AUSLEY MCMULLEN

ATTORNEYS AND COUNSELORS AT LAW

123 SOUTH CALHOUN STREET
P.O. BOX 391 (ZIP 32302)
TALLAHASSEE, FLORIDA 32301
(850) 224-9115 FAX (850) 222-7560

November 29, 2021

VIA: ELECTRONIC FILING

Mr. Adam J. Teitzman
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Tampa Electric Company; Docket No. 20180045-EI

Dear Mr. Teitzman:

Attached for filing in the above docket is Tampa Electric Company's Petition for Limited Proceeding to Reduce Base Rates and Charges to Address Impact of the 2021 Temporary State Income Tax Rate Reduction.

Thank you for your assistance in connection with this matter.

Sincerely,

J. Jeffry Wahlen

JJW/ne
Attachment

cc: All parties of record (w/attachment)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Tampa Electric Company	))))	Docket No. 20180045-EI Filed: November 29, 2021

TAMPA ELECTRIC COMPANY'S PETITION FOR LIMITED PROCEEDING TO REDUCE BASE RATES AND CHARGES TO ADDRESS IMPACT OF THE 2021 TEMPORARY STATE INCOME TAX RATE REDUCTION

Pursuant to Sections 366.076, 120.57(2) and 366.06(3), Florida Statutes, and Rule 28-106.301, F.A.C., Tampa Electric Company ("Tampa Electric" or "the company") petitions the Florida Public Service Commission ("FPSC" or "the Commission") for a limited proceeding to address the impact of the September 14, 2021 temporary State of Florida Corporate Income Tax Rate Reduction, and states:

Background

On September 27, 2017, Tampa Electric, the Office of Public Counsel ("OPC" or "Citizens"), the Florida Industrial Power Users Group ("FIPUG"), the Florida Retail Federation ("FRF"), the Federal Executive Agencies ("FEA"), and the WCF Hospital Utility Alliance ("HUA") (collectively, the "Consumer Parties") entered into the 2017 Amended and Restated Stipulation and Settlement Agreement ("2017 Agreement"), which has a term that end December 31, 2021. The Commission approved the 2017 Agreement by Order No. PSC-2017-0456-S-EI, issued on November 27, 2017 in Docket Nos. 20170210-EI and 20160160-EI. Paragraph 9 of the 2017 Agreement addresses the procedures and principles to be followed for changes in the rate of taxation of corporate income by federal or state taxing authorities ("Tax Reform").

On September 12, 2019, the Florida Department of Revenue issued a Tax Information Publication ("TIP") announcing that the Florida corporate income tax rate was reduced from 5.5

percent to 4.458 percent effective retroactive to January 1, 2019 and continuing in effect through December 31, 2021 ("2019 State Tax Rate Change"). The 2019 TIP indicated that the Florida corporate income tax rate will return to 5.5 percent effective January 1, 2022. It also indicated that further reductions in the tax rate were possible for calendar years 2020 and 2021.

Tampa Electric filed a petition to address the impact of the 2019 State Tax Rate Change on November 13, 2019 [DN 10892-2019]. The Commission disposed of the company's 2019 State Tax Rate Change Petition on a proposed agency action basis by Order No. PSC-2019-0524-PAA-EI, which was issued on December 17, 2019 [DN 11339-2019] and later became final. See Order No. PSC-2020-0030-CO-EI, issued January 21, 2020 [DN 00427-2020]. In its order, the Commission acknowledged the possibility of further state tax rate decreases for 2020 and 2021 and that a future true up might be necessary and as a result made the decision to leave this docket open through 2022.

On September 14, 2021, the Florida Department of Revenue issued a Tax Information Publication ("TIP") announcing that the Florida corporate income tax rate was reduced from 4.458 percent to 3.535 percent effective retroactive to January 1, 2021 and continuing in effect through December 31, 2021 ("2021 State Tax Rate Change"). The 2021 TIP indicates that the Florida corporate income tax rate will return to 5.5 percent effective January 1, 2022. A copy of the 2021 TIP is attached hereto as Attachment One.[1] The company became aware of the 2021 TIP shortly after it was issued and about the time it was beginning the process of calculating a true-up of the

[1] The 2021 State Tax Rate Change does not impact the 2021 Settlement Agreement pending approval in Docket No. 20210034-EI, because the new base rates and charges approved therein become effective with the first billing cycle in January 2022 and were calculated using a 5.5 percent state corporate income tax rate.

