

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

Re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Florida Public Utilities Company - Electric.

DOCKET NO. 20180048-EI

FILED: October 1, 2018

**MOTION TO STRIKE PORTIONS OF THE PETITION OF FLORIDA PUBLIC UTILITIES COMPANY AND THE TESTIMONY OF FLORIDA PUBLIC UTILITIES COMPANY WITNESS MICHAEL CASSEL**

The Citizens of the State of Florida, by and through Office of Public Counsel (OPC), and pursuant to Rule 28-106.204, Florida Administrative Code (F.A.C.), hereby file this Motion to Strike portions of the Petition of Florida Public Utilities Company (FPUC) and portions of the testimony of Witness Michael Cassel (Witness Cassel), and as grounds therefore state the following:

1. On May 31, 2018, FPUC filed its Petition for Approval of Tax Benefit Adjustment Amounts and Flow-Through Mechanism (Petition) seeking approval of its calculation of tax benefit amounts arising from the Federal Tax Cuts and Jobs Act of 2017 (2017 Tax Act) and consideration of an “alternative proposal.” The pre-filed Direct Testimony of Witness Cassel (Direct Testimony) was submitted together with this Petition for the stated purpose of explaining and supporting FPUC’s proposal for disposition of tax benefits related to the 2017 Tax Act.

2. On September 19, 2018, OPC and FPUC filed a Joint Motion to Amend Procedural Schedule and to Accept Revised/Supplemental Testimony requesting the dates established within this docket be amended to allow FPUC to file revised and supplemental testimony and also to extend the dates currently established for Intervenor Testimony.

3. On September 21, 2018, a Second Order Revising Order Establishing Procedure,

Order No. PSC-2018-0471-PCO-EI, was issued revising the controlling dates for the Utility Revised/Supplemental Testimony and Exhibits and Intervenor Testimony and Exhibits.

4. In accordance with Order No. PSC-2018-0471-PCO-EI, on September 21, 2018, FPUC filed Witness Cassel’s revised testimony (Revised Testimony).

5. FPUC’s Petition as well as the Direct Testimony and Revised Testimony of Witness Cassel both acknowledge the applicability of the Stipulation and Settlement (2017 Agreement) in Docket No. 20170150-EI, approved by the Commission in Order No. PSC-2017-0488-PAA-EI, as addressing how the full tax benefits of the then anticipated federal tax rate changes should be passed on to customers. However, despite the plain language of the federal income tax reform provision in the 2017 Agreement, FPUC is urging the consideration of an “alternative proposal” for applying the tax benefits.

6. Paragraph (a) of Section VIII of the 2017 Agreement, provides in pertinent part that “[t]he Parties further agree that this 2017 Agreement is in the public interest, that they will support this 2017 Agreement and will not request or support any order, relief, outcome, or result *in conflict with the terms* of this 2017 Agreement in any administrative or judicial proceeding relating to, reviewing, or challenging the establishment, approval, adoption or *implementation* of this 2017 Agreement or the subject matter hereof.” (emphasis added).

7. FPUC’s petition, in conjunction with Witness Cassel’s direct and revised testimonies, requesting the Commission’s consideration of an “alternative proposal” for the implementation of the tax benefits is in direct conflict with the plain terms of the 2017 Agreement.

8. FPUC is not free to ignore the fact that the 2017 Agreement prohibits such a request nor that the Commission is obligated to enforce the terms of the 2017 Agreement. See *Citizens of State v. Graham*, 213 So. 3d 703, 710- 720 (Fla. 2017).

9. Accordingly, the portions of FPUC's Petition, and Witness Cassel's Direct and Revised Testimonies that address FPUC's "alternative proposal" should be stricken.

10. Specifically, the following paragraphs from the Petition should be struck:

- a. Paragraph 11, page 5.
- b. Paragraphs 12 and 13, page 6.
- c. Paragraph 14, pages 6 to 7.
- d. Paragraph 15, page 7.
- e. Paragraph 18, page 8.

11. The following testimony from the Direct Testimony of Witness Cassel should be struck:

- a. Page 6, lines 8 through 24.
- b. Page 7, lines 1-3.
- c. Pages 8, lines 4-15.
- d. Page 9, lines 7-18 and lines 20 – 22.
- e. Page 10, lines 1-10; 20-22.
- f. Page 11, lines 12-25.
- g. Page 12, lines 1-9.

12. The following testimony from the Revised Testimony of Witness Cassel should be struck:

- a. Page 6, line 21.
- b. Page 7, lines 7-19.
- c. Page 9, lines 6-18.
- d. Page 10, lines 11-22.

- e. Page 11, lines 2–16.
- f. Page 12, lines 3-5; 20-23.
- g. Page 13, lines 1-19.

13. Pursuant to Rule 28-106.204(3), F.A.C., counsel for OPC has contacted counsel for FPUC who objects to this Motion.

WHEREFORE, the Citizens hereby respectfully request that the Prehearing Officer grant this Motion to Strike Portions of the Petition, and Witness Cassel’s Direct Testimony and Revised Testimony.

Respectfully submitted this 1<sup>st</sup> day of October, 2018.

J. R. Kelly  
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**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail on this 1<sup>st</sup> day of October, 2018, to the following:

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