012-0179-EI at 115-116. "Since Gulf's last rate case, the record evidence indicates Gulf paid dividends to Southern Company of $196 million more than Southern Company invested in the equity of Gulf."

its standalone taxes. If not for the PDA Rule, this affiliate transaction would create a subsidy flowing from ratepayers to shareholders. This is exactly what the Supreme Court of Florida recognized in its opinion upholding the affiliate transaction protections inherent in the parent debt adjustment when it stated:

> In the normal course of a parent-subsidiary relationship, the parent issues debt in order to acquire capital to support the operations of its subsidiaries. The capital is transferred to the subsidiary in exchange for stock in the subsidiary. As a practical matter, the equity of the subsidiary is thus directly supported by the debt of the parent. The debt of the parent used to support the subsidiary generates interest expense for the parent, which in turn is tax deductible. Although the capital is passed on through to the subsidiary, there is no corresponding pass-through of interest expense because the parent passes the capital to acquire ownership interest in the subsidiary as opposed to a creditor's interest. Therefore, the nature of the acquired capital changes from debt to equity at the point the capital passes from the parent to subsidiary.

General Telephone Company v. Florida Public Service Commission, 446 So.2d 1063, 1069 (Fla. 1984).

Notwithstanding this highly effective specific and limited regulatory safeguard, staff's workshop comments in the workshop erroneously conflated the notion of "double leverage adjustment" with the PDA:

> And so, back in the days of the double leverage adjustment, it was presumed that the return on equity for the utility should be the overall cost of the capital of the parent company. And that theory has pretty much been discredited, and as far as I know, is not followed by any Commission across the country, and so by making a double leverage adjustment, or a parent debt adjustment, the utility will not recover the cost of providing service.

Staff comments, August 15, 2023 workshop (transcribed from FPSC video recording). This conflation is in error.

Double leverage is a financial strategy whereby the parent raises debt but downstreams some or all of the proceeds to its operating subsidiary largely in the form of an equity investment. Therefore, the subsidiary's operations are financed by debt raised at the subsidiary level and by debt financed at the holding-company level. In this way, the subsidiary's equity is leveraged twice, once with the subsidiary debt and once with the holding company debt. The regulatory adjustment was to treat the parent and subsidiary capital structures as the same and give recognition to the lower overall weighted cost of capital caused by the higher parent leverage. This is not what the PDA Rule does.

What the PDA Rule ***does require*** is for the utility to properly recognize the interest deduction benefit related to the amount of debt being infused by the parent through the affiliate transaction of the investment. Inherent in the affiliate transaction is a very real tax benefit that customers provide to shareholders that is encompassed in the nature of the parent's equity investment – in the form of the return on equity (grossed up for income taxes). This benefit would otherwise be transferred to the shareholders without the PDA Rule. This tax effect of parent company debt scenario is not double leverage, it is not consolidated tax savings and it is not a departure from standalone ratemaking. Recognizing and correcting for the effect of an abusive affiliate transaction does not violate any principle of "stand alone ratemaking." The PDA Rule is simply the Commission regulating in the public interest, protecting customers and determining that the standalone, statutory tax rate expense embedded in the revenue requirement is overstated unless the tax benefit that customers provide to shareholders through the equity return (on equity that is effectively partly tax deductible debt) is properly reflected in the interest deductions on a standalone basis.

If this Commission adopts the new proposed rule change eviscerating the PDA Rule, it will insure that a parent issuing debt that supports investments in the regulated subsidiary can engineer the transfer of funds to the sole benefit of the stockholders and at the expense of utility ratepayers. This change in the Rule would effectively allow the utility to charge ratepayers an inflated equity return that ignores the true nature of the investment. This would be inconsistent with the standalone entity treatment. The PDA Rule as currently established is a necessary protection for the ratepayers as it allows the customers to properly receive the benefit of the interest on the infused debt as a reduction in the utility's standalone income tax expense.

It seems that the only change that should be considered in the Rule to fix the problem is to modify paragraph 4 to clarify that the standalone utility's statutory tax rate should be applied. OPC's proposed change is shown below:

> (4) The adjustment shall be made by multiplying the debt ratio of the parent by the debt cost of the parent. This product shall be multiplied by the statutory tax rate applicable to the ~~consolidated entity~~ regulated utility. This result shall be multiplied by the equity dollars of the subsidiary, excluding its retained earnings. The resulting dollar amount shall be used to adjust the income tax expense of the utility.

This clarification to the current rule would prevent any confusion that somehow an effective tax rate of the consolidated entity could be used to pass through to the utility of any consolidated savings through the consolidated tax rate. Since the statutory rate is the same regardless, it would seem that this clarification is not essential, but it can be done in an abundance of caution. Otherwise, there is no basis to change a 40-year old consumer protection rule that has survived challenges in the Florida Supreme Court, the United States Treasury Department and the United States Congress.

Respectfully submitted,

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CERTIFICATE OF SERVICE
DOCKET NO. 20230000-OT

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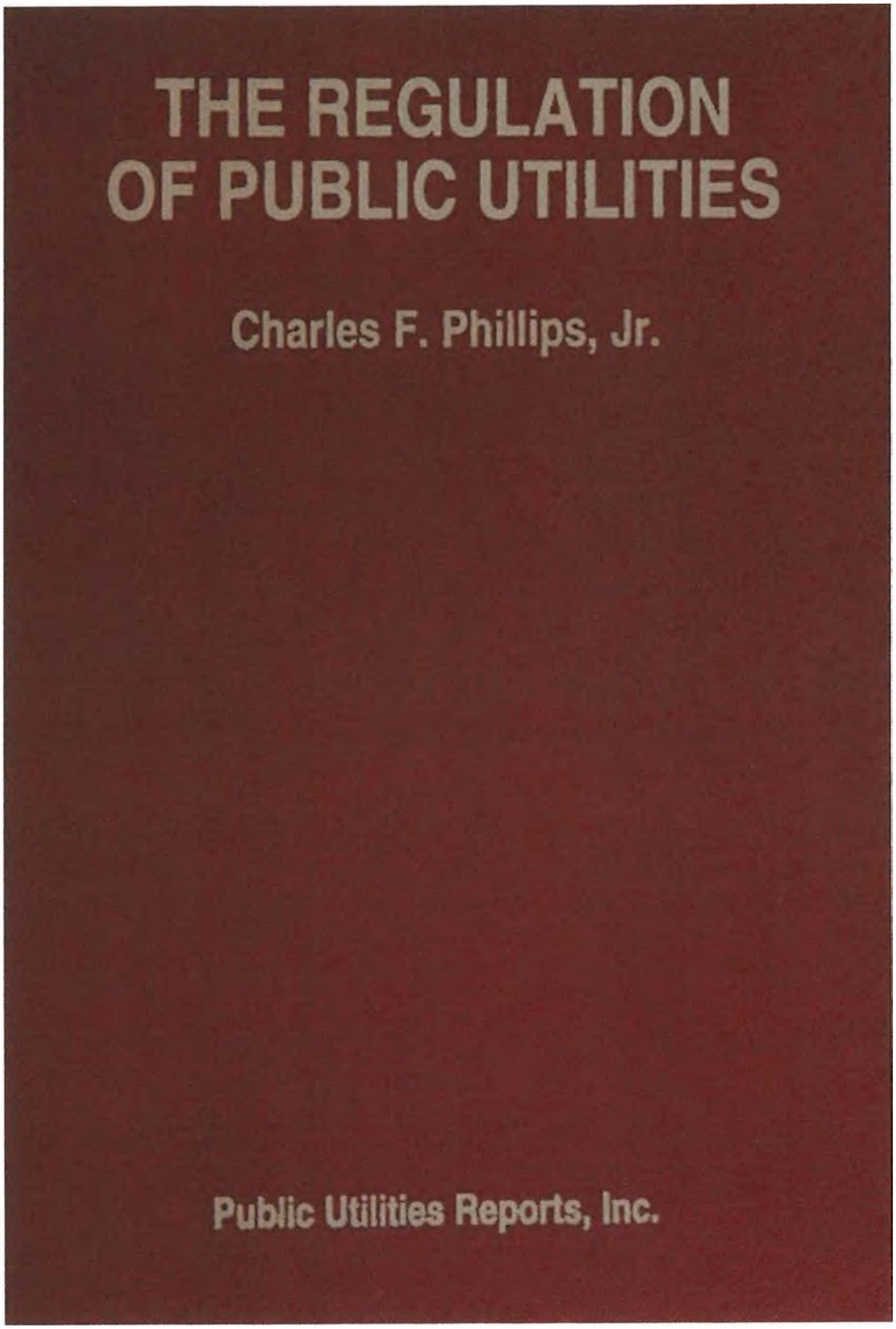
Attachment 1



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only affects the time when such depreciation may be used for tax purposes, the investment tax credit resulted in a permanent savings to the utility. The flow through method resulted in the entire tax credit being reflected as an increase in net income (or reduction of taxes) in the year the credit was received, thereby giving all benefits of the tax credit to a utility's customers, while the normalization method resulted in spreading the tax credit over the productive life of the property, thereby sharing the benefits of the tax credit with a utility's shareholders and customers. Normalization was the general practice.[180]

