

Shawna Senko

From: John Finnigan <jfinnigan@edf.org>
Sent: Monday, April 21, 2014 5:18 PM
To: Filings@psc.state.fl.us
Cc: Curt Kiser
Subject: E-Filing EDF Petition to Intervene.pdf
Attachments: Florida - Petition to Intervene.pdf

Hon. Ann Cole
Director, Office of Commission Clerk

Dear Ms. Cole:

I am attaching an electronic filing. Here is the relevant information:

Person making the filing:
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Docket number and title of docket:
Docket Nos. 130199-EI, 130200-EI, 130201-EI, 130202-EI
In re: Commission Review of Numeric Conservation Goals

Party on whose behalf filing is made:
John Finnigan, Environmental Defense Fund

Total number of pages:
17

Description:
This document consists of a cover letter, and a Petition to Intervene on behalf of Environmental Defense Fund, filed by John Finnigan in the above-referenced dockets.

Thank you for your consideration in this matter.

John Finnigan

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April 21, 2014

VIA E-FILING

Ann Cole
Director, Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket Nos. 130199-EI, 130200-EI, 130201-EI and 130202-EI

Dear Ms. Cole:

I have enclosed the Environmental Defense Fund's Petition to Intervene to be filed in the above-referenced dockets. Should you have any questions regarding this filing, please contact me at (513) 226-9558.

Very truly yours,

s/John Finnigan

John Finnigan
Lead Counsel
Clean Energy Program
Environmental Defense Fund
128 Winding Brook Lane
Cincinnati, Ohio 45174

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Commission Review of Numeric) DOCKET NO. 130199-EI
Conservation Goals)
Florida Power & Light Company)
_____)

In re: Commission Review of Numeric) DOCKET NO. 130200-EI
Conservation Goals)
Duke Energy Florida, Inc.)
_____)

In re: Commission Review of Numeric) DOCKET NO. 130201-EI
Conservation Goals)
Tampa Electric Company)
_____)

In re: Commission Review of Numeric) DOCKET NO. 130202-EI
Conservation Goals)
Gulf Power Company)
_____)

**PETITION TO INTERVENE BY
ENVIRONMENTAL DEFENSE FUND**

Pursuant to sections 120.569, 120.57, Florida Statutes and Rules 25-22.039 and 29-106.205, Florida Administrative Code, the Environmental Defense Fund (“EDF”) respectfully petitions for leave to intervene in the above-captioned, consolidated proceedings, and in support thereof states:

I. INTRODUCTION

Florida's electricity prices are the 21st highest in the country.¹ Several factors could cause Florida's prices to climb even higher. Florida's long-range electricity planning rests on two fundamental assumptions: (1) load growth will be slow; and (2) natural gas is the least-cost fuel source to serve Florida's electricity load. These assumptions were based on the best available information when they were made. But energy forecasts can be wrong. Apropos of baseball season, a common saying in the energy industry is: "Mother Nature bats last." The Department of Energy cautions that "[e]nergy price forecasts are highly uncertain."² When energy forecasts do not accurately predict energy fundamentals, customer electricity prices may be higher than expected. We can protect against higher electricity prices by greater use of conservation because energy efficiency is the least expensive resource.

Severe weather can impact load projections, fuel supply and fuel costs. Florida projects that electricity load will grow at an average annual rate of 1.4%.³ Florida experienced colder than normal temperatures in January 2014.⁴ The Midwest experienced one of the coldest winters on record in 2013-2014.⁵ Nationally, the harsh winter weather caused electricity sales to increase by 4.3% during the first quarter of 2014, including a 7.3% increase in residential electricity sales.⁶ The cold winter weather led to a record drawdown of natural gas storage

¹ Energy Information Administration, *State Profile and Energy Estimates – Florida* (Dec. 2013), available at: <http://www.eia.gov/state/rankings/?sid=FL#/series/31> (last viewed Apr. 16, 2014).

² Energy Information Administration, *State Profile and Energy Estimates – Florida* (Dec. 2013), available at: <http://www.eia.gov/state/rankings/?sid=FL#/series/31> (last viewed Apr. 16, 2014).

³ Florida Public Service Commission, *Review of the 2013 Ten Year Site Plans* at 1 (Oct. 2013).

⁴ Florida Climate Center, *Climate Summary for Florida – January 2014*, available at: <http://climatecenter.fsu.edu/products-services/summaries/climate-summary-for-florida-january-2014> (last viewed Apr. 16, 2014).

