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100155-EG

From: LOWE, AMY [Amy.Lowe@fpl.com]
Sent: Tuesday, August 10, 2010 3:51 PM
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Subject: Electronic Filing - Docket # 100155-EG
Attachments: FPL's Motion to Strike SACE Comments and Amended Comments.pdf; FPL's Motion to Strike SACE Comments and Amended Comments.DOC

Electronic Filing

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b. Docket No. 100155-EG

IN RE: Petition of approval of demand-side management plan of Florida Power & Light Company

c. The documents are being filed on behalf of Florida Power & Light Company.

d. There are a total of seven (7) pages.

e. The document attached for electronic filing is:

Florida Power & Light Company's Motion To Strike The Southern Alliance For Clean Energy's Preliminary Comments And Recommendations And Amended Preliminary Comments And Recommendations

(See attached file(s): FPL's Motion to Strike SACE Comments and Amended Comments.DOC; FPL's Motion to Strike SACE Comments and Amended Comments.pdf)

Regards,
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FPSC-COMMISSION CLERK

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for Approval of)
Demand Side Management Plan)
of Florida Power & Light Company)

Docket No. 100155-EG

Filed: August 10, 2010

**FLORIDA POWER & LIGHT COMPANY'S MOTION TO STRIKE
THE SOUTHERN ALLIANCE FOR CLEAN ENERGY'S
PRELIMINARY COMMENTS AND RECOMMENDATIONS AND
AMENDED PRELIMINARY COMMENTS AND RECOMMENDATIONS**

Florida Power & Light Company ("FPL"), pursuant to Rule 28-106.204, Florida Administrative Code ("F.A.C."), hereby moves to strike the Southern Alliance for Clean Energy's ("SACE's") July 14, 2010 preliminary comments and recommendations ("Comments") and SACE's August 3, 2010 amended preliminary comments and recommendations ("Amended Comments") from Docket No. 100155-EG, on the grounds that submission of the Comments and Amended Comments is not authorized by Commission rule or otherwise authorized under Florida law. As grounds therefore, FPL states:

BACKGROUND

On December 30, 2009, the Florida Public Service Commission ("Commission") issued its order setting the 2010-2019 Demand Side Management ("DSM") goals for each electric utility subject to the Florida Energy Efficiency and Conservation Act, including FPL. *See* Order No. PSC-09-0855-FOF-EG (issued Dec. 30, 2009). This decision followed a week-long technical hearing, in which the Natural Resources Defense Counsel ("NRDC") and SACE actively participated as a joint intervening party. On March 31, 2010, the Commission rejected a

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motion for reconsideration filed by NRDC and SACE, as well as motions for reconsideration filed by several utilities.¹ See Order No. PSC-10-0198-FOF-EG (issued March 31, 2010).

The Commission's DSM goal-setting and DSM Plan-approving process is set forth in Sections 366.81 and 366.82, Florida Statutes, and Rules 25-17.001 and 25-17.0021, Florida Administrative Code. Specifically, Rule 25-17.0021 addresses the submission of DSM Plans after the DSM goals proceeding. It provides in pertinent part:

(4) Within ninety (90) days of a final order establishing or modifying goals, or such longer period as approved by the Commission, each utility shall submit for Commission approval a demand side management plan designed to meet the utility's approved goals.

Pursuant to this rule, FPL filed its DSM Plan on March 30, 2010. It subsequently filed a corrected plan on July 1, 2010, to correct certain errors or issues that were discovered after the original plan filing. A new docket, separate from the DSM Goals docket, was opened to consider FPL's DSM Plan.

The Comments filed by SACE on July 14, 2010 and the Amended Comments filed by SACE on August 3, 2010, are impermissible and unauthorized under the Commission's rules and should be rejected. In addition to being impermissible, they would not in any event form a proper basis for a decision by the Commission because, by SACE's own admission, the Comments and Amended Comments are substantively incomplete, resource-constrained, and data-limited. For these reasons, as further discussed below, SACE's Comments and Amended Comments should be stricken from the record in this proceeding and should not be considered or relied upon by the Commission in reaching its determination on FPL's proposed DSM Plan. It is important to note that striking the Comments and Amended Comments does not leave SACE

¹ The Commission denied NRDC and SACE's motion for reconsideration, Gulf Power Company's motion for reconsideration, and FPL's motion for reconsideration, denied in part Progress Energy Florida's motion for reconsideration, and granted JEA's and Progress Energy Florida's motions for limited reopening of the record.

without an opportunity to participate in this proceeding or to be heard at an appropriate time and in an appropriate manner, if it complies with Florida law. However, SACE's filing of its Comments and Amended Comments are not authorized by Commission rule, and they should be stricken.

