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FPSC - COMMISSION CLERK

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20200001-EI

FUEL AND PURCHASED POWER COST RECOVERY CLAUSE WITH GENERATING PERFORMANCE INCENTIVE FACTOR.
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In the Matter of:

DOCKET NO. 20200002-EG

ENERGY CONSERVATION COST RECOVERY CLAUSE.
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In the Matter of:

DOCKET NO. 20200007-EI

ENVIRONMENTAL COST RECOVERY CLAUSE.
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PROCEEDINGS: COMMISSION STAFF WORKSHOP

DATE: Thursday, February 6, 2020

TIME: Commenced: 10:00 a.m.
Concluded: 10:53 a.m.

PLACE: Gerald L. Gunter Building, Room 105
2540 Shumard Oak Boulevard
Tallahassee, Florida

REPORTED BY: ANDREA KOMARIDIS WRAY
Court Reporter and
Notary Public in and for
the State of Florida at Large

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IN ATTENDANCE:

SUZANNE BROWNLESS, COMMISSION STAFF

MARK CICCHETTI, COMMISSION STAFF

ANDREW MAUREY, COMMISSION STAFF

CHRIS RICHARDS, COMMISSION STAFF

DALE BUYS, COMMISSION STAFF

JOHN HIGHTOWER, COMMISSION STAFF

DERRICK CRAIG AND MICHELLE NAPIER, FLORIDA PUBLIC UTILITIES

JEFF WAHLEN, TAMPA ELECTRIC COMPANY

MARCIA OLIVIER, DUKE ENERGY

LIZ FUENTES, FLORIDA POWER & LIGHT

MARIA MONCADA, FLORIDA POWER & LIGHT AND GULF POWER COMPANY

TAD DAVID AND MARSHALL WILLIS, OFFICE OF PUBLIC COUNSEL

P R O C E E D I N G S

MS. BROWNLESS: Good morning, everyone. We're all here today pursuant to notice to conduct a workshop in Dockets 20200001-EI, Docket 20200002-EG, and Docket 2020007-EI [sic].

The purpose of this workshop is to discuss modifications to Order No. PSC 20120425-PAA-EI, to comply with Internal Revenue Code treasury regulation Section 1.167(1)-1(H)(6), specifically, the methodology for calculating the weighted average cost of capital, which we're going to refer to as "WACC," applicable to the clause-related investments.

At this time, we'll just go around the table and let everybody identify themselves. Suzanne Brownless with the Public Service Commission.

MR. CICCHETTI: Mark Cicchetti with the Public Service Commission.

MR. MAUREY: Andrew Maurey, Commission staff.

MR. CRAIG: Derrick Craig with Florida Public Utilities.

MS. NAPIER: Michelle Napier, Florida Public Utilities.

MR. WAHLEN: Jeff Wahlen, Ausley McMullen, on behalf of Tampa Electric Company.

MS. OLIVIER: Marcia Olivier with Duke Energy.
MS. FUENTES: Liz Fuentes, Florida Power & Light.
MS. MONCADA: Maria Moncada, Florida Power & Light and Gulf Power Company.
MR. DAVID: Tad David, Office of Public Counsel.
MR. WILLIS: Marshall Willis, OPC.
MR. BUYS: Dale Buys with the Public Service Commission staff.
MR. HIGHTOWER: John Hightower, Commission staff.
MR. RICHARDS: Chris Richards, Commission staff.
MS. BROWNLESS: We're going to start out by having some opening remarks and a slide presentation by the PSC staff. And then, after that, we'll open it up if anyone else wants to make a presentation or we'll simply open it up to discussion.
The idea of what we're trying to accomplish today is to show you staff's thoughts on the matter and get your responses. We will have comments filed on March 6th and give y'all, there, another opportunity to address the things you've heard

today.

We have a court reporter, so there will be a transcript available. And this is being live-streamed at this time.

So, I'll go ahead and turn it over to the staff and let them start.

MR. CICCHETTI: Well, good morning, everyone. My name is Mark Cicchetti. I'm the chief of finance, tax, and cost recovery here at the Florida Public Service Commission.

And I know all of you must be very, very excited to be here this morning. I can imagine, when you left your house, you probably told your family, I can't wait to get to Tallahassee, or I can't wait to get to the Public Service Commission because I'm going to a workshop on the weighted average cost of capital. Not only that, they're going to be talking about deferred income taxes. It's going to be amazing.

(Laughter.)

MR. CICCHETTI: My sister got -- she's moving to Tallahassee, and she got here last night. And instead of her doing the move-in thing, she came over to our house, my wife and I. And I mentioned to her that I was doing a workshop this morning.

And a little later on in the evening, she said, so, what's this workshop that you're going to be doing tomorrow. And I said, it's going to be on the weighted average cost of capital and deferred income taxes. And she looked at me with this blank stare that was part, I don't know what you're talking about, and part, that sounds horrible.