⁵ The Weather Channel, *NOAA: Winter 2013-2014 Among Coldest on Record in Midwest; Driest, Warmest in Southwest* (Mar. 13, 2014), available at: <http://www.weather.com/news/winter-ncdc-state-climate-report-2013-2014-20140313> (last viewed Apr. 16, 2014).

⁶ Energy Information Administration, *Short-Term Energy and Summer Fuels Outlook* at 9 (Apr. 2014), available at: http://www.eia.gov/forecasts/steo/pdf/steo_full.pdf (last viewed Apr. 16, 2014).

supplies.⁷ Florida relies on natural gas as the primary fuel source for electricity generation. Natural gas is the fuel for 64.8% of Florida's load.⁸ Natural gas prices have increased 11% in 2014.⁹ This will result in higher electricity prices unless more conservation is adopted to offset the increase in natural gas prices.

Carbon intensity is another factor which could cause Florida's electricity prices to increase. Florida ranks fourth-highest in the country in carbon dioxide emissions from its power plants.¹⁰ The U.S. EPA will release rules by June 1, 2014 limiting greenhouse gas emissions from existing power plants.¹¹ These rules could lead utilities to retire more power plants and to invest more capital to install greenhouse gas controls, leading to higher electricity prices.

Energy efficiency can mitigate higher electricity prices. Florida's current average rate for residential customers is 11.41¢/kWh.¹² A March, 2014 study by the Lawrence Berkeley National Laboratory concluded that the average cost of energy savings for residential customers from energy efficiency programs is 0.018¢/kWh.¹³ In other words, Florida residential customers pay 600% more for electricity than the national average cost for energy efficiency programs. This comprehensive study covered over 1,700 energy efficiency programs in 31 states, including

⁷ Energy Information Administration, *Natural Gas Weekly Update* (Apr. 10, 2014), available at: <http://www.eia.gov/naturalgas/weekly/?src=Natural-b3> (last viewed Apr. 16, 2014)..

⁸ Florida Public Service Commission, *Review of the 2013 Ten Year Site Plans* at 3 (Oct. 2013).

⁹ Wall Street Journal, *Natural Gas Supply Shortage Could Jack Up Prices* (Apr. 11, 2014), available at: <http://www.marketwatch.com/story/natural-gas-supply-shortage-could-jack-up-prices-2014-04-11> (last viewed Apr. 16, 2014).

¹⁰ Energy Information Administration, *State CO2 Emissions* (Feb. 25, 2014), available at: http://www.eia.gov/environment/emissions/state/state_emissions.cfm (last viewed Apr. 16, 2014).

¹¹ Congressional Research Service, *EPA Standards for Greenhouse Gas Emissions from Power Plants: Many Questions, Some Answers* (Nov. 15, 2013), available at: <http://www.fas.org/sgp/crs/misc/R43127.pdf> (last viewed Apr. 16, 2014).

¹² Energy Information Administration, *State Profile and Energy Estimates – Florida* (Dec. 2013), available at: <http://www.eia.gov/state/rankings/?sid=FL#/series/31> (last viewed Apr. 16, 2014).

¹³ Lawrence Berkeley National Laboratory, *The Program Administrator Cost of Saved Energy for Utility Customer-Funded Energy Efficiency Programs* at xi (Mar. 2014), available at: <http://emp.lbl.gov/sites/all/files/cost-of-saved-energy-for-ee-programs.pdf> (last viewed Apr. 16, 2014).

Florida.¹⁴ Although Florida ranks in the higher tier of states for electricity prices and ranks fourth nationally in carbon emissions from the power sector, Florida ranks 27th, in the lower tier, for energy efficiency programs.¹⁵ Clearly, Florida is lagging in availability of energy efficiency programs and customers would benefit significantly from greater access to more cost-effective programs.

These cases also present the issue of whether the utilities should adopt programs for distributed solar resources. The Commission's pilot program has been highly successful in driving down the installed cost of rooftop PV solar. Utilities in the following states have adopted successful utility-owned distributed solar generation programs: Arizona, California, Massachusetts, North Carolina and New Jersey. Duke Energy operates a successful utility-owned rooftop PV solar program in North Carolina,¹⁶ but Duke Energy does not propose to do so in Florida. Yet the installed cost for rooftop PV solar units has fallen dramatically since 2009, when Duke Energy's North Carolina program was approved. In a mega-study reviewing several distributed solar generation cost/benefit studies, the Rocky Mountain Institute concluded that most of the studies found that the benefits exceed the costs.¹⁷ Duke Energy chose not to include environmental benefits in the cost/benefit study for Florida, even though distributed solar generation has no greenhouse gas emissions and uses no water.

