

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 100155-EG

PETITION FOR APPROVAL OF
DEMAND-SIDE MANAGEMENT PLAN
OF FLORIDA POWER & LIGHT COMPANY.

DOCKET NO. 100160-EG

PETITION FOR APPROVAL OF
DEMAND-SIDE MANAGEMENT PLAN
OF PROGRESS ENERGY FLORIDA,
INC.

PROCEEDINGS: ORAL ARGUMENT

COMMISSIONERS
PARTICIPATING:

CHAIRMAN ART GRAHAM
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER RONALD A. BRISÉ
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Tuesday, December 6, 2011

TIME: Commenced at 10:31 a.m.
Concluded at 11:13 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR, CRR
Official FPSC Reporter
(850) 413-6734

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FLORIDA PUBLIC SERVICE COMMISSION

FPSC-COMMISSION CLERK

1 APPEARANCES:

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4 behalf of Florida Power & Light Company.

5 DIANNE M. TRIPLETT, ESQUIRE, Progress Energy
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7 Petersburg, Florida 33701, appearing on behalf of
8 Progress Energy Florida.

9 VICKI GORDON KAUFMAN, ESQUIRE, Keefe, Anchors,
10 Gordon & Moyle Law Firm, 118 North Gadsden Street,
11 Tallahassee, Florida 32301, appearing on behalf of the
12 Florida Industrial Power Users Group.

13 GEORGE CAVROS, ESQUIRE, 120 East Oakland Park
14 Boulevard, Suite 105, Oakland Park, Florida 33334,
15 appearing on behalf of Southern Alliance for Clean
16 Energy.

17 LAWRENCE HARRIS and ADAM TEITZMAN, ESQUIRES,
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20 behalf of the Florida Public Service Commission Staff.

21 MARY ANNE HELTON, DEPUTY GENERAL COUNSEL,
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25 Service Commission.

P R O C E E D I N G S

1
2 **CHAIRMAN GRAHAM:** Okay. We are now into
3 Docket Number 100155, which is the oral arguments. You
4 know, I don't have a script in front of me. That's all
5 right. We'll wing it.

6 Staff, read the notice.

7 **MR. HARRIS:** Thank you, Chairman. Pursuant to
8 notice published November 18th, this time and place has
9 been set for an oral argument in Docket Numbers
10 100155 and 100160-EG, relating to the protest of the
11 Commission's approval of proposed agency action orders
12 for demand-side management of FPL and Progress Energy
13 Florida.

14 **CHAIRMAN GRAHAM:** Appearances.

15 **MS. TRIPLETT:** Good morning, Commissioners.
16 My name is Dianne Triplett, appearing on behalf of
17 Progress Energy Florida.

18 **MS. CANO:** Good morning. My name is Jessica
19 Cano, and I'm appearing on behalf of Florida Power &
20 Light Company.

21 **MS. KAUFMAN:** Good morning, Commissioners.
22 Vicki Gordon Kaufman. I'm appearing on behalf of the
23 Florida Industrial Power Users Group.

24 **MR. CAVROS:** Good morning, Commissioners.
25 George Cavros appearing on behalf of Southern Alliance

1 for Clean Energy.

2 MR. HARRIS: Larry Harris and Adam Teitzman on
3 behalf of Staff.

4 MS. HELTON: Mary Anne Helton, Advisor to the
5 Commission.

6 CHAIRMAN GRAHAM: All right. Any preliminary
7 matters?

8 MR. HARRIS: I'm not aware of any, Chairman.

9 CHAIRMAN GRAHAM: Commissioner Edgar.

10 COMMISSIONER EDGAR: Thank you, Mr. Chairman.
11 As you know, since you made the assignment, I served as
12 Prehearing Officer and still am serving as Prehearing
13 Officer in this docket. And so just to tee it up, since
14 this is a little bit unusual, the parties and Staff and
15 then I all agreed that the issues in this particular
16 docket at this point in time are all legal issues, that
17 there are not issues of fact at dispute. And there so,
18 per the discussions of the parties, instead of going
19 into hearing, we scheduled this oral argument since,
20 again, the issues before us are of a legal nature rather
21 than a factual nature.

22 The OEP that I issued gave 20 minutes per
23 side, so that would be 20 minutes for SACE, and then 20
24 minutes to be divided between Progress, FPL, and FIPUG,
25 per however they wanted to divvy that up. And so I just

1 wanted to kind of share with you why we are here on this
2 today, which, again, is a little unusual. I would like
3 to thank the parties though for their cooperation. I
4 think the issues that they agreed to that are before us
5 absolutely frame the issue that is before us. Thank
6 you.

7 **CHAIRMAN GRAHAM:** Thank you very much,
8 Commissioner Edgar.

9 I guess the question I have is have you guys
10 determined how you're going to split up the 20 minutes?

11 **MS. TRIPLETT:** Yes, Mr. Chairman. We're going
12 to go down the row this way, so I'm going to start
13 eight minutes, and I don't think I'll take
14 eight minutes, and then Ms. Cano will take eight
15 minutes, and then Ms. Kaufman the remaining time, four
16 minutes or whatever is remaining.

17 **CHAIRMAN GRAHAM:** Okay.

18 **MS. TRIPLETT:** Oh, and I'm sorry. We assumed
19 that SACE would go first and then we would follow.

20 **CHAIRMAN GRAHAM:** Yeah. I just wanted to make
21 sure that you guys were lined out.

22 **MS. TRIPLETT:** Yes, sir.

23 **CHAIRMAN GRAHAM:** Thanks.

24 SACE, you have 20 minutes.

25 **MR. CAVROS:** Great. Thank you, Commissioner.

1 I think I'll need pretty close to 20 minutes, but I'll
2 try to keep it under, if I can.

3 Chairman, Commissioners, thanks for the
4 opportunity to address you today regarding SACE's
5 protest of the proposed agency action and the DSM orders
6 for FP&L and Progress Energy.

7 And as I address Issues 1 and 3 of SACE's
8 argument today, I ask that you consider two fundamental
9 themes. The first one is that *Florida Statute 366.82* is
10 plain on its face, and that is that conservation goals
11 have to be set and that conservation goals have to be
12 met through the DSM implementation process.

13 And the other theme is that while the
14 Commission has agency deference to interpret statutes,
15 that does not extend to actions that are clearly
16 erroneous or unauthorized. And in this case, slashing
17 the conservation goals for Progress Energy and Florida
18 Power & Light through the DSM implementation process, we
19 argue, is clearly erroneous and unauthorized by statute.

20 So on August 16th, 2011, this Commission
21 issued Orders Number 11-0346 and 0347, which I'll refer
22 to as the DSM orders hereinafter, that denied PEF's
23 original goal scenario DSM plan, and also FP&L's
24 modified DSM plan respectively, and purported to create
25 a, quote, newly modified DSM plan, close quote, for both

1 utilities, which is nothing more than FPL's DSM plan and
2 PEF's DSM plan that's currently in place.

3 Now the FPL and Progress plans that are in
4 place are plans that were originally approved to meet
5 significantly weaker goals that were set in the 2004
6 conservation goal setting proceeding as adopted in
7 Orders Nos. 04-0763 and 0769 respectively, which are
8 appended to SACE's brief.

9 So the DSM orders effectuated a goal change
10 because FP&L and PEF have plans in place to meet 2004
11 goals instead of the more robust goals that were set
12 during the 2009 goal setting proceeding set out in Order
13 Nos. 09-0855 and 10-0198, which are also appended to
14 SACE's brief.

15 Now in the DSM orders the Commission relies on
16 its authority pursuant to 366.82(7) to effectuate that
17 goal change. And this subsection only contemplates the
18 approval, modification, or denial of plans and programs.
19 The Commission therefore violated that subsection
20 because the Commission simply does not have the
21 authority to adopt or change goals pursuant to this
22 subsection. And I understand that the order purports
23 that the 2009 goals are still in place, but that's a
24 legal fiction, and I'll highlight that in a moment.

