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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, Florida 32399-0850

**Re: Docket No. 20230000-OT**
**In re: Amendment of Rule 25-14.004, Florida Administrative Code**
**Joint Comments of FPL, FCG, and FPUC**

Dear Mr. Teitzman:

Enclosed for filing in the above-referenced rulemaking to amend Rule 25-14.004, Florida Administrative Code, are the Joint Comments of Florida Power & Light Company, Florida City Gas, and Florida Public Utilities Company. Copies of this filing are being served in accordance with the enclosed certificate of service.

If you or your staff have any question regarding this filing, please contact me at (561) 691-7144.

Respectfully submitted,

*/sChristopher T. Wright*
Christopher T. Wright
Fla. Auth. House Counsel No. 1007055

Enclosures

cc: Certificate of Service
Beth Keating (*counsel for FPUC*)

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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|---|---|
| In re: Amendment of Rule 25-14.004, Florida Administrative Code, Effect of Parent Debt on Federal Corporate Income Tax | Docket No. 20230000-OT<br><br>Submitted: September 26, 2023 |

**JOINT POST-WORKSHOP COMMENTS OF FLORIDA POWER & LIGHT COMPANY, FLORIDA CITY GAS, AND FLORIDA PUBLIC UTILITIES COMPANY**

## I. INTRODUCTION

On June 26, 2023, the Florida Public Service Commission ("Commission") Staff initiated a rulemaking to amend Rule 25-14.004, Florida Administrative Code, to update and clarify the rule. Staff conducted a rulemaking workshop on August 15, 2023, to solicit input and comments from interested parties on the proposed amendments. At the conclusion of the workshop, Staff invited interested parties to submit written comments and any suggested edits. Florida Power & Light Company ("FPL"), Florida City Gas ("FCG"), and Florida Public Utilities Company ("FPUC") (collectively, hereinafter referred to as "FPL/FCG/FPUC") herein submit these Joint Comments regarding the proposed amendment to Rule 25-14.004 for Staff's consideration.

At the outset, FPL/FCG/FPUC collectively thank Staff for their efforts to provide greater guidance and clarity regarding the determination of regulated utilities' federal income tax expense in Commission proceedings to establish revenue requirements or address over-earnings. As explained below, FPL/FCG/FPUC each support Staff's proposed amendments to Rule 25-14.004 and believe the amended rule will better align the treatment of tax detriments/benefits with the Commission's longstanding policy of determining allowable utility taxes on a stand-alone basis, is consistent with the treatment of all other cost of service items set in base rate proceedings, and consistent with current utility ratemaking practices and policies. In these Joint Comments, FPL/FCG/FPUC offer limited suggested modifications to Staff's proposed language to better reflect all components of a utility's total income tax expense. FPL/FCG/FPUC believe these

limited modifications will provide further clarity to all stakeholders and reduce the potential for future disagreements regarding the determination of a utility's income tax expense in base rate proceedings.[1]

## II. COMMENTS TO PROPOSED AMENDMENT TO RULE 25-14.004

### A. FPL/FCG/FPUC Support Staff's Proposed Amendments

Rule 25-14.004 currently provides that in Commission proceedings to establish revenue requirements "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." As this Commission has previously noted, "[o]n its face, the Parent Debt Adjustment Rule is inconsistent with our long-standing practice of determining allowable utility taxes on a stand-alone basis." *In re: Petition for increase in rates by Gulf Power Company*, Order No. PSC-12-0179-FOF-EI in Docket No. 110138-EI, 2012 Fla. PUC LEXIS 233, *295 (FPSC Apr. 3, 2012). To that end, Staff's proposed amendment to Rule 25-14.004 would make it clear that a utility's income tax expense should be determined on a stand-alone basis consistent with the utility's jurisdictional cost of service. For the reasons explained below, FPL/FCG/FPUC support this proposed amendment subject to a few minor modifications discussed below in Section II.B of these Joint Comments.

