

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of 2020-2029 Storm Protection  
Plan pursuant to Rule 25-6.030, F.A.C., Gulf  
Power Company.

DOCKET NO. 20200070-EI  
ORDER NO. PSC-2020-0161-PCO-EI  
ISSUED: May 18, 2020

ORDER DENYING THE OFFICE OF PUBLIC COUNSEL'S  
MOTION TO COMPEL DISCOVERY

The 2019 Florida Legislature enacted Section 366.96, Florida Statutes (F.S.), entitled “Storm protection plan cost recovery.” Section 366.96(3), F.S., requires each public utility to file a transmission and distribution storm protection plan that covers the immediate 10-year planning period, and explains the systematic approach the utility will follow to achieve the objectives of reducing restoration costs and outage times associated with extreme weather events and enhancing reliability. Pursuant to Sections 366.96(5) and 366.96(6), F.S., every three years the Florida Public Service Commission (Commission) is required to determine whether it is in the public interest to approve, approve with modification, or deny each utility’s transmission and distribution storm protection plan no later than 180 days after the utility files a plan that contains all of the elements required by Commission Rule. Rules 25-6.030 and 25-6.031, Florida Administrative Code (F.A.C.), (Rules) implement Section 366.96, F.S.

The Office of Public Counsel (OPC) challenged both Rules, and the matter was referred to the Division of Administrative Hearings. An administrative hearing was conducted on December 20, 2019. OPC’s primary arguments were that (1) Rule 25-6.030(3)(d), F.A.C., was impermissibly vague and contravened Section 366.96, F.S., because it did not require project-level detail sufficient enough to enable the Commission to conduct the review required by Section 366.96(4), F.S.; and (2) unless proposed Rule 25-6.030(3)(d), F.A.C., required project-level detail for years two and three of the storm protection plan, double recovery would not be able to be detected because project information would be unobtainable through discovery.<sup>1</sup> On January 21, 2020, the Division of Administrative Hearings found by a preponderance of evidence that the proposed Rules were not an invalid exercise of the Commission’s delegated legislative authority. The Rules subsequently became effective on February 18, 2020.<sup>2</sup>

On March 3, 2020, this docket was established to review Gulf Power Company’s (Gulf) transmission and distribution storm protection plan (SPP) pursuant to Section 366.95(5), F.S., and Rule 25-6.030, F.A.C. On March 13, 2020, a separate docket (Docket No. 20200092-EI) was established to review the investor-owned electric utilities’ storm protection plan cost recovery clause (SPPCRC) expenditures, pursuant to Section 366.96(7), F.S., and Rule 25-6.031, F.A.C.

On March 9, 2020, OPC filed a notice of intervention, which was acknowledged by Order No. PSC-2020-0126-PCO-EI. By the Order Establishing Procedure and Consolidating

<sup>1</sup> See *Office of Pub. Counsel v. Fla. Pub. Serv. Comm’n*, No. 19-6137RP (Fla. DOAH Jan. 21, 2020) (Final Order).

<sup>2</sup> See Docket No. 20190131-EU, *In re: Proposed adoption of Rule 25-6.030, F.A.C., and Rule 25-6.031, F.A.C., Storm Protection Plan Cost Recovery Clause*.

Dockets, Order No. PSC-2020-0073-PCO-EI, issued on March 11, 2020, this docket was consolidated for the purpose of the hearing with the additional dockets that were established to review each of the investor-owned electric utilities' SPPs (Docket Nos. 20200067-EI, 20200068-EI, 20200069-EI, and 20200071-EI), and controlling dates were established.<sup>3</sup> The dockets are currently scheduled for hearing from August 10, 2020, through August 13, 2020.

