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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Amendment of Rule 25-14.004, F.A.C., Effect of Parent Debt on Federal Corporate Income Tax	Docket No. 20240019-PU Submitted: June 8, 2026

POST-WORKSHOP COMMENTS OF
FLORIDA POWER & LIGHT COMPANY

I. INTRODUCTION

Florida Power & Light Company ("FPL") submits these Post-Workshop Comments in support of the Florida Public Service Commission ("Commission") Staff's proposal to amend Rule 25-14.004, Florida Administrative Code, to update and clarify the rule. Staff conducted a rulemaking workshop on August 15, 2023, and interested parties, including FPL, submitted written comments and suggested edits to Rule 25-14.004. Subsequently, the Commission deferred consideration of the proposed amendment to gather additional information and conduct further analysis. On April 8, 2026, Staff noticed a Commission rule development workshop, which was held on April 22, 2026. At the conclusion of the rule development workshop, the Commission invited interested parties to submit comments, including the bill impact of Staff's proposed amendment to Rule 25-14.004.

Although the current Parent Debt Adjustment ("PDA") in Rule 25-14.004 does not apply to FPL, FPL supports Staff's proposed amendment because it reflects sound ratemaking policy. Staff's proposed amendment would align tax detriments and benefits with the Commission's longstanding stand-alone treatment of allowable utility taxes, make income tax expense consistent with other cost-of-service components established in base rate proceedings, and conform Florida's rule to current ratemaking principles.

At the April 22, 2026 rule development workshop, Office of Public Counsel ("OPC") and Florida Rising argued that Staff's proposed amendment should be rejected because the current PDA lowers rates for some customers, has existed for decades, and should be preserved as a consumer-protection measure.[1] Those arguments do not address the central ratemaking issue presented by this rulemaking. An adjustment that may have a downward impact on rates for some utilities in future base rate proceedings is not self-justifying merely because it reduces rates. The question is whether the adjustment produces lawful, cost-based rates. The PDA does not. It reduces utility income tax expense for ratemaking purposes based on the imputation of a parent-level interest deduction while excluding the corresponding parent-level interest expense from the utility's jurisdictional cost of service. Staff's proposed amendment properly eliminates that mismatch and aligns Rule 25-14.004 with stand-alone cost of service based ratemaking.

II. COMMENTS TO PROPOSED AMENDMENT TO RULE 25-14.004

A. FPL SUPPORTS STAFF'S PROPOSED AMENDMENTS

1. The Commission Has Broad Discretion to Amend Rule 25-14.004 and Is Not Required to Retain the PDA

The Commission's statutory duty is to fix fair, just, reasonable, and compensatory rates. Section 366.06(1), Florida Statutes, provides that the Commission has authority to "determine and fix fair, just, and reasonable rates" for public utility service. Section 366.041(1), Florida Statutes, further authorizes the Commission, in fixing just, reasonable, and compensatory rates, to consider, among other things, the cost of providing service, the value of the service to the public, the utility's ability to improve service and facilities, and the adequacy of facilities and services; provided that

[1] The PDA is not a customer-protection device; it is a mandatory cost-of-service mismatch. It reduces utility income tax expense based on a parent-level expense that customers do not pay in rates. That is precisely the kind of asymmetry Staff's proposed amendment properly eliminates.

"no public utility shall be denied a reasonable rate of return upon its rate base." §§ 366.041(1), 366.06(1), Fla. Stat.

Those statutes do not require the Commission to retain any particular formula for determining income tax expense. Rather, they charge the Commission with determining a revenue requirement that reflects cost-based, reasonable, and compensatory rates. The Florida Supreme Court has likewise recognized that the Commission is not bound to any single formula for calculating cost-of-service expenses. In *General Telephone Company of Florida v. Fla. Pub. Serv. Comm'n*, 446 So. 2d 1063, 1067 (Fla. 1984), the Court upheld Rule 25-14.004 as a permissible exercise of Commission discretion, but expressly held 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." The Court further explained 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. Accordingly, *General Telephone* does not require the Commission to retain the current PDA. It holds only that the PDA was permissible when adopted. It does not hold that the PDA is required, preferred, or immune from later rulemaking.

Nor does *Citizens of State of Fla. v. Hawkins*, 356 So. 2d 254 (Fla. 1978), require retention of the PDA. In *Hawkins*, the Court held that use of a nonconsolidated capital-structure approach did not automatically dictate the approach for calculating tax expense. *Id*. at 259. *Hawkins* required the Commission's tax treatment in that adjudicatory proceeding to be supported by case-specific findings. *Id*. at 259-60. Because the record in that case supported the consolidated tax adjustment approach, the Court remanded for use of that approach on that record. It did not require the Commission to retain a consolidated tax adjustment by rule, nor did it constrain the Commission's authority to make a prospective policy determination through rulemaking.

