

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

[18 C.F.R. Parts 35 and 389]

Rate Changes Relating to Federal
Corporate Income Tax Rates for
Public Utilities

{Docket No. RM87-4-000}

ORDER NO. 475

(Issued June 26, 1987)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: In the Tax Reform Act of 1986 Congress reduced the maximum Federal corporate income tax rate from 46 percent to 34 percent, effective July 1, 1987. The Federal Energy Regulatory Commission is adopting an abbreviated rate filing procedure that public utilities may use to reduce their rates to reflect this decrease.

EFFECTIVE DATE: June 26, 1987

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

[18 C.F.R. Parts 35 and 389]

Before Commissioners: Martha O. Hesse, Chairman;
Anthony G. Sousa, Charles G. Stalon,
Charles A. Trabandt and C. M. Naeve.

Rate Changes Relating to Federal) Docket No. RM87-4-000
Corporate Income Tax Rate for)
Public Utilities)

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FINAL RULE

(Issued June 26, 1987)

I. INTRODUCTION

The Tax Reform Act of 1986 1/ signed on October 22, 1986, significantly lowered the Federal corporate income tax rate from 46 percent to 34 percent. The Federal Energy Regulatory Commission (Commission) is adopting a voluntary, abbreviated rate filing procedure that will allow electric public utilities to file for certain rate decreases under section 205 of the Federal Power Act (FPA), 2/ to reflect this decrease in the Federal income tax rate. 3/

1/ I.R.C. §§ 1-7872 (1986).

2/ 16 U.S.C. § 824d (1982).

3/ Although the reduction in the Federal corporate income tax rate impacts on natural gas and oil pipelines, this rule is limited to electric public utilities. Natural gas pipeline companies' rates will automatically be adjusted since tax trackers have been included in the majority of the natural gas pipeline companies' rate settlements. Changes in oil pipeline rates will be made on a case-by-case basis.

The reduction in rates will be based on a formula using data provided by the utility in its most recent rate filing. Under this procedure, the Commission will consider only the reduction in the Federal corporate tax rate in establishing the new rate. Any other issues which may be raised in the rate filing will be dismissed without prejudice.

For utilities which do not voluntarily reduce their rates either through this abbreviated procedure or through general rate change filings, the Commission intends to undertake a general review of their rates, and where appropriate, to institute formal investigations under section 206 of the FPA 4/ on the basis that rates reflecting the 46 percent tax rate or other previously authorized cost allowances may no longer be just and reasonable. 5/

II. BACKGROUND

In response to the Tax Reform Act, the Commission, on March 12, 1987, published a Notice of Proposed Rulemaking (NOPR) 6/ which proposed an abbreviated filing procedure that would allow public utilities to voluntarily reduce their rates to account

4/ 16 U.S.C. § 824e (1982).

5/ Recently, the Commission instituted 206 proceedings involving the formula rates of electric utilities. See, EL87-21-000 Yankee Atomic Electric Company, EL87-22-000 Vermont Yankee Nuclear Power Corporation, EL87-23-000 Connecticut Yankee Atomic Power Company, EL87-30-000 Connecticut Light & Power Company.

6/ Rate Changes Relating to Federal Corporate Income Tax Rate for Public Utilities, 52 Fed. Reg. 8616 (Mar. 19, 1987). FERC Stats. and Regs. ¶ 32,437.

for this reduction in the Federal tax rate. 7/ The NOPR proposed two methods of determining the rate reduction. The primary option would permit a utility to reflect the reduction in the tax rate through a formula reduction to its existing rates. The formula would rely on data supplied by the utility in its most recent rate filing. An alternative approach was also suggested under which rates would be reduced using a generically-determined fixed percentage reduction to the demand charge component of a utility's existing rates.

The NOPR proposed to preclude a utility from using the abbreviated filing procedure if it had a rate change application pending before the Commission on a date certain; if it had an accepted tariff providing for automatic adjustments to reflect changes in the Federal tax rate; or if it already had rates in effect which reflected the reduced Federal income tax rate.

