

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Date: January 7, 2019

FLORIDA POWER & LIGHT COMPANY'S PREHEARING STATEMENT

Florida Power & Light Company ("FPL" or the "Company"), pursuant to Order No. PSC-2018-0209-PCO-EI, files this Prehearing Statement with the Florida Public Service Commission (the "Commission").

1) FPL WITNESSES

Direct

<u>WITNESS</u>	<u>SUBJECT MATTER</u>	<u>ISSUE Nos.</u>
Scott R. Bores	Supports the total impact of the Tax Cuts and Jobs Act of 2017 ("Tax Act") on FPL's forecasted 2018 base revenue requirements of approximately \$684.8 million. Presents the differences in FPL's rate base, net operating income, and capital structure, representing the impact of the Tax Act on FPL's forecasted 2018 financial results. Describes how the pro forma 2018 Forecasted Earnings Surveillance Report ("FESR") excluding the impacts of the Tax Act was prepared. Discusses FPL's proposal to turn around the "protected" excess deferred income taxes in the manner prescribed by the Internal Revenue Code ("IRC") and Internal Revenue Service ("IRS") regulations and to turn around the "unprotected" excess deferred income taxes using reasonable methodologies that track the lives of the assets and liabilities to which the excess deferred income taxes relate.	1-8, 10, 12-15

Rebuttal

WITNESS

SUBJECT MATTER

ISSUE Nos.

Scott R. Bores	Addresses the proposed adjustments made by Office of Public Counsel (“OPC”) witness Smith for unprotected excess deferred income taxes that would result in the accelerated turnaround of those balances. Reaffirms that FPL’s proposal is reasonable but concludes that there is no accounting restriction or other significant concern in this instance regarding witness Smith’s proposed adjustments. Explains that witness Smith’s recommendation that FPL seek a private letter ruling (“PLR”) related to cost of removal as protected is impractical and not useful. Reaffirms that customers benefitted from FPL’s utilization of tax savings to offset Hurricane Irma restoration costs.	9, 11, 16, 17
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2) EXHIBITS

Witness	Proffered By	Exhibit No.	Description
Direct			
Scott R. Bores	FPL	SRB-1	FPL’s 2018 Forecasted Earnings Surveillance Report
Scott R. Bores	FPL	SRB-2	FPL’s Pro Forma 2018 FESR Excluding the Impacts of the Tax Act
Scott R. Bores	FPL	SRB-3	Differences in Rate Base
Scott R. Bores	FPL	SRB-4	Differences in Net Operating Income
Scott R. Bores	FPL	SRB-5	Differences in Capital Structure
Scott R. Bores	FPL	SRB-6	Forecast Change in 2018 FPSC Adjusted Revenue Requirement

In addition to the above pre-filed exhibits, FPL reserves the right to utilize any exhibit introduced by any party. FPL also reserves the right to introduce any additional exhibit necessary for rebuttal, cross-examination, or impeachment at the final hearing.

3) STATEMENT OF BASIC POSITION

FPL’s forecasted annual jurisdictional adjusted base revenue requirement decrease due to the enactment of the Tax Act for the tax year 2018, accounting for OPC witness Smith’s recommendations, is \$772.3 million. To calculate the Tax Act’s impact on “protected” excess deferred income taxes, FPL used the Average Rate Assumption Method (“ARAM”) thereby turning around the savings to customers over the remaining book depreciable life of the underlying assets. For “unprotected” excess deferred income taxes, FPL proposed to utilize two methodologies: ARAM for the property related unprotected excess deferred income taxes and the Reverse South Georgia Method (“RSGM”) for the non-property related unprotected excess deferred income taxes. FPL has no objection to OPC witness Smith’s proposed approach to

utilize 10-year straight-line amortization and to cap amortization at ten years for property-related and non-property related unprotected excess deferred taxes, respectively, if adopted by the Commission. The impact of witness Smith's recommendations is reflected in FPL's Statement of Issues and Positions.

