

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: November 29, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Accounting and Finance (Cicchetti, D. Buys, Fletcher, Hightower, Mouring) *M*
Division of Economics (Guffey) *SKY*
Division of Engineering (Ellis) *ED*
Office of the General Counsel (Davis, Nieves) *JN*

RE: Docket No. 20180154-GU – Petition for limited proceeding to consider the tax impacts associated with the Tax Cuts and Jobs Act of 2017 for Florida City Gas.

AGENDA: 12/11/18 – Regular Agenda – Parties May Participate

COMMISSIONERS ASSIGNED: Graham, Brown, Clark

PREHEARING OFFICER: Brown

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

ALM

Case Background

On March 12, 2018, the Office of Public Counsel (OPC), the Federal Executive Agencies (FEA), and Florida City Gas (FCG) filed a joint motion in support of their Stipulation and Settlement Agreement (SSA) to resolve all matters in Docket No. 20170179-GU, FCG's petition for a rate increase and approval of FCG's depreciation study. The Commission approved the SSA in Order No. PSC-2018-0190-FOF-GU.¹ The SSA, among other things, reflected the Parties' agreement that the issue of the finalized amount of "protected" and unprotected" excess deferred taxes and the flow back period of the excess "protected" deferred taxes, would be determined and trued-up either by submission of a later agreement or the initiation of a limited scope proceeding.

¹Order No. PSC-2018-0190-FOF-GU, issued April 20, 2018, in Docket No. 20170179-GU, *In re: Petition for rate increase by Florida City Gas.*

The Florida Public Service Commission (Commission) opened Docket No. 20180154-GU on August 13, 2018 to consider the tax impacts affecting FCG as a result of the passage of the Tax Cuts and Jobs Act of 2017. The Order Establishing Procedure, Order No. PSC-2018-0472-PCO-GU, was issued on September 24, 2018, in which controlling dates were set for filing testimony, exhibits, and discovery.

On October 8, 2018, FCG, OPC, and FEA (collectively, Parties) filed a Joint Motion for Approval of Stipulation and Settlement Regarding Remaining Excess Accumulated Deferred Income Tax Issues (2018 EADIT Agreement). On October 15, 2018, the Parties filed another Joint Motion with the Commission to temporarily suspend the procedural schedule in this Docket (Joint Motion). Order No. PSC-2018-0509-PCO-GU approved the parties Joint Motion and the procedural schedule in this docket was suspended.

The 2018 EADIT Agreement reclassified \$1.6 million of excess accumulated deferred income taxes from “protected” to “unprotected” with an amortization period of five (5) years resulting in an annual amortization of \$304,943. For 2018, FCG agreed to request authority to apply a levelized Purchased Gas Adjustment credit each month during 2019 to reflect the 2018 amortization of \$304,943. FCG agreed to implement a base rate reduction of \$304,943, beginning January 1, 2019. FCG classified the deficient deferred taxes relating to cost of removal/negative net salvage as protected. FCG agreed that if the IRS issues guidance that cost of removal/negative net salvage is to be treated as “unprotected,” it is agreed that the cost of removal/ net salvage shall be accounted for using the Average Rate Assumption Method and the deficient deferred taxes will be recovered over the remaining life of the asset.

The Parties seek the Commission’s approval of the 2018 EADIT Agreement which resolves all issues in this docket. Such approval would obviate the need for further testimony and a full hearing in this docket.

At this time, it is appropriate for the Commission to discuss and vote on whether to approve the Stipulation and Settlement Agreement as requested in the Joint Motion for Approval of Settlement Agreement. The Joint Motion of Florida City Gas, The Office of Public Counsel, and Federal Executive Agencies for approval of the Stipulation and Settlement regarding remaining excess accumulated deferred income tax issues is attached.



Writer's Direct Dial Number: (850) 521-1706
Writer's E-Mail Address: bkeating@gunster.com

October 8, 2018

Electronic Filing

Ms. Carlotta Stauffer, Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: DOCKET NO. 20180154-GU - Petition for limited proceeding to consider the tax impacts associated with the Tax Cuts and Jobs Act of 2017 for Florida City Gas.

Dear Ms. Stauffer:

Attached for filing in the above-referenced docket, please find the Joint Motion of Florida City Gas, the Office of Public Counsel, and the Federal Executive Agencies for Approval of Stipulation and Settlement Regarding Remaining Excess Accumulated Deferred Income Tax Issues. The Stipulation and Settlement for which the Joint Movants request approval is included as Attachment A to the Joint Motion.

