

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Amendment of Rule	)	DOCKET NO. 861190-PU
25-14.003, FAC, Corporate	)	
Income Tax Expense Adjustment.	)	ORDER NO. 21594
	)	
	)	ISSUED: 7-21-89

NOTICE OF RULEMAKING

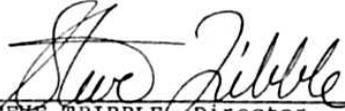
NOTICE is hereby given that the Commission, pursuant to section 120.54, Florida Statutes, has initiated rulemaking to amend Rule 25-14.003 relating to Corporate Income Tax Expense Adjustment.

The attached Notice of Rulemaking will appear in the July 29, 1989, edition of the Florida Administrative Weekly. If requested, a hearing will be held at the following time and place:

9:30 a.m., Friday, September 22, 1989  
 Room 106, Fletcher Building  
 101 East Gaines Street  
 Tallahassee, Florida

Written requests for hearing and written comments or suggestions on the rule must be received by the Director, Division of Records and Reporting, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, FL, 32399, no later than August 18, 1989.

By Direction of the Florida Public Service Commission,  
 this 21st day of JULY, 1989.

  
 STEVE TRIBBLE, Director  
 Division of Records & Reporting

( S E A L )

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DOCUMENT NUMBER-DATE  
 07330 JUL 21 1989  
 FPSC-RECORDS/REPORTING

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FLORIDA PUBLIC SERVICE COMMISSION

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RULE TITLE:	RULE NO.:
Corporate Income Tax Expense Adjustment	25-14.003

PURPOSE AND EFFECT: To repeal application of the rule to the water and wastewater utilities; to authorize a tax reporting date up to 15 days after due date of annual report.

SUMMARY: Rule 25-14.003, FAC, is intended to establish policy and procedure for adjusting utility income tax expense and its impact on achieved rate of return (ROR) caused by changes in federal and state corporate income tax rates. Under the current rule, adjustments, in the form of customer refunds or additional collections, would generally be an amount sufficient to return the ROR to the midpoint when earnings move through the midpoint. The exceptions would occur when a utility is earning above the midpoint before a tax decrease or below the midpoint before a tax increase: in these cases, the adjustment returns the company to its original ROR.

The proposed revisions to the rule would eliminate use of midpoint earnings benchmarks in income tax expense adjustments for water and wastewater utilities. Tax expense adjustments for changes in tax laws are already incorporated in other Commission rules and procedures, e.g., overearnings cases. These would require refunds or other adjustments, e.g., a change in depreciation, for earnings exceeding allowed ranges, but do not

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specifically target midpoints. Following exemption, water and wastewater utility refunds would be required only as tax changes moved water and wastewater utility earnings above allowed ranges. Water and wastewater tax deficiency collections would not be automatic after revision. If tax rates rose, firms would have to petition for a rate case to recover increased expenses and might not recover as much of the increase.

The proposed revisions would also change the tax report filing date for electric, gas, and telecommunications companies from March 1 to fifteen days after the due date (including extensions) of annual reports.

RULEMAKING AUTHORITY: Section 350.127, Florida Statutes.

LAW IMPLEMENTED: Section 364.01, 366.05, 367.121, Florida Statutes.

SUMMARY OF THE ESTIMATE OF ECONOMIC IMPACT OF THESE RULES: The proposed revisions to the rule would eliminate use of midpoint earnings benchmark in income tax expense adjustments for water and wastewater utilities. Tax expense adjustments for changes in tax laws are already incorporated in other Commission rules and procedures, e.g., overearnings cases. These would require refunds or other adjustments, e.g., a change in depreciation, for earnings exceeding allowed ranges, but do not specifically target midpoints. Following exemption from the rule, water and wastewater utility refunds would be required only as a tax change moved water and wastewater utility earnings above allowed ranges.

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Water and wastewater tax deficiency collections could be reduced after revision, if tax rates rose since firms would have to petition for a rate case to recover increased tax expenses.

