



April 7, 2020

**VIA ELECTRONIC FILING**

Mr. Adam Teitzman  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**Re: Docket No. 20200070-EI**

Dear Mr. Teitzman:

Enclosed for filing in the above referenced docket is Gulf Power Company's Response in Opposition to the Office of Public Counsel's Motion to Modify the Discovery Deadlines or, in the Alternative, to Extend the Due Dates for Testimony and Exhibits Established by the Order No. PSC 2020-0073-PCO-EI.

Please contact me if you or your Staff has any questions regarding this filing.

Sincerely,

/s/ Jason A. Higginbotham  
Jason A. Higginbotham

Enclosure

cc: Counsel for Parties of Record

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Review of 2020-2029 Storm Protection  
Plan pursuant to Rule 25-6.030, F.A.C., Gulf  
Power Company

Docket No. 20200070-EI

Filed: April 7, 2020

**GULF POWER COMPANY’S RESPONSE IN OPPOSITION TO THE  
OFFICE OF PUBLIC COUNSEL’S MOTION TO MODIFY DISCOVERY DEADLINES,  
OR IN THE ALTERNATIVE, TO EXTEND THE DUE DATES FOR TESTIMONY AND  
EXHIBITS ESTABLISHED BY ORDER NO. PSC 2020-0073-PCO-EI**

Gulf Power Company (“Gulf”), by and through its undersigned counsel, pursuant to Rule 28-106.204(1), Florida Administrative Code (“F.A.C.”), hereby files this Response in Opposition to the Office of Public Counsel’s (“OPC”) Motion to Modify the Discovery Deadlines or, in the Alternative, to Extend the Due Dates for Testimony and Exhibits Established by the Order No. PSC 2020-0073-PCO-EI (“OEP”). OPC’s request to shorten the discovery deadlines from twenty (20) days, as established by the OEP, to ten (10) days focuses solely on alleged impacts to OPC and fails to consider and reasonably balance the prejudicial impacts that OPC’s request would have on any other stakeholder. Moreover, OPC has failed to demonstrate good cause for its request to shorten the discovery deadlines as required by Rule 28-106.204(4), F.A.C. For these reasons, as further explained below, Gulf objects to OPC’s request to modify the discovery deadlines established by the OEP. However, in a cooperative effort to accommodate certain concerns alleged in OPC’s Motion, and to reasonably balance and account for the impacts to all stakeholders, Gulf has no objection to OPC’s alternative request to extend the due dates for testimony by ten (10) days provided that the due dates for Staff’s testimony and Gulf’s rebuttal testimony are extended by an equal number of days. In support, Gulf states as follows:

## **I. BACKGROUND**

1. On June 27, 2019, the Governor of Florida signed CS/CS/CS/SB 796 addressing Storm Protection Plan Cost Recovery, which was codified in Section 366.96, Florida Statutes (“F.S”). Therein, the Florida Legislature directed each investor owned utility (“IOU”) to file a transmission and distribution storm protection plan (“SPP”) that covers the immediate 10-year planning period and explains the systematic approach the utility will follow to achieve the legislative objectives of reducing restoration costs and outage times associated with extreme weather events and enhancing reliability. Section 366.96(3), F.S.

2. The Florida Legislature directed the Commission to propose rules to implement and administer Section 366.96 as soon as practicable but no later than October 31, 2019. Consistent with this mandate, the Commission initiated a rulemaking and voted to adopted proposed Rules 25-6.030 and 25-6.031, F.A.C., at its October 3, 2019 Agenda Conference. However, as a result of OPC’s challenges to the Commission’s proposed SPP Rules, including an appeal to and hearing before the Department of Administrative Hearings, which were denied, the SPP Rules did not become final and effective until February 18, 2020. As such, the Commission could not open the SPP dockets until after the February 18, 2020 effective date of the SPP Rules.

3. On February 26, 2020, Staff held an informal meeting with all stakeholders to discuss the schedule and filings deadlines for the utilities’ SPP. During this meeting, the participating stakeholders reached a consensus as to the initial filing date for the IOU’s SPPs, and the individual dockets were opened on March 3, 2020.

4. Pursuant to Sections 366.96(5) and 366.96(6), F.S., the Commission is required to determine whether it is in the public interest to approve, approve with modification, or deny each IOU’s SPP no later than 180 days after the IOU files a SPP that contains all of the elements required by Commission’s SPP Rules.