On April 3, 2020, OPC served Gulf its First Set of Interrogatories (Nos. 1-41) and First Request for Production of Documents (Nos. 1-14). On April 23, 2020, Gulf served its responses to OPC's First Set of Interrogatories and First Request for Production of Documents, and its objections to Interrogatory Nos. 7-8, 10, 22-26, 29, 31-34, and 40-41; and Request for Production of Documents Nos. 5-8 and 13 (Contested Discovery). Gulf objected to providing the discovery responses for two primary reasons; namely, that (1) the Contested Discovery was not relevant to this (SPP) proceeding because the subject matter was not included in Gulf's proposed SPP, and (2) the Contested Discovery would be addressed in subsequent and separate filings in the Commission's SPPCRC proceeding (Docket No. 20200092-EI). Accordingly, Gulf argued that the Contested Discovery is irrelevant to Gulf's SPP, beyond the scope of this proceeding, and unlikely to lead to admissible evidence in this proceeding.

On April 29, 2020, OPC filed its Citizen's Motion to Compel (Motion), requesting that the Commission compel Gulf to respond to OPC's First Set of Interrogatories, Nos. 7-8, 10, 22-26, 29, 31-34, and 40-41, and to produce all documents responsive to Citizens' First Request for Production of Documents, Nos. 5-8, and 13. On May 4, 2020, Gulf filed its Response in Opposition to OPC's Amended Motion to Compel Responses to First Set of Interrogatories and First Request for Production of Documents (Response).

The Contested Discovery requests are:

**Interrogatory No. 7:** Please provide a detailed list and description of all functions of the customer meters that your Company has currently installed. The list should be broken into two categories: 1) functions used exclusively for extreme weather events and 2) functions other than those used for extreme weather events. For the purpose of this question, "extreme weather events" are defined as named tropical storm or hurricane events.

**Interrogatory No. 8:** Please provide a detailed list and description of all functions of current and future battery installations currently in place or planned for construction. If any functions are described as required for extreme weather events, please provide a detailed description of the benefit(s) to customers during this type of event and why this is the main purpose for the battery installation. For the purpose of this question, "extreme weather events" are defined as named tropical storm or hurricane events.

---

<sup>3</sup> Order No. PSC-2020-0122-PCO-EI, issued on April 22, 2020, modified the controlling dates of the Order Establishing Procedure.

**Interrogatory No. 10:** If your answer to Question 9 is yes, please explain how the Commission will be able to distinguish between costs covered by base rates and the incremental costs above that covered by base rates based on the language in the Rule 25-6.031(6)(b)?<sup>4</sup>

**Interrogatory No. 22:** Please provide a schedule listing all franchise agreements, indicating the expiration date and those currently being negotiated for renewal.

**Interrogatory No. 23:** Please describe in detail how your Company determines what is included in a project that would be eligible for AFUDC?

**Interrogatory No. 24:** Please describe in detail how your Company determines when a project is eligible for AFUDC treatment? Please identify the document(s) containing the specific criteria for making such a determination.

**Interrogatory No. 25:** Please provide the amount equal to 0.5% of the sum of the total balance in Account 101 – Electric Plant In Service, and Account 106 – Completed Construction not Classified as of February 29, 2020?

**Interrogatory No. 26:**

Given the following hypothetical:

- Three undergrounding of lateral projects located in three distinctly separate counties and are not physically inter-connected other than as distinct components of the overall Company grid,
- The Company contracts for all three under one contract,
- None of the three projects independently meet the AFUDC requirements of Rule 25-6.0141, Florida Administrative Code.
- All three projects added together meet the threshold test of Rule 25-6.0141, Florida Administrative Code.

Do you believe the above projects would accrue AFUDC in accordance with your company policies and procedures? Explain your answer.

---

<sup>4</sup> Interrogatory No. 9: Rule 25-6.031(6)(b), Storm Protection Plan Cost Recovery Clause (SPPCRC) states that costs included in base rates or other cost recovery mechanisms are not recoverable through this clause. However, Rule 25-6.030, Storm Protection Plan (SPP), has no such language. Is it your Company's intention and opinion that the Storm Protection Plan should and will include storm protection costs, both capital costs and expensed costs, that are currently being recovered through the Company's base rates as well as the additional incremental costs above those already included in base rates? (Interrogatory No. 9 is not part of OPC's Motion.)

