

In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Peoples Gas System.

DOCKET NO. 20180044-GU

In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Tampa Electric Company

DOCKET NO. 20180045-EI

In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Florida Power & Light Company.

DOCKET NO. 20180046-EI

In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Duke Energy Florida, LLC.

DOCKET NO. 20180047-EI

In 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

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

DOCKET NO. 20180052-GU

In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Florida Public Utilities Company - Indiantown Division.

DOCKET NO. 20180053-GU

In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Florida Public Utilities Company - Fort Meade Division

In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Florida Division of Chesapeake Utilities Corporation.

DOCKET NO. 20180054-GU

**MOTION FOR EMERGENCY HEARING CONCERNING  
SCHEDULING AND DISCOVERY PROCEDURES**

Pursuant to Rule 28-106.204, Florida Administrative Code, the Citizens of the State of Florida, by and through the Office of Public Counsel (Citizens), hereby files its Motion For Emergency Hearing Concerning Scheduling and Discovery Procedures and as grounds state the following:

1. On April 25, 2018, the Florida Public Service Commission (PSC) issued orders setting forth procedural guidelines and controlling dates for key activities in the nine dockets identified above by order numbers: PSC-2018-0212-PCO-GU (Docket 20180044-GU); PSC-2018-0208-PCO-EI (Docket No. 20180045-EI); PSC-2018-0209-PCO-EI (Docket No. 20180046-EI); PSC-2018-0210-PCO-EI (Docket No. 20180047-EI); PSC-2018-0211-PCO-EI (Docket No. 20180048-EI); PSC-2018-0213-PCO-GU (Docket No. 20180051-GU); PSC-2018-0214-PCO-GU (Docket No. 20180052-GU); PSC-2018-0215-PCO-GU (Docket No. 20180053-GU); and PSC-2018-0216-PCO-GU (Docket No. 20180054-GU) (collectively, the “Orders Establishing Procedure”).

2. The procedural schedule, guidelines and key activity dates set forth in the Orders Establishing Procedure are identical.

3. The hearing for these nine dockets is scheduled for August 20-31, 2018.

4. The Orders Establishing Procedure provide a thirty-day response time, in conformance with the Florida Rules of Civil Procedure, for utilities in responding to discovery served prior to the utilities’ direct testimonies. Thereafter, the Orders Establishing Procedure, accelerate discovery deadlines including a fifteen-day response time for discovery requests directed to matters raised in a utility’s direct testimony and a ten-day turnaround for discovery requests directed to intervenor testimony.

5. Although styled as nine individual dockets, the merger of these dockets through an identical procedural schedule results in a de facto consolidation.

6. Rule 28-106.108, Florida Administrative Code, provides that “[i]f there are separate matters which involve similar issues of law or fact, or identical parties, the matters may be consolidated if it appears that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party.”

7. The virtual consolidation of these nine separate dockets is unduly prejudicial to Citizens and denies its right to procedural due process because it hinders its ability to properly conduct discovery, prepare testimony and prepare for hearing to effectively represent the Citizens of Florida.

8. On the surface, each of the nine dockets generally addresses the tax impacts as a result of the Tax Cuts and Jobs Act (TCJA). However, how the tax impacts are flowed through a particular company is dependent on specific facts and circumstances related to that company; as such, these cases are not identical and require separate review and analyses.

9. These proceedings are not subject to a statutory deadline nor any other legal limitation which would require the synchronization and compression of the procedural schedules in these dockets. It is noteworthy that during an informal meeting held on February 8, 2018, in Docket No. 20180013-PU (a generic docket to investigate and adjust rates for 2018 tax savings), the PSC staff queried the nine utilities in this docket, as well as others, as to when each company expected it would be in a position to make its filings related to the TCJA to the Commission. It was generally represented by all companies that filings could be accomplished by the end of May. The fact that the PSC gave meaningful consideration to the timeframes for filing as proposed by the utilities is apparent by the deadline of May 31, 2018, for Utility Testimony and Exhibits

reflected in the Orders Establishing Procedure. Yet, similar consideration on the matter of consolidation and compression of the schedule was not afforded to the intervening parties with regard to the timeframe necessary for preparation and submission of their testimonies and exhibits and discovery related thereto. The hearing dates were not discussed nor were they noticed for discussion. Rather, the notice of January 30, 2018, indicated that the purpose of the February 8, 2018, informal meeting was to “discuss what procedures should be used to identify and account for any revenue requirement adjustments for investor-owned electric utilities which result from the enactment of the [TCJA].” Regarding the timing for an evidentiary hearing, only one company, Tampa Electric (Docket No. 20180045-EI), expressed a need to have the hearing related to tax impacts prior to the end of this year, 2018. Thus, only one company indicated that it needed to have the hearing held before the end of the year, yet the schedule provided in the Orders Establishing Procedure has the hearing for all nine companies during the same ten-day period which seriously obstructs Citizens ability to properly prepare and litigate.

10. Citizens have retained Larkin & Associates as consultants in all nine dockets.

11. Under the current schedule, Citizens’ consultants will be responding to discovery in nine dockets to nine different companies in a ten-day turnaround during the exact same period of time. The accelerated timeframe does not afford Citizens and its consultants with sufficient time to meaningfully consider the discovery requests propounded by the utilities and Commission staff and to prepare responses. During this same time frame, Citizens must undergo hearing preparations for nine separate hearings to be held back-to-back within a ten-day period.

12. Absent the arbitrarily accelerated schedule in these nine dockets, Citizens would be entitled to a thirty-day response time pursuant to the Florida Rules of Civil Procedure. While even the thirty-day timeframe provided by rule would be challenging given the complexity of the issues

and financial analyses required in these dockets, the truncated response time of ten days greatly inhibits Citizens' ability to properly represent the citizens of the State of Florida. Any discovery response time frame less than 30 days would not be justified, given the complete lack of exigency in setting the hearing schedule.

13. There is no legal justification nor party convenience explanation as to why, in nine dockets of such significant public importance, the Commission has chosen to so severely restrict the discovery schedule and consolidate nine dockets into a lockstep hearing process. Under such a compressed time frame, Citizens' resources will be strained and forced to be fully dedicated to the litigation process.

14. Citizens is expending significant financial and time resources in preparing testimony and will be faced with extensive discovery. The compressed schedule is unduly prejudicial to Citizens impeding its effective participation in these hearings and in the representation of the Citizens of the State of Florida.

15. Citizens request an emergency hearing in order to present argument in support of our request concerning the scheduling and discovery procedures as set forth in the Orders Establishing Procedure.

16. Citizens' Counsel conferred with the Parties to this matter. Tampa Electric Company has no objection to the Motion. Duke Energy Florida, LLC, has no objection to the Motion. Florida Public Utilities does not oppose the Motion. Florida Power and Light Company has no objection to the Motion. Peoples Gas System has no objection to the Motion. Florida Industrial Power Users Group supports the Motion. Commission staff counsel takes no position.

WHEREFORE, the Citizens hereby request that the Commission grant this Motion for Emergency Hearing.

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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 30th day of April, 2018, to the following:

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