25 The Commission only has authority to adopt

1 goals or change goals in the FEECA statute pursuant to
2 the provisions of 366.82(2) and subsection (3), and
3 furthermore can change goals pursuant to subsection (6).

4 And I provided a copy of Section 366.8 to you
5 today. And I'd like to direct you first to subsection
6 (2), where it states, "The Commission shall adopt
7 appropriate goals." Now this is the first instance
8 where there's a requirement that the Commission adopt
9 goals.

10 And then I'd like to then refer you to
11 subsection (3), where it says, "In developing the goals,
12 the Commission must evaluate the full technical
13 potential of all available demand-side measures." And
14 it goes on to say that, "In establishing the goals, the
15 Commission must take into consideration," and it lists
16 four factors. And those four factors were added in
17 2008, were part of the 2008 amendments.

18 And, lastly, if you go to subsection (6), it
19 states, "The Commission may change goals for reasonable
20 cause. The time period to review the goals, however,
21 shall not exceed five years." Now this subsection
22 authorizes the Commission to change goals, if that's
23 what you choose to do, but that review must be done at
24 least every five years.

25 And, more importantly, it goes on to say that,

1 "After the plans and programs to meet the goals are
2 completed, the Commission shall determine what further
3 goals, and programs, plans are warranted and adopt
4 them." And I want, you know, I want to highlight that
5 sentence again because it says, "After the plans and
6 programs to meet the goals are completed." So this is
7 the first instance in the statute where it contemplates
8 that plans and programs must meet goals.

9 And then I'd like to direct you to subsection
10 (7), but, you know, subsections (7) and (8) also
11 contemplate that goals are set and then goals are met
12 through DSM plans. Now if you look at the first
13 sentence of subsection (7), it says, "Following adoption
14 of goals pursuant to subsections (2) and (3),
15 the Commission shall require each utility to develop
16 plans and programs to meet the overall goals within its
17 service territory." Now this creates a statutory
18 obligation on the FEECA regulated utilities to develop
19 DSM plans that meet the conservation goals and on the
20 Commission to ensure that they do just that.

21 Now the second sentence provides, "The
22 Commission may require modifications or additions to a
23 utility's plans and programs," but it doesn't say the
24 Commission can relieve the utility of its statutory
25 obligation to meet the goals through its DSM plans.

1 The third sentence goes on to state that, "The
2 Commission shall have the flexibility to modify or deny
3 plans and programs." But, again, there is no mention
4 that the Commission can relieve a utility of its
5 obligations to meet its goals through DSM plans, yet the
6 order purports to maintain the 2009 goals,
7 Commissioners. And this is a legal fiction, and let me
8 highlight this to you.

9 There's a highlighted sentence in subsection
10 (7) further down in the subsection that states, "If any
11 utility has not implemented its programs and is not
12 substantially in compliance with the provisions of its
13 approved plan at any time, the Commission shall adopt
14 programs required for that utility to achieve the
15 overall goals."

16 Now that provision contemplates that the
17 approved plan will meet the overall goals. So let's
18 assume just for a second that the Commission had to act
19 pursuant to this provision. The approved plan would be
20 the newly modified plan that's in the DSM orders that
21 the Commission developed, and then the overall goals
22 would be the 2009 goals that the order purports are
23 still in place. But the approved plan isn't aligned
24 with the overall goals. And if the DSM plans don't meet
25 the 2009 goals, that provision can't be executed

1 properly. And therefore, you know, the DSM orders are
2 in direct contravention at least for this portion of the
3 statute.

4 Now the statute itself, 366.82, lays out a
5 sequence of setting goals through subsection (2) and
6 (3) and then implementing goals through subsection (7).
7 But this Commission not only failed to approve plans
8 that would meet the overall goals, but it used
9 subsection (7) to change goals in contravention of the
10 plain meaning of the statute.

11 Now the Commission has previously agreed with
12 our interpretation of the statute; that is, that once
13 goals are set, goals have to be met. The Commission
14 properly recognized that approved plans had to meet, had
15 to meet the overall goals when it initially denied the
16 FP&L and Progress Energy DSM plans. And I want to
17 direct your attention to Order Number 10-0605 for PEF,
18 which I provided to you today. And if you turn to page
19 4, it states that, "PEF's proposed DSM plan does not
20 satisfy the company's annual numeric goals set by the
21 Commission." And it goes on to say, "Therefore,
22 consistent with Section 366.82(7), we find that PEF
23 shall file specific program modifications or additions
24 that are needed in order for the 2010 DSM plan to be in
25 compliance with Order Number PSC-10-0198." That is the

1 order that was -- that's the most recent goal setting
2 order.

3 And then, you know, it goes on at the end, it
4 says, "Ordered by the Florida Public Service Commission
5 that Progress Energy's proposed DSM plan does not
6 satisfy the numeric conservation goals set forth in
7 Order Number PSC-09-0198." So the Commission got it
8 right in this instance.

9 And, in fact, if I can direct your attention
10 to Order Number 11-0079 for FP&L, which was issued
11 several months later, which I provided to you, the
12 Commission again also got it right in this instance.
13 And if you look at page 2, there's a highlighted
14 sentence there, I hope, that says "FPL is responsible
15 for meeting its required conservation goals, yet the
16 projections provided by the company show that" -- you
17 plan -- "that they plan to fail." So this is, this
18 highlights the Commission's understanding that the
19 utilities have a statutory obligation to meet the goals
20 through their DSM plans.

21 And, again, if you turn to page 3 of that
22 order, again, it says, "FPL's proposed DSM plan does not
23 satisfy the company's annual numeric goals set by this
24 Commission." And then it continues to say, "Therefore,
25 consistent with Section 366.82(7), we find that FPL

1 shall file specific program modifications or additions
2 that are needed for the 2010 DSM plan to be in
3 compliance" with the most recent goal setting prediction
4 (phonetic).

5 So the Commission absolutely got it right in
6 those orders, but then several months later the
7 Commission inexplicably did a 180 degree turn by
8 purporting to modify Florida Power & Light and Progress
9 Energy's DSM plans, the plans that are already in place
10 that implement much weaker 2004 goals rather than the
11 most recent applicable goals.

12 So, you know, evidence of the inappropriate
13 goal change is further supported by how the Commission
14 constructed the penalty/reward provision in the order
15 pursuant to subsection (8). That is, that FP&L and PEF
16 may be subject to penalties if they don't meet the
17 savings projections of their current plans.

18 First, it's important to note that the penalty
19 provision that the Commission relied upon in subsection
20 (8) states the Commission may authorize financial
21 penalties for, quote, those utilities that fail to meet
22 their goals, close quote. So the authority you relied
23 on in the penalty provision is for a utility not meeting
24 goals.

25 Now the Commission order skirts the word

1 "goals" by requiring the utilities to meet, quote,
2 unquote, savings projections in the newly modified DSM
3 plan. But, Commissioners, savings projections are
4 goals. So even the financial penalty construction of
5 the DSM orders reflect that you've set new goals in the
6 DSM orders.

7 Now if you still assert that the 2009 goals
8 are still in place, then you've established two sets of
9 goals: One set of plans that implement the 2004 goals,
10 and purportedly another set of goals established in 2009
11 that are now only aspirational. There are no
12 consequences for meeting, for having to meet the 2009
13 goals, and the statute simply does not contemplate two
14 sets of goals. Again, it's simply legal fiction to say
15 that the 2009 goals are still in place.

