BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20180046-EI

CONSIDERATION OF THE TAX IMPACTS ASSOCIATED WITH TAX CUTS AND JOBS ACT OF 2017 FOR FLORIDA POWER & LIGHT COMPANY.
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VOLUME 1
PAGES 1 through 74

PROCEEDINGS: HEARING

COMMISSIONERS PARTICIPATING: COMMISSIONER JULIE I. BROWN
COMMISSIONER DONALD J. POLMANN
COMMISSIONER GARY F. CLARK
COMMISSIONER ANDREW GILES FAY

DATE: Tuesday, February 5, 2019

TIME: Commenced: 10:45 a.m.
Concluded: 11:21 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: ANDREA KOMARIDIS
Court Reporter

PREMIER REPORTING
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APPEARANCES:

MARIA J. MONCADA, JOHN T. BUTLER, and WADE R. LITCHFIELD, ESQUIRES, 700 Universe Boulevard, Juno Beach, Florida 33408-0420, on behalf of Florida Power & Light Company.

J.R. KELLY, PUBLIC COUNSEL; CHARLES REHWINKEL, DEPUTY PUBLIC COUNSEL; PATRICIA A. CHRISTENSEN, and TAD DAVIS, ESQUIRES, Office of Public Counsel, c/o the Florida Legislature, 111 W. Madison Street, Room 812, Tallahassee, Florida 32399-1400, appearing on behalf of the Citizens of the State of Florida.

CAPTAIN ROBERT FRIEDMAN, Federal Executive Agencies, AFCED/JA-ULFSC, 139 Barnes Drive, Suite 1, Tyndall Air Force Base, Florida 32403, appearing on behalf of the Federal Executive Agencies.

ROBERT SCHEFFEL WRIGHT and JOHN T. LAVIA, III, ESQUIRES, Gardner, Bist, Wiener, Wadsworth, Bowden, Bush, Dee, LaVia & Wright, P.A., 1300 Thomaswood Drive, Tallahassee, Florida 32308, appearing on behalf of the Florida Retail Federation.

JON C. MOYLE, JR., ESQUIRE, and KAREN A. PUTNAL, ESQUIRE, Moyle Law Firm, P.A., 118 North Gadsden Street, Tallahassee, Florida 32301, appearing on behalf of Florida Industrial Power Users Group.

APPEARANCES (CONTINUED):

SUZANNE BROWNLESS and JOHANA NIEVES, ESQUIRES, FPSC General Counsel's Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, appearing on behalf of the Florida Public Service Commission Staff.

KEITH HETRICK GENERAL COUNSEL; MARY ANNE HELTON, DEPUTY GENERAL COUNSEL, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, adviser to the Florida Public Service Commission.

I N D E X

WITNESSES

EXHIBITS

NUMBER:	ID	ADMITTED
1 - Comprehensive exhibit list	50	50
2 through 22 (as identified on the comprehensive exhibit list)	50	52

P R O C E E D I N G S

COMMISSIONER BROWN: Good morning. We are going to start very shortly. If you could, take your seats, please.

Thank you very much. This is the -- I'd like to call this hearing to order in the FPL ta- -- tax docket. The date is February 5th, and the time is 10:45.

Staff, can you please read the notice.

MS. BROWNLESS: Yes, ma'am. By notice issued on January 10th, 2019, by the Commission clerk, this time and place has been set for a hearing in Docket No. 20180046-EI.

The purpose of this hearing is to take final action regarding the tax impacts on the Florida Power & Light Company resulting from the passage of the Tax Cuts and Jobs Act of 2017, and to take action on any motions or other matters pending at the time of this hearing.

COMMISSIONER BROWN: Thank you, Ms. Brownless.

And at this time, we will take appearances, starting with Florida Power & Light.

MS. MONCADA: Good morning, Commissioners. Maria Moncada from Florida Power & Light. Here with me is John Butler, and also would like to

enter an appearance for Wade Litchfield.
COMMISSIONER BROWN: Thank you.
FIPUG.
MR. MOYLE: Good morning. Jon Moyle on behalf of the Florida Industrial Power Users Group, FIPUG. And I'd like to enter an appearance for Karen Putnal as well. Thank you.
COMMISSIONER BROWN: Thank you.
FEA.
CAPTAIN FRIEDMAN: Good morning, ma'am. Captain Rob Friedman on behalf of the Federal Executive Agencies.
COMMISSIONER BROWN: Thank you.
Retail Federation.
MR. WRIGHT: Good morning, Madam Chairman, Commissioners. Robert Scheffel Wright, Gardner Law Firm, on behalf of the Florida Retail Federation. I'd also like to enter an appearance for my law partner, John T. LaVia, III. Thank you.
COMMISSIONER BROWN: Thank you.
Office of Public Counsel.
MS. CHRISTENSEN: Good morning. Patti Christensen with the Office of Public Counsel. I'd like to make an appearance on behalf of J.R. Kelly, the Public Counsel; Charles Rehwinkel, Associate

Public -- or Deputy Public Counsel; as well as Tad Davis, Associate Public Counsel.

COMMISSIONER BROWN: Thank you.

Staff.

MS. BROWNLESS: Yes, ma'am. Suzanne Brownless and Johana Nieves on behalf of the Commission staff.

COMMISSIONER BROWN: Ms. Helton?

MS. HELTON: And I'm here as your adviser, along with your general counsel, Keith Hetrick. Mary Anne Helton.

COMMISSIONER BROWN: Thank you.

All right. Let's get to preliminary matters. Ms. Brownless.

MS. BROWNLESS: Yes, ma'am. There are stipulations for the cost issues, Issues No. 1 through 17, and 20, which are found in Exhibit 22, which has been provided to each of you. And these will be discussed later in this proceeding.

COMMISSIONER BROWN: Thank you. I want to first thank staff very much for diligently working with the parties and accomplishing our discussion at the prehearing conference earlier this month -- or last month. So, thank you very much for all the work you've done.

MS. BROWNLESS: Thank you.

COMMISSIONER BROWN: And the parties as well.

Do any of the parties have any additional preliminary matters?

MR. MOYLE: When we get to the stipulations, I want to just make sure we're all on the same page on that, but I think that's later.

COMMISSIONER BROWN: That's --

MR. MOYLE: So, when she references stipulations, said we're going to deal with them later, I just want --

COMMISSIONER BROWN: Certainly.

MR. MOYLE: When -- when it's my time, I just want --

COMMISSIONER BROWN: You'll be able to talk.

MR. MOYLE: Okay. Thanks.

COMMISSIONER BROWN: Okay. All right. Moving on, witnesses.

MS. BROWNLESS: Yes, ma'am. The parties have agreed that all witnesses can be excused and their prefiled testimony placed in the record as though read.

So, I would ask at this time that the prefiled direct and rebuttal testimony of Scott R. Bores for FP&L, and Ralph Smith for OPC be entered into the record.

COMMISSIONER BROWN: We'll go ahead and enter into the record the prefiled direct and rebuttal testimony of Scott R. Bores for FPL, and Ralph Smith for OPC.

(Whereupon, Witness Bores' prefiled direct and rebuttal testimonies and Witness Smith's prefiled direct testimony were inserted into the record as though read.)

Q. Please state your name and business address.

A. My name is Scott R. Bores. My business address is Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408.

Q. By whom are you employed and what is your position?

A. I am employed by Florida Power & Light Company ("FPL" or the "Company") as the Senior Director of Financial Planning and Analysis.

Q. Please describe your duties and responsibilities in that position.

A. I am responsible for FPL's corporate budgeting, financial forecast, analysis of financial results and resource analytics.

Q. Please describe your educational background and professional experience.

A. I graduated from the University of Connecticut in 2003 with a Bachelor of Science degree in Accounting. I received a Master of Business Administration from Emory University in 2011. I joined FPL in 2011 and have held several positions of increasing responsibility, including Manager of Property Accounting, Director of Property Accounting, and my current position as Senior Director of Financial Planning and Analysis. Prior to FPL, I held various accounting roles with Mirant Corporation, which was an independent power producer in Atlanta, Georgia, as well as worked for PricewaterhouseCoopers, LLP. I am a Certified Public Accountant ("CPA") licensed in the State of Georgia and a member of the American Institute of CPAs. I have previously filed testimony before the Florida Public Service

Commission ("FPSC" or the "Commission"), most recently in the City of Vero Beach Transaction, Docket No. 20170235-EI.

Q. Are you sponsoring any exhibits in this case?

A. Yes. I am sponsoring the following exhibits:

- SRB-1 – FPL's 2018 Forecasted Earnings Surveillance Report ("FESR");
- SRB-2 – FPL's Pro forma 2018 FESR Excluding the Impacts of the Tax Act;
- SRB-3 – Differences in Rate Base;
- SRB-4 – Differences in Net Operating Income;
- SRB-5 – Differences in Capital Structure; and
- SRB-6 – Forecast Change in 2018 FPSC Adjusted Revenue Requirement.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is threefold: 1) to confirm that FPL's 2018 FESR, as reflected in Exhibit SRB-1, properly incorporates the impacts of the Tax Cuts and Jobs Act of 2017 (the "Tax Act") and was prepared in accordance with the Internal Revenue Code ("IRC"), all relevant Internal Revenue Service ("IRS") guidance, the Uniform System of Accounts, and generally accepted accounting principles ("GAAP"); 2) to describe how the pro forma 2018 FESR excluding the impacts of the Tax Act ("pro forma 2018 FESR"), as reflected on Exhibit SRB-2, was prepared; and 3) to provide an overview of the Tax Act's impact on FPL's forecasted 2018 financial results that can be seen by comparing Exhibits SRB-1 and SRB-2.

Q. Please summarize your testimony.

A. After the passage of the Tax Act in December 2017, FPL appropriately incorporated the impacts from the Tax Act in accordance with IRS guidelines and U.S. GAAP. On March 15, 2018, FPL filed its 2018 FESR with the Commission that reflects the relevant adjustments effective as of January 1, 2018. This is my Exhibit SRB-1. FPL also prepared a pro forma 2018 FESR, my Exhibit SRB-2, which excludes the effects of the Tax Act. Comparing Exhibits SRB-1 and SRB-2 shows the differences in FPL's rate base, net operating income, and capital structure, which represent the impact of the Tax Act on FPL's forecasted 2018 financial results, as detailed on Exhibits SRB-3, SRB-4, and SRB-5. The total impact of the Tax Act on FPL's forecasted 2018 base revenue requirements of approximately $684.8 million is summarized on Exhibit SRB-6.

