

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of a regulatory asset to record costs incurred due to COVID-19, by Gulf Power Company.

DOCKET NO. 20200151-EI

In re: Petition for approval of a regulatory asset to record costs incurred due to COVID-19, by Utilities, Inc. of Florida.

DOCKET NO. 20200189-WS

In re: Petition for approval of regulatory assets to record costs incurred due to COVID-19, by Florida Public Utilities Company, Florida Public Utilities Company - Indiantown Division, Florida Public Utilities Company - Fort Meade, Florida Division of Chesapeake Utilities Corporation.

DOCKET NO. 20200194-PU  
ORDER NO. PSC-2021-0214-PHO-PU  
ISSUED: June 8, 2021

PREHEARING ORDER

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on June 2, 2021, in Tallahassee, Florida, before Commissioner Andrew Giles Fay, as Prehearing Officer.

APPEARANCES:

JOEL T. BAKER, KEN HOFFMAN, AND RUSSELL BADDERS, ESQUIRES,  
Gulf Power Company, One Energy Place, Pensacola, Florida, 32520-0100  
On behalf of Gulf Power Company (GULF).

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On behalf of Florida Public Utilities Companies (FPUC).

RICHARD GENTRY, CHARLES REHWINKEL, STEPHANIE MORSE,  
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Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street,  
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On behalf of the Citizens of the State of Florida (OPC).

SHAW P. STILLER, WALTER TRIERWEILER, AND JENNIFER S.  
CRAWFORD, ESQUIRES, Florida Public Service Commission, 2540 Shumard  
Oak Boulevard, Tallahassee, Florida 32399-0850  
On behalf of the Florida Public Service Commission (Staff).

MARY ANNE HELTON, ESQUIRE, Deputy General Counsel, and SAMANTHA CIBULA, Attorney Supervisor, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
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Florida Public Service Commission General Counsel

## **I. CASE BACKGROUND**

On May 22, 2020, Gulf Power Company (Gulf) filed a petition for approval to establish a regulatory asset to record costs incurred due to Coronavirus Disease 2019 (COVID-19), and therein requested deferral of incremental bad debt expense and safety-related costs attributable to COVID-19. On October 27, 2020, the Commission issued PAA Order PSC-2020-0406-PAA-EI, approving Gulf's request. On November 17, 2020, the Office of Public Counsel (OPC) filed a Petition Protesting a Proposed Agency Action and requested an administrative hearing on the proposed action.

On August 3, 2020, Utilities Inc. of Florida (UIF) filed a petition for approval to establish a regulatory asset to record costs incurred due to COVID-19, and therein requested deferral of incremental bad debt expense, assorted operating expenses, and safety-related costs attributable to COVID-19. On October 26, 2020, the Commission issued PAA Order PSC-2020-0403-PAA-WS, approving UIF's request. On November 16, 2020, OPC filed a Petition Protesting a Proposed Agency Action and requested an administrative hearing on the proposed action.

On August 11, 2020, Florida Public Utilities Company, Florida Public Utilities Company – Indiantown Division, Florida Public Utilities Company – Fort Meade, and Florida Public Utilities Company – Electric Division, as well as the Florida Division of Chesapeake Utilities Corporation (collectively FPUC/CFG) filed a petition for approval to establish regulatory assets for each entity listed above to record costs incurred due to COVID-19. FPUC/CFG requested deferral of incremental bad debt expense, incremental operating expenses, and safety-related costs attributable to COVID-19. On October 26, 2020, the Commission issued PAA Order PSC-2020-0404-PAA-PU, approving the request of FPUC/CFG. On November 16, 2020, OPC filed a Petition Protesting a Proposed Agency Action and requested an administrative hearing on the proposed action.

On March 12, 2021, Docket Nos. 20200151-EI, 20200189-WU, and 20200194-PU were consolidated and scheduled for final hearing to commence June 16, 2021.<sup>1</sup>

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<sup>1</sup> Order No. PSC-2021-0104-PCO-PU.

