

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Consideration of the tax impacts  
associated with Tax Cuts and Jobs Act of 2017  
for Florida Public Utilities Company - Fort  
Meade Division.

DOCKET NO. 20180053-GU  
ORDER NO. PSC-2019-0079-FOF-GU  
ISSUED: February 25, 2019

The following Commissioners participated in the disposition of this matter:

JULIE I. BROWN  
GARY F. CLARK  
ANDREW GILES FAY

FINAL ORDER ON THE TAX IMPACTS ASSOCIATED WITH  
THE TAX CUTS & JOBS ACT OF 2017

APPEARANCES:

GREGORY M. MUNSON and BETH KEATING, ESQUIRES, Gunster Law Firm, 215 South Monroe Street, Suite 601, Tallahassee, Florida 32301-1839  
On behalf of Florida Public Utilities Company - Fort Meade Division (FORT MEADE).

J.R. KELLY, VIRGINIA PONDER, CHARLES J. REHWINKEL, and PATRICIA CHRISTENSEN, ESQUIRES, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400  
On behalf of the Citizens of the State of Florida (OPC).

RACHAEL DZIECHCIARZ, MARGO DUVAL, and CHARLES MURPHY, ESQUIRES, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
On behalf of the Florida Public Service Commission (Staff).

MARY ANNE HELTON, ESQUIRE, Deputy General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
Advisor to the Florida Public Service Commission.

KEITH C. HETRICK, ESQUIRE, General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
Florida Public Service Commission General Counsel.

BY THE COMMISSION:

### **Background**

We opened Docket No. 20180053-GU on February 23, 2018, to consider the tax impacts affecting Florida Public Utilities Company (FPUC) – Fort Meade Division (Fort Meade or Company), resulting from the passage of the Tax Cuts and Jobs Act of 2017 (TCJA). FPUC – Fort Meade is a subsidiary of Chesapeake Utilities Corporation (CUC). CUC is also the parent of the Florida Division of CUC (Chesapeake) and FPUC. FPUC – Indiantown and FPUC – Fort Meade are separate divisions of FPUC. Docket Nos. 20180051-GU, 20180052-GU, and 20180054-GU were opened to address the tax impacts affecting FPUC, Indiantown, and Chesapeake, respectively.

On April 25, 2018, an Order Establishing Procedure for the instant docket was issued, in which controlling dates were set for filing testimony, exhibits, and discovery. On May 31, 2018, the discovery procedures and controlling dates were modified. Order No. PSC-2018-0412-PCO-GU, issued on August 20, 2018, was the second order revising the Order Establishing Procedure that allowed the Company to file revised and supplemental testimony, and extended testimony filing dates for Commission staff and the Office of Public Counsel (OPC). OPC is the only intervenor in this docket.

The prehearing conference was held on November 5, 2018. On, November 9, 2018, OPC filed an Agreed Motion to Consolidate for Purposes of Hearing in Docket Nos. 20180051-GU, 20180052-GU, 20180053-GU, and 20180054-GU. On November 16, 2018, the Prehearing Order was issued and reflected proposed stipulations between Fort Meade and OPC on most of the issues in this docket. Order No. PSC-2018-0555-PCO-GU, issued on November 20, 2018, consolidated the four dockets for purposes of the hearing.

The hearing was held on November 27, 2018. At that time, we voted to accept and approve the parties' proposed stipulations on Issue Nos. 1, 2, 3, 4A, 5A, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 22, and 23, as set forth in Attachment A of this Order. On December 28, 2018, Fort Meade and OPC submitted post-hearing briefs on Issue Nos. 4B, 5B, 18, 19, 20, 21, and 24.

We have jurisdiction over this matter pursuant to Sections 366.04, 366.041, 366.06, and 366.07, Florida Statutes.

### **Decision**

#### **Stipulated Issues**

As discussed above, we accepted and approved the proposed stipulations as set forth in Attachment A as being in the public interest, as we find they are just and reasonable and supported by competent, substantial evidence of record.

## **Contested Issues**

### **I. Protected Excess Deferred Taxes**

This section addresses what is the appropriate disposition of the protected excess deferred taxes.

## PARTIES' ARGUMENTS

### **FORT MEADE**

Fort Meade argued that given its earnings posture, the Company should be allowed to retain the estimated annual amount of \$1,787 as a result of the tax benefit created by the excess deferred tax balance. Fort Meade argued that the ability to retain this amount will provide the Company with further opportunity to earn a reasonable return, while also enabling the Company to provide service at present rates for a longer period, to continue making necessary capital investments, and to delay a costly rate proceeding. Fort Meade contended that if the Company is allowed to retain the tax benefits as it has proposed, the Company's return on equity (ROE) for 2019 is projected to be negative 19.40 percent.