The lower federal corporate income tax rate under the Tax Act results in the creation of excess deferred income taxes. FPL is turning around the "protected" excess deferred income taxes in the manner prescribed by the IRC and IRS regulations and is proposing to turn around the "unprotected" excess deferred income taxes using reasonable methodologies that track the lives of the assets and liabilities to which the excess deferred income taxes relate.

Q. Please describe how the passage of the Tax Act in December 2017 impacted FPL's business.

A. The passage of the Tax Act impacted FPL's business in three primary ways: 1) reduced the federal corporate income tax rate from 35% to 21%;

2) eliminated bonus depreciation eligibility for assets purchased and/or contracted for after September 27, 2017; and 3) eliminated the manufacturer's deduction (IRC Section 199) for income produced by FPL's generating facilities.

Q. Does FPL's 2018 FESR fully and properly reflect the effects of the Tax Act?

A. Yes. The 2018 FESR included a reduction in the federal corporate income tax rate from 35% to 21%, the reclassification of excess deferred income taxes to a net regulatory liability contained within FPL's capital structure, the elimination of bonus depreciation for assets purchased and/or contracted for after September 27, 2017, and the elimination of the manufacturer's deduction. In addition, as discussed below, the 2018 FESR properly reflects the turnaround of excess deferred income taxes.

Q. Did the reduction in the federal corporate income tax rate result in FPL having to remeasure its deferred income tax balances under U.S. GAAP? If so, please explain how FPL met these requirements.

A. Yes. In December 2017, after the enactment of the Tax Act, FPL was required under GAAP to remeasure all its deferred income tax balances as a result of the change in the federal corporate income tax rate. This remeasurement resulted in FPL recognizing excess deferred income taxes which were reclassified from FPL's deferred income tax balances to either a regulatory asset (FERC account 182.3) or regulatory liability (FERC account 254). As a result, FPL reclassified approximately $3.231 billion of excess deferred income taxes ($4.329 billion including the income tax gross-up) to a net regulatory liability.

Q. What are the two categories for classifying excess deferred income taxes, and how are those defined?

A. Excess deferred income taxes can be classified into two categories: "protected" and "unprotected." Protected deferred income taxes relate to method and life timing differences in depreciable property and are subject to IRC normalization requirements that govern the time over which the excess must be reversed for the benefit of customers. Excess deferred income taxes that are not subject to normalization requirements are referred to as "unprotected."

Q. Please explain the method for how FPL will turn around protected excess deferred income taxes to customers.

A. As described above, the protected excess deferred income taxes are subject to normalization pursuant to the IRC requirements, and therefore, will be turned around using the Average Rate Assumption Method ("ARAM"). ARAM turns around the protected excess deferred income taxes over the remaining book depreciable life of the underlying assets.

Q. Please explain FPL's proposal to turn around unprotected excess deferred income taxes to customers.

A. FPL is proposing to utilize two different methodologies to turn around unprotected excess deferred income taxes, both of which are permitted methods under the Tax Act for protected excess deferred income taxes. First, for the unprotected excess deferred income taxes related to depreciation timing differences due to basis differences, FPL proposes to utilize ARAM, similar to the treatment for the method and life depreciation timing differences for protected excess deferred income taxes. Second, for the unprotected excess deferred income taxes related to other assets and liabilities, FPL proposes to utilize the Reverse South Georgia Method ("RSGM"). The RSGM provides for the turnaround of the unprotected excess deferred income taxes on a straight-line basis over the estimated remaining life of the related assets and liabilities. FPL is proposing the RSGM as a straightforward approach that is simple to administer and treats the turnaround of the excess unprotected deferred income taxes in a manner and over a time period similar to how those deferred income taxes would reverse absent the Tax Act.

Q. Did FPL also prepare a pro forma 2018 FESR that excludes the impacts of the Tax Act?

A. Yes. Exhibit SRB-2 is FPL's pro forma 2018 FESR that excludes the impacts of the Tax Act.

Q. Is the pro forma 2018 FESR fully representative of what FPL's 2018 forecasted financial results would be if the Tax Act had not been enacted?

A. No. If the Tax Act had not been enacted, the Company's financial plan for 2018 certainly would have been different from that shown in the pro forma 2018 FESR. However, to assist in isolating the financial impacts of the Tax Act, FPL has kept all other assumptions the same. Thus, the pro forma 2018 FESR is appropriate for its intended purpose, but one should not view the financial results it depicts as representative of what would have happened had the Tax Act not been enacted.

Q. Please describe the differences between FPL's pro forma 2018 FESR and FPL's 2018 FESR filed with the Commission on March 15, 2018.

A. FPL's pro forma 2018 FESR, as reflected in Exhibit SRB-2, was prepared in the same manner as FPL's 2018 FESR filed with the Commission on March 15, 2018; however, it includes several differences related to the Tax Act. These differences include maintaining the 35% federal corporate income tax rate that was in effect prior to the Tax Act as well as the continuation of bonus depreciation and the inclusion of the manufacturer's deduction, both of which were eliminated by the Tax Act. Comparing the 2018 FESR to the pro forma 2018 FESR yields several differences, which can be categorized into three distinct areas: rate base (reflected on Exhibit SRB-3), net operating income ("NOI") (reflected on Exhibit SRB-4), and capital structure (reflected on Exhibit SRB-5). The summary of the forecast change in 2018 FPSC adjusted revenue requirements is reflected on Exhibit SRB-6 and is described later in my testimony.

Q. Please describe the differences in the rate base category.

A. As shown on Exhibit SRB-3, the FPSC Adjusted Rate Base is $154.5 million lower in the 2018 FESR than in the pro forma 2018 FESR, as a result of two items. First, in the 2018 FESR, FPL has projected to reverse $301.0 million of the Reserve Amount (as defined in paragraph 12 of FPL's 2016 Stipulation and Settlement Agreement) amortization that it had taken during 2017, which lowered the 13-month average rate base by $64.2 million. That reversal would not be feasible in the pro forma 2018 FESR because of the higher federal corporate income tax expense associated with excluding the impacts of the Tax Act. Second, FPL's working capital balance is $90.3 million lower in the 2018 FESR primarily because of an $80.4 million increase in accrued income taxes compared to the pro forma 2018 FESR, due to the higher taxable income in the 2018 FESR. This higher taxable income is the result of the elimination of bonus depreciation. In addition, there is a $9.9 million increase in the over-recovered clause revenues as a result of the lower federal corporate income tax rate and thus, lower income tax expense in the 2018 FESR compared to the pro forma 2018 FESR.

Q. Please describe the differences in the NOI category.

A. As shown on Exhibit SRB-4, comparing the FPSC Adjusted NOI between the 2018 FESR and the pro forma 2018 FESR shows that NOI is $230.2 million higher in the 2018 FESR. This increase is being driven by a $531.2 million decrease in FPSC adjusted income tax expense, which is primarily the result of a $435.0 million decrease in income tax expense associated with the lower federal corporate income tax rate under the Tax Act. In addition, the 2018 FESR includes an estimated NOI benefit of $115.6 million related to the amortization of the excess deferred income taxes. The $115.6 million is comprised of approximately $82.2 million for the turnaround of protected excess deferred income taxes and $33.4 million for the turnaround of unprotected excess deferred income taxes. The final amount of the excess deferred income taxes will not be known until after FPL files its 2017 federal corporate income tax return in October 2018.

Partially offsetting the reduction in income tax expense in the 2018 FESR is the exclusion of the manufacturer's deduction of approximately $19.4 million. In addition, the decreased income tax expense in the 2018 FESR is partially offset by an increase in depreciation and amortization expense of $301.0 million. As described previously, this increase in depreciation and amortization expense is the result of the reversal of a portion of the one-time amortization of all the available Reserve Amount in 2017 to partially offset the expensing of incremental Hurricane Irma storm restoration costs in that year.

Q. Please describe the differences in the capital structure category.

A. As shown on Exhibit SRB-5, there are several changes to the capital structure between the 2018 FESR and pro forma 2018 FESR. The overall FPSC adjusted capital structure is reduced in the 2018 FESR by $154.5 million, consistent with the decrease in FPSC adjusted rate base described above. The largest change in the components of the capital structure is to deferred income taxes, which decreases by $303.1 million. This decrease is being driven by: 1) the loss of bonus depreciation under the Tax Act; 2) deferred income taxes related to depreciation timing differences for plant that is forecasted to enter utility service in 2018 at the lower 21% federal corporate income tax rate; 3) the effects of turning around excess deferred income taxes; and 4) lower deferred income taxes associated with the $64.2 million reduction of FPSC adjusted rate base as a result of Reserve Amount amortization reversal. As a result of the decrease in deferred income taxes, both the equity and debt components of capital structure increase as reflected in FPL's 2018 FESR. I should note that, in both the 2018 FESR and the pro forma 2018 FESR, FPL targeted an investor sources capital structure that was 59.6% equity and 40.4% debt.

Q. Please summarize the overall change in FPSC adjusted revenue requirements as a result of the Tax Act.

A. As shown on Exhibit SRB-6, the overall forecast change in 2018 FPSC adjusted revenue requirements as a result of the Tax Act is a reduction of $684.8 million. The change is comprised of five primary items: 1) a $582.7 million reduction in base revenue requirements as a result of the lower federal corporate income tax rate (this represents the $435.0 million decrease in income tax expense described above grossed-up to the revenue requirement equivalent); 2) a $154.9 million reduction as a result of the amortization of the excess deferred income taxes (this represents the revenue requirement equivalent of the $115.6 million of amortization expense described above); 3) a $26.0 million increase which represents the revenue requirement equivalent of the $19.4 million increase in tax expense related to the loss of the manufacturer's deduction; 4) a $10.3 million increase due to higher sources of investor capital resulting from the loss of bonus depreciation; and 5) a $16.5 million increase resulting from higher sources of investor capital due to less deferred income taxes related to depreciation timing differences on plant that went into service in 2018, the effects of turning around excess deferred income taxes, and lower deferred income taxes associated with the rate base reduction as a result of Reserve Amount amortization reversal.