The estimate of the cost to the agency of the proposed action is that the revision would save substantial staff time. Staff would continue to monitor water and wastewater utility earnings levels and would bring recommendations to the Commission when company earnings exceed the authorized rate of return range from a change in tax expense. Presently, depending on the company, an established 200-600 hours of staff time is required for every review that is made necessary by Rule 25-14.003. After rule revision, a water or wastewater utility would have to request a rate case to collect additional taxes with a tax rate increase, whereas currently only a tax deficiency report is required for adjustments. This could decrease tax deficiency collections and paperwork to the extent that utilities do not find the recovery worth the expense.

Those water and wastewater utilities within the ratemaking scope of the Commission and the customers of the companies would be directly affected by the rule revision. The current rule generally targets the midpoint of the allowed ROR range as the goal after a change in corporate income tax rates. The exception would be if a company is above the midpoint before a tax decrease or below the midpoint before a tax increase. The adjustment would then require refunds or collections to maintain that ROR. The

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current rule essentially ignores the upper and lower bounds of the range, making the midpoint the effective ceiling or floor of the range for some companies, depending on their relative earnings levels, after income tax changes.

Customers of water and wastewater utilities would receive refunds of excess earnings above the ROR range after the repeal of the existing rule through continuation of the current practice of flagging excess earnings through surveillance procedures. If a utility is found to earn outside of its range, the Commission staff would follow up with audits and recommendations of refunds if necessary. Only revenues associated with a tax decrease which pushes ROR above the ceiling of the ROR range would be adjusted to the customers' benefit with a tax decrease following repeal of the rule for water and wastewater utilities. Cases where tax increases push ROR below the range floor would require rate case resolution following revision.

With over 300 companies reportings for 1988, only one company is potentially expected to have refunds -- either with the current rule or revision.

Some utilities would benefit from the proposed change in the filing date of the tax report from the first of March to fifteen days after the annual report is due because some of the required information is not available until the annual report is prepared.

Many of the water and wastewater utilities are small businesses and many have entered into stipulations with the

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Commission. Those companies responding to the survey fall below their allowed range of return and thus would not be affected by revision of the rule. The proposed rule revision would uniformly apply to all regulated water and wastewater utilities with no additional cost or reporting burdens placed upon small businesses.

There is no expected effect on competition.

No material change is expected in associated labor markets as a result of the proposed revision.

The methodology used for this economic impact statement included a survey of companies. The response to the survey provided estimates of ROR and tax revenue associated with the corporate income tax changes implied by the Tax Reform Act of 1986. Current allowed ranges and midpoints as well as achieved ROR were abstracted from Commission Rate of Return Surveillance Reports. Discussions were held with personnel from the Division of Accounting and Financial Analysis concerning the practices and conditions in the tax accounting of the affected businesses under the current rule and the consequences of the rule revision. Cost-benefit analysis was applied to effects of the proposed rule revision. Utility revenue and customer statistics published by the Division of Research were used for calculations.

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF RECORDS AND REPORTING, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING. IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS

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NOTICE, A HEARING WILL BE HELD AT THE DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:30 A.M., September 22, 1989.

PLACE: Room 106, 101 East Gaines Street, Tallahassee, Florida.

THE PERSON TO BE CONTACTED REGARDING THESE RULES AND THE ECONOMIC IMPACT STATEMENT IS: Director of Appeals, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399

THE FULL TEXT OF THE RULES IS:

25-14.003 Corporate Income Tax Expense Adjustments.

(1) This rule shall not apply to water and wastewater utilities, as defined in Chapter 367, Florida Statutes.

(2)~~(1)~~ Definitions. For the purposes of this rule, the following definitions shall apply:

(a) "Tax Savings." The difference between the tax expenses for a utility calculated under the previously effective corporate income tax rates and those calculated under newly effective, reduced corporate income tax rates.

(b) "Tax Deficiency." The difference between the tax expenses for a utility calculated under newly effective, higher corporate income tax rates and those calculated under the previously effective corporate income tax rates.

(c) "Associated Revenues." Those revenues resulting from the application of a utility's revenue expansion factor to a tax savings or tax deficiency.