**Interrogatory No. 29:** According to your storm hardening plans filed with the Commission and approved by the Commission on July 9, 2019, your Company already has plans to perform storm hardening activities for 2019 and 2020. Is it your Company's opinion that all of these activities and identified dollar amounts or dollar amount ranges would be recovered through your Company's current base rates and therefore is not being requested for recovery through the new Storm Protection Cost Recovery Clause? Explain your answer.

**Interrogatory No. 31:** If your answer to Question 8 is yes, please explain how the Commission will be able to distinguish between costs covered by base rates and the incremental costs above that covered by base rates based on the language in the Rule 25-6.031(6)(b)?

**Interrogatory No. 32:** Please explain in detail how the Company will distinguish between tree trimming expenses currently being recovered through base rates and those that you will be requesting as new incremental costs to be recovered through the SPPCRC?

**Interrogatory No. 33:** Rule 25-6.030(3)(e)2, Storm Protection Plan does not require the Company to list the specific projects to be included in years 2 and 3. Please explain how the Commission can make a determination that the programs included in year 2 and 3 do not include projects already being recovered through base rates, if no project detail is given?

**Interrogatory No. 34:** Rule 25-6.031(3), states that the annual hearing will be limited to determining the reasonableness of approved storm protection plan costs, determining the prudence of actual storm protection plan costs incurred by the utility, and establishing storm protection plan cost recovery factors consistent with the requirements of this rule. If no project information is required for years 2 and 3 of the plan, please explain how the Commission, Commission Staff or any intervenor can contest the inclusion of a particular project as being imprudent for inclusion in the clause for recovery?

**Interrogatory No. 40:** Please provide a detailed explanation of how your Company arrived at the amount of vegetation management costs you plan to include in the SPPCRC?

**Interrogatory No. 41:** Please provide a detailed explanation of how your company arrived at the amount of pole inspection costs you plan to include in the SPPCRC?

**Request for Production of Documents No. 5:** Please provide all Company documents that describe how customer meters aid in the recovery from extreme weather events.

**Request for Production of Documents No. 6:** Please provide all literature known to the Company that describe how customer meters aid in the recovery from extreme weather events.

**Request for Production of Documents No. 7:** Please provide all Company documents that describe how battery installations aid in the recovery from extreme weather conditions.

**Request for Production of Documents No. 8:** Please provide all literature known to the Company that describe how battery installations aid in the recovery from extreme weather conditions.

**Request for Production of Documents No. 13:** Please provide copies of all Company documents that discuss the separation of storm enhancement projects between those to be or already included in base rates and those projects to be included in the storm protection plan cost recover clause filing for the years 2019, 2020, and 2021.

### Motion

OPC argues that pursuant to Section 366.96(4)(d), F.S., when evaluating a utility's SPP, the Commission must consider the estimated annual rate impact resulting from implementation of the utility's proposed SPP during the first 3 years addressed in the plan. Consequently, OPC argues that any information that is related to the preliminary, estimated impact on customer rates is relevant, and could lead to evidence that is admissible in the SPP proceeding, because rate impact information is an element of the Commission's public interest determination in this SPP proceeding. OPC contends that the Contested Discovery is reasonably calculated to elicit sufficient information to examine, analyze, test, and challenge Gulf's development of the rate impacts of its SPP on its customers, and that the information is necessary to develop evidence that would be admissible in this SPP proceeding. OPC therefore requests that Gulf be compelled to produce responses to the Contested Discovery pursuant to Rule 1.280(b)(1), Florida Rules of Civil Procedure.