Q. Does FPL's pro forma 2018 FESR show a different return on equity than the return on equity projected in FPL's 2018 FESR?

A. Yes. FPL's pro forma 2018 FESR shows that FPL would earn a 10.27% return on equity as compared to the 11.60% return on equity projected in FPL's 2018 FESR, if nothing were changed about the 2018 forecasted operations other than excluding the impacts of the Tax Act.

Q. Does this conclude your direct testimony?

A. Yes.

Q. Please state your name and business address.

A. My name is Scott R. Bores. My business address is Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408.

Q. Did you previously submit direct testimony in this proceeding?

A. Yes.

Q. Are you sponsoring any rebuttal exhibits in this case?

A. No.

Q. What is the purpose of your rebuttal testimony?

A. The purpose of my rebuttal testimony is to address the proposed adjustments to Florida Power and Light Company's ("FPL") forecasted 2018 base revenue requirements as a result of the Tax Cuts and Jobs Act of 2017 ("Tax Act"), as recommended by Office of Public Counsel ("OPC") witness Ralph Smith.

Q. Please summarize your rebuttal testimony.

A. OPC witness Smith recommends several adjustments to FPL's proposal to account for the unprotected excess deferred income taxes that would result in the accelerated turnaround of those balances. My rebuttal testimony reaffirms that FPL's proposal to utilize the Average Rate Assumption Method ("ARAM") for the property related unprotected excess deferred income taxes and the Reverse South Georgia Method ("RSGM") for the non-property related unprotected excess deferred income taxes is reasonable. However, there is no accounting restriction or other significant concern in this instance regarding Mr. Smith's proposed adjustments. Accordingly, FPL has no objection to Mr. Smith's proposed approach to amortization if adopted by the

Commission. Additionally, my rebuttal testimony explains that Mr. Smith's recommendation that FPL seek a private letter ruling ("PLR") from the Internal Revenue Service ("IRS") with regard to FPL's treatment of the excess deferred income taxes related to cost of removal as protected, is impractical and not useful. Finally, my rebuttal testimony will reaffirm that customers have benefitted from FPL's utilization of tax reform savings to offset Hurricane Irma restoration costs.

Q. On pages 9 and 10, and further on page 18 of his testimony, witness Smith recommends FPL's unprotected property-related excess deferred income taxes be amortized using a 10-year straight-line approach rather than FPL's proposed ARAM approach, which results in a $41.46 million adjustment to income tax expense. Is this adjustment reasonable?

A. Yes, both FPL and OPC witness Smith have presented reasonable approaches to address the unprotected property-related excess deferred income taxes. While there is no specific guidance from the IRS on the treatment of unprotected property-related excess deferred income taxes, FPL's proposal to utilize ARAM is reasonable. The IRS requires, under normalization rules, that all protected property-related excess deferred income taxes be amortized utilizing ARAM. From both a substantive and consistency standpoint, FPL believes it would be appropriate to treat all property-related timing differences in the same manner, regardless of whether they are subject to the IRS normalization rules. However, there is no accounting restriction or other significant concern in this instance regarding the 10-year straight-line amortization approach recommended by OPC witness Smith. Accordingly, FPL has no objection to Mr. Smith's position if adopted by the Commission.

Q. Does witness Smith agree with FPL's proposed amortization for unprotected non-property-related excess deferred income taxes items with useful lives of up to ten years?

A. Yes. Witness Smith does not recommend an alternative amortization period for unprotected non-property-related excess deferred income taxes items with "turn periods" of up to ten years.

Q. On pages 12 and 13, and further on page 18, OPC witness Smith recommends that amortization periods of greater than ten years for FPL's unprotected *non*-property-related excess deferred income taxes **be capped at ten years, resulting in a $10.8 million adjustment to income tax expense. Is this adjustment reasonable?**

A. Yes. As with unprotected property-related excess deferred income taxes, while FPL's proposal is reasonable, there is no accounting restriction or other significant concern in this instance regarding OPC witness Smith's recommendation to cap at ten years the amortizations periods for non-property-related excess deferred income taxes. Accordingly, FPL has no objection to Mr. Smith's position if adopted by the Commission.

Q. On page 20, lines 1 through 8, witness Smith states that increased 2018 excess deferred income tax amortization could require higher sources of investor-supplied capital to support rate base. If the Commission adopts witness Smith's recommended adjustments, what would be the impact to FPL's forecasted 2018 revenue requirements?

A. Replacing deferred taxes with additional investor sources of capital would increase FPL's 2018 forecasted revenue requirements by $2.505 million; however, this would have no impact on rates as FPL is operating under its 2016 rate case settlement agreement (the "Settlement Agreement").

Q. Please explain the negative net salvage component of FPL's depreciation expense and describe how it is accounted for in the system.

A. FPL utilizes a financial system called "PowerPlan" to record book depreciation expense. PowerPlan calculates book depreciation expense based on Commission-approved depreciation rates, which includes negative net salvage as a component. Negative net salvage is comprised of two items: 1) cost of removal and 2) salvage. FPL's version of PowerPlan calculates one combined rate for negative net salvage. As result of this system limitation, FPL cannot separately track the cost of removal rate from the salvage rate.

Q. Has the IRS provided any guidance regarding the tax treatment of salvage?

A. Yes. The salvage component is part of a property-related assets depreciation basis, and is therefore subject to IRS normalization rules and is classified as protected. FPL acknowledges that cost of removal is *not* a component of a property-related assets depreciation basis and, therefore, is not subject to IRS normalization rules.

Q. How does FPL treat negative net salvage in light of PowerPlan's limitations?

A. Because FPL does not have the ability within PowerPlan to segregate the cost of removal portion of excess deferred income taxes from those of salvage, it has elected to treat the entire negative net salvage balance as protected to avoid any potential risk associated with a violation of IRS normalization rules. Additionally, FPL has proposed to utilize ARAM for *all* property-related timing differences.

Q. Please quantify the amount of FPL's excess deferred income taxes related to negative net salvage.

A. FPL currently has an excess deferred income tax balance of approximately $20 million classified as a regulatory asset within FPL's capital structure.

Q. Do you agree with OPC witness Smith that FPL should possibly seek a PLR from the IRS regarding its classification of excess deferred income taxes related to negative net cost of removal/ salvage?

A. No. FPL should not seek a PLR because, as I just described, FPL does not have the ability within PowerPlan to isolate the cost of removal component of negative net salvage. Therefore, regardless of whether cost of removal is classified as protected or unprotected, the impact must be turned-around using ARAM to avoid a normalization violation. Without the ability to treat cost of removal using a different methodology, obtaining a PLR would offer no practical distinction or opportunity for FPL to implement an alternate approach.

Q. On page 15, lines 9 and 10, OPC witness Smith asserts that FPL wants to retain all of the tax savings related to its base rate revenue requirement and return none of this money directly to customers. Is this true?

A. No. Witness Smith's statement is wrong. FPL's proposed treatment provided customers an immediate benefit in the form of an avoided surcharge, related to Hurricane Irma storm restoration costs, of no less than $4.00 a month on a typical 1,000 kWh residential bill over a three-year period, for a total avoided increase of approximately $1.3 billion.

Q. Please describe how FPL achieved this customer benefit.

A. FPL utilized the flexibility contained in its existing rate case Settlement Agreement to provide an immediate cash benefit to customers. Specifically, in December 2017, FPL made the decision to forgo requesting a storm surcharge for the approximately $1.3 billion of Hurricane Irma restoration costs. That decision resulted in FPL immediately expensing those deferred storm costs. Concurrently, FPL utilized all of its remaining Reserve Amount to partially offset the approximately $1.3 billion of Hurricane Irma restoration costs. The purpose of the Settlement Agreement's flexible use of Reserve Amortization is to enable FPL to stay within the authorized range of earnings. This helps ensure that the Settlement Agreement can remain in effect over at least the four-year term referenced in the agreement as the Minimum Term. The stated range of earnings is authorized irrespective of the specific type of expense or revenue, unless otherwise provided for in the

Settlement Agreement. Subsequent to having taken steps to avoid customers paying a surcharge for Irma restoration costs, FPL will continue to use the Reserve Amortization mechanism to maintain its earnings within the authorized range of 9.6% to 11.6%. It is anticipated that the reduction in tax expense resulting from the Tax Act will enable FPL to partially rebuild the Reserve Amount and maintain all of the benefits of the Settlement Agreement for customers. Using this approach, customers directly and promptly received the benefit from the tax savings. Further, by pursuing this approach, FPL expects to defer its next base rate case for at least one additional year beyond the Minimum Term of the Settlement Agreement.

Q. Did FPL file its 2017 federal income tax return?

A. Yes. FPL filed its 2017 federal income tax return on October 15, 2018.

Q. Are there any changes to FPL's excess deferred income taxes as a result of the completion of FPL's 2017 federal income tax return?

A. Yes, FPL adjusted its excess deferred income tax balance as a result of the compilation and review of its 2017 federal income tax return. The effects of the adjustment were appropriately recorded by FPL in the actual financial results that were reflected in FPL's September 2018 earnings surveillance report. The adjustment resulted in an increase of $10.0 million in the protected excess deferred income taxes and a decrease of $9.9 million in the unprotected excess deferred income taxes, for a total net increase in FPL's excess deferred income taxes of $0.1 million.

Q. Does FPL plan to true up the estimated revenue requirement impact of the Tax Act on its 2018 forecasted financial results?

A. No, as I noted previously, FPL has appropriately accounted for the effects associated with the 2017 federal income tax return by reflecting them in the September 2018 earnings surveillance report.

Q. Does this conclude your rebuttal testimony?

A. Yes.

DIRECT TESTIMONY

OF

RALPH SMITH

On Behalf of the Office of Public Counsel

Before the

Florida Public Service Commission

20180046-EI

I. INTRODUCTION

Q. WHAT ARE YOUR NAME, OCCUPATION, AND BUSINESS ADDRESS?

A. My name is Ralph Smith. I am a Certified Public Accountant licensed in the State of Michigan and a senior regulatory consultant at the firm Larkin & Associates, PLLC, Certified Public Accountants, with offices at 15728 Farmington Road, Livonia, Michigan, 48154.