In an effort to argue that the parent debt adjustment does not violate this Commission's policy to calculate a utility's income tax expense on a stand-alone basis, certain stakeholders may

[1] During the August 15, 2023 rulemaking workshop, counsel for the Office of Public Counsel ("OPC") made prepared remarks in opposition to Staff's proposed amendments to Rule 25-14.004 and requested that no changes to the Rule be made. Although FPL/FCG/FPUC cannot fully anticipate the positions and arguments that OPC may submit with its written comments, FPL/FCG/FPUC will nonetheless attempt to briefly respond herein to certain remarks and positions made by OPC during the rulemaking workshop. For the reasons explained below, FPL/FCG/FPUC submit that OPC's positions and issues should be rejected.

assert that the parent debt adjustment required by current Rule 25-14.004 is not a consolidated tax adjustment. Such arguments are a red herring that completely disregard the effect of applying the parent debt adjustment to a regulated utility that participates in a consolidated tax return.

If a parent company and utility subsidiary file a consolidated tax return and the parent company uses debt to invest in the utility, the interest expense on the parent's debt creates a tax benefit or savings (*i.e.*, reduces the tax liability) on the consolidated tax return. Under the current Rule 25-14.004, an adjustment is made to impute this tax benefit realized in the consolidated tax return to the regulated utility, which has the effect of reducing the level of revenue authorized for recovery of the utility's income tax expense below the actual income tax expense reflected in the utility's income statement. In short, the parent debt adjustment required by current Rule 25-14.004 is a limited or partial consolidated tax adjustment that flows through a single consolidated tax benefit realized in a consolidated tax return to reduce the utility's authorized income tax expense.

In Florida, one of the earliest consolidated tax adjustments to recognize the tax effect of consolidated interest expense was made in a 1975 case involving Southern Bell Telephone and Telegraph Company, a subsidiary of AT&T. *See In re: Petition of Southern Bell Telephone and Telegraph Company for consent to place into effect certain rate schedules*, Order No. 7018 in Docket No. 74805-TP, 2 P.U.R.4th 252, 1975 Fla. PUC LEXIS 31 (FPSC Dec. 4, 1975). In *Southern Bell*, the Commission made an adjustment to the utility's tax expense to recognize the tax effect of consolidated debt because the Commission used the consolidated capital structure to determine the utility's revenue requirements. The Commission reasoned that the "generally accepted accounting principle of consistency and conformity necessitates that the tax effect of AT&T debt be recognized in determining the revenue requirements of the Company." *Id*. at 1975 Fla. PUC LEXIS 31, *25.

Subsequently, in *Citizens of Fla. v. Hawkins*, 356 So. 2d 254 (Fla. 1978), the Florida Supreme Court cautioned against the strict application of the rule of consistency. Although the

Commission used a non-consolidated subsidiary (*i.e.*, stand-alone) approach for determining the utility's cost of capital, the Court held that approach does not automatically dictate the use of the same approach for tax effect calculations. *Id*. at 259. Rather, the Court concluded that each determination must be based on specific independent findings supported by substantial evidence. *Id*. Because there was no such independent finding with respect to the utility's tax expense and the only evidence in the record supported the consolidated approach, the Court remanded the case to the Commission to calculate the tax expense using a consolidated tax adjustment approach. *Id.* at 259-60.[2] Notably, however, 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 record evidence.

Thereafter, Rule 25-14.004[3] was adopted in 1982. This rulemaking was challenged on appeal in *Gen. Tel. Co. v. Fla. Pub. Serv. Com.*, 446 So. 2d 1063 (Fla. 1984). The Court upheld the adoption of Rule 25-14.004 finding:

> [T]hat the rule adopted by the PSC is neither arbitrary or capricious. The rule represents a valid implementation of a PSC policy choice regarding the treatment of a utility's income tax expense during ratemaking. Testimony put forth during the section 120.54(3) hearing shows that there is no single correct method of dealing with the income tax expense of a subsidiary-utility joining in the filing of a consolidated return. By choosing this particular method, the PSC is merely acting within the scope of its discretion. It is clear that this Court will not substitute its judgment for that of the PSC on a discretionary decision.

*Id*. at 1067 (emphasis added, citation omitted). Thus, the Court held that (i) the parent debt adjustment is not the only correct method for determining a utility's income tax expense and (ii)

[2] During the August 15, 2023 rulemaking workshop, OPC stated that *Hawkins* endorsed the concept recognizing that regulated subsidiary tax-deductible debt may cause customers to overpay on the income tax component embedded in their rates. However, a review of the decision in *Hawkins* reveals that the Court made no such finding. In fact, the only discussion about overcharges to customers was a summary of the arguments made by OPC in support of adopting a consolidated adjustment approach to calculate the utility's income tax expense. *Id*. at 259. The Court, however, did not address this argument or make any such findings.

