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December 28, 2018

E-PORTAL FILING

Ms. Carlotta Stauffer, Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 20180052 – In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Florida Public Utilities Company – Indiantown Division.

Attached for filing in the referenced docket, please find Florida Public Utilities Company – Indiantown Division's Post Hearing Statement and Brief.

Thank you for your assistance with this filing. As always, please don't hesitate to let me know if you have any questions whatsoever.

Kind regards,



Beth Keating
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MEK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Consideration of the tax impacts) Docket No. 20180052-GU
associated with the Tax Cuts and Jobs Act for)
Florida Public Utilities Company-Indiantown)
Division)
_____) Filed: December 28, 2018

FLORIDA PUBLIC UTILITIES COMPANY – INDIANTOWN DIVISION
POST HEARING STATEMENT AND BRIEF

Pursuant to the requirements of the Order on Procedure, Order No. PSC-2018-0216-PCO-GU, as amended by Order No. PSC-2018-0277-PCO-GU and Order No. PSC-2018-0412-PCO-GU, Florida Public Utilities Company – Indiantown Division (“Indiantown”) hereby submits its Prehearing Statement.

STIPULATIONS:

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 RATE	WEIGHTED COST	COST RATE	WEIGHTED COST	COST RATE	WEIGHTED 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.

ISSUES IN DISPUTE:

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

POSITIONS

INDIANTOWN: *Indiantown should be allowed 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.*

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

POSITIONS

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

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.*

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.*

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.*

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

POSITIONS

INDIANTOWN: *Yes.*

BRIEF ON DISPUTED ISSUES

Overview

The Tax Cuts and Jobs Act of 2017¹ (“TCJA”) was signed into law by President Trump on December 22, 2017. Thereafter, the Commission established generic Docket No. 20180013-PU to address the Office of Public Counsel’s (“OPC”) Petition to Establish Generic Docket to Investigate and Adjust Rates for 2018 Tax Savings. By Order No. PSC-2018-0104-PCO-PU, the Commission asserted jurisdiction over the subject matter of responsive tax adjustments effective on the date of the Commission’s vote, February 6, 2018 (“Jurisdictional Date”).

¹ HR-1, Pub. L. No. 115-97, December 22, 2017, 131 Stat 2054.

This docket was opened on February 23, 2018, to provide a vehicle for the Commission to consider the tax impacts associated with the passage of the TCJA on Florida Public Utilities Company – Indiantown Division (herein, “Indiantown”). Shortly, thereafter, OPC intervened.² The Order Establishing Procedure for this proceeding, Order No. PSC-2018-0214-PCO-GU, was issued April 25, 2018. Consistent with that Order, Indiantown filed its Petition, along with the Testimonies of Michael Cassel, Matthew Dewey, and Michael Reno on June 1, 2018. Thereafter, by Orders Nos. PSC-2018-0275-PCO-GU and PSC-2018-0412-PCO-GU, the procedural schedule for this proceeding was modified, and a hearing was scheduled to commence on November 27, 2018.

Between the time of Indiantown’s initial filing and the prehearing conference, Indiantown and OPC (jointly “Parties”) were able to reach stipulations of the factual issues pertaining to Indiantown’s calculation of the tax benefits, as well as the issues regarding Indiantown’s earnings posture. TR 9; Order No. PSC-2018-0536-PHO-GU. As such, the few remaining disputed issues, Issues 4B, 5B, 17, 18, 19, and 21, address the appropriate disposition of the identified tax savings, as well as Indiantown’s proposal to recoup the tax detriment. TR 10; Order No. PSC-2018-0536-PHO-GU.

To be clear, there is no debate between the Parties regarding the tax benefit amounts that need to be addressed, nor is there any debate regarding Indiantown’s earnings posture. TR 248-252 (Smith). The remaining issues present a policy question as to whether, given its earnings posture, the Company should be allowed to retain the identified tax benefits or return those tax benefits to its customers and whether it should be allowed to recover the tax detriment from customers utilizing the conservation cost recovery clause as the recovery mechanism.

