

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Approval of Demand-Side) DOCKET NO. 941170-EG
Management Plan of Florida Power) ORDER NO. PSC-95-1343-S-EG
& Light Company.) ISSUED: November 1, 1995
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER APPROVING STIPULATIONS,
DISMISSING PETITION FOR FORMAL PROCEEDING,
AND REINSTATING ORDER NO. PSC-95-0691-FOF-EI
AS A FINAL ORDER AS MODIFIED

BY THE COMMISSION:

CASE BACKGROUND

On June 9, 1995, the Commission issued a Notice of Proposed Agency Action, Order No. PSC-95-0691-FOF-EI. That order memorialized our decision in four dockets that had been consolidated for hearing: Docket No. 941170-EI, In Re: Approval of Demand-Side Management Plan of Florida Power & Light Company; Docket No. 941171-EI, In Re: Approval of Demand-Side Management Plan of Florida Power Corporation; Docket No. 941172-EI, In Re: Approval of Demand-Side Management Plan of Gulf Power Company; and, Docket No. 941173-EI, In Re: Approval of Demand-Side Management Plan of Tampa Electric Company. In Order No. PSC-95-0691-FOF-EI we approved Florida Power and Light's (FPL) Demand-Side Management Plan, as well as the Demand-Side Management Plans of the other three electric utilities. We held that the plans complied with Order No. PSC-94-1313-FOF-EG, which set numeric conservation goals for the electric utilities. We stated that our approval of the plans would not become effective or final if any person whose substantial interest was affected by the proposed action filed a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, by the close of business on June 30, 1995.

DOCKET NUMBER-DATE

10749 NOV-1 95

FPSC-REC'D-REGISTRATION

The Independent Savings Plan Company (ISPC) and Solar City, Inc. (SOLAR) timely filed a joint petition protesting the proposed agency action order. Legal Environmental Assistance Foundation, Inc., (LEAF), and Peoples Gas System, Inc. (Peoples) also filed timely petitions for a formal proceeding in the case. Mr. Donnie Nolley, owner of Free Energy, an energy auditing company, filed a letter requesting that the Commission reverse its decision approving FPL's plan to eliminate its solar water heating incentive plan. We have treated Mr. Nolley's letter as a protest of Order No. PSC-95-0691-FOF-EI and a request for an evidentiary proceeding. Several protests were also filed in the other dockets, and, as here, several stipulations were reached in those dockets. We will issue separate orders in each docket to address the protests and the stipulations unique to each case.

In this docket FPL filed Motions in Opposition to the petitions for formal proceedings on July 17, 1995. LEAF, ISPC/SOLAR and Peoples also filed responses to FPL's motions. Thereafter, in order to avoid litigation, the parties began settlement negotiations. FPL and LEAF filed a stipulation resolving LEAF's protest of the proposed agency action order on September 18, 1995. FPL and Peoples filed their stipulation on September 19, 1995, and FPL and ISPC/Solar filed their stipulation on September 28, 1995. The stipulations are attached to, and incorporated in, this order.

Upon review, we approve the stipulations. We deny Donnie Nolley's petition for formal proceeding. We reinstate our Order No. PSC-95-0691-FOF-EI approving FPL's demand side management plan as a final order, as modified by the stipulations. Also, as we explain below, the Commission's Bureau of Regulatory Review will conduct a management review to provide information regarding the competitive relationship between the electric and gas industries, and to study the effect of commercial/industrial conservation programs on competition in the industries.

DECISION

Stipulation between LEAF and FPL

In their September 18, 1995, stipulation, LEAF and FPL state that the stipulation is designed to attain "an informal disposition of LEAF's request for hearing in Docket No. 941170-EG . . . to avoid the time, expense and uncertainty associated with adversarial litigation in this docket in keeping with the Commission's encouragement to settle disputes". In return for LEAF's agreement

to withdraw its protest of the PAA order and refrain from further participation in the review and approval of FPL's program participation standards, FPL has agreed to take several actions in the implementation of its demand-side management plans. Among other things, FPL has agreed to seek approval from the Commission to conduct monitoring and evaluation studies of its programs, and FPL has agreed to provide the information obtained to LEAF. FPL has agreed to revise and seek Commission approval of the "Program Objective" section of its the proposed program participation standards for the Commercial/Industrial Heating Ventilation and Air Condition Program. FPL will also petition the Commission for approval of a residential new construction program as part of its Demand Side Management program. The actions FPL has agreed to take are described in detail in the stipulation incorporated in this order. See attachment A.

We have reviewed the terms of the stipulation and we find that they are consistent with our decisions in the Conservation Goals Docket and in Order No. PSC-95-0691-FOF-EI approving FPL's demand-side management plans. With the understanding that we are not preapproving any proposed new programs, we approve the stipulation. The stipulation will avoid additional time-consuming, expensive litigation and will allow FPL to proceed with the implementation of its new conservation programs. We find the stipulation to be in the public interest.

