

Office of Commission Clerk Official Filing

Ruth Nettles

From: george@cavros-law.com  
 Sent: Tuesday, June 23, 2009 4:49 PM  
 To: Filings@psc.state.fl.us  
 Cc: cguyton@ssd.com; jbeasley@ausley.com; srg@beggsllane.com; ljacobs50@comcast.net; suzannebrownless@comcast.net; jeremy.susac@eog.myflorida.com; Jack.Leon@fpl.com; cbrowder@ouc.com; john.burnett@pgnmail.com; sclark@radeylaw.com; Katherine Fleming; Erik Saylor; kelly.jr@leg.state.fl.us; Wade\_Litchfield@fpl.com; paul.lewisjr@pgnmail.com; regdept@tecoenergy.com; sdriteno@southernco.com; miltta@jea.com; willis@ausley.com; nhorton@lawfla.com; Jessica.Cano@fpl.com; vkaufman@kagmlaw.com; jmoyle@kagmlaw.com; jmcwhirter@mac-law.com  
 Subject: NRDC-SACE Reply in Support of Extension of Time  
 Attachments: NRDC-SACE Reply\_in\_Support\_of\_Extension.pdf



NRDC-SACE  
 y\_in\_Support\_c  
 A.

George Cavros, Esq.  
 120 E. Oakland Park Blvd, Ste. 105  
 Fort Lauderdale, FL 33334  
 (954) 563-0074  
 (866) 924-2824 (fax)  
 george@cavros-law.com

B. Docket Nos. 080407-EG; 080408-EG; 080409-EG; 080410-EG; 080411-EG; 080412-EG; 080413-EG

C. Document filed on behalf of Natural Resources Defense Council and Southern alliance for Clean Energy

D. Attached document is 8 pages

E. The attached document is a NRDC-SACE Motion in Support of Extension of Time to File Testimony and Exhibits

Thank you,

George Cavros

George Cavros, Esq.  
 120 E. Oakland Park Blvd, Ste. 105  
 Fort Lauderdale, FL 33334  
 954.563.0074 (office)  
 954.295.5714 (cell)  
 866.924.2824 (fax number)

-----  
 The information contained in this electronic transmission is privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this transmission in error, do not read it. Please immediately notify the sender that you have received this communication in error and then destroy the documents.

DOCUMENT NO. DATE  
 06281-09 06/23/09  
 FPSC - COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Commission Review of Numeric ) DOCKET NO. 080407-EG  
Conservation Goals )  
Florida Power & Light Company )  
\_\_\_\_\_ )

In re: Commission Review of Numeric ) DOCKET NO. 080408-EG  
Conservation Goals )  
Progress Energy, Florida, Inc. )  
\_\_\_\_\_ )

In re: Commission Review of Numeric ) DOCKET NO. 080409-EG  
Conservation Goals )  
Tampa Electric Company )  
\_\_\_\_\_ )

In re: Commission Review of Numeric ) DOCKET NO. 080410-EG  
Conservation Goals )  
Gulf Power Company )  
\_\_\_\_\_ )

In re: Commission Review of Numeric ) DOCKET NO. 080411-EG  
Conservation Goals )  
Florida Public Utilities Company )  
\_\_\_\_\_ )

In re: Commission Review of Numeric ) DOCKET NO. 080412-EG  
Conservation Goals )  
Orlando Utilities Commission )  
\_\_\_\_\_ )

In re: Commission Review of Numeric ) DOCKET NO. 080413-EG  
Conservation Goals )  
Jacksonville Electric Authority )  
\_\_\_\_\_ )

**REPLY IN SUPPORT OF NRDC-SACE MOTION FOR EXTENSION OF TIME  
TO FILE TESTIMONY AND EXHIBITS**

On June 16, 2009, the Natural Resources Defense Council ("NRDC") and  
Southern Alliance for Clean Energy ("SACE") filed a motion for a one-week extension

**DOCUMENT NO. DATE**

06281-09 06/23/09  
**FPSC - COMMISSION CLERK**

of time to file testimony and exhibits. On June 22, 2009, Florida Power & Light Company, Progress Energy Florida, Inc.,<sup>1</sup> Tampa Electric Company, Gulf Power Company and JEA (collectively "Opposing Utilities") filed an opposition to this extension request. Florida Public Utilities Company and Orlando Utilities Commission agreed to the proposed extension. NRDC and SACE respectfully seek leave to file the following two-paragraph reply in support of their motion for extension and attached declaration of John D. Wilson, Research Director for the Southern Alliance for Clean Energy. NRDC and SACE state as follows:

1. In their opposition, the Opposing Utilities assert that "NRDC and SACE have had access to substantial amounts of information through their participation in the Collaborative, including . . . the final results of the energy efficiency Achievable Potential Studies." Opposition at 3, ¶ 5. This is not accurate. As described below in the attached declaration of John D. Wilson, NRDC and SACE have not been provided access to the final Achievable Potential study through the Collaborative. For this reason, an extension is necessary and appropriate.
2. The Opposing Utilities also state that if the one-week extension is granted, *they will have substantially less time in which to prepare their rebuttal testimony.* Opp. At 3, ¶6. NRDC and SACE suggest that if the Commission agrees that this is a problem, then the deadline for the Utilities' rebuttal could be extended from July 27, 2009 to August 3, 2009. Because the current schedule does not provide adequate time to take discovery related to the

---

<sup>1</sup> Progress Energy Florida originally indicated that they did not oppose our motion for extension.

