

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Florida Power & Light Company

DOCKET NO. 20180046-EI

DATED: January 7, 2019

PREHEARING STATEMENT OF THE FLORIDA RETAIL FEDERATION

The Florida Retail Federation ("FRF"), pursuant to the Order Establishing Procedure in this docket, Order No. PSC-2018-0209-PCO-EI, issued April 25, 2018, hereby submits its Prehearing Statement in this docket.

APPEARANCES:

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On behalf of the Florida Retail Federation

1. **WITNESSES:**

The Florida Retail Federation does not intend to call any witnesses for direct examination, but reserves its rights to cross-examine all witnesses and to rely upon the prefiled testimony of witnesses in this docket, as well as testimony on their cross-examination.

2. **EXHIBITS:**

The Florida Retail Federation will not introduce any exhibits on direct examination, but reserves its rights to introduce exhibits through cross-examination of other parties' witnesses.

3. STATEMENT OF BASIC POSITION

The Tax Cuts and Jobs Act of 2017 (TCJA) significantly reduced the corporate tax rate applicable to FPL from 35 percent to 21 percent. On February 6, 2018, the Commission asserted jurisdiction over FPL's tax savings by its Order No. PSC-2018-0104-PCO-PU. On February 21, 2018, the Commission established this docket to consider the tax impact of the TCJA with respect to FPL. FPL and OPC appear to agree that the annual amount of federal income tax savings resulting from the TCJA is \$736.8 Million, including Excess Accumulated Deferred Income Taxes.

In this docket, FPL is requesting the Commission determine that: (1) FPL's proposed treatment of the tax impacts of the Tax Act are consistent with applicable accounting guidance; and (2) FPL's proposed treatment of the "unprotected" EADIT as reasonable and appropriate. In its petition, FPL did not request approval for, but rather, outlined its expected use of the tax savings in 2018-2020 to partially reverse the one-time amortization of all available Reserve Amounts.

The Florida Retail Federation asserts that the Commission, having taken jurisdiction over these dramatic, windfall tax savings, should act to ensure that these savings are flowed back to customers promptly. To that end and purpose, the FRF, joined by OPC and the Florida Industrial Power Users Group ("FIPUG"), filed their Joint Petition for Enforcement of 2016 Settlement and Permanent Base Rate Reductions Against Florida Power & Light Company¹, initiating Docket No. 20180224-EI, to address the disposition of the tax savings benefits associated with the TCJA. Since the TCJA was enacted after the negotiation and approval of the 2016 Settlement Agreement

¹ In the Joint Petition, the Customers assert that (1) FPL is overearning and that the Settlement Agreement provides for a general base rate case when a company is overearning, (2) the Amortization Reserve has been extinguished and cannot be recreated unilaterally, and (3) the tax savings benefits of approximately \$736.8 million should be flowed back to customers through the base rate case.

in FPL's last base rate case, the TCJA was not contemplated as part of the 2016 Settlement Agreement. Although the order has become final as to the Settlement Agreement, the Florida Supreme Court clearly stated that "[o]nce a decision has become final for these purposes [administrative finality], it may be modified if there is a significant change in circumstances or a great public interest is served by the modification." Gulf Coast Electric Co-op, Inc., v. Johnson, 727 So.2d 259, 265 (1999) (citing Austin Tupler Trucking, Inc. v. Hawkins, 377 So. 2d 679, 681 (1979)). The 2017 tax change which reduced corporate tax rates by 14% is a significant event, resulting in dramatic, windfall cost reductions neither known nor contemplated at the time of the 2016 Settlement, and the Commission has affirmatively acted to assert and maintain jurisdiction over these dramatic cost reductions. Further, the Florida Supreme Court in Reedy Creek Utils. Co. v. Fla. Public Serv. Comm., 418 So. 2d. 249, 254 (1982), stated that "a change in a tax law should no [sic] result in a 'windfall' to a utility, but in a refund to the customer who paid the revenue that translated into the tax savings." Due to this significant change in the tax rate, the amount of the tax benefit should be determined in this docket and the disposition of these tax benefits can and should ultimately be determined by the Commission in Docket No. 20180224-EI.