Fort Meade argued that while retention of the benefits as proposed will not enable the Company to earn within its authorized range of ROE, it will certainly allow it to earn closer to its range.

### **OPC**

OPC argued that Fort Meade should return the net tax benefit amount of \$6,375 to the customers via a base rate reduction. OPC contended that Fort Meade's earning surveillance reports for 2014-2018 demonstrate the Company has been in an under-earnings posture for several years; thus, it had the ability to file at any time for a base rate increase, which it unilaterally chose not to do. OPC argued the TCJA effect on the excess accumulated deferred income tax (ADIT) amount resulted in ratepayers making overpayments to Fort Meade. OPC argued that the protected excess deferred taxes should be refunded as rapidly as possible under the Internal Revenue Service (IRS) regulations to ensure only fair, just, and reasonable rates are paid by ratepayers.

## ANALYSIS

Fort Meade and OPC agree on the amount of the annual amortization of the protected excess ADIT benefit of \$1,787. Nor is there any debate regarding Fort Meade's earnings posture. Witness Cassel testified that retention of the protected deferred income tax benefit will potentially provide the Company with an opportunity to earn a reasonable return, to continue making capital investments, and enable Fort Meade to charge current rates for a longer period of time thus, delaying a rate case proceeding.

Fort Meade witness Cassel explained that if the Company is allowed to retain the protected excess ADIT benefit of \$1,787 annually, this would allow the Company to delay a rate case enabling continuation of its interim consolidation efforts pending its next rate case while also placing downward pressure on any rate increase sought in its next rate case. Fort Meade wishes to avoid customer confusion that could be associated with implementation of a rate decrease resulting from flowing through the tax benefit as a rate reduction, followed, in short order, by a rate increase arising from a full rate case proceeding.

OPC witness Smith relied on the 1982 Florida Supreme Court decision in Reedy Creek Utils. Co. v. Fla. Public Serv. Comm., 418 So. 2d 249, 254 (Fla. 1982), which stated, “[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 saving.” OPC argued, by definition, the excess tax monies in Fort Meade’s possession are a windfall to the Company that should be flowed back to the customers who paid the taxes in rates. OPC pointed out during cross-examination of Fort Meade witness Cassel that he admitted he did not provide in his testimony any calculations or evidence to demonstrate what the Company’s projected earnings would be if the tax benefits were retained by the Company. However, in response to a Commission staff interrogatory, Fort Meade indicated that its forecasted ROE for 2018 would be negative 19.40 percent if it were to retain all the tax benefits resulting from the TCJA.

Fort Meade argued in its brief that OPC witness Smith also acknowledged that Reedy Creek was in an over-earnings position at the time of the 1978 Tax Reform; thus, the issue that ultimately came before the Florida Supreme Court in the Reedy Creek case was a question of how much Reedy Creek would be required to refund. This Commission had already determined that Reedy Creek would have to make a refund, because it was over-earning. Fort Meade argued in its brief that witness Smith's refusal to consider Fort Meade's earnings posture in rendering his opinion on Fort Meade’s proposals to retain some of the TCJA benefits is contrary to prior Commission policy as reflected in Commission Order Nos. 8624 and 8624A and overstates the applicability of the Court's conclusions in the Reedy Creek case. As such, Fort Meade contended that OPC’s arguments on this point should be rejected. In the Reedy Creek decision, the Florida Supreme Court acknowledged this Commission’s decision wherein this Commission stated its position regarding a company’s over-earnings position:

Viewing the documents together with the testimony in the record, it is clear that a utility would be required to refund revenues if and only if it were earning in excess of the range of its authorized rate of return.

OPC maintained that Fort Meade witness Cassel’s interpretation of the Reedy Creek decision mistakenly links the over-earnings posture of the utility in that case with the Court’s use of the term “windfall.” While OPC conceded that the decision in Reedy Creek was driven by the over-earnings posture of the utility, OPC argued the foundation of the analysis was based on the cause of the increase in earnings, not on the extent of the utility’s earnings. In the Reedy Creek case, the utility was ordered to make a refund to its customers because regulated utilities are not allowed to earn above a Commission-authorized range of ROE regardless of the cause, and therefore, any over-earnings should be refunded to the customers. In Order No. 8624 this

Commission asserted, “[i]t is the Commission’s responsibility to ensure [public utilities] do not earn in excess of a fair and reasonable return on their investment.”<sup>1</sup>

In its brief, Fort Meade contended that the Company’s approach is not inconsistent with Reedy Creek or prior Commission practice as mentioned by OPC witness Smith. There is agreement between the parties with regard to the calculation of the annual protected excess deferred tax amount of \$1,787. Witness Cassel testified that approval of its proposed treatment reflects the more reasonable approach to addressing the disposition of the tax benefits and provides the greatest overall benefit for the Company and its customers. Fort Meade further contended that a key factor in the Reedy Creek case pertained to the utility’s earnings posture whereby the utility was required to make a refund because it was over-earning.

