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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20200151-EI

Petition for approval of a
regulatory asset to record
costs incurred due to COVID-19,
by Gulf Power Company.

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 4

COMMISSIONERS
PARTICIPATING: CHAIRMAN GARY F. CLARK
COMMISSIONER ART GRAHAM
COMMISSIONER JULIE I. BROWN
COMMISSIONER DONALD J. POLMANN
COMMISSIONER ANDREW GILES FAY

DATE: Tuesday, October 6, 2020

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: DEBRA R. KRICK
Court Reporter and
Notary Public in and for
the State of Florida at Large

PREMIER REPORTING
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TALLAHASSEE, FLORIDA
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1 P R O C E E D I N G S

2 CHAIRMAN CLARK: We will move along to Item
3 No. 4.

4 Mr. Stiller.

5 MR. STILLER: Good morning, Mr. Chair and
6 Commissioners. Shaw Stiller with your Office of
7 Legal Counsel.

8 Agenda Item 4 involves a motion for
9 reconsideration filed by the Office of Public
10 Counsel. The motion requests that the Commission
11 reconsider the previous order in this docket that
12 granted a petition filed by Gulf Power Company and
13 allowed the utility to establish a regulatory
14 asset. The purpose of the regulatory asset is to
15 record costs --

16 COMMISSIONER POLMANN: I am having difficulty
17 hearing.

18 MR. STILLER: -- incurred due to COVID-19 for
19 potential future recovery. The order was entered
20 as a final order, not proposed agency action or
21 PAA. OPC argues in its motion that the order
22 should have been entered as PAA.

23 Gulf filed a response to the motion and
24 objects to reconsideration.

25 The appropriate standard of review in a motion

1 for is whether the motion identifies a point of
2 fact or law that was overlooked, or that the
3 Commission failed to consider in rendering its
4 prior order.

5 Staff recommends that OPC's motion should be
6 granted because OPC has demonstrated that point of
7 law regarding the point of entry to establish -- to
8 challenge to establishment of a regulatory asset
9 was overlooked. The prior order should have been
10 PAA and provided to persons with substantial
11 interest may be affected by the creation of an
12 asset, and the definition of those expenses
13 eligible for deferral and potential future recovery
14 the opportunity to request a hearing. The
15 appropriate relief is to vacate the prior order and
16 reenter it with a modification to reflect --
17 (inaudible) -- PAA. Since staff filed its
18 recommendation -- (inaudible) -- submissions did
19 not change the staff recommendation.

20 Finally, there are two procedural matters
21 along with its motion for reconsideration to file
22 the petition requesting formal proceedings on the
23 prior order. OPC has also filed a motion to vacate
24 -- (inaudible) -- if this commission grants
25 reconsideration and reenters the prior order --

1 (inaudible) -- no party has requested oral argument
2 -- (inaudible) --

3 CHAIRMAN CLARK: Thank you, Mr. Stiller.

4 All right --

5 COMMISSIONER FAY: Mr. Chairman, sorry to
6 interrupt you, but if we could get Mr. Stiller
7 maybe to move to a different mic. He was cutting
8 in and out for us on the virtual. We appreciate
9 it. Thank you.

10 CHAIRMAN CLARK: Thank you, we will -- do we
11 need Mr. Stiller to repeat anything that he said
12 for anybody for any party?

13 COMMISSIONER BROWN: I didn't hear a word he
14 said.

15 CHAIRMAN CLARK: Okay.

16 (Discussion off the record.)

17 CHAIRMAN CLARK: Back on the record, please.

18 MR. STILLER: The second time will be a charm.

19 CHAIRMAN CLARK: Will be a charm, right.

20 MR. STILLER: Sorry about that, Mr. Chair and
21 Commissioners.

22 This item involves a motion for
23 reconsideration filed by the Office of Public
24 Counsel. The motion requests that the Commission
25 reconsider its previous order in this docket that

1 granted a petition filed by Gulf Power Company and
2 allowed the utility to establish a regulatory
3 asset. The purpose of the regulatory asset is to
4 record current expenses incurred due to the
5 COVID-19 pandemic for potential future recovery.
6 The order was entered as a final order, not
7 proposed agency action, or PAA. OPC argues in its
8 motion that the order should have been entered as
9 PAA. Gulf filed and written response to the motion
10 and objects the consideration.

