



The Independent Savings Plan Company

Robert B. Hicks, Esquire
Chief Administrative Officer

ORIGINAL
FILE COPY

August 7, 1995

VIA HAND DELIVERY

Blanca Bayo, Director
Division of Records and Reporting
Public Service Commission
2540 Shurmart Oak Blvd.
Tallahassee, Florida 32399-0850

RE: Memorandum in Response to Motions to Dismiss and Motion
in Opposition
Docket Nos. **941170-EG**, 941171-EG, 941172-EG, 941173-EG

Dear Ms. Bayo:

Enclosed for filing is the above referenced document,
together with 15 copies.

Please stamp the copy of this letter to serve as a receipt
for filing of the Memorandum.

If you have any questions, please feel free to call me.

Sincerely,

Robert B. Hicks

- ACK
- AFA
- APP
- CAF
- CMU
- CTR
- EAG
- LEG 1
- LIN 5
- OFC
- RCH
- SEC 1
- WAS Enclosures
- OTH

RECEIVED & FILED

DIVISION OF RECORDS

DOCUMENT NUMBER - DATE

07515 AUG-7 95

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL
FILE COPY

In Re: Approval of Demand-Side
Management Plan of Florida Power
& Light Company.

DOCKET NO. 941170-EG

In Re: Approval of Demand-Side
Management Plan of Florida Power
Corporation.

DOCKET NO. 941171-EG

In Re: Approval of Demand-Side
Management Plan of Gulf Power
Company.

DOCKET NO. 941172-EG

In Re: Approval of Demand-Side
Management Plan of Tampa
Electric Company.

DOCKET NO. 941173-EG

**MEMORANDUM IN RESPONSE TO MOTIONS
TO DISMISS AND MOTION IN OPPOSITION**

The Independent Savings Plan Company ("ISPC") and Solar City, Inc. ("SOLAR") submit this memorandum in response to the Motions to Dismiss filed by Tampa Electric Company ("TECO") and Florida Power Corporation ("FPC"), and the Motion in Opposition filed by Florida Power & Light Company ("FP&L") (hereinafter collectively referred to as "Motions to Dismiss").

The three Motions to Dismiss seek to show that ISPC and SOLAR lack standing to request a hearing pursuant to Section 120.57, Florida Statutes. Also, FP&L argues that ISPC and SOLAR are seeking to relitigate issues which were litigated in the Goals proceeding. For the reasons set forth below, ISPC and

DOCUMENT NUMBER DATE

.07515 AUG-78

FPSC-RECORDS/REPORTING

SOLAR have standing to request a hearing pursuant to Section 120.57, Florida Statutes, and do not seek to relitigate issues which have already been litigated.

Relitigation

FP&L mistakenly assumes that ISPC and SOLAR want to relitigate issues addressed during the Goals setting docket. This is not the case. ISPC and SOLAR seek a hearing to determine whether the demand-side management ("DSM") plans submitted in response to Order No. PSC-94-1313-FOF-EG, Order Setting Conservation Goals ("Goals Order"), and which the Commission is seeking to approve in Order No. PSC-95-0691-FOF-EG, Notice of Proposed Agency Action Order Approving Demand-Side Management Plans ("PAA Order"), are in compliance with the mandates contained in the Goals Order. Also, ISPC and SOLAR seek to determine whether the proposed DSM plans meet the criteria set forth in Order No. 22176 and in the PAA Order. Finally, ISPC and SOLAR want to determine what circumstances, if any, have changed to reverse FP&L's 1990 decision to propose the continuance of its residential solar water heating program and the Commission's subsequent decision to approve the program.

The Goals Order allows a utility to propose solar programs and further allows for such programs to qualify for lost revenue recovery and stockholder incentives. Goals Order at 23. This is so, even if the selected programs may fail the RIM Test. Id.

In the Goals Order, the Commission again recognized the contribution FP&L's residential solar water heating program makes toward advancing FEECA's policy objectives. Goals Order at 26. Also, the Commission mandated that FP&L develop alternative funding sources to promote the installation of solar water heating. Id. at 26. ISPC and SOLAR seek to explore the reasons why FP&L's proposed DSM plan does not continue the existing residential water heating program and whether FP&L has complied with the Commission's directive to develop alternative funding sources to promote the installation of solar water heating.

In the Goals Order, the Commission also mandated that FPC, TECO and Gulf Power Company ("GULF") explore the development of alternative funding sources to promote the installation of solar water hearing. Goals Order at 27. ISPC and SOLAR seek to determine whether FPC, GULF, and TECO have complied with this mandate.

Therefore, ISPC and SOLAR are not seeking to relitigate issues, but simply want a hearing to determine whether the DSM plans proposed by FP&L, GULF, TECO and FPC comply with the requirements set forth in the Goals Order.

