

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.: 20180013

Filed: January 22, 2018

**FPL'S ANSWER TO OFFICE OF PUBLIC COUNSEL'S  
PETITION TO ESTABLISH GENERIC DOCKET TO  
INVESTIGATE AND ADJUST RATES FOR 2018 TAX SAVINGS**

Florida Power & Light Company (“FPL” or “the Company”) hereby responds to the Office of Public Counsel’s (“OPC”) Petition To Establish Generic Docket To Investigate and Adjust Rates for 2018 Tax Savings. FPL agrees that the passage of the Tax Cuts and Jobs Act (“Tax Act”) benefits customers, and that the Commission could attach jurisdiction over the resulting federal tax savings on February 6, 2018 when it votes on OPC’s Petition. However, FPL does not believe that the generic proceeding contemplated by OPC’s Petition is necessary or warranted at this time. As FPL announced publicly on January 16, 2018, by taking advantage of both federal tax savings and the flexible framework included in FPL’s 2016 base rate settlement agreement (“Settlement Agreement”), FPL already has taken action to save customers nearly \$1.3 billion in Hurricane Irma restoration costs. Further, as a result of this action and the flexibility afforded under the Settlement Agreement, FPL expects to be positioned to avoid a general base rate increase beyond the minimum term of the Settlement Agreement.

*The Settlement Agreement*

FPL’s Settlement Agreement, approved by the Commission in Order No. PSC-16-0560-AS-EI, contains mechanisms that provide FPL flexibility to address unexpected changes in costs or expenses resulting from operating conditions, weather, market forces or even new laws, while maintaining its earnings within the range authorized by the Settlement Agreement. The change

resulting from the Tax Act categorically falls within this framework. Under the Settlement Agreement:

- FPL's authorized return on equity ("ROE") shall be a range of 9.6% to 11.6%. FPL is prohibited from requesting a further rate increase through 2020 unless its earnings fall beneath 9.6%. Conversely, the other parties to the Settlement Agreement, including OPC, are not permitted to challenge the rates authorized under the Agreement unless FPL's earned ROE exceeds 11.6%. Settlement Agreement, ¶ 11.
- FPL may amortize approximately \$1.25 billion of depreciation and dismantlement reserve surplus through at least the end of 2020 to address impacts on its earnings from factors such as those listed above, with the amount to be amortized in each year left to FPL's discretion. Settlement Agreement, ¶ 12(a), (c).
- FPL must amortize reserve surplus in amounts needed to stay within the 9.6% to 11.6% range. That is, FPL can neither debit nor credit amounts from the reserve which would cause FPL to exceed 11.6% ROE or fall below 9.6%. Settlement Agreement, ¶ 2, 12(c).
- During each year of the settlement, FPL must attach to its December monthly surveillance the amount of amortization credit or debit that it made to the reserve on monthly and year-end total bases. Settlement Agreement, ¶ 12(c).

These terms provide rate stability to customers and grant FPL flexibility to manage its business within the authorized range and to avoid or defer the need for additional increases. There are no limitations stated in the Settlement Agreement on the types of impacts (whether positive or negative) on FPL's earnings that FPL is authorized to address through the flexible amortization of reserve surplus. Thus, although the Settlement Agreement does not expressly contain the term

“tax reform,” it contemplates that FPL will account for unexpected changes in its business – no matter how they arise – within the framework of the Settlement Agreement. To alter that framework is to alter the terms of the Settlement Agreement itself.

*FPL's Use of Surplus To Offset Hurricane Irma Expense*

In September 2017, FPL's service territory was significantly impacted by Hurricane Irma. Restoration efforts lasted several weeks, costing approximately \$1.4 billion. FPL is authorized by Rule 25-6.0143 to charge the incremental portion of such costs (nearly \$1.3 billion) to the Storm Reserve (Account 228.1) rather than treat them as a current expense. That is what FPL did initially, leaving the Storm Reserve in a substantial deficit position. The Settlement Agreement also authorizes FPL, upon request, to recover such deficits and replenish the Storm Reserve through a surcharge to customers' electric bills. Settlement Agreement, ¶ 6. The federal tax savings and the Settlement Agreement's flexibility have given FPL the ability to charge the Hurricane Irma restoration costs as an expense in 2017 and reverse the earlier charge made to the Storm Reserve, rather than collecting a surcharge from customers. Had FPL instead availed itself of the surcharge mechanism to recover the deficit and replenish the Storm Reserve, it would have petitioned to implement a surcharge beginning on March 1, 2018 and continuing through the end of 2020. The initial charge would have started at \$4.00 per month on a 1,000-kWh residential bill, escalating to more than \$5.00 per month in 2019 for recovery over a 34-month period.