We find that the record is clear that Fort Meade is currently earning a negative return well below its authorized ROE range and that retention of the protected tax benefit will improve the Company's earnings posture, but will not cause it to exceed its authorized range.

On cross-examination, OPC witness Smith conceded that this Commission's orders underlying the Reedy Creek case, Order Nos. 8624 and 8624A, reflect that, in addressing the 1978 Tax Reform, this Commission considered the circumstances of the utilities on a case-by-case basis and only required those utilities that were earning above the ceiling of their Commission-authorized ROE range to refund the tax benefits arising under the 1978 Tax Reform.

## CONCLUSION

We believe that it is fair, just, and reasonable for us to consider the earnings position of the Company when making our decision in this matter. Reducing base rates as recommended by OPC would result in a cash flow reduction to the Company, put further downward pressure on Fort Meade’s earnings, and accelerate the need for a full rate case sooner due to Fort Meade earning well below its authorized range of ROE. Therefore, we hereby find that Fort Meade shall be allowed to retain the amortized protected excess deferred tax balance attributed to the TCJA of \$1,787.

## **II. Unprotected Excess Deferred Taxes**

This section addresses what is the appropriate disposition of the unprotected excess deferred taxes.

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<sup>1</sup> Order No. 8624, issued December 29, 1978, in Docket No. 780921-PU(CI), In Re: Disposition of Federal Tax Savings Realized under the Revenue Act of 1978.

PARTIES' ARGUMENTS**FORT MEADE**

Fort Meade asserted that given its earnings posture, the Company should be allowed to retain the unprotected excess deferred tax benefits. Fort Meade contended that it has an unprotected excess deferred tax liability recorded on its books with an estimated balance of \$45,881. The Company requests this deferred tax liability be amortized over 10 years at \$4,588 per year. The Company requested that this annual amortization benefit be retained by the Company. Fort Meade argued that this amount will provide the Company with further opportunity to earn a reasonable return, to provide service at present rates for a longer period, to continue making necessary capital investments, and to delay a costly rate proceeding. Fort Meade also argued that the ability to retain the excess ADIT of \$4,588 related to the unprotected excess deferred tax liability would enable the Company to delay a rate case, enable the Company to continue its interim consolidation efforts pending its next rate case, and would place downward pressure on the rate increase that the Company would be seeking in its next rate case. Fort Meade contended that allowing the Company to retain some of the tax benefits will provide immediate financial support to the utility, thereby enabling it to continue to provide safe and reliable service to its customers.

**OPC**

OPC argued that Fort Meade should return the total tax benefit amount of \$6,375 to the customers via a base rate reduction. OPC contended that Fort Meade's earning surveillance reports for 2014-2018 demonstrate the Company has been in an under-earnings posture for several years; thus, it had the ability to file at any time for a base rate increase, which it unilaterally chose not to do. OPC argued the TCJA effect on the ADIT resulted in ratepayers making overpayments to Fort Meade. OPC argued that the unprotected excess deferred taxes should be refunded as rapidly as possible under the IRS regulations to ensure ratepayers pay only fair, just, and reasonable rates. In its brief, OPC argued that, as an alternative to the Company's proposal to retain the full benefit amount of the excess ADIT amortization, this amount should be returned to the customers via a base rate reduction. OPC repeated its argument provided in Section I, citing the Florida Supreme Court Reedy Creek case. OPC maintained that the TCJA's effect on the Company results in the customers making overpayments which create excess ADIT. Like any overpayment, the unprotected excess deferred taxes should be refunded as rapidly as possible to avoid intergenerational inequity and to ensure only fair, just, and reasonable rates are paid by Fort Meade's ratepayers.

ANALYSIS

The record shows there is no debate between the Parties regarding the amount of unprotected excess deferred tax, nor is there any debate regarding Fort Meade's earnings posture. Fort Meade's position, as discussed in Section I, is that the Company's under-earnings posture necessitates its retention of the unprotected excess ADIT amount arising from the TCJA. The Company contended that retention of the unprotected excess ADIT amount will potentially

provide the Company with an opportunity to earn a reasonable return, to continue making capital investments and to enable Fort Meade to charge current rates for a longer period of time, thus delaying a rate case proceeding. We find these arguments to be persuasive.