The NOPR stated that if a utility wished to reflect in its rates other changes created by the Tax Reform Act or by other cost elements, instead of the abbreviated procedure, it should file a rate change application under section 205 of the FPA. The Commission also proposed that if a utility failed to file for rate reductions, the Commission might institute a proceeding requiring the utility to show cause why its unadjusted rates are just and reasonable under section 206 of the FPA. The NOPR

7/ Fifty-two commenters responded to the NOPR. The list of commenters is contained in Appendix A.

also proposed that such an investigation might not be limited to issues relating to the Tax Reform Act, and might include all components of the utility's rates.

A. Overview

The Commission is concerned that large overcollections on an industry-wide basis may occur unless rates are reduced promptly to reflect the new tax rate since the reduction in the tax rate affects all utilities. The Commission is adopting a generic approach to address this concern. Through a generic reduction in rates based on a formula, a utility would be able to adjust for changes in the corporate tax rate by using an expedited procedure that would provide consumers immediate rate relief.

The Commission realizes that a formula reduction in rates may not be appropriate for all utilities under all circumstances. Therefore, a utility that chooses not to use the abbreviated procedure established in this rule may agree to a settlement with its customers, file a general section 205 rate change application, or if a utility finds that no rate reduction is warranted, it may elect to do nothing.

The Commission encourages settlement agreements and will look favorably on any proposed settlements that take into account the impact of the reduction in the tax rate.

Under a full section 205 rate change application, a utility may raise any other factors which might counterbalance the tax rate reduction. Under a full rate change application customers may also raise any relevant issues.

If a utility concludes that no rate decrease is warranted, it may refrain from filing any rate reduction. If the Commission institutes a section 206 proceeding, a utility may raise relevant issues to show that its unadjusted rates are just and reasonable.

B. Other Tax and Cost Considerations.

In the NOPR, the Commission identified three provisions of the Tax Reform Act that might affect public utilities on an industry-wide scale. These were changes in the depreciation rates, loss of investment tax credits and the reduction in the Federal income tax rate. The Commission stated in the NOPR that changes in liberalized depreciation and the loss of investment tax credits would have little immediate effect on a utility's rates. ^{8/} It therefore concluded that the only

^{8/} Changes in tax depreciation have little immediate impact on the calculation of income tax allowable because of the Commission's tax normalization policy. Under normalization the calculation of allowable income tax expense is based upon the amount of book depreciation taken, not tax depreciation. The amount of book depreciation is not affected by the Tax Reform Act. See 18 C.F.R. §§ 35.25. "Regulations Implementing Tax Normalization for Certain Items Reflecting Timing Differences in the Recognition of Expenses or Revenues for Rate-making and Income Tax Purposes," Order No. 144, 46 Fed. Reg. 26,613 (May 14, 1981), FERC Stats. and Regs. [Regulations Preambles, 1977-1981] ¶ 30,254 (May 6, 1981). Similarly, loss of investment tax credits will also have a minimal effect on a utility's revenue requirements. Under current regulatory policy, the benefits of investment tax credits

(Footnote continues on next page.)

changes that a utility should adjust immediately would be those to reflect the reduction in the Federal corporate income tax rate.

Many commenters faulted the Commission for concentrating solely on the reduction of the tax rate. 9/ They argued that other provisions of the Tax Reform Act offset this decrease. 10/

(Footnote 8 continued from previous page.)

are shared between the ratepayer and the stockholders of the regulated entities. The ratepayer benefits by either receiving the time value of the unamortized investment tax credit or the annual amortization amount, but not both, depending upon the optional treatment elected by the utility. The rate reducing effects of previously generated investment tax credits will continue until fully amortized.

9/ See, e.g., Utah Power and Light Company, Philadelphia Electric Company, Kentucky Utilities Company, Electric Utilities, Public Service Electric and Gas Company, Colorado Public Utilities Commission, Public Service Company of Colorado, Sierra Pacific Power Company.

10/ In addition to elimination of investment tax credits and changes in depreciation other provisions of the TRA cited by commenters that addressed this issue were:

- recognition of unbilled revenues
- capitalization of certain construction overheads
- taxability of contributions in aid of construction
- alternative minimum tax provisions
- timing of deduction for sales tax, property tax, and employee benefits
- elimination of accrual accounting for accrued vacation pay and reserve for bad debts

The Commission recognizes that many of the aspects of the Tax Reform Act cited by the commenters may have an impact on a utility's cash flow. The effect, however, will differ widely from utility to utility depending upon its particular circumstances, and therefore would be inappropriate for a generic formula, which could not account for all the changes made by the Act and their effects on each utility. The one aspect of the Tax Reform Act that will have a significant effect on the rates of electric utilities on an industry-wide basis is the corporate tax rate reduction.