OPC's reliance on language in *General Telephone* and *Hawkins* is misplaced. Together, *Hawkins* and *General Telephone* establish that the treatment of a utility's income tax expense is a Commission policy determination that must be reasoned and supported. Staff's proposed amendment is consistent with that directive because it would establish a clear rule of general applicability, grounded in the Commission's current policy judgment that income tax expense should be determined on a stand-alone basis.

Florida Rising similarly acknowledged at the workshop that *General Telephone* and *Hawkins* do not appear to procedurally bar the Commission from amending the rule, while nevertheless arguing that those cases support retaining the existing PDA. That position confirms the dispositive legal point: the Florida Supreme Court cases do not compel the Commission to retain the PDA. At most, they show that the current rule was within the Commission's discretion when adopted in 1982. Those cases do not prevent the Commission from concluding, based on the current record, that income tax expense should be calculated on a stand-alone basis going forward.

Nor does the age of the current PDA transform it into a required ratemaking principle. OPC and Florida Rising have emphasized that the PDA has existed for decades and has been upheld by the Florida Supreme Court. But a rule's longevity does not eliminate the Commission's authority to revisit it when the Commission determines that a different approach better reflects current ratemaking policy and cost-of-service principles. Indeed, although *General Telephone* (a 1984 decision) upheld the PDA as a permissible exercise of Commission discretion, it did not hold that the PDA is the only permissible approach, the best approach, or an approach that cannot be reevaluated by the Commission with the passage of time. *See* 446 So. 2d at 1067-68.

Accordingly, the relevant question is not whether the PDA was lawful when adopted. The relevant question is whether the Commission should continue to require a mechanical adjustment that reduces utility income tax expense based on parent-level interest expense that is not included in the utility's jurisdictional cost of service. *Hawkins* and *General Telephone* leave that policy determination to the Commission, provided the Commission acts within its statutory authority and based on a reasoned rulemaking record.

2. The Current PDA Is a Limited Consolidated Tax Adjustment That Conflicts with Stand-Alone Ratemaking

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." Fla. Admin. Code R. 25-14.004(1). The current Rule therefore operates only where the regulated utility and its parent join in the filing of a consolidated income tax return. If a parent company uses debt to invest in a regulated utility subsidiary, the interest expense on the parent's debt may reduce the consolidated tax liability. The PDA then imputes the tax effect of that parent-level interest expense to the regulated utility, reducing the utility's authorized income tax expense. In substance, the PDA is a limited or partial consolidated tax adjustment: it flows through one tax benefit realized in a consolidated tax return (*i.e.*, the tax effect of parent-level interest expense) to reduce the regulated utility's revenue requirement.

This treatment is inconsistent with the Commission's current stand-alone approach to determining allowable utility taxes. The Commission has previously recognized this inconsistency. In the Gulf Power 2011 rate case, the Commission stated that "[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 Co.*, Order No. PSC-12-0179-FOF-EI, Docket No. 110138-EI, 2012 Fla. PUC LEXIS 233, at *295 (FPSC Apr. 3, 2012).

The Commission has also recognized in other contexts that "[r]ecovery of a tax detriment or benefit by a 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 Co.—Indiantown Division*, Order No. PSC-2019-0077-FOF-GU, Docket No. 20180052-GU, 2019 Fla. PUC LEXIS 74 (FPSC Feb. 25, 2019); see also *In re Consideration of the Tax Impacts Associated with Tax Cuts and Jobs Act of 2017 for Florida Public Utilities Co.—Fort Meade Division*, Order No. PSC-2019-0079-FOF-GU, Docket No. 20180053-GU, 2019 Fla. PUC LEXIS 75 (FPSC Feb. 25, 2019).

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 that gives rise to that benefit. Under that approach, ratepayers receive the tax benefits associated with expenses included in the regulated utility's jurisdictional cost of service. Conversely, tax benefits associated with expenses not included in jurisdictional cost of service are not used to reduce the utility's revenue requirement.

The Federal Energy Regulatory Commission ("FERC") has articulated this principle in similar terms. 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 FERC ¶ 61,141, at P 67, 2019

FERC LEXIS 216, at *41 (2019) (citing *City of Charlottesville v. FERC*, 774 F.2d 1205, 1207–08 (D.C. Cir. 1985), *cert. denied*, 475 U.S. 1108 (1986)). Likewise, FERC has explained that when an expense is not included in the cost of service because the regulated company did not incur that expense in providing jurisdictional service, the deduction created by that expense is not allocated to ratepayers. *SFPP, L.P.*, 150 FERC ¶ 61,097, at PP 56–57, 2015 FERC LEXIS 210, at *19–20 (2015).

