

Ruth Nettles

080407-EG

**From:** LOWE, AMY [Amy.Lowe@fpl.com]  
**Sent:** Thursday, January 21, 2010 4:13 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Katherine Fleming; E. Leon Jacobs; sclark@radeylaw.com; Paul Lewis; John T. Burnett; suzannebrownless@comcast.net; jbeasley@ausley.com; george@cavros-law.com; srg@beggslane.com; cbrowder@ouc.com; ryoung@yvlaw.net; milta@jea.com; nhorton@lawffa.com; sdriteno@southernco.com; jmcwhirter@mac-law.com; vkaufman@kagmlaw.com; jmoyle@kagmlaw.com; Cano, Jessica; Guyton, Charles A.; Anderson, Bryan; tbuford@yvlaw.net; regdept@tecoenergy.com; jeremy.susac@myflorida.com  
**Subject:** Electronic Filing - Dockets # 080407, 080408, 080409, 080410, 080411, 080412 and 080413  
**Attachments:** FPL's Response in Opposition to NRDC-SACE Motion for Reconsideration.pdf; FPL's Response in Opposition to NRDC-SACE Motion for Reconsideration.doc

**Electronic Filing**

a. Person responsible for this electronic filing:

Jessica A. Cano, Esq.  
 Florida Power & Light Company  
 700 Universe Boulevard  
 Juno Beach, FL 33408  
 (561) 304-5226  
[Jessica.Cano@fpl.com](mailto:Jessica.Cano@fpl.com)

b. Dockets No. 080407, 080408, 080409, 080410, 080411, 080412 and 080413

IN RE: Commission review of numeric conservation goals

c. The documents are being filed on behalf of Florida Power & Light Company.

d. There are a total of seven (7) pages.

e. The document attached for electronic filing is:

**FLORIDA POWER & LIGHT COMPANY'S RESPONSE IN OPPOSITION TO NRDC & SACE'S MOTION FOR RECONSIDERATION**

*See attached file(s):*

*FPL's Response in Opposition to NRDC-SACE Motion for Reconsideration.doc*  
*FPL's Response in Opposition to NRDC-SACE Motion for Reconsideration.pdf*

Regards,  
 Amy Lowe, CLA  
 Certified Legal Assistant  
 Senior Legal Assistant to  
 Bryan Anderson, Senior Attorney  
 Florida Power & Light Company  
 Office: (561) 304-5608 Fax: (561) 691-7135  
 Email: [amy.lowe@fpl.com](mailto:amy.lowe@fpl.com)

DOCUMENT NUMBER-DATE

00517 JAN 21 0

FPSC-COMMISSION CLERK

**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 (Orlando Utilities Commission)	Docket No. 080412-EG
In re: Commission review of numeric conservation goals (JEA)	Docket No. 080413-EG
	Filed: January 21, 2010

**FLORIDA POWER & LIGHT COMPANY'S RESPONSE IN OPPOSITION  
TO NRDC & SACE'S MOTION FOR RECONSIDERATION**

Florida Power & Light Company ("FPL"), by and through its undersigned counsel, and pursuant to Rule 25-22.060(3), Florida Administrative Code, responds in opposition to the Motion for Reconsideration filed by the Natural Resources Defense Council ("NRDC") and the Southern Alliance for Clean Energy ("SACE"), and in support states:

1. FPL remains committed to implementing cost-effective conservation that benefits all of its customers. On January 14, 2010, NRDC and SACE filed an Opposition to Progress Energy Florida, Inc's ("PEF's") Motion for Reconsideration and its own Motion for Reconsideration of Order No. PSC-09-0855-FOF-EG. FPL is hereby responding in opposition to

DOCUMENT NUMBER-DATE

00517 JAN 21 09

FPSC-COMMISSION CLERK

those portions of NRDC and SACE's filing that support its request for reconsideration of FPL's goals established by Order No. PSC-09-0855-FOF-EG.

2. The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law that the Commission overlooked or failed to consider in rendering its order. *See Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962); *Pingree v. Quaintance*, 394 So. 2d 162 (Fla. 1<sup>st</sup> DCA 1981). A motion is not an appropriate vehicle to reargue matters that have already been considered. *Sherwood v. State*, 111 So. 2d 96 (Fla. 3d DCA 1959), *citing State ex rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817 (Fla. 1<sup>st</sup> DCA 1958). Nor should a motion for reconsideration be granted "based upon an arbitrary feeling that a mistake may have been made". *Stewart Bonded Warehouse*, 294 So. 2d at 317.

3. NRDC and SACE fail to point to any issue of fact or law that was overlooked. Rather, they (i) reargue their position on the use of the two-year payback screen in the setting of DSM goals, and (ii) make an arbitrary assertion that if the use of technical potential to increase goals was in error, then the number of measures used to increase the goals must also be in error. Both of these assertions fail to meet the standard for reconsideration outlined under Florida law. Accordingly, NRDC and SACE's Motion should be denied.