² Order No. PSC-2018-0132-PCO-GU, issued March 13, 2018.

As explained by Indiantown witness Cassel, the corporate income tax rate change from 35% to 21% results in a tax detriment of approximately \$54,096. TR 119 (Cassel). Indiantown proposes to recover this annual tax detriment associated with the tax rate reduction, for purposes of addressing incremental, ongoing costs since the Company's last rate case in 2003. TR 119 (Cassel). Currently, not only is the Company not over-earning, it is, in fact, projected to be earning at the bottom of its allowable range.³ TR 193-194 (Cassel). As such, it is Indiantown's position that regulatory efficiency supports allowing the Company to recover the tax detriment. Indiantown's proposed mechanism for such recovery is the Company's consolidated ECCR Clause, which would enable recovery through a mere additional .1 cent per therm increase in the approved factors. Hearing Exhibit 17. The ECCR mechanism has been utilized before for purposes of flowing through tax benefits; as such, utilizing it to collect a tax detriment is not a stretch of regulatory philosophy. Hearing Exhibit 9. Such approval will provide the Company with an opportunity to preserve or improve its current earnings posture, thereby potentially deferring a future rate case. Such regulatory efficiency will extend rate stability and be more consistent with the stated purpose outlined by the tax bill's sponsor, Congressman Brady, to provide tax relief for workers, families, and job creators. Hearing Exhibit 10; TR 121 (Cassel). The implementation of this purpose is at the discretion of the Commission.

As for deferred taxes, these are recorded on the Company's balance sheet as a regulatory asset and liabilities. TR 120-121 (Cassel). The amount on the Company's books was calculated at the prior 35% rate, but the actual taxes paid to the government will be paid at the 21% rate. *Id.*

The Company has a net Unprotected Deferred Tax Asset recorded on its books with an estimated balance of \$6,484. The Company requests this Deferred Tax Asset be amortized over

³ Order No PSC-04-0565-S-GU.

10 years at \$648 per year. TR 120 (Cassel). This annual amortization detriment could be netted against the annual Protected benefit, as discussed below, and the Company requests that the net total of these amounts be retained by the Company.

For protected deferred taxes, the estimated grossed-up balance for Indiantown is approximately \$221,269, which is recorded as a Deferred Regulatory Tax Liability. TR 120 (Cassel). This estimated deferred balance will be amortized over 26 years using the Internal Revenue Service's ("IRS") prescribed methodology, which is approximately \$8,510 annually. Hearing Exhibit 2; TR 121 (Cassel). Current year final amounts will not be available until late 2018, as further explained by Indiantown's witness Matthew Dewey. TR 23 (Dewey). Indiantown proposes retaining the estimated annual amount of \$8,510, minus the Unprotected Deferred Tax Amortization, as discussed above, of \$648 for a net benefit of \$7,862. TR 121 (Cassel). In light of the Company's earnings posture, as noted above, this amount will provide the Company with further opportunity to earn within its range, while also enabling the Company to extend service at present rates for a longer period, to continue making necessary capital investments, and delay a costly rate proceeding. Id.

If the Commission accepts Indiantown's proposal to retain the benefits of the Tax Act, as well as recover the detriment associated with the rate decrease, Indiantown's customers would see extended rate stability. TR 121 (Cassel). The Company would likewise benefit from an improved earnings posture and a healthier fiscal outlook, which ultimately inures to the benefit of Indiantown's customers. TR 121-122 (Cassel).