The PDA does the opposite. It allocates to ratepayers the tax effect of parent-level interest expense even though that interest expense is not included in the regulated utility's jurisdictional cost of service. The current Rule therefore gives customers the benefit of the parent's deduction while leaving shareholders with the parent's cost. That is not stand-alone ratemaking; it is selective consolidated tax treatment. Staff's proposed amendment would correct that mismatch by requiring income tax expense to be determined on a stand-alone basis, consistent with the utility's jurisdictional cost of service.

OPC and Florida Rising have suggested that stand-alone ratemaking is unrealistic because regulated utilities may have parent companies, service companies, and other affiliates, and because the Commission routinely considers affiliate relationships in rate proceedings. That argument, which is further addressed below, misapprehends the stand-alone tax principle. Calculating income tax expense on a stand-alone basis does not mean that the Commission ignores affiliate transactions, service-company allocations, parent-company directives, or other affiliate-related issues. It means that the income tax allowance should be matched to the income and deductions attributable to the regulated utility's jurisdictional cost of service.

Thus, stand-alone tax treatment and affiliate-transaction oversight are fully compatible. If a utility seeks recovery of an affiliate charge, if a service-company allocation is unreasonable, or if an affiliate transaction improperly shifts costs or benefits, the Commission may review and adjust those matters based on the evidence in the utility's rate proceeding. But that does not justify imputing a parent-level interest deduction to the utility where the corresponding parent-level interest expense is not included in the utility's jurisdictional cost of service. The proposed amendment would preserve the Commission's full authority to review actual affiliate transactions while eliminating a tax adjustment that is inconsistent with stand-alone cost-of-service principles.

3. FERC and Modern Regulatory Practice Support Stand-Alone Tax Treatment

Available authority indicates that stand-alone tax treatment is the predominant modern regulatory approach, including before the FERC, and that comprehensive consolidated tax adjustments are now the exception rather than the rule.

In *Federal Power Commission v. United Gas Pipeline*, 386 U.S. 237 (1967), the Court approved 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.[2] That holding, however, was never universally accepted and has largely been abandoned by most jurisdictions.

In the early 1970s, FERC's predecessor, the Federal Power Commission, departed from the actual-taxes-paid approach and adopted the position that stand-alone accounting should be used to

[2] *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. Pub. 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 (N.J. 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 *Pa. Pub. Util. Comm'n 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).

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 Sept. 22, 1977). Further, in 1985, then Judge Antonin Scalia rejected a challenge that claimed the stand-alone methodology was unlawful, concluding that the FERC acted within its authority in using the stand-alone approach. *City of Charlottesville v. FERC*, 774 F.2d 1205, 1213, 1221 (D.C. Cir. 1985), *cert. denied*, 475 U.S. 1108 (1986).[3]

Although state commissions are not bound by the FERC ratemaking policy, FERC's treatment of consolidated tax issues is instructive. Under the 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. ¶ 61,141 at P 67, 2019 FERC LEXIS 216, at *41, 2019 WL 830962, at *10 (FERC Feb. 21, 2019) (citing *City of Charlottesville*, 774 F.2d at 1207-1208). The well-reasoned and sound ratemaking policy underlying the stand-alone tax basis approach is that ratepayers should only benefit from tax savings if they also bear the burden of the expenses that generate these savings. *See Southern*

[3] During the April 22, 2026 rulemaking workshop, OPC relied on the fact that the United States Treasury Department proposed and subsequently withdrew regulations in 1991 that, if adopted, would have required 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 United States Treasury Department 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.

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). That approach is consistent with the Commission's more recent recognition that allowable utility taxes should be determined on a stand-alone basis. *See Gulf Power*, Order No. PSC-12-0179-FOF-EI, 2012 Fla. PUC LEXIS 233, at *295; *FPUC Indiantown*, Order No. PSC-2019-0077-FOF-GU, 2019 Fla. PUC LEXIS 74.

Available state regulatory authority reviewed by FPL indicates that stand-alone federal income-tax treatment is the prevailing modern approach where commissions or legislatures have adopted an express rule. In those jurisdictions, the utility's federal income-tax expense is generally calculated as though the regulated utility were a separate taxpayer, and affiliate losses or tax benefits from nonregulated members of the consolidated group are not used to reduce the utility's cost of service. This approach is reflected in express stand-alone rules in, among others, Pennsylvania,[4] Virginia,[5] Nevada,[6] Oregon,[7] and Wisconsin.[8]

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[4] Pennsylvania previously had case law requiring recognition of consolidated tax savings, but current 66 Pa. Cons. Stat. § 1301.1(a) now provides that if an expense or investment is not included in rates, related income-tax deductions and credits, including parent or affiliate tax losses, are not included to reduce rates; deferred taxes used for rate base are based solely on the utility's own deductions and credits; and income-tax expense is computed using statutory rates.

