

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 20180051-GU
ORDER NO. PSC-2019-0076-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

Pursuant to Notice and in accordance with Rule 28-106.208, Florida Administrative Code (F.A.C.), a Hearing was held on November 27, 2018, in Tallahassee, Florida.

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 (FPUC).

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. 20180051-GU on February 23, 2018, to consider the tax impacts affecting Florida Public Utilities Company – Gas (FPUC or Company) resulting from the passage of the Tax Cuts and Jobs Act of 2017 (TCJA). FPUC is a wholly owned subsidiary of Chesapeake Utilities Corporation (CUC). CUC is also the parent of CUC – Florida (Chesapeake). FPUC – Indiantown and FPUC – Fort Meade are separate divisions of FPUC. Docket Nos. 20180052-GU, 20180053-GU and 20180054-GU were opened to address the tax impacts affecting FPUC – Indiantown, FPUC – Fort Meade, and Chesapeake, respectively.

On April 25, 2018, an Order Establishing Procedure for the 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 Monday, November 9, 2018, OPC filed an Agreed Motion to Consolidate for Purposes of Hearing Docket Nos. 20180051-GU, 20180052-GU, 20180053-GU and 20180054-GU. On November 16, 2018, Prehearing Order No. PSC-2018-0535-PHO-GU was issued. The Order reflected proposed stipulations between FPUC 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 the purpose 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, 18, 19, 20, 22, and 23, as set forth in Attachment A of this Order. On December 28, 2018, FPUC and OPC submitted post-hearing briefs on Issue Nos. 4B, 5B, 21, and 24.

We have jurisdiction pursuant to Sections 366.04, 366.041, 366.06, and 366.07, Florida Statutes (F.S.).

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

FPUC

FPUC argued that the Company is projected to be earning at the bottom of its allowable range of return on equity.¹ In light of the Company's earnings posture, FPUC argued that it should be allowed to retain the estimated annual amortized amount of the protected excess accumulated deferred income tax (ADIT) balance of approximately \$844,461, less the unprotected deferred tax amortization annual amount of \$307,287, for an annual net amount of \$537,174. FPUC argued that the ability to retain the net tax amount will provide the Company with further opportunity to earn within its authorized range of return on equity (ROE), 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. FPUC argued that if it is allowed to retain all of the tax amounts as proposed, the Company's ROE for 2019 is projected to be 8.67 percent, which is below FPUC's authorized ROE range of 9.85 to 11.85 percent.² FPUC also argued that if it is required to reduce its base rates by \$537,174 for the net excess deferred tax amount, its projected ROE would be even lower, at 8.29 percent.

OPC

OPC argued that we should reject FPUC's proposal to retain the tax amount associated with the protected deferred taxes because it is unjust, unfair, and unreasonable, and should instead apply the estimated annual tax savings of \$537,174 for the benefit of customers in the form of a rate reduction. OPC also argued that the tax savings represent money that was previously paid by FPUC's customers, and that the money therefore belongs to those customers and should be returned to them. Finally, OPC argued that the TCJA did not contain any language, express or otherwise, that suggests an intended goal of the TCJA was to allow a utility to keep tax savings so as to continue making capital investments, while potentially delaying the need for a rate proceeding.

ANALYSIS

FPUC and OPC agree on the amount of the protected excess deferred tax of \$21,955,992, amortized over 26 years, resulting in an annual tax amount of \$844,461, less the unprotected deferred tax amortization annual amount of \$307,287, for an annual net amount of \$537,174.

¹ Although FPUC witness Cassel's testimony stated that the Company expects to be earning *at* the bottom of its allowable range of return on equity, the record indicates that its projected return on equity is 8.38 percent, which is *below* its allowable range.

² FPUC incorrectly referenced a range of 9.50 percent to 11.85 percent in its post-hearing brief.

Where the parties differ is how the disposition of the tax savings should be resolved. OPC argued that the tax savings should be returned to FPUC's customers regardless of the Company's earnings posture to satisfy the intent of the TCJA. FPUC proposed to retain the tax savings which, it argued, will benefit its customers by enabling the Company to delay a rate case and place downward pressure on the requested rate increase in its next rate case.

