

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for Approval of _____)
Numeric Conservation Goals by _____)
Florida Power & Light Company _____)

Docket No. 130199-EI
Filed: March 21, 2014

**FLORIDA POWER & LIGHT COMPANY’S RESPONSE IN OPPOSITION TO
SIERRA CLUB’S MOTION TO EXTEND INTERVENORS’ TESTIMONY DEADLINE,
EXPEDITE DISCOVERY, AND PROMOTE PUBLIC ENGAGEMENT
AND REQUEST FOR ORAL ARGUMENT**

Pursuant to Rule 28-106.204(1), Florida Administrative Code, Florida Power & Light Company (“FPL”) hereby files this response in opposition to the Motion to Extend Intervenors’ Testimony Deadline, Expedite Discovery, and Promote Public Engagement filed by Sierra Club on March 14, 2014 (“Sierra Club Motion”) and to Sierra Club’s request for oral argument. In support thereof, FPL states:

**Sierra Club’s Request to Delay Intervenor Testimony
and Expedite Discovery Should be Denied**

1. Sierra Club’s argument for delaying intervenor testimony and all subsequent controlling dates in this docket (including the hearing dates) by six weeks and for shortening the time to respond to discovery to a brief 14 days is based on its alleged lack of access to information in this docket.¹ Specifically, Sierra Club complains about its access to the updated Technical Potential Study (“TPS”) of each of the Florida Energy Efficiency and Conservation Act (“FEECA”)-jurisdictional utilities. However, as supported by the facts and the timeline

¹ Sierra Club’s repeated reference to and discussion of an “information gap” is misplaced in the context of Florida’s legal framework for developing and adopting DSM goals, which clearly places the burden of developing and proposing DSM goals on the utilities. *See* Rule 25-17.0021(3), Fla. Admin. Code. These goals are specific to each utility and must be based upon each utility’s most recent resource planning processes. *Id.* This burden of developing and proposing DSM goals necessarily means that the FEECA utilities “control” this information in its developmental stages. Intervenors in this docket are free to take discovery and file testimony in response to the utilities’ filings, or undertake their own analyses to present in testimony. Nothing in FEECA or the Florida Administrative Code presupposes a joint utility-intervenor undertaking in the initial development of the proposed goals.

provided below, Sierra Club could have sought additional information related to FPL's 2014 TPS update. Additionally, FPL has provided requested information on its 2014 TPS update to Sierra Club despite the fact that it was not a party in the docket at the time. Finally, the Order Establishing Procedure has been available to Sierra Club and all parties for seven months now. Sierra Club's attempt to significantly shift all controlling dates at this late date should be rejected.

2. On June 17, 2013, a public meeting was held for interested persons to discuss the 2014 Demand Side Management ("DSM") goal-setting dockets. All participants in that meeting agreed for the Utilities to update the 2009 TPS, rather than expend the considerable time and cost (a cost which is ultimately borne by customers) of "starting from scratch" and performing an entirely new TPS. Sierra Club did not participate in that public meeting. Since that time, Sierra Club has never sought discovery on the detailed data supporting the 2009 TPS.²

3. On August 19, 2013, the prehearing officer issued an Order Consolidating Dockets and Establishing Procedure. *See* PSC-13-0386-PCO-EU. That order established a schedule for this docket which included, among other items, deadlines for the utilities' direct testimony, intervenor testimony, and utility rebuttal testimony. No party sought reconsideration of that order (and Sierra Club had not yet petitioned to intervene in this proceeding). A petition for reconsideration would have been due by August 29, 2013, pursuant to Rule 25-22.0376, Fla. Admin. Code.

4. On December 6, 2013, FPL responded to an informal data request by the Southern Alliance for Clean Energy ("SACE") seeking information on the 2014 TPS update. In that response, FPL provided a narrative explanation of the process used to update the 2009 TPS and

² FPL's 2009 TPS is a 273 page document that is publicly available on the Commission's website (Docket 080407-EG), and has been since April 8, 2009.

nine pages of tables of data. Sierra Club and Commission Staff were copied on this response. This information was provided as a courtesy, despite the fact that neither SACE nor Sierra Club had sought, or been granted, intervenor status in FPL's DSM Goals docket. No recipient indicated to FPL that it felt the information provided was insufficient or deficient at that time. No recipient sought discovery (or responses to additional, informal data requests) on the information provided for over three months.

5. While Sierra Club is correct that FPL cannot commit to providing *final* information in advance of its filing deadline of April 2, 2014, it is incorrect that FPL "has not provided to the Commission or to Intervenors [its] update[] to the Technical Potential Study." (Sierra Club Motion, p. 4).³ That is in fact precisely what FPL provided on December 6, 2013, subject to an appropriate caveat that there was the potential for change prior to April 2, 2014.

6. On December 18, 2013, Sierra Club petitioned to intervene in these consolidated dockets. During an informal meeting on February 13, 2014, with all parties and interested persons, Sierra Club and SACE indicated for the first time that they were unsatisfied with the timing of when they would receive information related to the final TPS update. Sierra Club and SACE also only recently issued discovery, dated March 12th and March 17th, respectively, seeking information related to the 2014 TPS Update FPL provided them last December.

