

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Commission review of numeric conservation goals (Florida Power & Light Company)	Docket No. 080407-EG
In re: Commission review of numeric Conservation goals (Progress Energy Florida, Inc.)	Docket No. 080408-EG
In re: Commission review of numeric conservation goals (Tampa Electric Company)	Docket No. 080409-EG
In re: Commission review of numeric Conservation goals (Gulf Power Company)	Docket No. 080410-EG
In re: Commission review of numeric conservation goals (Florida Public Utilities Company)	Docket No. 080411-EG
In re: Commission review of numeric conservation goals (Orlando Utilities Commission)	Docket No. 080412-EG
In re: Commission review of numeric conservation goals (JEA)	Docket No. 080413-EG
	Filed: June 22, 2009

**JOINT RESPONSE IN OPPOSITION TO MOTION FOR
EXTENSION OF TIME TO FILE TESTIMONY AND EXHIBITS**

Florida Power & Light Company (“FPL”), Progress Energy Florida, Inc. (“PEF”)¹, Tampa Electric Company (“TECO”), Gulf Power Company (“Gulf”), and JEA, through undersigned counsel, file this joint response in opposition to the Motion for Extension of Time to File Testimony and Exhibits (the “Motion”) filed by the Natural Resources Defense Counsel (“NRDC”) and the Southern Alliance for Clean Energy (“SACE”) on June 17, 2009, and in support thereof state:

¹ Although PEF initially expressed agreement to a testimony deadline extension for NRDC and SACE in principle, upon further review of the case schedule and the calendar for preparing rebuttal testimony, PEF cannot support the requested extension and joins the other utilities identified in this opposition.

1. On December 18, 2008, the prehearing officer issued an Order Consolidating Dockets and Establishing Procedures. *See*, Order No. PSC-08-0816-PCO-EG. 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. That order contemplated one month between the filing of utility testimony and the filing of intervenor testimony, just like the current schedule.

2. Subsequently, on March 12, 2009, the prehearing officer issued a First Order Revising Order Establishing Procedure adjusting the testimony deadlines and establishing the current schedule in the DSM Goals proceeding. *See*, Order No. PSC-09-0152-PCO-EG. It should be noted that this schedule adjustment called for the utilities to file their direct testimony fifteen days earlier than the original schedule, allowing NRDC/SACE and other intervenors more time for discovery between the filing of utility testimony and the hearing.

3. On June 17, 2009, NRDC and SACE filed their Motion (dated June 16, 2009) seeking to deviate from the terms of the revised Order Establishing Procedure by requesting a one week extension of the deadline to file intervenor testimony and exhibits. The requested extension would move the deadline from July 1, 2009 back to July 8, 2009. As described above, the current schedule for filing testimony has been in place since March. NRDC and SACE were parties to this docket at the time the schedule was developed, and had the opportunity to seek reconsideration of Order No. PSC-09-0152-PCO-EG if they felt the time provided for filing intervenor testimony was inadequate. Pursuant to Rule 25-22.0376, Fla. Admin. Code, however, NRDC and SACE would have had to petition for reconsideration by March 22, 2009. The Motion is thus nothing more than an untimely motion for reconsideration and should be rejected as such.

4. Contrary to the assertions made in the Motion, ample time for discovery has been available to all parties. Indeed, Staff served initial discovery on December 12, 2008 and the Florida Solar Coalition began serving discovery as early as March 5, 2009. NRDC and SACE were granted intervention in October 2008, but they delayed their initial discovery until June 8, 2009, a full week following the submittal of direct testimony.² Additionally, most of the discovery served by NRDC and SACE relates primarily to the various steps in the process used by the utilities to develop their goals and not to specific aspects of the direct testimony. This type of discovery could have been served at an earlier time.

5. Moreover, NRDC and SACE have had access to substantial amounts of information through their participation in the Collaborative, including the Technical Potential Studies since April 2009 and the final results of the energy efficiency Achievable Potential Studies.³ NRDC and SACE were active participants in the Collaborative for over a year, and through that role, have participated in the development of much of the underlying information and analyses supporting the issues in this docket. They have not been as active in the development of Achievable Potential as they were in the development of Technical Potential, but they have continued to participate in the Collaborative. Accordingly, the Prehearing Officer should reject the contention that their ability to prepare testimony is reliant upon the utilities' responses to their recently issued discovery.

6. The NRDC and SACE Motion, if granted, would substantially constrict the time available to FPL, PEF, TECO, Gulf, and JEA to prepare rebuttal testimony in response to

² See, NRDC/SACE Notice of Service of First Set of Interrogatories to FPL, Progress, GPC, TECO, FPUC, OUC, and JEA served June 8, 2009, and NRDC/SACE Notice of Service of First Request for Production of Documents to FPL, Progress, GPC, TECO, FPUC, OUC, and JEA dated June 9, 2009.

³ The assertion that the achievable potential analysis or any other analysis is incomplete is false. NRDC/SACE Motion p. 4. The achievable potential analysis results have been available since June 1, 2009. Only the final "report," which formally compiles those results, has yet to be issued by Itron, Inc.; consequently, it is not part of the utilities' direct cases and is not evidence that SACE/NRDC need to address in their testimony.

intervenors' testimony, as well as to respond to any testimony filed by staff on July 17, just 10 days before rebuttal testimony is due. Itron, Inc., the consultant retained by the Collaborative (which included SACE and NRDC) to perform the technical and achievable potential studies, has also expressed concern with the compressed time frame for responding to intervenor testimony because its assistance will likely be needed. NRDC and SACE have failed to present any compelling reason why such a prejudicial effect is justified, particularly given their participation in and access to information through the Collaborative for more than a year.

WHEREFORE, for the above and foregoing reasons, FPL, PEF, TECO, Gulf, and JEA respectfully request that the NRDC and SACE Motion be denied and the Order Establishing Procedure, as revised on March 12, 2009, be affirmed and maintained.

Respectfully submitted this 22nd day of June, 2009.

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CERTIFICATE OF SERVICE

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