

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-

DATE: November 17, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (Cicchetti) *ALM, MC*
Office of the General Counsel (Brownless, Schrader) *JBC*

RE: Docket No. 20180013-PU – Petition to establish a generic docket to investigate and adjust rates for 2018 tax savings, by Office of Public Counsel.

AGENDA: December 1, 2020 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: Graham, Brown, Clark

PREHEARING OFFICER: Brown

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

This docket was opened to address the tax effects of the Tax Cuts and Jobs Act of 2017 (TCJA) on regulated utilities in the State of Florida. Separate dockets were opened for all electric and natural gas utilities, all of which have been resolved. The fifteen water and wastewater utilities that included federal income taxes in their revenue requirements were addressed in this docket. Order No. PSC-2019-0350-PAA-PU, issued August 22, 2019, found that thirteen of the fifteen water and wastewater utilities, including Utilities Inc. of Florida (UIF), were not required to reduce their base rates to account for the reduction in the federal corporate income tax rate as they were not earning above their allowed rate of return.

On September 12, 2019, Office of the Public Counsel (OPC) filed a timely protest of Order No. PSC-2019-0350-PAA-PU with regard to UIF only. Order No. PSC-2019-0397-PCO-PU, issued October 2, 2019, set a final hearing for March 3-4, 2020. On February 6, 2020, OPC and UIF filed a joint motion to approve Settlement Agreement and to hold the hearing schedule in

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abeyance. This was granted by Order No. PSC-2020-0053-PCO-PU, issued February 13, 2020. The approved Settlement Agreement required UIF to file Minimum Filing Requirements (MFR) for a comprehensive rate proceeding on or before July 31, 2020, and if UIF did so, OPC agreed to withdraw its request for hearing filed on September 12, 2019. UIF filed its MFRs in Docket No. 20200139-WS on June 30, 2020. In accord with the Settlement Agreement, OPC filed a notice of withdrawal of its protest of Order No. PSC-2019-0350-PAA-PU on July 10, 2020. This recommendation addresses OPC's notice of withdrawal of its protest, and whether it is appropriate to close this docket at this time.

The Commission has jurisdiction over this matter pursuant to Sections 366.04, 366.041, 366.07, 367.011, 367.081 and 367.121, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission acknowledge OPC's withdrawal of its Petition Requesting Evidentiary Hearing on Protested Portions of PAA Order No. PSC-2019-0350-PAA-PU?

Recommendation: Yes. The Commission should acknowledge the withdrawal of OPC's petition and make Order No. PSC-2019-0350-PAA-PU final and effective. (Brownless, Cicchetti)

Staff Analysis: It is a well established legal principle that the plaintiff's right to take a voluntary dismissal is absolute.¹ Once a voluntary dismissal is taken, the trial court loses all jurisdiction over the matter, and cannot reinstate the action for any reason.² Both of these legal principles have been recognized in administrative proceedings.³ In *Saddlebrook Resorts, Inc. v. Wiregrass Ranch, Inc.*, 630 So. 2d 1123, 1128 (Fla. 2d DCA 1993), the court concluded that "the jurisdiction of any agency is activated when the permit application is filed . . . [and] is only lost by the agency when the permit is issued or denied or when the permit applicant withdraws its application prior to completion of the fact-finding process." In this case, the hearing has not yet occurred, so the fact-finding process is not complete. Staff therefore recommends that the Commission acknowledge OPC's withdrawal of its protest as a matter of right, which is in accord with past Commission decisions.⁴

OPC was the only entity that filed a protest of PAA Order No. PSC-2019-0350-PAA-PU, and OPC has now withdrawn its protest. The protest period for that order expired September 12, 2019. As such, Order No. PSC-2019-0350-PAA-PU should now become final and effective

¹ *Fears v. Lunsford*, 314 So. 2d 578, 579 (Fla. 1975)

² *Randle-Eastern Ambulance Service, Inc. v. Vasta, Elena, etc.*, 360 So. 2d 68, 69 (Fla. 1978)

³ *Orange County v. Debra, Inc.*, 451 So. 2d 868 (Fla. 1st DCA 1983); *City of Bradenton v. Amerifirst Development Corporation*, 582 So. 2d 166 (Fla. 2d DCA 1991); *Saddlebrook Resorts, Inc. v. Wiregrass Ranch, Inc.*, 630 So. 2d 1123 (Fla. 2d DCA 1993), *aff'd*, 645 So. 2d 374 (Fla. 1994).

⁴ See Order No. PSC-11-0453-FOF-EI, issued October 10, 2011, in Docket No. 100358-EI, *In re: Investigation into the design of Commercial Time-of-Use rates by Florida Power & Light pursuant to Order No. PSC-10-0153-FOF-EI* and Order No. PSC-07-0725-FOF-EU, issued September 5, 2007, in Docket No. 060635-EU, *In re: Petition for determination of need for electrical power plant in Taylor County by Florida Municipal Power Agency, JEA, Reedy Creek Improvement District, and City of Tallahassee.*

Issue 2: Should this docket be closed?

Recommendation: Yes. All issues associated with the TCJA having now been resolved, staff recommends that this docket be closed. (Brownless, Cicchetti)

Staff Analysis: This docket was opened to address the impacts of the TCJA on Florida regulated utilities. Separate dockets were opened for all electric and natural gas utilities, all of which have now been resolved. The fifteen Florida water and wastewater utilities that were impacted by the TCJA were addressed in this docket. The tax issues regarding thirteen of these water and wastewater utilities were resolved by Order No. PSC-2019-0350-PAA-PU. The remaining two utilities, Gold Coast Utility Corporation and St. James Utility Company, were not resolved in that order due to the fact that neither utility had filed its 2018 Annual Report. Separate dockets were established for these utilities⁵ and Proposed Agency Action (PAA) orders were issued in each docket on September 4, 2020.⁶ The protest period for each order ran on September 25, 2020. No protests were filed and Consummating Orders for each docket were issued on September 28, 2020,⁷ making PAA Order Nos. PSC-2020-0300-PAA-WS and PSC-2020-0301-PAA-WS final. All issues associated with the TCJA having now been resolved, staff recommends that this docket be closed.

⁵Docket No. 202000148-WS, *In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Gold Coast Utility Corporation*; Docket No. 20200149-WS, *In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for St. James Utility Company*.

⁶Order No. PSC-2020-0300-PAA-WS, issued September 4, 2020, in Docket No. 20200148-WS, *In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Gold Coast Utility Corporation*; Order No. PSC-2020-0301-PAA-WS, issued September 4, 2020, in Docket No. 2020149-WS, *In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for St. James Utility Company*.

⁷ Order Nos. PSC-2020-0325-CO-WS and PSC-2020-0326-CO-WS.