Stipulation between ISPC/SOLAR and FPL

In their September 28, 1995, stipulation, ISPC/SOLAR and FPL state that the stipulation is designed to attain "an informal disposition of ISPC's and SOLAR's request for hearing in Docket No. 941170-EG . . . to avoid the time, expense and uncertainty associated with adversarial litigation in this docket in keeping with the Commission's encouragement to settle disputes". In return for ISPC/SOLAR's agreement to withdraw its protest of the PAA order and refrain from further participation in the review and approval of FPL's program participation standards, FPL has agreed to a more gradual phase-out of its solar water heating incentives plan. The program will not be discontinued until May 30, 1996, or until 1,439 Wattsaver incentive certificates are issued for the year beginning June 1, 1995, whichever comes first. FPL has also agreed to consult with ISPC/Solar over the contents of objective solar water heating educational information to be provided to customers during residential energy audits. If agreement cannot be reached, the parties will bring the disagreement to the Commission for resolution. The stipulation is incorporated in this order. See Attachment B.

We have reviewed the terms of the stipulation and find that they are consistent with our decisions in the Conservation Goals Docket and in Order No. PSC-95-0691-FOF-EI approving FPL's demand-side management plans. We approve the stipulation. The stipulation will avoid additional time-consuming, expensive litigation, and will allow FPL to proceed with the implementation of its new conservation programs. We find the stipulation to be in the public interest.

Stipulation between Peoples and FPL

In their September 19, 1995, stipulation, Peoples and FPL state that the stipulation is designed to attain "an informal disposition of Peoples' request for hearing in Docket No. 941170-EG . . . to avoid the time, expense and uncertainty associated with adversarial litigation in this docket in keeping with the Commission's encouragement to settle disputes". Peoples has agreed to withdraw its protest of the PAA order, and to refrain from further participation in the review and approval of FPL's program participation standards. Peoples has also agreed to identify potential sites for FPL's proposed Gas Engine-Driven DX Air Conditioning Research Project. Peoples has also agreed to contribute a total of \$35,000 toward monitoring and evaluation of that project and FPL's Gas Engine-Driven Chillers Research Project. In return, FPL has agreed to take several actions in the implementation of its demand-side management plans. Those actions are described in detail in the stipulation incorporated in this order. See Attachment C.

FPL also agreed that Peoples may hire a specific consultant to provide services regarding the agreement and the data to be collected, and FPL agreed that all costs incurred by Peoples would be recoverable through Peoples' Energy Conservation Cost Recovery (ECCR) clause over the period of the research and development projects. We are somewhat concerned with the language of this part of the stipulation. The wording could be interpreted to indicate that in approving the stipulation we would be preapproving Peoples' costs of the project for recovery through the ECCR clause before the project was approved and before the prudence of the costs incurred had been demonstrated. To address that concern, Peoples sent a letter, dated September 27, 1995, to clarify the language of the stipulation. Peoples stated in the letter that:

Paragraph 3 of the subject stipulation is not intended, by either Peoples or FPL, to bind the Commission to preapproval of the costs of certain activities that have not yet been undertaken. Rather, this language is intended

as an expression of Peoples' intent to seek recovery, through its Commission-approved Energy Cost Recovery Factors, of the costs that it incurs in carrying out its obligations pursuant to the stipulation over the life of those efforts rather than during the ECCR recovery periods when incurred.

Peoples' clarification letter is attached to the stipulation and incorporated therein.

We have reviewed the terms of the stipulation as clarified, and we find that they are consistent with our decisions in the Conservation Goals Docket and in Order No. PSC-95-0691-FOF-EI approving FPL's demand-side management plans. We approve the stipulation. The stipulation will avoid additional time-consuming, expensive litigation and will allow FPL to proceed with the implementation of its new conservation programs. We find that the stipulation is in the public interest.

Mr. Nolley's Petition

In his letter to the Commission, Mr. Nolley requests that we reverse our decision to approve FPL's proposal to eliminate its existing solar water heating incentive. We have treated Mr. Nolley's request as a petition for a formal administrative hearing under our Rule 25-22.029, Florida Administrative Code. We deny the request, because Mr. Nolley has not demonstrated either that he will suffer an injury in fact that is of sufficient immediacy to entitle him to a formal hearing under Section 120.57, Florida Statutes, or that his injury is of a type or nature that the proceeding is designed to protect.

Rule 25-22.029 (4), Florida Administrative Code, "Point of Entry into Proposed Agency Action Proceedings", provides that a person may file a petition for a formal hearing pursuant to section 120.57, Florida Statutes, if that person's substantial interests may or will be affected by the Commission's proposed action. As the Court stated in Agrico Chemical Company v. Department of Environmental Regulation, 406 So.2d 478, 482 (Fla. 2d DCA 1981):

[B]efore one can be considered to have a substantial interest in the outcome of the proceeding he must show 1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a section 120.57

hearing, and 2) that his substantial injury is of a type or nature which the proceeding is designed to protect.

Both requirements must be met to establish standing to protest an agency action.

