



March 14, 2014

Ann Cole
Director, Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

RE: Docket No. 130199-EI Florida Power & Light Company;
Docket No. 130199-EI Duke Energy, Florida, Inc.;
Docket No. 130199-EI Tampa Electric Company;
Docket No. 130199-EI Gulf Power Company;
Docket No. 130199-EI Florida Public Utilities Company;
Docket No. 130199-EI Orlando Utilities Commission; and
Docket No. 130199-EI JEA

Dear Ms. Cole:

Enclosed for filing in the above-stated dockets please find Sierra Club's Motion to Extend Intervenors' Testimony Deadline, Expedite Discovery, and Promote Public Engagement. Thank you for your attention to this Motion.

Sincerely,

/s/ Diana A. Csank

Diana A. Csank
Qualified Representative for Sierra Club

Enclosures

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Commission review of numeric conservation goals (Florida Power & Light Company).

DOCKET NO. 130199-EI

In re: Commission review of numeric conservation goals (Duke Energy Florida, Inc.).

DOCKET NO. 130200-EI

In re: Commission review of numeric conservation goals (Tampa Electric Company).

DOCKET NO. 130201-EI

In re: Commission review of numeric conservation goals (Gulf Power Company).

DOCKET NO. 130202-EI

In re: Commission review of numeric conservation goals (JEA).

DOCKET NO. 130203-EM

In re: Commission review of numeric conservation goals (Orlando Utilities Commission).

DOCKET NO. 130204-EM

In re: Commission review of numeric conservation goals (Florida Public Utilities Company).

DOCKET NO. 130205-EI

Filed March 14, 2014

MOTION TO EXTEND INTERVENORS' TESTIMONY DEADLINE,
EXPEDITE DISCOVERY, AND
PROMOTE PUBLIC ENGAGEMENT

Pursuant to Rule 28-106.204, Florida Administrative Code (F.A.C.), Sierra Club files this Motion to Extend Intervenors' Testimony Deadline, Expedite Discovery, and Promote Public Engagement in the above-captioned, consolidated dockets. More specifically, Sierra Club moves the Prehearing Officer for the following relief: 1) extend Intervenors' direct testimony deadline to June 16, 2014, and shift the remaining controlling dates accordingly; 2) expedite discovery by limiting the response time to 14 days (inclusive of mailing) from the discovery request-receipt date; and 3) allow oral testimony by members of the public during a scheduled hearing, and to promote public access locate such a hearing in the Tampa Bay area or a similarly central part of the State. This Motion is timely pursuant to Rule 28-106.204(4), F.A.C., because it is filed prior to the expiration of the deadline sought to be extended.

As discussed further below, the FEECA utilities (named in the caption above, hereafter “Utilities”) are now over five months behind on producing their updated Technical Potential Study. Utilities have stated their intention to produce this critical information only with their direct testimony on April 2, 2014—on a timeframe that undercuts Intervenors’ ability to seek discovery, evaluate responses, and draft and file direct testimony, which is currently due on May 5, 2014. By comparison, in the last FEECA goal-setting proceeding, the Commission published the Technical Potential Study nearly three months before Intervenors’ direct testimony was due. *See* Document No. 03144-09. Even so, there, the Prehearing Officer extended Intervenors’ direct testimony deadline after Utilities gave Intervenors limited and delayed access to the related—and equally critical—economic and achievable potential studies. Order No. PSC-09-0467-PCO-EG. Here, the information disparity is slated to be worse because we lack the series of public workshops and Staff-retained independent experts, among other things, to help develop the record. The requested relief therefore is critical for record-development, and to ensure “an open, accessible, and efficient regulatory process that is fair and unbiased.” FPSC, *Statement of Agency Organization & Operations*, available at <http://www.psc.state.fl.us/home/files/SAOO.pdf> (“Commission Goals”).

REGULATORY BACKGROUND

Under FEECA, the Legislature charges the Commission with ensuring that Florida optimally saves energy through utility-sponsored measures. *See* FEECA, Sections 366.80 – 366.85, 403.519, Florida Statutes (F.S.). To inform the Commission’s FEECA oversight, the Legislature calls for the comprehensive re-evaluation at least every five years of “all available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy systems [‘distributed generation’]” in Utilities’ service territories. Sections 366.82 (2), (6), F.S. For good reason: rapid changes in the energy sector effectively re-make the regulated energy landscape on intervals even shorter than five years, and these FEECA goal-setting dockets present the only meaningful opportunity for the Commission to evaluate:

- 1) What energy efficiency and conservation services Utilities can offer their customers;
- 2) What the costs and benefits of such energy efficiency and conservation services are;
- 3) What distributed generation services Utilities can offer their customers; and
- 4) What the costs and benefits of such distributed generation services are.

