

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  
ORDER NO.  
ISSUED:

PREHEARING ORDER

Federal Executive Agencies (“FEA”), by and through their undersigned counsel, file this Post-Hearing Brief.

**BASIC POSITIONS**

FEA’s experts estimate that FPL is presently realizing tax savings as a result of the Tax Cuts Jobs Act. This benefit should be passed along to FPL’s customers, to include FEA. FEA argues that it should receive rate reductions on their bills from FPL. In summary, with fair and transparent recognition of the cost savings FPL is realizing as a result of the TCJA, FPL is overearning.

Federal Executive Agencies (“FEA”), by and through their undersigned counsel, file this Initial Post-Hearing Brief regarding the two remaining contested issues, per the Prehearing Order dated January 29, 2019.

The Prehearing Order identified three contested issues:

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?

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

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?

The Prehearing Order then directed parties to brief their positions concerning the contested Issue B and contested Issue C. FEA supports the description and opposition to FPL’s positions on Issue B and Issue C as outlined in the Prehearing Order. FEA’s positions will be repeated here.

**ISSUES AND POSITIONS**

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

**POSITION:**

**FEA:** FEA has no specific position on this issue. FEA does not waive its right to make argument on this issue once all facts are complete. FEA defers to Staff's position on this issue.

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

**POSITION:**

**FEA:** FEA has no specific position on this issue. FEA does not waive its right to make argument on this issue once all facts are complete. FEA defers to Staff's position on this issue.

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

**POSITION:**

**FEA:** FEA has no specific position on this issue. FEA does not waive its right to make argument on this issue once all facts are complete. FEA defers to Staff's position on this issue.

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

**POSITION:**

**FEA:** FEA has no specific position on this issue. FEA does not waive its right to make argument on this issue once all facts are complete. FEA defers to Staff's position on this issue.

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

**POSITION:**

**FEA:** FEA has no specific position on this issue. FEA does not waive its right to make argument on this issue once all facts are complete. FEA defers to Staff's position on this issue.

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

**POSITION:**

**FEA:** FEA has no specific position on this issue. FEA does not waive its right to make argument on this issue once all facts are complete. FEA defers to Staff's position on this issue.

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

**POSITION:**

**FEA:** FEA has no specific position on this issue. FEA does not waive its right to make argument on this issue once all facts are complete. FEA defers to Staff's position on this issue.

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

**POSITION:**

**FEA:** FEA has no specific position on this issue. FEA does not waive its right to make argument on this issue once all facts are complete. FEA defers to Staff's position on this issue.

**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?

**POSITION:**

**FEA:** FEA has no specific position on this issue. FEA does not waive its right to make argument on this issue once all facts are complete. FEA defers to Staff's position on this issue.

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

**POSITION:**

**FEA:** FEA has no specific position on this issue. FEA does not waive its right to make argument on this issue once all facts are complete. FEA defers to Staff’s position on this issue.

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

**POSITION:**

**FEA:** FEA has no specific position on this issue. FEA does not waive its right to make argument on this issue once all facts are complete. FEA defers to Staff’s position on this issue.

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

**POSITION:**

**FEA:** FEA has no specific position on this issue. FEA does not waive its right to make argument on this issue once all facts are complete. FEA defers to Staff’s position on this issue.

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

**POSITION:**

**FEA:** FEA has no specific position on this issue. FEA does not waive its right to make argument on this issue once all facts are complete. FEA defers to Staff’s position on this issue.

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

**POSITION:**

**FEA:** FEA has no specific position on this issue. FEA does not waive its right to make argument on this issue once all facts are complete. FEA defers to Staff’s position on this issue.

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

**POSITION:**

**FEA:** FEA has no specific position on this issue. FEA does not waive its right to make argument on this issue once all facts are complete. FEA defers to Staff's position on this issue.

**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"?**

**POSITION:**

**FEA:** FEA has no specific position on this issue. FEA does not waive its right to make argument on this issue once all facts are complete. FEA defers to Staff's position on this issue.

**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?**

**POSITION:**

**FEA:** FEA has no specific position on this issue. FEA does not waive its right to make argument on this issue once all facts are complete. FEA defers to Staff's position on this issue.

**ISSUE 18: Should this docket be closed?**

**POSITION:**

**FEA:** FEA has no specific position on this issue. FEA does not waive its right to make argument on this issue once all facts are complete. FEA defers to Staff's position on this issue.

**CONTESTED ISSUES**

**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?

**POSITION:**

**FEA:** FEA has no specific position on this issue. FEA does not waive its right to make argument on this issue once all facts are complete. FEA defers to Staff's position on this issue.

**FPL**

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

**POSITION:**

**FEA:** FEA has no specific position on this issue. FEA does not waive its right to make argument on this issue once all facts are complete. FEA defers to Staff's position on this issue.