OPC witness Smith relied on a 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 that, by definition, the excess tax monies in FPUC's possession are a windfall to the Company that should be flowed back to the customers who paid the taxes in their rates. OPC noted that FPUC's witness Cassel did not provide in his testimony any calculations or evidence to demonstrate what the Company's projected earnings would be if the tax savings were retained by the Company. However, in response to our staff interrogatory, FPUC indicated that its forecasted ROE for 2018 and 2019 would be 9.10 and 8.67 percent, respectively, if it were to retain all of the tax savings resulting from the TCJA.

OPC's witness Smith acknowledged that the Reedy Creek utility 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 the utility would be required to refund. At that time, we had already determined that Reedy Creek would have to provide a refund because it was over-earning.

In the Reedy Creek decision, the Florida Supreme Court acknowledged our decision 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.

FPUC argued that OPC's refusal to consider its earnings posture in rendering their opinion of FPUC's proposals to retain some of the TCJA tax savings is contrary to our prior policy as reflected in Order Nos. 8624 and 8624A (the underlying Orders in the Reedy Creek case), and overstates the applicability of the Florida Supreme Court's conclusions. As such, FPUC contends that OPC's arguments on this point should be rejected, and we agree with the Company's interpretation.

OPC argued that FPUC's interpretation of the Reedy Creek decision mistakenly links the over-earnings posture of the company in that case with the Court's use of the term "windfall." It is our opinion that 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 the Commission-authorized range of ROE regardless of the cause, and therefore, any over-earnings must be refunded to the

customers. In Order No. 8624, we asserted that “[i]t is the Commission’s responsibility to ensure they do not earn in excess of a fair and reasonable return upon their investment.”³

The record evidence demonstrates that FPUC is earning below its Commission-authorized range of ROE. The record also indicates that even with FPUC retaining all of the tax savings it has requested, the Company will not earn above its authorized range of ROE. We agree with FPUC 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 further find that OPC's reliance upon the Reedy Creek case is misplaced. On cross-examination, OPC’s witness Smith conceded that our orders underlying the Reedy Creek case, Order Nos. 8624 and 8624A, reflect that in addressing the 1978 Tax Reform, we considered the circumstances of the utilities on a case-by-case basis. Only those utilities that were earning above the ceiling of their Commission-authorized ROE range were required to refund the tax savings arising under the 1978 Tax Reform.

CONCLUSION

We find that it is fair, just, and reasonable for us to consider the earnings position of the Company in our decision. Reducing the base rates as recommended by OPC would result in a cash flow reduction to the Company, put downward pressure on FPUC’s earnings, and would accelerate the need for a full rate case sooner than it would otherwise due to FPUC earning below its authorized range of ROE. Therefore, we hereby find that FPUC shall be allowed to retain the estimated amortized protected deferred tax balance, less the unprotected deferred tax amortization attributed to the TCJA, for an annual savings of \$537,174, because FPUC will not exceed its authorized range of ROE.

II. Unprotected Excess Deferred Taxes

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

PARTIES’ ARGUMENTS

FPUC

FPUC argued that the Company is projected to be earning at the bottom of its authorized range of ROE.⁴ In light of the Company’s earnings posture, FPUC argued that it should be allowed to retain the estimated annual amortized amount of the protected excess accumulated deferred tax balance of approximately \$844,461, less the unprotected deferred tax amortization annual amount of \$307,287, for an annual net amount of \$537,174. FPUC also argued that the annual unprotected excess deferred tax of \$298,560 that is associated with the acquisition

³ 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*, p. 4.