Utilities' rebuttal testimony, this extension should not prejudice the staff or other parties to the docket.

**WHEREFORE**, for the above and foregoing reasons, NRDC and SACE request that the Motion for Extension of Time to File Testimony and Exhibits be granted.

Respectfully submitted on this 23rd day of June, 2009.

A handwritten signature in black ink, appearing to read 'G. Cavros', with a long horizontal flourish extending to the right.

George S. Cavros  
George Cavros, Esq., P.A.  
120 E. Oakland Park Boulevard, Suite 105  
Fort Lauderdale, Florida 33334  
(954) 563-0074  
(866) 924-2824  
[george@cavros-law.com](mailto:george@cavros-law.com)

## DECLARATION OF JOHN D. WILSON

I, John D. Wilson, declare as follows:

1. I am the Research Director for the Southern Alliance for Clean Energy (“SACE”).
2. I have worked actively since March 2008 on the above-captioned review of Demand Side Management (“DSM”) Goals and have participated in portions of the Collaborative for SACE and the Natural Resources Defense Council (“NRDC”).
3. Our participation in the technical potential portion of the Collaborative study was productive and at most times we felt included in the flow of information and decisions. SACE and NRDC intend to sponsor testimony outlining some shortcomings in the technical potential portion of the study. However, in general if we had been afforded an opportunity to sponsor the testimony regarding that portion of the study, we would have given that opportunity serious consideration.
4. During the economic and achievable portion of the study, however, SACE and NRDC were not adequately included in key decisions and were not provided copies of important information in most cases. Notably, we did not endorse the Scope of Work because its content was negotiated between the utilities and the consultants without our participation after being shown an early draft.
5. In their Opposition, the Opposing Utilities state that NRDC and SACE “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 the Achievable potential as they were in the development of Technical Potential, but they have continued to participate in the Collaborative.” The Opposing Utilities’ response implies that we have had access to additional information beyond that filed in the docket.
6. This implication grossly misrepresents what occurred during the Economic and Achievable Potential portion of the study. In fact, we were categorically excluded from receiving important exchanges of methodology, data and results between the utilities and the consultants. We were surprised at the ultimate results of the study and had no access to information that would have indicated the nature of the results in advance of June 1. During this portion of the study, the few documents and limited data that we were provided with are fairly insignificant and of limited relevance to what was actually completed and filed as testimony.

7. In fact, we were quite “active” in this portion of the study, but most of our activity was spent in negotiations with the utilities over whether we would be provided access to basic information and timely opportunity to influence key decisions in the methodology. Ultimately, we were not provided substantial information nor provided an opportunity to influence the analysis.
8. According to the Scope of Work signed by the utilities, task 5 (“Estimate Economic and Achievable Potential”) includes the following tasks. Our access to each deliverable is noted.
  - a. “Estimate economic potential.” We have partial access to the overall results. Data have been submitted on an aggregate level for four of the seven utilities. The four utilities providing economic potential data met the objectives for providing detailed data in varying degrees, but generally provided incomplete data as discussed below.
  - b. “Collect and estimate program and market share data for achievable calibration.” Specifically, the consultant was required to deliver “a memo reviewing and summarizing total program and individual measure savings from program efforts for the past few years, as well as estimates of marginal energy efficiency market penetration rates. In addition the memo will analyze recent trends in utility program spending and savings per dollar by sector and end use, as available.” We have not seen this memo or any of these data as they are presumably forthcoming in the final report.
  - c. “Draft achievable potential estimates for residential and industrial sectors.” We were not provided any opportunity to review draft estimates.
  - d. “Utilities review and comment on draft achievable potential estimates for the residential and industrial sectors.” We were not permitted to participate in this review.
  - e. “Draft achievable potential estimates for the commercial sector.” We were not provided any opportunity to review draft estimates.
  - f. “Utilities review and comment on draft achievable potential estimates for the commercial sector.” We were not permitted to participate in this review.
  - g. “Final achievable potential estimates for all sectors.” This item was scheduled for March 13, 2009. These estimates were not provided until June 1, 2009 and we do not have access to the underlying data.
  - h. “Provide payback acceptance curves for key measures.” We have not seen any of this material.
9. Under the Collaborative schedule, the “Draft economic and achievable potential report” was scheduled for March 20, 2009 and the final report was schedule for April 3, 2009. We have not seen either a draft or final report.

