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May 17, 2010

VIA HAND DELIVERY

COMMISSION
CLERK

10 MAY 17 PM 1:29

RECEIVED-FPSC

Ann Cole,
Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0800

Re: Docket Nos. 080407-EG, 080408-EG, 080409-EG, 080410-EG, 080411-EG, 080412-EG,
080413-EG

Dear Ms. Cole:

Attached please find the original and seven copies of the Florida Solar Energy Industries Association's Response in Opposition to Progress Energy Florida, Inc.'s Motion for Stay of Proceedings Pending Judicial Review to be filed in the above styled dockets and copies to be stamped for our records..

Should you have questions or need any additional information, please contact me.

Very truly yours,



Suzanne Brownless
Attorney for Florida Solar Energy Industry Association

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DOCUMENT NUMBER-DATE

04145 MAY 17 2010

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Commission review of numeric conservation goals for Florida Power & Light Company.

DOCKET NO. 080407-EG

In re: Commission review of numeric conservation goals for Progress Energy Florida, Inc.

DOCKET NO. 080408-EG

In re: Commission review of numeric conservation goals for Tampa Electric Company.

DOCKET NO. 080409-EG

In re: Commission review of numeric conservation goals for Gulf Power Company.

DOCKET NO. 080410-EG

In re: Commission review of numeric conservation goals for Florida Public Utilities Company.

DOCKET NO. 080411-EG

In re: Commission review of numeric conservation goals for Orlando Utilities Commission.

DOCKET NO. 080412-EG

In re: Commission review of numeric conservation goals for JEA.

DOCKET NO. 080413-EG

**FLORIDA SOLAR ENERGY INDUSTRIES ASSOCIATION'S RESPONSE
IN OPPOSITION TO PROGRESS ENERGY FLORIDA, INC.'S MOTION FOR
STAY OF PROCEEDINGS PENDING JUDICIAL REVIEW**

The Florida Solar Energy Industries Association (FlaSEIA), by and through its undersigned attorney, pursuant to Rule 25-28-106.204(1), F.A.C., files this Response in Opposition to Progress Energy Florida, Inc.'s (PEF) Motion for Stay of Proceedings Pending Judicial Review and in support thereof states as follows:

1. On April 30, 2010 the National Resources Defense Council (NRDC) and Southern

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FPSC-COMMISSION CLERK

Alliance for Clean Energy (SACE) filed a notice of appeal of Orders Nos. PSC-10-0198-FOF-EG¹ and PSC-09-0855-FOF-EG issued by the Public Service Commission (PSC, Commission) on March 31, 2010 and December 30, 2009, respectively.

2. On May 10, 2010 Progress Energy Florida, Inc. (PEF) filed a Motion for Stay of Proceedings Pending Judicial Review pursuant to Rule 25-22.061, F.A.C., and Rule 9.310(a), Rules of Appellate Procedure.

3. Order PSC-09-0855-FOF-EG, issued on December 30, 2009, among other things requires Florida's five investor-owned utilities (IOUs)² to offer renewable solar water heating and photovoltaic (PV) programs subject to a cap of 10% of the average annual recovery through the Energy Conservation Cost Recovery Clause (ECCR) for the previous five years. [Order PSC-09-0855 at 29-30] This resulted in a combined annual expense of \$24.5M divided among the IOUs as follows: FPL \$15.54M; PEF \$6.47M; TECO \$1.53M; Gulf Power \$900,338; and FPUC \$47,233. *Id.*

4. On March 30, 2010 each of the five IOUs filed demand-side management plans in new implementation dockets³ which proposed solar thermal and PV programs for residential and commercial customers, PV programs for public schools and renewable research and demonstration projects.

5. The cost of the renewable solar programs ordered by the Commission, as analyzed by the Commission's staff, will have a very small rate impact ranging from \$0.09 to \$0.19 per month for the

¹ *In re: Commission review of numeric conservation goals Florida Power & Light Company (FPL), Progress Energy Florida, Inc. (PEF), Tampa Electric Company (TECO), Gulf Power Company (Gulf Power), Florida Public Utilities Company (FPUC), Orlando Utilities Commission (OUC) and JEA, Dockets Nos. 080407-EG-080413-EG.*

² Florida Power & Light Company (FPL), Progress Energy Florida, Inc. (PEF), Tampa Electric Company (TECO), Gulf Power Company (Gulf Power) and Florida Public Utilities Company (FPUC).

³ *In re: Petition for approval of demand-side management plan of Florida Power & Light, Co., Docket No. 100155-EG; In re: Petition for approval of demand-side management plan of Florida Progress Energy, Inc., Docket No. 100160-EG; In re: Petition for approval of demand-side management plan of Tampa Electric Co., Docket No. 100159-EG; In re: Petition for approval of demand-side management plan of Gulf Power Co., Docket No. 100154-EG; and In re: Petition for approval of demand-side management plan of Florida Public Utilities, Co., Docket No. 100158-EG.*

average residential customer whose consumption is 1,200 kWh per month.⁴ The rate impact on PEF's average residential customer using 1,200 kWh per month is \$0.19 per month.