Q. PLEASE DESCRIBE THE FIRM LARKIN & ASSOCIATES, PLLC.

A. Larkin & Associates, PLLC, ("Larkin") is a Certified Public Accounting and Regulatory Consulting Firm. The firm performs independent regulatory consulting primarily for public service/utility commission staffs and consumer interest groups (public counsels, public advocates, consumer counsels, attorneys general, etc.). Larkin has extensive experience in the utility regulatory field as expert witnesses in over 600 regulatory proceedings, including numerous electric, water and wastewater, gas and telephone utility cases.

Q. **HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION?**

A. Yes, I have testified before the Florida Public Service Commission ("FPSC" or "Commission") previously. I have also testified before several other state regulatory commissions.

Q. **HAVE YOU PREPARED AN EXHIBIT DESCRIBING YOUR QUALIFICATIONS AND EXPERIENCE?**

A. Yes. I have attached Exhibit RCS-1, which is a summary of my regulatory experience and qualifications.

Q. **ON WHOSE BEHALF ARE YOU APPEARING?**

A. Larkin & Associates, PLLC, was retained by the Florida Office of Public Counsel ("OPC") to review the impacts on public utility revenue requirements due to the Tax Cuts and Jobs Act of 2017 ("TCJA" or "2017 Tax Act"). My testimony addresses the impacts of the TCJA on Florida Power & Light Company ("FPL" or "Company") on behalf of the OPC. Accordingly, I am appearing on behalf of the Citizens of the State of Florida.

Q. **WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

A. I am presenting OPC's recommendations regarding certain aspects of the TCJA impacts on the Company. In this testimony, I address TCJA impacts on FPL.

Q. **WHAT INFORMATION DID YOU REVIEW IN PREPARATION OF YOUR TESTIMONY?**

A. I reviewed the Company's filing, including the direct testimony and exhibits. I also reviewed the Company's responses to OPC's formal and informal discovery and other materials pertaining to the TCJA and its impacts on the Company. In addition, I reviewed Rule 25-14.011, Florida Administrative Code ("F.A.C."), concerning procedures for processing requests for rulings to be filed with the Internal Revenue Service ("IRS").

Q. PLEASE DESCRIBE HOW THE REMAINDER OF YOUR TESTIMONY IS ORGANIZED.

A. After this introduction (Section I), I address the TCJA impacts related to each of the following issues:

- In Section II, I address the amount and recommended treatment of "Protected" and "Unprotected" Excess Accumulated Deferred Income Taxes ("EADIT").
- In Section III, I address the amount of estimated 2018 income tax savings in base rates related to the reduction in the federal income tax rate to 21 percent.
- In Section IV, I address whether a Private Letter Ruling ("PLR") should be required for the Company, and issues related to a PLR request.
- In Section V, I summarize my findings and recommendations.

II. <u>QUANTIFICATION, CLASSIFICATION AND APPLICATION OF EXCESS ACCUMULATED DEFERRED INCOME TAXES</u>

Q. WHAT ARE ACCUMULATED DEFERRED INCOME TAXES ("ADIT")?

A. ADIT is a source of cost-free capital to reflect that the utility collects money from ratepayers for Deferred Income Tax Expense and holds onto that money prior to eventually paying the income taxes to the government. ADIT results from differences between book and tax accounting. ADIT is referred to as Accumulated Deferred Income Taxes to recognize that these balances typically build up (or accumulate) over time, e.g., as tax deductions exceed corresponding book expense. One primary source of ADIT results from claiming accelerated tax deductions. The tax depreciation deductions on public utility property typically occur on an accelerated basis (i.e., method differences) and over a shorter period (i.e., life differences) than book depreciation accruals relating to the original cost of the public utility property. These types of differences between book and tax depreciation are referred to as "method/life" differences. Unlike many other types of book-tax differences, the tax depreciation "method/life" differences are subject to normalization requirements under Sections 167 and 168 of the Internal Revenue Code.

Q. WHAT ARE "EXCESS" ACCUMULATED DEFERRED INCOME TAXES ("EXCESS ADIT" OR "EADIT")?

A. Regulated public utilities will be required to identify the portions of their ADIT balances that represent "excess" ADIT based on recalculations using the difference between the old federal corporate income tax ("FIT") rate (typically 35%) under which the ADIT was originally accumulated and the new FIT rate of 21% provided for in the TCJA. Basically, the utility's ADIT must be revalued at the new FIT rate (as if it had always been applicable) and the amounts that have been accumulated using the federal income tax rates that are higher than the current 21% rate will represent "excess" ADIT.

Q. WHAT AMOUNT OF EXCESS ACCUMULATED DEFERRED INCOME TAXES ("EADIT") DOES FPL SHOW?

A. FPL shows a total EADIT net liability of $3.241 billion. A summary of this is presented on Exhibit RCS-2, which reproduces in summary format the contents of an Excel file that was provided to OPC by FPL after on-site discussions. The Company indicates it will true-up these estimates after filing its 2017 tax return in October 2018. The total EADIT net liability of $3.241 billion consists of a property-related (account 282) EADIT liability of approximately $3.084 billion and a non-property related net EADIT liability of approximately $157.4 million.

Q. HOW HAS FPL CLASSIFIED THE PROPERTY-RELATED EADIT BETWEEN "PROTECTED" AND "UNPROTECTED"?

A. In its response to OPC Production of Documents (POD) No. 10, FPL shows a property-related (account 282) EADIT liability of $3.084 billion, of which FPL indicates $2.382 billion is "protected" and $701.4 million is "unprotected". FPL indicates that it tracks these property-related EADIT amounts in PowerTax (FPL's computer tax program).

Q. HOW HAS FPL CLASSIFIED THE NON-PROPERTY-RELATED EADIT BETWEEN "PROTECTED" AND "UNPROTECTED"?

A. As noted above, FPL shows an "other" EADIT liability (for EADIT tracked by FPL outside of PowerTax) of $157.4 million. A summary of these items is shown on Exhibit RCS-2, attached to my testimony. The "other" EADIT liability has been classified by FPL as "unprotected" except for the following two items:

- a $36.145 million EADIT liability for Florida bonus depreciation[1] and
- a $57.5 million EADIT asset for "Depreciation Protected - ICL"[2]

Q. DO THE EADIT AMOUNTS INCLUDE A TAX "GROSS-UP"?

[1] See "Code" items DEP118, DEP133 and DEP134 on Exhibit RCS-2.
[2] This relates to FPL's acquisition of an Indiantown CoGeneration facility (referred to as "ICL"); see "Code" items DEP101 on Exhibit RCS-2.

A. Yes. The amounts listed above include the "gross up" amount. The EADIT resulting from the tax rate change is increased or "grossed up" for the current income tax rate. The "grossed up" amount of the EADIT regulatory liability (or asset) will then be amortized and subject to income taxes at the current rate; therefore, the net income impact equals the amortized tax benefit.

Q. HOW DO IRS NORMALIZATION REQUIREMENTS AFFECT THE CATEGORIZATION OF ADIT AND EXCESS ADIT?

A. IRS normalization requirements will apply to the portion of the property-related ADIT that relates to the use of accelerated tax depreciation (including bonus tax depreciation). This will result in two general categories of excess ADIT: (1) "protected" (i.e., related to the use of accelerated tax depreciation and subject to the normalization requirements) and (2) "unprotected" property and non-property related excess ADIT (which is not subject to normalization requirements and for which the amortization or application is up to the discretion of the Commission).

Q. HOW DOES THE CATEGORIZATION OF "PROTECTED" OR "UNPROTECTED" AFFECT THE AMORTIZATION OF THE EADIT?

A. The 2017 Tax Act provides that the Average Rate Assumption Method ("ARAM") must be used for the "protected" portion of the EADIT. The flow back of the "protected" excess ADIT, therefore, must follow the prescribed method to comply with normalization requirements. In contrast, the flow back of the "unprotected" portion of the excess ADIT will be up to the discretion of the Commission. "Unprotected" ADIT is not subject to normalization requirements. The "unprotected" ADIT will be revalued at the lower 21% tax rate, creating balances of excess "unprotected" ADIT that can be flowed back to customers over amortization periods to be determined by the Commission, or applied in some other manner to be determined by the Commission (e.g., such as for the recovery of regulatory assets).

Q. DO YOU AGREE WITH FPL'S CLASSIFICATION OF THE EADIT BETWEEN THE "PROTECTED" AND "UNPROTECTED" CATEGORIES?

A. I have no disagreement with the Company's updated classification of EADIT. However, I note that the guidance provided in the TCJA and in previous IRS rulings presents some degree of uncertainty as to the classification of the EADIT related to at least one of the large book-tax differences, specifically to the EADIT relating to cost of removal/negative net salvage.

Q. WHAT IS THE APPROPRIATE DISPOSITION OF THE "PROTECTED" EADIT?

A. The "protected" EADIT should be reversed using an ARAM if the utility has the available information to calculate the ARAM, or via another appropriate method that complies with normalization requirements, if the Company does not have the information to compute the ARAM. FPL has the information needed for the ARAM calculations, so it should use the ARAM for its "protected" EADIT.

Q. ARE YOU CONTESTING THE AMOUNTS ASSOCIATED WITH THE COMPANY'S PROPOSED EADIT?

A. No. The Company has indicated that its EADIT amounts are estimates and are subject to correction after it files its 2017 tax return in October. I have accepted the Company's amounts as reasonable estimates, subject to the later true up.

Q. WHAT AMORTIZATION DOES FPL PROPOSE FOR ITS PROPERTY-RELATED "PROTECTED" AND "UNPROTECTED" EADIT?

A. FPL is proposing to use ARAM for both the "protected" and "unprotected" property-related EADIT.

Q. DO YOU AGREE WITH FPL'S PROPOSAL TO APPLY THE ARAM FOR THE "PROTECTED" PORTION OF ITS PROPERTY-RELATED EADIT?

A. Yes, I do. Application of the ARAM for the "protected" EADIT is required by the Internal Revenue Code and TCJA. I agree with FPL's proposal to use the ARAM, but only for the "protected" EADIT. As explained below, I disagree with FPL's proposal to apply the ARAM to "unprotected" EADIT.