11 The appropriate standard of review in a motion
12 for reconsideration is whether the motion
13 identifies a point of fact or law that was
14 overlooked or that the Commission failed to
15 consider in rendering its prior order.

16 Staff recommends that OPC's motion should be
17 granted because OPC has demonstrated that a point
18 of law regarding the point of entry to challenge
19 the establishment of the regulatory asset was
20 overlooked. The prior order should have been PAA
21 and provided persons whose substantial interests
22 may be affected by the creation of an asset and the
23 definition of expenses eligible for deferral and
24 potential future recovery the opportunity to
25 request a hearing. The appropriate relief is to

1 vacate the prior order and reenter it as PAA with
2 minor modifications to reflect its modified
3 procedural nature.

4 Since this recommendation was filed, both Gulf
5 and OPC have made further filings in the docket.
6 Those filings do not change staff recommendation.

7 Finally, there are two procedural matters
8 related to the motion for reconsideration along
9 with the motion, OPC filed the petition for hearing
10 requesting formal proceeding. OPC has separately
11 filed a notice of administrative appeal of this
12 commission's prior order. If the Commission
13 vacates and reenters the prior order, both of those
14 matters should be rendered moot.

15 No party requested oral argument on the
16 motion.

17 Staff is available to answer your questions.

18 CHAIRMAN CLARK: All right. Thank you,
19 Mr. Stiller.

20 We also have Mr. Badders and Ms. Morse on the
21 line representing Gulf and OPC for -- they are both
22 available for questions.

23 Commission, do you have any questions?

24 Commissioner Brown.

25 COMMISSIONER BROWN: I do have a question, and

1 I do think that this matter has fundamentally been
2 brought to our attention by staff as a process
3 error, and I agreed with the principle that we need
4 to treat all of our dockets like this the same. So
5 we are going to be taking up the next item, which
6 is the Commission taking it on its own motion to
7 reconsider this as process error rather than what
8 we are doing here today.

9 I have a question for Ms. Morse about
10 administrative efficiency, really, acknowledging
11 that our staff just said that there is an appeal of
12 the -- of this. And also, if we go ahead and agree
13 with this request to make this a PAA is, does OPC
14 intend to have hearings both on the creation of the
15 regulatory asset and then later, as well as the
16 costs associated with that regulatory asset, so two
17 hearings?

18 CHAIRMAN CLARK: Ms. Morse.

19 MS. MORSE: Hello, can you hear me?

20 CHAIRMAN CLARK: Yes.

21 MS. MORSE: Okay. Thank you. This is
22 Stephanie Morse with OPC.

23 First of all, as the record reflects, the
24 utility plans to file a rate case, so cost recovery
25 issues we then consider would be rolled into issues

1 of an eventual rate case. We did -- in the letter
2 that we filed, we did point out, though, that the
3 separate substantive rate-making issue on
4 establishment of this -- of the regulatory -- a
5 regulatory asset in the first place be worthy of a
6 hearing that it should occur likely separately
7 because of the remoteness in time to the rate case
8 itself, where the other -- you know, where it could
9 have been folded in, or where the cost recovery
10 portion of this question would be -- would be --
11 could be considered with all the other data and the
12 empirical evidence necessary to make that portion
13 of the -- of the determination.

14 So in short, you know, we did anticipate
15 separate hearings only because of the remoteness in
16 time. Gulf has not filed its rate case yet, so we
17 don't know -- there is no -- there is no date
18 certain. We don't know when that's going to occur,
19 or if it will be necessary, or when, so that was --

20 COMMISSIONER BROWN: Thank you. I hear you.
21 I hear you. And you are breaking up a little bit,
22 but, you know, as we start seeing more of these
23 regula-- creation of regulatory assets and -- and,
24 you know, I just want the Public Counsel to be
25 cognizant of not only your own administrative

1 resources and the efficiency, but also our staff's.
2 So that's -- that was my thinking.

3 But I would like to hear from staff, though,
4 about this -- about this matter, and kind of the
5 comments I just made we are treating -- you know,
6 Item 5, the Commission staff is creating -- is
7 doing it upon its own motion to change it to a PAA,
8 and that -- I understand we are trying to get to a
9 certain point here, but I don't know if the motion
10 for reconsideration is really the appropriate
11 vehicle.

