

BEFORE THE PUBLIC SERVICE COMMISSION

In Re: Petition the Commission to establish a generic docket to investigate and adjust rates for all investor owned utilities related to the reduction in the federal corporate income tax rate as a result of the passage of the Tax Cuts and Jobs Act (G.L.c.164, §94)

Docket No.:

Filed: January 9, 2018

CITIZENS' PETITION TO ESTABLISH GENERIC DOCKET TO INVESTIGATE AND ADJUST RATES FOR 2018 TAX SAVINGS

Pursuant to Sections 366.06, 366.07, and 367.081 Florida Statutes, the Citizens petition the Commission to establish a generic docket to investigate and adjust rates for all investor owned utilities related to the reduction in the federal corporate income tax rate as a result of the passage of the Tax Cuts and Jobs Act (G.L.c.164, §94) ("the Act"). As a part of its investigation, the Commission should place revenues subject to refund covering at least the amount of the Net Operating Income ("NOI") impact of lowering the rate from 35 percent to 21 percent. A corporate undertaking or written acknowledgement of Commission jurisdiction would be sufficient. Essentially the Commission should act to take jurisdiction over the revenue requirement reduction to avoid any retroactive ratemaking difficulties.

The President signed the Act on December 22, 2017 and the effective date of the Act was January 1, 2018. As a result, the rates (containing the federal income tax expense) charged to customers, as set by the Commission and determined based on a statutory corporate income tax rate of 35 percent, are unreasonable and excessive. Pursuant to the above-cited statutes governing the Commission's ratemaking authority, the agency has an obligation to take action to pass the tax reduction benefits of the Act back to customers. The new statutory corporate income tax rate of 21 percent represents approximately 13 percent of the overall net operating income ("NOI") included in the revenue requirement (ignoring the impacts of flowing back excess accumulated deferred income taxes.) See, Order No. 2017-0451-AS-EU (Duke Energy Florida ("DEF"))

Settlement Agreement) at 39 (referencing Exhibit 6 - not attached to the order). The Commission should presumptively identify at least 13% of overall NOI for each utility that does not already have a tax rate adjustment provision in an operative settlement agreement as an estimate and hold it subject to refund pending the outcome of the docket. To the extent that more accurate information is readily available, the Commission should use it to protect customers.¹

The provisions of the Act also have created excess accumulated deferred income taxes. These deferred taxes, accrued at the old 35 percent rate, will be paid to the United States Treasury at the lower 21 percent rate. Some of these excess accumulated reserves related to depreciable property (referred to as “protected” deferred taxes) must be returned to customers over a specified time, to the extent that there are provisions in federal law governing the flow back of the excess under principles of normalization. The Commission should identify the balances for each utility and order the benefits to be captured and returned to customers pursuant to applicable law. For excess deferred taxes not related to depreciation (sometimes referred to as “unprotected” deferred taxes), the Commission should identify the excess amounts for each company and require that they be flowed back for the benefit of customers to the greatest degree possible.

Four utilities under the Commission’s jurisdiction have entered into comprehensive rate settlements with provisions governing tax rate changes. These are, Gulf Power Company (“Gulf”), Order No. PSC-2017-0178-S-EI, issued May 16, 2017; Duke Energy Florida (“Duke”), Order No. PSC-2017-0451-AS-EU, issued November 20, 2017; Tampa Electric Company (“Tampa Electric or TECO”), Order No. PSC-2017-0456-S-EI, issued November 27, 2017; and Florida Public Utilities Company (“FPUC”), Order No. PSC-2017-0488-PAA-EI, issued December 26, 2017.

¹ The Citizens have estimated based on the October 2017 Florida Power and Light Company (“FPL”) earnings surveillance report that the Act yields benefit of approximately 16.6 percent of NOI (PSC adjustments only) or \$368 million annually calculated at the top of the earnings range of 11.6% without consideration of amortization to income of the excess deferred taxes. This is only an estimate and will need to be verified and refined.

These settlements provide a period of 90 days (Gulf) or 120 days (Duke, Tampa Electric and FPUC) for each utility to implement the base rate impacts of the Act through some form of limited proceeding. To the extent that these utilities are covered by specific agreements, the Commission should exempt those utilities from this docket when conducting those limited proceedings on the time frames specified in the agreements.

All utilities (applicable electric, gas, water and wastewater) who do not have an agreement covering the implementation of the Act should be subject to this expedited proceeding that (1) attaches jurisdiction over the change in reduction in the revenue requirement based on a 21 percent tax rate; (2) identifies the impact of the Act on base rates; (3) identifies the impact of the Act on protected and unprotected deferred tax reserves, separately; and (4) expeditiously orders adjustments to federal tax rates to pass through to customers the benefits of the lower costs which result from the Act.