OPC's argument has essentially two components. First, OPC acknowledges that the implementation of the utility's SPP is considered in the SPPCRC proceeding, but argues that since the Commission must consider the estimated annual rate impact of the SPP in this SPP proceeding, then OPC is entitled to any discovery that examines and challenges Gulf's development of the estimated rate impacts, which includes discovery that is also related to the SPPCRC proceeding. OPC also argues that Section 366.96(8), which provides that annual SPPCRC costs may not include costs recovered through a utility's base rates, further supports its argument that any rate-related discovery is relevant in this SPP proceeding.

Second, OPC contends that the Contested Discovery is reasonably calculated to elicit sufficient information to examine and challenge the information Gulf has provided as a result of the requirements of Rules 25-6.030(3)(d) and (3)(h), F.A.C., which collectively instruct the utility to provide sufficient detail in years two and three of its SPP to allow the development of preliminary estimates of rate impacts for the utility's typical residential, commercial, and industrial customers.

With respect to Interrogatory Nos. 10, 29, 31-34, 40-41, and Request for Production of Documents No. 13, OPC argues that Gulf is incorrect in its assertion that cost information should only be addressed in the SPPCRC proceeding. OPC contends that while the SPPCRC will address what, if any, of the costs related to an approved SPP will be recoverable, it is in this SPP proceeding where the Commission must evaluate the rate impacts of projects proposed in the SPP when making its determination as to whether or not the proposed SPP is in the public interest. OPC also argues that nothing in 366.96, F.S., or Rule 25-6.030, F.A.C., pre-judges whether the Commission will accept the SPP as filed. OPC concludes that it is thus important for the Commission to have cost information related to base rates and cost recovery clause rates because it directly implicates the rate impact analysis in this SPP proceeding.

With respect to Interrogatory Nos. 7, 8, and 22-26, and Request for Production of Documents Nos. 5-8, OPC argues that the responses it seeks are not beyond the scope of this SPP proceeding because the SPP programs and related cost-types will impact the appropriateness of including certain projects in Gulf's SPP. OPC asserts that rate impact information is required to be considered by the Commission in the SPP proceeding, and should be evaluated broadly, and that discovery requests should be granted liberally to ensure that the Commission has all relevant information that is required to render a decision in compliance with Section 366.96(4), F.S. OPC argues that it is entitled to all relevant cost information that is necessary to examine and challenge the development of the rate impacts, and that the questions were designed to elicit responses that are admissible evidence or are reasonably calculated to lead to the discovery of admissible evidence in the SPP proceeding.

#### Gulf's Response in Opposition

In its Response, Gulf argues that OPC's Motion should be denied on the grounds that the Contested Discovery is overly broad, burdensome, and unlikely to lead to admissible evidence in this SPP proceeding. Gulf argues that OPC has failed to demonstrate any causal connection between the information sought and the possible evidence relevant to the issues to be decided in this (SPP) proceeding. Gulf further argues that OPC's Motion is rendered moot, in part, by serving the same discovery requests that pertain to the cost recovery clause in the separate SPPCRC proceeding (Docket No. 20200092-EI).

As a preliminary matter, Gulf contends that OPC has conceded the Contested Discovery questions are not relevant to this SPP proceeding, and instead belong in the SPPCRC proceeding, by serving the Contested Discovery on Gulf in Docket No. 20200092-EI, on April 30, 2020. Gulf argues that OPC should not be permitted to claim that the discovery requests are relevant to the SPP proceeding, not the SPPCRC proceeding, and then serve the same discovery in the SPPCRC

proceeding. Gulf further contends that serving the Contested Discovery in Docket No. 20200092-EI renders OPC's Motion legally moot and practically superfluous.

