

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: May 28, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Brownless) *SBr, JSC*
Division of Accounting and Finance (Cicchetti) *ALM, MC*

RE: Docket No. 20180224-EI – Joint petition for rate reductions or alternative reverse make-whole rate case against Florida Power & Light Company, by Office of Public Counsel, Florida Industrial Power Users Group, and Florida Retail Federation.

AGENDA: 06/09/20 – Regular Agenda - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On January 9, 2018, the Office of Public Counsel (OPC) filed a petition to establish a generic docket, Docket No. 20180013-PU, to investigate and adjust rates for 2018 tax savings for all utilities regulated by the Commission. By Order No. PSC-2018-0104-PCO-PU, issued on February 26, 2018, in Docket No. 20180013-PU, the Commission established jurisdiction over Florida Power & Light Company's (FPL) tax savings associated with the Tax Cuts and Jobs Act of 2017 (TCJA) as of February 6, 2018.

On February 21, 2018, the Commission opened a separate docket, Docket No. 20180046-EI, to assess the tax impacts associated with the passage of the TCJA on FPL.¹ An administrative

¹ Docket No. 20180046-EI, *In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Florida Power & Light Company.*

hearing was held on February 5, 2019, in which the testimonies of Scott R. Bores and Ralph C. Smith, witnesses for FPL and OPC, respectively, were inserted into the record as though read. Exhibit Nos. 1-22 were admitted into the record and Issues 1-17 and 20, addressing the quantification of tax savings, were stipulated to by the parties and approved by the Commission. At the February 5 hearing, Issues 18 and 19² were reserved and the parties given an opportunity to file Initial and Reply Briefs on these issues on February 22 and March 8, 2019, respectively.³ The hearing was continued until April 16, 2019, at which time OPC, FPL, Federal Executive Agencies (FEA), Florida Industrial Users Group (FIPUG) and Florida Retail Federation (FRF) presented oral arguments on Issues 18 and 19.

By Order No. PSC-2019-0225-FOF-EI, issued on June 10, 2019, the Commission approved FPL's request to use the \$772.3 million annual tax savings generated by TCJA to replenish the Reserve Amount established by FPL's 2016 Settlement Agreement that was completely depleted to partially pay for Hurricane Irma storm restoration costs. OPC filed a timely appeal of Order No. PSC-2019-0225-FOF-EI to the Florida Supreme Court but voluntarily dismissed its appeal on November 26, 2019.

On February 22, 2018, Docket No. 20180049-EI⁴ was opened to review and evaluate FPL's storm restoration costs associated with Hurricane Irma. On August 31, 2018, FPL filed testimony and exhibits in support of its request to recover approximately \$1.27 billion by charging the incremental storm damage to base Operation and Maintenance (O&M) expenses and offsetting this amount with projected tax savings as a result of the TCJA. On June 6, 2019, a Joint Motion to Approve a Stipulation and Settlement (Storm Settlement) between OPC and FPL was filed in the case.⁵ A hearing was held on July 9, 2019, which addressed the evaluation of storm restoration costs for FPL associated with Hurricane Irma. By Order No. PSC-2019-0319-S-EI, issued August 1, 2019, the Commission approved the Storm Settlement.⁶ The Storm Settlement established total storm restoration costs of \$1,253,545,000 and a reduction in the Reserve Amount to \$1.245 billion. The audit provisions of the Storm Settlement were slightly modified by a Settlement Implementation Agreement approved by Order No. PSC-2020-0104-PAA-EI, issued on April 14, 2020.

This docket was opened on December 5, 2018, when a Joint Petition for Rate Reductions or Alternative Reverse Make-Whole rate case against FPL (Joint Petition) was filed by OPC, FIPUG and FRF. In its Joint Petition, the parties requested that the Commission assert jurisdiction over the tax savings generated by the TCJA as of February 6, 2018, review FPL's

² Issue 18: Does the 2016 Settlement Agreement allow FPL to credit the Amortization Reserve with the tax savings resulting from the Tax Cuts and Jobs Act of 2017? Issue 19: How should the savings associated with the Tax Cuts and Jobs Act of 2017 be treated?

³ FPL, OPC, FRF, Florida Executive Agencies (FEA) and the Florida Industrial Power Users Group (FIPUG) filed Initial Briefs on February 22. FPL, OPC, FRF, and FIPUG filed Reply Briefs on March 8.

