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Attachments: FPL's Motion for Reconsideration of Order No. PSC-09-0855-FOF-EG.pdf; FPL's Motion for Reconsideration of Order No. PSC-09-0855-FOF-EG.doc

Electronic Filing

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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 ten (10) pages.

e. The document attached for electronic filing is:

Florida Power & Light Company's Motion for Reconsideration of Order No. PSC-09-0855-FOF-EG

See attached file(s):

FPL's Motion for Reconsideration of Order No. PSC-09-0855-FOF-EG.pdf and FPL's Motion for Reconsideration of Order No. PSC-09-0855-FOF-EG.doc

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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 14, 2010

**FLORIDA POWER & LIGHT COMPANY'S
MOTION FOR RECONSIDERATION OF ORDER NO. PSC-09-0855-FOF-EG**

Florida Power & Light Company ("FPL"), pursuant to Rule 25-22.060, Florida Administrative Code, hereby moves for reconsideration of that portion of Order No. PSC-09-0855-FOF-EG, issued on December 30, 2009, which increases the demand side management ("DSM") goals for FPL by adding the technical potential ("TP") savings associated with certain appropriately excluded measures to the achievable potential ("AP") savings of measures that passed the enhanced Total Resource Cost ("E-TRC") test. The grounds for FPL's motion are as follows:

INTRODUCTION AND BACKGROUND

FPL is committed to implementing cost-effective conservation that benefits all of its customers. FPL's industry-leading energy efficiency programs have allowed the company to avoid building 12 medium-sized power plants since 1980, more than any other utility in the nation. This has saved customers billions of dollars, reduced their fuel bills and avoided millions of tons of greenhouse gas emissions. FPL remains committed to pursuing and implementing cost-effective DSM. However, an oversight or error in Order No. PSC-09-0855-FOF-EG requires the filing of this Motion for Reconsideration.

On December 30, 2009, the Florida Public Service Commission ("Commission") issued Order No. PSC-09-0855-FOF-EG, setting DSM goals for FPL over a ten-year period. Those goals consist of (i) the amount of achievable potential DSM that passed the E-TRC test; (ii) additional capacity and energy savings attributable to four residential DSM measures that were excluded by the Collaborative's use of the two-year payback screen to account for free riders; and (iii) a spending cap equal to ten percent of FPL's average Energy Conservation Cost Recovery Clause expenses over the last five years for demand-side renewable energy programs.

FPL is filing this Motion for Reconsideration because the amount of capacity and energy savings added to FPL's goals for the four residential DSM measures initially excluded due to the use of the two-year payback screen are unachievable "technical potential" savings instead of "achievable potential" savings.¹ FPL believes this may have been inadvertent, given that FPL's goals must be "reasonably achievable." See Rule 25-17.0021(1), Fla. Admin. Code. Technical potential savings are not reasonably achievable. Accordingly, the Commission's quantification

¹ FPL is not waiving and reserves its right to appeal the Commission's order in this matter, including for example whether this aspect of setting goals fails to consider free riders. Regardless of such issues, the Commission's quantification of savings for the four referenced DSM measures is overstated, in error, and unsupported by

of this aspect of FPL's DSM goals is in error. When corrected to reflect record evidence concerning achievable potential, the Commission's order would restate FPL's goals to be 1,180.65 Summer MW, 513.16 Winter MW, and 2,406.24 Energy GWh.

ARGUMENT

1. The Standard for Reconsideration

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, e.g., Diamond Cab Co. of Miami v. King*, 146 So. 2d 889, 891 (Fla. 1962) (purpose of petition for reconsideration is to bring to an agency's attention a point of law or fact which it overlooked or failed to consider when it rendered its order); *Steward Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315, 317 (Fla. 1974) (granting petition for reconsideration should be based upon specific factual matters set forth in the record and susceptible to review); *see also, In re: Review of Florida Power Corporation's earnings, including effects of proposed acquisition of Florida Power Corporation by Carolina Power & Light*; Docket No. 000824-EI; Order No. PSC-01-2313-PCO-EI, November 26, 2001.

