

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Approval of Demand-Side) DOCKET NO. 941173-EG
Management Plan of Tampa) ORDER NO. PSC-95-1346-S-EG
Electric 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 STIPULATION,
DISMISSING PETITIONS 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 the Commission approved Tampa Electric Company's (TECO) 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.

DOCUMENT NUMBER-DATE

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The Independent Savings Plan Company (ISPC) and Solar City, Inc. (SOLAR) timely filed a joint petition protesting Order No. PSC-95-0691-FOF-EI. Legal Environmental Assistance Foundation, Inc. (LEAF) and Peoples Gas System, Inc. (Peoples) also filed timely petitions for formal proceedings in the case. 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.

On July 14, 1995, TECO filed a Motion to Dismiss ISPC/SOLAR's petition. TECO filed an Answer to Peoples' petition on July 20, 1995. ISPC/SOLAR filed a response to TECO's motion to Dismiss on August 7, 1995. On September 21, 1995, TECO and LEAF filed a stipulation, which settled all issues relating to LEAF's protest. The stipulation is attached to, and incorporated in, this Order. See Attachment A.

Upon review, we approve the stipulations, and we deny the protests filed by ISPC/SOLAR and Peoples. We reinstate Order No. PSC-95-0691-FOF-EI approving FPC'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 TECO

In their September 21, 1995, stipulation, LEAF and TECO 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, TECO has agreed to take several actions in the implementation of its demand-side management plan. Among other things, TECO has agreed to: 1) seek approval of its monitoring and evaluation plan; 2) continue to deliver information on low-cost energy measures in its residential energy audit procedure, and; 3) provide LEAF with a detailed review of current Tampa Electric low-income practices. The agreement is

described in detail in the stipulation attached and incorporated in this Order.

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 TECO's demand-side management plans. We approve the stipulation. The stipulation will avoid additional time-consuming, expensive litigation and will allow TECO to proceed with the implementation of its new conservation programs. We find the stipulation to be in the public interest.

ISPC/SOLAR's Petition for Formal Proceedings

We deny ISPC/SOLAR's Petition for Formal Proceedings. The petition shows neither that the petitioners will suffer injury in fact that is of sufficient immediacy to entitle them to a formal hearing under Section 120.57, Florida Statutes, nor that their alleged substantial injury is of a type or nature that the proceeding is designed to protect.

ISPC is a privately-owned Florida corporation that finances retail sales of solar water heating products for Florida consumers. SOLAR is a privately-owned Florida corporation that distributes solar water heating equipment at wholesale throughout Florida. They allege that the failure of TECO to establish a solar water heating program in its service area will reduce sales of solar water heating equipment and thus negatively affect their business and the solar industry in Florida. Therefore, ISPC and SOLAR state, their substantial interests will be affected by the our decision to approve TECO's demand-side management plan without a solar water heating incentive plan.

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 demonstrate a substantial interest. We find that ISPC/Solar's petition for formal hearing in this case fails to meet either requirement of the test.

A. Injury in Fact

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, *supra.*; 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 our decision in the Order. Village Park, 506 So.2d at 433.

It appears to us that ISPC/SOLAR's alleged injury because TECO does not have a solar water heating incentive program is speculative. TECO has never had a solar water heating incentive plan, and it is virtually impossible to measure what benefit ISPC/SOLAR would have gained if it did, let alone what harm has beset ISPC/Solar because it doesn't. Allegations as to future economic detriment are too remote to establish standing. See, Florida Society of Ophthalmology v. State Board of Optometry, 532 So.2d 1279 (Fla. 1st DCA 1988) (Economic interests are not of sufficient "immediacy" to establish an injury in fact). The manner in which ISPC's and Solar's interests are affected by the lack of a program depends ultimately upon factors extraneous to these proceedings and upon consumer reactions. ISPC finances the wholesale purchase of SOLAR equipment which in turn is sold to retail customers of TECO by licensed contractors and retailers. SOLAR provides heating equipment to licensed contractors and other retail outlets. ISPC and SOLAR, therefore, are at least two steps removed from TECO customers who might have participated in an incentive program if there were one. ISPC/Solar have not shown that they have sustained actual injuries at the time of filing their petition, or that they are immediately in danger of sustaining direct injury as a result of the challenged Commission action. See, Village Park, 506 So.2d at 433. Therefore, ISPC/SOLAR's Joint Petition does not meet the first prong of the

Agrico test. Failure to satisfy one prong of the Agrico test is sufficient to find that ISPC/Solar do not have standing to protest our PAA order; but as explained below, ISPC and Solar also fail to satisfy the second prong of the Agrico test.