excess accumulated state deferred income taxes being flowed back to customers pursuant to Order No. PSC-2019-0524-PAA-EI ("True-up").[2]

This Petition addresses the impacts of the 2021 State Tax Rate Change on Tampa Electric as provided in the 2017 Agreement (Order No. PSC-2017-0456-S-EI). The company requests that the impact of the 2021 State Tax Rate Change be flowed through to customers via a credit to the Energy Conservation Cost Recovery Clause ("ECCR") via the company's 2021 ECCR true-up filing to be made in the spring of 2022. The company proposes this approach consistent with the 2017 Agreement and because base rates and charges cannot practically be reduced before the state tax rate return to 5.5 percent on January 1, 2022. The company has shared this petition with the parties to the 2017 Agreement (and Walmart, which is not a party to the 2017 Agreement, but is a party to the 2021 Agreement) and has been advised that they do not object to the proposal reflected herein.

I. Preliminary Information

1. The Petitioner's name and address are:

Tampa Electric Company
702 North Franklin Street
Tampa, Florida 33602

2. Any pleading, motion, notice, order, or other document required to be served upon Tampa Electric or filed by any party to this proceeding shall be served upon the following individuals:

James D. Beasley
jbeasley@ausley.com
J. Jeffry Wahlen
jwahlen@ausley.com
Malcolm N. Means
mmeans@ausley.com

Paula K. Brown
regdept@tecoenergy.com
Manager, Regulatory Coordination
Tampa Electric Company
Post Office Box 111
Tampa, FL 33601

[2] This True-up will update the company's estimate of excess amounts which were calculated using the available accumulated state deferred income tax balances as of December 31, 2018.

Ausley McMullen (813) 228-1444
Post Office Box 391 (813) 228-1770 (fax)
Tallahassee, FL 32302
(850) 224-9115
(850) 222-7560 (fax)

3. Tampa Electric is an investor-owned public utility regulated by the Commission pursuant to Chapter 366, Florida Statutes, and is a wholly-owned subsidiary of Emera, Inc. Tampa Electric's principal place of business is located at 702 North Franklin Street, Tampa, Florida 33602.

4. Tampa Electric serves approximately 800,000 retail customers in Hillsborough and portions of Polk, Pinellas and Pasco Counties, Florida.

5. This Petition represents an original pleading and is not in response to any proposed action by the Commission. Tampa Electric is not responding to any proposed agency action.

II. The 2021 State Tax Change and Paragraph 9 of the 2017 Agreement

6. Tampa Electric files its State of Florida corporate income tax returns on a calendar year basis. Although the TIP was not issued until September 14, 2021, the 2021 State Tax Rate Change reduced the state corporate income tax rate from 4.458 percent to 3.535 percent effective retroactive to January 1, 2021. According to the 2021 TIP, the 3.535 percent rate will be in effect for calendar year 2021 and then will return to 5.5 percent effective January 1, 2022.[3]

7. The 2021 State Tax Rate Change is a change of rate only and does not change other provisions associated with Florida's corporate income tax. The statutes and rules governing Florida's corporate income tax do not contain provisions applicable to public utilities that require normalization of book-tax differences, that distinguish between "protected" and "unprotected" accumulated deferred state income taxes, or that prescribe a transition rule for excess accumulated

[3] December 31, 2021 is the end of the general base rate freeze period specified in the 2017 Agreement.

deferred taxes arising when the state corporate income tax rate is lowered. Tampa Electric normalizes its state corporate income tax book-tax differences for financial reporting, FPSC surveillance reporting, and retail ratemaking purposes consistent with Statement of Financial Accounting Standard No. 109 ("SFAS 109," now codified as ASC 740) and FPSC Rule 25-14.013, Accounting for Deferred Income Taxes Under SFAS 109.

8. Paragraph 9 of the 2017 Agreement defines "Tax Reform" as "changes in the rate of taxation of corporate income by federal or state authorities," and states:

> (a) Changes in the rate of taxation of corporate income by federal or state taxing authorities ("Tax Reform") could impact the effective tax rate recognized by the company in FPSC adjusted reported net operating income and the measurement of existing and prospective deferred federal income tax assets and liabilities reflected in the FPSC adjusted capital structure. When Congress last reduced the maximum federal corporate income tax rate in the Tax Reform Act of 1986, it included a transition rule that, as an eligibility requirement for using accelerated depreciation with respect to public utility property, provided guidance regarding returning to customers the portion of the resulting excess deferred income taxes attributable to the use of accelerated depreciation. To the extent Tax Reform includes a transition rule applicable to excess deferred federal income tax assets and liabilities ("Excess Deferred Taxes"), defined as those that arise from the re-measurement of those deferred federal income tax assets and liabilities at the new applicable corporate tax rate(s), those Excess Deferred Taxes will be governed by the Tax Reform transition rule, as applied to most promptly and effectively reduce Tampa Electric's rates consistent with the Tax Reform rules and normalization rules.
>
> (b) If Tax Reform is enacted before the company's next general base rate proceeding, the company will quantify the impact of Tax Reform on its Florida retail jurisdictional net operating income thereby neutralizing the FPSC adjusted net operating income of the Tax Reform to a net zero. The company's forecasted earnings surveillance report for the calendar year that includes the period in which Tax Reform is effective will be the basis for determination of the impact of Tax Reform. The company will also adjust any SoBRAs that have not yet gone into effect to specifically account for Tax Reform. The impacts of Tax Reform on base revenue requirements will be flowed back to retail customers within 120

> days of when the Tax Reform becomes law, through a one-time adjustment to base rates upon a thorough review of the effects of the Tax Reform on base revenue requirements consistent with Subparagraph 9(a). This adjustment shall be accomplished through a uniform percentage decrease to customer, demand and energy base rate charges for all retail customer classes. <u>Any effects of Tax Reform on retail revenue requirements from the Effective Date through the date of the one-time base rate adjustment shall be flowed back to customers through the ECCR Clause on the same basis as used in any base rate adjustment. * * *</u>
>
> (c) All Excess Deferred Taxes shall be deferred to a regulatory asset or liability which shall be included in FPSC adjusted capital structure and flowed back to customers over a term consistent with law. If the same Average Rate Assumption Method used in the Tax Reform Act of 1986 is prescribed, then the regulatory asset or liability will be flowed back to customers over the remaining life of the assets associated with the Excess Deferred Taxes subject to the provisions related to FPSC adjusted operating income impacts of Tax Reform noted above. <u>If the Tax Reform law or act is silent on the flow-back period, and there are no other statutes or rules that govern the flow-back period, then there shall be a rebuttable presumption that the following flow-back period(s) will apply: (1) if the cumulative net regulatory liability is less than $100 million, the flow-back period will be five years; or (2) if the cumulative net regulatory liability is greater than $100 million, the flow-back period will be ten years.</u> * * * (emphasis added)

9. Section 366.076(1), Florida Statutes, provides that the Commission may conduct a limited proceeding to consider and act upon any issue within its jurisdiction, including any such issue which, once resolved, requires a public utility to adjust its rates. Approval of the company's proposed reduction to base rates and charges to reflect the impact of the 2021 State Tax Rate Change through a limited proceeding under Section 366.076, Florida Statutes, will provide the Commission and substantially affected persons a single proceeding in which all issues related to the 2021 State Tax Change and paragraph 9 of the 2017 Agreement can be resolved. Accordingly, Tampa Electric requests that the Commission open a docket that provides an opportunity to address the matters in this petition.

III. Statement on Disputed Issues of Material Fact

10. Tampa Electric is not aware of any disputed issues of material fact at this time, and does not believe any disputed issues of material fact will arise in this docket.

IV. Statement of Ultimate Facts Alleged and Providing the Basis for Relief

11. The ultimate facts that entitle Tampa Electric to the relief requested herein are:

(a) Paragraph 9(b) of the 2017 Agreement requires that the impacts of Tax Reform (*i.e.*, the 2021 State Tax Rate Change) on base revenue requirements be flowed back to retail customers within 120 days of when the Tax Reform becomes law. Although the State Tax Rate Change was announced on September 14, 2021, the temporary rate reduction therein was made effective retroactive to January 1, 2021. Given the timing of the issuance of the 2021 TIP and the procedural and notice issues associated with changes to the company's base rates and charges, it is not practical or feasible for the company to change its base rates and charges between now and the time the state corporate income tax rate returns to 5.5 percent.

<u>2021 Annual Revenue Requirement</u>

(b) Paragraph 9(b) of the 2017 Agreement requires the company to quantify the impact of the State Tax Rate Change on its Florida retail jurisdictional net operating income based on the company's forecasted earnings surveillance report for the calendar year that includes the period in which Tax Reform is effective, thereby neutralizing the impact of the Tax Reform on the company's FPSC-adjusted net operating income.

