

Writer's E-Mail Address: bkeating@gunster.com

January 22, 2020

VIA E-PORTAL

Mr. Adam Teitzman
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

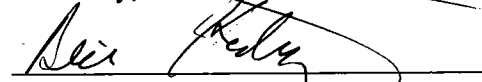
Re: [NEW FILING] Joint Motion of Florida Public Utilities Company and the Office of Public Counsel for Approval of Amendment to Stipulation and Settlement to Address State Income Tax Flow Through

Dear Mr. Teitzman:

Attached for filing, please find the attached Joint Motion of Florida Public Utilities Company and the Office of Public Counsel for Approval of Amendment No. 1 to Stipulation and Settlement. The referenced Amendment No. 1 is included as Attachment A to the Joint Motion.

Should you have any questions whatsoever, please do not hesitate to contact me. Thank you for your assistance in this matter.

Sincerely,



Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301
(850) 521-1706

MEK

Cc://Office of Public Counsel (Kelly)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Motion for Approval of) Docket No.
 Amendment to Stipulation and Settlement to)
 Address State Income Tax Flow Through.)
 _____) Filed: January 22, 2020

JOINT MOTION OF FLORIDA PUBLIC UTILITIES COMPANY AND THE OFFICE OF
 PUBLIC COUNSEL FOR APPROVAL OF AMENDMENT NO. 1 TO STIPULATION AND
 SETTLEMENT

Florida Public Utilities Company ("FPUC" or "Company") and the Office of Public Counsel ("OPC") (collectively, "Joint Movants") by and through their undersigned attorneys, respectfully move the Florida Public Service Commission ("Commission" or "FPSC") to approve the Amendment No. 1 to Stipulation and Settlement ("State Tax Amendment") attached hereto as Attachment "A", which the Joint Movants have entered into to address the disposition of savings resulting from the impact of a state income tax rate change on FPUC's Net Operating Income ("NOI"). In support hereof, the Joint Movants state as follows:

1. On July 3, 2017, FPUC petitioned the Florida Public Service Commission ("the Commission") for a limited proceeding to include \$15,241,515 in capital projects in rate base and increase its rates and charges by the amount necessary to recover the revenue requirement of \$1,823,869 on those projects.
2. OPC filed a notice of its intervention on September 21, 2017.
3. After extensive discovery, as well as productive discussions among the Parties, the Parties entered into a Stipulation and Settlement to resolve the Limited Proceeding ("Limited Proceeding Settlement"), which was filed on November 28, 2017, and approved by Commission Order No. PSC-2017-0488-PAA-EI, issued December 26, 2017.

State Tax Amendment

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4. The Limited Proceeding Settlement provided for an increase to FPUC's base rates sufficient to generate an additional \$1,558,050 of annual revenues to be implemented January 1, 2018, for purposes of recovering the revenue requirement on certain specified projects.

5. Article VII of the Limited Proceeding Settlement recognized that federal or state Tax Reform could impact the effective tax rate recognized by the Company in FPSC-adjusted reported net operating income and the measurement of existing and prospective deferred federal income tax assets and liabilities reflected in the FPSC adjusted capital structure. The Limited Proceeding Settlement required, therefore, that federal or state corporate tax savings arising from a state or federal corporate income tax rate reduction be passed on to FPUC's customers through a base rate reduction within 120 days of the effective date of such change.

6. On September 12, 2019, the Florida Department of Revenue ("DOR") issued a Tax Information Publication ("TIP") announcing that the Florida corporate income tax rate was reduced from 5.5 percent to 4.458 percent effective retroactive to January 1, 2019 and continuing in effect through December 31, 2021 ("State Tax Rate Change"). The TIP further indicated that the Florida corporate income tax rate will return to 5.5 percent effective January 1, 2022.

7. Both OPC and FPUC agree that this tax rate change took effect prior to the expiration of the Limited Proceeding Settlement. As noted, Article VII would require that FPUC flow the savings through to customers through a base rate change within 120 days of the effective date of the tax rate change. Given the timing, however, of the DOR's TIP, the retroactive nature of the State corporate income tax rate change, other existing, ongoing Commission proceedings that will likely impact FPUC's base rates, and the desire of the Joint Movants to avoid inclusion of an additional component that could increase the potential for customer confusion, the Joint Movants have reached agreement on an Amendment No. 1 ("State

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Tax Amendment”) to the Limited Proceeding Settlement, which provides for an alternative mechanism through which the state corporate income tax savings associated with the temporary state corporate income tax rate reduction will be passed on to FPUC’s customers.

8. The Joint Movants respectfully urge the Commission to approve this Joint Motion for Approval of Amendment No. 1 to Stipulation and Settlement.

9. The Joint Movants attest that no party will be prejudiced by the Commission’s approval of the State Tax Amendment.

10. In furtherance of this Joint Motion and approval of the State Tax Amendment, the Joint Movants waive any right to protest an order of the Commission approving the State Tax Amendment in its entirety.

