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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20200149-WS

Consideration of the tax
impacts associated with Tax
Cuts and Jobs Act of 2017
for St. James Utility Company.

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 6

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

DATE: Tuesday, August 18, 2020

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 CLARK: Good morning. I would like
3 to welcome everyone to this Tuesday, August 18th,
4 Agenda Conference, and also a Special Agenda
5 Conference that will be held immediately following
6 this one.

7 And at this time, before we begin our meeting,
8 I am going to ask Commissioner Graham, if he would,
9 to give our invocation this morning, and I will
10 lead us in the Pledge of Allegiance.

11 Commissioner Graham.

12 (Invocation and Pledge of Allegiance.)

13 CHAIRMAN CLARK: Thank you. You may be
14 seated.

15 All right. We will call this meeting to
16 order. Items No. 1, 5, 6 and 7 are on the move
17 staff list. Staff has also informed me that, at
18 Commissioner Polmann's request, we are going to
19 defer Item No. 3, if that's in agreement with
20 everyone, which leaves us Items No. 2 and 4 that
21 will be moved to the end for discussion.

22 Are there any other items that any
23 Commissioner would like to have taken off the move
24 staff list?

25 All right. If not, I will entertain a motion

1 to approve the move staff items.

2 COMMISSIONER BROWN: Mr. Chairman, I would
3 move to approve all of the staff recommendations on
4 Items 1, 5, 6 and 7.

5 COMMISSIONER GRAHAM: I will second.

6 CHAIRMAN CLARK: I have a motion and a second
7 to approve all the items on the Consent Agenda.

8 Any discussion?

9 All those in favor, please say aye.

10 (Chorus of ayes.)

11 MR. REHWINKEL: Chairman -- Chairman Clark.

12 CHAIRMAN CLARK: Yes, sir.

13 MR. REHWINKEL: This is Charles Rehwinkel. I
14 had informed staff that I wanted to speak on Items
15 5 and 6.

16 CHAIRMAN CLARK: Okay. My apologies, Mr.
17 Rehwinkel. I did not get that message. We will --
18 we will hold the vote and give you --

19 MR. REHWINKEL: I apologize for being slow on
20 the trigger while you were -- I apologize.

21 CHAIRMAN CLARK: No problem.

22 Go ahead, Mr. Rehwinkel. We will hold -- we
23 will have your comments before we take -- we call
24 for the vote.

25 Mr. Rehwinkel, are you there?

1 MR. REHWINKEL: Yes. I -- I didn't know if we
2 were going to go back into -- into the order, but I
3 will -- I will give you my comments on both St.
4 James and Gulf Coast together.

5 CHAIRMAN CLARK: Okay.

6 MR. REHWINKEL: On behalf of the customers, I
7 am here to confirm that OPC maintains our
8 continuing objection to the Commission's failure to
9 recognize the unanticipated and unexpected cost
10 reductions that resulted from the 2017 Tax Cuts and
11 Jobs Act, which was passed under circumstances
12 completely outside the control of the companies.

13 While we object to the Commission's policy of
14 not returning tax savings unless a company is
15 overearning, we are not here today to tilt at
16 windmills, I am not here really to object to the
17 staff's recommendation. Their recommendation is
18 fully consistent -- and that is an important
19 word -- with your long-established policy
20 regardless of our views about it being
21 ill-conceived. It is the policy that is wrong,
22 regardless, consistency should prevail.

23 So you may ask why am I here, and why is the
24 Office taking the time to speak on this issue?
25 Well, the answer is that this policy is being

1 applied unevenly. It is being applied in an
2 arbitrary manner. It is being applied
3 asymmetrically when it comes to another comparable
4 and equally unanticipated set of cost reduction --
5 costs also manifested outside the control of the
6 company.

7 We contend that the company needs to
8 understand that this asymmetry gives rise to an
9 appellate argument routed in unfairness. On one
10 hand, in creating regulatory assets, you are
11 arbitrarily and capriciously giving the companies a
12 benefit that you did not symmetrically and
13 consistently extend to the customers in allowing
14 without settlement agreements to keep the tax
15 savings if they are not overearning.