16 Subsection (6), (7), and (8) all contemplate
17 that plans and programs must meet goals. Moreover, the
18 use of subsection (7) to change goals renders other
19 subsections meaningless. If the Commission wants to
20 adopt goals, it must do so under subsection (2) and (3),
21 or change goals under subsection (7). To do it through
22 subsection -- I'm sorry -- subsection (6). But to do it
23 through subsection (7) renders subsections (2), (3), and
24 (6) meaningless. And there's a well established rule of
25 statutory construction that statutes read together --

1 must be read together to ascertain their meaning, and
2 that related statutory provision should be construed
3 with one another. We believe the statute is plain on
4 its face, but if the Commission believes statutory
5 construction is required, the Commission's DSM order
6 still violates the statutes because they render
7 subsections (2), (3), and (6) meaningless.

8 Moreover, the Commission's DSM order defies
9 legislative intent. In 2008, the statute was amended to
10 promote expanded use of energy efficiency as a resource
11 specifically through subsection (3), which we've
12 discussed before. Whether it be the Florida House of
13 Representatives' staff analysis of House Bill 7135, that
14 was a 2008 bill that amended FEECA, or the transcripts
15 of the Commission's own deliberations during the 2009
16 goal setting proceedings, which are both appended to
17 SACE's brief, they're both consistent that the
18 amendments call for providing more energy efficiency
19 options to customers, not the status quo as reflected in
20 the most current DSM orders.

21 So what you've done is take a big step
22 backwards to pre-2008 RIM cost-effectiveness based
23 measures and programs which the Commission moved away
24 from in setting the 2009 goals. So the Commission, you
25 know, clearly states in Order 09-0855 on page 15, which

1 is appended to SACE's brief, that "We approve goals
2 based on the unconstrained ETRC test for FPL, PEF, TECO,
3 Gulf, and FPUC."

4 Now this evidence is that the Commission
5 understood the intent of the 2000 amendments at that
6 time. Again, we believe the statute is plain on its
7 face. But if the Commission believes that a legislative
8 intent analysis is necessary, then the Commission DSM
9 orders still violate the statute because they're
10 inconsistent with the intent of the 2008 amendments.

11 Now, Florida Power & Light and Progress Energy
12 argue that the Commission action is appropriate since
13 they can already petition you to add programs that
14 increase energy, energy savings but yet don't change
15 goals.

16 The facts in the 2006 orders are completely
17 different from the facts in this case. In 2006, the
18 Commission approved additional programs for FPL and PEF
19 that have the effect of increasing energy savings, but
20 those, those actions did not slash their -- they did not
21 slash their goals. But more importantly, it did not
22 relieve the utilities of their statutory obligation to
23 meet their goals.

24 **CHAIRMAN GRAHAM:** You've got five minutes
25 left.

1 **MR. CAVROS:** Thank you. And additionally, you
2 know, Florida Power & Light, Progress Energy, FIPUG
3 argue that the agency is entitled to great deference to
4 interpret the statute that it's charged with enforcing.
5 But, once again, it's important to note that such
6 deference is only granted if the agency interpretation
7 of the statute is not clearly unauthorized or erroneous.
8 But we submit that no deference is due to the Commission
9 because the statute is clear on its face that adopting
10 or changing goals pursuant to 366.82(7) is unauthorized
11 and clearly erroneous.

12 Now could you have modified plans and programs
13 as authorized pursuant to subsection (7) without
14 changing the conservation goals? Absolutely. You could
15 have done that. SACE submitted numerous comments on
16 that issue. And, in fact, this is where your discretion
17 lies. You could have asked the utilities to go back to
18 the drawing board and come back with programs that are
19 better designed, programs that rely, or plans that rely
20 on lower cost programs, or simply introduce new
21 programs, lower cost programs. But you did not do that.
22 And, in fact, that would have even been consistent with
23 the legislative intent language in 366.81 which calls
24 for the most efficient conservation systems. And we
25 submit that that means ensuring the customers are

1 getting the most bang for their buck. But unfortunately
2 you took an easy shortcut in the DSM dockets and
3 selectively slashed the goals for Florida Power & Light
4 and PEF by modifying the plans to comport with business
5 as usual, and in so doing, Commissioners, we submit that
6 you let down Florida Power & Light and Progress Energy
7 customers, who won't get any more energy efficiency
8 opportunities than they're already getting. And those
9 are customers who depend on utility-sponsored programs
10 to help them reduce energy use and save money on their
11 bills. And our relief is, that we request is in our
12 brief. And I will end it there, and am available to
13 answer questions. Thank you.

14 **CHAIRMAN GRAHAM:** Thank you, sir.

15 Ms. Triplett.

16 **MS. TRIPLETT:** Thank you, sir. Thank you also
17 for the opportunity to provide comments.

18 Our positions are set out in lengthy detail in
19 our briefs, so I'm going to be quick and just hit on
20 some high points, and also briefly address some of the
21 things that I heard counsel for SACE argue.

22 So, first, as Commissioner Edgar pointed out,
23 to be clear, this protest is not about any factual
24 findings contained in your order. So SACE is not
25 challenging your finding that PEF's compliance plan

1 would have an undue rate impact on customers,
2 specifically to the tune of a monthly bill impact
3 ranging from \$11.28 in 2011 all the way to \$16.52 in
4 2014. The only thing SACE is challenging here is your
5 discretion and ability to do something about that undue
6 rate impact and to modify the plan to, to prevent that
7 undue rate impact. And PEF submits to you that the
8 Commission absolutely had the authority under the
9 statutes to do, to implement the order and pass the
10 order that it did.

11 I think it's also helpful to consider some
12 background on how the Commission got to where it is
13 today with respect to DSM. First, recall that the
14 Commission has been setting DSM goals and approving
15 plans for decades, and in 2008 the FEECA statute was
16 amended.

17 But in summary, the FEECA statute did three
18 main things. First, it added a requirement that the
19 Commission consider and encourage demand-side renewable
20 energy systems like solar, like the solar programs that
21 you approved last year.

22 Second, it made some changes and additions to
23 the analysis that the Commission must undertake when it
24 sets goals. Importantly, it didn't set any sort of
25 hierarchy or mandate that one particular consideration

1 was more important than the other. It just gave the
2 Commission the discretion to consider all of those
3 things when setting goals.

4 And finally, the 2008 amendments added two
5 sentences to subsection (7), and you have several
6 handouts, there's several places to look for it. But
7 it's basically, the following two sentences are: "The
8 Commission may require modifications or additions to a
9 utility's plans and programs at any time it is in the
10 public interest consistent with this act."

11 And the second sentence, "In approving plans
12 and programs for cost recovery, the Commission shall
13 have the flexibility to modify or deny plans or programs
14 that would have an undue impact."

15 So -- and I think this is a recognition that
16 the DSM process is a very complex and iterative one. So
17 the Legislature delegated authority to the Commission
18 for you to use your technical expertise, gather all the
19 information, and come to the right balance. And in
20 doing that, the Legislature did not intend to hamstring
21 the Commission and prevent you from exercising
22 flexibility and authority to, to make changes so as to
23 prevent undue cost impact to the customers.

24 So it is against this broad backdrop of broad
25 authority that, that the Commission has when you go to

1 look at what did you do in this case? So in this order,
2 what you did was you exercised that very discretion and
3 authority provided to you in the 2008 amendments. You
4 looked at the plans that were presented and you
5 exercised flexibility to modify them to reduce the undue
6 rate impact.

7 So turning to SACE's arguments, the underlying
8 premise of their argument is that the Commission
9 modified the goals when it, it approved the PAA order at
10 issue. Quite simply, this is not true for several
11 reasons.

12 First, the PSC clearly stated in its order
13 that the original goal would be, would remain in place.
14 It also stated that the reward is only eligible if the
15 original goal is not -- is exceeded.

