

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Adoption of Numeric Conservation Goals and Consideration of National Energy Policy Act Standards (Section 111) by FLORIDA POWER AND LIGHT COMPANY.)	DOCKET NO. 930548-EG
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In Re: Adoption of Numeric Conservation Goals and Consideration of National Energy Policy Act Standards (Section 111) by FLORIDA POWER CORPORATION.)	DOCKET NO. 930549-EG
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In Re: Adoption of Numeric Conservation Goals and Consideration of National Energy Policy Act Standards (Section 111) by GULF POWER COMPANY.)	DOCKET NO. 930550-EG
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In Re: Adoption of Numeric Conservation Goals and Consideration of National Energy Policy Act Standards (Section 111) by TAMPA ELECTRIC COMPANY.)	DOCKET NO. 930551-EG ORDER NO. PSC-95-0463-FOF-EG ISSUED: April 10, 1995

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER STRIKING EXCEPTIONS AND MOTION TO ALTER OR AMEND

BY THE COMMISSION:

Docket Nos. 930548-EG, 930549-EG, 930550-EG, and 930551-EG were opened to implement Rules 25-17.001 - .005, Florida Administrative Code. These rules require the setting of numeric demand side management (DSM) goals for electric utilities subject to the Florida Energy Efficiency and Conservation Act (FEECA), 366.80 - 366.82 and 403.519, Florida Statutes. In these dockets, we also considered implementation of two standards set forth in the

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Public Utilities Regulatory Policy Act of 1978 (PURPA) as amended by Subtitle B, Section 111, of the Energy Policy Act of 1992 (EPACT). These standards are commonly referred to as the "Integrated Resource Planning" and the "Income Neutrality" standards.

The hearing in these dockets was held on: June 1 - 4, 6 - 10, 17 - 18, 20 - 21, 27, 29 - 30, and July 12, 1994. These dates included public service hearings held in Tallahassee on June 1, in Miami on June 30, and in Tampa on July 12, 1994. Briefs and Posthearing Statements were filed on August 22, 1994. A special agenda conference to decide the issues was held on October 3, 1994.

On October 25, 1994, we issued Order No. PSC-94-1313-FOF-EG, setting conservation goals for Florida's four major investor-owned electric utilities. On November 9, 1994, the Legal Environmental Assistance Foundation, Inc. and Deborah B. Evans (collectively referred to hereinafter as LEAF), filed a motion for reconsideration of the Commission's order, and a request for oral argument. On November 9, 1994, the Florida Department of Community Affairs (DCA) filed an Adoption of LEAF's Motion for Reconsideration and a request for oral argument.

Responses to LEAF's motion for reconsideration were filed by Florida Power and Light Company and Tampa Electric Company. On November 21, 1994, Gulf Power Company (Gulf) filed a Motion for Enlargement of Time to respond to LEAF's motion which was denied, but which, to the extent it responded to the merits of LEAF's motion, was treated as Gulf's response.

In its 44 page Motion for Reconsideration, LEAF asserted that the Commission erred in the following respects:

1. In failing to directly rely on data found in the utilities' cost-effectiveness goals results reports (CEGRRs);
2. In making factual errors in comparison of cost-effective achievable potential;
3. In the use of the word "negligible" to describe the difference between rate impact measure (RIM) and total resource cost (TRC) based goals;
4. In rejecting the Synergic Resources Corporation's (SRC) Best Practices benchmark;
5. In setting pass-fail goals instead of aspirational goals;

6. In interpreting the term "cost-effectiveness" inconsistently with the conservation goals rule; and
7. In placing dashes instead of numbers in Gulf's commercial/industrial goals.

On January 12, 1995, we issued Order No. PSC-95-0075-FOF-EG, Granting in Part and Denying in Part Reconsideration. In our Order, we addressed each point made by LEAF separately and granted reconsideration insofar as numeric errors contained in Order No. PSC-94-1313-FOF-EG, in the compilation of data for Gulf Power Company and Florida Power and Light Company, were corrected. Reconsideration was denied in all other respects.

On January 25, 1995, LEAF filed Exceptions To Order Or, In The Alternative, Motion To Alter Or Amend Order.

