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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 for Florida Public Utilities Company - Fort Meade Division.	DOCKET NO. 20180053-GU FILED: October 22, 2018

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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-2018-0215-PCO-GU issued April 25, 2018, Order PSC-2018-0276-PCO-GU issued May 31, 2018, and Order PSC-2018-0412-PCO-GU issued August 20, 2018, submit this Prehearing Statement.

APPEARANCES:

Virginia Ponder
Associate Public Counsel

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Deputy Public Counsel

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Office of Public Counsel
c/o The Florida Legislature
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 – Fort Meade Division ("Fort Meade" or "Company"), 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"). The Company proposes to retain the net gross-up tax benefit arising from the excess accumulated deferred income taxes which is approximately $6,375 annually. OPC objects to the Company's proposal to retain the full estimated net benefit amount of $6,375 and recommends this amount be returned to customers via a base rate reduction.

The Company projects to have a negative operating income for 2018 and identifies an annual net tax detriment, based on its 2018 pro forma surveillance report, of $17,929. The Company indicates that because it is not over-earning, it wants to recover the full amount of its calculated annual TCJA tax detriment though the Energy Conservation Cost Recovery clause. OPC contends that the fact that Fort Meade is not over-earning is not a reason to allow the Company to recover the 2018 Base Rate Income Tax Detriment. Fort Meade has been earning below its authorized range since the Company was purchased in 2014. OPC recommends the Company not be allowed to charge customers through the Energy Conservation Cost Recovery clause for the 2018 income tax detriment.

Fort Meade indicates the impact of the TCJA on the Company's Gas Reliability Infrastructure Program ("GRIP") results (i) in a 2018 tax savings of $2,376 and (ii) in an annual tax savings, for the period 2019 and beyond, of approximately $2K. Fort Meade proposes to retain the 2018 tax savings benefit. OPC objects to FPUC's proposal to retain the 2018 tax savings associated with GRIP and recommends that the Company flow through the GRIP-related TCJA savings directly to customers. Regarding the second component, Fort Meade proposes to apply the new 21 percent federal income tax rate into its 2019 GRIP surcharge projections and future projections, reducing the annual Grip revenue amount by the annual tax savings of approximately $2K. OPC agrees with this proposal to flow through the GRIP-related TCJA savings directly to its customers.

Fort Meade'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 Fort Meade 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 Fort Meade 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 – Fort Meade Division (Fort Meade) 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 Fort Meade's classifications of the excess ADIT between "protected" and "unprotected" appropriate?

OPC: No Position at this time.

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 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, 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 liability of $45,881 should be amortized over 10 years at $4,588 per year.

ISSUE 6: Should Fort Meade 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 Fort Meade 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 Fort Meade of the cost of seeking a Private Letter Ruling?

OPC: By awaiting IRS rulings from the larger Florida utilities on their respective PLRs, Fort Meade 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 Fort Meade and its affiliates request their own PLR may be unnecessary. Thus, the cost for having Fort Meade and its Florida affiliates request a PLR does not need to be incurred at this time.

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

OPC: Yes, Citizens have identified no errors in Fort Meade's GRIP related adjustments.

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

OPC: The Citizens have identified no errors in Fort Meade's forecasted tax expense for the tax year 2018 as estimated to be $(17,929).

ISSUE 11: What is the forecasted tax expense for Fort Meade 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 Fort Meade's forecasted NOI of $(64,326) 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 Fort Meade's forecasted NOI of $(50,941) for the tax year 2018 at a 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 Fort Meade 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 Fort Meade for the tax year 2018 using a 35 percent corporate tax rate?

OPC: No Position at this time.

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?

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.

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?

OPC: No, the 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.

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?

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.

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

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

ISSUE 22: Should Fort Meade pass-on to customers all tax benefits directly associated with the GRIP program through future GRIP surcharges?

OPC: Yes, Fort Meade should pass-on to customers all tax benefits directly associated with the GRIP program through future GRIP surcharges.

ISSUE 23: Should Fort Meade update the estimated tax benefits 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
20180053-GU

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

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