BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Florida Power & Light Company.	DOCKET NO. 20180046-EI FILED: January 7, 2019

PREHEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to the Orders Establishing Procedure in this docket, Order No. PSC-2018-0209-PCO-EI, issued April 25, 2018, and Order No. PSC 2018-0278-PCO-EI, issued June 1, 2018, submit this Prehearing Statement.

APPEARANCES:

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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.

A. WITNESSES:

The Citizens intend to call the following witnesses, who will address the issues indicated:

NAME	ISSUES
Ralph Smith	1-17

B. EXHIBITS:

Witness	Proffered By	Exhibit #	Description
Direct			
Ralph C. Smith	OPC	Exhibit RCS-1	Qualifications of Ralph Smith
Ralph C. Smith	OPC	Exhibit RCS-2	Turnaround of Excess Deferred Taxes
Ralph C. Smith	OPC	Exhibit RCS-3	Turnaround of Excess Deferred Taxes

C. STATEMENT OF BASIC POSITION

The Tax Cuts and Jobs Act (TCJA) was enacted in 2017 which significantly reduced the corporate tax rate from 35% to 21%. On February 21, 2018, the Commission established this docket to consider the tax impact of the TCJA with respect to Florida Power and Light Company (FPL). FPL proposed a 2018 FPSC adjusted revenue requirement reduction of $648.8 million comprised of the following: (1) a $528.7 million reduction in base rate revenue requirements due to the lower federal income tax; (2) a $154.9 million reduction from the excess accumulated deferred income taxes (EADIT) amortization; (3) a $26.0 million increase related to the loss of the manufacturer's deduction; (4) a $10.3 million increase due to higher sources of investor capital associated with lower bonus tax depreciation; and (5) a $16.5 million increase related to higher sources of investor capital due to less accumulated deferred income taxes (ADIT) related to depreciation timing differences on plant going into service in 2018.

In this docket, FPL is requesting the Commission determine that: (1) FPL's proposes treatment of the tax impacts of the Tax Act are consistent with applicable accounting guidance; and (2) FPL's proposed treatment of the "unprotected" EADIT as reasonable and appropriate. In its petition, FPL did not request approval for, but rather, outlined its expected use of the tax savings in 2018-2020 to partially reverse the one-time amortization of all available Reserve Amounts.

Two issues remain in dispute regarding the treatment of the customer's tax savings. First, OPC recommends that the "unprotected" EADIT amortization period be no more than 10 years, resulting in an increase of $52 million additional EADIT amortization to

FPL's identified total net TCJA revenue requirement reduction amount of $684.8 million. OPC is recommending an annual jurisdictional adjusted base revenue requirement reduction in the amount of $736.8 million. Otherwise, FPL's quantification of the TCJA impact do not appear to be unreasonable for purposes of estimating the one-time annual revenue requirement reduction and the EADIT adjustments related to the TCJA.

Second, OPC asserts that the customer's tax saving should be flowed back to customers. OPC, the Florida Retail Federation (FRF), and the Florida Industrial Power Users Group (FIPUG) filed a the Joint Petition for Enforcement of 2016 Settlement and Permanent Base Rate Reductions Against Florida Power & Light Company[1], in Docket No. 20180224-EI, to address the disposition of the tax savings benefits associated with the TCJA. Since the TCJA was enacted after the negotiation and approval of the 2016 Settlement Agreement in FPL's last base rate case, the TCJA was not contemplated as part of the 2016 Settlement Agreement. Although the order has become final as to the Settlement Agreement, the Florida Supreme Court clearly stated that "[o]nce a decision has become final for these purposes [administrative finality], it may be modified if there is a significant change in circumstances or a great public interest is served by the modification." Gulf Coast Electric Co-op, Inc., v. Johnson, 727 So.2d 259, 265 (1999), (citing Austin Tupler Trucking, Inc. v. Hawkins, 377 So. 2d 679, 681 (1979). The 2017 tax change which reduced corporate tax rates by 14% is a significant event, over which the Commission maintains jurisdiction. Further, the Florida Supreme Court in Reedy Creek Co. v. Fla. Public Serv. Comm., 418 So. 2d. 249, 254 (1982), stated that "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 savings." Due to this significant change in the tax rate, the amount of the tax benefit should be determined in this docket and the disposition of these tax benefits can and should ultimately be determined by the Commission in Docket No. 20180224-EI.

