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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of: DOCKET NO. 20180046-EI

CONSIDERATION OF THE TAX
IMPACTS ASSOCIATED WITH TAX
CUTS AND JOBS ACT OF 2017
FOR FLORIDA POWER & LIGHT
COMPANY.

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 19

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER JULIE I. BROWN
COMMISSIONER DONALD J. POLMANN
COMMISSIONER GARY F. CLARK
COMMISSIONER ANDREW GILES FAY

DATE: Tuesday, May 14, 2019

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: DEBRA R. KRICK
Court Reporter and
Notary Public in and for
the State of Florida at Large

PREMIER REPORTING
114 W. 5TH AVENUE
TALLAHASSEE, FLORIDA
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1 P R O C E E D I N G S

2 CHAIRMAN GRAHAM: All right. My hourglass
3 says five minutes is up. Staff, Item No. 19.

4 MS. BROWNLESS: Thank you.

5 Susanne Brownless on behalf of Commission
6 staff.

7 This item addresses the treatment of tax
8 savings generated by the passage of the Tax Cuts
9 and Jobs Act of 2017 for Florida Power & Light
10 Company.

11 An administrative hearing was held on February
12 5th, 2019, in which exhibits Nos. 1 through 22 were
13 admitted into the record.

14 Further, the testimonies of Scott Bores and
15 Ralph Smith, witnesses for FPL and the Office of
16 Public Counsel respectively, were inserted into the
17 record as though read.

18 Issues 1 through 17 and 20 addressing the
19 quantification of tax savings were stipulated by
20 the parties and approved by the Commission.

21 At the February 5th hearing, Issues 18 and 19
22 were reserved, with the parties given an
23 opportunity to file initial and reply briefings on
24 these issues on February 22nd and March 8th
25 respectively.

1 The hearing was then continued until
2 April 16th, at which time parties were given 40
3 minutes per side for oral argument on Issues 18 and
4 19. Florida Power & Light, Office of Public
5 Counsel, the Florida Retail Federation, the Florida
6 Executive Agencies and the Florida Industrial Users
7 Group filed initial briefs on February 22nd. OPC,
8 OPC -- I am sorry, FPL, OPC, FRF and FIPUG filed
9 reply briefs on March 8th.

10 At the April 16th hearing, OPC, FPL, FEA,
11 FIPUG and FRF presented oral argument on Issues 18
12 and 19, which we are here today to resolve.

13 I would like to correct two typos in the
14 recommendation. On page 16 in the first sentence
15 of the recommendation section, the docket number
16 should be 20180049-EI, not 20190049-EI. That same
17 typo is made on page 21 in the first sentence.

18 Moving to Issue 18: Does the 2016 settlement
19 agreement allow FPL to credit the amortization
20 reserve with the tax savings resulting from Tax
21 Cuts and Jobs Act of 2017? Staff is recommending
22 that the 2016 settlement agreement does allow FPL
23 to credit the amortization reserve with tax
24 savings.

25 With regard to Issue 19: How should the

1 savings associated with the Tax Cuts and Jobs Act
2 of 2017 be treated? Staff is recommending that the
3 Commission find that FPL should retain the amount
4 of tax savings equivalent to the Hurricane Irma
5 storm restorations costs determined in Docket No.
6 20180049-EI to be reasonable and prudent.
7 Thereafter, FPL should reduce its base rates by the
8 772.3 million in annual tax savings stipulated to
9 by the parties in Exhibit No. 22.

10 Staff is also recommending that monthly
11 reports be filed by FPL to track the tax savings
12 realized on a monthly basis, and other
13 administrative matters as detailed in our written
14 recommendation.

15 The Commission, in this docket, has received
16 correspondence from over 1,600 customers. As a
17 post-hearing matter, discussion is limited to
18 Commissioners and staff.

19 Staff is available to answer any questions
20 that you may have.

21 CHAIRMAN GRAHAM: Thank you, staff.

22 I was going to make a statement before we get
23 into deliberations.

24 This all started back, as staff had said, back
25 in December of 2017, the Tax Act. We assumed

1 jurisdiction, I believe it was February or March of
2 2018, and originally had this set up as a panel so
3 we could move through it as quick as we could just
4 to make sure that we can process the tax
5 information.

6 It became a lot more complicated than I
7 thought it was going to be, and so I made it -- I
8 thought it was important it make it all
9 Commissioners, specifically on this one, because
10 there is a lot of moving parts to it. Because I
11 had some serious scheduling conflicts, I made it a
12 panel of four so we could move forward, because
13 it's already a year-and-a-half into it and I
14 thought we wanted to continue moving forward in
15 this and get this settled. But things have
16 changed, and my schedule has freed up, so it allows
17 for me to be here today to put myself back on this
18 to make it a full group of the entire Commission.

