

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Consideration of the Stipulation and Settlement Agreement between Gulf Power Company and the Office of Public Counsel, Florida Industrial Power Users Group, and Southern Alliance for Clean Energy regarding the Tax Cuts and Jobs Act of 2017.

DOCKET NO. 20180039-EI  
ORDER NO. PSC-2018-0116-PCO-EI  
ISSUED: March 1, 2018

PROCEDURAL ORDER

On February 14, 2018, Gulf Power Company (Gulf) filed a Stipulation and Settlement Agreement (SSA) between Gulf and the Office of Public Counsel (OPC), the Florida Industrial Power Users Group (FIPUG), and the Southern Alliance for Clean Energy (SACE) regarding the Tax Cuts and Jobs Act of 2017 in Docket Nos. 20180013-PU,<sup>1</sup> the generic tax docket, and 20160186-EI,<sup>2</sup> Gulf's last base rate case proceeding.

The SSA addresses the effects of the passage of the Tax Cuts and Jobs Act of 2017 (Act), signed into law by President Trump on December 22, 2017. The signatories to the SSA are OPC, FIPUG and SACE, all of whom were signatories to Gulf's last rate case stipulation.<sup>3</sup> The League of Woman Voters of Florida (LWVF), Wal-Mart Stores East, LP and Sam's East, Inc. (Walmart), Federal Executive Agencies (FEA) and Sierra Club were parties to the consolidated base rate case proceeding but were not signatories to the 2016 rate case stipulation. FEA, LWVF, Walmart and Sierra Club, however, did not oppose the 2016 rate case stipulation. FEA, LWVF, Walmart and the Sierra Club are not signatories to the SSA under consideration in this docket.

The SSA implements paragraph 6 of Gulf's 2017 Stipulation and Settlement Agreement (2017 Settlement) approved by Order No. PSC-17-0178-S-EI.<sup>4</sup> There are six basic parts to the SSA: 1) base rate reduction of \$18.2 million per year commencing on April 1, 2018;<sup>5</sup> 2) establishment of a regulatory liability to account for the tax rate reduction from January 1, 2018 until the effective date of the base rate reduction;<sup>6</sup> 3) refund of \$69.4 million by the end of 2018 through the fuel cost recovery clause for the unprotected excess deferred tax regulatory liability as of December 31, 2017;<sup>7</sup> 4) reduction of \$15.6 million to Environmental Cost Recovery Clause (ECRC) recovered by the end of 2018;<sup>8</sup> 5) establishment of a 53.5% equity ratio cap for all retail regulatory purposes, e.g., earnings surveillance reporting, interim rate determinations, cost

<sup>1</sup> Docket No. 20180013-PU, In re: Petition to establish a generic docket to investigate and adjust rates for 2018 tax savings, by Office of Public Counsel.

<sup>2</sup> Docket No. 20160186-EI, In re: Petition for rate increase by Gulf Power Company.

<sup>3</sup> Order No. PSC-17-0178-S-EI, issued on May 16, 2017, in Docket No. 160186-EI, In re: Petition for rate increase by Gulf Power Company.

<sup>4</sup> Id.

<sup>5</sup> Paragraphs 2, 4.

<sup>6</sup> Paragraphs 5, 8.

<sup>7</sup> Paragraph 7.

<sup>8</sup> Paragraph 9.

recovery clauses;<sup>9</sup> and 6) initiation of a limited scope proceeding by May 1, 2018, for the purpose of determining the amount and flow back period for protected excess deferred taxes through a prospective reduction in base rates, should one be warranted.<sup>10</sup> The parties state that the SSA must be approved in its entirety by the Commission without modification. The SSA is intended to resolve all of Gulf's outstanding tax issues associated with the Act.

On February 19, 2018, pursuant to Section 366.076(1), Florida Statutes, this docket was opened by the Commission to expedite consideration of the SSA as requested by the signatories so that the base rate reduction agreed to by the parties, if appropriate, can be implemented in April 2018. On February 26, 2018, Gulf filed a Motion to Approve Stipulation and Settlement Agreement (Motion) requesting that the SSA be approved in its entirety and that the Commission take final action no later than March 26, 2018, which would allow the tariffs filed with the Motion to become effective in April 2018. Gulf states that the SSA is in the best interest of Gulf's ratepayers as it allows for a reduction in base rates shortly after the Act's passage as well as reducing the ECRC clause and returning unprotected excess deferred income taxes to customers more rapidly than required. All parties to this docket, OPC, FIPUG and SACE, as joint movants to Gulf's Motion support the Motion.

Having reviewed the SSA, Gulf's Motion, the request by the signatories for a rate reduction in April 2018, and in light of the fact that there appear to be no disputed issues of material fact, a Final Commission Hearing shall take place at 1:30 p.m. on March 26, 2018, pursuant to Section 120.57(2), F.S.

#### Discovery

Commission staff and the parties shall be permitted a limited time to send no more than 150 data requests. Parties are directed to respond to the data requests in writing so the response is received within 5 days of receipt of the request. Affidavits must accompany all written data responses. All data responses must be received by March 19, 2018. Information obtained through data request responses may be used by the parties in their oral arguments, by staff in advising the Commission, and by the Commissioners in consideration of the SSA.

#### Use of Confidential Information at Hearing

While it is the Commission's policy to have all Commission hearings open to the public at all times, the Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use at the hearing any proprietary confidential business information, as that term is defined in Section 366.093, F.S., shall adhere to the following:

- (1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in

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<sup>9</sup> Paragraph 11.

<sup>10</sup> Paragraph 13.

red envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such information is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidentiality filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

#### Hearing Procedures

Section 120.57(4), F.S., permits the Commission to informally dispose of any proceeding by stipulation, agreed settlement, or consent order. Section 120.57(2), F.S., permits the Commission to proceed with hearings not involving disputed issues of material fact. Pursuant to Rule 28-106.302(2), F.A.C., the purpose of this hearing is for the Commission to take oral evidence or argument regarding Gulf's request for approval of the SSA.

The hearing agenda for March 26, 2018, will include the following:

- Parties present Opening Statements of no more than 8 minutes per party
- Public Testimony
- Commission Staff Overview
- Parties present evidence and respond to questions from Commissioners regarding the SSA

Upon completion of the Commission's questions, the hearing record will be closed and the Commission may render a bench decision. If a bench decision is not made, the Commission will render a decision during a Special Agenda Conference; date and time to be determined. Briefs, if any, will be due April 9, 2016.

The Commission has jurisdiction in this matter pursuant to Chapters 120, and 366, F.S., and is proceeding under its authority under Sections 366.04, 366.041, 366.05, 366.06, 366.07, 366.076, 366.8255, 366.93, and 120.57, F.S., and Rules 28-106.301 and 28-106.302, F.A.C.

Based on the foregoing, it is

ORDERED by Chairman Julie I. Brown, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

By ORDER of Commissioner Julie I. Brown, as Prehearing Officer, this 1st day of March, 2018.



JULIE I. BROWN

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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.

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, 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 or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code.

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of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.