B. Zone of Interest

The Agrico standing test also requires that the injury must be of the type or nature that the proceeding is designed to protect. 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).

ISPC/ Solar argue that their economic interests fall within the zone of interest of the Florida Energy Efficiency and Conservation Act (FEECA), Sections 366.80-.85, Florida Statutes. They claim that the enhancement of competition between the solar energy industry and other types of energy providers is what FEECA was intended to accomplish. TECO argues that ISPC/Solar's interest in enhancing their prospects for the financing and sale of solar water heating products is not an interest that FEECA was designed to protect.

We do not agree with ISPC/SOLAR's position. While FEECA encourages the use of solar energy and other renewable resources, it was not designed to protect the competitive economic interests of the solar industry. ISPC/ SOLAR's interest in this proceeding is beyond the scope of the energy conservation purposes FEECA was designed to promote and protect. ISPC/SOLAR fail to meet the zone of interest requirement of the Agrico standing test, and we therefore dismiss their Joint Petition for a formal proceeding.

Peoples' Petition on Proposed Agency Action

We also deny Peoples Petition on Proposed Agency Action. The petition does not show that Peoples will suffer injury-in-fact that is of sufficient immediacy at this time to entitle it to a formal hearing under Section 120.57, Florida Statutes. 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. Peoples' allegations of harm are very speculative at this point in the process.

Peoples requests a hearing ". . . on issues relating to potentially discriminatory provisions of the electric utilities' DSM plans and programs." Peoples states that it believes TECO's program participation standards will discriminate against customers who use natural gas. Peoples states that "until the standards are filed, Peoples cannot know whether they are discriminatory or objectionable." Peoples argues that because we have instructed our staff to administratively approve the program participation standards when they are filed, Peoples will not have an opportunity to protest the standards it finds objectionable.

Peoples' speculative concerns about the content of the utilities' program participation standards do not demonstrate injury in fact of sufficient immediacy to establish a substantial interest that will be affected by the our approval of FPC's conservation programs themselves. See International Jai-Alai Players, 561 So.2d at 1226. (Abstract injury is not enough. The injury or threat of injury must be both real and immediate, not conjectural or hypothetical). We therefore deny Peoples' petition, because it is based on a speculative concern that the implementation of the plan through TECO's program participation standards may be discriminatory. We are, nevertheless, sensitive to Peoples' concern that TECO's program participation standards may be objectionable in some way. Therefore we will permit Peoples to file a petition requesting our review of TECO's participation standards and procedures after TECO has filed them, if Peoples finds the standards objectionable.

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 Tampa Electric Company and the Legal Environmental Assistance Foundation resolving LEAF's protest of Order No. PSC-95-0691-FOF-EI is approved. It is further

ORDERED that the Joint Petition for Formal Proceedings by the Independent Savings Plan Company and Solar City, Inc. is denied. It is further

ORDERED that Peoples Gas System, Inc.'s Petition on Proposed Agency Action 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 shall remain open until the Commission has reviewed Tampa Electric Company's demand-side management program participation standards and procedures, if Peoples files a petition for such a review.

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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

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

MACFARLANE AUSLEY FERGUSON & McMULLEN

ATTORNEYS AND COUNSELORS AT LAW

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400 CLEVELAND STREET
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CLEARWATER FLORIDA 34615
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September 21, 1995

HAND DELIVERED

IN REPLY REFER TO

Tallahassee

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Approval of Demand-Side Management Plan of
Tampa Electric Company; FPSC Docket No. 941173-EG

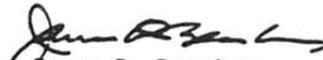
Dear Ms. Bayo:

Enclosed for filing in the above docket, are the original and fifteen (15) copies of a Stipulation between Tampa Electric Company and the Legal Environmental Assistance Foundation, Inc.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,


James D. Beasley

JDB/pp
Enclosures

cc: All Parties of Record (w/enc.)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Approval of Demand-Side)
Management Plan of TAMPA) DOCKET NO. 941173-EG
ELECTRIC COMPANY.) FILED: September 21, 1995