19 I just want to let all the parties know that I
20 have read the briefs, reply briefs, and I have
21 watched the oral arguments. I have to say I am a
22 little disappointed that Jon Moyle didn't use any
23 car analogies during his oral arguments, but I did
24 hear him talk about red lights and green lights, so
25 I figured that has something to do with automotive.

1 But on a serious note, I just wanted everybody
2 to know that I am up to speed and I am ready to
3 rule on this today.

4 That all being said, Commissioners, any
5 questions of staff?

6 Commissioner Clark.

7 COMMISSIONER CLARK: Thank you, Mr. Chairman.

8 I don't really have any questions, just to
9 make a couple of observations.

10 I support staff's recommendation on Issue No.
11 18. I think that the agreement does allow FPL to
12 utilize the funds in this way. The reserve amount,
13 I think, was intended to be used over the four-year
14 life of the settlement agreement. That's one of
15 the big issues to me, is the integrity of our
16 settlement agreement and what we have agreed to,
17 and looking forward, other utilities and
18 utilization of the settlement agreements.

19 I have stated on many occasions that sometimes
20 I don't know that I am a big fan of the process
21 that we use, but I think that once we commit to the
22 process, and that's something that we are stuck
23 with, and I think that's a very important part of
24 it.

25 In regard to Issue 19, I think that we have to

1 evaluate this under our continuing supervisory
2 jurisdiction over the companies that we regulate,
3 you know. Looking at the settlement agreement, we
4 are to determine that this is still in the public
5 interest when things change over time. I don't
6 find any evidence to suggest that the rates aren't
7 fair and reasonable at this particular point. In
8 fact, I think maintaining the integrity and
9 stability of the financial markets is in the public
10 interest.

11 I would support allowing the company to credit
12 the amortization reserve with the tax savings
13 resulting from the Tax Act, and continuing the
14 rates this Commission set until such time as the
15 company earns outside the boundaries, Mr. Chairman.

16 CHAIRMAN GRAHAM: Commissioner Polmann.

17 COMMISSIONER POLMANN: Thank you, Mr.
18 Chairman.

19 Both of the issues before us, 18 and 19, I see
20 as having very significant effect, and I think that
21 Issue 18, whichever way it's decided, will have
22 substantive implications for Issue 19. As a
23 result -- or as a consequence, I would ask that the
24 Chairman and Commissioners consider taking these
25 items -- taking the issues up separately. And if

1 it's the pleasure of the Commission, perhaps we
2 could do that.

3 Having said that, I would be prepared, at an
4 appropriate time, I have drafted out a motion for
5 consideration for No. 19.

6 I would like to make a comment to Commissioner
7 Clark's comments, if I may.

8 CHAIRMAN GRAHAM: Well, you want to split up
9 18 and 19. I don't think there is a problem with
10 that, if I don't see any -- any concerns with that.
11 Let's address 18, because if 18 doesn't pass, then
12 19 is kind of irrelevant.

13 So I will entertain a motion on Issue No. 18.
14 Commissioner Brown.

15 COMMISSIONER BROWN: Yes. Mr. Chairman, you
16 and I were both here in 2016 when the settlement
17 agreement was decided, and it was clear to me then,
18 it is clear to me now, the language is clear that
19 the utility, that the signatories signed on to as
20 well, that FPL had sole discretion to credit and
21 debit the reserve during the four-year term and
22 beyond. It's clear there is literally no ambiguity
23 under Issue 18 whatsoever. And there was no
24 contemplation we cannot rewrite a settlement
25 agreement that has already been approved by this

1 Commission, period.

2 So with that, I would move approval of Issue
3 18.

4 COMMISSIONER POLMANN: Second.

5 CHAIRMAN GRAHAM: It's been moved and second
6 approval of Issue 18.

7 Is there any further discussion on Issue 18?
8 Seeing none, all in favor say aye.

9 (Chorus of ayes.)

10 CHAIRMAN GRAHAM: Any opposed?

11 (No response.)

12 CHAIRMAN GRAHAM: By your action, you have
13 approved Issue 18.

14 All right. Commissioner Polmann, you still
15 have the floor.

16 COMMISSIONER POLMANN: Thank you, Mr.
17 Chairman.

18 With regard to this Commission's action back
19 in 2016, the sitting Commission at that time, and
20 just a reflection on Commissioner Clark's comments
21 as to that settlement and, in fact, settlements in
22 general.

23 I have had a good bit of discussion with
24 several folks here, staff and others with
25 considerable history with the Commission and, in

1 fact, asked for some records, and so forth, as to
2 settlements and their effect, and how the
3 Commission treats them and reviewed some of the
4 arguments from the parties.