[3] Formerly Rule 25-14.04, Florida Administrative Code.

the limited consolidated tax adjustment adopted in Rule 25-14.004 was a discretionary policy choice for the Commission. The Court explained, however, that "the [Commission] 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.

During its comments at the rulemaking workshop, OPC relied heavily on both the *Hawkins* and *Gen. Tel.* cases to argue that the Florida Supreme Court "strongly intimated" that the parent debt adjustment in current Rule 25-14.004 "was required as an element of ratemaking in the state of Florida." OPC's statement, however, relies on what is clearly dicta in the *Gen. Tel.* case.[4] Indeed, nowhere in either case does the Court state or imply that the parent debt adjustment is a ratemaking requirement in Florida. Rather, these two cases together stand for the proposition that the method for calculating a utility's income tax expense is a discretionary policy decision for the Commission, and that any such calculation must be based on competent substantial evidence of record.

During the rulemaking workshop, OPC also noted that, in upholding the adoption of the parent debt adjustment, the Court in *Gen. Tel.* noted that "[s]imilar approaches for determining, in ratemaking, the proper allocation of income tax expense for a utility joining in the filing of a consolidated return have been adopted in at least eighteen jurisdictions … and by the Federal Energy Regulatory Commission." *Id.* at 1069 (citations omitted). Although this may have been accurate in 1984, it appears the overall regulatory and ratemaking environment has since shifted

[4] OPC relied on the Court's statements in *Gen. Tel.* that once a consolidated return is filed, the "participating entity loses any independent significance outside of the consolidated liability," and "[n]o longer is it realistic to treat transactions between parent and subsidiary as transactions between separate entities." *Id.* at 1068-69. FPL/FCG/FPUC submit this language is dicta because it directly conflicts with the Court's findings that the parent debt adjustment is not the only correct method and the appropriate tax adjustment method is a discretionary policy decision for the Commission. *Id.* at 1067. Furthermore, this referenced language implies that comprehensive consolidated tax adjustments, not just the parent debt adjustment, are required to determine a utility's income tax expense if it joins in a consolidated tax return. Clearly, this is a nonsensical result that is inconsistent with the well-accepted stand-alone method for determining a utility's income tax expense, which further demonstrates that this referenced language is dicta.

away from applying consolidated tax adjustments to determine a utility's tax expense. Instead, the overwhelming majority of jurisdictions, including the Federal Energy Regulatory Commission ("FERC"), currently calculate a utility's income tax expense on a stand-alone basis as summarized below.

In *Federal Power Commission v. United Gas Pipeline*, 386 U.S. 237 (1967), the Court certified the use of the actual taxes paid method of ratemaking. The actual taxes paid approach is a flow-through method of accounting that merely passes along the actual expenditures of the company through a consolidated tax adjustment. Following the *United Gas* case, many states likewise concluded that consolidated tax adjustments should be employed in ratemaking.[5] That holding, however, was never universally accepted and has largely been abandoned by most jurisdictions.

In the early 1970s, FERC (formerly the Federal Power Commission) opposed *United Gas* and adopted the position that stand-alone accounting should be used to determine income tax expense. *Florida Gas Transmission Co.*, 47 F.P.C. 341, 360-64, 1972 FPC LEXIS 1, at *45-55, 1972 WL 138090, at *16-19 (FPC Feb. 16, 1972). The reasoning in *Florida Gas* was reaffirmed by *Southern California Edison Co.*, 59 F.P.C. 2167, 2172-74, 23 P.U.R.4th 44, 1977 FPC LEXIS 67, at *15-19, 1977 WL 205337, at *4-7 (FPC Sep. 22, 1977). Further, in 1985, Judge Antonin Scalia rejected a challenge that claimed the stand-alone methodology was unlawful, concluding that it was within the regulator's authority to require the stand-alone approach. *City of*

[5] *See, e.g.*, *Chesapeake & Potomac Tel. & Tel. Co. v. Public Serv. Comm'n*, 187 A.2d 475 (Md. 1963); *United Inter-Mountain Tel. Co. v. Public Serv. Comm'n*, 55 S.W.2d 389 (Tenn. 1977); *Arizona Dept. of Revenue v. Transamerica Title Ins. Co.*, 604 P.2d 1128 (Ariz. 1979); *In re Lambertville*, 378 A.2d 1158 (Super. Ct. App. Div. 1977), *reversed in part on other grounds*, 401 A.2d 211 (N.J. 1979); *Michaelson v. New England Tel. & Tel. Co.*, 404 A.2d 799 (R.I. 1979); and *Pennsylvania Public Utility Commission v West Penn Power Company*, Docket No. R-78100685, 53 Pa. PUC 410, 32 Pub. Util. Rep. 4th (PUR) 245, 1979 Pa. PUC LEXIS 37 (Pa. PUC Aug. 27, 1979).