Mr. Nolley's petition fails to meet either prong of this test for substantial interest. The letter states only that Mr. Nolley owns a residential energy auditing company in FPL's service area, that solar water heating is of interest to homeowners, that solar energy is a valuable resource, that ending solar water heating incentives would be a step backwards, and that with the help of the incentives, homeowners can take advantage of this renewable resource. These are all general, unspecified allegations that do not relate in any direct or immediate way to the specific substantial interests of Mr. Nolley. Remote, speculative, abstract or indirect injuries are not sufficient to meet the "injury in fact" standing requirement. International Jai-Alai Players Association v. Florida Pari-Mutuel Commission, 561 So.2d 1224 (Fla. 3d DCA 1990); Village Park Mobile Home Ass'n v. Department of Business Regulation, 506 So.2d 426 (Fla. 1st DCA 1987); Agrico Chemical Company v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981); Department of Offender Rehabilitation v. Jerry, 353 So.2d 1230 (Fla. 1st DCA 1978). There must be allegations that either (1) the petitioner has sustained actual injuries at the time of the filing of the petition, or (2) that the petitioner is immediately in danger of sustaining some direct injury as a result of the Commission's determination. Village Park, 506 So.2d at 433. We cannot tell from the letter that Mr. Nolley himself will be harmed.

Because Mr. Nolley's letter does not demonstrate how he himself will be harmed by the elimination of FPL's incentive program, it is not possible to establish that his claim meets the second prong of Agrico, the "zone of interest" test. Mr. Nolley's letter shows that he advocates the use of solar energy and encourages homeowners to take advantage of that renewable resource. It also became clear at our Agenda Conference that Mr. Nolley has an economic interest in the continuation of the program to increase sales of solar water heating equipment through his energy audit business. That interest, however, is not sufficient to establish standing to conduct a formal evidentiary proceeding.

In determining whether a petitioner has met the zone of interest test, the agency must examine the nature of the injury alleged and determine if a statute or rule governing the proceeding is intended to protect that interest. Grove Isle, Ltd. v. Bayshore

Homeowners' Ass'n, 418 So.2d 1046 (Fla. 1st DCA 1982); Suwannee River Area Council Boy Scouts of America v. Department of Community Affairs, 384 So.2d 1369 (Fla. 1st DCA 1980); Boca Raton Mausoleum v. Department of Banking and Finance, 511 So.2d 1060 (Fla. 1st DCA 1987); Friends of the Everglades v. Board of Trustees, 595 So.2d 186 (Fla. 1st DCA 1992). Economic interests usually are not sufficient to establish the zone of interest unless it is determined that the statute was specifically intended to protect economic interests. The Florida Energy Efficiency and Conservation Act (FEECA), Sections 366.80-.85, Florida Statutes, is not intended to promote businesses or protect business markets, and thus in this case an economic interest in the continuation of FPL's incentive program is insufficient to establish standing.

Furthermore, while FEECA evinces the Legislatures' intent that "the use of solar energy" is to "be encouraged", the Commission has interpreted this expression as limited by FEECA's intent that conservation measures must also be "cost-effective". In the Conservation Goals proceeding, we approved FPL's goals based on conservation measures that are cost-effective under the RIM (Rate Impact) and Participants tests. Order No. PSC-94-1313-FOF-EG at 22, 32. We concluded that it was not cost-effective for FPL to continue its existing solar water heating incentive plan. Instead, we directed FPL to investigate and consider other means to encourage the use of solar energy. We agree with FPL that the cost-effectiveness of the program, the effect of elimination of the program on the solar industry and on the encouragement of the use of solar energy was fully investigated and decided by the Commission in the goals docket. To reopen that investigation in these proceedings without a demonstration of mistake or material changed circumstances would violate the doctrine of administrative finality. Peoples Gas System, Inc. vs. Mason, 187 So.2d 325 (Fla. 1966).

For these reasons, we deny Mr. Nolley's request to reverse our decision approving the elimination of FPL's solar water heating incentive program. We reinstate our Proposed Agency Action Order No. PSC-95-0691-FOF-EI approving FPL's demand side management program as a final order. FPL may proceed with the implementation of its new conservation programs. At our Agenda Conference Mr. Nolley indicated that he was not satisfied with the stipulation ISPC/SOLAR and FPL had reached regarding the incentive program, but we do think that the agreement to phase out the program over a period of time and the effort to develop objective marketing information should be of some value to Mr. Nolley in his efforts to encourage the use of solar energy.

Management Review

At our May 16, 1995, Agenda Conference, we directed our staff to conduct a Commission workshop addressing issues involving the competitive relationship between the electric and gas industries and the effect of commercial/industrial conservation programs on competition between the industries. During the course of preparing for the workshop, concerns arose over confidentiality and access to data. Some of the data necessary to adequately address the issues involves detailed customer KW and KWH usage information. In response to these concerns, staff cancelled its data request, and the workshop was cancelled as well. In its place our staff proposes to initiate an investigation of the issues with a management review conducted by the Bureau of Regulatory Review. The review will address the following questions, among others that may arise as the study progresses:

1. Whether the implementation of conservation programs by the electric and gas utilities, particularly for commercial/industrial customers, has complied with the Commission's policy of fuel neutrality.
2. Whether the conservation programs of the electric and gas utilities, particularly for commercial/industrial customers, have resulted in the increased usage of electricity and natural gas.

