

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

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  
ORDER NO. PSC-2021-0266-S-PU  
ISSUED: July 22, 2021

The following Commissioners participated in the disposition of this matter:

GARY F. CLARK, Chairman  
ART GRAHAM  
ANDREW GILES FAY  
MIKE LA ROSA  
GABRIELLA PASSIDOMO

APPEARANCES:

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

BETH KEATING, ESQUIRE, Gunster, Yoakley & Stewart P.A., 215 South Monroe Street, Suite 601, Tallahassee, Florida 32301  
On behalf of Florida Public Utilities Companies (FPUC).

RICHARD GENTRY, CHARLES REHWINKEL, STEPHANIE MORSE, ANASTACIA PIRRELLO, AND PATRICIA A. CHRISTENSEN, ESQUIRES, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400  
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, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

Advisor to the Florida Public Service Commission.

KEITH HETRICK, ESQUIRE, General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
Florida Public Service Commission General Counsel

FINAL ORDER APPROVING STIPULATION AND SETTLEMENT  
BETWEEN FLORIDA PUBLIC UTILITIES COMPANY  
AND OFFICE OF PUBLIC COUNSEL

BY THE COMMISSION:

BACKGROUND

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) filed a petition for approval to establish regulatory assets for each entity listed above to record costs incurred due to COVID-19. FPUC 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. On November 16, 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 March 12, 2021, this docket was consolidated with Docket Nos. 20200151-EI and 20200189-WU and scheduled for final hearing to commence June 16, 2021.<sup>1</sup>

On June 11, 2021, FPUC and OPC filed a Joint Motion for Approval of a Stipulation and Settlement Agreement (Settlement) dated June 11, 2021, which resolved all outstanding issues in the case. A copy of the Settlement is appended to this order as Attachment A. A final hearing on the Settlement was held on July 8, 2021. At the final hearing, the testimonies of Michael D. Galtman, Derrick M. Craig, and J. Terry Deason on behalf of FPUC, and Daniel J. Lawton on behalf of OPC, were admitted into the record as though read. A Comprehensive Exhibit List was also admitted into the record as well as the exhibits identified thereon. The parties, supporting the Settlement, waived the right to file post-hearing briefs, and a bench vote was taken at the conclusion of the hearing.

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<sup>1</sup> On March 30, 2021, Utilities, Inc. of Florida filed a Notice of Voluntary Dismissal Without Prejudice of its Petition filed in Docket No. 20200189-WS, which dismissal was acknowledged by the Commission in Order No. PSC-2021-0241-FOF-WS, issued July 1, 2021. Gulf Power Company and OPC entered into a Stipulation and Settlement Agreement in Docket No. 20200151-EI, which was approved by unanimous vote of the Commission on July 8, 2021.

We have jurisdiction pursuant to Sections 366.04, 366.05, and 366.06, Florida Statutes.

### DECISION

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 due to COVID-19. 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. The Governor signed several Executive Orders extending the state of emergency. The final sixty-day extension expired June 26, 2021, at which time the state of emergency was lifted.

During the state of emergency, many local governments throughout the State enacted ordinances implementing heightened safety requirements. FPUC undertook numerous measures to comply with these mandates and also to protect its employees and customers independent of and in addition to direct government requirements. During this same period, FPUC experienced an increase in unpaid, past due balances due to the economic downturn and negative impacts on customers resulting from the pandemic.

FPUC sought to establish a regulatory asset to record and ultimately recover the above-referenced safety-related expenses and incremental increase in bad debt. FPUC also sought to record and recover amounts related to an alleged reduced insurance premium, hazard pay, health claims, communication, consulting, legal, and a category labelled “other.” OPC protested numerous aspects of the request made by FPUC. As a resolution of these disputes, the parties executed the attached Settlement, which contains the following material terms:

- FPUC may establish a regulatory asset in a total amount of \$2,085,759, as full recovery of all safety-related expenses and incremental bad debt incurred due to COVID-19 through June 30, 2021. All other COVID-19 related costs incurred by FPUC prior to June 30, 2021, are deemed to have been fully recovered through other savings and are not eligible for future recovery.
- Any COVID-19 related expenses incurred after June 30, 2021, shall be deemed a different event.
- FPUC shall be allowed to amortize and recover the regulatory asset over two years through the Purchased Gas Adjustment and Swing Service mechanisms for the natural gas business units and the Fuel and Purchased Power Cost Recovery clause mechanism for the electric division beginning with the factors established for the calendar year 2022.

