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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 Florida Public Utilities Company - Gas. /	DOCKET NO. 20180051-GU FILED: October 22, 2018

PREHEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL

The Citizens of the State of Florida, through the Office of Public Counsel ("Citizens" or "OPC"), pursuant to the Order Establishing Procedure in this docket, Order PSC-2018-0213-PCO-GU issued April 25, 2018, Order PSC-2018-0274-PCO-GU issued May 31, 2018, and Order PSC-2018-0412-PCO-GU issued August 20, 2018, submit this Prehearing Statement.

APPEARANCES:

Virginia Ponder
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111 West Madison Street, Room 812
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On behalf of the Citizens of the State of Florida.

A. WITNESSES:

Witness	Subject Matter	Issue Numbers
Direct		
Ralph Smith	Impacts of the Tax Cuts and Jobs Act of 2017	1-10, 12, 13, 18-23

B. EXHIBITS:

Witness	Proffered by	Exhibit No.	Description
Direct			
Ralph Smith	OPC	Exhibit RCS-1	Qualifications of Ralph C. Smith, CPA

C. STATEMENT OF BASIC POSITION

Florida Public Utilities Company – Gas ("FPUC"), in its May 31, 2018 petition, seeks determination by the Florida Public Service Commission of the tax benefits arising from the Tax Cuts and Jobs Act of 2017 ("TCJA"). FPUC has identified, as a result of the TCJA, a regulatory liability for excess accumulated deferred income taxes ("ADIT") of $25,581,776. FPUC proposes to retain the net annual amortization of the protected and unprotected excess ADIT estimated by FPUC to be approximately $537,174 annually. OPC objects to this proposal and submits this amount should be applied for the benefit of customers as a rate reduction.

FPUC has also identified a base rate savings of $1,141,134 as a result of the TCJA. OPC disagrees with the FPUC's proposal to retain this amount and contends the 2018 base rate income tax savings should be applied for the benefit of customers through a permanent base rate reduction.

FPUC indicates the impact of the TCJA on the Company's Gas Reliability Infrastructure Program ("GRIP") results (i) in a 2018 tax savings of $1,040,141 and (ii) in an annual tax savings, for the period 2019 and beyond, of approximately $1.2 million. FPUC proposes to flow back the 2018 tax savings benefit to its customers by incorporating it as an over-recovery in its 2019 GRIP projection. Additionally, FPUC indicates it will apply the new 21 percent federal income tax rate into its 2019 GRIP surcharge projections and future projections, which will reduce the annual GRIP revenue amount by the annual tax savings of approximately $1.2 million. OPC agrees with the Company's proposals to flow through the GRIP-related TCJA savings directly to its customers.

FPUC's revised filing on August 27, 2018, contained a reclassification of excess ADIT related to cost-of-removal from protected to unprotected. OPC does not disagree with this classification; however, due to the uncertainty in this area and the fact that different utilities have taken different positions as to the classification, OPC suggests it may be appropriate for FPUC to seek a private letter ruling ("PLR") from the IRS regarding its classification of the excess ADIT relating to cost of removal/negative net salvage as "unprotected". Notwithstanding, because of the cost involved in seeking such a ruling, OPC acknowledges that guidance provided by PLRs to larger Florida utilities may be sufficiently clear so as to prevent FPUC and its affiliates from having to obtain their own specific PLR.

D. STATEMENT OF FACTUAL ISSUES AND POSITIONS

ISSUE 1: Is the methodology and process Florida Public Utilities Company ("FPUC") used to calculate the impact of the Tax Cuts and Jobs Act of 2017 ("TCJA") appropriate?

OPC: Yes, the Citizens have identified no errors.

ISSUE 2: Were Accumulated Deferred Income Taxes (ADIT) appropriately calculated?

OPC: Yes, the Citizens have identified no errors.

ISSUE 3: Are FPUC's classifications of the excess ADIT between "protected" and "unprotected" appropriate?

OPC: Yes, the Citizens have identified no errors.

ISSUE 4: **A.** Were "protected excess deferred taxes" for 2018 using a 21 percent corporate tax rate appropriately calculated?

OPC: Yes, the Citizens have identified no errors in the Company's calculation of the protected excess ADIT.

B. What is the appropriate disposition of the protected excess deferred income taxes?

OPC: The Company 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 the Company does not have the information to compute the ARAM.

ISSUE 5: **A.** Were "unprotected excess deferred taxes" for 2018 using a 21 percent corporate tax rate appropriately calculated?

OPC: Yes, the Citizens have identified no errors in the Company's calculation of the unprotected excess ADIT.

B. What is the appropriate disposition of the unprotected 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 $3,072,874 should be amortized over 10 years at $307,287 per year.

ISSUE 6: Should FPUC seek a private letter ruling from the IRS regarding its classification of the excess ADIT relating to cost of removal/negative net salvage as "unprotected"?

OPC: Possibly, yes.

ISSUE 7: If FPUC seeks a private letter ruling and the IRS rules therein (or in another private letter ruling) that the excess ADIT relating to cost of removal/negative net salvage is to be treated as "protected," what process should be followed for the reclassification?

