

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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

Docket No. 130200-EI  
Filed: March 19, 2014

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**DUKE ENERGY FLORIDA, INC.'S RESPONSE IN OPPOSITION TO THE SIERRA  
CLUB'S MOTION TO EXTEND INTERVENORS' TESTIMONY DEADLINE,  
EXPEDITE DISCOVERY AND PROMOTE PUBLIC ENGAGEMENT AND TO SACE'S  
MOTION TO EXTEND INTERVENORS' FILING DEADLINE**

Duke Energy Florida, Inc. ("DEF" or the "Company"), pursuant to Rule 28-106.204(1), F.A.C., hereby responds in opposition to the Sierra Club's Motion to Motion to Extend Intervenors' Testimony Deadline, Expedite Discovery, and Promote Public Engagement ("Sierra Club's Motion") and to SACE's Motion to Extend Intervenors' Filing Deadline ("SACE's Motion").

As discussed in more detail below, granting the Sierra Club's Motion would unduly delay these proceedings while simultaneously shortening the time to respond to discovery to a nearly unmanageable 14 days. Furthermore, public participation in a technical docket of this nature is inappropriate because it would not produce any relevant information to the question at hand, namely the setting of goals for DEF's demand-side management programs.

Similarly, granting SACE's Motion would also cause unnecessary delay to these proceedings. SACE, like the Sierra Club, has been aware of the schedule ordered by the Commission since at least August 19, 2013, yet neither of them took any action to remedy their perceived shortcomings until March 14th.

In support of this Response, DEF states:

Sierra Club's Motion

The Order Consolidating Dockets and Establishing Procedure (the "Order") was issued on August 19, 2013, setting forth the schedule for this proceeding. As noted in its Motion, Sierra

Club did not petition to intervene in these dockets until December 18, 2013, 121 days after the Order was issued. Moreover, on March 12, 2014, Sierra Club served its first round of discovery requests on DEF, 205 days after the Order was issued. Finally, Sierra Club's Motion, which in effect is a motion to revise the Order, was filed on March 14, 2014, 207 days after the Order was issued.

In short, Sierra Club had ample opportunity upon the issuance of the Order to petition for intervention, to issue discovery requests, and to challenge the provisions of the Order, including seeking reconsideration of that Order under Rule 25-22.0376, F.A.C. Having failed to exercise these rights in a timelier manner, Sierra Club should not be permitted to contest the schedule at this juncture. Further, Intervenors take the case as they find it. Rule 25-22.039, F.A.C.

Additionally, Sierra Club's Motion asserts that "Sierra Club immediately asked Utilities for their updated Technical Potential Study after the September 2013 deadline, but none granted Sierra Club's request." *See* Sierra Club's Motion at 4. In support of this statement, Sierra Club attaches an email from the undersigned. While that email speaks for itself, it should be noted that DEF did provide Sierra Club with its response to SACE's informal data request on December 6, 2013, prior to Sierra Club filing its Petition to Intervene. *See* Email from Sierra Club's counsel acknowledging receipt of DEF's response to SACE's informal data request, attached as **Exhibit A**. Moreover, the email Sierra Club attached to its Motion clearly informs Sierra Club that the updated study would be filed as a testimonial exhibit on April 2<sup>nd</sup>. Therefore, although Sierra Club's Motion asserts that the Utilities first provided notice on February 13<sup>th</sup> that the final studies would not be provided until testimony is filed on April 2<sup>nd</sup>, Sierra Club was on notice at least as early as October 29, 2013, of DEF's plans to file the report as an exhibit to its April 2<sup>nd</sup> testimony.

Sierra Club's Motion also seeks to adjust Section V of the Order by shortening the time for a party to respond to discovery requests (including, presumably, a shortening of the time in

which to seek clarification or object to discovery as well). In addition to the concerns discussed above regarding the length of time that passed between the issuance of the Order and the filing of Sierra Club's Motion, the proposed 14-day response time is simply too short to adequately respond to discovery requests. Indeed, due to the technical nature of many of the discovery requests in this proceeding, at times a 30-day turn-around time can be difficult to meet; 14-days to respond is inadequate.

Finally, Sierra Club's Motion seeks to completely change this proceeding by requesting public hearings outside of Tallahassee at which members of the public, not parties to this proceeding, would presumably be invited to participate. However, Sierra Club's Motion ignores the fact that, unlike Rate Cases where the Commission is required to assess Utilities' service reliability through a series of public hearings, *see* Rule 25-22.0406, F.A.C., there is no such provision in FEECA or the Commission's Rules. In contrast, this proceeding is a technical goal-setting docket that requires analysis of potential DSM programs for their cost-effectiveness. Public testimony would simply not provide any relevant information towards that objective.

However, the foregoing does not leave the general body of customers without representation in this docket. Although it has not intervened in this docket at this time, Customers have the Office of Public Counsel to advocate on their behalf. Moreover, any customer who so wishes is free to formerly intervene and participate in this proceeding.

For the foregoing reasons, DEF respectfully requests the Commission to reject Sierra Club's belated attempt to modify the Order by denying its Motion.

#### SACE's Motion

SACE's Motion seeks to extend the deadline for Intervenors to file their testimony until at least May 19, 2014. SACE's Motion suffers from the same shortcomings as Sierra Club's Motion as far as SACE's delay in requesting this relief. SACE has also been aware of the schedule since the Order was issued August 19, 2013, and similarly waited over six-and-a-half

months before moving to amend the Order. In fact, although SACE has actively participated in these proceedings, including attending informal meetings, seeking information through an informal data request, and serving formal discovery, SACE only formally petitioned for intervention on February 20, 2014. The point being, DEF has worked with SACE to provide responsive information to its requests and is currently working to respond to their discovery requests.

If SACE believed that the current schedule was inadequate, those concerns could and should have been raised in a timely fashion. As they were not, the Commission should not grant the requested relief at this point in the proceedings. However, if the Commission is inclined to grant SACE's Motion, in the interest of fairness, the deadline for DEF to file its rebuttal testimony should be adjusted accordingly.

WHEREFORE, for the response stated herein, DEF respectfully requests the Commission to deny Sierra Club's and SACE's respective Motions. To the extent that the Commission is inclined to grant SACE's Motion, DEF respectfully requests a corresponding shift in its deadlines to file rebuttal testimony.

s/Matthew Bernier  
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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on the following via electronic mail this 19th day of March, 2014.

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**From:** [Diana Csank](#)  
**To:** [Tibbetts, Arlene](#)  
**Subject:** Re: response to SACE's informal data request  
**Date:** Friday, December 06, 2013 2:45:55 PM  
**Attachments:** [image001.png](#)

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Received. Thank you, Arlene.

Diana

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On Fri, Dec 6, 2013 at 2:21 PM, Tibbetts, Arlene <[Arlene.Tibbetts@duke-energy.com](mailto:Arlene.Tibbetts@duke-energy.com)> wrote:

Hi Diana,

DEF's response to SACE's informal data request is attached.

Have a great day,

Arlene Tibbetts, CP

Associate Regulatory Analyst



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**From:** Diana Csank [<mailto:diana.csank@sierraclub.org>]  
**Sent:** Friday, December 06, 2013 12:36 PM  
**To:** Bernier, Matthew  
**Subject:** response to SACE's informal data request

\*\*\* This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. \*\*\*

Matt -- thanks for your voice message. We're interested in the information you described. Please send it when you get a chance.

My contact information is below.

Best,

Diana

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