In its brief, OPC reiterated its arguments, as articulated in Section I, based on the Reedy Creek Florida Supreme Court case, that stated, “[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 saving.” OPC further argued that the TCJA’s effect on Fort Meade results in the customers making overpayments, and like any overpayment, the unprotected excess deferred taxes should be refunded to avoid intergenerational inequity and to ensure only fair, just, and reasonable rates are paid by the Company’s customers.

We find that the record is clear that Fort Meade is currently earning well below is authorized ROE range and retention of the unprotected excess ADIT amount will improve the Company’s earning posture, but will not cause it to exceed its authorized range of ROE. Further, in response to a Commission staff interrogatory, Fort Meade provided a calculation of its projected ROE of negative 22.35 percent “with tax savings recognized.”

We find that Fort Meade made a compelling argument that regulatory efficiency supports allowing the Company to retain the annual tax benefit of \$4,588 associated with the unprotected excess deferred accumulated taxes. We further find that this approach is not inconsistent with Reedy Creek or prior Commission practice as acknowledged by OPC witness Smith.

### CONCLUSION

We believe that it is fair, just, and reasonable for us to consider the earnings position of the Company when making our decision in this matter. Therefore, for the reasons discussed in Section I and the aforementioned analysis, we hereby find that Fort Meade shall be allowed to retain the unprotected excess deferred tax amount and that this balance shall be amortized over 10 years for an annual amount of \$4,588.

### **III. Recovery of Any Detrimental Impact**

This section addresses whether Fort Meade should be allowed to recover any detrimental impact associated with the corporate income tax rate change implemented by the TCJA, and, if so, whether Fort Meade should be allowed to recover such amount through the Energy Conservation Cost Recovery (ECCR) Clause.

### PARTIES’ ARGUMENTS

#### **FORT MEADE**

Fort Meade argued that the change in the corporate income tax rate from 35 percent to 21 percent results in a tax detriment of \$17,929. Fort Meade proposes to recover the annual tax detriment associated with the tax rate reduction for purposes of addressing infrastructure

investment. Fort Meade argued that the Company is projected to be earning below the bottom of the earnings range utilized for Fort Meade's surveillance reporting purposes. Fort Meade argued that approval to recover the tax detriment will provide the Company with an opportunity to preserve or improve its current earnings posture, thereby potentially deferring a future rate case. Such regulatory efficiency will extend rate stability and be more consistent with the stated purpose outlined by the tax bill's sponsor, Congressman Brady, to provide tax relief for workers, families, and job creators. Fort Meade acknowledged that approval of the Company's proposal to recover the tax detriment is at the discretion of this Commission.

## **OPC**

OPC argued that a putative tax detriment is not suffered directly by Fort Meade but is suffered, if at all, by Fort Meade's parent company CUC through its consolidated tax return. Upon cross-examination, witness Cassel admitted the taxes at issue here are already part of current base rates. The excess ADIT in dispute in Sections I and II is already calculated into the detriment amount of \$17,929.

Further, OPC argued that the fallacy of Fort Meade's proposed treatment of the putative tax detriment is demonstrated by inverting the effects of the TCJA. If, instead of a detriment to the parent company's consolidated tax return, as purported here, the TCJA resulted in a benefit on the parent company's consolidated tax return, Fort Meade would not be requesting to include the benefit in its rate base.

## ANALYSIS

As pointed out by OPC in its post-hearing brief, Fort Meade projects to have negative operating income for 2018 and has identified an annual net tax detriment of \$17,929, based on its pro forma surveillance report. Fort Meade contends that the change in the corporate income tax rate from 35 percent to 21 percent results in a tax detriment of approximately \$17,929 for the Company. Witness Cassel testified that while this amount will not be sufficient to increase the Company's earned return into its allowed range of ROE, it will help the Company to make additional investments in infrastructure.

In response to discovery requests, the Company explained the tax detriment is due to an operating loss recognized by Fort Meade. When a company incurs a net operating loss (NOL), the lower tax rate creates a smaller amount of tax deduction for the taxpayer. Fort Meade does not file its own Federal tax return, but instead files a consolidated Federal tax return with its parent company, CUC. CUC is the taxpayer, and the NOL is recognized as a tax detriment on CUC's books. Consequently, the "write off" on CUC's books from Fort Meade's NOL is worth less to the parent company due to the lower tax rate. Fort Meade is requesting to recover the loss of that tax deduction for its parent company through an increase of \$17,929 in its ECCR Clause factors. However, witness Cassel confirmed regulated public utility rates are set on a stand-alone basis, that is, as if the regulated utility is required to pay income taxes. The utility rates charged to customers already include an allowance for income taxes.