[5] For investor-owned water, gas, or electric utilities in Virginia that are part of a publicly traded consolidated group, federal income-tax costs must exclude consolidated tax liability or benefit adjustments originating from affiliates, and state income-tax costs are calculated as if the utility had not filed a consolidated return. Va. Code Ann. § 56-235.2.

[6] Nevada requires utility members of a consolidated group to compute federal income taxes using a separate-entity method rather than a consolidated-company approach including nonutility and affiliate impacts. Nev. Admin. Code § 704.6546.

[7] Oregon requires energy-utility income taxes to be calculated on a stand-alone basis for ratemaking and regulatory reporting, and if taxes are determined on a consolidated basis, the utility records income-tax expense as if determined separately. Or. Admin. R. 860-027-0048(4)(h).

[8] Wisconsin similarly supports the stand-alone principle in holding-company systems: the commission must treat the public utility affiliate as a wholly independent corporation and may not attribute holding-company or subsidiary tax benefits or liabilities to the public utility affiliate, or vice versa. Wis. Stat. § 196.795(5)(i).

By contrast, comprehensive consolidated tax adjustments appear to be the exception rather than the rule. A small number of jurisdictions continue to require or expressly recognize a consolidated-savings adjustment, most notably New Jersey[9] and Mississippi.[10] Many jurisdictions, however, do not expressly impose either a consolidated tax adjustment or stand-alone rule. Instead, they require disclosure by the utilities and leave the appropriate tax expense ratemaking treatment to the discretion of the commission based on the utility's structure, the applicable cost-of-service record, and the evidence in the case. That discretionary/disclosure model does not support treating consolidated tax savings as a generally prevailing ratemaking norm. Rather, it supports the narrower proposition that commissions retain case-specific authority where no statute, rule, or controlling order prescribes the method. Accordingly, absent a jurisdiction-specific statute, rule, or controlling commission order requiring consolidated tax adjustment, a commission may reasonably treat federal income-tax expense on a stand-alone basis as consistent with modern regulatory practice and with the cost-of-service principle that customers should bear the tax costs and receive the tax benefits associated with the regulated utility's own jurisdictional operations.

In Florida, 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., <u>The Regulation of Public Utilities</u> 288-89 (3rd

[9] New Jersey requires a utility that is part of a family of companies filing a consolidated federal return to submit a CTA calculation using the rate-base method. N.J. Admin. Code § 14:1-5.12(a)(10).

[10] Mississippi provides that, where a public utility is a member of an affiliated group eligible to file a consolidated return and consolidation is advantageous, income taxes are computed as though a consolidated return had been filed and the utility realized its fair share of the savings, unless the Commission is satisfied that non-consolidation was reasonable. Miss. Code Ann. § 77-3-31.

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.[11] This limited consolidated tax adjustment is inconsistent with this Commission's more recent stand-alone practice and with the prevailing modern regulatory approach to determining utility income tax expense.[12]

During the April 22, 2026 rulemaking workshop, OPC argued that some of the FERC precedent arose in cases involving non-jurisdictional affiliate losses rather than parent debt. That distinction does not undermine the broader principle. The operative principle is that the income tax allowance should be matched to the costs included in the jurisdictional cost of service. Whether the parent-level tax attribute is a non-jurisdictional loss or a parent-level interest deduction, the same matching principle applies: ratepayers should not receive tax benefits from expenses they do not pay through utility rates.

The stakeholders opposing Staff's proposal have suggested that Florida need not follow the FERC or other jurisdictions. FPL agrees that the FERC precedent and other state practices are not

[11] Based on publicly available authority reviewed by FPL, Florida and Texas appear to be the only jurisdictions that continue to apply a partial or limited consolidated tax adjustment. *See* Fla. Admin. Code R. 25-14.004. In Texas, gas utilities use a stand-alone-like statutory-rate matching, *see* Tex. Util. Code Ann. § 104.055(c), electric utilities use a partial consolidated-group savings for elimination of intercompany profit on affiliate purchases to reduce the purchased property/service cost, *see* Tex. Util. Code Ann. § 36.060, and telecom utilities retains broader fair-share consolidated-savings language, *see* Tex. Util. Code Ann. § 53.060.