[1] In the Joint Petition, the Customers assert that (1) FPL is overearning and that the Settlement Agreement provides for a general base rate case when a company is overearning, (2) the Amortization Reserve has been extinguished and cannot be re-established unilaterally, and (3) the tax savings benefits of approximately $737 million should be flowed back to customers through the base rate case.

D. STATEMENT OF FACTUAL ISSUES AND POSITIONS

TAX ISSUES

ISSUE 1: What is the forecasted tax expense for the tax year 2018 at a 21 percent federal corporate tax rate?

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

ISSUE 2: What is the forecasted tax expense for the tax year 2018 at a 35 percent federal corporate tax rate?

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

ISSUE 3: What is the forecasted NOI for the tax year 2018 at a 21 percent federal corporate tax rate?

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

ISSUE 4: What is the forecasted NOI for the tax year 2018 at a 35 percent federal corporate tax rate?

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

ISSUE 5: What is the forecasted capital structure for the tax year 2018 at a 21 percent federal corporate tax rate?

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

ISSUE 6: What is the forecasted capital structure for the tax year 2018 at a 35 percent federal corporate tax rate?

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

ISSUE 7: What is the forecasted jurisdictional adjusted base revenue requirement for the tax year 2018 using a 21 percent federal corporate tax rate?

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

ISSUE 8: What is the forecasted jurisdictional adjusted revenue requirement for the tax year 2018 using a 35 percent federal corporate tax rate?

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

ISSUE 9: What is the annual jurisdictional adjusted base revenue requirement increase/decrease due to the enactment of the Tax Cuts and Jobs Act of 2017 for the tax year 2018?

OPC: OPC recommends the "unprotected" EADIT amortization period be no more than 10 years, resulting in an increase of $52 million additional EADIT amortization to FPL's identified total net TCJA revenue requirement reduction amount of $684.8 million. As a result, the appropriate annual jurisdictional adjusted base revenue requirement reduction is $736.8 million.

ISSUE 10: Were "protected excess deferred taxes" for 2018 using a 21 percent federal corporate tax rate appropriately calculated?

OPC: OPC agrees that it is appropriate to use to use the Average Rate Assumption Method (ARAM) for the "protected" excess ADIT. FPL's quantification of the TCJA impact do not appear to be unreasonable for purposes of estimating the one-time annual revenue requirement reduction and EADIT related to the TCJA.

ISSUE 11: Were "unprotected excess deferred taxes" for 2018 using a 21 percent federal corporate tax rate appropriately calculated?

OPC: No. The "unprotected" EADIT for 2018 should be amortized over a period of no more than 10 years since it is not subject to IRS normalization requirements. Further, the shorter 10-year maximum amortization period reduces intergenerational inequity by returning the money to the customers who paid the higher tax rates rather than stretching the timeframe into the future for the benefit of customers who may never have paid for the "excess" ADIT. Based on OPC's recommendation for a 10-year amortization period, the "unprotected" EADIT should be increased by $52 million for a total of $204.9 million for "protected" and "unprotected" EADITs.

ISSUE 12: Were Accumulated Deferred Income Taxes (ADIT) for 2018 appropriately calculated?

OPC: No. OPC recommends a 10-year amortization period for the "unprotected" EADIT. This results in an increase of $52 million for a total of $204.9 million for "protected" and "unprotected" EADIT.

ISSUE 13: **Are classifications of the excess ADIT between "protected" and "unprotected" appropriate?**

OPC: No. FPL's property-related EADIT contains a net asset of approximately $20 million for cost-of-removal. OPC believes that the EADIT related to cost of removal/negative net salvage is "unprotected." FPL appears to treat cost of removal/negative net salvage as "protected."

ISSUE 14: **How should unprotected excess ADITs be flowed back to FPL customers?**

OPC: The "unprotected" EADITs should be flowed back to FPL customers over no more than 10 years. OPC is recommending a total annual jurisdictional adjusted base revenue requirement reduction in the amount of $736.8 million.

ISSUE 15: **How should protected excess ADITs be flowed back to FPL customers?**

OPC: The "protected" EADITs should be flowed back to FPL customers utilizing ARAM. Based on the use of ARAM and other OPC adjustments, OPC is recommending a total annual jurisdictional adjusted base revenue requirement reduction in the amount of $736.8 million.

ISSUE 18: **Should this docket be closed?**

OPC: No position at this time.

