State of Florida

Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: August 27, 2026

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Sapoznikoff, Bloom) SMC
Division of Accounting and Finance (Cicchetti) MC
Division of Economics (Guffey) EJD

RE: Docket No. 20240019-PU – Proposed amendment of Rule 25-14.004, F.A.C., Effect of Parent Debt on Federal Corporate Income Tax.

AGENDA: 09/10/26 – Regular Agenda – Rule Proposal – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: La Rosa

RULE STATUS: Proposal May Not Be Deferred

CRITICAL DATES: 09/30/2026 (If the Commission decides to propose the amendment of this rule, the Notice of Proposed Rule must be published in the Florida Administrative Register by this date pursuant to Section 120.54(2)(a)2., F.S.)

SPECIAL INSTRUCTIONS: None

Case Background

Rule 25-14.004, Florida Administrative Code (F.A.C.), Effect of Parent Debt on Federal Corporate Income Tax, addresses how the Commission assesses the income tax expense of a regulated entity that is a subsidiary company that files a consolidated tax return with a parent company. This rule applies to all regulated industries. When the regulated utility is a subsidiary of one or more parent companies, application of the current rule reduces the income tax expense of the regulated utility by the income tax effect of any debt the parent company has invested in the equity of the regulated subsidiary. There is a rebuttable presumption that a parent company'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.

History of the Rule

Prior to adoption of the rule, when the regulated utility was a subsidiary that filed a consolidated income tax return with one or more parent companies, the Commission typically used only the subsidiary's income (subsidiary approach), rather than the combined income reflected on the consolidated return (consolidated approach), to determine the tax amount to be used in ratemaking. That policy was challenged by the Office of Public Counsel (OPC) in *Citizens of Fla. v. Hawkin*s, 356 So. 2d 254 (Fla. 1978). In *Hawkins,* the Court found that there was insufficient record evidence to support the subsidiary approach and that the evidence in the record supported the consolidated approach as being more accurate. *Id.* at 259-260 (citations omitted). Subsequently, the Commission adopted Rule 25-14.004, F.A.C., in 1983, which reflected the consolidated approach.

The rule was challenged and upheld as a valid exercise of legal authority in *General Tele. Co. of Fla. v. Fla. Pub. Serv. Comm'n*, 446 So. 2d 1063 (Fla. 1984). However, as discussed further below, *General Telephone* was not a substantive endorsement of the consolidated approach over the subsidiary approach. Rather, the Court only evaluated whether the rule was "reasonably related to the purposes of the enabling legislation, and . . . not arbitrary or capricious." *General Tele.*, 446 So. 2d at 1067 (citations omitted). Neither *Hawkins* nor *General Telephone* require the Commission to use the consolidated approach nor preclude the Commission from using a different methodology.

In 1988, the Commission considered whether the rule was necessary or whether the litigation process would resolve the tax matter, and whether the rule should be repealed. The staff recommendation provided argument both in support of the current rule and also in support of its repeal.[1] The Commission did not affirmatively reject repeal of the rule. Rather, the Commission order simply stated, "[w]e do not wish to revisit the rule at this time."[2]

This Rulemaking Proceeding

In 2023, staff initiated rulemaking[3], this time to amend the rule rather than repeal it. A staff rule development workshop was held in August 2023. Representatives of OPC, American Water Works Corporation (AWWC), Duke Energy Florida LLC (DEF), Florida Power & Light Company (FPL), Florida City Gas (FCG), Florida Public Utilities Company (FPUC), People's Gas System, Inc. (PGS), and Tampa Electric Company (TECO) attended the workshop, and all submitted post-workshop comments. Thereafter, the matter was presented at an Agenda Conference on March 5, 2024.

Following presentation of the matter at the March 5, 2024, Agenda conference, the Commission deferred ruling to allow more time to consider the matter. The matter was then placed on the July 9, 2024, Agenda Conference schedule. Following that presentation, the Commission again

[1] Docket No. 870386-PI, DN09448, Sept. 8, 1988.
[2] Order No. 20206, issued Oct. 24, 1988, in Docket No. 870386-PU, *In re: Repeal of Rule 25-14.004, F.A.C., Effect of Parent Debt on Fed. Corp. Income Tax*.
[3] The Notice of Development of Rulemaking appeared in the June 23, 2023, edition of the Florida Administrative Register, Volume 49, Number 122

deferred ruling and requested "concrete numbers" about "the difference between sticking with the current rule and moving forward with this proposed rule . . . to compare those two."[4] To obtain that information, the Commission requested that a Commission workshop be scheduled.[5]

The Notice of Development of Rulemaking appeared in the April 2, 2026, edition of the Florida Administrative Register, Volume 52, Number 64, which notice scheduled a Commission workshop for April 22, 2026.[6] Staff issued data requests to the utilities to determine whether the rule applies to them and, if so, how the recommended amendments to the rule would impact customer rates.

