

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 -
Indiantown Division.

DOCKET NO. 20180052-GU
ORDER NO. PSC-2018-0536-PHO-GU
ISSUED: November 16, 2018

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on November 5, 2018, in Tallahassee, Florida, before Commissioner Julie I. Brown, as Prehearing Officer.

APPEARANCES:

GREGORY MUNSON, BETH KEATING, and LILA A. JABER, ESQUIRES,
215 South Monroe Street, Suite 601, Tallahassee, Florida 32301-1839
On behalf of Florida Public Utilities Company – Indiantown Division
(Indiantown).

VIRGINIA PONDER, CHARLES REHWINKEL and J.R. KELLY, ESQUIRES,
111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400
On behalf of the Office of Public Counsel (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.

PREHEARING ORDER

I. CASE BACKGROUND

Docket No. 20180052-GU was opened by the Commission on February 23, 2018, to consider the tax impacts associated with the passage of the Tax Cuts and Jobs Act of 2017 on Florida Public Utilities Company – Indiantown Division (Indiantown or Company). On March 13, 2018, Order No. PSC-2018-0132-PCO-GU, was issued acknowledging the intervention of the Office of Public Counsel (OPC). The Order Establishing Procedure, Order No. PSC-2018-0214-PCO-GU, was issued on April 25, 2018, in which controlling dates were set for filing testimony, exhibits, and discovery.

On April 30, 2018, OPC filed a Motion for Emergency Hearing Concerning Scheduling and Discovery Procedures. The First Order Revising Order Establishing Procedure, Order No. PSC-2018-0275-PCO-GU, was issued on May 31, 2018, in which controlling dates and discovery procedures were modified. On August 17, 2018, Florida Public Utilities Company, Indiantown, Florida Public Utilities Company-Ft. Meade, the Florida Division of Chesapeake Utilities Corporation, and OPC submitted a Joint Motion to Amend Procedural Schedule and to Accept Revised/Supplemental Testimony. The Second Order Revising Order Establishing Procedure, Order No. PSC-2018-0412-PCO-GU, was issued on August 20, 2018, in which controlling dates were modified.

Prehearing statements were filed on October 22, 2018, by Commission staff, Indiantown, and OPC. This docket is set for final hearing on November 27-30, 2018. Jurisdiction over these matters is vested in the Commission through several provisions of Chapter 366, Florida Statutes (F.S.), including Sections 366.04, 366.05, and 366.06, F.S.

II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code (F.A.C.), this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 366, F.S. This hearing will be governed by said Chapter and Chapters 25-7, 25-22, and 28-106, F.A.C., as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S.,

pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

While it is the policy of this Commission for all Commission hearings be 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 any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing that has not been filed as prefiled testimony or prefiled exhibits, parties must have copies for the Commissioners, necessary Staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. 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 material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification 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.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties and Staff has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto

may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand, which shall be limited to three minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

VI. ORDER OF WITNESSES

Each witness whose name is followed by an asterisk (*) is excused from the hearing.

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Michael Cassel	Indiantown	1 - 21
Matthew Dewey*	Indiantown	1 - 5, 9 - 16
Michael J. Reno*	Indiantown	1 - 5
Ralph Smith	OPC	1 - 9, 11, 12, 17 - 20
<u>Rebuttal</u>		
Michael Cassel	Indiantown	1 - 21

VII. BASIC POSITIONS

INDIANTOWN: Indiantown's computation of the tax benefits from the Tax Cut and Jobs Act of 2017 ("TCJA") is correct, and its proposed disposition of the tax benefits is appropriate.

OPC: Florida Public Utilities Company-Indiantown Division (“Indiantown” or “Company”), in its May 31, 2018 petition, seeks determination by the Florida Public Service Commission of the tax benefits arising from the Tax Cuts and Jobs Act of 2017 (“TCJA”). Indiantown proposes to retain the net gross-up tax benefit arising from the excess accumulated deferred income taxes which is approximately \$7,862 annually. OPC contests the Company’s proposal to retain the net benefit of the excess accumulated deferred income taxes amortization and recommends that the estimated net benefit amount of \$7,862 be returned to customers via a base rate reduction.

The Company projects to have a negative net operating income for 2018 and has identified an annual net tax detriment of \$54,096, based on its 2018 pro forma surveillance report. Because the Company is not over-earning, Indiantown proposes to recover the full amount of its calculated annual TCJA tax detriment through the Energy Conservation Cost Recovery clause. OPC submits that the fact that Indiantown is not over-earning is not a reason to allow the Company to charge the ratepayers for the 2018 income tax detriment through the Energy Conservation Cost Recovery clause. Indiantown has been earning below its authorized range since 2013 and OPC recommends the 2018 base rate income tax savings should be applied for the benefit of customers through a base rate reduction.

