

**Diamond Williams**

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**Subject:** Dockets #080408-EG & #100160-EG - PEF'S Motion for Stay of Proceedings Pending Judicial Review  
**Attachments:** Document.pdf

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Docket: 100160-EG

In re: Petition For Approval of Proposed Demand-side Management Plan of Progress Energy Florida, Inc.

On behalf of Progress Energy Florida

Consisting of 8 pages

The attached document for filing is *PEF'S Motion for Stay of Proceedings Pending Judicial Review*

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DOCUMENT NUMBER-DATE

03927 MAY 10 e

5/10/2010

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  
(Orlando Utilities Commission) Docket No. 080412-EG

In re: Commission review of numeric conservation goals  
(JEA) Docket No. 080413-EG

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In re: Petition for approval of  
Proposed Demand-side Management Plan  
of Progress Energy Florida, Inc. DOCKET NO.: 100160-EG

Filed: May 10, 2010

**Progress Energy Florida, Inc.'s Motion for Stay of Proceedings Pending Judicial Review**

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Pursuant to Rule 25-22.061(2), F.A.C. and Rule 9.310(a), Progress Energy Florida, Inc. ("PEF") moves the Florida Public Service Commission ("PSC" or "Commission") for entry of an order staying the above proceedings pending judicial review of Order Nos. PSC-10-0198-FOF-EG and PSC-09-0855-FOF-EG, which have been appealed by the National Resources Defense Council and the Southern Alliance for Clean Energy (collectively "NRDC/SACE") as of April 30, 2010. The orders at issue established goals for energy conservation for PEF. Based upon those orders, PEF filed a Demand Side Management and Energy Efficiency Plan ("DSM Plan") that is currently under review by the Commission. Because the outcome of the appeal directly impacts the programs included in the DSM Plan, as well as customer rates, PEF and its customers will suffer irreparable harm if the stay is not granted. For these reasons, as more fully developed below, PEF respectfully requests that this Commission enter an order to stay these proceedings pending judicial review.

1. The Commission issued Order Number PSC-09-0855-FOF-EG in Docket Number 080408-EG<sup>1</sup> on or about December 30, 2009. This Order, among other things, set numeric conservation goals for PEF and required that PEF, within 90 days, file a demand-side management plan designed to meet PEF's approved goals. Several parties, including NRDC/SACE, moved for reconsideration of that order, and on March 31, 2010, the Commission issued Order Number PSC-10-0198-FOF-EG that denied in part and granted in part certain of those motions for reconsideration.

Specifically, it denied NRDC/SACE's motion for reconsideration.

2. Consistent with the requirements set forth in Order 09-0855, on March 30, 2010, PEF submitted its DSM Plan for approval by the PSC. PEF also petitioned for recovery of the implementation costs for the DSM Plan in 2011 through the Energy Conservation Cost Recovery Clause ("ECCR").

The PSC established Docket 100160-EG for the purpose of reviewing PEF's DSM Plan. Under the

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<sup>1</sup> Docket 080408-EG related specifically to PEF's numeric conservation goals. This docket was consolidated with several other utilities' separate goals dockets. For ease of reference, this motion only refers specifically to PEF.

current schedule, the Commission staff will issue a staff recommendation with respect to PEF's DSM Plan on July 22, 2010, and the PSC is expected to vote at an agenda on August 3, 2010. PEF will then take the Commission's decision on its DSM Plan and develop its projected costs for the ECCR for 2011. PEF must make that filing on September 10, 2010 for updated ECCR rates that would become effective on January 1, 2011.