As described below, the Commission's order overlooked a specific factual matter set forth in the record and susceptible to review when it added savings associated with residential measures screened out by the use of the two-year payback criterion. The Commission used merely theoretical technical potential energy and demand savings data associated with the chosen residential measures, as opposed to achievable potential energy savings data, to increase FPL's goals. This fact was not discussed during the Commission's November 11, 2009 or

evidence.

December 1, 2009 agenda conferences nor was it addressed in Order No. PSC-09-0855-FOF-EG.

Accordingly, FPL respectfully submits that the standard for reconsideration has been met, and the Commission's order should be revised upon reconsideration.

2. The Savings Values Used to Increase the Goals Are A Theoretical Construct and Are Not Achievable Potential Values

The Commission's order has overlooked the fact that it was the technical potential savings that were added to FPL's goals by Order No. PSC-09-0855-FOF-EG – not achievable potential. Undisputed record evidence of the utilities and intervenors in this case clearly demonstrates that technical potential cannot be an appropriate basis for goals. DSM goals are required by Rule 25-17.0021(1), Fla. Admin. Code to be “reasonably achievable.” By the very definition of technical potential, discussed below, the portion of FPL's goals set by the Commission based on technical potential is not “reasonably achievable.”

The amount of savings the Commission added to FPL's goals, reflected on pg. 17 of Order No. PSC-09-0855-FOF-EG, was taken from Staff's November 20, 2009 recommendation. In Attachment 1 to that recommendation, Staff provided the “FPL Top Ten Free Riders Based on Energy Savings” and the Summer Demand, Winter Demand, and Annual Energy savings for each measure. The cited source for the savings reflected in that table is Exhibit 4, a stipulated exhibit consisting of several deposition transcripts and late-filed deposition exhibits. For FPL, Late Filed Deposition Exhibit 2 (included in Staff's stipulated Exhibit 4) provided the technical potential – not the achievable potential – associated with certain measures excluded by the two-year payback screen. Importantly, Late Filed Deposition Exhibit 2 included the following explanation:

Measures that were appropriately screened by the Collaborative's choice of the two-year payback criterion to address free-riders, as required by the DSM Goals rule, were not evaluated further. Consequently, Achievable Potential estimates

were not developed by Itron. Therefore, the only “savings” values that are available for these measures are Technical Potential values. As explained in the direct testimony of FPL Witness Haney, *Technical Potential is a theoretical construct which ignores real-world constraints such as availability, contractor/vendor capacity, cost and customer preferences. In other words, Technical Potential in no way reflects the energy efficiency potential that is achievable through actual voluntary programs. Therefore, Technical Potential values are meaningless in any comparison to proposed goals levels (or to any DSM value in any of the 4 DSM portfolios analyzed by FPL).* (emphasis added)

Yet it appears that the Commission’s order overlooks or fails to consider the fact that the added goals were based on technical potential, not achievable potential, requiring that FPL’s goals be recalculated upon reconsideration as described in this Motion.

The Commission’s DSM Rule requires that goals be reasonably achievable. According to Rule 25-17.0021(1), “[t]he goals shall be based on an estimate of the total cost effective kilowatt and kilowatt-hour savings *reasonably achievable* through demand-side management in each utility’s service area over a ten-year period.” (emphasis added) Undisputed record evidence shows that the technical potential of any measure is not reasonably achievable. Accordingly, it would be inappropriate to set goals based on the technical potential savings of any excluded measures.