Finally, these cases also present the issue of whether the utilities need some incentive to encourage them to deploy conservation programs. Arguments can be raised for and against

¹⁴ *Id.* at ix and 5.

¹⁵ American Council for an Energy Efficient Economy, *The State Energy Efficiency Scorecard* (2013), available at: <http://www.aceee.org/state-policy/scorecard> (last viewed Apr. 16, 2014).

¹⁶ Duke Energy Carolina website, available at: <http://www.duke-energy.com/nc-solar-panel/nc-solar-distributed-generation-program.asp> (last viewed Apr. 17, 2014).

¹⁷ Rocky Mountain Institute, *A Review of Solar PV Benefit and Cost Studies* (Apr. 2013), available at: http://www.rmi.org/Content/Files/eLab-DER_cost_value_Deck_130722.pdf (last viewed Apr. 17, 2014).

incentivizing utilities to deploy conservation programs. The pro and con arguments are well-summarized as follows:

The major advantage of incentives is that they put energy efficiency and supply-side investments on relatively equal financial footing, enabling shareholders to earn a comparable return on either investment. Arguments against incentives include the cost and difficulty of implementing a robust evaluation mechanism to verify savings for performance-based incentives, as well as the view that ratepayers should not have to pay utilities for simply complying with regulatory mandates for energy efficiency. Kihm (2009) also notes that the difference in scale of investments in energy efficiency programs versus supply-side resources encourages utilities to continue to favor the latter over the former, even when their respective rates of return are equal.¹⁸

The Commission should closely examine the utilities' management of their conservation programs and decide whether it would be appropriate to add performance incentives.

II. AGENCY AFFECTED

1. The name and address of the agency affected by this petition is:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

III. IDENTIFICATION OF THE INTERVENORS AND THEIR COUNSEL

2. The name and address of Petitioner is:

Environmental Defense Fund
257 Park Avenue South
17th Floor
New York, NY 10010
Phone: (212) 505-2100

3. The name and address of counsel for Petitioners, authorized to receive all notices, pleadings and other communications in this docket is:

¹⁸ American Council for an Energy Efficient Economy, *Incentivizing Utility-Led Programs: Performance Incentives*, available at: <http://aceee.org/sector/state-policy/toolkit/utility-programs/performance-incentives> (last viewed Apr. 17, 2014).

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IV. RECEIPT OF NOTICE OF AGENCY'S PROPOSED ACTION

4. Petitioner has received notice of the Florida Public Service Commission's ("Commission") action through its August 19, 2013 Order Consolidating Docket and Establishing Procedure.

V. THE INTERVENOR'S SUBSTANTIAL INTEREST

5. EDF is a national non-profit membership organization engaged in linking science, economics and law to create innovative, equitable and cost-effective solutions to society's most urgent environmental problems. EDF has over 300,000 members nationwide and has 16,421 members in Florida. EDF has been active in Florida working on environmental policies including clean energy, climate change and oceans.

6. EDF is working on a five-year strategic plan to change the trajectory of our country's electricity system. If we are successful, we will lock in by 2018 an additional 8.5%-13.3% in carbon dioxide emission reductions in the U.S. (from a 2005 baseline) beyond the U.S. Energy Information Administration (EIA) reference case for that period. These changes will complement and reinforce – and in many cases precede – carbon pollution standards for new and existing power plants. The first step is winning adoption of smart power policies to drive clean energy investment in nine key states, including Florida, which together represent almost half the U.S. electricity market. The policies we promote will align market incentives to reward investments in clean energy; ensure that the market values clean resources fairly; improve access

to consumer data, consumers and the grid; advance new clean energy financing mechanisms; and optimize electric grid efficiency. The present proceeding is EDF's first intervention before the Florida Public Service Commission. EDF has been active in state utility commission proceedings to promote these policies in California, Maryland, New Jersey, New York, North Carolina, Ohio and Texas.

VI STATEMENT OF AFFECTED INTERESTS

7. In the above-captioned consolidated proceeding, the Commission will determine the numeric conservation goals for FPL, DEF, TECO, and GPC. The conservation goals set by the Commission will establish the amount of energy savings to be captured by FPL, DEF, TECO and GPC through end-use energy efficiency, demand response programs, and through demand-side renewable energy implementation – such as photovoltaic (“PV”) panels. The goals set by the Commission will invariably affect the scope, number, quality, and type of energy efficiency programs that FPL, DEF, TECO, and GPC will offer to customers to meet the conservation goals, including their customers who are members of EDF. The cost of the programs to support the goals set by the Commission will be passed on to customers, including customers who are members of EDF.