So, we are well-aware of how exciting people think the weighted average cost of capital is and deferred income taxes are. And so, we had that in mind when we put this presentation together. We don't want to bore you with a lot of minutiae and we don't want you to -- to put you to sleep with a lot of detail we don't think is necessary.

And we think that the issue before us is more of a policy issue. And so, we're not going to get into a lot of boring calculations and things like that.

So, we decided what we would do is we would do this as if we were talking to a new Commissioner that had no background in finance or tax. We want everybody to understand what it is that we're dealing with, how we got here, what the potential solutions are in an effort to, hopefully, come to a meeting of the minds.

And we want this to be informal. And by informal, I mean we want to stimulate as much discussion as possible. If you have a question, ask it at the time -- not just people here at the table, but anyone.

And so, we want to thoroughly flesh things out and, hopefully, as I said, come to a meeting of the minds, if -- if not, make sure everyone has a good understanding of the issues.

So, the purpose today is to discuss the joint motion that was filed with regard to the weighted average cost of capital and the normalization rules of the IRS. And we will talk about the normalization rules and how they relate to the weighted average cost of capital and what the weighted average cost of capital is.

And the weighted average cost of capital is applied in the clause recovery dockets. And there is an inconsistency between the Commission's practice and what the IRS requires. So, that's what we're here to deal with.

There is an order that prescribes how the weighted average cost of capital is going to be applied in the dockets, and so, there's no alternative source. So, we have to come to a conclusion as to what we need to do in order to comply with the IRS regulations.

So, where we're going to go from here is we're going to talk a little bit about accumulated deferred income taxes. You can't understand this issue without at least having a general idea of what deferred income taxes are.

And we will talk about the IRS normalization rules, the history, and how they relate to the deferred income taxes. We'll talk about a history of the clauses, briefly, and how we got to where we are today.

We will talk about the joint motion and what it proposes. And, finally, we will talk about staff's concerns with -- with the proposal and the motion and -- and what we think a solution would be.

And after the staff is done, we thought we would have the companies and the Office of Public Counsel do paper/rock/scissors to decide who would present next. Just kidding. Just kidding.

What we'll do is we'll have the utilities go next, and we'll let -- allow the utilities to work that out among themselves who wants to go first or second, and we'll have the Office of Public Counsel and also any other interested parties that have some comments or would like to make a presentation.

I'm thinking the staff's presentation, just running through it, would take about 30 minutes, but with any questions or discussions, it might be longer than that. We do want to get you out of here before the weather gets too bad.

And so, before we get started, does anyone have any questions or comments? Seeing none, we'll move on.

So, what are deferred income taxes? And the deferred income taxes that we're talking about relate to depreciation, for today and in this docket. And deferred income taxes are created by a depreciation-related book-tax timing difference.

Now, what does that mean, a book-tax timing difference? When we depreciate something for setting rates, it's done on a book basis. For example, let's say something costs a thousand dollars and has a ten-year life, we're going to include in rates a hundred dollars a year. And that's the cost that's passed on to customers as the asset is being utilized.

However, for deapprec- -- for tax purposes, they may be able to take accelerated depreciation.

They may be able to claim, let's just say, for example, 50-percent depreciation in the first year. So, what does that mean? That means their taxes are going to be lower.

So, customers have paid to the company more for taxes than the company is going to pay to the IRS. And that enhances their cash flow. And they have that money available to them. And so, that shows up on the balance sheet as deferred income taxes.

Well, if they have accelerated depreciation for tax purposes in the earlier years, that means, over time, there are going to be later years when the book depreciation is greater than the tax depreciation. And that is when the deferred taxes reverse. They go from whatever they are down to zero, over time. And if you did that over a ten-year period, in relation to the depreciation rates, that's what the IRS would consider -- called a ratable amortization.

Keep that term in mind because it's going to be important. It's ratable. It's fair and it's depreciated over time, and the deferred taxes diminish over time. And that is basically what the normalization rules are. Now, there's going to be a few more little complications, but that's basically what it is.

And in Florida, when we have those deferred taxes that accumulate over time, it's basically a zero-cost loan from the federal government. And we included a zero-cost capital in the capital structure.

And that's another important point because a lot of states don't do it that way. The other way to treat it is to use those deferred income taxes to reduce rate base. And that's how most other states do it.

So, keep in mind that whether you use it to reduce rate base or you include it in the capital structure, it has the same impact on rates. It's six of one, half dozen of another. And that's an important point to keep in mind.

All right. The normalization rules are designed to protect the public utility, to protect the companies. And what do I mean by that? Early on, regulators attempted to take that benefit associated with deferred income taxes and pass it right through to customers. And how did they do that? By simply doing away with the book-tax timing difference.

