

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

FILED: November 17, 2020

PETITION PROTESTING A PROPOSED AGENCY ACTION

The Citizens of the State of Florida (“Citizens”) by and through undersigned counsel, pursuant to Section 120.57, Florida Statutes, and Rules 25-22.029 and 28-106.201, Florida Administrative Code (“F.A.C.”), file this protest to all of the Florida Public Service Commission’s (“Commission” or “PSC”) Order No. PSC-2020-0406-PAA-EI (“PAA Order”), issued October 27, 2020. In the PAA Order, the Commission approved deferral of incremental bad debt expense and safety-related costs attributable to COVID-19 by establishing a regulatory asset. In support of their Petition, Citizens state:

1. The name and address of the agency affected and the agency’s file number:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Docket No.: 202001898-EI

2. On May 22, 2020, Gulf Power Company (“GULF” or “the Company”) filed a petition for approval of a regulatory asset to record costs incurred due to COVID-19. Document No. 02730-2020 (the “Petition”). The Citizens include the customers of GULF whose substantial interests will be affected by the PAA Order because the PAA Order granted GULF the affirmative right to engage in deferral accounting and establish a regulatory asset “for recording costs incurred due to

COVID-19,” thereby increasing the Company’s achieved return on equity and creating a debt that future customers must pay.¹ PAA Order at 2.

3. Pursuant to Section 350.0611, Florida Statutes, Citizens are represented by the Office of Public Counsel (“OPC”) with the following address and telephone number:

Office of Public Counsel c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400
Telephone No. : (850) 488-9330

4. Citizens obtained a copy of the PAA Order via Commission email on October 27, 2020 at 12:31 p.m.

5. At this time, the ultimate facts alleged, including the specific facts which the Petitioner contends warrants reversal or modification of the agency’s proposed action, are as follows:

- a. The PAA Order authorized the Company to defer or reverse recording of current expenses related to incremental bad debt and safety-related expenses attributable to COVID-19 from its income statement and defer those expenses to the balance sheet in the form of a regulatory asset for later amortization for recovery in future rates.
- b. The PAA Order does not provide beginning or ending dates for the expenses to be recorded in the regulatory asset. In its Petition, GULF proposed to use April 1, 2020 “as the beginning date for the calculation of its incremental COVID Costs.” Petition at 6. Though the PAA Order purported to grant GULF’s Petition, the ordering paragraphs did not reference an exact beginning or end date for the expenses to be recorded in the regulatory asset.

¹ “[A] regulatory asset is a liability of a utility’s ratepayers” which constitutes “a future debt of the ratepayers that can be passed on . . . with interest . . .” *Office of Consumer Counsel v. Dep’t of Pub. Util. Control*, 279 Conn. 584 (Conn. 2006).

- c. The PAA Order does not determine whether the liability is proper pursuant to Accounting Standards Codification Section 980-340-25-1 (“ASC 980”). This accounting standard states that a regulatory asset shall be authorized if two asset recognition criteria are met. First, it must be probable that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes. Second, based on available evidence, the future revenue will be provided to permit recovery of the previously incurred, specific costs rather than to merely provide for expected levels of similar future costs.
- d. The PSC did not take testimony or otherwise consider any evidence regarding whether the criteria of ASC 980 were met by the Company, nor did the PAA Order state that the criteria were met. Accordingly, the PAA Order is legally insufficient because the determination is not based on competent, substantial evidence. While ASC 980 permits the later inclusion of costs which did not meet the criteria at the time the asset was established but do by the time it is reviewed, the PAA Order fails to consider whether these costs are qualified now, or whether they will be in the future.
- e. The bad debt expense proposed for deferral is related to costs that otherwise would have been written off as expense. By proposing to allow the recording of these costs in a regulatory asset, the PSC has proposed to authorize the Company to not only accrue the company’s Weighted Average Cost of Capital (“WACC”) on these costs, but to also charge said costs and WACC to GULF’s ratepayers at some future date through a commitment to probable future recovery in rates. It could be years

before the Commission knows and is able to review the full extent of the “costs attributable to COVID-19,” during which time both the ratepayers and the Company will be relying on or impacted by the imposition of this liability.