Wherefore, for the above stated reasons, Citizens ask the Commission to immediately open an investigation into and order the return of customer benefits which will result from 2018 Tax Reform.

Respectfully Submitted,

J.R. Kelly
Public Counsel



Charles J. Rehwinkel
Deputy Public Counsel
Bar No. 527599
Office of the Public Counsel
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400
(850) 488-9330
rehwinkel.charles@leg.state.fl.us

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail on this 9th day of January 2018, to the following:

Jessica Cano/Kevin I.C. Donaldson
Florida Power and Light Company
700 Universe Blvd
Juno Beach, FL 33418
jessica_cano@fpl.com
Kevin.Donaldson@fpl.com

Matthew R. Bernier
Duke Energy Florida.
106 East College Ave, Suite 800
Tallahassee, FL 32301-7740
matthew.bernier@duke-energy.com

Suzanne Brownless
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
sbrownle@psc.state.fl.us

J. Michael Walls/Blaise N. Gamba
Carlton Fields Law Firm
P.O. Box 3239
Tampa, FL 33601-3239
mwalls@CFJBLaw.com

Russell A. Badders/Steven R. Griffin
Beggs Law Firm
P.O. Box 12950
Pensacola FL 32591
srg@beggslane.com
rab@beggslane.com

Kenneth Hoffman
Florida Power & Light Company
215 South Monroe St., Suite 810
Tallahassee, FL 32301-1859
ken.hoffman@fpl.com

Rhonda J. Alexander/ Jeffrey A. Stone
Gulf Power Company
One Energy Place
Pensacola FL 32520
rjalexad@southernco.com
jastone@southernco.com

Ms. Paula K. Brown
Regulatory Affairs
Tampa Electric Company
P. O. Box 111
Tampa FL 33601-0111
regdept@tecoenergy.com

Dianne M. Triplett
Duke Energy Florida
299 First Avenue North
St. Petersburg, FL 33701
dianne.triplett@duke-energy.com

Blake O'Farrow/Elizabeth Wade
Southern Company Gas
Ten Peachtree Place, Location 1470
Atlanta GA 30309
bofarrow@southernco.com
ewade@southernco.com

Jerry H. Melendy, Jr.
Sebring Gas System, Inc.
3515 Highway 27 South
Sebring FL 33870-5452
jmelendy@floridasbestgas.com

Blake O'Farrow/Elizabeth Wade
Southern Company Gas
Ten Peachtree Place, Location 1470
Atlanta GA 30309
bofarrow@southernco.com
ewade@southernco.com

Carolyn Bermudez
Florida City Gas
4045 N.W. 97th Avenue
Doral FL 33178
(305) 835-3606
cbermude@southernco.com

Mr. Mike Cassel
FPUC/Indiantown/Fort Meade/Chesapeake (17)
1750 S.W. 14th Street, Suite 200
Fernandina Beach FL 32034-3052
mcassel@fpuc.com

Paula Brown/Kandi M. Floyd
Regulatory Affairs
Peoples Gas System
P. O. Box 111
Tampa FL 33601-0111
regdept@tecoenergy.com

Gregory M. Munson
Gunster Law Firm
215 South Monroe Street, Suite 601
Tallahassee FL 32301-1839
gmunson@gunster.com

Blake O' Farrow/Elisabeth Wade
AGL Resources
10 Peachtree Place, Location 1470
Atlanta GA 30309
bofarrow@aglresources.com
ewade@aglresources.com

Paula M. Sparkman
Messer Law Firm
2618 Centennial Place
Tallahassee FL 32308
psparkman@lawfla.com

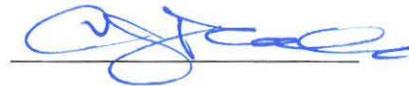
Mr. Andy Shoaf
St. Joe Natural Gas Company, Inc.
P. O. Box 549
Port St. Joe FL 32457-0549
andy@stjoegas.com

Mr. Mike Cassel
Florida Public Utilities Company
1750 S.W. 14th Street, Suite 200
Fernandina Beach FL 32034-3052
(904) 491-4361
mcassel@fpuc.com

John Hoy
Utilities, Inc. of Florida
200 Weathersfield Avenue
Altamonte Springs, FL 32714-4099
jphoy@uiwater.com

Patrick C. Flynn
Utilities, Inc. of Florida
200 Weathersfield Avenue
Altamonte Springs, FL 32714-4099
pcflyn@uiwater.com

Martin S. Friedman, Esquire
Coenson Friedman, P.A.
766 N. Sun Drive, Suite 4030
Lake Mary, FL 32746
mfriedman@coensonfriedman.com



Charles J. Rehwinkel
Deputy Public Counsel