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February 5, 2019

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Item 1

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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: January 24, 2019

TO: Docket No. 20180141-WS

FROM: Adam J. Teitzman, Commission Clerk, Office of Commission Clerk

RE: Rescheduled Commission Conference Agenda Item

Staff's memorandum assigned DN 07311-2018 was filed on November 29, 2018, for the December 11, 2018 Commission Conference. As the vote sheet reflects, this item was deferred. This item has been placed on the February 5, 2019 Commission Conference Agenda.

/ajt

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State of Florida

Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: November 29, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Harper)
Division of Accounting and Finance (Galloway, Wilson)
Division of Economics (Guffey)

RE: Docket No. 20180141-WS – Proposed adoption of Rule 25-30.4575, F.A.C., Operating Ratio Methodology.

AGENDA: 12/11/18 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Polmann

RULE STATUS: Proposal May Be Deferred

SPECIAL INSTRUCTIONS: None

Introduction and Summary of Changes

At the October 30, 2018 Agenda Conference, the Office of Public Counsel (OPC) asked the Commission to defer the item so that OPC and staff could further discuss a potential compromise on the rule language. The Commission deferred the item. On November 8, 2018, staff held an informal meeting on the rule, which included representatives from OPC, U.S. Water, OCBOA Consulting, LLC, and Florida Utility Services 1, LLC. As a result of the informal meeting with OPC and the interested persons, staff made changes to subsection (1) of the proposed rule which are summarized as follows:

- Including a $15,000 cap in subsection (1) of the rule (rather than no cap as staff initially proposed).

- In determining the revenue requirement, staff will apply a margin of 12 percent of the utility's operation and maintenance expenses (rather than 15 percent as initially proposed by staff).

Staff believes these changes will not affect the number of utilities who should qualify for the operating ratio methodology. As a result of these changes made to the rule arising out of staff's November 8, 2018 meeting, staff also made minor changes to this analysis, which are reflected below in type and strike.

Case Background

Pursuant to Section 367.0814(9), Florida Statutes (F.S.), the Commission may by rule establish standards and procedures whereby rates and charges of small utilities are set using criteria other than those set forth in Sections 367.081(1), (2)(a) and (3), F.S. Rule 25-30.4575, Operating Ratio Methodology, Florida Administrative Code (F.A.C.), will be a new rule that sets forth the Commission's policy on the use of the operating ratio methodology in staff-assisted rate cases (SARC). The proposed rule is included as Attachment A. The operating ratio methodology is used to determine the revenue requirement in certain staff-assisted water and wastewater rate cases and is an alternative to the traditional calculation of revenue requirement for smaller water and wastewater utilities. The operating ratio methodology substitutes the utility's operation and maintenance expenses for rate base in calculating the amount of return.

The operating ratio methodology was first introduced in Docket No. 950641-WU, an application for a SARC in Palm Beach County by Lake Osborne Utilities Company, Inc. (Lake Osborne).[1] In a SARC, the Commission is charged with approving a revenue requirement that will provide a utility with the opportunity not only to recover its operating expenses, but also to earn a fair return on its investment (or margin).

However, when a utility's rate base is small or negative, as was the case for Lake Osborne, the utility could be subject to an inadequate margin or no margin at all. As such, the utility is unable to effectively deal with extraordinary events, unexpected expenses and repairs, and has a reduced incentive for further investment. A utility that lacks the funds to make necessary repairs has a significantly reduced ability to provide safe and reliable service to its customers. To assist ~~these~~ water and wastewater utilities with these circumstances and protect the customers' ability to receive safe and reliable service, after approval of the Lake Osborne case, the Commission began utilizing the operating ratio methodology as an alternative to the traditional calculation of revenue requirement for smaller water and wastewater utilities that apply for a SARC.

Before considering applying the operating ratio methodology for subsequent SARCs, the Commission established the following threshold qualifying criteria in the Lake Osborne Order: (1) whether the utility's operation and maintenance (O&M) expense exceeds rate base, and (2) whether the utility is expected to become a Class B utility in the foreseeable future. The Commission noted that additional factors could be considered such as: (1) quality of service and

[1]Order No. PSC-96-0357-FOF-WU, issued March 13, 1996, in Docket No. 950641-WU, *In re: Application for staff assisted rate case in Palm Beach County by Lake Osborne Utilities Company, Inc.* (Lake Osborne Order).

condition of plant, (2) whether the utility is developer-owned, and (3) whether the utility operates treatment facilities or is simply a distribution and/or collection system. Collectively, these criteria have been used in subsequent SARCs in order to determine whether or not the operating ratio methodology was appropriate.

In the Lake Osborne Order, the Commission recognized that by implementing Section 367.0814, F.S. (the SARC statute), the Legislature recognized that the segment of the water and wastewater industry comprised of Class C utilities is significantly different from the remainder of regulated water and wastewater utilities. That Order also established that an alternative to the traditional calculation of revenue requirement was within the Commission's jurisdiction.[2]

Since the Lake Osborne Order, approximately 167 SARCs have been filed with the Commission. Staff recommended applying the operating ratio methodology in 23 dockets, and the Commission has approved the methodology in 21 of those dockets. A summary of these dockets is included as Attachment B. Staff initiated this rulemaking to codify the Commission's long-standing practice regarding the operating ratio methodology and to evaluate the necessary components needed in the rule to reflect the conditions currently faced by small water and wastewater utilities.

The Commission's Notice of Development of Rulemaking for Rule 25-30.4575, F.A.C., Operating Ratio Methodology, was published in Volume 43, No. 229, of the Florida Administrative Register on November 29, 2017. On December 14, 2017, staff held a Rule Development Workshop. Representatives from ~~the Office of Public Counsel (~~OPC~~)~~ and U.S. Water Services Corporation (U.S. Water) participated at the workshop and submitted post-workshop comments. Additionally, representatives from Utilities Inc. of Florida attended the workshop but did not submit post-workshop comments.

This recommendation addresses whether the Commission should propose the adoption of Rule 25-30.4575, F.A.C. The Commission has jurisdiction pursuant to Section 120.54, F.S., and Section 367.0814, F.S.

[2]Lake Osborne Order, pg. 3.

Discussion of Issues

Issue 1: Should the Commission propose the adoption of Rule 25-30.4575, F.A.C., Operating Ratio Methodology?

Recommendation: Yes, the Commission should propose the adoption of Rule 25-30.4575, F.A.C., as set forth in Attachment A. The Commission should certify Rule 25-30.4575, F.A.C., as a minor violation rule. (Harper, Galloway)

Staff Analysis: In a staff-assisted rate case (SARC), a calculation is made to determine the utility's revenue requirement. The revenue requirement reflects the monies a utility needs to recover its operating expenses and provide it with an opportunity to earn a fair rate of return on its investment.

The traditional calculation of revenue requirement for smaller water and wastewater utilities is achieved by adding the operation and maintenance (O&M) expenses to the net depreciation expense, amortization expense, taxes other than income taxes, income taxes, and a return on investment. The "return on investment" for SARCs is the overall rate of return multiplied by the amount of rate base. All of these components added together make up the revenue requirement in a SARC through traditional ratemaking. However, in some SARCs, traditional ratemaking, also referred to as the rate of return methodology, does not always provide sufficient revenue to protect against potential variances in revenue and expenses. In these cases, the utility may qualify for the operating ratio methodology.

When the operating ratio methodology is applied, instead of calculating the revenue requirement by including the return on investment (rate of return x rate base), the "return on investment" has been replaced by an operating margin. The operating margin is calculated by multiplying a defined percentage by the amount of O&M expenses. As stated in the Lake Osborne Order, the operating ratio methodology substitutes O&M expenses for rate base in calculating the amount of return (or margin).

The table below shows the difference between the two methodologies, the use of a rate of return times rate base (traditional rate base methodology), as compared to the margin percentage times operation and maintenance expenses (operating ratio methodology).

Table 1-1
Comparison of Traditional and Operating Ratio Methodologies*

Traditional Revenue Requirement Calculation	Operating Ratio Methodology
Operation and Maintenance Expense	Same
Net Depreciation Expense	Same
Amortization	Same
Taxes Other than Income Taxes (less RAFs)	Same
Income Taxes	Same
Rate of Return percent x Rate Base	Margin percent x O&M expense
= Revenue Requirement before RAFs	= Revenue Requirement before RAFs

*This table applies to non-reseller utilities

Many utilities that apply for a SARC are financially troubled systems. Many times, these are not utilities that are simply earning below the bottom of their authorized rate of return range; these are utilities that are losing money. Often, these are utilities that have been losing money on a consistent basis over a prolonged period of time. The operating ratio methodology is intended to act as a bridge for these troubled systems to become financially viable and return to the traditional revenue requirement calculation. The operating ratio methodology also provides a lifeline for them to stay in business and remain viable entities that can provide safe and reliable water and wastewater services to their customers.

At the staff workshop and in its post-workshop comments, OPC indicated its preference for the proposed Commission rule to codify the operating ratio methodology set forth in the Lake Osborne Order. OPC stated that because the proposed rule does not incorporate the exact same criteria set forth in the Lake Osborne Order, it defies the purpose of rulemaking and allows for the development of new policy based on non-existent difficulties. OPC further stated that the Commission's policy on the operating ratio methodology had been clearly and consistently applied over 21 years.

The Lake Osborne Order recognized that determining whether to utilize the operating ratio methodology required a great deal of judgement. In keeping with the spirit of the Lake Osborne Order, staff considered whether to include each of the five criteria from the Lake Osborne Order in the proposed rule. However, because the Lake Osborne Order states that the Commission "may" consider the factors listed in the order, this would give the Commission too much discretion in the context of rulemaking under Section 120.545(1), F.S. Therefore, staff began the process of scrutinizing each criteria in hope of finding a way to enable the same understanding that judgement is critical in determining which SARCs should qualify for the operating ratio methodology.

For smaller water and wastewater utilities whose resources are very limited, a SARC is a daunting process, even though staff provides the expertise. Staff notes that some utilities that apply for a SARC have never been before the Commission for a rate case or applied for a rate increase, despite having been in existence for decades. Because many <u>small water and wastewater utilities that are eligible for</u> SARCs are financially troubled systems, staff believes the suggestion that there ~~is~~ <u>are non-existent difficulties is misplaced. Staff believes there is</u> ~~no~~ evidence of a need to make the proposed adjustments contained in the proposed rule ~~is misplaced~~.

Staff believes the attached proposed rule is an opportunity to be proactive rather than reactive. Staff disagrees with OPC's assertion that provisions of the proposed rule address "non-existent difficulties." Instead, staff believes if the Commission codifies the practice in a rule, the proposed rule should reflect the Commission practice that has applied for over 20 years, the Commission's experience gained from implementing the operating ratio methodology, and the current economic and operational conditions that small water and wastewater utilities face. Staff's analysis below discusses in more detail the areas where the Commission's policy on the operating ratio methodology should be refined from the Commission's policy set forth in the Lake Osborne Order.

Subsection (1) of the Rule – How the Operating Ratio Methodology Should be Calculated

Subsection (1) of Rule 25-30.4575, F.A.C., provides that the operating ratio methodology will calculate the water or wastewater utility's revenue requirement based on the utility's operating expenses plus a margin of 12 ~~15~~ percent of the utility's operation and maintenance expenses.

12 ~~15~~ Percent Margin and ~~No $10,000~~ $15,000 Cap

OPC's initial comments ~~commented~~ were that the margin percentage should be 10 percent with a $10,000 cap, consistent with the Lake Osborne Order. It should be noted that this cap, which originated in the Lake Osborne Order, has been applied at the Commission's discretion in other cases since 1996. The Commission has always had the discretion to alter or remove the cap in any particular docket in the use and application of the operating ratio methodology.

In its comments, OPC alleged there is no evidence that the Commission's current practice is ineffective or causing harm. Contrary to OPC's view, staff believes that there is ~~Again, staff disagrees with OPC's suggestion that there is no~~ evidence to support an increase in the margin percentage and the removal of $10,000 cap. While the Commission has never applied a margin greater than 10 percent in any of the cases where operating ratio has been approved, staff believes the rule should promote a policy that allows utilities to provide the safest and most reliable service to customers. Staff believes that changes in circumstances have occurred since the Lake Osborne Order and the changes must be considered and evaluated. U.S. Water Services stated in its comments that:

> Many of the utilities that I manage have little to no rate base through no fault of the acquiring utility and are faced with financial difficulties meeting day-to-day operations. Just as many of these utilities were financially non-viable, distressed utilities that were acquired in order to turn them around and provide safe and reliable service to customers. Without the operating margin, several of these utilities would either not have been acquired and/or would remain financially non-viable.

U.S. Water also stated that the 10 percent margin that was established more than 20 years ago in the Lake Osborne Order should be further evaluated. Staff agrees, and believes that the proposed rule's 12 ~~15~~ percent margin represents a natural evolution of the practice addressed in the Lake Osborne Order.

Other states' policies regarding use of an operating ratio and the associated percentage applied to achieve a margin were analyzed in the Lake Osborne Order. As part of this rule docket, staff sent out a request through the National Association of Regulatory Utility Commissioners (NARUC) to learn what other states have been doing since the Commission's initial decision in 1996. The specific states referenced in the Lake Osborne Order included Kentucky, North Carolina, South Carolina, California, and Michigan. With the exception of Michigan, which no longer regulates water and wastewater utilities, and California, which did not respond to the request, the states referenced in the Lake Osborne Order have not changed from their 1995-1996 alternative rate setting policies. These states are very interested in what the Florida Commission will decide. Below is a synopsis of current policies for these states:

- Kentucky has been using a 12 percent margin since 1995-1996 and also allows a dollar-for-dollar coverage for short-term interest expense.

- North Carolina continues to use a margin based on the yield on the 5 year U.S. Treasury Bond plus 3 percent for risk.

- South Carolina sets operating margins for each water and wastewater utility regardless of size and recent rulings have been above the 15 percent margin level. However, the typical range is 10 – 15 percent. Two cases in 2018 were settled with one margin of 12.32 percent and the other margin was 14.99 percent.

While it is important to be informed about what other states are doing with regard to alternative rate making, staff believes that Florida is in a unique situation with respect to regulation of water and wastewater utilities. For example, water and wastewater utilities operating in Florida must contend with a seasonal customer base, saltwater intrusion, sinkholes, and hurricanes. Therefore, while consideration of other states' policies is informative, it is not necessarily conclusive for the Commission's determination of what is appropriate for this proposed rule.

OPC initially argued ~~commented~~ that the 10 percent margin is not a fixed dollar amount, and that it increases as expenses increase. OPC also asserted that ~~asserts~~ the proposed rule should include the same $10,000 cap that was in the Lake Osborne Order. Staff disagrees. Docket No. 160176-WS, *Application for staff assisted rate case in Polk County by Four Lakes Golf Club, Ltd.,* is a recent example of a utility being negatively impacted by the limitation of the $10,000 cap.[3] Due to the cap, the utility's allowed margin was reduced from 10 percent to 5.41 percent. Had the 10 percent margin been used, an operating margin of $18,476 would have been included in the revenue requirement rather than only $10,000. In this case, even if the full 10 percent margin had been used when the operating ratio methodology was applied, the utility's ability to provide safe and reliable service was still compromised as evidenced by the $64,000 operating loss it reported for the year.[4] Thus, contrary to OPC's argument, to include a $10,000 cap and 10 percent margin in the proposed rule would be harmful to the utilities and their ability to provide safe and reliable service.

Docket No. 160165-WS, In re: *Application for staff assisted rate case in Gulf County by ESAD Enterprises, Inc. d/b/a Beaches Sewer Systems, Inc.*, is another recent example of a utility being negatively impacted by the limitation of the $10,000 cap. Due to the cap, the utility's allowed margin was reduced from 10 percent to 7.25 percent.[5] Had the 10 percent margin been used, an operating margin of $13,801 would have been included in the revenue requirement rather than only $10,000.

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[3]Order No. PSC-2017-0459-PAA-WS, issued November 30, 2017, in Docket No. 20160176-WS, *In re: Application for staff-assisted rate case in Polk County by Four Lakes Golf Club, Ltd.*
[4]See Attachment B.
[5]Order No. PSC-2017-0383-PAA-SU, issued October 4, 2017, in Docket No. 20160165-SU, *In re: Application for staff-assisted rate case in Gulf County by ESAD Enterprises, Inc. d/b/a Beaches Sewer Systems, Inc.*

While staff believes that these two examples were pertinent to the argument for removing the cap, OPC believes that these two examples were anomalies. As discussed in the case background, at the October 30, 2018 Agenda Conference, OPC expressed a desire to meet with staff and interested parties and perhaps come to a compromise regarding the differences existing between their position and staff's initial proposed rule. Staff met with OPC and interested persons on November 8, 2018, and reached a compromise regarding the issue of a cap. Initially, staff was proposing that no explicit cap be included in the rule. Staff believes that the rule contains an implicit cap because it requires that a utility qualify for a SARC in order for the operating ratio methodology to be applied.[6] However, OPC expressed concerns about the removal of the $10,000 cap that originated in the Lake Osborne Order. OPC reiterated this concern at the informal meeting, commenting that there could be unintended consequences associated with removal of an explicit cap and that possibility was of great concern for their office. Staff believes that the utilities with revenues below $300,000 may occasionally exceed a $10,000 cap, so a $10,000 cap may be too disqualifying. On the other hand, staff believes that the utilities would rarely exceed a $15,000 cap. It is staff's view that the $15,000 proposed cap is not materially different from staff's initial proposed "no cap" because most small utilities that are eligible for the use of the operating ratio methodology will have margin amounts that fall below the $15,000 cap. In addition, an increase in the cap to $15,000 (from the Lake Osborne cap of $10,000) is a significant improvement which both updates and better reflects current and future needs of the small water and wastewater utilities. Thus, after discussions with OPC and in the spirit of compromise, staff is proposing a $15,000 cap.

The Lake Osborne Order stated that it may be appropriate to apply a margin greater than 10 percent in the case of a fully depreciated system where there would be an expectation of greater than average volatility in operation and maintenance costs. However, of the 23 cases where the operating ratio methodology was recommended, staff did not pursue a margin greater than 10 percent in any of them. The caveat contained in the Lake Osborne Order served to discourage application of a higher margin by the instruction to prove "an expectation of greater than average volatility in operation and maintenance costs." Staff has found that it has been a difficult task to prove "greater than average volatility" prior to the volatility occurring.

Recently, in Order No. PSC-2018-0327-PAA-WS, the Commission recognized that smaller water and wastewater utilities are more risky than other utilities. In the order, the Commission listed a variety of reasons that make smaller water and wastewater utilities more risky in nature:

> (1) WAW utilities are more capital intensive than electric or natural gas utilities; (2) WAW utilities experience lower relative depreciation rates than other utilities, thereby providing less cash flow; (3) WAW utilities experience consistently negative free cash flow, thereby increasing their financing requirements; (4) WAW utilities' credit metrics are inferior to those of electric and natural gas utilities; (5) Florida WAW utilities are substantially smaller than electric and natural gas utilities by virtually any measure including total revenues, total assets, and market capitalization; (6) WAW utilities' earnings are much more volatile

[6] Section 367.0814, F.S., provides a revenue threshold of $300,000 or less per system before a utility may qualify for a SARC.

> (uncertain) than electric and natural gas utilities' earnings; and (7) WAW utilities experience many more business failures than electric and natural gas utilities.[7]

Staff disagrees with OPC's initial opinion that the margin should remain unaffected by the Consumer Price Index (CPI) or other inflationary factors. Staff believes that the percentage should increase from 10 percent to ~~15 percent~~ reflect ~~reflects~~ not only inflationary factors, but also to compensate ~~compensates~~ for the riskier nature and true plight of smaller water and wastewater utilities that qualify and apply for a SARC. Initially, staff proposed an increase in the margin from 10 percent to 15 percent. At the November 8, 2018 meeting with OPC and interested parties, a compromise was reached resulting in an increase in the margin from 10 percent to 12 percent. Staff believes that a 12 percent vs. 15 percent margin will not affect the number of utilities who should qualify for the operating ratio methodology. Regarding any underlying argument of potential overearnings, staff believes the Commission's annual in-house review of Annual Reports, which are required to be filed by all regulated water and wastewater utilities, will alert the Commission of any potential overearnings.

As discussed below, Subsection (2) of the proposed rule includes limiting criteria. Subsection (2) would limit the use of the operating ratio methodology to only those utilities that are eligible for a SARC, and those utilities must continue to be eligible for a SARC when the methodology is applied.

Water and Wastewater Utilities that are Resellers

Subsection (1) of proposed Rule 25-30.4575, F.A.C., further provides that for water and wastewater utilities that are resellers, purchased water and purchased wastewater expenses will be removed from operation and maintenance expense before the 12 ~~15~~ percent margin is applied. As stated in the Lake Osborne Order, if a utility is a reseller, the issue is whether or not purchased water and/or wastewater costs should be excluded in the computation of the operating margin.[8] Staff believes that this qualification continues to remain valid, and thus, it is reflected in Subsection (1) of proposed Rule 25-30.4575, F.A.C.

Subsection (2) of the Rule – Criteria for Use of Operating Ratio Methodology

Subsection (2) of the proposed rule addresses the criteria the Commission would use to determine whether to use the operating ratio methodology.

125 Percent of O&M Expenses

Subsection (2)(a) of proposed Rule 25-30.4575, F.A.C., provides that the operating ratio methodology may only be used for those utilities whose rate base is no greater than 125 percent of operation and maintenance expenses. In its post-workshop comments, OPC initially took issue with this language in the proposed rule. While the Lake Osborne Order limits eligibility to utilities with O&M expenses equal to or greater than rate base, the Commission also stated in the

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[7]Order No. PSC-2018-0327-PAA-WS, issued June 26, 2018, in Docket No. 20180006-WS, *In re: Water and wastewater industry annual reestablishment of authorized range of return on common equity for water and wastewater utilities pursuant to Section 367.081(4)(f), F.S.*

[8]While these costs are removed specifically for the calculation of the operating margin, these costs are still included in the O&M expenses for the calculation of the revenue requirement.

Order that the initial eligibility criteria for the operating ratio methodology was purposely limited until more experience was gained.

While this rule is designed for small water and wastewater utilities, particularly those utilities where investment in rate base is limited relative to the level of O&M expenses, it is informative to compare what the typical relationship between rate base and the level of O&M expenses is for larger, more financially viable systems. For Class A water utilities in Florida, average rate base is three times greater than the average level of O&M expenses. For Class A wastewater systems, average rate base is five times greater than the average level of O&M expenses. Staff believes that requiring the investment in rate base to be less than the level of O&M expenses for purposes of this rule appears overly restrictive when compared to the typical relationship between rate base and the level of O&M expenses in this industry. Because the exigent conditions that exist for water and wastewater utilities whose rate base equals O&M expenses also exist for utilities with rate base marginally greater than O&M expenses, staff recommends that the proposed rule should modestly increase the threshold that was set forth in the Lake Osborne Order.

Based on information from the 2017 Annual Reports, under the current practice, the operating ratio methodology is available to 30 water and 29 wastewater systems. If the threshold for rate base is increased to 125 percent of O&M expenses, an additional 6 water and 8 wastewater systems will be eligible for the operating ratio methodology. While this change represents a modest increase in the number of eligible utilities, staff believes it is a reasonable evolution of the eligibility criteria for use of the operating ratio methodology. At the November 8, 2018 meeting, OPC agreed to this provision remaining in the rule.

Limit on the Application of the Operating Ratio Methodology to Only the Utilities that Qualify for a SARC

Subsection (2) of the proposed rule provides that the operating ratio methodology may only be used for utilities that qualify for a SARC under Rule 25-30.455, F.A.C. The current threshold for SARC eligibility under Rule 25-30.455(1), F.A.C., applies to water and wastewater utilities whose total gross annual operating revenues are $300,000 or less per system, and $600,000 or less on a combined basis. At the time of the Lake Osborne Order, the SARC threshold was for utilities with revenue of $150,000 or less per system, which precluded any Class B utilities from qualifying for a SARC.

OPC commented that the proposed rule should remain consistent with the Lake Osborne Order and that only Class C utilities should be eligible for the operating ratio methodology. However, since the Lake Osborne Order, the Florida Legislature has amended Section 367.0814, F.S., to increase the SARC threshold and to add language providing that the threshold for SARC eligibility must be adjusted on July 1, 2013, and every five years thereafter. As a result, the SARC threshold increased to $275,000 in July 2013 and then to $300,000 in July 2018. This means Section 367.0814, F.S., allows SARCs for utilities with revenue of $300,000 or less per system, which may include some Class B utilities. Accordingly, staff believes OPC's position to exclude all Class B utilities for eligibility for the operating ratio methodology is contrary to Section 367.0814, F.S. To be consistent with the statute and because exigent conditions that exist for many Class C utilities may also exist for smaller Class B utilities, staff believes utilities with

revenue of $300,000 or less per system that qualify for a SARC should be eligible for the use of the operating ratio methodology.

Limit on the Use of the Operating Ratio Methodology to Only Utilities that Continue to Qualify for a SARC

Subsection (2)(b) of the proposed rule provides that if the application of the operating ratio methodology changes the utilities' qualification for a SARC, the operating ratio methodology may not be applied. Thus, this provision ensures that only utilities that qualify for a SARC will benefit from the rule.

Quality of Service and Condition of Plant

OPC also takes issue with the fact that the proposed rule does not include the Lake Osborne Order's considerations of the quality of service and condition of the plant. OPC seems to suggest these considerations should be included in the rule as a means to disqualify certain utilities from the use of the operating ratio methodology. Staff disagrees. Staff believes that the Lake Osborne Order recognized that quality of service or condition of the plant are always considerations in a SARC and that, in fact, poor quality of service or condition of the plant may be indicative of a utility that would benefit from the use of the operating ratio methodology. As stated in the Lake Osborne Order, "poor condition of plant and/or unsatisfactory quality may be due to a variety of factors such as age of the system, poor maintenance" and these factors may "highlight the need for an adequate revenue stream to properly test and treat the water and maintain/renovate the system."[9]

Because evaluation of the quality of service and condition of the plant are standard considerations in every SARC,[10] staff believes it is unnecessary to include this criteria in the proposed rule. Moreover, it stands to reason that unsatisfactory quality of service and condition of the plant may be a result of insufficient revenues. To identify poor quality of service or condition of the plant in the proposed rule may cause a utility to be denied the opportunity to use the operating ratio methodology, which would not be in the long-term interest of the utility or its customers. If poor conditions are a direct result of the owner directly contributing to the system's decline, the Commission can pursue revocation of the certificate and/or an escrow of operating ratio methodology funds when improvements are needed to restore the utility system. Therefore, staff believes that because quality of service and condition of the plant are considered in every SARC, these factors do not need to be included and used as disqualifying criteria in proposed Rule 25-30.4575, F.A.C.

Developer-Owned Utilities

OPC also took issue with the proposed rule because it did not include the criteria from the Lake Osborne Order regarding developer-owned water and wastewater utilities. In the Lake Osborne Order, the Commission stated that being developer-owned should not disqualify a utility from the operating ratio method. The Commission also acknowledged in the Order that it may not be appropriate to use the operating ratio if the development is in the early stages of growth. The Commission stated:

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[9]Lake Osborne Order, pg. 6-7.
[10]Section 367.081(2)(a), F.S.

> Other factors that may be considered when determining eligibility for the operating ratio method are customer growth, the developer's financial condition, the utility's financial and operational condition, government mandated improvements and/or other unanticipated expenses. The level of CIAC collected by the utility may also be considered.[11]

The points contemplated in this criteria are standard considerations in every SARC. Therefore, staff believes it is duplicative and unnecessary to include these criteria in the rule.

Summary

The proposed rule codifies the Commission's practice of applying the operating ratio methodology. As discussed above, OPC expressed concerns about not seeing the long-standing Commission practice of using the five criteria set forth in the Lake Osborne Order in the attached proposed rule. However, staff believes the proposed rule sufficiently and clearly addresses the necessary qualifications for implementing the operating ratio methodology on a going forward basis. Simply restating the same criteria and considerations of the Lake Osborne Order in the proposed rule as OPC initially suggested ~~suggests~~ ignores the discretionary nature of the Lake Osborne Order criteria as well as the current requirements for rulemaking under Section 120.545(1), F.S., and the 20 years of Commission experience and practice in implementing the operating ratio methodology. Simply put, shoehorning the same discretionary criteria and considerations from the Lake Osborne Order into a rule would be contrary to the rulemaking requirements. Moreover, the proposed rule is not only well within the Commission's delegated grant of legislative authority but is also necessary to avoid violating the prohibition against unadopted rules.

Even with the adoption of the rule, staff will continue to present to the Commission both the option of the traditional and the operating ratio methodologies and the potential effect on the revenue requirement. The ultimate decision to use the operating ratio methodology will remain with the Commission. Staff believes the proposed rule captures the purpose and criteria necessary for the use of the operating ratio methodology for determining the revenue requirement and recommends that that the proposed rule as set forth in Attachment A should be approved.

Minor Violation Rules Certification

Pursuant to Section 120.695, F.S., beginning July 1, 2017, for each rule filed for adoption the agency head shall certify whether any part of the rule is designated as a rule the violation of which would be a minor violation. Rule 25-30.4575, F.A.C., is a rule for which a violation would be minor because violation of the rule would not result in economic or physical harm to a person or an adverse effect on the public health, safety, or welfare or create a significant threat of such harm. Thus, staff recommends that the Commission certify Rule 25-30.4575, F.A.C., as a minor violation rule.