#### **Re-argument Against Two-Year Payback Screen**

4. On page 8 of its Motion, NRDC and SACE ask that the Commission "reconsider the entire question" of whether the two-year payback screen should be used. The use of the two-year payback screen was an issue thoroughly litigated during this proceeding, despite the fact that the Collaborative – including NRDC and SACE – agreed to its use early in the process of analyzing the achievable potential for each investor owned utility. *See* Order No. PSC-09-0855-

FOF-EG, p. 9. As support for their request, NRDC and SACE refer to “reservations” expressed by some Commissioners in this case, “concerns” of a previous Commissioner in the 1994 DSM goal-setting docket, and arguments about the screen’s effect. NRDC-SACE Motion pp. 8-9. These are not points of fact or law supposedly overlooked by the Commission in choosing to accept, in part, the IOU’s use of the two-year payback screen.

5. First, the “reservations” of current Commissioners cited by NRDC and SACE do not demonstrate that the Commission overlooked or failed to consider anything in its order. To the contrary, these “reservations” indicate that the issue was vetted and a deliberate choice was made. Second, any concern expressed by one prior Commissioner in a past agenda conference is irrelevant to the decision made by this Commission in this docket. Third, NRDC and SACE attempt to reargue their position against the use of the two-year payback screen. They claim the two-year payback screen eliminates potential energy savings (a point considered and acknowledged by the Commission in its order, p. 9); the screen is not an effective means of addressing free riders (a point considered by the Commission and countered by the evidence cited in its order, p. 9); and the screen “bars consumers from accessing the most cost-effective energy efficiency measures” (a false claim not supported by any record evidence)<sup>1</sup>. None of these arguments meet the standard for reconsideration.

#### **Number of Measures Used to Increase Goals**

6. NRDC and SACE also argue that “if PEF’s reconsideration arguments are correct, then there are likely inadvertent errors regarding the Commissioners’ intention [sic] with respect to all four of these utilities, such as whether it intended to include ten residential measures or a

---

<sup>1</sup> The two-year payback screen does not bar customers from accessing these measures. All parties agree that measures screened out by the use of the two-year payback criterion are very cost-effective from a participant’s perspective. Therefore, those measures can and should be adopted by customers, without other utility customers paying incentives to those participants.

variable number.” NRDC-SACE Motion, p. 8. The PEF arguments referred to by NRDC and SACE are similar to the arguments made by FPL in its Motion for Reconsideration, regarding the Commission’s mistaken use of technical potential – as opposed to achievable potential – to increase the DSM goals.<sup>2</sup>

7. The basis for NRDC and SACE’s argument is found on pages 6-7 of their Motion. NRDC and SACE claim that if the Commission erred in adding technical potential to goals, it must also have erred by adding the “variable number [of measures] included in the staff tables” instead of adding ten measures for each utility. First, it is important to note that this argument is inconsistent with NRDC and SACE’s position that the Commission did not intend to approve specific measures. NRDC-SACE Motion, pp. 5, 6. Moreover, this argument is groundless. The tables provided by Staff and used by the Commission to increase each IOU’s goals clearly presented the top ten energy-saving measures removed by the two-year payback screen for each utility and the number of residential measures within each utility’s top ten list. There is no basis for the assertion that the Commission was unaware of the number of measures it was using to increase each utility’s goals, given the clarity of the tables included in Staff’s recommendation. *See Staff’s Nov. 20 Recommendation, Attachment 1.* Whether the Commission was adding the technical potential savings of those measures or the achievable potential savings of those measures, on the other hand, is *not* clear on the face of Staff’s tables. NRDC and SACE’s “arbitrary feeling that a mistake may have been made” fails to provide an appropriate basis for reconsideration. *See Stewart Bonded Warehouse, 294 So. 2d at 317.*

---

<sup>2</sup> FPL notes that NRDC and SACE “agree that it would have been preferable for the Commission to base its decision on the achievable potential savings.” NRDC-SACE Motion, p. 6.

WHEREFORE, FPL respectfully requests that the Commission deny NRDC and SACE's Motion for Reconsideration of Order No. PSC-09-0855-FOF-EG.

