

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: March 26, 2021

**JOINT RESPONSE IN OPPOSITION TO OFFICE OF PUBLIC COUNSEL'S
MOTION FOR EXTENSION**

Pursuant to Rule 28-106.204(1), Florida Administrative Code ("F.A.C."), Gulf Power Company ("Gulf"), Utilities, Inc. of Florida ("Utilities Inc."), and the Florida Public Utilities Company, including the Florida Division of Chesapeake Utilities Corporation ("FPUC"), hereby file this response in opposition to the Office of Public Counsel's ("OPC") motion for extension of testimony filing dates ("Motion"), filed on March 19, 2021. OPC's Motion reveals that OPC has not taken the available opportunity to conduct the discovery it claims it now needs and fails to show there is good cause to grant any extension of the dates established in the Order Establishing Procedure (Order No. PSC-2021-0104-PCO-PU, the "OEP"). In further support, Gulf, Utilities Inc., and FPUC state:

I. BACKGROUND

1. On May 22, 2020, Gulf filed its petition for approval to establish a regulatory asset and record COVID-19 related costs to that regulatory asset. Petitions with similar requests were filed by Utilities Inc. and FPUC on August 3, 2020 and August 11, 2020, respectively.

2. On October 26, 2020, proposed agency action (“PAA”) orders were issued by the Commission approving FPUC’s and Utilities Inc.’s requests to establish a regulatory asset for their respective COVID-19 related costs. The next day, on October 27, 2020, a PAA order was issued by the Commission authorizing Gulf to do the same.

3. On November 16, 2020, OPC filed protest petitions challenging the Commission’s PAA orders in the FPUC and Utilities Inc. proceedings. OPC did the same in the Gulf docket on November 17, 2020.

4. On March 12, 2021, the Gulf, Utilities Inc., and FPUC dockets were consolidated via the OEP and a procedural schedule was set.

5. Although the utilities’ petitions in these dockets were filed in May (Gulf) and August (FPUC and Utilities Inc.), 2020, virtually no discovery had been served by OPC since the petitions were filed and dockets opened. Only one set of discovery requests had been served by OPC prior to its March 19 Motion, which occurred on June 9, 2020 in Docket No. 20200151-EI, the Gulf docket.

6. On March 19, 2021, OPC filed the Motion that is the subject of this joint response, requesting that its testimony filing date be pushed back from April 30, 2021 to May 20, 2021, along with other conforming extensions. OPC’s principal justification for its requested extensions is that the procedural schedule leaves insufficient time for OPC to take discovery and prepare its case. (*See* Motion at 5, ¶ 14).

II. OPC IS INCORRECT IN ITS CONTENTION THAT IT HAS INSUFFICIENT TIME TO ENGAGE IN DISCOVERY

7. OPC’s contention that the OEP leaves it with insufficient time to take discovery is simply untrue, and disregards authoritative Commission precedent establishing OPC’s right to

take discovery in PAA proceedings. Legally, OPC has had the opportunity to conduct discovery in the now-combined proceedings for months but has chosen not to do so. This point of law has been well established since 2015, when the Commission unambiguously declared that OPC has the right to take discovery during PAA proceedings affecting rates or cost of service. Specifically, the Commission stated:

We hereby grant OPC's Petition for Declaratory Statement and declare that OPC has the authority under Section 350.0611(1), F.S., to utilize discovery pursuant to Fla. R. Civ. Pro. 1.280–1.390 in any proceeding affecting rates or cost of service processed using the proposed agency action procedures of Sections 366.06(4) and 367.081(8), F.S.

In re: Petition for declaratory statement regarding discovery in dockets or proceedings affecting rates or cost of service processed with the Commission's proposed agency action procedure, Docket No. 140107-PU, Order No. PSC-15-0381-DS-PU (September 14, 2015).

This decision recognized OPC's right to obtain discovery in PAA proceedings such as this one. In this case, OPC simply chose not to do so.

8. Moreover, OPC benefits from this particular combined proceeding since much of the information that is relevant to the nature, calculation, and recording of the costs proposed to be captured in the companies' respective regulatory assets is both demonstrated in the petitions and has been publicly reported.¹ For example, Gulf has been publicly indicating its incremental costs that are the subject of Gulf's petition in its monthly earnings surveillance reporting. Utilities Inc. also submitted an update on its recordable COVID-related costs in its docket on December 17, 2020. *See* Document No. 13610-2020. FPUC has, likewise, submitted monthly reports in Docket No. 20200194-PU updating its COVID-related costs and savings information. FPUC's most recent report was filed on March 1, 2021. Therefore, well before the issuance of the OEP in

¹ The utilities have been filing monthly COVID impact reports in the 20200000 and 20210000 dockets.

this consolidated case, this information was available for OPC's review and available for OPC to seek discovery on.

9. The fact that OPC did not engage in the discovery process earlier is reflective of its own decision-making, rather than the Commission's. OPC's attempt to cast blame on the Commission by arguing that the Commission's schedule "decide[s] for the Citizens whether they are allowed to conduct an investigation in accordance with due process, evaluate the evidence, and litigate the case" (Motion at 3, ¶ 8) is improper. As previously stated, OPC has already made its decision as to the scope and thoroughness of its own investigation. Thus, OPC's insistence that the procedural schedule was "arbitrarily drafted" (Motion at 3, ¶ 8) is misguided, particularly given the many months in which OPC has had the opportunity and failed to conduct discovery in these proceedings.

10. It should also be noted that, contrary to OPC's argument, the Commission's schedule *does* provide OPC with the opportunity to engage in discovery following the submission of the utilities' testimony, and so the OEP can hardly be said to limit OPC's ability to investigate. For clarity, the utilities' testimony is due on April 2, 2021 and OPC's testimony is due April 30, 2021, which is four weeks after the utilities' testimony. Notwithstanding their decision to forego discovery in these dockets prior to March 19, 2021 (with the exception of the first set of discovery requests served on Gulf in June 2020), the OEP still provides OPC with a sufficient window to seek relevant discovery, receive responses, and incorporate the content of those responses into its own testimony. The fact that the Commission has set a schedule that requires OPC to promptly review the utilities' testimony for the purposes of discovery is not a deprivation of due process rights or an infringement of statutory obligations.

11. In addition to the foregoing, it is also worth noting that OPC, on the same day it filed the Motion, also served discovery on FPUC, and sought similar discovery from Gulf and Utilities Inc. the following business day. These requests seek items such as rating agency reports and debt prospectuses, which (1) could have been requested much earlier in the proceedings, and (2) appear to be tailored toward the utilities current or upcoming rate cases. These items, to the extent relevant to the proceeding, could have been requested by OPC at a far earlier time. The fact that OPC is only now choosing to request them indicates that OPC has been inefficient in its case preparations. OPC should not be rewarded with an extension of its testimony deadline.

III. CONCLUSION

12. For the reasons stated, OPC has not shown good cause for its requested extension of the deadline for Intervenor testimony set forth in the OEP. Accordingly, its Motion should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by electronic mail this 26th day of March, 2021 to the following:

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