

**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

FILED: March 19, 2021

**CITIZENS' MOTION FOR EXTENSION OF TESTIMONY FILING DATES**  
**ESTABLISHED BY ORDER NO. PSC-2021-0104-PCO-PU**

The Citizens of the State of Florida (Citizens), by and through the Office of Public Counsel (OPC), pursuant to Rule 28-106.204, Florida Administrative Code (F.A.C.), hereby file Citizens' Motion for Extension of Testimony Filing Dates established by Order No. PSC-2021-0104-PCO-PU, issued March 12, 2021, in the above docket. The Citizens request this Motion be granted for good cause, and as grounds therefor state the following:

1. The Order Establishing Procedure and Consolidating Docket Nos. 20200151-EI, 20200189-WS, and 20200194-PU for Hearing ("OEP") in this case set the filing date for Intervenors' testimony and exhibits as April 30, 2021. Order No. PSC-2021-0104-PCO-PU, issued March 12, 2021.
2. The OEP set the filing date for the Utilities' testimony and exhibits as April 2, 2021. Additionally, the OEP established the discovery response time of 20 days for discovery served prior to the rebuttal testimony. Therefore, under the current controlling dates, and assuming

Citizens are able to fully review and analyze the separate sets of testimony and exhibits emanating from three different utilities’<sup>1</sup> COVID-19 petitions in one business day in order to serve discovery on Easter Monday, Citizens would, assuming timely and complete responses were received, have only three full business days before the filing date to receive, analyze and incorporate three sets of discovery responses related to three sets of utility testimony into the Citizens’ pre-filed testimony related each of the three petitions, including the multiple separate utility entities encompassed in FPUC’s petition.

3. Because the virtually non-existent time for discovery and analysis between filing of the multiple utilities’ testimonies and Citizens’ testimony filing deadline will compromise the Citizens’ ability to meaningfully respond to each of the utilities’ seven separate circumstances, and thus undermine the Citizens’ due process rights, Citizens hereby request an extension of their testimony filing date to and including May 20, 2021.

4. To eliminate the risk of prejudice to any party, Citizens request the utilities’ rebuttal testimony filing dates be similarly shifted outward 20 days, such that each utility’s rebuttal date would be June 3, 2021.

5. Citizens further request similar extensions of the other key activity dates in the case after the parties’ testimonies.<sup>2</sup>

6. The three dockets consolidated by Order No. PSC-2021-0104-PCO-PU were effectively dormant of litigation activity from December 9, 2020 until March 8, 2021, when Gulf, with no

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<sup>1</sup> Docket No. 20200194-PU includes the following five utility entities: the Florida Public Utilities Company, the Florida Public Utilities Company-Indiantown Division, the Florida Public Utilities Company-Fort Meade (FPUC Gas Divisions), Florida Public Utilities (Electric Division) and the Florida Division of Chesapeake Utilities Corporation (Gas). Collectively, they are referred to as “Companies” and filed one petition, but because the rates for each of the five utility entities have not been consolidated, they are effectively five separate companies. Therefore, in this consolidated docket, OPC is actually tasked with addressing seven different utilities’ circumstances in its three testimony filings in this case.

<sup>2</sup> Currently, Staff’s testimony is due 5 days after Intervenors’ testimony, so the Citizens do not object to extension of the deadline for Staff’s testimony to May 25, 2021.

public explanation and less than 4 days before the instant OEP was issued, withdrew its previous Motion to Stay Proceedings and to Consolidate into Forthcoming Base Rate Proceeding.<sup>3</sup> Though the Citizens filed PAA protests in each docket on November 16 and 17, 2020, the Commission did not set a hearing date, publish an OEP, or issue any kind of order in any of the three subject dockets from the date of the Citizens' protests until several days after Gulf withdrew its Motion on March 8, 2021.<sup>4</sup>

7. In its effort to prepare for the instant litigation, OPC hired an outside consultant. OPC's expert consultant is simultaneously analyzing documents in each of the three dockets which are part of the instant consolidation. The analytical work required on these multiple dockets operating under a consolidated timeline unavoidably hinders the ability of OPC's consultant to produce three sets of testimony in less time than the seven to ten months each utility has had to prepare its case from the date of filing their petitions to date.