16 And briefly addressing SACE's argument about
17 the Commission's authority to do that, if you look at
18 the section that provides the authority for financial
19 rewards and penalties, it is very -- it is
20 discretionary. So the Commission may authorize
21 financial rewards or penalties. It does not require
22 that the Commission provide any sort of rewards or
23 penalties. So you are clearly within your discretion to
24 choose when you're going to award a penalty and when
25 you're going to award a reward.

1 The third reason why your order did not modify
2 PEF's goals is because PEF can and will continue to work
3 towards achieving a higher level of savings. I don't
4 think there's a difference between what PEF did in 2006
5 and what we could do, you know, next month. If
6 technologies change and we find that there is a
7 potential for achieving higher energy savings, we will
8 come back to you and we will ask you to make those
9 changes, and we can still begin to achieve more energy
10 savings. It's what we have done for years.

11 If you look at our cumulative goals based on
12 the 2004 proceeding compared to what we actually
13 achieved, we are consistently hitting, you know, well
14 above our marks, and we, you know, fully intend to
15 continue to do that.

16 SACE also argues that the Commission's actions
17 are inconsistent with the overall intent of the FEECA
18 statute, again, because the approved programs are not,
19 are designed to meet 2004 goals and not 2009 goals.
20 But -- and he pointed out Section 7, subsection (7),
21 specifically the, the first paragraph -- the first
22 sentence and then the second -- basically the first
23 three sentences.

24 So I would submit to you that this is a
25 two-step process. So the first process is that the

1 Commission shall require each utility to develop plans
2 and programs to meet the overall goals. I think you did
3 that when you issued your initial order in 2009 and
4 said, Progress, go and find -- and submit a plan
5 designed to meet it. We did that. And then you looked
6 at it, and you said, well, this is going to cause an
7 undue rate impact. So I'm going to now exercise my
8 discretion under Section, under the second and third
9 sentences of subsection (7), and I'm going to ask that
10 the, that the plan be modified. So PEF would submit
11 that you have complied with the statutory intent here in
12 subsection (7).

13 So I'm going to, I'm going to stop here. I'm
14 available for questions. But in closing, I would just
15 say that we request that you deny SACE's protest, you
16 uphold your order because you were well within your
17 statutory, statutory authority to do so. Thank you.

18 **CHAIRMAN GRAHAM:** Thank you, Ms. Triplett.

19 Ms. Cano.

20 **MS. CANO:** Good morning again, Chairman and
21 Commissioners. FPL supports the Commission's PAA order
22 because the action taken by the Commission in that order
23 is expressly authorized by FEECA, and because the impact
24 of the order is to avoid an unnecessary bill increase
25 for FPL's customers.

1 In responding to SACE's protest, I'd like to
2 focus on two things: What the Commission did and what
3 the Commission did not do through its order.

4 What the Commission did was modify FPL's DSM
5 plan to reduce costs for customers. What the Commission
6 did not do was modify FPL's DSM goals in violation of
7 FEECA.

8 Turning first to what the Commission did, if
9 you could please take a look at the handout that was
10 provided with the highlighting on it. And you've heard
11 this a couple of times before but it does bear
12 repeating, that in Section 366.82(7), it states that
13 "The Commission may require modifications or additions
14 to a utility's plans and programs at any time it is in
15 the public interest consistent with this act. In
16 approving plans and programs for cost recovery, the
17 Commission shall have the flexibility to modify or deny
18 plans or programs that would have an undue impact on the
19 costs passed on to customers."

20 Beneath that section is an excerpt from the
21 Commission's order, FPL's PAA order. And in it the
22 Commission determined that the plans filed by FPL, and I
23 quote, will have an undue impact on the costs passed on
24 to consumers, and that the public interest will be
25 served by requiring modifications to FPL's DSM plan.

1 The action that the Commission took in its
2 order precisely tracks the type of action that is
3 expressly permitted by Section 366.82(7). The
4 Commission's decision, therefore, as opposed to being
5 clearly unauthorized or erroneous as SACE has claimed,
6 clearly complies with the plain language of the law.

7 Turning now to what the Commission did not do.
8 It is readily apparent, contrary to SACE's claims, that
9 the Commission did not change FPL's DSM goals. This is
10 not a legal fiction; this is actually the reality of the
11 situation. As Ms. Triplett pointed out, not one word in
12 the order says anything about changing FPL's DSM goals,
13 and it further makes clear that the goals are still in
14 place by putting FPL on notice that it won't be eligible
15 for any type of performance reward unless it exceeds
16 those goals.

17 Now further proof of this fact can be found by
18 looking at the Commission's July 26th DSM Agenda
19 Conference transcript. At that agenda, the Commission
20 repeatedly considered revisiting the goals, and
21 ultimately decided not to revisit the goals or even open
22 a proceeding to consider revisiting the goals at that
23 time.

24 So one cannot reasonably argue that the
25 Commission did through its PAA order precisely what it

1 decided not to do at that agenda.

2 Because SACE's premise that the goals were
3 changed is incorrect, its argument that the Commission
4 violated Section 366.82(7) because that section doesn't
5 allow for the modification of goals must fail.

6 Now the discussion could end there because the
7 order is clearly supported by the plain language of the
8 statute. But SACE addressed the underlying intent by
9 FEECA, for example, by pointing to a House bill
10 analysis, so I will briefly respond.

11 First and foremost, the case law in Florida is
12 clear that when a statute is clear, a court or agency
13 shouldn't look behind that language for legislative
14 intent. As we've just discussed, the language of the
15 statute is clear, so there's no legal basis to inject
16 varying interpretations of legislative intent here.
17 Nonetheless, it's worth pointing out that the
18 Commission's decision is consistent with the intent of
19 FEECA, and that intent is expressly provided in its
20 introductory section, Section 366.81. It's also
21 consistent with the step-by-step goal setting and plan
22 approval process laid out in Section 366.82, and it
23 reflects the overall balanced approach that FEECA
24 contemplates, which is to encourage conservation, all
25 the while being mindful of customer costs.

1 Now SACE would have the Commission believe
2 that once goals are set, the Commission is precluded
3 from modifying a company's DSM plan in a manner that
4 alters its projected performance. But nothing about the
5 intent of FEECA or the express language of FEECA limits
6 the Commission's authority in such a manner. To the
7 contrary, the language specifically authorizes the
8 Commission to consider cost impacts on customers by
9 modifying or denying plans and programs, the logical
10 effect of which would be to affect performance.

11 Finally, I would like to comment on one item
12 in SACE's brief which it didn't raise here in its oral
13 argument, and that's the company's filing requirements.
14 I won't go into detail, it is laid out in the brief, but
15 suffice it to say that another DSM plan filing is not
16 required here. It is required when a plan is
17 disapproved. But where, as here, the Commission has
18 modified a plan and then approved the resulting plan,
19 it's simply not necessary, especially where there's
20 already a plan on file with the Commission that's
21 consistent with that order.

22 So in sum, the Commission's PAA order does
23 comply with the law. It complies with the unambiguous
24 language of Section 366.82(7), which provides the
25 Commission the authority to do precisely what it's done

1 in this instance. And because the Commission's order
2 complies with the law, SACE's protest should be denied.
3 Thank you.

4 **CHAIRMAN GRAHAM:** Thank you.

5 Ms. Kaufman, you have seven minutes left.

6 **MS. KAUFMAN:** Thank you, Mr. Chairman,
7 Commissioners. I don't think I'm going to need seven
8 minutes.

9 But, as I said, I'm Vicki Gordon Kaufman. I'm
10 here on behalf of the Florida Industrial Power Users
11 Group, and I'm in the somewhat odd position of sitting
12 on the utility side, which doesn't happen very often.
13 But in this case, FIPUG does agree with the positions
14 that have been taken by Progress Energy and Florida
15 Power & Light. Ms. Triplett, Ms. Cano, they did an
16 admirable job of explaining that position to you and I'm
17 not going to repeat what they said.

