

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to establish a generic docket to investigate and adjust rates for 2018 tax savings, by Office of Public Counsel.

DOCKET NO. 20180013-PU
ORDER NO. PSC-2019-0350-PAA-PU
ISSUED: August 22, 2019

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman
JULIE I. BROWN
GARY F. CLARK

NOTICE OF PROPOSED AGENCY ACTION
ORDER ESTABLISHING TREATMENT FOR WATER AND WASTEWATER
UTILITIES FOR TAX SAVINGS RELATED TO TAX CUTS AND JOBS ACT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

BACKGROUND

The Tax Cuts and Jobs Act of 2017 (TCJA) was signed into law on December 22, 2017 and became effective for the taxable year beginning January 1, 2018. On January 9, 2018, the Office of Public Counsel (OPC) filed a “Petition to Establish Generic Docket to Investigate and Adjust Rates for 2018 Tax Savings.” On February 6, 2018, in Order No. PSC-2018-0104-PCO-PU,¹ we established jurisdiction over utilities’ tax savings if such a date was not contained in an applicable settlement agreement. Subsequently, we opened separate dockets to address the tax savings for electric and natural gas utilities. At this time, all electric and natural gas utilities tax savings dockets have been resolved. The instant docket remains open to address tax savings associated with water and wastewater utilities (WAW).

For WAW utilities that have income taxes included in their revenue requirement, the 2018 annual reports are necessary to determine each utility’s earned return and if the utility earned in excess of its allowed return. As of July 25, 2019, 13 of 15 WAW utilities that have income taxes included in their revenue requirement have filed their 2018 annual reports. This order addresses the tax savings for the 13 WAW utilities that have income taxes included in their revenue requirement and have filed 2018 annual reports.

We have jurisdiction in this case pursuant to Sections 367.081, Florida Statutes.

¹Order No. PSC-2018-0104-PCO-PU, issued February 6, 2018 in 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.*

DECISION

The 15 WAW utilities that have income taxes included in their revenue requirement are:

- East Central Florida Services
- Forest Utilities
- Gold Coast Utility Corporation
- Indiantown Company
- Marion Utilities
- NHC Utilities
- Ni Florida
- North Beach Utilities
- Peoples Water Service Company
- Pine Island Cove HOA
- Placid Lakes
- Pluris Wedgefield
- St. James Island
- Utilities Inc. of Florida
- Wildwood Water Company

Of the 15, all have filed their 2018 annual report except Gold Coast Utility Corporation and St. James Island. All utilities that have filed their 2018 annual report have reported either negative returns or returns below their rate of return ceilings. Attachment A shows all the utilities' Net Operating Income, Rate Base, Achieved Rate of Return, and Approved Rate of Return Cap.

We find that it is reasonable to consider the earnings position of a utility when deciding if its base rates should be reduced for changes in tax rates. Reducing base rates results in cash flow reductions for the utilities, puts downward pressure on earnings, and accelerates the need for a rate case sooner versus later. Consequently, we find that no adjustments to base rates, associated with the tax impacts resulting from the passage of the TCJA, are necessary for WAW utilities that have income taxes included in their revenue requirement but are not earning above their allowed rate of return. Such treatment is consistent with that taken in *Reedy Creek Utilities Company v. Florida Public Service Commission*,² and our decisions in Docket Nos. 20180051-GU, 20180052-GU, 20180053-GU, and 20180054-GU.³

² 418 So. 2d 249, 250 (Fla. 1982) (“Recognizing that consumer rates are determined on a projected estimate of costs including taxes, the Commission announced that should this tax reduction result in revenue to the utilities exceeding a fair and reasonable return upon their investment, the utilities could be required to refund these revenues to the consumers.”)