Consolidated Tax Returns. Under the Internal Revenue Code, an affiliated group of companies is permitted to file a consolidated tax return. Certain benefits accrue to companies that file such returns. The losses of any affiliate can be set off against the taxable income of other affiliates in the group;[181] the parent company is freed from paying federal income taxes on dividends from its subsidiaries. In determining a regulated affiliate's cost of service, for rate-making purposes, the common practice is to allocate to that company a share of the consolidated taxes.[182]

When a parent company has both utility and nonutility or jurisdictional and nonjurisdictional affiliates, a question arises as to the proper allocation procedure. A 1964 FPC decision, involving United Gas Pipe Line Company, a subsidiary of United Gas Corporation, is illustrative.[183] United Gas elected to file consolidated federal income tax returns for the years 1957-61. Because its two oil and gas production and exploration affiliates (Union and Overseas) had net losses over the five-year period, the group's tax liability was thereby reduced. In the rate case, United Gas Pipe Line claimed that its allowance for federal income taxes should be the full 52 percent rate (the rate then applicable), or about $12 million for the test year. The FPC rejected this claimed allowance and allocated the actual consolidated taxes paid among the companies in the group, or approximately $9.9 million for United Gas Pipe Line for the test period.[184]

On appeal, the company claimed that the FPC improperly applied nonjurisdictional losses to jurisdictional income. But the Supreme Court upheld the commission, saying in part:

> There is no frustration of the tax laws inherent in the commission's action. The affiliated group may continue to file consolidated returns and through this mechanism set off system losses against system income, including the United's fair return income. The tax law permits this, but it does not seek to control the amount of income which any affiliate will have. Nor does it attempt to set United's rates. This is the function of the commission, a function performed here by rejecting that part of the claimed tax expense which was no expense at all, by reducing cost of service and therefore rates, and by allowing United only a fair return on its investment.[185]

In short, when a group of affiliated companies elects to file a consolidated tax return, a commission *may* pass on to customers — in the form of lower rates — any resulting benefits. But the Court was careful to note that the decision to file such a return belongs to the companies.

However, during the 1970s, the FPC (and later the Federal Energy Regulatory Commission [FERC]) adopted a "stand-alone" policy — that is, the computation of the income tax expense component of the cost of service as if the subsidiaries had filed separate federal income tax returns. In a 1972 decision, the commission held that a pipeline company should be permitted to retain the consolidated tax savings generated by losses incurred by an affiliate engaged in gas exploration and development.[186] Five years later, the commission adopted a similar treatment in wholesale electric rate cases, holding that the stand-alone policy was appropriate in those situations where jurisdictional customers had not paid the expenses that generated the consolidated tax savings.[187] But in a 1981 decision, a court of appeals remanded a case to the FERC, holding that while the commission had legal authority to use a stand-alone policy, its order contained insufficient evidence to support the concept.[188] That support was put forth in a subsequent decision, when the commission held:

> Because deductions are given for expenses incurred in producing income, the necessary causal link between the ratepayers and the deductions is the expense the company incurs in providing service. Accordingly, the proper way to allocate deductions is to match the deductions with the expenses included in the cost of service. Thus, when an expense is included in the cost of service, the corresponding tax deduction is also allocated to the ratepayers. In this way any tax-reducing benefits, or savings, the company realizes in providing the service are recognized in calculating the tax allowance for the benefit of the ratepayers.
>
> The corollary to this is that when an expense is not included in the cost of service (because the company did not incur that expense in providing service), the deduction created by that expense is not allocated to the ratepayers. To do otherwise would result in the tax savings the company realizes from expenses incurred in providing services to other groups and periods or for its own benefit being used to reduce rates for a particular group of ratepayers. The tax allowance would then be lower or higher than is warranted by the profit each group provides the company. Since the amount of profit to be provided is the measure of the tax cost the company will incur in providing service, none of the rates for the groups would be cost justified. Subsidization would inevitably result. One group would bear the burden, but another group would gain the benefit.[189]

[181] A net loss in any year can be carried back to the three preceding years or carried forward to the succeeding five years.

[182] See, e.g., *In re General Tel. Co. of the Southwest*, 29 PUR4th 379 (Ark. 1979); *In re Mid-Carolina Tel. Co.*, 46 PUR4th 575 (N.C. 1982); *General Tel. Co. of Fla. v. Florida Pub. Serv. Comm'n*, 446 So.2d 1063 (1984); *Barasch v. Pennsylvania Pub. Util. Comm'n*, 548 A.2d 1310 (1988); *In re GTE S., Inc.*, 123 PUR4th 257 (W.Va. 1991).

[183] *In re United Gas Pipe Line Co.*, 54 PUR3d 285 (FPC 1964). See also *In re Missouri Cities Water Co.*, 29 PUR4th 1 (Mo. 1979).

[184] The FPC's allocation was based on a formula developed in an earlier decision, whereby (1) the companies are separated into regulated (jurisdictional) and nonregulated (nonjurisdictional) groups, (2) the net aggregate taxable income is determined for each group, and (3) the net total consolidated tax liability is apportioned over a representative period of time between the two groups, and among the companies in the regulated group, on the basis of their respective taxable incomes; "provided that the allowance so computed for the regulated company shall not exceed what its tax liability would be for rate-making purposes, if computed on a separate return basis." *In re Cities Serv. Gas Co.*, 49 PUR3d 229, 236 (FPC 1963).

[185] *Federal Power Comm'n v. United Gas Pipe Line Co.*, 386 U.S. 237, 246-7 (1967). In a dissenting opinion, Justice Harlan (joined by Justices Douglas and Stewart) argued:

> No allocation whatever could be required by the commission in this case because nonjurisdictional income was more than sufficient to absorb all nonjurisdictional losses and there was no showing that jurisdictional activities would actually benefit from nonjurisdictional losses. To permit the FPC in such circumstances to allocate would in effect extend the commission's jurisdiction to areas not encompassed within the authority given the commission by the Natural Gas Act. (Ibid., 256-57 [Harlan, J., dissenting].)

[186] *In re Florida Gas Transp. Co.*, 47 FPC 341, 93 PUR3d 477 (FPC 1972). The stand-alone method "is one that takes into account the revenues and costs entering into the regulated cost of service without increase or decrease for tax gains or losses related to other activities." Ibid., Exhibit 11, 4.

[187] *In re So. Cal. Edison Co.*, 23 PUR4th 44 (FPC 1977). See also "Consolidated Tax Savings and Affiliated Utilities: New Life for an Old Issue," *Public Utilities Fortnightly* 108 (5 November 1981): 62.

[188] *Charlottesville v. Federal Energy Regulatory Comm'n*, 661 F.2d 945 (D.C. Cir. 1981), 48 PUR4th 682 (1982).

[189] *In re Columbia Gulf Transp. Co.*, 54 PUR4th 31, 37 (FERC 1983).

> The mechanics of calculating a stand-alone allowance are as follows: From the total return allowed on rate base are deducted interest expenses (computed by multiplying the rate base by the weighted cost of long-term debt used in determining the rate of return), permanent tax differences, and the effect of the surtax exemption to arrive at the tax base. The tax base is then multiplied by the factor of 48 percent over 52 percent [now 46 percent over 54 percent] to produce the tax allowance, which includes recognition of the fact that the tax allowance itself is subject to tax when received by the utility and is not deductible. The amount so calculated is the tax allowance. (Ibid., 38.)

THE REGULATION OF PUBLIC UTILITIES

Charles F. Phillips, Jr.

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Consolidated Tax Returns. Under the Internal Revenue Code, an affiliated group of companies is permitted to file a consolidated tax return. Certain benefits accrue to companies that file such returns. The losses of any affiliate can be set off against the taxable income of other affiliates in the group;[158] the parent company is freed from paying federal income taxes on dividends from its subsidiaries. In determining a regulated affiliate's cost of service, for rate-making purposes, the common practice is to allocate to that company a share of the consolidated taxes.[159]

When a parent company has both utility and nonutility or jurisdictional and nonjurisdictional affiliates, a question arises as to the proper allocation procedure. A 1964 FPC decision, involving United Gas Pipe Line Company, a subsidiary of United Gas Corporation, is illustrative.[160] United Gas elected to file consolidated federal income tax returns for the years 1957-1961. Because its two oil and gas production and exploration affiliates (Union and Overseas) had net losses over the five-year period, the group's tax liability was thereby reduced. In the rate case, United Gas Pipe Line claimed that its allowance for federal income taxes should be the full 52 percent rate (the rate then applicable) or about $12 million for the test year. The FPC rejected this claimed allowance and allocated the actual consolidated taxes paid among the companies in the group or approximately $9.9 million for United Gas Pipe Line for the test period.[161]

On appeal, the company claimed that the FPC improperly applied nonjurisdictional losses to jurisdictional income. But the Supreme Court upheld the commission, saying in part:

> There is no frustration of the tax laws inherent in the commission's action. The affiliated group may continue to file consolidated returns and through

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commissions permit a utility a return only on the post-1971 investment tax credits. See National Association of Regulatory Utility Commissioners, *1981 Annual Report on Utility and Carrier Regulation, op. cit.*, pp. 541-45.

[158]A net loss in any year can be carried back to the three preceding years or carried forward to the succeeding five years.