Q. DO YOU AGREE WITH FPL'S PROPOSAL TO APPLY THE ARAM FOR THE "UNPROTECTED" PORTION OF ITS PROPERTY-RELATED EADIT?

A. No, I do not. There is no Internal Revenue Code or TCJA requirement that the "unprotected" EADIT must be amortized using the ARAM. The amortization of FPL's "unprotected" EADIT is up to the discretion of the Commission. Since this EADIT is by definition "excess" (meaning amounts that are in excess, or more than needed, based on the current federal corporate income tax rate of 21 percent) and the balance is a liability (meaning the amounts are being held by the Company and should be returned to ratepayers), a shorter amortization period should be considered.

Q. DO YOU HAVE A RECOMMENDATION FOR THE AMORTIZATION OF THE "UNPROTECTED" PORTION OF FPL'S PROPERTY-RELATED EADIT?

A. Yes. I recommend that FPL's "unprotected" property-related EADIT be amortized over ten years on a straight-line basis. A ten-year straight-line amortization period for "unprotected" EADIT is being used by another Florida regulated utility, Tampa Electric Company[3], and is a reasonable period for returning these excess amounts to customers. In addition, Duke Energy Florida has agreed to flow back its "unprotected" EADIT over a maximum period of 10 years pursuant to a 2017 settlement.[4] Moreover, Gulf Power Company agreed to return its entire "unprotected" property-related EADIT in 2018.[5] Thus, a ten-year flow back is reasonable for FPL to return this money to its ratepayers.

Q. WHAT ANNUAL AMORTIZATION OF THE "UNPROTECTED" PORTION OF FPL'S PROPERTY-RELATED EADIT IS PRODUCED BY A TEN-YEAR STRAIGHT-LINE AMORTIZATION?

A. Amortizing the "unprotected" property-related EADIT liability of $701,315,829 over ten years produces an annual amortization amount of $70,131,583.

Q. HOW DO THE RESULTS OF A 10-YEAR AMORTIZATION OF THE "UNPROTECTED" PROPERTY-RELATED EADIT COMPARE WITH FPL'S PROPOSED 2018 ARAM-BASED AMORTIZATION FOR THAT EADIT?

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[3] In re: Consideration of the Tax Impacts Associated with Tax Cuts and Jobs Act of 2017 for Tampa Electric Company, Order No. PSC-2018-0457-FOF-EI, issued September 10, 2018, in Docket No. 20180046-EI at p. 5.

[4] In re: Application for Limited Proceeding to Approve 2017 Second Revised and Restated Settlement Agreement, including Certain Rate Adjustments, by Duke Energy Florida, LLC., Order No. PSC-2017-0451-AS-EU, issued November 20, 2017, in Docket No. 20170183-EI, et. al., at p. 40.

[5] In re: Consideration of the Stipulation and Settlement Agreement Between Gulf Power Company, the Office of Public Counsel, Florida Industrial Power Users Group, and Southern Alliance for Clean Energy Regarding the Tax Cuts and Jobs Act of 2017, Order No. PSC-2018-0180-FOF-EI, issued April 12, 2018, in Docket No. 20180039-EI, at pp. 11-12.

A. Using a ten-year straight line amortization of FPL's "unprotected" property-related EADIT liability would increase the 2018 amortization amount by approximately $41.46 million, as summarized in the following table:

Florida Power & Light Co & Subs Unprotected Property-Related EADIT		Amount	Source
EADIT Liabiltiy Amount	$	701,315,829	Ex. RCS-1
Annual Amortization			
OPC proposed 2018 amortization (10 year straight line basis)	$	70,131,583	EADIT / 10 years
FPL proposed 2018 amortization using ARAM		28,671,032	Ex. RCS-1
Increased 2018 EADIT amortization using 10-year vs ARAM	$	41,460,551	

Q. HOW HAS FPL CLASSIFIED THE EADIT RELATED TO COST OF REMOVAL/NEGATIVE NET SALVAGE?

A. As shown on FPL's response to OPC POD No.10, FPL has identified an EADIT net asset of approximately $20 million for cost of removal/salvage in its property-related EADIT. FPL has classified that EADIT as "protected" in its response to OPC POD No. 10. FPL's response to OPC Interrogatory No. 29(a) provides an additional explanation of FPL's reasoning for classifying the EADIT for cost of removal as "protected." Later in my testimony, I discuss the potential need to request a Private Letter Ruling from the IRS related to the cost of removal component of EADIT.

Q. WHAT DOES THE COMPANY PROPOSE FOR THE AMORTIZATION OF THE NON-PROPERTY EADIT?

A. As explained in Company witness Bores' testimony at page 7, FPL proposes to apply what it refers to as the "Reverse South Georgia Method" ("RSGM") to its non-property EADIT. At page 7 of his Direct Testimony, FPL witness Bores states the RSGM provides for the turnaround of the "unprotected" EADIT on a straight-line basis over the estimated remaining life of the related assets and liabilities.

Q. DO YOU AGREE WITH APPLYING A STRAIGHT-LINE METHOD FOR AMORTIZING THE "UNPROTECTED" EADIT?

A. Yes. Amortizing the "unprotected" EADIT using a straight-line method is a straightforward approach that is simple to administer.

Q. IS IT NECESSARY THAT THE "UNPROTECTED" EADIT BE FLOWED BACK OVER A PERIOD SIMILAR TO HOW THE ADIT WOULD HAVE FLOWED BACK IN THE ABSENCE OF THE TCJA?

A. No. The amortization of the "unprotected" EADIT is subject to the discretion of the Commission. There is no need to allow utilities to hold "unprotected" EADIT amounts for decades into the future. As described above, the EADIT amounts are "excess" and, if in a liability position (i.e., if they represent amounts owed to customers), these amounts should be flowed back over a quicker period. This quicker flow back 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. I am recommending amortization periods that are no longer than ten years as the flow back period for FPL's "unprotected" EADIT balances.

Q. HAS THE COMPANY PROVIDED A DETAILED SCHEDULE SHOWING ITS PROPOSED AMORTIZATION OF THE NON-PROPERTY EADIT?

A. Yes. The Company provided OPC with an Excel file that presents a summary of the periods for which FPL proposes to amortize the non-property EADIT. Those periods are also shown in the "Turn Period (Years)" column of Exhibit RCS-2.

Q. REFERRING TO THE INFORMATION SHOWN IN THE "TURN PERIOD (YEARS)" COLUMN OF EXHIBIT RCS-2, ARE YOU RECOMMENDING ALTERNATIVE AMORTIZATION PERIODS FOR SOME OF FPL'S NON-PROPERTY RELATED "UNPROTECTED" EADIT?

A. Yes. In general, I am not taking issue with the accrual/reversal items of non-property related EADIT. FPL indicates those items will reverse in one year; thus, the "turn period" proposed by FPL is one year. I agree with FPL's use of a one-year "turn period" for EADIT for such accrual/reversal type items.

In addition, I am not recommending alternative amortization periods for the other "unprotected" non-property EADIT for which FPL shows a "turn period" of up to ten years. There are several "unprotected" EADIT items which FPL shows "turn periods" of 5 or 10 years. For those items, I have accepted FPL's proposed amortization.

However, there are some "unprotected" EADIT items that FPL proposes using periods longer than ten years. For those items, I recommend that the amortization occur over a period of no longer than 10 years.

Q. WHAT ADJUSTMENT TO THE 2018 NON-PLANT EADIT AMORTIZATION RESULTS FROM USING AN AMORTIZATION PERIOD OF NO LONGER THAN 10 YEARS FOR THE ITEMS OF "UNPROTECTED" EADIT FOR WHICH FPL PROPOSED USING LONGER AMORTIATON PERIODS?

A. Exhibit RCS-3 presents a calculation of the EADIT amortization on "non-plant" EADIT proposed by FPL. This calculation includes acceptance of FPL's proposed amortization periods for items where FPL proposed a "turn period" of 1 to 10 years, and application of a maximum amortization period of 10 years for the items for which FPL proposed longer amortizations. As shown on Exhibit RCS-3, FPL's total proposed 2018 amortization for such items is approximately $7.938 million.

In contrast, accepting FPL's proposed amortization periods for items where FPL proposed a "turn period" of 1 to 10 years, and applying a maximum amortization period of 10 years for the "unprotected" items for which FPL proposed longer amortizations, produces a 2018 annual amortization of approximately $18.774 million.

In summary, the 2018 non-property EADIT amortization amount is increased by $10.836 million over FPL's proposal, if the amortization periods for the "unprotected" EADIT components are capped at 10 years.

III. 2018 INCOME TAX SAVINGS IN BASE RATES RELATED TO THE REDUCTION IN THE FEDERAL INCOME TAX RATE TO 21 PERCENT.

Q. HOW MUCH 2018 INCOME TAX SAVINGS FROM BASE RATES HAS THE COMPANY IDENTIFIED?

A. Company witness Bores' Direct Testimony at pages 7-12 refers to calculations made by FPL using its 2018 Forecasted Earnings Surveillance Report ("2018 FESR"). At page 11 of his Direct Testimony, Mr. Bores identifies the overall forecast change in the Company's 2018 FPSC adjusted revenue requirement as a result of the TCJA to be a reduction of $684.8 million, consisting of the following five primary components:

1) a $582.7 million reduction in the base rate revenue requirement as a result of the lower federal income tax rate;

2) a $154.9 million reduction from the EADIT amortization proposed by FPL;

3) a $26.0 million increase related to the loss of the manufacturer's deduction[6];

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 ADIT related to depreciation timing differences on plant going into service in 2018.

Q. IF A MORE RAPID AMORTIZATION IS APPLIED TO THE "UNPROTECTED" EADIT AS YOU HAVE RECOMMENDED, WOULD THAT IMPACT THE ABOVE AMOUNTS FROM FPL'S APPLICATION?

A. Yes. The more rapid amortization I am recommending for "unprotected" EADIT would impact the second item listed above. The reduction related to the TCJA in 2018 would be higher if the amount of "unprotected" EADIT amortization in 2018 were higher. There would also be an impact on the sources of investor capital if investor capital was needed in 2018 to replace the amounts of net regulatory liability related to that "unprotected" EADIT and the related higher amortization amount in 2018.