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[11] Lake Osborne Order, pg. 7.

Statement of Estimated Regulatory Costs

Pursuant to Section 120.54, F.S., agencies are encouraged to prepare a statement of estimated regulatory costs (SERC) before the adoption, amendment, or repeal of any rule. The SERC is appended as Attachment C to this recommendation. The SERC analysis also includes whether the rule is likely to have an adverse impact on growth, private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate within five years of implementation.[12]

The SERC concludes that the rule will not likely directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate in Florida within one year after implementation. Further, the SERC concludes that the rule will not likely have an adverse impact on economic growth, private sector job creation or employment, private sector investment, business competitiveness, productivity, or innovation in excess of $1 million in the aggregate within five years of implementation. Thus, the rule does not require legislative ratification pursuant to Section 120.541(3), F.S. In addition, the SERC states that the rule will not have an adverse impact on small business and will have no impact on small cities or counties. No regulatory alternatives were submitted pursuant to paragraph 120.541(1)(a), F.S. None of the impact/cost criteria established in paragraph 120.541(2)(a), F.S., will be exceeded as a result of the recommended revision.

Conclusion

Based on the foregoing, staff recommends the Commission propose the adoption of Rule 25-30.4575, F.A.C., as set forth in Attachment A. In addition, staff recommends the Commission certify Rule 25-30.4575, F.A.C., as a minor violation rule.

[12]Section 120.541(2), F.S.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no requests for hearing or comments are filed, the rule may be filed with the Department of State, and this docket should be closed. (Harper)

Staff Analysis: If no requests for hearing or comments are filed, the rule may be filed with the Department of State, and this docket should be closed.

1 **25-30.4575 Operating Ratio Methodology.**

2 (1) Under the operating ratio methodology, instead of calculating the utility's revenue
3 requirement based on a rate of return on the utility's rate base, the revenue requirement
4 includes the utility's operating expenses plus a margin of 12 percent of the utility's operation
5 and maintenance expenses. For utilities that are resellers, purchased water and purchased
6 wastewater expenses will be removed from operation and maintenance expense before the 12
7 percent margin is applied. The operating ratio adjustment shall be no more than $15,000.

8 (2) In rate cases processed under Rule 25-30.455, F.A.C, the Commission will use the
9 operating ratio methodology to establish the utility's revenue requirement when:

10 (a) The utility's rate base is no greater than 125% of operation and maintenance expenses;
11 and

12 (b) The use of the operating ratio methodology does not change the utility's qualification
13 for a staff assisted rate case under subsection 25-30.455(1), F.A.C.

14 *Rulemaking Authority 367.0814(9) FS. Law Implemented 367.0814(9) FS. History-*
15 *New______.*

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25 CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

Comparison of 2017 Net Income/Loss to Approved Margin from Last Rate Case

Staff-Assisted Rate Case Information					2017 ANNUAL REPORT						Margin from Last Rate Case	
					Water			Wastewater				
Docket No.		Utility Name	County	Commission Action	Total Revenues	Total Expenses	Net Income/ Net Loss	Total Revenues	Total Expenses	Net Income/ Net Loss	Water	Sewer
19950641	WU	Lake Osborne	Palm Beach	Approved	No longer regulated						$3,692	
19960561	SU	Indian Springs	Citrus	Approved	No longer regulated							$5,829
19961434	WS	Point Water and Sewer	Clay	Recommended, but denied	No longer regulated						$1,659	$2,440
19991290	WU	Brendenwood	Lake	Approved	$33,113	$28,301	$4,812				$2,565	
20090170	WU	Mobile Manor	Lee	Approved	$61,511	$67,509	($5,998)				$3,380	
20090346	WU	Brendenwood	Lake	Approved	$33,113	$28,301	$4,812				$3,187	
20100471	SU	S&L	Marion	Approved				$55,401	$29,295	$26,106*		$4,977
20100472	WS	Heather Hills	Manatee	Approved, WW Only				$96,801	$99,309	($2,508)		$1,738
20110165	SU	Utility Corp of Florida	Highlands	Approved	No longer regulated							$10,000
20110238	WU	Sunrise Utilities, LLC	Polk	Approved	$70,120	$90,009	($19,889)				$6,166	
20110282	WS	Regency Utilities, Inc.	Duval	Approved, WW Only				$86,717	$120,880	($34,163)		$5,530
20120270	SU	West Lakeland	Polk	Approved				$130,333	$137,046	($6,713)		$9,451
20120078	SU	TKCB	Brevard	Approved				$82,793	$75,366	$7,427		$6,214
20120082	WU	Joyland	Gadsden	Approved	$26,657	$25,532	$1,125				$1,860	
20130194	WS	Lakeside	Lake	Approved**	$67,285	$64,292	$2,993	$57,159	$62,999	($5,840)	$5,000	$5,195
20140147	WS	Jumper Creek	Sumter	Recommended WW only, settled w/ OPC				$33,096	$37,542	($4,446)		$2,438
20140217	WU	Cedar Acres	Sumter	Approved	$73,260	$80,376	($7,116)				$9,420	
20140220	WU	Sunrise	Polk	Approved	$70,120	$90,009	($19,889)				$6,670	
20140239	WS	Orchid Springs	Polk	Approved, Water Only	$101,959	$104,567	($2,608)				$7,374	
20160143	WU	Charlie Creek	Hardee	Approved	$59,983	$67,939	($7,956)				$6,256	
20160165	SU	Beaches	Gulf	Approved				$142,954	$131,139	$11,815		$10,000
20160176	WS	Four Lakes	Polk	Approved, WW Only				$142,725	$206,995	($64,270)		$10,000
20170147	WS	FIMC Hideaway	Levy	Approved, WW Only	Approved at July 2018 Agenda Conference							$4,569

* Utility is being reviewed for potential overearnings. There have been substantial changes to the utility's operational structure since the rate case.
** Joint motion approved by the Commission provided that the utility would forego operating margin for first year.

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 15, 2018

TO: Adria E. Harper, Senior Attorney, Office of the General Counsel

FROM: Sevini K. Guffey, Public Utility Analyst II, Division of Economics S.K.G.

RE: Statement of Estimated Regulatory Costs for Proposed Adoption of Rule 25-30.4575, Florida Administrative Code (F.A.C.), Operating Ratio Methodology

The operating ratio methodology is an alternative to the traditional calculation of revenue requirement for smaller water and wastewater utilities and was first implemented by the Commission in 1996. The purpose of the proposed new Rule 25-30.4575, F.A.C., is to codify the Commission practice of using the operating ratio methodology when determining the revenue requirement in staff assisted rate cases for water and wastewater utilities.

Subsection (1) of Rule 25-30.4575, F.A.C., provides that the operating ratio methodology calculates the water and water utility's revenue requirement based on the utilities' operating expenses plus a margin of 12 percent of the utilities' operation and maintenance expenses and the operating ratio adjustment shall be capped at $15,000. For utilities that are resellers, their purchased water and wastewater expenses will be removed from the operation and maintenance expense before the 12 percent margin is applied.

Subsection (2) of Rule 25-30.4575, F.A.C., provides that the operating ratio methodology may only be used for utilities whose rate base is no greater than 125 percent of operation and maintenance expenses and when the use of the operating ratio methodology would not change the utility's eligibility for a staff assisted rate case under Rule 25-30.455(1), F.A.C.

Although the new rule applies to 132 investor-owned water and wastewater utilities, not all will qualify for the operating ratio methodology due to the rate base criteria contained in the proposed rule. A workshop to solicit input on the recommended rule was conducted by Commission staff on December 14, 2017. Several comments were received during the workshop from the Office of the Public Counsel (OPC) and a representative of U.S. Water Services Corporation (U.S. Water). Post-workshop written comments were received from OPC and U.S. Water.

At the October 30, 2018 Agenda Conference, OPC asked the Commission to defer the item so that OPC and staff could further discuss a potential compromise on rule language. The Commission deferred the item. On November 8, 2018, staff held an informal meeting on the rule, which included OPC, U.S. Water, Jeff Small with OCBOA Consulting, LLC, and Mike Smallridge.

The attached Statement of Estimated Regulatory Costs (SERC) addresses the considerations required pursuant to Section 120.541, Florida Statutes (F.S.). No regulatory alternatives were submitted pursuant to Paragraph 120.541(1)(a), F.S. None of the impacts/cost criteria established in Paragraph 120.541(2)(a), F.S. will be exceeded as a result of the recommended revisions.

cc: SERC File

FLORIDA PUBLIC SERVICE COMMISSION
STATEMENT OF ESTIMATED REGULATORY COSTS
Chapter 25-30.4575, F.A.C.

1. Will the proposed rule have an adverse impact on small business? [120.541(1)(b), F.S.] (See Section E., below, for definition of small business.)

Yes ☐ No ☒

If the answer to Question 1 is "yes", see comments in Section E.

2. Is the proposed rule likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate in this state within 1 year after implementation of the rule? [120.541(1)(b), F.S.]

Yes ☐ No ☒

If the answer to either question above is "yes", a Statement of Estimated Regulatory Costs (SERC) must be prepared. The SERC shall include an economic analysis showing:

A. Whether the rule directly or indirectly:

(1) Is likely to have an adverse impact on any of the following in excess of $1 million in the aggregate within 5 years after implementation of the rule? [120.541(2)(a)1, F.S.]

Economic growth Yes ☐ No ☒

Private-sector job creation or employment Yes ☐ No ☒

Private-sector investment Yes ☐ No ☒

(2) Is likely to have an adverse impact on any of the following in excess of $1 million in the aggregate within 5 years after implementation of the rule? [120.541(2)(a)2, F.S.]

Business competitiveness (including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets) Yes ☐ No ☒

Productivity Yes ☐ No ☒

Innovation Yes ☐ No ☒

(3) Is likely to increase regulatory costs, including any transactional costs, in excess of $1 million in the aggregate within 5 years after the implementation of the rule? [120.541(2)(a)3, F.S.]

Yes ☐ No ☒

Economic Analysis: A summary of the recommended new rule is included in the attached memorandum to Counsel. Staff believes that none of the impacts/cost criteria established in Paragraph 120.541(2)(a), F.S. will be exceeded as a result of the proposed new rule. The proposed new rule is not imposing any new regulatory requirements, only codifying existing Commission practice of using a variation of the rate of return methodology in determining that revenue requirement for staff assisted rate cases.

B. A good faith estimate of: [120.541(2)(b), F.S.]

(1) The number of individuals and entities likely to be required to comply with the rule.

Potentially affected entities include 132 investor-owned water and wastewater utilities that serve approximately 177,256 customers in Florida. Water and wastewater utilities which come under the jurisdiction of the Commission in the future also may be affected by the new rule.

(2) A general description of the types of individuals likely to be affected by the rule.

The 132 investor-owned water and wastewater utilities and customers of those utilities are likely to be affected by this rule.

C. A good faith estimate of: [120.541(2)(c), F.S.]

(1) The cost to the Commission to implement and enforce the rule.

☒ None. To be done with the current workload and existing staff.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

(2) The cost to any other state and local government entity to implement and enforce the rule.

2

☒ None. The rule will only affect the Commission.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

(3) Any anticipated effect on state or local revenues.

☒ None.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

D. A good faith estimate of the transactional costs likely to be incurred by individuals and entities (including local government entities) required to comply with the requirements of the rule. "Transactional costs" include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used, procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring or reporting, and any other costs necessary to comply with the rule. [120.541(2)(d), F.S.]

☒ None. The rule will only affect the Commission.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

E. An analysis of the impact on small businesses, and small counties and small cities: [120.541(2)(e), F.S.]

(1) "Small business" is defined by Section 288.703, F.S., as an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than $5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As to sole proprietorships, the $5 million net worth requirement shall

include both personal and business investments.

☒ No adverse impact on small business.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

(2) A "Small City" is defined by Section 120.52, F.S., as any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census. A "small county" is defined by Section 120.52, F.S., as any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

☒ No impact on small cities or small counties.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

F. Any additional information that the Commission determines may be useful. [120.541(2)(f), F.S.]

☒ None.

Additional Information:

G. A description of any regulatory alternatives submitted and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule. [120.541(2)(g), F.S.]

☒ No regulatory alternatives were submitted.

☐ A regulatory alternative was received from

☐ Adopted in its entirety.

☐ Rejected. Describe what alternative was rejected and provide a statement of the reason for rejecting that alternative.

5

Item 2

FILED 1/24/2019
DOCUMENT NO. 00353-2019
FPSC - COMMISSION CLERK

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: January 24, 2019

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Harper) JSH S.M.C.
Office of Industry Development and Market Analysis (Crawford) BC CH

RE: Docket No. 20180221-EQ – Petition by Tesla, Inc. for declaratory statement concerning leasing of solar electric equipment.

AGENDA: 02/05/19 – Regular Agenda – Parties May Participate at Commission's Discretion

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Fay

CRITICAL DATES: 3/4/19 (Final Order must be issued by this date pursuant to Section 120.565(3), Florida Statutes)

SPECIAL INSTRUCTIONS: None

Case Background

On December 3, 2018, Petitioner, Tesla, LLC (Tesla), filed a petition for a declaratory statement (Petition). Tesla asks the Commission to declare that based on the facts presented by Tesla:

(1) Tesla's leasing of solar electric equipment to residential lessees, pursuant to Tesla's standard form lease known as Tesla's SolarLease, does not constitute a sale of electricity;

(2) Tesla's offering to lease solar electric equipment to residential electricity users will not cause Tesla to be deemed a public utility under Florida Law; and

(3) The residential solar equipment lease described in its Petition (Tesla's SolarLease) will not subject either Tesla or Tesla's customer-lessees to regulation by the Commission.

The Commission's recent decisions in Order No. PSC-2018-0251-DS-EQ, issued May 17, 2018, in Docket No. 20170273-EQ, *In re: Petition of Sunrun Inc. for a declaratory statement concerning the leasing of solar equipment* (*Sunrun*) and Order No. PSC-2018-0413-DS-EQ, issued August 21, 2018, in Docket No. 20180124-EQ, *In re: Petition of Vivint Solar Developer, LLC. for a declaratory statement concerning the leasing of solar equipment* (*Vivint*), state the Commission does not have jurisdiction over an individual company that offers residential leases for solar equipment when the lease payments do not vary based on generation.

Pursuant to Rule 28-105.0024, Florida Administrative Code (F.A.C.), a Notice of Declaratory Statement was published in the December 4, 2018, edition of the Florida Administrative Register, informing interested persons of the Petition. There were no requests to intervene filed. This recommendation addresses Tesla's Petition for Declaratory Statement. The Commission has jurisdiction pursuant to Section 120.565, F.S., and Chapter 366, F.S.

Discussion of Issues

Issue 1: Should the Commission grant Tesla's Petition for Declaratory Statement?

Recommendation: Yes. Based on the facts presented by Tesla, the Commission should grant Tesla's Petition and declare: (1) Tesla's proposed residential solar equipment lease, as described by its Petition, will not be deemed to constitute a sale of electricity; (2) Offering its solar equipment lease, as described in its Petition, to consumers in Florida will not cause Tesla to be deemed a public utility; and (3) The residential solar equipment lease described in its Petition will not subject Tesla or Tesla's customer-lessees to regulation by this Commission. The Commission should also state that its declaration is limited to the facts described in Tesla's Petition and would not apply to different, alternative facts. However, for those with an identical fact pattern to Sunrun's, Vivint's, or Tesla's Petitions, these declarations have precedential significance and individual declaratory statements are not necessary. (Harper, Crawford)

Staff Analysis: Tesla's Petition asks the Commission to declare that Tesla's solar leasing program as described in Tesla's Petition will not make Tesla or its lease customers a public utility subject to the Commission's jurisdiction under Section 366.02(1), F.S. Tesla's Petition also asks the Commission to apply Rule 25-6.065, F.A.C., which allows leases for solar equipment that include a maintenance agreement so long as the lease payments do not depend on electric generation. According to Tesla's facts, the customer will be the end-user, and the lease payments do not depend on electric generation. Tesla's proposed solar equipment lease program shows that the lease customers must utilize their utility's service and interconnection and net metering provisions.

Tesla's Petition also states that it is aware that the facts in Sunrun's and Vivint's Petitions are substantively the same as the facts in Tesla's request for declaratory statement. According to Tesla, the *Sunrun* and *Vivint* orders were limited only to the specific facts described in *Sunrun* and *Vivint*'s petitions and are therefore not binding or applicable to Tesla.

Staff believes that the *Sunrun* and *Vivint* orders are applicable to any individual entity where the alleged facts show that the company offers residential solar lease programs with lease payments that do not vary based on generation. Both of these orders applied the facts presented in the petitions to Rule 25-6.065, F.A.C, which states that "[t] customer-owned renewable generation does not preclude the customer of record from contracting for the purchase, lease, operation, or maintenance of an on-site renewable generation system with a third-party under terms and conditions that do not include the retail purchase of electricity from the third party." The notice provision in Section 120.565, F.S., suggests that a declaratory statement, although not binding as precedent, has precedential significance. *Chiles v. Dep't of State, Div. of Elections*, 711 So. 2d 151, 155 (Florida 1st DCA 1998).

Tesla also states that requirements of investors who will provide financing for Tesla's SolarLease program in Florida compel Tesla to seek the declaratory statement. Tesla's Petition states it is requesting a declaratory statement as a "real-world business necessity" to meet the "requirements of investors." The purpose of a declaratory statement is to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular

circumstances.[1] Staff believes that there is no controversy because the facts in Tesla's Petition are virtually identical to the facts set forth in both the Sunrun's and Vivint's Petitions. Thus, a company's financing or investor requirements are irrelevant to the determination of whether a declaratory statement should be granted.

Nonetheless, an agency has an obligation to issue a declaratory statement explaining how a statute or rule applies in the petitioner's particular circumstances even if the explanation would have a broader application than to the petitioner. S*oc'y for Clinical & Med. Hair Removal, Inc. v. Dep't of Health*, 183 So. 3d 1138, 1144 (Fla. 1st DCA 2015). Thus, staff believes that Tesla's petition for declaratory statement should be granted.[2]

Conclusion

For the reasons set forth above, staff recommends that the Commission grant Tesla's Petition for Declaratory Statement and declare: (1) Tesla's leasing of solar electric equipment to residential lessees, pursuant Tesla's standard form lease known as Tesla's SolarLease, and as described in its Petition, will not be deemed to constitute a sale of electricity; (2) Tesla's offering to lease solar electric equipment to residential electricity users, as described in its Petition, will not cause Tesla to be deemed a public utility under Florida Law; and (3) The residential solar equipment lease as described its Petition (Tesla's SolarLease) will not subject either Tesla or Tesla's customer-lessees to regulation by the Commission. The Commission should also state that its declaration is limited to the facts described in Tesla's Petition and would not apply to different, alternative facts. However, for those with an identical fact pattern to Sunrun's, Vivint's, or Tesla's Petitions, these declarations have precedential significance and individual declaratory statements are not necessary.

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[1]Rule 28-105.001, F.A.C., Purpose and Use of Declaratory Statement, provides that declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority.

[2]As the Commission stated previously in the *Sunrun* and *Vivint* orders, approving Tesla's draft lease does not fall within the Commission's jurisdiction and review of the lease is not necessary for the Commission's determination of Tesla's Petition. Staff's analysis is limited solely to the jurisdiction question raised by the Petition, not the draft lease. Provisions in Tesla's draft lease that involve statutes and rules that are outside our jurisdiction, such as those provisions that relate to Tesla's compliance with the consumer protection laws, are not relevant and were not considered in staff's analysis. *See Deltona Corp. v. Mayo,* 342 So. 2d 510 (Fla. 1977), wherein the Florida Supreme Court held that consumer protection was outside the bounds of the Commission's jurisdiction: "If Deltona engaged in an unfair business practice or committed fraud, however, it may be a concern of other state agencies or the basis for private law suits (on which we express no opinion), but it is not a matter of statutory concern to the Public Service Commission."

Issue 2: Should this docket be closed?

Recommendation: Yes, if the Commission votes to either grant or deny the Petition for Declaratory Statement, the docket should be closed. (Harper)

Staff Analysis: Whether the Commission grants or denies Tesla's Petition, a final order will be issued. Upon issuance of the final order, the docket should be closed.

Item 3

FILED 1/24/2019
DOCUMENT NO. 00350-2019
FPSC - COMMISSION CLERK

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: January 24, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (King)
Division of Economics (DiPietro, Higgins)

RE: Docket No. 20180230-GU – Petition for temporary waiver of Rule 25-7.045, F.A.C., by Florida Public Utilities Company.

AGENDA: 02/05/19 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 03/26/19 (date by which the petition must be ruled upon pursuant to Section 120.542, F.S.)

SPECIAL INSTRUCTIONS: None

Case Background

On December 26, 2018, Florida Public Utilities Company (FPUC) filed a petition to temporarily waive Rule 25-7.045(4)(a), Florida Administrative Code (F.A.C.).[1] The rule requires natural gas distribution utilities to file a depreciation study at least once every five years. FPUC's next study was due January 14, 2019. FPUC is requesting that it be permitted to submit its study no later than March 4, 2019. It also requests that subsequent due dates be based on the March filing date.

Notice of FPUC's petition was published in the January 4, 2019, edition of the Florida Administrative Register, Vol. 45, No. 3, as required by Section 120.542(6), Florida Statutes (F.S.). No one commented on the petition within the 14-day comment period provided by Rule

[1] FPUC cites paragraph (8)(a) of Rule 25-7.045, F.A.C., but that paragraph no longer exists. It was renumbered as paragraph (4)(a) when the rule was amended in 2016.

28-104.003, F.A.C. In accordance with section 120.542(8), F.S., the petition is deemed approved if the Commission does not approve or deny it by March 26, 2019.

The Commission has jurisdiction under Sections 120.542, 350.115, 366.04, .05, and .06, F.S.

Discussion of Issues

Issue 1: Should the Commission grant FPUC's request for a temporary waiver from Rule 25-7.045(4)(a), F.A.C.?

Recommendation: Yes. The Commission should grant FPUC's petition and require that FPUC file its depreciation study no later than March 4, 2019. The Commission should also order that FPUC's next depreciation study will be due within five years from the date that it files its March 2019 depreciation study. (King, DiPietro)

Staff Analysis: FPUC is requesting that the Commission grant it a temporary waiver of Rule 25-7.045(4)(a), F.A.C. Pursuant to the rule, FPUC was required to file a depreciation study by January 14, 2019.

Legal Standard for Rule Waivers

Pursuant to Section 120.542(2), F.S., the Commission is required to grant waivers and variances from its rules "when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness." The section defines a "substantial hardship" as a "demonstrated economic, technological, legal, or other type of hardship."

Under Rule 25-7.045(4)(a), F.A.C., natural gas distribution utilities are required to submit a depreciation study for Commission review at least once every five years. The rule implements several statutes. Section 350.115, F.S., allows the Commission to "approve or establish adequate, fair, and reasonable depreciation rates and charges." Section 366.06(1), F.S., requires the Commission to "investigate and determine the actual legitimate costs of the property of each utility company, . . . less accrued depreciation." To accomplish these tasks, the Commission is permitted under Section 366.04(2)(f), F.S., to "prescribe and require the filing of periodic reports and other data as may be reasonably available."

FPUC's Petition

FPUC's current depreciation study was due on January 14, 2019, but it claims that preparing the study would create a substantial hardship. FPUC states that it was severely affected by Hurricane Michael, which wreaked havoc in several counties it serves in the Florida panhandle. FPUC argues that due to the effects of Hurricane Michael, its "plant accounting [personnel] have been faced with an unusually increased workload, some of which is outside the scope of their typical tasks." FPUC claims that preparing the depreciation study is a "time-consuming, difficult task" under ordinary circumstances, but marshalling its already strained resources to complete the study before the recently passed deadline under current circumstances would have resulted in an undue hardship.

FPUC also argues that the purpose of the underlying statutes will still be fulfilled should the Commission grant the waiver. FPUC will still furnish the Commission with the required data, albeit slightly delayed.

FPUC has asked that it be permitted to submit its study on or before March 4, 2019. FPUC has also requested that its next depreciation study be due within five years of the extended March 2019 filing date.

Conclusion

The Commission has previously determined that staffing limitations can create substantial hardships in the timely filing of depreciation studies.[2] The Commission has also recently granted FPUC a waiver from the rule requiring it to send out monthly billing statements under Rule 25-6.100(1), F.A.C., based on the effects of Hurricane Michael.[3] Staff believes a staffing limitation caused by Hurricane Michael constitutes a substantial hardship under the statute.

Section 366.04(2)(f), F.S., allows the Commission to require a utility to periodically file depreciation studies in order to facilitate the Commission's duty under Sections 350.115 and 366.06(1), F.S., to determine accurate depreciation costs for the utility. The short delay will not affect the Commission's ability to establish adequate, fair, and reasonable depreciation rates and charges. FPUC has not submitted any customer rate requests to the Commission on or since January 14, 2019, nor has it submitted a test year notification letter under Rule 25-7.140, F.A.C. For these reasons, the purpose of the statute will still be achieved if FPUC is granted a seven-week extension to submit its study.

Staff believes that FPUC's request to file its study on or before March 4, 2019, is reasonable and that FPUC should be granted a temporary rule waiver until this date. Moreover, the Commission should order that FPUC's next depreciation study will be due within five years from the date that it files its March 2019 depreciation study.

[2] Order No. PSC-02-0242-PAA-EI, issued Feb. 25, 2002, in Docket No. 011611-EI, *In Re: Petition for Waiver of Depreciation Study Filing Requirement in Rule 25-6.0436(8)(a), F.A.C., by Florida Power Corporation*.
[3] Order No. PSC-2018-0529-PAA-EI, Nov. 8, 2018, in Docket No. 20180195-EI, *In re: Petition for temporary waiver of Rule 25-6.100, F.A.C., by Florida Public Utilities Company*.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued and this docket should be closed.

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued and this docket should be closed. (King)

Item 4

FILED 1/24/2019
DOCUMENT NO. 00341-2019
FPSC - COMMISSION CLERK

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: January 24, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (Richards, D. Buys, Cicchetti)
Office of the General Counsel (Schrader)

RE: Docket No. 20180162-EI – Application for authority to issue and sell securities and to receive common equity contributions during 12 months ending December 31, 2019, pursuant to Chapter 25-8, F.A.C., and Section 366.04, F.S., by Gulf Power Company.

AGENDA: 02/05/19 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On January 7, 2019, Gulf Power Company (Gulf or Company) submitted a petition for modification of the Company's previously approved securities application[1] to reflect the acquisition of the company by NextEra Energy, Inc. (NextEra) and to request an increase in the amount of securities authorized. Gulf was acquired by, and became a wholly-owned subsidiary of, NextEra on January 1, 2019. Gulf will no longer be able to receive equity funds from and/or issue common equity securities to Gulf's former parent, the Southern Company.

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[1] Order No. PSC-2018-0542-FOF-EI, issued November 19, 2018, in Docket No. 20180162-EI, In re: *Application for authority to issue and sell securities and to receive common equity contributions during 12 months ending December 31, 2019, pursuant to Chapter 25-8, F.A.C. and Section 366.04, F.S. by Gulf Power Company.*

Discussion of Issues

Issue 1: Should Gulf Power Company's petition for modification of the authority to issue and sell securities be approved?

Recommendation: Yes. Gulf Power Company's petition for modification of the authority to issue and sell securities filed on January 7, 2019 should be approved as requested. (Richards)

Staff Analysis: On January 7, 2019, Gulf submitted a petition for modification of the Company's previously approved securities application to reflect the acquisition of the company by NextEra and to request an increase of the amount of securities authorized.

Gulf was acquired by and became a wholly-owned subsidiary of NextEra on January 1, 2019, and will no longer be able to receive equity funds from and/or issue common equity securities to Gulf's former parent, the Southern Company. Gulf requests approval to issue and sell and/or exchange any combination of the long-term debt and equity securities described and/or to assume liabilities or obligations as guarantor, endorser or surety in an aggregate amount not to exceed $1.2 billion during calendar year 2019. The currently authorized amount of long-term debt and equity securities is $600 million. Gulf also requests to increase the maximum principal amount of short-term debt previously approved from $500 million to $600 million. The net increase in funding from the previously approved securities application is $600 million in long-term debt and equity securities and $100 million in short-term debt.

In its petition, Gulf explained the requested modifications are necessary to reflect the new ownership and the anticipated increased issuances of securities required due to the significant storm-related expenses incurred as a result of Hurricane Michael; to fund the cost of the prompt restoration, reconstruction and/or repair of facilities damaged or destroyed during calendar year 2019 due to the occurrence of any man-made or natural disaster or event or otherwise.

Staff has reviewed Gulf's projected capital expenditures. The amount of long-term securities requested ($1.2 billion) exceeds Gulf's expected capital expenditures ($262.8 million). The additional amount requested exceeding the projected capital expenditures allows for financial flexibility with regard to unexpected events such as hurricanes, financial market disruptions and other unforeseen circumstances.