Gulf also contends that even if the Contested Discovery is not rendered moot, the questions are nevertheless irrelevant to this SPP proceeding. Gulf notes that the Contested Discovery was served seven days prior to Gulf's submission of its Petition for Approval of Gulf's 2020-2029 SPP, and avers that OPC was either guessing at what it thought was relevant, or attempting through discovery to drive the issues that OPC wanted to be addressed in this proceeding, neither of which is an acceptable basis for issuing appropriate discovery.<sup>5</sup>

Gulf argues that OPC has taken a broad, audit-type approach to discovery and is seeking information about topics that do not and cannot relate to Gulf's SPP, and that, by seeking overwhelmingly broad and detailed information that is beyond the scope of the SPP proceeding, OPC's Motion and the Contested Discovery ignore the fact that the Commission adopted separate Rules for the SPP and SPPCRC proceedings. Gulf notes that OPC unsuccessfully challenged Rules 25-6.030 and 25-6.031, F.A.C., and argues that OPC should be held to respect the Commission's separation of these proceedings in the discovery that OPC serves in the SPP and SPPCRC proceedings.

In addition, Gulf argues that OPC uses as its principal, and in some cases sole justification, a flawed interpretation of Section 366.96(4)(d), F.S., to argue that the Contested Discovery is relevant. Gulf argues that OPC conflates estimated rate impacts with bill impacts, and states that the estimated rate impacts are a simple function of the total estimated annual SPP program costs and annual sales, and that this is the impact contemplated by 366.96(4)(d), F.S., and Rule 25-6.030, F.A.C. In contrast, information about whether SPP costs will be recovered in base rates or in the SPPCRC, and what amounts are to be included in the SPPCRC, are more appropriately categorized as bill impacts, and thus by extension more appropriately addressed in the SPPCRC proceeding.

Gulf contends that OPC's discovery requests that seek detailed information about the bill impacts of the costs to be recovered through the SPPCRC are simply not relevant to the SPP. Gulf continues that although the Commission is to consider the estimated rate impacts in determining whether a proposed SPP is in the public interest, Section 366.96(7), F.S., and Rule 25-6.031, F.A.C., unequivocally provide that the reasonableness and prudence of the SPP costs to be charged to customers through the SPPCRC, i.e., the bill impacts, will be addressed in the SPPCRC proceeding. Gulf notes that OPC will have an opportunity in the SPPCRC proceeding to seek discovery at the appropriate time on the costs proposed to be recovered in the SPPCRC, once the SPPCRC petition is filed.

Gulf further argues that Rule 25-6.030, F.A.C., does not direct the utility to provide the estimated incremental rate impacts, the estimated rate impacts from the SPPCRC proceeding, or the costs that are being recovered in base rates, and that the Commission's exclusion of these

---

<sup>5</sup> Gulf did not address whether pre-petition discovery by a non-petitioner is appropriate, or when and how such discovery should be deemed served, but reserved all objections and arguments regarding pre-petition discovery, and whether such practice is legally permissible, reasonable, and appropriate.

requirements from Rule 25-6.030, F.A.C., which governs the SPP proceeding, was purposeful. Gulf avers that the Commission's intent is confirmed by Rule 25-6.031, F.A.C., which expressly directs the utility to identify the costs to be included in the SPPCRC proceeding, and states that such costs cannot include costs recoverable through base rates or any other cost recovery mechanism.

### Standard of Review

Rule 28-106.206, Florida Administrative Code (F.A.C.), provides that:

After commencement of a proceeding, parties may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure. The presiding officer may issue appropriate orders to effectuate the purposes of discovery and to prevent delay, including the imposition of sanctions in accordance with the Florida Rules of Civil Procedure, except contempt.

The purpose of discovery is to “eliminate surprise, to encourage settlement, and to assist in arriving at the truth.” *Spencer v. Beverly*, 307 So. 2d 461, 462 (Fla. 4<sup>th</sup> DCA 1975); *Binger v. King Pest Control*, 401 So. 2d 1310, 1313 (Fla. 1981); *Elkins v. Syken (Elkins)*, 672 So. 2d 517, 522 (Fla. 1996) (“Pretrial discovery was implemented to simplify the issues in a case, to eliminate the element of surprise, to encourage the settlement of cases, to avoid costly litigation, and to achieve a balanced search for the truth to ensure a fair trial.”)

