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Electronic Filing

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b. Docket Nos. 100155-EG

IN RE: Petition for 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 fifteen (15) pages.

e. The document attached for electronic filing is: *Florida Power & Light Company's Brief in Opposition to the Southern Alliance for Clean Energy's Protest of Commission Order No. PSC-11-0346-PAA-EG*

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08230 NOV-7 =
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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
In re: Petition for Approval of Demand Side Management Plan of Progress Energy Florida	)	Docket No. 100160-EG
		Filed: November 7, 2011

FLORIDA POWER & LIGHT COMPANY'S BRIEF IN OPPOSITION TO THE SOUTHERN ALLIANCE FOR CLEAN ENERGY'S PROTEST OF COMMISSION ORDER NO. PSC-11-0346-PAA-EG

Pursuant to Order No. PSC-11-0469-PCO-EG, Florida Power & Light Company ("FPL") hereby files its Brief in opposition to the Southern Alliance for Clean Energy's ("SACE's") protest of Order No. PSC-11-0346-PAA-EG (the "PAA Order"),[1] and states as follows:

Issue 1: Whether the Commission Violated Florida Statute Section 366.82(7) by Ordering a "Newly Modified DSM Plan" for FPL that Matches its DSM Plan Currently in Place?

FPL Position: No. The Commission complied with Section 366.82(7) when it ordered FPL to implement a DSM plan that continues existing programs. The Commission acted pursuant to express authority granted by Section 366.82(7) to modify a utility's DSM plan. SACE's claim that the Commission changed FPL's DSM goals is incorrect and should be rejected.

Issue 2: Whether the Commission Violated Florida Statute Section 366.82(7) by Not Requiring FPL to Submit a Modified Plan Following the Denial of FPL's "Modified DSM Plan" and "Alternate DSM Plan" Submitted on March 25, 2011?

FPL Position: No. The Commission complied with Section 366.82(7). Because the Commission's PAA Order clearly specified the modifications that shall be made and approved the plan as modified, another filing is not required by Section 366.82(7). Additionally, a DSM plan consistent with the Commission's decision is already on file with the Commission. Accordingly, SACE's claim that the Commission should order another filing of the DSM plan should be rejected.

[1] Order No. PSC-11-0469-PCO-EG consolidated Progress Energy Florida's DSM plan docket (Docket No. 100160-EG) and FPL's DSM plan docket (Docket No. 100155-EG) for purposes of SACE's protest. FPL's brief is limited to the issues identified for FPL.

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I. SUMMARY OF ARGUMENT

The Florida Public Service Commission's ("Commission's") PAA Order modified FPL's Demand Side Management ("DSM") plan to save FPL's customers money. The Commission's action is expressly authorized by the plain language of Section 366.82(7), Florida Statutes, which clearly states that the Commission "may require modifications...to a utility's plans and programs at any time it is in the public interest" and "shall have the flexibility to modify or deny plans or programs that would have an undue impact on the costs passed on to customers." Accordingly, SACE's claim that the action taken by the Commission is outside of the Commission's authority is incorrect and should be rejected.

The changes made by the PAA Order to FPL's DSM plan are exactly that – changes to the *plan* made by the Commission as authorized by statute. In contrast, review of the July 26, 2011 agenda conference transcript and the PAA Order shows that FPL's DSM *goals* were not changed or modified in any way. For example, the PAA Order makes it clear that FPL is not eligible for any financial reward unless its performance exceeds the goals established by the Commission's 2009 DSM goals order, reinforcing the fact that the goals have not changed. Accordingly, SACE's claim that the PAA Order changed FPL's DSM goals when it modified FPL's DSM plan is incorrect and should be rejected.

Because the statutory language authorizing the Commission's actions in the PAA Order is clear and unambiguous, there is no need as a legal matter to determine legislative intent in deciding this matter. Even if this were not the case, however, the Commission's action in the PAA Order is entirely consistent with the intent of the Florida Energy Efficiency and Conservation Act ("FEECA"), as amended. The Commission found that FPL's current DSM programs, as extended by the PAA Order, "are likely to continue to increase energy conservation

and decrease seasonal peak demand." This factual finding, which SACE is not disputing, clearly complies with the legislative intent stated in Section 366.81, Florida Statutes, declaring that "it is critical to utilize the most efficient and cost-effective...conservation systems" and that "reduction in, and control of, the growth rates of electric consumption and of weather-sensitive peak demand are of particular importance." Accordingly, the PAA Order is entirely consistent with FEECA's legislative intent, and SACE's claims to the contrary should be rejected.