5 And I have heard from Commissioners here on
6 this Commission, this sitting Commission, views on
7 settlements, and so forth. And I feel strongly, as
8 I feel others do, that the settlements that come
9 before us are, in a manner of speaking, because
10 they are referred to assessment agreements, they
11 are contracts between the parties, and we are
12 not -- we, as the Commission, we are not a party to
13 those. We accept them, and we approve them as a
14 matter being in the public interest.

15 And I view them as a mechanism by which the
16 matters within that settlement agreement facilitate
17 closing out the issues that they refer to, so that
18 similar, but with a different vehicle they -- that
19 settlement agreement appears or looks like within
20 the docket stipulations on other issues.

21 So it's a -- it's a mechanism by which the
22 Commission can close out a docket. Those things
23 that are settled have the effect of bringing the
24 matter to closure. And because it is an orderly
25 process, we use the phrase that settlements are

1 encouraged.

2 Settlements are encouraged to the extent that
3 the parties can come to an agreement. And because
4 it's in the public interest for matters to come to
5 closure efficiently, cost effectively and so forth,
6 it provides an opportunity for this Commission to
7 find that that is in the public interest. And in
8 those cases where we deem that to be the case, we
9 approve those, we accept those and we incorporate
10 the result into our final orders.

11 Now, I agree with Commissioner Clark, that we
12 want to not, unless we have cause, to modify that.
13 We don't want to go back and find ourselves in a
14 position to start trying to alter a settlement
15 agreement, because then I think -- and I am not a
16 lawyer -- we would find ourselves modifying a
17 contract that is between other parties. That would
18 be awkward at best. I don't -- I don't want to
19 speculate on the consequence of that, but
20 nonetheless.

21 So I have been giving this a tremendous amount
22 of thought what to do with the settlement, this
23 whole issue seems to circle around the 2016
24 settlement agreement. It's always been referred to
25 in this docket as the settlement agreement, and

1 not -- we make very little reference to the final
2 order, which is an action of this order. I keep
3 trying to think of it as what did we do in the
4 final order. All the discussion is around the 2016
5 settlement Commissioner Brown just made reference
6 to. And the terms of the settlement seem to be the
7 focus.

8 So I will stop rambling, Mr. Chairman.

9 CHAIRMAN GRAHAM: Thank you.

10 COMMISSIONER POLMANN: And as I said, I am
11 prepared with a draft motion, and I will be quiet
12 now.

13 CHAIRMAN GRAHAM: Commissioner Brown.

14 COMMISSIONER BROWN: Thank you.

15 Just a few points I want to make. And this is
16 complex, and this utility is unique from the other
17 utilities that we will be voting on that we have
18 voted on. This utility is in a unique position
19 under the existing settlement agreement.

20 The one point I want to stress that the
21 utility, what they did after Hurricane Irma was
22 beneficial to the customers, the customers who
23 would have otherwise seen potentially a surcharge
24 on their bills, the utility had that flexibility --
25 has the flexibility to under the settlement

1 agreement to utilize the reserve funds. Tremendous
2 amount, laudable, prudent course of action.
3 Customers have benefited. Customers continue to
4 still benefit with fair, just and reasonable rates
5 under the settlement agreement. That is still and
6 continues to be in the public interest.

7 One point I want to talk about is this reverse
8 rate case that has been filed by Public Counsel.
9 And I think right now it is being used, the utility
10 is not overearning. And that needs to be clear on
11 the record. The reverse rate case is being used to
12 insight the public opinion right now.

13 There are customer protections -- this
14 Commission will absolutely take action if the
15 utility is overearning, but there are customer
16 protections ample in the settlement agreement and
17 under the Florida Commission rules and our
18 procedures if the utility does overearn, but that
19 is not the case today, period.

20 So I want that to be clear for the record, and
21 for the public, and for the customers.

22 Now, how should the savings be associated with
23 the Tax Cuts and Jobs Act be treated under Issue
24 19?

25 Staff, in our briefing, we stalked about the

1 record evidence in this docket, and we talked about
2 the 772 million, whether this recommendation, as
3 proposed, whether it is supported by the utility's
4 proposal and by what staff is recommending. And
5 your answer to me in our briefing was, there is
6 record evidence to do both; is that correct?

7 MS. BROWNLESS: Yes, ma'am.

8 COMMISSIONER BROWN: Can you talk about why
9 you came up with the recommendation then?

10 MS. BROWNLESS: This record is very unique,
11 and this case is very unique. You have -- FPL has
12 a reserve amount no other electric utility in the
13 state has that, so that has created a very unique
14 situation.