What does that mean? Whatever depreciation rate was used to pay your taxes, that's what the regulator used to set rates. And so, you no longer have any book-tax timing difference. The tax benefit flows straight through to the customers.

And the IRS had a problem with that. And that is because the accelerated depreciation was passed by Congress to provide an incentive to the companies to invest in plant and equipment.

And if the regulator was just going to pass that benefit straight through to the customer, they said, we're just going to take that benefit away. And that's harmful because the deferred taxes are a benefit to the company in that they help their cash flow. They also help their earnings. And it's zero-cost capital in the capital structure for the customer.

So, it's a good thing to have these deferred income taxes. Even though the customer had to pay it sooner than the company paid it to the IRS, it is reflected in the weighted average cost of capital or it's being used to reduce rate base, but the important point is that the normalization requirements are there to protect the company -- not necessarily the customer, but to protect the company.

Now, the normalization rules have a couple of components to them. One is the consistency rule. And what that simply means, in walking-around language, is if you're going to project the rate base, i.e., the investment, then you also need to project your capital structure. Or if you're going to use a historical rate base, you have to use a historical capital structure.

For rate cases, that's what we do. We don't, in a rate case, project the investment and use a historical capital structure or vice versa because then you're not having apples and oranges -- apples-to-apples, and you have all kinds of inconsistencies that come up.

So, the IRS really doesn't care if you project or if you use historical, as long as both the rate base and the capital structure are doing the same thing.

The second part of the normalization rules is a component called the pro-rata adjustment. Now, the pro-rata adjustment, in walking-around terms, is simply levelizing the amount of deferred taxes over the course of the year.

Rather than having a 13-month average where they're all front-loaded or back-loaded, the IRS makes you do this calculation that just simply levelizes it over the course of a year.

So, if you say something like, well, the normalization requirements require ratable amortization with the pro-rata adjustment, it sounds really complicated, but it's really not. The pro-rata adjustment only applies to a projected test year or a projected year, and it just levelizes out the investment.

The final part of the normalization rules has to do with the limitation provision. Now, the limitation provision is simply a way of saying, are you using more deferred taxes than you should be or, if you're using less, it's okay. They're only concerned if you use too many, if you have too many that are going into the zero-cost capital or if you have too many that are being used to reduce rate base.

And we're going to have a little example of that later on, but the whole idea of the limitation provision is basically how many deferred taxes are you attributing to the year and is it too many or too little.

And some of these slides are just background that you could have with you that -- a lot of it came right out of the joint motion. So, it's just describing how the things are calculated, and how they apply, but it's basically what I've just explained to you.

Now, the next thing I want to talk about is a history of the clauses. And this slide shows what we do under the 2012 order, and then the bottom is what is proposed in the joint motion.

Now, we originally started out with the Fuel Clause. And only fuel flowed through the Fuel Clause. It's a very large expense. If the company has to wait until another rate case to collect any increases in the amount of fuel they use, it puts a lot of pressure on the balance sheet. So, regulators and the companies came up with the Fuel Clause.

As time went by, here in Florida, it was determined that, if you make any kind of investment that reduces fuel -- or increases fuel savings that -- that's -- you know, makes your use of fuel more efficient, you can collect or recover that capital through the Fuel Clause.

And that means it's going to be -- that investment is going to be recovered over time, which means it has to have a carrying charge, which is the cost of capital that -- the cost of money that finances whatever that investment is.

So, what carrying charge do we do -- do we use? We use the weighted average cost of capital. And after the Fuel Clause, we came up with several other clauses that allow the companies to recover the -- certain investments more quickly, and they also had carrying charges. So, the weighted average cost of capital is used in -- in a number of the clauses and it represents the carrying charge.

Now, originally they said, well, what weighted average capital should we use. And it was determined we would use the weighted average cost of capital from the last rate case. Well, that worked fine until we came to 2012 where we had a situation where there was a utility whose weighted average cost of capital from the prior rate case was ten years removed and was significantly higher than their current weighted average cost of capital being reflected on their current surveillance reports. So, we opened the docket and said this has to be dealt with.

In -- in the late -- earlier time period, interest rates were higher, stock prices were lower, the cost of money -- that is, the overall cost of capital -- was higher then. And so, we wanted to reflect the more-current cost of money in the clauses.

Well, a stipulation was presented to the Commission that were -- parties were -- at least the utilities and the Office of Public Counsel and the Commission accepted it. And what that did was that said, we'll use a more-current weighted average cost of capital. We'll take it from the May surveillance report of that year, rather than using the weighted average cost of capital from the old rate case.