Finally, a DSM plan that complies with the PAA Order is already on file with the Commission, because it is contained in previous filings made in 2004 and 2006. Accordingly, SACE's claim that the Commission should have ordered FPL to take a needless ministerial step by filing the same plan again within 30 days of the PAA Order should be rejected

In conclusion, because Order No. PSC-11-0346-PAA-EG is consistent with the plain language of Section 366.82(7), Florida Statutes, and the intent of FEECA, SACE's protest should be rejected and the Commission's PAA order should stand.

II. PROCEDURAL HISTORY AND BACKGROUND

The Commission has a long and successful history of implementing FEECA. Through 2010, FPL's DSM efforts have eliminated the need to construct the equivalent of more than 13 new 400 MW generating units. Moreover, the Commission has consistently recognized that costs to customers associated with Demand Side Management ("DSM") programs and the rate impact of implementing those programs is a primary concern. Until the most recent DSM goals order the Commission considered customer costs and rate impacts primarily by relying on the Participant and Rate Impact Measure ("RIM") cost-effectiveness tests. *See, e.g.,* Order No. PSC-04-0763-PAA-EG (issued Aug. 9, 2004) (approving numeric conservation goals for FPL); *see also, Legal Environmental Assistance Foundation, Inc. v. Clark*, 668 So. 2d 982, 988 (Fla. 1996)

(affirming Commission order setting DSM goals based on use of the RIM cost-effectiveness test).

By Order No. PSC-09-0855-FOF-EG, for the first time, the Commission set DSM goals for FPL at a level that was not cost-effective under the RIM test. *See* Order No. PSC-09-0855-FOF-EG (issued Dec. 30, 2009). Additionally, the goals set for FPL exceeded FPL's projected resource needs and were augmented to include the technical potential associated with certain additional residential measures that had been screened out early in the analytical process.[2] *Id.* These policy decisions were not necessary for purposes of complying with FEECA as amended in 2008. The Commission's 2009 decisions were made to "approve conservation goals for each utility that are more robust than what each utility proposed." Order No. PSC-09-0855-FOF-EG, p. 15.

FPL filed a DSM plan on March 30, 2010 to meet the DSM goals established by the Commission. That first plan was rejected because it would not achieve annual, incremental DSM goals, despite the fact that it would achieve annual, cumulative goals.[3] Order No. PSC-11-0079-PAA-EG. The Commission did not specify what modifications should be made in order to meet the annual, incremental goals but rather ordered FPL to file a modified plan. *Id.* FPL then filed a "Modified DSM Plan" that would meet the annual, incremental goals as well as an "Alternate Plan" that was designed to reduce customer costs. Ultimately, as explained in the PAA Order that SACE now protests, the Commission determined that the best way to mitigate customer cost impacts would be to continue existing DSM programs that are known to be cost-effective. *See* Order No. PSC-11-0346-PAA-EG, p. 5.

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[2] These measures were screened out to minimize "free riders," due to their quick (less than two-year) payback, in compliance with Rule 25-17.0021, Fla. Admin. Code.

[3] FPL's proposed solar pilot programs were approved by Order No. PSC-11-0079-PAA-EG, and the Commission clarified in the PAA Order that those solar pilot programs should be continued. References in this Brief to "existing" DSM programs are exclusive of these recently-approved solar pilot programs.

As explained below, the Commission's PAA Order is consistent with the strict language of Section 366.82(7), Florida Statutes, as well as the intent of FEECA. Additionally, it will have the effect of saving customers money by reducing their Energy Conservation Cost Recovery ("ECCR") clause costs and mitigating base rate impacts – a fact that SACE does not dispute and is precluded from disputing at this time. *See* Order No. PSC-11-0346-PAA-EG, p. 3-4 (providing ECCR and base rate impacts and concluding that the increase to an average residential monthly bill associated with the "Modified Plan" that meets the 2009 goals constitutes an undue rate impact); SACE protest p. 5 (stating "SACE is not alleging any disputed issues of material fact"); § 120.30(18)(b), Fla. Stat., (providing that "[i]ssues in the proposed action which are not in dispute are deemed stipulated").

III. ISSUES

Issue 1: Whether the Commission Violated Florida Statute Section 366.82(7) by Ordering a "Newly Modified DSM Plan" for FPL that Matches its DSM Plan Currently in Place?