As always, please don't hesitate to let me know if you have any questions. Thank you for your assistance with this filing.

Kind regards,

Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301
(850) 521-1706

cc:// (Service List)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Re: Petition for limited proceeding to consider the tax impacts associated with the Tax Cuts and Jobs Act of 2017 for Florida City Gas.

DOCKET NO. 20180154-GU

FILED: October 8, 2018

JOINT MOTION OF FLORIDA CITY GAS, THE OFFICE OF PUBLIC COUNSEL, AND FEDERAL EXECUTIVE AGENCIES FOR APPROVAL OF STIPULATION AND SETTLEMENT REGARDING REMAINING EXCESS ACCUMULATED DEFERRED INCOME TAX ISSUES

Florida City Gas (“FCG” or “Company”), the Office of Public Counsel (“OPC”), and Federal Executive Agencies (“FEA”), (collectively, “Joint Movants”) by and through their undersigned attorneys, respectfully move the Florida Public Service Commission (“Commission” or “FPSC”) to approve a Stipulation and Settlement addressing the remaining issues associated with disposition of excess accumulated deferred income taxes (“2018 EADIT Agreement”), attached hereto as Attachment A, which the Joint Movants have entered into in order to resolve issues in this limited proceeding. In support hereof, the Joint Movants state as follows:

1. On April 20, 2018, the Commission approved a Settlement in Docket No. 20170179-GU, *Petition for rate increase by Florida City Gas*, among OPC, FEA, and FCG. The Settlement outlined, among other things, the Joint Movants’ agreement that the Company’s projected tax savings from the Tax Cuts and Jobs Act of 2017 (“TCJA”) is \$4,584,338 and this amount was included as a reduction to the test year subject to certain specified conditions set forth in the Settlement.

2. The Settlement further reflected the Joint Movants’ agreement that the issue of the finalized amount of the “protected” and “unprotected” excess deferred taxes and the flow back period of the “protected” and “unprotected” excess deferred taxes, would be determined and

trued-up either by submission of a later agreement or the initiation of a limited scope proceeding no later than July 1, 2018.

3. On August 10, 2018, FCG filed its Petition for Limited Scope Proceeding, consistent with Article II, paragraph c. of the Settlement, asking the Commission to address the quantification of FCG's excess accumulated "protected" and "unprotected" deferred income taxes created by the TCJA, as well as the appropriate disposition of the excess deferred income taxes. The Limited Scope Proceeding was assigned Docket No. 20180154-GU. On September 24, 2018, the Order Establishing Procedure for this proceeding, Order No. PSC-2018-0472-PCO-GU, was issued.

4. The Joint Movants continued to negotiate in good faith with regard to the disposition of "protected" and "unprotected" excess deferred taxes to resolve the issues in this docket and thereby avoid the need for any further expensive and time-consuming litigation before the Commission. These efforts have been successful and the result is the 2018 EADIT Agreement attached hereto as Attachment A.

5. The 2018 EADIT Agreement is the result of good faith efforts to address the issues in this proceeding in a manner that will provide regulatory certainty with regard to FCG's rates and avoid the unnecessary expense and uncertainty associated with further litigation. The 2018 EADIT Agreement results in a fair, just, and reasonable disposition of the tax benefits arising from the TCJA to the benefit of FCG's customers. Therefore, the Joint Movants submit the 2018 EADIT Agreement is in the public interest and respectfully request its approval as further described below.

6. In furtherance of this Joint Motion and approval of the 2018 EADIT Agreement, the Joint Movants waive any right to seek reconsideration of, or otherwise appeal, any decision of the Commission approving, in its entirety, this 2018 EADIT Agreement.