The record demonstrates that Fort Meade is requesting to use a purported tax detriment to recover incremental costs in lieu of initiating a rate increase. As argued by OPC, the tax detriment is not suffered directly by Fort Meade, but is suffered, if at all, by CUC through its consolidated tax return. Further, sufficient record evidence is lacking to support a finding that the tax detriment as proposed by Fort Meade is a result of the TCJA on a stand-alone basis. Recovery of a tax detriment or benefit by a regulated utility on behalf of its parent company is inconsistent with current regulatory practice to align income tax expense on a stand-alone basis.

As to whether the Company should be allowed to collect any detrimental impact through the ECCR clause, we note that the clause is governed by Rule 25-17.015, Florida Administrative Code, which states that a utility “may seek to recover its costs for energy conservation programs.” OPC witness Smith stated that “[t]he estimated amount of 2018 income tax detriment does not have anything to do with the ECCR and, therefore, should not be charged to ratepayers through the ECCR.” Witness Cassel agreed during cross-examination that the taxes in question are part of base rates, and that the ECCR has nothing to do with base rates tax impacts.

Additionally the Company stated in its response to our staff’s 2nd Set of Interrogatories, No. 4(c), that it:

recommends that the annual tax detriment be collected through the ECCR clause on an entirely consolidated basis, rather than a per-division basis. The company believes that this computation is more favorable to the Ft. Meade customers as compared to assigning the detrimental impacts specific to only the appropriate division customers.

Per Commission Order No. PSC-14-0655-FOF-GU, we allowed FPUC to consolidate the conservation programs’ expenses of the various divisions for purposes of ECCR cost recovery.<sup>2</sup> That order is specific to conservation expenses and does not consider non-conservation expenses or costs. As FPUC proposes, customers from all FPUC’s divisions would contribute to Fort Meade’s base rates tax impact through the ECCR factors. The Company further stated in its response to our staff’s 2<sup>nd</sup> Set of Interrogatories, No. 4(f) that it “anticipates collecting these funds through the clause until its next rate proceeding.” Witness Cassel stated during cross-examination that 2020 or 2021 is the current anticipated timeframe for potential rate filings. As such, we find that there would not be a clearly defined endpoint at which the non-division customers would cease supporting Fort Meade’s base rate tax detriment through ECCR factors.

Based on the aforementioned, we find that Fort Meade shall not be allowed to recover any alleged detrimental impact associated with the corporate tax rate change implemented by the TCJA, and that the ECCR clause is not the appropriate mechanism to collect the tax detriment because the taxes are part of base rates and not associated with conservation expenses.

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<sup>2</sup>Order No. PSC-14-0655-FOF-GU, issued November 6, 2014, in Docket No. 20140004-GU, In re: Natural gas conservation cost recovery.

CONCLUSION

Based on the above, we hereby find that Fort Meade shall not be allowed to recover any presumed detrimental impact associated with the corporate income tax rate change implemented by the TCJA through the ECCR clause.

**IV. Retention & Amortization of Protected Deferred Tax Liability**

This section addresses whether Fort Meade should be allowed to retain and amortize, over 26 years, the total annual benefit associated with the Protected Deferred Tax liability.

PARTIES' ARGUMENTS

**FORT MEADE**

Fort Meade argued that for protected excess deferred taxes, the grossed-up balance for Fort Meade was approximately \$46,451, which was recorded as a Deferred Regulatory Tax Liability. This estimated deferred balance will be amortized over 26 years using the Average Rate Assumption Method (ARAM) as prescribed by the IRS, which is approximately \$1,787 annually.

**OPC**

As discussed in Section I, OPC argued Fort Meade should not be allowed to retain the annual benefit associated with the protected excess deferred tax liabilities. However, if the Commission decides to allow Fort Meade to retain the protected excess deferred tax benefit, then OPC agreed the amount should be amortized over 26 years consistent with the ARAM.

ANALYSIS

OPC maintained that the protected excess deferred tax amount should be returned to customers while Fort Meade argued the amount should be retained. However, both Parties agree Fort Meade should amortize the total annual benefit associated with the protected excess deferred tax liabilities, over 26 years consistent with the ARAM. We agree that it is appropriate for the Company to follow the IRS ARAM and that the protected excess ADIT should be amortized over a period of 26 years.

CONCLUSION

Because Fort Meade is earning a negative return well below its authorized range of ROE and is expected to continue to earn below this range even with retention of the tax savings, we hereby find that Fort Meade shall be allowed to retain the total annual amount associated with the protected excess deferred tax liabilities and shall amortize this balance over 26 years, consistent with the ARAM.

**V. Retention & Amortization of Unprotected Deferred Tax Liability**

This section addresses whether Fort Meade should be allowed to retain and amortize, over 10 years, the total annual benefit associated with the Unprotected Deferred Tax liability.