[159]See, *e.g.*, *Re South Central Bell Teleph. Co.*, Docket No. U-6402 (Tenn., 1977); *Re West Virginia Water Co.*, Case No. 8634 (W.Va., 1977); and *Re General Teleph. Co. of the Southwest*, 29 PUR 4th 379 (Ark., 1979).

[160]*Re United Gas Pipe Line Co.*, 54 PUR 3d 285 (FPC, 1964). See also *Re Missouri Cities Water Co.*, 29 PUR 4th 1 (Mo., 1979).

[161]The FPC's allocation was based on a formula developed in an earlier decision, whereby (1) the companies are separated into regulated (jurisdictional) and nonregulated (nonjurisdictional) groups, (2) the net aggregate taxable income is determined for each group, and (3) the net total consolidated tax liability is apportioned over a representative period of time between the two groups, and among the companies in the regulated group, on the basis of their respective taxable incomes; "provided that the allowance so computed for the regulated company shall not exceed what its tax liability would be for rate-making purposes, if computed on a separate return basis." *Re Cities Service Gas Co.*, 49 PUR 3d 229, 236 (FPC, 1963).

> this mechanism set off system losses against system income, including the United's fair return income. The tax law permits this, but it does not seek to control the amount of income which any affiliate will have. Nor does it attempt to set United's rates. This is the function of the commission, a function performed here by rejecting that part of the claimed tax expense which was no expense at all, by reducing cost of service and therefore rates, and by allowing United only a fair return on its investment.[162]

In short, when a group of affiliated companies elects to file a consolidated tax return, a commission *may* pass on to customers—in the form of lower rates—any resulting benefits. But the Court was careful to note that the decision to file such a return belongs to the companies.

However, during the 1970s, the FPC (and later the FERC) adopted a "stand-alone" policy; that is, the computation of the income tax expense component of the cost of service as if the subsidiaries had filed separate federal income tax returns. In a 1972 decision, the commission held that a pipeline company should be permitted to retain the consolidated tax savings generated by losses incurred by an affiliate engaged in gas exploration and development.[163] Five years later, the commission adopted a similar treatment in wholesale electric rate cases, holding that the stand-alone policy was appropriate in those situations where jurisdictional customers had not paid the expenses that generated the consolidated tax savings.[164] But in a 1981 decision, a court of appeals remanded a case to the FERC, holding that while the commission had legal authority to use a stand-alone policy, its order contained insufficient evidence to support the concept.[165] That support was put forth in a subsequent decision, when the commission held:

> [2] Because deductions are given for expenses incurred in producing income, the necessary causal link between the ratepayers and the deductions

[162] *Federal Power Comm.* v. *United Gas Pipe Line Co.*, 386 U.S. 237, 246-47 (1967). In a dissenting opinion, Justice Harlan (joined by Justices Douglas and Stewart), argued: "... no allocation whatever could be required by the commission in this case because nonjurisdictional income was more than sufficient to absorb all nonjurisdictional losses and there was no showing that jurisdictional activities would actually benefit from nonjurisdictional losses. To permit the FPC in such circumstances to allocate would in effect extend the commission's jurisdiction to areas not encompassed within the authority given the commission by the Natural Gas Act." Dissenting opinion, *ibid.*, pp. 256-57.

[163] *Re Florida Gas Trans. Co.*, 47 FPC 341, 93 PUR 3d 477 (FPC, 1972). The stand-alone method "is one that takes into account the revenues and costs entering into the regulated cost of service without increase or decrease for tax gains or losses related to other activities." *Ibid.*, Exhibit 11, p. 4.

[164] *Re So. California Edison Co.*, 23 PUR 4th 44 (FPC, 1977). See also "Consolidated Tax Savings and Affiliated Utilities: New Life for an Old Issue," 108 *Public Utilities Fortnightly* 62 (November 5, 1981).

[165] *City of Charlottesville* v. *Federal Energy Regulatory Comm. and Columbia Gas Trans. Corp.*, 661 F. 2d 945 (D.C. Cir. 1981), 48 PUR 4th 682 (1982).

is the expense the company incurs in providing service. Accordingly, the proper way to allocate deductions is to match the deductions with the expenses included in the cost of service. Thus, when an expense is included in the cost of service, the corresponding tax deduction is also allocated to the ratepayers. In this way any tax-reducing benefits, or savings, the company realizes in providing the service are recognized in calculating the tax allowance for the benefit of the ratepayers.

The corollary to this is that when an expense is not included in the cost of service (because the company did not incur that expense in providing service), the deduction created by that expense is not allocated to the ratepayers. To do otherwise would result in the tax savings the company realizes from expenses incurred in providing services to other groups and periods or for its own benefit being used to reduce rates for a particular group of ratepayers. The tax allowance would then be lower or higher than is warranted by the profit each group provides the company. Since the amount of profit to be provided is the measure of the tax cost the company will incur in providing service, none of the rates for the groups would be cost justified. Subsidization would inevitably result. One group would bear the burden, but another group would gain the benefit.[166]

Severance and "First Use" Taxes: A Digression

There are two tax issues that are of particular importance to electric and gas utilities and that require brief discussion. Both affect the prices paid by these utilities for their fuel supplies.

Severance Taxes. Thirty-three states impose severance taxes on depletable resources. In 1981, these taxes generated $6.4 billion in tax revenues, with 80 percent going to just five states (Texas, Alaska, Louisiana, Oklahoma, and New Mexico).[167] Of particular concern in more recent years has been the severance taxes on coal which, with one possible exception (North Dakota's severance tax on lignite), are the highest such taxes in the country. Montana levies a maximum rate of 30 percent of the "contract sales price;" Wyoming a 17 percent rate (including local charges). These two states account for 40 percent of domestic coal reserves and 68 percent of reserves of low-sulfur coal.

[166] *Re Columbia Gulf Trans. Co.*, 54 PUR 4th 31, 37 (FERC, 1983). "The mechanics of calculating a stand-alone allowance are as follows: From the total return allowed on rate base are deducted interest expenses (computed by multiplying the rate base by the weighted cost of long-term debt used in determining the rate of return), permanent tax differences, and the effect of the surtax exemption to arrive at the tax base. The tax base is then multiplied by the factor of 48 percent over 52 percent (now 46 percent over 54 percent) to produce the tax allowance, which includes recognition of the fact that the tax allowance itself is subject to tax when received by the utility and is not deductible. The amount so calculated is the tax allowance." *Ibid.*, p. 38.

[167] Andy Plattner, "Severance Taxes on Energy Seen Widening Gap Between Rich, Poor Areas of Nation," 40 *Congressional Quarterly* 319 (February 20, 1982).

Attachment 2

INDIVIDUAL AFFILIATED TRANSACTIONS IN EXCESS OF $25,000

Company: PIVOTAL UTILITY HOLDINGS, INC. D/B/A FLORIDA CITY GAS

For the Year Ended December 31, 2022

Provide information regarding individual affiliated transactions in excess of $25,000. Recurring monthly affiliated transactions which exceed $25,000 per month should be reported annually in the aggregate. However, each land or property sales transaction even though similar sales recur, should be reported as a "non-recurring" item for the period in which it occurs.

Name of Affiliate (a)	Description of Transaction (b)		Dollar Amount (c)
Florida Power & Light	Business Operations Support Provided by Affiliate	$	365,752
Florida Power & Light	Corporate Real Estate Capital Support Provided by Affiliate	$	442,424
Florida Power & Light	Corporate Real Estate Services Provided by Affiliate	$	27,681
Florida Power & Light	Corporate Service Charges From Affiliate	$	1,803,140
Florida Power & Light	Information Technology Capital Support Provided by Affiliate	$	1,362,345
Florida Power & Light	Information Technology Services Provided by Affiliate	$	400,000
Florida Power & Light	Liquified Natural Gas Project Capital Support Provided by Affiliate	$	55,143
Florida Power & Light	Rate Case Support Provided by Affiliate	$	328,706
Florida Power & Light	Reimbursement to Affiliate for Insurance Premiums	$	1,302,228
Florida Power & Light	Storm Support Provided to Affiliate	$	49,489
Florida Power & Light	Compensation, Deferred Comp, Incentives, Stock Awards, RSA Amortization, Pension & Other	$	54,579
Florida Power & Light	Reclass Loan from Affiliate to Capital Contribution	$	3,100,000
Florida Power & Light	Loan Interest Payments to Affiliate	$	6,106,598
Florida Power & Light	Purchases of Natural Gas from Affiliate	$	25,029,900
Florida Power & Light	Loans from Affiliate	$	31,000,000
Florida Power & Light	Federal Tax Payments to Affiliate	$	3,555,991
NextEra Energy Pipeline Services,LLC	Business Operations Support Provided by Affiliate	$	55,152
NextEra Energy Resources LLC	Information Technology Capital Support Provided by Affiliate	$	922,455
NextEra Energy Resources LLC	Information Technology Services Provided by Affiliate	$	185,314
NextEra Energy, Inc.	Federal Income Taxes Due to Affiliate	$	2,673,354
NextEra Energy, Inc.	State Income Taxes Due to Affiliate	$	459,277
NextEra Energy, Inc.	Transfer of 2021 Performance Incentive from Affiliate	$	30,000

ANALYSIS OF DIVERSIFICATION ACTIVITY
Individual Affiliated Transactions in Excess of $500,000

FLORIDA POWER & LIGHT COMPANY
For the Year Ended December 31, 2022

Provide information regarding individual affiliated transactions in excess of $500,000. Recurring monthly affiliated transactions which exceed $500,000 per month should be reported annually in the aggregate. However, each land or property sales transaction even though similar sales recur, should be reported as a "non-recurring" item for the period in which it occurs.