E. CONTESTED ISSUES

OPC

ISSUE 16: Should FPL seek a private letter ruling from the IRS regarding its classification of the excess ADIT relating to cost of removal/negative net salvage as "protected"?

OPC: No Position.

ISSUE 17: If FPL seeks a private letter ruling and the IRS rules therein (or issues other relevant guidance) that the excess ADIT relating to cost of removal/negative net salvage is to be treated as "unprotected", what process should be followed for the reclassification?

OPC: Pending clarification of the appropriate classification of EADIT for cost of removal/negative net salvage, FPL should amortize the related EADIT using the ARAM if the classification ruled by the IRS indicates this is "protected."

FIPUG

ISSUE A: What is the rate decrease for each customer class resulting from the Tax Cuts and Jobs Act of 2017, if any, and, if so, when will those rate decreases become effective?

OPC: No position at this time.

FPL

ISSUE B: How should FPL treat the savings associated with the Tax Cuts and Jobs Act of 2017?

OPC: The Tax Cuts and Jobs Act of 2017 (TCJA) significantly reduced the corporate tax rate from 35% to 21%, which is an annual revenue requirement reduction of approximately $737 million that should be passed on to customers. OPC, the Florida Retail Federation (FRF), and the Florida Industrial Power Users Group (FIPUG) filed a the Joint Petition for Enforcement of 2016 Settlement and

Permanent Base Rate Reductions Against Florida Power & Light Company[2], in Docket No. 20180224-EI, to address the disposition of the tax savings benefits associated with the TCJA. Since the TCJA was enacted after the negotiation and approval of the 2016 Settlement Agreement in FPL's last base rate case, the TCJA was not contemplated as part of the 2016 Settlement Agreement. Although the order has become final as to the Settlement Agreement, the Florida Supreme Court clearly stated that "[o]nce a decision has become final for these purposes [administrative finality], it may be modified if there is a significant change in circumstances or a great public interest is served by the modification." Gulf Coast Electric Co-op. Inc., v. Johnson, 727 So.2d 259, 265(1999), (citing Austin Tupler Trucking, Inc. v. Hawkins, 377 So. 2d 679, 681 (1979).). The 2017 tax change which reduced corporate tax rates by 14% is a significant event, over which the Commission maintains jurisdiction. Further, the Florida Supreme Court in Reedy Creek Co. v. Fla. Public Serv. Comm., 418 So. 2d. 249, 254(1982), stated that "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 savings." Due to this significant change in the tax rate, the amount of the tax benefit should be determined in this docket and the disposition of these tax benefits can and should be determined by the Commission in Docket No. 20180224-EI.

ISSUE C: Does the 2016 Settlement Agreement allow FPL to replenish the Amortization Reserve with the tax savings resulting from the Tax Cuts and Jobs Act of 2017?

OPC: No. FPL extinguished the Amortization Reserve and may not unilaterally re-establish it. OPC, the Florida Retail Federation (FRF), and the Florida Industrial

[2] In the Joint Petition, the Customers assert that (1) FPL is overearning and that the Settlement Agreement provides for a general base rate case when a company is overearning, (2) the Amortization Reserve has been extinguished and cannot be re-established unilaterally, and (3) the tax savings benefits of approximately $737 million should be flowed back to customers through the base rate case.

Power Users Group (FIPUG) filed its the Joint Petition for Enforcement of 2016 Settlement and Permanent Base Rate Reductions Against Florida Power & Light Company, in Docket No. 20180224-EI, to address the disposition of the tax savings benefits associated with the TCJA and the extinguishment of the Amortization Reserve due to FPL's one-time offset of Hurricane Irma storm costs. In the Joint Petition, the Customers assert that (1) the Settlement Agreement provides for a general base rate case when the Company is overearning, (2) the Amortization Reserve has been extinguished and cannot be re-established unilaterally, and (3) the tax savings benefits of approximately $737 million should be flowed back to customers through the base rate case. Thus, the issue of whether FPL should be allowed to re-establish the Amortization Reserve with customer's tax benefits must be determined by the Commission in Docket No. 20180224-EI.

F. PENDING MOTIONS:

None.

G. REQUESTS FOR CONFIDENTIALITY

Citizens have no pending requests for claims for confidentiality.

H. OBJECTIONS TO QUALIFICATIONS

None.

I REQUIREMENTS OF ORDER

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

Dated this 7th day of January, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Office of Public Counsel's Prehearing Statement has been furnished by electronic mail on this 7th day of January, 2019, to the following:

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