On February 1, 1995, Tampa Electric Company filed a Memorandum In Opposition To LEAF's Exceptions Or, In The Alternative, Motion To Alter Or Amend. On February 6, 1995, Florida Power and Light Company filed a Response To LEAF's Exceptions, Or In The Alternative, Motion To Alter Or Amend. On February 6, 1995, Gulf Power Company filed a Motion To Strike LEAF's Exceptions, Or Alternatively, Motion To Alter Or Amend.

On February 13, 1995, LEAF filed its Notice of Appeal of Orders PSC-94-1313-FOF-EG and PSC-95-0075-FOF-EG, to the Florida Supreme Court. On February 23, 1995, LEAF filed its Directions To The Clerk And Designations To the Reporter, in order to have the record transmitted to the Florida Supreme Court.

It would not be appropriate to entertain LEAF's Exceptions To Order Or, In The Alternative, Motion To Alter Or Amend Order for the following reasons:

I. THE COMMISSION HAS RELINQUISHED JURISDICTION OVER THESE DOCKETS TO THE FLORIDA SUPREME COURT

On February 13, 1995, LEAF filed its Notice of Appeal of Orders PSC-94-1313-FOF-EG (Order Setting Conservation Goals) and PSC-95-0075-FOF-EG (Order Granting in Part and Denying in Part Reconsideration). We have relinquished jurisdiction over these dockets to the Florida Supreme Court. We are therefore unable to address LEAF's exceptions and LEAF'S pleading is a nullity.

II. EVEN IF THE COMMISSION HAD JURISDICTION TO ENTERTAIN LEAF'S
PLEADING IT WOULD BE IMPROPER TO DO SO

A. Reconsideration of Reconsideration is Not Permitted by
Commission Rules

LEAF's motion is prohibited by Rule 25-22.060, Florida
Administrative Code, which provides in pertinent part:

The Commission will not entertain any motion for
reconsideration of any order which disposes of a motion
for reconsideration.

LEAF's motion is nothing more than a second request for
reconsideration in the guise of "exceptions". It should not be
entertained.

B. Exceptions to Final Commission Orders Are Not Permitted
by Commission Rules

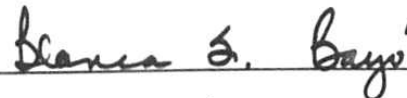
Our procedural rules do not allow the opportunity to file
exceptions to final orders. LEAF has previously argued that our
procedural rules are invalid because they do not permit parties to
file exceptions. This contention was rejected by the Florida
Division of Administrative Hearings in Legal Environmental
Assistance Foundation, Inc. v Florida Public Service Commission,
Case No. 93-02956RX, Final Order issued August 27, 1993, and by the
First District Court of Appeals without published opinion in Legal
Environmental Assistance Foundation, Inc. v Florida Public Service
Commission, 641 So 2d 1349 (Fla. 1 DCA, 1994).

Section 120.57(1)(b)4, Florida Statutes, does not require the
Commission to entertain exceptions to its final orders because
appellate review is the appropriate statutory remedy for parties
aggrieved by an agency's final order. Rule 25-22.056, Florida
Administrative Code, offers parties the opportunity to file
exceptions to every proposed or recommended order. However, when
we hear and decide a case as the finder of fact and the trier of
law, the Administrative Procedure Act does not require issuance of
a proposed or recommended order. See Calfin v State, Department of
Business Regulation, 391 So. 2d 739, 741 (Fla. 4th DCA 1980) ("It
would be absurd to require the agency head to submit a recommended
order to himself and thus require him to accept or reject his own
finding of fact.") If there is no proposed or recommended order to
review, there is no need to file exceptions, and nothing to which
parties may except. Our procedural rules are not deficient for
failure to allow parties to except to final orders in those cases,
and we will not entertain LEAF's exceptions in these dockets.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Exceptions To Order, Or In The Alternative, Motion To Alter Or Amend Order, filed by the Legal Environmental Assistance Foundation, Inc., on January 25, 1995, are hereby stricken.

By ORDER of the Florida Public Service Commission, this 10th day of April, 1995.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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MAP

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: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting 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

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First District Court of Appeal in the case of a water and/or wastewater 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 Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.