[12] 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 the rule in 1987, the reasoning and support for Staff's recommended repeal of the parent debt adjustment remains just as valid today.

binding on this Commission. They are nevertheless instructive. They demonstrate that stand-alone tax treatment is a well-recognized and legally supportable ratemaking methodology, and they reinforce the same matching principle that supports Staff's proposed amendment here. Florida remains free to adopt a Florida-specific rule, but any such rule should be grounded in the Commission's statutory obligation to set fair, just, reasonable, and compensatory rates based on the utility's jurisdictional cost of service.

B. Response to Concerns Raised by OPC and Florida Rising

1. The PDA Is Properly Understood as a Limited Consolidated Tax Adjustment

OPC contends that the PDA is not a double-leverage adjustment and therefore cannot be criticized on that basis. Whether the PDA is labeled "double leverage" is not dispositive.[13] The controlling ratemaking problem is simpler: the PDA imports a parent-level financing characteristic into the utility's income tax allowance without including the corresponding parent-level interest expense in the utility's jurisdictional cost of service.

The PDA traces a portion of the regulated subsidiary's equity to parent-level debt and imputes the tax effect of that parent-level debt to the regulated utility's income tax expense. The current Rule's formula confirms this point. The PDA is calculated by reference to the parent's debt ratio and debt cost and then applied to the subsidiary's equity dollars, excluding retained earnings. Fla. Admin. Code R. 25-14.004(4). Thus, while the adjustment is made through income tax expense rather than through the weighted average cost of capital, it still imports parent-level leverage into the subsidiary's revenue requirement. Accordingly, whether the PDA is labeled a consolidated tax adjustment, a parent-debt adjustment, or a double-leverage-type adjustment, the

[13] Although the PDA is not identical to the classic form of double leverage, which directly substitutes or imputes a parent-level capital structure or parent-level cost of capital for the regulated subsidiary's allowed return, that formal distinction does not resolve the issue.

economic problem and regulatory outcomes are the same: the current rule reduces the regulated utility's authorized income tax expense based on a parent-level expense that is not included in the utility's jurisdictional cost of service.

Florida Rising argued at the rulemaking workshop that the PDA is "not technically" double leverage and instead concerns who receives the benefit of the parent's interest deduction. Even accepting the formal distinction between the PDA and classic double leverage, the same cost-of-service problem remains. The parent's interest expense is not included as utility interest expense in the regulated utility's jurisdictional cost of service. Under a stand-alone tax methodology, the tax effect of that parent-level expense should not be used to reduce the utility's jurisdictional income tax allowance.

Stated differently, the issue is not simply "who gets the deduction." The issue is whether the deduction is associated with an expense that customers pay through regulated rates. If the underlying expense is excluded from jurisdictional cost of service, then the related tax benefit should likewise be excluded. Treating the utility as equity-financed for return purposes while importing the parent's debt treatment for income-tax purposes creates the very asymmetry Staff's proposed amendment is intended to eliminate.

2. The "Affiliate Transaction" and "Consumer Protection" Theories Do Not Justify Retaining the PDA

OPC and Florida Rising have characterized the PDA as an affiliate-transaction or consumer-protection rule. FPL agrees that the Commission has broad authority to protect customers from unreasonable affiliate charges and improper affiliate transactions. But that general authority does not justify the specific PDA at issue here.

The attempt to recast the PDA as an affiliate-transaction protection rather than a consolidated tax adjustment is neither credible nor persuasive. The PDA does not review, disallow, or adjust an actual affiliate charge booked to the utility. It does not test whether a service-company allocation is prudent. It does not determine whether an asset transfer between affiliates occurred at fair value. Instead, it mechanically imputes to the regulated utility the tax effect of interest expense incurred by the parent.

That distinction matters. In a typical affiliate-transaction case, the regulated utility seeks recovery of an actual cost charged by an affiliate or the Commission evaluates whether a transaction between affiliates improperly shifts costs or benefits. The parent's third-party interest expense is not such a cost. Indeed, it is not booked as utility interest expense, is not charged to the utility as a cost of service, and is not included in the utility's jurisdictional revenue requirement.

OPC's reliance on *United Telephone Long Distance, Inc. v. Nichols*, 546 So. 2d 717 (Fla. 1989), does not compel a different result. In that case, the Court upheld Commission authority to require compensation for benefits that a regulated telephone company's ratepayers had helped create and that an affiliate used in providing long-distance service. *Id*. at 720. That case involved an actual affiliate use of utility-supported assets, goodwill, name recognition, and related benefits. *Id*. at 719–20. It does not hold that parent-level interest expense, not charged to the regulated utility and not included in cost of service, must be used to reduce the utility's income tax expense.