In connection with this security application, Gulf confirms that the capital raised pursuant to this authority will be used in connection with the regulated activities of Gulf and its affiliates, and not the non-regulated activities of its affiliates. Staff believes the requested amounts are appropriate and recommends Gulf's petition to issue securities be modified as requested.

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open until Gulf Power Company has filed the required Consummation Report. (Schrader)

Staff Analysis: For monitoring purposes, this docket should remain open until May 1, 2020, to allow Gulf Power Company time to file the required Consummation Report.

Item 5

FILED 1/24/2019
DOCUMENT NO. 00348-2019
FPSC - COMMISSION CLERK

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-

RECEIVED-FPSC
2019 JAN 24 AM 9:35
COMMISSION CLERK

DATE: January 24, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Doherty) EJD PD JDH
Office of the General Counsel (Simmons) KS JSC

RE: Docket No. 20180222-EI – Petition for approval of customer specified lighting tariff by Tampa Electric Company.

AGENDA: 02/05/19 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 60-day suspension date waived by the utility until 02/05/2019

SPECIAL INSTRUCTIONS: None

Case Background

On December 3, 2018, Tampa Electric Company (TECO or utility) filed a petition for approval of a new optional customer specified lighting tariff (LS-2 tariff). TECO proposed the new LS-2 tariff in response to customers requesting special lighting fixtures or poles.

TECO provided a letter waiving the 60-day file and suspend provision of Section 366.06(3), Florida Statutes (F.S.), until the February 5, 2019 Agenda Conference. On January 15, 2019, TECO filed two corrections to the tariffs filed with the petition. First, the correction to tariff sheet No. 6.835 reflects the addition of the LS-2 energy charge, which was inadvertently omitted. Second, TECO revised the cost recovery clause tariff sheet No. 6.020 to include the LS-2 tariff as LS-2 customers will be billed all cost recovery clauses. The proposed tariff sheets in legislative format are shown in Attachment A to this recommendation. The Commission has jurisdiction over this matter pursuant to Sections 366.03, 366.04, 366.05, and 366.06, F.S.

Discussion of Issues

Issue 1: Should the Commission approve TECO's proposed customer specified lighting tariff as shown in Attachment A?

Recommendation: Yes. The Commission should approve TECO's proposed customer specified lighting tariff, as shown in Attachment A, effective February 5, 2019. The LS-2 tariff allows TECO to respond to customer requests for special fixtures or poles in a timely and efficient manner. The general body of ratepayers will be protected as LS-2 customers will be responsible for all costs associated with their request. (Doherty)

Staff Analysis: Currently, TECO offers lighting service under its Lighting Service-1 (LS-1) tariff. The LS-1 tariff includes specific fixtures and poles a customer can choose from. The LS-1 charges for each fixture are comprised of three components: a fixture charge, a maintenance charge, and an energy charge. Charges for poles include a pole and maintenance charge. Customers taking service under the LS-1 tariff are required to sign the Bright Choices Outdoor Lighting Agreement (agreement) for a minimum of 10 years. After the initial 10-year term, the agreement can be terminated by either party upon providing the other party with 90 days written notice of termination.

TECO explained that, on occasion, customers request a specific fixture or pole that is not offered under the LS-1 tariff. After receiving such a customer request, TECO has the option of seeking Commission approval to add the requested fixture or pole to the LS-1 tariff. In the alternative, customers have the option of choosing lighting facilities that are offered under the LS-1 tariff or installing customer-owned facilities and utilizing TECO's energy-only rate offering under the LS-1 tariff.

To address customer requests in a timely and efficient manner for special fixtures or poles not offered under the LS-1 tariff, TECO proposed the LS-2 tariff. If the requested lighting facilities meet TECO's reliability standards, TECO would purchase and install the lighting facilities. TECO stated that customers are seeking lighting poles or fixtures that would be a signature of or attraction for their location. TECO believes that as economic development continues in the Tampa Bay area, the LS-2 tariff will be predominantly used by subdivisions, shopping centers, and other new developments.

TECO explained that the utility will not actively market the LS-2 tariff, but will only apply the LS-2 tariff in response to a special lighting request. The utility stated that it has one current request for lighting service from a subdivision that would be best accommodated under the LS-2 tariff, as the subdivision requested a unique style of pole.

The lighting requests under the LS-2 tariff will be unique to each customer; therefore, TECO proposes that a different rate setting approach be applied. To bill customers for the fixture and maintenance costs, TECO proposes to apply a monthly factor of 1.19 percent to the in-place value of the facilities. The in-place value is determined by TECO's cost to purchase and install the requested facilities. The Commission-approved monthly factor of 1.19 percent is currently contained in the Facilities Rental Agreement (tariff sheet Nos. 7.760 – 7.775) and was approved

in TECO's last rate case.[1] The monthly factor of 1.19 percent assures recovery of TECO's lighting facilities investment (depreciation, taxes, maintenance cost, and return). All other Commission-approved street lighting energy charge and cost recovery factors, such as fuel, will apply.

As with the currently available LS-1 tariff, customers will be required to sign the agreement. However, the initial term for LS-2 customers will be 20 years to allow for full cost recovery over the expected life of the facilities. TECO explained that the longer term is justified because the lighting equipment installed is specific to a customer's request and may not be of value to a subsequent customer at the location or another customer at a different location. To accommodate the 20-year term associated with the proposed LS-2 tariff, TECO modified one page of the agreement (refer to Attachment A, page 6 of 7, of this recommendation).

Conclusion

The Commission approved a similar lighting tariff (Form 4, tariff sheet No. 7.13) for Gulf Power Company (Gulf) in Gulf's 2001 rate case[2] in response to customers requesting more fixture or pole options. More recently, the Commission approved an optional LT-1 streetlight tariff for Florida Power & Light Company (FPL).[3] The LT-1 tariff allows FPL to offer a wide range of fixtures through a catalogue on the FPL website as opposed to in the tariff itself.

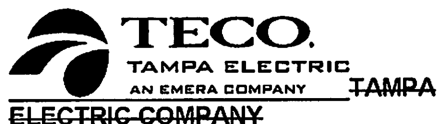
Staff has reviewed TECO's petition and believes the proposed LS-2 tariff is reasonable and appropriate. The LS-2 tariff allows TECO to respond to customer requests for special fixtures or poles in a timely and efficient manner. The general body of ratepayers will be protected as LS-2 customers will be responsible for all costs associated with their request. Staff recommends that TECO's proposed customer specified lighting tariff, as shown in Attachment A, be approved effective February 5, 2019.

[1] Order No. PSC-13-0443-FOF-EI, issued September 30, 2013, Docket No. 130040-EI, *In re: Petition for rate increase by Tampa Electric Company.*
[2] Order No. PSC-02-0787-FOF-EI, issued June 10, 2002, Docket No. 010949-EI, *In re: Request for rate increase by Gulf Power Company.*
[3] Order No. PSC-17-0115-TRF-EI, issued March 28, 2017, Docket No. 160245-EI, *In re: Petition for approval of a new optional pilot LED streetlight tariff, by Florida Power & Light Company.*

Issue 2: Should this docket be closed?

Recommendation: If Issue 1 is approved and a protest is filed within 21 days of the issuance of the order, the tariff should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order. (Simmons)

Staff Analysis: If Issue 1 is approved and a protest is filed within 21 days of the issuance of the order, the tariff should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order.



~~TAMPA ELECTRIC COMPANY~~

~~FIRST~~ SECOND REVISED SHEET NO. 4.060
CANCELS ~~ORIGINAL~~ FIRST REVISED SHEET NO. 4.060

Ground
Earth potential.

Group Metering
Customer owned and company approved meter centers.

Guarantor
One who initiates or gives a guarantee.

Hand Hole
A small junction box placed in the ground.

High Density Subdivision
A subdivision having a density of 6 or more dwelling units per acre.

High Leg
The conductor in a three-phase delta secondary connection that has a higher voltage-to-ground potential than the other conductors.

High Pressure Sodium
A lamp using sodium as a medium for street and area lighting use.

Horse Power
The nameplate rating of motors and/or other apparatuses. For conversion purposes, one horsepower shall be considered as equivalent to one kilowatt.

In Place Value
Plant in service value (undepreciated) of the facility.

Incandescent
The ordinary light bulb.

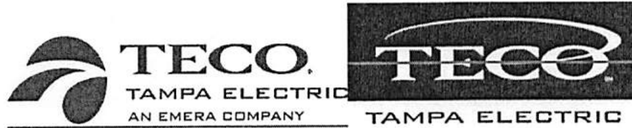
Industrial Service
Service to customers engaged In a process which creates or changes raw or unfinished materials into another form or product. (Factories, mills, machine shops, mines, oil wells, refineries, pumping plants, creameries, canning and packing plants, shipyards, etc.; i.e., in extractive fabricating or processing activities.)

Inspector or Inspection Authority
A person or agency authorized to inspect and approve electrical installations.

Integrated Demand
Is the summation of the continuously varying instantaneous demands during a specified time interval performed by metering equipment.

ISSUED BY: ~~G. F. Anderson~~ N. G. Tower, President

DATE EFFECTIVE: ~~May 10, 1993~~



TWENTY-~~FOURTH~~ FIFTH
REVISED SHEET NO. 6.010
CANCELS TWENTY-~~THIRD~~
FOURTH REVISED SHEET NO.
6.010

INDEX OF RATE SCHEDULES

Schedule	Classification	Sheet No.
	Additional Billing Charges	6.020
	Payment of Bills	6.022
RS	Residential Service	6.030
GS	General Service - Non Demand	6.050
GSD	General Service - Demand	6.080
IS	Interruptible Service	6.085
CS	Construction Service	6.290
GST	Time-of-Day General Service - Non-Demand (Optional)	6.320
GSDT	Time-of-Day General Service - Demand (Optional)	6.330
IST	Time of Day Interruptible Service (Optional)	6.340
RSVP-1	Residential Service Variable Pricing	6.560
SBF	Firm Standby And Supplemental Service	6.600
SBFT	Time-of-Day Firm Standby And Supplemental Service (Optional)	6.605
SBI	Interruptible Standby And Supplemental Service	6.700
EDR	Economic Development Rider	6.720
CISR-2	Commercial/Industrial Service Rider	6.740
LS-1	Street and Outdoor Lighting Service	6.800
LS-2	Customer Specified Lighting Service	6.830

ISSUED BY: ~~G. L. Gillette~~N. G. Tower, President

DATE EFFECTIVE: ~~June 20, 2014~~

SEVENTY-~~FIFTH~~ SIXTH REVISED SHEET NO. 6.020
CANCELS SEVENTY-~~FOURTH~~ FIFTH REVISED SHEET NO. 6.020

ADDITIONAL BILLING CHARGES

TOTAL FUEL AND PURCHASED POWER COST RECOVERY CLAUSE: The total fuel and purchased power cost recovery factor shall be applied to each kilowatt-hour delivered, and shall be computed in accordance with the formula prescribed by the Florida Public Service Commission. The following fuel recovery factors by rate schedule have been approved by the Commission:

RECOVERY PERIOD
(January 2019 through December 2019)

Rate Schedules		Fuel ¢/kWh Standard	Fuel ¢/kWh Peak	Fuel ¢/kWh Off-Peak	¢/kWh Energy Conservation	¢/kWh Capacity	¢/kWh Environmental
RS (up to 1,000 kWh)		2.405			0.321	0.103	0.222
RS (over 1,000 kWh)		3.405			0.321	0.103	0.222
RSVP-1	(P_1)	2.719			(2.319)	0.103	0.222
	(P_2)	2.719			(0.877)	0.103	0.222
	(P_3)	2.719			5.936	0.103	0.222
	(P_4)	2.719			34.911	0.103	0.222
GS, GST		2.719	2.874	2.653	0.292	0.086	0.221
CS		2.719			0.292	0.086	0.221
LS-1, LS-2		2.691			0.180	0.024	0.217
GSD Optional							
Secondary		2.719			0.272	0.075	0.220
Primary		2.692			0.269	0.074	0.218
Subtransmission		2.665			0.267	0.074	0.216

Rate Schedules	Fuel ¢/kWh Standard	Fuel ¢/kWh Peak	Fuel ¢/kWh Off-Peak	$/kW Energy Conservation	$/kW Capacity	¢/kWh Environmental
GSD, GSDT, SBF, SBFT						
Secondary	2.719	2.874	2.653	1.17	0.32	0.220
Primary	2.692	2.845	2.626	1.15	0.32	0.218
Subtransmission	2.665	2.817	2.600	1.14	0.31	0.216
IS, IST, SBI						
Primary	2.692	2.845	2.626	0.93	0.24	0.214
Subtransmission	2.665	2.817	2.600	0.92	0.24	0.212

Continued to Sheet No. 6.021

ISSUED BY: N. G. Tower, President

DATE EFFECTIVE: ~~January 3, 2019~~

CUSTOMER SPECIFIED LIGHTING SERVICE

SCHEDULE: LS-2

AVAILABLE: Entire service area

APPLICABLE:

Customer Specified Lighting Service is applicable to any customer for the sole purpose of lighting roadways or other outdoor areas. Service hereunder is provided for the sole and exclusive benefit of the customer, and nothing herein or in the contract executed hereunder is intended to benefit any third party or to impose any obligation on the Company to any such third party. At the Company's option, a deposit amount of up to a two (2) month's average bill may be required at anytime.

CHARACTER OF SERVICE:

Service is provided during the hours of darkness normally on a dusk-to-dawn basis.

At the Company's option and at the customer's request, the company may permit a timer to control a lighting system provided under this rate schedule that is not used for dedicated street or highway lighting. The Company shall install and maintain the timer at the customer's expense. The Company shall program the timer to the customer's specifications as long as such service does not exceed 2,100 hours each year. Access to the timer is restricted to company personnel.

LIMITATION OF SERVICE:

Installation shall be made only when, in the judgment of the Company, location of the proposed lights are, and will continue to be, feasible and accessible to Company personnel and equipment for both construction and maintenance and such installation is not appropriate as a public offering under LS-1.

TERM OF SERVICE:

Service under this rate schedule shall, at the option of the customer, be for an initial term of twenty (20) years beginning on the date one or more of the lighting equipment is installed, energized, and ready for use and shall continue after the initial term for successive one-year terms until terminated by either party upon providing ninety (90) days prior written notice.

Continued to Sheet No. 6.835

ISSUED BY: N. G. Tower, President

DATE EFFECTIVE:

ORIGINAL SHEET NO. 6.835

Continued from Sheet No. 6.830

MONTHLY RATE: The monthly charge shall be calculated by applying the monthly rate of 1.19% to the In-Place Value of the customer specific lighting facilities identified in the Outdoor Lighting Agreement entered into between the customer and the Company for service under this schedule.

The In-Place Value may change over time as new lights are added to the service provided under this Rate Schedule to a customer taking service, the monthly rate shall be applied to the In-Place Value in effect that billing month.

NON-STANDARD FACILITIES AND SERVICES:

The customer shall pay all costs associated with additional company facilities and services that are not considered standard for providing lighting service, including but not limited to, the following:

1. relays;
2. distribution transformers installed solely for lighting service;
3. protective shields;
4. bird deterrent devices;
5. light trespass shields;
6. light rotations;
7. light pole relocations;
8. devices required by local regulations to control the levels or duration of illumination including associated planning and engineering costs;
9. removal and replacement of pavement required to install underground lighting cable;
10. directional boring;
11. specialized permitting that is incremental to a standard construction permit; and
12. specialized engineering scope required by either the customer or by local code or ordinance that is unique to the requested work.

Payment may be made in a lump sum at the time the agreement is entered into, or at the customer's option these non-standard costs may be included in the In-Place Value to which the monthly rate will be applied.

MINIMUM CHARGE: The monthly charge.

ENERGY CHARGE: For monthly energy served under this rate schedule, 2.509¢ per kWh.

FUEL CHARGE: See Sheet Nos. 6.020 and 6.021.

ENERGY CONSERVATION CHARGE: See Sheet Nos. 6.020 and 6.021.

CAPACITY CHARGE: See Sheet Nos. 6.020 and 6.021

ENVIRONMENTAL COST RECOVERY CHARGE: See Sheet Nos. 6.020 and 6.021

FLORIDA GROSS RECEIPTS TAX: See Sheet No. 6.022

FRANCHISE FEE: See Sheet No. 6.022

PAYMENT OF BILLS: See Sheet No. 6.022

ISSUED BY: N. G. Tower, President

DATE EFFECTIVE:

~~SIXTH~~ SEVENTH REVISED SHEET NO. 7.202
CANCELS ~~FIFTH~~ SIXTH REVISED SHEET NO. 7.202

Continued from Sheet No. 7.201

8. Customer Contribution in Aid of Construction

The Company shall pay for all normal Equipment installation costs, with the exception of the following: $_________ for _________________________. If applicable, a final invoice or partial refund shall be issued to the Customer based upon deviations of actual costs in relation to the estimated customer contribution. CIAC payment to satisfy actual costs are non-refundable.

9. Monthly Payment

During the term of this Agreement, the Customer shall pay the Company monthly for the lighting services provided pursuant to Rate Schedule ~~LS-1~~ ______as the rate schedule, which is on file with the Florida Public Service Commission, may be amended from time to time. All bills shall be due when rendered.

The current monthly base charges for facilities installed under this agreement are_____________. Fuel and other adjustment clause charges and (where applicable) franchise fees and taxes per month under current tax rates pursuant to the Rate Schedule shall be _________. The total monthly charge shall be _____________ per month.

If Applicable, Customer agrees to deposit with the Company, the additional cash sum of ___________, which is equivalent to approximately two (2) months service under this Agreement, or upon acceptance if the Company so agrees, provide a surety bond or an irrevocable letter of credit from a bank, in favor of the Company in the same amount. The Company will annually credit the Customer's bill with an interest amount, at the rate currently approved by the Florida Public Service Commission, for cash deposits received. The currently authorized interest rate is __%.

The monthly charges specified in this agreement are tied to the tariff charges currently on file with the Florida Public Service Commission and may change during the term of this Agreement in accordance with filed changes to the relevant tariffs.

10. Term

This Agreement shall be effective on the later of the dates indicated on the signature block ("Effective Date") and shall remain in force for a primary term of ~~ten (10)~~ _____year(s) (the "Primary Term" as provided in the applicable Rate Schedule) beginning on the date one or more of the Equipment is installed and, if applicable, at least one light is energized and ready for use and shall continue thereafter for successive one year terms (each, a "Renewal Term") until terminated by either party upon providing the other party with ninety (90) days prior written notice of termination.

11. Limitation on Damages

The Company will furnish electricity to operate the Equipment for dusk to dawn service or less, depending on the controlling device, each calendar year. The Company will use reasonable diligence at all times to provide continuous operation during the term. The Company shall not be liable to the Customer for any damages arising from causes beyond its control or from the negligence of the Company including, but not limited to, complete or partial failure or interruption of service, shut down for repairs or adjustments, delay in providing or restoring service, or for failure

ISSUED BY: ~~G. L. Gillette~~N. G. Tower, President

DATE EFFECTIVE: ~~February 6, 2018~~

~~SIXTH~~ SEVENTH REVISED SHEET NO. 7.202
CANCELS ~~FIFTH~~ SIXTH REVISED SHEET NO. 7.202

to warn of any interruption of service or lighting.

Continued to Sheet No. 7.203

ISSUED BY: ~~G. L. Gillette~~ N. G. Tower, President

DATE EFFECTIVE: ~~February 6, 2018~~

Item 6

FILED 1/24/2019
DOCUMENT NO. 00349-2019
FPSC - COMMISSION CLERK

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: January 24, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Sibley, Hudson)
Division of Engineering (Lewis)
Office of the General Counsel (DuVal)

RE: Docket No. 20170147-WS – Application for staff-assisted rate case in Levy County by FIMC Hideaway, Inc.

AGENDA: 02/05/19 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

FIMC Hideaway, Inc. (FIMC or Utility) is a Class C utility which was granted water and wastewater certificates in 1984 to serve the Hideaway development when Levy County turned jurisdiction over to the Florida Public Service Commission (Commission) in 1983.[1] The Hideaway systems were transferred to Florida Investors Mortgage Corporation (FIMC) Hideaway, Inc. in 1992 following its foreclosure on the Utility.[2] Subsequently, a transfer of majority organizational control was approved in 2005 when the Utility stock was acquired by the

[1] Order No. 13497, issued July 10, 1984, in Docket No. 19830552-WS, *In re: Application of Hideaway Service, Inc. for a certificate to operate a water and sewer utility in Levy County.*

[2] Order No. 25584, issued January 8, 1992, in Docket No. 19910672-WS, *In re: Application for transfer of Certificates Nos. 426-W and 362-S from Hideaway Service, Inc. to FIMC Hideaway, Inc. in Levy County.*

current owners.[3] In 2009, the Commission approved the transfer of the Springside water and wastewater systems from Par Utilities, Inc. to FIMC Hideaway, Inc.[4] The Hideaway and Springside water and wastewater systems were interconnected in April 2013.

On June 22, 2017, FIMC filed an application for a staff-assisted rate case (SARC). Pursuant to Order No. PSC-2018-0389-PAA-WS, the Commission approved rates and charges for FIMC. Order No. PSC-2018-0389-PAA-WS, additionally ordered:

> [T]he overall quality of service provided by FIMC Hideaway, Inc. shall be considered marginal until the utility can sufficiently demonstrate that it meets the Department of Environmental Protection's [DEP] secondary water standards. The [U]tility shall file the results of its next primary and secondary water standards tests with this Commission in this docket by November 1, 2018. If the results are unfavorable, our staff will bring this item to this Commission by March 1, 2019, for further action.

By email, on October 8, 2018, FIMC provided to staff the results of its most recent DEP primary and secondary water tests. By letter dated November 6, 2018, Commission staff notified the Utility that this item would be brought to the Commission for consideration at the February 5, 2019 Commission Conference.[5] This recommendation addresses the test results provided by FIMC and staff's recommendation as to further action. The Commission has jurisdiction pursuant to Sections 367.011, 367.081, 367.0812, 367.0814, and 367.091, Florida Statutes (F.S.).

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[3]Order No. PSC-05-0298-PAA-WS, issued March 18, 2005, in Docket No. 20040152-WS, *In re: Application for transfer of majority organizational control of FIMC Hideaway, Inc. in Levy County from Florida Investors Mortgage Corporation, a Florida corporation, to Robert and Janet McBride.*
[4]Order No. PSC-09-0279-PAA-WS, issued April 29, 2009, in Docket No. 20080268-WS, *In re: Joint Application for transfer of the Springside water and wastewater systems from Par Utilities, Inc. in Levy County to FIMC Hideaway, Inc.:, amendment of Certificates 426-W and 362-S held by FIMC Hideaway, Inc.; and amendment of Certificate 428-W and cancellation of Certificate 366-S held by Par Utilities, Inc.*
[5] Document No. 07000-2018.

Discussion of Issues

Issue 1: What further action should be taken considering FIMC's failure to meet DEP secondary water quality standards?

Recommendation: Staff recommends that the Commission direct FIMC to create an estimate of costs and benefits of a plausible solution to reduce sulfates and total dissolved solids to a level that is within acceptable DEP standards. Staff additionally recommends that the Commission direct FIMC to meet with its customers to discuss the estimated costs and benefits of and the time necessary for implementing a plausible solution to reduce sulfates and total dissolved solids to a level that is within acceptable DEP standards. The Utility should report the results of such meeting(s) to the Commission by August 6, 2019. After analyzing FIMC's report, staff will bring this item before the Commission for further action, if needed. (Lewis)

Staff Analysis: Pursuant to Section 367.081(2)(a)1., F.S., in water and wastewater rate cases, the Commission shall consider the quality of service provided by a utility. Additionally, Section 367.0812(2), F.S., states:

> (2)(a) In determining the quality of water service, the commission shall consider a finding by the Department of Environmental Protection as to whether the utility has failed to provide water service that meets the secondary water quality standards of the department.
> (b) The utility shall create an estimate of the costs and benefits of a plausible solution to each issue identified by the commission.
> (c) The utility shall meet with its customers within a time prescribed by the commission to discuss the estimated costs and benefits of and time necessary for implementing a plausible solution for each quality of water service issue identified, and the utility shall report the results of such meetings to the commission.
> (d) The utility shall inform the commission, if:
> 1. The customers and the utility agree on a solution for each quality of water service issue identified, of each agreed-on solution and the cost of each solution; or
> 2. The customers and the utility prefer a different solution to at least one of the quality of water service issues identified, of the preferred solutions by each and the cost of each solution.

By Order No. PSC-2018-0389-PAA-WS, the Commission determined the Utility's quality of service to be marginal based in part on the Utility not meeting DEP secondary standards for sulfates and total dissolved solids. The Commission additionally ordered the Utility to file updated test results by November 1, 2018. On October 8, 2018, FIMC timely provided its test results to Commission staff. The test results indicated the water service provided by the Utility continues to exceed DEP standards for sulfates and total dissolved solids. The reading for sulfates was 426 mg/L (milligrams per Liter) which exceeds the 250 mg/L maximum

containment level (MCL) 250 mg/L. The reading for total dissolved solids was 992 mg/L which exceeds the 500 mg/L MCL standard.[6]

Given the unfavorable test results and the requirements of Section 367.0812(2), F.S., staff recommends that the Commission direct FIMC to create an estimate of costs and benefits of a plausible solution to reduce sulfates and total dissolved solids to a level that is within acceptable DEP standards. Staff notes that in 1992, the Commission found the following:

> According to DER [predecessor of the Department of Environmental Protection], the utility has three options available to it which may secure compliance with the requirements. It may pursue the use of another water source, either an existing surface or ground water supply, or it may install additional means of treating the water. However, the only recommended treatment for sulfate is reverse osmosis, and, in this instance, reverse osmosis will be cost prohibitive for this utility. In addition, because of the plant's location, it is questionable that the utility could meet the industrial waste standards required for the backwash discharge. Lastly, the utility can procure land and permits to construct a well field outside the area where the gypsum deposits are located. The DER engineer suggests that the utility determine the cost of drilling a new well field outside of the subdivision. The DER engineer also suggested that Hideaway work with the Springside at Manatee, Ltd., and Fowlers Bluff utilities to locate a better source of water since all three are experiencing the same types of problems in the same general location.[7]

Staff recommends that the Commission direct FIMC to meet with its customers after an estimate of costs and benefits to reduce sulfates and total dissolved solids is created. In its meeting(s) with customers, the Utility should discuss the estimated costs and benefits of and time necessary for implementing a plausible solution to reduce sulfates and total dissolved solids to a level that is within acceptable DEP standards. The Utility should report the results of such customer meeting(s) to the Commission by August 6, 2019. After analyzing FIMC's report, staff will bring this item before the Commission for further action, if needed. If the Utility encounters any unforeseen events that will impede its ability to timely meet the recommended schedule, the Utility should immediately notify this Commission in writing.

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[6] Document No. 00244-2019, filed January 16, 2019, p. 8.
[7] Order No. PSC-92-0479-FOF-WS, issued June 9, 1992, in Docket No. 19911091-WS, *In re: Application for a staff-assisted rate case in Levy County by FIMC Hideaway, Inc.*, p. 5.

Issue 2: Should this docket be closed?

Recommendation: No. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued. The docket should remain open to allow the Utility to provide the appropriate reporting information and the allow staff to bring this item back to the Commission for further action, if needed. (Duval)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued. The docket should remain open to allow the Utility to provide the appropriate reporting information and the allow staff to bring this item back to the Commission for further action, if needed.

Item 7

FILED 1/24/2019
DOCUMENT NO. 00354-2019
FPSC - COMMISSION CLERK

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: January 24, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Engineering (Wooten, Ellis, King)
Division of Accounting and Finance (Frank, Norris)
Division of Economics (Bruce)
Office of the General Counsel (Schrader)

RE: Docket No. 20170174-SU – Application for transfer of assets of exempt utility, amendment of Certificate No. 465-S, and petition for partial variance or waiver of Rule 25-30.030(5)(b), F.A.C. by Utilities, Inc. of Florida.

AGENDA: 02/05/19 – Regular Agenda – Proposed Agency Action for Issues 2 and 3 – Interested Persons May Participate

COMMISSIONERS ASSIGNED: Brown, Polmann, Clark

PREHEARING OFFICER: Polmann

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On August 9, 2017, Utilities, Inc. of Florida (UIF or Buyer) filed an application for transfer of assets of exempt utility Barrington Estates Property Holdings Homeowners' Association, Inc. (Barrington Estates HOA) to UIF, amendment of Certificate No. 465-S, and petition for partial variance or waiver of Rule 25-30.030(5)(b), Florida Administrative Code (F.A.C.). The Barrington Estates wastewater system (Utility) currently serves 148 wastewater customers in Lake County. Customers currently receive water service from UIF.

The Barrington Estates HOA system was bought from Centennial Bank who acquired it in a foreclosure proceeding to assure wastewater service to the members of the Barrington Estates

HOA. UIF is a Class A water and wastewater utility currently serving approximately 34,000 water and/or wastewater customers throughout 27 systems in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties.[1] UIF is a wholly owned subsidiary of Utilities, Inc., and its rates and charges were last approved by the Florida Public Service Commission (Commission) in Docket No. 20160101-WS.[2]

On October 11, 2017, the Commission granted UIF partial variance or waiver of Rule 25-30.030(5)(b), F.A.C., for notice to be provided to all customers and property owners within its existing service area. This partial waiver was granted by the Commission due to the minimal amount of customers that would be added to UIF's system.[3] Further, the Barrington Estates HOA system is not connected to any of UIF's existing wastewater systems and would not affect the current customers' quality of service or rates.