A Commission rule development workshop was held on April 22, 2026. Representatives of OPC, AWWC, DEF, FCG, FPL, FPUC, Florida Rising, Inc. (Florida Rising), PGS, Sunshine Water Services Company (Sunshine), and TECO, attended the workshop. OPC submitted comments in advance of the workshop. OPC, DEF, and Florida Rising also made formal presentations at the workshop. Following the workshop, all stakeholders who attended the workshop submitted post-workshop comments.

This recommendation addresses whether the Commission should propose the amendment of Rule 25-14.004, F.A.C. The Commission has jurisdiction pursuant to Sections 120.54 and 350.127(2), Florida Statutes (F.S.).

Regardless of the Commission's determination in this docket, this rule will be reviewed in the 2026-2027 rule review cycle, as required by Section 120.5435, F.S., and the Commission's Regulatory Plan.[7]

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[4] Docket No. 20240019-PU, DN07705-2024, p. 27, July 9, 2024.
[5] *Id*., p. 26.
[6] The Notice of Development of Rulemaking appeared in the April 2, 2026, edition of the Florida Administrative Register, Volume 52, Number 64.
[7] This means that the Commission will need to determine whether this rule requires a substantive change, a technical change, no change, or should be repealed, and report that determination to the President of the Senate, the Speaker of the House, and the Joint Administrative Procedures Committee by January 1, 2027.

Discussion of Issues

Issue 1: Should the Commission propose the amendment of Rule 25-14-004, F.A.C., Effect of Parent Debt on Federal Corporate Income Tax?

Recommendation: Yes. The Commission should propose the amendment of Rule 25-14.004, F.A.C., as set forth in Attachment A. The Commission should also certify the rule as a minor violation rule. However, if the Commission decides not to propose the amendment of this rule, a Notice of Withdrawal should be filed in the Florida Administrative Register pursuant to Section 120.54(3)(d)2, F.S. (Sapoznikoff, Cicchetti, Guffey)

Staff Analysis: Two workshops were held concerning the proposed amendments to Rule 25-14.004, F.A.C. The workshops and the comments filed in response to those workshops revealed significant disagreement among stakeholders regarding whether any amendment to the rule is warranted.

Workshop Comments

OPC and Florida Rising oppose amending the rule. AWWC, FPL, DEF, TECO, PGS, FCG, and FPUC support staff's recommended amendments to the rule.

OPC

OPC argues no amendments to the rule are needed, as the rule in its current state is not outdated and still addresses modern issues related to parent companies investing tax deductible debt in regulated utilities. In addition, OPC contends the current rule does not deprive shareholders of earning their authorized return, nor is there any evidence that it cools investments in Florida utilities. Instead, OPC states that the rule helps protect customers from overpaying an equity return on debt. OPC alleges that the justifications for the amendments recommended by staff are "sophistry" - deceptive, seemingly plausible reasoning that is unsound. In effect, OPC states the current rule acts as an affiliate transaction adjustment that allows the Commission to adjust excessive costs on the books of a regulated utility based on an affiliate relationship and protects customers by ensuring that they do not pay an equity return (and the associated income taxes) on debt that is disguised as equity. OPC emphasizes that the fact that the Federal Energy Regulatory Commission (FERC) and other states do not use the consolidated approach like the Commission is not a compelling reason to amend the current rule. OPC argues that FERC's retreat from the consolidated approach was more to address concerns that losses incurred by nonregulated pipeline affiliates were being used to reduce the income tax expense of the regulated pipeline subsidiary, even though those affiliates were not engaged in regulated activities. OPC notes this is not an issue before the Commission. Finally, OPC asserts that the rebuttable presumption contained in the rule provides enough flexibility to keep the rule relevant to current conditions.

Florida Rising

Florida Rising also opposes amending the rule. Florida Rising asserts that the recommended amendments would raise energy bills for investor-owned utility customers and how the rule is currently written does not have a negative impact on returns on equity or investments in Florida. Florida Rising stresses there is no evidence that the current rule prevents utilities from recovering their costs of service or earning a fair return. It further asserts that the current rule protects customers by allowing the federal tax deductions available to the parent company to be imputed to the subsidiary utility, resulting in lower rates. Florida Rising states that the recommended amendments not only would raise energy bills, but also would broaden the gap between shareholder profits and cost of service. It also challenges the assertion that amending the rule would decrease the need for utilities to come in for more frequent rate cases. In addition, Florida Rising argues the current rule is not a pure double leverage rule and noted that the Florida Supreme Court has affirmed the current rule.

