

**Diamond Williams**

080407-EG

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**Sent:** Monday, May 17, 2010 4:17 PM  
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**Subject:** Docket Nos. 080407; 080408; 080409; 080410; 080411; 080412; 080413 and Docket No: 100160 - NRDC/SACE Response in Opposition to PEF Motion for Stay  
**Attachments:** NRDC-SACE\_Response to Progress Motion for Stay.pdf

Dear Commission Clerk,

In accordance with the electronic filing procedures of the Florida Public Service Commission, the following filing is made:

A. The name, address, telephone number and email for the person responsible for the filing is:

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B. This filing is made in Docket Nos. 080407; 080408; 080409; 080410; 080411; 080412; 080413 and Docket No: 100160

C. This document is filed on behalf of Natural Resources Defense Council (NRDC) and Southern Alliance for Clean Energy (SACE).

D. The document is 9 total pages.

E. The attached document is NRDC-SACE's Response in Opposition to PEFs Motion for Stay.

Sincerely,

George Cavros

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Commission review of numeric conservation goals (Florida Power & Light Company)	)	Docket No. 080407-EG
	)	
In re: Commission review of numeric conservation Goals (Progress Energy Florida, Inc.)	)	Docket No. 080408-EG
	)	
In re: Commission review of numeric conservation goals (Tampa Electric Company)	)	Docket No. 080409-EG
	)	
In re: Commission review of numeric conservation goals (Gulf Power Company)	)	Docket No. 080410-EG
	)	
In re: Commission review of numeric conservation goals (Florida Public Utilities Company)	)	Docket No. 080411-EG
	)	
In re: Commission review of numeric conservation goals (Orland Utilities Commission)	)	Docket No. 080412-EG
	)	
In re: Commission review of numeric conservation goals (JEA)	)	Docket No. 080413-EG
	)	
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In re: Petition for approval of Proposed Demand-side Management Plan of Progress Energy Florida, Inc.	)	Docket No. 100160-EG
	)	
	)	May 17, 2010

**NATURAL RESOURCES DEFENSE COUNCIL AND SOUTHERN ALLIANCE  
FOR CLEAN ENERGY'S RESPONSE IN OPPOSITION TO PROGRESS  
ENERGY FLORIDA, INC.'S MOTION FOR STAY**

On May 10, 2010, Progress Energy Florida, Inc ("PEF") filed a motion to stay further consideration of their petition for approval of their proposed demand-side management plan pending resolution of an appeal of the Public Service Commission's orders setting goals for demand-side efficiency and renewable energy.<sup>1</sup> PEF requests a stay of its proposed demand-side management plan docket and does not seek to stay the

<sup>1</sup> Order Nos. PSC-10-0198-FOF-EG and PSC-09-0855-FOF-EG.

other utilities' proposed demand-side management plan dockets.<sup>2</sup> See PEF Motion ¶ 5 (requesting stay of "current proceeding" and consideration of "PEF's DSM Plan"). PEF itself has not appealed the Commission's order; the only appeal was filed by the Natural Resources Defense Council ("NRDC") and Southern Alliance for Clean Energy ("SACE"). NRDC and SACE hereby respectfully submit this Opposition to PEF's Motion for Stay.

PEF's Motion is entirely without merit and should be denied. First, a stay will significantly harm the public interest by depriving customers of the energy and bill savings that will result from implementation of the expanded energy efficiency goals set by the Commission in Order Nos. PSC-10-0198-FOF-EG and PSC-09-0855-FOF-EG.

Second, PEF does not face any significant injury from continuing to develop and implement programs consistent with the Commission's goals while NRDC and SACE's appeal is pending. NRDC and SACE seek, through their appeal, review of the Commission's decision to exclude measures that have a payback of less than two years. If appellants NRDC and SACE are successful, the appeal will simply result in the addition of highly cost-effective energy efficiency measures to Progress's existing program. It would not require the elimination of any existing programs nor would any revised goals be retroactively applied. Any efforts to implement those programs now will be well spent regardless of whether or not NRDC and SACE prevail in their appeal. In addition, NRDC and SACE's appeal will have no effect whatsoever on the solar energy programs approved and there is therefore no basis for a broad stay that would prevent implementation of these programs.

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<sup>2</sup> For this reason, there is no basis for granting a stay of any of the other utility's dockets.

As explained more fully below, PEF's motion for a stay should be denied.

**Standard of Review of Motion for Stay**

1. PEF's appeal is governed by Florida Administrative Code Rule 25-22.061(2), which provides that in evaluating a discretionary motion for stay pending judicial review, the Commission may, among other things, consider:
  - (a) Whether the petitioner is likely to prevail on appeal;
  - (b) Whether the petitioner has demonstrated that he is likely to suffer irreparable harm if the stay is not granted; and
  - (c) Whether the delay will cause substantial harm or be contrary to the public interest.

As demonstrated below, PEF has failed to carry its burden with respect to any of these factors.