The proposed additional service territory is intended to serve solely the Barrington Estates HOA area, which is near the City of Clermont's (Clermont) service area. On September 21, 2017, Clermont filed an objection to the application for transfer of assets of exempt utility and for amendment of Certificate 465-S. This was resolved via an amendment[4] to a Settlement Agreement that UIF and Clermont finalized in a previous docket.[5] On September 17, 2018, Clermont issued a notice of withdrawal of its objection to application for transfer of assets of exempt utility and for amendment of Certificate 465-S by UIF.

This recommendation addresses the amendment of Certificate No. 465-S, the transfer of the wastewater system from Barrington Estates HOA to UIF, the net book value (NBV) of the wastewater system at the time of the transfer, the need for an acquisition adjustment, and implementation of UIF's rates to the Utility. The Commission has jurisdiction pursuant to Sections 367.045, 367.071 and 367.091, Florida Statutes (F.S.).

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[1] Document No. 06847-2017.
[2] Docket No. 20160101-WS, *In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties by Utilities, Inc. of Florida.*
[3] Order No. PSC-2017-0387-PAA-SU, issued October 11, 2017.
[4] Document No. 07846-2017.
[5] Order No. PSC-05-0523-FOF-WS, issued May 13, 2005, in Docket No. 20020907-WS, *In re: Application for amendment of Certificate Nos. 496-W and 465-S to extend water and wastewater service areas in Lake County by Lake Utility Services, Inc.*

Discussion of Issues

Issue 1: Should the transfer of Barrington Estates HOA wastewater system, an exempt entity in Lake County, to Utilities, Inc. of Florida and amendment of Certificate No. 465-S be approved?

Recommendation: Yes. The transfer of the Barrington Estates HOA wastewater system and amendment of Certificate No. 465-S, to include the territory as described in Attachment A, is in the public interest and should be approved effective the date of the Commission's vote. The resultant order should serve as the Buyer's amended certificate and should be retained by the Buyer. The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, F.A.C., as modified by the Commission pursuant to Order No. PSC-2017-0387-PAA-SU. UIF should be responsible for filing all future annual reports and Regulatory Assessment Fees (RAFs) subsequent to the date of closing. (Wooten, Bruce, Frank)

Staff Analysis: On August 9, 2017, UIF filed an application for transfer of assets to UIF of a currently exempt utility and amendment of Certificate No. 465-S in Lake County. The application is in compliance with Section 367.071, F.S., Section 367.045, F.S., Rule 25-30.036, F.A.C., Application for Amendment to Certificate of Authorization to Extend or Delete Service Area and Rule 25-30.037, F.A.C., Application for Authority to Transfer. The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030(5)(b), F.A.C., Notice of Application and of Customer Meeting and Noticing. Adequate service territory maps and territory descriptions have also been provided. The application contains a description of the wastewater service territory of the currently exempt utility which is appended to this recommendation as Attachment A.

Noticing, Territory, and Land Ownership

UIF provided notice of the application pursuant to Section 367.071, F.S. and Rule 25-30.030(5)(b), F.A.C., however Rule 25-30.030(5)(b), F.A.C. was partially waived by the Commission regarding the requirement that the notice be provided to all customers and property owners within its existing service area.[6] In lieu of noticing all of its customers by mail, UIF was ordered to place a staff-approved notice of its application on its website for 30 days, which UIF has satisfied. This notice also provided 30 days for customers to file an objection to the transfer. Clermont objected to the transfer on October 11, 2017, which was resolved by a Settlement Agreement[7] between Clermont and UIF. No other objections were received and the time for filing objections has expired.

The application contains a description of the wastewater service territory which is appended to this recommendation as Attachment A. The application contains a copy of a Utility and Water Treatment Facilities easement that was executed on October 16, 2012, as evidence that the Applicant owns or has rights to long-term use of the land upon which the wastewater treatment facilities are located pursuant to Rule 25-30.037(2)(s), F.A.C.

[6] Order No. PSC-2017-0387-PAA-SU, issued October 11, 2017.
[7] Document No. 07846-2017.

Purchase Agreement and Financing

Pursuant to Rule 25-30.037(2)(i), and (j), F.A.C., the application contains a statement regarding financing and a copy of the Purchase Agreement, which includes the purchase price, terms of payment, and a list of the assets purchased. There are no customer deposits, guaranteed revenue contracts, developer agreements, customer advances, leases, or debt of Barrington Estates HOA that must be disposed of with regard to the transfer. According to the Purchase Agreement, the total purchase price for the assets is $270,000. According to the Buyer, the closing date of the sale will take place 30 days after the date of the consummating order for this docket. The consummating order is scheduled to be filed on March 22, 2019. Therefore, the closing date will be April 21, 2019, subject to Commission approval, pursuant to Section 367.071(1), F.S.

Facility Description and Compliance

The wastewater treatment plant (WWTP) is an extended aeration sewage treatment plant with reuse of two rapid infiltration basins permitted by the Florida Department of Environmental Protection (DEP) at 49,000 gallons per day based on the annual average daily flow. Chlorine disinfection is applied in a chlorine contact chamber. The collection system is composed of 4- and 8-inch polyvinyl chloride (PVC) pipes and there is a single lift station with two submersible pumps in the service area. The last compliance evaluation inspection of the facility was conducted on March 23, 2016 by DEP. There was one deficiency that was corrected; therefore, the system appears to be in compliance with DEP rules.

Technical and Financial Ability

Pursuant to Rules 25-30.037(2)(l), and (m), F.A.C., the application contains statements describing the technical and financial ability of UIF to provide service to the proposed service area. The application states that UIF is a Class A water and wastewater utility currently serving approximately 34,000 water and/or wastewater customers throughout 27 systems in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties. UIF has been operating as a Commission regulated utility in Florida since 1975 and is the largest investor-owned water and wastewater utility in Florida.

The Buyer is a Class A utility that owns and operates multiple water and wastewater systems. Staff reviewed the financial statements of UIF for this docket. Based on the above, the Buyer has demonstrated the technical and financial ability to provide service to the existing service territory.

Regulatory Assessment Fees and Annual Reports

Because the Buyer is acquiring a non-regulated utility, there are no annual reports or RAFs on file for this system. The Buyer will be responsible for filing annual reports and paying RAFs for 2019 and all future years.

Conclusion

Staff recommends the transfer of the Barrington Estates HOA wastewater system and amendment of Certificate No. 465-S, to include the territory as described in Attachment A, is in the public interest and should be approved effective the date of the Commission's vote. The resultant order should serve as the Buyer's amended certificate and should be retained by the Buyer. The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, F.A.C., as modified by the Commission pursuant to Order No. PSC-2017-0387-

PAA-SU. UIF should be responsible for filing all future annual reports and RAFs subsequent to the date of closing.

Issue 2: What is the appropriate net book value for the Barrington Estates HOA wastewater system for transfer purposes?

Recommendation: The net book value of the wastewater system for transfer purposes is $277,549 as of April 21, 2019. An acquisition adjustment should not be included in rate base. Within 90 days of the date of the final order, UIF should be required to notify the Commission in writing that it has adjusted its books in accordance with the Commission's decision. The adjustments should be reflected in UIF's 2019 Annual Report when filed. (Frank, Wooten)

Staff Analysis: Rate base has not previously been established for the Utility. The purpose of establishing NBV for transfers is to determine whether an acquisition adjustment should be approved. The NBV does not include normal ratemaking adjustments for used and useful plant or working capital. The Utility's NBV has been updated to reflect balances as of April 21, 2019. Staff's recommended NBV, as described below, is shown on Schedule No. 1.

Utility Plant in Service (UPIS)

The Utility's application reflected a UPIS balance of $543,142. Barrington Estates HOA is a non-regulated company and thus did not maintain its books and records according to the National Association of Regulatory Utility Commissioners uniform system of accounts (NARUC USOA). Further, Barrington Estates HOA purchased the utility system from Centennial Bank after a foreclosure proceeding, therefore original cost records are not available. On July 12, 2018, UIF filed documentation supporting the original cost of the Barrington Estates HOA wastewater collection system. This original cost documentation included original invoices for the components involved in the wastewater system which totaled $425,041, excluding the WWTP and Lift Station.[8] The Utility did not possess the original cost documentation for the WWTP and Lift Station for the July filing, but contacted the manufacturer to obtain the documentation. On September 18, 2018, UIF provided the original cost invoices for the WWTP and Lift Station, which totaled an additional $230,200.[9] Staff reviewed all original cost documents and verified the NARUC USOA account numbers.

According to the original cost analysis, the Utility had a UPIS balance of $655,241, as of December 31, 2008. Staff recalculated UPIS since 2008 to reflect all additions and retirements as of April 21, 2019. Staff calculated the appropriate UPIS balance to be $660,805. As a result, UPIS should be increased by $117,663 ($660,805 - $543,142) to reflect a UPIS balance of $660,805, as of April 21, 2019.

Land

The Utility's application reflected a land balance of $0, as of April 21, 2019. Therefore, staff recommends a balance for land of $0, as of April 21, 2019.

Accumulated Depreciation

The Utility's application reflected an accumulated depreciation balance of $181,617. Based on the original cost analysis and depreciation Rule 25-30.140, F.A.C., staff calculated an accumulated depreciation balance of $279,577, as of December 31, 2008. Staff recalculated

[8] Document No. 04666-2018.
[9] Document No. 06129-2018.

accumulated depreciation of plant since 2008, including plant additions and retirements, to reflect accumulated depreciation as of April 21, 2019. Staff calculated the appropriate accumulated depreciation balance to be $277,592. As a result, accumulated depreciation should be increased by $95,975 to reflect an accumulated depreciation balance of $277,592 ($181,617 + $95,975), as of April 21, 2019.

Contributions-in-Aid-of-Construction (CIAC) and Accumulated Amortization of CIAC

As mentioned above, Barrington Estates HOA is a non-regulated company and thus did not maintain its books and records according to the NARUC USOA. As a result, no CIAC was recorded. Barrington Estates HOA purchased the utility system from Centennial Bank after a foreclosure proceeding. Because Barrington Estates HOA is comprised of all of the Utility's customers, staff believes the system should be considered 100 percent contributed. Based on its original cost analysis, staff calculated a CIAC balance of $655,241 and an accumulated amortization of CIAC balance of $279,577.

In an effort to be consistent with the Commission's decision in the 2000 transfer of Utilities, Inc. of Eagle Ridge, UIF has requested that its investment in the system be used to offset the CIAC balance.[10] In most transfers, the sales transaction is outside the control of the customers of the utility and generally only benefits the utility and its shareholders. However, this transfer, like the transfer in Eagle Ridge, is unique in that the customers of the Utility are also the owners of the Utility. Therefore, due to the specific and unique facts in this case, and consistent with the Commission's decision in Eagle Ridge, staff recommends that the purchase price of $270,000 be used to offset the imputed CIAC of $655,241 to reflect the fact that the customers have been reimbursed a portion of their investment in the Utility. This results in a net CIAC balance of $385,241 ($270,000 - $655,241). Therefore, staff recommends a CIAC balance of $385,241, and an accumulated amortization of CIAC balance of $279,577, as of April 21, 2019.

Net Book Value

The Utility's application reflected a NBV of $361,525. Based on the adjustments described above, staff recommends a NBV of $277,549, as of April 21, 2019. Staff's recommended NBV and the NARUC USOA balances for UPIS and accumulated depreciation as of April 21, 2019, are shown on Schedule No. 1.

Acquisition Adjustment

An acquisition adjustment results when the purchase price differs from the NBV of the assets at the time of the acquisition. Pursuant to Rule 25-30.0371, F.A.C., a positive acquisition adjustment may be appropriate when the purchase price is greater than the NBV, and a negative acquisition adjustment may be appropriate when the purchase price is less than NBV. With respect to negative acquisition adjustments, Rule 25-30.0371, F.A.C., states that no negative acquisition adjustment shall be included in rate base if the purchase price is greater than 80 percent of the NBV. The Utility and its assets were purchased for $270,000. As mentioned

[10] Order No. PSC-01-1792-PAA-SU, issued September 5, 2001, in Docket No. 20001820-SU, *In re: Application for transfer of wastewater utility facility in Lee County from Cross Creek of Fort Myers Community Association, Inc., a not-for-profit Florida Corporation, to Utilities, Inc. of Eagle Ridge, holder of Certificate No. 369-S, and for amendment of Certificate No. 369-S to include additional territory.*

above, staff recommends that the appropriate NBV is $277,549. Because the purchase price of $270,000 is greater than 80 percent of NBV ($222,039), no acquisition adjustment is required. As such, staff recommends that no negative acquisition adjustment be approved.

Conclusion

Based on the above, staff recommends that the NBV of the wastewater system for transfer purposes is $277,549 as of April 21, 2019. No acquisition adjustment should be included in rate base. Within 90 days of the date of the final order, the Buyer should be required to notify the Commission, in writing, that it has adjusted its books in accordance with the Commission's decision. The adjustments should be reflected in UIF's 2019 Annual Report when filed.

Issue 3: Should the Commission approve UIF's request to implement its consolidated monthly wastewater rates and charges for Barrington Estates?

Staff Recommendation: Yes. The Commission should, consistent with the Purchase Agreement, approve UIF's request to implement its consolidated monthly wastewater rates and miscellaneous service charges as shown on Schedule No. 2 for the Utility. The approved rates and charges should be effective for the Utility for service rendered after the order becomes final, the sale of Barrington Estates' wastewater system is final, and the Barrington Estates HOA homeowners have been noticed of the approved rates and charges. The notice should be approved by staff prior to publication and the Utility should provide proof of the date notice was given within 10 days of the date of the notice. (Bruce)

Staff Analysis:
Currently, the Barrington Estates HOA owns its wastewater system, which is operated by UIF. The water service is provided by UIF. The Barrington Estates homeowners pay quarterly HOA fees of $246.50, which includes $89.86 for wastewater service ($29.95 monthly). Barrington Estates HOA has no general service customers. In its application, UIF is requesting that its consolidated monthly wastewater rates and miscellaneous service charges be implemented for the Barrington Estates homeowners as reflected in the contract for the purchase of Barrington Estates wastewater system. The wastewater rates consist of a base facility charge of $25.93 and gallonage charge of $4.15 per 1,000 gallons with an 8,000 gallon cap. In the past, the Commission has approved several amendments wherein the acquiring utility implemented its rates for an acquired utility.[11] In support of its request to implement its consolidated rates, UIF states: (1) the HOA agreed to pay the consolidated wastewater rates approved by the Commission; (2) revenues are revenue neutral; therefore, the customers will not be subsidizing nor be subsidized by the other UIF customers because the consolidated rates are consistent with the purchase price; and (3) the revenues produced by applying the consolidated rate structure will also result in UIF's currently authorized rate of return.

According to UIF, under the Barrington Estates HOA fees, the revenues generated for wastewater service were approximately $53,200 per year. Based on average consumption of the homeowners, approximately $81,145 of revenues will be generated annually with the implementation of the consolidated monthly wastewater rates.[12] The Utility indicated that the revenues under its consolidated rates will cover the additional operating costs (operation and maintenance, depreciation, and taxes) and allow UIF to earn its authorized rate of return on the acquired system. Staff will monitor UIF's revenues for any potential overearnings as a result of

[11] Order No. PSC-1997-0929-FOF-WS, issued August 4, 1997, in Docket No. 19970210-WS, *In re: Application by United Water Florida, Inc. for amendment of Certificates Nos. 236-W and 179-S and for limited proceeding to adjust rates in St. Johns County*; Order No. PSC-93-1480-FOF-WS, issued October 11, 1993, in Docket No. 19930204-WS, *In re: Application for Amendment of Certificates Nos. 236-W and 179-S and for a Limited Proceeding to adjust rates in St. Johns County by Jacksonville Suburban Utilities Corporation*; Order No. 23111, issued June 25, 1990, in Docket No. 19891110-WS; *In re: Application for transfer of Certificate Nos. 475-W and 411-S from St. Johns North Utility Corp. to Jacksonville Suburban Utilities Corp. and for a limited proceeding to adjust rates.*

[12] The customer's average consumption is approximately 5,000 gallons per month.

the additional revenues. If there is a determination of potential overearnings, staff can recommend initiation of an investigation for the Commission.

The Barrington Estates HOA development is essentially built out except for a parcel of property for which there are no current plans for development.[13] There are no approved service availability charges for this system and UIF has no plans to interconnect the Barrington Estates wastewater system to its closest wastewater treatment plant. Therefore, if there is additional development in the service area in the future, the Utility will need Commission approval to implement service availability charges.

Conclusion

Based on the above, staff recommends that the Commission should, consistent with the Purchase Agreement, approve UIF's request to implement its consolidated monthly wastewater rates and miscellaneous service charges as shown on Schedule No. 2 for the Utility. The approved rates and charges should be effective for the Utility for service rendered after the order becomes final, the sale of Barrington Estates' wastewater system is final, and the Barrington Estates HOA homeowners have been noticed of the approved rates and charges. The notice should be approved by staff prior to publication and the Utility should provide proof of the date notice was given within 10 days of the date of the notice.

[13] Currently, the Barrington Estates HOA uses 60 percent of the capacity of the wastewater treatment plant. Centennial Bank has reserved 40 percent of the capacity of the wastewater treatment plant for potential future developments.

Issue 4: Should this docket be closed?

Recommendation: If no protest to the proposed agency action is filed by a substantially affected person within 21 days of the date of the issuance of the order, a consummating order should be issued and the docket should be closed administratively upon Commission staff's verification that the revised tariff sheets have been filed, the Buyer has notified the Commission in writing that it has adjusted its books in accordance with the Commission's decision, and proof that appropriate noticing has been completed pursuant to Rule 25-30.4345, F.A.C. (Schrader)

Staff Analysis: If no protest to the proposed agency action is filed by a substantially affected person within 21 days of the date of the issuance of the order, a consummating order should be issued and the docket should be closed administratively upon Commission staff's verification that the revised tariff sheets have been filed, the Buyer has notified the Commission in writing that it has adjusted its books in accordance with the Commission's decision, and proof that appropriate noticing has been completed pursuant to Rule 25-30.4345, F.A.C.

Utilities, Inc. Of Florida
Wastewater Territory Description
Lake County

Lake County, Florida, Village Lakeland

Sections 14 and 23, Township 28 South, Range 24 East

A PARCEL OF LAND LOCATED IN SECTIONS 11 AND 14. TOWNSHIP 23 SOUTH, RANGE 25 EAST OF LAKE COUNTY, FLORIDA. BEING MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHWEST 1/4 OF SECTION 11, TOWNSHIP 23 SOUTH, RANGE 25 EAST, LAKE COUNTY, FLORIDA: THENCE RUN N 00° 48' 18" E ALONG THE WEST LINE OF SAID SOUTHWEST 1/4, A DISTANCE OF 1311.35 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 11: THENCE RUN S 89° 43' 28" E ALONG SAID NORTH LINE, A DISTANCE OF 660.94 FEET TO A POINT ON THE EAST LINE OF THE WEST ½ OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 11; THENCE RUN S 00° 47 '02" W ALONG SAID EAST LINE. A DISTANCE OF 656.57 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 11: THENCE RUN S 89° 38' 46" E ALONG SAID NORTH LINE. A DISTANCE OF 628.18 FEET TO A POINT ON THE EAST LINE OF SAID SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4; THENCE RUN S 00° 45' 46" W ALONG SAID EAST LINE. A DISTANCE OF 657.43 FEET TO A POINT ON THE SOUTH LINE, OF SAID SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4; THENCE RUN N 89° 34' 05" W ALONG SAID SOUTH LINE. A DISTANCE OF 628.41 FEET TO A POINT ON THE EAST LINE OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 14, TOWNSHIP 23 SOUTH. RANGE 25 EAST: THENCE RUN S 00° 55' 45" W ALONG SAID EAST LINE. A DISTANCE OF 678.12 FEET TO A POINT: THENCE LEAVING SAID EAST LINE RUN N 89° 11' 42" W. A DISTANCE OF 184.93 FEET; THENCE RUN N 72° 01' 37" W, DISTANCE OF 52.33 FEET; THENCE RUN N 89° 11' 42" W. A DISTANCE OF 240.00 FEET; THENCE RUN S 73° 38' 12" W, A DISTANCE OF 52.33 FEET; THENCE N 89° 11' 42" W, A DISTANCE OF 136.26 FEET TO A POINT ON THE WEST LINE OF THE NORTHWEST 1/4 OF SECTION 14, TOWNSHIP 23 SOUTH, RANGE 25 EAST; THENCE RUN N 00° 54' 43" E ALONG SAID WEST LINE. A DISTANCE OF 673.82 FEET TO THE POINT OF BEGINNING.

Utilities, Inc. Of Florida
Wastewater Territory Description
Lake County, Florida Village Lakeland

Sections 14 and 23, Township 23 South, Range 25 East

A portion of Section 14, Township 23 South, Range 25 East, Lake County, Florida, being described as follows:

BEGIN at the southwest corner of the Northwest ¼ of the Northwest ¼ of said Section 14; thence run N 00°54'43" E, along the west line of the Northwest ¼ of the Northwest ¼ of said Section 14, a distance of 649.14 feet to a point on the south line of BARRINGTON ESTATES PHASE 1, according to the plat thereof, as recorded in Plat Book 62, Pages 46 through 49, Public Records of Lake County, Florida; thence run easterly along the southerly line of said BARRINGTON ESTATES PHASE 1 the following courses and distances; run S 89°11'42"E, a distance of 136.26 feet; thence run N 73°38'12" E, a distance of 52.33 feet; thence run S 89°11'42" E, a distance of 240.00 feet; thence run S 72°01'37" E, a distance of 52.33 feet; thence run S 89°11'42" E, a distance of 184.93 feet to a point on the east line of the Southwest ¼ of the Northwest ¼ of the Northwest ¼ of said Section 14; thence run S 00°55'45" W, along the east line of the Southwest ¼ of the Northwest ¼ of the Northwest ¼ of said Section 14, a distance of 644.55 feet to a point on the south line of the Northwest ¼ of the Northwest ¼ of said Section 14; thence run N 89°35'33" W, along the south line of the Northwest ¼ of the Northwest ¼ of said Section 14, a distance of 661.02 feet to the POINT OF BEGINNING.

Containing 9.92 acres, more of less.

FLORIDA PUBLIC SERVICE COMMISSION

Authorizes
Utilities Inc. of Florida
Pursuant to
Certificate Number 465-S

To provide wastewater service in Lake County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

Order Number	Date Issued	Docket Number	Filing Type
15967	4/8/1986	860131-WS	Original Certificate
24283	3/25/1991	900957-WS	Original Certificate
PSC-92-1328-FOF-WS	11/16/1992	920900-WS	Amendment
PSC-93-0194-FOF-WS	2/9/1993	920588-WS	Transfer Certificate & Territory Correction
PSC-94-0116-FOF-WS	1/31/1994	931000-WS	Amendment
PSC-99-0164-FOF-WS	1/26/1999	980958-WS	Transfer of Majority Org. Control
PSC-99-0884-FOF-WS	5/3/1999	990195-WS	Amendment
PSC-00-1657-PAA-WS	9/18/2000	000430-WS	Amendment
PSC-01-0066-FOF-WS	1/9/2001	001652-WS	Correction
PSC-01-2316-FOF-WS	11/27/2001	010887-WS	Transfer of Majority Org. Control
PSC-02-1658-FOF-WS	11/26/2002	020695-WS	Name Change Merger
PSC-03-1000-PAA-WS	9/5/2003	030236-WS	Transfer of Certificate
PSC-04-0966-FOF-WS	10/5/2004	040371-WS	Amendment
PSC-05-0523-FOF-WS	5/13/2005	020907-WS	Amendment
PSC-06-0094-FOF-WS	2/9/2006	050499-WS	Transfer of Majority Org. Control
PSC-06-1065-FOF-WS	12/26/2006	020907-WS	Correction
PSC-09-0302-FOF-WS	5/6/2009	090034-WS	Quick-Take Amendment
PSC-12-0497-FOF-WS	9/27/2012	090034-WS	Transfer of Majority Org. Control
PSC-16-0143-FOF-WS	4/12/2016	150235-WS	Reorganization/Name Change
*	*	20170174-SU	Amendment

*** Order Numbers and dates to be provided at time of issuance**

Barrington Estates Wastewater System Schedule
Wastewater System
Schedule of Net Book Value as of April 21, 2019

Description	Balance Per Utility	Adjustments		Staff Recommended
Utility Plant in Service	$543,142	$117,663	A	$660,805
Land & Land Rights	0	0		0
Accumulated Depreciation	(181,617)	(95,975)	B	(277,592)
CIAC	0	(385,241)	C	(385,241)
Amortization of CIAC	0	279,577	D	279,577
Total	$361,525	($83,976)		$277,549

Explanation of Staff's Recommended
Adjustments to Net Book Value as of April 21, 2019
Wastewater System

Explanation	**Amount**
A. Utility Plant in Service (UPIS) To reflect appropriate amount of UPIS.	$117,663
B. Accumulated Depreciation To reflect appropriate amount of accumulated depreciation.	($95,975)
C. Contributions-in-Aid-of-Construction (CIAC) To reflect appropriate amount of CIAC.	($385,241)
D. Accumulated Amortization of CIAC To reflect appropriate amount of accumulated amortization of CIAC.	$279,577
Total Adjustments to Net Book Value as of March 20, 2019.	($83,976)

Barrington Estates
Wastewater System
Schedule of Staff Recommended Account Balances as of April 21, 2019

Account No.	Description	UPIS	Accumulated Depreciation
354	Structures and Improvements	$36,820	($9,945)
360	Collection Sewers - Force	66,801	(24,058)
361	Collection Sewers - Gravity	229,082	(55,001)
363	Service to Customers	30,960	(8,803)
371	Pumping Equipment	9,625	(4,037)
380	Treatment and Disposal Equipment	232,698	(136,700)
389	Other Plant and Misc. Equipment	43,040	(27,269)
398	Other Tangible Plant	11,779	(11,779)
	Total	$660,805	($277,592)

Utilities, Inc. of Florida
Monthly Wastewater Rates

	Barrington Estates Rates	UIF's Existing Rates
Residential Service		
Base Facility Charge – All Meter Sizes	$29.95	$25.93
Charge per 1,000 gallons	N/A	$4.15
8,000 gallon cap		
General Service		
Base Facility Charge by Meter Size		
5/8" x 3/4"	N/A	$25.93
3/4"		$38.90
1"		$64.83
1 1/2"		$129.65
2"		$207.44
3"		$414.88
4"		$648.25
6"		$1,296.50
8"		$2,074.40
10"		$3,759.85
Charge per 1,000 gallons		$4.97

Initial Customer Deposits

Residential Service and General Service	
5/8" x 3/4"	$89.00
Other Meter Sizes	2x Average Estimated Bill

Miscellaneous Service Charges

	Business Hours	After Hours
Initial Connection Charge	$36.77	$45.55
Normal Reconnection Charge	$36.77	$45.55
Violation Reconnection Charge	Actual Cost	Actual Cost
Premises Visit Charge	$36.77	$45.55
Late Payment Charge		$6.54
NSF Check Charge	Pursuant to Section 68.065, F.S.	

Item 8

FILED 1/28/2019
DOCUMENT NO. 00345-2019
FPSC - COMMISSION CLERK

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: January 24, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (Cicchetti, D. Buys, Hightower)
Division of Economics (Guffey)
Division of Engineering (Ellis)
Office of the General Counsel (Dziechciarz, DuVal)

RE: Docket No. 20180051-GU – Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 Florida Public Utilities Company - Gas.

AGENDA: 02/05/19 – Regular Agenda – Post-Hearing Decision – Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: Brown, Clark, Fay

PREHEARING OFFICER: Brown

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

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Issue	***Description***	***Page***
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4B	Appropriate disposition of the protected excess deferred taxes.	4
5B	Appropriate disposition of the unprotected excess deferred taxes.	7
21	Should FPUC be allowed to retain the tax benefits arising from the TCJA rate reduction.	10
24	Should this docket be closed.	12

Case Background

The Florida Public Service Commission opened Docket No. 20180051-GU on February 23, 2018, to consider the tax impacts affecting Florida Public Utilities Company – Gas, (FPUC or Company) resulting from the passage of the Tax Cuts and Jobs Act of 2017 (TCJA). FPUC is a wholly owned subsidiary of Chesapeake Utilities Corporation (CUC). CUC is also the parent of CUC – Florida (Chesapeake). FPUC – Indiantown and FPUC – Fort Meade are separate divisions of FPUC. Docket Nos. 20180052-GU, 20180053-GU and 20180054-GU were opened to address the tax impacts affecting Indiantown, Fort Meade and Chesapeake.

On April 25, 2018, an Order Establishing Procedure for the docket was issued, in which controlling dates were set for filing testimony, exhibits, and discovery. On May 31, 2018, the discovery procedures and controlling dates were modified. Order No. PSC-2018-0412-PCO-GU, issued on August 20, 2018, was the second order revising the order establishing procedure that allowed the Company to file revised and supplemental testimony, and extended testimony filing dates for Commission staff and the Office of Public Counsel (OPC). OPC is the only intervenor in this docket.