Pursuant to these FEECA oversight responsibilities, the Commission is in a unique position of public trust: many Floridians look to their utility for information and resources to help reduce their energy use and save money on their bills. Again, the FEECA goal-setting dockets present the only meaningful opportunity for the Commission—and the general public—to obtain critical information from Utilities—and to have their voices heard—in the decisions governing what energy-saving services Utilities will provide over the next ten years.

Finally, in conducting FEECA oversight, the Commission must establish, as always, a transparent process that allows for meaningful participation by the general public and interested parties. The broad public interest in promoting energy savings is emphasized in FEECA's legislative findings. *See* Section 366.81, F.S. (stating that saving energy is “critical” to “protect the health, prosperity, and general welfare of the state and its citizens.”) Further, Rule 28-106.111, F.A.C., allows the Prehearing Officer to “issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just speedy, and inexpensive determination of all aspects of the case [emphasis added].” Similarly, the Commission's goals for such proceedings emphasize openness and protection for the State's billpayers. *See* Commission Goals at 1 (goals are to (1) “provide an open, accessible, and efficient regulatory process that is fair and unbiased,” and (2) “provide appropriate regulatory oversight to protect consumers,” among others). Finally, Rule 28-106.204(4), F.A.C., allows for the requested extension because this Motion is “filed prior to the expiration of the deadline sought to be extended” and “states good cause for the request,” as discussed further below.

FACTUAL BACKGROUND

Utilities must provide the Commission and the public an updated Technical Potential Study to serve as the first meaningful basis for re-evaluating the energy savings potential in each Utility's service territory. *See* Order No. PSC-13-0386-PCO-EU at 2 (“the parties agreed that the Technical Potential Study used in the previous numeric goals proceeding, Docket Nos. 080407-EG- 080412-EG, should be updated by each utility, on or about September 30, 2013.”) Timely publication of the updated Technical Potential Study is necessary for an open, accessible, and efficient FEECA process that is fair and unbiased. In particular, the updated Study is needed for the full evaluation of energy-saving opportunities in Utilities' service territories, and

subsequently for the evaluation of the costs and benefits of those opportunities, and for establishing goals.

With the understanding that Utilities would complete their updates to the Technical Potential Study on or around September 30, 2013, the Commission established the controlling dates for these consolidated dockets. *See* Order No. PSC-13-0386-PCO-EU at 10. Under the current schedule, Utilities must file their direct testimony on April 2, 2014, and Intervenors and Staff must file their direct testimony as follows:

- | | |
|--|--------------------------------------|
| (1) Utility's testimony and exhibits | April 2, 2014 |
| (2) Intervenors' testimony and exhibits | May 5, 2014 |
| (3) Staff testimony and exhibits, if any | May 19, 2014 |
| (4) Rebuttal testimony and exhibits | June 2, 2014 |
| (5) Prehearing Statements | June 10, 2014 |
| (6) Prehearing Conference | June 16, 2014 |
| (7) Discovery deadline | July 7, 2014 |
| (8) Hearing | July 21-23, 30-31, 2014 ¹ |
| (9) Briefs | September 8, 2014 |

Id. The Commission further set discovery responses as due within 30 days from the discovery request-receipt date. *Id.*

Sierra Club petitioned for leave to intervene in this proceeding on December 18, 2013. The Prehearing Officer granted intervention on February 7, 2014, in Order No. PSC-14-0097-PCO-EU. Sierra Club immediately asked Utilities for their updated Technical Potential Study after the September 2013 deadline, but none granted Sierra Club's request. *See, e.g.*, October 29, 2013, Email from Duke Energy Florida to Sierra Club, attached as Exhibit A.

To date, Utilities subject to the participation and filing requirements of the Order Establishing Procedure have not provided to the Commission or to Intervenors their updates to the Technical Potential Study. Instead, Utilities provided mere high-level summaries of their tentative updates and, on February 13, 2014, Utilities informed Staff, Intervenors, and interested persons that their final updates will not be available until April 2, 2014—the same date that Utilities file their direct testimony and exhibits. Utilities' ongoing failure to provide full and final

¹ In February 2014, the hearing dates changed. *See* Order No. PSC-14-0112-PCO-EU.

updates to the Technical Potential Study, including the supporting data and analyses, has produced a growing information disparity: Utilities will have over six months more time (from September 2013 to April 2014) than Intervenors to develop the analyses that are required in this proceeding and that rely on the updated Technical Potential Study.