7. As set forth in the attached 2018 EADIT Agreement, the Joint Movants have reached agreement, as follows:

- (a) \$1.6 million of basis adjustments were incorrectly classified as “protected” and shall be reclassified as “unprotected” with an amortization period of five (5) years, resulting in a difference of \$304,943 that would have otherwise been flowed-through to customers. FCG agrees to file on or before October 12, 2018 a supplemental exhibit in Docket No. 20180003-EI, which will request authority to apply a levelized Purchased Gas Adjustment credit each month during 2019 to reflect the 2018 amortization of \$304,943 if this 2018 EADIT Agreement is approved. FCG agrees to implement a base rate reduction on January 1, 2019, in the amount of \$304,943;
- (b) The Joint Movants have further agreed that, aside from the \$1.6 million EADIT adjustment above, FCG appropriately calculated the amount of protected EADIT and correctly applied the Average Rate Assumption Method (“ARAM”) to the protected EADIT balance associated with the June 1, 2018 rate increase authorized in the Rate Case Settlement. Accordingly, no additional adjustments are needed to address protected EADIT; and

- (c) FCG classifies the deficient deferred taxes relating to cost of removal/negative net salvage as protected. If the IRS issues guidance that cost of removal/negative net salvage is to be treated as “unprotected,” the Joint Movants agree that the cost of removal/negative net salvage shall be accounted for using the ARAM and the deficient deferred taxes will be recovered over the remaining life of the asset.

8. The Joint Movants represent that the 2018 EADIT Agreement provides an equitable and just balance of the positions of the Joint Movants on the issues in this proceeding. The Joint Movants submit approval of the 2018 EADIT Agreement as is in the best interests of both the Company and its customers, and therefore, respectfully request approval of same.

9. For the sake of efficiency and to allow the terms of the 2018 EADIT Agreement to become fully effective on January 1, 2019, as contemplated, the Joint Movants request the Commission rule on this Joint Motion For Approval of Stipulation and Settlement at or before the Commission’s December 2018 Agenda Conference.

10. Commission approval of this Joint Motion is consistent with the Commission’s long-standing policy to encourage settlements that provide benefits to the customers and avoid unnecessary additional litigation expense.

WHEREFORE, the Joint Movants respectfully request that the Commission approve the 2018 EADIT Agreement attached hereto as Attachment A.

Respectfully submitted this 8th day of October 2018 by:

/s/Patricia Christensen

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Patricia A. Christensen, Esquire
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/s/Beth Keating

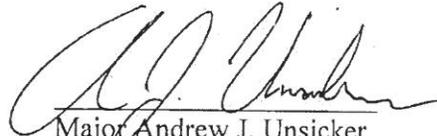
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Respectfully submitted this 8th day of October 2018 by:

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CERTIFICATE OF SERVICE
Docket No. 20180154-GU

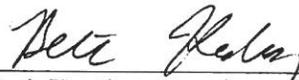
I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail on this 8th day of October 2018 to the following:

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ATTACHMENT A

**STIPULATION AND SETTLEMENT REGARDING
REMAINING EXCESS ACCUMULATED DEFERRED INCOME TAX ISSUES**

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for limited proceeding to consider the tax impacts associated with the Tax Cuts and Jobs Act of 2017 for Florida City Gas.

Docket No. 20180154-GU

Dated: October 8, 2018

**STIPULATION AND SETTLEMENT REGARDING
REMAINING EXCESS ACCUMULATED DEFERRED INCOME TAX ISSUES**

WHEREAS, Florida City Gas (“FCG” or “Company”), the Office of Public Counsel (“OPC”) and the Federal Executive Agencies (“FEA”) have signed this Stipulation and Settlement Regarding Remaining Excess Accumulated Deferred Income Tax Issues (“2018 EADIT Agreement”); and

WHEREAS, unless the context clearly intends otherwise, the term “Party” or “Parties” shall mean a signatory or signatories to this 2018 EADIT Agreement; and

WHEREAS, on October 23, 2017, FCG petitioned the Florida Public Service Commission (“the Commission”) for a rate increase to generate additional gross annual revenues in the amount of \$19.3 million, with the effective date of such rate increase to be August 1, 2018 (“the Rate Case”); and

WHEREAS, the Parties entered into a Stipulation and Settlement to resolve the Rate Case (“Rate Case Settlement”), which was filed March 12, 2018, and approved by Commission Order No. PSC-2018-0190-FOF-GU, issued April 20, 2018; and

WHEREAS, the Rate Case Settlement provided for an increase to FCG’s base rates sufficient to generate an additional \$11.5 million in revenues to be implemented June 1, 2018, and an additional \$3.8 million in revenues to be implemented in two steps: (i) \$2.5 million on June 1, 2019 or on the in-service date of FCG’s Liquefied Natural Gas (“LNG”) facility, whichever is later; and (ii) \$1.3 million on December 1, 2019. If the in-service date of the LNG facility is after December 1, 2019, the Rate Case Settlement allows FCG to implement an increase in rates and charges sufficient to recover the remaining \$3.8 million upon the in-service date of the LNG facility;