4. STATEMENT OF FACTUAL ISSUES AND POSITIONS

PRELIMINARY ISSUES

ISSUE 1: What is the forecasted tax expense for the tax year 2018 at a 21 percent federal corporate tax rate?

FRF: Agree with OPC.

ISSUE 2: What is the forecasted tax expense for the tax year 2018 at a 35 percent federal corporate tax rate?

FRF: Agree with OPC.

ISSUE 3: What is the forecasted NOI for the tax year 2018 at a 21 percent federal corporate tax rate?

FRF: Agree with OPC.

ISSUE 4: What is the forecasted NOI for the tax year 2018 at a 35 percent federal corporate tax rate?

FRF: Agree with OPC.

ISSUE 5: What is the forecasted capital structure for the tax year 2018 at a 21 percent federal corporate tax rate?

FRF: Agree with OPC.

ISSUE 6: What is the forecasted capital structure for the tax year 2018 at a 35 percent federal corporate tax rate?

FRF: Agree with OPC.

ISSUE 7: What is the forecasted jurisdictional adjusted base revenue requirement for the tax year 2018 using a 21 percent federal corporate tax rate?

FRF: Agree with OPC.

ISSUE 8: What is the forecasted jurisdictional adjusted revenue requirement for the tax year 2018 using a 35 percent federal corporate tax rate?

FRF: Agree with OPC.

ISSUE 9: What is the annual jurisdictional adjusted base revenue requirement increase/decrease due to the enactment of the Tax Cuts and Jobs Act of 2017 for the tax year 2018?

FRF: Agree with OPC.

ISSUE 10: Were “protected excess deferred taxes” for 2018 using a 21 percent federal corporate tax rate appropriately calculated?

FRF: Agree with OPC.

ISSUE 11: Were “unprotected excess deferred taxes” for 2018 using a 21 percent federal corporate tax rate appropriately calculated?

FRF: Agree with OPC.

ISSUE 12: Were Accumulated Deferred Income Taxes (ADIT) for 2018 appropriately calculated?

FRF: Agree with OPC.

ISSUE 13: Are classifications of the excess ADIT between “protected” and “unprotected” appropriate?

FRF: Agree with OPC.

ISSUE 14: How should unprotected excess ADITs be flowed back to FPL customers?

FRF: Agree with OPC.

ISSUE 15: How should protected excess ADITs be flowed back to FPL customers?

FRF: Agree with OPC.

ISSUE 18: Should this docket be closed?

FRF: Agree with OPC.

5. CONTESTED ISSUES

OPC

ISSUE 16: Should FPL seek a private letter ruling from the IRS regarding its classification of the excess ADIT relating to cost of removal/negative net salvage as “protected”?

FRF: Agree with OPC.

ISSUE 17: If FPL seeks a private letter ruling and the IRS rules therein (or issues other relevant guidance) that the excess ADIT relating to cost of removal/negative net salvage is to be treated as “unprotected”, what process should be followed for the reclassification?

FRF: Agree with OPC.

FIPUG

ISSUE A: What is the rate decrease for each customer class resulting from the Tax Cuts and Jobs Act of 2017, if any, and, if so, when will those rate decreases become effective?

FRF: No position at this time.

FPL

ISSUE B: How should FPL treat the savings associated with the Tax Cuts and Jobs Act of 2017?

FRF: The Tax Cuts and Jobs Act of 2017 (TCJA) significantly reduced the corporate tax rate applicable to FPL from 35% to 21%, resulting in dramatic reductions in FPL's income tax costs and equally dramatic reductions in FPL's required revenue requirements - by approximately \$736.8 million per year, which should be passed on to customers. Since the TCJA was enacted after the negotiation and approval of the 2016 Settlement Agreement in FPL's last base rate case, the TCJA was not contemplated as part of the 2016 Settlement Agreement. The Florida Supreme Court has stated that "[o]nce a decision has become final for these purposes [administrative finality], it may be modified if there is a significant change in circumstances or a great public interest is served by the modification." Gulf Coast Electric Co-op, Inc., v. Johnson, 727 So.2d 259, 265(1999) (citing Austin Tupler Trucking, Inc. v. Hawkins, 377 So. 2d 679, 681 (1979)). The TCJA clearly represents a significant change in circumstances. Further, the Florida Supreme Court in Reedy Creek Utils. Co. v. Fla. Public Serv. Comm., 418 So. 2d. 249, 254 (1982), stated that "a change in a tax law should no [sic] result in a 'windfall' to a utility, but in a refund to the customer who paid the revenue that translated into the tax savings." The FRF, OPC, and FIPUG filed their Joint Petition for Enforcement of 2016 Settlement and Permanent Base Rate Reductions Against Florida Power & Light Company², in Docket No. 20180224-EI, to address (among other issues) the disposition of the dramatic tax savings benefits flowing from the TCJA. Due to this dramatic change in the tax rate and FPL's tax costs, the amount of the tax benefit should be determined in this docket and the disposition of these tax cost reduction benefits can and should be determined by the Commission in Docket No. 20180224-EI.

