

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 ORDER NO. PSC-09-0467-PCO-EG ISSUED: June 30, 2009

ORDER GRANTING IN PART MOTION FOR EXTENSION OF TIME
TO FILE TESTIMONY AND EXHIBITS AND
SECOND ORDER REVISING ORDER ESTABLISHING PROCEDURE

BY THE COMMISSION:

By Order No. PSC-08-0816-PCO-EG (Order Establishing Procedure or OEP), issued December 18, 2008, Docket Nos. 080407-EG, 080408-EG, 080409-EG, 080410-EG, 080411-EG, 080412-EG, and 080413-EG were consolidated for purposes of hearing and controlling dates were established for the seven dockets. The utilities, which are the subject of these seven dockets, are hereinafter "FEECA Utilities." On October 24, 2008, the Natural Resources Defense Council (NRDC) and the Southern Alliance for Clean Energy (SACE) filed a Joint Petition to Intervene in these dockets which was granted by Order No. PSC-09-0027-PCO-EG, issued on January 9, 2009.

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By Order No. PSC-09-0152-PCO-EG (Revised OEP), issued March 12, 2009, the initial controlling dates established for these dockets were revised in order to accommodate other scheduling requirements on the Commission's calendar. This revision made the FEECA Utilities' direct testimony and exhibits due on June 1, 2009, the Intervenors' direct testimony and exhibits due on July 1, 2009, Commission staff's direct testimony and exhibits due on July 17, 2009, and the FEECA Utilities' rebuttal testimony and exhibits due on July 27, 2009.

NRDC and SACE's Motion for Extension of Time to File Testimony and Exhibits

On June 17, 2009, NRDC and SACE filed a Motion for Extension of Time to File Testimony and Exhibits (Motion), requesting permission to extend the Intervenor testimony deadline by one week, from July 1, 2009, until July 8, 2009. NRDC and SACE assert that they do not presently have access to information critical to prepare their testimony, specifically the final energy efficiency achievable potential report, data from the ITRON analysis, or data from internal analyses completed by investor-owned utilities. Additionally, NRDC and SACE assert they submitted Interrogatories and Requests for Production of Documents as soon as possible following receipt of the FEECA Utilities' testimony and exhibits and requested expedited responses to these discovery requests, which the FEECA Utilities unanimously refused. NRDC and SACE assert that they expect to receive responses to their discovery requests just two calendar days prior to the Intervenors' deadline to file direct testimony. In addition, NRDC and SACE assert that because the analyses on which the FEECA Utilities relied would not be complete until shortly before the FEECA Utilities' June 1, 2009, testimony filing deadline, NRDC and SACE were unable to conduct discovery prior to then. Furthermore, NRDC and SACE assert that an extension is in the public interest because it will elevate the quality of the record before the Commission and not prejudice the other parties to the proceeding.

Respondent Utilities' Joint Response in Opposition to Motion for Extension

On June 22, 2009, Florida Power & Light Company, Progress Energy Florida, Inc., Tampa Electric Company, Gulf Power Company, and JEA (Respondent Utilities), five of the seven FEECA Utilities, filed a Joint Response in Opposition to Motion for Extension of Time to File Testimony and Exhibits (Joint Response). The Respondent Utilities assert that the current testimony filing schedule has been in place since March of 2009, that NRDC and SACE were parties to this docket at the time the schedule was developed, and that NRDC and SACE had the opportunity to seek reconsideration of the Revised OEP. The Respondent Utilities assert that NRDC and SACE's Motion is an untimely motion for reconsideration and, pursuant to Rule 25-22.0376, Florida Administrative Code (F.A.C.), the Motion should be rejected. The Respondent Utilities assert that the Intervenors were given more time to respond to the FEECA Utilities' testimony by the Revised OEP.

Additionally, the Respondent Utilities allege that ample time for discovery was available to all parties, but NRDC and SACE delayed filing their initial discovery request until June 8, 2009. Commission staff served discovery starting in December 2008. Furthermore, the Respondent Utilities assert that NRDC and SACE have had access to substantial amounts of

information through their active participation in the Collaborative between the FEECA Utilities. The Respondent Utilities assert that the achievable potential analysis results have been available since June 1, 2009. Finally, the Respondent Utilities assert that if the extension of time is granted, it would substantially constrict all the FEECA Utilities' time to prepare rebuttal testimony in response to Intervenor testimony, and any testimony and exhibits filed by Commission staff on July 17, 2009.