And on this schedule, it shows -- oops -- it shows that -- which surveillance reports are going to be used. And in the 2012 order, you can see we're using earnings surveillance reports from a prior year or the year -- it's a historical number. And in the proposal, we have a projected number, except for the true-up, which would be the earnings surveillance reports, to true it up in December -- through December of that year.

And the next group of slides -- or basically just the wording that reflects what's in that first slide of which earnings surveillance reports are used in which year. And this schedule here is just one that was taken from a -- I believe it was Florida City Gas. It's a calculation of the pro-rata adjustment that's done in order to comply with the Internal Revenue requirements' normalization rules.

Now, the calculation or the numbers are not in dispute. And so, we don't need to go through these in detail. Chris, who is sitting over here to my left -- he's a numbers guy. He likes working with numbers. He likes working with spreadsheets. He's very good at it.

And he said to me, Mark, I can go through this slide and explain every number in detail so that everyone can understand it. And I said, Chris, if you try and go through this slide and explain every number, they're going to say, you're a boring nerd. And he said, if I had a dollar for every time I was called a boring nerd, I would have a daily mean income of $5.86 with a standard deviation of $1.24.

(Laughter.)

MR. CICCHETTI: So, I said, Chris, don't worry about it; we don't need to go through this slide in excruciating detail. It's just there to let everyone know, that's the calculation. You can refer back to it. It's -- there's also an example in the motion, and the numbers are not in dispute.

So, then I want to turn to what the staff's concerns are with the proposal in the motion. And I'm going to flip to this slide, which is on Page 28.

And on this slide, the column on the left, which is labeled "projected" -- that is what is the best estimate of what's happening in a particular year. The investment is projected. The capital structure is projected. And just, for example purposes, this part in the middle are the deferred income taxes.

Now, keep in mind, this example is going to be done using the deferred income taxes to reduce rate base. And just because I think it's easier to see what's going on when you use the deferred income taxes to reduce rate base as opposed to looking at what happens with the weighted average cost of capital -- because, if you're looking at different time periods, the relative percentages of the sources of funds in the capital structure are going to change, the cost rates might change, and what's actually going on with the deferred income taxes' impact -- it gets lost in that calculation a little bit. It -- it's still there, but it's a little harder to see.

When you use an example where you're going to use the deferred income taxes to do -- reduce rate base, it becomes a little more clear of what's going on and what our concerns are.

So, let's just say, if you use projected all the time, that's what you have in this left column. Now, if we have a situation of what's in this left column, however, the 2012, the historical surveillance report reflects what's in the middle, then the deferred income taxes that would be used to reduce rate base or that would be included in the weighted average cost of capital are greater than what's actually projected. And that's what the IRS has a problem with. You're going to be reducing rate base too much and, therefore, that's a normalization violation.

So, according to the motion, if we have this situation, we're going to go back to this, what's going on in the left-hand column. That meets what's going on -- everything that's going on, and meets the normalization rules. The IRS is fine with it.

Now, let's say we have a situation where this is what's going on, this is the actual estimate, but we have a situation of what's in the right-hand column. That's where we're using the historical deferred income taxes. The income -- the deferred income taxes are less than what's actually estimated.

So, the IRS -- remember, they have a problem with you using too much, but in the private-letter ruling, it was asked, well, what about if we have this situation, can we still use this. And the answer was yes, because the normalization rules are used to protect the company.

And if you have this situation, then the company is being harmed; however, if you have this situation, the company -- you're not more-than-ratably flowing back the deferred income taxes. You're actually using less.

And so, what the joint motion wants -- is proposing is that, if we have this situation, we use this, but if we have this situation, we use -- stay with what we've done historically (indicating).

And so, the staff's concern is, why don't we just use this all the time, because what's happening here is we're not reducing rate base enough, if you did the reduction of rate base, or we're not getting enough deferred taxes, i.e., zero-cost capital in the weighted average cost of capital. And so, our proposal is to do this all the time.

And if we go back to some of the staff concerns, being the bureaucrats that we are, we're going to nitpick everything we can find and try and bolster our case. But even though we're bureaucrats, we're not -- we're still nice people, mostly. And so, our concerns are, under the 2012 method, it may result in rates that are higher than they need to be before they get trued-up.

We recognize that they will get trued-up in that third year, but in the meantime, you could have this sawtooth effect that's going to get trued-up, but the sawtooth would actually be less over time if we got the deferred taxes where they need to be and didn't have to make such -- so much of a true-up.

The second bullet has to do with consistency. And again, this is the same type of consistency that the IRS is referring to. If you're going to use a projected rate base, let's use a projected capital structure. If you're going to use a historical rate base, let's use a historical capital structure.

If someone came in and asked us, what should we do if we're projecting our rate base, we would always say, let's project the capital structure. It's just that the clause has evolved in a way that that wasn't recognized and the IRS rules were violated.