⁴ Although FPUC witness Cassel’s testimony stated that the Company expects to be earning at the bottom of its allowable range of return on equity, the record indicates that its projected return on equity is 8.38 percent, which is below its allowable range.

adjustment should be applied to reduce the remaining grossed up balance of the unamortized acquisition adjustment of \$6,518,569. FPUC contended that this accounting treatment will facilitate a more expeditious reduction of the acquisition adjustment balance. FPUC argued that the ability to retain the net tax savings will provide the Company with further opportunity to earn within its authorized range of ROE, while also enabling the Company to charge current rates for a longer period, continue making necessary capital investments, and delay a costly rate proceeding. FPUC contended that if it is allowed to retain all of the tax savings as proposed, the Company's return on equity for 2019 is projected to be 8.67 percent. FPUC also argued that if it is required to reduce its base rates by \$537,174 for the net excess deferred tax amount, its projected ROE would be 8.29 percent. FPUC's authorized range of ROE is 9.85 to 11.85 percent.⁵

OPC

OPC agreed with FPUC that the estimated annual protected excess ADIT amount amortization of \$844,461, less the estimated annual unprotected excess ADIT amortization of \$307,287, produces an estimated annual net amount of \$537,174. However, OPC argued this net amount of \$537,174 should be returned to customers via a base rate reduction, and not retained by the Company. OPC argued that in the recent cases before us that address the tax savings due to the TCJA, the electric and gas utilities have agreed to refund the monies to their customers, or to apply them in a manner that directly benefits their customers (e.g., pay off storm costs in lieu of utilizing a storm surcharge). OPC further contended that FPUC is currently earning a positive return, and that FPUC will continue to earn within its authorized range without the tax savings being retained by the Company. OPC argued that although FPUC claims that retaining the tax savings would not put the Company in an over-earning position, FPUC witness Cassel could not point to any calculations or evidence that was offered by FPUC to demonstrate where FPUC's projected earnings level would be if the tax savings were retained. OPC contended that the net amount of the protected and unprotected excess ADIT that is not related to the acquisition adjustment of \$537,174 should be applied for the benefit of the customers as a rate reduction. OPC argued that to do otherwise would be unjust, unfair, and unreasonable to FPUC's customers.

ANALYSIS

FPUC's witness Cassel testified that there are two distinct components of the unprotected excess deferred tax balance. The first component is a deferred tax amount associated with the acquisition adjustment. This grossed up balance is \$6,518,569, which the Company requested be included with the net acquisition adjustment and amortized at \$298,560 per year, based on the remaining months of amortization of the acquisition adjustment. The second component is a net unprotected excess deferred tax amount of \$3,072,874. The Company requested this excess deferred tax amount be amortized over 10 years at \$307,287 per year. The Company requested that the amortization detriment be netted against the annual protected tax amount and retained by the Company.

⁵ FPUC incorrectly referenced a range of 9.50 percent to 11.85 percent in its post-hearing brief.

We find that this treatment is appropriate because the Company is not earning above its authorized range of ROE. OPC witness Smith agreed that the net annual amortization of the protected and unprotected excess ADIT that is not associated with the acquisition adjustment estimated by the Company is approximately \$537,174 annually. Witness Smith further testified that the TCJA savings should be applied for the benefit of customers as a permanent base rate reduction, rather than being retained by FPUC. We do not find OPC witness Smith's argument compelling because the record demonstrates that the Company is not projected to be in an over-earnings position even if it is allowed to retain all of the tax savings. We additionally find the Company's proposal appropriate because the record shows that OPC did not take issue with FPUC's proposed disposition of the unprotected deferred tax amount associated with the acquisition adjustment.

CONCLUSION

We find that it is fair, just, and reasonable for us to consider the earnings position of the Company in its decision. Therefore, for the reasons discussed in Section I and the aforementioned analysis, we find that FPUC shall be allowed to retain the excess deferred tax amount associated with the net acquisition adjustment of \$6,518,569 amortized over the life of the acquisition adjustment. Further, the unprotected deferred tax amount of \$3,072,874 should be amortized over 10 years and netted against the protected excess deferred taxes of \$21,955,922.

III. Retention of the Tax Benefits Arising from the TCJA Rate Reduction

This section addresses whether FPUC should be allowed to retain the tax savings arising from the TCJA rate reduction, excluding the 2018 GRIP savings, as well as the estimated net deferred tax savings of the protected and unprotected deferred tax amount not associated with the acquisition adjustment.

