

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** February 20, 2020

**TO:** Office of Commission Clerk (Teitzman)

**FROM:** Division of Accounting and Finance (Richards, D. Buys, Cicchetti) *CRR* *MC* *ALM*  
Office of the General Counsel (Brownless) *MB*

**RE:** Docket No. 20200033-EI – Joint motion for approval of Amendment No. 1 to stipulation and settlement, by Florida Public Utilities Company and Office of Public Counsel.

**AGENDA:** 03/03/20 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Graham

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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### Case Background

On July 3, 2017, Florida Public Utilities Company (FPUC or Company) petitioned the Commission to include \$15,241,515 in capital projects in its rate base and increase its rates and charges by the amount necessary to recover the revenue requirement of \$1,823,869 on those projects. These projects fell into three categories: (1) grid modernization and safety; (2) storm hardening; and (3) an interconnection with Florida Power & Light Company (FPL). The Office of Public Counsel (OPC) intervened on September 21, 2017, and the parties entered into a Stipulation and Settlement (2017 Settlement) resolving all issues which was approved by Order No. PSC-2017-0488-PAA-EI.<sup>1</sup>

<sup>1</sup>Order No. PSC-2017-0488-PAA-EI, issued December 26, 2017, in Docket No. 20170150-EI, *In re: Petition for limited proceeding to include reliability and modernization projects in rate base, by Florida Public Utilities Company.*

Article VII of the 2017 Settlement addresses changes in the federal or state corporate income tax rates and requires that federal or state corporate tax savings be addressed through a base rate reduction within 120 days of the effective date of such change.

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 5.500 percent to 4.458 percent effective retroactively to January 1, 2019, and continuing through December 31, 2021. The TIP indicates that the Florida corporate income tax rate will return to 5.50 percent effective January 1, 2022.

On January 22, 2020, to address this Florida tax change, FPUC and OPC filed a Joint Motion for Approval of Amendment No. 1 to Stipulation and [2017] Settlement (Joint Motion). Amendment No. 1 is Attachment A hereto. Both OPC and FPUC agree that the impact of the State Tax Rate change on FPUC's NOI associated with base rates is approximately \$35,000 annually for years 2019 through 2021. Acknowledging the tax savings amounts are based upon FPUC's best estimates, the Company calculated the actual amount of the tax benefit to be flowed-through to customers. 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.

If approved by the Commission, this State Tax Amendment will take effect upon Commission approval and expire on December 31, 2023, unless otherwise modified by Commission order.

The Commission should vote on whether or not to grant the Joint Motion and approve Amendment No. 1 to the 2017 Stipulation.

**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.

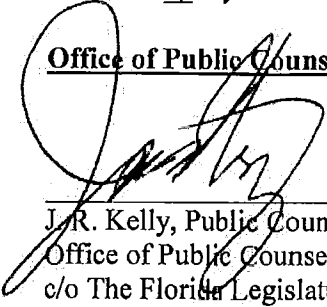
VIII. This State Tax Amendment is dated as of January 21, 2020. It may be executed in one (1) or more counterparts, all of which will be considered one and the same State Tax Amendment and each of which will be deemed an original.

[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



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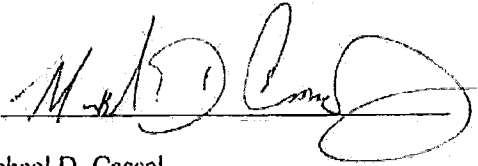
J.R. Kelly, Public Counsel  
Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, Room 812  
Tallahassee, Florida 32399-1400

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