The Commission has determined that, to reflect this one change, the income tax component of rates under the Commission's ratemaking model should be reduced by nearly 40 percent. 11/ Through this procedure, the Commission is enabling a public utility to voluntarily reduce its rates without having to file a full rate change application.

Some commenters suggested that the Commission consider changes in state income taxes. 12/ Others urged the Commission to take into

11/ The percentage change in the income tax component of a jurisdictional company's revenue requirement due to a reduction in the Federal corporate income tax rate can be measured by the incremental change in the "income tax factor." This factor, expressed as the Federal tax rate divided by one minus the Federal tax rate, is 0.85185 at the 46 percent rate and 0.51515 at the 34 percent rate. Thus, the 12 percentage point reduction in the Federal tax rate translates to nearly a 40 percent reduction in a jurisdictional company's income tax allowance.

12/ See Utah Power and Light Company, Idaho Power Company (state tax increases), Cities and Villages of Algoma, et al. (state tax decreases)

account other increases in cost components which might affect a utility's rates. 13/ The Commission disagrees. The purpose of this final rule is to provide utilities with a simple mechanism to voluntarily reduce rates to reflect the reduction in the Federal tax rate. Consideration of these other suggested factors would unnecessarily complicate the abbreviated filing and delay rate relief.

C. Filing Options

The NOPR requested comments on two proposed abbreviated filing methods, and invited suggestions on any other alternatives. The first alternative proposed in the NOPR was a formula reduction in rates, based on data supplied by the utility in its most recent rate filing. Under the alternative option, rates would be reduced automatically, for all utilities, using a fixed percentage reduction to the demand charge.

Most commenters (even those opposed to the rulemaking) favored the formula approach over a fixed percentage reduction. 14/ Most utilities favored retaining both approaches, which would enable the filing utility to select the methodology most suited

13/ See, e.g., Central Illinois Public Service Company, Utah Power and Light Company.

14/ See, e.g., Public Service Company of Oklahoma, Borough of Madison, New Jersey, Consumer Power Company, Saffer Utility Consultants, Inc.

to its particular situation. 15/ Some utilities also suggested that the Commission provide many abbreviated filing options. 16/

The Commission is adopting only the formula alternative. The Commission agrees with many of the commenters that a formula reduction has certain advantages over a fixed percentage reduction. 17/ While both may be simple, the formula approach is utility-specific. As such, it can more readily accommodate a utility's specific circumstances and, therefore, more closely approximates the actual cost-of-service impact of the lower tax rate.

Commenters also cited problems with the fixed percentage option. 18/ Since it is not utility-specific, but calls for an across-the-board reduction for all utilities, it may be imprecise. In fact, it may produce excessive reductions for some utilities and allow others to receive a windfall. The Commission believes that the fixed percentage approach would be unfair to both the utility and the ratepayers. Additionally, these commenters faulted the method by which the Commission determined the fixed

15/ See, e.g., Carolina Power and Light Company, Electric Utilities, Arizona Public Service Company.

16/ See, e.g., American Electric Power Service Corporation, Edison Electric Institute, Southwestern Electric Power Company.

17/ See, e.g., Department of Water Resources of the State of California, Coast Electric Power Association, et al.

18/ See, e.g., Southwestern Electric Power Company, Public Systems

reduction percentage. The percentage reduction proposed in the NOPR was based on a sampling of eight rate filings which resulted in a five to eight percent reduction in the nonvariable portion of a utility's revenue requirement. Commenters argued that the sampling was too small and was not representative of the industry. The Commission recognizes that there are approximately 175 utilities subject to the Commission's jurisdiction. The Commission agrees that a determination of an appropriate fixed percentage reduction would require extensive sampling. Furthermore, the Commission believes that using any fixed percentage reduction would not yield as accurate a result as a formula reduction.

