

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: March 8, 2019

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

The Florida Industrial Power Users Group (“FIPUG”), by and through their undersigned counsel, pursuant to Commission Order, files its Reply 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 initial and reply briefs be filed to address the following two issues, and other 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. Initial Briefs Suggest That A Meeting of the
Minds Was Never Reached in the 2016 Settlement Agreement**

Upon review of the parties’ initial briefs addressing Issue 18 set forth above, a meeting of the minds never occurred with respect to how the amortization reserve provision of the 2016 Settlement Agreement (“Agreement”) would be implemented. (FIPUG was not a signatory to this Agreement. The Agreement was executed by only three (3) parties, while six (6) parties did not sign the Agreement.) Given the vastly differing views set forth in the respective Initial Briefs in this docket of how the amortization reserve is to be implemented, and specifically, how

the amortization reserve Agreement provisions interacts with the tax savings resulting from the Tax Cuts and Jobs Act of 2017, it is readily apparent that a meeting of the minds by important signatories to the Agreement never took place. *See*, Initial Briefs of Florida Power & Light Company (FPL), Office of Public Counsel (OPC) and Florida Retail Federation (FRF) filed in this docket on February 22, 2019.

Case law is clear that a contract is not formed if the parties did not reach a meeting of the minds on an essential provision of the contract. “Without a meeting of the minds of the parties on an essential element there can be no enforceable contract.” *See, Goff v. Indian Lake Estates, Inc.*, 178 So.2d 910, 912 (Fla. 2d DCA 1965); *Perkins v. Simmons*, 153 Fla. 595 (Fla. 1943) (“The law requires that there must be a meeting of the minds of the parties as to the essential elements contained or incorporated in the offer, as well as the essential elements incorporated in the acceptance.”).

While the parties obviously do not agree on the amortization reserve provision of the Settlement Agreement, the pleadings and respective Initial Briefs make clear that the amortization reserve provision is an essential provision of the Settlement Agreement. The failure to have a meeting of the minds regarding the amortization reserve provision, an essential element of the Agreement, is reason for the Settlement Agreement to be set aside.

Once the Agreement is set aside, the pending action in Docket Number 2018022-EI, which asks the Commission to order FPL to reduce its base rates as a result of the Tax Cuts and Jobs Act of 2017, should promptly move forward so that FPL’s customers receive federal tax savings rightly due them due to Congress passing federal tax reform legislation in 2017. Further, because FIPUG was not a party to the Agreement, and is not bound by an

Agreement it did not execute, the Commission should proceed with Docket 2018022-EI, consistent with its rules and Chapter 120 governing administrative actions.

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 will be flowed back to customers. FIPUG further requests that the Joint Petition be considered by the Commission given the changed circumstances resulting from the Tax Cuts and Jobs Act of 2017, because doing so is in the public interest, because no meeting of the minds occurred between FPL, OPC, and FRF about a material and essential element of the Agreement, namely how the amortization reserve provisions of the Agreement would be implemented, and grant such other relief as warranted.

/s/ Jon C. Moyle

Jon C. Moyle, Jr.

Karen A. Putnal

Moyle Law Firm, P.A.

118 North Gadsden Street

Tallahassee, Florida 32301

Telephone: (850)681-3828

Facsimile: (850)681-8788

jmoyle@moylelaw.com

kputnal@moylelaw.com

Attorneys for Florida Industrial Power Users Group

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail this 8th day of March, 2019, to the following:

Suzanne S. Brownless
Margo Duval
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
sbrownle@psc.state.fl.us
mduval@psc.state.fl.us

Mr. Ken Hoffman
Florida Power & Light Company
215 South Monroe Street, Suite 810
Tallahassee FL 32301
ken.hoffman@fpl.com

John Butler
Maria Moncada
Florida Power & Light Company
700 Universe Boulevard
Juno Beach FL 33408
John.Butler@fpl.com
Maria.moncada@fpl.com

J.R. Kelly, Esq.
Charles J. Rehwinkel
Office of Public Counsel
111 West Madison Street, room 812
Tallahassee, FL 32301
kelly,jr@leg.state.fl.us
rehwinkel.charles@leg.state.fl.us

Robert Scheffel Wright
John T. LaVia
Gardner Law Firm
1300 Thomaswood Drive
Tallahassee FL 32308
jlavia@gbwlegal.com
schef@gbwlegal.com

Maj. A. Unsicker/Capt. L. Zieman/
T. Jernigan/E. Payton/TSgt. R. Moore
Federal Executive Agencies
139 Barnes Drive, Suite 1
Tyndall AFB FL 32403
andrew.unsicker@us.af.mil
lanny.zieman.1@us.af.mil
thomas.jernigan.3@us.af.mil
ebony.payton.ctr@us.af.mil
ryan.moore.5@us.af.mil

/s/ Jon C. Moyle

Jon C. Moyle, Jr.