AWWC

AWWC supports amending the rule; however, it does not believe anything precludes nor requires the amendment. AWWC believes a utility should be regulated on a stand-alone basis. Contrary to OPC's allegations, AWWC asserts that the stand-alone approach provides customer protection because it prevents the regulated utility from subsidizing or being subsidized by non-regulated investments. AWWC does not believe the current rule results in a textbook double leverage adjustment as seen in other states, but now rejected. AWWC believes the current rule is a backdoor approach to double leverage. However, it states that the rule changes the actual income tax determination and artificially lowers the return on equity (ROE), making it very difficult for the utility to earn the authorized rate of return. AWWC opined that while the parent debt adjustment may appear to lower rates in the short term, in the long run it increases rates through higher overall cost of capital. AWWC asserts that the current rule artificially reduces ROE, potentially leading to a higher cost of debt, which ultimately leads to a higher weighted average cost of capital and eventually higher rates for customers. AWWC indicates that this rule is one of the reasons it does not operate in Florida and that the rule chases capital away.

FPL

FPL supports amending the rule. Specifically, FPL contends the current rule is not in line with the stand-alone approach to utility ratemaking. FPL asserts most regulatory bodies in the United States, including the FERC, have adopted the stand-alone approach, demonstrating that it is a well-recognized and legally supported ratemaking methodology. FPL notes the Florida Supreme Court in *Hawkin*s and *General Telephone* affirmed the Commission's broad discretion to amend Rule 25-14.004 and that neither case requires the Commission to retain the rule in its current state. FPL criticizes the current iteration of the rule, stating it reduces income tax expenses based on a parent level expense that is not included in the utility's jurisdictional cost of service.

FPL disagrees with OPC's and Florida Rising's contentions that issues concerning affiliate-transaction protections for customers, furthering customer affordability, possible capital market harm, amendments making the parent debt adjustment easier to calculate, and protections provided by the rule's rebuttable presumption are relevant considerations for the Commission when looking at staff's recommended amendments. FPL instead urges the Commission to focus on whether the current rule properly measures a utility's income tax expense for ratemaking purposes. FPL also disagrees with OPC's assertion that a hearing under Section 120.54(3)(c)2, F.S., is needed for staff's recommended rule amendments. Specifically, FPL believes that OPC's request to use discovery to obtain information is unwarranted at this point in the rulemaking process. FPL noted that staff's recommended amendments to the rule would not affect its customer's bills, as the rule is not applicable to FPL at this time, and it is not currently required to make a parent debt adjustment to the calculation of its income tax expense or revenue requirements.

DEF

DEF also supports amending the rule. DEF argues that the double leverage issue the current rule attempts to address is no longer a regulatory concern, as modern utility operations now use stand-alone financing, transparent capital structures, and independent credit profiles. DEF further states the current rule is based on a rebuttable presumption that parent investments are made in proportion to the parent's overall capital structure, but in practice, parent level debt is often used for nonregulated or nonutility purposes. DEF also asserts that the current rule reduces a utility's ability to recover its cost of service and earn its authorized return on equity, in addition to causing artificially high debt ratios. DEF contends the Commission possesses other, more flexible tools, such as interest reconciliation adjustments, that help address issues related to affiliate transactions, capital structure, and tax expense. DEF points out that other jurisdictions, such as the FERC, have moved away from rules like the consolidated approach towards a stand-alone approach for utility income tax calculations. Lastly, if the Commission decides to not propose staff's recommended amendments, DEF requests that the mathematical formula in section (4) of the rule be amended to include retained earnings in the parent's common equity. In its response to staff's data request, DEF indicated that the customer rate impact of the approximately $7.4 million parent debt adjustment is a savings of approximately $0.25 per month,[8] but that the adjustment results in a revenue requirement impact of $10 million grossed up for taxes. DEF asserts that if the Commission proposes staff's recommended amendments to the rule, the result would be a $0.25 monthly increase to each customer bill.

TECO and PGS

TECO and PGS filed joint comments supporting staff's recommended amendments to the rule. They contend that the recommended amendments would better reflect a regulated utility's stand-alone income tax expense for ratemaking and earnings surveillance reporting. TECO notes that in its 2024 rate case, it made a parent debt adjustment of approximately $12.9 million, which reduced monthly bills of TECO residential customers using 1,000 kWh by $1.12 and reduced the bills of small commercial non-demand customers using 1,250 kWh by $1.41. However, in its response to staff's data request, it indicated that in that rate case the parent debt adjustment "had an earnings impact equivalent to reducing the return on equity by 30 basis points in the test year," which may accelerate the company's need for rate relief. For PGS's 2025 rate case, the parent debt adjustment of approximately $2.97 million reduced monthly residential customer bills with an average usage of 21 therms by $0.46 and the monthly bill for a GS-1 commercial customers with an average usage of 400 therms by $0.72. In its response to staff's data request, it indicated that in that rate case the parent debt adjustment "had an earnings impact equivalent to reducing the return on equity by 21 basis points in the test year," which may accelerate the company's need for rate relief.