In view of the disadvantages of the fixed percentage approach, the Commission must reject the argument that a utility should have the option of using either the formula method or the fixed percentage method.

Some commenters wanted the Commission to adopt numerous filing options. 19/ Others suggested that the Commission establish some type of simplified procedure that a utility could use to show that its unadjusted rates remained justified. 20/ The Commission believes that multiple filing options or additional procedures would be unduly cumbersome. Allowing utilities to make simplified

19/ See, e.g., Public Service Company of Oklahoma, Edison Electric Institute.

20/ See, e.g., Pennsylvania Power & Light Company, Central Vermont Public Service Corporation, Public Service Company of New Mexico.

showings that their rates are just and reasonable also poses evidentiary problems, since a utility would be free to selectively supply the Commission with data in support of its case. A more appropriate forum to make such a showing is a proceeding under either section 205 or 206 of the FPA.

D. The Formula

The adopted formula is:

$$K = \frac{D - D(E/F)}{I}$$

Where

D = Composite income taxes allowable included in rates in effect on the date that the change in the Federal corporate income tax rate becomes effective.

E = Composite income tax factor using the new Federal corporate income tax rate and the effective state income tax rate from the rate application docket upon which existing rates are based. This is computed by the following formula:

$$\frac{\text{composite marginal income tax rate}}{1 - \text{composite marginal income tax rate}}$$

F = Composite income tax factor using the old Federal corporate income tax rate. This is computed by the same formula used for determining E.

I = Test period billing units from the rate application docket upon which the rates that are in effect are based. Absent extraordinary circumstances a public utility shall use demand billing units. This information is usually available in Statement BG of the rate application and/or settlement or compliance documents.

K = Required rate reduction per billing demand unit.

This formula may be broken down into the following four-step process:

$$\begin{array}{rclcl}
 1) & A & \times & \frac{B}{C} & = & D \\
 2) & D & \times & \frac{E}{F} & = & G \\
 3) & D & - & G & = & H \\
 4) & \frac{H}{I} & = & K & &
 \end{array}$$

Where

- A = Income taxes allowable (exclusive of deferred tax make-up provisions, i.e. "South Georgia" provisions, and investment tax credit amortizations) included in the revenue requirement of the public utility's rate application docket upon which the rates in effect on the date the Federal corporate income tax rate change becomes effective were finally accepted or approved. This information is generally included in Statement BK or BL of the filing as revised after any summary dispositions where revised rates were required to be filed.
- B = Revenue level in effect on the date the change in Federal corporate income tax rate becomes effective using test period billing determinants. This information is generally available from Statement BG of the rate application and/or settlement or compliance filing documents.
- C = Revenue requirement from the rate application docket which includes A. This is generally included in Statement BK or BL of the filing.
- G = Income taxes allowable at the new Federal corporate income tax rate.
- H = Difference between income taxes allowable at the new Federal corporate income tax rate, and at the old Federal corporate income tax rate. This is the revenue reduction required to reflect the reduction in the Federal corporate income tax rate.

The Commission will use the data provided by a public utility in the rate application supporting its current rates on file to determine the reduction in rates to reflect the change in the Federal corporate tax rate. Since a public utility's rates generally differ, depending on the type of service the utility provides (firm transmission service, full requirements service, or partial requirements service) and for each customer group, the utility must make a separate rate reduction calculation for each type of service and each customer group.

In the first step of the formula, the income tax allowable component (A) from a public utility's last rate application is multiplied by the ratio of: (B) the test period revenues from the rates actually in effect on July 1, 1987 (using billing determinants from Statement BG of the public utility's rate application) to (C) the test period revenue requirement reported by the public utility in its last rate application (Statement BK or BL of the public utility's rate application). The result (D) represents the income tax allowable component which, for purposes of this rule, the Commission is presuming is included in a public utility's rate in effect on the date that the change in Federal corporate income tax rate became effective. This figure is based on the old Federal corporate income tax rate. The calculation recognizes that the public utility's current rate level may be designed to achieve test period revenues lower than the revenue requirement originally supported

by the public utility in its rate application. The difference between generated rate levels and revenue requirement may be due to a variety of reasons including reductions in rate levels due to settlement agreements, voluntary reductions, Commission orders, and Commission opinions. For those rates that were determined by Commission opinion or equivalent order following a litigated proceeding, the income tax allowance from the company's finally accepted compliance filing, exclusive of deferred tax make-up provisions and investment tax credit amortizations, must be used as (D) in the formula instead of using "A x (B/C)" as (D). For settlement rates where the utility submitted a cost of service supporting the settlement rate level, the utility must use the income tax allowable figure contained in the settlement as (D) in the formula.

