

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In Re: Proposed Revisions to Rule)	
25-14.003, F.A.C., Corporate)	Docket No. 891278-PU
Income Tax Expense Adjustment Rule:)	Filed: January 19, 1990
Midpoint and Additional Changes)	

COMMENTS OF THE CITIZENS OF THE STATE OF FLORIDA

The Citizens comments will address two basic areas. The first area involves the proper ROE to be used when applying the tax savings refund rule. In some instances, Rule 25-14.003 has been interpreted to require the PSC to use the rate of return approved in the utility's last full revenue requirements hearing. This provision is particularly illogical when drastic changes have taken place in the capital markets. The PSC, of course, has recognized that using an out-of-date ROE is bad policy and therefore has "jawboned" electric and telephone utilities into

ACK _____ using compromise ROE's for the purposes of applying the tax rule.
 AFA 1
 APP 1 While the compromise ROE's have provided some benefit, a far
 CAF _____ superior approach would be to authorize updated ROE's reflecting
 CMU 1 current market realities. The tax refund rule should allow for
 CTR _____
 EAG 1 such an approach.

LEG ~~6~~
 LIN 6 The second area of comment involves the treatment of
 OPC _____ investment tax credits (ITC's). Normalization requires that in

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setting rates, the PSC must assign an overall cost of capital to certain ITC's, even though no cost actually exists. The PSC has recognized the flagrant unfairness of this proposition, but nevertheless has assigned the required cost rate to avoid losing the credits. In the application of the Rule 25-14.003(1), F.A.C., however, the PSC would not be bound to those normalization requirements and is therefore free to treat the ratepayers fairly on the ITC issue.

The tax savings refund is not a ratemaking process. Rather, it is a process first to determine the amount by which a utility's tax expense has been reduced, and second to determine how much of that reduction should be refunded to the customers.

The assignment of an overall cost of capital to ITC's is not required in every circumstance. Section 46 of the Internal Revenue Code requires that the ITC's be assigned to the overall cost of capital "for ratemaking purposes." In fact, Regulation 1.46-6(b)(4)(iv), specifically identifies "the consideration of a company's financial condition by a regulatory body" as a circumstance under which the overall cost of capital need not be assigned to the ITC's. Thus, if the tax rule uses the midpoint as an examination of the companies' financial condition, then it need not assign the overall cost of capital to the ITC's in calculating that midpoint.

A number of Commissions around the country have required utilities to refund the full amount of their tax savings and not normalization violations have occurred. Therefore, the Florida PSC would not violate normalization if it required the full amount of every utility's tax savings to be refunded. If a refund of 100% of the tax savings is not a violation, a refund of any portion likewise would not result in a violation. The PSC should take this opportunity to remedy this injustice against the ratepayers.

The Citizens are aware of this Commission's cautious approach to the treatment of ITC's. No doubt some will argue that assigning a zero cost to ITC's will jeopardize the utilities' entire deferred tax account. Should the Commission choose to heed any such arguments, the Citizens offer the following alternative position. The Commission could instruct the parties to seek private letter rulings and react to the results as follows: if, on the one hand, the IRS agrees that zero cost ITC's for the tax savings refund calculation would not violate normalization, then zero cost would be used; if, on the other, the IRS asserts that the zero cost ITC's for the tax savings refunds will violate normalization, the PSC would require refunds of the full amount of any tax savings or disallow any collection of any tax deficiency.

The logic behind this suggestion is grounded in the very purpose for using the overall rate of return. The overall rate of return is used as a safety net in both directions. When tax rates fall, the utility must refund the excess, but not to the extent that the refund would drive the utility below a reasonable return. The last authorized rate of return therefore acts as a safety net for the utility's financial integrity. Likewise when tax rates rise, the utility may collect the deficiency, but only to the extent that the utility does not exceed a reasonable return. In that case, the last authorized rate of return (ROR) acts as a safety net protecting the customers from excessive rates.

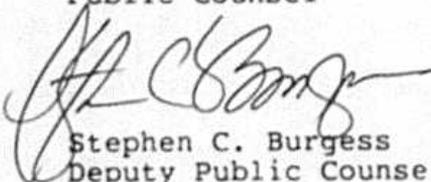
In both instances the value of the authorized ROR as a safety net is directly dependent upon its proximity to a currently reasonable return. That is, if the authorized ROR cannot reflect a currently reasonable level of return, it loses its value as a safety net. Put another way, if the Commission is prohibited from using a reasonable return, there is no reason to apply a safety net at all.

Yet if the Commission cannot assign a zero cost to ITC's (which unarguably is their actual cost), it is being prohibited from setting the safety net at a reasonable level. The Commission should not allow itself and Florida's ratepayers to be held hostage to such shameful circumstances. By adopting the

Citizens' alternative recommendation, the Commission can ensure that an illogical IRS policy will not dictate a burdensome regulatory result.

Respectfully submitted,

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CERTIFICATE OF SERVICE
Docket No. 891278-WS

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail*, hand-delivery**, or by facsimile*** to the following parties on this 19th day of January, 1990.

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