The prehearing conference was held on November 5, 2018. On Monday, November 9, 2018, OPC filed an Agreed Motion to Consolidate for Purposes of Hearing Docket Nos. 20180051-GU, 20180052-GU, 20180053-GU and 20180054-GU. On November 16, 2018, Prehearing Order No. PSC-2018-0535-PHO-GU was issued and reflected proposed stipulations between FPUC and OPC on most of the issues. Order No. PSC-2018-0555-PCO-GU, issued on November 20, 2018, consolidated the four dockets for the purpose of the hearing. The hearing was held on November 27, 2018. At that time, the Commission voted to accept and approve the parties' proposed stipulations. This recommendation addresses the remaining contested issues. The Commission has jurisdiction pursuant to Sections 366.04, 366.041, 366.06, and 366.07, Florida Statutes.

Discussion of Issues

Issue 4B: What is the appropriate disposition of the protected excess deferred taxes?

Recommendation: FPUC should be allowed to retain the annual amortized amount of the protected excess deferred tax balance less the unprotected excess deferred tax amortization, for an annual net amount of $537,174. (Hightower, D. Buys, Cicchetti)

Position of the Parties

FPUC: FPUC should be allowed to retain the estimated amortized deferred balance less the unprotected deferred tax amortization, thereby fulfilling the purpose of the TCJA by allowing FPUC to continue making capital improvements and potentially delaying a rate proceeding.

OPC: The Company should not be allowed to retain the amount of the protected excess accumulated deferred income tax (ADIT). The protected excess ADIT should be reversed using an Average Rate Assumption Method ("ARAM") if the utility has the available information to calculate the ARAM, or via another appropriate method that complies with normalization requirements, if the Company does not have the information to compute the ARAM.

Staff Analysis:

PARTIES' ARGUMENTS

FPUC

FPUC argued that the Company is projected to be earning at the bottom of its allowable range of return on equity.[1] (FPUC BR 9; TR 98) In light of the Company's earning posture, FPUC argued that it should be allowed to retain the estimated annual amortized amount of the protected excess accumulated deferred income tax (ADIT) balance of approximately $844,461, less the unprotected deferred tax amortization annual amount of $307,287, for an annual net amount of $537,174. (FPUC BR 10; TR 100) FPUC argued that the ability to retain the net tax amount will provide the Company with further opportunity to earn within its authorized range of return on equity (ROE), while also enabling the Company to provide service at present rates for a longer period, to continue making necessary capital investments, and to delay a costly rate proceeding. (FPUC BR 10; TR 100) FPUC argued that if it is allowed to retain all of the tax amounts as proposed, the Company's return on equity for 2019 is projected to be 8.67 percent, which is below FPUC's allowed range of return on equity of 9.85 to 11.85 percent.[2] (FPUC BR 12; EXH 10, BSP 00043; EXH 12, BSP 00067) FPUC also argued that if it is required to reduce its base rates by $537,174 for the net excess deferred tax amount, its projected ROE would be even lower, at 8.29 percent. (FPUC BR 12, EXH 12, BSP 00064)

OPC

OPC argued that the Commission should reject FPUC's proposal to retain the tax amount associated with the protected deferred taxes as being unjust, unfair and unreasonable, and should

[1] Although FPUC witness Cassel's testimony stated that the Company expects to be earning *at* the bottom of its allowable range of return on equity, the record indicates that its projected return on equity is 8.38 percent, which is *below* its allowable range. (ESH 10, BSP 00043; EXH 15, BSP 000518)

[2] FPUC incorrectly referenced a range of 9.50 percent to 11.85 percent in its post-hearing brief.

apply the estimated annual tax savings of $537,174 for the benefit of customers in the form of a rate reduction. (OPC BR 1; TR 232, 241) OPC also argued that the tax savings represents money that was previously paid by FPUC's customers, and that the money therefore belongs to those customers and should be returned to them. (OPC BR 5) Finally, OPC argued that the TCJA did not contain any language, express or otherwise, that suggests an intended goal of the TCJA was to allow a utility to keep tax savings so as to continue making capital investments, while potentially delaying the need for a rate proceeding. (OPC BR 5; TR 184)

ANALYSIS

FPUC and OPC agree on the amount of the protected excess deferred tax of $21,955,992, amortized over 26 years, resulting in an annual tax amount of $844,461. (TR 100, 232) Where the parties differ is how the disposition of the tax savings should be resolved. OPC argued that the tax savings should be returned to FPUC's customers regardless of the Company's earnings posture to satisfy the intent of the TCJA. (OPC BR 10) FPUC proposed to retain the tax savings which, it argued, will benefit its customers by enabling the Company to delay a rate case and place downward pressure on the requested rate increase in its next rate case. (FPUC BR 11)

OPC witness Smith relied on a 1982 Florida Supreme Court decision in Reedy Creek Utils. Co. v. Fla. Public Serv. Comm., 418 So. 2d 249, 254 (Fla. 1982), which stated, "[a] change in a tax law should no [sic] result in a 'windfall' to a utility, but in a refund to the customer who paid the revenue that translated into the tax saving." (OPC BR 6; TR 235; EXH 17) OPC argued that, by definition, the excess tax monies in FPUC's possession are a windfall to the Company that should be flowed back to the customers who paid the taxes in rates. (OPC BR 7, 10) OPC pointed out during cross-examination of FPUC witness Cassel that he admitted he did not provide in his testimony any calculations or evidence to demonstrate what the Company's projected earnings would be if the tax savings were retained by the Company. (OPC BR 8-9; TR 182) However, in response to a staff interrogatory, FPUC indicated that its forecasted ROE for 2018 and 2019 would be 9.10 and 8.67 percent, respectively, if it were to retain all the tax savings resulting from the TCJA. (EXH 12, BSP 00062, 00067)

FPUC noted that OPC witness Smith acknowledged that Reedy Creek utility was in an over-earnings position at the time of the 1978 Tax Reform; thus, the issue that ultimately came before the Florida Supreme Court in the Reedy Creek case was a question of how much the utility would be required to refund. (FPUC BR 14) The Commission had already determined that Reedy Creek would have to provide a refund because it was over-earning. (FPUC BR 14, TR 308)

In the Reedy Creek decision, the Florida Supreme Court acknowledged the Commission's decision wherein the Commission stated its position regarding a company's over-earnings position:

> Viewing the documents together with the testimony in the record, it is clear that a utility would be required to refund revenues if and only if it were earning in excess of the range of its authorized rate of return. (EXH 17)

FPUC argued that OPC witness Smith's refusal to consider FPUC's earnings posture in rendering his opinion of FPUC's proposals to retain some of the TCJA tax savings is contrary to prior Commission policy as reflected in Order Nos. 8624 and 8624A, and overstates the applicability of the Court's conclusions in the Reedy Creek case. (FPUC BR 14) As such, FPCU contends OPC's arguments on this point should be rejected and staff agrees with the Company's interpretation. (FPUC BR 14)

OPC maintained that FPUC witness Cassel's interpretation of the Reedy Creek decision mistakenly links the over-earnings posture of the company in that case with the Court's use of the term "windfall." (OPC BR 9) Staff disagrees with OPC's argument. It is staff's opinion that in the Reedy Creek case, the utility was ordered to make a refund to its customers because regulated utilities are not allowed to earn above the Commission authorized range of ROE regardless of the cause, and therefore, any over-earnings should be refunded to the customers. In Order No. 8624 the Commission asserted, "It is the Commission's responsibility to ensure they do not earn in excess of a fair and reasonable return upon their investment."[3]

The record evidence demonstrates that FPUC is earning below its allowed range of ROE. (FPUC BR 12; TR 102; EXH 15, BSP 000518) The record also indicates that even with FPUC retaining all of the tax savings it has requested, the Company will not earn above its authorized range of ROE. (EXH 12, BSP 00062, 00067) Staff agrees with FPUC that a key factor in the Reedy Creek case pertained to the utility's earning posture whereby the utility was required to make a refund because it was over-earning.

Staff agrees with FPUC's argument that OPC's reliance upon the Reedy Creek case is misplaced, and staff agrees with the Company's analysis. (FPUC BR 14) On cross-examination, OPC witness Smith conceded that the Commission's orders underlying the Reedy Creek case, Order Nos. 8624 and 8624A, reflect that, in addressing the 1978 Tax Reform, the Commission considered the circumstances of the utilities on a case-by-case basis, and only required those utilities that were earning above the ceiling of their Commission-authorized ROE range to refund the tax savings arising under the 1978 Tax Reform. (FPUC BR 14; TR 311-315)

CONCLUSION

Staff recommends that it is fair, just, and reasonable for the Commission to consider the earnings position of the Company in its decision. Reducing the base rates as recommended by OPC would result in a cash flow reduction to the Company, put downward pressure on FPUC's earnings, and would accelerate the need for a full rate case sooner than it would otherwise due to FPUC earning below its authorized range of ROE. Therefore, staff recommends that FPUC be allowed to retain the estimated amortized protected deferred tax balance, less the unprotected deferred tax amortization attributed to the TCJA, for an annual savings of $537,174, because FPUC will not exceed its authorized range of ROE.

[3] Order No. 8624, issued December 29, 1978, in Docket No. 780921-PU (CI), *In Re: Disposition of Federal Tax Savings Realized under the Revenue Act of 1978, p. 4.*

Issue 5B: What is the appropriate disposition of the unprotected excess deferred taxes?

Recommendation: FPUC should be allowed to retain the excess deferred tax amount associated with the net acquisition adjustment of $6,518,569 amortized over the life of the acquisition adjustment. Further, the unprotected deferred tax amount of $3,072,874 should be amortized over 10 years and netted against the protected excess deferred taxes of $21,955,922. (Hightower, D. Buys, Cicchetti)

Position of the Parties

FPUC: FPUC should be allowed to retain the deferred tax liability associated with the net acquisition adjustment amortized over the life of the acquisition adjustment and unprotected deferred tax asset amortized over 10 years, netted against the protected excess deferred taxes.

OPC: The Company should not be allowed to retain the tax savings from the unprotected excess ADIT. The Unprotected excess ADIT net asset of $3,072,874 should be amortized over 10 years at $307,287 per year.

Staff Analysis:

PARTIES' ARGUMENTS

FPUC

FPUC argued that the Company is projected to be earning at the bottom of its authorized range of return on equity.[4] (FPUC BR 9, TR 98) In light of the Company's earning posture, FPUC argued that it should be allowed to retain the estimated annual amortized amount of the protected excess accumulated deferred tax balance of approximately $844,461, less the unprotected deferred tax amortization annual amount of $307,287, for an annual net amount of $537,174. (FPUC BR 10; TR 100) FPUC also argued that the annual unprotected excess deferred tax of $298,560 associated with the acquisition adjustment should be applied to reduce the remaining grossed up balance of the unamortized acquisition adjustment of $6,518,569. (FPUC BR 11; TR 99) FPUC contended that this accounting treatment will facilitate a more expeditious reduction of the acquisition adjustment balance. (FPUC BR 11; TR 99) FPUC argued that the ability to retain the net tax savings will provide the Company with further opportunity to earn within its authorized range of ROE, while also enabling the Company to charge current rates for a longer period, continue making necessary capital investments, and delay a costly rate proceeding. (FPUC BR 10; TR 100) FPUC argued that if it is allowed to retain all of the tax savings as proposed, the Company's return on equity for 2019 is projected to be 8.67 percent. (FPUC BR 12; EXH 12, BSP 00067) FPUC also argued that if it is required to reduce its base rates by $537,174 for the net excess deferred tax amount, its projected ROE would be 8.29 percent. (FPUC BR 12; EXH 12, BSP 00064) FPUC's authorized range of ROE is 9.85 to 11.85 percent.[5] (FPUC BR 12; EXH 10, BSP 00043)

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[4] Although FPUC witness Cassel's testimony stated that the Company expects to be earning at the bottom of its allowable range of return on equity, the record indicates that its projected return on equity is 8.38 percent, which is below its allowable range. (ESH 10, BSP 00043; EXH 15, BSP 000518)

[5] FPUC incorrectly referenced a range of 9.50 percent to 11.85 percent in its post-hearing brief.

OPC

OPC agreed with FPUC that the estimated annual protected excess ADIT amount amortization of $844,461, less the estimated annual unprotected excess ADIT amortization of $307,287, produces an estimated annual net amount of $537,174. (OPC BR 6; TR 234) However, OPC argued this net amount of $537,174 should be returned to customers via a base rate reduction, and not retained by the Company. (OPC BR 6; TR 234) OPC argued that in the recent cases before the Commission that address the tax savings due to the TCJA, the electric and gas utilities have agreed to refund the monies to their customers, or to apply them in a manner that directly benefits their customers (e.g., pay off storm costs in lieu of utilizing a storm surcharge). (OPC BR 7; TR 318) OPC further contended that FPUC is currently earning a positive return, and that FPUC will continue to earn within its authorized range without the tax savings being retained by the Company. (OPC BR 7; TR 98) OPC argued that although FPUC claims that retaining the tax savings would not put the Company in an over-earning position, FPUC witness Cassel could not point to any calculations or evidence that was offered by FPUC to demonstrate where FPUC's projected earnings level would be if the tax savings were retained. (OPC BR 7, TR 103, 182) OPC contended that the net amount of the protected and unprotected excess ADIT that is not related to the acquisition adjustment of $537,174 should be applied for the benefit of the customers as a rate reduction. (OPC BR 7, TR 241) OPC argued that to do otherwise would be unjust, unfair, and unreasonable to FPUC's customers. (OPC BR 7)

ANALYSIS

FPUC witness Cassel testified that there are two distinct components of the unprotected excess deferred tax balance. (TR 99) The first component is a deferred tax amount associated with the acquisition adjustment. (TR 99) This grossed up balance is $6,518,569, which the Company requested be included with the net acquisition adjustment and amortized at $298,560 per year, based on the remaining months of amortization of the acquisition adjustment. (TR 99) The second component is a net unprotected excess deferred tax amount of $3,072,874. (TR 99) The Company requested this excess deferred tax amount be amortized over 10 years at $307,287 per year. (TR 99) The Company requested that the amortization detriment be netted against the annual protected tax amount and retained by the Company. (TR 99)

Staff recommends that this treatment is appropriate because the Company is not earning above its authorized range of ROE. OPC witness Smith agreed that the net annual amortization of the protected and unprotected excess ADIT that is not associated with the acquisition adjustment estimated by the Company is approximately $537,174 annually. (TR 241) Witness Smith further testified that the TCJA savings should be applied for the benefit of customers as a permanent base rate reduction, rather than being retained by FPUC. (TR 241) Staff disagrees with OPC witness Smith because the record demonstrates that the Company is not projected to be in an over-earnings position even if it is allowed to retain all the tax savings. (EXH 12, BSP 00067) Staff additionally finds the Company's proposal appropriate because the record shows that OPC did not take issue with FPUC's proposed disposition of the unprotected deferred tax amount associated with the acquisition adjustment. (TR 233-234)

CONCLUSION

Staff recommends that it is fair, just, and reasonable for the Commission to consider the earnings position of the Company in its decision. Therefore, for the reasons discussed in Issue 4B and the aforementioned analysis, staff recommends FPUC be allowed to retain the excess deferred tax amount associated with the net acquisition adjustment of $6,518,569 amortized over the life of the acquisition adjustment. Further, the unprotected deferred tax amount of $3,072,874 should be amortized over 10 years and netted against the protected excess deferred taxes of $21,955,922.

Issue 21: Should FPUC be allowed to retain the tax benefits arising from the TCJA rate reduction, excluding the 2018 GRIP savings, as well as the estimated Deferred Tax portion of the Protected and estimated Unprotected Deferred Tax regulatory asset that are not associated with the acquisition adjustment?

Recommendation: Yes, FPUC should be allowed to retain the tax savings arising from the TCJA rate reduction, excluding the 2018 GRIP savings, as well as the estimated net deferred tax savings of the protected and unprotected deferred tax regulatory amount not associated with the acquisition adjustment (Hightower, D. Buys, Cicchetti)

Position of the Parties

FPUC: Yes, FPUC should be allowed to retain the tax benefits arising from the TCJA rate reduction, excluding the 2018 GRIP savings, as well as the estimated Deferred Tax portion of the Protected and estimated Unprotected Deferred Tax regulatory asset including those that are associated with the acquisition adjustment.

OPC: No, FPUC should not be allowed to retain the tax savings arising from the TCJA rate reduction.

Staff Analysis:

PARTIES' ARGUMENTS

FPUC

FPUC argued that even if the Company is allowed to retain the tax savings as it has requested, FPUC's ROE for 2019 is projected to be only 8.67 percent, which is below its authorized range of 9.85 percent to 11.85 percent. (FPUC BR 12; EXH 12, BSP 00067) The Company also contended that if it is required to reduce its base rates in 2019 by $537,174 for the net excess deferred tax amount, its projected ROE will be only 8.29 percent. (FPUC BR 12; EXH 12, BSP 00064) FPUC also argued that if it is required to refund the $1,141,134 in annual tax savings, along with the gas reliability infrastructure program (GRIP) tax savings it has already proposed to refund, its ROE is projected to be even lower at only 7.85 percent. (FPUC BR 12; EXH 12, BSP 00065) Also, if FPUC is not allowed to retain any of the tax savings, FPUC projected that its 2019 ROE would be 7.74 percent. (FPUC BR 12; EXH 12, BSP 00064).

FPUC contended that the Company is currently under-earning. (TR 102; EXH 15, BSP 000518) FPUC argued that earning below its authorized range would drives the Company into a rate case or force it to deal with severe financial duress. (FPUC BR 12) The Company opined that such a result would be contrary to the stated intent of those that sponsored the TCJA. (FPUC BR 13) Although retention of the savings as proposed by the Company will not enable the Company to earn above its authorized range, it will allow it to earn much closer to its ROE. (TR 102) This will ensure that the Company remains well-positioned financially pending its next rate case so that it can continue to provide safe and reliable service to its customers. (FPUC BR 13)

OPC

OPC argued that FPUC is not currently under-earning, and is projected to earn within its authorized range - albeit at the lower end of the range for the foreseeable future. (OPC BR 8; TR 98) OPC further argued that FPUC did not offer any evidence or provide any calculations indicating where FPUC would be earning relative to its authorized earnings range if the Commission were to allow the Company to keep the tax savings. (OPC BR 8; TR 182) OPC contended that even though the Company asserts that it could avoid a potential rate case if the tax savings was retained, a close examination of witness Cassel's testimony demonstrates no rate case will be avoided. (OPC BR 9) Witness Cassel acknowledged that FPUC was already earning within its authorized earnings range. (TR 98) Furthermore, OPC argued that none of the testimony or exhibits submitted by FPUC included any evidence indicating a rate case by the Company was pending. (OPC BR 9) Finally, OPC argued that the tax savings resulting from the TCJA is money that belongs to the Company's customers and should be returned to them as a permanent base rate reduction. (OPC BR 10; TR 241)

ANALYSIS

FPUC witness Cassel testified that the estimated impact of the federal income tax rate change from 35 percent to 21 percent for FPUC is approximately $2,181,275. (TR 98, 180) Excluding $1,040,141 of tax savings related to FPUC's GRIP, the incremental amount of tax savings is $1,141,134. (TR 98; EXH 10, BSP 00047) In Issues 9 and 22, FPUC and OPC stipulated to return the tax savings related to GRIP back to the customers. (FPUC BR 3, 6) Further, FPUC proposed to retain the net savings annual amount of $537,174 related to the protected and unprotected excess deferred tax saving ($844,461 for the protected excess ADIT less $307,287 for the unprotected excess ADIT). (TR 100) A second component of the unprotected deferred tax amount is associated with the acquisition adjustment. (TR 99) FPUC proposed to reduce the amortization amount for the remaining life of the acquisition adjustment to $298,560 per year. (FPUC BR 9; TR 99) OPC witness Smith did not object to FPUC's proposal for disposition of the tax savings associated with the acquisition adjustment. (OPC BR 6; TR 233) It is staff's opinion that the record evidence demonstrates that FPUC is earning below the bottom of its authorized ROE. (TR 98; EXH 15, BSP 000518) The record also indicates that even with FPUC retaining all of the tax savings it has requested, the Company will not earn above its authorized range of ROE. (EXH 12, BSP 00062) Therefore, it is staff's opinion that FPUC should be allowed to retain the tax savings.

CONCLUSION

Staff agrees with FPUC that the Company should be allowed to retain the tax savings arising from the TCJA rate reduction, excluding the 2018 GRIP savings, as well as the estimated net deferred tax saving of the protected and unprotected deferred tax amount not associated with the acquisition adjustment.

Issue 24: Should this docket be closed?

Recommendation: Yes, this docket should be closed after the time for filing an appeal has run. (Dziechciarz, DuVal)

Position of the Parties

FPUC: Yes.

OPC: No.

Staff Analysis:

PARTIES' ARGUMENTS

FPUC
None provided.

OPC
None Provided.

ANALYSIS

Upon issuance of an order determining the tax impacts associated with the Tax Cuts and Jobs Act of 2017 for Florida Public Utilities Company, this docket should be closed after the time for filing an appeal has run.

Item 9

FILED 1/28/2019
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FPSC - COMMISSION CLERK

State of Florida

Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: January 24, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (Cicchetti, D. Buys, Hightower)
Division of Economics (Coston, Guffey)
Division of Engineering (Ellis)
Office of the General Counsel (DuVal, Dziechciarz)

RE: Docket No. 20180052-GU – Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Florida Public Utilities Company - Indiantown Division.

AGENDA: 02/05/19 – Regular Agenda – Post-Hearing Decision – Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: Brown, Clark, Fay

PREHEARING OFFICER: Brown

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

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Case Background

The Florida Public Service Commission opened Docket No. 20180052-GU on February 23, 2018, to consider the tax impacts affecting Florida Public Utilities Company – Indiantown Division (Indiantown or Company), resulting from the passage of the Tax Cuts and Jobs Act of 2017 (TCJA). Indiantown is a subsidiary of Chesapeake Utilities Corporation (CUC). CUC is the parent of Chesapeake Utilities Corporation – Florida (Chesapeake) and Florida Public Utilities Company (FPUC). Indiantown and Fort Meade are separate divisions of FPUC. Docket Nos. 20180051-GU, 20180053-GU, and 20180054-GU were opened to address the tax impacts affecting FPUC, Fort Meade, and Chesapeake.

On April 25, 2018, an Order Establishing Procedure for the instant docket was issued, in which controlling dates were set for filing testimony, exhibits, and discovery. On May 31, 2018, the discovery procedures and controlling dates were modified. Order No. PSC-2018-0412-PCO-GU, issued on August 20, 2018, was the second order revising the Order Establishing Procedure that allowed the Company to file revised and supplemental testimony and extended testimony filing dates for Commission staff and the Office of Public Counsel (OPC). OPC is the only intervenor in the docket.

The prehearing conference was held on November 5, 2018. On November 9, 2018, OPC filed an Agreed Motion to Consolidate for Purposes of Hearing in Docket Nos. 20180051-GU, 20180052-GU, 20180053-GU and 20180054-GU. On November 16, 2018, the Prehearing Order was issued. The Order reflected proposed stipulations between Indiantown and OPC on most of the issues. Order No. PSC-2018-0555-PCO-GU, issued on November 20, 2018, consolidated the four dockets for purposes of the hearing. The hearing was held on November 27, 2018. At that time, the Commission voted to accept and approve the parties' proposed stipulations. This recommendation addresses the remaining contested issues. The Commission has jurisdiction pursuant to Sections 366.04, 366.041, 366.06, and 366.07, Florida Statutes.

Discussion of Issues

Issue 4B: What is the appropriate disposition of the protected excess deferred taxes?

Recommendation: Indiantown should be allowed to retain the net amortized amount of the protected excess deferred tax balance of $7,862. (Hightower, D. Buys, Cicchetti)

Position of the Parties

INDIANTOWN: Indiantown should be allowed to retain the amortized deferred balance less the unprotected deferred tax amortization, thereby fulfilling the purpose of the TCJA by allowing Indiantown to continue making capital improvements and potentially delaying a rate proceeding.

OPC: Indiantown should not be allowed to retain the benefit of the protected excess ADIT. The protected excess ADIT should be reversed using an Average Rate Assumption Method ("ARAM") if the utility has the available information to calculate the ARAM, or via another appropriate method that complies with normalization requirements, if Indiantown does not have the information to compute the ARAM.

Staff Analysis:

PARTIES' ARGUMENTS

INDIANTOWN

Indiantown argued that given its earnings posture, the Company should be allowed to retain the protected excess deferred tax amount of $8,510, less the unprotected excess deferred tax amount of $648, for a net tax savings of $7,862. (Indiantown BR 9) Indiantown argued that the ability to retain this amount will provide the Company with the opportunity to earn closer to its authorized range of return on equity (ROE), while also enabling the Company to provide service at current rates for a longer period, to continue making necessary capital investments, and to delay a costly rate proceeding. (Indiantown BR 9) Indiantown argued that it is currently under-earning and even if it is allowed to retain the tax benefits it has requested, the Company's ROE for 2019 is projected to be negative 21.85 percent as opposed to a negative 22.58 percent. (Indiantown BR 10-11; EXH 9, BSP 00048)

Indiantown also argued that while retention of the net tax savings as proposed by Indiantown will not enable the Company to earn within its authorized range, it will improve the current situation. (Indiantown BR 11) This will ensure that the Company remains financially stable pending the next rate case so that it can continue to provide safe and reliable service to its customers. (Indiantown BR 11, TR 123) Indiantown contended that its proposal reflects the more reasonable approach to addressing the disposition of the tax savings and provides the greatest overall benefit for the Company and its customers. (Indiantown BR 13)

OPC

OPC argued that instead of retaining the tax savings as proposed by Indiantown, the tax savings should be returned to the customers via a base rate reduction. (OPC BR 2, 8) OPC contended that Indiantown has knowingly been earning below its authorized range since 2013, and has had

ample opportunity to file for a base rate increase. (OPC BR 2) OPC argued that the TCJA's effect on the excess ADIT amount resulted in ratepayers making overpayments to Indiantown. (OPC BR 8) Like any overpayment, the protected excess deferred taxes should be refunded as rapidly as possible under the IRS regulations to ensure only fair, just, and reasonable rates are paid by ratepayers. (OPC BR 8) Therefore, OPC argued all of the 2018 income tax savings should be applied for the benefit of its customers through a base rate reduction. (OPC BR 2)

ANALYSIS

The Parties agree on the amount of the amortization of the protected excess accumulated deferred income taxes of $7,862. (TR 253-254; TR 120-121) In its brief, Indiantown reiterated there is no debate between the Parties regarding the amount of the protected excess deferred taxes, nor is there any debate regarding Indiantown's earnings posture. (Indiantown BR 7; TR 252) Witness Cassel testified that retention of the net protected annual tax savings of $7,862 will potentially provide the Company with an opportunity to earn a return closer to its authorized range, to continue making capital investments, and will enable Indiantown to charge current rates for a longer period of time, thereby delaying a rate case proceeding. (Indiantown BR 9; TR 121-122) Witness Cassel also testified that retention of the tax savings would potentially enable the Company to continue its interim consolidation efforts pending its next rate case, while also placing downward pressure on any rate increase sought in its next rate case. (Indiantown BR 10; TR 121-123)

OPC witness Smith relied on the 1982 Florida Supreme Court decision in Reedy Creek Utils. Co. v. Fla. Public Serv. Comm., 418 So. 2d, 249, 254 (Fla. 1982), which stated, "[a] change in a tax law should no[sic] result in a 'windfall' to a utility, but in a refund to the customer who paid the revenue that translated into the tax saving." (OPC BR 6; TR 255; EXH 18) OPC argued that, by definition, the excess tax monies in Indiantown's possession are a windfall to the Company that should be flowed back to the customers who paid the taxes through rates. (OPC BR 6) In response to a staff interrogatory, Indiantown indicted that its forecasted ROE for 2019 would still be negative 19.43 percent, even if it were to retain all the tax savings resulting from the TCJA. (EXH 11, BSP 00063)

In its brief, Indiantown pointed out that OPC witness Smith also acknowledged that Reedy Creek was in an over-earnings position at the time of the 1978 Tax Reform; thus, the issue that ultimately came before the Florida Supreme Court in the Reedy Creek case was a question of how much Reedy Creek would be required to refund. (Indiantown BR 12-13; TR 310-311) The Commission had already determined that Reedy Creek would have to make a refund, because it was over-earning. (Indiantown BR 12-13, TR 314-315) In the Reedy Creek decision, the Florida Supreme Court acknowledged the Commission's decision wherein the Commission stated its position regarding a company's over-earnings position:

> Viewing the documents together with the testimony in the record, it is clear that a utility would be required to refund revenues if and only if it were earning in excess of the range of its authorized rate of return. (EXH 17)

OPC maintained that Indiantown witness Cassel's interpretation of the Reedy Creek decision mistakenly links the over-earnings posture of the company in that case with the Court's use of the term "windfall." (OPC BR 6) While OPC conceded that the decision in Reedy Creek was driven by the over-earning posture of the utility, OPC argued the foundation of the analysis was based on the cause of the increase in earnings, not on the extent of the company's earnings. (OPC BR 6; TR 314-315) Staff disagrees with OPC's argument. It is staff's opinion that in the Reedy Creek case, the utility was ordered to make a refund to its customers because regulated utilities are not allowed to earn above the Commission authorized range of ROE regardless of the cause, and therefore, any over-earnings should be refunded to the customers. In Order No. 8624 the Commission asserted, "It is the Commission's responsibility to ensure [public utilities] do not earn in excess of a fair and reasonable return upon their investment." [1]

In its brief, Indiantown contended the Company's approach is not inconsistent with Reedy Creek or prior Commission practice as opined by OPC witness Smith. (Indiantown BR 12-13; TR 314-315) Witness Cassel testified that Reedy Creek was in an overearnings position, which led to a required refund, while Indiantown is under-earning and should be able to retain the protected excess deferred tax benefit. (Indiantown BR12-13; TR 308) Staff agrees with Indiantown that a key factor in the Reedy Creek case pertained to the utility's earnings posture whereby the utility was required to make a refund because it was over-earning.