In the second step, the income tax allowable component (D) is multiplied by the ratio of: (E) the income tax factor at the new Federal corporate income tax rate to (F) the income tax factor at the old Federal corporate income tax rate. The result (G) represents the income tax allowable based on the new Federal corporate income tax rate.

In the third step of the formula, the income tax allowable component based on the new Federal corporate income tax rate (G) is subtracted from the income tax allowable component based on the old Federal corporate income tax rate (D). The result (H) represents the revenue reduction necessary to reflect the new corporate income tax rate.

Finally, in the fourth step of the formula, the revenue reduction figure (H) is divided by the demand billing units reported in the public utility's last rate application to determine the revenue reduction per unit of billing demand (K). Some adjustments in the implementation of this aspect of the formula may be allowed if, for example, the utility's rate is entirely energy-based, *i.e.*, on a per kilowatt-hour basis, or if the utility's rate design incorporates unusual features.

In applying this formula, a utility may, by affidavit setting forth the reason, deviate from the use of demand billing units under extraordinary circumstances. Under this filing procedure intervenors may challenge this variation. The utility shall have the burden of proof in showing that a deviation from the use of demand billing units is based on extraordinary circumstances.

In order to expedite filings under this rule, a utility must provide the following in support of its rate reduction:

- (A) Computations showing the application of each step of the formula methodology;
- (B) Supporting workpapers including (1) all intermediate calculations necessary under the formula with narrative explanation where appropriate and (2) details on the derivation of all formula inputs together with copies of all statements and workpapers used as source documents;

- (C) Detailed explanations of all adjustments to data shown on supporting statements (e.g., adjustments to exclude South Georgia provisions from Federal Income Tax Allowable);
- (D) Form of notice noting that the rates are to be effective as of July 1, 1987;
- (E) Revised rate sheets reflecting the proposed rate reduction for every rate schedule to which the reduction is proposed;
- (F) A list of any customers or services for which no reduction is proposed and the reasons for not reducing these rates.

A number of commenters raised issues regarding application of the formula. The Commission proposed to base the formula reduction on data derived from a utility's most recent rate filing. However, several commenters argued that the Commission should not rely on data in a utility's last rate filing since the data may have been filed several years ago and may no longer reflect a utility's true costs, and a formula based on the data would therefore not be valid. 21/

While a utility's specific costs may have changed since its last rate application, the data contained in this application are the most comprehensive on file at the Commission. A utility that believes that the data supporting its current rates no longer reflect its true costs should file an application for a general rate change.

21/ See, e.g., Idaho Power Company, Public Service Company of New Mexico, Utah Power and Light Company.

The Iowa Public Service Company suggested that the Commission use data from a utility's most recent FERC annual report. The Commission disagrees since rates currently being collected are based on a utility's last cost-of-service filing and not annual report figures. Furthermore, it may not be possible to derive accurate data such as a utility's income tax allowable figure from its annual report.

In the formula, a utility's deferred tax make-up provision is excluded from the income taxes allowable component. These make-up provisions are designed to recover any deficiencies or to eliminate any excesses in the deferred tax reserves of a utility. Several commenters questioned whether the provision should be excluded in computing the appropriate reduction. 22/ The Commission will consider any corrections to a utility's make-up provision amortization in conjunction with the utility's next full rate change application. The Commission believes that potentially complex questions involving any such adjustments should be dealt with in individual FPA section 205 or 206 proceedings, where all parties may question the necessary adjustment. Until that time, a utility should continue to accrue the deferred tax amortization amount in accordance with its previously approved plan of recovery.

22/ See, e.g., Allegheny Electric Cooperative, Inc., Coast Electric Power Association, et al.