Q. WHAT TREATMENT HAS THE COMPANY PROPOSED FOR THE 2018 BASE RATE INCOME TAX SAVINGS?

A. FPL's application references the Settlement Agreement in its rate case and Order No. PSC-16-0560-AS-EI issued on December 15, 2016 wherein the Commission approved that Settlement Agreement. As described in FPL's application, in paragraph 7, when the TCJA

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[6] This is also referred to as the Domestic Production Activities Deduction, and was allowable under Section 199 of the Internal Revenue Code, which was repealed by the TCJA.

was signed into law, FPL concluded it had the opportunity to combine expected tax savings with the flexible amortization of a depreciation Reserve Amount under the Settlement Agreement, to avoid an interim storm charge due to Hurricane Irma. In paragraph 8 of its application, FPL states it expects that from 2018 through 2020, tax savings under the TCJA will enable FPL to partially reverse the one-time amortization of the Reserve Amount, while staying within its authorized ROE range. By applying TCJA savings in such a manner, FPL indicates in its application in paragraph 9 that it expects rate stability under the Settlement Agreement to continue for up to two additional years past the end of 2020. Thus, FPL wants to effectively retain all of the TCJA tax savings related to its base rate revenue requirement and to return none of this money directly to its ratepayers.

Q. HOW DOES THE OPC PROPOSE TO APPLY THE TCJA SAVINGS FOR FPL?

A. OPC has determined that the application of TCJA savings for FPL involve legal interpretations of the Settlement Agreement. Therefore, the OPC's proposed application of the TCJA savings for FPL will be addressed in OPC's legal pleadings. I am not offering an opinion on the ultimate method of returning the total tax savings to FPL's customers.

IV. <u>WHETHER A PRIVATE LETTER RULING ("PLR") SHOULD BE REQUIRED, AND ISSUES RELATED TO A PLR REQUEST.</u>

Q. DID THE COMPANY'S FILING CONTAIN A CLASSIFICATION OF EADIT RELATED TO COST-OF-REMOVAL?

A. Yes. FPL's property-related EADIT contains a net asset of approximately $20 million for cost-of-removal. This is shown on the Company's response to OPC POD No. 10 and described in FPL's response to OPC Interrogatory No. 29.

Q. DO YOU HAVE AN OPINION AS TO WHETHER THE EADIT RELATED TO COST OF REMOVAL/NEGATIVE NET SALVAGE IS "PROTECTED" OR "UNPROTECTED"?

A. Yes, I do. Based on currently available guidance, it is my opinion that the EADIT related to cost of removal/negative net salvage is "unprotected." This is because the tax deduction for cost of removal is not addressed under §167 or §168 of the Internal Revenue Code ("IRC" or "Code"), which are the sections pertaining to the use of accelerated tax depreciation and the sections which contain the normalization requirements pertaining to the continued use of accelerated tax depreciation. Deductions provided for under other sections of the Code are not subject to the normalization requirements associated with the Company's ability to continue to use accelerated depreciation for federal income tax purposes.

Q. IS THERE SOME UNCERTAINTY IN THIS AREA?

A. Yes, there is. The comparison of utility book and tax depreciation for purposes of tracking the method/life and other differences can be very complex. Utility book depreciation rates typically include a component for negative net salvage (as well as for the recovery of original cost over the estimated useful life of the assets). The normalization process involves comparing book and tax depreciation; however, the calculations can be very complex. Such calculations are typically done by larger utilities using specialized software, such as PowerPlan and PowerTax, and the proper application can require significant additional analytical work by the utility and the vendor. Since the comparison of book and tax depreciation involves complex calculations and utility book depreciation typically includes an element for negative net salvage, some jurisdictions (e.g., New York) have raised concerns about the cost of removal/negative net salvage component of book depreciation and the risks presented for potential normalization violations. For example, FPL appears to be taking a different position than Tampa Electric Company ("TECO") and Peoples' Gas System ("PGS") concerning the treatment of cost of removal/negative net salvage and has proposed to treat that item as "protected," pending receipt of additional guidance.

Q. 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 "UNPROTECTED"?

A. Possibly, yes.

Q. IF FPL SEEKS A PRIVATE LETTER RULING AND THE IRS RULES THEREIN (OR IN ANOTHER PRIVATE LETTER RULING) THAT THE EADIT RELATING TO COST OF REMOVAL/NEGATIVE NET SALVAGE IS TO BE TREATED AS "PROTECTED," WHAT PROCESS SHOULD BE FOLLOWED FOR THE RECLASSIFICATION?

A. 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."

V. <u>FINDINGS AND RECOMMENDATIONS</u>

Q. ARE YOU RECOMMENDING ANY ADJUSTMENTS TO THE COMPANY'S QUANTIFICATIONS OF THE TCJA IMPACTS AT THIS TIME?

A. No, I am not. The Companies' quantifications do not appear to be unreasonable for the purposes of estimating the one-time annual revenue requirement reduction and EADIT related to the TCJA.

Q. ARE YOU RECOMMENDING ANY DIFFERENT AMORTIZATION PERIODS FOR FPL'S EADIT?

A. Yes. For FPL's "unprotected" property-related EADIT, I recommend an amortization period of ten years. As explained above in my testimony, FPL has an "unprotected" property-related EADIT Liability Amount of approximately $701.3 million. Amortizing that over 10 years results in an annual amortization of $70.132 million per year. Compared with FPL proposed 2018 amortization (which used ARAM approach) of $28.671 million, applying a 10-year straight-line approach for the "unprotected" property-related EADIT versus FPL's proposed ARAM-based approach results in an increased 2018 EADIT amortization of $41.461 million.

Additionally, for FPL's "unprotected" non-property-related EADIT, I recommend accepting FPL's proposed "turn period" where FPL has proposed turn periods of 10 years or less. For the "unprotected" non-property related EADIT, where FPL proposed a "turn period" longer than ten years, I recommend that a ten-year turn period be used instead. As shown on Exhibit RCS-3, this results in a 2018 "unprotected" EADIT amortization of $18.774 million, which is $10.836 million higher than the $7.938 million proposed by FPL.

Q. PLEASE SUMMARIZE YOUR RECOMMENDED ADJUSTMENTS FOR THE FLOW BACKS FOR THE TCJA SAVINGS.

A As noted above, FPL quantified the FPSC adjusted revenue requirement as a result of the TCJA to be a reduction of $684.8 million, consisting of the following five primary components:

1) a $582.7 million reduction in the base rate revenue requirement as a result of the lower federal income tax rate;

2) a $154.9 million reduction from the EADIT amortization proposed by FPL;

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 ADIT related to depreciation timing differences on plant going into service in 2018.

I am recommending the EADIT amortizations identified in Item No.2 above to be increased, which will reduce FPL's 2018 revenue requirement. As discussed above, my recommended sum for 2018 EADIT amortizations results in increases of $41.461 million for "unprotected" property-related EADIT and $10.836 million for “unprotected” non-property-related EADIT is approximately $52 million. Therefore, the $154.9 million reduction from the EADIT amortization proposed by FPL should be increased by approximately $52 million. This produces a reduction to FPL's 2018 revenue requirement from EADIT amortization of approximately $204.9 million, or $52 million larger than the $154.9 million proposed by FPL for Item No. 2 in the above list.

Similarly, adding the $52 million additional EADIT amortization to FPL's identified total net TCJA revenue requirement reduction amount of $684.8 million increases that reduction amount to $736.8 million.

Q. COULD THERE BE A RELATED IMPACT ON INVESTOR CAPITAL SOURCES ASSOCIATED WITH INCREASED EADIT AMORTIZATION IN 2018?

A. Yes. I acknowledge that, other things being equal, the increased 2018 EADIT amortization could have an impact related to requiring higher sources of investor capital (similar to Item No. 5 on FPL's list). If the non-investor supplied cost-free capital represented by that EADIT is being amortized at higher amounts in 2018, other things being equal, that could require sources of investor-supplied capital to support rate base; however, I have not quantified that impact. Presumably, that could be quantified by FPL in a compliance filing if the Commission adopts the recommended 2018 EADIT amortizations that I have described above.

Q. DOES THIS COMPLETE YOUR PREFILED TESTIMONY?

A. Yes, it does.

COMMISSIONER BROWN: Exhibits.

MS. BROWNLESS: Yes, ma'am. Staff has prepared a comprehensive exhibit list, which includes all exhibits attached to all of the witnesses' prefiled testimony. That's Exhibits 2 through -- 2 through 10; staff exhibits, Exhibits 11 through 19; documents, Exhibit 20 and 21; and stipulations for Issues 1 through 17 and 20, which is Exhibit 22.

The list is marked as Exhibit 1 and has been provided to the parties, the Commissioners, and the court reporter. At this time, staff would request that Exhibit 1 be entered into the record and all other exhibits be marked as identified therein.

COMMISSIONER BROWN: Seeing no objection, we'll go ahead and do that at time.

MS. BROWNLESS: Thank you, ma'am.

(Whereupon, Exhibit No. 1 was marked for identification and admitted into the record; Exhibit Nos. 2 through 22 were marked for identification.)

MS. BROWNLESS: It is my understanding that all parties have either taken no position on, not objected to, or agreed to stipulate the exhibits which have been identified on Exhibit 1, and would ask that they be entered into the record at this time.

I will elaborate, to the extent that it's my understanding, that OPC and FP&L have agreed to the stipulations; that FIPUG has no position on these stipulations; that FRF does not object to these stipulations; and that FEA agrees with the Office of Public Counsel.

COMMISSIONER BROWN: So, I'm just going to confirm with all of the parties what Ms. Brownless just said, starting with Public Counsel first.

MS. CHRISTENSEN: Yes, Madam, we have agreed to the stipulations.

COMMISSIONER BROWN: Okay.

MS. CHRISTENSEN: Oh, and the exhibit as well.

COMMISSIONER BROWN: Exhibit, right -- we'll focus -- but -- if you could, address both.

Retail Federation.

MR. WRIGHT: Yeah, I'll -- I -- I had another obligation at the prehearing conference. We can agree to the stipulations with Public Counsel and to the admission of the exhibits.