STAFF

ISSUE C: Does the 2016 Settlement Agreement allow FPL to replenish the Amortization Reserve with the tax savings resulting from the Tax Cuts and Jobs Act of 2017?

FRF: No. FPL exhausted and extinguished the Amortization Reserve and may not unilaterally re-establish it. The FRF, OPC, and FIPUG filed their Joint Petition for Enforcement of 2016 Settlement and Permanent Base Rate Reductions Against Florida Power & Light Company, which initiated Docket No. 20180224-EI, to address the disposition of the tax cost savings benefits flowing from the TCJA and

² In the Joint Petition, the Customers assert that FPL is overearning and that the Settlement Agreement provides for a general base rate case when a company is overearning, the Amortization Reserve has been extinguished and cannot be recreated unilaterally, and the tax savings benefits of \$737 million should be flowed back to customers through the base rate case.

the extinguishment of the Amortization Reserve due to FPL's one-time offset of Hurricane Irma storm restoration costs. In the Joint Petition, the Customers assert that (1) the Settlement Agreement provides for a general base rate case when the Company is overearning, (2) the Amortization Reserve has been extinguished and cannot be recreated unilaterally, and (3) the tax savings benefits of approximately \$736.8 million per year should be flowed back to customers through base rate reductions following the requested general base rate case. Accordingly, the issue of whether FPL should be allowed to re-establish the Amortization Reserve with its customers' tax savings benefits should be determined by the Commission in Docket No. 20180224-EI.

6. STIPULATED ISSUES:

The FRF is not aware of any stipulated issues at this time.

7. PENDING MOTIONS:

The FRF has no pending motions before the Commission in this docket.

8. STATEMENT OF PARTY'S PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY:

The FRF has no pending requests for claims for confidentiality.

9. OBJECTIONS TO QUALIFICATION OF WITNESSES AS AN EXPERT:

As of the time of filing its prehearing statement, the FRF does not expect to challenge the qualification of any witness. However, the FRF believes that each party that intends to rely upon a witness's testimony as expert testimony should be required to identify the field or fields of expertise of such witness and to provide the basis for the witness's claimed expertise.

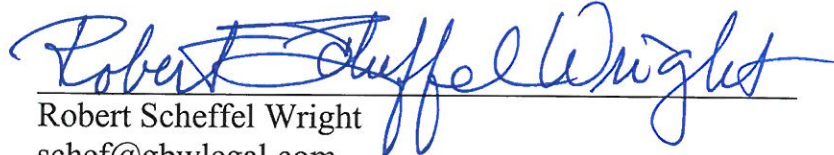
10. SEQUESTRATION OF WITNESSES:

The FRF takes no position on the sequestration of witnesses in this proceeding.

11. STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE:

There are no requirements of the Order Establishing Procedure with which the Florida Retail Federation cannot comply.

Respectfully submitted this 7th day of January, 2019.



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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail on this 7th day of January, 2019, to the following:

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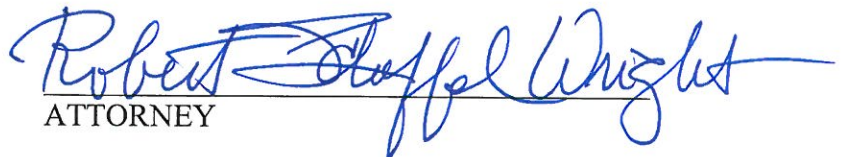
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