*Charlottesville v. FERC*, 774 F.2d 1205, 1213, 1221 (D.C. Cir. 1985), *cert. denied*, 475 U.S. 1108 (1986).[6]

Under FERC's stand-alone methodology, "a regulated entity's income tax allowance is based on the income and deductions specifically attributable to the regulated entity's jurisdictional cost of service and the income tax allowance does not incorporate potentially offsetting losses and deductions of the parent owner not reflected in the regulated entity's jurisdictional cost of service." *Trailblazer Pipeline Co. LLC*, 166 F.E.R.C. P61141, 61674, 2019 FERC LEXIS 216, at *41, 2019 WL 830962, at *10 (FERC Feb. 21, 2019) (citing *City of Charlottesville*, at 1207-1208). Ratepayers should only benefit from tax savings if they also bear the burden of the expenses that generate these savings. *See Southern California Edison Co.*, at 2174, 1977 FPC LEXIS 67, at *20, 1977 WL 205337, at *7 (holding that where a utility's customers did not pay for the expense leading to the tax savings, they were not entitled to a rate reduction based on those savings).

Research indicates that the overwhelming majority of regulatory jurisdictions have shifted away from consolidated tax adjustments and adopted the stand-alone approach to determine a regulated utility's income tax expense. FPL/FCG/FPUC are aware of only two remaining regulatory jurisdictions that continue to require comprehensive consolidated tax adjustments when

[6] During the rulemaking workshop, OPC relied on the fact that the Internal Revenue Service ("IRS") proposed and subsequently withdrew regulations in 1991 that, if adopted, would require a utility's ratemaking tax expense to be determined on a stand-alone basis in order to comply with the normalization requirements. *See Notice of Proposed Rulemaking and Notice of Public Hearing*, 55 Fed. Reg. 49,294 (Nov. 27, 1990); *Withdrawal of Notice of Proposed Rulemaking*, 56 Fed. Reg. 19,825 (Apr. 30, 1991). OPC appeared to imply that because these proposed regulations requiring the stand-alone approach were withdrawn and Congress failed to take any action, this somehow means the parent debt adjustment is required. However, the absence of an IRS regulation or action by Congress requiring the stand-alone approach does not somehow create binding authority requiring consolidated tax adjustments, such as the parent debt adjustment.

determining a utility's income tax expense: New Jersey[7] and West Virginia.[8] In Florida, however, this Commission has explained "that the income tax expense of the utility should continue to be calculated as if the utility were a stand-alone company." *In re: Application for a wastewater rate increase for the North Fort Myers division in Lee County by Florida Cities Water Company*, Order No. PSC-92-0594-FOF-SU in Docket No. 910756-SU, 1992 Fla. PUC LEXIS 1078 (FPSC July 1, 1992). The Commission's stand-alone- treatment is consistent with general tenets of ratemaking. *See* Charles F. Phillips, Jr., The Regulation of Public Utilities 288-89 (3rd ed. 1993) (stating that the stand-alone theory provides for the computation of the income tax expense component of the cost of service as if the subsidiaries had filed separate federal income tax returns).

Notwithstanding the foregoing, the current Rule 25-14.004 continues to apply a limited consolidated tax adjustment to impute the tax savings realized in a consolidated tax return from the interest expense on a parent's debt to the regulated utility.[9] This limited consolidated tax adjustment is entirely inconsistent with this Commission's practice, as well the vast majority of the regulatory jurisdictions, to determine a utility's income tax expense on a standalone basis.[10] Indeed, as this Commission has recently explained, "[r]ecovery of a tax detriment or benefit by a

[7] The use of consolidated tax adjustments in New Jersey has been the subject of on-going rulemaking proceedings and litigation for the past several years. *See, e.g., In re Adopted Amendment to N.J.A.C. 14:1-5.12 Tariff Filings Or Petitions Which Propose Increases in Charges to Customers*, No. A-3621-18, 2021 N.J. Super. Unpub. LEXIS 1075, at *2 (Super. Ct. App. Div. June 7, 2021) (reversing proposed rulemaking and remanding back to the New Jersey Board of Public Utilities).