11. For reference purposes only, the following is an overview of the key provisions of the State Tax Amendment:

a. The Parties agree that the impact of the State Tax Rate change on FPUC’s Net Operating Income (“NOI”) associated with base rates is a savings of approximately \$35,000 annually for years 2019 through 2021.

b. The Parties agree that the tax savings identified herein are based upon FPUC’s best estimates at the time of the filing of this State Tax Amendment. FPUC shall calculate the actual amount of the tax benefit to be flowed-through to customers.

c. For calendar year 2019, the NOI annual tax savings impact of \$35,825 will be applied to the Company’s existing fuel and purchased power cost recovery balance with interest, which will serve to reduce FPUC’s Fuel Cost Recovery factors for 2021. The savings for calendar years 2020 and 2021 will be

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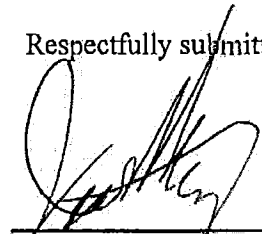
trued-up to actual and applied to the Company's existing fuel and purchased power cost recovery balances in 2020 and 2021 with interest, thereby reducing FPUC's Fuel Cost Recovery factors for 2022 and 2023.

12. The Joint Movants represent that the State Tax Amendment provides an equitable and just approach that fulfills the intent of Article VII of the Limited Proceeding Settlement. The Joint Movants submit approval of the State Tax Amendment is in the best interests of both the Company and its customers, and therefore, respectfully request approval of same.

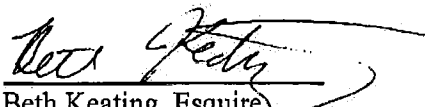
10. Commission approval of this Joint Motion is consistent with the Commission's long-standing policy to encourage settlements that provide benefits to the customers and avoid unnecessary additional litigation expense.

WHEREFORE, the Joint Movants respectfully request that the Commission approve the State Tax Amendment attached hereto as Attachment A.

Respectfully submitted this 22nd day of January 2020 by:



J.R. Kelly, Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street; Room 812
Tallahassee, FL 32399-1400
(850) 488-9330
Kelly.jr@leg.state.fl.us
Attorneys for the Citizens of the
State of Florida



Beth Keating, Esquire
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301
(850) 521-1706
bkeating@gunster.com
Attorneys for Florida Public Utilities Company

ATTACHMENT A

Amendment No. 1 to Stipulation and Settlement

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Motion for Approval of Amendment) Docket No.
to Stipulation and Settlement to Address State)
Income Tax Flow Through.)
_____) January 21, 2020

AMENDMENT NO. 1 TO STIPULATION AND SETTLEMENT

WHEREAS, on July 3, 2017, Florida Public Utilities Company (“FPUC” or “Company”) petitioned the Florida Public Service Commission (“the Commission”) for a limited proceeding to include \$15,241,515 in capital projects in rate base and increase its rates and charges by the amount necessary to recover the revenue requirement of \$1,823,869 on those projects with the effective day of such rate increase to be January 1, 2018 (“Limited Proceeding”); and

WHEREAS, on September 21, 2017, the Office of Public Counsel (“OPC”) intervened in that proceeding on behalf of the Citizens of Florida; and

WHEREAS, the Parties entered into a Stipulation and Settlement to resolve the Limited Proceeding (“Limited Proceeding Settlement”), which was filed November 28, 2017, and approved by Commission Order No. PSC-2017-0488-PAA-EI, issued December 26, 2017; and

WHEREAS, the Limited Proceeding Settlement provided for an increase to FPUC’s base rates sufficient to generate an additional \$1,558,050 of annual revenues to be implemented January 1, 2018, for purposes of recovering the revenue requirement on certain specified projects;

WHEREAS, Article VII of the Limited Proceeding Settlement recognized that federal or state Tax Reform could impact the effective tax rate recognized by the Company in FPSC-adjusted reported net operating income and the measurement of existing and prospective deferred federal income tax assets and liabilities reflected in the FPSC adjusted capital structure; and

WHEREAS, on September 12, 2019, the Florida Department of Revenue issued a Tax Information Publication (“TIP”) announcing that the Florida corporate income tax rate was

reduced from 5.5 percent to 4.458 percent effective retroactive to January 1, 2019 and continuing in effect through December 31, 2021 ("State Tax Rate Change"); and

WHEREAS, the TIP indicates that the Florida corporate income tax rate will return to 5.5 percent effective January 1, 2022; and

WHEREAS, the Parties agree that the state corporate income tax rate reduction became effective before the Limited Proceeding Settlement expired; and

WHEREAS, Section VII of the Limited Proceeding Settlement required that federal or state corporate tax savings be addressed through a base rate reduction within 120 days of the effective date of such change; and