18 But I would like to say that I think the issue
19 before you is a legal one, and it's a very narrow issue.
20 And as we see it, it's basically whether you have the
21 authority and the discretion to consider the rate impact
22 of DSM programs on consumers.

23 We have been involved in this docket since the
24 beginning, and we have urged you many times that it is
25 within your authority and part of your responsibility to

1 decide how these programs will impact ratepayers.
2 Ms. Cano laid out the impact that Progress's plans would
3 have had on ratepayers, and I suggest that she gave you
4 the, I guess the 1,000 per kilowatt residential bill.
5 And I'd urge you to consider that the impact will be far
6 greater on FIPUG members, who obviously consume much
7 more electricity.

8 And I think that when we were at the Agenda
9 Conference that resulted in the PAA order, there was
10 extensive discussion, not only from the parties but
11 among yourselves, about the importance of taking a look
12 at rate impact in terms of our economic situation, job
13 creation, and all the other things that go into
14 increasing rates. This is a difficult time to do that.
15 You all considered that and had a lot of discussion,
16 and, as Ms. Cano pointed out, you incorporated that
17 discussion into your order.

18 I think that this one-page handout that both
19 Ms. Triplett and Ms. Cano read to you from, the
20 highlighted sentences are absolutely clear authority for
21 the action that you took. And in this instance I will
22 agree with Mr. Cavros, and that is the statute is
23 absolutely plain on its face in regard to what you
24 should take into consideration when you are approving or
25 disproving or modifying DSM programs. I think that

1 Mr. Cavros would like you to disregard that section, and
2 I think that you appropriately considered it and made
3 your decision based on all the factors that were before
4 you.

5 It's FIPUG's view that the PAA orders were
6 correct, that SACE has shown no basis for overturning
7 them, and that their protest should be denied. Thank
8 you.

9 **CHAIRMAN GRAHAM:** Thank you.

10 Well, Mr. Cavros, I appreciate your position
11 that you're in. You have to come before this board that
12 made this decision in August and strategically argue
13 with all due respect you disagree with us, and I thought
14 you did a good job of doing that.

15 Ms. Triplett, Ms. Cano, Ms. Kaufman, it's good
16 to see you guys all playing in the same sandbox. Maybe
17 we should see more of that in the future moving forward.

18 Staff, I really don't see any of the facts
19 have changed since we made this decision back in August.
20 My question is to you, do we have the ability to make a
21 bench decision on this?

22 **MR. HARRIS:** Yes, Mr. Chairman, you do.

23 **CHAIRMAN GRAHAM:** That being said,
24 Commissioners, I'd like to ask for a bench decision on
25 this. I think, I think we should deny the protest and

1 continue with the approved PAA that we approved back in
2 August. Any comments? Lights everywhere.

3 Commissioner Brown.

4 **COMMISSIONER BROWN:** Thank you, Mr. Chairman.
5 And I would agree with you. I think SACE's arguments,
6 while interesting, are unpersuasive. And this
7 Commission has broad discretion and broad flexibility to
8 alter, amend, modify the plans, which we did.

9 And as Ms. Cano, pardon me, Cano pointed out
10 in her discussion, nowhere in the order did it talk
11 about us reversing the goals or going back. And I
12 remember the vivid discussion that we had. We didn't
13 even open up a docket to, to alter them. So for these
14 reasons, I can't support SACE's decision and I'm
15 prepared to make a motion.

16 **CHAIRMAN GRAHAM:** Commissioner Balbis.

17 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.
18 And I agree with Commissioner Brown's comments.

19 And I just have one question for our legal
20 counsel, is if -- the question to them is based on
21 SACE's arguments and the positions of FPL, Progress, and
22 FIPUG, have you -- do you stand by your legal assessment
23 that our decision was a legal and sound one?

24 **MR. HARRIS:** Yes, we do. The legal division
25 has carefully reviewed the briefs filed by all the

1 parties. I have not heard anything at this oral
2 argument that leads me to believe that this protest
3 should be upheld. Instead, I believe the protest should
4 be denied.

5 It is my position and my opinion that you have
6 clear legal authority. The statute is plain on its
7 face, you had the authority to take the actions that you
8 did.

9 **COMMISSIONER BALBIS:** Thank you. And with
10 that, Mr. Chairman, I move that we deny SACE's protest
11 in this matter.

12 **CHAIRMAN GRAHAM:** It has been moved and
13 seconded.

14 Commissioner Brisé.

15 **COMMISSIONER BRISÉ:** Thank you, Mr. Chairman.
16 I'm just going to support that motion, particularly
17 because we have not changed any goals. We just looked
18 at the plans and made the modifications as we saw fit,
19 and used the backing of obviously the authority that we
20 have to look at undue rate impact on consumers. So I
21 think we were well within the bounds of our ability and
22 authority to act when we acted in that particular PAA.
23 So, therefore, I think that it should stand and,
24 therefore, I wouldn't support the protest.

25 **CHAIRMAN GRAHAM:** Commissioner Edgar.

1 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman,
2 and to each of you for your comments. And I agree,
3 especially, Mr. Chairman, Mr. Cavros, I think that you
4 did an excellent job of arguing your case. Obviously
5 though I don't agree with your argument, but I do
6 appreciate the position that you have taken and, and the
7 rationale that you have expressed to back that up.

8 I do disagree adamantly though with one or two
9 things that you said. And in your argument you said
10 that the Commission took a big step backwards. I
11 appreciate that that would be the perspective of your
12 organization. Again, I don't agree. And I also don't
13 agree that we took an easy shortcut, because I can
14 assure you that I, and I know all of us, put a whole lot
15 of time into trying to make a decision that put all of
16 the pieces together in a way that certainly is in
17 keeping with the statute, but also tries to help us keep
18 moving forward as a state in a way that is good for the
19 public interest and good for ratepayers with energy
20 efficiency and conservation. And I know I commit to
21 trying to keep that ball moving forward in any way that
22 I can just as one Commissioner.

23 There are many statutes that are very, very
24 prescriptive to us as a, as a Commission. This is a
25 statute that in my opinion does give us some discretion

1 and the opportunity to exercise flexibility, and that is
2 key to my decision. Because there are statutes that do
3 not, but I believe that this one does. And I know that
4 we all expressed a great deal of concern about the rate
5 impact that was presented to us.

6 So, Mr. Cavros, I would say to you and to your
7 organization, please keep participating in our issues
8 and in the dockets and the discussions here at the
9 Commission. I believe that you contribute very
10 valuably. But in this instance I do believe, as I did
11 at the time, that the answer to the four issues before
12 us as to whether we violated the statute with these
13 decisions, that the answer to that is no, that our
14 actions were in keeping with the statutes, were in
15 keeping with the direction that the statutes give us,
16 and that we were on firm statutory ground. And so with
17 that, obviously I support the motion.

18 **CHAIRMAN GRAHAM:** Okay. We have a motion to
19 deny the protest and it's been seconded. Seeing no
20 other lights on, all in favor, say aye.

21 (Affirmative response.)

22 Any opposed?

23 (No response.)

24 By your action, you have denied SACE's
25 protest. That concludes the oral arguments that we

1 have.

2 (Proceeding concluded at 11:13 a.m.)

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1 STATE OF FLORIDA)
 :
 2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

3
 4 I, LINDA BOLES, RPR, CRR, Official Commission
 5 Reporter, do hereby certify that the foregoing
 6 proceeding was heard at the time and place herein
 7 stated.

8 IT IS FURTHER CERTIFIED that I
 9 stenographically reported the said proceedings; that the
 10 same has been transcribed under my direct supervision;
 11 and that this transcript constitutes a true
 12 transcription of my notes of said proceedings.

13 I FURTHER CERTIFY that I am not a relative,
 14 employee, attorney or counsel of any of the parties, nor
 15 am I a relative or employee of any of the parties'
 16 attorneys or counsel connected with the action, nor am I
 17 financially interested in the action.

