

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  
ORDER NO. PSC-14-0189-PCO-EU  
ISSUED: April 22, 2014

ORDER DENYING MOTIONS  
AND  
FURTHER MODIFYING PROCEDURAL SCHEDULE

**A. Background**

On June 17, 2013, Commission staff held a public meeting for interested persons to discuss the 2104 Demand Side Management (DSM) goal-setting dockets. The participants agreed that, rather than develop a new Technical Potential Study, the Florida Energy Efficient Conservation Act (FEECA) Utilities should update the 2009 Technical Potential Study used in the previous goal setting proceeding in order to save costs and time for all parties.<sup>1</sup> The Commission established controlling dates in Docket Nos. 130199-EI - 130202-EI, 130203-EM,

<sup>1</sup> The FEECA Utilities are Florida Power & Light Company (FPL), Duke Energy Florida (DEF), Tampa Electric Company (TECO), Gulf Power Company (Gulf), Jacksonville Electric Association (JEA), Orlando Utilities Commission (OUC) and Florida Public Utilities Company (FPUC).

130204-EM, and 130205-EI, by Order No. PSC-13-0386-PCO-EU and Order No. PSC-14-0112-PCO-EU, issued on August 19, 2013, and February 26, 2014, respectively.<sup>2</sup>

The Commission granted intervention to the Sierra Club and the Southern Alliance for Clean Energy (SACE) on February 18, 2013, and March 18, 2014, by Order Nos. PSC-14-0097-PCO-EU and PSC-14-0135-PCO-EI, respectively.<sup>3</sup> On March 14, 2014, Sierra Club filed a Motion to Extend Intervenors' Testimony Deadline, Expedite Discovery, and Promote Public Engagement (March 14, 2014 Motion). Sierra Club also filed a Request for Oral Argument on the March 14 Motion. On that same date, SACE filed a Motion to Extend Intervenors' Filing Deadline (SACE Motion).

On March 18, 2014, TECO filed a Memorandum in Opposition.<sup>4</sup> On March 19, 2014, DEF filed a Response in Opposition.<sup>5</sup> On March 20, 2014, Gulf and TECO filed Responses in Opposition.<sup>6</sup> On March 21, 2014, FPL filed Responses to SACE and Sierra Club's filings.<sup>7</sup> JEA also filed a Response in Opposition to Intervenors' Procedural Motions on the same day.

On April 2, 2014, Sierra Club filed a Motion for Leave to File Reply to Responses to Sierra Club's Motion (April 2, 2014 Motion). On April 4, 2014, FPL, DEF and Gulf filed Responses to the April 2, 2014 Motion. TECO filed a Response to the April 2, 2014 Motion on April 7, 2014.

On April 15, 2014, the Office of the Public Counsel (OPC) filed its Notice of Intervention in the these dockets.

This Order addresses the forgoing motions and 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.

---

<sup>2</sup> On December 4, 2013, by Order No. PSC-13-0645-PAA-EU, issued in Docket Nos. 130204-EM and 130205-EI, the Commission approved both OUC and FPUC use of a proxy setting methodology to set goals and excused both companies for participating in 2014 FEECA goal-setting process.

<sup>3</sup> Sierra Club requested intervention for all FEECA utilities, Docket Nos. 130199-EI - 130202-EI, 130203-EM, 130204-EM, and 130205-EI. SACE requested for intervention for Docket Nos. 130199-EI - 130202-EI.

<sup>4</sup> Memorandum in Opposition to Sierra Club's Motion to Extend Intervenors' Testimony Deadline, Expedite Discovery, And Promote Public Engagement.

<sup>5</sup> Response in Opposition to the Sierra Club Motion to Extend Intervenors' Testimony Deadline, Expedite Discovery and Promote Public Engagement and To SACE's Motion to Extend Intervenors' Filing Deadline.

