

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Energy conservation cost recovery
clause.

DOCKET NO. 090002-EG
ORDER NO. PSC-09-0663-PCO-EG
ISSUED: October 5, 2009

ORDER GRANTING IN PART REQUEST FOR EXTENSION OF TIME
AND FIRST ORDER REVISING ORDER ESTABLISHING PROCEDURE

Background

By Order No. PSC-09-0184-PCO-EG, issued March 27, 2009, a schedule was established for the hearing and prehearing activities in this docket, including the filing of testimony by the utilities, intervenors, and staff. On September 16, 2009, the Florida Industrial Power User's Group (FIPUG) filed a Motion for Extension of Time to File Intervenor Testimony (Motion). On September 23, 2009, Response and Objections to FIPUG's Motion were separately filed by Florida Power & Light Company (FPL) and Progress Energy Florida, Inc. (PEF).

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code (F.A.C.), which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

FIPUG's Motion for Extension of Time

In its Motion, FIPUG notes that it received the testimony of FPL and Tampa Electric Company on September 14, 2009, and the testimony of PEF on September 15, 2009.¹ Pursuant to the schedule established by Order No. PSC-09-0184-PCO-EG, FIPUG would have a little over one week in which to file its testimony and exhibits (September 23, 2009). This would afford insufficient time for FIPUG to analyze the utilities' testimony, conduct discovery, and draft its own testimony. FIPUG states that it was unable to conduct discovery prior to receipt of the testimony as it did not know what credits the utilities would flow through the recovery clause in this docket for interruptible or curtailable load until their testimonies were filed.

In order to be able to complete at least one round of discovery prior to filing its testimony, and in order to have sufficient time to prepare its testimony, FIPUG requests that the deadline for its intervenor testimony be extended to October 6, 2009. In the alternative, FIPUG requests that the 20-day discovery response time established by Order No. PSC-0184-PCO-EG be modified to five days, and that FPL, PEF, and TECO be required to provide all workpapers underlying their credit calculations in electronic format within five days of filing its Motion. In that case, FIPUG suggests an extension of intervenor testimony to September 30, assuming

¹ FPL and TECO timely filed their testimony on September 11, 2009, as required by Order No. PSC-09-0184-PCO-EG. PEF requested permission to late-file its testimony on September 14, 2009, and states in its Response and Objection that it does not oppose a three-day extension of time as it relates to all deadlines in this docket.

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FIPUG's discovery requests were answered by September 21, 2009. In any event, FIPUG states that it has no objection to a commensurate extension of the time to file rebuttal testimony. Pursuant to Rule 28-106.204(3), F.A.C., FIPUG attempted to contact all parties to this docket, and represents that Florida Public Utilities Company takes no position on the Motion, TECO and PEF object to the Motion, and the other parties did not provide a position at the time the Motion was filed.

FPL's Response and Objection to FIPUG's Motion

FPL objects to FIPUG's Motion on the basis that the credit issues it raises are better addressed in Docket 080407-EG, In re: Commission review of numeric conservation goals (Florida Power & Light Company), in which the Commission is being asked to review and approve FPL's demand-side management (DSM) plan, the costs and expenses of which are ultimately projected and trued up in this pending Energy Conservation Cost Recover Clause (ECCR) docket. FPL contends that its testimony filed in this docket go only to the calculation of ECCR factors with respect to projected and actual expenses incurred for FPL's existing, approved DSM plan. FPL has not sought any change to the programs or "credit issues," and contends that it is inappropriate for FIPUG to attempt to interject these issues here.

Even if the issues were relevant to this proceeding, FPL contends that FIPUG reaffirmed its party status to this docket on February 19, 2009, and that Order No. PSC-09-0184-PCO-EG placed all parties on notice that intervenor testimony would be due September 23, 2009. Nothing in the petitions or supporting testimony that FPL filed on May 1 or September 11, 2009, addresses FIPUG's credit issue, and it is illogical for FIPUG to argue that it had to wait to receive the September 11 petition and testimony before propounding discovery on a topic which wasn't raised by FPL and isn't appropriately addressed in this docket. FPL therefore requests that FIPUG's Motion be denied.

PEF's Response and Objection to FIPUG's Motion

PEF objects to FIPUG's Motion on the basis that the current schedule for filing testimony was established in March, and FIPUG has been afforded sufficient notice and opportunity to conduct its discovery in this docket and to timely prepare its testimony. In the six months since that schedule was established, FIPUG did not raise any issue concerning the dates to file testimony and exhibits. Further, FIPUG could have conducted discovery at any point during the course of this proceeding to analyze the utilities' proposals, and did not have to wait until receiving PEF's testimony to analyze the utilities' proposals or conduct discovery. PEF contends that FIPUG has failed to present any compelling reason to justify its Motion; therefore, PEF requests that the Motion be denied.

Analysis and Decision


Having considered the arguments of the parties, it appears that FIPUG's Motion for an extension of time to file intervenor testimony is reasonable and is hereby granted in part. FIPUG shall file its direct testimony and exhibits no later than October 2, 2009. This extension should afford additional time for FIPUG to conduct discovery and prepare its testimony and exhibits, without unduly prejudicing the other parties to this proceeding. However, to ensure fairness to all parties, a commensurate extension of time for filing Prehearing Statements and Rebuttal Testimony and Exhibits shall also be made to October 14, 2009. Issue development is an ongoing process; while issues should be germane to this proceeding, disagreement as to the particular wording or inclusion of issues will ultimately be resolved at the Prehearing Conference.

Based on the foregoing, it is

ORDERED by Commissioner Katrina J. McMurrian, as Prehearing Officer, that the Florida Industrial Power Users Group's Motion for Extension of Time to File Intervenor Testimony is granted in part, as set forth herein. It is further

ORDERED that Order No. PSC-09-0184-PCO-EG is reaffirmed in all other respects.

By ORDER of Commissioner Katrina J. McMurrian, as Prehearing Officer, this 5th day of October, 2009.


KATRINA J. McMURRIAN
Commissioner and Prehearing Officer

(S E A L)

JSB

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.