⁴ Docket No. 20180049-EI, *In re: Evaluation of storm restoration costs for Florida Power & Light Company related to Hurricane Irma*.

⁵ Although FIPUG was not initially a signatory to the proposed Storm Settlement, it subsequently endorsed the proposed Storm Settlement. See Document No. 04584-2019.

⁶ Order No. PSC-2019-0319-S-EI, issued August 1, 2019, in Docket No. 20180049-EI, *In re: Evaluation of storm restoration costs for Florida Power & Light Company related to Hurricane Irma*.

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base rates, and establish new base rates reflecting the lower federal corporate income tax rate that became effective January 1, 2018.

The Commission has jurisdiction over this matter based on Sections 366.04, 366.05, and 366.06, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should this docket be closed?

Recommendation: Yes. All issues raised in the Joint Motion opening this docket have either been resolved, with the Joint Motion parties' participation, in Docket Nos. 20180013-PU, 20180046-EI, and 20180049-EI, or are no longer relevant. (Brownless, Cicchetti)

Staff Analysis: In the Joint Motion filed in this docket the parties argued that FPL's base rates should be reduced because its estimated \$736.8 million in tax savings generated by TCJA in 2018 caused it to earn a return on equity (ROE) of approximately 13 percent which was in excess of the 9.6 to 11.6 percent ROE range allowed by its 2016 Settlement Agreement. [Petition at pp. 8, 24] FPL did not contest that it received \$736.8 million in tax savings in 2018 due to the enactment of TCJA, rather FPL contended that it should be allowed to replenish the Reserve Amount created by its 2016 Settlement Agreement that it had used to partially pay for Hurricane Irma storm restoration costs. If the TCJA savings were used to replenish the Reserve Amount, FPL argued that there were no overearnings in 2018 nor any projected overearnings in any year until the 2016 Settlement Agreement was scheduled to terminate in December of 2020.⁷

As discussed above, in Docket No. 20190046-EI, OPC fully litigated whether FPL could pay Hurricane Irma costs from the Reserve Amount and whether FPL could replenish the Reserve Amount with the TCJA tax savings. The Commission applied both a contract law analysis of the terms of the 2016 Settlement Agreement as well as a public interest standard and found that FPL could pay for Hurricane Irma costs from the Reserve Amount and could replenish the Reserve Amount with TCJA savings. Having determined that the tax savings generated by the passage of the TCJA were appropriately used to regenerate the Reserve Amount, FPL's earnings in 2018 and 2019 remained at 11.6 percent.⁸

FPL, given its ability to debit and credit the Reserve Amount, currently is earning 11.6 percent and is expected to earn 11.6 percent through 2020.⁹ The Reserve Amount balance was \$744,467,457 as of March 31, 2020.¹⁰

The Joint Petitioners made three requests of the Commission in this docket. First, that the tax savings generated in 2018 by the passage of the TCJA be placed under Commission jurisdiction. This was done by Order No. PSC-2018-0104-PCO-PU issued on February 26, 2018. Second, to determine if FPL's use of the Reserve Amount to pay Hurricane Irma costs and its decision to replenish the Reserve Amount with the tax savings violated the 2016 Settlement Agreement. Order No. PSC-2019-0225-FOF-EI issued on June 10, 2019, answered both questions and found that neither violated the 2016 Settlement Agreement. Finally, the Joint Petitioners asked for a reduction in base rates to account for the projected overearnings associated with the TCJA tax savings. However, the treatment of the TCJA tax savings approved in Order No. PSC-2019-

⁷ In accord with Section 12(c) of the 2016 Settlement Agreement, on March 5, 2020, FPL notified all parties that it will not seek a general rate base increase that becomes effective before January 1, 2022. This action extends the 2016 Settlement Agreement for one more year until December 31, 2021.

⁸ Annual Earnings Surveillance Reports for 2018 and 2019.

⁹ DN 02640-2020, March 2020 FPL Forecasted Earnings Surveillance Report filed May 15, 2020.

¹⁰ DN 02640-2020, FPL Reserve Amount Balance Report as of March 31, 2020.

0225-FOF-EI has maintained FPL's earnings at 11.6 percent which is compliant with the 2016 Settlement Agreement. All issues raised in Docket No. 20180224-EI have been fully litigated with participation by all of the Joint Petitioners and resolved in other dockets. Additionally, FPL is not currently earning above its allowed rate of return, indicating that no adjustment to base rates is currently warranted. Given these undisputed facts, staff recommends that this docket be closed.