16 On the other hand, for costs that are
17 similarly unanticipated and outside the company's
18 control, you are providing deferral with an
19 assurance of future cost recovery to companies who
20 have not been determined to be underearning. You
21 contend that actual cost recovery will not incur
22 until after you have conducted or provided an
23 opportunity for a Section 120.57 hearing.
24 Nonetheless, because the assurance of future cost
25 recovery is a required element for establishing the

1 deferral mechanism, or regulatory asset in the
2 first instance, most, if not all, of the costs
3 deferred are likely to be recovered from the
4 pockets of customers.

5 Commissioners, this is not fair. The
6 customers ride in steerage class while the
7 companies and their shareholders enjoy first class
8 state rooms. This is the classic heads you lose,
9 tails I win situation. Your unwritten and
10 inconsistently applied tax windfall and deferred
11 asset authorization policies are stacked against
12 the customers, and these two dockets illustrate it
13 in contrast.

14 The policy reeks of unfairness because of the
15 lack of a two-way street. If you are not going to
16 hold hearings in advance of allowing deferral of
17 the debits without regard to earnings, then we
18 contend you have a moral if not a legal obligation
19 to forbear here and return the tax savings, or
20 perhaps revisit those rulings that applied an
21 earnings test with an opportunity for hearing to
22 your treatment of the tax savings credits.

23 Otherwise, to be consistent in application of this
24 policy and cases that are analogous to these
25 dockets, tax savings determinations, but in a

1 mirror image situation, you should conducted a
2 hearing, and then based on the outcome of the
3 hearing, you should symmetrically and consistently
4 apply an earnings test to any recognition of
5 unanticipated costs that are also considered any
6 unanticipated associated cost savings.

7 Perhaps under these circumstances, symmetrical
8 rate-making treatment could be applied in the form
9 of allowing the creation of regulatory asset.

10 The customers deserve the rudiments of
11 fairness and consistency. Rate-making really is
12 about fair recognition above the debits and
13 credits, and not just the selectively chosen
14 debits.

15 Commissioners, I make these comments because I
16 am illustrating that this docket is -- is being
17 decided inconsistently with other dockets based on
18 analogous set of facts.

19 Thank you.

20 CHAIRMAN CLARK: Thank you, Mr. Rehwinkel.

21 Commissioners, any discussion?

22 Commissioner Brown.

23 COMMISSIONER BROWN: Thank you.

24 So reading these dockets, it was clear to me,
25 quite frankly, that these utilities -- these water

1 utilities are significantly earning below their
2 rate of return, and obviating the need to have a
3 full blown rate case, staff is recommending a
4 prudent course of action.

5 But I do want to hear from staff regarding Mr.
6 Rehwinkel's comments, which definitely surprised
7 me. It appears that he doesn't object to the
8 actual dockets itself, correct -- or to staff
9 recommendation on these two items. He just objects
10 to the different treatments of the tax savings as a
11 result of the Tax and Jobs Act, so could I -- could
12 we here from staff on this?

13 CHAIRMAN CLARK: Mr. Futrell.

14 MR. FUTRELL: Commissioner Brown, this is Mark
15 Futrell. I will take a shot, and perhaps Mr.
16 Maurey or Mr. Cicchetti may want to -- want to
17 follow up.

18 Certainly we understand -- I hear Mr.
19 Rehwinkel's arguments that go to a global
20 perspective of not only these tax issues but also
21 regulatory asset issues, one of which is coming up
22 before you in Item 4, and it's previously been
23 dealt with for -- for Gulf Power Company and their
24 filings pertaining to that decision by the
25 Commission that will be brought before you in the

1 coming weeks and -- and be resolved.

2 So I understand what the -- the larger issues
3 he is touching upon, but I think some of these
4 things are dependent upon additional decisions that
5 are coming before the Commission, again in Item 4,
6 and also in the future.

7 COMMISSIONER BROWN: Thank you, Mr. Futrell.

8 And, Mr. Chairman, I have no problem with the
9 staff recommendation on these two items, and I
10 still stand by the motion.

