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Subject:	NRDC-SACE Motion for Reconsideration and Opposition to PEF Motion for Reconsideration
Attachments:	NRDC-SACE Motion for Reconsideration and Response Opposing PEF Motion for Reconsideration.pdf

NRDC-
ON FOR

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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 12 pages.

E. The attached document is a Motion for Reconsideration and Opposition to the PEF Motion for Reconsideration.

Thank you,

George Cavros

DOCUMENT NUMBER-DATE
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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 (Orland Utilities Commission)	)	Docket No. 080412-EG
In re: Commission review of numeric conservation goals (JEA)	)	Docket No. 080413-EG
	)	Date: January 14, 2010

NATURAL RESOURCES DEFENSE COUNCIL AND SOUTHERN ALLIANCE FOR CLEAN ENERGY MOTION FOR RECONSIDERATION AND OPPOSITION TO PROGRESS ENERGY FLORIDA, INC.'S MOTION FOR RECONSIDERATION

Natural Resources Defense Council ("NRDC") and Southern Alliance for Clean Energy ("SACE") hereby respectfully submit this Opposition to the Motion for Reconsideration filed by Progress Energy Florida, Inc. ("PEF") and NRDC and SACE's own Motion for Reconsideration of the goals set for PEF, Florida Power and Light Company ("FPL"), Tampa Electric Company ("TECO"), and Gulf Power Company ("Gulf"), and in support state the following:

1. PEF filed a Motion for Reconsideration on January 12, 2010 in the above dockets. PEF contends that inadvertent 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 PEF, FPL, TECO and Gulf. However, NRDC and SACE oppose PEF's request that the Commission selectively reconsider only those issues raised in PEF'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. Third, PEF's arguments are without merit. First, it contends that the Commission's Order will raise customer bills. Second, it contends that the Commission inadvertently relied on technical potential. Third, it contends that certain measures were double-counted. As described below, these arguments are in error and do not justify a lowering of the reasonable DSM goals set for PEF.

The Commission's Order Will Not Raise Electricity Bills for Customers as a Whole

4. PEF commences its motion with a claim that the Commission's decision will result in a five dollar per month increase to the typical PEF residential customer's bill. This assertion is unsubstantiated and misleading. PEF's statement cannot accurately reflect the impact on the bills paid by its customers as a whole. This is because PEF's goals are based on measures which pass the Total Resource Cost (TRC) test and, by definition, these measures will result in lower total system costs. In other words, the Commission has approved only energy efficiency measures where the total savings exceed the total cost paid by both the utility and the participant of implementing those measures. Because these measures will lower total system expenses, customer bills as a whole – considering both participants and non-participants as required by the FEECA amendments – will also be lower. Moreover, if PEF makes its programs available widely, then all customers, including low-income customers, will be able to participate and see their bills go down.[1] Even if some rate increase is required to meet PEF's fixed costs, there will still be savings to customers as a whole because the energy savings achieved will reduce PEF's variable costs.

5. PEF's allegations concerning rate impacts are also irrelevant to the questions it raises regarding the two-year payback. In fact, the two-year payback screen increases the costs of achieving energy efficiency savings. This is because the

[1] Evidence from Florida Power and Light as well as other evidence in the record shows that well-run programs can achieve equal participation by low-income and other customer groups. Tr. 267-23; see also Ex. 22; (JRH-6); Ex. 1419.

two-year payback screen excludes the most cost effective measures – that is the measures that produce the greatest savings at the lowest cost.

The Commission's Approval of Additional Efficiency Savings Was Not An Inadvertent Error

6. PEF contends that the Commission must have made an inadvertent error by approving 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 PEF is in error. Rather, the transcripts and record documents indicate that the Commissioners intended to increase the DSM goals for PEF and the other investor-owned utilities ("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.[2] In response to the 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. [3] This confirms that the

[2] 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.
[3] *Id.* at pp. 60, 63.

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, the ability of PEF to comply with the adopted goal is not limited by deriving that goal from technical potential data.

7. Importantly, the goals that the Commission approved should not be difficult for PEF to meet. As the Commissioners indicated, PEF will be able to draw from the full range of measures excluded by the two-year payback, which alone add up to 3,105.3 GWh's of potential savings.[4] Moreover, the goals approved for PEF remain far below the levels regularly achieved in other parts of the country and below the level found achievable for Progress by staff witness Spellman. PEF's ten year goals call for savings of only approximately 0.8% percent per year. The record shows that top utilities nationwide are achieving average annual kWh savings of 1.79 percent of sales[5] and ten states have recently set annual efficiency goals of two percent or more.[6]

As a Matter of Policy, the Top-ten Tables Provided By Staff Are An Imperfect Vehicle for Increasing Goals

8. 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 inadvertent. However, the staff's proposal of adding only the residential measures from the top-ten charts is imperfect in

[4] See Final Order at 9.
[5] Tr. 1539; Ex. 103 (RFS-17).

