

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20200148-WS

Consideration of the tax  
impacts associated with Tax  
Cuts and Jobs Act of 2017 for  
Gold Coast Utility Corp.

---

PROCEEDINGS: COMMISSION CONFERENCE AGENDA  
ITEM NO. 5

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

DATE: Tuesday, August 18, 2020

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

REPORTED BY: DEBRA R. KRICK  
Court Reporter and  
Notary Public in and for  
the State of Florida at Large

PREMIER REPORTING  
114 W. 5TH AVENUE  
TALLAHASSEE, FLORIDA  
(850) 894-0828

## 1 P R O C E E D I N G S

2 CHAIRMAN CLARK: Good morning. I would like  
3 to welcome everyone to this Tuesday, August 18th,  
4 Agenda Conference, and also a Special Agenda  
5 Conference that will be held immediately following  
6 this one.

7 And at this time, before we begin our meeting,  
8 I am going to ask Commissioner Graham, if he would,  
9 to give our invocation this morning, and I will  
10 lead us in the Pledge of Allegiance.

11 Commissioner Graham.

12 (Invocation and Pledge of Allegiance.)

13 CHAIRMAN CLARK: Thank you. You may be  
14 seated.

15 All right. We will call this meeting to  
16 order. Items No. 1, 5, 6 and 7 are on the move  
17 staff list. Staff has also informed me that, at  
18 Commissioner Polmann's request, we are going to  
19 defer Item No. 3, if that's in agreement with  
20 everyone, which leaves us Items No. 2 and 4 that  
21 will be moved to the end for discussion.

22 Are there any other items that any  
23 Commissioner would like to have taken off the move  
24 staff list?

25 All right. If not, I will entertain a motion

1 to approve the move staff items.

2 COMMISSIONER BROWN: Mr. Chairman, I would  
3 move to approve all of the staff recommendations on  
4 Items 1, 5, 6 and 7.

5 COMMISSIONER GRAHAM: I will second.

6 CHAIRMAN CLARK: I have a motion and a second  
7 to approve all the items on the Consent Agenda.

8 Any discussion?

9 All those in favor, please say aye.

10 (Chorus of ayes.)

11 MR. REHWINKEL: Chairman -- Chairman Clark.

12 CHAIRMAN CLARK: Yes, sir.

13 MR. REHWINKEL: This is Charles Rehwinkel. I  
14 had informed staff that I wanted to speak on Items  
15 5 and 6.

16 CHAIRMAN CLARK: Okay. My apologies, Mr.  
17 Rehwinkel. I did not get that message. We will --  
18 we will hold the vote and give you --

19 MR. REHWINKEL: I apologize for being slow on  
20 the trigger while you were -- I apologize.

21 CHAIRMAN CLARK: No problem.

22 Go ahead, Mr. Rehwinkel. We will hold -- we  
23 will have your comments before we take -- we call  
24 for the vote.

25 Mr. Rehwinkel, are you there?

1           MR. REHWINKEL: Yes. I -- I didn't know if we  
2           were going to go back into -- into the order, but I  
3           will -- I will give you my comments on both St.  
4           James and Gulf Coast together.

5           CHAIRMAN CLARK: Okay.

6           MR. REHWINKEL: On behalf of the customers, I  
7           am here to confirm that OPC maintains our  
8           continuing objection to the Commission's failure to  
9           recognize the unanticipated and unexpected cost  
10          reductions that resulted from the 2017 Tax Cuts and  
11          Jobs Act, which was passed under circumstances  
12          completely outside the control of the companies.

13          While we object to the Commission's policy of  
14          not returning tax savings unless a company is  
15          overearning, we are not here today to tilt at  
16          windmills, I am not here really to object to the  
17          staff's recommendation. Their recommendation is  
18          fully consistent -- and that is an important  
19          word -- with your long-established policy  
20          regardless of our views about it being  
21          ill-conceived. It is the policy that is wrong,  
22          regardless, consistency should prevail.

23          So you may ask why am I here, and why is the  
24          Office taking the time to speak on this issue?  
25          Well, the answer is that this policy is being

1 applied unevenly. It is being applied in an  
2 arbitrary manner. It is being applied  
3 asymmetrically when it comes to another comparable  
4 and equally unanticipated set of cost reduction --  
5 costs also manifested outside the control of the  
6 company.

