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Sent: Friday, August 28, 2009 4:11 PM
To: Filings@psc.state.fl.us
Cc: Susac, Jeremy; Vickers, Robert
Subject: Electronic Filing
Attachments: FECC's Post-hearing brief.pdf

In accordance with the electronic filing procedures of the Florida Public Service Commission, the following filing is made:

a. **The full name, address, telephone number, and e-mail address of the person responsible for the electronic filing:**

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Florida Energy & Climate Commission

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b. **The docket number and title if filed in an existing docket:**

This filing is made In re: Commission review of numeric conservation goals for
Florida Power & Light (Docket No. 080407-EG)
Progress Energy Florida, Inc. (080408-EG)
Tampa Electric Company (080409-EG)
Gulf Power Company (080410-EG)
Florida Public Utilities Company (080411-EG)
Orlando Utilities Commission (080412-EG)
JEA (080413-EG

c. **The name of the party on whose behalf the document is filed:**

The document is filed on behalf of Florida Energy & Climate Commission

d. **The total number of pages in each attached document:**

18 pages

e. **A brief but complete description of each attached document:**

The attached document is FECC's Post-hearing brief

Regards,
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8/28/2009

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CHARLIE CRIST
GOVERNOR

August 28, 2009

Ann Cole, Director
Division of Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Dear Ms. Cole:

Please find attached the Florida Energy and Climate Commission's comments for filing in the Florida Energy Efficiency and Conservation Act. The Commission files these comments pursuant to Section 366.82(5), F.S.

By copy of this letter, the enclosed document has been furnished to the parties on the attached certificate of service.

If you have any questions, please contact me at (850) 487-3800.

Regards,

Jeremy L. Susac, Executive Director
Governor Crist's Energy Office

JS/bc
Enclosures

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record and interested parties as listed below electronically (*) or regular U.S. mail this 28th day of August, 2009.

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Jeremy L. Susac by am

Jeremy L. Susac, Executive Director

EXECUTIVE SUMMARY

Created by Governor Charlie Crist and the Florida Legislature in the 2008 Legislative session, the Florida Energy & Climate Commission ("FECC") is housed within the Executive Office of the Governor and is the primary organization for state energy and climate change programs and policies. Comprised of nine members appointed by the Governor, Commissioner of Agriculture and Consumer Services, and Chief Financial Officer, the FECC holds a variety of responsibilities, including administering financial incentive programs; completing annual assessments of Florida's Energy and Climate Change Action Plan; and providing recommendations to the Governor and the Legislature. The FECC also works cooperatively with other state entities, including the Florida Public Service Commission, the Florida Department of Environmental Protection, the Florida Department of Community Affairs, and the Florida Energy Systems Consortium, to develop state energy and climate change policies and programs.

The Florida Energy Efficiency and Conservation Act

Enacted in 1980, The Florida Energy Efficiency and Conservation Act ("FEECA"), Section 366.80-366.85 and 403.519, Florida Statutes (F.S.), requires the Florida Public Service Commission ("PSC") to set goals for conservation and energy efficiency every five years. *See* 366.82(6), F.S. (2008).

> Pursuant to FEECA, utility energy and conservation goals shall be designed to: increase the conservation of expensive resources, such as petroleum fuels, to reduce and control the growth rates of electric consumption, to reduce the growth rates of weather-sensitive peak demand, and to encourage development of demand-side renewable energy resources.

Id. 366.82(2), F.S. (2008). In determining the level of appropriate demand-side management ("DSM") goals, the PSC is required to evaluate the full technical potential of all available measures, and utilities are required to submit cost-effectiveness data to enable the PSC to reach a determination as to the reasonably achievable and cost-effective level of DSM goals for each utility. *See* Section 366.92(3), F.S. (2008); Rule 25-17.008, Florida Administrative Code (2008).

FECC STATUTORY OBLIGATION

Among its responsibilities, the FECC is statutorily designated as a party to the FEECA goals proceeding and is required to file comments on several topics, including:

> (a) An evaluation of utility load forecasts, including an assessment of alternative supply-side and demand-side resource options.
> (b) An analysis of various policy options that can be implemented to achieve a least-cost strategy, including nonutility programs targeted at reducing and controlling the per capita use of electricity in the state.
> (c) An analysis of the impact of state and local building codes and appliance efficiency standards on the need for utility-sponsored conservation and energy efficiency measures and programs.