There was one company that brought this up when they were discussing using a projected test year. And someone said, well, we're not doing the pro-rata adjustment. And then someone else thought, well, we have clauses where we're not even doing a consistency adjustment.

And so, a number of private-letter rulings were filed. The issue got clarified. And then finally, it came upon -- the issue became, well, what if they're not flowing back too much, but too little; can we continue to do it that way. And that's when the IRS said, yeah, right, we're only concerned if you do too much, not if you do too little.

And so, in line with the rates being a little too high over that sawtooth effect, if you did away with that, that would help stabilize rates.

If we have different methodologies, depending on what the situation is -- we may have the same company doing it one way in one year, another way in another year. And when you think about all the different companies and all the different years, we'd have a lot to track. Everyone would have a lot more to track. And we think it would be a lot easier if we just stuck to one methodology, which meets the IRS regulations.

Finally, the -- the joint motion proposed that, if the staff or anyone wanted verification of meeting the limitation provision, they would provide it. We said, well, we'd like it all the time. And the company -- I think that -- the feedback we got was, that's fine, we'll provide it to you, but that's just something that's in there.

And then the final thing that's not on here is we have storm hardening and undergrounding that's going to be occurring in the future. And those clauses are going to have a lot of capital running through them. That can have a high-dollar impact.

If you go to Page 29, we did a -- just a little, general calculation and said, if you had a billion-dollar investment in undergrounding and the life was 30 years, but makers allowed you to depreciate over 20 years, the impact of that would be $3.4 million, generally -- approximately.

MR. WAHLEN: Is that as revenue-requirement number or deferred tax --

MR. CICCHETTI: That's a deferred-tax number.

And so, if you bury that in a utility's very-large capital structure, it might not seem like a lot, but if you sought -- thought, well, for every billion dollars, we should be reducing rate base by 3.4 million, it -- you can see, it's not a meaningless number.

And so, finally, this slide just shows that we would like to use the projected, projected method in every year.

And finally, any comments that anyone would like -- we would like to hear comments. If you don't have any, that's fine, but we would like to get them back by March 6th.

And with that, I will turn it over to any of the utilities that would like to make comments, followed by Public Counsel, filed -- followed by any interested party.

MS. MONCADA: Can we have two minutes?

MR. CICCHETTI: Yes.

MS. MONCADA: Thanks.

MR. CICCHETTI: We're going to take a two-minute break.

(Brief recess.)

MR. CICCHETTI: All right. We're back on the record.

MS. MONCADA: Thank you, Mark. This is Maria Moncada for Florida Power & Light Company and Gulf Power Company.

If you could, Mark, could you walk us through a little bit more of Slide 30 and staff's recommendation just to make sure we understand what the recommendation is?

MR. CICCHETTI: We would propose that the methodology that the motion proposes, when the limitation provision is not met, is used all the time; that we always use projected investment and a projected capital structure.

MS. MONCADA: And for the projected capital structure, the piece that the IRS requires be projected is just the ADFIT portion? Is that what you're envisioning as well?

MR. CICCHETTI: Well, we would envision that you would project your -- the right-hand side of the balance sheet also. I mean, I would think, if you're projecting investment, you would also be projecting how you would pay for that investment.

MR. WAHLEN: The whole capital structure?

MR. CICCHETTI: Right.

MS. MONCADA: So --

MR. CICCHETTI: So, basically, you would be projecting your balance sheet. I would imagine you do you that already, if not a lot of that already. And so, we would just be proposing that -- you know, because you have to do it when you don't meet the limitation provision. It's -- and -- and so, we would just do the same.

MS. MONCADA: That -- that's not exactly what -- how we interpret the IRS requirement of what actually needs to be projected under the PLR.

Let me start with some easy points first and then, for anything else, I'm going to turn to our accountants. The first is to confirm that, yes, absolutely, the utilities are willing to provide you with documentation of whether we meet or -- and exceed or don't meet or exceed the limitation provision as part of our filings, and to confirm that would be done separately in each clause, since each one would need its own evidence. So, we would provide that in every clause for you without you having to request it.

The second -- I want to turn to Slide 10 for just a second.

MS. BROWNLESS: And Maria, before you keep going, at what time, in what filing would you do that?

MS. MONCADA: The projection filing.

MS. BROWNLESS: Okay. The September filing.

MS. MONCADA: The September filing.

In the second column, where it has the filing date for the final true-up, it puts down April/May. And that is true for environmental and for conservation, but it is not true for fuel capacity and what I anticipate will be the SPP schedule, storm-protection-plan schedule.

And I don't point that out just to point out an omission, but it does actually impact when we can get certain things done. So, for example, you have proposed using the December ESR. If we had -- the December ESR gets filed in mid-February. So, say, this year, it will be filed in mid-February.