15 I look at Issue No. 19 as an issue of rate
16 setting, because whether the Commission sets rates
17 via a evidentiary hearing, or sets rates via
18 approval of a stipulation, you are still setting
19 rates. So the standard for setting rates is are
20 those rates just reasonable and fair, as well as
21 when you look at the whole, are those rates in the
22 public interest?

23 So this record clearly supports doing what FPL
24 has suggested, which is treating them, allowing
25 them to use the monies for Hurricane Irma, and

1 allowing them to retain the tax savings because
2 they have not overearned. That is consistent with
3 what the Commission did in the Reedy Creek case,
4 which was the last case in which the Commission
5 dealt with a reduction in federal income tax.

6 Now, that reduction in the Reedy Creek case
7 was from 48 to 46 percent, so that was quite small.
8 And the magnitude of the reduction here is
9 obviously a lot larger. But at that time, the
10 Commission says, we are only going to make people
11 reduce base rates if they are overearning.

12 COMMISSIONER BROWN: Well, the utility is not
13 overearning here.

14 MS. BROWNLESS: And at utility is not
15 overearning here. So that supports FPL's position
16 of we are not overearning, the Commission does not
17 normally micromanage what we do, so let us keep on
18 doing what we are doing.

19 COMMISSIONER BROWN: And continue to operate
20 under the settlement agreement?

21 MS. BROWNLESS: I am sorry.

22 COMMISSIONER BROWN: And continue to operate
23 under the settlement agreement?

24 MS. BROWNLESS: Yes, ma'am. And continue to
25 operate as we are, as long as we do not overearn in

1 excess of 11.6. Obviously, if FPL earns in the
2 excess of 11.6, then both the signatories to the
3 agreement and the Commission would have the ability
4 to bring them in for a rate case. So that -- the
5 record fully supports that.

6 The record also fully supports what we have
7 suggested, which is a how FPL, or require FPL to
8 recover from tax savings the money associated with
9 the reasonable and prudent costs of Hurricane Irma,
10 which will be set in the 49 docket, 20180049, and
11 then subsequent to that, reduce base rates. And
12 you are reducing base rates because a material
13 significant change in circumstances has occurred,
14 which is a tremendous reduction in the federal tax
15 rate.

16 Now, FPL had nothing to do with that. That's
17 something that's happened, but it's of such large
18 significance that the staff concluded that that --
19 that the rates in the settlement agreement were no
20 longer fair, just and reasonable.

21 So the record supports our position. The
22 record supports FPL's position. This truly is a
23 policy call.

24 COMMISSIONER BROWN: Agreed, but I also brief
25 that we have a contract that was approved by the

1 Commission that's in place that we have to take
2 that into our consideration as well.

3 Notably, in this particular settlement
4 agreement, the tax provision that we approved in
5 other settlement -- all of the other IOU settlement
6 agreements is absent --

7 MS. BROWNLESS: Yes, ma'am.

8 COMMISSIONER BROWN: -- and --

9 MS. BROWNLESS: That's correct.

10 COMMISSIONER BROWN: And what -- there was a
11 thought that there could potentially have a change
12 notice tax law when the settlement agreement was
13 being reviewed and approved. Subsequent to the FPL
14 settlement agreement, Gulf Power came in shortly
15 thereafter with that specific tax language.

16 Do you think that the omission of the -- that
17 type of provision in here bolsters the utility's
18 argument to continue to operate and utilize those
19 tax dollars for the reserve?

20 MS. BROWNLESS: Well, I think it's -- I think
21 it's fair that, at the time the settlement
22 agreement was being negotiated by the parties with
23 FPL, certainly people were aware that President
24 Trump might be elected and that he had promised tax
25 relief. I think everyone was aware of that. But I

1 don't think it's fair to say that was a --

2 COMMISSIONER BROWN: Certainty --

3 MS. BROWNLESS: -- given. I think it was
4 certainly in the atmosphere.

5 It is obviously correct, and you are
6 absolutely right that the settlement agreement does
7 not mention treatment of taxes, for sure. So, you
8 know, I wasn't privy to those conversations, and I
9 don't know what was or was not discussed, but it's
10 obvious that this settlement agreement, unlike
11 Gulf's, TECO's, Duke's and FPUC's, does not contain
12 any language talking about what will happen when
13 there is a tax decrease.

14 COMMISSIONER BROWN: Thank you, I wanted to
15 highlight some of those points. Thank you.

16 MS. BROWNLESS: Yes, ma'am.

17 CHAIRMAN GRAHAM: Commissioner Clark.

18 COMMISSIONER CLARK: On that same note, I just
19 had a thought earlier about suppose that the tax
20 rates had increased, how would this have a changed?
21 Would -- do you think the utilities would have
22 still been locked into the agreement, or would
23 there have been a -- how it have been handled had
24 there been a tax increase?