(c) The company's forecasted earnings surveillance report for the calendar year that includes the period in which the State Tax Rate Change is effective is the 2021 forecasted earnings surveillance report, which was filed on April 1, 2021.

(d) The state corporate income tax rate for 2021 is now 3.535 percent, effective January 1, 2021 through December 31, 2021.

(e) When the state income tax rate changes, SFAS 109 and Rule 25-14.013 require Tampa Electric to recalculate accumulated deferred state income tax balances as of December 31, 2020 to reflect the income tax rates expected to be in effect in the period the timing differences are expected to reverse. In this case, SFAS 109 and Rule 25-14.013 require the company to recalculate or revalue accumulated deferred state income taxes arising from timing differences that are expected to reverse in calendar year 2021 as of December 31, 2020 at the 3.535 percent state corporate income tax rate for that year.

(f) In addition to preparing the True-up, the company is in the process of recalculating or revaluing accumulated deferred state income taxes arising from timing differences that are expected to reverse in calendar year 2021 as of December 31, 2020 at the 3.535 percent state corporate income tax rate, but does not anticpate completing that work until early 2022.

(g) The State Tax Rate Change is temporary and the state corporate income tax rate is expected to return to 5.5 percent effective January 1, 2022, so accumulated deferred state income taxes on the company's books as of December 31, 2018 arising from timing differences that are expected to reverse after December 31, 2021 need not be recalculated because they were recorded using a 5.5 percent state income tax rate, which is the rate expected to be in effect when they will reverse. Likewise, new accumulated deferred state income taxes arising during 2021 that are expected to reverse after December 21, 2021 need not be recalculated or revalued because they will be recorded in the company's accounting records at 5.5 percent. Ultimately, all accumulated state deferred income taxes will need to be measured at the 5.5% for the period ending December 31, 2021.

(h) The company is in the process of calculating the "excess" accumulated state deferred income taxes as of December 31, 2020, i.e., state accumulated deferred income taxes recorded at a 5.5 or 4.458 percent that will reverse in 2021 at the lower state rate of 3.535 percent and expects its calculation to be complete in early 2022. This amount of excess deferred state income taxes will be "unprotected" within the meaning of the 2017 Agreement.

(i) According to paragraph 9(c) of the 2017 Agreement, if the amount of unprotected excess deferred taxes is less than $100 million and there are no statutes or rules governing the flow-back period, the flow-back period is 5 years. The company is confident that the amount of excess accumulated state deferred income taxes will be well under $100 million, so the 2017 Agreement will prescribe a five-year flow back period.

(j) Excluding the impact of the amortization of excess accumulated state deferred income taxes arising from the 2021 Rate Change, the company estimates on a preliminary basis that the impact of 2021 state tax rate change is a net annual revenue requirement reduction of $3.6M after applying the appropriate retail separation factors and the effective tax rate gross-up factor. A schedule showing the calculation of this amount is included with this petition as Attachment Two.

(k) Once the company completes the True Up described in this petition and calculates the excess accumulated deferred income taxes arising from this rate change, the company will file its calculations for approval in this docket and, subject to that approval, will reflect the final approved amount in the calculation when it files its 2021 ECCR true-up in the spring of 2022.

V. Relief Requested

12. Based on the forgoing, the company requests that:

(a) establish a procedural schedule allowing the company to file its final calculation of the effect of the 2021 State Tax Rate Change on or before January 31, 2022;

(b) approve the calculation described in paragraphs 11(k) and 2(a) once it has been filed;

(c) order the company to include the 2021 revenue requirement impact of the 2021 State Tax Rate Change in its 2021 ECCR true-up filing to be filed in the spring of 2022; and

(d) Grant other such relief as may be required or appropriate.

13. Tampa Electric is entitled to the relief requested pursuant to Chapter 366, Florida Statutes, Chapter 120, Florida Statutes, the 2017 Agreement and FPSC Order No. PSC-2017-0456-S-EI.

VI. Conclusion

14. For the reasons shown above, Tampa Electric respectfully requests that the Commission grant this Petition and the relief requested herein.

DATED this 29th day of November, 2021.