COMMISSIONER BROWN: Thank you.

MR. WRIGHT: Thank you.

COMMISSIONER BROWN: FEA.

CAPTAIN FRIEDMAN: Yes, ma'am, that's correct, in agreement along with OPC.

COMMISSIONER BROWN: Thank you.

FIPUG.

MR. MOYLE: I think staff stated it correctly; we're taking no position.

COMMISSIONER BROWN: Okay. And no objection to entering the exhibits, too.

MR. MOYLE: That's right.

COMMISSIONER BROWN: All right. And FPL, anything to add?

MS. MONCADA: We agree to these stipulations and entering the exhibits as well.

COMMISSIONER BROWN: All right. So, we will go ahead at this time and enter into the record Exhibits 1 -- oh, we already did one -- 2 through 22.

(Whereupon, Exhibit Nos. 2 through 22 were admitted into the record.)

COMMISSIONER BROWN: All right. Anything to address with -- under exhibits? We're done.

MS. BROWNLESS: No, ma'am. Thank you.

COMMISSIONER BROWN: Okay. So, let -- we're going to move to opening statements, now. Opening statements, as you all know, are limited to five minutes per party and shall be limited to the stipulation and the cost issues associated with Issues 1 through 17.

We will start with FPL, followed by Office of Public Counsel, FEA, Retail Federation, and concluding with FIPUG. Okay?

MS. MONCADA: Good morning, Commissioners.

COMMISSIONER BROWN: Good morning.

MS. MONCADA: Thank you for the opportunity to be here this morning. As has been stated a few times earlier, FPL and OPC have worked together throughout this docket and cooperatively conferred with each other regarding the calculations of the tax savings and, on that basis, were able to reach a stipulation on Issues 1 through 17. And we support their approval this morning.

COMMISSIONER BROWN: Very brief. 12 seconds.

All right. Office of Public Counsel.

MS. CHRISTENSEN: Good morning, Commissioner. We would like to thank you for the opportunity to address the stipulations of Issues 1 through 17 and Issue 20 that were entered into between FPL and OPC. Both FPL and OPC have filed testimony and exhibits in this docket, and OPC has conducted extensive discovery.

This testimony and exhibits and a fair amount of the discovery have been entered into the record this morning and, given the posture of the proceeding, we believe that it is in the customers' best interest to resolve the non-controversial issues regarding the amount of the tax savings.

Based on the information gathered by OPC in this proceeding and the expert testimony filed, OPC and FPL have been able to agree on the amount of the tax-savings impacts with and without credits based on the fall- -- which is based on the fallout of the Commission's resolution of future issues.

We further believe that these stipulations, when taken in their totality, are in the public interest, and will allow the Commission to resolve the amount of the tax savings to be applied in future proceedings.

We thank you for your consideration of the stipulations and respectfully request that you approve the stipulations for Issues 1 through 17 and 20 as well.

Thank you.

COMMISSIONER BROWN: Thank you. And just for Commissioners and for the public, Issue 20 is just the -- close the docket. So, the substance is 1 through 17.

FEA.

CAPTAIN FRIEDMAN: Yes, Commissioner. Thank you. I'm Captain Rob Friedman on behalf of the Federal Executive Agencies.

The FEA are customers of Florida Power & Light, substantially at Patrick Air Force Base, Cape Canaveral Air Force Station, and Homestead Air Reserve Base. And in this matter, we are essentially supporting OPC's position.

We're looking for a reasonable balance between the utility and the customer, which we are. And we believe that that will be achieved with OPC's position regard -- particularly regarding the accumulated deferred income tax. And we are -- support the stipulations discussed.

COMMISSIONER BROWN: Thank you.

Retail Federation.

MR. WRIGHT: Thank you, Madam Chairman and Commissioners. Thank you, thank the staff, and thank, particularly, FPL and OPC and their witnesses for working hard to get these numbers worked out, with and without the treatment of the amortization credits at -- which issue is to be decided down the road. As I said earlier, we support the -- the stipulations, and we'll handle the briefing schedule.

I -- I will say, for the record, we believe that -- that the -- the ultimate issues should be addressed in Docket 20180224, but we're here and we will be briefing.

And see you on April 16th. Thank you.

COMMISSIONER BROWN: Thank you.

FIPUG.

MR. MOYLE: Thank you. On behalf of -- and Florida Industrial Power Users Group, we have -- we're here today to talk about the impacts of the federal tax reform and the docket that's before you.

As I indicated in earlier comments, a stipulation has been reached by the Office of Public Counsel and Florida Power & Light. FIPUG is not a party to that stipulation. And we would just ask that the record reflect that.

I think a key part of the stipulation that -- that should warrant some attention is -- is Issue No. 9, which is, what is the annual jurisdictional adjusted base-revenue requirement increase/decrease due to the tax act.

And it looks like OPC and FPL agreed with their technical experts, looking at it, that it's close to three-quarters of a billion dollars. $772.3 million is the annual amount of money that is realized from the federal tax impact.

And you know, like we have indicated previously on -- on tax dockets and appeared before you, that we think transparency is important, we think these monies should be returned to the taxpayer expeditiously as possible.

I -- I understand, Madam Chair, that we had a conversation at the prehearing where, you know, the other utilities have returned the monies with TECO having -- having returned over a hundred million, beginning January of this year; Gulf having already returned over a hundred million with a plan that you all approved; and Duke having had a plan approved where they're returning over 150.

So, now -- FPL is the biggest utility in the state. The agreed-upon amount is 750. And my client looks forward to a -- a resolution of this, that provides some certainty with respect to how these monies are going to -- to be handled.

And as with those others -- you know, at least there was a plan. And Duke -- the money is not coming back until 2021, I believe.

MS. MONCADA: Commissioner Brown, I'm remiss to interrupt anybody's opening statement, but it's set forth clearly in your prehearing order that the opening statement should be limited to the cost issues. Mr. Moyle has gone a little bit beyond that and was on his way to go far beyond that.

COMMISSIONER BROWN: Mr. Moyle?

MR. MOYLE: Well, I think I'm talking about $772 million of -- you know, of costs that they should flow- -- flow back to the -- to the ratepayers. I would -- you know, I think that's part and parcel of what -- you know, what you all are set up for. This --

COMMISSIONER BROWN: You may continue.

MR. MOYLE: Thank you.

I've got to get back on that train of thought.

COMMISSIONER BROWN: I know, and I -- I hit continue here. So, your time is ticking. Sorry.

MR. MOYLE: All right. So -- but in any event, the point -- point being made, I think, even -- you know, with Duke -- with them saying, let us take care of some of the hurricane expense with these tax savings, an agreement was worked out, but that agreement said, when that's done, we're flowing back the monies.

And I would just urge this Commission, when they are considering this issue, that they put in place a plan so that ratepayers understand what the plan is. I mean, how much of the monies are coming back; when are they coming back. It's just some -- some basic information that half of -- of the citizens of Florida, we believe, should know.

And so, I think that is a very important issue. And I know that we have briefs upcoming and some other processes, but I would urge you not -- not to get mired in -- you know, in a legal issue, but also exercise your jurisdiction and ability and discretion to say, here is the plan so that people are on notice and they're aware of what the -- what the future holds with three-quarters of a billion dollars in -- in tax savings.

And you know, that's a lot of money. I -- I know FPL has said, well, we spent 1.3 billion in hurricane re- -- repairs. My math, which is not very good and should be double-checked -- but if you've got 7- -- 775 million and you double it, that's two years, and the hurricane repairs are taken care of. Should the money flow back then? We would say yes.

And so, we would encourage you to take a close, hard look at that and make sure --

COMMISSIONER BROWN: You're going to have an opportunity to address all of this in your initial brief, your reply brief, at -- and as well as oral argument, as you know very well.

MR. MOYLE: Thank -- thank you. And we will -- we will do that, but I didn't want to miss the opportunity to also tell you about it today.

COMMISSIONER BROWN: I was being very lenient here. And you kind of got a little carried away there, but --

MR. MOYLE: With -- with that, thank -- thank you for the -- for the discretion and latitude to make those comments.

COMMISSIONER BROWN: Okay. Commissioners, any -- any questions regard- -- yes, Commissioner Fay.

COMMISSIONER FAY: Just really quick, I just want to make sure you didn't -- you didn't state an objection to the numbers, correct?

MR. MOYLE: That -- that's right, we haven't gone and double-checked them. And they've had technical people looking at them and doing all kinds of accounting stuff, but -- so, the stipulation is between OPC and -- and FPL, but we haven't independently gone in. We're just saying, we don't want to stand in the way and make somebody come up and testify, but we're not an affirmative party to that. We don't want to be called out as saying, oh, you agreed to this number, you -- you -- we have not agreed.

COMMISSIONER FAY: No, I gotcha.

MR. MOYLE: To the number.

COMMISSIONER FAY: I just -- I just wanted to make sure. You -- you had a great opening statement. I just was trying to keep up with it and make sure that there wasn't any objection in there.

MR. MOYLE: No. No.

COMMISSIONER FAY: Okay.

MR. MOYLE: We -- we're -- it's not a legal term, but we're getting out of the way --

COMMISSIONER FAY: Gotcha.

MR. MOYLE: -- of -- you know, of this thing moving forward --

COMMISSIONER FAY: Thanks.

MR. MOYLE: -- without people testifying.

COMMISSIONER BROWN: Okay. Commissioners, so, now we have the opportunity to ask questions of the staff or the parties on Issues 1 through 17, if -- which is the stipulation that's marked as Exhibit 22, which, again, are just the cost issues. We'll talk about the rest of the proceeding after we deal with the stipulations.

So, Commissioner, any questions on Exhibit 22? If not, we're ripe for a motion.

Yes, Commissioner Fay.

COMMISSIONER FAY: Thank you, Chairman Brown. I would move approval on the stipulations presented in 1 through 17 and 20.

COMMISSIONER BROWN: Is there a second?

COMMISSIONER CLARK: Second.

COMMISSIONER BROWN: Yeah. Any further discussion?

Seeing none, all those in favor, signify by saying aye.

(Chorus of ayes.)

COMMISSIONER BROWN: All right. The motion passes unanimously. Thank you.

Okay. So, Ms. Brownless, can you continue, regarding our posture at this time?

