

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
ORDER NO. PSC-2018-0596-S-GU
ISSUED: December 20, 2018

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman
JULIE I. BROWN
DONALD J. POLMANN
GARY F. CLARK
ANDREW GILES FAY

ORDER APPROVING STIPULATION AND SETTLEMENT AGREEMENT

BY THE COMMISSION:

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 their depreciation study. This Commission approved the SSA in Order No. PSC-2018-0190-FOF-GU. 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 tried-up either by submission of a later agreement or the initiation of a limited scope proceeding.

We 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), which is appended to this Order in Attachment A. In their Joint Motion, the Parties asserted that our approval of the 2018 EADIT Agreement would resolve the issues in this docket and thereby avoid the need for any further expensive and time-consuming litigation before this Commission. On October 15, 2018, the Parties filed another Joint Motion with this 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.

Decision

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 standard for approval of a settlement agreement is whether it is in the public interest.¹ A determination of public interest requires a case-specific analysis based on consideration of the proposed settlement taken as a whole.²

The Parties, in their Joint Motion, assert that 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 Parties further assert that 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."

We agree with the Parties and find that the 2018 EADIT Agreement allows FCG's customers to fairly, justly, and reasonably benefit from the tax benefits arising from the TCJA. Based on our review of the 2018 EADIT Agreement; the exhibits entered into the record; the support and assertions of the Parties; and the benefits to FCG customers, we find that the 2018 EADIT Agreement, as a whole, is in the public interest. Therefore, the 2018 EADIT Agreement is hereby approved.

¹ Order No. PSC-13-0023-S-EI, issued January 14, 2013, in Docket No. 120015-EI, In re: Petition for increase in rates by Florida Power & Light Company; Order No. PSC-11-0089-S-EI, issued February 1, 2011, in Docket Nos. 080677 and 090130, In re: Petition for increase in rates by Florida Power & Light Company and In re: 2009 depreciation and dismantlement study by Florida Power & Light Company; Order No. PSC-13-0023-S-EI, issued January 14, 2013, in Docket No. 120015-EI, In re: Petition for increase in rates by Florida Power & Light Company; PSC-10-0398-S-EI, issued June 18, 2010, in Docket Nos. 090079-EI, 090144-EI, 090145-EI, 100136-EI, In re: Petition for increase in rates by Progress Energy Florida, Inc., In re: Petition for limited proceeding to include Bartow repowering project in base rates, by Progress Energy Florida, Inc., In re: Petition for expedited approval of the deferral of pension expenses, authorization to charge storm hardening expenses to the storm damage reserve, and variance from or waiver of Rule 25-6.0143(1)(c), (d), and (f), F.A.C., by Progress Energy Florida, Inc., and In re: Petition for approval of an accounting order to record a depreciation expense credit, by Progress Energy Florida, Inc.; Order No. PSC-05-0945-S-EI, issued September 28, 2005, in Docket No. 050078-EI, In re: Petition for rate increase by Progress Energy Florida, Inc.

² Order No. PSC-13-0023-S-EI, at p. 7.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the attached 2018 Stipulation and Settlement Regarding Remaining Excess Accumulated Deferred Income Tax Issues is approved. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 20th day of December, 2018.



CARLOTTA S. STAUFFER
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request:

- 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or
- 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida

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Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

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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 <u>8</u> , 2018
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**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;

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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,

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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-E1, 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

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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

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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.

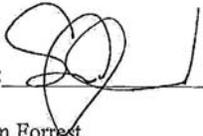
[SIGNATURE PAGES FOLLOW]

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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

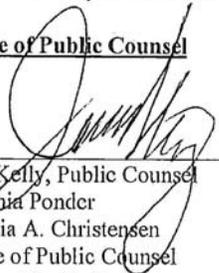
Signature Page to Stipulation and Settlement Agreement in Docket No. 20180154-GU

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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
Virginia Ponder
Patricia A. Christensen
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400

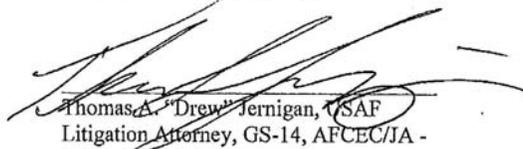
Signature Page to Stipulation and Settlement Agreement in Docket No. 20180154-GU

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

Dated this 7 day of October 2018.

Federal Executive Agencies


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