Standing

In the Motions to Dismiss, TECO, FP&L and FPC argue that ISPC and SOLAR do not have standing to request a Section 120.57 hearing because they fail to demonstrate that their substantial

interests will be affected by the Commission's proposed agency action under the test set forth in Agrico Chemical v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981). To demonstrate a substantial interest under the test, one "must show 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." Agrico at 482. For the following reasons, ISPC and SOLAR meet the Agrico test.

Injury in Fact

As explained in ISPC's and SOLAR's Joint Petition on Proposed Agency Action, ISPC's and SOLAR's business interests are directly tied to and dependent on the existence of a viable market for solar water heating equipment in Florida. ISPC's primary business is financing solar water heating equipment sales. SOLAR is the largest wholesale distributor of solar equipment in Florida.

The discontinuance of FP&L's existing residential solar water heating program and the failure of FPC, GULF, and TECO to provide residential solar water heating programs will result in a reduction in total sales of residential water heating equipment in Florida. This will reduce the sales made by SOLAR and the financings provided by ISPC.

The absence (as opposed to the discontinuance) of a residential solar water heating program in the DSM plans of TECO, FPC and GULF results in a less direct kind of injury, but an injury none-the-less. The Commission mandated that FPC, TECO and GULF explore funding sources which would promote solar water heating. This kind of exploration is inevitably a creative process, and economic opportunities which are lost as a result of a failure to adequately explore (and injuries from those lost opportunities) are inherently prospective since they can arise only after the exploration process is accomplished and then evaluated. If such prospective injuries are not sustainable, programs developed as a result of any Commission order which mandates the exploration of new programs can never be challenged for their inadequacies.

The reduction in sales is an injury in fact under the Agrico test. It will be immediate and substantial. This is not a case where the injury is speculative or remote, as advocated in the Motions to Dismiss. See, e.g., International Jai-Alai Players Association v. Florida Pari-Mutual Commission, 561 So.2d 1224 (Fla. 3d DCA 1990); Village Park Mobile Home Association, Inc. v. Department of Business Regulation, 506 So.2d 426 (Fla. 1st DCA 1987); In Re: Peoples Gas System, Inc.'s Petition for Approval of Load Profile Enhancement Rider to Rate Schedules RS, SGS, GS, GSLV-1, GSLV-2 and GTSLV-2, Order No. PSC-95-0348-FOF-GU, issued March 13, 1995. In fact, ISPC's and SOLAR's injuries are exactly the type of economic injury found by the Agrico court to satisfy

the injury in fact requirement: "Petitioners in the instant case were able to show a high degree to potential economic injury." Agrico at 482.

The injuries to ISPC and SOLAR are not speculative because they are dependent on the actions of third parties, as FP&L argues in the Motions to Dismiss. Due to the nature of ISPC's business and the extent of SOLAR's sales in Florida, any reduction in sales of residential water heating equipment will necessarily reduce the sales made by SOLAR and the financings provided by ISPC.

Nature of Injury

The injuries to ISPC and SOLAR are of the type or nature the proceeding is designed to protect. Section 366.81, Florida Statutes, provides, in part, that "the Legislature intends that the use of solar energy ... be encouraged." See also Section 288.041 and 288.0415, F.S. Also, the provisions of Section 366.81 "are to be liberally construed in order to meet the complex problems of reducing and controlling the growth rates of electric consumption" Section 366.81, F.S.

The failure of FP&L, TECO, GULF and FPC to propose any viable solar water heating program runs counter to the Legislature's clearly-stated policy that the use of solar energy be encouraged. FP&L's discontinuance of its water heating

program, coupled with the failure of TECO, FPC and GULF to provide any residential solar water heating program will not only fail to encourage solar energy, but will result in solar energy being discouraged. The existence of utility-sponsored solar programs, such as FP&L's program, serve to give the solar industry legitimacy in the eyes of the public and the discontinuance of the FP&L program will result in the reverse being true.

In the Motions to Dismiss, FP&L, TECO and FPC argue that competitive economic interests are not the kind of interest that this proceeding is designed to protect. It is true that, on some level, solar energy is a competitor of the electric utilities. However, the enhancement of this competition is exactly what the Legislature intends to accomplish by the provisions of Section 366.81, 288.041 and 288.0415, Florida Statutes. ISPC and SOLAR are integral components of the solar industry in Florida. Therefore, their interests are part of the interest this proceeding is intended to protect. To argue otherwise would be to admit that no one involved in the solar energy industry has any interests protected by Section 366.81, Florida Statutes.

Conclusion

For the reasons set forth above, ISPC and SOLAR are entitled to be granted a Section 120.57 hearing.

