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From: Darnes, Melissa Ann <MADARNES@SOUTHERNCO.COM>
Sent: Thursday, March 20, 2014 4:23 PM
To: Filings@psc.state.fl.us
Subject: Gulf's Response in Opposition to Motions to Modify OEP - Docket 130202-EI
Attachments: 3.20.14 Gulf's Response in Opposition to Sierra Club's and SACE's Motions to Modify OEP.pdf

A. s/Robert L. McGee

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B. Docket No. 130202-EI

C. Gulf Power Company

D. Document consists of 9 pages.

E. The attached document is Gulf Power Company's Response in Opposition to Sierra Club's and Southern Alliance for Clean Energy's Motions to Modify the Order Establishing Procedure.

Thank you for your attention and assistance in this matter.

Melissa Darnes

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March 20, 2014

Ms. Carlotta Stauffer
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee FL 32399-0850

Dear Ms. Stauffer:

RE: Docket No. 130202-EI

Enclosed herein is Gulf Power Company's Response in Opposition to Sierra Club's and Southern Alliance for Clean Energy's Motions to Modify the Order Establishing Procedure in the above referenced docket.

Sincerely,

A handwritten signature in black ink that reads "Robert L. McGee, Jr." in a cursive style.

Robert L. McGee, Jr.

md

Enclosure

cc: Beggs & Lane
Jeffrey A. Stone

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Commission review of numeric conservation goals (Florida Power & Light Company).

Docket No.: 130199-EI

In re: Commission review of numeric conservation goals (Duke Energy Florida, Inc.).

Docket No.: 130200-EI

In re: Commission review of numeric conservation goals (Tampa Electric Company).

Docket No.: 130201-EI

In re: Commission review of numeric conservation goals (Gulf Power Company).

Docket No.: 130202-EI

In re: Commission review of numeric conservation goals (JEA)

Docket No.: 130203-EM

In re: Commission review of numeric conservation goals (Orlando Utilities Commission)

Docket No.: 130204-EM

In re: Commission review of numeric conservation goals (Florida Public Utilities Company).

Docket No.: 130205-EI

Filed: March 12, 2014

GULF POWER COMPANY'S RESPONSE IN OPPOSITION TO SIERRA CLUB'S AND SOUTHERN ALLIANCE FOR CLEAN ENERGY'S MOTIONS TO MODIFY THE ORDER ESTABLISHING PROCEDURE

Gulf Power Company ("Gulf Power," "Gulf," or "the Company"), by and through its undersigned attorneys, files this response in opposition to separate motions filed by the Sierra Club and Southern Alliance for Clean Energy on March 14, 2014 seeking to modify various aspects of the Order Establishing Procedure in this docket. In support of this response, the Company states:

PROCEDURAL BACKGROUND

1. On June 17, 2013 Commission Staff and interested parties (including representatives from SACE) attended an informal meeting to discuss the numeric goals proceeding. Discussion during this meeting included, among other things, minimum testimony requirements and proposed dates for testimony and hearings.

2. The Commission opened dockets for all FEECA utilities on July 26, 2013.

3. On August 19, 2013, the prehearing officer issued an Order Consolidating Dockets and Establishing Procedure (the “OEP”). See, Order No. PSC-13-0386-PCO-EU. Among other things, the OEP sets deadlines and timeframes responding to discovery, for filing utility direct testimony, intervenor testimony, utility rebuttal testimony and the final hearing.¹

4. Sierra Club and SACE petitioned to intervene in these proceedings on December 18, 2013 and February 20, 2014, respectively. The Commission granted Sierra Club’s and SACE’s petitions on February 7, 2014 and March 18, 2014 respectively. See, PSC Order Nos. 14-0097-PCO-EU and 14-0135-PCO-EU. The Commission’s orders clearly state that “[p]ursuant to Rule 25-22.039, F.A.C., [the intervenor] takes the case as it finds it.” *Id.* at 3. (emphasis added).

5. On March 14, 2014, Sierra Club filed a motion seeking to: (a) extend Intervenors’ direct testimony deadline by six weeks and extend the remaining controlling dates – including the dates for the final hearing – by a similar timeframe; (b) expedite discovery by limiting the response time to 14 days; and (c) schedule a hearing in central Florida for the purpose of taking public testimony.

¹ On February 26, 2014, the prehearing officer issued an order modifying the dates for the final hearing such that the hearing is presently scheduled for July 21-23, 30-31, 2014. See, Order No. PSC-14-0112-PCO-EU. All other aspects of the OEP remain unchanged.

6. On March 14, 2014, SACE filed a motion endorsing Sierra Club's request to extend the time for filing Intervenor testimony and expedite discovery. In the alternative, SACE proposes to extend the deadline for filing Intervenor testimony to at least May 19, 2014.

