

**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 – Indiantown Division.

DOCKET NO. 20180052-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 No. PSC-2018-0214-PCO-GU issued April 25, 2018, Order PSC-2018-0275-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

Charles J. Rehwinkel  
Deputy Public Counsel

J.R. Kelly  
Public Counsel  
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:**

<u>Witness</u>	<u>Subject Matter</u>	<u>Issue Numbers</u>
<u>Direct</u>		
Ralph Smith	Impacts of the Tax Cuts and Jobs Act of 2017	1-9, 11, 12, 17-20

**B. EXHIBITS:**

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

**C. STATEMENT OF BASIC POSITION**

Florida Public Utilities Company-Indiantown Division (“Indiantown” 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”). Indiantown proposes to retain the net gross-up tax benefit arising from the excess accumulated deferred income taxes which is approximately \$7,862 annually. OPC contests the Company’s proposal to retain the net benefit of the excess accumulated deferred income taxes amortization and recommends that the estimated net benefit amount of \$7,862 be returned to customers via a base rate reduction.

The Company projects to have a negative net operating income for 2018 and has identified an annual net tax detriment of \$54,096, based on its 2018 pro forma surveillance report. Because the Company is not over-earning, Indiantown proposes to recover the full amount of its calculated annual TCJA tax detriment through the Energy Conservation Cost Recovery clause. OPC submits that the fact that Indiantown is not over-earning is not a reason to allow the Company to charge the ratepayers for the 2018 income tax detriment through the Energy Conservation Cost Recovery clause. Indiantown has been earning below its authorized range since 2013 and OPC recommends the 2018 base rate income tax savings should be applied for the benefit of customers through a base rate reduction.

Indiantown's revised filing on August 27, 2018, contained a reclassification of excess accumulated deferred income taxes 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 Indiantown to seek a private letter ruling ("PLR") from the IRS regarding its classification of the excess accumulated deferred income taxes 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 Indiantown and its Florida utility affiliates from having to obtain their own specific PLRs.

#### **D. STATEMENT OF FACTUAL ISSUES AND POSITIONS**

**ISSUE 1:** Is the methodology and process Florida Public Utilities Company - Indiantown Division (Indiantown) 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 Indiantown'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 taxes?

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 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: 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.

**ISSUE 6:** Should Indiantown 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 Indiantown 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 EADIT for cost of removal/negative net salvage, Indiantown should amortize the related EADIT 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 Indiantown of the cost of seeking a Private Letter Ruling?

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

**ISSUE 9:** What is the forecasted tax expense for Indiantown for the tax year 2018 at a 21 percent corporate tax rate?

OPC: The Citizens have identified no errors in Indiantown's forecasted tax expense of \$54,096 for the tax year 2018 at a 21 percent corporate tax rate.

**ISSUE 10:** What is the forecasted tax expense for Indiantown for the tax year 2018 at a 35 percent corporate tax rate?

OPC: No position at this time.

**ISSUE 11:** 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 Indiantown's forecasted NOI of \$(196,879) for the tax year 2018 at the 21 percent corporate tax rate.

**ISSUE 12:** 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 Indiantown's forecasted NOI of \$(156,494) for the tax year 2018 at the 35 percent corporate tax rate.

**ISSUE 13:** 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 14:** 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 15:** What is the forecasted annual revenue requirement for Indiantown for the tax year 2018 using a 21 percent corporate tax rate?

OPC: No position at this time.

**ISSUE 16:** What is the forecasted annual revenue requirement for Indiantown for the tax year 2018 using a 35 percent corporate tax rate?

OPC: No position at this time.

**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?

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

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

OPC: No, the Company 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 19:** Should Indiantown 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.

**ISSUE 20:** Should Indiantown update the estimated tax benefits for 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 21:** Should this docket be closed?

OPC: No.

**E. STIPULATED ISSUES:**

None.

**F. PENDING MOTIONS:**

None.

**G. REQUESTS FOR CONFIDENTIALITY**

OPC has no pending requests for claims for confidentiality.

**H. OBJECTIONS TO WITNESS QUALIFICATIONS AS AN EXPERT**

OPC has no objections to any witness' qualifications as an expert in this proceeding.

**I. REQUIREMENTS OF ORDER**

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

Dated this 22<sup>nd</sup> day of October, 2018.

Respectfully submitted,

JR Kelly  
Public Counsel

/s/Virginia Ponder  
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**CERTIFICATE OF SERVICE**  
**20180052-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 22<sup>nd</sup> day of October, 2018, to the following:

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