FPL Position: No. The Commission complied with Section 366.82(7) when it ordered FPL to implement a DSM plan that continues existing programs. The Commission acted pursuant to express authority granted by Section 366.82(7) to modify a utility's DSM plan. SACE's claim that the Commission changed FPL's DSM goals is incorrect and should be rejected.

A. The Commission's Order Complies with the Unambiguous Language of Section 366.82(7), Florida Statutes

Section 366.82, Florida Statutes, sets up a step-by-step DSM process that includes the following: (i) the Commission sets goals; (ii) the utilities propose plans and programs to meet those goals; and (iii) the Commission reviews the utilities' proposals and exercises discretion in approving, modifying, or denying those proposals. There is no dispute that Sections 366.82(2), 366.82(3), and 366.82(6) govern the process for setting or changing DSM goals, and that Section 366.82(7) governs the process for the submittal and approval, modification, or denial of DSM plans. There is also no dispute that the language of Section 366.82(7) is clear and unambiguous,

and requires no examination of legislative history or other efforts at statutory construction. *See State of Florida v. Burris*, 875 So. 2d 408, 410 (Fla. 2004) (stating "[w]hen a statute is clear, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent) (citing *Lee County Elec. Coop., Inc. v. Jacobs*, 820 So. 2d 297, 303 (Fla. 2002)); *see also Forsyth v. Longboat Key Beach Erosion Control*, 604 So. 2d 452, 454 (Fla. 1992) (explaining that "[e]ven where a court is convinced that the Legislature really meant and intended something not expressed in the phraseology of the act, it will not deem itself authorized to depart from the plain meaning of the language which is free from ambiguity.").

The first sentence of Section 366.82(7) reads: "Following adoption of goals pursuant to subsections (2) and (3), the commission shall require each utility to develop plans and programs to meet the overall goals within its service area." This is a statutory requirement that the Commission order *each utility* to develop a plan to meet its DSM goals. The Commission, in Docket No. 100155-EG, has done precisely that. Beginning with Order No. PSC-09-0855-FOF-EG, FPL was required to submit a DSM plan within 90 days designed to meet the goals established by that order. FPL filed a DSM plan on March 30, 2010, that it believed met its DSM goals. The Commission then issued Order No. PSC-11-0079-PAA-EG which disapproved FPL's DSM plan based on the Commission's decision that the plan must meet annual, incremental (rather than cumulative) goals and again ordered FPL to submit a plan to meet the goals. Order No. PSC-11-0079-PAA-EG (issued Jan 31, 2011). FPL responded by filing a Modified Plan designed to meet the annual, incremental goals, along with an Alternate Plan to reduce customer cost impacts for the Commission's consideration. There can be no genuine

question that the Commission has complied with the first sentence of Section 366.82(7), Florida Statutes.

The second and third sentences of Section 366.82(7) read:

> The commission 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 commission shall have the flexibility to modify or deny plans or programs that would have an undue impact on the costs passed on to customers***.

(emphasis added). These two sentences were added by House Bill 7135 – the bill amending FEECA in 2008 that SACE so often references in its Brief. As opposed to the first sentence of Section 366.82(7), which dictates what the *utilities* are required to submit (i.e., DSM plans that meet the DSM goals), the second and third sentences go to the *Commission's* authority, and expressly provide it with the power to modify DSM plans "at any time it is in the public interest," including specifically when the plan "would have an undue impact on the costs passed on to customers." The broad discretion granted to the Commission during the DSM plan-approval phase of the DSM process is patent.

The Commission exercised this authority in issuing the PAA Order. Specifically, the Commission found that the plans proposed by FPL "will have an undue impact on the costs passed on to consumers, and that the public interest will be served by requiring modifications to FPL's DSM Plan." Order No. PSC-11-0345-PAA-EG, pp. 4-5. The Commission acknowledged its authority to modify FPL's DSM plan when it stated "we hereby determine to exercise the flexibility specifically granted us by statute to modify the Plan and Programs set forth by FPL." Order No. PSC-11-0345-PAA-EG, p. 5. The Commission modified FPL's DSM plan by ordering that it include only those programs that are currently in effect, which are cost-effective

for all FPL customers.[4] Such a modification of FPL's plan is clearly authorized by the plain language of Section 366.82(7), Florida Statutes.