PARTIES' ARGUMENTS

**FORT MEADE**

Fort Meade argued that the Company has an unprotected excess deferred tax liability recorded on its books with an estimated balance of \$45,881. The Company requested this excess deferred tax liability be amortized over 10 years at \$4,588 per year. Fort Meade argued that in light of its earnings posture, this annual amortization benefit be retained by the Company as it will provide the Company with further opportunity to earn a reasonable return.

**OPC**

As discussed in Section II, OPC argued Fort Meade should not be allowed to retain the annual benefit associated with the Unprotected Deferred Tax liabilities. However, if the Commission decides to allow Fort Meade to retain the unprotected deferred tax benefit, OPC agreed the benefit should be amortized over 10 years.

ANALYSIS

In Section II, OPC maintained that the unprotected excess deferred tax amount should be returned to customers while Fort Meade argued the amount should be retained by the Company. However, both Parties agreed Fort Meade should amortize the total annual benefit associated with the unprotected excess deferred tax amount over 10 years. We agree that it is appropriate for the Company to amortize the unprotected excess ADIT amount over a period of 10 years.

CONCLUSION

Because Fort Meade is earning a negative return well below its authorized range of ROE and is expected to continue to earn below this range even with retention of the tax savings, we hereby find that Fort Meade shall be allowed to retain the total annual amount associated with the unprotected excess deferred taxes and shall amortize this balance over 10 years.

**VI. Retention & Amortization of Unprotected Deferred Tax Liability**

This section addresses whether Fort Meade should be allowed to retain the 2018 tax benefits arising from the TCJA excluding the 2018 gas reliability infrastructure program (GRIP) savings.

PARTIES' ARGUMENTS**FORT MEADE**

Fort Meade argued there are two components of the tax savings on the GRIP surcharge. The first component consists of the tax savings on the GRIP surcharge from the Jurisdictional Date through the end of the calendar year. The second component is the impact to the GRIP surcharge for 2019 forward. The tax savings in 2018 will be \$2,376. The Company contended that for 2019 and beyond, the savings will be approximately \$2,000. The Company proposed to retain the 2018 savings. Fort Meade argued that in 2019, the new tax rate would be incorporated in the calculation of the GRIP surcharge passing the estimated \$2,000 tax benefit on to Fort Meade's customers. Fort Meade argued, if the Commission accepts Fort Meade's proposal to retain a portion of the benefits of the Tax Act, Fort Meade's customers would experience continued rate stability and would see a reduction to the GRIP surcharge. Fort Meade contended the Company would likewise benefit from an improved earnings posture and a healthier fiscal outlook, which ultimately inures to the benefit of Fort Meade's customers.

**OPC**

OPC contended that Fort Meade's proposal to retain the 2018 tax savings associated with GRIP is for the Company's sole benefit. OPC argued that Fort Meade should return the 2018 GRIP-related TCJA savings directly to its customers for the same reasons presented in the preceding issues.

OPC agreed with Fort Meade's proposal to apply the new 21 percent federal income tax rate to its 2019 GRIP surcharge projections and future projections, reducing the annual GRIP revenue amount by the resulting annual tax savings of approximately \$2,000. OPC agreed with the return of the GRIP-related TCJA savings directly to its customers.

ANALYSIS

As a point of clarification, Fort Meade's position on this issue is inconsistent with its argument and testimony. In its position statement, Fort Meade stated that it should be allowed to retain the 2018 tax benefits arising from the TCJA excluding the 2018 GRIP Savings. (emphasis added) However, in Fort Meade's argument and witness Cassel's testimony, it is clear that the Company proposes to retain the 2018 GRIP tax savings.

Fort Meade proposed to retain the estimated annual amount of \$1,787 from the tax benefit associated with the protected deferred tax amortization and the annual amount of \$4,588 associated with the unprotected deferred tax amortization for a total amount of \$6,375. In addition, Fort Meade proposed to retain the tax savings of \$2,376 from the 2018 GRIP surcharge. Fort Meade proposed to incorporate the new tax rate of 21 percent into the calculation of the 2019 GRIP surcharge passing on an estimated \$2,000 tax benefit to the Company's customers on a prospective basis. As discussed in Sections I, II, IV, and V, we find that the record supports allowing Fort Meade to retain the tax benefit resulting from the protected and unprotected excess

deferred taxes. However, as discussed in Section III, we find that the record evidence does not support a ruling that allows the Company to monetize a tax detriment due to a NOL into clause revenue, nor is it sound regulatory policy.