By comparison, in the last FEECA goal-setting proceeding, “to facilitate access by the public” the Commission published the Technical Potential Study nearly three months before Intervenors’ direct testimony was due (89 days from the publication date, April 8, 2009, to the testimony date, June 6, 2009). *See* Document No. 03144-09. Even so, the Prehearing Officer agreed with Environmental Intervenors that an extension of their direct testimony deadline was warranted given that Utilities provided limited and late access to the related economic and achievable potential studies. There, the Prehearing Officer concluded that “it is important for there to be a complete record before the Commission for review and upon which to set DSM goals.” Order No. PSC-09-0467-PCO-EG. Without the requested relief, here, the information disparity and challenges to developing the record are worse because we lack the series of public workshops and Staff-retained independent experts, among other things, that aided record-development last time. Further, Public Counsel—who advocates on behalf of Florida’s billpayers before the Commission—has not yet intervened in this proceeding.

As discussed further below, Intervenors hereby move to extend their direct testimony deadline, expedite discovery, and promote public engagement because this relief is critical to developing the record that will inform the Commission’s decisions in these dockets, and to ensuring an open, accessible, and efficient FEECA goal-setting process that is fair and unbiased.

ARGUMENT

I. The Prehearing Officer Should Adjust the Schedule and Expedite Discovery to Mitigate the Unjust and Counterproductive Information Gap Resulting from Utilities Controlling Virtually All of the Relevant Information in this Proceeding.

As noted above, the Commission’s primary objective in such proceedings is “to provide an open, accessible, and efficient regulatory process that is fair and unbiased.” Commission Goals at 1. As currently structured, this proceeding will do exactly the opposite given the Utilities’ nearly exclusive control of the relevant information, and the insufficient time under the current schedule and discovery procedures to rectify this information gap.

Due to the Utilities' delay in producing their updates to the Technical Potential Study—which will now be available only on April 2, 2014—the current schedule and discovery procedures will render the proceeding unfair and biased because of the lopsided access to information. As discussed above, the updated Technical Potential Study comprises the initial basis of information from which Intervenors' experts develop their analyses and identify what additional data may be needed to fully evaluate the energy-saving potential in Utilities' service territories. And the updates to the Technical Potential Study, as well as the underlying data, are solely in the Utilities' control.

Assuming that Utilities file their updates to the Technical Potential Study on April 2, 2014, Intervenors and their experts will have one to two days to review that data, identify data deficiencies, and draft and serve discovery on Utilities. The remaining time between April 2 and May 5 will be largely lost while Utilities take their 30 days to respond to Intervenors' discovery, as allowed by the current procedures. *See* Order No. PSC-13-0386-PCO-EU at 4-5. Assuming Utilities provide timely and full responses, Intervenors and their experts would then have just one more day to analyze that additional data, draft their direct testimony, develop exhibits and file these materials with the Commission. Such a process is far from “accessible,” “open,” or “fair.” Commission Goals at 1.

To mitigate the imbalance in information-control created by Utilities' ongoing failure to provide the updated Technical Potential Study, it is critical that the Prehearing Officer extend Intervenors' direct testimony deadline by 6 weeks, to June 16, 2014, and shift the remaining dates in the schedule accordingly. In addition, Intervenors request that the Prehearing Officer order that discovery responses be served within 14 days.

In the interest of justice and a fair and unbiased proceeding, the Prehearing Officer should grant this relief. Doing so would allow Intervenors and their experts the time needed to review the data provided by Utilities on April 2, 2014; propound discovery seeking substantiating information or other data that was not provided by Utilities but that is needed for an independent expert analysis; analyze the additional data once Utilities provide it; and finally draft and file Intervenors' direct testimony. Even then, six weeks is a very constrained timeline, especially if Utilities do not provide full and timely responses to Intervenors' discovery requests.