Section 366.82(5), Fla. Stat. (2008). Through this brief, the FECC files its comments on the above, as well as, other specific issues being considered by the PSC in setting DSM Goals for the 2010 – 2019 time-frame.

(a) Supply-side and demand-side resource options - utility load forecasts The 2008 Legislature had significant foresight in calling on the FECC to address utility load forecasts and the impact of more stringent building codes and appliance efficiency standards on the potential for utility-sponsored demand-side management programs. It is undisputed that our state and this nation are in the midst of the most severe recession

since the Great Depression. State of Florida unemployment rates exceed 10% and, as a result, people are increasingly saving, and conserving energy more than ever before. This conservation is opposite of the recent boom period experienced just a few years back in Florida. Individual energy conservation, as well as, more stringent appliance standards and building codes, are significant drivers behind a negative short-term load growth and reduced longer term load growth across the board for all state utilities. This, in addition to the decline in housing markets, has reduced the short-term need for additional supply-side resources.

Significantly lower projections of load growth and more stringent federal lighting and efficiency standards have reduced the potential for utility-sponsored conservation. Indeed, Florida Power & Light Company ("FPL"), the state's largest utility, projects that the impact of updated federal appliance efficiency and lighting standards to reduce demand and energy by a significant 895 MW in the 2010-2019 time frame of concern in this proceeding. (Sim Direct. p. 83). That equates to the size of two medium-sized power plants being deferred by lighting and efficiency standards alone. The FECC estimates that this number is almost double for the entire state. The FECC notes that more energy efficient technologies should be encouraged to accelerate conservation.

As Floridians are well aware, the Governor's Energy Office and the FECC are intensely focused on sponsoring, promoting and supporting demand and supply-side conservation measures, including nonutility programs targeted at reducing and controlling the per capita use of electricity in the state. The FECC is accomplishing these

objectives through such means as grants, rebates, and loan guarantees offered to the state under the American Recovery and Reinvestment Act of 2009. For example, the United States Department of Energy ("DOE") has recently approved the FECC's spending plan to inject approximately $40 million towards rebates and low interest loans for energy efficient home retrofits, rebates and low interest loans for residential and commercial rebates for solar photovoltaic and solar thermal, as well as, a significant solar effort through the Sunsmart School program. In addition, the U.S. DOE recently committed at least $17.5 million for the FECC to establish a rebate program for energy star appliances which will certainly further reduce residential energy consumption.[1] Similarly, the Florida Department of Community Affairs has received $176 million through the U.S. DOE to provide weatherization assistance to low-income homeowners. Furthermore, many local governments throughout Florida are doing their part to promote conservation and investments in renewable energy systems by sponsoring local initiatives designed to encourage their communities to adopt such technologies for their homes and businesses. For example, cities and counties throughout the State of Florida will receive approximately $168 million dollars to "green their local operations" under the Energy Efficiency & Conservation Block Grant (EECBG). Although these counties and cities spending plans pursuant to the EECBG are pending federal approval, there is little doubt that their initiatives will reduce energy consumption, and be part of the state's energy

[1] This is just one policy objective by the Federal Government under the Energy Star Rebate Program as the Federal Government's fundamental policy objective is to stimulate the economy through American manufacturing sector while also substantially reducing electrical energy consumption.

future. The fundamental question here, however, is what is the role of the utilities and their customers? It is undeniable the utilities' role is significant, but cost considerations and rate impacts must be taken into account, as the Legislature made clear in requiring the FECC to undergo an analysis of the "least-cost strategy." *See* Section 366.82(5), F.S.

(b) Least-cost strategy

Pursuant to Florida law, the FECC must perform an analysis of various policy options that can be implemented to achieve a least-cost strategy, including nonutility programs targeted at reducing and controlling the per capita use of electricity in the state. Based on the record evidence, the FECC believes that the least-cost strategy for energy efficiency measures that can be implemented under FEECA is more than likely the E-RIM test.