[8] On June 11, 2016, Pennsylvania enacted House Bill 1436, which prohibits the use of consolidated tax savings adjustments in public utility ratemaking. West Virginia has proposed, but not adopted, multiple bills to exclude from a utility's total income tax costs any consolidated tax liability or benefit adjustments originating from any taxable income or loss of its parent or its affiliates. *See, e.g.*, 2020 Bill Text WV H.B. 2722; 2019 Bill Text WV H.B. 2722; 2009 Bill Text WV S.B. 665.

[9] To the knowledge of FPL/FCG/FPUC, Indiana also applies a limited consolidated tax adjustment for a parent's interest expense. *See, e.g., Re Muncie Water Works Company*, Cause No. 34571, Indiana Public Service Commission, 44 PUR 4th 331 (1981).

[10] In fact, shortly after Rule 25-14.004 was adopted, Commission Staff recommended repealing it in Docket No. 870386. In response, the Commission simply stated that "[w]e do not wish to revisit the rule at this time." *See* Commission Order No. 20206 in Docket No. 870386. Although the Commission elected not to revisit rule in 1987, the reasoning and support for Staff's recommended repeal of the parent debt adjustments remains just as valid today.

regulated company on behalf of its parent company is inconsistent with current regulatory practice to align income tax expense on a stand-alone basis." *In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Florida Public Utilities Company - Indiantown Division*, Order No. PSC-2019-0077-FOF-GU in Docket No. 20180052-GU, 2019 Fla. PUC LEXIS 74 (FPSC Feb. 25, 2019).[11]

The purpose of the 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 deduction in a consistent manner. As FERC has explained, when an expense is not included in a utility's cost of service because the utility did not incur that expense in providing service (*e.g.*, such as interest expense on a parent's debt), the deduction created by that expense is not allocated to the ratepayers. *SFPP, L.P.*, 150 F.E.R.C. P61,097, 61656-57, 2015 FERC LEXIS 210, *19-20 (FERC Feb. 19, 2014). The parent debt adjustment under the current Rule 25-14.004 does just the opposite – the tax deduction associated with the parent company's debt is imputed to the benefit of customers even though customers are not obligated to pay rates reflecting the interest expense on the parent's debt in rates.

Further, the parent debt adjustment included in current Rule 25-14.004 is inconsistent with the regulatory treatment of the other cost of service items set during a ratemaking proceeding. Applying the parent debt adjustment results in the amount of debt used to determine the utility's capital structure being different than the amount of debt used to determine the utility's interest expense. Although Commission practice is to reconcile the amount of interest expense allowed in rates to the amount of debt in the capital structure, the parent debt adjustment under Rule 25-14.004

[11] *See also In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Florida Public Utilities Company - Fort Meade Division*, Order No. PSC-2019-0079-FOF-GU, Docket No. 20180053-GU, 2019 Fla. PUC LEXIS 75 (FPSC Feb. 25, 2019) (same); *In re: Petition for increase in rates by Gulf Power Company*, Order No. PSC-12-0179-FOF-EI in Docket No. 110138-EI, 2012 Fla. PUC LEXIS 233, *295 (FPSC Apr. 3, 2012) ("long-standing practice of determining allowable utility taxes on a stand-alone basis").

results in a different amount of interest expense being used to determine interest expense for tax purposes for a regulated utility on a stand-alone basis.

In opposition to Staff's proposed amendments to Rule 25-14.004, OPC argued at the rulemaking workshop that the elimination of the parent debt adjustment would guarantee an increased return for shareholders of the parent.[12] The flaw with this argument is that it completely ignores the effect of the parent debt adjustment included in current Rule 25-14.004 – that it reduces the utility's ability to earn its allowed rate of return because the level of revenue authorized for recovery of the utility's income tax expense is below the actual income tax expense reflected in the utility's income statement. The true effect of the current parent debt adjustment is an indirect reduction of a utility's equity return, not a correction of income tax expense.