8. EDF and its members advocate for all cost-effective energy efficiency measures. Such measures can meet electricity demand at a fraction of the cost of building new power plants. EDF's members have an interest in ensuring that the Commission properly considers the true value of all conservation measures, including demand side renewable energy, as required by law. Thus, the substantial interest of members of EDF are affected in these consolidated cases because the Commission's order will determine the level of cost-effective energy savings to be captured through the utility-sponsored programs of FPL, DEF, TECO, and

GPC. Those energy savings will directly affect how much higher-cost generation is displaced which directly impacts the overall electric system of costs of FPL, DEF, TECO, and GPC that is passed on to their customers, including EDF members. Thus, the Commission's order will directly affect the mission of EDF members and their pecuniary interests. Additionally, it will determine the level of effort the aforementioned utilities will undertake to help customers reduce energy use and save money on their bills. This level of effort directly impacts the mission of EDF and its members and impacts the pecuniary interests of EDF members residing in the service territories of FPL, DEF, TECO, and GPC. Lastly, the Commission will address how to meet its demand-side renewable requirement in these dockets. EDF and its members likewise have an interest in ensuring that the Commission properly considers the true value of all conservation measures, including demand side renewable energy, such as rooftop solar. The level of demand-side renewable implementation to be determined in the consolidated cases directly impacts the mission of EDF and its members and impacts the pecuniary interests of EDF members residing in the service territories of FPL, DEF, TECO, and GPC.

9. Moreover, EDF and its members rely on these proceedings to provide the Commission with expert testimony and opinion about the full technical, economic and achievable potential for cost-effective energy efficiency, and the value of demand side renewables. EDF staff members and consultants have worked on projects which directly bear on this proceeding including the Austin Energy Value of Solar tariff and the Rocky Mountain Institute ELab Project. Other EDF staff members have served as public utility commissioners in states and have direct experience developing policies in the areas involved in this proceeding.

10. These are the type of interests this proceeding is designed to protect because the purpose of these consolidated cases coincides with the substantial interests of EDF

and its members. *Ameristeel Corp. v. Clark*, 691 So.2d 473 (Fla. 1997); *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So.2d 478 (Fla. 2d DCA 1981), *reh. denied*, 415 So.2d 1359 (Fla. 1982); *Florida Home Builders Ass 'n v. Department of Labor and Employment Security*, 412 So.2d 351, 353-54 (Fla. 1982).

11. EDF is authorized by its bylaws to represent its interests and the interests of its members in legal actions, including formal administrative actions such as these. The subject matter of this docket is well within the scope of interest and activities of EDF, and the relief requested is the type of relief appropriate for EDF to receive on behalf of its members. The rights and interests of EDF and its members cannot be adequately represented by any other party in this docket, and intervention will not unduly delay or prejudice the rights of other parties.

12. EDF's intervention is timely and consistent with the Commission's Order Consolidating Dockets and Establishing Procedure at 10. Rule 25-22.039, F.A.C.

VII. STATEMENT OF DISPUTED ISSUES OF FACT

13. At this time, EDF cannot identify all disputed issues of material fact because the utilities have not yet submitted their filings in these proceedings.

14. EDF anticipates that the disputed issues of material fact in these proceedings will include, but are not limited to, the following:

- a. Whether the utilities provided a complete assessment of the full technical potential of all available energy savings measures?
- b. Whether the utilities provided a complete assessment of the economic potential of all available energy savings measures?
- c. Whether the utilities provided a complete assessment of the achievable potential all available energy savings measures?

- d. Whether the utilities' proposed energy savings goals appropriately reflect the costs and benefits to customers participating in the measure?
- e. Whether the utilities' proposed energy savings goals appropriately reflect the costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions?
- f. Whether the utilities' proposed goals adequately reflect the need for incentives to promote both customer-owned and utility-owned energy efficiency and demand-side renewable energy systems?
- g. Whether the utilities' proposed energy savings goals appropriately reflect the projected compliance costs imposed by state and federal regulations on the emission of CO₂, and whether those numeric costs are consistent with compliance costs utilized in other dockets by the utilities before the Commission?
- h. Whether the utilities' proposed conservation goals utilize all cost-effective energy efficiency measures?
- i. Whether the utilities' proposed conservation goals properly value demand-side renewables?
- j. Whether the utilities are using an appropriate methodology to determine free-ridership?
- k. What cost-effectiveness test or tests should the Commission use to set goals pursuant to section 366.82, Florida Statutes?
- l. What specific residential summer and winter megawatt (MW) and annual gigawatt-hour (GWh) energy savings goals should be established for each utility?
- m. What specific commercial/industrial summer and winter megawatt (MW) and annual gigawatt-hour (GWh) energy savings goals should be established for each utility?
- n. What demand-side renewable energy savings goals should be established for each utility?