Analysis & Ruling

Having reviewed the pleadings, I find that the time-frames established in Order Nos. PSC-08-0816-PCO-EG (OEP) and PSC-09-0152-PCO-EG (Revised OEP) are both reasonable. However, both NRDC and SACE as well as the Respondent Utilities have raised valid points in their pleadings which I will address. It should be noted that our Rules do not contemplate a response to a response or a reply to a response by a petitioner.¹

I am not persuaded by the Respondent Utilities' assertion that this Motion is an untimely motion for reconsideration of the Revised OEP. I have reviewed both the Motion and Rule 25-22.0376, F.A.C., and find that NRDC and SACE did not file a motion for reconsideration, but rather a Motion for Extension of Time to File Testimony and Exhibits for the reasons they asserted above. Regarding the Motion, NRDC and SACE assert that an extension of time to file is in the public interest because it will elevate the quality of the record before the Commission. Considering the 2008 legislative changes made to Section 366.82, F.S., I find that it is important for there to be a complete record before the Commission for review and upon which to set DSM goals, thus, I will grant their Motion in part. Regarding the Respondent Utilities' assertion that they would be substantially restricted in preparing their rebuttal testimony, I find their arguments persuasive, and will grant the FEECA Utilities a concomitant extension of time to file rebuttal testimony and exhibits.

In determining the length of extension to grant the Intervenors and the FEECA Utilities, I reviewed the tight schedule and time-line established for these dockets and the Commission calendar, and evaluated what effect, if any, an extension of time would have on the upcoming hearing. Because of the tight schedule and time-line established for this hearing, it is not possible to grant an extension from July 1, 2009 until July 8, 2009; however, an extension until July 6, 2009, is workable. Similarly, a concomitant extension of time for the FEECA Utilities from July 27, 2009, until July 30, 2009, is also workable. By granting an extension of time to the Intervenors and FEECA Utilities, I find it also necessary to extend the deadline to conduct discovery until August 6, 2009. Moreover, I find that these extensions will not adversely affect any of the parties to these dockets, the scheduled hearing, or Commission calendar.

¹ See Rule 28-106.204(1), F.A.C. On June 23, 2009, NRDC and SACE filed a reply to the Joint Response in support of their Motion. As such, the Reply in Support of their Motion was not relied upon in this Ruling.

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DOCKET NOS. 080407-EG, 080408-EG, 080409-EG, 080410-EG, 080411-EG, 080412-EG,
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Conclusion

Therefore, upon review and evaluation of NRDC and SACE's Motion and the Respondent Utilities' Joint Response, the tight schedule and time-line established for these dockets, and the Commission's calendar, the Motion for Extension of Time to File Testimony and Exhibits is granted in part. Accordingly, the following three controlling dates shall be revised for these dockets:

- | | | |
|-----|--|----------------|
| (1) | Intervenors' Testimony and Exhibits | July 6, 2009 |
| (2) | Utilities' Rebuttal Testimony and Exhibits | July 30, 2009 |
| (3) | Last Day to Conduct Discovery | August 6, 2009 |

All other procedures and dates established in Order Nos. PSC-08-0816-PCO-EG and PSC-09-0152-PCO-EG shall remain the same.

Based on the foregoing, it is

ORDERED by Chairman Mathew Carter II, as Prehearing Officer, that the Motion for Extension of Time to File Testimony and Exhibits is granted in part, as set forth herein. It is further

ORDERED that the controlling dates are revised as set forth in the body of this Order. It is further

ORDERED that Order Nos. PSC-08-0816-PCO-EG and PSC-09-0152-PCO-EG are reaffirmed in all other respects.

By ORDER of Chairman Matthew M. Carter II, as Prehearing Officer, this 30th day of June, 2009.


MATTHEW M. CARTER II
Chairman and Prehearing Officer

(S E A L)

ELS/KEF/sw

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.