Pursuant to the Settlement Agreement, FPL was able to offset most but not all of the Hurricane Irma restoration expense by amortizing the full amount of reserve surplus then available under the Settlement Agreement. Over subsequent years of the Settlement Agreement, FPL will be able to use tax savings resulting from the Tax Act to replenish partially the reserve

surplus through amortization of debits, as permitted under Paragraph 12(c) of the Settlement Agreement. That action, in turn, is expected to position FPL to defer the next general base rate increase for up to two additional years beyond the end of the minimum term of the Settlement Agreement (December 31, 2020).

*Continued Use of the Reserve To Postpone Future Base Rate Increases*

As noted above, FPL is authorized to continue to access the accumulated reserve even after the minimum term of the Settlement Agreement if it provides notice by March 31, 2020 that it does not intend to seek a general base rate increase to be effective any earlier than January 1, 2022. FPL anticipates that tax savings generated over the next few years will enable it to replenish to some degree the reserve FPL used for the benefit of customers in avoiding an Irma restoration surcharge. Absent a marked change in business conditions, therefore, FPL would expect to be positioned to remain under the Commission-approved Settlement Agreement for up to two additional years.<sup>1</sup> This would be a significant benefit for customers, preserving FPL's already low rates along with other rate concessions and maintaining overall rate stability potentially through the end of 2022.

*The Commission's Earnings Surveillance*

The Commission has ongoing jurisdiction to review FPL's earnings on a monthly basis. And, under the terms of the Settlement Agreement, FPL must disclose the amounts credited and debited to the reserve surplus, which will provide the Commission, OPC and any other interested person a clear view of the balance of the reserve and how FPL manages it within the structure of the Settlement Agreement. This process allows for full transparency regarding the basis for FPL's calculation of tax impacts under the Tax Act, and FPL will work collaboratively with the

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<sup>1</sup> Accordingly, FPL would provide notice pursuant to Paragraph 12(c) of the Settlement Agreement on or before March 31 2020.

Commission's Staff and with OPC to that end. Thus, in FPL's view, a formal proceeding at this time is not necessarily required to accomplish this goal. Instead, FPL commits to support the efforts of the Commission's Staff and OPC to understand the impacts of the Tax Act on FPL, including through the exchange of data and information. The Commission could hold a duly noticed meeting, open to all interested persons, at which FPL would make a detailed presentation as to its calculation of taxes under the Tax Act.<sup>2</sup> A period of informal discovery would follow, during which time FPL would respond to data requests from the Commission Staff and OPC. If it became clear through this informal process that there was a genuine, substantive dispute over FPL's tax calculations or resulting deferred tax impacts, the Commission certainly could initiate a formal proceeding.

### *Conclusion*

In summary, using the flexibility embodied in the Settlement Agreement, FPL developed and already has begun executing an approach that provides a total of nearly \$1.3 billion in relief to customers, with typical residential customer savings of at least \$4.00 monthly beginning March 2018, with those savings increasing to more than \$5.00 monthly in 2019 and 2020. In fact, with the completion of Hurricane Matthew cost recovery, FPL customers will benefit from a net bill decrease beginning March 1. Beyond 2020, FPL anticipates that federal tax savings, combined with reserve amortization that it has been able to replenish to that point, will enable it to remain under the current Settlement Agreement for up to two additional years, thus avoiding a general base rate increase potentially until January 2023. The Commission can, through an open and informal process, explore and confirm FPL's calculation of tax savings and address any related regulatory accounting issues resulting from the Tax Act.

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<sup>2</sup> FPL expects that there will be a separate process to review its Hurricane Irma restoration expenses.

WHEREFORE, FPL respectfully requests that the Commission deny without prejudice or, alternatively suspend, OPC's Petition To Establish Generic Docket To Investigate and Adjust Rates for 2018 Tax Savings with respect to FPL, to allow for the previously described informal process to occur.

Respectfully submitted,

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**Docket 20180013-PU**

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