FCG and FPUC

FCG and FPUC filed joint comments in support of staff's recommended amendments to the rule. They also allege the recommended amendments would more accurately reflect a regulated utility's stand-alone income tax expense for ratemaking and earnings surveillance reporting purposes. FCG and FPUC indicate that staff's recommended amendments to the rule would not impact their customers' bills, as the current rule is not applicable to their companies. In their

[8] Bill impact figure is based on retail sales of approximately 40,000,000 megawatt-hours of energy, not using the average residential bill of 1,000 kilowatt-hours of energy.

response to staff's data request, FCG and FPUC explained that although they file consolidated tax returns with their parent companies, the rule is not applicable to them at this time, as both rely on parent companies to provide all their capital in their last rate cases.

Staff's Analysis and Conclusions

Preliminarily, it is important to note that nothing compels the Commission to amend Rule 25-14.004, F.A.C., and nothing requires it to remain as is. The current rule was validly promulgated in 1984 pursuant to the statutory authority delegated to the Commission by the Legislature and within the Commission's broad discretion. As reflected above, OPC and Florida Rising urge the Commission not to amend the rule as the recommended amendments will increase rates and the existing rule offers a rebuttable presumption that provides utilities with flexibility.

Nonetheless, for the reasons stated below staff recommends amending the rule to reflect a change in Commission policy on how to determine the income tax expense of a regulated utility that is a subsidiary of one or more parent companies. Under the current rule, there is a parent debt adjustment in which the tax benefits associated with the parent company's interest expense are attributed to the subsidiary utility. Staff believes this impedes recovery of the actual income tax expense and artificially lowers utility rates. Under staff's recommended amendments to Rule 25-14.004, F.A.C., only the interest expense inherent in the capital structure of the regulated utility would be used to compute income tax expense, rather than reducing the tax expense in accordance with the parent's capital structure. This policy is referred to as the stand-alone approach. The stand-alone approach sets utility rates as if the subsidiary utility were an independent entity.

With regard to income tax expense, the stand-alone approach ensures that the revenue requirement is based upon operations of the regulated utility and that the tax benefits associated with the debt are both an expense of the regulated utility and borne by that utility's customers. The stand-alone approach is different from the current rule in that by not considering the income of the parent company invested in the subsidiary there are no cross-subsidies between regulated and non-regulated operations, which contributes to a more accurate picture of the utility's financial health.

Chapter 366, F.S., requires the Commission to determine, in a rate proceeding, a utility's cost-based revenue requirement and to establish rates that are fair, just, reasonable and compensatory. That not only means that customers should only pay for their actual cost of service, but also that utilities should be allowed to recover their actual revenue requirements. By imputing a parent's debt, the current rule has the effect of artificially lowering the revenue requirement and placing downward pressure on rates. All other things being equal, this can have the effect of increasing the frequency of requests for adjustments to rates. The current rule is the only instance in which the Commission does not use actual cost of service in determining revenue requirements and setting rates.

Additionally, staff notes that the recommended amendments would align the rule with the current national standard.[9] FERC uses the stand-alone approach reflected in the recommended

[9] *See, e.g., Constellation Mystic Power, LLC v. Fed. Energy Reg. Comm'n,* 45 F.4th 1028 (D.C. 2022), *McCloskey v. Penn. Pub. Util. Comm'n*, 255 A.3d 416 (Pa. 2021), *Oncor Elect. Del. Co. LLC v. Pub. Util. Comm'n of Texas*, 507 S.W.3d 706 (Tex. 2017), *SFPP, L.P. v. Pub. Utils. Comm'n,* 217 Cal. App. 4th 784 (2013), *In re North. States*

amendments to the rule.[10] Moreover, based on staff's research, while other states may make adjustments for consolidated tax savings, Florida is the only state that requires including the income tax benefit of parent debt in the calculation of the subsidiary's income tax expense and applies that adjustment to all types of regulated utilities.

As reflected in the responses to the data requests, workshop comments, and post-workshop comments, the utilities[11] indicate that the recommended amendments to the rule would affect their customers' bills as follows:

- DEF advises that as part of the global settlement of its 2024 rate case, it agreed to include a $7.4 million parent debt adjustment ($10 million revenue requirement impact) pursuant to the current rule. DEF calculates that adjustment resulted in an average monthly bill reduction of approximately $0.25. DEF acknowledges that the recommended amendments eliminating the parent debt adjustment would increase customer rates.
- TECO advises that in its 2024 rate case, under the current rule the company made a parent debt adjustment of $12.9 million. For the average residential customers (using 1,000 kWh per month), application of the current rule reduced the bill by $1.12. For the average small commercial non-demand customer's (using 1,250 kWh per month), application of the current rule reduced the bill by $1.41. TECO acknowledges that the recommended amendments eliminating the parent debt adjustment would increase customer rates.
- PGS advises that in its 2025 rate case, under the current rule the company made a parent debt adjustment of $2.967 million. For the average residential customers (using 21 therms), application of the current rule reduced the monthly bill by $0.46. For the average GS-1 commercial customer (using 400 therms), application of the current rule reduced the monthly bill by $0.72.
- FPL, FCG, and FPUC advise that the recommended amendments to the rule would have no impact on their customers' bills because the rule does not apply to their corporate structure.
- Sunshine responded to the data request, but did not file post workshop comments. In its response to the data request, Sunshine advises that the rule does not apply to it and that the recommended amendments would have no impact on its customers' rates.

