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Subject: Motion for Clarification and Modification of Discover Process
Attachments: Motion for Clarification and Modification of Discoverey Process(f)docx.pdf

Electronic Filing

a. Person responsible for this electronic filing:

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DOCKET NO. 130001-EI	In Re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor
DOCKET NO. 130002-EG	In Re: Conservation Cost Recovery Clause
DOCKET NO. 130003-GU	In Re: Purchased gas adjustment (PGA) true-up
DOCKET NO. 130004-GU	In Re: Natural Gas Conservation Cost Recovery
DOCKET NO. 130007-EI	In Re: Environmental Cost Recovery Clause
DOCKET NO. 130009-EI	In Re: Nuclear Cost Recovery Clause

c. Document being filed on behalf of Office of Public Counsel

d. There are a total of 6 pages.

DOCUMENT NUMBER-DATE

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e. The document attached for electronic filing is Citizens' Motion For Clarification and Modification of Discovery Process in the above named dockets.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power
Cost Recovery Clause with
Generating Performance Incentive Factor

DOCKET NO. 130001-EI

In Re: Conservation Cost Recovery
Clause

DOCKET NO. 130002-EG

In Re: Purchased gas adjustment
(PGA) true-up

DOCKET NO. 130003-GU

In Re: Natural Gas Conservation Cost
Recovery

DOCKET NO. 130004-GU

In Re: Environmental Cost Recovery
Clause

DOCKET NO. 130007-EI

In Re: Nuclear Cost Recovery
Clause

DOCKET NO. 130009-EI

FILED: March 21, 2013

MOTION FOR CLARIFICATION AND MODIFICATION
OF DISCOVERY PROCESS

Citizens, by and through undersigned counsel, hereby files this Motion for Clarification and Modification of the Discovery Process. As grounds for the Motion, Citizens state as follows:

1. By Order No. PSC-13-0104-PCO-EI, issued February 27, 2013, in Docket No. 130001-EI (Amended OEP), the Commission amended the Order Establishing Procedure (OEP), Order No. PSC-13-0069-PCO-EI, issued February 4, 2013.

Paragraphs 5 and 6 of the original OEP state:

(5) Discovery responses to interrogatories and requests for admission shall be served by electronic mail. Parties are encouraged to serve discovery responses to requests for production electronically when possible.

(6) Discovery made prior to the filing of a utility's actual/estimated testimony and exhibits in this docket shall be made in the manner provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure, except as modified by this Order and any subsequent procedural orders issued in this docket. For discovery requests related to matters raised in a utility's

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actual/estimated testimony and exhibits, risk management plan for fuel procurement, hedging activity supplemental report, or projection testimony and exhibits, and intervenors' or staff's testimony and exhibits, the responding party shall serve its responses to the requesting party via electronic mail within 20 days of the date of the request. For discovery requests related to matters addressed in a utility's rebuttal testimony, the utility shall serve its responses to the requesting party via electronic mail within 10 days of the date of the request. A hard copy of responses shall also be served by hand-delivery, U.S. Mail or overnight mail on the day that responses are served electronically.

The Amended OEP states as follows:

Specifically, the provision requiring hard copies of responses to discovery, in paragraph 6, on page 4 of the OEP conflicts with paragraph 5, page 3, providing for discovery responses to be served electronically.

Accordingly, the last sentence of paragraph 6, page 4 of the OEP which reads "A hard copy of responses shall also be served by hand-delivery, U.S. Mail or overnight mail on the day that responses are served electronically" shall be deleted, and paragraph 6 is corrected as follows:

Discovery made prior to the filing of a utility's actual/estimated testimony and exhibits in this docket shall be made in the manner provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure, except as modified by this Order and any subsequent procedural orders issued in this docket. For discovery requests related to matters raised in a utility's actual/estimated testimony and exhibits, risk management plan for fuel procurement, hedging activity supplemental report, or projection testimony and exhibits, and intervenors' or staff's testimony and exhibits, the responding party shall serve its responses to the requesting party via electronic mail within 20 days of the date of the request. For discovery requests related to matters addressed in a utility's rebuttal testimony, the utility shall serve its responses to the requesting party via electronic mail within 10 days of the date of the request.

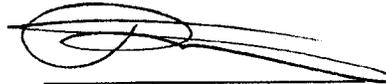
2. The Amendatory OEP modified paragraph 6 of the OEP to delete the requirement that, in addition to electronic service via electronic mail (email) of discovery responses, a hard copy of same discovery be served by hand-delivery, U.S. Mail or overnight mail on the day sent by email. While Paragraph 5 of the OEP specifically mandates email service of interrogatories and requests for admission only, Paragraph

6 appears to apply to all discovery responses of any kind. Since the documentary responses to the request for Production of Documents (PODs) or confidential materials are not explicitly mentioned, the Amended OEP as written can be read to require PODs and confidential materials be served by email. Citizens believe this is not the intent of the Amended OEP. In addition to the need for clarification regarding which discovery responses are required to be served via email, Citizens have some additional concerns.

3. Citizens are very supportive of utilizing processes that will reduce delay in service time and reduce the need for paper copies when appropriate. Citizens believe that the changed language raises two potential logistical problems. First, large attachments sent by email may be rejected by the recipient's server without the recipient knowing an attempt at delivery was made or whether multi-part emails were sent. Citizens have discussed this with the Legislative IT office and there is no way to address this issue on our end. Second, on its face, the requirement that discovery be served via email covers confidential information. Citizens believe this is not the intent of the Amended OEP. Since email is not sufficiently secure to protect confidentiality, Citizens believe the Amended OEP language should expressly exempt confidential materials from the email requirement, while still requiring responding parties to serve redacted versions by email.
4. Regarding the transmission of large attachments, Citizens seek the following modifications:
 - a) Email service shall be limited to notice of service, answers to interrogatories and requests for admissions with small attachments, and to POD questions and the responsive pleadings without attachments. Further, large attachments and POD related documents will be served on the same date in the form of an electronic copy on disc(s).
 - b) When attachments are sent via email, each email shall be limited to 5MB per attachment and shall indicate how many emails are being sent related to the discovery response (such as 1 of 6 emails). Limiting email attachment size to 5MB per email numbered sequentially in the subject line is consistent with the service of pleading and documents that have been adopted by the Courts in Rule 2.516, Florida Rules of Judicial Administration.
5. For confidential materials, Citizens seek the following clarifications and modifications:
 - a) A redacted version of the confidential material subject to email service shall be sent electronically.

- b) An electronic version of the confidential material in the form of disc(s) shall be served by hand-delivery, U.S. Mail, or overnight mail on the day that the redacted version of the discovery response is served via email.
6. Citizens requested an informal meeting to discuss these concerns, which was held with the parties on Wednesday, March 13, 2013. Most parties participated in a productive process and we believe that a general consensus exists that the proposed clarifications and modifications will improve the discovery process. A copy of this motion has been furnished to the parties of record in the above docket. The parties have not indicated an objection to the motion.

Wherefore, Citizens requests that this motion for Clarification and Modification of the Discovery Process be approved.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and foregoing Office of **Public Counsel's Motion for Clarification and Modification of Discovery Process** has been furnished by electronic mail on this 21st day of March, 2013, to the following:

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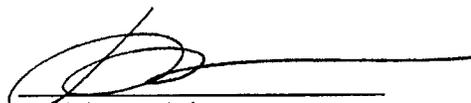
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