WHEREAS, the revenue increase included in the Rate Case Settlement incorporated a \$4,584,338 reduction to the Company's 2018 projected test year to reflect the Company's projected tax savings from the Tax Cuts and Jobs Act of 2017 (Pub. Law 115-97) ("TCJA"); and

WHEREAS, Article II, Paragraph c. of the Rate Case Settlement further acknowledged that the finalized amount of FCG's "protected" and "unprotected" excess deferred taxes and the flow back period of the excess "protected" deferred taxes, arising from the TCJA, would be determined and trued-up either by submission of a later agreement or the initiation of a limited scope proceeding no later than July 1, 2018; and

WHEREAS, on June 29, 2018, and again on July 12, 2018, the Parties submitted letters in Docket No. 20170179-GU representing that discussions regarding the calculation and appropriate treatment of the "protected" and "unprotected" excess deferred taxes were ongoing, but had not yet produced a resolution, thereby necessitating extensions of time; and

WHEREAS, FCG filed its Petition for Limited Scope proceeding on August 10, 2018, before expiration of the second extension period, which initiated this Docket No. 20180154-GU; and

WHEREAS, the Parties have nonetheless continued, in good faith, to work to resolve the issues in this docket in order to minimize the rate impact to FCG customers while providing regulatory certainty to FCG and avoiding the uncertainty associated with further litigation; and

WHEREAS, the legal system, including the Commission, favors settlement agreements that further and are in the public interest; and

WHEREAS, the Parties intend that this 2018 EADIT Agreement supplement the Rate Case Settlement, but not revise or amend any terms or conditions of the Rate Case Settlement; and

WHEREAS, the Parties to this 2018 EADIT Agreement, individually and collectively, agree that this 2018 EADIT Agreement, taken as a whole, is in the public interest; and

WHEREAS, the Parties have entered into this 2018 EADIT Agreement in compromise of positions taken in accord with their rights and interests under Chapters 350, 366 and 120,

Florida Statutes, as applicable, and as part of a negotiated exchange of consideration among the Parties to this 2018 EADIT Agreement, each Party has agreed to concessions to the others with the expectation, intent, and understanding that all provisions of this 2018 EADIT Agreement, upon approval by the Commission, will be enforced by the Commission as to all matters addressed herein with respect to all Parties;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants set forth herein, which the Parties agree constitute good and valuable consideration, the Parties hereby stipulate and agree as follows:

I. Effective Date

a. This 2018 EADIT Agreement will take effect upon Commission approval and shall be implemented on the date of the meter reading for the first billing cycle of January 2019.

b. The parties reserve all rights, unless such rights are expressly waived or released, under the terms of this 2018 EADIT Agreement.

II. Federal Income Tax Reform

a. The parties agree that \$1.6 million of basis adjustments were incorrectly classified as “protected” and shall be reclassified as “unprotected” with an amortization period of five (5) years. The difference between (a) FCG’s revenue requirement based on the current amortization in base rates, and (b) the revenue requirement amount that would have been flowed through using a five-year amortization is \$304,943. FCG agrees to file on or before October 12, 2018 a supplemental exhibit in Docket No. 20180003-EI, which will request authority to apply a levelized Purchased Gas Adjustment credit each month during 2019 to reflect the amortization of \$304,943 if this 2018 EADIT Agreement is approved. FCG agrees to implement a base rate reduction on January 1, 2019, in the amount of \$304,943.

b. The Parties have reached agreement regarding the flow back of the “protected” EADIT. Consistent with normalization principles under the Internal Revenue Code, protected EADIT are subject to the Average Rate Assumption Method (“ARAM”), which flows back the protected EADIT over the remaining book depreciable life of the underlying assets. The parties

agree that, aside from the \$1.6 million EADIT identified in paragraph II(a) above, FCG appropriately calculated the amount of protected EADIT and correctly applied ARAM to the protected EADIT balance associated with the June 1, 2018 rate increase authorized in the Rate Case Settlement. Accordingly, no additional adjustments are needed to address protected EADIT.

c. The Parties acknowledge that FCG classifies the deficient deferred taxes relating to cost of removal/negative net salvage as protected. If the IRS issues guidance that cost of removal/negative net salvage is to be treated as “unprotected,” the Parties agree that the cost of removal/negative net salvage shall be accounted for using the ARAM and the deficient deferred taxes will be recovered over the remaining life of the asset.