Respectfully submitted this 21st day of January,

Jessica A. Cano  
Attorney  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, FL 33408  
Telephone: (561) 304-5226  
Facsimile: (561) 691-7135

By: s/ Jessica A. Cano  
Jessica A. Cano  
Fla. Bar No. 0037372

CERTIFICATE OF SERVICE

I HEREBY CERTIFY Florida Power & Light Company's Response in Opposition to NRDC and SACE's Motion for Reconsideration of Order No. PSC-09-0855-FOF-EG was served by electronic delivery or U.S. Mail this 21st day of January, 2010, to the following:

Katherine E. Fleming, Senior Attorney  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850  
[keflemin@psc.state.fl.us](mailto:keflemin@psc.state.fl.us)

E. Leon Jacobs, Jr., Esquire  
Williams & Jacobs, LLC  
1720 S. Gadsden St., MS 14 Suite 201  
Tallahassee, FL 32301  
[Ljacobs50@comcast.net](mailto:Ljacobs50@comcast.net)  
Attorney for Southern Alliance for  
Clean Air/Natural Resources

Susan Clark, Esquire  
Radey Law Firm  
301 South Bronough Street, Suite 200  
Tallahassee, FL 32301  
Attorney for Itron  
[sclark@radeylaw.com](mailto:sclark@radeylaw.com)

Paul Lewis, Jr., Esquire  
106 East College Avenue, Suite 800  
Tallahassee, FL 32301-7740  
[Paul.lewisjr@pgnmail.com](mailto:Paul.lewisjr@pgnmail.com)  
Attorney for Progress Energy Florida,  
Inc

John T. Burnett, Esquire  
P.O. Box 14042  
Saint Petersburg, FL 33733-4042  
[John.Burnett@pgnmail.com](mailto:John.Burnett@pgnmail.com)  
Attorney for Progress Energy Service  
Company, LLC

Suzanne Brownless, Esquire  
Suzanne Brownless, P.A.  
1975 Buford Blvd.  
Tallahassee, FL 32308  
[suzannebrownless@comcast.net](mailto:suzannebrownless@comcast.net)  
Attorney for Florida Solar Coalition

Tampa Electric Company  
Ms. Paula K. Brown  
Regulatory Affairs  
P. O. Box 111  
Tampa, FL 33601-0111

James D. Beasley, Esquire  
Ausley Law Firm  
Post Office Box 391  
Tallahassee, FL 32302  
[jbeasley@ausley.com](mailto:jbeasley@ausley.com)  
Attorney for Tampa Electric Company

George S. Cavros, Esq.  
George S. Cavros, Esq. P.A.  
120 E. Oakland Park Blvd., Suite 105  
Ft. Lauderdale, Florida 33334  
[george@cavros-law.com](mailto:george@cavros-law.com)  
Co-Counsel for NRDC/SACE

Steven R. Griffin, Esquire  
Beggs & Lane Law Firm  
501 Commendencia Street  
Pensacola, FL 32502  
[srg@beggslane.com](mailto:srg@beggslane.com)  
Attorney for Gulf Power Company

Florida Public Utilities Company  
Mr. John T. English, Esquire  
P. O. Box 3395  
West Palm Beach, FL 33402-3395

Jacksonville Electric Authority  
Ms. Teala A. Milton  
V.P., Government Relations  
21 West Church Street, Tower 16  
Jacksonville, FL 32202-3158  
[mitta@jea.com](mailto:mitta@jea.com)

Executive Director  
Florida Energy and Climate Commission  
c/o Governor's Energy Office  
600 South Calhoun Street, Suite 251  
Tallahassee, Florida 32399-0001

John. W. McWhirter, Jr., Esquire  
PO Box 3350  
Tampa, Florida 33601  
[jmcwhirter@mac-law.com](mailto:jmcwhirter@mac-law.com)

Vicki G. Kaufman/Jon C. Moyle, Jr.  
c/o Keefe Law Firm, The Perkins House  
118 North Gadsden Street  
Tallahassee, FL 32301  
[vkaufman@kagmlaw.com](mailto:vkaufman@kagmlaw.com)  
Attorneys for Florida Industrial Power Users  
Group

Orlando Utilities Commission  
W. Chris Browder / Randy Halley  
100 W. Anderson Street  
Orlando, FL 32802  
[cbrowder@ouc.com](mailto:cbrowder@ouc.com)  
[rbrowder@ouc.com](mailto:rbrowder@ouc.com)

Roy C. Young/Tasha O. Buford  
Young Law Firm  
225 S. Adams Street, Suite 200  
Tallahassee, FL 32301  
[ryoung@yvlaw.net](mailto:ryoung@yvlaw.net)  
Attorneys for OUC

Norman H. Horton, Jr., Esquire  
Messer Law Firm  
Post Office Box 15579  
Tallahassee, FL 32317  
[nhorton@lawfla.com](mailto:nhorton@lawfla.com)  
Attorneys for Florida Public Utilities Co.

Gulf Power Company  
Ms. Susan D. Ritenour  
One Energy Place  
Pensacola, FL 32520-0780  
[sdriteno@southernco.com](mailto:sdriteno@southernco.com)

By: s/ Jessica A. Cano  
Jessica A. Cano