In his testimony, Indiantown witness Cassel explained that permitting the Company to retain some of the tax savings would allow immediate financial support to the Company, thereby enabling it to continue to provide reliable service to its customers. (Indiantown BR 11-12; TR 123) Witness Cassel testified that allowing the Company to retain some of the tax savings will also delay the additional expense, and likely rate increase associated with a full rate proceeding, which OPC's witness Smith conceded would be costly. (Indiantown BR 12; TR 121-123, 306) The Company argued that Indiantown is currently earning below its authorized ROE range, and that retention of the net protected excess deferred tax amount will improve the Company's earnings posture, but will not cause it to exceed its authorized range. (Indiantown BR 13; EXH 9, BSP 00048) The authorized range of ROE for Indiantown is 10.50 percent to 12.50 percent.[2] (EXH 9, BSP 00044) Indiantown is currently earning a negative return which is well below its authorized ROE range. (EXH 9, BSP 00045) Staff agrees with Indiantown that the Company is currently earning below its authorized ROE and that retention of the net protected tax savings will improve the Company's earnings posture and will not cause it to exceed its authorized range. (TR 121-122) Further, staff agrees with Indiantown that a reduction in the Company's rates as recommended by OPC would put additional downward pressure on Indiantown's earnings and reduce the earned ROE on a prospective basis, which would produce an unreasonable outcome. (TR 122; EXH 11, BSP 00063)

Indiantown argued in its brief that witness Smith's refusal to consider Indiantown's earnings posture in rendering his opinion on Indiantown's proposals to retain some of the TCJA benefits is contrary to prior Commission policy as reflected in Order Nos. 8624 and 8624A and overstates

[1] Order No. 8624, issued December 29, 1978, in Docket No. 780921-PU (CI), In Re: Disposition of Federal Tax Savings Realized under the Revenue Act of 1978.
[2] Order No. PSC-04-0565-PAA-GU, issued June 2, 2004, in Docket No. 20030954-GU, In re: Petition for rate increase by Indiantown Gas Company.

the applicability of the Court's conclusions in the Reedy Creek case. (Indiantown BR 13) As such, Indiantown contended, and staff agrees, OPC’s arguments on this point should be rejected. (Indiantown BR 13)

Staff agrees with Indiantown’s argument that OPC's reliance upon the Reedy Creek case is misplaced. (Indiantown BR 12) On cross-examination, witness Smith conceded that the Commission's orders underlying the Reedy Creek case, Order Nos. 8624 and 8624A, reflect that, in addressing the 1978 Tax Reform, the Commission considered the circumstances of the utilities on a case-by-case basis and only required those utilities that were earning above the ceiling of their Commission-authorized ROE range to refund the tax savings arising under the 1978 Tax Reform. (Indiantown BR 12-13; TR 310-315)

CONCLUSION

Staff recommends that it is fair, just, and reasonable for the Commission to consider the earnings position of the Company in its decision. Reducing base rates as recommended by OPC would result in a cash flow reduction to the Company, put further downward pressure on Indiantown’s earnings, and accelerate the need for a full rate case sooner due to Indiantown earning well below its authorized range of ROE. Therefore, staff recommends that Indiantown be allowed to retain the net amortized amount of the protected excess deferred tax balance of $7,862.

Issue 5B: What is the appropriate disposition of the unprotected excess deferred taxes?

Recommendation: Indiantown should be allowed to retain the unprotected excess deferred tax balance of $6,484, amortized over 10 years at $648 per year, netted against the protected excess deferred tax balance. (Hightower, D. Buys, Cicchetti)

Position of the Parties

INDIANTOWN: Indiantown should be allowed to retain the deferred tax liability associated with the unprotected deferred tax asset amortized over 10 years, netted against the protected excess deferred taxes.

OPC: Indiantown should not be allowed to retain the benefit of the unprotected excess ADIT. The unprotected excess ADIT net asset of $6,484 should be amortized over 10 years at $648 per year.

Staff Analysis:

PARTIES' ARGUMENTS

INDIANTOWN

Indiantown contended that it has an unprotected excess deferred tax asset recorded on its books with an estimated balance of $6,484. (Indiantown BR 8) The Company requested this deferred tax asset be amortized over 10 years at $648 per year. (Indiantown BR 8-9; TR 120-121) The Company proposed retaining the protected excess deferred tax liability of $8,510, less the unprotected excess deferred tax asset of $648, for a net tax savings of $7,862. (Indiantown BR 9; TR 121-122) Indiantown argued that given its earnings posture, the Company should be allowed to retain the net tax savings of $7,862. (Indiantown BR 9) Indiantown argued that the ability to retain this amount will provide the Company with the opportunity to earn closer to its range of return on equity (ROE), while also enabling the Company to provide service at current rates for a longer period, to continue making necessary capital investments, and to delay a costly rate proceeding. (Indiantown BR 9)

Indiantown also argued that while retention of the net tax savings as proposed by Indiantown will not enable the Company to earn within its authorized range, it will improve the current situation. (Indiantown BR 11) This will ensure that the Company remains financially stable pending the next rate case so that it can continue to provide safe and reliable service to its customers. (Indiantown BR 11-12; TR 123) Indiantown contended that its proposal reflects the more reasonable approach to addressing the disposition of the tax savings and provides the greatest overall benefit for the Company and its customers. (Indiantown BR 13)

OPC

OPC pointed out it its brief that the unprotected excess deferred tax asset of $6,484 was one the three impacts of the TCJA. (OPC BR 8) OPC argued that instead of retaining the proceeds as Indiantown has proposed, these tax savings should be returned to the ratepayers as soon as allowable under the IRS guidelines. (OPC BR 8) OPC argued that Indiantown witness Cassel

affirmed that the TCJA does not contain any language, express or otherwise, suggesting an intended goal of the TCJA was to allow a company to keep tax savings in order to continue making capital investments or to avoid potential rate proceedings.[3] (OPC BR 9; TR 184) OPC maintained that the TCJA's effect on the Company results in Indiantown's customers making overpayments which create excess accumulated deferred income taxes. (OPC BR 9) OPC argued that like any overpayment, the unprotected excess deferred taxes should be refunded as rapidly as possible to avoid intergenerational inequity and to ensure only fair, just, and reasonable rates are paid by Indiantown's ratepayers. (OPC BR 9-10)

ANALYSIS

Both Indiantown and OPC agreed on the unprotected excess deferred tax balance of $6,484, and that it should be amortized annually over 10 years. (TR 121, 251-252) Indiantown witness Cassel testified that the Company's under-earnings posture necessitates the Company's retention of the unprotected excess deferred tax amount arising from the TCJA. (Indiantown BR 9-11; TR 121-122) Indiantown witness Cassel also testified that permitting the Company to retain some of the tax savings would allow immediate financial support to the Company, thereby enabling it to continue to provide safe and reliable service to its customers. (Indiantown BR 12; TR 121-122) Retention of the unprotected excess deferred income tax amount will potentially provide the Company with an opportunity to earn a reasonable return, to continue making capital investments, and to enable Indiantown to charge current rates for a longer period of time, thus, delaying a rate case proceeding. (Indiantown BR 9-10; TR 121-122) Witness Cassel explained that if the Company is allowed to retain the net deferred tax savings of $7,862, the Company would be able to delay a rate case and continue its interim consolidation efforts, and to place downward pressure on the rate increase amount that the Company would be seeking in its next rate case. (Indiantown BR 10, TR 121-122)

In its brief, OPC reiterated its argument as articulated in Issue 4B, based on the Reedy Creek Florida Supreme Court case, that, "[a] change in a tax law should no[sic] result in a 'windfall' to a utility, but in a refund to the customer who paid the revenue that translated into the tax saving." (OPC BR 9) OPC further argued that the TCJA's effect on Indiantown results in the customers making overpayments, and like any overpayment, the unprotected excess deferred taxes should be refunded to avoid intergenerational inequity and to ensure only fair, just, and reasonable rates are paid by the Company's customers. (OPC BR 9-10)

As discussed in Issue 4B, the record evidence demonstrates that Indiantown is earning a negative return well below its authorized range of return on equity. (EXHs 9, 11, 19) In response to a staff interrogatory, Indiantown provided a calculation of its projected ROE of negative 22 percent "with tax savings recognized." (EXH 11, BSP 00061) Staff agrees with Indiantown's contention that its approach is not inconsistent with the Reedy Creek decision or prior Commission practice as acknowledged by OPC witness Smith. (Indiantown BR 12-13; TR 314-315) In staff's opinion, Indiantown made a compelling argument that regulatory efficiency supports allowing the

[3] However, staff would point out that OPC's post hearing brief is mistaken on this point and that question was never asked of witness Cassel for the Indiantown docket. (TR 186 - 195) OPC asked witness Cassel the question as it related to the FPUC case in Docket No. 20180051-GU. (TR 184)

Company to retain the annual tax savings of $648 associated with the unprotected excess deferred accumulated taxes, which would be netted against the annual protected excess deferred accumulated tax amount of $8,510, for a net tax savings of $7,862.

Staff concurs that Indiantown is currently earning well below its authorized ROE range, and retention of the net protected excess ADIT benefit will improve the Company's earnings posture, but will not cause it to exceed its authorized range of ROE. (Indiantown BR 10-11; TR 121-122, 190-191)

CONCLUSION

Staff recommends that it is fair, just, and reasonable for the Commission to consider the earnings position of the Company in its decision. Reducing base rates as recommended by OPC would result in a cash flow reduction to the Company, put further downward pressure on Indiantown's earnings, and accelerate the need for a full rate case sooner due to Indiantown earning well below its authorized range of ROE. Therefore, staff recommends that Indiantown should be allowed to retain the unprotected excess deferred tax balance of $6,484, amortized over 10 years at $648 per year, netted against the protected excess deferred tax balance.

Issue 17: Should Indiantown be allowed to recover any detrimental impact associated with the corporate income tax rate change implemented by the TCJA? If so, what amount, and should Indiantown be allowed to recover such amount through the Energy Conservation Cost Recovery (ECCR) clause?

Recommendation: No, Indiantown should not be allowed to recover from its customers an alleged detrimental impact associated with the corporate income tax rate change implemented by the TCJA. (Hightower, D. Buys, Cicchetti, Coston)

Position of the Parties

INDIANTOWN: Yes, Indiantown should be allowed to recover any detrimental impact associated with the corporate income tax rate change implemented by the TCJA. The amount Indiantown should be allowed to recover through the ECCR clause is $54,096.

OPC: No, Indiantown should not be allowed to recover any detrimental impact associated with the corporate income tax rate change implemented by the TCJA.

Staff Analysis:

PARTIES' ARGUMENTS

INDIANTOWN

Indiantown argued that the change in the corporate income tax rate from 35 percent to 21 percent results in a tax detriment of approximately $54,096. (Indiantown BR 8; TR 119) Indiantown argued that the Company is projected to be earning at the bottom of the earnings range utilized for Indiantown's surveillance reporting purposes.[4] (Indiantown BR 8; TR 119) Indiantown argued that approval to recover the tax detriment will provide the Company with an opportunity to preserve or improve its current earnings posture, thereby potentially deferring a future rate case. (Indiantown BR 8) The Company argued that such regulatory efficiency will extend rate stability and be more consistent with the stated purpose outlined by the tax bill's sponsor, Congressman Brady, to provide tax relief for workers, families, and job creators. (Indiantown BR 8) Indiantown acknowledged that approval of the Company's proposal to recover the tax detriment is at the discretion of the Commission. (Indiantown BR 8)

OPC

OPC argued that a tax detriment is not suffered directly by Indiantown but is suffered, if at all, by Indiantown's parent company, CUC, through its consolidated tax return. (OPC BR 10; TR 213-215) OPC contended that witness Cassel admitted during cross-examination that the taxes at issue here are already part of current base rates. (OPC BR 10; TR 189) Further, OPC argued that the fallacy of Indiantown's proposed treatment of the putative tax detriment is demonstrated by inverting the effects of the TCJA. (OPC BR 10) If, instead of a detriment to the parent company's consolidated tax return, as purported here, the TCJA resulted in a tax benefit on the

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[4] However, the record demonstrates that Indiantown is actually earning a negative rate of return, well below its authorized rate of return. (EXH 9, BSP 00045)

parent company's consolidated tax return, Indiantown would not be requesting to include said tax benefit in its rate base. (OPC BR 10)

ANALYSIS

Indiantown projects to have negative operating income for 2018 and has identified an annual net tax detriment of $54,096 based on its pro forma surveillance report. (TR 119) Indiantown contended that the change in the corporate income tax rate from 35 percent to 21 percent results in a tax detriment of approximately $54,096 for the Company. (Indiantown BR 8; TR 119) Witness Cassel testified that Indiantown's purpose for recovering the tax detriment is to address incremental ongoing costs that have been incurred since the Company's last rate case in 2003. (Indiantown BR 8; TR 119)

The alleged tax detriment is the result of Indiantown's net operating loss (NOL) being worth less at 21 percent than at 35 percent on CUC's consolidated tax return. (TR 213-214) Indiantown does not file its own Federal tax return, but instead files a consolidated Federal tax return with its parent company, CUC. (TR 214) Consequently, the "write off" on CUC's books from Indiantown's NOL is worth less to the parent company due to the lower tax rate. (TR 214) Indiantown is requesting to recover the loss of that tax deduction for its parent company through an increase of $54,096 in its ECCR clause factors. (TR 119) However, witness Cassel confirmed that regulated public company rates are set on a stand-alone basis, that is, as if the regulated company is required to pay income taxes. (TR 214) The utility rates charged to customers already include an allowance for income taxes in base rates. (TR 189)

In staff's opinion, Indiantown is requesting to use a purported tax detriment on CUC's books to recover incremental costs in lieu of initiating a rate increase. Witness Cassel explained in his direct testimony:

> At present, the Company is not over-earning. In fact, the Company is earning below its allowable range and is projected to continue to do so in the foreseeable future. As such, the Company should be allowed to recover this annual tax detriment through the Energy Conservation Cost Recovery ("ECCR") clause for purposes of addressing ongoing, incremental costs that have been incurred since the company's last base rate increase, which was initiated in 2003. (TR 119)

As argued by OPC, the tax detriment is not suffered directly by Indiantown, but is suffered, if at all, by CUC through its consolidated tax return. (OPC BR 10; TR 213-215) Further, sufficient record evidence is lacking to support that the tax detriment as proposed by Indiantown is a result of the TCJA on a stand-alone basis. In staff's opinion, recovery of a tax detriment or benefit by a regulated company on behalf of its parent company is inconsistent with current regulatory practice to align income tax expense on a stand-alone basis.

Regarding whether the Company should be allowed to collect any detrimental impact through the ECCR clause, staff notes that the clause is governed by Rule 25-17.015, F.A.C., which states that a utility "may seek to recover its costs for energy conservation programs." OPC witness Smith stated that "[t]he estimated amount of the 2018 income tax detriment does not have

anything to do with the ECCR and, therefore, should not be charged to ratepayers through the ECCR." (TR 254) Witness Cassel agreed during cross-examination that the taxes in question are part of base rates, and that the ECCR has nothing to do with base rate tax impacts. (TR 189)

Additionally the Company stated in its response to staff's 2nd Set of Interrogatories, No. 4(c), that it:

> recommends that the annual tax detriment be collected through the ECCR clause on an entirely consolidated basis, rather than a per-division basis. The Company believes that this computation is more favorable to the Indiantown customers as compared to assigning the detrimental impacts specific to only the appropriate division customers. (EXH 17)

In Order No. PSC-14-0655-FOF-GU, the Commission allowed FPUC to consolidate the conservation programs' expenses of the various divisions for purposes of ECCR cost recovery.[5] The Order is specific to conservation expenses and does not consider non-conservation expenses or costs. As Indiantown proposes, customers from all FPUC divisions would contribute to Indiantown's base rates tax impact through the ECCR factors. The Company further stated in its response to staff's 2nd Set of Interrogatories, No. 4(f), that it, "anticipates collecting these funds though the clause until its next rate proceeding." (EXH 17) Witness Cassel stated during cross-examination that 2020 or 2021 is the current anticipated timeframe for potential rate filings. (TR 218) As such, there would not be a clearly defined endpoint at which the non-division customers would cease supporting Indiantown's base rate tax detriment through ECCR factors.

Based on the aforementioned, staff agrees with OPC and recommends that Indiantown not be allowed to recover any alleged detrimental impact associated with the corporate tax rate change implemented by the TCJA, and that the ECCR clause is not the appropriate mechanism to collect the tax detriment because the taxes are part of base rates and not associated with conservation expenses.

CONCLUSION

Staff recommends Indiantown not be allowed to recover from its customers any presumed detrimental impact associated with the corporate income tax rate change implemented by the TCJA through the ECCR clause.

[5] Order No. PSC-14-0655-FOF-GU, issued November 6, 2014, in Docket No. 20140004-GU, In re: Natural gas conservation cost recovery.

Issue 18: Should Indiantown be allowed to retain and amortize, over 26 years, the total annual benefit associated with the Protected Deferred Tax liabilities?

Recommendation: Yes, Indiantown should be allowed to retain and amortize, over 26 years, the total annual amount of the tax savings associated with the protected excess deferred taxes consistent with the ARAM. (Hightower, D. Buys, Cicchetti)

Position of the Parties

INDIANTOWN: Yes, Indiantown should be allowed to retain and amortize, over 26 years, the total annual benefit associated with the Protected Deferred Tax liabilities.

OPC: No, Indiantown should not be allowed to retain any portion of the protected deferred income taxes; however, OPC agrees with the 26 years amortization which is consistent with ARAM.

Staff Analysis:

PARTIES' ARGUMENTS

INDIANTOWN

Indiantown argued that for protected excess deferred income taxes, the grossed-up balance for Indiantown was approximately $221,269. (Indiantown BR 9; TR 120) This deferred tax balance will be amortized over 26 years using the Average Rate Assumption Method (ARAM) as prescribed by the Internal Revenue Service (IRS), which results in an amount of approximately $8,510 annually. (Indiantown BR 9; TR 121; EXH 2)

OPC

As discussed in Issue 4B, OPC argued Indiantown should not be allowed to retain the annual tax savings associated with the protected excess deferred tax amount. (OPC BR 11) However, if the Commission decides to allow Indiantown to retain the protected excess deferred tax savings, then OPC agreed the benefit should be amortized over 26 years consistent with the ARAM. (OPC BR 11)

ANALYSIS

This issue is basically a fall-out issue from Issue 4B. OPC maintained that the protected excess deferred taxes should be returned to customers while Indiantown argued the Company should be allowed to retain the amount of the protected excess deferred taxes. Both parties agreed Indiantown should amortize the protected excess deferred tax balance of $221,269 over 26 years consistent with the ARAM, for an annual amount of $8,510. (Indiantown BR 9; OPC BR 11; TR 120-121; TR 251-252)

Based on the staff analysis in Issue 4B, in staff's opinion, it is fair, just, and reasonable for the Commission to consider the earnings position of the Company in its decision. Reducing base rates as recommended by OPC would result in a cash flow reduction to the Company, put further

downward pressure on Indiantown's earnings, and accelerate the need for a full rate case sooner due to Indiantown earning well below its authorized range of ROE. Therefore, staff agrees with Indiantown and recommends that the Company be allowed to retain the protected excess deferred tax liability. Staff also agrees that it is appropriate for the Company to follow the IRS ARAM and that an amortization period of 26 years is consistent with ARAM.

CONCLUSION

Because Indiantown is earning a negative return well below its authorized range of ROE and is expected to continue to earn below this range even with retention of the tax savings, staff recommends that Indiantown be allowed to retain and amortize, over 26 years, the total annual amount of the tax savings associated with the protected excess deferred taxes consistent with the ARAM.

Issue 19: Should Indiantown be allowed to retain and amortize, over 10 years, the total annual benefit associated with the Unprotected Deferred Tax liabilities?

Recommendation: Yes, Indiantown should be allowed to retain and amortize, over 10 years, the total annual amount of the tax savings associated with the unprotected excess deferred taxes. (Hightower, D. Buys, Cicchetti)

Position of the Parties

INDIANTOWN: Yes, Indiantown should be allowed to retain and amortize, over 10 years, the total annual benefit associated with the unprotected deferred tax liabilities.

OPC: No, Indiantown should not be allowed to retain any portion of the unprotected deferred income taxes; however, OPC agrees with the 10 years amortization period.

Staff Analysis:

PARTIES' ARGUMENTS

INDIANTOWN

The Company argued that it has an unprotected excess deferred tax balance of $6,484. (Indiantown BR 8; TR 120) The Company requested this excess deferred tax balance be amortized over 10 years at $648 per year. (Indiantown BR 8-9; TR 121) The Company requested that this annual amortization amount be retained by the Company. (Indiantown BR 9; TR 120 - 121)

OPC

OPC argued Indiantown should not be allowed to retain the annual tax savings associated with the unprotected excess deferred tax amounts. (OPC BR 11) However, if the Commission decides to allow Indiantown to retain the unprotected excess deferred tax savings, OPC agreed the balance should be amortized over 10 years. (OPC BR 11)

ANALYSIS

This issue is basically a fall-out issue from Issue 5B. OPC maintained that Indiantown should not be allowed to retain the annual tax savings associated with the unprotected excess deferred tax balance. Indiantown argued the Company should be allowed to retain the amount of the unprotected excess deferred tax amount. Both Parties agreed Indiantown should amortize the unprotected excess deferred tax balance of $6,484 over 10 years for an annual amount of $648. (Indiantown BR 8-9; OPC BR 11; TR 120-121; TR 251)

In Issue 5B, OPC maintained that the unprotected excess deferred tax savings should be retuned to customers while Indiantown argued the amount should be retained by the Company. (OPC BR 11) However, both Parties agree Indiantown should amortize the total unprotected excess deferred tax balance over a 10 year period. (Indiantown BR 9; OPC BR 11)

Based on the staff analysis in Issue 5B, in staff's opinion, it is fair, just, and reasonable for the Commission to consider the earnings position of the Company in its decision. Reducing base rates as recommended by OPC would result in a cash flow reduction to the Company, put further downward pressure on Indiantown's earnings, and accelerate the need for a full rate case sooner due to Indiantown earning well below its authorized range of ROE. Therefore, staff agrees with Indiantown and recommends that the Company be allowed to retain the unprotected excess deferred tax savings. Staff also agrees that a 10 year amortization period is appropriate and reasonable.

CONCLUSION

Because Indiantown is earning a negative return well below its authorized range of ROE, and is expected to continue to earn below this range even with retention of the tax savings, staff recommends that Indiantown be allowed to retain and amortize, over 10 years, the total annual amount of the tax savings associated with the unprotected excess deferred taxes.

Issue 21: Should this docket be closed?

Recommendation: Yes, this docket should be closed after the time for filing an appeal has run. (Dziechciarz, DuVal)

Position of the Parties

INDIANTOWN: Yes.

OPC: No.

Staff Analysis:

PARTIES' ARGUMENTS

INDIANTOWN
None Provided

OPC
Once the Commission makes the findings contained herein it will be unnecessary to keep this docket open. However, until that time, the docket should not be closed.

ANALYSIS

Upon issuance of an order determining the tax impacts associated with the Tax Cuts and Jobs Act of 2017 for Florida Public Utilities Company – Indiantown Division, this docket should be closed after the time for filing an appeal has run.

Item 10

FILED 1/28/2019
DOCUMENT NO. 00347-2019
FPSC - COMMISSION CLERK

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: January 24, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (Cicchetti, D. Buys, Hightower)
Division of Economics (Coston, Guffey)
Division of Engineering (Ellis)
Office of the General Counsel (DuVal, Dziechciarz)

RE: Docket No. 20180053-GU – Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Florida Public Utilities Company - Fort Meade Division.

AGENDA: 02/05/19 – Regular Agenda – Post-Hearing Decision – Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: Brown, Clark, Fay

PREHEARING OFFICER: Brown

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

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Case Background

The Florida Public Service Commission opened Docket No. 20180053-GU on February 23, 2018, to consider the tax impacts affecting Florida Public Utilities Company (FPUC) – Fort Meade Division (Fort Meade or Company), resulting from the passage of the Tax Cuts and Jobs Act of 2017 (TCJA). FPUC – Fort Meade is a subsidiary of Chesapeake Utilities Corporation (CUC). CUC is also the parent of the Florida division of CUC (Chesapeake) and FPUC. FPUC – Indiantown and FPUC – Fort Meade are separate divisions of FPUC. Docket Nos. 20180051-GU, 20180052-GU and 20180054-GU were opened to address the tax impacts affecting FPUC, Indiantown and Chesapeake

On April 25, 2018, an Order Establishing Procedure for the instant docket was issued, in which controlling dates were set for filing testimony, exhibits, and discovery. On May 31, 2018, the discovery procedures and controlling dates were modified. Order No. PSC-2018-0412-PCO-GU, issued on August 20, 2018, was the second order revising the Order Establishing Procedure that allowed the Company to file revised and supplemental testimony, and extended testimony filing dates for Commission staff and the Office of Public Counsel (OPC). OPC is the only intervenor in this docket.

The prehearing conference was held on November 5, 2018. On, November 9, 2018, OPC filed an Agreed Motion to Consolidate for Purposes of Hearing in Docket Nos. 20180051-GU, 20180052-GU, 20180053-GU and 20180054-GU. On November 16, 2018, the Prehearing Order was issued and reflected proposed stipulations between Fort Meade and OPC on most of the issues. Order No. PSC-2018-0555-PCO-GU, issued on November 20, 2018, consolidated the four dockets for purposes of the hearing. The hearing was held on November 27, 2018. At that time, the Commission voted to accept and approve the parties' proposed stipulations. The Commission has jurisdiction pursuant to Sections 366.04, 366.041, 366.06, and 366.07, Florida Statutes.

Discussion of Issues

Issue 4B: What is the appropriate disposition of the protected excess deferred taxes?

Recommendation: Fort Meade should be allowed to retain the amortized amount of the protected excess deferred tax balance of $1,787. (Hightower, D.Buys, Cicchetti)

Position of the Parties

FORT MEADE: Fort Meade should be allowed to retain the estimated amortized deferred balance, thereby fulfilling the purpose of the TCJA by allowing Fort Meade to continue making capital improvements and potentially delaying a rate proceeding.

OPC: Fort Meade should not be allowed to retain the benefit of the protected excess ADIT. The protected excess ADIT should be reversed using an Average Rate Assumption Method ("ARAM") if the utility has the available information to calculate the ARAM, or via another appropriate method that complies with normalization requirements, if Fort Meade does not have the information to compute the ARAM.