- f. While, under certain circumstances, the purpose of a regulatory asset can be to avoid having a Company seek rate increases every time it experiences a material, exogenous event, *see e.g.*, PAA Order at 2 (Oct. 27, 2020), *post hoc* denial of a significant portion of the costs permitted to be recorded to the asset at the time the Company seeks recovery would violate the implicit agreement in ASC 980 that has historically served as the basis for the Commission’s deferral of costs. Any future denial of cost recovery not based on prudence or allowable cost standards could subject future customer rates to harmful volatility and uncertainty as future litigation over the denials proceeds. The Commission must, therefore, make the necessary findings, listed below, before granting any regulatory asset.
- g. In its discussion of regulatory assets on the same day the instant Petition was considered on reconsideration, the Commission demonstrated that it is unaware what it has proposed to be deferred and recorded as an asset. *See* Transcript of Agenda 10/06/2020, Item #6, Docket No. 20200194, p. 11 (“Can you share some just common examples of what a utility would record?”).² The Commission’s

² Additionally, when Gulf originally presented its Petition to the Commission, it conceded it did not have a “finite” list of all the types of costs it wanted to defer and recover in the future, but instead suggested the determination of what costs to include should be made at a future proceeding. *See*, July 7, 2020 Commission Conference Agenda, Transcript p. 21 lines 13-15, p. 22, lines 1-7.

discussion of a regulatory asset is instructive in the instant case, though it occurred in a subsequent item during the same Agenda conference.³

- h. Despite requiring monthly reporting, there is no method for the Commission to immediately remove unapproved costs. *See* Transcript of Agenda 10/06/2020, Item #6, Docket No. 20200194, p. 9 (“Is it possible if we find something in the reports that we don’t think in those regulatory asset [sic] to actually remove them prior to a rate case? And if so, how do we go about doing that?”); “I don’t believe we have that ability to -- to pull things out incrementally over time.”); *see also id.* at p. 10 (“What happens if one of our utilities shows up with a \$300 million regulatory asset and we decide that two-thirds of it is not prudent and now we cut it 50 percent, how does Wall Street react to something like that as they are going into a rate case -- or actually as they are in a rate case?”).
6. Each of the foregoing matters involve disputed issues of material fact.
7. Citizens protest the PAA Order in its entirety, and reserve their right to fully participate in the hearing process to resolve any issues identified in any other party’s protest and cross-petitions.
8. Pursuant to section 120.80(13)(b), Florida Statutes, a section 120.57 hearing may address only those issues in dispute, and any other issues not in dispute are deemed stipulated.

³ Similarly, in PAA Orders from other dockets regarding requests for deferral accounting and regulatory asset treatment considered at the October 6, 2020 Agenda Conference, the Commission explicitly denied lost revenue as an appropriate category to be included within a regulatory asset. Though not specifically referenced in the instant PAA Order, OPC notes it objects to any inclusion of lost revenue as a category of any regulatory asset approved for GULF and disputes any suggestion that lost revenue is an appropriate category to be included within a regulatory asset in this case.

9. By Order No. PSC-2020-0406-PAA-EI, protests of the PAA Order shall be filed with the Office of Commission Clerk no later than the close of business on November 17, 2020. This Petition has been timely filed.

10. Section 366.06, Florida Statutes, is the specific statute the Petitioner contends requires reversal of the agency's proposed action.

11. Citizens request that the Commission set the Company's Petition that is addressed in the Proposed Agency Action, Order No. PSC-2020-0406-PAA-EI, for hearing.

12. Citizens seek the Commission to take the following actions with respect to the agency's proposed action:

a. Acknowledge that OPC's protest dissolves the PAA Order and requires action on the Company's Petition consistent with OPC's Petition.

b. Determine whether the Company is earning within its authorized range and to what extent the Company's financial position would be impacted by granting or denying the Company's Petition, and only consider granting any aspect of the Company's petition to the extent that the Company would not be able to earn a fair and reasonable rate of return on equity absent such relief.

c. In the event that a regulatory asset is properly established, and as part of that determination:

i. Determine that, "it is probable that future revenue in an amount at least equal to the capitalized cost requested will result from inclusion of that cost in allowable costs for rate-making purposes." ASC 980-25-1(a).

ii. Determine the appropriate, if any, expenses that are permitted to be considered for regulatory asset treatment due to the effects of COVID-19.

- iii. Determine the beginning and end dates for deferring costs, recording the regulatory asset, and the specific types of costs that are permitted to be included.
- iv. Determine that the Company shall include any savings attributable to the effects of COVID-19 to offset any amount recorded to a regulatory asset should a regulatory asset be established.

WHEREFORE, the Citizens hereby protest and object to Commission Order No. PSC-2020-0406-PAA-EI in its entirety, and petition the Commission to conduct a formal evidentiary hearing, under the provisions of Section 120.57(1), Florida Statutes, and further petition that such hearing be scheduled at a convenient time and as close as practical to the Company's certified service area.

Respectfully Submitted,

JR Kelly
Public Counsel

/s/Stephanie A. Morse
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CERTIFICATE OF SERVICE
DOCKET NO. 20200151-EI

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail on this 17th day of November 2020, to the following:

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