The Commission retains ample authority to address actual affiliate transactions without preserving the PDA. If a utility records an imprudent affiliate charge, receives an improper allocation, transfers an asset to an affiliate at an unreasonable value, or otherwise seeks recovery of affiliate-related costs that are not reasonable or prudent, the Commission should address those matters in the utility's rate case based on the evidence. Eliminating the PDA would not in any way reduce the Commission's existing oversight of affiliate transactions. It would simply eliminate a mechanical parent-level tax imputation that is inconsistent with stand-alone cost-of-service principles.

Florida Rising's broader "consumer protection" framing does not change the analysis. The Commission protects customers by setting lawful cost-based rates, reviewing utility costs, disallowing imprudent or unreasonable expenses, and ensuring that affiliate transactions are properly accounted for. Preserving a mechanical parent-level tax imputation is not necessary to protect customers from affiliate abuse. To the contrary, Staff's proposed amendment would leave intact all of the Commission's existing tools for reviewing affiliate transactions while aligning income tax expense with the regulated utility's jurisdictional cost of service.

3. Customers Do Not Bear the Parent's Interest Expense Merely Because Parent Debt May Have Supported an Equity Contribution

OPC argues that customers pay a grossed-up equity return on subsidiary equity that may be supported by parent debt and therefore, according to OPC, customers should receive the tax benefit associated with the parent's interest deduction. In short, OPC's position would retain equity treatment when calculating the utility's return, but switch to parent-debt treatment when calculating income tax expense. This argument conflates two distinct costs: the regulated utility's authorized return on equity and the parent company's interest expense.

When a parent contributes capital to a regulated subsidiary as equity, the subsidiary's rates reflect the Commission-approved cost of equity for the regulated utility, based on the utility's risk and capital structure as determined in the rate proceeding. The utility's ratepayers are not paying the parent's interest expense; rather, the parent's interest expense remains at the parent-level. Because that expense is not included in the regulated utility's jurisdictional cost of service, the related tax deduction should likewise not be used to reduce the utility's income tax expense under a stand-alone approach.

This is precisely the matching principle underlying stand-alone tax treatment. Ratepayers should receive the tax benefits associated with expenses they pay through rates. They should not receive tax benefits associated with expenses that are not included in the regulated utility's cost of service and recovered in rates. See *Trailblazer Pipeline Co. LLC*, 166 FERC ¶ 61,141, at P 67; *SFPP, L.P.*, 150 FERC ¶ 61,097, at PP 56–57; *City of Charlottesville*, 774 F.2d at 1207–08, 1213–15.

OPC's position would retain the utility's equity treatment for return purposes while importing the parent's debt treatment for tax purposes. That asymmetry is inconsistent with stand-alone ratemaking. Staff's proposed amendment would restore symmetry by calculating income tax expense based on the income and deductions attributable to the regulated utility's jurisdictional cost of service.

Florida Rising's contrary position effectively asks the Commission to treat the same capital as equity for purposes of the utility's authorized return but as parent debt for purposes of calculating income tax expense. That selective treatment is inconsistent with stand-alone ratemaking. Once capital is contributed to the regulated utility as equity, the relevant ratemaking inquiry is the utility's Commission-approved capital structure, the utility's authorized return on equity, and the income and deductions attributable to the utility's jurisdictional cost of service. The parent's separate financing decision does not convert parent interest expense into a utility cost, and it should not convert the parent's interest deduction into a utility tax benefit.

4. Rate-Impact and Affordability Arguments Do Not Resolve the Ratemaking Issue

OPC and Florida Rising characterize Staff's proposal as a rate-increase measure and argue that the PDA should be retained because it lowers rates for some customers. Florida Rising also raised broader affordability concerns, including customer bills, disconnections, and utility returns.

FPL does not minimize the importance of customer affordability. But affordability is addressed through lawful, cost-based rates – not through an income-tax adjustment that assigns customers a tax benefit from an expense they do not pay. The Commission protects customers by disallowing imprudent costs, reviewing affiliate transactions, setting appropriate returns, and addressing overearnings directly. The PDA is not necessary to perform any of those functions. It is a blunt, mechanical imputation of a parent-level tax benefit that is disconnected from the utility's jurisdictional cost of service.

A rate-reducing adjustment is not self-justifying if it reduces recoverable income tax expense below the level associated with the regulated utility's jurisdictional cost of service. If the PDA lowers revenue requirements by imputing a parent-level tax benefit to customers while excluding the corresponding parent-level interest expense from cost of service, then the issue is not whether the adjustment lowers rates – the issue is whether the adjustment accurately measures the regulated utility's tax expense. Staff's proposed amendment should therefore be evaluated based on cost-of-service consistency, not rhetoric about shareholder "windfalls." Eliminating a mismatch between parent-level deductions and utility-level cost of service is not a windfall. It is a correction to the manner in which tax expense is determined for ratemaking purposes.

