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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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1 P R O C E E D I N G S

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

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

8 MS. SAPOZNIKOFF: Thank you.

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

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

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

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

25 Currently, when the regulated utility is a

1 subsidiary of one or more parent companies and
2 files a consolidated return with the parent
3 company, the rule adjusts the income tax expense of
4 the regulated utility to reflect the income tax
5 benefit of the parent that may be invested in the
6 equity of the subsidiary.

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

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

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

1 Thank you.

2 CHAIRMAN LA ROSA: Thank you.

3 Mr. Rehwinkel, with OPC, you are recognized.

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

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

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

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

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

16 If you propose to repeal this rule, it could
17 mean that you are creating a direct and immediate
18 risk to up to three million customers of Duke,
19 Tampa Electric and Peoples Gas that they will
20 immediately be subjected to increased rates and
21 bills to the tune of \$30 million for the three --
22 three companies combined. \$30 million in annual
23 customer savings, which would be over \$100 million
24 out of customers' pockets in the conventional
25 four-year rate setting period, versus the murky

1 difficult to articulate and even harder to
2 understand benefits outlined by the repeal's
3 proponents.

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

12 The Public Counsel urges you to reject this
13 effort at repeal just like the Commission did in
14 1988. Maybe in another 36 years, when we are
15 living in an energy utopia consumer protection such
16 as rules like this will have lost their meaning,
17 but not today.

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

24 Customers throughout the states,
25 Commissioners, are really struggling with high

1 bills, fuel surcharges, storm surcharges,
2 additional clause costs like the SPP costs. On top
3 of this, they phase face a greater threat to
4 affordability as some utilities are seeking
5 enormous rate increases in unprecedented amounts.

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

12 Thank you.

13 CHAIRMAN LA ROSA: Thank you.

14 Commissioners, questions or comments?

15 Commissioner Clark.

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

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

23 Mr. Cicchetti, any comments or thoughts on
24 what actually happens? I know he quoted
25 specifically from Duke's customers might see an

1 increase here. Will other customers see a decrease
2 as a result of the rule?

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

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

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

25 And so the Commission looked at this in the

1 past and said they didn't choose to amend the rule
2 at that time, we think the time has come. It will
3 lower the chance of more rate cases because they
4 will have the full cost of service allowed in their
5 rates.

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

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

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

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

24 COMMISSIONER CLARK: Yes.

25 MR. CICCHETTI: And the effect will be based

1 on the size of the utility. The bigger the
2 utility, the more impact this has.

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

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

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

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

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

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

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

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

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

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

18 MR. CICCHETTI: Yes.

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

1 be in the benefit of all consumers immediately.

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

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

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

20 Mr. Rehwinkel, you are recognized.

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

23 Florida Power & Light does not have this
24 adjustment because of the way they are organized.
25 They issue their own debt, so they don't have a

1 parent above them that is investing in their equity
2 using debt. Their debt is ringfenced, if you will,
3 is my term. They might say that they use a
4 different term. So FPL, this is an adjustment that
5 they haven't applied for years because of the way
6 they are capitalized.

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

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

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

1 CHAIRMAN LA ROSA: Thank you.

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

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

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

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

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

20 When we are talking about -- I mean, I am not
21 going to even pretend to be a tax attorney. I
22 might be an attorney, but that doesn't mean I know
23 much about the tax code, and it keeps changing.
24 But if we are talking about precedent when the
25 Florida Supreme Court, when I read our cases, the

1 cases that the court has said, yes, they have
2 affirmed that this -- that the current rule of the
3 parent adjustment is valid, that doesn't -- I did
4 not see any tacit endorsement, or that that was the
5 only method that was needed. That I think that we
6 have the discretion to align our rule with the
7 majority of how the country operates, how FERC
8 operates doing the stand-alone basis.

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

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

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

21 MS. SAPOZNIKOFF: No. Commissioner Passidomo
22 was absolutely correct. The Florida Supreme Court
23 has not affirmatively endorsed this rule. It did
24 uphold it to challenge, but that was only looking
25 at things about whether we follow procedure to

1 enact it, whether it was arbitrary, capricious or
2 vague. The Court specifically made the statement
3 that there is no single correct method of dealing
4 with the income tax expense.

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

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

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

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

25 MS. SAPOZNIKOFF: No, sir.

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

3 Is there any opposition if we defer this item?

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

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

9 CHAIRMAN LA ROSA: Thank you. Good questions.

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

13 (Agenda item concluded.)

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CERTIFICATE OF REPORTER


STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, Court Reporter, do hereby
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DATED this 19th day of March, 2024.


DEBRA R. KRICK
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