BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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 ORDER NO. PSC-2019-0053-FOF-EI ISSUED: February 1, 2019

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman
JULIE I. BROWN
GARY F. CLARK

APPEARANCES:

MATTHEW R. BERNIER, ESQUIRE, 106 East College Avenue, Suite 800, Tallahassee, Florida 32301, and DIANE M. TRIPLETT, ESQUIRE, 299 First Avenue North, St. Petersburg, Florida 33701
On behalf of Duke Energy Florida, LLC (DEF).

CHARLES J. REHWINKEL, ESQUIRE, Deputy Public Counsel, THOMAS A. DAVID, ESQUIRE, Associate Public Counsel, and J.R. KELLY, ESQUIRE, Public Counsel, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida (OPC).

JON C. MOYLE, JR. and KAREN PUTNAL, ESQUIRES, Moyle Law Firm, P.A., 118 North Gadsden Street, Tallahassee, Florida 32312
On behalf of the Florida Industrial Power Users Group (FIPUG).

ROBERT SCHEFFEL WRIGHT and JOHN T. LAVIA, III, ESQUIRES, Gardner, Bist, Bowden, Bush, Dee, LaVia & Wright, P.A., 1300 Thomaswood Drive, Tallahassee, Florida 32308
On behalf of the Florida Retail Federation (FRF).

JAMES W. BREW and LAURA A. WYNN, ESQUIRES, Stone Mattheis Xenopoulos & Brew, PC, 1025 Thomas Jefferson Street, NW, Eighth Floor, West Tower, Washington, D.C. 20007
On behalf of White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (PCS PHOSPHATE or PCS) (Excused).

MARGO A. DUVAL and ADRIA E. HARPER, ESQUIRES, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission (Staff).

MARY ANNE HELTON, ESQUIRE, Deputy General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
Advisor to the Florida Public Service Commission.

KEITH C. HETRICK, ESQUIRE, General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
Florida Public Service Commission General Counsel.

FINAL ORDER APPROVING STIPULATED POSITIONS OF DUKE ENERGY FLORIDA, LLC AND THE OFFICE OF PUBLIC COUNSEL

BY THE COMMISSION:

BACKGROUND

We opened Docket No. 20180047-EI on February 21, 2018, to consider the tax impacts affecting Duke Energy Florida, LLC (DEF) as a result of the passage of the Tax Cuts and Jobs Act of 2017. DEF submitted testimony and exhibits in support of its petition. The Office of Public Counsel (OPC) filed testimony and one exhibit in this docket as well.

On November 2, 2018, DEF and OPC filed a Joint Motion to Approve Stipulated Positions and Suspend Procedural Dates. In their motion, DEF and OPC requested that we approve their stipulated positions that resolved all issues in this docket. DEF and OPC further provided that the other parties to this proceeding, the Florida Industrial Power Users Group (FIPUG), the Florida Retail Federation (FRF), and White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (PCS Phosphate), took no position on the proposed stipulations and did not object to our approval of them.

By Order No. PSC-2018-0534-PCO-EI, the procedural schedule in this docket was suspended and an administrative hearing to consider the proposed stipulations was set for January 8, 2019.

We have jurisdiction over this matter by the provisions of Chapter 366, Florida Statutes (F.S.), including Sections 366.04, 366.05, and 366.06, F.S.

DECISION

The issues in this docket were presented to us as proposed stipulations between DEF and OPC, with all other parties taking no position, at the administrative hearing held on January 8, 2019. At that time, we accepted the parties' prefiled testimony and exhibits, along with Commission staff's exhibits, into the record. We further accept and approve the stipulations on all issues as being in the public interest, as we find they are reasonable and supported by competent, substantial evidence of record. The approved stipulations are appended to this Order as Attachment A.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the stipulations as set forth in Attachment A of this Order are hereby approved. It is further

ORDERED that Duke Energy Florida, LLC shall abide by the stipulations, findings, and rulings herein. It is further

ORDERED that this docket shall remain open to consider feedback from the Internal Revenue Service through the Private Letter Ruling regarding whether the treatment of excess accumulated deferred income taxes relating to the cost of removal/negative net salvage as unprotected is appropriate and until all true-ups and offsets are fully implemented pursuant to the 2017 Second Revised and Restated Settlement Agreement and the Implementation Stipulation regarding Tax Cuts and Jobs Act of 2017.

By ORDER of the Florida Public Service Commission this 1st day of February, 2019.

ADAM J. TEITZMAN
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

MAD

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

STIPULATION LANGUAGE – DOCKET 20180047

ISSUE 1: Has DEF complied with the applicable provisions of its 2017 Second Revised and Restated Settlement Agreement (2017 Agreement) and Implementation Stipulation regarding Tax Cuts and Jobs Act of 2017 (TCJA)?