25 MS. BROWNLESS: I believe that the staff's

1 recommendation in Issue No. 19 is based upon the
2 Commission's broad jurisdiction to set rates, and
3 that the Commission's jurisdiction to set fair,
4 just and reasonable rates, the Commission -- in
5 order to do that, the Commission must evaluate the
6 facts in the record and determine if it's in the
7 public interest -- if the rate that you have got is
8 in the public interest.

9 So I think if the rates had gone up, we would
10 be doing exactly the same thing.

11 MR. CICCHETTI: Commissioner, I think if the
12 rates would have went up, if the company expected
13 to underearn at that point in time, they would have
14 filed a rate case.

15 COMMISSIONER GRAHAM: Commissioner Polmann.

16 COMMISSIONER POLMANN: Thank you, Mr.
17 Chairman.

18 Somewhat to follow up on Commissioner Brown's
19 comments, and Ms. Brownless.

20 The -- the 2016 settlement, and the issue of
21 fair, just and reasonable, we found the 2016
22 settlement to be in the public interest. The
23 notion of fair, just and reasonable was, in terms
24 of the rates, was a little bit difficult.

25 Of course I wasn't here, but looking back, the

1 settlement, as I understand it, came forward with a
2 lump sum determined -- or accepted by the parties
3 as a revenue requirement. There were a certain
4 number of dollars that the parties agreed to, and a
5 tariff setting rates that were built into the
6 agreement and we accepted that.

7 Now, I may have the details wrong, but there
8 wasn't really a demarcation, if you will, as to
9 details underlying the total revenue requirement.

10 MS. BROWNLESS: Well, that's correct. There
11 was a revenue requirement agreed to by the parties,
12 which was stated in the settlement agreement, and
13 tariffs filed that implemented that revenue
14 requirement, but there was not the level of detail
15 in this settlement agreement, or any other that one
16 gets when you file MFRs in a rate case.

17 COMMISSIONER POLMANN: Okay. So my point
18 there is that with regard to the total revenue,
19 there was no demarcation as to taxes, customers
20 paying a certain amount for corporate taxes or
21 anything. It's all lumped together. And I think
22 you identified that in the staff analysis such that
23 monies were being collected from the customers and
24 the companies earning the business, including
25 paying the corporate taxes --

1 MS. BROWNLESS: Yes.

2 COMMISSIONER POLMANN: -- and that a dollar is
3 a dollar, and that all the monies being collected
4 are, in fact, fungible. Meaning they are used for
5 anything that the company is obligated to do.

6 So, in fact, that's demonstrated today where
7 FPL is using the current revenue to recover costs
8 for storm damage --

9 MS. BROWNLESS: Correct.

10 COMMISSIONER POLMANN: -- that, in fact, they
11 paid out of company funds. So there is no
12 difference between paying corporate taxes and
13 paying for storm damage internal to the company.
14 Those monies can flow through the amortization
15 reserve amortization reserve mechanism if the
16 company so chooses.

17 MS. BROWNLESS: Yes, sir.

18 COMMISSIONER POLMANN: And that's -- like you
19 said, that's unique to FPL.

20 MS. BROWNLESS: Yes.

21 COMMISSIONER POLMANN: And that's all part of
22 the settlement agreement.

23 MS. BROWNLESS: Right.

24 COMMISSIONER POLMANN: So we can choose to
25 just leave that to continue to operate?

1 MS. BROWNLESS: Yes. In your vote on Issue
2 No. 18, you have, in fact, left the reserve amount
3 operation.

4 COMMISSIONER POLMANN: Yes, okay. Well, thank
5 you.

6 CHAIRMAN GRAHAM: Commissioner Fay.

7 COMMISSIONER FAY: Thank you, Mr. Chairman.

8 This is an extremely complex issue, and I will
9 do my best to be brief, but I can't promise that I
10 will be able to do that.

11 So I think some of the points that are
12 significant within the recommendation is there is
13 some discussion about the role of a regulatory body
14 and the role of a judicial body, and how some of
15 those roles may differ, which I think is accurate
16 to a large extent. I think they do serve some
17 different functions.

18 I do think there are also similarities in
19 those functions, in that whatever you want to call
20 it, settlement stipulation, consent decree, those
21 items are given significant deference to whatever
22 body it may be to honor those agreements and, to a
23 large extent, to encourage them, and recognizing
24 that the burden is extremely high to intervene in
25 those types of agreements, or settlements. And so

1 I think that's -- that's part of what the role
2 entails.

3 I think in this recommendation from staff,
4 there is discussion about the Reedy Creek case,
5 which, to a large extent, has some significant
6 relevance, in my opinion, in that it's the last
7 time we've had some tax reform related to this
8 Commission. And so I think it does help provide
9 some direction. And I think the analysis talks a
10 lot about the administrative finality component and
11 references two other cases as it relates to that to
12 give us an idea of how that component to apply to a
13 decision like this. I think that I carries great
14 weight.