6. PEF has argued that PSC Orders Nos. 09-0855 and 10-0198 should be stayed pending appeal essentially because PEF and its customers will suffer irreparable harm if the stay is not granted. The irreparable harm is economic. PEF contends that the money it will be required to spend getting approval of its DSM Plan in this docket, getting approval in the annual ECCR docket of rates for 2011 which incorporate the costs associated with its demand side management programs approved in this docket, and actually implementing the demand side management programs approved in this docket whose costs are recovered from ratepayers in the ECCR docket during the appeal process will all be wasted if SACE/NRDC's appeal is granted. PEF's premise is that its customers will pay for programs that are, or have the potential to be, abandoned if the Florida Supreme Court's decision causes PEF to have to change its goals and implement programs other than those proposed in its current DSM plan.

7. PEF has generously offered to continue its current DSM programs approved by the Commission in 1994 until the Florida Supreme Court rules on SACE/NRDC's appeal. PEF is proposing six solar programs in its current DSM Plan: Residential Solar Water Heating with Energy Management Program; Residential low-income Solar Water Heating; Residential Solar PV; Commercial Solar PV; PV for Schools and Research and Demonstration Renewable Projects. If allowed to revert to its 1994 DSM programs, PEF will reduce the number of renewable solar programs to two: residential and commercial solar water heating with energy management and PV for schools. Given the fact that no funds remain in the Florida Energy Conservation Commission (FECC) solar rebate program, the return of PEF to its 1994 DSM plan will be devastating on the solar industry in Florida.

8. The standard for review of a motion for stay of an order which does not involve the

⁴ The monthly residential bill impact for the four largest IOUs is: FPL \$0.18; PEF \$0.19; TECO \$0.10 and Gulf Power \$0.09. Presentation by Mark Futrell, House Energy & Utilities Committee, April 1, 2010 at page 14.

refund of money to customers or a decrease in rates is found in Rule 25-22.061(2), F.A.C., which states that the Commission may consider the following factors:

- (a) Whether the petitioner is likely to prevail on appeal;
- (b) Whether the petitioner has demonstrated that he is likely to suffer irreparable harm if the stay is not granted; and
- (c) Whether the delay will cause substantial harm or be contrary to the public interest.

9. A close look at the appeal in this case and the potential impact on PEF and its customers does not support the imposition of a stay. First, although the specific arguments that SACE/NRDC will make in its appellate brief are unknown at this time, it is highly unlikely that SACE/NRDC will prevail on its appeal.

10. The Florida Supreme Court is required to give deference to an administrative agency's decisions regarding its specific areas of expertise and each agency's interpretation of the statutes which it is authorized to implement. The application of these principles to the Commission has been clearly stated by the Florida Supreme Court in *Gulf Coast Electric Cooperative, Inc. v. Johnson*, 727 So.2d 259, 262 (Fla. 1999):

Commission orders come to this Court "clothed with the statutory presumption that they have been made within the Commission's jurisdiction and powers, and that they are reasonable and just and such as ought to have been made." Moreover, an agency's interpretation of a statute it is charged with enforcing is entitled to great deference. The party challenging an order of the Commission bears the burden of overcoming those presumptions by showing a departure from the essential requirements of law. We will approve the Commission's findings and conclusions if they are based on competent substantial evidence and if they are not clearly erroneous. [citations omitted]

11. The Commission has specialized knowledge and expertise in setting demand side management goals for electric utilities and is specifically charged by the Legislature with that task. §§366.81-.82, Fla. Stat. The Commission's decisions with regard to establishing demand side management goals and renewable energy programs in Orders Nos. 09-0855 and 10-0198 are more than adequately supported by competent and substantial evidence of record and are not clearly erroneous. The

goals are ultimately increased, is *de minimis*.

14. Third, substantial harm will be done to PEF's customers, and the solar industry in Florida, if the programs which provide incentives to PEF's customers are delayed for more than a year while the appeal is pending. PEF's customers will not have the benefit of renewable solar energy programs which will reduce Florida's dependence on fossil fuels and lower the cost of fossil fuels burned to produce electricity. At this time there is no cash rebate money available at the state level to mitigate the equipment and installation cost of solar water heating and PV. Without rebates, the solar industry cannot survive. If the solar industry's infrastructure of manufacturers, retail merchants and installers are allowed to collapse, a process that is currently in progress, a year from now there will be no means of implementing the residential and commercial solar water heating and PV programs PEF has included in its current DSM Plan. The Legislature has clearly required the Commission to adopt goals to encourage and increase the development of demand-side renewable energy systems. §§366.81; 366.82(2), Fla. Stat. Staying PSC Orders Nos. 09-0855 and 10-0198 is contrary to the Legislature's clear direction and intent "that the use of solar energy, renewable energy sources, highly efficient systems, cogeneration, and load-control systems be encouraged." §366.81, Fla. Stat.

WHEREFORE, the Florida Solar Energy Industries Association requests that the Commission deny PEF's Motion for Stay.

Respectfully submitted this 17th day of May, 2010 by:



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U.S. Mail and email(*), this 17th day of May, 2010 to the following persons:

<p>Katherine Fleming, Esq. Erik L. Slayer, Esq. Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, Florida 32399-0850 keflemin@psc.state.fl.us</p>	<p>J.R. Kelly, Esq. Charles Beck, Esq. Office of Public Counsel 111 West Madison Street, room 812 Tallahassee, Florida 32399-1400 kelly.jr@leg.state.fl.us</p>
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