7. Sierra Club's missed opportunities to participate as a party and gather additional information on FPL's 2014 TPS Update are not an appropriate basis for the significant shift in controlling docket dates and shortening of discovery response time that Sierra Club seeks. Additionally, FPL is willing to expedite the production of information and documents related to

³ To the extent Sierra Club is envisioning a new, 270-page TPS study, it is missing the very purpose of the parties' agreement noted in Order No. PSC-13-0386-PCO-EU to update the 2009 study rather than perform a new TPS study.

the 2014 TPS update. Specifically, FPL is willing to provide its responses, relative to the 2014 TPS update provided last December, to Sierra Club's First Set of Interrogatories No. 17⁴ and SACE's First Request for Production of Documents No. 2⁵ one week from today (March 28, 2014). This is significantly in advance of the discovery due date for each set and will contain documents that ordinarily would not have been filed with FPL's direct testimony and exhibits due April 2, 2014. FPL respectfully suggests that Sierra Club seek to obtain properly discoverable information through the established discovery process rather than resorting to motions for relief. And, while FPL is under no obligation to do so, it will work with Sierra Club on the timing of responses to such discovery, to the extent the requested information is readily available.

Sierra Club's Request for a Public Hearing Should be Denied

8. Sierra Club's request to insert an additional "public hearing" into the process is unnecessary and should be denied. The issues in this docket will be determined by a formal review and litigation of various economic analyses. Moreover, persons with a substantial interest in the proceeding may petition to intervene and participate fully as a party in the docket. Sierra Club has sought and received permission to intervene. There are several other petitions to intervene pending or granted on behalf of various customer groups and another environmental-advocacy group, none of which FPL has opposed. Specifically with respect to Sierra Club, its very participation in this docket is intended to represent the interest of its members. Surely

⁴ "With regard to FPL's response to SACE's first informal discovery request, please provide any and all documentation describing the adjustments and calculations. Please include all related reports, documentation and workpapers, in electronic machine-readable form." (Sierra Club Interrogatory No. 17)

⁵ "...complete copies of all documents, workpapers, and source documents related to inputs provided by FPL, or FPL specific data, utilized in the Technical Potential Study, including any drafts, along with the final Technical Potential Study report which supports FPL's analyses and filings in this docket." (SACE Production of Document Request No. 2) FPL's final 2014 TPS update will still be filed April 2, 2014.

Sierra Club intends to represent the interests of its members fully, so their participation in such a “public hearing” would be duplicative of Sierra Club’s participation in the scheduled hearing.

9. Presumably in support of its motion for an additional, public hearing, Sierra Club makes several, fundamental misstatements and mischaracterizations of the purpose and ultimate outcome of this DSM goal-setting docket. While they may not be dispositive of Sierra Club’s motion, two such misstatements cannot go unaddressed:

- This docket will not determine “the energy-saving services that [FPL] provide[s] [its] captive billpayers” (Sierra Club Motion, p. 7). Rather, it will determine the total amount of DSM on FPL’s system that is projected to be cost-effective for all of FPL’s customers to purchase. In a subsequent proceeding, the programs FPL intends to offer customers to meet its DSM goals will be reviewed.
- Similarly, this docket will not determine “whether billpayers can insulate themselves...by adopting more energy efficiency and conservation measures, or by employing distributed generation” (Sierra Club Motion, p. 7-8). Regardless of the total level of DSM goals determined to be cost-effective for all customers in this docket, and the programs that are subsequently approved to meet those goals, individual customers are free to implement energy efficiency, conservation, or distributed generation devices outside of FPL’s DSM programs. This proceeding in no way interferes with a customer’s choice and ability to do so. Nor does it interfere with the substantial energy savings customers realize from increasingly stringent federal and state energy efficiency codes and standards. Sierra Club’s argument gives far too little credit to FPL’s customers, and their ability to make energy-efficient choices for themselves.

Sierra Club's inaccurate claims and rhetoric should be disregarded.

Sierra Club's Request for Oral Argument Should be Denied

10. Oral Argument is unnecessary on Sierra Club's motion. Sierra Club claims that oral argument will "allow Parties to respond to . . . one another's relevant concerns" (Sierra Club Request for Oral Argument p. 1) and will "giv[e] all Parties a chance to discuss and reconcile the relevant issues raised" (Sierra Club Request for Oral Argument p. 2). An oral argument, however, is neither an appropriate forum nor a necessary means for Parties to "discuss" issues.

11. Sierra Club's claim that there have been "limited communications to date regarding the procedures in this proceeding" (Sierra Club Request for Oral Argument, p. 1), is without merit. The procedures in this proceeding have been the subject of discussion since August 2013. Reasonable adjustments to testimony deadlines or discovery deadlines subsequent to the utilities' initial filings could have been raised and discussed informally with Commission staff and the other parties at any time. Additionally, as discussed above, Sierra Club did not indicate dissatisfaction with FPL's update to its TPS study for two months. An oral argument is not necessary to facilitate such discussions.

Respectfully submitted this 21st day of March, 2014.

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**CERTIFICATE OF SERVICE
DOCKET NO. 130199-EI**

I HEREBY CERTIFY that a true and correct copy of FPL's Response in Opposition to Sierra Club's Motion to Extend Intervenors' Testimony Deadline, Expedite Discovery, and Promote Public Engagement and Request for Oral Argument was served by electronic delivery this 21st day of March, 2014 to the following:

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