OPC: Pending clarification of the appropriate classification of excess ADIT for cost of removal/negative net salvage, FPUC-Gas should amortize the related excess

ADIT using the ARAM if the classification ruled by the IRS indicates this is "protected".

ISSUE 8: What mechanism should be utilized to avoid the negative impact to FPUC of the cost of seeking a Private Letter Ruling?

OPC: By awaiting IRS rulings from the larger Florida utilities on their respective PLRs, FPUC could potentially avoid the need to seek its own PLR. If the PLRs for the larger Florida utilities are clear and consistent in their rulings, having FPUC and its affiliates request their own PLR may be unnecessary. Thus, the cost for having FPUC and its Florida affiliates request a PLR does not need to be incurred at this time.

ISSUE 9: Were appropriate adjustments made to FPUC's Gas Reliability Infrastructure Program "GRIP" for the impact of the TCJA for the tax year 2018?

OPC: Yes, the Citizens have identified no errors and agree with FPUC's proposals to flow GRIP-related TCJA savings through its GRIP surcharge filings.

ISSUE 10: What is the forecasted tax expense for FPUC for the tax year 2018 at a 21 percent corporate tax rate?

OPC: The Citizens have identified no errors in FPUC's forecasted tax expense for the tax year 2018 as estimated to be $2,181,275.

ISSUE 11: What is the forecasted tax expense for FPUC for the tax year 2018 at a 35 percent corporate tax rate?

OPC: No Position at this time.

ISSUE 12: What is the forecasted NOI for the tax year 2018 at a 21 percent corporate tax rate?

OPC: The Citizens have identified no errors in FPUC's forecasted NOI of $12,268,779 for the tax year 2018 at the 21 percent corporate tax rate.

ISSUE 13: What is the forecasted NOI for the tax year 2018 at a 35 percent corporate tax rate?

OPC: The Citizens have identified no errors in FPUC's forecasted NOI of $10,640,348 for the tax year 2018 at the 35 percent corporate tax rate.

ISSUE 14: What is the forecasted capital structure for the tax year 2018 at a 21 percent corporate tax rate?

OPC: No position at this time.

ISSUE 15: What is the annual forecasted capital structure for the tax year 2018 at a 35 percent corporate tax rate?

OPC: No Position at this time.

ISSUE 16: What is the forecasted annual revenue requirement for FPUC for the tax year 2018 using a 21 percent corporate tax rate?

OPC: No position at this time.

ISSUE 17: What is the forecasted annual revenue requirement for FPUC for the tax year 2018 using a 35 percent corporate tax rate?

OPC: No Position at this time.

ISSUE 18: What is the tax benefit arising from the TCJA rate reduction that FPUC requests to be retained?

OPC: FPUC proposes to retain (i) the net annual amortization of the protected and unprotected excess ADIT estimated by FPUC to be approximately $537,174 annually; and (ii) the base rate savings of $1,141,134. OPC opposes this proposal and recommends the tax impact arising from the TCJA should be flowed through for the benefit of customers through rate reductions.

ISSUE 19: What is the estimated amount of the Deferred Tax portion of the Protected regulatory asset that is not associated with the acquisition adjustment that FPUC is requesting to be retained?

OPC: The estimated amount of the deferred tax portion of the protected regulatory asset that FPUC is requesting to be retained is approximately $838,462 per year over 26 years. OPC disagrees with FPUC's proposal to retain this benefit.

ISSUE 20: What is the estimated amount of the Deferred Tax portion of the Unprotected regulatory asset that is not associated with the acquisition adjustment that FPUC is requesting to be retained?

OPC: The estimated amount of the deferred tax portion of the unprotected regulatory asset that is not associated with the acquisition adjustment is approximately $291,688 per year over 10 years.

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?

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

ISSUE 22: Should the tax benefits directly associated with the GRIP program be passed-on to customers through future GRIP surcharges?

OPC: Yes, the GRIP-related TCJA savings should be passed-on to customers through FPUC's GRIP surcharge filings.

ISSUE 23: Should FPUC update the estimated tax benefit to be consistent with any adjustments to those estimates through December 22, 2018? If so, how should it be handled?

OPC: Yes. Adjustments or corrections to the amounts should be addressed in a true-up filing.

ISSUE 24: Should this docket be closed?

OPC: No.

E. **STIPULATED ISSUES:**

None.

F. **PENDING MOTIONS:**

None.

G. **REQUESTS FOR CONFIDENTIALITY**

Citizens have no pending requests for claims for confidentiality.

H. **OBJECTIONS TO QUALIFICATIONS**

None.

I. **REQUIREMENTS OF ORDER**

There are no requirements of the Order Establishing Procedure with which the Office of Public Counsel cannot comply.

Dated this 22nd day of October, 2018.

Respectfully submitted,

JR Kelly
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/s/Virginia Ponder
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CERTIFICATE OF SERVICE
20180051-GU

I HEREBY CERTIFY that a true and correct copy of the Office of Public Counsel's Prehearing Statement has been furnished by electronic mail on this 22nd day of October, 2018, to the following:

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