7 We contend that the company needs to  
8 understand that this asymmetry gives rise to an  
9 appellate argument routed in unfairness. On one  
10 hand, in creating regulatory assets, you are  
11 arbitrarily and capriciously giving the companies a  
12 benefit that you did not symmetrically and  
13 consistently extend to the customers in allowing  
14 without settlement agreements to keep the tax  
15 savings if they are not overearning.

16 On the other hand, for costs that are  
17 similarly unanticipated and outside the company's  
18 control, you are providing deferral with an  
19 assurance of future cost recovery to companies who  
20 have not been determined to be underearning. You  
21 contend that actual cost recovery will not incur  
22 until after you have conducted or provided an  
23 opportunity for a Section 120.57 hearing.  
24 Nonetheless, because the assurance of future cost  
25 recovery is a required element for establishing the

1           deferral mechanism, or regulatory asset in the  
2           first instance, most, if not all, of the costs  
3           deferred are likely to be recovered from the  
4           pockets of customers.

5           Commissioners, this is not fair. The  
6           customers ride in steerage class while the  
7           companies and their shareholders enjoy first class  
8           state rooms. This is the classic heads you lose,  
9           tails I win situation. Your unwritten and  
10          inconsistently applied tax windfall and deferred  
11          asset authorization policies are stacked against  
12          the customers, and these two dockets illustrate it  
13          in contrast.

14          The policy reeks of unfairness because of the  
15          lack of a two-way street. If you are not going to  
16          hold hearings in advance of allowing deferral of  
17          the debits without regard to earnings, then we  
18          contend you have a moral if not a legal obligation  
19          to forbear here and return the tax savings, or  
20          perhaps revisit those rulings that applied an  
21          earnings test with an opportunity for hearing to  
22          your treatment of the tax savings credits.

23          Otherwise, to be consistent in application of this  
24          policy and cases that are analogous to these  
25          dockets, tax savings determinations, but in a

1 mirror image situation, you should conducted a  
2 hearing, and then based on the outcome of the  
3 hearing, you should symmetrically and consistently  
4 apply an earnings test to any recognition of  
5 unanticipated costs that are also considered any  
6 unanticipated associated cost savings.

7 Perhaps under these circumstances, symmetrical  
8 rate-making treatment could be applied in the form  
9 of allowing the creation of regulatory asset.

10 The customers deserve the rudiments of  
11 fairness and consistency. Rate-making really is  
12 about fair recognition above the debits and  
13 credits, and not just the selectively chosen  
14 debits.

15 Commissioners, I make these comments because I  
16 am illustrating that this docket is -- is being  
17 decided inconsistently with other dockets based on  
18 analogous set of facts.

19 Thank you.

20 CHAIRMAN CLARK: Thank you, Mr. Rehwinkel.

21 Commissioners, any discussion?

22 Commissioner Brown.

23 COMMISSIONER BROWN: Thank you.

24 So reading these dockets, it was clear to me,  
25 quite frankly, that these utilities -- these water

1 utilities are significantly earning below their  
2 rate of return, and obviating the need to have a  
3 full blown rate case, staff is recommending a  
4 prudent course of action.

5 But I do want to hear from staff regarding Mr.  
6 Rehwinkel's comments, which definitely surprised  
7 me. It appears that he doesn't object to the  
8 actual dockets itself, correct -- or to staff  
9 recommendation on these two items. He just objects  
10 to the different treatments of the tax savings as a  
11 result of the Tax and Jobs Act, so could I -- could  
12 we here from staff on this?

13 CHAIRMAN CLARK: Mr. Futrell.

14 MR. FUTRELL: Commissioner Brown, this is Mark  
15 Futrell. I will take a shot, and perhaps Mr.  
16 Maurey or Mr. Cicchetti may want to -- want to  
17 follow up.

18 Certainly we understand -- I hear Mr.  
19 Rehwinkel's arguments that go to a global  
20 perspective of not only these tax issues but also  
21 regulatory asset issues, one of which is coming up  
22 before you in Item 4, and it's previously been  
23 dealt with for -- for Gulf Power Company and their  
24 filings pertaining to that decision by the  
25 Commission that will be brought before you in the



1 coming weeks and -- and be resolved.

2 So I understand what the -- the larger issues  
3 he is touching upon, but I think some of these  
4 things are dependent upon additional decisions that  
5 are coming before the Commission, again in Item 4,  
6 and also in the future.