The -- the clause filing for fuel and capacity is due on March 1. Just to point out, there is -- it's virtually impossible to work with information that was just finalized mid-February and roll it into a March filing.

Your -- in your list of concerns, the bullet point regarding the consistency and the sawtooth effect -- I'll let the accountants explain why we think using the IRS method, when we have met the limitation provision, actually might exacerbate that rather than improve upon it.

Liz Fuentes is here for FPL and Gulf, and Maria Olivier is here for Duke. And we have, from Florida Public Utilities -- they've already introduced themselves, but Derrick and Michelle are here for them as well.

MS. FUENTES: Hi, good morning. This is Liz Fuentes. I appreciate the dec. It was very well-laid-out and easy to follow and very clear.

In regards to the staff's recommendation, on Slide 30, I just want to clarify one point associated with the third bullet point that says: Use the forecasted ESR for the same year as the projected clause filing.

Can you please provide an example of what that would entail? Like, using this year's clause projection filing as an example -- so, for the 2021 projection filing for the clauses -- what do you anticipate doing for that?

MR. CICCHETTI: I would refer back to the -- the slide with the -- the filing dates.

MS. FUENTES: Okay. So -- so, for this year, then, if we had a 2021 projection filing for clauses, you would anticipate us using the 2020 forecasted ESR --

MR. CICCHETTI: Yes.

MS. FUENTES: -- as the basis for the calculation?

MR. CICCHETTI: Yes.

MS. FUENTES: And then we would layer on top of that a consistency and proration adjustment for the 2021 period?

MR. CICCHETTI: Well, I -- I don't know that you need to make a consistency adjustment. I do think you need to make a pro-rata adjustment.

MS. FUENTES: Okay. It's -- it's our interpretation of the IRS guidelines that you need to sync up the projection period with your forecasted period for deferred taxes.

So, you would need to forecast out your deferred -- your FDA -- your ADFIT associated with depreciation through the forecasted period. So, 2021 is the forecasted period. Your earnings surveillance report that would be used would be a

2020 period. And so, it's our understanding you would need to apply a consistency adjustment first to bring it under the same period and then layer on a proration adjustment.

And our understanding is that the IRS only requires you to update ADFIT and no other components of capital structure. Is that your understanding as well?

MR. CICCHETTI: Yes. We were proposing that we didn't think it would be that much more to project the entire right-hand side of the balance sheet. I would imagine you have forward views that -- that do that.

We would be open to considering if you just want to project the deferred taxes to make sure the deferred taxes match up. But do you have that same problem when you are forced to use the projected, as you're proposing in the joint motion? I mean, you're -- you're proposing that. And what if we said, whatever you're proposing in the joint motion is okay for -- just do that all the time?

MS. FUENTES: Okay. What we proposed in the joint is what I just described, and it wasn't forecasting all components of capital structure.

MR. CICCHETTI: Okay. Okay.

MS. FUENTES: It -- it was a happy medium, I think, that each of the IOUs agreed to that we would try to limit the amount of changes that were required from the -- the May 2012 -- I'm sorry -- the 2012 WACC order.

And that's why we wanted to keep in place the -- using the May ESR in instances where the utility did meet the limitation provision, and then only make an -- a change if -- if we didn't meet the limitation provision.

MR. CICCHETTI: Right, but what if you did what you're proposing to do in the joint motion --

MS. FUENTES: Uh-huh.

MR. CICCHETTI: -- and do that all the time, even if the IRS didn't require you to do that? It would be a better match of the deferred income taxes to the projected investment.

MS. FUENTES: Yeah, I -- I -- you want me to take a quick stab at that or is that --

MS. OLIVIER: Yeah, you can or I can.

MS. FUENTES: Okay.

MS. OLIVIER: What do you prefer?

MS. FUENTES: Go ahead.

MS. OLIVIER: Yeah, this is Marcia Olivier.

So, what we propose in the motion is to use what's in the record, to the -- to the best of our ability, which is the forecasted earnings surveillance report, which would be in the record, knowing that that was for the year prior to the projection period, right, and that we would adjust the depreciation-related ADFIT to be for that forecasted period, if needed.

And so, we -- and so -- so, the goal here was to use what's in the record and not to try to have to forecast out another year of capital structure. That's what's proposed.

And what that does is it does cause some swings in the -- in the WACC because we've got to now forecast out the depreciation-related ADFIT into that next period, but we want to use everything else that's in the record. It makes it much easier to review and, you know -- and -- and see what we've already got out there.

And then, of course, that would be trued-up in the true-up filing when we use the actual December surveillance report for that particular true-up year.

And that's why we -- we -- our -- our goal being to use what's already in the record, we feel like if we go back and use what we already have, you know, established here, using those May historical earnings surveillance reports, that it's much easier for us to see the number. It's already in the record. We've reported it.