The Commission should not direct FPL to seek a PLR. Pursuant to the IRC, salvage must be turned around using ARAM to avoid a normalization violation. FPL does not have the ability within the PowerPlan tax application to isolate the cost of removal component of negative net salvage. Therefore, cost of removal must be turned-around using ARAM to avoid a normalization violation whether it is classified as protected or unprotected. Obtaining a PLR would have no practical import because FPL could not implement a different approach.

Finally, FPL is properly using the savings resulting from the Tax Act to replenish the Amortization Reserve established in its 2016 Settlement Agreement. Pursuant to the 2016 Settlement Agreement, FPL is permitted to make both credit and debit entries to the Amortization Reserve, so long as it maintains its earned return on equity within the authorized range. This flexible mechanism is fundamental to FPL's ability to "stay out" of another rate case for a minimum of four years, thereby maintaining rate stability for at least that period. Nothing in the 2016 Settlement Agreement provides that the Amortization Reserve is extinguished when the balance reaches zero. To read such a condition on the use of the Amortization would be contrary to Florida law and would lead to absurd results that are contrary to the purpose of the 2016 Settlement Agreement.

4) STATEMENT OF ISSUES AND POSITIONS

ISSUE 1: What is the forecasted tax expense for the tax year 2018 at a 21 percent federal corporate tax rate?

FPL: FPL's forecasted tax expense for the tax year 2018 at a 21 percent federal corporate tax rate is \$430.6 million. FPL's position incorporates OPC witness Smith's recommendation. (Bores)

ISSUE 2: What is the forecasted tax expense for the tax year 2018 at a 35 percent federal corporate tax rate?

FPL: FPL's forecasted tax expense for the tax year 2018 at a 35 percent federal corporate tax rate is \$1,029.1 million. (Bores)

ISSUE 3: What is the forecasted NOI for the tax year 2018 at a 21 percent federal corporate tax rate?

FPL: FPL's forecasted NOI for the tax year 2018 at a 21 percent federal corporate tax rate is \$2,406.2 million. FPL's position incorporates OPC witness Smith's recommendation. (Bores)

ISSUE 4: What is the forecasted NOI for the tax year 2018 at a 35 percent federal corporate tax rate?

FPL: FPL's forecasted NOI for the tax year 2018 at a 35 percent federal corporate tax rate is \$2,175.4 million. (Bores)

ISSUE 5: What is the forecasted capital structure for the tax year 2018 at a 21 percent federal corporate tax rate?

FPL: FPL's forecasted capital structure for the tax year 2018 at a 21 percent federal corporate tax rate is \$36,142.2 million. FPL's position incorporates OPC witness Smith's recommendation. (Bores)

ISSUE 6: What is the forecasted capital structure for the tax year 2018 at a 35 percent federal corporate tax rate?

FPL: FPL's forecasted capital structure for the tax year 2018 at a 35 percent federal corporate tax rate is \$36,317.7 million. (Bores)

ISSUE 7: What is the forecasted jurisdictional adjusted base revenue requirement for the tax year 2018 using a 21 percent federal corporate tax rate?

FPL: FPL's forecasted jurisdictional adjusted base revenue requirement for the tax year 2018 using a 21 percent federal corporate tax rate is \$5,842.8 million. FPL's position incorporates OPC witness Smith's recommendation. (Bores)

ISSUE 8: What is the forecasted jurisdictional adjusted revenue requirement for the tax year 2018 using a 35 percent federal corporate tax rate?

FPL: FPL's forecasted jurisdictional adjusted base revenue requirement for the tax year 2018 using a 35 percent federal corporate tax rate is \$6,615.2 million. (Bores)

ISSUE 9: What is the annual jurisdictional adjusted base revenue requirement increase/decrease due to the enactment of the Tax Cuts and Jobs Act of 2017 for the tax year 2018?