STIPULATION: Yes, as detailed below.

ISSUE 1a: Was DEF's "forecasted earnings surveillance report for the calendar year that includes the period in which Tax Reform is effective" used?

STIPULATION: Yes. The Company properly used the 2018 Forecasted Earnings Surveillance Report as filed on March 15, 2018 to compute the annual revenue requirement impact associated with the TCJA in accordance with the 2017 Agreement.

ISSUE 1b: Were "protected" excess accumulated deferred income taxes (ADIT) for 2018 using a 21 percent federal corporate tax rate appropriately calculated and flowed back?

STIPULATION: Yes. The amount of "protected" excess ADIT as of December 31, 2017 was estimated to be $560.5 million. "Protected" excess ADIT amounts were properly reflected in the calculation of 2018 income tax expense using the average rate assumption method (ARAM) in accordance with the Internal Revenue Code and the 2017 Agreement.

ISSUE 1c: What were the "protected" ADIT for 2018 using a 35 percent federal corporate tax rate?

STIPULATION: Total Protected ADIT for 2018 using a 35 percent federal corporate tax rate is $1,768,801,034.

ISSUE 1d: Were "unprotected" excess ADIT for 2018 using a 21 percent federal corporate tax rate appropriately calculated and flowed back?

STIPULATION: Yes. Book-tax differences not covered by "protected" normalization rules were properly considered to be "unprotected". The amount of "unprotected" excess ADIT as of December 31, 2017 was estimated to be $248.5 million. Excess "unprotected" ADIT were properly reflected in the calculation of 2018 income tax expense over a ten-year flow back period in accordance with the 2017 Agreement.

ISSUE 1e: **What were the "unprotected" ADIT for 2018 using a 35 percent federal corporate tax rate?**

STIPULATION: Total Unprotected ADIT for 2018 using a 35 percent federal corporate tax rate is $1,020,458,892.

ISSUE 1f: **Were ADIT appropriately calculated?**

STIPULATION: Yes. DEF identified the book-tax differences that would be impacted by the TCJA, then calculated income tax expense to re-measure ADIT balances at the new applicable corporate rate of 21 percent. In accordance with the 2017 Agreement, these excess ADIT were deferred to a regulatory asset or liability which will be included in FPSC-adjusted capital structure and flowed back to customers consistent with the Internal Revenue Code and the 2017 Agreement.

DEF's calculation of excess ADIT is an estimate at this time. DEF will calculate the actual amount of excess ADIT as of December 2017 in December 2018 based on the 2017 filed tax return that was filed in September 2018. DEF will submit the actual excess ADIT and amortization amounts in December 2018 and will true-up these amounts retroactive to January 2018.

ISSUE 1g: **Are DEF's calculations and classifications of the excess ADIT between "protected" and "unprotected" appropriate?**

STIPULATION: Yes, DEF's classifications of excess ADIT between "protected" and "unprotected" are appropriate.

ISSUE 1h: **Should DEF seek a private letter ruling from the IRS regarding its classification of the excess ADIT relating to cost of removal/negative net salvage as primarily "protected" ?**

STIPULATION: Yes. DEF does not object to seeking a PLR from the IRS regarding its classification of the excess ADIT relating to cost of removal/negative net salvage as primarily protected.

ISSUE 1i: **If DEF 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 "unprotected", what process should be followed for the reclassification?**

STIPULATION: If DEF receives a private letter ruling ("PLR") from the IRS ruling that the excess ADIT relating to cost of removal/negative net salvage is to be treated entirely as unprotected, then a reclassification should be made in the company's books and records and flow-back amounts should be trued up retroactive to January 2018 based on the ruling.

<u>ISSUE 1i</u>: Were appropriate adjustments made to the Citrus CC GBRA for the impact of the TCJA for the tax year 2018?

STIPULATION: Yes. In accordance with the 2017 Agreement, for 2018 the Company adjusted its cost recovery request for the Citrus CC GBRA in Docket No. 20180084-EI to reflect lower revenue requirements as a result of the TCJA.

<u>ISSUE 2</u>: What is the appropriate amount of amortization for 2018 of "protected" excess ADIT?

STIPULATION: Amortization of the "protected" excess ADIT under ARAM is estimated to be $27.0 million, calculated by applying the 4.82% ARAM rate to the estimated balance of protected excess ADIT of $560.5 million. This amount is subject to true-up as explained in Issues 1f and 1i.

<u>ISSUE 3</u>: What is the appropriate amount of annual amortization of "unprotected" excess ADIT?