At the rulemaking workshop, OPC characterized Staff's proposed amendment to Rule 25-14.004 as a proposal to increase rates. FPL/FCG/FPUC disagree with OPC's characterization. The parent debt adjustment reduces the utility's ability to earn its allowed rate of return as explained above. Such an outcome may result in utilities underearning and needing to file more frequent and costly base rate increases, which will further increase rates paid by customers. To mitigate this costly and time-consuming potential, rates should reflect the taxes associated with only the items that are included in the cost of service and net operating income directly attributable to them. Accordingly, the parent debt adjustment under current Rule 25-14.004 should be removed and the utility's income tax expense should be determined on a stand-alone basis consistent with the utility's jurisdictional cost of service as proposed by Staff's amendment.

FPL/FCG/FPUC also submit that Florida's application of the parent debt adjustment under current Rule 25-14.004 is not only an outlier, but also entirely unnecessary. All parties to base rate

[12] OPC's argument overlooks that if consolidated tax adjustments, such as the parent debt adjustment, are allowed, the tax benefits realized in a consolidated return would be taken away from public utility shareholders. Such tax benefits provide a financial incentive for shareholders to invest capital in new, clean technologies that provide federal tax benefits that are passed through to retail customers.

cases before the Commission have the opportunity to provide expert testimony and analyses regarding the appropriate level of income tax expense, capital structure, and rate of return. The Commission can approve any adjustments necessary and appropriate, based on the specific evidence of record, without applying a partial consolidated tax adjustment that is entirely at odds with Commission's long-standing policy of determining a utility's income tax expense on a stand-alone basis.[13]

As the Florida Supreme Court held in *Gen. Tel.*, *supra*, there is no single correct method for determining a utility's income tax expense and that determination is a discretionary policy decision for the Commission, including whether to continue the parent debt adjustment or adopt Staff's proposed amendment. For the reasons discussed above, FPL/FCG/FPUC support Staff's proposal to amend Rule 25-14.004 to better align the treatment of tax detriments/benefits with the Commission's longstanding policy of determining allowable utility taxes on a stand-alone basis consistent with the utility's jurisdictional cost of service, and better align with the currently accepted ratemaking practices and policies throughout the country. Although FPL/FCG/FPUC agree with and support Staff's proposed amendments, FPL/FCG/FPUC hereby offer limited suggested modifications to Staff's language in the section below to provide further clarity and guidance.

[13] During the rulemaking workshop, counsel for the OPC claimed that "[i]n the era of when the Commission was more directly engaged in comprehensive detailed scrubbing of costs that customers of monopolies required to bear, tax effect of parent debt adjustment was born." FPL/FCG/FPUC vehemently disagree with OPC's implication that the Commission no longer undertakes detailed comprehensive reviews of utility costs proposed to be recovered in rates. FPL/FCG/FPUC submit that the Commission appropriately and thoroughly reviews all utility rate requests based on the evidence of record and in full accordance with the requirements of Chapters 120 and 366 of the Florida Statutes. Further, any suggestion that adoption of Staff's recommended changes to Rule 25-14.004 would somehow reduce the Commission's oversight of utility costs is unsupported and ignores that Staff's proposed amendment will better align the treatment of tax detriments/benefits with the utility's jurisdictional cost of service actually recovered in rates.

**B. FPL/FCG/FPUC Proposed Modifications**

As explained above, FPL/FCG/FPUC agree with and support Staff's proposed amendments to Rule 25-14.004. However, FPL/FCG/FPUC have some concerns with the proposed use of the term "net income." Specifically, FPL/FCG/FPUC are concerned that, without more, this term as used in Staff's proposed language would not appropriately capture total taxable income and income tax expense, such as deferred income tax expense or applicable tax credits.

To avoid ambiguity and reduce the potential for future disagreements on the meaning and intent of amended Rule, FPL/FCG/FPUC propose that Staff's amended language in Rule 25-14.004 be revised as follows:

> 25-14.004 Determination of ~~Federal~~ Total Corporate Income Tax Expense.
>
> In Commission proceedings to establish revenue requirements or address over-earnings, the ~~federal~~ income tax expense of a regulated utility must be determined using only the income of the regulated utility regardless of any parent-subsidiary relationship that may exist~~s~~. The regulated utility's stand-alone ~~federal~~ income tax expense will be calculated as follows:
>
> (1) State corporate current income taxes will be determined by multiplying the regulated utility's ~~net~~ state taxable income before state and federal income taxes by Florida's corporate income tax rate plus or minus any applicable tax adjustments or credits in accordance with applicable state income tax laws and regulations.
>
> (2) The state corporate current income taxes as calculated above will then be deducted from the regulated utility's ~~net~~ federal taxable income before income taxes to yield the ~~net~~ federal taxable income after state income taxes.
>
> (3) The ~~net~~ federal taxable income after state current income taxes as calculated above will then be multiplied by the federal corporate income tax rate, plus or minus any applicable tax adjustments or credits in accordance with applicable federal income tax laws and regulations, to yield the federal corporate current income tax for the regulated utility.
>
> (4) Federal and state deferred income tax expenses for the regulated utility will be determined based on the applicable temporary adjustments to taxable income multiplied by the federal and state corporate income tax rates, respectively, plus or minus any

applicable tax adjustments or credits in accordance with applicable federal and state income tax laws and regulations.

(5) Total income tax expense for the regulated utility will be determined by adding the amounts determined in subsections (1), (3), and (4).

FPL/FCG/FPUC believe these proposed modifications to Staff's amended language in Rule 25-14.004 are necessary and appropriate to reflect all components of total income tax expense for a regulated utility on a stand-alone basis. Therefore, FPL/FCG/FPUC recommend including these proposed modifications to properly state how total income tax expense should be determined.

Provided in Appendix A to these Joint Comments is a type and strike version to Staff's proposed Rule 25-14.004 that incorporates the limited modifications proposed by FPL/FCG/FPUC. For completeness, provided in Appendix B is type and strike version of Rule 25-14.004 that incorporates both Staff's and the FPL/FCG/FPUC proposed changes to the current version of the Rule, and provided in Appendix C is a clean version of Rule 25-14.004 that incorporates the changes recommended by both Staff and FPL/FCG/FPUC.

## III. CONCLUSION

As stated above, FPL/FCG/FPUC support Staff's proposal to amend Rule 25-14.004 to better align the treatment of tax detriments/benefits with the Commission's longstanding policy of determining allowable utility taxes on a stand-alone basis consistent with the utility's jurisdictional cost of service, and better align with the currently accepted ratemaking practices and policies throughout the country. FPL/FCG/FPUC herein offer certain limited modifications to Staff's proposed language to better reflect the utility companies' total income tax expense. As discussed in the foregoing Joint Comments, FPL/FCG/FPUC believe that their proposed modifications will provide further clarity to all stakeholders and reduce the potential for future disagreements regarding the determination of regulated utilities' income tax expense in Commission proceedings to establish revenue requirements or address over-earnings. Accordingly, FPL/FCG/FPUC

respectfully request that Staff revise the proposed amendments to Rule 25-14.004 consistent with these Joint Comments and Appendices A through C.

Again, FPL/FCG/FPUC thank Commission Staff for its efforts to provide greater guidance and clarity regarding the determination of regulated utilities' total income tax expense and appreciate the opportunity to comment on the proposed amendments to Rule 25-14.004, Florida Administrative Code.

Respectfully submitted this 26th day of September 2023,


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*Attorney for Florida Public Utilities Company*

# APPENDIX A

## Redline Version of the FPL/FCG/FPUC Proposed Modifications to Staff's Proposed Amendments to Rule 25-14.004, Florida Administrative Code

(*Mark against clean version of Staff's proposed amendment*)

**25-14.004 Determination of ~~Federal~~ Total Corporate Income Tax Expense.**

In Commission proceedings to establish revenue requirements or address over-earnings, the ~~federal~~ income tax expense of a regulated utility must be determined using only the income of the regulated utility regardless of any parent-subsidiary relationship that may exist~~s~~. The regulated utility's stand-alone ~~federal~~ income tax expense will be calculated as follows:

(1) State corporate current income taxes will be determined by multiplying the regulated utility's ~~net~~ state taxable income before state and federal income taxes by Florida's corporate income tax rate plus or minus any applicable tax adjustments or credits in accordance with applicable state income tax laws and regulations.

(2) The state corporate current income taxes as calculated above will then be deducted from the regulated utility's ~~net~~ federal taxable income before income taxes to yield the ~~net~~ federal taxable income after state income taxes.

(3) The ~~net~~ federal taxable income after state current income taxes as calculated above will then be multiplied by the federal corporate income tax rate, plus or minus any applicable tax adjustments or credits in accordance with applicable federal income tax laws and regulations, to yield the federal corporate current income tax for the regulated utility.