On March 30, 2021, UIF filed a Notice of Voluntary Dismissal Without Prejudice in Docket No. 20200189-WS. The Commission is scheduled to take action on that Notice at the Agenda Conference on June 15, 2021, prior to the final hearing.

## **II. CONDUCT OF PROCEEDINGS**

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

## **III. JURISDICTION**

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapters 366 and 367, Florida Statutes (F.S.). This hearing will be governed by said Chapters and Chapters 25-6, 25-22, 25-30, 25-40, and 28-106, F.A.C., as well as any other applicable provisions of law.

## **IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION**

Information for which proprietary confidential business information status is requested pursuant to Section 366.093 or 367.156, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Subsection 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093 or 367.156, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Sections 366.093 and 367.156, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093 or 367.156, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing that has not been filed as prefiled testimony or prefiled exhibits, parties must follow the procedures for providing confidential electronic exhibits to the Commission Clerk prior to the hearing.

- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information must be presented by written exhibit.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

#### **V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES**

Testimony of all witnesses to be sponsored by the parties has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to three minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

**VI. ORDER OF WITNESSES**

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Mitchell Goldstein	GULF	1, 2, 3, 4, 5
J. Terry Deason	GULF	1, 3, 4, 5
Derrick M. Craig	FPUC	Issues 1 – 4
Michael D. Galtman	FPUC	Issues 1 and 3
Daniel J. Lawton	OPC	1 – 4
<u>Rebuttal</u>		
Mitchell Goldstein	GULF	1, 2, 3, 4, 5
J. Terry Deason	GULF & FPUC	1, 3, 4, 5
Michael D. Galtman	FPUC	Issues 1, 3, and 4
Derrick M. Craig	FPUC	Issues 2 and 4

**VII. BASIC POSITIONS**

**GULF:** In late 2019, a severe outbreak of the Novel Coronavirus Disease 2019, or COVID-19, began. Since the beginning of the outbreak, COVID-19 has spread internationally and to all 50 U.S. states. COVID-19’s severity and transmissibility caused the World Health Organization to classify COVID-19 as a pandemic.

The State of Florida has taken actions to reduce the virus’ impact on its residents. On March 1, 2020, Governor Ron DeSantis issued Executive Order number 20-51, directing the State Health Officer and Surgeon General to declare a public health emergency, and on March 9, 2020, the Governor issued Executive Order number 20-52 declaring the existence of a state of emergency in the State of Florida. On April 1, 2020, Governor DeSantis issued Executive Order number 2091 (the “Safer at Home Executive Order”), requiring that “all persons in Florida shall limit their movements and personal interactions outside of their home to only those necessary to obtain or provide essential services or conduct essential activities.” Most recently, on April 27, 2021, Governor DeSantis issued Executive Order number 21-94, extending the state of emergency declaration an additional 60 days.

In response to the significant economic and societal impact and increased unemployment attributable to COVID-19, Gulf Power announced on March 17, 2020 that it would suspend customer disconnections. The Company's decision to proactively suspend disconnections for non-payment of overdue balances was similar to actions taken by utilities across the country in response to COVID-19. The Company's announcement served as an extension of then-existing disconnect suspension that had been necessitated by the Company's implementation of its new customer billing system, Customer Account Management System ("CAMS"), in the first quarter of 2020.

Gulf Power has undertaken and continues to undertake safety-related actions to ensure its employees, contractors, and customers are protected from COVID-19. To this end, the Company has obtained materials and equipment to limit the potential spread of COVID-19 and has implemented a variety of practices at its facilities based on recommendations from the United States Centers for Disease Control and Prevention and Florida Department of Health.

Although Gulf Power was able to implement various measures to assist its customers during the pandemic, Gulf Power has incurred incremental operating costs that were not contemplated when base rates were last reset. These incremental costs were incurred due to this unique and unanticipated COVID-19 pandemic event beyond Gulf Power's control.