Line No.	Name of Affiliate (a)	Description of Transaction (b)	Dollar Amount (c)
1	Florida City Gas	Federal Tax Payments due from Affiliate	3,196,410
2	Florida City Gas	Information Technology Capital Support to Affiliate	509,196
3	Florida City Gas	Loan Interest Payments from Affiliate	6,035,269
4	Florida City Gas	Loans to Affiliate	31,000,000
5	Florida City Gas	Project Development Support Provided to Affiliate	968,853
6	Florida City Gas	Sale of Natural Gas to Affiliate	25,029,900
7	Florida City Gas	Reclassify Affiliate Loan as an Investment in Subsidiary	3,100,000
8	Florida Renewable Partners, LLC	Project Development Support Provided to Affiliate	564,318
9	Florida Southeast Connection, LLC	Natural Gas Purchases from Affiliate	99,545,086
10	FPL Energy Services, LLC	Federal Tax Payments due from Affiliate	8,409,727
11	FPL Energy Services, LLC	State Tax Payments due from Affiliate	1,492,633
12	FPL Energy Services, LLC	Marketing & Communication Services Provided to Affiliate	1,439,413
13	FPL Energy Services, LLC	Sale of Asset/Inventory to Affiliate	586,476
14	FPL Energy Services, LLC	Sales Program Support Provided to Affiliate	565,078
15	KPB Financial Corporation	Federal Taxes Due from Affiliate	13,974,346
16	KPB Financial Corporation	Non-Qualified Fund Tax Payment Due from Affiliate	20,656,676
17	KPB Financial Corporation	State Taxes Due from Affiliate	2,452,893
18	KPB Financial Corporation	Storm Fund Balance Transfer from Affiliate	73,750,515
19	NextEra Energy Capital Holdings, Inc.	Charge to Affiliate for Share of Insurance Premiums	1,210,030
20	NextEra Energy Capital Holdings, Inc.	Corporate Real Estate Services Provided to Affiliate	500,000
21	NextEra Energy Capital Holdings, Inc.	Reimbursement from Affiliate for Legal Costs	741,129
22	NextEra Energy Capital Holdings, Inc.	State Taxes Due from Affiliate	640,000
23	NextEra Energy Constructors, LLC	Return of Telecommunications Equipment from Affiliate	1,007,091
24	NextEra Energy Foundation, Inc.	2022 Foundation Contribution to Affiliate	30,000,000
25	NextEra Energy Resources, LLC	Allocation of Credit Card Rebate to Affiliate	771,951
26	NextEra Energy Resources, LLC	Charge to Affiliate for Share of Insurance Premiums	3,002,912
27			

ANALYSIS OF DIVERSIFICATION ACTIVITY
Individual Affiliated Transactions in Excess of $500,000

FLORIDA POWER & LIGHT COMPANY
For the Year Ended December 31, 2022

Provide information regarding individual affiliated transactions in excess of $500,000. Recurring monthly affiliated transactions which exceed $500,000 per month should be reported annually in the aggregate. However, each land or property sales transaction even though similar sales recur, should be reported as a "non-recurring" item for the period in which it occurs.

Line No.	Name of Affiliate (a)	Description of Transaction (b)	Dollar Amount (c)
28	NextEra Energy Resources, LLC	Corporate Real Estate Services Provided to Affiliate	712,500
29	NextEra Energy Resources, LLC	Corporate Services Charge to Affiliate	37,128,465
30	NextEra Energy Resources, LLC	Information Technology Capital Support Provided to Affiliate	696,656
31	NextEra Energy Resources, LLC	Information Technology Services Provided to Affiliate	7,262,128
32	NextEra Energy Resources, LLC	Sale of Asset/Inventory to Affiliate	1,046,580
33	NextEra Energy Resources, LLC	Space & Furniture Billing to Affiliate	9,781,671
34	NextEra Energy, Inc.	401K Forfeitures Reimbursed by Affiliate	964,865
35	NextEra Energy, Inc.	401K Match Activity Reimbursed by FPL to Affiliates	1,189,249
36	NextEra Energy, Inc.	Assignment of Solar Panel Master Agreement from Affiliate	6,118,412
37	NextEra Energy, Inc.	Compensation, Deferred Comp, Incentives, Stock Awards, RSA Amortization, Pension & Other Employee Benefits Plans	14,782,251
38	NextEra Energy, Inc	Equity Contribution from Parent Compan	[illegible]00,000,000
39	NextEra Energy, Inc.	Reimbursement from Parent Company for National Ad Campaign	5,751,929
40	NextEra Energy, Inc.	Reimbursement to Parent Company for Solar Panel Downpayment	141,533,568
41	NextEra Energy, Inc.	Return of Partial Solar Panel Downpayment from Parent Company	6,118,412
42	NextEra Energy, Inc.	Transfer of Employee Incentives to Parent Company	16,389,550
43	NextEra Energy, Inc	Dividend Contribution to Parent Company	[illegible]0,000,000
44	NextEra Energy, Inc.	Federal Tax Payments/Distributions	138,028,512
45	NextEra Energy, Inc.	State Tax Payments/Distributions	9,867,075
46	Palms Insurance Company, Limited	Contractor Workers' Compensation Insurance Premium to Affiliate	7,616,154
47	Palms Insurance Company, Limited	Employee Workers' Compensation Insurance Premium to Affiliate	1,248,738
48	Palms Insurance Company, Limited	Excess Liability Premium to Affiliate	4,986,873
49	Palms Insurance Company, Limited	Fleet Vehicle Liability Insurance Premium to Affiliate	8,008,543
50	Palms Insurance Company, Limited	Allocation of Fleet Insurance Premium to Affiliate	1,173,926
51	Palms Insurance Company, Limited	Reimbursement of Workers Comp Losses from Affiliate	1,516,999
52	Sabal Trail Transmission LLC	Transportation of Natural Gas Provided by Affiliate	314,445,839
53			
54	General Comments		
55	Items exclude payments of cash collected on behalf of Affiliates.		

BEFORE THE INTERNAL REVENUE SERVICE

COMMENTS OF THE CITIZENS OF THE STATE OF FLORIDA IN OPPOSITION TO THE NOTICE OF PROPOSED RULEMAKING CONCERNING THE APPLICATION OF NORMALIZATION REQUIREMENTS AS IT AFFECTS UTILITIES SUBJECT TO CONSOLIDATED TAX ADJUSTMENTS

I. PREFACE

The Citizens of Florida ("Citizens") submit these comments in opposition to the regulations proposed on November 27, 1990 by the Internal Revenue Service ("IRS" or "Service") relating to consolidated tax adjustments.

The Citizens concur wholeheartedly in the comments filed by the Pennsylvania Office of Consumer Advocate ("OCA"). The Citizens adopt and incorporate herein the objections and arguments sumbitted by the OCA. In the alternative, Citizens ask that the Service make clear that a parent debt adjustment recognizing a permanent tax timing difference arising from the filing of a consolidated tax return does not violate the normalization requirements of the internal revenue code.

II. INTERESTS OF THE CITIZENS OF FLORIDA

The Florida Office of the Public Counsel was established by the Florida Legislature to represent the interests of ratepayers of investor-owned electric, gas, telephone, and water and sewer utilities in proceedings before the Florida Public Service

Commission. The Public Counsel is specifically authorized to represent the State of Florida and its Citizens before federal agencies in matters affecting the jurisdiction of the Florida Public Service Commission. Section 350.0611, Florida Statutes.

The most direct and tangible impact of the proposed regulations on Citizens is manifested in the application of Florida Public Service Commission Rule 25-14.004, Florida Administrative Code, relating to the effect of parent debt on federal corporate income tax (hereinafter "parent debt adjustment"). The rule, the application of which is mandatory under Florida law[1], requires that in determining revenue requirements, the interest expense associated with the debt of the parent company (and of any grandparent(s) in a tiered structure) assumed to be invested in the regulated subsidiary's equity be used to effectively reduce the subsidiary's current income tax expense. A prerequisite to the application of the rule is that the subsidiary and its parent (and grandparent(s)) join in the filing of a consolidated tax return. The effect of application of the rule has been, in all cases where applied, to reduce the revenue requirements of the regulated company.

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[1]The Florida Administrative Procedures Act (Chapter 120, Florida Statutes) provides that an agency final order shall be remanded if the agency fails to follow its own rules. Section 120.68(12)(b).

Although the Citizens of Florida believe that the Service has not intended to proscribe this FPSC adjustment through the proposed regulations, and although the Citizens do not believe that the Service may validly prevent, through regulations, consolidated tax savings adjustments (including the parent debt adjustment) of state regulatory commissions, the staff of the Florida Public Service Commission, and the Florida Public Service Commission in several cases[2] have preliminarily interpreted the regulations as prohibiting (through denial of accelerated depreciation and deferred tax benefits) the ratemaking adjustment mandated by Rule 25-14.004, Florida Administrative Code. Because of the actions of the FPSC, the Citizens have sought clarification at this point in the Service's decision making.