The scope of discovery is broad under Florida law: “any matter that is relevant to the subject matter or reasonably calculated to lead to the discovery of admissible evidence.” Rule 1.280(b)(1), Florida Rules of Civil Procedure; *Allstate Insurance Co. v. Langston*, 655 So. 2d 91 (Fla. 1995). The discovery rules are to be liberally construed so as to permit any form of discovery within the scope of the rules. *Weyant v. Rawlings*, 389 So. 2d 710 (Fla. 2<sup>nd</sup> DCA 1980). However, discovery should be denied when it has been established that the information requested is neither relevant to any pending claim or defense nor will it lead to the discovery of admissible evidence. *Poston v. Wiggins*, 112 So. 3d 783 (Fla. 1<sup>st</sup> DCA 2013). If a logical connection is not readily apparent, the questioner should make it apparent by pointing out to the court his reasoning process based on facts and inferences demonstrating how he calculates that the sought information will ‘reasonably’ lead to admissible evidence. *Calderbank v. Cazares*, 435 So. 2d 377 (Fla. 5<sup>th</sup> DCA, 1983). Further, in deciding whether a party should be required to respond to a discovery request, the court must weigh the relevance of the information sought against the burdensomeness of the request. *Elkins*, 672 So. 2d at 522.

### Analysis and Decision

Having reviewed the arguments in OPC's Motion and in Gulf's response, the Motion is hereby denied. In short, OPC is incorrect in its assertion that the requirement for the Commission to consider the estimated rate impacts of the utility's proposed SPP, as iterated in Section 366.96(4)(d), F.S., enables OPC to seek discovery related to any programs and costs that may



impact rates, including programs and costs not proposed in the SPP, as well as costs that are directly related to the SPPCRC proceeding. On balance, OPC's argument rests on what constitutes an acceptable "estimated rate impact" for the Commission to consider when reviewing the utility's SPP. OPC concludes that a deep-dive of any information that is broadly related to rate impacts should be discoverable in this SPP proceeding. However, I do not find that the Contested Discovery that OPC seeks in this instance would assist in facilitating the Commission's determination of whether or not Gulf's SPP should be approved as in the public interest. In addition, it is important to note that even if the Commission approves Gulf's SPP as in the public interest, the cost estimates are not correspondingly "approved." The Commission will have the opportunity to scrutinize and allow or disallow cost recovery of Gulf's actual costs in the SPPCRC proceeding.

More specifically, I find that Interrogatory Nos. 7, 8, 22, and Request for Production of Document Nos. 5-8, are irrelevant to this SPP proceeding because they pertain to programs and costs not identified in Gulf's proposed SPP, and therefore will not lead to the discovery of admissible evidence in this SPP proceeding. In its Motion, OPC failed to identify its reasoning for how the broad information it seeks related to Gulf's customer meter installations, battery installations, and franchise agreements, none of which are included in Gulf's SPP, will reasonably lead to admissible evidence in this SPP proceeding. Instead, OPC generally avers that the Commission should broadly evaluate any information pertaining to its consideration of rate impacts, and that the programs and related cost types impact the appropriateness of including certain projects in the SPP, despite their absence from the SPP. However, since Gulf is not proposing in its SPP any of these programs or costs, then it would be overly burdensome to compel Gulf to respond to these questions in this proceeding. OPC's argument that programs and cost types that are *not* included in the SPP ultimately impact what *is* included in the SPP, and are therefore discoverable in this SPP proceeding, is excessively broad, and OPC failed to point out a logical connection between the discovery it seeks and the proceeding at hand.

In addition, I find that Interrogatory Nos. 23-26, which pertain to Gulf's AFUDC eligibility determinations, are also not relevant to this SPP proceeding, and not likely to lead to admissible evidence in this SPP proceeding. Gulf did not include AFUDC for any projects or programs reflected in its SPP, and therefore it would be overly burdensome to compel Gulf to answer OPC's broad, AFUDC-related questions, which make no reference to Gulf's SPP. In addition, as it is an accounting determination, questions related to AFUDC are more appropriately addressed in the SPPCRC proceeding, if they are determined to be relevant.