The discussion below is designed to set the stage for one of the critical considerations that the FECC is required to comment – what is the least-cost strategy for implementing utility-sponsored conservation and energy efficiency measures? In other words, how much demand-side management and conservation is needed in order for utilities to meet their customers' reliability and service requirements during the 2010-2019 time-frame for the entire body of utility customers?

It is argued by Witness Dean that the cumulative difference between the petitioner's goals, and that of the PSC's consultant, Witness Spellman, would result in nearly $3.8 billion dollar increase over the next ten years, due to unrecovered revenue for

fixed costs.[2] However, the National Resource Defense Council (NRDC) argues in its post-hearing memo to the FECC that Witness Dean only considered the underecovered revenue and neglected to consider the benefits (i.e., ratepayer savings from energy efficiency). NRDC further argues that the customer savings would be much greater than this because he is not estimating the total savings, but instead, is only estimating the portion of savings for which the utilities may end up with a financial shortfall on the their revenue requirement. Thus, NRDC argues that the savings are much greater than $3.8 billion for rate-payers under an E-TRC analysis.

After taking both above arguments into consideration, and analyzing the growing number of nonutility programs such the State Energy Program, the Energy Efficiency & Conservation Block Grant, and the Weatherization Assistance Program, the FECC finds that a blended test of E-RIM+Participant test achieves the least-cost strategy to the general body of ratepayers, and that the E-TRC will achieve greater efficiency measures than the E-RIM+Participant Test. In arriving at this conclusion, the FECC agrees with NRDC that the E-TRC will result in more efficiency and also agrees that some bills will go down. However, the FECC does not agree that the bills of the entire general body of ratepayers will decrease; rather, the FECC believes that a portion of the bills will decrease while the overall general body of ratepayers' bill will increase. Further, the FECC finds that NRDC/SACE/GDS to have competing prefiled testimony on this issue with those of Witness Dean and Witness Sim. However, the FECC finds no record

[2] In this cumulative difference, Witness Dean is using the E-RIM+Participant Test for the utilities goals, and the E-TRC test for Witness Spellman's goals.

evidence that Witness Dean's hearing exhibit, projecting a $4 billion dollar increase over the next ten years using E-TRC, was ever cross-examined or impeached by NRDC/SACE/GDS.

Additionally, the FECC respectfully reminds the PSC that the PSC has much more flexibility in its review of the record evidence. Specifically, the PSC is not confined to the least-cost strategy, but rather, it must determine the cost-effective measures to gain the greatest efficiency.

For example, the PSC has increased flexibility in approving, modifying, or denying demand side management programs that have undue impact on the costs to customers. Specifically, as a direct result of HB 7135 (Ch. 2008-227, L.O.F.), the PSC "may require modifications or additions to a utility's plans and programs at any time it is in the public interest consistent with this act. In approving plans and programs for cost recovery, the PSC shall have the flexibility to modify or deny plans or programs that would have an undue impact on the costs passed on to customers." *See*, Section 366.82(7), F.S.

Further, the 2008 Legislature clarified certain matters the PSC should take into consideration in setting the appropriate level of conservation goals:

(a) The costs and benefits to customers participating in the measure.

(b) The costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions.

(c) The need for incentives to promote both customer-owned and utility-owned energy efficiency and demand-side renewable energy systems.

(d) The costs imposed by state and federal regulations on the emission

of greenhouse gases.

See Section 366.82(3). F.S. (2008). These considerations refer to certain factors taken into account in the traditional cost-effectiveness evaluations that the PSC requires the utilities to use for screening DSM measures – the rate impact measure or RIM test; the total resource cost or TRC test; and the Participant Test. However, it adds a new consideration that has not been incorporated into the three traditional tests – that being the costs imposed by state and federal regulation on the emission of greenhouse gases. During this DSM goals setting phase – 2010-2019 – such costs are expected to be imposed on emissions of SO2, NOx and CO2 and, therefore, environmental compliance costs should be taken into consideration in evaluating the cost-effectiveness of DSM measures that will avoid new generation and reduce the amount of environmental compliance costs to which customers will be exposed.