Indiantown’s revised filing on August 27, 2018, contained a reclassification of excess accumulated deferred income taxes related to cost-of-removal from “protected” to “unprotected”. OPC does not disagree with this classification; however, due to the uncertainty in this area and the fact that different utilities have taken different positions as to the classification, OPC suggests it may be appropriate for Indiantown to seek a private letter ruling (“PLR”) from the IRS regarding its classification of the excess accumulated deferred income taxes relating to cost of removal/negative net salvage as “unprotected.” Notwithstanding, because of the cost involved in seeking such a ruling, OPC acknowledges that guidance provided by PLRs to larger Florida utilities may be sufficiently clear so as to prevent Indiantown and its Florida utility affiliates from having to obtain their own specific PLRs.

STAFF: Staff’s positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff’s final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

ISSUE 1: *Proposed Type 1 Stipulation, See Section X.*

ISSUE 2: *Proposed Type 1 Stipulation, See Section X.*

ISSUE 3: *Proposed Type 1 Stipulation, See Section X.*

ISSUE 4A: *Proposed Type 1 Stipulation, See Section X.*

ISSUE 4B: **What is the appropriate disposition of the protected excess deferred taxes?**

POSITIONS

INDIANTOWN: Indiantown proposes to retain the estimated amortized deferred balance less the unprotected deferred tax amortization, thereby fulfilling the purpose of the TCJA by allowing INDIANTOWN to continue making capital improvements and potentially delaying a rate proceeding.

OPC: Indiantown should not be allowed to retain the benefit of the protected excess ADIT. The protected excess ADIT should be reversed using an Average Rate Assumption Method (“ARAM”) if the utility has the available information to calculate the ARAM, or via another appropriate method that complies with normalization requirements, if the Company does not have the information to compute the ARAM.

STAFF: Staff has no position pending evidence adduced at the hearing.

ISSUE 5A: *Proposed Type 1 Stipulation, See Section X.*

ISSUE 5B: **What is the appropriate disposition of the unprotected excess deferred taxes?**

POSITIONS

INDIANTOWN: Indiantown proposes to retain the deferred tax liability associated with the unprotected deferred tax asset amortized over 10 years, netted against the protected excess deferred taxes.

OPC: Indiantown should not be allowed to retain the benefit of the unprotected excess ADIT. The unprotected excess ADIT net asset of \$6,484 should be amortized over 10 years at \$648 per year.

STAFF: Staff has no position pending evidence adduced at the hearing.

ISSUE 6: *Proposed Type 1 Stipulation, See Section X.*

ISSUE 7: *Proposed Type 1 Stipulation, See Section X.*

ISSUE 8: *Proposed Type 1 Stipulation, See Section X.*

ISSUE 9: *Proposed Type 2 Stipulation, See Section X.*

ISSUE 10: *Proposed Type 2 Stipulation, See Section X.*

ISSUE 11: *Proposed Type 1 Stipulation, See Section X.*

ISSUE 12: *Proposed Type 1 Stipulation, See Section X.*

ISSUE 13: *Proposed Type 2 Stipulation, See Section X.*

ISSUE 14: *Proposed Type 2 Stipulation, See Section X.*

ISSUE 15: *Proposed Type 2 Stipulation, See Section X.*

ISSUE 16: *Proposed Type 2 Stipulation, See Section X.*

ISSUE 17: **Should Indiantown be allowed to recover any detrimental impact associated with the corporate income tax rate change implemented by the TCJA? If so, what amount, and should Indiantown be allowed to recover such amount through the Energy Conservation Cost Recovery (ECCR) clause?**

POSITIONS

INDIANTOWN: Yes, Indiantown should be allowed to recover any detrimental impact associated with the corporate income tax rate change implemented by the TCJA. The amount Indiantown should be allowed to recover through the ECCR clause is \$54,096.

OPC: No, Indiantown should not be allowed to recover any detrimental impact associated with the corporate income tax rate change implemented by the TCJA.

STAFF: Staff has no position pending evidence adduced at the hearing.

ISSUE 18: **Should Indiantown be allowed to retain and amortize, over 26 years, the total annual benefit associated with the Protected Deferred Tax liabilities?**

POSITIONS

INDIANTOWN: Yes, Indiantown should be allowed to retain and amortize, over 26 years, the total annual benefit associated with the Protected Deferred Tax liabilities.

OPC: No, the Company should not be allowed to retain any portion of the protected deferred income taxes; however, OPC agrees with the 26 years amortization which is consistent with ARAM.

STAFF: Staff has no position pending evidence adduced at the hearing.

ISSUE 19: **Should Indiantown be allowed to retain and amortize, over 10 years, the total annual benefit associated with the Unprotected Deferred Tax liabilities?**

POSITIONS

INDIANTOWN: Yes, Indiantown should be allowed to retain and amortize, over 10 years, the total annual benefit associated with the Unprotected Deferred Tax liabilities.

OPC: No, Indiantown should not be allowed to retain any portion of the unprotected deferred income taxes; however, OPC agrees with the 10 years amortization period.

STAFF: Staff has no position pending evidence adduced at the hearing.

ISSUE 20: *Proposed Type 1 Stipulation, See Section X.*

ISSUE 21: **Should this docket be closed?**

POSITIONS

INDIANTOWN: Yes.

OPC: No.