[6] Ex. 78.

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 were 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.[7]

9. Second, although the evidence shows that the goals for PEF and the other utilities are all eminently achievable, NRDC and SACE agree that it would 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 PEF Is Correct That The Commission's Use Of Technical Potential Was Inadvertent, Then The Commissioners Likely Also Intended To Approve Ten Residential Measures

10. 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 PEF is correct that the Commissioners intended to approve

[7] 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.

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."[8] Viewed on its own, this strongly suggests that the Commissioners intended to approve ten additional residential measures for each utility. In other words, if PEF is correct that the Commissioners were not using this as a shorthand for the tables which Staff had provided, then NRDC and SACE belive the Commissioners meant what they said and ten additional residential measures should have been added 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.

PEF Fails To Adequately Substantiate Its Claim
That Measures Were Duplicated

11. PEF contends that three measures were duplicated in both its E-TRC compilation and the two-year payback table. However, PEF fails to explain the origin of this error, whether PEF was responsible for it, or provide any documents demonstrating the alleged error. Moreover, the savings data presented in PEF's motion does not match the savings data presented in the staff's November 20, 2009 supplemental recommendation. In addition, to the extent that PEF seeks to remove these measures, it may be necessary to add

[8] Commission Review of Numeric Docket Nos. 080407-080413, Agenda Conference Item No. 12, December 1, 2009, pp 59-60, 62-63.

additional measures to the top ten measures in exhibit 4 to the Staff's November 20, 2009 Supplemental Recommendation.

12. At this late point in the process, PEF should not be permitted to selectively revise the data it presented to the Commission. To the extent that the Commission does consider PEF's request, it should only do so as part of a full review of the two-year payback and should require a full explanation for the alleged errors.

NRDC and SACE'S Motion For Reconsideration

13. For the reasons described above, NRDC and SACE respectfully request that if the Commission decides to reconsider its decision regarding the two-year payback screen as PEF requests, that it 1) reconsider this question with respect to PEF, FPL, TECO and Gulf, and 2) 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 two-year payback measures, consider other methods of doing this.

14. NRDC and SACE make this request in light of the fact that if PEF's reconsideration arguments are correct, then there are likely inadvertent errors regarding the Commissioners' intention with respect to all four of these utilities, such as whether it intended to include ten residential measures or a variable number.

15. In addition, given the strong reservations regarding the two year payback expressed by several Commissioners in this case (as well as the concerns expressed by Commissioner Clark during the 1994 hearing when the two-

year payback was first introduced[9]), the Commissioners should reconsider use of the two-year payback screen in general. The record before the Commission shows that the screen eliminates a tremendous quantity of potential energy savings and that the screen is not an effective means of addressing free riders. As a matter of sound policy, the two-year payback simply does not make sense because it bars consumers from accessing the most cost-effective energy efficiency measures. The record also shows that without assistance from the utilities, a significant portion of customers will not adopt these measures.[10] As Florida moves forward to lower customer bills, avoid the expense required to construct additional power plants, and reduce emissions of harmful pollutants, it is critical that the State take advantage of the full suite of measures covered by the two-year payback, which achieve the greatest savings for customers and the environment at the lowest cost.

16. Finally, during the Commission's reconsideration of the 2-year payback criteria, it should retain, on an interim basis, the approved goals. In addition, the goals for demand-side renewable energy systems should remain final and need not be disturbed during a reconsideration of the two-year payback. Pursuant to rule 28-106.204(3), F.A.C., counsel for NRDC and SACE has attempted to contact counsel for all parties of record in this matter and is authorized to report that PEF objects to the Motion for Reconsideration;

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[9] *See* Docket Nos. 930548-EG, 930549-EG, 930550-EG, 930551-EG, Transcript Vol. V, at 644, available at http://www.psc.state.fl.us/dockets/cms/docketFilings2.aspx?docket=930548.

[10] It may be possible for the utilities to use education, rather than incentives to achieve sufficient adoption rates. Whether or not this can be done, achieving these energy efficiency savings should still be included in the utilities goals.

while FPL, TECO, Gulf, JEA, OUC and FPUC take no position on the motion at this time. As of the time of this filing, the undersigned was not able to determine the position of the remaining parties to this docket.

RESPECTFULLY SUBMITTED this 14th day of January, 2010.

By:_______/s/_________

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This 14th day of January 14, 2010.

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