³Order No. PSC-2019-0076-FOF-GU, issued February 25, 2019, in Docket No. 20180051-GU, *In re: Consideration of the tax impacts associated with the Tax Cuts and Jobs Act of 2017 for Florida Public Utilities Company – Gas*; Order No. PSC-2019-0077-FOF-GU, issued February 25, 2019, in Docket No. 20180052-GU, *In re: Consideration of the tax impacts associated with the Tax Cuts and Jobs Act of 2017 for Florida Public Utilities Company – Indiantown Division*; Order No. PSC-2019-0079-FOF-GU, issued February 25, 2019, in Docket No. 20180053-GU, *In re: Consideration of the tax impacts associated with the Tax Cuts and Jobs Act of 2017 for Florida Public*

Gold Coast Utility Corporation and St. James Island have not yet filed their 2018 annual reports. Consequently, the tax impacts associated with the TCJA cannot be evaluated for these two utilities. Both of these utilities are facing unique circumstances that will be addressed in dockets of their own. Also, closing this docket will resolve this tax issue for financial reporting purposes for the 13 utilities identified that have filed their 2018 annual reports. Therefore, we find that the instant docket shall be closed and individual dockets shall be opened to address this tax issue for Gold Coast Utility Corporation and St. James Island.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that East Central Florida Services, Forest Utilities, Indiantown Company, Marion Utilities, NHC Utilities, Ni Florida, North Beach Utilities, Peoples Water Service Company, Pine Island Cove HOA, Placid Lakes, Pluris Wedgefield, Wildwood Water Company, and Utilities Inc. of Florida, based on their 2018 annual reports, have reported either negative returns or returns below their rate of return ceilings, and for that reason, no adjustment to base rates is necessary for the tax impacts resulting from the passage of the Tax Cuts and Jobs Act of 2017. It is further

ORDERED that individual dockets shall be opened for Gold Coast Utility Corporation and St. James Island in order to receive their 2018 annual reports and evaluate the appropriate treatment for the tax impacts resulting from the passage of the Tax Cuts and Jobs Act of 2017. It is further

ORDERED that the provisions of this order, issued as Proposed Agency Action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that if no person whose substantial interests are affected by the Proposed Agency Action files a protest within 21 days of the issuance of the Order, this docket shall be closed upon the issuance of a Consummating Order.

By ORDER of the Florida Public Service Commission this 22nd day of August, 2019.



ADAM J. TEITZMAN
Commission Clerk
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 that is available under Section 120.57, 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 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.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 12, 2019.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

**Table 1-1
Tax Cuts and Jobs Act WAW Analysis**

	Company	Net Operating Income	Rate Base	Achieved ROR	Approved ROR Cap
1	East Central Florida Services	\$ (114,909)	\$ 258,447	-44.46%	8.12%
2	Forest Utilities	\$ 49,819	\$ 2,523,171	1.97%	4.94%
3	Gold Coast Utility Corporation				5.91%
4	Indiantown Company	\$ (56,565)	\$ 486,821	-11.62%	4.21%
5	Marion Utilities	\$ (68,168)	\$ 1,232,286	-5.53%	8.19%
6	NHC Utilities	\$ (18,724)	\$ 71,054	-26.35%	8.74%
7	Ni Florida	\$ 258,149	\$ 4,254,955	6.07%	8.00%
8	North Beach Utilities	\$ 97,188	\$ 1,280,162	7.59%	7.69%
9	Peoples Water Service Company	\$ 259,716	\$ 3,599,525	7.22%	8.05%
10	Pine Island Cove HOA	\$ (70,504)	\$ 42,979	-164.04%	8.12%
11	Placid Lakes	\$ (12,020)	\$ 546,969	-2.20%	6.80%
12	Pluris Wedgefield	\$ 64,259	\$ 6,336,871	1.01%	9.85%
13	St. James Island				8.74%
14	Utilities, Inc. of Florida	\$ 6,555,469	\$ 114,572,234	5.72%	7.54%
15	Wildwood Water Company	\$ (33,893)	\$ 89,021	-38.07%	8.18%

Source: 2018 Annual Reports