We agree with our staff's proposal. The process necessary to protect the confidentiality of information is built into the Bureau's audit process. According to Rule 25-22.006, Florida Administrative Code, all information gathered by the Audit Document/Record Request Notice of Intent form during the investigative process will be treated confidentially through the audit exit conference. At the audit exit conference the utility will have the opportunity to review the draft audit report and workpapers. Then the utility will have twenty one days thereafter to file a formal request for confidential treatment of all confidential information to be used in the final report. Technical assistance will be provided from the Division of Electric and Gas, as needed. Staff will bring the results of the study to the Commission for review.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the stipulation between Florida Power and Light Company and the Legal Environmental Assistance Foundation resolving LEAF's protest of Order No. PSC-95-0691-FOF-EI is approved. It is further

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ORDERED that the stipulation between Florida Power and Light Company and The Independent Savings Plan Company and Solar City, Inc. resolving ISPC/SOLAR's joint protest of Order No. PSC-95-0691-FOF-EI is approved. It is further

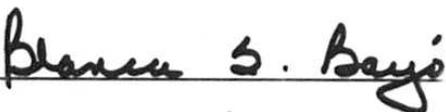
ORDERED that the stipulation between Florida Power and Light Company and Peoples Gas System, Inc. resolving Peoples' protest of Order No. PSC-95-0691-FOF-EI is approved. It is further

ORDERED that Mr. Donnie Nolley's protest of Order No. PSC-95-0691-FOF-EI is dismissed and his request for an evidentiary proceeding is denied. It is further

ORDERED that the Notice of Proposed Agency Action, Order No. PSC-95-0691-FOF-EI, as modified by the stipulations approved in this Order, will be reinstated as a Final Order. It is further

ORDERED that this docket should be closed.

By ORDER of the Florida Public Service Commission, this 1st day of November, 1995.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

MCB

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 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 or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting 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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

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Attachment A

Legal

Steel Hector & Davis
Tallahassee, Florida

Charles A. Guyton
(904) 222-3423

September 18, 1995

By Hand Delivery

Blanca S. Bayó, Director
Records and Reporting
Florida Public Service Commission
4075 Esplanade Way, Room 110
Tallahassee, Florida 32399-0850

Re: **LEAF/FPL Stipulation**
Docket No. 941170-EG

Dear Ms. Bayó:

Enclosed for filing are the original and fifteen (15) copies of a Stipulation between Florida Power & Light Company and the Legal Environmental Assistance Foundation in Docket No. 941170-EG.

If you or your staff have any questions regarding this filing, please contact me.

Very truly yours,



Charles A. Guyton

CAG/sh
EDCS.
TAL/12853
cc: All Parties of Record

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DOCUMENT NUMBER-DATE
09181 SEP 18
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In Re: Approval of Demand Side Management) Docket No. 941170-EG
Plan of Florida Power & Light Company) Filed: September 18, 1995**

**STIPULATION OF FLORIDA POWER & LIGHT COMPANY
AND LEGAL ENVIRONMENTAL ASSISTANCE FOUNDATION**

This stipulation is entered into between Florida Power & Light Company ("FPL") and the Legal Environmental Assistance Foundation ("LEAF") pursuant to Section 120.57(3), Florida Statutes, for the purpose of an informal disposition of LEAF's request for hearing in Docket No. 941170-EG. FPL and LEAF wish to avoid the time, expense and uncertainty associated with adversarial litigation in this docket in keeping with the Commission's encouragement to settle disputes. Accordingly, without prejudice as to FPL's or LEAF's position in any other proceeding before this Commission, FPL and LEAF agree and stipulate as follows:

1. In consideration of the actions undertaken by FPL pursuant to this stipulation, LEAF:
 - a. withdraws its request for hearing in Docket No. 941170-EG, and
 - b. agrees not to participate further in Docket No. 941170-EG, including the review and approval of FPL's program participation standards arising from Docket No. 941170-EG, and the review and approval of any FPL monitoring and evaluation plan required by the Commission in Docket No. 941170-EG.
2. In consideration of the actions undertaken by LEAF pursuant to this agreement, FPL agrees to the following:
 - a. For each measure offered in programs in FPL's DSM Plan, FPL will provide to LEAF by October 15, 1995 the values for the assumptions listed in Attachment A. FPL agrees to seek Commission approval to conduct monitoring and evaluation in

a manner intended to verify, for each measure offered in programs in its DSM Plan, the values of the assumptions to be provided to LEAF. For the most part the values of the assumptions listed in Attachment A for the measures in FPL's DSM Plan are the values used by FPL in its development of RIM Achievable Potential in Docket No. 930548-EG, and FPL has attempted to note in its DSM Plan filing if new or different values were used.

