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080408-EG

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**To:** Filings@psc.state.fl.us  
**Cc:** Burnett, John; Stright, Lisa  
**Subject:** Progress Energy Florida, Inc.'s Response in Opposition to NRDC/SACE'S MOTION FOR RECONSIDERATION  
**Attachments:** Document.pdf

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Docket No.: 080408-EG  
In Re: Commission Review of Numeric Conservation Goals  
(Progress Energy Florida, Inc.)

On behalf of Progress Energy Florida.

Consisting of 6 pages.

The attached document for filing is:  
PEF's Response In Opposition to NRDC/SACE'S Motion for Reconsideration.

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**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 18, 2010

**PROGRESS ENERGY FLORIDA, INC.'S RESPONSE IN OPPOSITION TO NRDC/SACE'S MOTION FOR RECONSIDERATION**

Progress Energy Florida, Inc. ("PEF" or the "Company"), hereby submits this Response in Opposition to NRDC/SACE's Motion for Reconsideration in this matter and states as follows:

1. On January 14, 2010, NRDC/SACE filed a consolidated response in opposition to PEF's January 12, 2010 motion for reconsideration along with its own motion for reconsideration. NRDC/SACE's motion for reconsideration begins on page 8 of their consolidated response/motion and asks the Commission to "reconsider the entire question of whether the two-year payback screen should be used at all and, if it is only willing to approve a portion of the two-year payback measures, consider other methods of doing this." Consolidated Response/Motion, Page 8, Paragraph 13.

2. In support of its motion asking the Commission to revisit its ruling on the use of a two-year payback screen and the method the Commission used to apply that screen in its order, NRDC/SACE provide the following three arguments:

1. Several Commissioners expressed “strong reservations” in this case regarding the two-year payback screen;
2. Commissioner Clark expressed concerns in a 1994 hearing; and
3. The two-year payback “simply does not make sense.”

Consolidated Response/Motion , Pages 8-9, Paragraph 15. As discussed in the following paragraphs, none of these three arguments meet the legal standard for reconsideration, and NRDC/SACE’s motion should be denied.

3. A motion for reconsideration must identify a point of fact or law that the Commission overlooked or failed to consider in rendering the order. In re: Petition for determination of need for electrical power plant in Taylor County by Florida Municipal Power Agency, JEA, Reedy Creek Improvement District, and City of Tallahassee, Order No. PSC 06-1028-FOF-EU, 2006 Fla. Puc Lexis 650 (Dec. 11, 2006), citing 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), and State ex. Rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1<sup>st</sup> DCA 1958). This is the “sole and only purpose” of a motion for reconsideration. Green, 105 So. 2d at 818.

Further, an evidentiary matter is not “overlooked” or “misapprehended” by the Commission merely because a movant says it was. “Frequent violations” masquerading as matters “overlooked” or “not considered” include “...(2) arguing or quarrelling with the [commission] over the correctness of its conclusions on the points it has considered and decided, (3) advancing new or other points or theories not previously relied on, and (4) rearguing the cause...” Sherwood v. State, 11 So. 2d 96, 98-99 (Fla. 3d DCA 1959). Evidentiary matters,

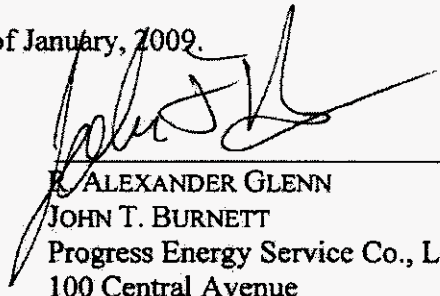
therefore, are not “overlooked” or “misapprehended” when the movant asks the Commission to re-weigh the evidence and re-argues the case. In re: Complaint by Ocean Properties, Ltd, et. al., against Florida Power & Light Co. concerning thermal demand meter error, Order No. PSC-05-1034-FOF-EI, Docket No. 030623-EI (October 21, 2005) (“reweighing the evidence is not a sufficient rationale for granting reconsideration”), citing Green, 105 So. 2d at 818. Indeed, if reconsideration is granted based on re-weighing or re-arguing evidence it is reversible error on appeal. Stewart Bonded Warehouse, Inc., 294 So. 2d 317-318.

4. Reviewing the three justifications that NRDC/SACE offer in support of their motion in the context of the controlling law, it is evident that NRDC/SACE’s motion does not state proper grounds for reconsideration. First, the fact that several Commissioners allegedly expressed “strong reservations” in this case regarding the two-year payback screen cannot, by definition, be facts that the Commissioners did not consider. In other words, the fact that those Commissioners expressed such reservations but then issued a vote after expressing them necessarily means that they were previously considered and given whatever weight due to them in the hearing. Second, the fact that former Commissioner Clark allegedly expressed unspecified concerns in a 1994 hearing is irrelevant to the decision that this Commission made in its order and also is evidence that NRDC/SACE put forward during the hearing, which this Commission has already considered. Finally, stating an opinion that the two-year payback “simply does not make sense” does not constitute proper grounds for reconsideration and is, in any event, an argument that NRDC/SACE and their witnesses made at the hearing, which the Commission has already considered.

WHEREFORE, based on all the reasons stated above, PEF respectfully requests that the Commission deny SACE/NRDC’s Motion for Reconsideration.

RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of January, 2009.

By:



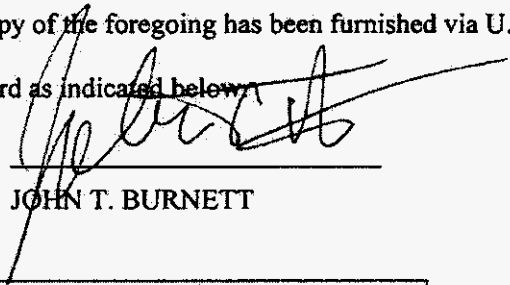
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S.

Mail this 18<sup>th</sup> day of January, 2010 to all parties of record as indicated below.



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