

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Environmental Cost )  
Recovery Clause )  
\_\_\_\_\_)

DOCKET NO. 130007-EI  
FILED: OCTOBER 4, 2013

**JOINT MOTION OF DeSOTO COUNTY GENERATING COMPANY, LLC, AND THE OFFICE OF PUBLIC COUNSEL FOR LEAVE TO FILE SURREBUTTAL TESTIMONY**

DeSoto County Generating Company, LLC ("DeSoto" or "DeSoto Generating Company"), and the Office of Public Counsel ("OPC") (collectively referred to as the "Movants"), pursuant to Rules 28-106.204 and 28-106.211, Florida Administrative Code ("F.A.C."), hereby respectfully move the Prehearing Officer for an order granting them leave to file surrebuttal testimony in this docket.

In summary, Florida Power & Light Company ("FPL") provided new information and revised economic analyses in its rebuttal testimony in this docket to which the Movants have not had an opportunity to respond. The Movants request that the Prehearing Officer exercise the broad discretion granted to him by the Uniform Rules of Procedure and allow the Movants to file surrebuttal testimony specifically addressing the new information and revised economic analyses contained in FPL's rebuttal testimony.

In further support of this Motion for Leave to File Surrebuttal Testimony (the "Motion"), the Movants state as follows:

**BACKGROUND**

1. This docket is an on-going docket of the Commission, in which the Commission annually determines the Environmental Cost Recovery Clause ("ECRC") rates of Florida public utilities that impose charges pursuant to Section 366.8255, Florida Statutes.

2. On September 13, 2013, DeSoto petitioned to intervene in the docket. By Order dated September 23, 2013, the Commission granted DeSoto's intervention, noting that FPL did not object to DeSoto's intervention and participation in the docket as a retail customer.

3. On September 13, 2013, DeSoto timely filed the direct testimony of Carolyne Wass and Kathy A. French. On September 13, 2013, OPC filed a notice of limited adoption of the testimony of Witnesses Wass and French.

4. On September 27, 2013, FPL filed the rebuttal testimony of Juan E. Enjamio, Terry K. Keith, Randall R. LaBauve and William C. Yeager. The rebuttal testimony of FPL Witness Enjamio includes Exhibit JEE-6, entitled Updated Results of the Economic Evaluation (the "Revised Economic Evaluation"). A substantial portion of Witness Enjamio's rebuttal testimony,

specifically pages 6 through 9, discusses the methodology and summary results of the Revised Economic Evaluation. Exhibit JEE-6 presents total FPL system costs for different "resource plans," but presents no detailed information regarding those plans or the characteristics of the different alternatives, including the options of purchasing the DeSoto Generating Facility or entering into a power purchase agreement with DeSoto. FPL Witness Yeager also addresses the Revised Economic Evaluation in significant portions of his rebuttal testimony. See Rebuttal Testimony of William L. Yeager at 8-11.

**APPLICABLE LAW**

5. Rule 28.106.211, F.A.C., provides in pertinent part that:

The presiding officer before whom a case is pending may issue orders necessary to . . . promote the just, speedy, and inexpensive determination of all aspects of the case . . .  
. . .

Thus, while no party has the right to file surrebuttal testimony, the decision to grant leave to file surrebuttal testimony is clearly within the discretion of the Prehearing Officer assigned to the docket on behalf of the Commission.

6. In In Re: Petition to Determine Need for Florida Energy Secure Pipeline by Florida Power & Light Company, 2009 WL 2218696 (Order Granting Motion for Leave to File Surrebuttal Testimony) (PSC Docket 090172-EI) (July 21, 2009) (hereinafter

referred to as "Florida Energy Secure Pipeline"), the Commission granted Florida Gas Transmission Company, LLC's request to file surrebuttal testimony because FPL had "presented new information and revised analyses in its rebuttal testimony." The Commission explained that the decision to allow surrebuttal testimony is consistent with "the Commission's predisposition to include information in its administrative proceedings rather than to exclude information." Id.

**THE COMMISSION SHOULD ALLOW THE MOVANTS TO FILE  
SURREBUTTAL IN THIS DOCKET**

7. FPL's Revised Economic Evaluation presented and discussed by Witnesses Enjamio and Yeager in significant portions of their rebuttal testimony clearly constitutes a new analysis based on new underlying information. The Movants have not had the opportunity to address the new analyses and evidence presented in FPL's rebuttal testimony, including, without limitation, the Revised Economic Evaluation and the assumptions and facts underlying the Revised Economic Evaluation. Accordingly, consistent with the Commission's precedent in Florida Energy Secure Pipeline, the Prehearing Officer should exercise his broad discretion and allow the Movants to file surrebuttal testimony. Allowing surrebuttal testimony will provide the Commission and Staff the opportunity to consider this crucial evidence prior to the hearing, which in turn, will expedite the hearing process.

**SUGGESTED PROCEDURE FOR FILING SURREBUTTAL TESTIMONY**

8. The Movants will limit their surrebuttal testimony to address only new issues or facts raised in FPL's rebuttal testimony. The Movants suggest that a reasonable deadline for filing their surrebuttal testimony is October 21, 2013.<sup>1</sup>

**POSITIONS OF OTHER PARTIES**

9. Undersigned counsel has contacted counsel for the other parties participating with respect to FPL's NO2 Compliance Project issues in this docket and is authorized to represent that the Florida Industrial Power Users Group supports the Motion, that FPL does not agree with the Motion and intends to file a response to the motion, that the Commission Staff takes no position on the motion, Gulf Power and PCS Phosphate take no position on the motion, and the other Parties to the ECRC Docket have not yet responded to a request to state their positions concerning this motion.

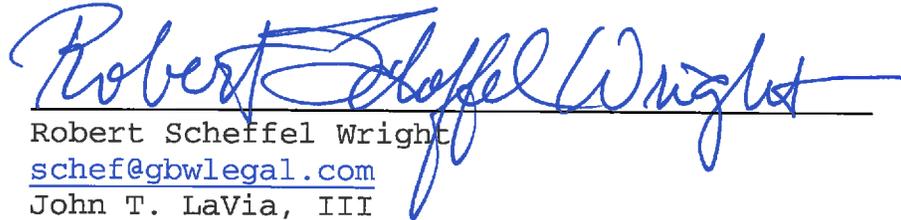
WHEREFORE, DeSoto County Generating Company, LLC, and the Office of Public Counsel respectfully move the Commission, through the Prehearing Officer for this ECRC Docket, to issue an

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<sup>1</sup> On October 3, 2013, the Florida Industrial Power Users Group filed a Motion to Establish Separate "Spin-Off" Docket with respect to FPL's Petition for Approval of its proposed NO2 Compliance Project. If the Commission grants FIPUG's motion, the Movants suggest that the date for filing surrebuttal testimony should be tied to the new schedule developed for the spin-off docket. This would allow the Movants to conduct discovery on the Revised Economic Evaluation before filing their surrebuttal testimony.

order granting leave to file surrebuttal testimony as prayed herein.

Respectfully submitted this 4th day of October 2013.



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following by electronic mail on this 4th day of October 2013.

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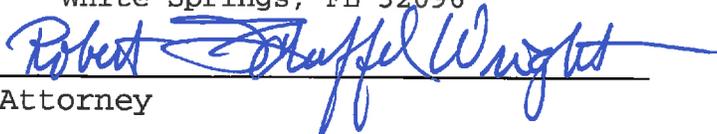
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