Florida Rising's broader concerns about affordability, authorized returns, earned returns, general utility profitability, and capital attraction do not change the analysis. Those issues should be addressed directly in rate proceedings, surveillance proceedings, or other utility-specific proceedings based on the relevant evidence. The PDA is not a return on equity-setting mechanism, an overearnings remedy, or a substitute for cost-of-capital evidence. Using income tax expense to indirectly address those issues would obscure, rather than improve, the Commission's cost-of-service analysis.

Florida Rising's reliance on broad affordability and profitability concerns therefore does not answer the question presented by this rulemaking. The question is whether income tax expense should be calculated based on the regulated utility's jurisdictional income and deductions, or whether the rule should continue to impute to the utility the tax effect of parent-level interest expense that is not included in utility cost of service. Under cost-based ratemaking principles, the former approach is the better one.

5. The Commission Need Not Find Concrete Capital-Market Harm to Correct the PDA

OPC and Florida Rising have also suggested that Staff's proposed amendment is unnecessary because utilities have not shown that the PDA has caused a credit-rating action, capital-market impairment, rate-case filing, or inability to earn an authorized return. That argument misses the point. Staff's proposed amendment does not depend on proof of a discrete capital-market event. The rulemaking issue is whether the PDA properly measures income tax expense for ratemaking purposes. It does not.

The PDA mechanically reduces the amount of revenue authorized for recovery of the utility's income tax expense below the level that would be determined using the utility's stand-alone cost of service. All else equal, that reduction can impair the utility's ability to earn the return authorized by the Commission. This reduction creates tension with the statutory requirement that rates be fair, just, reasonable, and compensatory, and that no public utility be denied a reasonable return on rate base. § 366.041(1), Fla. Stat. The Commission may correct that mismatch prospectively as a matter of sound ratemaking policy without waiting for a utility to demonstrate a credit-rating downgrade, capital-market disruption, or other discrete financial injury.

Nor is it a valid rebuttal to point to FPL's circumstances, including FPL's authorized return, earned return, or rate-case history. The PDA does not apply to FPL because FPL independently issues its own debt and its parent does not issue debt to invest in FPL. FPL's circumstances therefore do not prove that the PDA is appropriate for utilities to which the rule may apply. The relevant question is not whether FPL has been harmed by a Rule that does not apply to it. The relevant question is whether Rule 25-14.004 should continue to require a parent-level tax imputation inconsistent with stand-alone cost-of-service principles.

6. The Rule's Rebuttable Presumption Does Not Cure the Underlying Policy Problem

OPC and Florida Rising argue, directly or by adoption, that the PDA's rebuttable presumption protects utilities from improper application of the Rule. However, that argument does not address the fundamental issue. The problem is not merely that the PDA may be factually inaccurate in particular cases. The problem is that the Rule presumes, as a matter of policy, that parent-level debt should produce a utility-level tax reduction even when the corresponding parent interest expense is not included in the utility's cost of service.

The rebuttable presumption does not cure the problem. It starts from the wrong premise: that parent-level debt should reduce utility-level tax expense even when the related parent-level interest expense is excluded from utility cost of service. A party should not have to litigate debt history, dividend flows, retained earnings, and corporate financing decisions to escape a mismatch the rule should not presume in the first place. This only adds to rate case expense to the detriment of customers.

Staff's proposed amendment would eliminate the need for that collateral inquiry. If a party believes that a utility's tax expense, capital structure, affiliate transactions, or cost allocations are unreasonable, that party may present evidence in the utility's rate case. The Commission can then make case-specific adjustments based on the evidence of record. That approach is more consistent with stand-alone ratemaking and preserves the Commission's full authority to ensure that rates are fair, just, reasonable, and compensatory.

The existence of a rebuttable presumption also does not resolve Florida Rising's affordability-based objection to Staff's proposal. Whether the PDA lowers rates in a particular case says nothing about whether the presumption is a sound basis for determining income tax expense. The Commission can protect customers through direct review of utility costs and affiliate transactions without preserving a presumption that begins from the premise that parent-level debt should reduce utility-level tax expense.

7. OPC's Proposed Narrow Clarification Would Not Resolve the Issue

OPC has suggested that, if the Commission amends the rule, it should merely clarify that the statutory tax rate applicable to the regulated utility should be used in calculating the PDA. OPC's proposed clarification would make the PDA easier to calculate, but it would not make the PDA correct.

The problem is not the tax rate used in the PDA formula. The problem is the formula itself. Clarifying the applicable tax rate would leave intact the Rule's core defect: imputing a parent-level interest deduction to the regulated utility without including the parent-level interest expense in jurisdictional cost of service.