Power Co., 2008 WL 131201 (2008), *Stumbo v. Ky. Pub. Serv. Comm'n*, 243 S.W.3d 374 (Ky. App. 2007), *Litchfield Park Serv. Co. v. Az. Corp. Comm'n*, 874 P.2d 988 (1994), *Pittman v. Miss. Pub. Serv. Comm'n,* 538 So. 2d 387 (Miss. 1989), *General Tele. Co. of the Southwest v. Corp. Comm'n*, 852 P.2d 1200 (N.M. 1982), *General Tele. Co. of SW v. Ark. Pub. Serv. Comm'n*, 616 S.W.2d 1 (Ark. 1981), *New York Water Serv. Corp. v. Pub. Serv. Comm'n*, 72 A.D.2d 841 (N.Y. App. 3d 1979), *United Tele. Co. of Iowa v. Iowa State Comm. Comm'n,* 257 N.W.2d 466 (Iowa 1977).

[10] *See Trailblazer Pipeline Co. LLC,* 166 F.E.R.C. P 61141, 2019 WL 830962, at *10 (F.E.R.C. Feb. 21, 2019); *Constellation Mystic Power, LLC*, 165 F.E.R.C. P 61267, 2018 WL 6720402 at *14 (F.E.R.C. Dec. 20, 2018); *System Ener. Resources, Inc.*, 57 F.E.R.C. P 63012, 1991 WL 307023, **11 (F.E.R.C. Nov. 21, 1991); *City of Charlottesville v. FERC*, 774 F.2d 1205, 1213, 1221 (D.C. Cir. 1985), *cert. den'd*, 475 U.S. 1108 (1986); *In re: Columbia Gulf Trans. Co.*, 54 P.U.R. 4th 31, 1983 WL 874322 (F.E.R.C. June 22, 1983).

[11] While AWWC participated in the workshop and provided comments, it does not do business in Florida. Staff did not send it a data request as it has no customers in Florida for which to assess the effect of the rule and the recommended amendments.

In addition, TECO and PGS addressed the earnings impact equivalent of the parent debt adjustment. For TECO the parent debt adjustment under the current rule reduced its return on equity by 30 basis points in the test year. For PGS, application of the rule had an earning impact equivalent to 21 basis points of the return on equity in the test year. DEF did not provide that information However, staff calculates that amount to be 8.3 basis points.

The amounts of recent parent debt adjustments and the impact of those adjustments on customer bills and return on equity are summarized in the table below.

Impact of Parent Debt Adjustment in Last Rate Case

Utility	Parent Debt Adjustment	Bill Impact with Parent Debt Adjustment	Bill Impact without Parent Debt Adjustment	Return on Equity Earnings Impact Equivalent (Basis Points)
DEF[12]	$7.4 million[13]	($0.25)	$0.25	8.3 bps.
TECO[14]	$12.9 million	($1.12)	$1.12	30 bps.
PGS[15]	$2.967 million	($0.46)	$0.46	21 bps.
FPL	N/A	$0	$0	N/A
FCG	N/A	$0	$0	N/A
FPUC	N/A	$0	$0	N/A
Sunshine Water	N/A	$0	$0	N/A
St. James Island	N/A	$0	$0	N/A
CSWR-Florida	N/A	$0	$0	N/A
WMSI	N/A	$0	$0	N/A

Sources: Responses to staff data requests and staff calculations.

In totality, the utilities indicate that all things being equal the recommended amendments would raise rates by the same dollar amounts that had been reduced by the parent debt adjustment. DEF advises the recommended amendments would add $0.25 to the average monthly bill. TECO indicates the recommended amendments would add $1.12 to the average monthly residential bill and $1.41 to the average monthly small commercial non-demand customer's bill. PGS states the recommended amendments would add $0.46 to the average monthly residential bill and $0.72 to the average GS-1 commercial customer bill. Florida Rising agrees that moving forward with the recommended amendments would result in a bill impact of a similar magnitude as had been saved with application of the parent debt adjustment.

For the policy reasons stated above and noting the utilities have indicated they support the recommended amendments, staff recommends that the Commission change its policy by amending the rule.

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[12] Bill impact figure is based on retail sales of approximately 40,000,000 megawatt-hours of energy.
[13] That parent debt adjustment results in a $10 million adjustment to DEF's revenue requirement.
[14] Residential Class impact based on 1,000 kilowatt-hours of energy.
[15] Residential Class impact based on 21 therms of natural gas.