18 DATED THIS 16th day of December,
 19 2011.

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 22
 23
 24
 25

 Linda Boles
 LINDA BOLES, RPR, CRR
 FPSC Official Commission Reporter
 (850) 413-6734

Section 366.82(7), Florida Statutes:

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. 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...

Florida Public Service Commission Order No. PSC-11-0346-PAA-EG, pp. 4-5:

We find that both Plans filed by FPL (Modified and Alternative) 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. Therefore, we hereby determine to exercise the flexibility specifically granted us by statute to modify the Plans and Programs set forth by FPL.

Parties/Staff Handout
event date 12/6/11
Docket No. 100155/10 D160

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of demand-side management plan of Progress Energy Florida, Inc.

DOCKET NO. 100160-EG
ORDER NO. PSC-10-0605-PAA-EG
ISSUED: October 4, 2010

The following Commissioners participated in the disposition of this matter:

NANCY ARGENZIANO, Chairman
LISA POLAK EDGAR
NATHAN A. SKOP
ART GRAHAM
RONALD A. BRISÉ

NOTICE OF PROPOSED AGENCY ACTION ORDER
DENYING DEMAND-SIDE MANAGEMENT PLAN AND
APPROVING SOLAR PILOT PROGRAMS

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

BACKGROUND

As required by the Florida Energy Efficiency and Conservation Act (FEECA), Sections 366.80 through 366.85 and 403.519, Florida Statutes (F.S.), we adopted annual goals for seasonal peak demand and annual energy consumption for the FEECA Utilities. These include Florida Power & Light Company (FPL), Progress Energy Florida, Inc. (PEF), Tampa Electric Company (TECO), Gulf Power Company (Gulf), Florida Public Utilities Company (FPUC), JEA, and Orlando Utilities Commission (OUC).

Pursuant to Rule 25-17.008, F.A.C., in any conservation goal setting proceeding, the Commission requires each FEECA utility to submit cost-effectiveness information based on, at a minimum, three tests: (1) the Participants Test; (2) the Rate Impact Measure (RIM) Test, and (3) the Total Resource Cost (TRC) Test. The Participants Test measures program cost-effectiveness to the participating customer. The RIM Test measures program cost-effectiveness to the utility's overall rate payers, taking into consideration the cost of incentives paid to participating customers and lost revenues due to reduced energy sales that may result in the need for a future rate case. The TRC Test measures total net savings on a utility system-wide basis. In past goal setting proceedings, we established conservation goals based on measures that pass both the Participants Test and the RIM Test.

The 2008 Legislative Session resulted in several changes to the FEECA Statute, and our goal-setting proceeding was the first implementation of these modifications. By Order No. PSC-09-0855-FOF-EG,¹ we established annual numeric goals for summer peak demand, winter peak demand, and annual energy conservation for the period 2010 through 2019, based upon an unconstrained Enhanced-Total Resource Test (E-TRC) for the investor-owned utilities (IOUs). The E-TRC Test differs from the conventional TRC Test by taking into consideration the estimated additional costs imposed by the potential regulation of greenhouse gas emissions. In addition, the numeric impact of certain measures with a payback period of two years or less were also included in the goals. Further, the IOUs subject to FEECA were authorized to spend up to 10 percent of their historic expenditures through the Energy Conservation Cost Recovery (ECCR) clause as an annual cap for pilot programs to promote solar water heating (Thermal) and solar photovoltaic (PV) installations.

On January 12, 2010, PEF filed a Motion for Reconsideration of our decision in Docket No. 080408-EG. Order No. PSC-10-0198-FOF-EG² granted, in part, PEF's reconsideration which revised PEF's numeric goals to correct a discovery response that caused a double-counting error. On March 30, 2010, PEF filed a petition requesting approval of its Demand-Side Management (DSM) Plan pursuant to Rule 25-17.0021, F.A.C.

The Florida Industrial Power Users Group (FIPUG) was granted leave to intervene on May 7, 2010.³ White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (PCS Phosphate) was granted leave to intervene on June 18, 2010.⁴ The Southern Alliance for Clean Energy (SACE) was granted leave to intervene on August 9, 2010.⁵ The Florida Solar Energy Industry Association (FlaSEIA) was granted leave to intervene on August 11, 2010.⁶ Wal-Mart Stores East, LP, and Sam's East, Inc. (Walmart) was granted leave to intervene on August 18, 2010.⁷

On July 14, 2010, the SACE filed comments on the FEECA Utilities' DSM Plans. These comments were amended on August 3, 2010, to include comments regarding FPUC. No other intervenors filed comments. On July 28, and August 12, 2010, PEF and Gulf, respectively, filed responses to SACE's comments.

¹ See Order No. PSC-09-0855-FOF-EG, issued December 30, 2009, in Docket No. 080408-EG, In re: Commission review of numeric conservation goals (Progress Energy Florida, Inc.).

² See Order No. PSC-10-0198-FOF-EG, issued March 31, 2010, in Docket No. 080408-EG, In re: Commission review of numeric conservation goals (Progress Energy Florida, Inc.).

³ See Order No. PSC-10-0289-PCO-EG, issued May 7, 2010, in Docket No. 100160-EG, In re: Petition of approval of demand-side management plan of Progress Energy Florida, Inc. (FIPUG)

⁴ See Order No. PSC-10-0399-PCO-EG, issued June 18, 2010, in Docket No. 100160-EG, In re: Petition of approval of demand-side management plan of Progress Energy Florida, Inc. (PCS Phosphate)

⁵ See Order No. PSC-10-0498-PCO-EG, issued August 9, 2010, in Docket No. 100160-EG, In re: Petition of approval of demand-side management plan of Progress Energy Florida, Inc. (SACE)

⁶ See Order No. PSC-10-0509-PCO-EG, issued August 11, 2010, in Docket No. 100160-EG, In re: Petition of approval of demand-side management plan of Progress Energy Florida, Inc. (FlaSEIA)

⁷ See Order No. PSC-10-0529-PCO-EG, issued August 18, 2010, in Docket No. 100160-EG, In re: Petition of approval of demand-side management plan of Progress Energy Florida, Inc. (Walmart)

We have jurisdiction over this matter pursuant to Sections 366.80 through 366.85 and 403.519, F.S.

DEMAND-SIDE MANAGEMENT PLAN

By Order No. PSC-09-0855-FOF-EG, we established annual goals for the FEECA Utilities for the period 2010 through 2019. Order No. PSC-10-0198-FOF-EG granted, in part, PEF’s reconsideration which revised PEF’s numeric goals to correct a discovery response that caused a double-counting error. PEF’s approved goals are divided into residential and commercial/industrial goals, with each of these further subdivided into three categories: summer peak demand, winter peak demand, and annual energy. PEF is responsible for meeting its required conservation goals, yet the projections provided by the Company show that they plan to fail in a number of years.

Order No. PSC-10-0198-FOF-EG set annual, not aggregate or cumulative, goals for conservation in a total of six areas. As detailed below in Table 1, PEF’s proposed DSM Plan fails to meet its annual residential goals in any category for the first six years and its winter demand goals through year seven. Similarly, Table 2 shows that the Company’s Plan does not meet all the annual commercial/industrial goals from 2010 through 2013.

