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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 We would note that even though the Rule is not being repealed, the essence of the ratepayer protections from affiliate transaction abuse through application of a tax effect of parent debt ("Parent Debt Adjustment" or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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s/Charles J. Rehwinkel
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CERTIFICATE OF SERVICE
DOCKET NO. 20230000-OT

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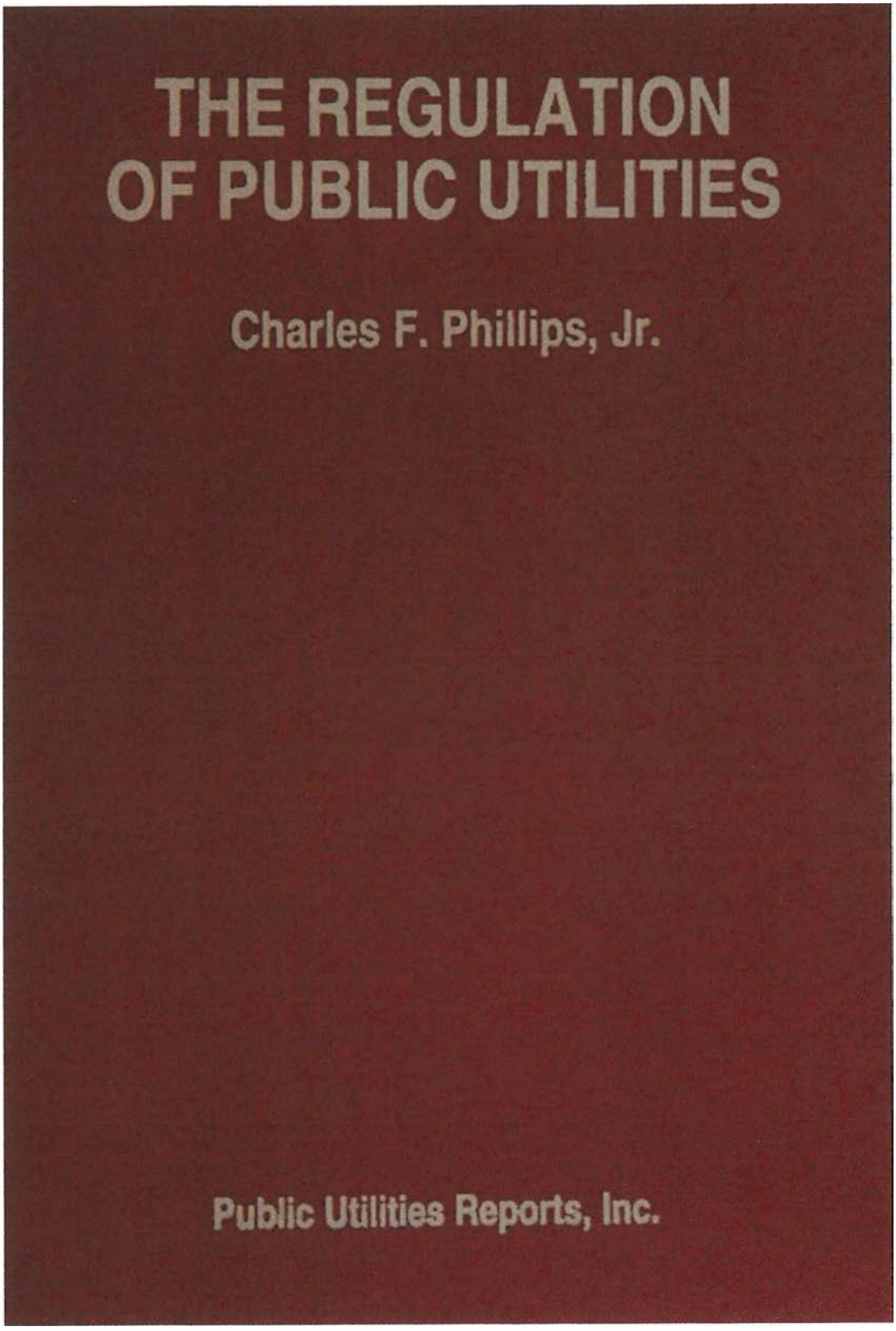
Attachment 1



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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 Company	3,700,000,000
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.		