The standard for approval of a settlement agreement is whether it is in the public interest.<sup>2</sup> A determination of public interest requires a case-specific analysis based on

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<sup>2</sup> Order No. PSC-2017-0488-PAA-EI, issued December 26, 2017, in Docket No. 20170150-EI, *In re: Petition for limited proceeding to include reliability and modernization projects in rate base, by Florida Public Utilities*

consideration of the proposed settlement taken as a whole.<sup>3</sup> The costs at issue in this proceeding were incurred by FPUC as a result of COVID-19. OPC and Commission staff have conducted extensive discovery in this case and have reviewed detailed material concerning COVID-19 related costs supplied by FPUC. After this extensive review, as statutory representative of Florida's citizens, OPC negotiated this Settlement of all issues. In light of OPC's participation in this Settlement of issues relating to customer and employee health and safety and the unforeseen economic impacts caused by a pandemic, we find that the Settlement when taken as a whole provides a reasonable resolution of issues regarding the recovery of costs incurred due to COVID-19. Therefore, we find that the Settlement is in the public interest and hereby approve it.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Joint Motion of Office of Public Counsel and Florida Public Utilities Company for Approval of Stipulation and Settlement Agreement is hereby granted. It is further

ORDERED that the Stipulation and Settlement Agreement, attached hereto as Attachment A, and incorporated by reference, is hereby approved. It is further

ORDERED that the effective date of the Stipulation and Settlement Agreement, attached hereto as Attachment A, and incorporated by reference, shall be July 8, 2021.

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*Company*; Order No. PSC-13-0023-S-EI, issued on January 14, 2013, in Docket No. 120015-EI, *In re: Petition for increase in rates by Florida Power & Light Company*; Order No. PSC-11-0089-S-EI, issued February 1, 2011, in Docket Nos. 080677 and 090130, *In re: Petition for increase in rates by Florida Power & Light Company and In re: 2009 depreciation and dismantlement study by Florida Power & Light Company*; Order No. PSC-10-0398-S-EI, issued June 18, 2010, in Docket Nos. 090079-EI, 090144-EI, 090145-EI, 100136-EI, *In re: Petition for increase in rates by Progress Energy Florida, Inc., In re: Petition for limited proceeding to include Bartow repowering project in base rates, by Progress Energy Florida, Inc., In re: Petition for expedited approval of the deferral of pension expenses, authorization to charge storm hardening expenses to the storm damage reserve, and variance from or waiver of Rule 25-6.0143(1)(c), (d), and (f), F.A.C., by Progress Energy Florida, Inc., and In re: Petition for approval of an accounting order to record a depreciation expense credit, by Progress Energy Florida, Inc.*; Order No. PSC-05-0945-S-EI, issued September 28, 2005, in Docket No. 050078-EI, *In re: Petition for rate increase by Progress Energy Florida, Inc.*

<sup>3</sup> Order No. PSC-13-0023-S-EI, at p. 7.

By ORDER of the Florida Public Service Commission this 22nd day of July, 2021.

  
ADAM J. TEITZMAN  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
www.floridapsc.com

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 Section 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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

## **ATTACHMENT A**

Docket No. 20200151-EI - In re: Petition for approval of a regulatory asset to record costs incurred due to COVID-19, by Gulf Power Company.

### **STIPULATION AND SETTLEMENT**

**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

Date: June 15, 2021

**STIPULATION AND SETTLEMENT BETWEEN GULF POWER COMPANY  
AND THE OFFICE OF PUBLIC COUSEL**

**WHEREAS**, Gulf Power Company (herein, “Gulf Power”) and the Office of Public Counsel (“OPC”) have signed this Stipulation and Settlement regarding Gulf Power’s request for relief, which initiated Docket No. 20200151-EI, (“Gulf COVID-19 Settlement”); and

**WHEREAS**, unless the context clearly intends otherwise, the term “Party” or “Parties” shall mean a signatory or signatories to this Gulf COVID-19 Settlement; and

**WHEREAS**, on March 9, 2020, the Governor issued Executive Order Number 20-52, declaring a state of emergency for the State of Florida as a result of Novel Coronavirus Disease 2019, or COVID-19; and