STIPULATION: Amortization of the "unprotected" excess ADIT over a ten year period is $24.9 million, calculated by dividing the "unprotected" excess ADIT balance of $248.5 million by 10 years. This amount is subject to true-up as explained in Issues 1f and 1i.

<u>ISSUE 4</u>: What is the revenue requirement impact of the amortization of excess ADIT?

STIPULATION: The total amortization of excess ADIT is estimated to be $51.9 million. After removing the wholesale portion of 3.73%, the retail amortization is $49.9 million, and the application of the 0.74655 tax gross-up factor results in a revenue requirement of $66.9 million

<u>ISSUE 5</u>: What is the amount of tax savings under the TCJA based on the 2018 forecasted earnings surveillance report?

STIPULATION: The tax savings calculated in accordance with the template in Exhibit 6 to the 2017 Agreement, based on the 2018 forecasted earning surveillance report, are $100.1 million. Exhibit 6 calculates the difference between income tax expense at the 35 percent federal tax rate and income tax at the 21 percent federal tax rate. With respect to DEF's capital structure, the excess ADIT regulatory liability has been included in the ADIT row on Schedule 3 ("Average - Capital Structure") of DEF's 2018 forecasted earnings surveillance report, and the first year excess ADIT amortization has been reflected. As the excess ADIT is amortized, DEF's debt and equity ratios increase, thereby resulting in a higher weighted average cost of capital (all other things being equal) as compared to the weighted average cost of capital absent tax reform, and this differential will likely grow each year as excess ADIT is amortized.

ISSUE 6: **What is the revenue requirement impact of the tax savings that were calculated based on the 2018 Forecasted Earnings Surveillance report?**

STIPULATION: The tax savings are $100.1 million, and the application of the 0.74655 tax gross-up factor results in a revenue requirement of $134.1 million.

ISSUE 7: **What is the appropriate amount of tax savings to apply to accelerated depreciation of Crystal River coal units 4&5 (CR4&5) per the 2017 Agreement?**

STIPULATION: The appropriate amount of accelerated depreciation of CR4&5 is $50 million. The 2017 Agreement provides for an amount of CR4&5 accelerated depreciation equal to the lesser of 40% of the revenue requirement impact of the TCJA based on the 2018 forecast earnings surveillance report or $50 million. The revenue requirement impact of the TCJA in the 2018 forecasted earnings surveillance report is $134.1 million, and 40% of this amount is $53.6 million. Therefore, the appropriate amount of accelerated depreciation of CR4&5 is $50 million.

ISSUE 8: **What is the total amount of annual revenue requirement decrease/increase due to the enactment of the TCJA for the tax year 2018?**

STIPULATION: The revenue requirement decrease due to the enactment of the TCJA for the tax year 2018 is estimated to be $150.9 million, made up of the revenue requirement impact of the TCJA based on the 2018 Forecasted Earnings Surveillance Report of $84.1 million (after removing the $50 million accelerated depreciation of CR4&5) and the estimated revenue requirement on the amortization of excess ADIT of $66.8 million. This amount is subject to true-up as explained in Issues 1f and 1i.

ISSUE 9: **What is the amount of the 2018 annual revenue requirement decrease attributable to the TCJA that should be used in Docket No. 20170272-EI to recover the storm costs?**

STIPULATION: The estimated $150.9 million annual revenue requirement impact should be used in Docket No. 20170272-EI to recover the storm costs. This amount is subject to true-up as explained in Issues 1f and 1i.

ISSUE 10: What are the appropriate base rate charges implementing the TCJA and when should the new base rate charges become effective?

STIPULATION: Pursuant to the 2017 Agreement and the Implementation Stipulation, a one-time rate reduction should be accomplished via a uniform percentage decrease to customer, demand and energy base rate charges, excluding delivery voltage credits, for all retail customer classes, effective concurrent with the first billing cycle after the storm costs authorized for recovery in docket no. 20170272 have been fully recovered as contemplated by the Implementation Stipulation. This rate reduction is currently an estimate of $150.9 million, but it will be subject to true-up upon DEF's filing of the final amount of excess ADIT amortization as explained in Issues 1f and 1i. DEF will submit revised tariff sheets for Staff's administrative approval at least sixty days prior to the effective date of this base rate decrease.

ISSUE 11: Should this docket be closed?

STIPULATION: This docket should remain open to consider feedback from the IRS through the PLR regarding whether the treatment of excess ADIT relating to the cost of removal/negative net salvage as unprotected is appropriate and until all true-ups and offsets are fully implemented pursuant to the 2017 Agreement and the Implementation Stipulation.