On May 22, 2020, Gulf Power filed a petition for approval to establish a regulatory asset to record costs incurred due to COVID-19, and therein requested deferral of incremental bad debt expense and safety-related costs attributable to COVID-19. On October 27, 2020, the Commission issued PAA Order PSC-2020-0406-PAA-EI, approving Gulf's request. On November 17, 2020, OPC filed a Petition Protesting a Proposed Agency Action and requested an administrative hearing on the proposed action.

Gulf Power has incurred two types of costs due to the impacts of COVID-19: 1) incremental bad debt expense and 2) incremental operating costs to preserve the health and safety of its employees, contractors and customers. Both types of costs are being deferred in Account 182.3, Other Regulatory Assets. As of February 28, 2021, the amount of the COVID-19 regulatory asset is \$17.6 million, representing incremental bad debt expense and COVID-19-related operating expenses, reduced by savings for travel and meals expenses. During March 2021, Gulf Power reviewed the status of savings on medical expenses achieved between April 2020 and February 2021. These savings were initially anticipated due to changes in timing, with the likelihood that such costs would increase in early 2021. Since no increase has occurred to date, Gulf Power made an entry in March 2021 to reduce the amount deferred to the COVID-19 regulatory asset by \$1.6 million, based on

the medical expense savings achieved each month versus the planned expense for that month, for the period April 1, 2020 through March 31, 2021.

Gulf Power proposes to cease deferring amounts to the COVID-19 regulatory asset on December 31, 2021, based on Gulf Power's forecast that the most significant impacts of COVID-19 will be concluded at that time and the fact that accounts receivable and bad debt are returning to historic levels and less need for the strict COVID operating protocols, which are currently remain in place. Gulf Power forecasts its total costs eligible for inclusion in the regulatory asset to be \$20.7 million at the end of 2021.

**FPUC:** As the Commission is well-aware, the impact of the Novel Coronavirus Disease 2019, or COVID-19, has been prolonged and devastating. While in recent months circumstances have suggested that there is an end in sight, the long-term effects of this extraordinary pandemic will likely be felt across businesses and the healthcare sector for an extended period of time.

At the outset of the COVID-19 pandemic, the FPUC Companies, consistent with the direction of their corporate parent Chesapeake's CEO and the corporation's Pandemic Response Plan, responded quickly to the first indications that COVID-19 was spreading from other countries. That response included a variety of safety measures on a multitude of fronts, including, among other things, enabling as many employees as possible to work from home, cancelling all business travel, stopping movement of employees between offices, postponing face to face meetings and events, instituting health reporting protocols, providing paid time off to employees that become infected or exposed to COVID-19 and could not work, providing needed personal protective equipment ("PPE") to employees, and implementing social distancing practices. For those employees unable to work from home due to the nature of their role with the companies, namely the Companies' field operations teams that must continue providing essential services, the FPUC Companies provided each such employee with social distancing and health protection training, as well as necessary PPE and disinfectant supplies consistent with the Centers for Disease Control ("CDC") guidelines. The FPUC Companies also effectuated a proactive economic response to the pandemic by temporarily suspending customer late fees and disconnections.

The FPUC Companies' proactive response to COVID-19, as well as the economic impacts of the virus, have, however, resulted in increased safety-related costs and a projected overall shortfall in customer bill payments. Consequently, the FPUC Companies anticipate their bad debt expense attributable to COVID-19 will be incrementally higher than the previous, three-year average. Coupled with the unusual, non-recurring safety-related expenses incurred to protect their customers and employees, the total COVID-19 related costs incurred by each of the FPUC Companies is expected to be notable and, in most cases, material. These unanticipated, extraordinary expenses include the additional costs of acquiring

PPE, as well as costs associated with enhanced cleaning and disinfecting, as well as the installation of protective barriers, at all office locations, in vehicles, and at associated utility facilities, consistent with CDC guidance. These costs also include incremental “hazard pay” for those essential employees required to remain “customer facing,” which the Companies determined was necessary and appropriate given the heightened risks and uncertain conditions these employees have faced due to the highly infectious nature of the COVID-19 virus. In addition, the amount that the Company seeks to include in the regulatory assets includes the loss of an insurance premium reduction that would have otherwise gone into effect but for the pandemic. These unique and extraordinary circumstances support the Companies’ categorization of these extraordinary costs as COVID-19, safety-related expenses.