III. ARGUMENT

a. THE NORMALIZATION REQUIREMENTS OF SECTIONS 167(l) AND 168(i)(9) OF THE INTERNAL REVENUE CODE DO NOT AUTHORIZE THE SERVICE TO FIND THAT THE USE OF A CONSOLIDATED TAX SAVINGS ADJUSTMENT VIOLATES NORMALIZATION REQUIREMENTS.

The Citizens concur in the comments of the Pennsylvania Office of Consumer Advocate and the National Association of State Utility Consumer Advocates. Each of the arguments set forth in their comments are adopted and incorporated herein by reference.

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[2] In Re: People's Gas, Docket No. 891353-GU, agenda vote of January 2, 1991; In Re: United Telephone of Florida, Docket No. 891239-TL, agenda vote of January 7-8, 1991; In Re: City Gas, Docket No. 871175-GU, agenda vote of December 17, 1991.

b. FINAL REGULATIONS, IF ADOPTED OVER CITIZENS' OBJECTIONS, SHOULD NEVERTHELESS CLEARLY INDICATE THAT THE PARENT DEBT ADJUSTMENT MANDATED BY FLORIDA LAW AND FLORIDA AGENCY RULE DOES NOT VIOLATE THE NORMALIZATION PROVISIONS OF THE INTERNAL REVENUE CODE.

(1) THE FLORIDA PARENT DEBT ADJUSTMENT

Since at least 1978[3], the FPSC has applied some form of the parent debt adjustment to account for the tax effect of the parent company's debt presumed invested in the equity of a regulated utility subsidiary joining in the filing of a consolidated return. Initially this adjustment was applied on a case-by-case basis. In 1982, the Commission adopted Rule 25-14.04[4] entitled "Effect of Parent Debt on Federal Corporate Income Tax." See Attachment 1. The rule was immediately challenged on appeal to the Florida Supreme Court.[5] The court upheld the Commission's promulgation of the rule, stating:

> We find that the adjustment implemented by the rule in question and the resulting income tax expense attributed to the utility are more representative of the economic realities of a parent-subsidiary consolidated tax liability than is an expense figure calculated as if the subsidiary utility had filed a separate return.
>
> In the normal course of a parent-subsidiary relationship, the parent issues debt in order to acquire capital to support the operations of its subsidiaries. The capital is

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[3]In Re: United Telephone Company of Florida, Docket No. 780777-TP Order No. 9208, 34 P.U.R.4th 421.

[4]Since renumbered as Rule 25-14.004, F.A.C.

[5]No party at either the rulemaking stage or on appeal challenged the rule on the basis that it violated the normalization requirements of the Internal Revenue Code.

> transferred to the subsidiary in exchange for stock in the subsidiary. As a practical matter, the equity of the subsidiary is thus directly supported by the debt of the parent. The debt of the parent used to support this subsidiary generates interest expense for the parent, which in turn is tax deductible. Although the capital is passed on through to the subsidiary, there is no corresponding pass-through of interest expense because the parent passes on the capital to acquire ownership interest in the subsidiary as opposed to a creditor's interest. Therefore, the nature of the acquired capital changes from debt to equity at the point the capital passes from parent to subsidiary.
>
> If the parent and subsidiary had chosen to maintain their separate tax identities, the distinctions between the capital acquired through debt by the parent and through equity by the subsidiary would have been valid. By filing a consolidated return, however, the entities have removed the separation between parent and subsidiary for tax purposes. No longer is it realistic to treat transactions between parent and subsidiary as transactions between separate entities. Parent and subsidiary are now components of the consolidated entity and the debt issued by the parent component supports the capital structure of the subsidiary component. The pragmatic result is that the consolidated entity has issued debt to support its overall capital structure and the interest paid on the debt goes toward reducing the tax liability of the consolidated entity, therefore benefiting each component member. The adjustment implemented by the rule in question merely allocates to the subsidiary component the interest expensed deduction generated by the proportion of the consolidated debt that is used to support the subsidiary component's capital structure.

General Telephone Company v. Florida Public Service Commission, 446 So.2d 1063, 1068-1069 (Fla. 1984).

In upholding the Commission's rule the Florida Supreme Court also noted that:

> This Court has instructed the PSC to apply this type of adjustment in a ratemaking case when the facts of the case were found to warrant such an adjustment. See Citizens of Florida v. Hawkins, 356 So.2d 254 (Fla. 1978).

Id. at 1067. The Court further added that:

> It must be noted that the PSC is not bound to any pre-determined formula for calculating any cost of service expense, but instead is free to use any method which will enable it to ascertain the actual cost to the utility.

Id. at 1068.

Clearly, the Florida Supreme Court has ruled that the Florida Public Service Commission must make the tax effect of parent company debt adjustment since it more closely approximates the actual tax expense of the utility on a stand alone basis. The Court went to great lengths to relate its decision to the factual and theoretical under-pinnings of the FPSC's rule. As pointed out, the Commission's determination was based on an actual, concrete, identifiable accounting relationship. Furthermore, the Court correctly ruled that the Commission's authority under Florida law is to use any method which will allow determination of a utility's actual cost of service. Any legitimate invasion of the FPSC's soundly based regulatory powers should therefore not be lightly undertaken.

Despite the clear mandate and authority of the Florida Public Service Commission and the mandatory nature of application of the Rule 25-14.004, F.A.C., the Commission has declined to set rates utilizing the parent debt adjustment in three cases decided to date since November 27, 1990. In the United Telephone case[6], decided on January 7-8, 1991, the Commission, upon the recommendation of its staff, declined to make the parent debt adjustment for ratemaking purposes.[7] In a recommendation issued on January 18, 1991, the Commission staff has recommended essentially identical treatment for Central Telephone Company of Florida.[8] Based upon an oral recommendation of the staff, the Commission has also voted in the Peoples' Gas and City Gas cases, that the parent debt adjustment should not be made in ratesetting pending a determination by the IRS regarding any normalization violation.

The Commission staff in the United case advised the Commission that:

> These proposed regulations provide that determining a utility's ratemaking tax expense, either current or deferred, by taking into account the income, losses, deductions,

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[6]In Re: Investigation into United Telephone Company of Florida's Authorized Return on Equity and Earnings, Docket No. 891239-TL.

[7]While the Commission did not set rates utilizing the adjustment, the associated revenue requirement was placed subject to refund pending clarification or decision of the Internal Revenue Service.

[8]In Re: Central Telephone Company of Florida's Petition for a Rate Increase, Docket No. 891246-TL. Commission vote is scheduled for January 30, 1991.

> or credits of other taxpayers with which it files a consolidated return violates the normalization requirements of the Internal Revenue Code. A regulated utility that violates normalization is prohibited from using accelerated depreciation, both prospectively and retroactively, for income tax purposes. This eliminates all zero cost deferred taxes from the capital structure, resulting in a higher rate of return and higher revenue requirement. Application of Rule 25-14.004, Florida Administrative Code, by the Commission in this case would clearly put UTF in the position of violating the IRS' normalization requirements according to the provisions of these proposed regulations.

Based on this recommendation, the Commission voted not to apply the rule for purposes of setting rates at this time.[9]

Although the Citizens disagree with the proposed regulations and furthermore do not believe that even as written they are intended to apply to the adjustment the Florida Commission makes, the FPSC has decided that it must cautiously interpret the proposed regulations so as to not risk losing the accelerated depreciation related benefits. It is because of this action of the Commission that Citizens seek clarification at this time.

(2) THE PROPOSED REGULATIONS

The Citizens understand proposed Section 1.168(i) - 1(a) and (b) to be what the Florida Public Service Commission has

[9]The Commission did place the revenue requirement subject to refund, therefore arguably following the rule, contingent upon the outcome of this matter before the IRS. The practical result was that customer's rates increased because of the interpretation.

interpreted to prohibit the parent debt adjustment. In part the proposed Section 1.168(i) - 1(a) reads:

> Any procedure or adjustment that results in the flow-through of tax savings arising from the filing of a consolidated return will be treated as inconsistent with a normalization method of accounting.

Proposed Section 1.168(i) - 1(b) further provides that:

> [I]t is inconsistent with a normalization method of accounting to determine either the current or deferred portion of ratemaking tax expense using an effective tax rate determined by taking into account the losses or credits of other membsrs of the utility's consolidated group, or otherwise to reduce cost of service for ratemaking purposes to take into account the current tax savings resulting from the losses or credits of other members of the utility's consolidated group.

55 F.R. at 49297-49298. Since the only cited specific regulatory authority for promulgation of these regulations would be found in Sections 167(l) and 168(i)(9)(B)(iii) of the Internal Revenue Code which deal solely with depreciation of public utility property and the creation of deferred tax reserves associated with book-tax timing differences related thereto, the Citizens must look to the introductory and explanatory provisions preceding the proposed regulations for an understanding of their possible application to the parent debt adjustment made by the FPSC.

The only discernable rationale for the Service's proposed prohibition of consolidated tax savings adjustments is found in the reference to the specific authority of Section 167(l) and 168(i)(9)(B)(iii) of the Internal Revenue Code. The former section requires normalization accounting for public utility property when accelerated depreciation is taken. The latter section forbids inconsistent methods of calculation of depreciation expense on public utility property by utilities taking accelerated depreciation.