8. Like every other litigant, the Citizens must be allowed make their own decisions on the legal theory of the Citizens' case and strategy. As such, an arbitrarily drafted schedule cannot lawfully presume to instead decide *for* the Citizens whether they are allowed to conduct an investigation in accordance with due process, evaluate the evidence, and litigate the case.

9. Any utility filings listing tracked costs, whether filed in the corresponding Regulatory Asset Petition dockets, in another docket, or elsewhere, cannot be deemed to provide any sort of advance notice of the testimony details on which OPC may wish to issue discovery once the

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<sup>3</sup> On December 18, 2020 at the informal meeting held by Staff with the parties, Gulf reaffirmed its intent to stand on its motion to consolidate its regulatory asset request into the rate case in lieu of agreeing to Staff's suggestion that they consolidate with the other companies. Gulf's recent reversal in immediate proximity to the issuance of the March 12, 2021 OEP surprised the OPC.

<sup>4</sup> Although the Commission has made a decision on consolidating the dockets, OPC maintains, as it did in December 2020, the dockets are not appropriate for consolidation because of all the different facts and circumstances among the various gas, water and electric entities involved, among other things.

testimony is served. Nor does a proposed issue list provide OPC with adequate notice of the types of questions and issues that may be raised by the utilities' actual prefiled testimony.

10. Under the circumstances, including the consolidation of multiple dockets involving multiple different utilities, the extension requested by OPC is reasonable and supported by precedent. *See, In re: Natural Gas Conservation Cost Recovery*, Order No. PSC-2007-0744 (finding an extension of time reasonable where a party had to use the same staff to conduct multiple reviews and filings in multiple dockets at or about the same time as the subject filing).

11. Currently, the OEP requires the parties to file Prehearing Statements before the expiration of the post-rebuttal discovery response time. As such, the deadlines listed in the OEP would require the Citizens to articulate positions on each issue for hearing before completing discovery. Where key activity dates overlap, the schedule presents further potential for the erosion of Citizens' due process rights and the requested extensions of time should be granted. *Cf., In re: Impact of AT&T/DOJ Anti-Trust Settlement, et al.*, Order No. 13479 (granting extension of testimony filing date where discovery responses to be used in developing testimony will be due after the date the testimony is due).

12. The requested extension of time will not harm or prejudice any of the Petitioner utilities in any way because it appears one or more of the Petitioner utilities have already moved the COVID costs from the income statement to a regulatory asset, regardless of the question of the authority to do so, or have otherwise already started tracking the subject costs in some manner. Additionally, there is no applicable statute or rule which requires the hearing in these matters to take place within a certain timeframe or by a certain date. Therefore, an extension of 20 days will not violate any operative provision of law.

13. OPC will be materially prejudiced if the motion is not granted. Due process requires that Citizens be allowed a full opportunity to be heard regarding its analysis of the legality of the establishment of a regulatory asset under the circumstances and the parameters for any regulatory asset. The views of other stakeholders in the process regarding how they would personally prepare a case has no bearing on the Public Counsel's right to present his case in support of the public interest as he deems necessary. S. 350.061(1), Fla. Stat. Moreover, the primary opportunity for OPC to provide its analysis is in its direct prefiled testimony, as the rules do not allow OPC to respond to the utilities' rebuttal testimonies in the normal course. If Citizens are denied the meaningful opportunity to conduct essential discovery and include the synthesis of said discovery responses into their testimony, Citizens' due process protections would be irreparably harmed.

14. Therefore, for good cause shown, Citizens request that Intervenors' testimony filing date be moved to May 20, 2021 to allow OPC sufficient time to engage in discovery and conduct a thorough analysis of the testimony, facts, and applicable law.

15. Citizens' Counsel conferred with the other parties to this matter. FPUC and UIF advised OPC that they cannot agree to the Citizens' motion at this time. Gulf advised OPC that it opposes the extension proposed.

WHEREFORE, the Citizens hereby request that the Prehearing Officer grant their Motion for Extension of Testimony Filing Dates established by Order No. PSC-2021-0104-PCO-PU, issued March 12, 2021, grant Intervenors an extension of time to and including May 20, 2021 to file their testimony, and amend the other testimony dates as described in this motion.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**  
**DOCKET NO. 20200151-EI, 20200189-WS & 20200194-PU**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing **Motion for Extension of Testimony Filing Dates** has been furnished by electronic mail on this 19<sup>th</sup> day of March, 2021, to the following:

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