As reflected in the testimony of FPUC Company witness Galtman, the incremental costs incurred in connection with the COVID-19 pandemic meet the requirements contained within the Uniform System of Accounts (“USOA”) for establishment of a regulatory asset. The profound and widespread impact of the COVID-19 pandemic on businesses and on day-to-day life demonstrates that the pandemic qualifies as an extraordinary event under applicable USOA accounting guidance. The incremental costs the FPUC Companies have incurred in order to continue to safely carry on operations during this pandemic are clearly unrelated to the ordinary and typical activities of the entity. As such, the costs are appropriately deemed “unusual.” Moreover, an event of this nature, scope, and impact has not previously occurred this century, and through the accelerated production of PPE and the distribution of vaccines, it is clear that efforts are being made to ensure that it does not recur. Thus, the infrequency of an event of this nature further qualifies this pandemic as being “extraordinary.”

As urged by joint rebuttal witness Deason, the Commission should not accept the additional standards or criteria proposed by the Office of Public Counsel’s (“OPC”) witness Lawton, because application of these additional criteria would distort the existing regulatory balance between customers and shareholders and likely impede the Commission’s ability to proactively respond to emergency conditions and set rates which are fair and reasonable. As also emphasized by witness Deason, safety and customer protection should be any utility’s top priority and a utility’s management should have the necessary tools in its toolbox to achieve this objective without the utility having to diminish its return in order to do what is right. The ability to establish a regulatory asset is precisely that necessary tool.

Allowing the Companies to establish the requested regulatory assets does not guarantee that the Companies will be allowed to recover all of the costs included in those assets. The Commission will have the ability to review the recoverability of the costs in an appropriate rate proceeding. Not allowing the Companies to establish the regulatory assets at all, whether by application of witness Lawton’s unnecessary additional criteria or not, would however turn the regulatory compact on its head



and virtually eliminate the usefulness of this accounting mechanism for the Companies. Thus, the Companies respectfully request that the Commission allow the Companies to establish the requested regulatory assets.

**OPC:** Utilities, Inc. of Florida (“UIF”) filed a Notice of Voluntary Dismissal on March 30, 2021, so its petition should not be considered at the hearing, and any issues proposed by UIF should be deemed denied. Prior to the hearing, an Order should be entered dismissing UIF from the proceedings and closing PSC Docket No. 20200189-WS.

As the Commission makes a determination on whether deferred accounting treatment should be approved, three basic standards or requirements should be applied, as follows: i) accounting requirements, ii) financial integrity requirements, and iii) the equity balance between customers and shareholder interests that all regulatory authorities must constantly weigh and evaluate. If a company’s proposal fails to satisfy any of these standards, then the request for this type of extraordinary deferral should be denied.

As to Gulf Power Company (“Gulf” or “the Company”), the Company has failed to meet its burden of proving that a regulatory asset should be established for the costs it claims to have incurred due to the COVID-19 pandemic. COVID-19 related costs may have been unexpected – not only for Gulf, but for all its customers who already paid for these very same costs through the rates established in Order No. PSC-20170178-S-EI and who also continue to pay for their own COVID-19 safety and pandemic-related costs. However, Gulf failed to show that its costs posed a threat to either Gulf’s financial integrity or that of Florida Power & Light Co. (“FPL”) after the merger of Gulf and FPL. In fact, the evidence indicates some of Gulf’s financial metrics improved during the pandemic, particularly as to cost savings and adjusted earnings. Gulf has failed to fully account for savings offsets in its claims for cost deferrals. Gulf earned well within its approved rate of return range during 2020, and is expected to earn in the upper half of its authorized equity return range in 2021. Gulf’s own information reveals that without deferral, its earnings inclusive of the COVID-19 expenses would still remain within the 200-basis point range of reasonableness established by the Commission. This means that Gulf will effectively already be recovering those costs. Deferring them and recovering them again from future customers means that Gulf’s customers essentially pay for the same expenses twice.