5. On March 11, 2020, the Prehearing Officer issued the OEP that adopted a procedural schedule consistent with the SPP filing date agreed to by the stakeholders at Staff's February 26, 2020 Informal Meeting, as well as the statutory requirement for the Commission to rule on each SPP within 180 days from the filing date. The OEP established the following key dates:

IOU Petition, SPP, and Testimony	April 10, 2020
Intervenor Testimony	May 15, 2020
Staff Testimony	May 29, 2020
Rebuttal Testimony	June 15, 2020
Prehearing Statements	July 14, 2020
Discovery Deadline	July 21, 2020
Prehearing Conference	July 28, 2020
Hearing	August 10-13, 2020
Post Hearing Briefs	September 4, 2020

6. Additionally, the OEP modified the time to respond to discovery from the standard thirty (30) day response period provided in Fla. R. Civ. P. Rules 1.340 and 1.350 to twenty (20) days for discovery requests served prior to rebuttal testimony, and ten (10) days for discovery served after rebuttal testimony.

7. On April 6, 2020, OPC filed the pending motion requesting that the discovery deadlines be modified or, in the alternative, the testimony dates be extended.

8. Gulf hereby submits this Answer to OPC's Motion and requests that OPC's request to modify the discovery deadlines be denied. However, for the reasons stated below, Gulf has no objection to OPC's proposal to extend the testimony dates provided that due dates for Staff testimony and rebuttal testimony are extended by the same period.

## **II. RESPONSE IN OPPOSITION**

9. “Motions for extension of time shall be filed prior to the expiration of the deadline sought to be extended and shall state *good cause* for the request.” Rule 28-106.204(4), F.A.C., (emphasis added). Gulf submits that OPC has failed to demonstrate good cause for its request to modify the discovery deadlines established in the OEP.

10. In support of its request to modify the discovery deadlines, OPC asserts in Paragraph 4 of its Motion that OPC served its first set of discovery on April 3, 2020, which under the 20-day response period would be due April 23, 2020, and that a second set of discovery to clarify and develop the IOU’s responses to the first set of discovery would not be due until after the May 15, 2020 date for Intervenor testimony. Without regard to the questionable legal status of discovery served prior to the filing of an initial petition and plan, the service of such “boiler plate” discovery by OPC, particularly under the current workplace challenges posed by the COVID-19 pandemic under an OEP developed to meet the compressed statutory deadline for this proceeding, is not a model of efficiency. OPC certainly could have waited for the SPP to be filed, reviewed the SPP, and submitted relevant and focused questions about the SPP that was actually filed. In any case, Gulf submits that there is ample time for OPC to review the actual SPP when filed, submit relevant discovery questions, receive responses within the 20 days pursuant to the procedural schedule adopted by the OEP and prepare and file their testimony. Therefore, OPC’s request to modify the discovery deadlines is unnecessary.

11. OPC also asserts in Paragraph 8 that the requested modification of the discovery deadlines would provide extra time for OPC’s experts who are consultants for multiple matters in various jurisdictions. The IOUs and the Commission staff are similarly subject to numerous and varied work responsibilities in multiple dockets and, of course, it is the IOUs who carry the burden of proof in this proceeding and need sufficient time to properly prepare accurate and thorough

responses to discovery.

12. Finally, in Paragraph 9 of its Motion, OPC cites to the impact that the COVID-19 pandemic has had on its resources and the fact that OPC has been pre-occupied by making arrangements for teleworking under the COVID-19 crisis. OPC is not alone. Gulf will stipulate that the COVID-19 pandemic has imposed significant challenges on staff and all parties and had a very significant impact on all parties' resources and abilities to timely produce work product and comply with procedural deadlines. In light of these challenges, Gulf believes that OPC's Motion fails to consider and reasonably balance the prejudicial impacts that OPC's request to shorten the discovery deadlines would have on Gulf and other stakeholders equally impacted by COVID-19.

13. For the reasons stated above, Gulf submits that OPC's request to modify the discovery deadlines adopted by the OEP are unnecessary and, moreover, fail to properly account for and balance the impacts that its request would have on all stakeholders. Therefore, Gulf requests that OPC's request to modify the discovery deadlines be denied.

14. In a cooperative effort to accommodate the current unique and trying circumstances, Gulf states it has no objection to OPC's alternative request to extend the due dates for testimony by ten (10) days provided that the due dates for Staff's testimony and Gulf's rebuttal testimony are extended by an equal number of days. Gulf believes this alternative request to modify the due dates for testimony appropriately and reasonably balances and accounts for the impacts to all parties and Staff.

### **III. CONCLUSION**

WHEREFORE, for all the reasons stated above, Gulf Power Company respectfully requests that the Office of Public Counsel's request to modify the discovery deadlines be denied, and that its alternative request to extend the due dates for testimony by ten (10) days should be granted.

Respectfully submitted this 7th day of April, 2020,

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By: s/Jason A. Higginbotham

Jason A. Higginbotham  
Fla. Auth. House Counsel No. 1017875

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of Gulf Power Company's Response in Opposition to the Office of Public Counsel's Motion to Modify the Discovery Deadlines, or in the Alternative, to Extend the Due Dates for Testimony and Exhibits Established by Order No. PSC 2020-0073-PCO-EI has been furnished by Electronic Mail to the following parties of record this 7th day of April, 2020:

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