12 CHAIRMAN CLARK: Thank you, Commissioner
13 Brown.

14 Any other Commissioners questions? Comments?

15 COMMISSIONER BROWN: That was more a question
16 for legal, actually, Mr. Chairman.

17 CHAIRMAN CLARK: Okay. I thought so. They
18 weren't -- they weren't jumping up to answer that.

19 MS. HELTON: Maybe I can take a stab at that.

20 We do think that the order that was issued for
21 Florida Power -- or for Gulf Power was -- did
22 attach the correct ending language. It was issued
23 as a procedural order, and we think that it should
24 have been a proposed agency action order as, you
25 know, we are recommending for Peoples and as staff

1 is recommending for the other two regulatory assets
2 that are on the agenda later today.

3 So if you aren't comfortable taking a vote on
4 OPC's motion for reconsideration, then I think it's
5 within your purview to move for reconsideration on
6 the Commission's own motion, as staff is
7 recommending for the -- for the Peoples item, which
8 is the next item up, that way you might avoid some
9 of the issues I think you are concerned with.

10 COMMISSIONER BROWN: Thank you, Ms. Helton.
11 You got there.

12 CHAIRMAN CLARK: Commissioner Brown, could you
13 elaborate? I mean, as a non-attorney, help us out
14 here on the motion on the reconsideration. What's
15 the concern -- is there a concern?

16 COMMISSIONER BROWN: Well, yes. The language
17 that they are relying on, it was actually from
18 Commissioner Polmann and I, our comments, are
19 somewhat taken out of context to make it a PAA
20 action, and I don't think -- I don't think those
21 factual -- those are factual errors or legal
22 errors. I think this is a process error that
23 occurred, and staff -- it was brought to staff's
24 attention. None of us picked up on it during the
25 actual docket itself. I didn't realize that it

1 wasn't PAA, and we have previous -- all of our
2 regulatory assets prior have been PAA. So I think
3 it's more appropriate, since it was a procedural
4 error, administrative error, rather than relying on
5 the language that OPC is relying on, I think it's
6 more appropriate to get us to the right posture to
7 reconsider our own procedural order and approve
8 in -- approving the Gulf regulatory asset and we
9 reissue it as a PAA, like we are doing in Item 5,
10 and it would be consistent with that item as well.

11 CHAIRMAN CLARK: Okay. That -- great
12 clarification. I think I understand exactly what
13 you are proposing.

14 Commissioner Polmann, do you have a question?

15 COMMISSIONER POLMANN: Well, I guess I had a
16 question, and now I have a different question,
17 because I am concerned the question I originally
18 had, I probably shouldn't. But it's going to
19 depend on the question that I am going to ask
20 Commissioner Brown, which is what did you just say?
21 You want the motion to be our Commission motion,
22 that we are going to do what the staff
23 recommendation is, but it's not their
24 recommendation, it's going to be our own motion?

25 COMMISSIONER BROWN: The staff underlined

1 recommendation is to change our previous decision
2 from procedural to PAA. To get there, though, they
3 are relying on language that is taken somewhat out
4 of context and OPC's motion for reconsideration.

5 In Item 5, and as Ms. Helton just said, we do
6 have the authority to render that motion for
7 reconsideration moot and make our own motion to
8 reconsider the procedural order as PAA as suggested
9 by -- because due to a process error, and that
10 would get us to the same place that OPC is asking
11 for.

12 COMMISSIONER POLMANN: Yes. Yes. So you
13 would like No. 4 to be handled in an analogous
14 manner and have the same outcome on No. 4 based on
15 the Commission's own motion?

16 COMMISSIONER BROWN: That is correct, and I
17 have a motion --

18 COMMISSIONER POLMANN: -- and same end point
19 but a different pathway?

20 COMMISSIONER BROWN: Absolutely.

21 CHAIRMAN CLARK: Commissioner Brown, do you
22 have a -- would you prepare the correct motion when
23 the time comes to do so?