**PEF Fails To Demonstrate Any Irreparable Harm**

2. PEF fails to demonstrate that it faces any substantial or irreparable harm. PEF states that "[i]f NRDC/SACE are successful in their appeal, PEF will necessarily need to re-evaluate its DSM plan . . . ." PEF Motion ¶ 4. PEF adds that if it must re-evaluate its plan, "labor, training, IT programming, capital, and other development and implementation related costs . . . would be wasted." *Id.* This statement of harm does not justify a stay.
3. PEF overstates the potential for wasted effort. The objective of NRDC and SACE's appeal is to increase PEF's energy efficiency programs by reversing the decision to exclude the most cost-effective efficiency measures, namely those that have a payback of less than two years. If NRDC and SACE are

successful, PEF will be able to comply by adding additional measures to those included in PEF's current proposed demand-side efficiency program. Because NRDC and SACE seek to increase energy savings and customer bill savings, PEF would not be required to halt any of the efficiency programs that it is currently proposing. Nor would a successful outcome have any effect on PEF's renewable energy programs. In addition, NRDC and SACE are not seeking any retroactive application of new goals. Any new goals that may result from a remand would simply be applied prospectively to the years remaining before the next goal-setting process. Thus, PEF's current efforts will not be wasted as a result of a successful appeal.

4. To the extent that PEF were required to re-do some of its training, IT programming and other program development following an appeal, these potential costs would not rise to the level of "irreparable harm." PEF fails to estimate or otherwise demonstrate the magnitude of the potential extra costs it would face. Common sense suggests that any potential costs would be minimal. In addition, PEF could likely include reasonable costs in the ECCR cost recovery clause. Moreover, the Commission has the authority to ensure that PEF's revised program is structured in such a way as to minimize any potential additional costs. *See* § 366.82(7), Fla. Stat.
5. In addition to being unquantified and minimal, the potential harm that PEF alleges is highly speculative and contingent on the decisions that PEF and the Commission would make following a possible remand of the case. As Florida courts have held, "[i]rreparable injury will never be found where the injury

complained of is doubtful, eventual, or contingent.” *Jacksonville Elec. Auth. v. Beemik Builders & Constructors, Inc.*, 487 So.2d 372, 373 (Fla. 1<sup>st</sup> DCA 1986) (internal quotations omitted); *see also Lennar Homes, LLC v. V Ventures LLC*, 988 So. 2d 660, 663-64 (Fla. 3d DCA 2008) (holding “speculative” injury “insufficient to meet the irreparable injury standard”).

**A Delay Will Cause Substantial Harm and  
Is Contrary to the Public Interest**

6. The public interest tips decisively against a stay. As the Legislature recognized in passing the 2008 amendments to the Florida Energy Efficiency and Conservation Act (FEECA), it is paramount that the Commission take advantage of the extraordinary potential for increasing energy efficiency in Florida and start to capture the tremendous benefits that such programs will deliver to customers and the environment. A stay will harm the public interest by delaying implementation of the recently approved efficiency and renewable energy goals.
7. Although the goals set by the Commission for PEF are lower than those advocated by NRDC and SACE, and Commission Staff expert Richard Spellman, PEF’s new goals are significantly stronger than PEF’s 2004 goals. The goal set by the Commission for 2010 is approximately three times the level that PEF actually achieved in 2008 and sixteen times the level set by the Commission in 2004. A stay will harm PEF’s customers by denying them access to these expanded savings.
8. It is important to emphasize that all of the efficiency measures approved by the Commission passed the total resource cost test. This means that the

savings from these programs exceed their costs and customers' bills will be reduced once PEF starts to implement these programs. Because these programs are cost-effective, customers as a whole will save money even if some rate increase is required. In other words, the overall customer savings will always exceed any lost-revenue recovery that the Commission may approve. If programs are offered widely, as they should be, all customers will be able to share in these savings. Providing customers access to cost-effective energy efficiency programs that save them money is in the public interest and must not be delayed.

9. In addition to customer savings, implementing expanded efficiency programs benefits Florida by increasing job creation, lowering dependence on fossil fuels, and reducing greenhouse gas emissions. A stay will harm the public interest by delaying these benefits as well.
10. The Commission's order also requires that PEF make annual investments of \$6,467,000 in demand-side solar energy. These investments will greatly benefit PEF customers. In addition, the investments will create jobs and help Florida move toward a clean-energy economy. A stay would harm the public interest by delaying the implementation of these solar energy programs.

**PEF Makes No Showing That Appellants Are Likely To Prevail**

11. A movant for a stay must demonstrate that the party seeking judicial review is likely to prevail. § 25-22.061(2)(a), F.A.C. In its motion, PEF fails to address the likelihood of success of NRDC and SACE's appeal. NRDC and SACE's appeal is the only appeal pending and the time period for filing appeals and

cross-appeals has now passed. Accordingly, PEF fails to carry its burden with respect to this factor.

### **Conclusion**

12. WHEREFORE, NRDC and SACE respectfully request that PEF's Motion for Stay of its petition for approval of its proposed demand-side management plan be denied.

RESPECTFULLY SUBMITTED this 17th day of May, 2010.

*s/ George Cavros*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy and correct copy of the foregoing was served on this 17<sup>th</sup> day of May, 2010, via electronic mail\* and via US Mail on:

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This 17th day of May, 2010.

Respectfully submitted,

s/ George Cavros  
George S. Cavros