And then -- and then just use that throughout the period, and it doesn't require us to go and do this -- this consistency adjustment and this proration adjustment.

And then, when we do our preliminary true-up filing, have to potentially adjust that carry-forward, potentially adjust that proration adjustment. And then the final true-up, we've got to potentially adjust that proration adjustment again.

So, it requires a lot of extra effort to have to track and change those adjustments, if we're using the new methodology all the time versus simply using something that's been filed, that's there, it's not going to change, it's not going to require any kind of true-up in a -- in a future year, based on when you actually file your February 15th filing of your December surveillance report. And then we've got to, you know, true-up the -- whatever we booked on our investment, our returns, and our clauses.

So, those were kind of some of the things we had thought about. It was a lot of information in one statement, but that was -- that was the reason that we proposed to leave the status quo, if possible, and then only go to the new method when required because it does require those adjustments.

MR. CICCHETTI: And so, basically, is the hardest part matching up the accumulated deferred income taxes and depreciation with the expected investment or is it making the pro-rata adjustments and the consistency adjustment?

MS. OLIVIER: I wouldn't say one -- one part is harder than the other; it is -- it's just additional, you know, things that we have to track and adjust for throughout these -- these three filings.

MR. CICCHETTI: Okay. Well, I -- I guess you can include that in your comments. I -- our proposal -- we would like to see, you know, projected and projected -- project both sides of the balance sheet, but it -- if -- with what you've put in the motion, just projecting the deferred taxes to match up deferred taxes with the investment -- I think that would go a long way to what our concerns are, understanding that, you know, having to project the deferred taxes and -- which means you've got a projected depreciation, but that that has to be done when the limitation provision is not met. And so, we would just suggest that that would be more consistent to do it that way all the time.

MS. OLIVIER: And we would agree that it's consistent. We would all be doing the same thing, but that means that, then, it requires actually more review and work to ensure that everybody is calculating all of their numbers the right way as opposed to only having to do it for maybe one or two utilities at any given time, hopefully, to make sure that they're -- they -- they used the right WACC.

MR. CICCHETTI: Well, we'll definitely take that into consideration.

MR. MAUREY: This is Andrew Maurey. I had a question on the March 1 filing. And this is just for discussion. It's not indicating anything. If -- if the March 1 filing for fuel were pushed back to April 1, as some of the other clauses, and it was six weeks between the December 20- -- or December year-end's earnings surveillance report, would that be practical or the --

MS. MONCADA: It would go a long way to help us.

MR. MAUREY: Okay.

MS. MONCADA: If we were in a position where we had to use a -- the December ESR, which is finalized in mid-February, if that were the ultimate decision, then, yes, pushing it out another four weeks would help.

MR. MAUREY: It would. We understand the -- the work and we appreciate that and -- but we were looking at the projections as -- in a year a rate case is filed, it -- it's not -- they're projecting not just the -- say, a 2020 MFR filing -- they're not just going to be the projected surveillance report in 2020; you -- you'd have a -- perhaps a 2021 test year. So, all of that would have been projected in -- in the capital structure in its entirety.

So, these exercises go on and we -- we -- that's where we were coming from, thinking that it would be available.

MR. CICCHETTI: And the other thing we were considering is the fact that, I think, FPL has indicated they may do 30 to $40 billion. I know it's over a matter of time, of undergrounding. So,

it could have a big impact.
Any other comments from folks?
Can we move to Public Counsel?
MR. WAHLEN: I -- I was just going to say, Mark, maybe we didn't say this strong enough, but we really appreciate the dec, the slides, the explanation. Tampa Electric wants to do some calculations and look at this a little bit more.
And I guess the only thing I want to push back on real hard today is your statement that this is not really that complicated.
MR. CICCHETTI: Did I say that?
(Laughter.)
(Simultaneous speakers.)
MR. WAHLEN: Other than that, we're going to take this all into consideration, but you're not going to persuade us of that, I think.
MR. CICCHETTI: Okay.
MR. WAHLEN: It's -- it is very complicated.
MR. CICCHETTI: Thank you, Jeff.
MR. CRAIG: I would like to -- this is Derrick Craig for FPU. I would like to add a few comments, which will be redundant in nature, but also I want to try to drive the point home.
To a certain extent, the 2012 order was

created based on the accumulated deferred income tax. So, that's why we're here. So, I feel that, if we're going to project anything, it would be the ADIT and not necessarily the rest of the capital structure because we are here because of the change in ADIT.

And it also seems, to me, that if we are going to do this all the time as opposed to when the limited provision is not met, then providing information saying we've met the limited provision is -- becomes moot.

Just a couple of points I would like to throw out there as we're discussing this going forward.

MR. CICCHETTI: Okay. Thank you.