24 COMMISSIONER BROWN: I am ready whenever you
25 are ready.

1 CHAIRMAN CLARK: Okay. Let's wrap up our
2 questions and then we will get to our motion.

3 Commissioner Fay.

4 COMMISSIONER POLMANN: All right.

5 CHAIRMAN CLARK: I'm sorry, Commissioner
6 Polmann.

7 COMMISSIONER POLMANN: Mr. Chairman, I am just
8 going to yield -- I am going to yield and let the
9 lawyers work it out.

10 CHAIRMAN CLARK: I was kind of doing the same
11 thing, Commissioner Polmann.

12 Commissioner Fay.

13 COMMISSIONER FAY: Thank you, Mr. Chairman.

14 I do think we are -- we are doing the right
15 thing here to resolve this.

16 I just had a question for OPC. I looked back
17 at the transcript of the hearing, and it seemed
18 like this was an objection issue that came up
19 after-the-fact. I know that, of course, there is
20 always a lot of moving parts to these regulatory
21 assets that complicate it, and we are constantly
22 kind of tweaking what our commission is doing, and
23 commissions all over the country are doing the same
24 thing, so it's not an easy item to take up. But is
25 there a particular reason to why this specific

1 objection wasn't raised in the initial hearing that
2 we had?

3 MS. MORSE: What specific -- I am sorry,
4 Commissioner, what specific objection are you
5 talking about?

6 COMMISSIONER FAY: The objection that it was
7 taken out as a procedural item and not a PAA.

8 MS. MORSE: I think staff's analysis is
9 accurate in that we -- that's what we were talking
10 about the entire time. We said it wasn't
11 preliminary or procedural, or all of the language
12 that was -- that was in the -- in the
13 recommendation. Our whole point was that it's not
14 just some preliminary or interim measure. It's a
15 substantive matter.

16 COMMISSIONER FAY: Yeah, and maybe -- you
17 know, maybe it's just the difference of
18 interpretation by the people who read the
19 transcript, but I just -- I didn't see any explicit
20 language in there saying we object to this being
21 taken up as a procedural motion. I just saw
22 concerns that it should be vetted out more, and I
23 think that's a fair discussion, but it just seemed
24 like it was after-the-fact.

25 So it sounds like maybe the reason is because

1 you believed you did actually explicitly object to
2 it in the hearing even though some people might not
3 interpret it that way.

4 MS. MORSE: I thought we did raise that issue.
5 In fact, I mean, that was getting at the very heart
6 of our -- our comments and our objection. Yeah, I
7 am sorry. To my -- to my knowledge, or to my
8 belief, that's what we were talking about.

9 COMMISSIONER FAY: Okay. I -- I appreciate
10 that. We agree to disagree on that, and I think
11 this is probably a good way to cure it, so I
12 appreciate staff working on it, and I am really
13 glad Commissioner Brown is here to do this motion.

14 CHAIRMAN CLARK: Without further questions,
15 Commissioner Brown, you are recognized for a
16 motion.

17 COMMISSIONER BROWN: Thank you. And I
18 appreciate Commissioner Fay's points. Those are
19 excellent.

20 And with that, I would like to move that on
21 our own motion, we reconsider our procedural order
22 issued on July 27th, 2020, approving the Gulf
23 regulatory asset, and that we reissue the order as
24 proposed agency action. In so doing, our staff
25 should be granted administrative authority to make

1 the necessary changes to conform the order to
2 proposed agency action. And by reconsidering the
3 order on our own motion, OPC's motion for
4 reconsideration would hereby be rendered moot.

5 COMMISSIONER FAY: I will second that.

6 CHAIRMAN CLARK: We have a motion and a
7 second.

8 Commissioner Brown, a good Chairman will
9 always repeat the motion back to the audience, and
10 he is not going to do so today, I assure you.

11 Any questions on Commissioner Brown's motion?

12 I think we do all understand it, though. I am
13 going on the record as understanding.

14 All right. All if favor say aye.

15 (Chorus of ayes.)

16 CHAIRMAN CLARK: Opposed?

17 COMMISSIONER POLMANN: Aye.

18 CHAIRMAN CLARK: Motion carries.

19 All right. Thank you very much.

20 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, Court Reporter, do hereby
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IT IS FURTHER CERTIFIED that I
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DATED this 19th day of October, 2020.



DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #HH31926
EXPIRES AUGUST 13, 2024