Indeed, this is exactly the relief the Commission granted in the last FEECA goal-setting proceeding, where, based on a similar information gap, the Commission extended Intervenors'

direct testimony deadline to help develop the record. Here, however, Intervenors face a greater and more unjust information gap because they have had virtually no access to the data and analyses that have been in the exclusive control of the Utility-Parties for over six months. By comparison, in the last FEECA-goal-setting proceeding, the Commission also helped develop a complete record by: (1) requiring discovery responses within 20 days; (2) fostering public engagement through a series of workshops; and (3) retaining technical consulting experts. *See* Order No. PSC-09-0855-FOF-EG. Nonetheless, there, the Commission found certain aspects of the record lacking, and decided to defer portions of FEECA-goal-setting where further record development was needed. *Id.* At a minimum, absent public workshops and Staff-retained independent technical experts, we need expedited discovery and an extended deadline for Intervenors' direct testimony to mitigate the unfair information gap in this proceeding, and to develop a complete record to inform the Commission's goal-setting.

The Prehearing Officer should enter an order granting the extension and requiring discovery responses within 14 days because such an order is "necessary to effectuate discovery, to prevent delay, and to promote the just speedy, and inexpensive determination of all aspects of the case [emphasis added]." Rule 28-106.111, F.A.C. Doing so is consistent with the comprehensive evaluation and record development FEECA requires for setting new goals by December 2014. Further, no Party will be unduly prejudiced because this relief impacts controlling dates that are many weeks away and shorter discovery response times can and have been accommodated.

Further, the request for an extension is timely because it is filed prior to—indeed many weeks before—the expiration of the deadline sought to be extended. Rule 28-106.204(4), F.A.C. The requested extension is also supported by good cause because Sierra Club was recently granted Intervenor status and confirmed that Utilities' ongoing delay in producing updates to the Technical Potential Study will endure up to or beyond April 2, exacerbating the information disparity in this proceeding.

II. The Prehearing Officer Should Provide for a Public Hearing in Central Florida.

As noted above, during FEECA goal-setting the Commission will determine the energy-saving services that Utilities provide their captive billpayers; whether bills will shrink or grow; and whether billpayers can insulate themselves from the risks of Utilities' business decisions

either by adopting more energy efficiency and conservation measures, or by employing distributed generation. This is the only meaningful opportunity for billpayers to have their voices heard, and to thus exercise some degree of control and influence over the energy-saving services that Utilities provide them over the next ten years.

That said, transportation to Tallahassee presents a hardship for many billpayers in other parts of the State, especially South Florida and the Tampa Bay area. Therefore, Sierra Club requests that the Commission establish a public hearing in a central part of the State, such as the Tampa Bay area. Doing so will increase the number of billpayers who can attend the hearing, and it is all the more urgent here given that we lack public workshops and intervention by Public Counsel.

Further, these dockets will impact Utilities' resource decisions and the Commission has made it standard practice to facilitate input from billpayers by hosting public hearings in proceedings involving resource decisions, such as need determinations and Ten-Year Site Planning.

RELIEF SOUGHT

WHEREFORE, Sierra Club respectfully requests that the Prehearing Officer enter an order to 1) extend Intervenors' direct testimony deadline by six weeks to June 16, 2014, and shift the remaining dates accordingly; 2) expedite discovery by limiting the response time to 14 days (inclusive of mailing) from the discovery request-receipt date; and 3) allow oral testimony by members of the public during a scheduled hearing, and to promote public access set the location for such a hearing in the Tampa Bay area or a similarly central part of the State. The requested relief is critical to developing the record that will inform the Commission's decisions in these dockets, and to ensuring an open, accessible, and efficient FEECA goal-setting process that is fair and unbiased.

STATEMENT PURSUANT TO RULE 28-106.204(3), F.A.C.

Pursuant to Rule 28-106.204(3) of the Florida Administrative Code, Sierra Club conferred with all of the parties to Docket Nos. 130199-130203. The Southern Alliance for Clean Energy supports this Motion. Florida Power & Light Company, Duke Energy Florida, Inc., Tampa Electric Company, and JEA expressed objections. Florida Public Utilities Company, Orlando Utilities Commission, Florida Department of Agriculture and Consumer Services, and

Florida Industrial Power Users Group did not register a preference.

RESPECTFULLY SUBMITTED this 14th day of March, 2014.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy and correct copy of the foregoing was served electronically on this 14th day of March, 2014 on:

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This 14th day of March, 2014.

/s/ Diana A. Csank

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Ten-Year Site Plan Workshop follow-up

Bernier, Matthew <Matthew.Bernier@duke-energy.com>
To: Diana Csank <diana.csank@sierraclub.org>

Tue, Oct 29, 2013 at 3:07 PM

Diana –

Sorry for the delay getting back to you – I'm tied up at 4:30 on Thursday, would you be available earlier that afternoon?

