BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 Tampa Electric Company.	DOCKET NO. 20180045-EI FILED: July 25, 2018

PREHEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL

The Citizens of the State of Florida, through the Office of Public Counsel ("Citizens"), pursuant to the Order Establishing Procedure in this docket, Order No. PSC-2018-0208-PCO-EI, issued April 25, 2018, hereby submit this Prehearing Statement.

APPEARANCES:

Virginia Ponder
Associate Public Counsel

Charles J. Rehwinkel
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J.R. Kelly
Public Counsel
Office of Public Counsel
c/o The Florida Legislature
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On behalf of the Citizens of the State of Florida

1. WITNESSES:

Witness	Subject Matter	Issue Numbers
Direct		
Ralph Smith	Impacts of the Tax Cuts and Jobs Act of 2017	1-10,12, 13

2. <u>EXHIBITS:</u>

NONE

<u>STATEMENT OF BASIC POSITION</u>

Tampa Electric Company has identified (i) a net regulatory liability for excess accumulated deferred income taxes of approximately $438.528 million and (ii) a one-time base rate revenue requirement change of $102.687 million, as two major impacts of the Tax Cuts and Jobs Act of 2017 ("TCJA").

The Citizens find no errors with Tampa Electric Company's calculation of excess accumulated deferred income taxes and do not disagree with its classification of the excess accumulated deferred income taxes between "protected" and "unprotected." However, guidance provided in the TCJA and in previous Internal Revenue Service rulings presents some uncertainty as to the appropriate classification of the excess accumulated deferred income taxes relating to cost of removal/negative net salvage. As a result of this uncertainty, the Citizens submit that Tampa Electric Company should be required to seek a private letter ruling from the Internal Revenue Service to address its specific factual situation regarding the cost of removal/negative net salvage as it relates to excess accumulated deferred income taxes.

Tampa Electric Company's identification of approximately $102.687 million as the one-time base rate revenue requirement reduction as shown on its Exhibit No. JSC-1, Document No. 5, does not appear to be unreasonable for purposes of estimating the one-time annual revenue requirement reduction and excess accumulated deferred income taxes related to the TCJA. Therefore, this amount should be used for evaluating any true-up required under the Amended

Implementation Agreement filed on February 13, 2018, in Docket Nos. 20170271-EI and 20180013-PU.

4. STATEMENT OF FACTUAL ISSUES AND POSITIONS

ISSUE 1: **Has TECO complied with the applicable provisions of its 2017 Amended and Restated Stipulation and Settlement Agreement and Amended Implementation Stipulation regarding the Tax Cuts and Jobs Act of 2017 (TCJA)?**

OPC: Yes, as set forth below:

a) Was TECO's "forecasted earnings surveillance report for the calendar year that includes the period in which Tax Reform is effective" used?

OPC: Yes, the Citizens have identified no errors.

b) Were "protected excess deferred taxes" for 2018 using a 21 percent corporate tax rate appropriately calculated and flowed back?

OPC: Yes, the Citizens have identified no errors. The calculation appears correct; however, the flow back has yet to occur.

c) Were "unprotected excess deferred taxes" for 2018 using a 21 percent corporate tax rate appropriately calculated and flowed back?

OPC: Yes, the Citizens have identified no errors. The calculation appears correct; however, the flow back has yet to occur.

d) Were Accumulated Deferred Income Taxes (ADIT) appropriately calculated?

OPC: Yes, the Citizens have identified no errors.

e) Are TECO's classifications of the excess ADIT between "protected" and "unprotected" appropriate?

OPC: Yes, the Citizens have identified no errors.

f) Should TECO 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”?

OPC: Yes, as outlined in the testimony of the Citizens’ Witness Ralph Smith.

g) If TECO 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?

OPC: If Tampa Electric receives a private letter ruling (“PLR”) from the IRS ruling that the excess ADIT relating to cost of removal/negative net salvage is to be treated as protected, then a reclassification should be made in the company’s books and records and flow back amounts should be trued-up based on the ruling. In addition, the company should further adjust base rates to reflect the 2018 revenue requirement impact either (a) in conjunction with a future solar base rate adjustment or (b) by filing a petition for a limited scope proceeding (or stipulated among all parties in lieu thereof) to adjust base rates within 60 days of the determination in the PLR, whichever will result in a rate change earlier; and shall refund the associated 2018 revenue requirement difference from January 1, 2018 to the effective date of the further rate change through the conservation cost recovery clause.

h) Were appropriate adjustments made to the First SoBRA project for the impact of the TCJA for the tax year 2018?

