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 Subject: NRDC-SACE Response in Opposition to Gulf's Motion for Reconsideration - Docket Nos. 080407-13  
 Attachments: NRDC-SACE Response in Opposition to Gulf's Motion for Reconsideration.pdf



NRDC-SACE  
 ponse in Oppos  
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B. Docket Nos. 080407 - 080413.

C. Document filed on behalf of Natural Resource Defense Council (NRDC) & Southern Alliance for Clean Energy (SACE).

D. Attached document is 10 pages.

E. The attached document is a Response in Opposition to Gulf Power Company's Motion for Reconsideration.

Thank you,

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

NATURAL RESOURCES DEFENSE COUNCIL AND SOUTHERN ALLIANCE  
FOR CLEAN ENERGY RESPONSE IN OPPOSITION TO GULF POWER  
COMPANY'S MOTION FOR RECONSIDERATION

Natural Resources Defense Council ("NRDC") and Southern Alliance for Clean Energy ("SACE") hereby respectfully submit this Response in Opposition to the Motion for Reconsideration filed by Gulf Power Company (Gulf) and in support state the following:

1. Gulf filed a Motion for Reconsideration on January 14, 2010 in the above dockets. Gulf contends that errors were made in the Commission's decision to include in its goals a portion of the energy savings that otherwise would have been excluded by the two-year payback screen. As described in their brief on the merits of the case, NRDC and SACE believe that the two-year

payback screen should not be employed because it is arbitrary, does not achieve the claimed purpose of limiting free riders, and, contrary to the Legislature's directive, eliminates the most cost-effective energy efficiency measures. Now more than ever, it is critically important that the Commission take advantage of all cost-effective energy efficiency measures in order to save customers money, avoid the need to build expensive new power plants, and improve system reliability. Accordingly, NRDC and SACE would welcome a decision by the Commission to reconsider the use of the two-year payback in setting the goals for Gulf, FPL, PEF and TECO. However, NRDC and SACE oppose Gulf's request that the Commission selectively reconsider only those issues raised in Gulf's motion.

2. Second, as a policy matter, NRDC and SACE believe that to the extent the Commission wishes to approve some but not all of the two-year payback energy savings, it could achieve that result more effectively by approving for each utility a portion of the achievable potential results for the two-year payback, as identified by staff expert Richard Spellman.
3. 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). Gulf assumes that the Commission made an inadvertent mistake in not considering that the goals were set with technical potential energy savings values rather than achievable potential energy savings values. Gulf Motion pages 2, 4. As discussed more fully below, the record indicates that the Commission used its discretion to reintroduce a

portion of the achievable potential eliminated by the 2-year payback criteria in order to increase the goals of Gulf and the other investor-owned utilities (IOUs). The record evidence indicates that goals set for Gulf are well within the achievable potential range. The goals contemplated by the Commission for Gulf are 573.80 GWhs of energy savings over ten years.<sup>1</sup> The achievable potential for Gulf is over 1, 279.9 GWhs according to Staff expert witness Spellman.<sup>2</sup>

#### The Commission's Approval of Additional Efficiency Savings Was Not In Error

4. Gulf suggest that the Commission must have mistakenly approved additional efficiency goals based on information regarding the technical potential of the top ten residential and commercial measures. The transcripts and record before the Commission indicate that Gulf is in error. Rather, the transcripts and record documents indicate that the Commissioners intended to increase the DSM goals for Gulf and the other IOUs by using tables which exhibited the energy savings from a selection of measures excluded by the two-year payback. The discussion at the agenda meetings clearly showed that the Commissioners were concerned over the arbitrary manner in which the two-year payback lowered the level of the goals and excluded substantial amounts of the most-cost effective energy efficiency.<sup>3</sup> In response to the

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<sup>1</sup> Order No. PSC-09-0855-FOF-EG, p. 20.

<sup>2</sup> Hearing Exhibit 172, Direct Testimony of Richard Spellman, Ex. RFS-20, p.4, Docket Nos. 080407—080413, Filed July 17, 2009

<sup>3</sup> Commission Review of Numeric Docket Nos. 080407-080413, Agenda Item Conference No. 9 Transcripts, November 10, 2009 pp. 50-51, 54-55, 64, 66-68, 70-71, 85; Commission Review of Numeric Docket Nos. 080407-080413, Agenda Conference Item No. 12, December 1, 2009, pp. 43-47.

Commissioners' concerns, the staff offered the top ten commercial and residential measures as a compromise approach in order to raise the level of the goals. Commissioner Skop emphasized, in stating the Commission's decision, that when the utilities develop their implementation plans, they should not be limited to the specific measures within the top-ten group.<sup>4</sup> This confirms that the Commission was not approving a specific set of measures but was approving additional savings based on the tables provided by staff. Because the Commission was not approving specific measures, it does not matter whether Gulf could achieve the required savings from just the measures listed on the staff's chart.

5. Importantly, the goals that the Commission approved should not be difficult for Gulf to meet. As the Commissioners indicated, Gulf will be able to draw from the full range of measures excluded by the two-year payback, which alone add up to 1,028.5 GWh's of potential savings.<sup>5</sup> The Commission's goals reintroduce only 322 Gwh's of energy savings to the goal.<sup>6</sup> Moreover, the goals approved for Gulf remain far below the levels regularly achieved in other parts of the country and below the level found achievable for Gulf by staff witness Spellman. Gulf's ten year goals call for savings of only approximately 0.38 percent per year. The record shows that top utilities nationwide are achieving

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<sup>4</sup> *Id.* at pp. 60, 63.