(d) "Previously Effective." Refers to the corporate income tax rate used in a utility's last rate case or show cause

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proceeding, or used in the last tax expense adjustment by the Commission, whichever occurred most recently.

(e) "Tax Rate." The statutory tax rates, both federal and state, applicable to utility income, including any surcharges, minimum taxes, and other adjustments to the basic percentage tax rates.

(f) "Midpoint." The midpoint of the range of return approved by the Commission in the utility's last rate case, adjusted for the cost of any debt issued subsequent to the rate case and prior to the commencement of a tax savings refund or tax deficiency collection.

~~(3)~~ ~~(2)~~ Tax Savings Refunds. In accordance with subsection ~~(6)~~ ~~(5)~~ of this rule and using a calendar year as the basis of the calculation:

(a) When, during the reporting period described in paragraph ~~(6)~~ ~~(5)~~ (a) below, a utility is earning a rate of return which is at or above the midpoint of its authorized range computed without consideration of a tax rate reduction, the utility shall refund all associated revenues as described in paragraph 65 (c).

(b) When, during the reporting period described in paragraph 65 (a) below, a utility is earning a rate of return which is below the midpoint of its authorized range computed without consideration of a tax rate reduction, the utility shall refund only those associated revenues which cause the utility to earn in excess of that midpoint, as described in paragraph 65 (c).

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(4)~~(3)~~ Tax Deficiency Collections. In accordance with subsection (6)~~(5)~~ of this rule and using a calendar year as the basis of the calculation:

(a) When, during the reporting period described in 65(a) below, a utility is earning a rate of return which is at or below the midpoint of its authorized range computed without consideration of a tax rate increase, the utility shall collect all associated revenues, as described in paragraph 65(c).

(b) When, during the reporting period described in 65(a) below, a utility is earning a rate of return which is above the midpoint of its authorized range computed without consideration of a tax rate increase, the utility shall collect only those revenues which cause the utility to earn below that midpoint, as described in paragraph 65(c).

(5)~~(4)~~ Reporting Requirements. Fifteen days after the due date, including authorized extensions, of the annual report, on or before March 1st of every year following a tax rate change, each utility shall furnish a final report, in the form prescribed by the Commission. The report shall cover only the prior calendar year during which the tax rate change was effective.

(6)~~(5)~~ Procedures.

(a) Refunds or collections shall be calculated from the effective date of any tax rate change through the end of the calendar year. If the tax rate change is in effect for only part of a tax year, the refund or collection shall be calculated in

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accordance with the utility's customary accounting treatment as authorized by the federal or state taxing authority for tax rate changes which occur during a tax year.

(b) A further change in the tax rate shall end one period of compliance and initiate a new period but shall not affect any refund or collection already in progress pursuant to this rule.

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

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

(e) The utility may make any refund or collection either as a lump sum payment or billing or in monthly installments not to exceed twelve (12) months. Such refunds or collections shall be made to or from current customers of the utility at the time that

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such refunds or collections are to be effected. In either event, the utility shall refund or collect the amount with interest accruing on any outstanding balance from the date of overcollection or underpayment. Interest shall be set by the Commission.

(f) An electric utility shall determine each customer's share of refund or collection on a kilowatt hour basis. A telephone company shall determine each customer's share of refund or collection based on existing general residence and business local rate relationships. Other utilities shall determine each customer's share of refund or collection based on consumption or any other reasonable basis specified in the utility's petition and approved by the Commission.

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

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

(b) Nothing in this subsection shall be construed as limiting the operation of the tax expense adjustment process under this rule either in completing a tax savings refund or tax deficiency collection for any tax years prior to the year in which a rate

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case or show cause is initiated. It shall also not prohibit a tax savings refund or tax deficiency collection for any tax year or portion thereof ending prior to the final order in a rate case or show cause proceeding.

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

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

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

NAME OF PERSON ORIGINATING PROPOSED RULE: Ann Causseaux.

NAME OF SUPERVISOR OR PERSON(S) WHO APPROVED THE PROPOSED RULES:  
Florida Public Service Commission

DATE PROPOSED RULES APPROVED: 7/11/89.

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.