FPL: FPL's forecasted annual jurisdictional adjusted base revenue requirement decrease due to the enactment of the Tax Cuts and Jobs Act of 2017 for the tax year 2018 is \$772.3 million. This figure incorporates OPC witness Smith's recommendation and represents a change of \$87.5 million from the \$684.8 million presented in witness Bores's direct testimony. The change is comprised of three items. First, accelerating the amortization of unprotected excess deferred income taxes by \$52 million annually as proposed by OPC witness Smith would lead to a revenue requirement decrease of \$68 million. Secondly, the accelerated amortization would lead to a reversal of surplus depreciation previously taken, reducing rate base and causing a reduction of \$22 million in revenue requirements due to lower income tax expense. Finally, as noted by witness Bores in his rebuttal testimony, there would be a \$2.5 million increase in revenue requirements due to the increase of investor sources of capital as a result of the accelerated amortization of unprotected excess deferred income taxes. (Bores)

ISSUE 10: Were "protected excess deferred taxes" for 2018 using a 21 percent federal corporate tax rate appropriately calculated?

FPL: Yes. FPL utilized ARAM to turn around the protected excess deferred income taxes over the remaining book depreciable life of the underlying assets. FPL's position is consistent with OPC's witness Smith's recommendation. (Bores)

ISSUE 11: Were “unprotected excess deferred taxes” for 2018 using a 21 percent federal corporate tax rate appropriately calculated?

FPL: FPL proposed to utilize two methodologies for the amortization of unprotected excess deferred taxes: ARAM for the property related unprotected excess deferred income taxes and RSGM for the non-property related unprotected excess deferred income taxes. FPL has no objection to OPC witness Smith’s proposed approach to utilize 10-year straight-line amortization and to cap amortization at ten years for property-related and non-property related unprotected excess deferred taxes, respectively, if adopted by the Commission. (Bores)

ISSUE 12: Were Accumulated Deferred Income Taxes (ADIT) for 2018 appropriately calculated?

FPL: Yes. FPL’s position incorporates OPC witness Smith’s recommendation. (Bores)

ISSUE 13: Are classifications of the excess ADIT between “protected” and “unprotected” appropriate?

FPL: Yes. (Bores)

ISSUE 14: How should unprotected excess ADITs be flowed back to FPL customers?

FPL: FPL proposes to turn around unprotected excess deferred income taxes for the benefit of customers via base rates, over the turnaround periods as approved by the Commission, regardless of whether they relate to base rate or adjustment clause assets. (Bores)

ISSUE 15: How should protected excess ADITs be flowed back to FPL customers?

FPL: FPL proposes to turn around protected excess deferred income taxes for the benefit of customers via base revenue requirements, over the turnaround periods specified by the normalization requirements, regardless of whether they relate to base or adjustment clause assets. (Bores)

OPC

ISSUE 16: Should FPL seek a private letter ruling from the IRS regarding its classification of the excess ADIT relating to cost of removal/negative net salvage as “protected”?

FPL: No. FPL should not seek a PLR because the Company does not have the ability within PowerPlan to isolate the cost of removal component of negative net salvage. Salvage must be turned around using ARAM to avoid a normalization violation. Therefore, because cost of removal is an inseparable component of net negative salvage in PowerPlan, its impact must be turned-around using ARAM to avoid a normalization violation regardless of whether cost of removal classified is protected or unprotected in isolation. Without the ability to treat cost of removal using a different methodology, obtaining a PLR would offer no practical distinction or opportunity for FPL to implement an alternate approach. (Bores)

OPC

ISSUE 17: If FPL seeks a private letter ruling and the IRS rules therein (or issues other relevant guidance) that the excess ADIT relating to cost of removal/negative net salvage is to be treated as “unprotected”, what process should be followed for the reclassification?

FPL: FPL does not have the ability within the PowerPlan financial system to segregate the cost of removal portion of excess deferred income taxes from those of salvage. As a result, FPL cannot separately track the cost of removal rate from the salvage rate. Therefore, regardless of the classification, FPL will need to turn-around the excess using ARAM. (Bores)

ISSUE 18: Should this docket be closed?