Simply put, Gulf does not need extraordinary assistance in the form of the accounting scheme requested in order to continue to operate safely and earn within the profit range that it agreed to in 2017. In contrast, many customers found their financial conditions deteriorated dramatically during the pandemic – many customers lost hours from work or even lost their jobs and income entirely. If Gulf is allowed to defer the claimed COVID-19 related costs, customers will suffer

additional harm in the form of paying twice for the same costs; the result would render the rates Gulf agreed to unfair and unreasonable, and directly contrary to statutory requirements governing utility regulation and rates.

Even if Gulf is allowed to establish a regulatory asset, Gulf should only be allowed to defer costs directly related to COVID-19 related bad debt and tangible safety equipment and supplies. Items such as incentive pay, insurance, meals and entertainment, etc. should be disallowed.

As for Florida Public Utility Company (“FPUC”), i.e., Florida Public Utility Company (Electric Division), Florida Public Utilities Company (Gas Division), Florida Public Utilities Company – Indiantown (Gas Division), Florida Public Utilities Company – Ft. Meade (Gas Division), and Florida Division of Chesapeake Utilities Corporation, they have failed to provide sufficient support to justify extraordinary deferred accounting treatment. FPUC’s requests fail to satisfy all three of the following standards – (i) accounting requirements, ii) financial integrity requirements, and iii) the equity balance between customers and shareholder interests – therefore FPUC’s requests for extraordinary deferred accounting for COVID-19 related costs should be denied.

FPUC’s requests include O&M costs that are marginally related to, or unnecessary for its response to, the COVID-19 pandemic and therefore should be removed. The remaining legitimate COVID-19 related O&M expense category, when offset for COVID-19 related savings, yields an overall negative cost. In addition, FPUC’s attempt to quantify actual bad debts is merely an estimate and not based on actual write-offs and are overstated; thus, it is difficult to determine a reasonable level of bad debt for 2020. If a regulatory asset is to be contemplated, FPUC should be required to provide actual 2020 write-offs for 2020 and limit costs to only safety-related COVID-19 costs. However, FPUC has not provided sufficient evidence that the COVID-19 impact is material and qualifies for a deferral. In any case, FPUC has failed to satisfy the financial integrity requirement, in that FPUC acknowledged its financial integrity is not threatened by the claimed COVID-19 costs. Thus, there is no basis for FPUC to be granted deferred accounting in this case.

Since the temporary downturn of the U.S. economy in March 2020, both the country and Florida have made substantial, albeit not complete, recovery. While some electric utilities did see stock price declines in 2020, NextEra (Gulf’s parent company) did not suffer stock price losses. Given the continued improvement from June 2020 through the first quarter of 2021, FPUC’s projections of worsening costs through the end of 2020 is highly questionable. Moreover, it is highly suspect that either utility will experience any significant on-going COVID-19 expenses as the economy continues to reopen fully. On May 3, 2021 Florida’s Governor issued executive orders which invalidated local emergency orders (effective July 1, 2021) and suspended local mandates and restrictions (effective immediately). As such,

Gulf and FPUC (“the Utilities”) should be prohibited from deferring to a regulatory asset any costs incurred after July 1, 2021. Moreover, utility cost of capital actually declined during 2020 as a result of COVID-19 impacts on the economy and Federal Reserve’s monetary policy responses. In general, no particular hardship impacts have directly affected the utility industry. However, individuals and small businesses, the Utilities’ customers, have suffered significant economic impacts from COVID-19. If the deferred regulatory assets for COVID-19 costs are authorized for Gulf and FPUC, in lieu of their normal, required expensing in the period incurred, the costs will be recovered again from these suffering customers in future rates just so that these Companies can enhance their average overall rate of return during a pandemic. Therefore, Gulf’s and FPUC’s requests for deferred accounting treatments should be denied.