WHEREAS, FPUC and OPC have signed this Amendment No. 1 ("State Tax Amendment") to the Limited Proceeding Settlement addressing an alternative mechanism by which the tax savings associated with the temporary state corporate income tax rate reduction will be passed on to FPUC's customers that is more efficient and equally beneficial; and

WHEREAS, unless the context clearly intends otherwise, the term "Party" or "Parties" shall mean a signatory or signatories to this State Tax Amendment; and

WHEREAS, the legal system, as well as the Commission, favors settlement of disputes for a variety of reasons, including that they are in the public interest; and

WHEREAS, the Parties to this State Tax Amendment, individually and collectively, agree that this State Tax Amendment, taken as a whole, is in the public interest; and

WHEREAS, the Parties have entered into this State Tax Amendment in compromise of positions taken in accord with their rights and interests under Chapters 350, 366 and 120, Florida Statutes, as applicable, and as part of a negotiated exchange of consideration among the Parties, each Party has agreed to concessions to the others with the expectation, intent, and understanding such that all provisions of this State Tax Amendment, upon approval by the Commission, will be enforced by the Commission as to all matters addressed herein with respect to both Parties; and

WHEREAS, the Parties agree that this State Tax Amendment is consistent with the underlying intent of the Limited Proceeding Settlement approved in Docket No. 20170150-EI; and

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants set forth herein, which the Parties agree constitute good and valuable consideration, the Parties hereby stipulate and agree as follows:

I. This State Tax Amendment will take effect upon Commission approval (“Effective Date”) and expire December 31, 2023, unless otherwise modified by Commission order.

II. The Parties agree that the impact of the State Tax Rate change on FPUC’s Net Operating Income (“NOI”) associated with base rates is a savings of approximately \$35,000 annually for years 2019 through 2021.

III. The Parties agree that the tax savings identified herein are based upon FPUC’s best estimates at the time of the filing of this State Tax Amendment. FPUC shall calculate the actual amount of the tax benefit to be flowed-through to customers.

III. For calendar year 2019, the NOI annual tax savings impact of \$35,825 will be applied to the Company’s existing fuel and purchased power cost recovery balance with interest, which will serve to reduce FPUC’s Fuel Cost Recovery factors for 2021. The savings for calendar years 2020 and 2021 will be trued-up to actual and applied to the Company’s existing fuel and purchased power cost recovery balances in 2020 and 2021 with interest, thereby reducing FPUC’s Fuel Cost Recovery factors for 2022 and 2023.

VI. The Parties reserve all rights, unless such rights are expressly waived or released, under the terms of this State Tax Amendment.

VII. The Parties hereto agree that this State Tax Amendment is in the public interest. As such, the Parties agree that this State Tax Amendment should be approved. The Parties likewise agree and acknowledge that the Commission’s approval of this State Tax Amendment promotes planning and regulatory certainty for both FPUC and its customers.

VIII. The Parties agree that they will support this State Tax Amendment and will not request or support any order, relief, outcome, or result in conflict with the terms of this State Tax Amendment in any administrative or judicial proceeding relating to, reviewing, or challenging the establishment, approval, adoption, or implementation of this State Tax Amendment or the subject matter hereof.

IX. No Party will assert in any proceeding before the Commission that this State Tax Amendment or any of the terms herein shall have any precedential value. The Parties' agreement to the terms in this State Tax Amendment shall be without prejudice to any Party's ability to advocate a different position in future proceedings not involving this State Tax Amendment.

X. The provisions of this State Tax Amendment modify the provisions of Section VII the Limited Proceeding Settlement and survive the expiration of the Limited Proceeding Settlement only to the extent expressly set forth herein.

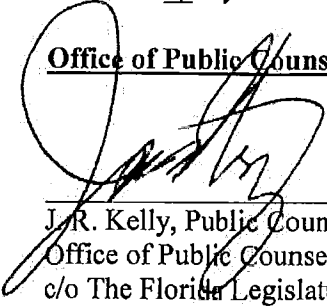
VIII. This State Tax Amendment is dated as of January 21, 2020. It may be executed in one (1) or more counterparts, all of which will be considered one and the same State Tax Amendment and each of which will be deemed an original.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties evidence their acceptance and agreement with the provisions of this State Tax Amendment by their signature(s).

Dated this 21 day of January 2020.

Office of Public Counsel



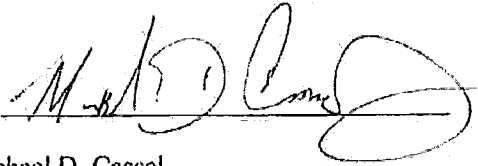
J.R. Kelly, Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400

Docket No. 20190156-EI

IN WITNESS WHEREOF, the Parties evidence their acceptance and agreement with the provisions of this State Tax Amendment by their signature(s).

Dated this 21 day of January 2020.

Florida Public Utilities Company

By: 

Michael D. Cassel
Assistant Vice President, Florida Public Utilities Company