- b. FPL agrees to revise its Assistance and Referral Process flow chart as shown in Attachment B. The revision reflects that an option available to some persons who enter into a Bill Payment Arrangement (PEXT) with FPL will be the offering of a free energy survey.
- c. FPL will revise and seek Commission approval of the "Program Objective" section of its proposed Program Participation Standards for its Commercial/Industrial Heating Ventilation & Air Conditioning Program to read

The objective of the Commercial/Industrial Heating, Ventilation and Air Conditioning (C/I HVAC) Program is to reduce the current and future growth of coincident peak demand and energy consumption by increasing the use of high efficiency Heating, Ventilation and Air Conditioning (HVAC) systems and encouraging the early replacement of inefficient HVAC equipment.

- d. FPL will add language to its Residential HVAC Procedures and include language in its Procedures for its residential new construction program indicating that FPL will inspect residential HVAC installations for proper refrigerant line sizing, proper valves, and thermostats.
- e. FPL will file, on or before December 31, 1995, a petition with the Florida Public Service Commission seeking approval of a residential new construction program as

part of FPL's DSM Plan. The residential new construction program will be designed consistent with FPL's existing BuildSmart[®] pilot program and will be justified for cost-effectiveness using the planning assumptions used to justify FPL's proposed DSM Plan in Docket No. 941170-EG. FPL and LEAF believe it is desirable to extend the existing BuildSmart[®] pilot program until the new residential new construction program is approved, and, if necessary, FPL will also petition for Commission extension of the existing BuildSmart[®] pilot program up to the time FPL's new residential new construction program is approved. FPL and LEAF agree that any savings achieved from the BuildSmart[®] pilot project and the to be filed residential new construction program should be recognized in the determination of whether FPL achieves its annual and cumulative conservation goals.

- f. FPL will continue to provide applications for exemption from FPL participating contractor requirements to government agencies and entities authorized to act on behalf of government agencies.
- g. FPL will provide objective solar water heating educational materials to customers during residential energy audits. If FPL and the Independent Savings Plan Company ("ISPC") and SOLAR reach a settlement including a provision that they will agree upon objective solar water heating materials to be provided during FPL residential energy audits, LEAF will not participate in the determination of the content of the solar water heating materials. If FPL and ISPC and SOLAR do not reach a settlement agreement that provides for their agreement upon solar water heating materials to be provided during FPL energy audits, then LEAF and FPL will agree

upon the content of the solar water heating materials. In the event FPL cannot reach agreement with either LEAF or ISPC/SOLAR, the dispute as to what constitutes objective solar water heating information to be provided during residential energy audits will be brought to the Florida Public Service Commission for resolution.

3. Nothing in this stipulation shall be construed as requiring FPL to implement or to continue to offer any DSM option or program that is not cost-effective under the Rate Impact Measure and Participants tests; to modify or to refrain from seeking modification of the conservation goals established for FPL in Order No. PSC-94-1313-EG, to modify its proposed DSM Plan in a fashion other than seeking approval of a residential new construction program, or to refrain from seeking modification of its DSM Plan.
4. This stipulation shall become null and void in the event it is not approved by the Florida Public Service Commission.
5. This stipulation may not be modified except by the written mutual consent of LEAF and FPL.
6. This stipulation shall be subject to the jurisdiction of the Florida Public Service Commission.

DATED: September 18, 1995

LEGAL ENVIRONMENTAL
ASSISTANCE FOUNDATION, INC

Debra Swim

Debra Swim
Legal Environmental Assistance
Foundation, Inc.
1115 North Gadsden Street
Tallahassee, Florida 32303

Attorney, Energy Advocacy Project

FLORIDA POWER & LIGHT COMPANY

Charles A. Guyton

Charles A. Guyton
Steel Hector & Davis
215 South Monroe Street
Suite 601
Tallahassee, Florida 32301

Attorneys for Florida Power
& Light Company

ATTACHMENT A

1. baseline equipment, building, end use, and/or customer annual energy usage, summer coincident-peak demand, and winter coincident-peak demand,
2. baseline equipment installation and/or building construction cost,
3. baseline equipment efficiency and customer operating habits,
4. changes to baseline usage and/or cost due to changes in building code, efficiency standards, or other market forces,
5. per measure and/or per participant actual energy, summer demand, and winter demand savings,
6. measure retention rates and savings persistence,
7. total annual energy, summer demand, and winter demand savings for all participants,
8. per measure and/or per participant total costs and utility incentives,
9. program administrative costs; and
10. free-ridership and total savings attributable to free-rider participants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the Stipulation Of Florida Power & Light Company And Legal Environmental Assistance Foundation, were served by Hand Delivery (when indicated with an *) or mailed this 18th day of September, 1995 to the following

Martha Carter Brown, Esq. *
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Florida Public Service Commission
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Tallahassee, Florida 32301