MS. BROWNLESS: At this time --

COMMISSIONER BROWN: Mic.

MS. BROWNLESS: Oh, I'm sorry.

COMMISSIONER BROWN: Nobody could hear you.
MS. BROWNLESS: At this time, as discussed at the prehearing conference, we anticipate that this hearing shall be continued until April 16th, 2019, at which time Issues 18 and 19 shall be addressed.
And those are the issues of what treatment should be given to the tax savings identified and whether or not using those tax savings to restore the amortization reserve is allowed under the 2016 FP&L rate-case settlement agreement.
We anticipate that initial briefs shall be due on those two issues on February 22nd, 2019, by 5:00 p.m.; that reply briefs will, then, be due on March 8th by 5:00 p.m.; and that, when we reconvene on April 16th, there shall be oral arguments limited to Issues 18 and 19. And I believe the Chair was going to let us know the duration of those arguments.
COMMISSIONER BROWN: That -- that is ac- -- that's correct. So, just to go over, so you all are aware, official briefs, February 22nd; reply briefs, March 8th. Remem- -- as provided in the prehearing order, 40 pages for both initial briefs, and then 40 pages for reply briefs. Any questions regarding those or -- all right.

Oral arguments, then, will be convened -- we'll reconvene the hearing on April 16th on Issues 18 and 19. Given that, we will have initial briefs and reply briefs and the Commission will have a lot of material to digest. Each part- -- each side will be given 30 minutes. You all can divide up the time how you see fit and then -- that was what was recommended by legal.

MS. BROWNLESS: Yes, ma'am.

COMMISSIONER BROWN: Okay. Does anybody have any questions? Seeing none.

MR. REHWINKEL: Madam -- Madam Chair --

COMMISSIONER BROWN: Could you put the mic a little closer, please.

MR. REHWINKEL: Yes. Charles Rehwinkel with the Public Counsel.

We have four parties here, and 30 minutes could -- could be whittled down pretty quickly. I mean, FPL is going to have 30 minutes entirely.

The -- we had discussed with staff as for the weeks -- and I really appreciate the staff that -- your staff and -- and the Commission staff and FPL working on a process that would get us here.

This -- I know Mr. Moyle went down -- in a path that you probably didn't want him to, and I'm not going to -- I'm not going to repeat that, but --

COMMISSIONER BROWN: Thank you.

MR. REHWINKEL: There is an intersection in this case with a -- a substantial pleading that we filed, and there's a lot of money at stake. It's a significant issue and --

COMMISSIONER BROWN: You would like more time.

MR. REHWINKEL: We -- we would, but I -- I would -- what I would ask leave to do is -- is allow us to talk among ourselves -- and -- and I'm not saying we need to decide it today. If you want to, we can -- and approach your staff and FPL about an allocation of time or an enlargement of time on our side that we can work among ourselves and propose to you.

I'm not trying to get, you know --

COMMISSIONER BROWN: And --

MR. REHWINKEL: -- an excessive amount of time.

COMMISSIONER BROWN: Absolutely. And -- and I will say, our legal staff offered less time, so I -- so, I --

MR. REHWINKEL: Yeah.

COMMISSIONER BROWN: -- expanded it to 30 minutes.

So, if there is an agreement with -- among the parties and -- I'll come to the bench in a second, but if there's an agreement or a proposal, we're willing to entertain it at this time. So, is there something that you believe is reasonable?

MR. REHWINKEL: Well, we -- we just haven't had a chance to talk among ourselves.

I wasn't expecting that, among all the intervenors, we would only have 30 minutes. I mean, this -- it -- I just -- I would need to talk among the folks to see what they think they --

COMMISSIONER BROWN: Why don't we do this: Let's take a five-minute recess. The time is 11:10. We'll come back here at 11:15.

MR. REHWINKEL: Okay. Thank you. Thank you.

COMMISSIONER BROWN: You're welcome.

(Brief recess.)

COMMISSIONER BROWN: All right. I hope the time was used wisely. We are back on the record.

I'm going to turn to Mr. Rehwinkel to see if you have a proposal for us.

MR. REHWINKEL: Well -- well, Madam Chairman, the -- the intervenor side has a proposal. We -- we sought to work out a comprehensive proposal that we could represent to you would work. We couldn't quite reach that.

COMMISSIONER BROWN: It looked like you almost did back there.

MR. WRIGHT: We were trying.

MR. REHWINKEL: Well, you know, I -- I want to credit FPL for taking the time to sit down and talk to us and share their views. And -- and when we don't reach agreement, it's not because one side is wrong and one side is right. It's just you can't reach agreement. So, by saying we couldn't work it out, I'm not ascribing any -- anything to -- to that, other than we didn't reach an agreement on a proposal.

But we do want to propose to you, from our side -- this is a unilateral proposal from the intervenor's side -- is you've indicated 30 minutes. We would ask that we be given an additional 10 minutes on our side to allocate among ourselves.

Our -- our view is this is an extremely serious issue with a lot of money for five million customers of FPL. Parsing minutes here and there should not be the goal. It -- the goal should be that we have sufficient time to make our case on --

COMMISSIONER BROWN: I could not agree more --

MR. REHWINKEL: -- matter.

COMMISSIONER BROWN: -- with -- with what you're saying.

MR. REHWINKEL: So, we -- we -- based on that, we would ask that we be given an additional ten minutes. We have no objection to FPL being given the same amount of time, but we recognize that the discretion of time is ultimately with the Commission. And so, that's -- that's my proposal.

COMMISSIONER BROWN: So, I -- so, I'd like to be equal and fair to the sides here. So, if FPL has a proposal be- --

MS. MONCADA: Thank you, Commissioner Brown. FPL agrees with what you said earlier, just less than ten minutes ago. We think 30 minutes per side is fair.

We also echo your sentiment that this will be 30 minutes of oral argument, following multiple rounds of briefing, in addition to the papers that already have been filed that address this issue.

There are four parties, as OPC represents, but as we heard this morning, the parties share the positions. They aren't divergent in their views. So, we think 30 minutes is fair.

COMMISSIONER BROWN: Thank you.

FIPUG.

MR. MOYLE: Respectfully, I mean, you know, as you said, the briefs are going to be pretty wide open to brief a lot of topics, including what --

COMMISSIONER BROWN: Not a lot of topics. I did not say that.

MR. MOYLE: Okay. Well --

COMMISSIONER BROWN: I did not say that.

MR. WRIGHT: Two topics.

(Laughter.)

MR. MOYLE: I guess I just want to make the point -- I mean, we're talking about three-quarters of a billion dollars. With four parties splitting it, as originally suggested, is going to be challenging.

My client -- and, I believe, the military -- is in a slightly different position because we -- we did not sign the settlement agreement. And the provisions of the settlement agreement are something that some parties are going to argue about, I think, more -- more stridently, you know, than others.

And we may take a position about saying, well, you know, we're a joint petitioner, but let us make our arguments. So, I think, you know, providing sufficient time --

COMMISSIONER BROWN: So, I -- I -- we don't need to have any more discussion on it.

MR. MOYLE: Okay.

COMMISSIONER BROWN: I'm prepared to rule on it. 40 minutes per side. FPL gets 40 minutes. The intervenors get 40 minutes, followed by, we will have an open dialogue with Commissioners, being allowed an opportunity to ask questions on any of the briefs, any of the materials that are presented on these two issues, Issue 18 and Issue 19.

As we know, the cost issues have already been voted on here today. So, we are limited to those two issues. The briefs should be limited to those two positions, and the oral argument should be limited to those two positions.

Do any of the Commissioners have any questions?

Commissioner Fay.

COMMISSIONER FAY: Madam Chair, do we need to vote on that or is that --

COMMISSIONER BROWN: No. No. We're -- we're just moving it forward. We're going to continue the hearing shortly.

MR. REHWINKEL: Thank you very much.

COMMISSIONER BROWN: You're welcome.

Any other matters to be addressed here before we conclude the -- pardon me --

MS. BROWNLESS: Continue.

COMMISSIONER BROWN: Continue -- move to continue the meeting to April 16th -- the hearing?

MS. BROWNLESS: Yes, ma'am. And I just want to make sure we're all clear, it's 40 minutes per side. So, FP&L will get 40 minutes, and all of the intervenors together will get 40 minutes.

COMMISSIONER BROWN: Yes, I thought I -- I said that, but yes, that is -- that is correct.

MS. BROWNLESS: Thank you, ma'am.

COMMISSIONER BROWN: Does -- are there any other concluding matters before we adjourn here?

MS. BROWNLESS: No, ma'am.

MR. MOYLE: Florida Industrial Power Users Group had -- had previously sought to raise an issue that, at the prehearing, you denied. And just out of an abundance of caution, I -- I would ask to raise that and have a ruling on that. I don't want to waive anything, in terms of preservation of the record.

COMMISSIONER BROWN: Wouldn't that have been cont- -- considered a preliminary matter at the beginning of this hearing?

MR. MOYLE: Probably.

COMMISSIONER BROWN: Yeah.

MR. MOYLE: Right, but -- but you're about to gavel it down. So, I just don't want anybody to ever say, you know, you -- you waived something. That's bad for lawyers when people say that, you didn't -- you weren't on your -- on your A-game and didn't raise it, so --

COMMISSIONER BROWN: Are you saying you're not on your A-game?

MR. MOYLE: I -- I hope I am.

(Laughter.)

COMMISSIONER BROWN: Ms. Brownless.

MS. BROWNLESS: Commissioner, we had a specific ruling on that. The prehearing order specifically discusses that at length. So, I believe that has been totally disposed of at this time and no additional ruling is necessary.

COMMISSIONER BROWN: Okay. All right. We will listen to our legal counsel on this matter.

MR. MOYLE: Okay. Thank -- thank you.

COMMISSIONER BROWN: Okay. Thank you.

Seeing no other matters, we will continue this hearing to April 16th, following internal affairs. And thank you so much for all of your participation here today. Thank you.

(Whereupon, proceedings concluded at 11:21 a.m.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, ANDREA KOMARIDIS, Court Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 13th day of February, 2019.

____
ANDREA KOMARIDIS
NOTARY PUBLIC
COMMISSION #GG060963
EXPIRES February 9, 2021