

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In 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: February 22, 2019

**FLORIDA INDUSTRIAL POWER USERS GROUP'S
INITIAL BRIEF**

The Florida Industrial Power Users Group (“FIPUG”), by and through their undersigned counsel, pursuant to Commission Order, files its Initial Brief in the above-styled matter.

Following preliminary proceedings, including the prehearing conference, the Commission established a briefing and oral argument schedule. The Commission asked that briefs be filed to address the following two issues, and issues which are “subsumed” within these two issues.

The remaining two issues are:

Issue 18: Does the 2016 Settlement Agreement allow FPL to credit the amortization reserve with the tax savings resulting from the Tax Cuts and Jobs Act of 2017?

Issue 19: How should the savings associated with the Tax Cuts and Jobs Act of 2017 be treated?

**I. Flow Back the Federal Tax Savings to Customers or
Require a Plan of How the Federal Tax Savings Will be Used**

FIPUG will first address how the nearly \$775 million in tax savings dollars realized every year should be treated by the Commission, Issue 19 above¹. Put simply, as the Commission has done in every other case in which it has acted on tax savings resulting from the Tax Cuts and Jobs Act of 2017, the Commission should order that the saved federal tax dollars be refunded to customers on a date certain. Doing so provides transparency and certainty as to what FPL will

¹ With respect to Issue 18, FIPUG will adopt the argument put forward by the Office of Public Counsel and the Florida Retail Federation.

do with the federal tax savings dollars. In other words, the Commission should develop, or ask FPL to develop, a federal tax savings plan which provides in detail when FPL customers can expect to receive a rate reduction, if any, attributable to the federal tax savings. The plan should be detailed and include at a minimum the amount of federal tax savings dollars that will be flowed back to customers, if any, and a date certain when these dollars will be flowed back to customers. Taking this step, informing the parties and the public when the federal tax savings will be realized by the ratepayers in the form of lower rates, and detailing the impact on FPL's customer's rates attributable to the federal tax savings changes, would meet the goals of transparency and certainty that has been discussed in related Commission federal tax reform proceedings. The Commission should review FPL's plan and either approve it, or order appropriate changes to the plan. Having such a plan will ensure that all parties, the utility and its customers understand the FPL plan and are able to plan accordingly.

II. Other Florida Electric Utilities Have Developed Plans to Flow Back Federal Tax Savings Dollars which the Commission Has Considered and Approved

Other Florida investor-owned utilities, including Duke Energy Florida, Inc. ("Duke"), Gulf Power Company ("Gulf") and Tampa Electric Company ("TECO") have developed plans related to the federal tax savings and have flowed back tax saving dollars to their respective ratepayers. Specifically, Duke proposed to flow back \$150.9 million per year to customers after paying expenses associated with Hurricane Irma and, to a lesser degree, Hurricane Nate. The Commission considered and approved this plan. See Docket No. 20180047-EI.

Gulf proposed base rate reductions for its customers as a result of federal tax reform. The Commission considered and approved the flow back of more than \$100 million to Gulf's customers. See Docket No. 20180039-EI.

TECO, after applying federal tax savings dollars to certain storm restoration costs, proposed a plan in which more than \$100 million would be flowed back to its customers beginning January 1, 2019. The Commission considered and approved this plan. TECO's customers are today enjoying the benefit of a base rate reduction directly attributable to the Tax Cuts and Jobs Act of 2017.

This Commission has also ordered a host of regulated natural gas companies to flow back federal tax return savings to customers. See e.g., Docket No. 20180044-GU.

Here, the Commission should order FPL to submit a plan for Commission consideration which details when and in what amount, if any, FPL will flow back federal tax savings dollars to ratepayers. Submission, review and approval (or modification of such a plan, if warranted) would be consistent with the Commission's statutory duties to actively regulate investor-owned utilities and set rates that are fair, just and reasonable. See sections 366.041 and 366.06, Florida Statutes. Further, Commission involvement in reviewing such a plan will result in nearly half of the state's population, which FPL currently serves, knowing with certainty whether Congressional action in passing the Tax Cuts and Jobs Act of 2017 will result in savings to them on their FPL electric bill, or not.

III. FPL's Hurricane Irma Expenses Should Be Paid For by the End of 2019

FPL has stated that it incurred approximately \$1.3 billion dollars in Hurricane Irma expense. (See FPL Petition filed in Docket 20180049-EI, Paragraph 25 claiming 1.27 billion in cost reimbursement for damage caused by Hurricane Irma). FPL and OPC have stipulated that the federal tax reform legislation saves FPL approximately \$775 million dollars per year. Thus, the federal tax reform savings of 2018 and 2019 ($\$775\text{m} \times 2 = \1.55 billion) surpasses the FPL

claimed amount for Hurricane Irma repairs.² As Duke and TECO have proposed, and the Commission has reviewed and ordered, the Commission should flow back the federal tax reform savings enjoyed by FPL to FPL's customers. Upon information and belief, nearly every state regulatory commission in the country has acted to ensure that federal tax reform savings are appropriately handled, with most flowing these monies back to customers. More than 100 public utilities have flowed back tax savings to their respective rate payers.