However, again, nothing compels amendment of the rule, and nothing requires it remain as is. Rule 25-14.004, F.A.C., is a validly promulgated rule, the adoption of which in 1984 was within the statutory authority delegated to the Commission by the Legislature and within the Commission's broad ratemaking discretion. While the Commission could have made a different policy choice in promulgating this rule, and while there may be policy arguments for amending the rule, nothing requires the Commission to propose amendment of the rule. OPC and Florida Rising assert that the existing rule protects against affiliate transaction abuse and moderates rates for consumers. The utilities acknowledge that the recommended amendments to the rule will increase rates as argued by OPC and Florida Rising but assert that the amendments allow them to recover an actual cost of service. If the Commission decides not to propose the amendment of this rule, a Notice of Withdrawal must be filed in the Florida Administrative Register pursuant to Section 120.54(3)(d)2, F.S.

As discussed above, regardless of the Commission's determination in this docket, Section 120.5435, F.S., and the Commission's Regulatory Plan, require this rule to be reviewed in the 2026-2027 rule review cycle.

Recommended Amendments to the Rule

If the Commission finds that the rule should be amended to reflect the policy changes discussed above, staff recommends amendment of the rule rule's title, initial paragraph, subsections (1) through (4), and the addition of subsection (5) to reflect the change in the process of making tax determinations from incorporating parent debt to only using the tax expense of the regulated utility. The following is a detailed discussion of staff's recommended amendments as reflected in Attachment A.

Rule Title

Rule 25-14.004, F.A.C., is currently titled "Effect of Parent Debt on the Federal Corporate Income Tax." Staff recommends the Commission amend the title of the rule to accurately reflect the rule's content. The recommended amendment of the rule title is "Determination of Total Corporate Income Tax" because the recommended amendments change the policy for making tax determinations from incorporating parent debt to only using the tax expense of the regulated utility.

Initial Paragraph

The initial paragraph of the current rule is unnumbered and requires that when a regulated utility is a subsidiary of one or more parent companies and files a consolidated tax return with a parent company, the subsidiary's income tax must be adjusted to reflect the income tax expense of the parent debt that may be invested in the equity of the subsidiary. Under the current rule, the tax benefits associated with the parent company's interest expense are attributed to the subsidiary utility. Under the recommended amendments to Rule 25-14.004, F.A.C., the Commission would use only the interest expense inherent in the capital structure of the regulated utility to compute income tax expense, rather than reducing the tax expense in accordance with the parent's capital structure. The recommended amendments to the unnumbered introductory paragraph require that the income tax expense of a regulated utility be determined using only its income, regardless of any parent-subsidiary relationship that may exist.

Subsection (1)

Subsection (1) of the current rule addresses how to calculate the income tax effect of the parent's debt when there is only one parent company.

As parent debt is not a consideration in the recommended amendments, the recommended amendment of subsection (1) deletes the prior language in its entirety. In its place, the recommended rule language of subsection (1) sets forth the method of determining state corporate current income tax of the regulated, subsidiary utility. This amount is calculated 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.

Subsection (2)

Subsection (2) of the current rule addresses how to calculate the income tax effect of the parent's debt when there is more than one parent company.

As parent debt is not a consideration in the recommended amendments, the recommended amendment of subsection (2) deletes the prior language in its entirety. In its place, the recommended rule language of subsection (2) sets forth the method of determining the federal taxable income of the regulated, subsidiary utility after state corporate income tax. This amount is calculated by deducting the state corporate income tax amount calculated pursuant to the recommended amendment of subsection (1) from the regulated utility's federal income before taxes.

Subsection (3)

Subsection (3) of the current rule addresses what is included in the capital structure of the parent and notes that it is 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."

As parent debt is not a consideration in the recommended amendments, the recommended amendment of subsection (3) deletes the prior language in its entirety. In its place, the recommended rule language of subsection (3) sets forth the method of determining the federal current corporate income tax of the regulated, subsidiary utility. This amount is calculated by multiplying the federal taxable income after state taxes (which amount was calculated pursuant to the recommended amendment of subsection (2)), 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.

Subsection (4)

Subsection (4) of the current rule addresses how to calculate the parent debt adjustment using debt ratio and debt cost of the parent, the statutory tax rate applicable to the consolidated entity, and the equity dollars of the regulated subsidiary, excluding its retained earnings.

As parent debt is not a consideration in the recommended amendments, the recommended amendment of subsection (4) deletes the prior language in its entirety. In its place, the recommended rule language of subsection (4) clarifies that applicable temporary adjustments to taxable income multiplied by the respective federal and state corporate income tax rates, plus or minus any applicable tax adjustments or credits in accordance with applicable federal and state income tax laws and regulation, shall be used in determining federal and state income tax expenses for the regulated utility.

Subsection (5)

The current version of the rule does not contain a subsection (5). The recommended amendment of the rule adds subsection (5), which states that total income tax expense for the regulated utility will be determined by adding the amounts calculated pursuant to the recommended amendments of subsections (1), (3), and (4) of the rule.