Similarly, some commenters requested that the Commission establish a method of returning any overaccruals of a utility's unfunded future tax liability to the ratepayers. 23/ The Commission is delaying consideration of any of these excess accruals until a utility's next rate application for the same reasons discussed above with regard to deferred tax make-up provisions. Utilities are required to establish a plan to return any excess accruals in rate applications. Until the next full rate change application a utility would not receive a windfall because any excess funds the utility collects for deferred income taxes are used as a rate base deduction until ultimately returned to the customers. 24/

Under the formula, reductions were to be made on a per billing demand unit basis unless there were "extraordinary circumstances" not to do so. The NOPR requested comments as to the appropriate circumstances under which exceptions to the use of demand billing units should be allowed. Although two commenters addressed this issue, neither provided the Commission with specific examples of

23/ See, e.g., Wholesale Distribution Customers, Arkansas Public Service Commission, Indiana Utility Consumer Counselor.

24/ See Order No. 144, 46 Fed. Reg. 26,613 (May 14, 1981), FERC Stats. & Reg. [Regulations Preambles 1977-1981] ¶ 61,254 (May 6, 1981); Order No. 144-A, 47 Fed. Reg. 8329 (Feb. 26, 1982) and 477 Fed. Reg. 8991 (Mar. 2, 1981), FERC Stats. & Regs. [Regulations Preambles (1982-1985)] ¶ 30,340 (Feb. 22, 1982).

what would constitute an extraordinary circumstance. 25/ Therefore, the Commission will consider these situations on a case-by-case basis. Intervenor may challenge such a deviation. A utility shall have the burden of proof in showing that a variation from the use of demand billing units is based on extraordinary circumstances.

E. Rates Affected

In the NOPR, the Commission proposed to exclude three types of utilities from the abbreviated filing procedure: a utility with rate filings pending before the Commission in which the tax component could be changed and in which the effective date of the rates at issue was no later than July 1, 1987; a utility that tendered rate applications to allow an effective date no later than July 1, 1987; or a utility whose rates already reflected the change in the Federal tax rate.

Some commenters suggested that formula reductions were unwarranted with respect to certain types of rates, specifically wheeling rates 26/ and market-based rates. 27/ Since the Commission is adopting only the formula rate reduction method, only rates which can be reduced by this method are included in this rule. These are requirements service rates (full or partial) and firm wheeling rates.

25/ See Pacific Gas & Electric Company, Iowa Public Service Company.

26/ See Niagara Mohawk Power Corporation.

27/ See Illinois Power Company.

Several commenters argued that a formula reduction was not appropriate for settlement rates, since the income tax allowable component in these rates may not be readily determinable. 28/ The formula assumes, in settlement rates, a pro-rata reduction in all of a utility's costs. For example, if a utility proposed revenues of \$100 but settled for \$75, all of the cost components submitted in support of the rate request to achieve those revenues, including income taxes allowable, would be reduced by 25 percent. The American Electric Power Service Corporation suggested a revision in the formula which would attribute the difference between the rate as filed and the settlement rate solely to a reduction in the rate of return on equity. Since it may be impossible to accurately allocate the reduction among all the different costs in a settlement rate, the Commission believes the best generic approach is to assume a pro-rata reduction in all the costs rather than attributing the reduction to a single factor. A utility that believes that application of the formula would result in inequitable treatment is encouraged to file an application under FPA section 205.

Other commenters questioned whether the formula could be applied to settlement rates subject to moratorium provisions. For moratoriums that prohibit any rate change (increase or decrease), the Commission is adopting a procedure suggested by the Florida Power & Light Company. Adjustment to this type of rate can be

28/ See, e.g., Detroit Edison Company, Pennsylvania Power & Light Company, Edison Electric Institute.

made under the abbreviated procedure, but the Commission will defer the effective date of the reduction until after the moratorium term. However, if a moratorium prohibits only rate increases, the rate can be adjusted using the formula since filing for a rate decrease would not violate the moratorium.

Two commenters stated that a formula reduction in phase-in rates may not be appropriate. 29/ Phase-in rates present unique problems since rates are not computed using a conventional cost-of-service. Consequently, the Commission will adjust these rates on a case-by-case basis.

F. Effective Date of Decreased Rates

The Commission proposed that, in order to use the abbreviated filing procedure, a utility would have to file by June 1 1987, so that the proposed rates would become effective July 1, 1987, when the 34 percent tax rate becomes effective.