<sup>6</sup> Response in Opposition to Sierra Club's And Southern Alliance for Clean Energy's Motion to Modify the Order Establishing Procedure and Response in Opposition to Southern Alliance for Clean Energy's Motion to Extend Intervenors' Filing Deadline, respectively.

<sup>7</sup> Response in Opposition to Sierra Club's Motion to Extend Intervenors' Testimony Deadline, Expedite Discovery, And Promote Engagement and Request for Oral Argument, Response in Opposition to Southern Alliance for Clean Energy's Motion to Extend Intervenors' Filing Deadline.

## **B. Motion for Leave to File Response**

### Sierra Club

Sierra Club requests leave to file a reply to the FEECA Utilities' responses to its March 14, 2014 Motion pursuant to Rule 28-106.204(1), F.A.C. Sierra Club states that its reply highlights the undisputed facts that support granting its relief requested in its March 14, 2014 Motion and that the April 2, 2014 Motion for Leave should be granted because its members have a strong interest in the requested relief to allow Sierra Club a meaningful opportunity to participate in this proceeding.

### FEECA Utilities

FPL, Gulf, TECO and DEF contend that Sierra Club does not provide a good faith reason why the April 2, 2014 Motion should be granted by the Prehearing Officer. FPL argues that Sierra Club's reply rehashes the arguments presented in Sierra Club's March 14, 2014 Motion. Gulf contends that intervenors have had an open point of entry in this proceeding since July 2013 and that Sierra Club's failure to utilize opportunities for early participation does not establish cause for the relief it seeks. FPL notes that Rule 28-106.204(1), F.A.C., provides in pertinent part that a "written motion will normally be disposed of after the response period has expired, based on the motion, together with any supporting or opposing memoranda;" FPL asserts that the Commission has routinely held that there is no right to reply to a response in opposition to a motion.

In addition, Gulf, TECO and DEF state that Sierra Club failed to comply with Rule 28-106.204(3), F.A.C., which provides that all motions must include a statement that the movant has conferred with all parties of record and state whether the party has an objection to the motion. The companies assert that no such discussion occurred. FPL, Gulf, TECO and DEF object to Sierra Club's April 2, 2014 Motion.

### Decision

Neither the Uniform Rules nor Rule 28-106.204, F.A.C., contemplate replies to a response to a motion. It is not Commission practice to allow an additional pleading into the pleading cycle established by rule. Upon consideration, Sierra Club's April 2, 2014 Motion is denied.

## **C. Oral Argument for March 14, 2014 Motion**

### Sierra Club

Sierra Club argues that oral argument regarding its March 14, 2014 Motion will assist in understanding and evaluating relevant factual developments, legal grounds, and any alternative procedural changes. Further, Sierra Club contends that oral argument will give all parties a

chance to discuss and reconcile the relevant issues raised in the March 14, 2014 Motion and any responses.

#### FEECA Utilities

FPL opposes the request for oral argument, arguing that an oral argument is not the appropriate forum for the parties to “discuss” the issues. TECO and Gulf also argue that oral argument is unwarranted and unnecessary for the disposition of the motion.

#### Decision

Upon review, Sierra Club’s March 14, 2014 Motion contains sufficient written argument so that oral argument is unnecessary in order to understand or evaluate the issues. Therefore, Sierra Club’s request for oral argument is hereby denied.