Minor Violation Rule Certification

Pursuant to Section 120.695, F.S., for each rule filed for adoption, the agency head shall certify whether any part of the rule is designated as a rule the violation of which would be a minor violation. Rule 25-14.004, F.A.C., is currently listed as a minor violation rule by the Commission. This rule is a minor violation rule because the violation of this rule would not result in economic or physical harm to a person, cause an adverse effect on the public health, safety, or welfare, or create a significant threat of such harm. Violations of Rule 25-14.004, F.A.C., with the recommended amendments would continue to be minor violations. Therefore, for the purposes of filing the proposed amended rule for adoption with the Department of State, staff recommends that the Commission certify Rule 25-14.004, F.A.C., as a minor violation rule.

Statement of Estimated Regulatory Costs

Section 120.54(3)(b)1., F.S., encourages agencies to prepare a Statement of Estimated Regulatory Costs (SERC) before the adoption, amendment, or repeal of any rule. A SERC was prepared for this rulemaking and is appended as Attachment B. As required by Section 120.541(2)(a)1., F.S., the SERC analysis includes whether the rule amendments are likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate within five years after implementation. None of the impact/cost criteria will be exceeded as a result of the recommended amendments.

The SERC concludes that the amendments to the rule will likely not directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate in Florida within one year after implementation. Further, the SERC concludes that the recommended rule amendments will not likely increase regulatory costs, including any transactional costs, or have an adverse impact on business competitiveness, productivity, or innovation, in excess of $1 million in the aggregate within five years of implementation. Thus, pursuant to Section 120.541(3), F.S., the recommended amendment of the rule does not require legislative ratification.

In addition, the SERC states that the recommended amendments to the rule would have no impact on small businesses, would have no implementation or enforcement costs on the Commission or any other state or local government entity, and would have no impact on small cities or small counties. The SERC states that there will be no transactional costs likely to be incurred by individuals and entities required to comply with the requirements.

Conclusion

The Commission should propose the amendment of Rule 25-14.004, F.A.C., as set forth in Attachment A. Staff also recommends that the Commission certify the rule as a minor violation rule. However, if the Commission decides not to propose the amendment of this rule, a Notice of Withdrawal must be filed in the Florida Administrative Register pursuant to Section 120.54(3)(d)2, F.S.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no requests for hearing or comments from the Joint Administrative Procedures Committee (JAPC) are filed, and no proposal for a lower cost regulatory alternative is submitted, the rule may be filed with the Department of State for adoption, and the docket should be closed. (Sapoznikoff)

Staff Analysis: If no requests for hearing or JAPC comments are filed, and no proposal for a lower cost regulatory alternative is submitted pursuant to Section 120.541(1)(a), F.S., the rule may be filed with the Department of State for adoption, and the docket should be closed.

25-14.004 Determination of Total ~~Effect of Parent Debt on Federal~~ Corporate Income Tax.

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 exists. ~~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 current corporate income taxes as calculated above will then be deducted from the regulated utility's federal 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 current corporate 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,~~

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~~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 respective federal and state corporate income tax rates, 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 calculated in subsections (1), (3), and (4) above.

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, Amended _____.

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State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER ● 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE:	December 21, 2023
TO:	Susan Sapoznikoff, Senior Attorney, Office of the General Counsel
FROM:	Sevini K. Guffey, Public Utility Analyst IV, Division of Economics SKG
RE:	Statement of Estimated Regulatory Costs (SERC) for proposed Amendments to Rule 25-14.004, Florida Administrative Code (F.A.C.), Determination of Total Corporate Income Tax

Current Rule 25-14.004, F.A.C., Determination of Total Corporate Income Tax, provides that in proceedings to establish revenue requirements or address overearnings, the income tax expense of a utility shall be adjusted to reflect the income tax expense benefit of the parent company's debt that may be invested in the equity of the utility subsidiary where a consolidated income tax return is filed.

By amending this rule, utilities will be treated on a stand-alone basis regarding income taxes, and no portion of the interest expenses benefit of a parent company will be attributed to a utility subsidiary.

Staff held a rule development workshop on August 15, 2023, pursuant to Section 120.54(2)(c), Florida Statutes (F.S.). Staff issued a SERC data request on November 28, 2023. Responding electric, natural gas, and water and wastewater utilities stated that they do not expect incremental costs of any significance as a result of the proposed revisions to Rule 25-14.004, F.A.C. The SERC analysis indicates that none of the adverse impact/cost criteria established in Sections 120.541(2)(a), (c), (d), and (e), F.S., will be exceeded as a result of the proposed amendments to Rule 25-14.004, F.A.C.

cc: SERC file

FLORIDA PUBLIC SERVICE COMMISSION
STATEMENT OF ESTIMATED REGULATORY COSTS
Rule 25-14.004, F.A.C., Determination of Total Corporate Income Tax

1. Will the proposed rule have an adverse impact on small business? [120.541(1)(b), F.S.] (See Section E., below, for definition of small business.)