Analysis

a. Benefits of Indiantown's Proposal

Indiantown's proposal provides a fair and reasonable balancing of the benefits of the 2017 Tax Act for the benefit of Indiantown's customers. TR 121-122 (Cassel). As it relates to the Unprotected Deferred Tax Asset, Indiantown witness Cassel explained that the Company could utilize this amount to offset a portion of the \$8,510 per year amortization of Protected EDIT. TR 121 (Cassel). As previously noted, Witness Cassel explained that if the Company is allowed to retain the net protected EDIT benefit of \$7,862 this would enable the Company to delay a rate case and would place downward pressure on the rate increase that the Company would be seeking in its next rate case. The record reflects that, if allowed to take this approach, the Company may be able to avoid customer confusion that would likely otherwise be associated with implementation of a rate decrease resulting from flowing through the tax benefit as a rate reduction, followed, in short order, by a rate increase arising from a full rate proceeding. Further allowing the Company to recover the tax detriment by means of the ECCR clause would further support the Company's financial position even though it will, for the time being, continue to operate at a loss. TR 119 (Cassel). Indiantown's proposals regarding retention of the tax benefits and recovery of the tax detriment will promote bill stability and may enable the Company to delay a rate case. TR 120-121 (Cassel). The Commission should consider the importance of rate stabilization opportunities especially those that are grounded with the authority afforded here in the implementation of a federal decision.

b. Current Earnings Posture

Indiantown's Commission-allowed earnings range is 10.5% to 12.5%, but the record is clear that the Company is *currently under earning*. TR 189 (Cassel); Hearing Exhibit 15. Even if Indiantown-Gas is allowed to retain the tax benefits as it has requested, the Company's return

on equity (“ROE”) for 2019 is projected to be negative 21.85 to negative 22%. Hearing Exhibits 9 and 11. If Indiantown-Gas is not allowed to keep any of the tax benefits or recover the detriment, Indiantown-Gas projects that its 2019 ROE would be a negative 22.58%. Hearing Exhibit 11. Simply stated, this defies logic. Any of these results either drives the Company into a rushed rate case or forces it to deal with an uneconomic result and severe financial duress. Either situation is not good for the Company’s customers. The implementation of the TCJA should not result in a company rate case nor harm to the consumers. Such result would be contrary to the stated intent of those that sponsored the TCJA.

A number of factors have contributed to Indiantown’s current financial posture. Customers have decreased, while costs associated with enhanced federal safety standards have increased. Hearing Exhibit 9. While retention of the benefits and recovery of the tax detriment as proposed by Indiantown will not enable the Company to earn within its authorized range, it will certainly improve the current situation. This will ensure that the Company remains financially stable pending its next rate case so that it can continue to provide safe reliable service to its customers. TR 121 (Cassel).

OPC’s contrasting proposal would have the Company implement base rate reductions to flow back the \$7,862 net EDIT amortization amount and forego recovery of the \$54,096 annual tax detriment amount that arises from the tax rate change from 35% to 21%. TR 252-255 (Smith). OPC’s witness Smith characterizes the tax reform as an “extraordinary, one-time event that was beyond the control of utility management” and should not, therefore, become a “windfall” for the utility. TR 254 (Smith). OPC’s witness fails, however, to fully address the fact that Indiantown’s proposal does ultimately inure to the benefit of its customers. As explained by witness Cassel, allowing the Company to recover the tax detriment and retain the

net EDIT benefit will provide immediate financial support to the utility, thereby enabling it to continue to provide reliable service to its customers. It will also delay the additional expense, and likely rate increase, associated with a full rate proceeding, which even OPC's witness conceded would be costly. TR 306 (Smith). Even when Indiantown does find it necessary to seek base rate relief, the Commission can expect that retention of the tax benefit amounts requested by Indiantown would be reflected in Indiantown's filing and result in a request that is less than it otherwise would be should the Commission require the Company to flow the full tax reform benefit through to customers in its entirety. TR 121-122 (Cassel).