PARTIES' ARGUMENTS

FPUC

FPUC argued that even if the Company is allowed to retain the tax savings as it has requested, FPUC's ROE for 2019 is projected to be only 8.67 percent, which is below its authorized range of 9.85 percent to 11.85 percent. The Company also contended that if it is required to reduce its base rates in 2019 by \$537,174 for the net excess deferred tax amount, its projected ROE will be only 8.29 percent. FPUC also argued that if it is required to refund the \$1,141,134 in annual tax savings, along with the gas reliability infrastructure program (GRIP) tax savings it has already proposed to refund, its ROE is projected to be even lower at only 7.85 percent. Also, if FPUC is not allowed to retain any of the tax savings, FPUC projected that its 2019 ROE would be 7.74 percent.

FPUC contended that the Company is currently under-earning. FPUC argued that earning further below its authorized range would drive the Company into a rate case, or force it to deal with severe financial duress. The Company opined that such a result would be contrary to the stated intent of those that sponsored the TCJA. Although retention of the savings as proposed

by the Company will not enable the Company to earn above its authorized range, it will allow it to earn much closer to its authorized ROE. FPUC argued that this will ensure that the Company remains well-positioned financially pending its next rate case, so that it can continue to provide safe and reliable service to its customers.

OPC

OPC argued that FPUC is not currently under-earning, and is projected to earn within its authorized range - albeit at the lower end of the range for the foreseeable future. OPC further argued that FPUC did not offer any evidence or provide any calculations indicating where FPUC would be earning relative to its authorized earnings range if we were to allow the Company to keep the tax savings. OPC contended that even though the Company asserts that it could avoid a potential rate case if the tax savings were retained, a close examination of FPUC witness Cassel's testimony demonstrates no rate case will be avoided. OPC noted that witness Cassel acknowledged that FPUC was already earning within its authorized earnings range. Furthermore, OPC argued that none of the testimony or exhibits submitted by FPUC included any evidence indicating a rate case by the Company was pending. OPC also argued that the tax savings resulting from the TCJA is money that belongs to the Company's customers and should be returned to them as a permanent base rate reduction.

ANALYSIS

FPUC witness Cassel testified that the estimated impact of the federal income tax rate change from 35 percent to 21 percent for FPUC is approximately \$2,181,275. Excluding \$1,040,141 of tax savings related to FPUC's GRIP, the incremental amount of tax savings is \$1,141,134. In stipulated Issue Nos. 9 and 22, FPUC and OPC agreed to return the tax savings related to GRIP back to the customers. Further, FPUC proposed to retain the net savings annual amount of \$537,174 related to the protected and unprotected excess deferred tax saving (\$844,461 for the protected excess ADIT less \$307,287 for the unprotected excess ADIT). A second component of the unprotected deferred tax amount is associated with the acquisition adjustment. FPUC proposed to reduce the amortization amount for the remaining life of the acquisition adjustment to \$298,560 per year. OPC's witness Smith did not object to FPUC's proposal for disposition of the tax savings associated with the acquisition adjustment. We find that the record evidence demonstrates that FPUC is earning below the bottom of its authorized ROE. The record also indicates that even with FPUC retaining all of the tax savings it has requested, the Company will not earn above its authorized range of ROE. Therefore, we hereby find that FPUC should be allowed to retain the tax savings.

CONCLUSION

We find that FPUC should be allowed to retain the tax savings arising from the TCJA rate reduction, excluding the 2018 GRIP savings, as well as the estimated net deferred tax saving of the protected and unprotected deferred tax amount not associated with the acquisition adjustment.

IV. Docket Closure

This section addresses whether this docket should be closed.

PARTIES' ARGUMENTS

FPUC

Yes.

OPC

No.

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 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.



ADAM J. TEITZMAN
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
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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.

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 (“FPUC”) used to calculate the impact of the Tax Cuts and Jobs Act of 2017 (“TCJA”) appropriate?

STIPULATION: Yes, the methodology and process FPUC 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 3: Are FPUC’s classifications of the excess ADIT between “protected” and “unprotected” appropriate?

STIPULATION: Yes, FPUC’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?