**STAFF:** Staff’s positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff’s final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

### **VIII. ISSUES AND POSITIONS**

**ISSUE 1: Should the Commission approve the Companies’ requests to establish regulatory assets to defer, track, and record COVID-19 related costs?**

**GULF:** Yes. Such approval is consistent with the Commission’s ratemaking authority and its prior decisions, and approval of the request is appropriate under the circumstances presented by the pandemic. Gulf Power’s current rates were not set to recover an unanticipated increase in costs such as those incurred due to the pandemic; and, as such, these costs will never be recovered in rates unless they are identified and booked to a regulatory asset. Approval of Gulf Power’s request sends the message that the Commission encourages its utilities to expeditiously take all reasonable steps as Gulf Power did in an emergency situation to protect customers, employees, and contractors, and to continue to provide customers with reliable service. (Goldstein, Deason)

**FPUC:** Yes. The identified costs are incremental, not recovered in the Companies’ current rates, are the product of an unusual, infrequent event, and are appropriately deemed extraordinary. (Craig, Galtman, Deason)

**OPC:** No. The Commission should not approve the establishment of a regulatory asset unless each Company satisfies its burden of proof regarding accounting standard requirements, financial integrity criteria, and the appropriate balancing of equities between the Company and its customers. Gulf and FPUC failed to prove requisite elements of their requests; therefore, the Commission should not authorize deferral or establishment of regulatory assets. (Lawton)

**STAFF:** No position at this time pending evidence adduced at hearing.

**ISSUE 2: If the Commission approves the requests, when should the recording of costs included in the regulatory assets commence?**

**GULF:** As preliminarily approved by the Commission in Order No. PSC-2020-0406-PAA-EI, the recording of COVID-19-related costs included in the regulatory asset should commence on April 1, 2020. Such amounts have been reported to the Commission in a schedule included along with Gulf Power's monthly earnings surveillance reports, beginning in July 2020. (Goldstein)

**FPUC:** The Companies should be allowed to record costs beginning March 9, 2020. (Craig)

**OPC:** No earlier than the effective date of the order in this docket. (Lawton)

**STAFF:** No position at this time pending evidence adduced at hearing.

**ISSUE 3: If the Commission approves the requests, what type of costs should be eligible for inclusion in the regulatory assets?**

**GULF:** The types of costs that should be eligible for inclusion in the regulatory asset due to the impacts of COVID-19 include incremental bad debt expense and incremental safety-related costs to preserve the health and safety of Gulf Power's employees, contractors and customers, reduced by savings for travel and meals expenses, and medical expenses. (Goldstein, Deason)

**FPUC:** The Companies should be allowed to include COVID-19 safety-related costs such as those described in the Direct Testimony of Witness Derrick Craig and the Rebuttal Testimony of Witness Michael Galtman. Those costs should include costs associated with acquiring PPE, implementing enhanced safety and cleaning protocols, and bad debt expense. Given the unique nature of this event, the Companies should also be allowed to include hazard pay for its essential, customer-facing employees, and its loss of an otherwise certain insurance premium reduction, as COVID-19 safety-related costs. (Craig, Galtman, Deason)

**OPC:** COVID-19 related bad debt, COVID-19 related safety equipment and supplies. The Commission should deny carrying charges for the subject COVID-19 related costs. (Lawton)

**STAFF:** No position at this time pending evidence adduced at hearing.

**ISSUE 4:** **If the Commission approves the requests, should the Companies be required to file reports detailing the status of their respective regulatory assets? If so, what information should be included in these reports, and how frequently should the reports be filed?**

**GULF:** Such amounts have been reported to the Commission in a schedule included along with Gulf Power's monthly earnings surveillance reports, beginning in July 2020. Gulf Power anticipates that the last report will be filed with its December 2021 earnings surveillance report. (Goldstein, Deason)