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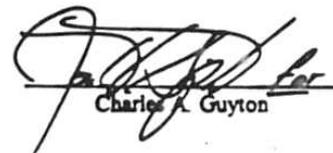
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** Courtesy Copy
TAL/12736


Charles A. Guyton

Steel Hector & Davis
Tallahassee Florida

Charles A. Guyton
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September 28, 1995

By Hand Delivery

Blanca S. Bayó, Director
Records and Reporting
Florida Public Service Commission
4075 Esplanade Way, Room 110
Tallahassee, Florida 32399-0850

Re: ISPC-SOLAR/FPL Stipulation
Docket No. 941170-EG

Dear Ms. Bayó:

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If you or your staff have any questions regarding this filing, please contact me

Very truly yours,



Charles A. Guyton

CAG/sh
encs.
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cc: All Parties of Record

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In Re: Approval of Demand Side Management) Docket No. 941170-EG
Plan of Florida Power & Light Company) Filed: September 28, 1995**

**STIPULATION OF FLORIDA POWER & LIGHT COMPANY
AND THE INDEPENDENT SAVINGS PLAN COMPANY AND SOLAR CITY, INC.**

This stipulation is entered into between Florida Power & Light Company ("FPL") and The Independent Savings Plan Company ("ISPC") and Solar City, Inc. ("SOLAR") pursuant to Section 120.57(3), Florida Statutes, for the purpose of an informal disposition of ISPC's and SOLAR's joint request for hearing in Docket No. 941170-EG. FPL, ISPC and SOLAR wish to avoid the time, expense and uncertainty associated with adversarial litigation in this docket in keeping with the Commission's encouragement to settle disputes. Accordingly, without prejudice as to FPL's or ISPC's and SOLAR's position in any other proceeding before this Commission, FPL, ISPC and SOLAR agree and stipulate as follows:

1. In consideration of the actions undertaken by FPL pursuant to this stipulation, ISPC and SOLAR agree to:
 - a. withdraw their request for hearing in Docket No. 941170-EG upon the Commission's approval of this stipulation;
 - b. not participate in the review and approval of program participation standards arising from Docket No. 941170-EG, the review and approval of any monitoring and evaluation plan required by the Commission in Docket No. 941170-EG, and any workshops created as a result of orders in Docket No. 941170-EG, so long as any review, approval and/or workshops do not affect the agreements reached in this stipulation;

- c. meet and agree with FPL regarding the content of objective solar water heating educational information to be provided by FPL to its customers, and
 - d. enter no objection to any potential FPL petition to withdraw its Residential Solar Water Heating Research Project.
2. In consideration of the actions undertaken by ISPC and SOLAR pursuant to this stipulation, FPL agrees:
- a. to phase out the offering of solar water heating incentives by continuing to offer solar water heating WattSaver certificates until the earlier of May 30, 1996 or the date of issuance of the 1,439th certificate during the twelve month period beginning June 1, 1995 and paying solar water heating WattSaver certificates until three months after the issuance of the last authorized certificate,
 - b. to provide to ISPC and SOLAR, for the year beginning June 1, 1995, (i) monthly updates of the number of solar water heating WattSaver certificates issued and (ii) notice of when and if the certificates issued reach 1300.
 - c. to meet and agree with ISPC and SOLAR regarding the contents of objective solar water heating educational information, written and oral, to be provided to customers during residential energy audits and in response to residential customer inquiries related to solar water heating. In the event FPL and ISPC and SOLAR cannot reach agreement, the initial dispute as to what constitutes objective solar water heating information to be provided to FPL residential customers may be brought to the Florida Public Service Commission for resolution, and FPL agrees not to contest ISPC's and SOLAR's standing to participate in that resolution.

- After the initial determination (by agreement or Commission resolution) of what constitutes objective solar water heating information to be provided by FPL to its residential customers, if FPL desires to modify the substantive content of such information or to discontinue providing such information, FPL will petition the Commission to approve such a change and provide notice to ISPC and SOLAR of such petition, and nothing in this stipulation or its implementation shall be construed as granting ISPC and SOLAR standing to participate in such a proceeding or as waiving FPL's right to challenge ISPC's and SOLAR's potential participation in such a proceeding; and
- d. to provide adequate training for appropriate FPL employees to ensure the accurate dissemination of objective solar water heating information.
3. Nothing in this stipulation shall be construed as requiring FPL to implement or to continue to offer any DSM option or program that is not cost-effective under the Rate Impact Measure and Participants tests other than the phase out of the offering of solar water heating incentives pursuant to paragraph 2. a. ; to modify or to refrain from seeking modification of the conservation goals established for FPL in Order No. PSC-94-1313-EG; to modify its DSM Plan in a fashion other than as outlined in paragraphs 2. a. through 2. d. above; or to refrain from seeking modification of its DSM Plan.
 4. This stipulation shall become null and void in its entirety if it is not approved by the Florida Public Service Commission.
 5. This stipulation may not be modified except by the written mutual consent of ISPC and SOLAR and FPL. However, ISPC and SOLAR and FPL recognize that the Commission

has continuing jurisdiction regarding FPL's DSM programs and may, on its own initiative, suggest program changes, subject to the rights of appropriate parties to participate in the resulting proceedings.