**WHEREAS**, due to emergency orders and ordinances issued by counties and municipalities throughout the State of Florida, many Florida citizens and businesses were greatly impacted by closure of certain businesses and/or restrictions on businesses causing significant economic impacts as well as health impacts due to the COVID-19 pandemic; and

**WHEREAS**, many Florida citizens and businesses have experienced a substantial reduction or loss of income due to the COVID-19 restrictions and these some of citizens and businesses are located in Gulf Power's service territories; and

**WHEREAS**, due to the pandemic's economic impacts on Gulf Power's customers, Gulf Power experienced increases in bad debt expense; and

**WHEREAS**, Gulf Power incurred additional costs related to COVID-19 to ensure the safety of its employees, contractors, and customers during the COVID-19 pandemic; and

**WHEREAS**, the impact of the COVID-19, has been prolonged and devastating with lasting, long-term effects both nationally and globally especially for many individuals that are residential customers and small business customers; and

**WHEREAS**, on May 22, 2020, Gulf Power petitioned the Florida Public Service Commission ("Commission") for approval to establish a regulatory asset for the incremental bad debt expense and safety-related costs attributable to COVID-19; and

**WHEREAS**, on October 27, 2020, the Commission issued Order No. PSC-2020-0406-PAA-EI ("PAA Order") allowing Gulf Power to establish a regulatory asset, and record certain incremental costs in that regulatory asset, for bad debt and safety-related costs directly and solely attributable to the health and safety of Gulf Power's employees, contractors and customers during the COVID-19 pandemic; and

**WHEREAS**, by its PAA Order, the Commission also required Gulf Power to track and report on any assistance or benefits, regardless of form or source, that would offset any COVID-19 related expenses including but not limited to any cost savings directly attributable to COVID-19; and

**WHEREAS**, the OPC protested the PAA Order on November 17, 2020; and



**WHEREAS**, Docket No. 20200151-EI addressing Gulf Power's requests was consolidated with the additional referenced dockets for purposes of hearing by Order No. PSC- 2021-0104-PCO-PU, issued March 12, 2021; and

**WHEREAS**, by Order No. PSC-2021-0104-PCO-PU, as amended by Order No. PSC- 2021-0104A-PCO-PU, the consolidated dockets were scheduled for an administrative hearing on June 16, 2021; and

**WHEREAS**, pursuant to the Prehearing Officer's scheduling orders, Gulf Power and OPC have submitted the testimony and exhibits of their respective witnesses; and

**WHEREAS**, extensive discovery has been conducted as it pertains to Docket No. 20200151-EI; and

**WHEREAS**, after full and extensive review of the testimony and discovery produced, the Parties have engaged in good faith discussion and have reached a full and complete resolution of all matters in Docket No. 20200151-EI; and

**WHEREAS**, the legal system, as well as the Commission, favors settlement of disputes, including interim solutions, for a variety of reasons, including that they are in the public interest; and

**WHEREAS**, the Parties to this Gulf COVID-19 Settlement, individually and collectively, agree that this Gulf COVID-19 Settlement, when taken as a whole, is in the public interest; and

**WHEREAS**, the Parties are not in agreement on all legal and policy questions raised in these proceedings, but have mutually agreed in compromise, without conceding either Party's position on the legal and policy questions is correct, to adjustment to the amount requested for recovery by Gulf Power to be included in the regulatory asset, as well as a mechanism for recovery of the amount of the regulatory asset; and

**WHEREAS**, the Parties have entered into the Gulf COVID-19 Settlement in compromise of positions taken in accord with their rights and interests under Chapters 350, 366 and 120, Florida Statutes, as applicable, and as part of a negotiated exchange of consideration among the Parties, each Party has agreed to concessions to the others with the expectation, intent, and understanding such that all provisions of this Gulf COVID-19 Settlement, upon approval by the Commission, will be enforced by the Commission as to all matters addressed herein with respect to both Parties;

**NOW THEREFORE**, in consideration of the foregoing and the covenants contained herein, the Parties hereby stipulate and agree as follows:

I. Establishment of Regulatory Asset

1. The Parties agree that Gulf Power may establish a regulatory asset in a total amount not to exceed \$13,200,000, which shall be deemed the appropriate amount as of June 30, 2021.