15 I also think that -- I rarely cite specific
16 language from cases, but I think it's relevant
17 within that case because it is one that deals with
18 tax savings and, at the time, does have some
19 similarities, some differences but also some
20 similarities.

21 The Reedy Creek case provided some guidance
22 when it stated: It is clear the utility would be
23 required to refund revenues if, and only if, it
24 were earning in excess of the range of its
25 authorized rate of return.

1 And I give that guidance great weight. And I
2 think that that is not the case for what we have in
3 front of us here today.

4 And I think -- I do agree with the intervenors
5 that there is a broader public interest standard
6 that's applied to these types of decisions. And I
7 think that can make these really challenging,
8 because you have to balance those -- those
9 interests that -- that relate to different topics
10 and give -- give weight to some more than others.
11 And I think under this circumstance, I think we
12 specifically do satisfy that public interest test
13 by recognizing that short-term rate stability has
14 significant value and does satisfy that test.

15 I think that, in addition to that, you have
16 language in the 2016 rate case that speaks to the
17 potential of a utility staying out an additional
18 year based on the terms of the agreement. And I
19 think there is -- I think that only supplements
20 that analysis, and provides more value to why that
21 benefit would be in place.

22 And I do think there is a balance between
23 those interests, and I do think that there can be
24 differences in opinions as to what interest may
25 carry more weight; but I think that does, in my

1 opinion, satisfy the standard.

2 I do also think that within the public
3 interest, that that application of the Doctrine of
4 Administrative Finality is one I give great weight
5 to, and I think the cases speak to that. So I
6 don't -- I don't -- the analysis speaks to that. I
7 don't need to elaborate on that, and some of the
8 other Commissioners have spoken to the finality of
9 it.

10 But I will say that with that analysis, I
11 think it -- it's very likely that with a
12 comprehensive review that a rate exceeds the rate
13 of return, that it, by definition, would then serve
14 as unjust, unfair or unreasonable. And so I think
15 to moving forward to ensure that the Commission is
16 aware of that to potentially occur, I would hope to
17 provide some specific surveillance report
18 requirements to make a determination if that rate
19 of return is exceeded, then I think the Commission
20 has a different scenario that it would face. And I
21 think, until that case occurs, the public interest
22 is still satisfied as a whole.

23 So, Mr. Chairman, I think it was kind of brief
24 maybe in the middle somewhere. Those are my
25 comments. Thank you.

1 CHAIRMAN GRAHAM: Thank you, Mr. Fay.

2 I am reading over the statement that my
3 General Counsel told me I had to read, and I did
4 say that I did read the briefs and watched the oral
5 arguments. I did not say that I, quote, thoroughly
6 reviewed the entire record. So I put that on the
7 record as well.

8 Okay. No lights are on. Mr. Poulmann, you
9 said that you had a motion. Let's hear that.

10 COMMISSIONER POLMANN: I'll -- somebody is
11 messaging with my microphone.

12 Mr. Chairman, I would like to just pass this
13 down. Staff, the aids have a copy of this also.

14 CHAIRMAN GRAHAM: You said staff does have a
15 copy of this?

16 COMMISSIONER POLMANN: Yes.

17 CHAIRMAN GRAHAM: Okay.

18 COMMISSIONER POLMANN: Your staff -- our
19 staff.

20 CHAIRMAN GRAHAM: Does our staff there, like
21 Ms. Brownless, have a copy of it?

22 MS. BROWNLESS: I don't, sir.

23 COMMISSIONER POLMANN: No, but she will in a
24 minute.

25 CHAIRMAN GRAHAM: And our counsel. Do we just

1 have one copy? Okay.

2 COMMISSIONER POLMANN: On Item 19, Issue 19,
3 there is a predicate here, recognizing our action
4 in approving Issue 18 in this docket, finding that
5 FPL has no restriction on the types of funds
6 flowing -- I am paraphrasing -- finding that FPL
7 has no restriction on types of funds flowing in or
8 out of the ARM, including that tax savings can be
9 credited to the amortization reserve. I therefore,
10 move that the terms and provisions of the 2016
11 settlement continue to function as they have been
12 since inception; and further, that the Commission
13 find this action on balance is in the public
14 interest.

