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Subject: Joint Motion to Strike "Rebuttal" Testimony and Exhibit of Nathanael Miksis
Attachments: Dkt. 130199 et. al Joint Motion.pdf

Electronic filing

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b. Docket Number 130199-EU
In re: Commission review of numeric conservation goals (Florida Power & Light Company)

Docket Number 130200-EI
In re: Commission review of numeric conservation goals (Duke Energy Florida, Inc.)

Docket Number 130201-EI
In re: Commission review of numeric conservation goals (Tampa Electric Company)

Docket No. 130202-EI
In re: Commission review of numeric conservation goals (Gulf Power Company)

Docket No. 130203-EI
In re: Commission review of numeric conservation goals (JEA)

c. The document is being filed on behalf of Florida Power & Light Company, Duke Energy Florida, Inc., Tampa Electric Company, Gulf Power Company and JEA

d. There are a total of 8 pages

e. The document attached for electronic filing is Joint Motion to Strike "Rebuttal" Testimony and Exhibit of Nathanael Miksis

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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
	DATED: June 23, 2014

**JOINT MOTION TO STRIKE
"REBUTTAL" TESTIMONY AND EXHIBIT OF NATHANAEL MIKSIS**

Duke Energy Florida, Inc., Florida Power & Light Company, Gulf Power Company, JEA and Tampa Electric Company (collectively, the "FEECA Utilities"), pursuant to Rule 28-106.204, Florida Administrative Code, jointly move the Commission to strike the "Rebuttal" testimony and exhibit of Nathanael Miksis filed on behalf The Alliance for Solar Choice ("TASC") on June 10, 2014, and as grounds therefor, say:

BACKGROUND

1. On June 10, 2014 TASC filed a Petition to Intervene (the "Petition") along with "Rebuttal" testimony and exhibit of Nathanael Miksis.

2. On June 16, 2014 the FEECA Utilities filed their Joint Response in opposition to TASC's Petition ("Joint Response"), detailing TASC's lack of standing under the two-prong test for standing to intervene set forth in *Agrico Chemical Company v. Department of Environmental Regulation*, 406 So.2d 478, 482 (Fla. 2nd DCA 1981).

3. The schedule for these consolidated proceedings was initially set on August 19, 2013, in the Commission's Order Consolidating Dockets and Establishing Procedure¹ and called for Intervenors' testimony and exhibits to be filed by May 5, 2014. The hearing dates were later modified in a February 26, 2014 Order Modifying Procedure.²

4. On March 14, 2014 intervenors Sierra Club and Southern Alliance for Clean Energy ("SACE") filed motions seeking to extend the deadline for intervenors' testimony, among other requests. On April 22, 2014 the Commission entered its order³ denying the motions filed by Sierra Club and SACE and further modifying the procedural schedule as follows:

Intervenor testimony will be due on May 19, 2014.

Utilities rebuttal testimony and exhibits will be due on June 10, 2014.

All other controlling dates will remain the same.

5. All intervenors who had requested intervention earlier in the process complied with the May 19, 2014 due date for intervenor testimony and exhibits. TASC on the other hand did not seek intervention until some 22 days after the May 19th due date for intervenor testimony.

ARGUMENT

6. The FEECA Utilities reaffirm the argument set forth in their Joint Response in Opposition to TASC's Petition: that TASC lacks standing to intervene in this proceeding. The

¹ Order No. PSC-13-0386-PCO-EU

² Order No. PSC-14-0112-PCO-EU

³ Order No. PSC-14-0189-PCO-EU

relief requested in this Motion is in the nature of a subordinate alternative to the relief requested in the Joint Response. The Motion is filed in an abundance of caution, because of the possibility that the ruling on TASC's standing will not come until after the prehearing conference, which is the deadline for moving to strike testimony and exhibits. In the event the Commission agrees that TASC lacks standing to intervene, issues concerning Mr. Miksis's "Rebuttal" testimony are rendered moot. In the event TASC is permitted to intervene, Mr. Miksis's "Rebuttal" testimony should be stricken as inappropriate, inconsistent with the established schedule for this proceeding and contrary to the rule that intervenors take the case as they find it.

7. TASC's "Rebuttal" testimony of Nathanael Miksis should be stricken for having been filed after the May 19, 2014 deadline for intervenor testimony. It should also be stricken as inappropriate rebuttal, because the procedural schedule in this proceeding provides only for the filing of "utilities' rebuttal." The Commission's April 22, 2014 Order Denying Motions and Further Modifying Procedural Schedule makes clear that the June 10, 2014 deadline for rebuttal testimony was for *utilities'* rebuttal testimony and exhibits alone. After granting a two-week extension for the filing of intervenor testimony, that Order states, at page 5:

. . .To insure fairness, I find it appropriate to extend the due date for utilities' rebuttal testimony and exhibits given the change in the intervenor testimony due date.

It is after that statement that the Order sets the due date for utilities' rebuttal testimony and exhibits of June 10, 2014.

8. It would be fundamentally unfair to permit TASC to disrupt the orderly process of these consolidated proceedings by ignoring the established deadline for filing intervenor testimony simply by re-naming it "rebuttal" testimony, when the controlling rebuttal testimony and exhibit due date specifically and rightly applies only to the utilities.

9. Rule 25-22.039, Florida Administrative Code, is the Commission's rule governing intervention. The FEECA Utilities have demonstrated in their Joint Response in Opposition to TASC's Petition to Intervene that TASC has failed to establish standing to intervene. If, however, TASC is allowed to intervene, then under the Commission's rule TASC must take the case as it finds it and its intervenor testimony, masquerading as "Rebuttal" testimony, was filed out of time and should be stricken from the record. By delaying its petition to intervene well beyond the due date for intervenor testimony, TASC voluntarily waived any opportunity to file testimony as an intervenor.

10. In accordance with the Rule 28-0106.204(3), Florida Administrative Code, counsel for Tampa Electric, on behalf of the FEECA Utilities, has contacted or attempted to contact counsel for all the parties in these consolidated proceedings and is authorized to state that The Alliance for Solar Choice opposes the motion and the following parties take no position on the motion: PCS Phosphate-White Springs, Southern Alliance for Clean Energy, Office of Public Counsel, Florida Department of Agriculture and Consumer Affairs, Sierra Club, Florida Industrial Power Users Group and Environmental Defense Fund. Orlando Utilities Commission does not oppose the motion. Walmart has no position at this time regarding the motion.

WHEREFORE, the FEECA Utilities respectfully request, subject and subordinate to their earlier request that TASC be denied intervention, that the Commission strike the testimony and exhibit of TASC witness Nathanael Miksis as being untimely filed, mislabeled as "Rebuttal" testimony and inconsistent with the schedule established by the Commission in these consolidated proceedings.

DATED this 23rd day of June 2014.

Respectfully submitted,

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I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Strike was served by electronic delivery this 23rd day of June 2014 to the following:

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