### **D. Extension of Testimony Deadline**

#### Sierra Club

Sierra Club requests that the intervenors’ testimony deadline be extended to June 16, 2014, and the controlling dates be shifted accordingly. Sierra Club argues that the current controlling dates fail to allow intervenors access to information and insufficient time to gain access. Sierra Club argues that the Technical Potential Study being submitted as exhibits to the hearing provides insufficient time for Sierra Club and its experts to review the data, and draft and serve discovery. Further, Sierra Club argues that it is critical that the intervenors’ testimony deadline be extended six weeks. Sierra Club asserts that the extension will allow the intervenors the time needed to review the data, propound discovery, and draft and file its direct testimony. Sierra Club argues that additional time was granted in the previous FEECA goal-setting procedure and should likewise be provided in this proceeding. Sierra Club argues that, in contrast with the instant proceeding, in the last proceeding the Commission helped develop a complete record by providing for 1) a twenty day discovery turnaround, 2) public workshops, and 3) the engagement of technical consulting experts. Sierra Club contends that no party will be unduly prejudiced by its request because the relief requested impacts controlling dates that are many weeks away. Sierra Club asserts that its request is made with good cause because of its recently granted intervenor status. Sierra Club also argues that the FEECA Utilities will delay updates to the Technical Potential Studies up to and beyond April 2, 2014.

#### SACE

SACE states that it fully supports the Sierra Club’s March 14, 2014 Motion for a six-week extension of the intervenor testimony deadline. SACE argues that, since there is no surrebuttal testimony, rebuttal testimony is the only opportunity to address the complex issues of this proceeding. SACE contends that it has not had access to the updated information regarding

the technical potential study. Although SACE supports the six-week extension, it offers an alternative option to extend the due date for filing rebuttal testimony from May 5, 2014, to May 19, 2014, arguing that the alternative date would provide some relief to the intervenors. SACE asserts that its request is in the public interest and, if granted, would elevate the quality of the record before the Commission.

#### FEECA Utilities

The FEECA Utilities variously argue the following: pursuant to Rule 25-22.039, F.A.C., an intervenor must “take the case as it finds it;” the requests to alter the controlling dates are untimely; Sierra Club and SACE did not provide good cause to alter the long-established schedule; changing the schedule would require all parties to expend undue resources and cause unnecessary delay to the proceedings; Sierra Club and SACE have been provided the requested data, yet continue to seek substantial changes to the controlling dates based on the argument that they lack access to data.

More specifically, with respect to the timing of the requests, the FEECA Utilities assert that the Commission opened these dockets on July 26, 2013, and the timetable for the dockets was clearly identified in the August 19, 2013, Order Establishing Procedure. Sierra Club and SACE petitioned for intervention in this proceeding months after the controlling dates were set, on December 18, 2013 and February 20, 2014, respectively. Sierra Club and SACE had ample opportunity to act if there were issues with the controlling dates set August 19, 2013, rather than waiting over 6 months to take action. The attempt to restructure the schedule for this proceeding approximately seven months after the Order Establishing Procedure is inappropriate. Sierra Club and SACE’s missed opportunities to participate in this proceeding are not an appropriate basis to significantly alter the controlling dates and no extension is warranted.

#### Decision

The six week extension for intervenor testimony requested by Sierra Club would prevent the Commission from meeting the statutory deadline contemplated by the FEECA statutes. Therefore, Sierra Club’s request to extend the intervenor testimony deadline six weeks is denied. However, it appears that SACE’s alternate request for a two week extension of time to file intervenor testimony is reasonable and is hereby granted. To ensure fairness, I find it appropriate to extend the due date for utilities’ rebuttal testimony and exhibits given the change in the intervenor testimony due date. The new controlling dates for intervenor and utilities’ rebuttal testimony and exhibits shall be as follows:

Intervenor testimony will be due on May 19, 2014.

Utilities’ Rebuttal testimony and exhibits will be due on June 10, 2014.

All other controlling dates will remain the same.

### **E. Discovery Response Time**

#### Sierra Club

Sierra Club requests an expedited discovery response time of fourteen (14) days inclusive of mailing. Sierra Club argues that granting the request would effectuate discovery and prevent delay and would assist in the comprehensive evaluation and record development in this proceeding. Sierra Club contends that no party would be unduly prejudiced because the relief impacts controlling dates that are far away. SACE supports Sierra Club's request.