6. This stipulation shall be subject to the jurisdiction of the Florida Public Service Commission, and the Commission shall be the sole body for the resolution of any disputes arising out of the discharge of this agreement.

DATED: September 27, 1995

**THE INDEPENDENT SAVINGS
PLAN COMPANY, SOLAR
CITY, INC.**



Robert B. Hicks, Attorney for
The Independent Savings Plan
Company and Solar City, Inc.

**FLORIDA POWER & LIGHT
COMPANY**



Charles A. Guyton, Attorney for
Florida Power & Light Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the Stipulation Of Florida Power & Light Company And The Independent Savings Plan Company And Solar City, Inc., were served by Hand Delivery (when indicated with an *) or mailed this 28th day of September, 1995 to the following:

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Robert Scheffel Wright, Esq.*
Landers & Parsons
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Legal Environmental
Assistance Foundation, Inc.
1115 North Gadsden Street
Tallahassee, Florida 32303


Charles A. Guyon

** Courtesy Copy

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In Re: Approval of Demand Side Management) Docket No. 941170-EG
Plan of Florida Power & Light Company) Filed: September 19, 1995**

**STIPULATION OF PEOPLES GAS SYSTEM, INC.
AND FLORIDA POWER & LIGHT COMPANY**

This stipulation is entered into between Peoples Gas System, Inc. ("Peoples") and Florida Power & Light Company ("FPL") pursuant to Section 120.57(3), Florida Statutes, for the purpose of an informal disposition of Peoples' requests for hearing in Docket No. 941170-EG. FPL and Peoples wish to avoid the time, expense and uncertainty associated with adversarial litigation in this docket in keeping with the Commission's encouragement to settle disputes. Accordingly, without prejudice as to FPL's or Peoples' position in any other proceeding before this Commission, FPL and Peoples agree and stipulate as follows:

1. In consideration of the actions undertaken by FPL pursuant to this stipulation, Peoples agrees:
 - a. to withdraw its Petition on Proposed Agency Action and its Petition for Formal Proceeding and related pleadings and responses in Docket No. 941170-EG;
 - b. not to participate further in Docket No. 941170-EG, including the review and approval of program participation standards arising from Docket No. 941170-EG, and the review and approval of any monitoring and evaluation plan required by the Commission in Docket No. 941170-EG;
 - c. to identify potential sites for FPL's proposed Gas Engine-Driven Chillers Research Project and Gas Engine-Driven DX Air Conditioning Research Project.

- In identifying potential sites Peoples will give priority to existing sites with state of the art technology and identify sites that should yield results which are transferable to other sites;
- d. contribute \$ 35,000.00 to the monitoring and evaluation of FPL's proposed Gas Engine-Driven Chillers Research Project and Gas Engine-Driven DX Air Conditioning Research Project. Peoples' contribution shall be credited to FPL customers as a reduction of the monitoring costs for the two research projects that are passed through FPL's Energy Conservation Cost Recovery ("ECCR") clause, and
 - e. not protest the Commission's order approving FPL's Natural Gas End-Use Technology Research and Development Plan.
2. In consideration of the actions taken by Peoples pursuant to this stipulation, FPL agrees:
- a. to allow Peoples to identify potential sites for FPL's proposed Gas Engine-Driven Chillers Research Project and Gas Engine-Driven DX Air Conditioning Research Project. In identifying potential sites Peoples will give priority to existing sites with state of the art technology and identify sites that should yield results which are transferable to other sites.
 - b. to seek a revision of its Gas Engine Driven Chiller Research Project to remove heat recovery requirements so that gas engine-driven chillers with heat recovery would not be an application FPL is actively researching and could be an eligible installation for FPL's BCI patterned gas research and development project, which is more fully described in Paragraph 2.c.;

- c. to file a petition with the Florida Public Service Commission seeking approval of a gas research and development project patterned after FPL's Business Custom Incentive ("BCI") Program. The BCI type gas research and development project will extend for a period of two years from program approval, unless shortened or discontinued upon the Commission's initiative. Under the BCI patterned project Peoples may request cost-effectiveness analyses for no more than twenty-four (24) projects within FPL's service territory. Projects which pass cost-effectiveness and for which incentives are paid must meet a minimum savings of 25 kW individually and may not exceed a savings of 10 MW collectively and 2 MW individually. Except for desiccant cooling, applications which FPL is actively researching, including the applications covered by FPL's Natural Gas End-Use Technology Research and Development Plan, will not be eligible for this gas research and development project unless bundled with equipment that is not eligible for FPL DSM incentives. Small (not larger than 150 kW) self-service package cogeneration applications and hybrid systems will be eligible if they meet other BCI program eligibility criteria. If Peoples proposes applications that are eligible for incentives under Peoples' approved conservation programs, Peoples' incentives will be recognized as a cost reduction in the Participants test analysis performed by FPL; however, if the recognition of the Peoples' incentive combined with FPL's incentive results in less than a two year payback to the customer, both Peoples' and FPL's incentives shall be reduced proportionately to a level such that the customer receives a total incentive that results in a payback of

not less than two years. Any savings achieved by FPL through this gas research and development effort shall be recognized in any determinations of whether FPL has achieved its conservation goals.