If the Commission determines, as Staff has proposed, that income tax expense should be calculated on a stand-alone basis consistent with the utility's jurisdictional cost of service, then a narrow clarification of the PDA formula is insufficient. The appropriate amendment is to eliminate the mandatory parent debt adjustment and establish clear stand-alone treatment.

8. A "Draw-Out" Proceeding Is Not Required to Amend the Rule.

OPC has threatened that, if the Commission proceeds with this rulemaking, OPC may seek a separate proceeding under Section 120.54(3)(c)2, Florida Statutes. The statute does not require such a proceeding merely because OPC opposes the proposed amendment. A separate proceeding is required only if a person timely asserts that its substantial interests will be affected and affirmatively demonstrates that the rulemaking proceeding does not provide an adequate opportunity to protect those interests. § 120.54(3)(c)2, Fla. Stat.

Here, the Commission is considering a prospective rule of general applicability. Utility-specific revenue requirements, rate impacts, capital structure issues, income tax calculations, and affiliate-transaction disputes will all continue to be addressed in individual rate proceedings based on the actual evidence of record. The rulemaking process itself provides interested parties with notice, an opportunity to submit written comments, an opportunity to participate in workshops or hearings, and an opportunity to propose alternative language. *See* § 120.54(3), Fla. Stat. In the case of this rulemaking, all such opportunities for participation and input have been afforded by the Commission to all affected persons, including OPC.

Accordingly, OPC cannot credibly establish that ordinary rulemaking is inadequate merely by asserting that it would prefer discovery or cross-examination. A preference for discovery and cross-examination is not the statutory test under Section 120.54(3)(c)2, Florida Statutes. The Commission does not need a utility-specific evidentiary hearing to decide whether a generally applicable rule should continue to mandate a cost-of-service mismatch. Rather, the Commission may proceed through rulemaking and adopt Staff's proposed amendment if the rulemaking record supports the policy determination that income tax expense should be calculated on a stand-alone basis.

C. Bill Impacts of Current Rule vs. Staff's Proposed Amendment

Because FPL independently issues its own debt and its parent does not issue debt to invest in FPL, the PDA in the current Rule 25-14.004 does not apply to FPL. Accordingly, Staff's proposed amendment to Rule 25-14.004 to eliminate the PDA and align the treatment of tax detriments/benefits with the Commission's longstanding policy of determining allowable utility taxes on a stand-alone basis would have no impact on the bills of FPL's customers. Because the PDA does not apply to FPL, the bill-impact analysis is straightforward.

Rate Schedule	Bill Impact Under Current Rule 25-14.004	Bill Impact Under Staff's Proposed Amendment to Rule 25-14.004
All Rate Schedules	$0.00	$0.00

FPL's lack of bill impact does not diminish the importance of the rulemaking; it confirms that FPL's support is grounded in sound ratemaking policy, not case-specific financial effect. For the many reasons explained above, FPL submits that Staff's proposal to amend Rule 25-14.004 will provide greater guidance and clarity regarding the determination of regulated utilities' federal income tax expense in Commission proceedings.

III. <u>CONCLUSION</u>

The Florida Supreme Court has made clear that there is no single legally required method for determining the income tax expense of a regulated utility that participates in a consolidated return. *General Telephone*, 446 So. 2d at 1067. The Commission adopted the PDA in 1982 as a discretionary policy choice, and it may now amend Rule 25-14.004 as a discretionary policy choice if it determines that stand-alone tax treatment better reflects the utility's jurisdictional cost of service.

The current PDA is a limited consolidated tax adjustment. It imputes a parent-level tax benefit to the regulated utility even though the corresponding parent-level interest expense is not included in the utility's jurisdictional cost of service. That treatment violates the matching principle underlying stand-alone tax treatment. It is also unnecessary to preserve the Commission's authority to review affiliate transactions, disallow unreasonable costs, or make case-specific adjustments in rate proceedings. Arguments that the PDA has existed for decades, lowers rates in some circumstances, or should be retained as a generalized consumer-protection measure do not resolve the cost-of-service mismatch created by the current Rule.

For these reasons, FPL supports Staff's proposal to amend Rule 25-14.004 to align income tax expense with the Commission's longstanding practice of determining allowable utility taxes on a stand-alone basis consistent with the utility's jurisdictional cost of service. FPL respectfully requests that the Commission adopt Staff's proposed amendments to Rule 25-14.004, Florida Administrative Code.

Respectfully submitted this 8th day of June 2026,

By: */s/Christopher T. Wright*

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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 8th day of June 2026:

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