



**BILL GALVANO**  
*President of the Senate*

**STATE OF FLORIDA**  
**OFFICE OF PUBLIC COUNSEL**

c/o THE FLORIDA LEGISLATURE  
111 WEST MADISON ST.  
ROOM 812  
TALLAHASSEE, FLORIDA 32399-1400  
850-488-9330

EMAIL: [OPC\\_WEBSITE@LEG.STATE.FL.US](mailto:OPC_WEBSITE@LEG.STATE.FL.US)  
[WWW.FLORIDAOPC.GOV](http://WWW.FLORIDAOPC.GOV)



**JOSE R. OLIVA**  
*Speaker of the House of  
Representatives*

October 5, 2020

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

Re: Docket No. 20200151-EI

Dear Mr. Teitzman,

Please note for the record the Office of Public Counsel, ("OPC"), objects to Gulf Power Company's ("Gulf"), letter request filed October 2, 2020 as an untimely, inappropriate filing which should be disregarded, thus not considered at the Commission's October 6<sup>th</sup> Agenda Conference. The letter seeks a new form of relief, and is thus effectively a new motion or amended petition. By filing on the eve of the October 6<sup>th</sup> Agenda Conference, Gulf has attempted to deprive the customers we represent of the due process protections mandated in Florida Statutes and the Florida Administrative Code.

The Florida Rules of Administrative Procedure generally provide parties seven days to respond to a written request for relief, i.e., a motion. There is not adequate time before the Agenda Conference for OPC to fully respond to Gulf's new request for relief. Moreover, Gulf already had the opportunity to respond to OPC's Motion for Reconsideration. Apparently dissatisfied with the Staff's Recommendation, Gulf now seeks a second bite at the apple, despite its failure to cite to any rule or authority which allows the unsanctioned pleading it filed on October 2, which effectively provided OPC one full business day before the Agenda to respond. Gulf blatantly and improperly attempts to re-litigate and argue OPC's Motion for Reconsideration, though it already previously filed a responsive pleading and failed to request oral argument. If Gulf wants its late-filed proposal for "possible resolution" considered, the correct course of action is for Gulf to request a separate hearing after OPC has had the time allowed under the Rules to respond to the request for relief, or defer their item to the next Agenda Conference.

Nonetheless, OPC must bring to your attention that Gulf's proposed resolution is inadequate and incorrect as a matter of law because it does not solve the two fundamental errors in the Commission's July 27, 2020 Order, i.e., (1) the failure to provide customers a timely point of entry to protect their substantial interests in this docket, and (2) rendition of a purportedly "preliminary,

procedural” order rather than a PAA, when, as Staff has stated, the PSC has historically and properly rendered regulatory asset decisions as PAA decisions. The substantive ratemaking decision regarding a regulatory asset is comprised of two steps: first, the decision to approve deferral of the subject costs, and second, the decisions on recovery of the individual costs. While we may all agree that the method of recovery should be addressed during the rate proceeding, in this case, approval must be addressed earlier and in a more timely manner than the year or so from now proposed by Gulf. The substantive decision on creation of and approval of a regulatory asset will be addressed appropriately if Staff’s Recommendation is accepted.

Instead of assuring customers a clear point of entry within a specified time, as required by law and recommended by Staff, Gulf apparently proposes the Commission put customers off for a hearing on establishment of a regulatory asset until some completely unspecified date after Gulf files a rate case, which of course has not yet been filed and for which filing there is no date certain, much less a date certain for a hearing. Rather than promoting administrative efficiency or fairness for customers, Gulf’s proposal merely provides the utility an end-run around the administrative process requirements – Gulf would still presumably alter its financial statements in such a way as to obtain the benefit of the deferral scheme, but without providing customers a way to protect their substantial interests until at least a year or more after Gulf changes its financial statements and immediately starts accruing interest (or profit) from customers on pandemic-related costs. Gulf’s new proposal simply attempts to turn what should be a PAA decision into a supposedly “procedural” order which would deprive customers of due process. Contrary to Gulf’s claims, instead of preserving Commission precedent, Gulf’s proposal actually violates Commission precedent which mandates that persons with substantial interests must be provided a clear point of entry within a specified time. If Gulf prefers not to comply with the Administrative Procedure Act now, it should simply withdraw its petition and bring up the regulatory asset issue during its eventual rate case, if in fact the issue is still relevant by that unknown date.

OPC asserts that Gulf’s new request for relief in the form of its proposed resolution should be rejected as untimely, improper and contrary to law.

Sincerely,

*Stephanie A. Morse*

Stephanie A. Morse  
Associate Public Counsel

cc : Florida Public Service Commission

Hon. Donald Polmann, Commissioner  
Hon. Art Graham, Commissioner  
Hon. Gary F. Clark, Commission Chairman  
Hon. Julie Imanuel Brown, Commissioner  
Hon. Andrew Giles Fay, Commissioner

Keith Hetrick, Office of General Counsel  
Jennifer Crawford, Office of General Counsel  
Samantha Cibula, Office of General Counsel  
Shaw Stiller, Office of General Counsel  
Curtis Mouring, Division of Accounting & Finance  
Justin Sowards, Division of Accounting & Finance  
Cheryl Bulecza~Banks, Division of Accounting & Finance  
Stephen Fletcher, Division of Accounting & Finance

Counsel for Gulf Power Company

Russell A. Badders, Vice President & Associate General Counsel  
Kenneth A. Hoffman, Vice President, Regulatory Affairs  
Joel T. Baker, Principal Attorney