B. SACE's Claim that FPL's DSM Goals Were Changed by the Commission's Order is Wrong

SACE argues that the plain language of Section 366.82(7) should govern the issues in this protest, but refuses to look at the plain language of the Commission's PAA Order. The PAA Order modified FPL's DSM *plan* – but SACE twists it into an order that purportedly modified FPL's DSM *goals*. Indeed, SACE's entire argument on Issue 1 relies upon a presumption that the Commission changed FPL's DSM goals. As explained below, FPL's 2009 DSM goals were not changed by the PAA Order. Therefore, SACE's conclusion that the Commission does not have the authority to change FPL's DSM goals pursuant to Section 366.82(7), Florida Statutes, is irrelevant at best.[5]

The Commission states at page 5 of the protested order that in exercising the specific authority granted by Section 366.82(7), "we hereby modify FPL's 2010 Demand-Side Management ***Plan***, such that the DSM ***Plan*** shall consist of those ***programs*** that are currently in effect today" (emphasis added). The Commission's decision is clearly limited to FPL's DSM plan and programs, and nothing in the PAA Order states that FPL's DSM *goals* are being

[4] The Commission is not limited to the proposed cost-saving approaches recommended in SACE's "comments," even assuming those comments had merit (which they do not).

[5] Throughout its Brief, SACE often confuses DSM goals with DSM plans. For example, on pages 13-14, SACE correctly notes that pursuant to Section 366.82(6), Fla. Stat., and Rule 25-17.0021(2), Fla. Admin. Code, the Commission may initiate a proceeding to modify the DSM *goals*. However, SACE's footnote for this point cites to examples where, in 2006, FPL petitioned the Commission to approve DSM *plan and program* modifications. *See* Order No. PSC-06-0740-TRF-EI (issued Sept. 1, 2006). The Commission did not modify FPL's DSM goals when it approved those plan and program modifications. *Id.* Additionally, on pages 16-17, SACE claims the Commission stated it was maintaining the "status quo" in regards to *goals* at the July 26, 2011 agenda conference. The transcript is clear that the Commission was interested in maintaining the "status quo" with respect to *programs*. *Agenda Conference*, Item No. 5, Tr. 79-80 and Item No. 6, Tr. 3-4 (July 26, 2011).

modified.[6] This is consistent with previous Commission decisions to approve DSM plan and program modifications without revising the DSM goals. *See, e.g.,* Order No. PSC-06-0740-TRF-EI (issued Sept. 1, 2006) (approving two new DSM programs and approving the modification of seven existing DSM programs without changing FPL's DSM goals).

In fact, the PAA Order clarifies that FPL's 2009 DSM goals are still in place. It does so by stating the FPL is not eligible for any financial reward unless it exceeds its DSM goals established by Order No. PSC-09-0855-FOF-EG. *See* Order No. PSC-11-0346-PAA-EG, p. 5. This clarification is consistent with the statutory language found in Section 366.82(8) and (9), Florida Statutes, which specifically authorizes the Commission to provide rewards for DSM performance which exceeds the goals.

SACE claims that the Commission's approach to penalties in the PAA Order demonstrates that the Commission has changed FPL's DSM goals. SACE's position is incorrect. The PAA Order states that "FPL shall not be subject to any financial penalty unless it fails to achieve the savings projections contained in the existing DSM plan." Order No. PSC-11-0346-PAA-EG, p. 5. This portion of the PAA Order is consistent with the Commission's permissive, not mandatory, authority to impose penalties for DSM performance. § 366.82(8), Fla. Stat. (providing that the Commission "***may*** authorize financial penalties for those utilities that fail to meet their goals." (emphasis added)). Because the Commission could choose not to impose financial penalties at all, it certainly has the discretion to consider imposing financial penalties for some level of performance below the DSM goals without changing the goals.

Finally, it is worth noting that at the Commission's July 26, 2011 agenda conference the Commission specifically considered whether it should open a docket to examine revising the

[6] SACE acknowledges that the PAA Order does not include language modifying FPL's DSM goals. SACE Brief, p. 22.

DSM goals and acknowledged that it was not revising the DSM goals at this time. *See, e.g., Agenda Conference*, Item No. 5, Tr. 67 (July 26, 2011) (Commissioner Balbis, stating that "we are not resetting [the goals] today"); *see also,* Item No. 6, Tr. 3 (July 26, 2011) (referencing discussion had on Item No. 5). In light of the clear decision *not* to revise DSM goals or open a docket to revise DSM goals at the agenda conference, one cannot reasonably argue that the Commission's resulting PAA Order is an order to revise FPL's DSM goals.