Respectfully submitted,

JAMES D. BEASLEY
J. JEFFRY WAHLEN
MALCOLM N. MEANS
Ausley McMullen
Post Office Box 391
Tallahassee, Florida 32302
(850) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition, filed on behalf of Tampa Electric Company, has been furnished by electronic mail on this 29th day of November, 2021, to the following:

Suzanne Brownless Office of the General Counsel Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 sbrownle@psc.state.fl.us Richard Gentry Charles Rehwinkel Office of Public Counsel c/o The Florida Legislature 111 West Madison Street, Room 812 Tallahassee, FL 32399-1400 gentry.richard@leg.state.fl.us rehwinkel.charles@leg.state.fl.us Mr. Robert Scheffel Wright John LaVia, III Gardner, Bist, Wiener, Wadsworth, Bowden, Bush, Dee, LaVia & Wright, P.A. 1300 Thomaswood Drive Tallahassee, FL 32308 shef@gbwlegal.com jlavia@gbwlegal.com WCF Hospital Utility Alliance Mark F. Sundback William M. Rappolt Andrew P. Mina Sheppard Mullin Richter & Hampton LLP 2099 Pennsylvania Ave., N.W., Suite 100 Washington, D.C. 20006-6801 msundback@sheppardmullin.com wrappolt@sheppardmullin.com amina@sheppardmullin.com	Florida Industrial Power Users Group Jon Moyle Karen Putnal c/o Moyle Law Firm 118 N. Gadsden Street Tallahassee, FL 32301 jmoyle@moylelaw.com kputnal@moylelaw.com mqualls@moylelaw.com Federal Executive Agencies Thomas A. Jernigan Holly L. Buchanan, Maj, USAF 139 Barnes Drive, Suite 1 Tyndall Air Force Base, Florida 32403 thomas.jernigan.3@us.af.mil holly.buchanan.1@us.af.mil Stephanie U. Eaton Spilman Thomas & Battle, PLLC 110 Oakwood Drive, Suite 500 Winston-Salem, NC 27103 seaton@spilmanlaw.com Barry A. Naum Spilman Thomas & Battle, PLLC 1100 Bent Creek Boulevard, Suite 101 Mechanicsburg, PA 17050 bnaum@spilmanlaw.com ATTORNEY

FLORIDA DEPARTMENT OF REVENUE

Tax Information Publication **TIP**

No: **21C01-02**

Date Issued:
September 14, 2021

Florida Corporate Income Tax

2021 Tax Rate Reduction

The Florida corporate income/franchise tax rate is reduced from 4.458% to 3.535% for taxable years beginning on or after January 1, 2021, but before January 1, 2022. The tax rate returns to 5.5% for taxable years beginning on or after January 1, 2022.

The Florida Department of Revenue will post additional TIPs on any future tax rate changes.

Taxable Year Beginning	Prior to 1/1/2019	1/1/2019 - 12/31/2020	1/1/2021 - 12/31/2021	On or after 1/1/2022
Tax Rate	5.5%	4.458%	3.535%	5.5%

Taxpayers that have a 52 - 53 week taxable year beginning on or about January 1 and ending on or about December 31 have the same tax rates as a calendar year-end taxpayer.

2022 Estimated Tax Payments – Prior Year Exception

Interest and penalty are not imposed on estimated payments that meet:

- the standard requirement of 90% of the tax due in the current year, after credits; or
- 100% of the tax due in the prior year at the current year's tax rate.

Since the 2022 corporate income tax rate returns to 5.5%, the prior year exception for tax years that begin within the 2022 calendar year is based on the tax due on the prior year's income using a 5.5% tax rate. As a result, taxpayers should recompute the prior year tax due for purposes of determining the installment required to meet the prior year exception.

References: Sections 220.1105 and 220.34, Florida Statutes

For More Information

This document is intended to alert you to the requirements contained in Florida laws and administrative rules. It does not by its own effect create rights or require compliance.

For forms and other information, visit the Department's website at floridarevenue.com or call Taxpayer Services at 850-488-6800, Monday through Friday (excluding holidays).

For a detailed written response to your questions, write the Florida Department of Revenue, Taxpayer Services MS 3-2000, 5050 West Tennessee Street, Tallahassee, FL 32399-0112.

ATTACHMENT ONE

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Tampa Electric Company
Florida State Income Tax Rate Change
Estimated Annual Revenue Requirement Difference
2021 Forecasted ESR

Net Operating Income (Retail Jursidictional) at Former Tax Rate	$	377,664,782
Net Operating Income (Retail Jursidictional) at New Tax Rate		380,390,608
Impact of New Rate	$	2,725,826
Effective Tax Rate Gross-Up Factor		0.76207350
Revenue Requirement Change	$	3,576,854

ATTACHMENT TWO