The traditional RIM test, as enhanced to take into consideration the benefits of avoided environmental compliance costs, in combination with the Participant test, incorporates all DSM-related costs and benefits to be incurred by, or received by, all utility customers is more than likely the least-cost strategy. In addition, these combined tests look to an economic analysis over a 30-year time period. (Sim Direct, p. 61). In contrast, the traditional TRC test, enhanced to add environmental compliance costs as a benefit, ignores this protection as well as certain DSM-related costs that will be borne by all utility customers, including: (i) incentive payments made to DSM participants; (ii) looks only at the incremental cost of the measure while ignoring the underlying cost of

the measure; and (iii) unrecovered fixed cost/revenues not recovered by utilities as a result of lower sales. For these reasons, a combination of the E-TRC and Participant tests is more than likely not the least-cost strategy for the general body of ratepayers.

For example and as stated above, Witness Dean projects that, were the goals of one of the intervenor's consultant's in this proceeding accepted, the state's investor owned utilities would require rate increases approaching $4 billion dollars just to pay for implementation of the proposal. (JWD-2) Implementing a multi-billion dollar DSM-related rate increase over this DSM goals-planning horizon to acquire DSM that is not needed to meet the state's resource needs and is not consistent with the least-cost strategy pursuant to FEECA. Acquiring DSM that exceeds the state's resource needs is inconsistent with the least-cost strategy. Lastly, the E-RIM in combination with the Participant test is viewed as a much fairer test for the general body of ratepayers by Florida Industrial Power Users Group (FIPU). For example, when FIPUG's witness, Witness Pollack, was asked if the TRC test treats all customers fairly, Witness Pollock answers "no." (Direct, p. 6). Specifically, Witness Pollock, testifies that these rate impacts in the evaluation of conservation programs helps to minimize both rates and costs to rate-payers. (Direct, p. 6). In addition, the TRC is not the most equitable test for the general body of ratepayers according the large industrial consumers in the State of Florida.

(c) Impact of building codes

In 1978, Florida issued its first statewide building Energy Code. Modeled after

ASHRAE Standard 90-75, this code became effective in 1979 and from that point forward, Florida has successfully managed a statewide residential Energy Code that consistently receives high marks in U.S. Department of Energy national code studies. A recent evaluation by the Florida Solar Energy Center found that since 1979 the Energy Code has increased efficiency requirements by more than 65% and cumulatively saved Floridians more than 39 billion kWh of electricity – enough to power more than 3 million new Florida homes per year. The cost savings have also been significant, estimated at almost $4.7 billion, cumulatively. Compared to the initial 1979 Energy Code, the significance of improved building codes and appliance efficiency standards, which the FECC supports in partnership with other state agencies, including the Department of Community Affairs and the Department of Environmental Protection, is that these measures reduce the potential for utility-sponsored DSM, while increasing the level of overall energy conservation. As building codes become stricter, utilities must increase the standards for qualifying for utility incentives to participate in their DSM programs. Utilities' customers should not pay incentives for implementation of energy efficiency measures that are mandated by statute or rule. The same is true for appliance and lighting efficiency measures. Fundamentally, utilities, utility customers, and the public at large should not pay an incentive to get someone to do something they are already required to do.

To put all of this in context, the fundamental question in this proceeding is how much DSM should all utility customers be required to pay for? That is an entirely

different evaluation from how much conservation is a good idea, which is an individual decision, based on, but not limited to, the following: an evaluation of local, state, and federal requirements; availability of grants, rebates, and tax incentives; and personal financial means along with the desire to accomplish certain societal goals.

Section 366.82(2), F.S.: Increase use of solar

The FECC notes another modification to the FEECA statute (by HB 7135) essentially focuses attention on increasing the use of demand-side renewables, such as solar technology, that is under 2MWs in size. Specifically, Section 366.82(2), F.S., states that the PSC shall increase the development of demand-side renewable energy system[s]. In light of this statutory obligation, the FECC believes that coupling cost-effective measures that satisfy E-RIM with solar measures that do not satisfy E-RIM will increase the customer take rate of solar applications at the lowest possible cost. It was stated at the hearing that coupling cost-effective measures that satisfy E-RIM with solar measures that do not satisfy E-RIM will increase the customer take rate of solar applications at the lowest possible cost. Although there was testimony that this coupling would erode the cost-savings associated with E-RIM, the FECC believes that the coupling of these measures is an overall cost-effective means to achieve greater energy efficiency via solar applications throughout the utilities' customer base. The FECC also believes that these incentives for solar can serve as a long-term dedicated revenue stream to incentivize all solar installations in the utilities customer service area. This policy objective is not only

consistent with Florida Statutes but is also consistent with Florida's Climate and Action Plan that is in the hearing record.