OPC: Yes, the Citizens have identified no errors in the First SoBRA.

<u>ISSUE 2</u>: What is the forecasted tax expense for TECO for the tax year 2018 at a 21 percent corporate tax rate?

OPC: The Citizens have identified no errors in TECO’s forecasted tax expense of $85.9 million for the tax year 2018 at a 21 percent corporate tax rate.

<u>ISSUE 3</u>: What is the forecasted tax expense for TECO for the tax year 2018 at a 35 percent corporate tax rate?

OPC: The Citizens have identified no errors in TECO’s forecasted tax expense of $168.1 million for the tax year 2018 at a 35 percent corporate tax rate.

<u>ISSUE 4</u>: **What is the forecasted NOI for the tax year 2018 at a 21 percent corporate tax rate?**

OPC: The Citizens have identified no errors in TECO's forecasted NOI of $439.5 million for the tax year 2018 at a 21 percent corporate tax rate.

<u>ISSUE 5</u>: **What is the forecasted NOI for the tax year 2018 at a 35 percent corporate tax rate?**

OPC: The Citizens have identified no errors in TECO's forecasted NOI of $360.0 million for the tax year 2018 at a 35 percent corporate tax rate.

<u>ISSUE 6</u>: **What is the forecasted capital structure for the tax year 2018 at a 21 percent corporate tax rate?**

OPC: The Citizens have identified no errors in TECO's forecasted capital structure for the tax year 2018 at a 21 percent corporate tax rate.

<u>ISSUE 7</u>: **What is the forecasted capital structure for the tax year 2018 at a 35 percent corporate tax rate?**

OPC: The Citizens have identified no errors in TECO's forecasted capital structure for the tax year 2018 at a 35 percent corporate tax rate.

<u>ISSUE 8</u>: **What is the forecasted revenue requirement for TECO for the tax year 2018 using a 21 percent corporate tax rate?**

OPC: The Citizens have identified no errors in the forecasted revenue requirement for TECO for the tax year 2018 using a 21 percent corporate tax rate.

<u>ISSUE 9</u>: **What is the forecasted revenue requirement for TECO for the tax year 2018 using a 35 percent corporate tax rate?**

OPC: The Citizens have identified no errors in the forecasted revenue requirement for TECO for the tax year 2018 using a 35 percent corporate tax rate.

<u>ISSUE 10</u>: **What is the amount of annual revenue requirement decrease/increase due to the enactment of the TCJA for the tax year 2018?**

OPC: TECO's calculation of $102.687 million as the amount of annual revenue requirement decrease appears to be reasonable.

<u>ISSUE 11</u>: What is the annual percentage decrease for the base rate charges for the RS, GS, GSD and IS rate classes resulting from the TCJA?

OPC: No Position.

<u>ISSUE 12</u>: What are the appropriate base rate charges implementing the TCJA and when should the new base rate charges become effective?

OPC: Pursuant to the 2017 Amended and Restated Stipulation and Settlement Agreement and the Amended Implementation Stipulation, a one-time rate reduction of $102.687 million should be accomplished via a uniform percentage decrease to customer, demand and energy base rate charges for all retail customer classes and the new base rate charges should become effective with the first billing cycle of 2019.

<u>ISSUE 13</u>: What is the amount of the 2018 annual revenue requirement decrease attributable to the TCJA that should be used in Docket No. 20170271-EI to recover the storm cost as provided in paragraph 3 and to calculate the true up contemplated in paragraph 5(c) of the Amended Implementation Stipulation?

OPC: The amount of $102.687 million should be used in Docket No. 20170271-EI to recover the storm cost as provided in paragraph 3 and to calculate the true up contemplated in paragraph 5(c) of the Amended Implementation Stipulation.

<u>ISSUE 14</u>: Should this docket be closed?

OPC: No. This docket should remain open until all true-up (including PLR) and offsets are fully implemented pursuant to the 2017 Amended and Restated Stipulation and Settlement Agreement and the Amended Implementation Stipulation.

<u>5. STIPULATED ISSUES:</u>

None at this time.

<u>6. PENDING MOTIONS</u>:

None.

7. STATEMENT OF PARTY'S PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY:

None.

8. OBJECTIONS TO QUALIFICATION OF WITNESSES AS AN EXPERT:

None at this time.

9. STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE:

There are no requirements of the Order Establishing Procedure with which the Office of Public Counsel cannot comply.

Dated this 25th day of July, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE
Docket No. 20180045-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing Citizens' Prehearing Statement has been furnished by electronic mail on this 25th day of July, 2018, to the following:

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