<sup>5</sup> See Final Order at 9.

<sup>6</sup> *Id.* at 20.

average annual kWh savings of 1.79 percent of sales<sup>7</sup> and ten states have recently set annual efficiency goals of two percent or more.<sup>8</sup>

**As a Matter of Policy, the Top-ten Tables Provided By Staff  
are an Imperfect Vehicle for Increasing Goals**

6. As discussed, NRDC and SACE do not believe that any two-year payback measures should have been excluded and also do not believe that the Commissioners' decision was in error. However, the staff's proposal of adding only the residential measures from the top-ten charts is imperfect in several respects. First, this approach had highly variable results between the different utilities. This is because the mix of residential and commercial measures varied randomly between the utilities. For PEF, nine of the ten measures were residential. For FPL only four of the ten were residential. For TECO only one of the ten was residential. For Gulf eight of the ten were residential. Particularly for FPL and TECO, this approach captured only a small fraction of the energy savings excluded by the two-year payback.<sup>9</sup> In fact, TECO has not filed a motion for reconsideration, presumably because they recognize that under the Commission's order only an extremely small percentage of the two-year payback energy savings were added to their goals.
7. Second, although the evidence shows that the goals for Gulf and the other utilities are all eminently achievable, NRDC and SACE agree that it would

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<sup>7</sup> Tr. 1539; Ex. 103 (RFS-17).

<sup>8</sup> Ex. 78.

<sup>9</sup> Based on the technical potential numbers on page 9 of the final order, the fraction of the energy savings were as follows: For Florida Power and Light, the two-year payback screened out 9,889.9 GWhs and only 905 GWhs – less than ten percent – was restored. For Tampa Electric Company, 1,629.6 was screened out and a mere 50 GWhs – about three percent – was restored. For Gulf, 1028.5 GWhs was screened out and 322 GWhs – 31 percent – was restored.

have been preferable for the Commission to base its decision on the achievable potential savings. Although the achievable potential information for each of the two-year payback measures was not available, the record contains a summary of the achievable potential analysis for those measures in staff expert Spellman's testimony.

**If Gulf is Correct That the Commission's Use of Technical Potential Was Inadvertent, Then the Commissioners Likely Also Intended To Approve Ten Residential Measures**

8. As described above, the hearing transcripts indicate that the Commissioners intended to approve an additional amount of energy savings from the two-year payback measures but did not intend to approve individual measures. However, if Gulf is correct that the Commissioners intended to approve specific measures – and therefore should have relied on achievable potential data – then it is also likely that the Commissioners intended to approve ten additional measures for each utility, rather than the variable number included in the staff tables. At the December 1, 2009 hearing, the Commissioners consistently spoke about the “top ten residential measures.”<sup>10</sup> Viewed on its own, this strongly suggests that the Commissioners intended to approve ten additional residential measures for each utility. Accordingly, if the Commission reconsiders whether it intended to rely on technical or achievable data, the Commission should also reconsider whether it intended to approve ten measures or the variable numbers included in the staff tables.

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<sup>10</sup> Commission Review of Numeric Docket Nos. 080407-080413, Agenda Conference Item No. 12, December 1, 2009, pp 59-60, 62-63.



Conclusion

9. WHEREFORE, NRDC and SACE respectfully submit that the Commission is not required to grant Gulf's motion for reconsideration because its order does not reflect the inadvertent error Gulf claims. NRDC and SACE further request that if the Commission decides to reconsider its decision regarding the two-year payback screen as Gulf requests, that it 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 measures excluded by the two-year payback criteria, it should do so by selecting a percentage of Staff expert witness Richard Spellman's analysis of the achievable potential for the two-year payback measures, which is presented in the attached appendix as Table A.

RESPECTFULLY SUBMITTED this 21st day of January, 2010.

By: 

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**CERTIFICATE OF SERVICE**

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This 21st day of January, 2010.

Respectfully submitted,



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## APPENDIX

**Table A: Goals based on Staff Expert Spellman's Testimony<sup>11</sup>**

FEECA Top-4 IOUs

EE Savings Goals, 2010-2019, in GWhs

	E-TRC + Spellman Achievable Potential for all 2yr PB meas.	E-TRC + 66% of Spellman Achievable Potential for all 2yr PB meas.	PSC Order Goals
Utility			
FP&L	12,066.9	8,704.3	3,082.2
Progress	4,689.8	3,634.0	3,487.6
TECO	1,939.9	1,385.8	360.3
Gulf	1,279.9	930.2	573.8
Rpt. Total	19,976.5	14,654.4	7,503.9

**Table B: Illustrative Comparison of Achievable Potential for Measures Eliminated by 2-Year Payback Criteria**

FEECA Top-4 IOUs

EE Savings Goals, 2010-2019, in GWhs    2yr PB Measures

	Spellman Achievable Potential for all 2yr PB meas. only	66% of Spellman Achievable Potential for all 2yr PB meas. only	12/29/09 PSC Order energy savings from 2yr PB meas. only
Utility			
FP&L	9,889.9	6,527.3	905.2
Progress	3,105.3	2,049.5	1,903.1
TECO	1,629.6	1,075.5	50.0
Gulf	1,028.5	678.8	322.4
Rpt. Total	15,653.3	10,331.2	3,180.7

<sup>11</sup> Hearing Exhibit 172, Direct Testimony of Richard Spellman, Ex. RFS-20, Docket Nos. 080407—080413, Filed July 17, 2009