The Commission should order FPL to return federal tax savings to its customers upon the payment of its Hurricane Irma costs, just like the Commission did for Duke and TECO. Alternatively, the Commission should require FPL to file a plan for Commission review and approval which provides with specificity when, if at all, the federal tax savings dollars will be returned to FPL's customers and how much, if anything, will be flowed back to FPL's customers.

IV. FIPUG Is Not A Party to the Most Recent FPL Rate Case Settlement Agreement; The Joint Petition Should be Considered Due to Changed Circumstances and the Public Interest

FIPUG is not a signatory to the 2016 Stipulation and Settlement between FPL, the Office of Public Counsel ("OPC") and the Florida Retail Federation ("FRF"). FIPUG is a joint petitioner, along with OPC and FRF, in the Joint Petition for Rate Reductions or Alternative Reverse Make-Whole Action against FPL, Docket No. 20180224-EI. FIPUG's independent ability to take part in this joint filing is not impinged or in any way limited by the terms of the 2016 Stipulation and Settlement, an accord that FIPUG did not sign. Nor is FIPUG bound by the contractual Amortization Reserve language found in the Settlement Agreement. Obviously,

² The Commission is scheduled to consider whether this sum, or a lesser amount, should be awarded to FPL in Docket No. 20180049-EI

FIPUG cannot be contractually bound if it did not sign the contract in question. The Commission is similarly not bound by the 2016 Stipulation and Settlement as it has statutory obligations and responsibilities that cannot be constrained by the contractual settlement agreements of third parties. This point was made clear in Commission Order No. 22353, Docket Nos. 890216-TL and 890216-TL, *In re: Petition of Citizens of the State of Florida for a limited proceeding to reduce General Telephone Company of Florida's authorized return on equity; In re: Investigation into the proper application of Rule 25-14.003, F.A.C., relating to tax savings refunds for 1988 and 1989 for GTE Florida Incorporated* (Dec. 29, 1989), when the Commission explained:

[w]e do not possess the legal capacity of a private party to enter into contracts covering our statutory duties. Indeed, we cannot abrogate – by contract or otherwise – our authority to assure that our mandate from the Legislature is carried out. As a result, we may not bind the Commission or forego action in derogation of our statutory obligations....Therefore, the parties cannot limit our jurisdiction by way of a settlement agreement.

The Commission's ability to ensure that FPL is charging fair, just and reasonable rates, its express statutory responsibility, is not upended or removed by the 2016 Stipulation and Settlement Agreement. The Joint Petition alleges that FPL is currently charging rates that are not fair, just and reasonable after considering the effects of the federal tax reform. The Commission should consider that Joint Petition, conduct an evidentiary hearing in accord with the Administrative Procedures Act, and issue its decision.

Further, changed circumstances, namely, the passage of significant federal tax reform which reduce FPL's tax burden by 40%, is a significant change in circumstances that enable the Commission to decide what to do with FPL's federal tax savings, notwithstanding the Commission's approval of the 2016 Stipulation and

Settlement Agreement and Issue 18, the Amortization Reserve question. Put simply, Florida courts will not apply the doctrine of administrative finality when circumstances have changed significantly. *See Fla. Power & Light Co. v. Beard*, 626 So. 2d 660 (Fla.1993); *Univ. Hosp., Ltd. v. Agency for Health Care Admin.*, 697 So. 2d 909, 912 (Fla. 1st DCA 1997). Further, the Commission is able to review past decisions and make necessary adjustments if doing so is in the public interest. *Delray Medical Center Inc. v. Agency for Health Care Administration*, 5 So. 3d 26 (Fla. 4th DCA 2009).

Conclusion

For the reasons set forth above, FIPUG respectfully asks that the Commission take appropriate steps to return to FPL's customers the approximately \$775 million dollars that FPL is realizing as result of the Tax Cuts and Jobs Act of 2017. These steps may include, but are not limited to ordering FPL to submit a plan for Commission consideration detailing when federal tax savings will be flowed back to customers and how much in federal tax savings, if anything, will be flowed back to customers. FIPUG requests that the Joint Petition be considered by the Commission given the changed circumstances resulting from the Tax Cuts and Jobs Act of 2017 and because doing so is in the public interest, and order other relief as warranted.

/s/ Jon C. Moyle

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail this 22nd day of February, 2019, to the following:

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