In Docket Nos. 20180051-GU and 20180054-GU, FPUC and Chesapeake, respectively, the Company and OPC agreed to a Type 1 Stipulation to flow the 2018 GRIP tax savings back to the customers as an over-recovery in 2019.<sup>3,4</sup> Fort Meade's argument for retaining the 2018 GRIP tax benefit in the instant docket was that the Company would benefit from an improved earnings posture and a healthier financial fiscal outlook, which ultimately inures to the benefit of its customers. However, the GRIP surcharge is separate from base rates and the surcharge is based on the costs incurred by the Company to make reliability improvements to its system and is trued-up annually. All expenses, including income tax expense, recovered through the GRIP surcharge are trued-up at the end of the year as an over or under recovery and applied to the ensuing year's GRIP factor. Income tax expense is not an exception to the true-up methodology. As such, flowing the 2018 GRIP tax benefit back to the customers as an over-recovery in the 2019 GRIP surcharge is the appropriate regulatory treatment in this case. In consideration of consistent regulatory treatment across all CUC owned utilities, we find that Fort Meade shall return the 2018 GRIP-related TCJA savings to its customers as an over-recovery applied in the 2019 GRIP surcharge.

### CONCLUSION

We hereby find that Fort Meade shall be allowed to retain the 2018 tax benefits arising from the TCJA, excluding the 2018 GRIP over-recovery.

### **VII. Docket Closure**

This section addresses whether this docket should be closed.

### PARTIES' ARGUMENTS

#### **FORT MEADE**

None provided.

#### **OPC**

Once the Commission makes the findings contained herein it will be unnecessary to keep this docket open. However, until that time, the docket should not be closed.

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<sup>3</sup>Order No. PSC-2018-0535-PHO-GU, issued November 16, 2018, in Docket No. 20180051-GU, In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 Florida Public Utilities Company – Gas, Issues 9 and 22.

<sup>4</sup>Order No. PSC-2018-0538-PHO-GU, issued November 16, 2018, in Docket No. 20180054-GU, In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 Florida Division of Chesapeake Utilities Corporation, Issues 9 and 21.

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CONCLUSION

Upon issuance of this Order, this docket shall be closed after the time for filing an appeal has run.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the stipulations as set forth in Attachment A of this Order are hereby approved. It is further

ORDERED that all other findings set forth in the body of this Order are hereby approved. It is further

ORDERED that Florida Public Utilities Company - Fort Meade Division shall abide by the stipulations, findings, and rulings herein. It is further

ORDERED that this docket shall be closed after the time for filing an appeal of this Order has run.

By ORDER of the Florida Public Service Commission this 25th day of February, 2019.

  
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ADAM J. TEITZMAN  
Commission Clerk  
Florida Public Service Commission  
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

MAD

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

**COMMISSION-APPROVED TYPE 1 STIPULATIONS**

**ISSUE 1:** Is the methodology and process Florida Public Utilities Company – Fort Meade Division (Fort Meade) used to calculate the impact of the Tax Cuts and Jobs Act of 2017 (TCJA) appropriate?

**STIPULATION:** Yes, the methodology and process Ft. Meade used to calculate the impact of the TCJA is appropriate.

**ISSUE 2:** Were Accumulated Deferred Income Taxes (ADIT) appropriately calculated?

**STIPULATION:** Yes, ADIT is appropriately calculated.

**ISSUE 4A:** Were “protected excess deferred taxes” for 2018 using a 21 percent corporate tax rate appropriately calculated?

**STIPULATION:** Yes, “protected excess deferred taxes” for 2018 using a 21 percent corporate tax rate are appropriately calculated.

**ISSUE 5A:** Were “unprotected excess deferred taxes” for 2018 using a 21 percent corporate tax rate appropriately calculated?

**STIPULATION:** Yes, the “unprotected excess deferred taxes” for 2018 using a 21 percent corporate tax rate are appropriately calculated.

**ISSUE 6:** Should Fort Meade seek a private letter ruling from the IRS regarding its classification of the excess ADIT relating to cost of removal/negative net salvage as “unprotected”?

**STIPULATION:** Fort Meade should await IRS guidance, including guidance provided to larger, similarly-situated Florida utilities.

**ISSUE 7:** If Fort Meade seeks a private letter ruling and the IRS rules therein (or in another private letter ruling) that the excess ADIT relating to cost of removal/negative net salvage is to be treated as “protected,” what process should be followed for the reclassification?

**STIPULATION:** If the IRS issues guidance that cost of removal should be a protected asset, the Parties agree that the balances associated with the cost of removal shall be accounted for using the IRS prescribed methodology for protected assets.



ISSUE 8: What mechanism should be utilized to avoid the negative impact to Fort Meade of the cost of seeking a Private Letter Ruling?

STIPULATION: If it becomes necessary to seek clarification from the IRS by way of a Private Letter Ruling, then the Parties agree that the costs associated with the procedural activity may be deferred and amortized over five years, or until the next base rate proceeding.

ISSUE 9: Were appropriate adjustments made to Fort Meade's Gas Reliability Infrastructure Program "GRIP" for the impact of the TCJA for the tax year 2018?