MS. FUENTES: Can I -- can I -- this is Liz Fuentes. Just one more comment. Totally understand, you know, when -- when companies are going in for rate cases and projecting out capital structure, but that's a very-significant exercise that the companies undertake in any given period.

When you do it outside of that and you're in a -- you know, looking at your cost-recovery clauses on an annual basis, typically those types of exercises would take place before, say, FPL and Gulf has had a chance to finalize its budgets for the year, which is typically done a little bit later. So, the timing is a little off. And in forecasting those types of things out could drive some inconsistencies ultimately of where the entities end up.

MS. MONCADA: Ultimately, again, from a timing perspective, we keep looking at Slide 10. We would have had to finalize our -- I think the entire next-year's budget by August. And that's just something that doesn't happen at the company -- at least not at FPL.

MS. NAPIER: Yeah, I can -- I agree with that. We're not done by that time -- to have it done by then.

MR. CICCHETTI: And that's for doing the entire right-hand side of the balance sheet versus just the --

MS. MONCADA: Versus just the A- --

MR. CICCHETTI: Okay.

MS. NAPIER: ADIT.

MS. MONCADA: Yes. That's what we're also --

MS. FUENTES: That's right.

MS. MONCADA: You're right.

MS. BROWNLESS: When you make your comments, I would ask that you talk about what you can do, when you can do it, and what data you would base that on so that you can tell us the -- we would use this ESR, and it would be filed in the dockets on this day, and it would tell us the new ADIF, so that we have an idea --

MS. MONCADA: Right.

MS. BROWNLESS: -- what data is going to be used and when that data is going to be filed; is it going to filed -- for example, in the fuel docket, we have filings in March, we have filings in July, we have filings in September.

So, for folks like me, who don't understand the accounting at all -- I'll just admit that right on the front end, even though Mark gave a very-simplified explanation -- just the mechanics of what you would use, what you would file, and when you would file it.

MR. CICCHETTI: Tad?

MR. WILLIS: I'll go ahead and throw -- we originally had some of your concerns, too, that why don't we go ahead and actually do the projection all the time, and then Marcia got ahold of me and -- for quite a while, on the phone, and thoroughly confused me, and -- no, actually explained a lot of it.

I -- I understand the complexities, after discussing with her for a while. I think you have a novel idea in removing the time frame back for filing to April for that March filing that might help, but it's going to cause you other problems where you're going to have a month less time to do your analysis of the projections. It's an idea I think everybody needs to think about.

Other than that, I -- I mean -- I understand their problems, I understand their desire not to do this all the time because, after listening to exactly what it does take to come up with those projections, it does cause quite a bit of work on something that has worked for quite a while.

And I'm not sure the benefit to the companies or -- or us -- us is that great to change it up all the time. But other than that, I think we would just reserve more comments for -- for later.

MR. CICCHETTI: So, are you referring to the additional complexity being with projecting the whole right-hand side of the balance sheet or just the ADITs?

MR. WILLIS: Well, not only that, it's the depreciation and the ADIT.

MR. CICCHETTI: So, you think that, in and of itself, would just be burdening, if they didn't do the whole right-hand side of the balance sheet.

MR. WILLIS: Well, the whole right-hand side -- I'm not going to get too far into commenting on this, but from -- I think that's -- if I was doing that kind of work out there, I think that would be difficult in the time frame to get that filed.

MR. CICCHETTI: But the -- are your comments directed to both, either doing just the ADITs or the right-hand side or --

MR. WILLIS: Yeah.

MR. CICCHETTI: Okay.

MR. WILLIS: But more so if you're going to do the whole right-hand side.

MR. CICCHETTI: Okay.

MR. WILLIS: I mean, we're understanding of that. It's one of the reasons we entered into a settlement with them, but --

MR. CICCHETTI: Okay.

MR. WILLIS: Other than that, that's pretty much what our comments are going to be --

MR. CICCHETTI: All right.

MR. WILLIS: -- at this point.

MR. CICCHETTI: Anyone else have any comments, thoughts, or ideas?

Okay. If none, I -- I know the weather is approaching. Time and tide wait for no man or woman.

We would appreciate it if we could get the comments filed by March 6th. And I thank everyone for taking the time to come here, especially if you had to travel. So, have safe travels and thank you for everything.

(Discussion off the record.)

MS. BROWNLESS: Excuse me. And everybody should be filing whatever comments you file in all three dockets.

MS. MONCADA: All three dockets.

MS. BROWNLESS: 01, 07, and 02.

MS. MONCADA: Thank you.

(Whereupon, the proceedings concluded at 10:53 A.M.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, ANDREA KOMARIDIS WRAY, Court Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 17th day of February, 2020.

____
ANDREA KOMARIDIS WRAY
NOTARY PUBLIC
COMMISSION #GG365545
EXPIRES February 9, 2021