In this final rule, the Commission is establishing a filing timetable that utilities must use. Rates under this abbreviated filing are to be effective July 1, 1987, regardless of when the rate application is filed. To implement this procedure, the Commission is waiving any notice requirements in order to make July 1 the effective date of the new rate. 30/

If a utility uses the abbreviated filing procedure, it must refund to its customers the difference between the rate unadjusted for the tax change and the new rate that reflects the tax adjustment.

29/ See Union Electric Company, Missouri Public Service Commission.

30/ See 18 C.F.R. § 35.11 (1987).

utilities to use this procedure, the
 requiring that refunds be made with interest.
 expects that many public utilities will file
 under this rule. In order to process these
 ously, the Commission is establishing the
 dule which utilities must follow. The
 these filing periods will provide the
 derly and efficient basis to initiate its
 those utilities that do not file under this

Schedule for Filings

Filing Period

No later than September 15, 1987
 No later than September 30, 1987
 No later than October 15, 1987
 No later than October 31, 1987
 No later than November 15, 1987
 No later than November 30, 1987

suggested that the Commission delay the
 e new rates until January 1, 1988. ^{31/} While
 stratively simpler, the Commission is unwilling
 uld allow utilities to overcollect during the
 1987. They further argued that the June 1 filing
 NOPR did not allow utilities sufficient time
 ida Power & Light Company, Idaho Power Company.

to collect the data necessary to file. The first filing period
 in the schedule established in the final rule gives utilities at
 least two months to collect this data. The Commission believes
 that this is sufficient time for a utility to prepare its filing.

G. Tax Rate for 1987

Since the Tax Reform Act reduced the tax rate to 34 percent
 effective July 1, 1987, the NOPR proposed that rate filings under
 the abbreviated procedure were to reflect this 34 percent tax rate.

Numerous commenters argued that if a utility were to use a
 split tax rate of 46 percent for the first half of 1987 and
 34 percent for the remaining half, it would be violating standard
 accounting practices and Internal Revenue Service normalization
 requirements. ^{32/} They specifically cited section 15 of the
 Internal Revenue Code ^{33/} that requires a blended tax rate of

^{32/} See, e.g., Deloitte, Haskins & Sells, Arthur Anderson &
 Company, Kentucky Utilities Company, Utah Power & Light
 Company, Commonwealth Edison, Southern California Edison
 Company.

^{33/} I.R.C. § 15(a) (1986) provides in part:

If any rate of tax imposed by this chapter changes, and
 if the taxable year includes the effective date of the
 change (unless that date is the first day of the taxable
 year), then

- (1) tentative taxes shall be computed by applying the
 rate for the period before the effective date of the
 change, and the rate for the period on and after such
 date, to the taxable income for the entire taxable
 year; and
- (2) the tax for such taxable year shall be the sum of
 that proportion of each tentative tax which the number
 of days in each period bears to the number of days in
 the entire taxable year.

PART 35 - FILING OF RATE SCHEDULES

1. The authority citation for Part 35 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. No. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a-825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601-2645 (1982).

2. In § 35.13, paragraph (a)(2)(ii) is revised to read as follows:

§ 35.13 Filing of changes in rate schedules.

* * * * *

- (a) General rule. * * *
- (2) Abbreviated filing requirements. * * *
- (ii) For rate schedule changes other than rate increases.

(A) Except as provided in paragraph (a)(2)(ii)(B) of this section, any utility that files a rate schedule change that does not provide for a rate increase or that provides for a rate increase that is based solely on change in delivery points, a change in delivery voltage, or a similar change in service, must submit with its filing only the information required in paragraphs (b) and (c) of this section.

(B) Any utility that files a rate schedule change that provides for a rate decrease under § 35.27 of this part must submit with its filing only the information required by § 35.27 of this part.

* * * * *

3. Section 35.27 is added to read as follows:

§ 35.27 Changes of rates relating to changes in the Federal corporate income tax rate.

(a) Purpose.