Staff Analysis:

PARTIES' ARGUMENTS

FORT MEADE

Fort Meade argued that given its earnings posture, the Company should be allowed to retain the estimated annual amount of $1,787 as a result of the tax benefit created by the excess deferred tax balance. (Fort Meade BR 8-9; TR 129-130, 132-133) Fort Meade argued that the ability to retain this amount will provide the Company with further opportunity to earn a reasonable return, while also enabling the Company to provide service at present rates for a longer period, to continue making necessary capital investments, and to delay a costly rate proceeding. (Fort Meade BR 10, TR 130) Fort Meade contended that if the Company is allowed to retain the tax benefits as it has proposed, the Company's return on equity (ROE) for 2019 is projected to be negative 19.40 percent. (Fort Meade BR 12; EXH 10, BSP 00047)

Fort Meade argued that while retention of the benefits as proposed will not enable the Company to earn within its authorized range of ROE, it will certainly allow it to earn closer to its range. (Fort Meade BR 12; EXH 10, BSP 00047)

OPC

OPC argued that Fort Meade should return the net tax benefit amount of $6,375 to the customers via a base rate reduction. (OPC BR 1) OPC contended that Fort Meade's earning surveillance reports for 2014-2018 demonstrate the Company has been in an under-earnings posture for several years; thus, it had the ability to file at any time for a base rate increase, which it unilaterally chose not to do. (OPC BR 7; EXH 19) OPC argued the TCJA effect on the excess accumulated deferred income tax (ADIT) resulted in ratepayers making overpayments to Fort Meade. (OPC BR 8) OPC argued that the protected excess deferred taxes should be refunded as

rapidly as possible under the IRS regulations to ensure only fair, just, and reasonable rates are paid by ratepayers. (OPC BR 8)

ANALYSIS

Fort Meade and OPC agree on the amount of the annual amortization of the protected excess accumulated deferred income tax (ADIT) benefit of $1,787. (Fort Meade BR 9; TR 270) Nor is there any debate regarding Fort Meade's earnings posture. (Fort Meade BR 8; TR 273, 305-306) Witness Cassel testified that retention of the protected deferred income tax benefit will potentially provide the Company with an opportunity to earn a reasonable return, to continue making capital investments, and enable Fort Meade to charge current rates for a longer period of time thus, delaying a rate case proceeding. (Fort Meade BR 10; TR 130)

Fort Meade witness Cassel explained that if the Company is allowed to retain the protected excess accumulated deferred income tax (ADIT) benefit of $1,787 annually, this would allow the Company to delay a rate case enabling continuation of its interim consolidation efforts pending its next rate case while also placing downward pressure on any rate increase sought in its next rate case. (Fort Meade BR 11; TR 130-132) Fort Meade wishes to avoid customer confusion that could be associated with implementation of a rate decrease resulting from flowing through the tax benefit as a rate reduction, followed, in short order, by a rate increase arising from a full rate case proceeding. (Fort Meade BR 11; TR 132-133)

OPC witness Smith relied on the 1982 Florida Supreme Court decision in Reedy Creek Utils. Co. v. Fla. Public Serv. Comm., 418 So. 2d 249, 254 (Fla. 1982), which stated, "[a] change in a tax law should no [sic] result in a 'windfall' to a utility, but in a refund to the customer who paid the revenue that translated into the tax saving." (OPC BR 6; TR 274; EXH 17) OPC argued, by definition, the excess tax monies in Fort Meade's possession are a windfall to the Company that should be flowed back to the customers who paid the taxes in rates. (OPC BR 6-7; TR 274) OPC pointed out during cross-examination of Fort Meade witness Cassel that he admitted he did not provide in his testimony any calculations or evidence to demonstrate what the Company's projected earnings would be if the tax benefits were retained by the Company. (OPC BR 9, TR 208) However, in response to a staff interrogatory, Fort Meade indicated that its forecasted return on equity (ROE) for 2018 would be negative 19.40 percent if it were to retain all the tax benefits resulting from the TCJA. (EXH 10, BSP 00047)

Fort Meade argued in its brief that OPC witness Smith also acknowledged that Reedy Creek was in an over-earnings position at the time of the 1978 Tax Reform; thus, the issue that ultimately came before the Florida Supreme Court in the Reedy Creek case was a question of how much Reedy Creek would be required to refund. (Fort Meade BR 13-14; TR 310-311) The Commission had already determined that Reedy Creek would have to make a refund, because it was over-earning. (Fort Meade BR 13-14, TR 308, 314-315) Fort Meade argued in its brief that witness Smith's refusal to consider Fort Meade's earnings posture in rendering his opinion on Fort Meade's proposals to retain some of the TCJA benefits is contrary to prior Commission policy as reflected in Order Nos. 8624 and 8624A and overstates the applicability of the Court's conclusions in the Reedy Creek case. (Fort Meade BR 14) As such, Fort Meade contended and staff agrees, OPC's arguments on this point should be rejected. (Fort Meade BR 14) In the Reedy

Creek decision, the Florida Supreme Court acknowledged the Commission's decision wherein the Commission stated its position regarding a company's over-earnings position:

> Viewing the documents together with the testimony in the record, it is clear that a utility would be required to refund revenues if and only if it were earning in excess of the range of its authorized rate of return. (EXH 17)

OPC maintained that Fort Meade witness Cassel's interpretation of the Reedy Creek decision mistakenly links the over-earnings posture of the utility in that case with the Court's use of the term "windfall." (OPC BR 6) While OPC conceded that it is a given that the decision in Reedy Creek was driven by the over-earning posture of the utility; OPC argued the foundation of the analysis was based on the cause of the increase in earnings, not on the extent of the utility's earnings. (OPC BR 6) Staff disagrees with OPC's argument. It is staff's opinion that in the Reedy Creek case, the utility was ordered to make a refund to its customers because regulated utilities are not allowed to earn above a Commission authorized range of ROE regardless of the cause, and therefore, any over-earnings should be refunded to the customers. In Order No. 8624 the Commission asserted, "It is the Commission's responsibility to ensure [public utilities] do not earn in excess of a fair and reasonable return on their investment."[1]

In its brief, Fort Meade contended that the Company's approach is not inconsistent with Reedy Creek or prior Commission practice as mentioned by OPC witness Smith. (Fort Meade BR 14; TR 314-315) There is agreement between the parties with regard to the calculation of the annual protected excess deferred tax amount of $1,787. Witness Cassel testified that approval of its proposed treatment reflects the more reasonable approach to addressing the disposition of the tax benefits and provides the greatest overall benefit for the Company and its customers. (TR 130-133) Staff agrees with Fort Meade that a key factor in the Reedy Creek case pertained to the utility's earnings posture whereby the utility was required to make a refund because it was over-earning.

Staff agrees that the record is clear that Fort Meade is currently earning a negative return well below its authorized ROE range, and that retention of the protected tax benefit will improve the Company's earnings posture and will not cause it to exceed its authorized range. (TR 129-130, 133; EXH 19)

Staff agrees with Fort Meade's argument that OPC's reliance upon the Reedy Creek case is misplaced. (Fort Meade BR 13-14) On cross-examination, OPC witness Smith conceded that the Commission's orders underlying the Reedy Creek case, Order Nos. 8624 and 8624A, reflect that, in addressing the 1978 Tax Reform, the Commission considered the circumstances of the utilities on a case-by-case basis and only required those utilities that were earning above the ceiling of their Commission-authorized ROE range to refund the tax benefits arising under the 1978 Tax Reform. (Fort Meade BR 13-14; TR 311-315)

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[1] Order no. 8624, issued December 29, 1978, in Docket No. 780921-PU(CI), In Re: Disposition of Federal Tax Savings Realized under the Revenue Act of 1978,

CONCLUSION

Staff recommends that it is fair, just, and reasonable for the Commission to consider the earnings position of the Company in its decision. Reducing base rates as recommended by OPC would result in a cash flow reduction to the Company, put further downward pressure on Fort Meade's earnings, and accelerate the need for a full rate case sooner due to Fort Meade earning well below its authorized range of ROE. Therefore, staff recommends that Fort Meade be allowed to retain the amortized protected excess deferred tax balance attributed to the TCJA of $1,787.

Issue 5B: What is the appropriate disposition of the unprotected excess deferred taxes?

Recommendation: Fort Meade should be allowed to retain the unprotected excess deferred tax amortized over 10 years of $4,588. (Hightower, D.Buys, Cicchetti)

Position of the Parties

FORT MEADE: Ft. Meade should be allowed to retain the unprotected deferred tax liability amortized over 10 years.

OPC: Fort Meade should not be allowed to retain the benefit of the unprotected excess ADIT. The unprotected excess ADIT net liability of $45,881 should be amortized over 10 years at $4,588 per year.

Staff Analysis:

PARTIES' ARGUMENTS

FORT MEADE

Fort Meade asserted that given its earnings posture, the Company should be allowed to retain the unprotected excess deferred tax benefits. (Fort Meade BR 8) Fort Meade contended that it has an unprotected excess deferred tax liability recorded on its books with an estimated balance of $45,881. (Fort Meade BR 9; TR 129) The Company requests this deferred tax liability be amortized over 10 years at $4,588 per year. (Fort Meade BR 9; TR 129) The Company requested that this annual amortization benefit be retained by the Company. (Fort Meade BR 9; TR 129-130; EXH 2) Fort Meade argued that this amount will provide the Company with further opportunity to earn a reasonable return, to provide service at present rates for a longer period, to continue making necessary capital investments, and to delay a costly rate proceeding. (Fort Meade BR 10) Fort Meade also argued that the ability to retain the excess ADIT of $4,588 related to the unprotected excess deferred tax liability would enable the Company to delay a rate case, enable the Company to continue its interim consolidation efforts pending its next rate case, and would place downward pressure on the rate increase that the Company would be seeking in its next rate case. (Fort Meade BR 11; TR 132-133) Fort Meade contended that allowing the Company to retain some of the tax benefits will provide immediate financial support to the utility, thereby enabling it to continue to provide safe and reliable service to its customers. (Fort Meade BR 13; TR 133)

OPC

OPC argued that Fort Meade should return the total tax benefit amount of $6,375, to the customers via a base rate reduction. (OPC BR 1) OPC contended that Fort Meade's earning surveillance reports for 2014-2018 demonstrate the Company has been in an under-earnings posture for several years; thus, it had the ability to file at any time for a base rate increase, which it unilaterally chose not to do. (OPC BR 7; EXH 19) OPC argued the TCJA effect on the ADIT resulted in ratepayers making overpayments to Fort Meade. (OPC BR 10) OPC argued that the unprotected excess deferred taxes should be refunded as rapidly as possible under the IRS regulations to ensure ratepayers pay only fair, just, and reasonable rates. (OPC BR 10) In its

brief, OPC argued that, as an alternative to the Company's proposal to retain the full benefit amount of the excess ADIT amortization, this amount should be returned to the customers via a base rate reduction. (OPC BR 9) OPC repeated its argument in Issue 4B citing the Florida Supreme Court Reedy Creek case. (OPC BR 9) OPC maintained that the TCJA's effect on the Company results in the customers making overpayments which create excess accumulated deferred income taxes. (OPC BR 10) Like any overpayment, the unprotected excess deferred taxes should be refunded as rapidly as possible to avoid intergenerational inequity and to ensure only fair, just, and reasonable rates are paid by Fort Meade's ratepayers. (OPC BR 10)

ANALYSIS

Staff agrees the record shows there is no debate between the Parties regarding the amount of unprotected excess deferred tax, nor is there any debate regarding Fort Meade's earnings posture. (TR 129-130, 271, 273) Staff agrees with Fort Meade's position as discussed in Issue 4B, that the Company's under-earnings posture necessitates its retention of the unprotected excess ADIT amount arising from the TCJA. (Fort Meade BR 10, TR 130) The Company contended retention of the unprotected excess ADIT amount will potentially provide the Company with an opportunity to earn a reasonable return, to continue making capital investments and to enable Fort Meade to charge current rates for a longer period of time, thus delaying a rate case proceeding. (Fort Meade BR 10; TR 130)

OPC reiterated its argument as articulated in Issue 4B, based on the Reedy Creek Florida Supreme Court case, that, "[a] change in a tax law should no [sic] result in a 'windfall' to a utility, but in a refund to the customer who paid the revenue that translated into the tax saving."(OPC BR 9) OPC further argued that the TCJA's effect on Fort Meade results in the customers making overpayments, and like any overpayment, the unprotected excess deferred taxes should be refunded to avoid intergenerational inequity and to ensure only fair, just, and reasonable rates are paid by the Company's customers. (OPC BR 10) Staff disagrees with OPC's arguments regarding the unprotected excess ADIT.

As discussed in Issue 4B, the record evidence demonstrates that Fort Meade is earning a negative return well below its authorized range of ROE. (EXH 10, BSP 00044-00046; EXH 12 00059-00061) Staff agrees that Fort Meade made a compelling argument that regulatory efficiency supports allowing the Company to retain the annual tax benefit of $4,588 associated with the unprotected excess deferred accumulated taxes.

Fort Meade is currently earning well below is authorized ROE range, and retention of the unprotected excess ADIT amount will improve the Company's earning posture, but will not cause it to exceed its authorized range of ROE. (TR 170)

In response to a staff interrogatory, Fort Meade provided a calculation of its projected ROE of negative 22.35 percent "with tax savings recognized." (EXH 12, BSP 00059) Staff further agrees that this approach is not inconsistent with Reedy Creek or prior Commission practice as acknowledged by OPC witness Smith. (Fort Meade BR 14; TR 314-315)

CONCLUSION

Staff recommends that it is fair, just, and reasonable for the Commission to consider the earnings position of the Company in its decision. Therefore, for the reasons discussed in Issue 4B and the aforementioned analysis, staff recommends Fort Meade be allowed to retain the unprotected excess deferred tax amount and that this balance be amortized over 10 years for an annual amount of $4,588.

Issue 18: Should Fort Meade be allowed to recover any detrimental impact associated with the corporate income tax rate change implemented by the TCJA? If so, what amount, and should Fort Meade be allowed to recover such amount through the Energy Conservation Cost Recovery (ECCR) clause?

Recommendation: No, Fort Meade should not be allowed to recover any supposed detrimental impact associated with the corporate income tax rate change as a result of the TCJA through the ECCR clause. (Hightower, D.Buys, Cicchetti, Coston)

Position of the Parties

FORT MEADE: Yes, Ft. Meade should be allowed to recover any detrimental impact associated with the corporate income tax rate change implemented by the TCJA. The amount Fort Meade should be allowed to recover through the ECCR clause is $17,929.

OPC: No, Ft. Meade should not be allowed to recover any detrimental impact associated with the corporate income tax rate change implemented by the TCJA.

Staff Analysis:

PARTIES' ARGUMENTS

FORT MEADE

Fort Meade argued that the change in the corporate income tax rate from 35 percent to 21 percent results in a tax detriment of $17,929. (Fort Meade BR 8; TR 128) Fort Meade proposes to recover the annual tax detriment associated with the tax rate reduction for purposes of addressing infrastructure investment. (Fort Meade BR 8; TR 128) Fort Meade argued that the Company is projected to be earning below the bottom of the earnings range utilized for Fort Meade's surveillance reporting purposes. (Fort Meade BR 8; TR 196; EXH 12, BSP 00059-00061) Fort Meade argued that approval to recover the tax detriment will provide the Company with an opportunity to preserve or improve its current earnings posture, thereby potentially deferring a future rate case. (Fort Meade BR 9) Such regulatory efficiency will extend rate stability and be more consistent with the stated purpose outlined by the tax bill's sponsor, Congressman Brady, to provide tax relief for workers, families, and job creators. (Fort Meade BR 9) Fort Meade acknowledged that approval of the Company's proposal to recover the tax detriment is at the discretion of the Commission. (Fort Meade BR 9)

OPC

OPC argued that a punitive tax detriment is not suffered directly by Fort Meade but is suffered, if at all, by Fort Meade's parent company Chesapeake Utility Corporation through its consolidated tax return. (OPC BR 10; TR 213-215) Upon cross-examination, witness Cassel admitted the taxes at issue here are already part of current base rates. (OPC BR 10; TR 196) The excess ADIT in dispute in Issues 4B and 5B is already calculated into the detriment amount of $17,929. (OPC BR 10; TR 196)

Further, OPC argued that the fallacy of Fort Meade's proposed treatment of the putative tax detriment is demonstrated by inverting the effects of the TCJA. (OPC BR 10) If, instead of a

detriment to the parent company's consolidated tax return, as purported here, the TCJA resulted in a benefit on the parent company's consolidated tax return, Fort Meade would not be requesting to include the benefit in its rate base. (OPC BR 10)

ANALYSIS

As pointed out by OPC in its post-hearing brief, Fort Meade projects to have negative operating income for 2018 and has identified an annual net tax detriment of $17,929, based on its pro forma surveillance report. (OPC BR 2) Fort Meade contends that the change in the corporate income tax rate from 35 percent to 21 percent results in a tax detriment of approximately $17,929 for the Company. (Fort Meade BR 8; 128) Witness Cassel testified that while this amount will not be sufficient to increase the Company's earned return into its allowed range of ROE, it will help the Company to make additional investments in infrastructure. (TR 128)

In response to discovery requests, the Company explained the tax detriment is due to an operating loss recognized by Fort Meade. (EXH 10, BSP 00048-00049) When a company incurs a net operating loss (NOL), the lower tax rate creates a smaller amount of tax deduction for the tax payer. (TR 205-206, TR 272; EXH 10) Fort Meade does not file its own Federal tax return, but instead files a consolidated Federal tax return with its parent company, CUC. (TR 214) CUC is the tax payer, and the NOL is recognized as a tax detriment on CUC's books. (TR 214) Consequently, the "write off" on CUC's books from Fort Meade's NOL is worth less to the parent company due to the lower tax rate. (TR 214) Fort Meade is requesting to recover the loss of that tax deduction for its parent company through an increase of $17,929 in its ECCR Clause factors. (TR 128) However, witness Cassel confirmed regulated public utility rates are set on a stand-alone basis, that is, as if the regulated utility is required to pay income taxes. (TR 214) The utility rates charged to customers already include an allowance for income taxes. (TR 90)

The record demonstrates that Fort Meade is requesting to use a purported tax detriment to recover incremental costs in lieu of initiating a rate increase. As argued by OPC, the tax detriment is not suffered directly by Fort Meade, but is suffered, if at all, by CUC through its consolidated tax return. (OPC BR 10; TR 213-215) Further, sufficient record evidence is lacking to support that the tax detriment as proposed by Fort Meade is a result of the TCJA on a stand-alone basis. Recovery of a tax detriment or benefit by a regulated utility on behalf of its parent company is inconsistent with current regulatory practice to align income tax expense on a stand-alone basis.

As to whether the Company should be allowed to collect any detrimental impact through the ECCR clause, staff notes that the clause is governed by Rule 25-17.015, F.A.C., which states that a utility "may seek to recover its costs for energy conservation programs." OPC witness Smith stated that "[t]he estimated amount of 2018 income tax detriment does not have anything to do with the ECCR and, therefore, should not be charged to ratepayers through the ECCR." (TR 273) Witness Cassel agreed during cross-examination that the taxes in question are part of base rates, and that the ECCR has nothing to do with base rates tax impacts. (TR 196)

Additionally the Company stated in its response to staff's 2nd Set of Interrogatories, No. 4(c), that it:

> recommends that the annual tax detriment be collected through the ECCR clause on an entirely consolidated basis, rather than a per-division basis. The company believes that this computation is more favorable to the Ft. Meade customers as compared to assigning the detrimental impacts specific to only the appropriate division customers. (EXH 13)

Per Commission Order No. PSC-14-0655-FOF-GU, the Commission allowed FPUC to consolidate the conservation programs' expenses of the various divisions for purposes of ECCR cost recovery.[2] The Order is specific to conservation expenses and does not consider non-conservation expenses or costs. As FPUC proposes, customers from all FPUC's divisions would contribute to Fort Meade's base rates tax impact through the ECCR factors. The Company further stated in its response to staff's 2nd Set of Interrogatories, No. 4(F) that it "anticipates collecting these funds through the clause until its next rate proceeding." (EXH 13) Witness Cassel stated during cross-examination that 2020 or 2021 is the current anticipated timeframe for potential rate filings. (TR 218) As such, there would not be a clearly defined endpoint at which the non-division customers would cease supporting Fort Meade's base rate tax detriment through ECCR factors.

Based on the aforementioned, staff agrees with OPC and recommends that Fort Meade should not be allowed to recover any alleged detrimental impact associated with the corporate tax rate change implemented by the TCJA, and that the ECCR clause is not the appropriate mechanism to collect the tax detriment because the taxes are part of base rates and not associated with conservation expenses.

CONCLUSION

Staff recommends Fort Meade not be allowed to recover any presumed detrimental impact associated with the corporate income tax rate change implemented by the TCJA through the ECCR clause.

[2] Order No. PSC-14-0655-FOF-GU, issued November 6, 2014, in Docket No. 20140004-GU, In re: Natural gas conservation cost recovery.

Issue 19: Should Fort Meade be allowed to retain and amortize, over 26 years, the total annual benefit associated with the Protected Deferred Tax liability?

Recommendation: Yes, Fort Meade should be allowed to retain and amortize, over 26 years, the total annual benefit associated with the Protected Deferred Tax liability. (Hightower, D.Buys, Cicchetti)

Position of the Parties

FORT MEADE: Yes, Fort Meade should be allowed to retain and amortize, over 26 years, the total annual benefit associated with the Protected Deferred Tax liabilities.

OPC: No, Fort Meade should not be allowed to retain any portion of the protected deferred income taxes; however, OPC agrees with the 26 years amortization which is consistent with ARAM.

Staff Analysis:

PARTIES' ARGUMENTS

FORT MEADE

Fort Meade argued that for protected excess deferred taxes, the grossed-up balance for Fort Meade was approximately $46,451, which was recorded as a Deferred Regulatory Tax Liability. (Fort Meade BR 9; TR 129-130) This estimated deferred balance will be amortized over 26 years using the Average Rate Assumption Method (ARAM) as prescribed by the Internal Revenue Service (IRS), which is approximately $1,787 annually. (Fort Meade BR 9; TR 130; EXH 2)

OPC

As discussed in Issue 4B, OPC argued Fort Meade should not be allowed to retain the annual benefit associated with the protected excess deferred tax liabilities. (OPC BR 11) However, if the Commission decides to allow Fort Meade to retain the protected excess deferred tax benefit, then OPC agreed the amount should be amortized over 26 years consistent with the ARAM. (OPC BR 11)

ANALYSIS

In Issue 4B, OPC maintained that the protected excess deferred tax amount should be returned to customers while Fort Meade argued the amount should be retained. However, both Parties agree Fort Meade should amortize the total annual benefit associated with the protected excess deferred tax liabilities, over 26 years consistent with the ARAM. (Fort Meade BR 9; OPC BR 11, TR 130) Staff agrees that it is appropriate for the Company to follow the IRS ARAM and that the protected excess ADIT should be amortized over a period of 26 years.

CONCLUSION

Because Fort Meade is earning a negative return well below its authorized range of ROE and is expected to continue to earn below this range even with retention of the tax savings, staff recommends that Fort Meade be allowed to retain the total annual amount associated with the protected excess deferred tax liabilities and to amortize this balance over 26 years consistent with the ARAM.

Issue 20: Should Fort Meade be allowed to retain and amortize, over 10 years, the total annual benefit associated with the Unprotected Deferred Tax liability?

Recommendation: Yes, Fort Meade should be allowed to retain and amortize, over 10 years, the total annual benefit associated with the Unprotected Deferred Tax liability. (Hightower, D.Buys, Cicchetti)

Position of the Parties

FORT MEADE: Yes, Fort Meade should be allowed to retain and amortize, over 10 years, the total annual benefit associated with the Unprotected Deferred Tax liabilities.

OPC: No, Fort Meade should not be allowed to retain any portion of the unprotected deferred income taxes; however, OPC agrees with the 10 years amortization period.

Staff Analysis:

PARTIES' ARGUMENTS

FORT MEADE

Fort Meade argued that the Company has an unprotected excess deferred tax liability recorded on its books with an estimated balance of $45,881. (Fort Meade BR 9; TR 129) The Company requested this excess deferred tax liability be amortized over 10 years at $4,588 per year. (TR 129; Fort Meade BR 9) Fort Meade argued that in light of its earnings posture, this annual amortization benefit be retained by the Company as it will provide the Company with further opportunity to earn a reasonable return. (Fort Meade BR 10)

OPC

As discussed in Issue 5B, OPC argued Fort Meade should not be allowed to retain the annual benefit associated with the Unprotected Deferred Tax liabilities. (OPC BR 11) However, if the Commission decides to allow Fort Meade to retain the unprotected deferred tax benefit, OPC agreed the benefit should be amortized over 10 years. (OPC BR 11)

ANALYSIS

In Issue 5B, OPC maintained that the unprotected excess deferred tax amount should be returned to customers while Fort Meade argued the amount should be retained by the Company. (OPC BR 11; Fort Meade BR 10) However, both Parties agreed Fort Meade should amortize the total annual benefit associated with the unprotected excess deferred tax amount over 10 years. (OPC BR 11; Fort Meade BR 9, TR 129-130) Staff agrees that it is appropriate for the Company to amortize the unprotected excess ADIT amount over a period of 10 years.

CONCLUSION

Because Fort Meade is earning a negative return well below its authorized range of ROE and is expected to continue to earn below this range even with retention of the tax savings, staff

recommends that Fort Meade be allowed to retain the total annual amount associated with the unprotected excess deferred taxes and to amortize this balance over 10 years.

Issue 21: Should Fort Meade be allowed to retain the 2018 tax benefits arising from the TCJA excluding the 2018 GRIP savings?

Recommendation: Yes, Fort Meade should be allowed to retain the 2018 tax benefits arising from the TCJA, excluding the 2018 gas reliability infrastructure program (GRIP) savings. (Hightower, D.Buys, Cicchetti)

Position of the Parties

FORT MEADE: Yes, Fort Meade should be allowed to retain the 2018 tax benefits arising from the TCJA excluding the 2018 GRIP savings.

OPC: No, Fort Meade should not be allowed to retain the 2018 tax benefits arising from the TCJA.

Staff Analysis:

PARTIES' ARGUMENTS

FORT MEADE

Fort Meade argued there are two components of the tax savings on the gas reliability infrastructure program (GRIP) surcharge. (Fort Meade BR 10; EXH 3, 4) The first component consists of the tax savings on the GRIP surcharge from the Jurisdictional Date through the end of the calendar year. (Fort Meade BR 10) The second component is the impact to the GRIP surcharge for 2019 forward. (Fort Meade BR 10) The tax savings in 2018 will be $2,376. (Fort Meade BR 10) The Company contended that for 2019 and beyond, the savings will be approximately $2,000. (Fort Meade BR 10; TR 131) The Company proposed to retain the 2018 savings. (Fort Meade BR 10) Fort Meade argued that in 2019, the new tax rate would be incorporated in the calculation of the GRIP surcharge passing the estimated $2,000 tax benefit on to Fort Meade's customers. (Fort Meade BR 10) Fort Meade argued, if the Commission accepts Fort Meade's proposal to retain a portion of the benefits of the Tax Act, Fort Meade's customers would experience continued rate stability and would see a reduction to the GRIP surcharge. (Fort Meade BR 10; TR 132) Fort Meade contended the Company would likewise benefit from an improved earnings posture and a healthier fiscal outlook, which ultimately inures to the benefit of Fort Meade's customers. (Fort Meade BR 10; TR 132-133)

OPC

OPC contended that Fort Meade's proposal to retain the 2018 tax savings associated with GRIP is for the Company's sole benefit. (OPC BR 12; TR 274-275) OPC argued that Fort Meade should return the 2018 GRIP-related TCJA savings directly to its customers for the same reasons presented in the preceding issues. (OPC BR 12; TR 274-275)

OPC agreed with Fort Meade's proposal to apply the new 21 percent federal income tax rate to its 2019 GRIP surcharge projections and future projections, reducing the annual GRIP revenue amount by the resulting annual tax savings of approximately $2,000. (OPC BR 12; TR 274-275)

OPC agreed with the return of the GRIP-related TCJA savings directly to its customers. (OPC BR 12; TR 274-275)

ANALYSIS

As a point of clarification, Fort Meade's position on this issue is inconsistent with its argument and testimony. In its position statement, Fort Meade stated that it should be allowed to retain the 2018 tax benefits arising from the TCJA *excluding* the 2018 GRIP Savings. (Fort Meade BR 6) (emphasis added) However, in Fort Meade's argument and witness Cassel's testimony, it is clear that the Company proposes to retain the 2018 GRIP tax savings. (TR 131)

Fort Meade proposed to retain the estimated annual amount of $1,787 from the tax benefit associated with the protected deferred tax amortization and the annual amount of $4,588 associated with the unprotected deferred tax amortization for a total amount of $6,375. (Fort Meade BR 10, TR 130) In addition, Fort Meade proposed to retain the tax savings of $2,376 from the 2018 GRIP surcharge. (Fort Meade BR 10; TR 131; EXH 3) Fort Meade proposed to incorporate the new tax rate of 21 percent into the calculation of the 2019 GRIP surcharge passing on an estimated $2,000 tax benefit to the Company's customers on a prospective basis. (Ft. Meade BR 10; TR 131) As discussed in Issues 4B, 5B, 19, and 20, staff believes the record supports allowing Fort Meade to retain the tax benefit resulting from the protected and unprotected excess deferred taxes. However, as discussed in Issue 18, staff does not believe allowing the Company to monetize a tax detriment due to a net operating loss into clause revenue is supported by record evidence, nor is it sound regulatory policy.

In Docket Nos. 20180051-GU and 20180054-GU, FPUC and Chesapeake, respectively, the Company and OPC agreed to a Type 1 Stipulation to flow the 2018 GRIP tax savings back to the customers as an over-recovery in 2019.[3,4] Fort Meade's argument for retaining the 2018 GRIP tax benefit in the instant docket was that the Company would benefit from an improved earnings posture and a healthier financial fiscal outlook, which ultimately inures to the benefit of its customers. (Fort Meade BR 10; TR 132-133) However, the GRIP surcharge is separate from base rates and the surcharge is based on the costs incurred by the Company to make reliability improvements to its system and is trued-up annually. (EXH 3) All expenses, including income tax expense, recovered through the GRIP surcharge are trued-up at the end of the year as an over or under recovery and applied to the ensuing year's GRIP factor. Income tax expense is not an exception to the true-up methodology. (EXH 8, 00033) As such, flowing the 2018 GRIP tax benefit back to the customers as an over-recovery in the 2019 GRIP surcharge is the appropriate regulatory treatment in this case. In consideration of consistent regulatory treatment across all CUC owned utilities, staff agrees with OPC that Fort Meade should return the 2018 GRIP-related TCJA savings to its customers as an over-recovery applied in the 2019 GRIP surcharge.

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[3] Order No. PSC-2018-0535-PHO-GU, issued November 16, 2018, in Docket No. 20180051-GU, In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 Florida Public Utilities Company – Gas, Issues 9 and 22.