Two Year Payback Issue:

The utilities in this proceeding have excluded energy efficiency measures that have a two year pay back period. Utilities argue that energy efficient measures within a two-year payback period makes economic sense for consumers, and a large percentage of the general body of rate-payers already take advantage of this. The utilities believe this should be a function of education and outreach, rather than a cost to the general body of rate-payers. However, NRDC argues that excluding these measures from the goals is contrary to the goal of a "least cost" approach since the shorter the payback the more cost-effective a measure.

Specifically, NRDC/SACE and Witness Spellman argue in their testimonies that this policy is misguided and makes no sense relating to energy efficiency. Some specific concerns sited in NRDC's post-hearing memo to the FECC with excluding two year payback measures are summarized below:

- This is a reverse-cost effectiveness test that eliminates the most cost-effective measures. This is a way to ensure that energy efficiency programs miss the best opportunities and instead go after efficiency measures that cost more and deliver smaller savings. Not only does this policy not make common sense, more importantly, it is also contrary to The Legislature's directive to pursue the most cost-effective demand side management.

- The effect of this screen is enormous as it eliminates between 36 and 46 percent of the total technical potential energy efficiency savings.

- Not surprisingly, no other state follows this approach. In fact, there is expert testimony in this case that the programs excluded by this test generally form the bulk of the energy efficiency portfolios in other states.

- As the utilities own expert admitted, customers do not adopt these measures to a significant degree unless they are included in an energy efficiency program. Therefore, the utilities are depriving Florida customers of the help they need to adopt the most cost-effective programs. This is the opposite of a "least-cost" approach to energy planning.

- The ostensible purpose of the two-year payback is to minimize so called "free riders" but there is no evidence showing that this approach is effective for this purpose. A "free rider" is a person who would have adopted a measure anyway, but takes advantage of an incentive offered by a utility. The utilities admit that they have done no studies showing that the two-year screen will effectively minimize free riders. In 1994, the PSC accepted goals proposed by FPL that had relied on a version of this screen, and the issue has not been revisited since then. The PSC should reject this screen, and simply instruct the utilities to consider ways to minimize free riders as they develop their more detailed portfolio of efficiency programs.

Conversely, Witness Dean believes the two year payback period to be a reasonable measure based on research on individual investment behavior with respect to installing energy efficiency measures. (Dean Direct, p. 29-30). Witness Dean sites to studies ranging between a two-year to a four-year payback period, and would move away from subsidizing "free-riders." (Dean Direct, p. 30). Witness Dean addresses "free-riders" to "find a balance between paying too much in incentives and thus paying unnecessarily for free- riders or paying too little and not meeting the goals [pursuant to PSC rules].." (Dean Direct, p. 30). Witness Dean rebuts NRDC/SACE testimony on pages 50-52 of his rebuttal. Specifically, Witness Dean sites to the PSC's DSM Goals Rule that require utilities to address free riders in setting utility goals. (Dean Rebuttal, p. 50). Witness Dean testifies that the PSC has used a two-year payback in its free-ridership and argues the PSC should not disregard its own rules. (Dean Rebuttal, p. 50)

CONCLUSION

The PSC should approve a level of goals for each utility that satisfies the utility's resource needs and results in reasonably achievable lower rates for all electric customers. As called for in the recent legislation, the PSC should also take into account environmental compliance costs that are almost a certainty over this goals-planning horizon. In this regard, the FECC supports a reasonably achievable level of DSM Goals based on measures that pass the E-RIM and Participant Tests to achieve the least-cost strategy for the general body of ratepayers. Additionally, the FECC believes that coupling cost-effective measures that satisfy E-RIM with solar measures that do not satisfy E-RIM will increase the customer take rate of solar applications at the lowest possible cost.