**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?

**POSITION:**

**FEA:** FEA has no specific position on this issue. FEA does not waive its right to make argument on this issue once all facts are complete. FEA defers to Staff's position on this issue.

Dated this 21st day of February, 2019

/s/ Andrew J. Unsicker \_\_\_\_\_

Andrew J. Unsicker, Maj, USAF  
USAF Utility Law Field Support Center  
Air Force Legal Operations Agency  
139 Barnes Drive, Suite 1  
Tyndall Air Force Base, FL 32403  
Andrew.unsicker@us.af.mil  
850-283-6347

/s/ Robert J. Friedman

Robert J. Friedman, Capt, USAF  
USAF Utility Law Field Support Center  
Air Force Legal Operations Agency  
139 Barnes Drive, Suite 1  
Tyndall Air Force Base, FL 32403  
Robert.friedman.5@us.af.mil  
850-283-6348

Attorneys on behalf of Federal Executive Agencies

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and foregoing **PREHEARING STATEMENT OF FEDERAL EXECUTIVE AGENCIES** has been furnished by electronic mail on this 21st day of February, 2019, to the following:

<p>Margo Duval/Suzanne Brownless Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 <a href="mailto:sbrownle@psc.state.fl.us">sbrownle@psc.state.fl.us</a> <a href="mailto:mduval@psc.state.fl.us">mduval@psc.state.fl.us</a></p>	<p>Jon C. Moyle, Jr./Karen A. Putnal c/o Moyle Law Firm, PA Florida Industrial Power Users Group 118 North Gadsden Street Tallahassee, FL 32301 <a href="mailto:jmoyle@moylelaw.com">jmoyle@moylelaw.com</a> <a href="mailto:kputnal@moylelaw.com">kputnal@moylelaw.com</a></p>
<p>John Butler/Maria Moncada Florida Power &amp; Light Company 700 Universe Boulevard Juno Beach FL 33408 <a href="mailto:John.Butler@fpl.com">John.Butler@fpl.com</a> <a href="mailto:Maria.moncada@fpl.com">Maria.moncada@fpl.com</a></p>	<p>Mr. Ken Hoffman Florida Power &amp; Light Company 215 South Monroe Street, Suite 810 Tallahassee FL 32301 <a href="mailto:ken.hoffman@fpl.com">ken.hoffman@fpl.com</a></p>

<p>Robert Scheffel Wright/John T. LaVia Gardner Law Firm 1300 Thomaswood Drive Tallahassee FL 32308 <a href="mailto:jlavia@gbwlegal.com">jlavia@gbwlegal.com</a> <a href="mailto:schef@gbwlegal.com">schef@gbwlegal.com</a></p> <p>J. R. Kelly Patricia Ann Christensen Charles Rehwinkel <b>Office of Public Counsel</b> c/o The Florida Legislature 111 West Madison St., Room 812 Tallahassee, FL 32399-1400 <a href="mailto:kelly.jr@leg.state.fl.us">kelly.jr@leg.state.fl.us</a> <a href="mailto:christensen.patty@leg.state.fl.us">christensen.patty@leg.state.fl.us</a> <a href="mailto:rehwinkel.charles@leg.state.fl.us">rehwinkel.charles@leg.state.fl.us</a></p>	<p>Maj. A. Unsicker/Capt. L. Ziemann/T. Jernigan/E. Payton/ Federal Executive Agencies 139 Barnes Drive, Suite 1 Tyndall AFB FL 32403 <a href="mailto:andrew.unsicker@us.af.mil">andrew.unsicker@us.af.mil</a> <a href="mailto:joshua.yanov@us.af.mil">joshua.yanov@us.af.mil</a> <a href="mailto:Robert.friedman.5@us.af.mil">Robert.friedman.5@us.af.mil</a> <a href="mailto:ebony.payton.ctr@us.af.mil">ebony.payton.ctr@us.af.mil</a></p>
--	---

/s/ Andrew J. Unsicker

Andrew J. Unsicker, Maj, USAF  
USAF Utility Law Field Support Center  
Air Force Legal Operations Agency  
139 Barnes Drive, Suite 1  
Tyndall Air Force Base, FL 32403  
[Andrew.unsicker@us.af.mil](mailto:Andrew.unsicker@us.af.mil)  
850-283-6347

/s/ Robert J. Friedman

Robert J. Friedman, Capt, USAF  
USAF Utility Law Field Support Center  
Air Force Legal Operations Agency  
139 Barnes Drive, Suite 1  
Tyndall Air Force Base, FL 32403  
[Robert.friedman.5@us.af.mil](mailto:Robert.friedman.5@us.af.mil)  
850-283-6348

Attorneys on behalf of Federal Executive Agencies