Regarding the study, at this time, DEF is not in a posture to provide the updated technical potential study. While the analysis necessary to refresh the study has been updated as required by the PSC's August 19th Order, the document itself is not yet in a final, consumable format. The study will be filed as a testimonial exhibit in April as contemplated by the Order Establishing Procedure in this docket. However, until that time the document is subject to change during the reviewing stage, and therefore the current draft may not be a complete and accurate representation of the finalized study.

Thanks,

Matt

From: Diana Csank [mailto:diana.csank@sierraclub.org]
Sent: Tuesday, October 29, 2013 9:07 AM

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Commission review of numeric conservation goals (Florida Power & Light Company).	DOCKET NO. 130199-EI
In re: Commission review of numeric conservation goals (Duke Energy Florida, Inc.).	DOCKET NO. 130200-EI
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Filed: March 14, 2014

SIERRA CLUB'S REQUEST FOR ORAL ARGUMENT

Pursuant to Rule 25-22.0022(1), Florida Administrative Code (F.A.C.), Sierra Club requests oral argument on its accompanying Motion to Extend Intervenors' Testimony Deadline, Expedite Discovery, and Promote Public Engagement. The Motion raises questions of fairness and openness in this proceeding, and oral argument will allow Parties to respond to the Prehearing Officer and one another's relevant concerns. Moreover, since the initial meeting, dated June 17, 2013, between Staff, Utilities, and interested persons to discuss the procedures in this proceeding, an information disparity has developed that makes these procedures unworkable. Therefore, oral argument will allow the Parties to aid the Prehearing Officer's understanding and evaluation of the relevant factual developments and legal grounds for ruling on the Motion.

Oral argument will also aid the Prehearing Officer's evaluation of any alternative procedural changes that are appropriate for this proceeding. Because the procedural changes requested in the Motion apply to all Parties, the Prehearing Officer may need to reconcile potential scheduling conflicts among the Parties, and oral argument would facilitate such reconciliation. Also, in their Response to the Motion, if any, other Parties may raise new issues, including issues unforeseeable to Intervenors given the limited communications to date regarding the procedures in this proceeding. Here too, oral argument will aid the

Prehearing Officer's understanding and evaluation of this Motion, by giving all Parties a chance to discuss and reconcile the relevant issues raised in the Motion and any Response.

WHEREFORE, Sierra Club requests that oral argument be heard on its Motion to Extend Controlling Dates, Expedite Discovery, and Promote Public Engagement, and that Sierra Club be granted at least thirty (30) minutes for its oral argument.

Respectfully submitted this 14 day of March, 2014.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy and correct copy of the foregoing was served electronically on this 14th day of March, 2014 on:

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This 14th day of March, 2014.

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	Filed:

PROPOSED SECOND ORDER MODIFYING PROCEDURE

Upon review and evaluation of Sierra Club's Motion to Extend Intervenors' Testimony Deadline, Expedite Discovery, and Promote Public Engagement, and the Commission's calendar, the Motion is granted. Accordingly, the controlling dates for these consolidated dockets are revised as follows:

- | | | |
|-----|--------------------------------------|----------------|
| (1) | Intervenors' testimony and exhibits | June 16, 2014 |
| (2) | Staff testimony and exhibits, if any | June 30, 2014 |
| (3) | Rebuttal testimony and exhibits | July 14, 2014 |
| (4) | Prehearing statements | July 21, 2014 |
| (5) | Prehearing conference | August 4, 2014 |

- | | | |
|-----|--|---------------------|
| (6) | Discovery deadline | August 14, 2014 |
| (7) | Public Hearing (Tampa Bay area) | TBD |
| (8) | Hearing from July 21-23, and July 30-31,2014 | September 1-5, 2014 |
| (9) | Briefs | September 19, 2014. |

The general requirements for discovery are also modified. Discovery responses shall be served within 14 calendar days (inclusive of mailing) of the discovery request-receipt date. When a discovery request is served and the respondent intends to seek clarification of any portion of the discovery request, the respondent shall request such clarification within 5 days of service of the discovery request. Further, any specific objections to a discovery request shall be made within 7 days of service of the discovery request.

Finally, to promote public engagement in this proceeding, members of the public will be invited to testify at the scheduled hearing in Tallahassee and at an additional public hearing, the details of which will be published in a separate notice at least thirty days in advance.

[Prehearing Officer]