3. On April 30, 2010, NRDC/SACE appealed Orders 09-0855 and 10-0198 to the Florida Supreme Court.
4. The matters addressed in the appeal will have a material impact on the nature and composition of PEF's DSM Plan, which the PSC is currently reviewing in Docket 100160-EG, as well as on the rates that PEF's customers will have to pay. NRDC/SACE's appeal necessarily goes to the heart of the programs and measures that PEF used to develop its DSM Plan because those programs and measures, and the timing in which those programs and measures are implemented, are dependent on what numeric goals PEF is attempting to achieve. If NRDC/SACE are successful in their appeal, PEF will necessarily need to re-evaluate its DSM plan to determine the appropriate combination of programs and measures to meet the new conservation goals that would be the product of a successful appeal. Thus, PEF should not incur the expenses needed in order for PEF to offer new and/or expanded programs and measures to meet goals approved in Order Nos. PSC-10-0198-FOF-EC and PSC-09-0855-FOF-EG, only to find those goals to be subsequently changed if the Supreme Court grants the subject appeal. To do so would subject PEF's customers to the prospect of paying for labor, training, IT programming, capital, and other development and implementation related costs that would be wasted if PEF has to change its goals and implement programs other than those proposed in PEF's current DSM plan that is subject to review.

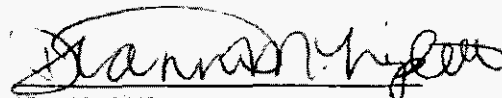
5. Pursuant to Rule 25-22.061, F.A.C., the PSC may grant a party's motion to stay a final order, pending judicial review. Among the things the Commission may consider is "whether the petitioner has demonstrated that he is likely to suffer irreparable harm if the stay is not granted." Rule 25-22.061(2)(b), F.A.C. PEF, and its customers, will suffer irreparable harm due to the risk that its DSM Plan will need to be revised and result in customers paying for increased development, training and other implementation related costs associated with new or expanded programs and measures that are later replaced or removed from the Plan. Additionally, in a scenario of repeating developmental and implementation activities as a result of changes in PEF goals, internal resources would be further diverted from the normal duties of recruiting and acquiring customer participation in existing programs and measures that help consumers lower their energy consumption. These risks would be eliminated if the PSC stays the current proceeding and considers PEF's DSM Plan at the completion of NRDC/SACE's appeal of the very orders upon which that DSM Plan was developed.
6. Another consideration under Rule 25-22.061 is "whether the delay will cause substantial harm or be contrary to the public interest." Rule 25-22.061(2)(c). In this case, the proposed stay will *prevent*, not cause, substantial harm to PEF's customers, by ensuring that they do not pay for programs and/or measures that will ultimately not be included in the DSM Plan. In addition, granting a stay will not be contrary to the public interest, because it is in the public interest to avoid paying for something that could be rendered useless by the appeal. Indeed, PEF proposes that it be allowed to operate under its DSM goals approved by Order No. PSC-04-0769-PAA-EG while the appeal is pending so there will be continued energy saving and load reduction benefits during the pendency of the appeal. The public interest is therefore adequately protected by the grant of a stay.

7. Also, it is administratively efficient to stay this proceeding pending NRDC/SACE's appeal.

Because the orders on appeal impact other dockets, including the approval of PEF's DSM Plan (Docket 100160-EG) and the ECCR (Docket 100002-EG), it is more efficient for the PSC to let the appellate process run its course, so that the results of the appeal do not require the un-raveling of these other dockets and filings. By issuing a stay, and permitting PEF to proceed on its already-approved DSM goals and plan, the PSC will assure administrative efficiency.

8. Pursuant to Rule 28-106.204(3), undersigned counsel for PEF has contacted all parties of record and reports that the following parties have no objection to the filing of this motion to stay: Florida Industrial Power Users Group, Gulf Power Company, Tampa Electric Company, Florida Power & Light Company, Florida Public Utilities Corporation, and Orlando Utilities Commission and that the following parties object to the filing of this motion: NRDC/SACE and the Florida Solar Coalition. As of the time of this filing, PEF was unable to determine the positions of the remaining parties to these dockets.

WHEREFORE, PEF respectfully requests that the Commission (1) grant its motion to stay and issue an order staying the proceedings in Dockets 080408-EG and 100160-EG until the completion of the appeal by NRDC/SACE of Orders PSC-10-0198-FOF-EG and PSC-09-0855-FOF-E; and (2) permit PEF to proceed with its currently-approved DSM Plan for purposes of projections in Docket 100002-EG.



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following by U.S. Mail this 10<sup>th</sup> day of May, 2010 to all parties of record as indicated below.



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