15 CHAIRMAN GRAHAM: Is that your motion?

16 COMMISSIONER POLMANN: That's the motion.

17 CHAIRMAN GRAHAM: Second?

18 COMMISSIONER BROWN: I will second it.

19 CHAIRMAN GRAHAM: Okay. There is a motion on
20 the floor that's duly seconded.

21 Discussions on the motion.

22 Commissioner Clark.

23 COMMISSIONER CLARK: Thanking you, Mr.

24 Chairman.

25 Yeah, if we could -- thank you, Mr.

1 Poulmann -- Commissioner Polmann. I appreciate
2 that.

3 I wanted to just throw out there the
4 possibility of caveating this with something that's
5 probably already in practice, but just to codify it
6 into the record that we include a monthly
7 monitoring, I guess you would say, staff
8 surveillance of the annual -- excuse me -- the
9 quarterly earning reports.

10 Is there another type of -- there is another
11 type of report that we also look at, Suzanne, that
12 might help me there as well?

13 MS. BROWNLESS: I think that if you allow --
14 or if you pass the motion that's before you, there
15 is two reports that the staff would like provided.
16 One is a monthly reserve amount report beginning
17 with entries as of January 1, 2019, which record
18 and explain each and every debit and credit. And
19 the other is an annual projected earnings
20 surveillance report filed quarterly that will allow
21 the staff more information, and more timely
22 information regarding whether FPL is still earning
23 within its range.

24 CHAIRMAN GRAHAM: Ms. Brownless, say that
25 second one again.

1 MS. BROWNLESS: It is an annual projected
2 earnings surveillance report filed quarterly.

3 CHAIRMAN GRAHAM: Now, if for one reason or
4 another one of those reports show that there is an
5 overearning, or they stepped into overearnings,
6 what happens at that point?

7 MS. BROWNLESS: I think the staff would meet
8 with the company and try to ascertain whether that
9 overearning was the result of a one-time event, or
10 whether they anticipated that that would continue.

11 CHAIRMAN GRAHAM: But that's not something
12 that would automatically flag them overearning,
13 okay.

14 MS. BROWNLESS: But it would automatically
15 flag a discussion with the company by the staff.

16 MR. CICCHETTI: Commissioner, I would just
17 clarify that we are looking at expected
18 overearnings. For example, a company doesn't have
19 to actually be underearning in order to file a rate
20 case. They just would be expecting to underearn.

21 So we are monitoring for expected
22 overearnings, so we could bring to you a
23 recommendation to establish jurisdiction if it's
24 determined that that's necessary.

25 CHAIRMAN GRAHAM: Commissioner Clark, you

1 still have the Florida. You are good?

2 Okay. We have a motion and second.

3 Any further discussion?

4 MR. HETRICK: Yes, excuse me, Mr. Chair.

5 CHAIRMAN GRAHAM: Yes.

6 MR. HETRICK: If I could just, with your
7 permission, Commissioner Polmann, clarify
8 technically your motion a bit, which I think would
9 give more credence to the record and to the
10 decision that you -- or the motion that you
11 proposed. And if you look at your motion.
12 Commissioners, you all have that there?

13 COMMISSIONER POLMANN: Yes.

14 MR. HETRICK: I might suggest, I therefore
15 move that the terms and provisions of the 2016
16 settlement continue to function as they have been
17 since inception, comma, that rates are fair, just
18 and reasonable and no adjustment is necessary, and
19 then continue on with the motion.

20 CHAIRMAN GRAHAM: Commissioner Polmann, it's
21 your motion.

22 COMMISSIONER POLMANN: That's acceptable to
23 me. I will look to the seconder -- to the second
24 of the motion.

25 I say it's acceptable. I am wondering why

1 it's necessary. I mean, it's -- it's -- the
2 settlement has terms and provisions. Are the rates
3 not -- the rates that were are accepted at that
4 time, was that not part of the terms and
5 provisions?

6 MR. HETRICK: No. I think it's for
7 confirmation and clarity. That's all. That you
8 are clarifying that, then and now, rates will
9 continue to be fair, just and reasonable, and no
10 adjustment is necessary.

11 COMMISSIONER POLMANN: Well, I -- I think it's
12 implied. I don't know that it's -- that we need to
13 make this more verbose than necessary. Is there
14 some damage or torment here?

15 MR. BAEZ: Commissioner, I would like to take
16 a stab at answering that one.

17 What those words -- what those words establish
18 is that as, at least some of you have mentioned,
19 that you are -- you are in a rate-making posture,
20 and that -- and so those words sort of follow and
21 confirm that you are in a rate-making posture.
22 That's sort of what qualifies your action.

23 And it makes it a lot clearer for the staff in
24 later drafting the order with the proper language.
25 It makes it a stronger -- it makes it a stronger

1 decision.