C. SACE's Claim that the Commission's Order Is Inconsistent with FEECA Should Be Rejected

SACE repeatedly claims that the Commission "disregarded" or "defied" the legislative intent of FEECA – specifically, the intent of the amendments enacted in 2008. SACE Brief, pp. 10, 11, 18. SACE further claims that the Commission's action has rendered the DSM goal-setting provisions of Section 366.82 meaningless. Such attempts to position the Commission against the legislature should be disregarded. The action taken in the PAA Order is wholly consistent with the overall intent of FEECA, the amendments enacted in 2008, and the step-by-step goal-setting and plan-approval process laid out in Section 366.82(2), (3), and (7), Florida Statutes.[7]

The 2008 amendments to FEECA resulted in a number of changes, including but not limited to (i) encouraging the use of demand-side renewable energy systems (*see, e.g.,* §366.82(2), Fla. Stat.); (ii) requiring that the Commission evaluate "technical potential" (§366.82(3), Fla. Stat.); (iii) setting forth a number of cost/benefit categories that the

[7] To the extent there is any dispute over the legislative intent of Section 366.82, the Commission's interpretation of the legislative intent of FEECA should govern in this instance. *See, e.g., PW Ventures, Inc. v. Nichols*, 533 So. 2d 281, 283 (Fla. 1988) (noting the "well established principle that the contemporaneous construction of a statute by the agency charged with its enforcement and interpretation is entitled to great weight.") The only instance in which the Commission's interpretation should be disregarded would be when its interpretation is "clearly unauthorized or erroneous." *Id.* (citing *Gay v. Canada Dry Bottling Co.,* 59 So. 2d 788 (Fla. 1952)). SACE has failed to demonstrate that the Commission's application of Section 366.82(7) was "clearly unauthorized or erroneous."

Commission must consider when setting the goals (§366.82(3)(a), (b), Fla. Stat.); and (iv) requiring that the Commission consider costs imposed on the emission of greenhouse gasses (§366.82(3)(d), Fla. Stat.). Additionally, the importance of customer costs was emphasized through these amendments by the addition of specific Commission authority "to modify or deny plans or programs that would have an undue impact on the costs passed on to customers." Section 366.82(7), Fla. Stat.; HB 7135 lines 2440-43. Nowhere do the amendments indicate that the Commission's historical implementation of FEECA or the resulting DSM achievements were insufficient. What is clear is that customer costs and cost-effectiveness considerations remain a focus of FEECA. *See, e.g.*, § 366.81, Fla. Stat. (declaring that it is critical to utilize the most efficient and ***cost-effective*** demand-side renewable energy systems and conservation systems) (emphasis added).

SACE claims – almost as a matter of fact – that the cost and benefit considerations added in Sections 366.82(3)(a) and (b), Florida Statutes, were added "to encourage the Commission to set more meaningful conservation goals." SACE Brief, p. 17. SACE's interpretation of these FEECA amendments is neither supported by the language of the amendments nor supported by the House of Representatives Staff Analysis SACE references.[8] But one need not resolve the accuracy of SACE's interpretation in order to determine the legislative intent of FEECA. Section 366.81, Florida Statutes, provides the legislative intent by declaring that "it is critical to utilize the most efficient and cost-effective...conservation systems" and that "reduction in, and control of, the growth rates of electric consumption and of weather-sensitive peak demand are of

[8] SACE quotes House of Representatives Staff as explaining that the amendments require the Commission "to adopt goals to increase and promote cost-effective demand-side and supply-side efficiency and conservation programs and renewable energy systems." SACE Brief, p. 17, fn 27. New considerations related to supply-side efficiency and renewable energy systems were added by HB 7135. However, the desire to "increase energy efficiency and conservation" was a stated goal of FEECA prior to the 2008 amendments (and remains a stated goal of FEECA today). Accordingly, the Staff explanation reveals nothing about the overall DSM goal-levels that the legislature may have had in mind.

particular importance." The Commission found that FPL's current programs, as extended by the Commission's PAA Order, "are likely to continue to increase energy conservation and decrease seasonal peak demand." Order No. PSC-11-0346-PAA-EG, p. 5. This factual finding, which is not in dispute, demonstrates compliance with the express intent of FEECA.

