§ 35.23 General provisions.

(a) Applicability. This subpart applies to any wholesale sale of electric energy in a coordination transaction by a public utility if that sale requires the use of an emissions allowance.

(b) Implementation Procedures. (1) If a public utility has a coordination rate schedule on file that expressly provides for the recovery of all incremental or out-of-pocket costs, such utility may make an abbreviated rate filing detailing how it will recover emissions allowance costs. Such filing must include the following: the index or combination of indices to be used; the method by which the emission allowance amounts will be calculated; timing procedures; how inconsistencies, if any, with dispatch criteria will be reconciled; and how any other rate impacts will be addressed. In addition, a utility making an abbreviated filing must:

(i) Clearly identify the filing as being limited to an amendment to a coordination rate to reflect the cost of emissions allowances, in the first paragraph of the letter of transmittal accompanying the filing;

(ii) Submit the revisions in accordance with §35.7; and

(iii) Identify each rate schedule to which the amendment applies.

(2) The abbreviated filing must apply consistent treatment to all coordination rate schedules. If the filing does not apply consistent rate treatment, the public utility must explain why it does not do so.

(3) If a public utility wants to charge incremental costs for emissions allowances, but its rate schedule on file with the Commission does not provide for the recovery of all incremental costs, the selling public utility may submit an abbreviated filing if all customers agree to the rate change. If customers do not agree, the selling public utility must tender its emissions allowance proposal in a separate section 205 rate filing, fully justifying its proposal.


§ 35.24 Tax normalization for public utilities.

(a) Applicability. (1) Except as provided in subparagraph (2) of this paragraph, this section applies, with respect to rate schedules filed under §§35.12 and 35.13 of this part, to the ratemaking treatment of the tax effects of all transactions for which there are timing differences.

(2) This section does not apply to the following timing differences:

(i) Differences that result from the use of accelerated depreciation;

(ii) Differences that result from the use of Class Life Asset Depreciation Range (ADR) provisions of the Internal Revenue Code;

(iii) Differences that result from the use of accelerated amortization provisions on certified defense and pollution control facilities;

(iv) Differences that arise from recognition of extraordinary property losses as a current expense for tax purposes but as a deferred and amortized expense for book purposes;

(v) Differences that arise from recognition of research, development, and demonstration expenditures as a current expense for tax purposes but as a deferred and amortized expense for book purposes;
(vi) Differences that result from different tax and book reporting of deferred gains or losses from disposition of utility plant;

(vii) Differences that result from the use of the Asset Guideline Class “Repair Allowance” provision of the Internal Revenue Code;

(viii) Differences that result from recognition of purchased gas costs as a current expense for tax purposes but as a deferred expense for book purposes.


(b) General rules—1) Tax normalization required. (i) A public utility must compute the income tax component of its cost of service by using tax normalization for all transactions to which this section applies.

(ii) Except as provided in paragraph (c) of this section, application of tax normalization by a public utility under this section to compute the income tax component will not be subject to case-by-case adjudication.

(2) Reduction of, and addition to, rate base. (i) The rate base of a public utility using tax normalization under this section must be reduced by the balances that are properly recordable in Account 281, “Accumulated deferred income taxes—accelerated amortization property;” Account 282, “Accumulated deferred income taxes—other property;” and Account 283, “Accumulated deferred income taxes—other.” Balances that are properly recordable in Account 190, “Accumulated deferred income taxes,” must be treated as an addition to rate base.

(ii) Such rate base reductions or additions must be limited to deferred taxes related to rate base, construction or other jurisdictional activities.

(iii) If a public utility uses an approved purchased gas adjustment clause or a research, development and demonstration tracking clause, the rate base reductions or additions required under this subparagraph must apply only to the extent that the balances in Account 190 and Accounts 281 through 283 are not used, for purposes of calculating carrying charges, as an offset to balances properly recordable in Account 188, “Research development and demonstration expenditures,” or Account 191, “Unrecovered purchased gas costs.”

(c) Special rules. (1) This paragraph applies:

(i) If the public utility has not provided deferred taxes in the same amount that would have accrued had tax normalization been applied for the tax effects of timing difference transactions originating at any time prior to the test period; or

(ii) If, as a result of changes in tax rates, the accumulated provision for deferred taxes becomes deficient in or in excess of amounts necessary to meet future tax liabilities as determined by application of the current tax rate to all timing difference transactions originating in the test period and prior to the test period.

(2) The public utility must compute the income tax component in its cost of service by making provision for any excess or deficiency in deferred taxes described in subparagraphs (1)(i) or (1)(ii) of this paragraph.

(3) The public utility must apply a Commission-approved ratemaking method made specifically applicable to the public utility for determining the cost of service provision described in subparagraph (2) of this paragraph. If no Commission-approved ratemaking method has been made specifically applicable to the public utility, then the public utility must use some ratemaking method for making such provision, and the appropriateness of this method will be subject to case-by-case determination.

(d) Definitions. For purposes of this section, the term:

(1) Tax normalization means computing the income tax component as if the amounts of timing difference transactions recognized in each period for ratemaking purposes were also recognized in the same amount in each such period for income tax purposes.

(2) Timing differences means differences between amounts of expenses or revenues recognized for income tax purposes and amounts of expenses or
§ 35.25 Construction work in progress.

(a) Applicability. This section applies to any rate schedule filed under this part by any public utility as defined in subsection 201(e) of the Federal Power Act.

(b) Definitions. For purposes of this section:

(1) Construction work in progress or CWIP means any expenditure for public utility plant in process of construction that is properly included in Accounts 107 (construction work in progress) and 120.1 (nuclear fuel in process of refinement, conversion, enrichment, and fabrication) of part 101 of this chapter, the Uniform System of Accounts Prescribed for Public Utilities and Licens- ees Subject to the Provisions of the Federal Power Act (Major and Nonmajor), that would otherwise be eli-
gible for allowance for funds used during construction (AFUDC) treatment.

(2) Double whammy means a situation which may arise when a wholesale electric rate customer embarks upon its own or participates in a construction program to supply itself with all or a portion of its future power needs, thereby reducing its future dependence on the CWIP of the rate applicant, but is simultaneously forced to pay to the CWIP public utility rate applicant the CWIP portion of the wholesale rates that reflects existing levels of service or a different anticipated service level.

(3) Fuel conversion facility means any addition to public utility plant that en-
ables a natural gas-burning plant to convert to the use of other fuels, other than natural gas. Such facilities in-
clude those that alter internal plant worknings, such as oil or coal burners, soot blowers, bottom ash removal sys-
tems and concomitant air pollution control facilities, and any facility needed for receiving and storing the fuel to which the plant is being converted, which facility would not be nec-
essary if the plant continued to burn gas or oil.

(4) Pollution control facility means an identifiable structure or portions of a structure that is designed to reduce the amount of pollution produced by the power plant, but does not include any facility that reduces pollution by sub-
stituting a different method of generation or that generates the additional power necessitated by the operation of a pollution control facility.

(c) General rule. For purposes of any initial rate schedule or any rate sched-
ule change filed under §35.12 or §35.13 of this part, a public utility may in-
clude in its rate base any costs of con-
struction work in progress (CWIP), in-
cluding allowance for funds used during construction (AFUDC), as provided in this section.