GULF'S RESPONSE

7. Gulf does not support the relief sought in either intervenor's motion. The OEP was issued over seven months ago and Gulf has, accordingly, relied on the OEP in preparing for hearing. The OEP was issued under the authority of Rule 28-106.211, F.A.C. Order at p. 2. This rule, in turn, provides that "[t]he presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case, including bifurcating the proceeding." Granting the intervenors' motions would undermine these objectives and the well-settled principle that "intervenors take the case as they find it." See, Rule 25-22.039.

8. The intervenors premise their motions largely on what they mis-characterize as an in improper delay in the utilities' providing their updated Technical Potential Studies. (Sierra Motion at pp. 2, 4, 5-6; SACE Motion at pp. 2-3) The OEP indicates that Technical Potential studies would be updated "on or about September 30, 2013" and Gulf complied with this directive. The OEP does not require that utilities file these updates with the Commission or share them on an informal basis with anyone who asks for a copy. Prior to March 17, 2014, Gulf had not received a single discovery request from any intervenor for its Technical Potential analyses. Notwithstanding the foregoing, Gulf did, in fact, voluntarily share its analyses with Sierra Club and SACE on December 6, 2012 –prior to either party intervening in these proceedings. Sierra Club acknowledges this in passing, but characterizes Gulf's submission as nothing more than a "mere high level summar[y]." Sierra Motion at p. 4. This characterization

seemingly demonstrates a fundamental misunderstanding on Sierra Club's part with regard to the process used to update the Technical Potential Study. As noted in the OEP, the parties agreed during the June 17, 2013 informal meeting that repeating a complete bottom up analysis of technical potential --as was performed in the 2009 proceeding-- was not necessary or desirable. Order at p. 2. Instead, the parties agreed to update their existing technical potential studies to account for new measures, evolution of existing measures, intervening changes in building codes, etc. The update process, while thoughtful and robust, was significantly streamlined in comparison to the previous analysis. It did not result in a new neatly bound "study" which could be handed to Sierra Club or SACE for their review. Rather, the analysis is housed primarily in the very Excel spreadsheets which were provided to SACE and Sierra Club months ago. Despite this passage of time, neither intervenor has asked follow up questions of Gulf about its analysis or expressed concerns. Now, nearly seven months after the issuance of the OEP and three months after receiving Gulf's data, the movants are seeking substantial changes to the hearing process based on an assertion that they lack access to data which they already have in their possession.

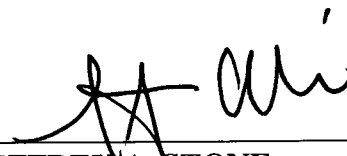
9. In addition to expressing concern about lack of access to the Technical Potential updates, the movants also raise general concerns regarding completeness of the record. They refer repeatedly to public workshops, staff retained experts and testimony extensions from the previous goals proceeding. (Sierra Motion at pp 2, 5, 7; SACE Motion at p. 3) Gulf notes that the previous goals proceeding was the first to occur following the 2008 amendments to FEECA. Consequently, the Commission and the parties spent an extraordinary measure of time and resources ensuring that the 2009 proceeding complied with the then-recent statutory amendments. Armed with the knowledge gained from the 2009 proceedings, there is simply no

need to duplicate those unprecedented efforts today. The minimum testimony requirements set forth in the OEP are sufficient to ensure completeness of the record. That said, Sierra Club and SACE are, and have always been, free to submit testimony which goes beyond the minimum testimony requirements, including their own technical and achievable potential analyses. The movants seem to suggest that they are limited to reacting to the utilities' testimony rather than developing their own independent analyses. They then improperly attempt to use this so-called "unjust information gap" as a springboard for deviating from the OEP.

10. Sierra Club and SACE are sophisticated organizations with substantial experience in the DSM arena. They have had ample opportunity to intervene early in these proceedings and conduct discovery. For whatever reasons, they did not avail themselves of these opportunities. Notably, Gulf received SACE's first set of discovery on March 17, 2014. This discovery seeks the very information which the movants claim necessitates deviating from the OEP. The movants could, and perhaps should, have sought this information earlier. Regardless, their failure to do so should not form a basis for departing from the existing OEP.

WHEREFORE, for the foregoing reasons, Gulf Power respectfully requests that SACE and Sierra Club's motions be denied and that the Order Establishing Procedure, as revised on February 26, 2014, be affirmed and maintained. Gulf does not believe that oral argument on the motions is warranted, but requests to participate if the movants' requests for oral argument are granted. Additionally, if the Commission is inclined to grant either intervenor's motion, Gulf requests that the deadline to file its rebuttal testimony be adjusted accordingly.

Respectfully submitted this 20th day of March, 2014.

A handwritten signature in black ink, appearing to read "Jeff Stone", written over a horizontal line.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Commission review of numeric
conservation goals)

Docket No.: 130202-EI

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished by electronic mail this 20th day of March, 2014 to the following:

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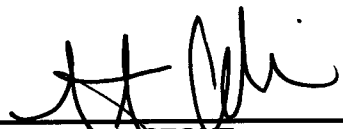
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