

DOCKET NO. 891296-PU

ORIGINAL  
FILE COPY

REQUEST TO ESTABLISH DOCKET

Date 11/14/89

- 1. Division Name/Staff Name Appeals/Miller *CM*
- 2. OPR Appeals
- 3. OCR AFAD/Causseaux
- 4. Suggested Docket Title Public Counsel *Petition by Office of*  
Rule 25-14.003, F.A.C., Corporate Income Tax Expense Adjustments.

5. Suggested Docket Mailing List (attach separate sheet if necessary)

A. Parties (Provide names of regulated companies; provide names and addresses of nonregulated companies; provide names, addresses, and affiliation (i.e., attorney, company liaison officer, or customer) of individuals)

Please provide to parties listed in Docket No. 861190-PU.

_____	_____
_____	_____
_____	_____
_____	_____

B. Interested Persons/Companies (Provide names, complete mailing addresses, and affiliation)

_____	_____
_____	_____
_____	_____
_____	_____

C. This is a generic proceeding and the Interested Persons mailing list should be expanded to include the industries checked below:

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Investor-Owned Electrics | <input checked="" type="checkbox"/> Water Utilities               |
| <input type="checkbox"/> Electric Cooperatives               | <input checked="" type="checkbox"/> Local Exchange Telephone Cos. |
| <input type="checkbox"/> Municipal Electrics                 | <input type="checkbox"/> Interexchange Telephone Cos.             |
| <input checked="" type="checkbox"/> Gas Utilities            | <input type="checkbox"/> Coin-Operated Telephone Cos.             |
| <input checked="" type="checkbox"/> Sewer Utilities          | <input type="checkbox"/> Shared Tenant Telephone Cos.             |

- 6. Check One: *Per Causseaux*  
 Documentation attached.
- Documentation will be provided with recommendation.

DOCUMENT NUMBER-DATE  
11159 NOV 14 1989  
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Amendment of Rule  
25-14.003, F.A.C., Corporate  
Income Tax Expense Adjustments )  
\_\_\_\_\_ )

) Docket No. 861190-PJ  
) Filed: November 6, 1989  
)

PETITION FOR THE INITIATION  
OF EMERGENCY RULEMAKING PROCEDURES

Pursuant to Section 120.54(9), Florida Statutes, and Commission Rules 25-22.012 and 25-22.018, Florida Administrative Code, the Citizens of the State of Florida ("Citizens"), through Jack Shreve, Public Counsel, file this petition for the Public Service Commission to initiate emergency rulemaking proceedings to amend Commission Rule 25-14.003(1)(f), Florida Administrative Code, as set forth below.

1. The Citizens request emergency rulemaking proceeding to implement the following amendment to Rule 25-14.003(1)(f), Florida Administrative Code:

(f) "Midpoint." The midpoint of the range of rate of return calculated as the weighted average cost of capital for the period of time covered by the tax adjustment report required in subsection (4). The weighted average cost of capital shall be calculated using the current embedded cost of fixed rate capital, the actual cost of short term debt, zero cost

for all investment tax credits, the cost of common equity that is the most recent Commission approved return on equity, and the actual cost of other sources of capital. The capital structure used shall be the company's actual capital structure adjusted to reflect all regulatory adjustments. of---return approved-by-the-Commission--in--the--utility's last--rate--case,-adjusted-for-the-cost-of-any debt-issued-subsequent-to-the--rate--case--and prior--to--the--commencement--of-a-tax-savings refund-or-tax-deficiency-collection-

2. The above language is a verbatim excerpt from a broader amendment which the Commission voted to propose on October 31, 1989. While the balance of the Commission-approved amendment can be implemented on a more leisurely basis, the specific provision cited here forms the crux of the amendment and must be passed on an emergency basis to implement its provisions as soon as possible.

3. In discussing the rule amendment, the Commission expressed frustration over the failure of the rule to work as it had been intended. By voting to propose the amendment, the Commission demonstrated its intent to implement a tax rule which would efficiently carry out its purpose.

4. Staff counsel, however, advised the Commission that the proposed amendment could take several months to become effective, if any parties chose to oppose the amendment. And as Commissioner Beard pointed out, the amendment is likely to be challenged.

5. Thus, to prevent its will from being thwarted by a protracted rule proceeding, the Commission should apply its emergency rulemaking procedures to amend the specific portion of the rule which has so frustrated the Commission over the past few years.