STIPULATION: Appropriate adjustments have not yet been made to Fort Meade's GRIP for the impact of the TCJA for the tax year 2018. Fort Meade is proposing in this case to treat the adjustments as a GRIP over-recovery in 2019, which Fort Meade believes would be an appropriate adjustment.

ISSUE 12: What is the forecasted NOI for the tax year 2018 at a 21 percent corporate tax rate?

STIPULATION: The net operating loss is \$64,326 excluding the effects of any amortization of protected and unprotected ADIT, and the refund of any benefits.

ISSUE 13: What is the forecasted NOI for the tax year 2018 at a 35 percent corporate tax rate?

STIPULATION: The net operating loss is \$50,941 excluding the effects of any amortization of protected and unprotected ADIT, and the refund of any benefits.

ISSUE 22: Should Fort Meade pass-on to customers all tax benefits directly associated with the GRIP program through future GRIP surcharges?

STIPULATION: Yes, Ft. Meade should pass-on to customers all tax benefits directly associated with the GRIP program through future GRIP surcharges.

ISSUE 23: Should Fort Meade update the estimated tax benefits consistent with any adjustments to those estimates through December 22, 2018? If so, how should it be handled?

STIPULATION: Yes, Ft. Meade should update the estimated tax benefit to be consistent with any adjustments to those estimates through December 22, 2018 adjusting the amount Ft. Meade is able to retain.

**COMMISSION-APPROVED TYPE 2 STIPULATIONS**

ISSUE 3: Are Fort Meade’s classifications of the excess ADIT between “protected” and “unprotected” appropriate?

STIPULATION: Yes, Ft. Meade’s classifications of the excess ADIT between “protected” and “unprotected” is appropriate.

ISSUE 10: What is the forecasted tax expense for Fort Meade for the tax year 2018 at a 21 percent corporate tax rate?

STIPULATION: Excluding the effects of any amortization of protected and unprotected ADIT, or the refund of any benefits, the forecasted tax expense using the 21% corporate tax rate for Ft. Meade is negative \$25,639. If GRIP is refunded and the ADIT amortized but not refunded, the forecasted tax expense using the 21% corporate tax rate for Ft. Meade is a negative \$27,857.

ISSUE 11: What is the forecasted tax expense for Fort Meade for the tax year 2018 at a 35 percent corporate tax rate?

STIPULATION: Excluding the effects of any amortization of protected and unprotected ADIT, or the refund of any benefits, the forecasted tax expense using the 35% corporate tax rate for Ft. Meade is a negative \$39,024. If GRIP is refunded and the ADIT amortized but not refunded, the forecasted tax expense using the 35% corporate tax rate for Ft. Meade is a negative \$42,399.

ISSUE 14: What is the forecasted capital structure for the tax year 2018 at a 21 percent corporate tax rate?

STIPULATION:

			LOW POINT		MIDPOINT		HIGH POINT	
			COST	WEIGHTED	COST	WEIGHTED	COST	WEIGHTED
			RATE	COST	RATE	COST	RATE	COST
AVERAGE	BALANCE	(%)	(%)	(%)	(%)	(%)	(%)	(%)
COMMON EQUITY	\$366,671	39.95%	10.00%	4.00%	11.00%	4.39%	12.00%	4.79%
LONG TERM DEBT	\$179,989	19.61%	4.54%	0.89%	4.54%	0.89%	4.54%	0.89%
SHORT TERM DEBT	\$169,656	18.49%	1.77%	0.33%	1.77%	0.33%	2.09%	0.39%
CUSTOMER DEPOSITS	\$13,860	1.51%	-0.04%	0.00%	-0.04%	0.00%	-0.04%	0.00%
DEFERRED INCOME TAXES	\$187,619	20.44%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
TOTAL AVERAGE	\$917,794	100.00%		5.22%		5.61%		6.07%

ISSUE 15: What is the annual forecasted capital structure for the tax year 2018 at a 35 percent corporate tax rate?

STIPULATION: The capital structure is the same as the capital structure at 21% because the Company has assumed that the regulatory liability should be grouped with deferred income taxes as a part of the capital structure at a zero cost rate.

ISSUE 16: What is the forecasted annual revenue requirement for Fort Meade for the tax year 2018 using a 21 percent corporate tax rate?

STIPULATION: Using the midpoint rate of return, the revenue requirement is \$70,256 using the 21% corporate tax rate.

ISSUE 17: What is the forecasted annual revenue requirement for Fort Meade for the tax year 2018 using a 35 percent corporate tax rate?

STIPULATION: Using the midpoint rate of return, the revenue requirement is \$85,388 using the 35% corporate tax rate.