11 CHAIRMAN CLARK: Thank you, Commissioner
12 Brown.

13 Commissioner Polmann.

14 COMMISSIONER POLMANN: Mr. Chairman, may we
15 have, if there is, any further elaboration on
16 Commissioner Brown's request? Did -- did staff
17 have anything to add that Mr. Futrell suggested? I
18 just wanted to close that if other staff had
19 anything to add to that, I just wanted to make sure
20 we -- we fully answered that question.

21 MR. FUTRELL: Does Mr. Maurey have anything to
22 offer?

23 MR. MAUREY: Commissioner Polmann, this is
24 Andrew Maurey. Good morning.

25 No, we agree with -- with what Mr. Futrell

1 said. It appears to be a discussion of regulatory
2 assets on a macro basis.

3 COMMISSIONER POLMANN: Okay, thank you.

4 Mr. Chairman, to Mr. Rehwinkel's comments,
5 I -- I appreciate the Office of Public Counsel
6 bringing forth the -- the concern for equity and
7 consistency. I want to honor that. I -- I believe
8 that is an ongoing concern for this commission, and
9 I am thankful that he, on behalf of OPC, continues
10 to raise it. That is a challenge for this
11 commission, and I don't discount that in any way.

12 I am concerned, however, regarding his
13 question, or -- or his bringing into the assertion,
14 if you will, I believe what he -- what his remark
15 suggested is some assurance to the utilities, and
16 it concerns the regulatory asset for an assurance
17 to utilities for future recovery that we may be
18 providing, he seemed rather unhappy about --
19 (inaudible) -- in a subsequent item here, that's
20 fine, but if staff has a comment, I don't believe
21 that's what we are doing, or what we have done, Mr.
22 Chairman. I just want to respond to that. I don't
23 understand that that's the case. So if there is a
24 response that's necessary on the record, I would
25 like to hear it. I just wanted to make that

1 comment, because that is not my understanding. I
2 don't believe that's true.

3 That's all I wanted to say about that, but if
4 staff has anything else to add, I certainly would
5 like to hear it.

6 Thank you, Mr. Chairman.

7 CHAIRMAN CLARK: Thank you, Commissioner
8 Polmann.

9 Mr. Futrell.

10 MR. FRIEDMAN: Mr. Chairman, this is Marty
11 Friedman. I am the attorney for Gold Coast, can I
12 just make one observation?

13 CHAIRMAN CLARK: Yes, Mr. Friedman.

14 MR. FRIEDMAN: Yeah, I would just point out,
15 at least as to Gold Coast, there is less than
16 \$2,000 in income tax expense included in the
17 revenue requirement for this company. So I don't
18 know how that could be anything significant in
19 the -- in the realistic outcome of -- of this tax
20 docket.

21 CHAIRMAN CLARK: I think that OPC was saying
22 they did not have a specific problem with these
23 issues. It was the overall way that the tax -- the
24 Tax and Jobs Act was being applied as a regulatory
25 asset. I think that's kind of a different issue.

1 Mr. Futrell, do you want to address that?

2 MR. FUTRELL: I would just suggest,
3 Commissioner Polmann, I think some of his questions
4 are -- are right on the money, appropriate for Item
5 4 that will be coming up before the Commission.
6 And again, I think that's the place where some of
7 these larger considerations can be -- can be
8 brought up. I am sure OPC will be bringing up some
9 of these same arguments in that item.

10 CHAIRMAN CLARK: Okay. Very good.

11 Commissioners, any other questions or
12 discussion?

13 All right. On the motion, all in favor say
14 aye.

15 (Chorus of ayes.)

16 CHAIRMAN CLARK: Opposed?

17 (No response.)

18 CHAIRMAN CLARK: All right. The motion is
19 adopted.

20 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, Court Reporter, do hereby
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IT IS FURTHER CERTIFIED that I
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I FURTHER CERTIFY that I am not a relative,
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financially interested in the action.

DATED this 26th day of August, 2020.



DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #HH31926
EXPIRES AUGUST 13, 2024