STAFF: Staff has no position pending evidence adduced at the hearing.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
	<u>Direct</u>		
Michael Cassel	Indiantown	FIMC-1 (revised)	Computation of Gas Tax Savings
Matthew Dewey	Indiantown	FIMD-1 (revised)	Computation of Regulatory Liability
Matthew Dewey	Indiantown	FIMD-2 (revised)	Computation of Regulatory Liability Common Division
Ralph C. Smith, CPA	OPC	Exhibit RCS-1	Qualifications of Ralph C. Smith, CPA

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

As referenced in Section VIII., above, the parties have reached stipulations on the issues described below. Type 1 Stipulations reflect stipulations upon which the parties agree. Type 2 Stipulations reflect stipulations upon which OPC takes no position.

ISSUE 1: Is the methodology and process Indiantown used to calculate the impact of the TCJA appropriate?

**Type 1 Stipulation*

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

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

**Type 1 Stipulation*

STIPULATION: Yes, ADIT is appropriately calculated.

ISSUE 3: Are Indiantown's classifications of the excess ADIT between "protected" and "unprotected" appropriate?

**Type 1 Stipulation*

STIPULATION: Yes, Indiantown's classifications of the excess ADIT between "protected" and "unprotected" is appropriate.

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

**Type 1 Stipulation*

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?

**Type 1 Stipulation*

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

ISSUE 6: Should Indiantown 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"?

**Type 1 Stipulation*

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

ISSUE 7: If Indiantown 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?

**Type 1 Stipulation*

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 Indiantown of the cost of seeking a Private Letter Ruling?

**Type 1 Stipulation*

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

**Type 2 Stipulation*

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 Indiantown is negative \$77,366. If the ADIT is amortized but not refunded, the forecasted tax expense using the 21% corporate tax rate is a negative \$75,374.

ISSUE 10: What is the forecasted tax expense for Indiantown for the tax year 2018 at a 35 percent corporate tax rate?

**Type 2 Stipulation*

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 Indiantown is a negative \$117,752. If the ADIT is amortized but not refunded, the forecasted tax expense using the 35% corporate tax rate is a negative \$114,719.

ISSUE 11: What is the forecasted NOI for the tax year 2018 at a 21 percent corporate tax rate?

**Type 1 Stipulation*

STIPULATION: A net operating loss of \$196,879 excluding the effects of any amortization of protected and unprotected ADIT, and the refund of any benefits.

ISSUE 12: What is the forecasted NOI for the tax year 2018 at a 35 percent corporate tax rate?

**Type 1 Stipulation*

STIPULATION: A net operating loss of \$156,494 excluding the effects of any amortization of protected and unprotected ADIT, and the refund of any benefits.

ISSUE 13: What is the forecasted capital structure for the tax year 2018 at a 21 percent corporate tax rate?

**Type 2 Stipulation*

STIPULATION:

			LOW POINT		MIDPOINT		HIGH POINT	
			COST	WEIGHTED	COST	WEIGHTED	COST	WEIGHTED
			RATE	COST	RATE	COST	RATE	COST
AVERAGE	BALANCE	RATIO (%)	(%)	(%)	(%)	(%)	(%)	(%)
COMMON EQUITY	\$1,009,314	42.31%	10.50%	4.44%	11.50%	4.87%	12.50%	5.29%
LONG TERM DEBT	\$ 495,445	20.77%	4.54%	0.94%	4.54%	0.94%	4.54%	0.94%
SHORT TERM DEBT	\$ 467,002	19.58%	1.77%	0.35%	1.77%	0.35%	2.09%	0.41%
CUSTOMER DEPOSITS	\$ 8,389	0.35%	2.37%	0.01%	2.37%	0.01%	2.37%	0.01%
DEFERRED INCOME TAXES	\$ 405,156	16.99%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
TOTAL AVERAGE	\$2,385,306	100.00%		5.74%		6.17%		6.65%

ISSUE 14: What is the annual forecasted capital structure for the tax year 2018 at a 35 percent corporate tax rate?

**Type 2 Stipulation*

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 15: What is the forecasted annual revenue requirement for Indiantown for the tax year 2018 using a 21 percent corporate tax rate?

**Type 2 Stipulation*

STIPULATION: Using the midpoint rate of return, the revenue requirement is \$200,818 using the 21% corporate tax rate.

ISSUE 16: What is the forecasted annual revenue requirement for Indiantown for the tax year 2018 using a 35 percent corporate tax rate?

**Type 2 Stipulation*

STIPULATION: Using the midpoint rate of return, the revenue requirement is \$244,072 using the 35% corporate tax rate.

ISSUE 20: Should Indiantown update the estimated tax benefit to be consistent with any adjustments to those estimates through December 22, 2018? If so, how should it be handled?

**Type 1 Stipulation*

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

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality matters at this time.

XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

XIV. RULINGS

Opening statements, if any, shall not exceed five minutes per party.

It is therefore, hereby

ORDERED by Commissioner Julie I. Brown, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Julie I. Brown, as Prehearing Officer, this 16th day of November, 2018.



JULIE I. BROWN
Commissioner and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

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. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review 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.