Furthermore, I find that Interrogatory Nos. 10, 29, 31-34, and 40-41, and Request for Production of Documents No. 13, are irrelevant to this SPP proceeding because they pertain to costs that are directly related to the SPPCRC proceeding, and therefore will not lead to the discovery of admissible evidence in this SPP proceeding. While the SPPCRC costs are not unrelated to the SPP, when enacting Section 366.96, F.S., the Florida Legislature divided the SPP and SPPCRC into separate proceedings, as evidenced by Section 366.96(4), F.S., and Section 366.96(7), F.S., respectively. Accordingly, the Commission enacted Rule 25-6.030, F.A.C., to govern the information and proceeding related to a utility's SPP filing, and Rule 25-6.031, F.A.C., to govern the information and proceeding related to a utility's annual SPPCRC

filing. The questions that pertain to details regarding SPPCRC costs are more appropriate to address in the SPPCRC proceeding, and OPC has essentially acknowledged as much by serving the same questions in the SPPCRC docket (Docket No. 20200092-EI). Indeed, Gulf has indicated that its response to Interrogatory Nos. 10, 29, 31-34, and 40-41, and Request for Production of Documents No. 13, would be provided to OPC at the appropriate time in the SPPCRC proceeding.

OPC acknowledges that implementation of the SPP is effectuated through the SPPCRC proceeding, yet attempts to put the cart before the horse by seeking any information related to the implementation of the plan at the outset of this SPP proceeding – in this case before Gulf even filed its proposed plan, and well before Gulf is required to file its proposed cost recovery in the SPPCRC proceeding, which Gulf indicated is tentatively set to be filed in the third quarter of 2020 (in Docket No. 20200092-EI). In this regard, OPC fails to acknowledge the bifurcation of the SPP and SPPCRC proceedings and ignores the direction it was given in its challenge to the SPP and SPPCRC Rules earlier this year. The Final Order, issued by the Division of Administrative Hearings, specifically indicated that:

The utilities, not the Commission, and not the Challengers [OPC and Florida Industrial Power Users Group], have the burden to prove that costs recovered through the clause are not recovered elsewhere. *But if that information is needed, it should be provided through a cost recovery clause proceeding, not the storm protection plan approval proceeding.*<sup>6</sup> (emphasis added)

As indicated above, OPC has already submitted these questions to Gulf in the appropriate SPPCRC proceeding; accordingly, I find that the responses to Interrogatory Nos. 10, 29, 31-34, 40-41, and Request for Production of Documents No. 13, are not relevant to this SPP proceeding, and not likely to lead to admissible evidence. In addition, it would be overly burdensome to compel Gulf to respond to Interrogatory Nos. 10, 29, 31-34, 40-41, and Request for Production of Documents No. 13, at this time, as the utility has already indicated that it will respond to these questions at the appropriate time in the SPPCRC proceeding.

Therefore, it is

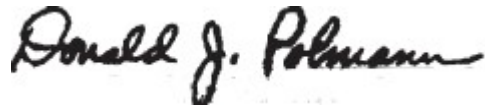
ORDERED by Commissioner Donald J. Polmann, as Prehearing Officer, that the Office of Public Counsel's Motion to Compel Discovery is hereby denied. It is further

ORDERED that the provisions of this order are applicable to this Gulf Power Company SPP proceeding (Docket No. 20200070-EI) only.

---

<sup>6</sup> See *Office of Pub. Counsel v. Fla. Pub. Serv. Comm'n*, No. 19-6137RP (Fla. DOAH Jan. 21, 2020) (Final Order), p. 35.

By ORDER of Commissioner Donald J. Polmann, as Prehearing Officer, this 18th day of May, 2020.



---

DONALD J. POLMANN, Ph.D., P.E.  
Commissioner and Prehearing Officer  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

RAD

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.