FPL: Yes. Upon issuance of an order confirming FPL’s proposed treatment of the tax impacts of the Tax Act is consistent with applicable accounting guidance and approving the proposed treatment of unprotected excess deferred income taxes as reasonable and appropriate, this docket should be closed.

CONTESTED ISSUES

FIPUG

ISSUE A: What is the rate decrease for each customer class resulting from the Tax Cuts and Jobs Act of 2017, if any, and, if so, when will those rate decreases become effective?

FPL
Objection:

FPL objects to FIPUG’s Issue A on the grounds that it incorrectly assumes FPL is required under the 2016 Settlement Agreement to implement a rate decrease as a result of The Tax Cuts and Jobs Act of 2017. To the extent FIPUG’s Issue A is included in this Docket, FPL provides its position below.

FPL
Position:

There should be no base rate decrease as FPL currently is earning within the ROE range authorized in its 2016 Settlement Agreement. In December 2017, FPL wrote off incremental Hurricane Irma Costs that had been initially charged to the storm reserve to O&M expense. Subsequently, FPL amortized all of the Reserve Amount available at the time. The amortization offset most, but not all, of the incremental Irma Costs, resulting in a one-time reduction in FPL’s earnings for 2017. FPL expects that from 2018 through 2020, tax savings under the Tax Act will enable the Company to utilize the reserve amortization mechanism under the 2016 Settlement Agreement to earn within its authorized range for the Minimum Term and at least one additional year. Any impact on customer base rates thereafter cannot be determined at this time, because the impact on base rates would be considered at the time of the next base rate proceeding along with a full review of base revenue requirements.

By combining expected tax savings with the flexible amortization of the Reserve Amount under the 2016 Settlement Agreement, FPL provided customers with a nearly immediate economic benefit by avoiding an interim storm charge due to Hurricane Irma entirely.

FPL

ISSUE B: How should FPL treat the savings associated with the Tax Cuts and Jobs Act of 2017?

FPL: In December 2017, FPL wrote off incremental Hurricane Irma Costs that had been initially charged to the storm reserve to O&M expense and then amortized all of the Reserve Amount available at the time. The amortization offset most, but not all, of the incremental Irma Costs, resulting in a one-time reduction in FPL's earnings for 2017. FPL expects that from 2018 through 2020, tax savings under the Tax Act will enable the Company to partially reverse the one-time amortization of all available Reserve Amount, while staying within the authorized ROE range. By combining expected tax savings with the flexible amortization of the Reserve Amount under the 2016 Settlement Agreement, FPL provided customers with a nearly immediate economic benefit by avoiding an interim storm charge due to Hurricane Irma entirely.

STAFF

ISSUE C: Does the 2016 Settlement Agreement allow FPL to replenish the Amortization Reserve with the tax savings resulting from the Tax Cuts and Jobs Act of 2017?

FPL: Yes. The 2016 Settlement Agreement allows FPL to make both credit and debit entries to the Amortization Reserve, so long as it maintains its earned ROE within the authorized range. To the extent FPL's earnings, taking into account the impact of tax savings and all of the Company's other costs of doing business, allow FPL to make debit entries to the Amortization Reserve while remaining within the authorized ROE range, then FPL is permitted by the 2016 Settlement Agreement to do so.

5) STIPULATED ISSUES

None at this time; however, FPL anticipates being able to reach a stipulation on all issues pertaining to the calculation of the impact resulting from the Tax Act and the classifications of the excess ADIT between "protected" and "unprotected."

6) PENDING MOTIONS

None at this time.

7) PENDING REQUESTS FOR CONFIDENTIALITY

None at this time.

8) OBJECTIONS TO WITNESS QUALIFICATIONS AS AN EXPERT

None at this time.

9) **REQUEST FOR SEQUESTRATION OF WITNESSES**

None at this time.

10) **STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE**

There are no requirements of the Order Establishing Procedure with which FPL cannot comply.

Respectfully submitted this 7th day of January 2019.

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CERTIFICATE OF SERVICE
Docket No. 20180046-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished
by electronic service on this 7th day of January 2019 to the following:

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