(4) Federal and state deferred income tax expenses for the regulated utility will be determined based on the applicable temporary adjustments to taxable income multiplied by the federal and state corporate income tax rates, respectively, plus or minus any applicable tax adjustments or credits in accordance with applicable federal and state income tax laws and regulations.

(5) Total income tax expense for the regulated utility will be determined by adding the amounts determined in subsections (1), (3), and (4).

*Rulemaking Authority 350.127(2) FS. Law Implemented 366.05(1), 367.121(1)(a) FS. History–New 1-25-83, Formerly 25-14.04.*

# APPENDIX B

## Type and Strike Version of Staff's and the FPL/FCG/FPUC Proposed Modifications to Rule 25-14.004, Florida Administrative Code

(*Staff and FPL/FCG/FPUC combined changes against current Rule*)

**25-14.004 Determination of ~~Effect of Parent Debt~~ Total Corporate Income Tax Expense.**

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 utility ~~company~~ must ~~shall~~ be determined using only the income of the regulated utility regardless of any ~~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 that may exist~~s. and the parties to the relationship join in the filing of a consolidated income tax return.~~ The regulated utility's stand-alone income tax expense will be calculated as follows:

(1) State corporate current income taxes will be determined by multiplying the regulated utility's state taxable income before state and federal income taxes by Florida's corporate income tax rate plus or minus any applicable tax adjustments or credits in accordance with applicable state income tax laws and regulations. ~~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) The state corporate current income taxes as calculated above will then be deducted from the regulated utility's federal taxable income before income taxes to yield the federal taxable income after state income taxes. ~~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 federal taxable income after state current income taxes as calculated above will then be multiplied by the federal corporate income tax rate, plus or minus any applicable tax adjustments or credits in accordance with applicable federal income tax laws and regulations, to yield the federal corporate current income tax for the regulated utility. ~~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) Federal and state deferred income tax expenses for the regulated utility will be determined based on the applicable temporary adjustments to taxable income multiplied by the federal and state corporate income tax rates, respectively, plus or minus any applicable tax adjustments or credits in accordance with applicable federal and state income tax laws and regulations. ~~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.~~

(5) Total income tax expense for the regulated utility will be determined by adding the amounts determined in subsections (1), (3), and (4).

*Rulemaking Authority 350.127(2) FS. Law Implemented 366.05(1), 367.121(1)(a) FS. History–New 1-25-83, Formerly 25-14.04.*

# APPENDIX C

## Clean Version of Staff's and the FPL/FCG/FPUC Proposed Modifications to Rule 25-14.004, Florida Administrative Code

(*Includes both Staff's and the FPL/FCG/FPUC proposed changes*)

**25-14.004 Determination of Total Corporate Income Tax Expense.**

In Commission proceedings to establish revenue requirements or address over-earnings, the income tax expense of a regulated utility must be determined using only the income of the regulated utility regardless of any parent-subsidiary relationship that may exists. The regulated utility's stand-alone income tax expense will be calculated as follows:

(1) State corporate current income taxes will be determined by multiplying the regulated utility's state taxable income before state and federal income taxes by Florida's corporate income tax rate plus or minus any applicable tax adjustments or credits in accordance with applicable state income tax laws and regulations.

(2) The state corporate current income taxes as calculated above will then be deducted from the regulated utility's federal taxable income before income taxes to yield the federal taxable income after state income taxes.

(3) The federal taxable income after state current income taxes as calculated above will then be multiplied by the federal corporate income tax rate, plus or minus any applicable tax adjustments or credits in accordance with applicable federal income tax laws and regulations, to yield the federal corporate current income tax for the regulated utility.

(4) Federal and state deferred income tax expenses for the regulated utility will be determined based on the applicable temporary adjustments to taxable income multiplied by the federal and state corporate income tax rates, respectively, plus or minus any applicable tax adjustments or credits in accordance with applicable federal and state income tax laws and regulations.

(5) Total income tax expense for the regulated utility will be determined by adding the amounts determined in (1), (3), and (4).

*Rulemaking Authority 350.127(2) FS. Law Implemented 366.05(1), 367.121(1)(a) FS. History–New 1-25-83, Formerly 25-14.04.*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic delivery on the following individuals on this 26th day of September 2023:

| | |
|---|---|
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