2 COMMISSIONER POLMANN: Well, let me -- let me
3 look to the issue as stated.

4 Issue 19 is a simple question. How should the
5 savings associated with the Tax Cuts and Jobs Act
6 of 2017 be treated? And the entirety of my
7 statement is in the context of having approved
8 Issue 18. And the -- although, we specifically
9 took Issue 18 and 19 separately. The predicate
10 here, the action in 19 relies upon 18, which is --
11 and I deliberately set up the motion in 19
12 dependent on 18. And it was my intention that this
13 whole thing be part of the motion, even though the
14 motion is to simply allow the 2016 settlement to
15 continue to function as it has been, as it was
16 accepted in 2016 by the sitting Commission.

17 Issue 19 doesn't speak to anything other than
18 what do you do with the money? And, in fact, what
19 we are saying here is, allow it to continue to
20 function within the terms and provisions of 2016.

21 And I am looking at Commissioner Brown, who
22 seconded the motion, and I think we are in
23 agreement.

24 MR. BAEZ: Commissioner, it was a suggestion.

25 COMMISSIONER POLMANN: I know it was a

1 suggestion, and I appreciate the suggestion.

2 MR. BAEZ: This is not a hill to die on.
3 We -- staff made a -- just recommended some
4 additional language --

5 COMMISSIONER POLMANN: Yes. Yes.

6 MR. BAEZ: -- that would have made our work a
7 little easier, but we are happy to work with
8 whatever you give us, sir.

9 COMMISSIONER POLMANN: I -- I always intend
10 for your work --

11 MR. BAEZ: Yes, you do.

12 COMMISSIONER POLMANN: To be as difficult as
13 possible. Just kidding.

14 CHAIRMAN GRAHAM: Well, the question comes
15 down, Mr. Poulmann, it's your motion. You just had
16 advice of counsel. You can decide if you want to
17 include it or not.

18 COMMISSIONER POLMANN: Thank you, Mr.
19 Chairman.

20 My explanation, which I just put on the
21 record, is the rationale for the wording I put in
22 the motion. My intention is that all of the words
23 that I spoke are the motion.

24 CHAIRMAN GRAHAM: Okay. Commissioner Brown,
25 on the motion.

1 COMMISSIONER BROWN: And, thank you.

2 I wanted just to make a slight modification, a
3 friendly amendment to the motion, incorporating
4 Commissioner Clark's suggestion of including the
5 quarterly earnings surveillance reports and the
6 monthly reserve account report with the debits and
7 credits, so that's clear in our order.

8 Obviously, the order will go on to clarify the
9 language that Mr. Hetrick and Mr. Baez suggested.
10 So we will make sure that that language is in the
11 order, that these rates are, and continue to be
12 fair, just and reasonable and in the public
13 interest.

14 MR. BAEZ: Thank you, Commissioners.

15 COMMISSIONER BROWN: Okay. Are you amenable
16 to that?

17 MR. POLMANN: Yes. I am not writing the
18 order. The order language will be written in the
19 appropriate language.

20 COMMISSIONER BROWN: It's good that you are
21 not writing the order.

22 CHAIRMAN GRAHAM: Are you amenable -- are you
23 okay with adding those surveillance reports?

24 COMMISSIONER POLMANN: Yes. The surveillance
25 reports that Commissioner Clark suggested, and

1 recited by Commissioner Brown, is an acceptable
2 addition. And I think Ms. Brownless put all the
3 right words in there, so I agree with what has been
4 stated.

5 Thank you very much, Mr. Chairman.

6 CHAIRMAN GRAHAM: Commissioner Brown, you
7 still have the floor.

8 COMMISSIONER BROWN: That is all.

9 CHAIRMAN GRAHAM: Mary Anne, did we -- is that
10 sufficient, the motion and the second, and the
11 additions?

12 MS. HELTON: Yes, sir. I think it's clear now
13 what you would be voting on.

14 CHAIRMAN GRAHAM: Okay. On the motion as
15 amended, any further discussion, comments or
16 questions?

17 Seeing none, all in favor say aye.

18 (Chorus of ayes.)

19 CHAIRMAN GRAHAM: Any opposed?

20 (No response.)

21 CHAIRMAN GRAHAM: By your action, you have
22 approved the Polmann motion -- Polmann motion.

23 I think that concludes Item No. 19, correct?

24 MS. BROWNLESS: Yes, sir.

25 CHAIRMAN GRAHAM: All right. That concludes

1 this hearing.

2 We are adjourned. There is no IA today, and
3 so I think we need to adjourn to outdoors.

4 Please, everybody, travel safe.

5 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, 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 22nd day of May, 2019.



DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #GG015952
EXPIRES JULY 27, 2020