Table 1 – Comparison of Residential Goals to DSM Plan

Year	Summer (MW)		Winter (MW)		Annual (GWh)	
	Commission Approved Goal	PEF Projected Savings	Commission Approved Goal	PEF Projected Savings	Commission Approved Goal	PEF Projected Savings
2010	79.6	47.5	81.3	64.2	261.6	97.9
2011	81.5	51.0	86.8	72.0	267.6	114.5
2012	84.5	57.2	90.8	76.2	276.7	137.2
2013	86.5	62.3	93.5	80.2	282.7	158.0
2014	88.4	66.4	96.2	84.1	288.8	173.6
2015	93.8	85.7	100.9	88.9	309.9	258.1
2016	102.3	111.2	111.7	107.7	297.8	335.3
2017	101.9	129.4	111.1	121.1	291.8	393.1
2018	96.4	147.4	103.6	133.2	279.7	478.8
2019	81.9	152.0	79.1	132.3	270.6	525.6
Total	896.6	909.9	955.1	959.9	2827.1	2672.1

Table 2 - Comparison of Commercial/Industrial Goals to DSM Plan

Year	Summer (MW)		Winter (MW)		Annual (GWh)	
	Commission Approved Goal	PEF Projected Savings	Commission Approved Goal	PEF Projected Savings	Commission Approved Goal	PEF Projected Savings
2010	13.7	14.4	5.3	8.7	31.1	24.5
2011	16.2	14.7	5.3	8.9	33.0	27.2
2012	25.5	24.1	11.4	11.3	35.9	37.9
2013	25.9	25.4	11.5	13.0	37.7	36.1
2014	26.4	29.0	11.5	16.2	39.6	47.0
2015	27.6	31.3	11.7	17.9	46.2	59.7
2016	27.1	33.5	11.6	18.4	42.5	69.6
2017	27.0	36.2	11.6	19.1	40.6	77.6
2018	25.7	37.6	11.4	18.0	36.8	85.1
2019	22.3	34.3	11.3	12.1	34.0	68.1
Total	237.3	280.5	102.6	143.6	377.4	532.6

PEF's proposed DSM Plan does not satisfy the Company's annual numeric goals set by this Commission. It appears that PEF will not meet its annual goals which may result in financial penalties or other appropriate action by this Commission. Therefore, consistent with Section 366.82(7), F.S., we find that PEF shall file specific program modifications or additions that are needed in order for the 2010 DSM Plan to be in compliance with Order No. PSC-10-0198-FOF-EG within 30 days of this Order. In Order No. PSC-09-0855-FOF-EG we directed the utilities to file pilot programs focusing on encouraging solar water heating and solar PV technologies. As part of its DSM filing, PEF included savings from its solar pilot program to meet its summer and winter peak demand and energy goals. Because the solar pilot programs were mandated by this Commission, the compliance filing shall also include savings associated with PEF's solar pilot programs.

As previously stated, since PEF's proposed DSM Plan does not satisfy the Company's numeric conservation goals set forth in Order No. PSC-09-0198-FOF-EG, PEF shall file a modified DSM Plan. We are not approving any additional DSM programs at this time. We will evaluate and make a final determination regarding the cost-effectiveness of any new or modified programs when we review PEF's modified DSM Plan.

SOLAR PILOT PROGRAMS

Section 366.82(2), F.S. requires us to establish goals for demand-side renewable energy systems. In order to meet the intent of the Legislature, we directed the utilities to file pilot programs focusing on encouraging solar water heating and solar PV technologies in Order No. PSC-09-0855-FOF-EG. Order No. PSC-09-0855-FOF-EG directed the IOUs to file pilot programs focused on encouraging solar water heating and solar PV technologies subject to an expenditure cap of 10 percent of the average annual recovery through the Energy Conservation Cost Recovery clause in the previous five years. The approved annual expense cap for PEF is

Table 4 - Percentage of Funds Allocated by Technology Type⁸

Company	FPL	PEF	PEF	GULF	FPUC
PV	41.0%	67.3%	86.7%	63.9%	Not Available
Thermal	37.6%	20.9%	13.3%	19.4%	
The percentages above do not sum to 100% as administrative, education, and R&D costs are excluded.					

The distribution of funds between solar installations intended for public facilities, such as schools, and privately owned facilities, including residential housing and commercial properties, is another area of variation among the utilities. Table 5 below, illustrates these differences, which overall favor private installations.

Table 5 - Percentage of Funds Allocated by Ownership Type

Company	FPL	PEF	PEF	GULF	FPUC
Public	7.2%	31.7%	10.4%	15.5%	Not Available
Private	68.9%	56.5%	89.6%	67.8%	
The percentages above do not sum to 100% due to administrative and education costs being excluded.					

The variations between the utilities' plans represent different service territories and program designs. Because of the variations between the utilities, we direct our staff to conduct a workshop to address how the distribution of funds should be allocated.

Conclusion

PEF's proposed DSM Plan includes pilot programs to encourage the development of solar water heating and solar PV technologies. The cost of the proposed pilot programs is within the annual expenditure cap specified by Order No. PSC-09-0855-FOF-EG. Accordingly, we find that the solar pilot programs included in PEF's proposed DSM Plan are hereby approved and shall be incorporated into the compliance filing. However, the allocation of funds to: (1) solar thermal versus solar PV, (2) private customers versus public institutions, and (3) low-income residential varies widely among the investor-owned utilities. Therefore, we direct our staff to conduct a workshop to address how the distribution of funds should be allocated.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Progress Energy Florida, Inc.'s Proposed Demand-Side Management Plan does not satisfy the numeric conservation goals set forth in Order No. PSC-09-0198-FOF-EG. It is further

⁸ Refer to Docket No. 100154-EG – In re: Petition of approval of demand-side management plan of Gulf Power Company. Docket No. 100155-EG – In re: Petition of approval of demand-side management plan of Florida Power & Light Company. Docket No. 100158-EG – In re: Petition of approval of demand-side management plan of Florida Public Utilities Company. Docket No. 100159-EG – In re: Petition of approval of demand-side management plan of Tampa Electric Company. Docket No. 100160-EG – In re: Petition of approval of demand-side management plan of Progress Energy Florida, Inc.

ORDERED that Progress Energy Florida, Inc. shall file specific program modifications or additions that are needed in order for the 2010 DSM Plan to be in compliance with Order No. PSC-09-0198-FOF-EG within 30 days of this Order. It is further

ORDERED that Progress Energy Florida, Inc.'s solar pilot programs contained in its Proposed Demand-Side Management Plan are hereby approved as set forth herein. It is further

ORDERED that all attachments contained herein are incorporated by reference. It is further

ORDERED that the solar pilot programs shall be effective on the date of the Consummating Order. It is further

ORDERED that if a protest is filed, the solar pilot programs shall not be implemented until after the resolution of the protest. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall remain open in order for Progress Energy Florida, Inc. to refile its Demand-Side Management Plan within 30 days from the date of this Order.

By ORDER of the Florida Public Service Commission this 4th day of October, 2010.

/s/ Ann Cole

ANN COLE

Commission Clerk

This is an electronic transmission. A copy of the original signature is available from the Commission's website, www.floridapsc.com, or by faxing a request to the Office of Commission Clerk at 1-850-413-7118.

(S E A L)

KEF

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
ORDER NO. PSC-11-0079-PAA-EG
ISSUED: January 31, 2011

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman
LISA POLAK EDGAR
RONALD A. BRISÉ
EDUARDO BALBIS
JULIE I. BROWN

NOTICE OF PROPOSED AGENCY ACTION ORDER
DENYING DEMAND-SIDE MANAGEMENT PLAN AND
APPROVING SOLAR PILOT PROGRAMS

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.)

BACKGROUND

As required by the Florida Energy Efficiency and Conservation Act (FEECA), Sections 366.80 through 366.85 and 403.519, Florida Statutes (F.S.), we adopted annual goals for seasonal peak demand and annual energy consumption for the FEECA Utilities. These include Florida Power & Light Company (FPL), Progress Energy Florida, Inc. (PEF), Tampa Electric Company (TECO), Gulf Power Company (Gulf), Florida Public Utilities Company (FPUC), JEA, and Orlando Utilities Commission (OUC).