SACE'S COMMENTS ARE IMPERMISSIBLE

Each utility's DSM Plan submittal is being reviewed pursuant to a Proposed Agency Action ("PAA") proceeding. An interested person's participation in a PAA proceeding is governed by Rule 25-22.029, F.A.C., which is titled "Point of Entry Into Proposed Agency Action Proceedings". That rule specifies that after the agenda conference wherein the Commission makes its determination and after a PAA order is issued (which includes notification to all parties of the right to request a hearing), parties have 21 days to protest the order and request a hearing pursuant to Section 120.569 or 120.57, Florida Statutes. No other point of entry is provided. Accordingly, SACE's only point of entry into FPL's DSM Plan docket (Docket No. 100155-EI) is to protest the order and request a hearing after the PAA order is issued.

SACE's Comments and Amended Comments are simply not permitted by the Commission's PAA process under which this case is being handled. The PAA process does not provide a party the opportunity to file comments or make recommendations to the Staff and the Commission prior to the issuance of the PAA. The Commission's PAA process as it applies to this docket is set forth on the Case Assignment and Scheduling Record ("CASR") for this proceeding, which provides:

Description	Previous Due Date	Due Date	Completed Date
Petition Filed	none	03/30/2010	03/30/2010
Staff Recommendation	07/22/2010	08/19/2010	none
Agenda	08/03/2010	08/31/2010	none
PAA Order	08/23/2010	09/20/2010	none
Consummating Order if No Protest – Close Docket	09/16/2010	10/14/2010	none

There is no party comment opportunity set forth between the filing of the petition and the Staff recommendation. Instead, the opportunity for parties to weigh in on the merits of a PAA comes after the Commission PAA Order, through a formal administrative hearing, but only if a protest to the PAA order is timely filed.

Further, SACE's Comments and Amended Comments are not permitted by the DSM goals and DSM Plan process set forth in the Commission's DSM rules. Rule 25-17.0021, Florida Administrative Code, states as follows:

(4) Within ninety (90) days of a final order establishing or modifying goals, or such longer period as approved by the Commission, each utility shall submit for Commission approval a demand side management plan designed to meet the utility's approved goals.

Consistent with this rule and established Commission practice, there is not a provision for SACE, or any party, to submit comments or recommendations on the DSM Plans submitted by the utilities prior to the consideration of the DSM Plan by the Commission under its PAA process.

SACE's Comments also ignore, and indeed, are in conflict with, the Commission's DSM cost-effectiveness rule. In Rule 25-17.008, Florida Administrative Code, the Commission sets forth three specific tests for cost-effectiveness. SACE's Comments offer an entirely

different measure of cost-effectiveness. SACE advocates the use of “saved energy costs”. SACE acknowledges that “this metric is not one of the official metrics required by the Florida Public Service Commission” but suggests that it has advantages over the approved methods incorporated by Commission rule. SACE is urging the Commission to disregard its established rule and adopt as controlling non-rule policy an entirely different measure of cost-effectiveness that SACE introduces for the first time in its Comments. Such a recommendation invites legal error and should be avoided.

Finally, SACE’s Comments should be stricken because they amount to an untimely request for reconsideration² of the Commission’s acceptance of the utilities’ use of the two year payback criterion in its DSM goals order and upon reconsideration. The Commission approved the use of that criterion knowing that it excluded some potentially cost-effective DSM measures. It presumably did so to avoid free riders, namely the payment of incentives by all customers to a few customers when those few customers already have a sufficient economic incentive to implement DSM. The Commission’s order recognized that this would eliminate certain otherwise potentially cost-effective measures by increasing the utilities’ goals by a portion of the energy that would be saved by those eliminated measures. Such collateral attacks on a Commission order are impermissible and an additional reason for striking the Comments and Amended Comments.

² The Commission has already denied a petition for reconsideration of the DSM Goals order filed by SACE. *See* Order No. PSC-10-0198-FOF-EG. The best evidence that SACE’s Comments and Amended Comments are an untimely request for reconsideration is found in the first sentence of its first Major Finding, where SACE notes, “The major utilities filed generally what the commission requested....” SACE acknowledges that the plans conform to the DSM Goals order, so it stands to reason that SACE’s issue is with the DSM Goals order itself. This is simply another, untimely, request for reconsideration.

CONCLUSION

SACE's Comments and Amended Comments are not authorized by Commission rule or Florida law. There is no opportunity for a party to submit such comments in the Commission's PAA process or under the Commission's DSM rules. SACE's unauthorized, incomplete, resource-constrained and data-limited Comments and Amended Comments should be stricken and not relied upon by the Commission in reaching a determination on FPL's proposed DSM Plan. To the extent the Commission does consider SACE's Comments and Amended Comments in reaching its determination, FPL requests the opportunity to address the lack of substance and legal authority as well as the technical inaccuracies in the Comments and Amended Comments prior to, or at, the Commission's agenda conference on this matter.

Respectfully submitted this 10th day of August, 2010,

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By: s/ Jessica A. Cano
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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Motion to Strike SACE's Comments and Amended Comments has been furnished electronically and by United States Mail this 10th day of August 2010, to the following:

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