10. The information provided in the utilities' testimony omits important areas that were to have been included in the final economic and achievability report such as detailed information on the methodology utilized, the economic analysis, the basis for calibrating the achievable analysis to program experience in Florida, or detailed information on the specific measures screened at each step of the process and the data supporting each screening decision
11. As of March 22, 2009 (the deadline to petition for reconsideration of Order No. PSC-09-0152-PCO-EG), SACE and NRDC were aware that the utilities and consultants were behind schedule. However, we reasonably believed that information contained in the report would be made available to us as members of the collaborative sometime in May prior to the utilities filing testimony on June 1, 2009.
12. Prior to filing testimony on June 1, 2009, SACE and NRDC had made several requests for information to FPL, which was the utility coordinating the collaborative. These requests remained unanswered or were rejected.
13. During May, 2009, we anticipated (although we were not informed specifically) that we would not receive any further substantive information from the utilities regarding the potential study. However, we fully anticipated that the utilities' testimony would include information substantially equivalent to the final potential study report. Moreover, based on the Collaborative schedule, we expected at the very least that the utilities would have made available all deliverables expected under the Collaborative process to the docket within two weeks of filing testimony. However, they have not done so.

I declare under the penalty of perjury that the foregoing is true and correct.

Dated: this 23rd day of June, 2009.



---

John D. Wilson

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy and correct copy of the foregoing was served on this 23rd day of June, 2009 via email (\*) and/or US Mail on:

<p>Katherine Fleming, Esq. *  Erik L. Slayer, Esq. *  Florida Public Service Commission  Gerald L. Gunter Building  2540 Shumard Oak Boulevard  Tallahassee, Florida 32399-0850  KEFLEMIN@PSC.STATE.FL.US  esayler@PSC.STATE.FL.US</p>	<p>J.R. Kelly / Stephen Burgess *  Office of Public Counsel  c/o The Florida Legislature  111 W. Madison Street, Room 812  Tallahassee, FL 32399-1400  kelly.jr@leg.state.fl.us</p>
<p>Jessica A. Cano8  Florida Power and Light  700 Universe Blvd.  Juno Beach, FL 33408  Jessica.Cano@fpl.com</p>	<p>Mr. Paul Lewis, Jr. *  Progress Energy Florida  106 East College Avenue, Suite 800  Tallahassee, FL 32301-7740  paul.lewisjr@pgnmail.com</p>
<p>John T. Burnett / R. Alexander Glenn *  Progress Energy Service Company, LLC  Post Office Box 14042  St. Petersburg, FL 33733-4042  john.burnett@pgnmail.com</p>	<p>Paula K. Brown *  Tampa Electric Company  Regulatory Affairs  P. O. Box 111  Tampa, FL 33601-0111  regdept@tecoenergy.com</p>
<p>Susan D. Ritenour *  Gulf Power Company  One Energy Place  Pensacola, FL 32520-0780  sdriteno@southernco.com</p>	<p>John T. English  Florida Public Utilities Company  P. O. Box 3395  West Palm Beach, FL 33402-3395</p>
<p>Chris Browder *  Orlando Utilities Commission  P. O. Box 3193  Orlando, FL 32802-3193  cbrowder@ouc.com</p>	<p>Teala M. Milton *  JEA  V.P., Government Relations  21 West Church Street, Tower 16  Jacksonville, FL 32202-3158  miltta@jea.com</p>
<p>Suzanne Brownless, Esq. *  1975 Buford Boulevard  Tallahassee, FL 32308  suzannebrownless@comcast.net</p> <p>James D. Beasley, Esq., *  Lee L. Willis, Esq. *  Ausley Law Firm  PO Box 391  Tallahassee, FL 32302  jbeasley@ausley.com  lwillis@ausley.com</p>	<p>Jeremy Susac *  Florida Energy Commission  600 South Calhoun Street, Suite 251  Tallahassee, FL 32399-001  jeremy.susac@eog.myflorida.com</p> <p>Susan Clark, Esq. *  Radey Law Firm  301 South Bronough Street, Suite 200  Tallahassee, FL 32301  sclark@radeylaw.com</p>



Steven R. Griffin, Esq. \*  
Beggs and Lane Law Firm  
501 Commendancia Street  
Pensacola, FL 32502  
srg@beggslane.com

Vicki Kaufman, Esq. and  
John Moyle, Esq.\*  
Keefe Anchors Gordon and Moyle  
118 North Gadsden Street  
Tallahassee, FL 32301  
vkaufman@kagmlaw.com  
jmoyle@kagmlaw.com

Jack Leon, Esq., \*  
Wade Litchfield, Esq. \*  
Florida Power & Light Company  
215 S. Monroe Street, Suite 810  
Tallahassee, Florida 32301-1859  
Jack.Leon@fpl.com  
Wade\_Litchfield@fpl.com

Norman Horton, Jr., Esq. \*  
Messer, Caparello and Self, P.A.  
2618 Centennial Place  
Tallahassee, FL 32308  
nhorton@lawfla.com

Charles A. Guyton  
Squire, Sanders & Dempsey  
215 South Monroe Street  
Suite 601  
Tallahassee, FL 32301  
cguyton@ssd.com

John, W. Mcwhirter, Jr., Esquire\*  
PO Box 3350  
Tampa, Florida 33601  
jmcwhirter@mac-law.com

This 23rd day of June, 2009.



---

George Cavros