**FPUC:** The FPUC Companies agree that it would be appropriate to require the filing of reports. The reports should detail the incremental amounts associated with the types of costs allowed to be included in the regulatory assets. The incremental amounts should be based upon a three-year average for the Companies. The reports should also detail incremental savings determined on the same, three-year-average basis. The FPUC Companies should be required to maintain records supporting the entries so that they can furnish full information as to the nature and amount of each cost in the regulatory assets, including justification for inclusions of such amounts. The Companies suggest that the reports be required on a quarterly basis, and that the Companies be allowed to cease filing such reports once they have ceased accruing amounts to the regulatory assets and have submitted a final report. (Craig, Galtman, Deason)

**OPC:** Yes. The Companies' reports should be filed monthly to the respective open Regulatory Asset dockets (20200151 and 20200194). Counsel for all parties and interested persons should be served directly, rather than Companies filing the reports in the "undocketed" docket or as attachments to Electronic Surveillance Reports. (Lawton)

**STAFF:** No position at this time pending evidence adduced at hearing.

**ISSUE 5:** **If the Commission approves the requests, what are the total costs eligible for recovery?**

**GULF:** The total amount of costs eligible for recovery is \$20.7 million. This amount includes actual incremental bad debt expense and COVID-related safety costs, less savings, as of February 28, 2021 totaling \$17.6 million, and Gulf Power's reasonable forecast of costs, less forecasted savings, through the end of 2021. (Goldstein)

**FPUC:** The FPUC Companies are unable to take a position on this issue at this time, as the Companies have not reached a final determination of the amounts at issue. As such, the Companies respectfully ask that this issue, requested by Gulf, be treated as a Gulf-specific issue.

**OPC:** The Companies have the burden of proof on this issue. The total costs eligible for recovery will depend on the Commission's determinations regarding Issue 3 and the sufficiency of proof submitted by each of the Companies.

**STAFF:** No position at this time pending evidence adduced at hearing.

**ISSUE 6: Should these dockets be closed?**

**GULF:** Yes. (Goldstein, Deason)

**FPUC:** Yes, once the Commission has issued its final decision in this proceeding and the time period for reconsideration and appeal have run. (Deason)

**OPC:** No.

**STAFF:** No position at this time pending evidence adduced at hearing.

**IX. EXHIBIT LIST**

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
<u>Direct</u>			
Mitchell Goldstein	GULF	MG-1	Gulf Power's COVID costs by category
Daniel J. Lawton	OPC	DJL-1	Resume
Daniel J. Lawton	OPC	DJL-2	Economic Reports and Statistics

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination. The procedure for submitting exhibits to be used during cross-examination are set forth in Attachment A to this Prehearing Order.

**X. PROPOSED STIPULATIONS**

There are no proposed stipulations at this time.

**XI. PENDING MOTIONS**

There are no pending motions at this time.

## **XII. PENDING CONFIDENTIALITY MATTERS**

There are no pending confidentiality matters at this time.

## **XIII. POST-HEARING PROCEDURES**

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The Office of Public Counsel may submit a post-hearing statement of no more than 75 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time. The Office of Public Counsel may submit a brief of no more than 60 pages.

## **XIV. RULINGS**

- Opening statements, if any, shall not exceed five minutes per party. The Office of Public Counsel's opening statement, if any, may not exceed seven minutes.
- Gulf has requested inclusion of Issue 5 on the total amount of costs related to COVID-19 that are eligible for recovery. Because a determination of total costs was not pleaded by Gulf in its Petition, was not previously presented to the full Commission for consideration, and is not part of the PAA Order here under protest, due process and notice concerns preclude final adjudication of that issue in this docket. However, based on the representations by counsel for Gulf/FPL at the Prehearing Conference, and the concurrence of OPC, I find a limited consideration of total costs in this docket is appropriate and may assist the Commission in its deliberation of Issues 1- 4. Accordingly, Issue 5 is included, with the following qualifications:
  1. "Total costs eligible for recovery" represents a presumptive maximum or ceiling above which recovery will not be sought as part of this regulatory asset;
  2. All parties to the docket in which Gulf seeks cost recovery, as well as Commission staff, will be afforded the right to conduct full discovery regarding the individual costs that comprise total requested recovery;

3. The Commission may modify or adjust any of the individual costs included in the total amount in a subsequent proceeding in which cost recovery is sought; and
4. The prudence of Gulf's incurred costs is not at issue in this docket, nor does a finding of prudence attach to the amount of total costs ultimately decided by the Commission for this issue.