- o. Whether the Commission should establish performance incentives for the relevant utilities for meeting meaningful energy savings goals, including demand-side renewable energy goals?
- p. What modifications, if any, should be made to the utilities' existing Pilot Solar programs?
- q. Whether the utilities evaluated the use on-bill repayment as a means to finance conservation programs at a lower cost than conventional financing?

VIII. STATEMENT OF ULTIMATE FACT

15. The Florida Legislature has recognized the extraordinary potential for increasing energy efficiency and encouraging the development of residential and commercial renewable energy in Florida in adopting the Florida Energy Efficiency and Conservation Act (“FEECA”). *See* §§ 366.81—366.85, Fla. Stat. Indeed, the Florida legislature declared it “critical to utilize the most efficient and cost effective demand-side renewable energy systems and conservation systems in order to protect the health, prosperity, and general welfare of the state and its citizens.” § 366.81, Fla. Stat. Moreover, FEECA is to be “liberally construed” to meet the legislature’s stated policy of reducing the rate of electricity consumption, increasing the overall efficiency and cost-effectiveness of electricity use, encouraging further development of demand-side renewable energy systems, and conserving expensive resources. § 366.81, Fla. Stat.

16. Under FEECA, the Commission is required to set energy efficiency and conservation goals for the state’s major electric utilities, which include FPL, DEF, TECO, and GPC. In setting those goals, the Commission must “evaluate the full technical potential of all available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy systems.” §366.82(3), Fla. Stat. Additionally, the Commission must consider four mandatory criteria when setting goals pursuant to FEECA:

- a) The costs and benefits to customers participating in the measure.

- b) The costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions.
- c) The need for incentives to promote both customer-owned and utility-owned energy efficiency and demand-side renewable energy systems.
- d) The costs imposed by state and federal regulations on the emission of greenhouse gases.

Id.

17. EDF contends, and will provide data and analysis, that generally accepted methodologies have been developed to evaluate the costs and benefits of distributed PV solar generation. EDF further contends that the utilities did not properly evaluate all of the appropriate costs and benefits of distributed solar PV generation. Additionally, Florida ranks fourth-highest in the country in carbon dioxide emissions from its power plants. The U.S. EPA will soon release rules limiting greenhouse gas emissions from existing power plants. These rules could require utilities to retire more power plants and to invest more capital to install greenhouse gas controls, leading to higher electricity prices. The EPA's rules may allow the greenhouse gas emission reductions acquired through a distributed solar PV program to offset emissions from existing fossil-fuel power plants; therefore, the cost of complying with these rules may be less expense by using alternative methods to comply with the rules.

18. EDF cannot at this time provide a complete statement of ultimate facts to be proven because the utilities have not yet submitted their filings in these proceedings. EDF's allegations of ultimate facts include, but is not limited to, that the utilities' updated technical potential analysis does not provide a complete assessment of the full technical potential of all energy efficiency measures and demand side renewables as required by statute. The lack of a

complete technical potential assessment further undercuts the assessment of the economic potential of measures, and the achievable potential of measures, which the Commission shall ultimately utilize to set goals.

IX. STATUTES AND RULES THAT REQUIRE THE RELIEF REQUESTED

19. The rules and statutes that entitle EDF to intervene and participate in this case include, but are not limited to, the following:

- a. §120.569, Fla. Stat.;
- b. § 120.57, Fla. Stat.;
- c. §§366.80-.85, Fla. Stat.;
- d. R. 28-106.201, F.A.C.;
- e. R. 28-106.205, F.A.C; and
- f. R. 25-22.039, F.A.C.

X. RELIEF SOUGHT

20. WHEREFORE, the Environmental Defense Fund respectfully requests that the Commission enter an order granting them leave to intervene in the above-styled series of dockets as a full party, and further requests parties to provide the undersigned with all pleadings, testimony, evidence, and discovery filed in said dockets.

RESPECTFULLY SUBMITTED this 21st day of April, 2014

s/John Finnigan

John Finnigan
Lead Counsel
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy and correct copy of the foregoing was served on this 21st day of April, 2014, via electronic mail on:

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