

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of demand-side management plan of Florida Power & Light Company.

DOCKET NO. 100155-EG

In re: Petition for approval of demand-side management plan of Progress Energy Florida, Inc.

DOCKET NO. 100160-EG

ORDER NO. PSC-11-0590-FOF-EG

ISSUED: December 22, 2011

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman  
LISA POLAK EDGAR  
RONALD A. BRISÉ  
EDUARDO E. BALBIS  
JULIE I. BROWN

ORDER DENYING PROTESTS, CONSUMMATING PROPOSED  
AGENCY ACTION ORDERS, AND CLOSING DOCKETS

BY THE COMMISSION:

BACKGROUND

As required by the Florida Energy Efficiency and Conservation Act<sup>1</sup> (FEECA), we are required to adopt annual goals for seasonal peak demand and annual energy consumption for the FEECA Utilities, which include Florida Power & Light Company (FPL) and Progress Energy Florida (PEF). By Order No. PSC-09-0855-FOF-EG (“goal setting order”), issued December 30, 2009, we established annual numeric goals for summer peak demand, winter peak demand, and annual energy consumption for all seven FEECA utilities for the period 2010 through 2019.

On March 30, 2010, both PEF and FPL filed petitions requesting approval of their Demand-Side Management (DSM) plans pursuant to Rule 25-17.0021, Florida Administrative Code (F.A.C.). On May 7, 2010, we granted the Florida Industrial Users Group (FIPUG) leave to intervene.<sup>2</sup> On August 9, 2010, we granted the Southern Alliance for Clean Energy (SACE) leave to intervene.<sup>3</sup>

<sup>1</sup> Sections 366.80 through 366.85 and 403.519, Florida Statutes.

<sup>2</sup> See Order No. PSC-10-0287-PCO-EG, issued May 7, 2010, in Docket No. 100155-EG, In re: Petition of approval of demand-side management plan of Florida Power & Light Company. (FIPUG)

<sup>3</sup> See Order No. PSC-10-0494-PCO-EG, issued August 9, 2010, in Docket No. 100155-EG, In re: Petition of approval of demand-side management plan of Florida Power & Light Company. (SACE)

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FPSC-COMMISSION CLERK

On October 4, 2010, by Order No. PSC-10-0605-PAA-EG, we denied PEF's DSM plan and directed the Company to modify its DSM plan to meet the annual goals set forth in the goal setting order.<sup>4</sup> During the discussion at the September 14, 2010, Commission Conference, we also encouraged PEF to provide an alternative DSM plan to reduce the customer rate impact in addition to the DSM plan designed to meet the goals as set. Therefore, on November 29, 2010, PEF filed two DSM plans: an Original Goal Scenario DSM Plan and a Revised Goal DSM Plan.

On January 31, 2011, by Order No. PSC-11-0079-PAA-EG, we denied FPL's DSM plan for failure to satisfy the annual goals set forth in the goal setting order, and ordered FPL to file a revised plan which would meet those goals.<sup>5</sup> FPL filed its Modified DSM Plan on March 25, 2011. FPL also filed an Alternate Plan which has a lower rate impact but also has reduced projected savings as compared to the Modified Plan.

On August 16, 2011, in Docket No. 100155-EG, we issued Order No. PSC-11-0346-PAA-EG, Modifying and Approving the Demand Side Management Plan of Florida Power & Light Company ("FPL Order"). Also on that date, in Docket Number 100160-EG, we issued Order No. PSC-11-0347-PAA-EG, Modifying and Approving the Demand Side Management Plan of Progress Energy Florida, Inc. ("PEF Order"). In both Proposed Agency Action ("PAA") Orders, we modified the DSM plans of FPL and PEF, such that the approved plans would consist of those existing programs in effect as of the date of the Orders.

On September 6, 2011, SACE timely protested portions of the FPL and PEF Orders. SACE's protests specifically state: "[w]hile SACE does not agree with the material facts the Commission utilized to reach its decision, SACE is not alleging any disputed issues of material fact in this protest in order to focus on the legal infirmity of the Commission's decision." As relief, SACE specifically requests that we vacate the PAA orders and order the approval of plans which meet the energy savings goals set for FPL and PEF in the goal setting order, or in the alternative, approve those portions of FPL and PEF's DSM plans which meet Commission approval and order the companies to submit modified plans which address specific deficiencies we may identify. The parties identified two legal issues for us to decide; given that our decisions were similar, the parties agreed that the two issues would be worded identically for both FPL and PEF.