2. The regulatory asset amount includes COVID-19 related incremental bad debt and safety-related expenses.

3. Gulf Power will not record any further amounts to the regulatory asset after June 30, 2021. Any incremental costs associated with the COVID-19 pandemic or otherwise incurred after June 30, 2021 and through December 31, 2021 will be deemed a separate event by the Parties and already recovered through base rates.

4. The Parties have agreed that, beginning on January 1, 2022, with the factors established for the calendar year 2022, Gulf Power shall be allowed to amortize over three years and recover the regulatory asset established consistent with the provisions of this Gulf COVID-19 Settlement through the Fuel and Purchased Power Cost Recovery clause mechanism.

5. The carrying cost on unamortized amount of the regulatory asset shall be set at the 2022 test year embedded long term cost of debt of 3.61 %, as proposed in Docket No. 20210015-EI, and shall be subject to annual adjustment.

II. Additional Commitments

6. Nothing in this Gulf COVID-19 Settlement will have precedential value.

7. The Parties' agreement to the terms in the Gulf COVID-19 Settlement shall be without prejudice to any Party's ability to advocate a different position in future proceedings not involving this Gulf COVID-19 Settlement or pending or future proceedings involving other utilities. The Parties further expressly agree that no individual provision, by itself, necessarily represents a position of any Party in any future proceeding, and the Parties further agree that no Party shall assert or represent in any future proceeding in any forum that another Party endorses any specific provision of the Gulf COVID-19 Settlement by virtue of that Party's signature on, or participation in, this Gulf COVID-19 Settlement. The parties agree that no Party will cite or use this settlement agreement in any forum to assert the proper use of a regulatory asset. It is the intent of the Parties to this Gulf COVID-19 Settlement that the Commission's approval of all the terms and provisions of this Gulf COVID-19 Settlement is an express recognition that no individual term or provision, by itself, necessarily represents a position, in isolation, of any Party or that a Party to this Gulf COVID-19 Settlement endorses a specific provision, in isolation, of this Gulf COVID-19 Settlement by virtue of that Party's signature on, or participation in, this Gulf COVID-19 Settlement.

8. The Parties agree the direct and rebuttal testimony of Gulf Power's witness Goldstein, the direct testimony of Gulf Power witness Deason, and the rebuttal testimony of joint witness Deason, as it pertains to Gulf Power, as well as the direct testimony of OPC witness

Lawton may be entered into the record of this consolidated proceeding, along their exhibits and the Gulf Power related exhibits on the stipulated Comprehensive Exhibit List.

9. Approval of this Gulf COVID-19 Settlement resolves all issues in this proceeding. The Parties agree that approval of the Gulf COVID-19 Settlement will avoid additional litigation costs for the Parties. The Parties agree to waive:

- i. All notice requirements for a hearing as set forth in Section 120.569(2)(b), Florida Statutes, or other applicable law;
- ii. Their right to require a hearing on the merits;
- iii. Their respective rights to seek reconsideration of any Final Order that approves the Gulf COVID-19 Settlement in its entirety without change; and
- iv. Their respective right to judicial review of any such final agency action approving the Gulf COVID-19 Settlement afforded by Section 120.68, Florida Statutes.

10. The Parties further agree they will support the Gulf COVID-19 Settlement and affirmatively assert that this Gulf COVID-19 Settlement is in the public interest and should be approved. The Parties likewise agree and acknowledge that the Commission's approval of this Gulf COVID-19 Settlement promotes planning and regulatory certainty for both Gulf Power and its customers.

11. The effective date of the Gulf COVID-19 Settlement shall be the date of the Commission's vote approving this Gulf COVID-19 Settlement.

12. The provisions of the Gulf COVID-19 Settlement are contingent upon approval by the Commission of the Gulf COVID-19 Settlement in its entirety without modification, which the Parties agree is in this public interest. Approval of this Gulf COVID-19 Settlement will resolve all matters and issues in Docket 20200151-EI.

*[SIGNATURE PAGES FOLLOW]*

In Witness Whereof, the Parties evidence their mutual acceptance and agreement with the provisions of this Gulf COVID-19 Settlement by their signature

Dated this 15<sup>th</sup> day of June, 2021

**Gulf Power Company**

**Office of Public Counsel**

By: 

By: 

**Russell Badders,  
Vice President & Associate General Counsel**

**Richard Gentry,  
Public Counsel**