c. Commission Authority

This is not the first time the Commission has undertaken the task of determining how the impacts of a federal tax reform should be implemented. As OPC's witness Smith acknowledged, the Commission dealt with similar issues arising from the Revenue Act of 1978 ("1978 Reform"), which gave rise to the Reedy Creek case upon which Witness Smith relies for the proposition that Indiantown should not be allowed to retain any of the tax benefits.⁴ TR 255 (Smith). OPC's reliance, however, upon the Reedy Creek case is misplaced. On cross-examination, Witness Smith conceded that the Commission's orders underlying the Reedy Creek case, Orders Nos. 8624 and 8624A, reflect that, in addressing the 1978 Reform, the Commission considered the circumstances of the utilities on a case-by-case basis and only required those utilities that were earning above the ceiling of their Commission-approved ROE range to refund the tax benefits arising under the 1978 Reform. TR 311-315 (Smith). As Witness Smith also acknowledged, Reedy Creek was in an over-earnings position at the time of the 1978 Reform; thus, the issue that ultimately came before the Supreme Court in the case cited by Witness Smith was a question of how much Reedy Creek would be required to refund. The Commission had

⁴ Reedy Creek Utils. Co. v. Fla. Public Serv. Comm., 418 So. 2d 249 (Fla. 1982); Hearing Exhibit 18.

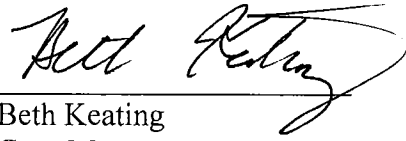
already determined that Reedy Creek would have to make a refund, because it was over-earning. TR 308 (Smith). Witness Smith also acknowledged that those utilities that have more recently agreed to refund the tax benefits arising from the TCJA were earning positive returns at the time of those agreements. TR 320 (Smith).

Witness Smith's refusal to consider Indiantown's earnings posture in rendering his opinion on Indiantown's proposals to retain some of the TCJA benefits is contrary to prior Commission policy as reflected in Orders Nos. 8624 and 8624A and overstates the applicability of the Court's conclusions in the Reedy Creek case. As such, his arguments on this point should be rejected.

Conclusion

There is no disagreement between the parties with regard to the calculation of the tax benefit and detriment amounts, subject to true up. The record clearly reflects that Indiantown is currently earning below its authorized ROE range, and that retention of both the net protected EDIT benefit and recovery of the annual tax rate reduction detriment will improve the Company's earnings posture, but will not cause it to exceed, or even earn within, its authorized range. The record also includes testimony with regard to the benefits that would inure to both the Company and its ratepayers in the event that Indiantown is allowed to retain these tax benefits, as well as testimony of OPC's witness acknowledging that Indiantown's approach is not inconsistent with the Reedy Creek case or prior Commission policy. As such, the Company respectfully requests that the Commission approve its request to retain the specified tax benefit amounts. Such approval reflects the more reasonable approach to addressing the disposition of the tax benefits and provides the greatest overall benefit for the Company and its customers.

RESPECTFULLY SUBMITTED this 28th day of December, 2018.

A handwritten signature in black ink, appearing to read "Beth Keating", written in a cursive style. The signature is positioned above a horizontal line.

Beth Keating

Greg Munson

Lila Jaber

Gunster, Yoakley & Stewart, P.A.

215 South Monroe St., Suite 601

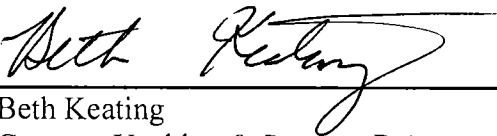
Tallahassee, FL 32301

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Post Hearing Statement and Brief of Florida Public Utilities Company – Indiantown Division in the referenced docket has been served by Electronic Mail this 28th day of December, 2018, upon the following:

Rachael A. Dziechciarz Margo DuVal Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 RDziehc@psc.state.fl.us Mduval@psc.state.fl.us	J.R. Kelly/V. Ponder Office of Public Counsel c/o The Florida Legislature 111 W. Madison Street, Room 812 Tallahassee, FL 32399-1400 kelly.jr@leg.state.fl.us ponder.virginia@leg.state.fl.us
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By: 
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