The meaning of “technical potential” is clear, and its absolute inapplicability to setting goals is plainly established and not disputed in the record in this proceeding. Several witnesses testified about the meaning of “technical potential.” As explained by Mr. Rufo, who presented Itron, Inc.’s Technical Potential Study:

[I]t should be understood that technical potential is a theoretical construct that represents the upper bound of [energy efficiency] potential from a technical feasibility sense, regardless of cost, acceptability to customers, or normal replacement rates of equipment...technical potential does not account for other important real-world constraints such as product availability, contractor/vendor capacity, cost-effectiveness, customer preferences, or normal equipment replacement rates. In this way, technical potential does not reflect – and is not intended to reflect – the amount of EE potential that is achievable through

voluntary, utility programs and should not be evaluated as such.

Tr. 881 (Rufo). Witnesses Steven Sim and John Haney for FPL similarly testified that technical potential did not reflect savings that actually might be achievable through DSM programs. *See* Tr. 214 (Sim); Tr. 245-46 (Haney). Mr. Mosenthal, a witness for the Natural Resources Defense Council and the Southern Alliance for Clean Energy, also testified to the theoretical nature of technical potential. *See* Tr. 1318 (Mosenthal).

This evidence supports the Commission's finding in its order in this case that technical potential "is what is technically feasible, regardless of cost, customer acceptance, or normal replacement schedules." Order No. PSC-09-0855-FOF-EG, p. 6. However, the Commission in setting goals has overlooked this finding – and the fact that technical potential is not reasonably achievable – when it added the technical potential savings of excluded measures to FPL's DSM goals. As a result of this potentially inadvertent oversight, Order No. PSC-09-0855-FOF-EG establishes DSM goals that are based on technical potential, not achievable potential, and are therefore not reasonably achievable in violation of Rule 25-17.0021(1), Fla. Admin. Code. Accordingly, the Commission's standard for granting a motion for reconsideration is clearly satisfied, and the order should be revised to correct FPL's DSM goals.

The record in this proceeding demonstrates that at most 25.3% of the technical potential of these measures should be considered to be achievable potential. According to Itron Inc.'s final technical potential study for FPL, the total technical potential in FPL's service territory is 31,849 GWh. Composite Ex. 2 (item 42). Using the Commission's consultant Mr. Spellman's calculation of achievable potential that includes all measures appropriately eliminated by the two-year payback screen – an optimistically high calculation with which FPL does not entirely agree – the purported achievable potential in FPL's service territory is 8,067.5 GWh. Ex. 106

(RFS-20, as revised Aug. 10, 2009). This represents approximately 25.33% of FPL's technical potential. Accordingly, the record supports the conclusion that only 25.33% of the Summer MW, Winter MW, and Energy GWh savings of these four excluded measures could be added if "reasonably achievable" goals were to be set. Based upon this competent, substantial evidence in the record, FPL's DSM goals including the achievable potential of the top residential measures would be revised as follows:

	E-TRC	AP of Top Residential (TP x 25.33% conversion factor)	Total E-TRC + AP of Top Residential
Summer MW	1,073	107.65	1,180.65
Winter MW	482	31.16	513.16
Energy GWh	2,177	229.24	2,406.24

POSITIONS OF OTHER PARTIES

In accordance with Rule 28-106.204(3), Florida Administrative Code, FPL contacted counsel for each party in this docket to determine whether they object to this Motion. FPL is authorized to represent that Progress Energy Florida, Inc. and Gulf Power Company do not object to this Motion. FPL was unable to determine the positions of the remainder of the parties to this docket prior to the time of filing.

WHEREFORE, FPL respectfully requests that the Commission reconsider Order No. PSC-09-0855-FOF-EG, and revise the portion of goals attributable to the four residential measures initially excluded by the two-year payback screen to reflect the achievable potential of those measures. FPL's total DSM goals would then equal 1,180.65 Summer MW, 513.16 Winter MW, and 2,406.24 Energy GWh.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY Florida Power & Light Company's Motion for Reconsideration of Order No. PSC-09-0855-FOF-EG, was served by electronic delivery or U.S. Mail this 14th day of January, 2010, to the following:

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