On October 18, 2011, Order No. PSC-11-0469-PCO-EG was issued, consolidating Dockets 100155-EG and 100160-EG for hearing purposes, establishing hearing procedure,<sup>6</sup> and setting forth a total of four issues (two each for FPL and PEF) for our decision. On October 24, 2011, SACE filed its brief in support of its protest of the PAA orders<sup>7</sup>; on November 7, 2011, FPL, PEF, and FIPUG filed briefs in opposition. We held oral argument on December 6, 2011;

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<sup>4</sup> We did, at that time, approve six solar pilot programs, which have been implemented and are currently in place.

<sup>5</sup> As with PEF, we approved seven FPL solar pilot programs for immediate implementation.

<sup>6</sup> As there were no disputed issues of material fact, this proceeding was conducted pursuant to Sections 120.569 and 120.57(2), Florida Statutes.

<sup>7</sup> Since these dockets have been consolidated for hearing, SACE filed a combined brief for both FPL and PEF. SACE's positions and arguments on Issues 3 and 4 (PEF) are identical to its arguments for Issues 1 and 2 (FPL).

at the conclusion of the oral argument, we rendered our decision on these matters. We have jurisdiction pursuant to Sections 366.80 through 366.85 and 403.519, Florida Statutes (“F.S.”)

### DECISION

As stated in the Background, the parties stipulated to all the facts in the record, and therefore, the only issues before us are legal. All the parties (SACE, FPL, PEF, and FIPUG) submitted written briefs, which we were able to consider. In addition, all parties participated in oral argument.

Based upon the hearing record, briefs in opposition, and oral argument, we find that the plain language of Section 366.82(7), F.S., specifically and unequivocally grants us authority to modify a company’s DSM plans “at any time it is in the public interest consistent with this act” or when plans or programs “would have an undue impact on the costs passed on to customers.” Further, we reiterate that we did not in any way change the DSM goals as set by the goal setting order, Order No. PSC-09-0855-FOF-EG. Finally, given that we modified the DSM plans of FPL and PEF, and did not deny them, the plain language of Section 366.82(7), F.S. does not compel us to require FPL and PEF to undertake needless administrative action by filing a plan which merely mirrors information already on file with this Commission.

After having considered the briefs filed by the parties and the arguments presented, SACE has failed to persuade us that our previous decisions, as proposed in Order Nos. PSC-11-0346-PAA-EG and PSC-11-0347-PAA-EG, were incorrect as a matter of law. SACE has similarly failed to convince us that we are required to reverse or modify those decisions. To the contrary, we find that our decision to modify the plans of FPL and PEF fully complies with the requirements of Section 366.82, F.S., and that such modification does not constitute a change of the DSM goals established by the goal setting order. We further find that that after such modification, we are not obligated to require FPL or PEF to file needlessly duplicative plans.

Therefore, we decline to reverse our previously proposed agency action orders modifying and approving the Demand Side Management plans of FPL and PEF, and hereby deny the protests filed by SACE. We further decline to require FPL or PEF to file plans which merely restate information already on file and publically available. Given our denial of SACE’s protest, Order Nos. PSC-11-0346-PAA-EG and PSC-11-0347-PAA-EG are consummated and made final and effective. Finally, Docket Nos. 100155-EG and 100160-EG are concluded and shall be closed.

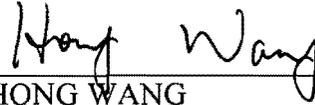
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Southern Alliance for Clean Energy’s Protests of Proposed Agency Action Order Nos. PSC-11-0346-PAA-EG and PSC-11-0347-PAA-EG are DENIED. It is further

ORDERED that Order Nos. PSC-11-0346-PAA-EG and PSC-11-0347-PAA-EG are made final and effective. It is further

ORDERED that after the time for filing an appeal has run, these dockets shall be closed.

By ORDER of the Florida Public Service Commission this 22nd day of December, 2011.



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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request:

- 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or
- 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.