6. As the Commission knows, for 1987 the electric industry kept \$42 million dollars of tax savings which could have been refunded; for 1988 the electric industry has kept \$140 million to date; for 1989, it will probably be worse. This dismal record was caused primarily by two factors: the authorized returns on equity were far in excess of the existing market cost of equity; and the investment tax credits have been assigned a cost which does not exist. Both of these fundamental injustices can be solved by the specific amendment to 25-14.003(1)(f), Florida Administrative Code, which the Commission approved on October 31, 1989.

7. The only remaining impediment to the solution is the unnecessary passage of time. The Commission can remove this final offending impediment by employing its emergency rulemaking

2  
powers. Section 120.54(9), Florida Statutes, and Rule 25-~~12~~.018, Florida Administrative Code, provide for the Public Service Commission to adopt an emergency rule if the Commission finds an immediate danger to the public health, safety or welfare exists which requires immediate Commission action.

8. The public clearly needs protection from the continuation of a process which allows an annual excess of \$140 million to be paid to the electric industry alone. Each day that passes without corrective Commission action serves to compound this already intolerable situation. Immediate action is necessary to implement the rule amendment to stem the loss of these monies.

9. Thus, the Commission must take emergency action to remove the imminent danger to the public welfare. The passage of an emergency rule under Section 120.54(9), Florida Statutes, can be viewed as analogous to the procedure used to establish interim rates. Section 120.54(9)(c), Florida Statutes, provides:

(c) An emergency rule adopted under this subsection may not be effective for a period longer than 90 days and shall not be renewable, except during the pendency of a challenge to proposed rules addressing the subject of the emergency rule. However, the agency may take identical action by normal rulemaking procedures.

The Commission can pass the specific amendment to Rule 25-14.003(1)(f), Florida Administrative Code, as an emergency rule,

and concurrently proceed on the proposed amendment for the entire Rule 25-14.003, Florida Administrative Code, under the normal rulemaking process. By that mechanism, the Commission would ensure the protection of the public welfare against the immediate danger of losing hundreds of millions of dollars for 1990. At the same time, the Commission could consider the entire proposed amendment under a more deliberate time frame.

WHEREFORE, the Citizens of the State of Florida petition the Commission to undertake an emergency rule proceeding to amend Rule 25-15.003(1)(f), Florida Administrative Code.

Respectfully submitted,

/s/  
Jack Shreve  
Public Counsel

/s/  
Stephen C. Burgess  
Deputy Public Counsel

Office of the Public Counsel  
c/o The Florida Legislature  
111 West Madison Street  
Room 801  
Tallahassee, Florida 32399-1400  
904/488-9330

Attorneys for the Citizens  
of the State of Florida

CERTIFICATE OF SERVICE  
Docket No. 861190-PU

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail\*, hand-delivery\*\*, or by facsimile\*\*\* to the following parties on this 6th day of November, 1989.

\*F. MARSHALL DETERDING, ESQ.  
Rose, Sundstrom & Bentley  
2548 Blairstone Pines Drive  
Tallahassee, FL 32301

\*\*CINDY MILLER, ESQ.  
Division of Legal Services  
Florida Public Service Commission  
101 E. Gaines Street.  
Tallahassee, FL 32399-0872

\*RICHARD D. MELSON, ESQ.  
Hopping Boyd Green & Sams  
123 South Calhoun Street  
Post Office Box 6526  
Tallahassee, FL 32314

\*E. BARLOW KEENER, ESQ.  
Southern Bell Telephone Company  
150 South Monroe Street  
Suite 400  
Tallahassee, FL 32301

\*B. KENNETH GATLIN, ESQ.  
Gatlin, Woods, Carlson  
& Cowdery  
1709-D Mahan Drive  
Tallahassee, FL 32308

\*JOSEPH A. MCGLOTHLIN, ESQ.  
Lawson, McWhirter, Grandoff  
& Reeves  
522 E. Park Avenue  
Tallahassee, FL 32301

\*BILL WALKER  
Florida Power & Light Company  
703 First Florida Bank Building  
Tallahassee, FL 32301

\*LEE WILLIS, ESQ.  
Ausley, McMullen, McGehee,  
Carothers and Proctor  
Post Office Box 391  
Tallahassee, FL 32301

/s/  
Stephen C. Burgess  
Deputy Public Counsel

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3. OCR AFAD/Causseaux
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Water Utilities  
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 Interexchange Telephone Cos.  
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 Shared Tenant Telephone Cos.

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