The abbreviated filing procedure and formula for this section are intended to permit a public utility to make an adjustment to its rates to reflect the decrease in the Federal corporate income tax rate pursuant to the Tax Reform Act of 1986. This abbreviated filing procedure and formula would be used by a public utility in lieu of a more comprehensive rate filing under § 35.13 of this part concerning changes in rate schedules.

(b) Applicability.

(1) Except as provided in paragraphs (b)(2), and (b)(3) of this section, a public utility may use the abbreviated filing procedure and formula in this section to adjust its rates to reflect the decrease in the Federal corporate income tax rate.

(2) If a public utility has a rate case currently pending before the Commission in which the change in the Federal corporate income tax rate can be reflected, the public utility may not use this section to adjust its rates.

(3) If a public utility has a rate accepted for filing by the Commission that provides for the automatic adjustment of its rates to reflect, without prior hearing, increases or decreases in the Federal corporate income tax rate, it may not use this section to adjust its rates.

(ii) Whether or not the formula in § 35.27 has been properly applied, and

(iii) Whether or not the correct information was used in that formula.

(2) Any other issue raised will be severed from the proceeding and dismissed without prejudice.

(f) Effective date.

Rates proposed under the filing are to have a July 1, 1987 effective date. A public utility that chooses to use the abbreviated filing procedure and formula contained in this section must make its filing according to the following schedule:

Schedule for Filings

<u>First Letter of Utility Name</u>	<u>Filing Period</u>
A - B	No later than September 15, 1987
C - E	No later than September 30, 1987
F - L	No later than October 15, 1987
M - N	No later than October 31, 1987
O - S	No later than November 15, 1987
T - Z	No later than November 30, 1987

(g) Refunds.

A utility filing under this procedure must refund to its customers the difference between the rates unadjusted for the tax change and the new rate that reflects the tax adjustment. These refunds will be made without interest.

(h) Waiver of filing fees.

Any filing under this section may be filed without the filing fee required by § 35.0 of this part.

PART 389 - OMB CONTROL NUMBERS FOR COMMISSION INFORMATION COLLECTION REQUIREMENTS

4. The authority citation for Part 389 continues to read as follows:

Authority: Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520) (1982).

5. The Table of OMB Control Numbers in § 389.101(b) is amended by inserting "35.27" in numerical order in the Section column and "0096" in the corresponding position in the OMB Control Number column.

NOTE: This Appendix will not appear in the Code of Federal Regulations

Appendix A

1. Arthur Young
2. Public Service Company of Oklahoma
3. Cities and Villages of Algoma, et al.
4. American Electric Power Service Corporation
5. Air Transport Association of America
6. Borough of Madison, New Jersey
7. Cincinnati Gas & Electric Company
8. Public Service Company of New Mexico
9. Illinois Power Company
10. Philadelphia Electric Company
11. Consumers Power Company
12. Missouri Public Service Commission
13. Arkansas Public Service Commission
14. Utah Power & Light Company
15. Allegheny Electric Cooperative, Inc.
16. Mississippi Power Company
17. New England Power Company
18. Union Electric Company
19. American Public Power Association
20. Wholesale Distribution Customers
21. Public Systems
22. Niagara Mohawk Power Corporation
23. Iowa Power & Light Company
24. Department of Water Resources of the State of California
25. Kentucky Utilities Company
26. Pacific Gas & Electric Company
27. Central Illinois Public Service Company
28. Carolina Power & Light Company
29. Pennsylvania Power & Light Company
30. Saffer Utility Consultants, Inc.
31. Detroit Edison Company
32. Southwestern Electric Power Company
33. Florida Power & Light Company
34. Idaho Power Company
35. Robert Abrams, Attorney General of New York
36. Public Service Electric & Gas Company
37. Electric Utilities
38. Golden Spread Electric Cooperative, Inc., et al.
39. Central Vermont Public Service Corporation
40. Coast Electric Power Association, et al.
41. Colorado Public Utilities Commission
42. Deloitte, Haskins & Sells
43. Edison Electric Institute
44. Public Service Company of Colorado
45. Arthur Andersen & Company
46. Arizona Public Service Company
47. Iowa Public Service Company
48. Indiana Utility Consumer Counselor
49. Otter Tail Power Company
50. Commonwealth Edison Company
51. Sierra Pacific Power Company
52. Southern California Edison Company