The Service's explanation of how the cited authority authorizes the prohibition of a consolidated tax savings adjustment appears to the Citizens to be a multistep process. First, the service has assumed that the tax timing difference represented by the accumulated deferred taxes represents a temporary, interest free loan from the Treasury. Normalization accounting as pointed out by the Service, prevents the flow-through to utility ratepayers of the reduction in current taxes stemming from the use of accelerated depreciation. In other words, the reduction must be treated as a tax deferral that is treated as cost free capital until the loan is repaid to the Treasury. 55 F.R. at 4994.

Next, consolidated tax savings, as defined by the service[10] are viewed as creating tax timing differences "analogous" to tax timing differences created using accelerated depreciation. The temporary nature of the tax timing difference exists if, and only if, the assumption is valid that a reduction in a consolidated

[10]In the explanation section the Service appears to view the consolidated tax savings adjustment as being calculated under either a "bottom-line," overall consolidated tax savings approach, or an effective tax rate approach. 55. F.R. 49295.

group's tax liability (generated by net operating loses) "might not be permanent and that "[w]hen the loss affiliate becomes profitable the group as a whole will have a higher tax liability." 55 F.R. 49295. [Emphasis added]. This assumption provides the keystone supporting the bridge of logic between the normalization prohibitions of the Code and the assumed regulatory authority to prohibit or restrict consolidated tax savings adjustments. The Citizens' conclusion on this point is evident when the Service further elaborates:

> Consolidated tax savings are similar to the deferred taxes arising from the allowance of accelerated depreciation on public utility property in that the temporary tax savings available to the utility is cost-free capital from the time it is collected from ratepayers until the time the affiliate becomes profitable.

55 F.R. 49295. [Emphasis added].

Thus as a result of the assumptions implicit in the Services reasoning, the necessary conclusion is that consolidated tax savings must be temporary in order to provide the Service with even colorable authority to require normalization consistent with the Internal Revenue Code.

The Citizens believe that because of the logical framework supporting the Service's claim of authority to promulgate these regulations, that the FPSC's parent debt adjustment is not intended to be proscribed since the tax timing difference (if one exists) created by the parent's tax deduction applicable to the parent company's investment in the equity of the regulated subsidiary is permanent and not temporary. For this reason, the Citizens ask that the Service clarify its rules to indicate that, even if the proposed rules are adopted substantially as proposed and over Citizens' objection, the FPSC parent debt adjustment would not violate any putative normalization enforcement authority that the Service might exercise. The Citizens' interpretation is supported by a closer analysis.

First, common sense dictates that even if an overall consolidated tax savings approach captured fluctuating, bottom-line net operating losses by affiliates which in turn generate reduced consolidated group tax liability, the interest deduction associated with a parent company's capitalization ratios should remain static over time. Since most parent companies in the utility holding company scenario are not operating companies, but rather shells or management companies, their capitalization would be less a function of an operating environment that might generate true operating losses or profits, and more a function of the regulated utility environment.[11] This condition would also support a conclusion that the tax deductibility of the parent's interest expense would be a permanent phenomenon.

[11] If anything, a better assumption might be that as diversification increases, the leverage (and debt ratio) would increase over time.

The Federal Energy Regulatory Commission ("FERC") has also concluded that the tax effect of the parent company debt creates a permanent tax timing difference rather than a temporary one as might be assumed by the Service. In the case of In Re: Columbia Gulf Transmission Company, Opinion No. 173, 54 P.U.R. 4th 31 (1983), the FERC, despite its philosophical retreat from application the consolidated tax savings approach approved by the United States Supreme Court in FPC v. United Gas Pipeline Company, 386 U.S. 244 (1967), made a tax effect of parent company debt adjustment. In assuming that consolidated tax savings adjustments represent temporary tax savings that should be more appropriately normalized, the FERC concluded that the parent company deductions generated by the parent's interest expense is a permanent tax timing difference incurred in an activity related to the regulated company's operations.[12] Interestingly, the FERC also explicitly recognizes that the parent company's interest expense generating the tax deduction was incurred by the parent company in an activity related to the regulated company's operations. 54 P.U.R. 4th at 50.

Furthermore, as a practical matter, and because of the direct nature of the parent-subsidiary relationship the FPSC could

[12]As stated above, the Citizens of Florida do not agree that consolidated tax savings represent a tax timing difference that is temporary. Certainly as stated above and in Pennsylvania OCA comments, we do not believe the IRS has authority to require normalization of the consolidated tax savings even if the timing differences are temporary.

effectively reduce the company's revenue requirements to the same degree and address the same or similar concerns that lead to the parent debt adjustment, by simply adjusting the utility's equity ratio, or using a consolidated capital structure approach. See General Development Utilities, Inc. v. Hawkins, 357 So.2d 408 (Fla. 1978). Such adjustments would address valid Commission concern regarding leverage, over capitalization, and parent subsidiary transactions such as upstream loans, payment or nonpayment of dividends, and abusive equity transactions. If such an equity ratio adjustment was made, a portion of the customer provided equity return on the subsidiary's so-called "actual" equity ratio[13], would be replaced by an overall cost of debt return. This would in turn yield an interest expense on the subsidiary's books, the deduction for which would reduce the subsidiary's current income tax expense for ratemaking purposes. Any such Commission adjustment would not violate any supposed normalization authority that the Service claims under the proposed regulations.

The Citizens also believe that there is no dispute that the parent debt adjustment mandated by Florida law has absolutely no

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[13]Although some might argue that the parent debt adjustment recognizes a tax deduction that is not supported by an expense borne by the customer, the equity return is functionally the same as interest expense from the standpoint of the ratepayers. Almost without exception the cost of equity is higher than the cost of debt; therefore as the parent debt adjustment implicitly recognizes that the customers are bearing the expense which leads to the deduction that the parent company receives in a leveraged investment structure. This matches the parent debt deduction with the cost which generates it.

effect on the deferred tax reserve related to accelerated depreciation taken on public utility property. For that matter, the parent debt adjustment has absolutely no effect on any deferred tax reserve of the regulated utilities. For purposes of illustration, the Citizens have attached Minimum Filing Requirement pages relied on by the Florida Public Service Commission in the recent United Telephone case. See Attachment 2. In that case, for reasons unrelated to any hypothetical normalization violation, United sought a waiver by the Commission of the parent debt adjustment.[14] Because of this position the company filed two different variations of its calculation of total income tax expense (state and federal). As the attachment shows, the parent debt adjustment has no effect on the deferred tax reserves of the regulated company.

IV. CONCLUSION

In summary, as argued by the OCA and NASUCA, the IRS should withdraw the proposed regulations. Alternatively, because the parent debt adjustment does not affect, directly or indirectly the deferred tax reserves mandated by Section 167(l) of the Internal Revenue Code, and because, even under the rationale offered by the Service for prohibiting consolidated tax savings adjustments, the parent debt adjustment mandated by the Florida law represents a

[14] Legally such a waiver could not be granted. See footnote 1, supra.

permanent tax timing difference, the proposed regulations, if issued over Citizens objections, should be clarified to state that the parent debt adjustment does not violate normalization requirements of the Internal Revenue Code.

Respectfully submitted,

/s/
Jack Shreve
Public Counsel

/s/
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ATTACHMENT 1

CHAPTER 25-14
LIMITATION ON RATES, CHARGES AND TARIFFS

25-14.001 In General. The Commission is responsible for the setting of reasonable rates and charges of numerous utility companies. In determining reasonable charges to be paid by the customers of these companies, the Commission promulgates policy determinations affecting all the companies subject to its jurisdiction. This chapter has been established to identify policy determinations affecting the rates, charges and tariffs of all companies subject to our rate-setting jurisdiction. Except as provided by Part X, Chapter 25-24, Florida Administrative Code, the provisions of this Chapter shall not apply to Interexchange Companies or Pay Telephone Service Companies.
Specific Authority 350.127(2), 366.05(1), 367.121 FS. Law Implemented 364.03, 364.05, 364.337, 366.04, 366.041, 366.05, 367.121 FS. History—New 7-25-73, Formerly 25-14.01, Amended 2-23-87.

ANNOTATIONS

Burden of proof

Requirement that utilities demonstrate reasonableness of their fuel costs was neither improper nor unusual, and Commission did not err in placing burden on nuclear power company to show that excess costs incurred were reasonable and were not fault of management, where data provided showed that company's fuel costs were significantly higher due to incident, responsibility for which was in dispute; simple production of cost records and documentation could not satisfy requirements imposed on utility in true-up proceeding. Florida Power Corporation v. Cresse, 413 So. 2d 1187 (1982).

Evidence

Where Public Service Commission had granted telephone company's requested rate increase on basis of "value of service", rather than "costs of service" principle, nonprofit corporation who intervened in review proceedings to protest such increase failed to meet burden of showing order was invalid, arbitrary or unsupported by evidence. Florida Retail Federation, Inc. v. Mayo, 331 So. 2d 308 (1976).