- d. to share analyzed monitoring and evaluation data provided to FPL by the consultants retained to monitor and evaluate FPL's research projects in its Natural Gas End-Use Technology Research and Development Plan. This data includes any interim and final reports. Upon review of the data, Peoples may contact FPL and request additional data/analysis or raw data used by the consultants. FPL shall not unreasonably withhold agreement from requesting from its consultant the data requested by Peoples; however, FPL will forward to Peoples data which is customer specific only with customer permission and under terms acceptable to the customer. Peoples shall pay any and all costs associated with the provision of the additional data/analysis or raw data.
- e. to share with Peoples, for Peoples to consider in recommending sites, the criteria recommended by FPL's consultants for site selection for FPL's Gas Engine-Driven Chillers Research Project and Gas Engine-Driven DX Air Conditioning Research Project. FPL and Peoples will exchange their site selection analyses used to identify sites for these two projects;
- f. to share with Peoples monitoring and evaluation of data from the participating installations in FPL's BCI patterned gas research and development project, subject to the permission and conditions of customers regarding customer specific information; and

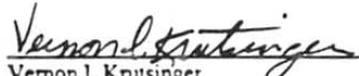
- g. to withdraw its motions and memoranda in opposition to Peoples' petitions requesting a hearing in Docket No. 941170-EG.
3. Although not consideration for actions undertaken by FPL pursuant to this stipulation, Peoples will contract with Maury J. Blalock, P.E., to provide consulting services regarding this agreement and the data to be collected pursuant to this agreement, including site-specific applications and monitoring of electric and gas usage, and all costs incurred by Peoples as mentioned in this stipulation will be collected through Peoples' ECCR clause, but will be recoverable over the period of the research and development projects rather than during the recovery periods when spent.
 4. Nothing in this stipulation shall be construed as requiring FPL: (a) to implement or to continue to offer any DSM option or program that is not cost-effective under the Rate Impact Measure and Participants tests; (b) to modify or refrain from seeking modification of the conservation goals established for FPL in Order No. PSC-94-1313-EG; (c) to modify its proposed DSM Plan in a fashion other than seeking approval of a BCI type gas research and development project as more fully described above in paragraph 2.b.; or (d) to refrain from seeking modification of its DSM Plan.
 5. This stipulation shall become null and void to the extent it is not approved by the Florida Public Service Commission.
 6. This stipulation may not be modified except by the written mutual consent of Peoples and FPL. However, FPL and Peoples recognize the Commission's continuing jurisdiction regarding FPL's and Peoples' DSM activities and that the Commission may suggest changes on its own initiative.

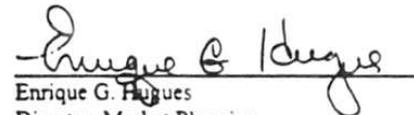
7. This stipulation shall be subject to the jurisdiction of the Florida Public Service Commission, and the Commission shall be the sole body for the resolution of any disputes arising out of the discharge of this agreement.

DATED: September 19, 1995

PEOPLES GAS SYSTEM, INC.

FLORIDA POWER & LIGHT COMPANY


Vernon I. Krutsinger
Manager, Energy Utilization

 9-15-95
Enrique G. Hugues
Director, Market Planning

TAL/12767-1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by hand delivery (*) or by United States Mail, postage prepaid, on the following individuals this 20th day of September, 1995:

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September 27, 1995

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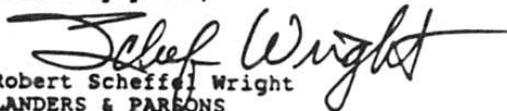
Re: Stipulation Between Peoples Gas System and Florida Power &
Light Company in FPSC Docket No. 941170-EG

Dear Martha:

Per our recent discussions, this letter will clarify the intent of certain language contained in the stipulation between Peoples and FPL filed in Docket No. 941170-EG on September 20, 1995. Paragraph 3 of the subject stipulation is not intended, by either Peoples or FPL, to bind the Commission to preapproval of the costs of certain activities that have not yet been undertaken. Rather, this language is intended as an expression of Peoples' intent to seek recovery, through its Commission-approved Energy Conservation Cost Recovery factors, of the costs that it incurs in carrying out its obligations pursuant to the stipulation over the life of those efforts rather than during the ECCR recovery periods when incurred. Similarly, the inclusion of this language in the stipulation is intended to convey to the Commission that FPL acknowledges and does not object to Peoples' plan to recover the subject costs in this manner.

If you have any questions, please give me a call.

Cordially yours,


Robert Scheffel Wright
LANDERS & PARSONS

Attorneys for Peoples Gas System, Inc.