7 COMMISSIONER BROWN: Thank you, Mr. Futrell.

8 And, Mr. Chairman, I have no problem with the  
9 staff recommendation on these two items, and I  
10 still stand by the motion.

11 CHAIRMAN CLARK: Thank you, Commissioner  
12 Brown.

13 Commissioner Polmann.

14 COMMISSIONER POLMANN: Mr. Chairman, may we  
15 have, if there is, any further elaboration on  
16 Commissioner Brown's request? Did -- did staff  
17 have anything to add that Mr. Futrell suggested? I  
18 just wanted to close that if other staff had  
19 anything to add to that, I just wanted to make sure  
20 we -- we fully answered that question.

21 MR. FUTRELL: Does Mr. Maurey have anything to  
22 offer?

23 MR. MAUREY: Commissioner Polmann, this is  
24 Andrew Maurey. Good morning.

25 No, we agree with -- with what Mr. Futrell

1           said. It appears to be a discussion of regulatory  
2           assets on a macro basis.

3           COMMISSIONER POLMANN: Okay, thank you.

4           Mr. Chairman, to Mr. Rehwinkel's comments,  
5           I -- I appreciate the Office of Public Counsel  
6           bringing forth the -- the concern for equity and  
7           consistency. I want to honor that. I -- I believe  
8           that is an ongoing concern for this commission, and  
9           I am thankful that he, on behalf of OPC, continues  
10          to raise it. That is a challenge for this  
11          commission, and I don't discount that in any way.

12          I am concerned, however, regarding his  
13          question, or -- or his bringing into the assertion,  
14          if you will, I believe what he -- what his remark  
15          suggested is some assurance to the utilities, and  
16          it concerns the regulatory asset for an assurance  
17          to utilities for future recovery that we may be  
18          providing, he seemed rather unhappy about --  
19          (inaudible) -- in a subsequent item here, that's  
20          fine, but if staff has a comment, I don't believe  
21          that's what we are doing, or what we have done, Mr.  
22          Chairman. I just want to respond to that. I don't  
23          understand that that's the case. So if there is a  
24          response that's necessary on the record, I would  
25          like to hear it. I just wanted to make that

1 comment, because that is not my understanding. I  
2 don't believe that's true.

3 That's all I wanted to say about that, but if  
4 staff has anything else to add, I certainly would  
5 like to hear it.

6 Thank you, Mr. Chairman.

7 CHAIRMAN CLARK: Thank you, Commissioner  
8 Polmann.

9 Mr. Futrell.

10 MR. FRIEDMAN: Mr. Chairman, this is Marty  
11 Friedman. I am the attorney for Gold Coast, can I  
12 just make one observation?

13 CHAIRMAN CLARK: Yes, Mr. Friedman.

14 MR. FRIEDMAN: Yeah, I would just point out,  
15 at least as to Gold Coast, there is less than  
16 \$2,000 in income tax expense included in the  
17 revenue requirement for this company. So I don't  
18 know how that could be anything significant in  
19 the -- in the realistic outcome of -- of this tax  
20 docket.

21 CHAIRMAN CLARK: I think that OPC was saying  
22 they did not have a specific problem with these  
23 issues. It was the overall way that the tax -- the  
24 Tax and Jobs Act was being applied as a regulatory  
25 asset. I think that's kind of a different issue.

1           Mr. Futrell, do you want to address that?

2           MR. FUTRELL: I would just suggest,  
3           Commissioner Polmann, I think some of his questions  
4           are -- are right on the money, appropriate for Item  
5           4 that will be coming up before the Commission.  
6           And again, I think that's the place where some of  
7           these larger considerations can be -- can be  
8           brought up. I am sure OPC will be bringing up some  
9           of these same arguments in that item.

10          CHAIRMAN CLARK: Okay. Very good.

11          Commissioners, any other questions or  
12          discussion?

13          All right. On the motion, all in favor say  
14          aye.

15          (Chorus of ayes.)

16          CHAIRMAN CLARK: Opposed?

17          (No response.)

18          CHAIRMAN CLARK: All right. The motion is  
19          adopted.

20          (Agenda item concluded.)

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE OF REPORTER

STATE OF FLORIDA )  
COUNTY OF LEON )

I, DEBRA KRICK, 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 26th day of August, 2020.



DEBRA R. KRICK  
NOTARY PUBLIC  
COMMISSION #HH31926  
EXPIRES AUGUST 13, 2024