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

ISSUE 7: If FPUC 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 FPUC 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 FPUC'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 FPUC's GRIP for the impact of the TCJA for the tax year 2018. FPUC is proposing in this case to treat the adjustments as a GRIP over-recovery in 2019, which FPUC 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: \$12,268,779 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: \$10,640,348 excluding the effects of any amortization of protected and unprotected ADIT, and the refund of any benefits.

ISSUE 18: What is the tax benefit arising from the TCJA rate reduction that FPUC requests to be retained?

STIPULATION: \$1,678,308 including the estimated amortization of the protected and unprotected regulatory tax liability (excluding the acquisition adjustment).

ISSUE 19: What is the estimated amount of the Deferred Tax portion of the Protected regulatory asset that is not associated with the acquisition adjustment that FPUC is requesting to be retained?

STIPULATION: A regulatory tax liability of \$21,955,992 in total or \$844,461 of estimated amortization a year.

ISSUE 20: What is the estimated amount of the Deferred Tax portion of the Unprotected regulatory asset that is not associated with the acquisition adjustment that FPUC is requesting to be retained?

STIPULATION: \$3,072,874 in total or a negative \$307,287 of amortization a year.

ISSUE 22: Should the tax benefits directly associated with the GRIP program be passed-on to customers through future GRIP surcharges?

STIPULATION: Yes, the tax benefits directly associated with the GRIP program should be passed-on to customers through future GRIP surcharges.

ISSUE 23: Should FPUC 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?

STIPULATION: Yes, FPUC should update the estimated tax benefit to be consistent with any adjustments to those estimates through December 22, 2018 by flowing the benefit back to customers by incorporating it as an over-recovery in the 2019 GRIP projection.

COMMISSION-APPROVED TYPE 2 STIPULATIONS

ISSUE 10: What is the forecasted tax expense for FPUC 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 FPUC is \$3,535,175. If GRIP is refunded and the ADIT amortized but not refunded, the forecasted tax expense using the 21% corporate tax rate for FPUC is \$3,407,695.

ISSUE 11: What is the forecasted tax expense for FPUC 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 FPUC is \$5,163,603. If GRIP is refunded and the ADIT amortized but not refunded, the forecasted tax expense using the 35% corporate tax rate for FPUC is \$4,969,584.

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 RATE | WEIGHTED COST | COST RATE | WEIGHTED COST | COST RATE | WEIGHTED COST |
| <u>AVERAGE</u> | BALANCE | RATIO (%) | RATE (%) | COST (%) | RATE (%) | COST (%) | RATE (%) | COST (%) |
| COMMON EQUITY | \$ 92,294,263 | 39.34% | 9.85% | 3.88% | 10.85% | 4.27% | 11.85% | 4.66% |
| LONG TERM DEBT - CU | \$ 41,036,305 | 17.49% | 4.54% | 0.79% | 4.54% | 0.79% | 4.54% | 0.79% |
| SHORT TERM DEBT | \$ 43,846,558 | 18.69% | 1.77% | 0.33% | 1.77% | 0.33% | 1.77% | 0.33% |
| LONG TERM DEBT - FC | \$ 5,480,739 | 2.34% | 12.04% | 0.28% | 12.04% | 0.28% | 12.04% | 0.28% |
| CUSTOMER DEPOSITS | \$ 8,258,945 | 3.52% | 2.36% | 0.08% | 2.36% | 0.08% | 2.36% | 0.08% |
| DEFERRED INCOME TAXES | \$ 43,668,344 | 18.62% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% |
| TAX CREDITS - WEIGHTED COST | \$ - | 0.00% | 5.29% | 0.00% | 5.68% | 0.00% | 6.07% | 0.00% |
| TOTAL AVERAGE | \$ 234,585,154 | 100.00% | | 5.36% | | 5.75% | | 6.14% |

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 FPUC for the tax year 2018 using a 21 percent corporate tax rate?

STIPULATION: Using the midpoint rate of return, the revenue requirement is \$18,241,342 using the 21% corporate tax rate.

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

STIPULATION: Using the midpoint rate of return, the revenue requirement is \$22,170,662 using the 35% corporate tax rate.