Respectfully submitted,



Robert B. Hicks
6302 Benjamin Road, Suite 414
Tampa, Florida 33634
813/881-1988
ATTORNEY FOR THE
INDEPENDENT SAVINGS PLAN
COMPANY AND SOLAR CITY, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Joint Petition on
Proposed Agency Action has been furnished by U.S. Mail this 7th
day of August, 1995 to the following:

James A. McGee
J. Wesley Bailey
Post Office box 14042
St. Petersburg, Florida 33733-4042

Martha Carter Brown, Esquire
Division of Legal Services
Florida Public Service Commission
Gunter Building, Room 370
Tallahassee, Florida 32399-0850

Floyd R. Self
Messer, Vickers et al
Post Office box 1876
Tallahassee, Florida 32302

Glyn Hazelden
City Gas Company of Florida
955 E. 25th Street
Hialeah, Florida 33013-3498

Competitive Energy Producers Assoc.
c/o Suzanne Brownless
2546 Blairstone Pines Drive
Tallahassee, Florida 32301

David Russ
Strategic Planning
Department of Community Affairs
2740 Centerview Drive
Tallahassee, Florida 32399-2100

Deborah Evans
12307 Old Country Road
Wellington, Florida 33414

Michelle Hershel
Florida Electric Cooperative Assoc.
Post Office Box 590
Tallahassee, Florida 32302

Florida Industrial Power Users Group
c/o McWhirter, Reeves, McGlothlin,
Davidson & Bakas, P.A.
Vicki Kaufman
315 South Calhoun Street
#716
Tallahassee, Florida 32301-1838

E.C. Shreve
Florida Municipal Electric Association
Post Office Box 10114
Tallahassee, Florida 32302

Bill Feaster
Florida Power & Light Company
810 First Florida Bank
215 South Monroe Street
Tallahassee, Florida 32301-1888

Florida Solar Energy Industries Association
6208 West Corporate Oaks Drive
Crystal River, Florida 34429

P.G. Para
Jacksonville Electric Authority
21 W. Church Street, 7th Floor
Jacksonville, Florida 32202

John Stark & Associates, Inc.
3706 Bobbin Brook Circle
Tallahassee, Florida 32312

Robert Scheffel Wright
Landers & Parsons
Post Office Box 271
Tallahassee, Florida 32302

Debra Swim
Legal Environmental Assistance
Foundation, Inc.
1115 N. Gadsden Street
Tallahassee, Florida 32303-6327

Thompson/Wahlen
MacFarlane, Ausley, Ferguson
& McMullen
Post Office Box 391
Tallahassee, Florida 32302

Joseph McGlothlin
McWhirter, Reeves, McGlothlin,
Davidson & Bakas, P.A.
315 South Calhoun Street
#716
Tallahassee, Florida 32301

John McWhirter
McWhirter, Reeves, McGlothlin,
Davidson & Bakas, P.A.
Post Office Box 3350
Tampa, Florida 33601-3350

Frederick Bryant
Moore, Williams, Bryant,
Peebles & Gautier, P.A.
Post Office Box 1169
Tallahassee, Florida 32302

John Roger Howe
Office of the Public Counsel
The Florida Legislature
111 W. Madison Street
#812
Tallahassee, Florida 32399-1400

Terry Black
Pace University Energy Project
78 North Broadway
White Plains, New York 10603

Jack E. Uhl
Peoples Gas System, Inc.
Post Office Box 2562
Tampa, Florida 33601-2562

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

The Center for Energy &
Economic Development
1800 Diagonal Road
#370
Alexandria, Virginia 22314

Assistant General Counsel/Gollomp
U.S. Department of Energy
1000 Independence Avenue, SW
#6D-033
Washington, DC 20585

J.E. McIntyre
West Florida Natural Gas Company
Post Office Box 1460
Panama City, Florida 32402-1460

J.S. Bell
City Hall
City of Tallahassee
300 S. Adams Street
Tallahassee, Florida 32301-1766

Florida Client Counsel
c/o Benjamin Ochshorn, Esquire
2121 Delta Blvd.
Tallahassee, Florida 32303

Michael Chaney
Florida Housing Coalition
Post Office Box 932
Tallahassee, Florida 32302

James Fama
Florida Power Corporation
Post Office 14042
St. Petersburg, Florida 33733

Mr. Raymond O. Manasco, Jr.
Gainesville Regional Utilities
City of Gainesville
Post Office Box 147117
Station A-138
Gainesville, Florida 32614-7117

Bruce May
Holland & Knight
Post Office Drawer 810
Tallahassee, Florida 32302

Kenneth Hoffman
Post Office Box 551
Tallahassee, Florida 32302

Richard Zambo, Esquire
598 SW Hidden River Avenue
Palm City, Florida 34990

Jeffery Stone
Beggs & Lane
Post Office Box 12950
Pensacola, Florida 32576-2950

Jack L. Haskins
Gulf Power Company
Post Office Box 13470
Pensacola, Florida 32591-3470

David Dismukes/Steven Warn
Project for an Energy Efficient Florida
707 E. Park Avenue
Tallahassee, Florida 32301

James Beasley
MacFarlane, Ausley, Ferguson
& McMullen
Post Office Box 391
Tallahassee, Florida 32302

Russell Chapman
Regulatory Affairs Department
Tampa Electric Company
Post Office Box 111
Tampa, Florida 33601-0111



Robert B. Hicks