This issue is specific to Gulf. FPUC is not seeking a determination of total costs.

- OPC has requested inclusion of its proposed Issue, "What criteria should the Commission apply in determining whether to establish a Covid-19 regulatory asset?" Having heard the positions of the parties and staff at the Prehearing Conference, I find that the arguments OPC represents it will advance under its proposed Issue may be addressed in Issue 1. This additional issue is not necessary and will not promote a more efficient proceeding. Accordingly, this proposed Issue will not be included.
- The parties shall provide cross-examination exhibits, including impeachment exhibits, to the Commission Clerk by close of business on June 9, 2021, following the procedures set forth in Attachment A. The exhibits that are pre-filed and designated as cross-examination or impeachment exhibits shall not be viewed by opposing witnesses or opposing counsel or otherwise have their contents or identity communicated to such witnesses or counsel.

It is therefore,

ORDERED by Commissioner Andrew Giles Fay, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.



By ORDER of Commissioner Andrew Giles Fay, as Prehearing Officer, this 8th day of June, 2021.



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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

SPS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Subsection 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

**ATTACHMENT A**

Requirements related to providing Cross-Examination Exhibits prior to Hearing

By June 9, 2021, each party must provide the Commission Clerk an electronic copy of all cross-examination exhibits, including impeachment exhibits, the party plans to use during the hearing. All cross-examination exhibits must be provided to the Clerk's Office on either USB flash drives or CDs. Confidential documents must be placed on one USB flash drive or CD, and non-confidential exhibits must be placed on a different or separate USB flash drive or CD. This is because the Clerk's Office will process the confidential exhibits, and will transmit all non-confidential exhibits to the General Counsel's Office for processing. All USB flash drives or CDs provided to the Clerk's Office must be clearly labeled as confidential or non-confidential, and the label must also include the Docket Number(s) and the name of the party providing the exhibits.

Each party must also provide to the Clerk by close of business June 9, 2021, a table listing the exhibit numbers and short titles of each cross-examination exhibit provided to the Clerk. Pursuant to Rule 25-22.006(3), F.A.C., a notice of intent to request confidential classification must be filed for all confidential information.

Each party must pre-number each exhibit with the following sequential numbering system that clearly denotes confidential exhibits. For example, Gulf Power Company will pre-identify its cross-examination exhibits GULF-1, GULF-2, GULF-3, etc. All confidential exhibits must include the letter "C" placed after the number. Thus, if Gulf's third exhibit is confidential, it will be labeled GULF-3C.

Each exhibit must be saved as a separate electronic file, and each file must be labeled with the exhibit number that reflects the information contained in the exhibit. The exhibit number will serve as the filename in the virtual folder during the hearing. Each exhibit must also include a cover page that includes the exhibit number. In addition, each exhibit must include sequentially numbered pages. The page numbers must be placed in the upper right-hand corner of each page.

The confidential and non-confidential cross-examination exhibits will be made available to the parties in virtual folders the day before the hearing. The cross-examination exhibits will be made available to the parties for the sole purpose of providing the witnesses and their counsel with the opportunity to print the exhibits or download them to their electronic devices for use during the hearing. The parties must not view or read the exhibits prior to the hearing. Parties will be provided usernames and passwords by Commission staff that will give them access to the confidential exhibits and any other confidential information that will be used during the hearing. By close of business June 9, 2021, parties must provide the Commission Clerk with the list of names of those persons who should be given a user name and password to access confidential information.