III. Commission Approval

a. The provisions of this 2018 EADIT Agreement are contingent upon Commission approval of this 2018 EADIT Agreement in its entirety without modification. The Parties further agree that they believe the 2018 EADIT Agreement is in the public interest, that they will support this 2018 EADIT Agreement and will not request or support any order, relief, outcome, or result in conflict with the terms of this 2018 EADIT Agreement in any administrative or judicial proceeding relating to, reviewing, or challenging the establishment, approval, adoption, or implementation of this 2018 EADIT Agreement or the subject matter hereof.

b. No Party will assert in any proceeding before the Commission that this 2018 EADIT Agreement or any of the terms in this 2018 EADIT Agreement shall have any precedential value. The Parties’ agreement to the terms in this 2018 EADIT Agreement shall be without prejudice to any Party’s ability to advocate a different position in future proceedings not involving this 2018 EADIT Agreement. The Parties further expressly agree that no individual provision, by itself, necessarily represents a position of any Party in any future proceeding, and the Parties further agree that no Party shall assert or represent in any future proceeding in any forum that another Party endorses any specific provision of this 2018 EADIT Agreement by virtue of that Party’s signature on, or participation in, this 2018 EADIT Agreement. It is the intent of the Parties to this 2018 EADIT Agreement that the Commission’s approval of all the terms and provisions of this 2018 EADIT Agreement is an express recognition that no individual

term or provision, by itself, necessarily represents a position, in isolation, of any Party or that a Party to this 2018 EADIT Agreement endorses a specific provision, in isolation, of this 2018 EADIT Agreement by virtue of that Party's signature on, or participation in, this 2018 EADIT Agreement.

c. The Parties agree that approval of the 2018 EADIT Agreement will avoid additional litigation costs for all Parties. The Parties agree to waive:

- i. All notice requirements for a hearing as set forth in Section 120.569(2)(b), Florida Statutes, or other applicable law;
- ii. Their right to require a hearing on the merits;
- iii. Their respective rights to seek reconsideration of any Final Order that approves this Agreement in its entirety without change; and
- iv. Their respective right to judicial review of any such final agency action approving this Agreement afforded by Section 120.68, Florida Statutes.

d. The Parties further agree they will support this 2018 EADIT Agreement and affirmatively assert that this 2018 EADIT Agreement is in the public interest and should be approved. The Parties likewise agree and acknowledge that Commission approval of this 2018 EADIT Agreement promotes planning and regulatory certainty for both FCG and its customers.

IV. Execution

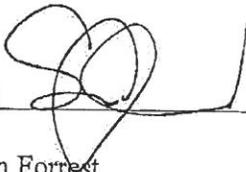
This 2018 EADIT Agreement is dated as of October 8, 2018. It may be executed in one (1) or more counterparts, all of which will be considered one and the same Agreement and each of which will be deemed an original.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties evidence their acceptance and agreement with the provisions of this 2018 Agreement by their signature(s).

Dated this 8 day of October 2018.

Florida City Gas

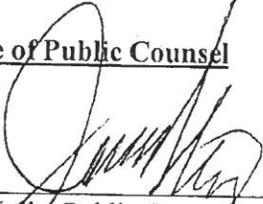
By:  _____

Sam Forrest
President, Florida City Gas

IN WITNESS WHEREOF, the Parties evidence their acceptance and agreement with the provisions of this 2018 Agreement by their signature(s).

Dated this 4th day of October 2018.

Office of Public Counsel

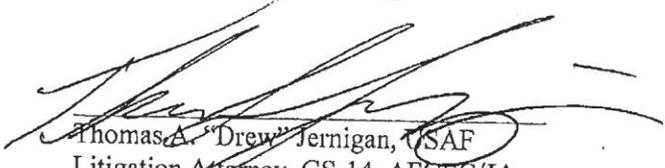


J. R. Kelly, Public Counsel
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Tallahassee, Florida 32399-1400

IN WITNESS WHEREOF, the Parties evidence their acceptance and agreement with the provisions of this 2018 Agreement by their signature(s).

Dated this 5 day of October 2018.

Federal Executive Agencies



Thomas A. "Drew" Jernigan, USAF
Litigation Attorney, GS-14, AFCEC/JA -
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