[4] Order No. PSC-2018-0538-PHO-GU, issued November 16, 2018, in Docket No. 20180054-GU, In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 Florida Division of Chesapeake Utilities Corporation,

CONCLUSION

Staff recommends Fort Meade be allowed to retain the 2018 tax benefits arising from the TCJA, excluding the 2018 GRIP over-recovery.

Issue 24: Should this docket be closed?

Recommendation: Yes, this docket should be closed after the time for filing an appeal has run. (Dziechciarz, DuVal)

Position of the Parties

FORT MEADE: Yes.

OPC: No.

Staff Analysis:

PARTIES' ARGUMENTS

FORT MEADE
None Provided.

OPC
Once the Commission makes the findings contained herein it will be unnecessary to keep this docket open. However, until that time, the docket should not be closed.

ANALYSIS

Upon issuance of an order determining the tax impacts associated with the Tax Cuts and Jobs Act of 2017 for Fort Meade, this docket should be closed after the time for filing an appeal has run.

Item 11

FILED 1/28/2019
DOCUMENT NO. 00344-2019
FPSC - COMMISSION CLERK

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: January 24, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (Cicchetti, D. Buys, Hightower)
Division of Economics (Guffey)
Division of Engineering (Ellis)
Office of the General Counsel (Dziechciarz, DuVal)

RE: Docket No. 20180054-GU – Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Florida Division of Chesapeake Utilities Corporation.

AGENDA: 02/05/19 – Regular Agenda – Post-Hearing Decision – Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: Brown, Clark, Fay

PREHEARING OFFICER: Brown

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

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Case Background

The Florida Public Service Commission opened Docket No. 20180054-GU on February 23, 2018, to consider the tax impacts affecting Florida Division of Chesapeake Utilities Corporation (Chesapeake or Company) resulting from the passage of the Tax Cuts and Jobs Act of 2017. Chesapeake is a subsidiary of Chesapeake Utilities Corporation (CUC). CUC is the parent of Florida Public Utilities Company (FPUC). FPUC – Indiantown and FPUC – Fort Meade are separate divisions of FPUC. Docket Nos. 20180051-GU, 20180052-GU, and 20180053-GU were opened to address the tax impacts affecting FPUC, Fort Meade and Indiantown.

On April 25, 2018, an Order Establishing Procedure (OEP) for the docket was issued, in which controlling dates were set for filing testimony, exhibits, and discovery. On May 31, 2018, the discovery procedures and controlling dates were modified. Order No. PSC-2018-0412-PCO-GU, issued on August 20, 2018, was the second order revising the OEP that allowed the Company to file revised and supplemental testimony, and to extend testimony filing dates for Commission staff and the Office of Public Counsel (OPC). OPC is the only intervenor in this docket.

The prehearing conference was held on November 5, 2018. On Monday, November 9, 2018, OPC filed an agreed Motion to Consolidate, for Purposes of Hearing in Docket Nos. 20180051-GU, 20180052-GU, 20180053-GU, and 20180054-GU. On November 16, 2018, Prehearing Order No. PSC-2018-0535-PHO-GU was issued and reflected proposed stipulations between Chesapeake and OPC on most of the issues. Order No. PSC-2018-0555-PCO-GU, issued on November 20, 2018, consolidated the dockets for the purpose of the hearing. The hearing was held on November 27, 2018. At that time, the Commission voted to accept and approve the parties' proposed stipulations. This recommendation addresses the remaining contested issues. The Commission has jurisdiction pursuant to Sections 366.04, 366.041, 366.06, and 366.07, Florida Statutes.

Discussion of Issues

Issue 4B: What is the appropriate disposition of the protected excess deferred taxes?

Recommendation: Chesapeake should be allowed to retain the annual amortized amount of the protected excess deferred tax balance less the unprotected deferred tax amortization of $250,042. (Hightower, D. Buys, Cicchetti)

Position of the Parties

CHESAPEAKE: Chesapeake should be allowed to retain the estimated amortized deferred balance less the unprotected deferred tax amortization, thereby fulfilling the purpose of the TCJA by allowing Chesapeake to continue making capital improvements and potentially delaying a rate proceeding.

OPC: The Company should not be allowed to retain the benefit of the protected excess accumulated deferred income tax (ADIT). The protected excess ADIT should be reversed using an Average Rate Assumption Method ("ARAM") if the utility has the available information to calculate the ARAM, or via another appropriate method that complies with normalization requirements, if the Company does not have the information to compute the ARAM.

Staff Analysis:

PARTIES' ARGUMENTS

Chesapeake

Chesapeake argued that the Company is projected to be earning at the bottom of its allowable range of return on equity.[1] (Chesapeake BR 8; TR 138) In light of the Company's earning posture, Chesapeake argued that it should be allowed to retain the annual amortized amount of the protected excess accumulated deferred tax balance of approximately $369,596, less the unprotected excess deferred tax amortization annual amount of $119,554, for an annual net savings of $250,042. (Chesapeake BR 9; TR 139, 140) Chesapeake argued that the ability to retain the net tax savings will provide the Company with the opportunity to earn within its authorized range of return on equity (ROE), while also enabling the Company to provide utility service at present rates for a longer period, to continue making necessary capital investments, and to delay a costly rate proceeding. (Chesapeake BR 9-10; TR 140) Chesapeake argued that if it is allowed to retain all of the tax savings as proposed, the Company's return on equity for 2019 is projected to be 10.90 percent. (Chesapeake BR 11; EXH 12, BSP 00064) Chesapeake also argued that if it is required to reduce its base rates by $250,042 for the net excess deferred tax savings, its projected 2019 return on equity would be 10.43 percent. (Chesapeake BR 11; EXH 12, BSP 00061)

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[1]Although Chesapeake witness Cassel's testimony stated that the Company expects to be earning *at* the bottom of its allowable range of return on equity, the record indicates that its projected return on equity is 9.77 percent, which is *below* its allowable range. (EXH 10, BSP 00044)

OPC

OPC argued that the Commission should reject Chesapeake's proposal to retain the tax savings associated with the protected excess deferred taxes as being unjust, unfair, and unreasonable, and should apply the annual tax savings of $369,596 for the benefit of customers in the form of a rate reduction. (OPC BR 1, 4; TR 292-294) OPC also argued that the tax savings represents money that was previously paid by Chesapeake's customers, and the money therefore belongs to those customers and should be returned to them. (OPC BR 4, 5) Finally, OPC argued that the TCJA did not contain any language, express or otherwise, that suggested an intended goal of the TCJA was to allow a utility to keep tax savings so as to continue making capital investments while potentially delaying the need for a rate proceeding. (OPC BR 4; TR 212)

ANALYSIS

Both Chesapeake and OPC agree on the amount of the protected excess deferred tax of $9,609,491, and that amount should be amortized over 26 years, resulting in an annual tax savings of $369,956. (TR 140; TR 290-292) Where the parties differ is how the disposition of the tax savings should be resolved. OPC argued that the tax savings should be returned to Chesapeake's customers regardless of the Company's earnings posture to satisfy the intent of the TCJA. (OPC BR 4, 5) Chesapeake proposed to retain the tax savings, asserting that retention of the tax savings will benefit its customers by enabling the Company to delay a rate case and place downward pressure on the requested rate increase in its next rate case. (Chesapeake BR 9, 11)

OPC witness Smith relied on the 1982 Florida Supreme Court decision in Reedy Creek Co. v. Fla. Public Serv. Comm., 418 So. 2d. 249, 254 (Fla. 1982), which stated, "[a] change in a tax law should no [sic] result in a 'windfall' to a utility, but in a refund to the customer who paid the revenue that translated into the tax saving." (OPC BR 6; TR 294; EXH 18, P 5) OPC argued that the excess tax monies in Chesapeake's possession are a windfall to the Company that should be flowed back to the customers who paid the taxes in rates. (OPC BR 6) OPC also noted that Chesapeake witness Cassel admitted he did not provide in his testimony any calculations or evidence to demonstrate what the Company's projected earnings would be if the tax savings were retained by Chesapeake. (OPC BR 9, 10; TR 210) However, in response to a staff interrogatory, Chesapeake indicated that its forecasted ROE for 2018 and 2019 would be 10.86 and 10.90 percent, respectively, if it were to retain all the tax savings resulting from the TCJA. (EXH 12, BSP 00059, BSP 00064) Chesapeake's Commission-authorized range of return on equity is 9.80 percent to 11.80 percent. (EXH 10, BSP 00043)

Chesapeake argued that OPC's reliance upon the Reedy Creek case is misplaced. (Chesapeake BR 13) On cross-examination, OPC witness Smith conceded that the Commission's orders underlying the Reedy Creek case, Order Nos. 8624 and 8624A, reflect that, in addressing the 1978 Tax Reform, the Commission considered the circumstances of the utilities on a case-by-case basis and only required those utilities that were earning above the range of their Commission-approved ROE range to refund the tax savings arising under the 1978 Tax Reform. (Chesapeake BR 13; TR 311-315) Chesapeake also noted that witness Smith acknowledged that the Reedy Creek utility was in an over-earnings position at the time of the 1978 Tax Reform; thus, the issue that ultimately came before the Florida Supreme Court in the Reedy Creek case was a question of how much the utility would be required to refund. (Chesapeake BR 13) The

Commission had already determined that the utility would have to make a refund because it was over-earning. (Chesapeake BR 13, TR 308) Chesapeake argued in its brief that witness Smith's refusal to consider Chesapeake's earnings posture in rendering his opinion on Chesapeake's proposals to retain some of the TCJA savings is contrary to prior Commission policy, as reflected in Order Nos. 8624 and 8624A, and overstates the applicability of the Court's conclusions in the Reedy Creek case. (Chesapeake BR 13-14) As such, Chesapeake contends OPC's arguments on this point should be rejected. (Chesapeake BR 14)

In the Reedy Creek decision, the Florida Supreme Court acknowledged the Commission's decision wherein the Commission stated its position regarding a company's over-earnings position:

> Viewing the documents together with the testimony in the record, it is clear that a utility would be required to refund revenues if and only if it were earning in excess of the range of its authorized rate of return. (EXH 18)

OPC maintains that Chesapeake witness Cassel's interpretation of Reedy Creek mistakenly links the over-earnings posture of the utility in that case with the Court's use of the term "windfall." (OPC BR 6-7) Staff disagrees with OPC's argument. It is staff's opinion that in the Reedy Creek case, the utility was ordered to make a refund to its customers because regulated utilities are not allowed to earn above a Commission range of ROE regardless of the cause, and therefore, any over-earnings should be refunded to the customers.

Record evidence demonstrates that Chesapeake is currently earning below its authorized ROE. (Chesapeake BR 11; EXH 16, BSP 000395) The record also indicates that even with Chesapeake retaining all of the tax savings it has requested, the Company will not earn above its authorized range of ROE. (EXH 10, BSP 00047) In response to a staff interrogatory, Chesapeake indicated its forecasted ROE for 2019, with tax savings retained by the Company, would be 10.90 percent. (EXH 12, BSP 00064) Staff agrees with Chesapeake that a key factor in the Reedy Creek case pertained to the utility's earning's posture whereby the utility was required to make a refund because it was over-earning.

CONCLUSION

Staff recommends that it is fair, just, and reasonable for the Commission to consider the earnings position of the Company in its decision. Reducing base rates as recommended by OPC would result in a cash flow reduction to the Company, put downward pressure on Chesapeake's earnings, and would accelerate the need for a full rate case sooner than it would otherwise. Therefore, staff recommends that Chesapeake be allowed to retain the amortized protected excess deferred tax balance less the unprotected excess deferred tax amortization attributed to the TCJA.

Issue 5B: What is the appropriate disposition of the unprotected excess deferred taxes?

Recommendation: Chesapeake should be allowed to amortize the unprotected excess deferred tax amount over 10 years and net this amount against the protected excess deferred tax annualized amount. (Hightower, D. Buys, Cicchetti)

Position of the Parties

CHESAPEAKE: Chesapeake should be allowed to amortize the unprotected deferred tax asset over 10 years, netted against the protected excess deferred taxes.

OPC: The Company should not be allowed to retain the benefit of the unprotected excess ADIT. The Unprotected excess ADIT net asset of $1,195,541 should be amortized over 10 years at $119,554 per year.

Staff Analysis:

PARTIES' ARGUMENTS

Chesapeake

Chesapeake argued that it is projected to be earning at the bottom of or below its authorized range of ROE. (Chesapeake BR 8; TR 142) In light of the Company's earning posture, Chesapeake argued that it should be allowed to retain the annual amortized amount of the protected excess accumulated deferred tax balance of approximately $369,596, less the unprotected excess deferred tax amortization annual amount of $119,554, for an annual net savings of $250,042. (Chesapeake BR 9; TR 139, 140) Chesapeake further argued that the ability to retain the net tax savings will provide the Company with the opportunity to earn within its authorized range of ROE to provide service at current rates for a longer period, to continue making necessary capital investments, and to delay a costly rate proceeding (Chesapeake BR 9; TR 142-143) Chesapeake argued that if it is allowed to retain all of the tax savings as proposed, the Company's return on equity for 2019 is projected to be 10.90 percent. (Chesapeake BR 11; EXH 12, BSP 00064) Chesapeake also argued that if it is required to reduce its base rates by $250,042 for the net excess deferred tax savings, its projected ROE would be 10.43 percent. (Chesapeake BR 11; EXH 12, BSP 00061)

OPC

OPC agreed with Chesapeake that the annual protected excess accumulated deferred income tax (ADIT) amortization of $369,596 less the estimated annual unprotected excess ADIT amortization of $119,554 produces an estimated annual net amount of $250,042. (OPC BR 6; TR 291) However, OPC argued this net savings amount of $250,042 should be returned to customers via a base rate reduction and not retained by the Company. (OPC BR 6; TR 291-293) OPC argued that in the recent cases before the Commission that address tax savings, the electric and gas utilities have agreed to refund the monies to their customers or to apply them in a manner that directly benefits their customers (e.g., pay off storm costs in lieu of utilizing a storm surcharge). (OPC BR 7; TR 317-318) OPC contends that Chesapeake is currently earning a positive return, and that Chesapeake will continue to earn within its authorized range without the

tax savings being retained by the Company. (OPC BR 7) OPC argued that although Chesapeake claims that retaining the tax savings would not put the Company in an over-earning position, Chesapeake witness Cassel could not point to any calculations or evidence that was offered by Chesapeake to demonstrate where Chesapeake's projected earnings level would be if the tax savings was retained. (OPC BR 7, TR 210) OPC contended that the $250,042 net amount of the protected and unprotected excess ADIT should be applied for the benefit of the customers as a rate reduction. (OPC BR 6-7, TR 293, 300) To do otherwise would be unjust, unfair, and unreasonable to Chesapeake's customers. (OPC BR 8)

ANALYSIS

Both Chesapeake and OPC agree on the amount of the unprotected excess deferred tax of $1,195,541, amortized over 10 years, resulting in an annual tax detriment of $119,554. (TR 140; TR 290-292) Where the parties differ is how the disposition of the tax detriment will be resolved.

OPC witness Smith agreed that the net annual amortization of the protected and unprotected excess ADITs is approximately $250,042, annually. (TR 291) Witness Smith further testified that the balance for the base rate TCJA savings should be applied for the benefit of customers as a permanent base rate reduction rather than being retained by Chesapeake. (TR 300)

Chesapeake witness Cassel testified that the annual unprotected excess deferred tax balance is $1,195,541 and the Company requests that this amount be amortized annually over 10 years at $119,554 per year. (Chesapeake BR 9; TR 139, 140) This annual amortization detriment of $119,554 should be netted against the annual protected savings ($369,596), and the Company requests that the net of these amounts ($250,042) be retained by the Company. (TR 139, 140) Staff recommends that this treatment is appropriate because the Company is not earning above its authorized range of ROE.

CONCLUSION

Staff recommends that it is fair, just, and reasonable for the Commission to consider the earnings position of the Company in its decision. Therefore, for the same reasons discussed in Issue 4B, and the aforementioned analysis, staff recommends Chesapeake be allowed to offset the amount associated with the unprotected excess deferred taxes against the protected excess deferred taxes attributed to the TCJA. Because the Company's expected earned return, with the net amount of tax savings retained, is within its Commission-authorized range of return on equity, Chesapeake should be allowed to retain the annual net savings of $250,042.

Issue 18: Should Chesapeake be allowed to retain any of the tax benefit associated with the tax rate change implemented by the TCJA and if so, how much?

Recommendation: Chesapeake should be allowed to retain the tax savings arising from the TCJA rate reduction, excluding the 2018 GRIP savings, as well as the net savings of the protected and unprotected excess deferred taxes. (Hightower, D. Buys, Cicchetti)

Position of the Parties

CHESAPEAKE: Yes, Chesapeake should be allowed to retain any of the tax benefit associated with the tax rate change implemented by the TCJA in the amount of $845,652.[2]

OPC: No, CFG should not be allowed to retain any of the tax benefit associated with the tax rate change implemented by the TCJA.

Staff Analysis:

PARTIES' ARGUMENTS

Chesapeake

Chesapeake argued that even if the Company were allowed to retain the tax savings as it has requested, the Company would not exceed its authorized ROE range for 2019. (Chesapeake BR 8, 14; EXH 12, BSP 00059) In its brief, the Company argued OPC witness Smith's characterization of the tax savings becoming a "windfall" for the utility fails to recognize that the Company's proposal ultimately inures to the benefit of its customers (Chesapeake BR 12). Chesapeake also opined that should it be required to return all of the tax savings, along with the GRIP tax savings it has already proposed to refund, its ROE is projected to be only 8.66 percent. (Chesapeake BR 11; EXH 12, 00063) Chesapeake contended that its Commission-authorized earnings range is 9.80 percent to 11.80 percent, and the record demonstrates that the Company is currently earning below its range of ROE. (TR 142; EXH 10, BSP 00045) Chesapeake argued that any of the results proposed by OPC either drives the Company into a rate case or forces it to deal with an uneconomic result and severe financial duress. (Chesapeake BR 12) The Company opined that such a result would be contrary to the stated intent of those that sponsored the TCJA. (Chesapeake BR 12) Chesapeake argued retention of the tax savings as proposed will not cause the Company to earn above its authorized range, but will allow Chesapeake to earn within its range. (Chesapeake BR 11; TR 143)

OPC

OPC argued that Chesapeake is currently earning within its authorized range, and is projected to be earning within its authorized range - albeit at the lower end of the range for the foreseeable future. (OPC BR 7; TR 138, 143) OPC further argued that Chesapeake did not offer any evidence or provide any calculations indicating where Chesapeake would be earning relative to

[2]The amount of $845,652 is not mentioned in the record. Witness Cassel testified that the annual tax savings excluding the amount related to the GRIP is $630,137, and the net excess deferred tax amount is $250,042. (TR 138-140)

its authorized earnings range if the Commission were to allow the Company to keep the tax savings. (OPC BR 7; TR 210) OPC contended that even though the Company asserts that it could avoid a potential rate case, an examination of witness Cassel's testimony demonstrates no rate case will be avoided. (OPC BR 4, 9) OPC argued that witness Cassel testified that Chesapeake is earning within its range without the tax savings being retained. (TR 138) Finally, OPC argued that the tax savings resulting from the TCJA is money that belongs to the Company's customers and should be returned to them as a permanent base rate reduction. (TR 291)

ANALYSIS

Chesapeake witness Cassel testified that the estimated impact of the federal income tax rate change from 35 percent to 21 percent for Chesapeake is approximately $954,499. (Chesapeake BR 8; TR 138) Excluding $324,362 of tax savings related to the Company's 2018 GRIP savings, the incremental amount of tax savings is $630,137. (TR 138) In Issue 21, Chesapeake and OPC stipulated to return the tax savings related to GRIP back to the customers. Further, Chesapeake proposed to retain the annual net tax savings amount of $250,042 related to the protected and unprotected excess deferred tax saving ($369,596 for the protected excess ADIT less $119,554 for the unprotected excess ADIT). (TR 138) Staff concurs that the record evidence demonstrates that Chesapeake is earning below its authorized range of ROE. (Chesapeake BR 8, 12; TR 142; EXH 16, BSP 000395) The record also indicates that even with Chesapeake retaining all of the tax savings it has requested, the Company will not earn above its authorized range of ROE. (Chesapeake BR 8; EXH 12, BSP 00059)

CONCLUSION

For the aforementioned reasons, and the analysis in Issue 4B regarding the Reedy Creek case that is also applicable to this issue, staff recommends Chesapeake be permitted to retain the tax amount associated with the tax rate reduction as well as the net tax savings amount of the protected and unprotected excess ADITs attributed to the TCJA, excluding the 2018 GRIP over-recovery.

Issue 19: Should Chesapeake be allowed to retain the total net benefit associated with the Protected Deferred Tax Liability and the Unprotected Deferred Tax Asset, and should Chesapeake be allowed to amortize the Protected Deferred Tax Liability over 26 years and the Unprotected Deferred Tax Asset over 10 years?

Recommendation: Yes, Chesapeake should be allowed to retain the total net savings associated with the protected excess deferred tax liability and the unprotected excess deferred tax amount, and should be allowed to amortize the protected excess deferred tax amount over 26 years and the unprotected deferred tax amount over 10 years. (Hightower, D. Buys, Cicchetti)

Position of the Parties

CHESAPEAKE: Yes, Chesapeake should be allowed to retain the total net amount associated with the Protected Deferred Tax Liability and the Unprotected Deferred Tax Asset, and should be allowed to amortize the Protected Deferred Tax Liability over 26 years and the Unprotected Deferred Tax Asset over 10 years.

OPC: No, CFG should not be allowed to retain the total net benefit associated with the Protected Deferred Tax Liability and the Unprotected Deferred Tax Asset. Yes, CFG should be allowed to amortize the Protected Deferred Tax Liability over 26 years and the Unprotected Deferred Tax Asset over 10 years.

Staff Analysis:

PARTIES' ARGUMENTS

Chesapeake

Chesapeake contended that there is no debate between the Parties regarding the tax savings amounts that need to be addressed, nor is there any debate regarding Chesapeake's earnings posture. (Chesapeake BR 8; TR 290- 292) The Company contends this issue is a policy question as to whether, given its earnings posture, Chesapeake should be allowed to retain the identified tax savings or return those tax savings to its customers. (Chesapeake BR 8)

The Company contended that it has an unprotected deferred tax asset balance of $1,195,541 and requested it be amortized over 10 years at $119,554 per year. (TR 139) For protected deferred taxes, the grossed-up balance for Chesapeake is approximately $9,609,491, which is recorded as a deferred regulatory tax liability and should be amortized over 26 years using the Average Rate Assumption Method (ARAM), as prescribed by the Internal Revenue Service (IRS), which is approximately $369,569 annually. (TR 140; EXH 2)

OPC

OPC argued that similar to Issues 4B and 5B, the net grossed up tax savings of $250,042 arising from the excess ADIT amortization should be returned to Chesapeake's customers through a base rate reduction. (OPC BR 8) OPC agreed with the Company's proposal that $9,609,491, for the protected deferred tax savings should be amortized using the ARAM or the IRS prescribed methodology that complies with IRS normalization requirements, and flowed back over 26 years

at approximately $369,596 per year. (OPC BR 8; TR 291-292; EXH 2) Chesapeake witness Cassel also testified that the unprotected excess deferred tax asset has an estimated balance of $1,195,541, and that this amount should be amortized over 10 years at $119,554 per year. (TR 139)

ANALYSIS

Both Parties agree regarding the excess deferred tax amounts that need to be addressed, the amortization period of the protected excess deferred tax balance and the unprotected excess deferred tax balance, and the Company's earnings posture. (Cassel TR 140; Smith TR 290-292) What remains is a policy question as to whether, given its earnings posture, the Company should be allowed to retain the identified tax savings or return those tax savings to its customers (Chesapeake BR 8). As discussed in Issues 4B and 5B, staff believes the record supports Chesapeake's retention of the net protected and unprotected excess deferred tax savings arising from the TCJA. The record shows that if all of the tax savings are returned to customers as proposed by OPC, the Company's earned return would drop to 8.66 percent, which is below the bottom of its Commission-authorized range of 9.80 percent to 11.80 percent. (Chesapeake BR 11; EXH 10, BSP 00043; EXH 12, BSP 00063) The record also shows that if Chesapeake were to retain these savings, the Company would not be in an over earnings position. (Chesapeake BR 8; EXH 12) Chesapeake's proposal to retain the amortized amounts will allow the Company an opportunity to earn a return within its authorized range of ROE so that it can continue to provide safe and reliable service to its customers. (Cassel TR 143)

CONCLUSION

For the reasons discussed in Issues 4B, 5B, and the analysis above, staff recommends Chesapeake be allowed to retain the net amount associated with the protected excess deferred tax balance and the unprotected excess deferred tax balance, and should be allowed to amortize the protected excess deferred tax balance over 26 years and the unprotected excess deferred tax asset over 10 years.

Issue 20: Should the tax benefit arising from the TCJA rate reduction, excluding the 2018 GRIP savings, be retained by Chesapeake?

Recommendation: Yes, Chesapeake should be allowed to retain the net tax savings arising from the TCJA rate reduction, excluding the 2018 GRIP savings. (Hightower, D. Buys, Cicchetti)

Position of the Parties

CHESAPEAKE: Yes, Chesapeake should be able to retain the tax benefit arising from the TCJA rate reduction, excluding the 2018 GRIP savings.

OPC: No, the tax benefits arising from the TCJA rate reduction should not be retained by CFG.

Staff Analysis:

PARTIES' ARGUMENTS

Chesapeake

As the Company argued in Issues 4B, 5B, and 18, Chesapeake contended that it should be allowed to retain the tax savings arising from the TCJA. Chesapeake argued that the record clearly reflects that Chesapeake is currently earning below its authorized ROE range, and that retention of both the net protected excess ADIT amount and the annual tax rate reduction savings, less the portion associated with GRIP, will not cause the Company to earn above its authorized range of ROE. (Chesapeake BR 14, EXH 12) If Chesapeake is not allowed to retain any of the tax savings, Chesapeake argued that its 2019 ROE would be 8.66 percent. (Chesapeake BR 11, EXH 12) Chesapeake contended that its Commission-authorized earnings range is 9.80 percent to 11.80 percent, and that OPC's proposed treatment would result in an earned return below this range. (Chesapeake BR 12; TR 142) Chesapeake argued that any of the results proposed by OPC either drives the Company into a rate case or forces it to deal with an uneconomic result and severe financial duress. (Chesapeake BR 12) The Company opined that such a result would be contrary to the stated intent of those that sponsored the TCJA. (Chesapeake BR 13) The Company's recommended treatment will ensure that the Company remains well-positioned financially pending its next rate case so it can continue to provide safe reliable service to its customers. (TR 143)

OPC

OPC argued that for the reasons argued in Issues 4B, 5B, and 18, the 2018 income tax savings arising from the TCJA rate reduction should not be retained by Chesapeake. (OPC BR 9) OPC argued Chesapeake will be earning a "positive" return for the foreseeable future, as demonstrated by witness Cassel's testimony that Chesapeake is earning within its range without the tax savings being retained. (OPC BR 9; TR 138) OPC opined that under cross-examination, witness Cassel could not point to any evidence or calculations provided by Chesapeake in this docket that demonstrates what the Company's projected earnings would be if these tax savings were retained by Chesapeake, even though he contended that OPC argued that keeping the tax savings would

not put Chesapeake in an over-earnings position. (OPC BR 9-10; TR 143, 210) In contrast to the Company's proposal to keep the tax savings, OPC argued the tax savings should be flowed back to Chesapeake's customers. (OPC BR 10; TR 300) OPC argued that consistent with the Florida Supreme Court decision in the Reedy Creek case, and this Commission's recent decisions to return tax savings to utility customers when it approved settlements with other electric and gas utilities regarding the TCJA, the 2018 tax savings should be applied for the benefit of Chesapeake's customers as a base rate reduction. (OPC BR 10; TR 138, 300, 318-319)

ANALYSIS

As previously discussed in Issues 4B, 5B, and 18, staff recommends that Chesapeake be allowed to retain the annual net savings amount of tax savings attributable to the TCJA rate reduction, excluding the 2018 GRIP savings. Staff disagrees with OPC that there it not any record evidence provided by Chesapeake to demonstrate what the Company's earning would be if the tax savings were retained. In response to a staff interrogatory Chesapeake indicated its ROE would be 10.90 percent if forecasted for 2019 if all the tax savings are retained. (EXH 12. BSP 00064) Staff agrees with Chesapeake that requiring the Company to reduce base rates while the Company is not over-earning is contrary to past Commission decisions.

CONCLUSION

Based on the aforementioned and the analysis in 4B regarding the Reedy Creek case, staff recommends Chesapeake be allowed to retain the tax savings arising from the TCJA rate reduction, excluding the 2018 GRIP savings.

Issue 23: Should this docket be closed?

Recommendation: Yes, this docket should be closed after the time for filing an appeal has run. (Dziechciarz, DuVal)

Position of the Parties

CHESAPEAKE: Yes.

OPC: No.

Staff Analysis:

PARTIES' ARGUMENTS

Chesapeake
None Provided.

OPC
None Provided.

ANALYSIS

Upon issuance of an order determining the tax impacts associated with the Tax Cuts and Jobs Act of 2017 for Florida Division of Chesapeake Utilities Corporation, this docket should be closed after the time for filing an appeal has run.