   Yes ☐ No ☒

If the answer to Question 1 is "yes", see comments in Section E.

2. Is the proposed rule likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate in this state within 1 year after implementation of the rule? [120.541(1)(b), F.S.]

   Yes ☐ No ☒

If the answer to either question above is "yes", a Statement of Estimated Regulatory Costs (SERC) must be prepared. The SERC shall include an economic analysis showing:

A. Whether the rule directly or indirectly:

(1) Is likely to have an adverse impact on any of the following in excess of $1 million in the aggregate within 5 years after implementation of the rule? [120.541(2)(a)1, F.S.]

Economic growth	Yes ☐	No ☒
Private-sector job creation or employment	Yes ☐	No ☒
Private-sector investment	Yes ☐	No ☒

(2) Is likely to have an adverse impact on any of the following in excess of $1 million in the aggregate within 5 years after implementation of the rule? [120.541(2)(a) 2, F.S.]

Business competitiveness (including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets)	Yes ☐	No ☒
Productivity	Yes ☐	No ☒
Innovation	Yes ☐	No ☒

(3) Is likely to increase regulatory costs, including any transactional costs, in excess of $1 million in the aggregate within 5 years after the implementation of the rule? [120.541(2)(a)3, F.S.]

Yes ☐ No ☒

Economic Analysis: Current Commission policy and practice regulate subsidiary utilities, and their associated tax expense, on a stand-alone basis. The proposed revisions to Rule 25-14.004, F.A.C., are to ensure that the Florida Public Service Commission (FPSC) rules are consistent with current FPSC policy and practice regarding taxes.

In response to staff's data request, two of the responding water and wastewater utilities stated that they do not expect any incremental costs as a result of the proposed revisions to Rule 25-14.004, F.A.C. One responding water utility stated that they expect an annual incremental cost of approximately $10,000 as a result of the proposed methodology to calculate its stand-alone income tax expense.

In response to staff's data request, the electric and natural gas investor-owned utilities (IOUs) stated that they do not expect incremental costs of any significance as a result of the proposed revisions to Rule 25-14.004, F.A.C.

B. A good faith estimate of: [120.541(2)(b), F.S.]

(1) The number of individuals and entities likely to be required to comply with the rule.

A total of 154 utilities are required to comply with the rule. The proposed rule amendments will affect 4 investor-owned electric companies, 5 investor-owned natural gas companies, and 145 water and wastewater utilities.

(2) A general description of the types of individuals likely to be affected by the rule.

The types of individuals likley to be affected by the rule are the ratepayers of the above listed utilities.

C. A good faith estimate of: [120.541(2)(c), F.S.]

(1) The cost to the Commission to implement and enforce the rule.

☒ None. To be done with the current workload and existing staff.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

(2) The cost to any other state and local government entity to implement and enforce the rule.

☒ None.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

(3) Any anticipated effect on state or local revenues.

☒ None.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

D. A good faith estimate of the transactional costs likely to be incurred by individuals and entities (including local government entities) required to comply with the requirements of the rule. "Transactional costs" include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used, procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring or reporting, and any other costs necessary to comply with the rule. [120.541(2)(d), F.S.]

☒ None.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

E. An analysis of the impact on small businesses, and small counties and small cities: [120.541(2)(e), F.S.]

(1) "Small Business" is defined by Section 288.703, F.S., as an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than $5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As to sole proprietorships, the $5 million net worth requirement shall include both personal and business investments.

☐ No adverse impact on small business.

☒ Minimal. Provide a brief explanation. Small businesses will be affected to the extent that revenue requirements, for utilities with parent companies that have debt at the parent level, will no longer reflect the tax benefit provided by the parent debt adjustment and the proposed rule revisions would help ensure small businesses receive proper price signals.

☐ Other. Provide an explanation for estimate and methodology used.

(2) A “Small City” is defined by Section 120.52, F.S., as any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census. A “small county” is defined by Section 120.52, F.S., as any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

☒ No impact on small cities or small counties.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

F. Any additional information that the Commission determines may be useful. [120.541(2)(f), F.S.]

☐ None.

Additional Information: In response to staff’s data request, two electric IOUs and one natural gas IOU stated that the proposed revisions to Rule 25-14.004, F.A.C., would eliminate costs associated with calculating a parent debt adjustment in a rate case and the associated costs of preparing supportive testimony. However, the above stated cost savings will not be materially significant as stated by the utilities.

G. A description of any regulatory alternatives submitted and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule. [120.541(2)(g), F.S.]

☒ No regulatory alternatives were submitted.

☐ A regulatory alternative was received from

☐ Adopted in its entirety.

☐ Rejected. Describe what alternative was rejected and provide a statement of the reason for rejecting that alternative.