SACE also claims that the Commission's action has rendered the goal-setting provisions of Sections 366.82(2) and (3), Florida Statutes, meaningless. This position again relies on the presumption that FPL's DSM goals have been modified by the PAA Order. As explained above, the DSM goals have not been modified. The substantial analyses and thorough hearing process that resulted in FPL's DSM goals continue to support the goals that are in effect today. Accordingly, this claim is without merit and should be rejected.

Issue 2: Whether the Commission Violated Florida Statute Section 366.82(7) by Not Requiring FPL to Submit a Modified Plan Following the Denial of FPL's "Modified DSM Plan" and "Alternate DSM Plan" Submitted on March 25, 2011?

FPL Position: No. The Commission complied with Section 366.82(7). Because the Commission's PAA Order clearly specified the modifications that shall be made and approved the plan as modified, another filing is not required by Section 366.82(7). Additionally, a DSM plan consistent with the Commission's decision is already on file with the Commission. Accordingly, SACE's claim that the Commission should order another filing of the DSM plan should be rejected.

The Commission's PAA Order modifies FPL's DSM plan and specifies precisely what modifications shall occur. The Commission's order states that FPL's DSM plan "shall consist of those programs that are currently in effect today." Order No. PSC-11-0346-PAA-EG, p. 5. The PAA Order also approved a DSM plan for FPL, stating "a newly modified DSM Plan, consisting of existing Programs currently in effect, as detailed in the body of this Order, is Approved." *Id.* at p. 6. FPL's existing DSM programs currently in effect have been filed with and approved by the Commission in previous dockets.

SACE claims that the Commission should have ordered FPL to file a modified DSM plan within 30 days of the PAA Order. SACE points to the sentence in Section 366.82(7) which states that "[i]f the commission disapproves a plan, it shall specify the reasons for disapproval, and the utility whose plan is disapproved shall resubmit its modified plan within 30 days." Such a filing would of course be necessary where the utility is required to implement modifications consistent with the Commission's reasons for disapproval, and the Commission has yet to approve a plan for the utility. However, in this circumstance, the Commission modified FPL's plan by specifically directing what programs it shall contain and then approved the plan as modified.[9] As a result, no further filings are required. Additionally, the Commission's authority to "modify" a DSM plan pursuant to Section 366.82(7) is not coupled with a re-filing requirement the way the Commission's authority to "disapprove" a plan is coupled with a re-filing requirement. A generally accepted rule of statutory construction is that when the legislature includes a provision in one section of a statute but excludes it in another, the difference should be deemed intentional. *Bell South v. Meeks*, 863 So. 2d 287, 291 (Fla. 2003) (citing *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987)).

SACE's argument also fails to recognize that a DSM plan consistent with Order No. PSC-11-346-PAA-EG is already on file with the Commission, in that it is contained in previous filings made in 2004 and 2006 (*see* Docket No. 040029-EG and Docket No. 060408-EG). In any event, should the Commission decide that a modified plan filing is desired to reflect the Commission's decision to continue existing DSM programs, FPL is prepared to make such a filing.

[9] The action taken by Order No. PSC-11-0346-PAA-EG is in sharp contrast to the action taken by Order No. PSC-11-0079-PAA-EG, whereby the Commission disapproved FPL's first DSM plan and ordered FPL to make modifications to meet annual, incremental goals without specifying what modifications should be made and without approving any DSM plan.

IV. CONCLUSION

The Commission's Order No. PSC-11-0346-PAA-EG complies with the unambiguous language of Section 366.82(7), Florida Statutes. The Commission is authorized to "require modifications...to a utility's plans and programs at any time it is in the public interest" and "shall have the flexibility to modify or deny plans or programs that would have an undue impact on the costs passed on to customers." § 366.82(7), Fla. Stat. This express grant of authority supports the action taken by the Commission in Order No. PSC-11-0346-PA-EG to modify FPL's DSM plan. Additionally, there is no requirement to re-file a modified DSM plan in this circumstance, where a modified plan has been approved and where the modified plan is already reflected in previous Commission filings. Because Order No. PSC-11-0346-PAA-EG complies with both the letter and intent of the law, it should be affirmed and reinstated by the Commission.

Respectfully submitted this 7th day of November, 2011.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief in Opposition to SACE's Protest of Order No. PSC-11-0346-PAA-EG has been furnished electronically and by United States Mail this 7th day of November 2011, to the following:

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