Fuel adjustment charges

Fuel adjustment charges of Florida Power Corporation and Gulf Power Company imposed pursuant to Docket Nos. 6013-EU and 6014-EU should not have been allowed without public hearing procedures provided by statute. However, such automatic fuel adjustment clauses, imposed for more than fourteen years without challenge, may only be rescinded by subsequent modification order promulgated after duly noticed public hearing. There is no statutory authority for proportionate refund of fuel adjustment charges imposed under such orders, nor is there any such authority for establishment by utilities of escrow fund for restitution of that portion of approved rate which may be allocated to automatic fuel adjustment clause. Proper procedure for Commission to follow in event that it determines that present fuel adjustment clauses give rise to excessive profits would be modification, after notice and hearing, of its earlier order establishing subject fuel adjustment clauses. Op. Atty. Gen., 074-288, September 1974.

Retroactive application

Commission's full consideration of retroactive application of new depreciation represcription for telephone company did not constitute retroactive rate making; new depreciation allowance did have effect on prior Commission order, but this was factor that all parties knew or should have known would affect 1980 refund. Citizens of the State of Florida v. Florida Public Service Commission, 415 So. 2d 1268 (1982).

Telephone company's proposed depreciation represcription was not precluded by prior stipulation whereby company was to refund to its customers specific amount for year 1979 and whatever amount, if any, that intrastate earnings exceeded 9.02 percent on average net investment for year 1980. Id.

25-14.002 Florida Corporate Income Tax.
Specific Authority 323.07, 323.55, 330.48, 350.12, 364.20, 364.41, 366.05, 357.121 FS. Law Implemented 323.07, 323.55, 330.48, 350.12, 364.20, 364.41, 366.05, 367.121 FS. History—New 7-25-73, Amended 9-11-74, Repealed 12-16-80, Formerly 25-14.02.

25-14.003 Corporate Income Tax Expense Adjustments.
Specific Authority 364.01, 366.05, 367.121 FS. Law Implemented 364.01, 366.05, 367.121 FS. History—New 6-22-82, Formerly 25-14.03, Amended 1-1-90, Repealed 10-14-90.

25-14.004 Effect of Parent Debt on Federal Corporate Income Tax. In Commission proceedings to establish revenue requirements or address over-earnings, other than those entered into under Rule 25-14.003, F. A. C., the income tax expense of a regulated company shall be adjusted to reflect the income tax expense of the parent debt that may be invested in the equity of the subsidiary where a parent-subsidiary relationship exists and the parties to the relationship join in the filing of a consolidated income tax return.

(1) Where the regulated utility is a subsidiary of a single parent, the income tax effect of the parent's debt invested in the equity of the subsidiary utility shall reduce the income tax expense of the utility.

(2) Where the regulated utility is a subsidiary of tiered parents, the adjusted income tax effect of the debt of all parents invested in the equity of the subsidiary utility shall reduce the income tax expense of the utility.

(3) The capital structure of the parent used to make the adjustment shall include at least long term debt, short term debt, common stock, cost free capital and investment tax credits, excluding retained earnings of the subsidiaries. It shall be a rebuttable presumption that a parent's investment in any subsidiary or in its own operations shall be

considered to have been made in the same ratios as exist in the parent's overall capital structure.

(4) The adjustment shall be made by multiplying the debt ratio of the parent by the debt cost of the parent. This product shall be multiplied by the statutory tax rate applicable to the consolidated entity. This result shall be multiplied by the equity dollars of the subsidiary, excluding its retained earnings. The resulting dollar amount shall be used to adjust the income tax expense of the utility.

Specific Authority 350.127(2) FS. Law Implemented 366.05(1), 364.03, 364.035, 367.121(1)(a) FS. History—New 1-25-83, Formerly 25-14.04.

ANNOTATIONS

Validity

Rule 25-14.04 [now Rule 25-14.004], F. A. C. adopted by Public Service Commission is neither arbitrary nor capricious. Rule represents valid implementation of PSC policy choice regarding treatment of utility's income tax expense during ratemaking. By choosing this particular method, PSC is merely acting within scope of its discretion. General Telephone Company of Florida v. Florida Public Service Commission, 446 So. 2d 1063 (1984).

25-14.005 Effect on Deferred Income Taxes of a Change in Federal and State Income Tax Rates.

Specific Authority 350.127(2) FS. Law Implemented 366.05(1), 364.03, 364.035, 367.121(1)(a) FS. History—New 11-18-82, Formerly 25-14.05, Repealed 11-6-87.

25-14.008 Method of Accounting; Cost of Service.

(1) Each utility seeking to qualify its public utility property as recovery property under the Economic Recovery Tax Act of 1981 shall follow a normalization method of accounting with respect to differences in ratemaking and tax lives, ratemaking and tax depreciation methods, averaging conventions, and salvage.

(2) If a utility qualifies its public utility property as recovery property under the Economic Recovery Tax Act of 1981 through the use of a normalization method of accounting, the effect of such use shall be recognized in determining cost of service.

(3) For the purpose of this rule, the following shall apply:

(a) Recovery property is public utility property for which the accelerated cost recovery system of depreciation and a normalization method of accounting is used.

(b) A normalization method of accounting is used for both recovery property and property for which the investment tax credit is allowed.

1. For depreciable property, adjustments are made to a reserve to reflect ratemaking and tax differences in salvage and depreciation rates, lines and starting points.

2. For investment tax credits where an election was made under section 46(f)(1) of the Code, restorations to rate base are allocated ratably in proportion to the ratemaking life used in the calculation of the regulated depreciation expense.

3. For investment tax credits where an election was made under section 46(f)(2) of the Code, reductions to cost of service are made on the basis of ratable allocations of the credit in proportion to the regulated depreciation expense.

(c) Ratemaking life is the period of time actually used in computing the regulated depreciation expense.

(d) Tax life is the period of time over which the company may and does depreciate property under Sections 168(b)(3) and 168(c)(2) of the Code.

(e) Ratemaking depreciation is the regulated depreciation expense actually used by the Commission for the purpose of establishing the utility's cost of service for ratemaking purposes.

(f) Tax depreciation expense is the depreciation expense allowed by Section 168 of the Code and used by the utility.

(g) The averaging convention is use of one-half of one year's depreciation for the first year that the asset is placed in service for tax purposes as required by Section 168 of the Code.

(h) Salvage is not recognized under the accelerated cost recovery system although for ratemaking purposes it may be recognized.

Specific Authority 350.127(2) FS. Law Implemented 364.03, 364.035, 366.05(1), 367.121(1)(c) FS. History—New 12-29-82, Formerly 25-14.08.

25-14.009 Investment Tax Credit Elections.

(1) Taxpayers (utilities and companies subject to the commission's ratemaking jurisdiction) utilizing IRC § 46(f)(1) shall be treated for ratemaking purposes as if they had elected to reduce asset basis for tax purposes as described in IRC § 48(q)(1) and the Tax Equity and Fiscal Responsibility Act of 1982 § 205(a)(1).

(2) Taxpayers utilizing IRC § 46(f)(2) shall be treated for ratemaking purposes as if they had elected to reduce the applicable investment tax credit two percentage points as described in IRC § 48(q)(4) and the Tax Equity and Fiscal Responsibility Act of 1982 § 205(a)(1).

(3) If an affected utility desires to use the alternative method on its book and tax return for the current vintage year, it shall petition the Commission, which shall issue a ruling, by order as to the ratemaking and/or accounting treatment to be afforded qualified current vintage year property. If the Commission finds that the alternative method reduces the revenue requirement, the Commission may allow its use for ratemaking purposes, rather than the method specified. Once the Commission has prescribed the election treatment for a particular vintage year, that treatment shall be applicable in any subsequent ratemaking proceeding.

(4) Subsections (1) and (2) of this rule shall apply absent a petition filed by the utility requesting use of the alternative method.

Specific Authority 350.127(2) FS. Law Implemented 366.05(1), 364.03, 364.035, 367.121(1)(a) FS. History—New 5-17-83, Amended 6-25-84, Formerly 25-14.09, Amended 10-22-86.

Editorial Note: Before the enactment of the Tax Reform Act of 1986, a taxpayer could make an election with respect to its investment tax credits (ITCs). Rule 25-14.009 was promulgated to assure that the ITC

ATTACHMENT 2

UNITED TELEPHONE COMPANY OF FLORIDA
Docket No. 891239-TL
Test Year 1991

Historic [ ] or Projected (X)
Average [ ] or Year End (X)
Period: 1991

REVISED 8/22/90

FPSC MFR Schedule C-23a
Page 1 of 1
Witness: R. D. McRae

Reconciliation: Total Income Tax Provision (State & Federal) (Commission Basis)

Line No.	Description	Reference	Total Per Books	Utility Adjustment	Utility Adjusted
1	Current Income Tax Expense	C-23b	$33,047,000	$(1,409,000)	$31,638,000
2	Deferred Income Tax Expense-Property Related	C-23e	13,966,302	-	13,966,302
3	Deferred Income Tax Expense-Non-Property Related		955,698	-	955,698
4	ITC Realized This Year	B-14a	-	-	-
5	ITC Amortization	B-14a	(4,470,000)	-	(4,470,000)
6	Parent Debt Adjustment	C-23g	-	(3,473,000)	(3,473,000)
7	Total Income Tax Expense		$43,499,000	$(4,882,000)	$38,617,000

Supporting Schedules: B-14a, C-1b, C-2a, C-23b, C-23e, C-23g

Recap Schedules:

UNITED TELEPHONE COMPANY OF FLORIDA
Docket No. 891239-TL
Test Year 1991

Historic [ ] or Projected [X]
Average ( ) or Year End (X)
Period: 1991

REVISED 8/22/90

FPSC MFR Schedule C-23a

Witness: R. D. McRae

Reconciliation: Total Income Tax Provision (State & Federal) (Company Basis)

Line No.	Description	Reference	Total Per Books	Utility Adjustment	Utility Adjusted
1	Current Income Tax Expense	C-23b	$33,047,000	$(2,057,000)	$30,990,000
2	Deferred Income Tax Expense-Property Related	C-23e	13,966,302	-	13,966,302
3	Deferred Income Tax Expense-Non-Property Related		955,698	-	955,698
4	ITC Realized This Year	B-14a	-	-	-
5	ITC Amortization	B-14a	(4,470,000)	-	(4,470,000)
6	Parent Debt Adjustment	C-23g	-	-	-
7	Total Income Tax Expense		$43,499,000	$(2,057,000)	$41,442,000

Supporting Schedules: B-14a, C-1b, C-2a, C-23b, C-23e, C-23g

Recap Schedules:

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: CENTRAL TELEPHONE COMPANY OF FLORIDA'S Petition for Rate Increase	DOCKET NO. 891246-TL
In re: Petitions of SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY for rate stabilization and implementation orders and other relief	DOCKET NO. 880069-TL
In re: Resolution by GADSDEN COUNTY BOARD OF COUNTY COMMISSIONERS for extended area service between Gadsden County and Tallahassee	DOCKET NO. 890292-TL ORDER NO. 24985 ISSUED: 8/28/91

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
J. TERRY DEASON
BETTY EASLEY
MICHAEL McK. WILSON

ORDER IMPLEMENTING PARENT DEBT ADJUSTMENT
AND
NOTICE OF PROPOSED AGENCY ACTION
ORDER REDUCING PER MESSAGE RATE ON INTERCOMPANY ROUTES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that a portion of the action discussed in Section III-B herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. BACKGROUND

The U.S. Treasury Department issued proposed regulations sections 1.167(l)-1(h)(7) and 1.168(i)-1 on November 27, 1990. As a result of the issuance of these proposed regulations, our Order No. 24178 did not reflect a final parent debt adjustment. These proposed regulations have subsequently been withdrawn and the regulation project has been closed until Congress provides further guidance. However, we required Central Telephone Company of Florida (Centel or the Company) to hold, subject to refund with interest, the portion of its revenues that would not have been authorized if there had been a parent debt adjustment. We also

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FPSC-RECORDS/REPORTING

required Centel to request a ruling from the Internal Revenue Service (IRS) as to whether or not the parent debt adjustment was a violation of the normalization requirements under the proposed regulations. Since the proposed regulations have been withdrawn and the project has been closed, the required ruling is moot.

On May 7, 1991, the Office of Public Counsel (OPC) filed a Motion requesting that Centel be ordered to refund, immediately, approximately $225,000 related to the parent debt adjustment. The Motion also requests a rate reduction of $1,017,731 on a going forward basis. The Company responded on May 17, 1991. The Company asserts that any refund or rate reduction should wait until a response is received from the ruling request of Peoples Gas System, Inc. Centel further states that all parties should be given an opportunity to address any disposition of these funds.

II. PARENT DEBT ADJUSTMENT

We believe that it is now appropriate to make the parent debt adjustment and to require Centel to dispose of the monies and interest associated with this adjustment. We find it appropriate to reduce rates on a going forward basis effective September 1, 1991. By Order No. 24178, this Commission allowed Centel to collect $1,017,731 in annual revenues, subject to refund or other disposition, effective February 11, 1991. From February 11, 1991, through August 31, 1991, Centel will collect $559,055, plus accrued interest of $9,369, related to the parent debt adjustment. In its Motion filed May 7, 1991, OPC states that this Commission should order the monies held subject to refund by Order No. 24178 to be refunded to Centel's customers. However, we disagree with OPC. We find it appropriate that these revenues be utilized to reduce rate base, as opposed to being refunded.

By Order No. 24178, we approved a stipulation which increased Centel's overall depreciation expense by $2,000,000 ($1,509,356 intrastate) annually. This amount was to be recorded as a bottom-line, non-account specific expense. The primary reason for the stipulation between the parties was the recognition that Centel needed additional capital recovery even though its depreciation study did not adequately support a specific amount. In light of this recognized need for depreciation, we find it appropriate to offset the amount of revenue collected from the time rates were increased on February 11, 1991, until rates are decreased effective September 1, 1991, by ordering Centel to record additional depreciation expense. We believe that a long term benefit will be provided to the ratepayers through a reduction in rate base and an ongoing reduction in rates. We believe a rate reduction is more beneficial to the ratepayers than a one-time refund of approximately $1.76 per access line for residential customers. Therefore, we find it appropriate to order Centel to place $568,424 into an unclassified intrastate depreciation reserve account, effective September 1, 1991.

III. PROSPECTIVE RATE REDUCTIONS

OPC asserts in its Motion that this Commission should order Centel to lower its rates prospectively by the amount of revenues represented by the parent debt adjustment. We agree. We find it appropriate that rates be reduced by $1,017,731 prospectively. Rates should be reduced by an additional $73,895 annually to reflect the reduction in revenue requirements which results from placing money in the depreciation reserve and thereby decreasing rate base. The total prospective rate reduction for these two items is $1,091,626.

A. MTS Rates

We reduced Centel's MTS rates effective February 11, 1991, by Order No. 24178. We find a further reduction of $469,469 appropriate to make Centel's MTS rates more competitive with the rates charged by the other local exchange companies and interexchange companies on intrastate traffic. The discounts shall be changed to 25% and 50% in lieu of the 35% and 60% for evenings and night/weekends, respectively, as follows:

Mileage	1st Min.	Add'l Min.
0-10	$ 0.17	$ 0.07
11-22	0.18	0.14
23-55	0.24	0.20
56-124	0.24	0.20
125-292	0.24	0.20

B. Local Calling Plan Rates

We also find it appropriate to revisit the $.25 local calling plan approved in Order No. 24178 and reduce the rate on all of these routes to a $.20 per message charge. Our action herein shall be in the form of a notice of proposed agency action for those local exchange companies (LECs) other than Centel. The routes that involve LECs other than Centel are: (1) between Sneads and Chattahoochee (St. Joseph Telephone and Telegraph Company (St. Joe)); (2) between Bonifay and Chipley (Southern Bell Telephone and Telegraph Company (Southern Bell)); (3) between Cottondale and Chipley (Southern Bell); and (4) between Graceville and Holmes and Jackson counties (Southern Bell). Our rate reduction shall be final as to Centel and proposed as to the companies other than Centel.

In addition, we propose that the $.25 calling plan between Tallahassee and certain Gadsden County exchanges (Greensboro, Gretna, Quincy (Quincy Telephone Company) and Chattahoochee (St. Joe)) also be reduced to $.20 per call, with the call allowance to remain in place. We propose this reduction to reflect the strong community of interest between Gadsden County and Tallahassee, and because of the unexpectedly high volume of calling from Quincy to Tallahassee. In all instances where we are reducing the price per call from homes and businesses to $.20 per message, calls from pay telephones shall continue to be $.25 per message (like any other local call). Our action reducing rates on these particular routes is proposed action as to all of the affected LECs, excluding Centel.

C. BHMOC Reduction

The remaining monies shall be applied to reduce Centel's BHMOC from its present $4.15 to $3.94, a reduction of $0.21. Using 1991 projected units, a $0.01 reduction in the BHMOC yields a revenue impact of $19,751. Therefore, this reduction is $414,771.

IV. SUMMARY

In summary, we find it appropriate to reduce Centel's annual revenues by reducing the Company's MTS rates, certain EAS rates, and its BHMOC rate. These reductions shall become effective September 1, 1991. Appropriate tariff revisions shall be filed no

ORDERED that these rate reductions shall become effective September 1, 1991. Appropriate tariff revisions shall be filed no later than August 23, 1991. It is further

ORDERED that if no protest is filed within the time frame set forth below, Dockets Nos. 890292-TL and 891246-TL shall be closed after tariffs are filed and reviewed by our staff. It is further

ORDERED that Docket No. 880069-TL shall remain open.

By ORDER of the Florida Public Service Commission, this 28th day of AUGUST, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)
ABG

by: Kay Flynn
Chief, Bureau of Records

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

As identified in Section III-B of this order, our action reducing certain per message rates on intercompany routes is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on 9/18/91. In the absence of such a petition, this order shall become effective on the date

ORDERED that these rate reductions shall become effective September 1, 1991. Appropriate tariff revisions shall be filed no later than August 23, 1991. It is further

ORDERED that if no protest is filed within the time frame set forth below, Dockets Nos. 890292-TL and 891246-TL shall be closed after tariffs are filed and reviewed by our staff. It is further

ORDERED that Docket No. 880069-TL shall remain open.

By ORDER of the Florida Public Service Commission, this 28th day of AUGUST, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)
ABG

by: Kay Flynn
Chief, Bureau of Records

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

As identified in Section III-B of this order, our action reducing certain per message rates on intercompany routes is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on 9/18/91. In the absence of such a petition, this order shall become effective on the date subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If the relevant portion of this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.