#### FEECA Utilities

DEF argues that shortening the discovery response time to fourteen (14) days is nearly unmanageable due to the technical nature of many of the discovery requests in this proceeding. FPL and TECO argue that the shortened discovery time is not appropriate but are willing to work on the timing of responses to certain discovery, when the requested information is readily available.

#### Decision

Upon review, Sierra Club's March 14, 2014 Motion to shorten discovery response time to fourteen (14) days is denied. However, the parties are encouraged to work together and conduct discovery as efficiently and quickly as possible. The discovery response time shall remain thirty (30) days up to the rebuttal testimony deadline. Due to the tight schedule of this proceeding and the change in the intervenor and rebuttal testimony filing dates, I find it appropriate to shorten the discovery response time to twenty (20) days for discovery served after the June 10, 2014, rebuttal testimony deadline. There shall be no additional time for mailing.

### **F. Request for Public Hearing**

#### Sierra Club

Sierra Club argues that a public hearing would provide the bill payers the opportunity to have their voices heard on the energy-saving services that the FEECA Utilities will provide over the next ten years. Sierra Club further argues that transportation to Tallahassee is a hardship and asserts that a public hearing in a central part of the state would increase the number of bill payers who can attend the hearing. Sierra Club asserts that a public hearing is necessary because there were no public workshops and there has been no intervention from the Office of Public Counsel.

FEECA Utilities

DEF argues that public participation in a technical proceeding is inappropriate because it would not produce any information relevant to the setting of goals for the FEECA Utilities' demand side management programs. DEF asserts that, unlike a rate case in which the Commission must assess service reliability through public hearings, there is no provision in the FEECA statutes that would require public testimony. DEF further argues that this proceeding is a technical goal-setting docket that requires analysis of potential DSM programs for cost-effectiveness.

FPL argues that a public hearing is unnecessary. FPL states that the issues in this docket will be determined by a formal review and litigation of various economic analyses. FPL further argues that persons with a substantial interest in the proceeding may petition to intervene, as did Sierra Club and SACE. FPL notes that Sierra Club's participation in this docket is intended to represent the interests of its members. FPL argues that a public hearing would be duplicative of Sierra Club's participation in the scheduled hearing.

Decision

On April 15, 2014, the Office of public Counsel filed its Notice of Intervention in these dockets. Given the technical nature of this goal-setting procedure and no legislative directive to take public testimony, I do not find it necessary to hold a public hearing. Persons without the resources to intervene may file written comments in the docket.

Therefore, it is

ORDERED by Commissioner Ronald A. Brisé, as Prehearing Officer, that Sierra Club's Motion for Leave to File Reply to Responses to Sierra Club's Motion is denied. It is further

ORDERED that Sierra Club's Motion to Extend Intervenors' Testimony Deadline, Expedite Discovery, and Promote Public Engagement is denied. It is further

ORDERED that Sierra Club's Request for Oral Argument is denied. It is further

ORDERED that Southern Alliance for Clean Energy's Motion to Extend Intervenors' Filing Deadline is denied. It is further

ORDERED that the controlling dates and discovery response time shall be amended as set forth in the body of this Order. It is further

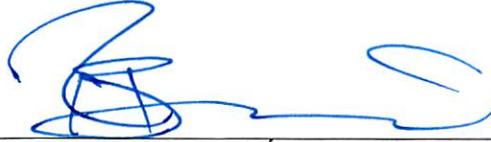
ORDERED that all other aspects of Order No. PSC-13-0386-PCO-EU and Order No. PSC-14-0112-PCO-EU remain the same.

ORDER NO. PSC-14-0189-PCO-EU

DOCKET NOS. 130199-EI, 130200-EI, 130201-EI, 130202-EI, 130203-EM, 130204-EM,  
130205-EI

PAGE 8

By ORDER of Commissioner Ronald A. Brisé, as Prehearing Officer, this 22nd day of  
April, 2014.



RONALD A. BRISÉ

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.

TLT

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.