STIPULATION

Tampa Electric Company ("Tampa Electric" or "the company") and the Legal Environmental Assistance Foundation, Inc. ("LEAF") hereby stipulate and agree as follows:

Purpose of this Stipulation

This Stipulation is entered into between Tampa Electric Company ("Tampa Electric") and 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. 941173-EG and reflects a negotiated settlement of all issues between Tampa Electric and LEAF in this docket. Tampa Electric 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 either Tampa Electric's or LEAF's position in any other proceeding before this Commission, Tampa Electric and LEAF agree and stipulate as follows:

1. Tampa Electric confirms that the assumptions underlying its DSM Plan are solely the assumptions stated in the goals case CEGRR, Docket No. 930551-EG and in such Plan. Tampa Electric agrees to seek Public Service Commission approval of its monitoring and evaluation ("M & E") plan to verify these assumptions

(including any assumptions listed in Attachment "A" that are reasonably applicable for each conservation program being monitored and evaluated) and, once the plan is approved, to conduct M & E in accordance with such plan. The parties recognize that subsequently developed information in support of Tampa Electric's future conservation program filings and program modifications may be based on different assumptions.

2. Tampa Electric agrees to continue to deliver information on low-cost energy measures such as low-flow shower heads, aerated faucets and water heater wraps within the design of the standard residential energy audit procedure. Tampa Electric will endeavor to work closely with the City of Tampa and Hillsborough County water utility departments on joint delivery of water and energy conservation activities that are RIM cost effective for Tampa Electric.

3. Tampa Electric will reasonably promptly amend its procedures and standards to require as a condition of any incentive for HVAC equipment installed by participating contractors or other persons eligible for any incentive, that the contractor or other person applying for the incentive certify in writing that the HVAC equipment installed is in accordance with the manufacturer's specifications for proper size, air flow, refrigerant type and charge. Tampa Electric may, in its sole discretion, inspect such installations as it deems appropriate.

4. Tampa Electric will provide LEAF with a detailed review of current Tampa Electric low-income customer practices. By April

1 of each year Tampa Electric will summarize annually to LEAF on efforts to expand opportunities with weatherization agencies to enhance our existing energy efficiency-related programs for low-income customers.

5. Tampa Electric will reasonably promptly amend its procedures and standards to clarify that the company will evaluate commercial HVAC/CFC early retirements in the context of CFC phase-out requirements as part of its Conservation Value Program. By April 1 of each year Tampa Electric will provide an annual summary of its HVAC/CFC retirement activities to LEAF.

6. Nothing in this Stipulation shall be construed as requiring Tampa Electric to implement or to continue to offer any DSM option or program that is not cost-effective under the Rate Impact Measure, Total Resource Cost, and Participants tests; to modify or to refrain from seeking modification of the conservation goals established for Tampa Electric in Order No. PSC-94-1313-EG, to modify its proposed DSM Plan or to refrain from seeking modification of its DSM Plan.

7. In consideration of Tampa Electric's commitment to the above, LEAF agrees: to immediately withdraw from Tampa Electric's DSM Plan docket, now pending before the FPSC in Docket No. 941173-EG; not to participate further in Docket No. 941173-EG, including the review and approval of Tampa Electric's program standards arising from Docket No. 941173-EG and review and approval of any Tampa Electric monitoring and evaluation plan required by the Commission in Docket No. 941173-EG.

8. Neither party to this Stipulation concedes the validity of the argument or positions urged by the other party. However, the approval of this Stipulation in compliance with its provisions will completely resolve all of the matters at issue between LEAF and Tampa Electric in this docket.

9. This Stipulation shall become null and void in the event it is not approved in its entirety by the Florida Public Service Commission.

10. This Stipulation may not be modified except by the written consent of LEAF and Tampa Electric.

11. This Stipulation shall be subject to the jurisdiction of the Florida Public Service Commission.

12. The parties hereto shall not seek reconsideration or judicial appeal of the Commission's approval of this Stipulation.

DATED this 21st day of September 1995.

Debra Swim

DEBRA SWIM
Legal Environmental Assistance
Foundation
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Tallahassee, FL 32303

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ATTORNEYS FOR TAMPA ELECTRIC
COMPANY

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 a true and correct copy of the foregoing Stipulation, has been furnished by Hand Delivery (*) or by United States Mail, this 21st day of September, 1995 to the following:

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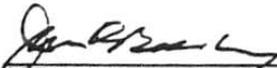
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