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**ORIGINAL  
FILE COPY**

**Southern Bell**

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March 21, 1990

Mr. Steve C. Tribble  
Director, Division of Records and Reporting  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, Florida 32301

Re: Docket No. 891278-PU - Tax Savings Rule

Dear Mr. Tribble:

Enclosed please find an original and fifteen copies of Southern Bell Telephone and Telegraph Company's Comments on Staff's Proposed Versions of Rule 25-14.003, F.A.C., which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely yours,  
*E. Barlow Keener*  
E. Barlow Keener

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APP	1
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Enclosures

cc: All Parties of Record  
A. M. Lombardo  
Harris R. Anthony  
R. Douglas Lackey

RECEIVED & FILED

*JJ*  
FPSC BUREAU OF RECORDS

A BELL SOUTH Company

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FPSC-RECORDS/REPORTING

CERTIFICATE OF SERVICE  
Docket No. 891278-PU

I HEREBY CERTIFY that a copy of the foregoing has been  
furnished by United States Mail this *21<sup>st</sup>* day of *March*, 1990  
to:

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*E. Barlow Keene*

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Revisions to ) Docket No. 891278-PU  
Rule 25-14.003, FAC, Corporate )  
Income Tax Expense Adjustment ) Filed: March 21, 1990  
Rule: Midpoint and Additional )  
Changes )  
\_\_\_\_\_ )

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S  
COMMENTS ON STAFF'S PROPOSED RULE 25-14.003, F.A.C

Pursuant to Rule 25-22.016(5), Florida Administrative Code, Southern Bell Telephone and Telegraph Company ("Southern Bell" or "Company") submits its Comments on Staff's Proposed Rule 25-14.003, Florida Administrative Code, issued on February 23, 1990, by the Florida Public Service Commission ("Commission") Associate General Counsel.

1. Rule 25.14.003, Florida Administrative Code, entitled "Corporate Income Tax Expense Adjustments", was designed to identify and treat in a specified manner any changes which occur in federal or state corporate income tax rates. The intent of the existing rule is to provide an evenhanded approach that would allow a utility to recover increased tax expense if corporate income tax rates increased and to return to the benefit of the ratepayers tax savings resulting from lower income tax rates. Income tax expense is one of the many issues traditionally considered in a full utility rate case proceeding, but the

objective of the existing rule was to single out the income tax rate issue for special adjustments between rate cases.

2. As set forth in the Notice, the Commission Staff is recommending three different alternatives to the existing rule. These alternatives are: (1) a proposed rule similar to the emergency rule, with a change regarding the treatment of the investment tax credit ("ITC") pending a private letter ruling from the IRS regarding the ITC for each company; (2) repeal of the rule; and, (3) a proposed rule, providing for a direct flow-through, which basically applies a formula developed by the Federal Energy Regulatory Commission (FERC). Southern Bell comments on the three proposals as follows:

ALTERNATIVE I: THE EMERGENCY  
TAX RULE TREATING ITC AT ZERO COST

3. Southern Bell objects to Staff's alternative proposed rule insofar as it treats the ITC at zero cost rate for the calculation of a mid-point used to determine a tax rate increase or decrease adjustment. Using a zero cost for ITC is inconsistent with the regulatory treatment of the ITC in a full rate case proceeding and is, therefore, not an appropriate method for dealing with any federal or state tax rate changes adopted between rate cases. If the ITC is treated at zero cost, utilities may, under certain circumstances when income tax rate changes, file

rate cases in order to give the utilities an opportunity to earn a reasonable rate of return.

4. In addition, the Staff's proposed rule raises concerns regarding consistency with Section 46(f)(2) of the Internal Revenue Code. These concerns have led to Staff's proposal to allow utilities the opportunity to seek a private letter ruling from the IRS. Southern Bell notes that it would most likely file for its own private letter ruling if this version of the rule becomes final.

#### ALTERNATIVE II: REPEAL OF THE RULE

5. Southern Bell supports the repeal of Rule 25-14.003, Florida Administrative Code, because the rule prejudices the appropriate treatment of one issue in the rate setting process without considering the impact of other equally important issues. If the rule remains as it exists or Alternative I of the proposed rule is adopted, the rule will require rate increases or decreases that could result in the filing of rate cases to recognize other near term changes that are not recognized by the rule.

6. Another reason that the tax rule should be repealed is to allow the Commission the flexibility to treat each utility according to its unique situation. The Commission has already taken considerable steps through implementing alternative rate

regulation plans that have demonstrated a more efficient and appropriate method for dealing with tax rate changes and should not be limited in this regard in the future. For example, the Commission adopted an alternative method by treating tax changes as exogenous items in Southern Bell's rate stabilization plan.

#### ALTERNATIVE III - FERC FORMULA METHOD

7. Staff's Alternative III, which incorporates a formula used by FERC, would require that utilities file revised tariffs based on a calculation of the impact of a pending income tax rate change sixty days before the effective date of the tax rate change. However, the pattern of Congress in recent years has been to make tax rate changes effective on the date the legislation is first proposed. Thus, it would be impractical, if not impossible, to meet the requirement of filing the revenue impacts and revised tariffs sixty days in advance of the effective date of the tax rate change.


8. Alternative III also appears to take away flexibility from the Commission. For example, the proposed rule would not allow the Commission to implement any alternative treatment to offset the impact of the tax rate change, even if the Commission believed that the alternative treatment was superior to adjusting rates. Thus, the adoption of this proposed rule, using a complex


formula would confine the Commission to the use of an inflexible, complex method.

9. Furthermore, Southern Bell believes that it would be difficult to apply the formula contained in this alternative. First, the description of the calculation, which calls for a revenue effect, is inconsistent with the result of the formula, which calculates a tax effect. Second, the definitions of factors "I" and "K" used in the formula cannot be applied to all utilities. It is therefore clear that the FERC formula method will be difficult to apply and administer and, as a result, this version is apparently just as complicated and complex as the existing rule.

Respectfully submitted,

SOUTHERN BELL TELEPHONE AND  
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