Pursuant to Rule 25-17.008, F.A.C., in any conservation goal setting proceeding, we require each FEECA utility to submit cost-effectiveness information based on, at a minimum, three tests: (1) the Participants Test; (2) the Rate Impact Measure (RIM) Test, and (3) the Total Resource Cost (TRC) Test. The Participants Test measures program cost-effectiveness to the participating customer. The RIM Test measures program cost-effectiveness to the utility's overall rate payers, taking into consideration the cost of incentives paid to participating customers and lost revenues due to reduced energy sales that may result in the need for a future rate case. The TRC Test measures total net savings on a utility system-wide basis. In past goal setting proceedings, we established conservation goals based on measures that pass both the Participants Test and the RIM Test.

The 2008 Legislative Session resulted in several changes to the FEECA Statute, and the Commission's goal-setting proceeding was the first implementation of these modifications. By Order No. PSC-09-0855-FOF-EG,¹ we established annual numeric goals for summer peak demand, winter peak demand, and annual energy consumption for the period 2010 through 2019, based upon an unconstrained Enhanced-Total Resource Test (E-TRC) for the investor-owned utilities (IOUs). The E-TRC Test differs from the conventional TRC Test by taking into consideration the estimated additional costs imposed by the potential regulation of greenhouse gas emissions. In addition, the numeric impact of certain measures with a payback period of two years or less were also included in the goals. Further, the IOUs subject to FEECA were authorized to spend up to 10 percent of their historic expenditures through the Energy --water heating (Thermal) and solar photovoltaic (PV) installations.

On January 14, 2010, FPL filed a Motion for Reconsideration of our decision in Docket No. 080407-EI. Order No. PSC-10-0198-FOF-EG² denied FPL's Motion for Reconsideration. On March 30, 2010, FPL filed a petition requesting approval of its Demand-Side Management (DSM) Plan pursuant to Rule 25-17.0021, F.A.C.

On July 14, 2010, SACE filed comments on the FEECA Utilities' DSM Plans. These comments were amended on August 3, 2010, to include comments regarding FPUC. No other interveners filed comments. On July 28, and August 12, 2010, PEF and Gulf, respectively, filed responses to SACE's comments.

We have jurisdiction over this matter pursuant to Sections 366.80 through 366.85 and 403.519, F.S.

DEMAND-SIDE MANAGEMENT PLAN

By Order No. PSC-09-0855-FOF-EG, we established annual goals for the FEECA Utilities for the period 2010 through 2019. FPL's approved goals are divided into residential and commercial/industrial, with each of these further subdivided into three categories: summer peak demand, winter peak demand, and annual energy consumption. FPL is responsible for meeting its required conservation goals, yet the projections provided by the Company show that they plan to fail.

Order No. PSC-09-0855-FOF-EG set annual, not aggregate or cumulative, goals for conservation in a total of six areas. As detailed below in Table 1, FPL's proposed DSM Plan fails to meet its annual residential goals in at least one category for six years. Similarly, Table 2 shows that FPL's Plan does not meet all the annual commercial/industrial goals for six years of the ten-year period.

¹ See Order No. PSC-09-0855-FOF-EG, issued December 30, 2009, in Docket No. 080407-EG, In re: Commission review of numeric conservation goals (Florida Power & Light Company).

² See Order No. PSC-10-0198-FOF-EG, issued March 31, 2010, in Docket No. 080407-EG, In re: Commission review of numeric conservation goals (Florida Power & Light Company).

Table 1
 Comparison of Residential Goals to DSM Plan

Year	Summer (MW)		Winter (MW)		Annual (GWh)	
	Commission Approved Goal	FPL Projected Savings	Commission Approved Goal	FPL Projected Savings	Commission Approved Goal	FPL Projected Savings
2010	67.7	73.8	33.2	44.5	119.6	119.3
2011	79.7	82.1	42.4	55.1	145.8	146.8
2012	90.2	94.5	50.3	62.3	168.8	170.5
2013	98.5	95.7	56.3	60.4	186.7	188.6
2014	104.3	102.6	60.2	63.8	200.0	201.8
2015	100.7	101.5	55.9	61.6	193.0	192.6
2016	95.9	98.3	51.3	59.3	183.4	186.1
2017	91.4	92.1	47.0	56.6	174.2	173.7
2018	87.4	88.8	43.2	51.8	166.4	167.2
2019	83.3	82.6	39.4	44.9	157.5	157.0
Total	899.1	911.9	479.0	560.3	1,695.3	1,703.6

Table 2
 Comparison of Commercial/Industrial Goals to DSM Plan

Year	Summer (MW)		Winter (MW)		Annual (GWh)	
	Commission Approved Goal	FPL Projected Savings	Commission Approved Goal	FPL Projected Savings	Commission Approved Goal	FPL Projected Savings
2010	42.7	44.2	8.1	43.7	84.7	83.7
2011	62.5	66.4	9.9	43.8	149.4	155.5
2012	76.3	74.0	11.6	51.6	191.5	202.1
2013	81.3	79.7	13.1	53.8	202.7	222.7
2014	79.3	79.3	14.4	54.1	194.1	221.9
2015	71.5	71.5	15.1	52.4	167.5	186.4
2016	60.0	61.1	15.0	42.7	134.2	120.6
2017	48.7	46.3	14.1	39.0	104.8	78.4
2018	41.3	41.0	13.2	39.7	86.9	70.1
2019	35.0	36.2	12.0	40.3	71.0	62.4
Total	598.7	599.8	126.3	461.1	1,386.7	1,403.9

FPL's proposed DSM Plan does not satisfy the Company's annual numeric goals set by this Commission. It appears that FPL will not meet the annual goals which may result in financial penalties or other appropriate action by this Commission. Therefore, consistent with Section 366.82(7), F.S., we find that FPL shall file specific program modifications or additions

that are needed for the 2010 DSM Plan to be in compliance with Order No. PSC-09-0855-FOF-EG within 30 days of the issuance of the Consummating Order. In Order No. No. PSC-09-0855-FOF-EG we directed the utilities to file pilot programs focused on encouraging solar water heating and solar PV technologies. As part of its DSM filing, FPL included savings from its solar pilot programs to meet its summer and winter peak demand and energy goals. Because the solar pilot programs were mandated by this Commission, the compliance filing shall also include savings associated with FPL’s solar pilot programs.

As previously stated, FPL’s proposed DSM Plan does not satisfy the Company’s numeric conservation goals set forth in Order No. PSC-09-0855-FOF-EG; therefore, FPL shall file a modified DSM Plan. We are not approving any additional DSM programs at this time. We will evaluate and make a final determination regarding the cost-effectiveness of any new or modified programs when we review FPL’s modified DSM Plan. As part of its filing, to the extent possible, FPL shall provide information on the estimated job creation impact for each program of the modified DSM plan.

SOLAR PILOT PROGRAMS

Section 366.82(2), F.S. requires us to establish goals for demand-side renewable energy systems. In order to meet the intent of the Legislature, we directed the utilities to file pilot programs focusing on encouraging solar water heating and solar PV technologies in Order No. PSC-09-0855-FOF-EG. This Order also directed the IOUs to file pilot programs focused on encouraging solar water heating and solar PV technologies subject to an expenditure cap of 10 percent of the average annual recovery through the ECCR clause in the previous 5 years. The Commission-approved annual expense cap for FPL is \$15,536,870. The projected annual expenditures for FPL’s pilot programs do not exceed the approved annual expense cap as shown in Table 3 below.

Table 3
 Solar Pilot Program Costs

Program Name	First Full Year Expenditures (\$)	First Full Year Percentage of Annual Expenditure Cap (%)
Residential Solar Water Heating	\$4,330,175	27.9%
Residential Solar Water Heating (Low Income New Construction)	\$848,437	5.5%
Business Solar Water Heating	\$73,198	0.5%
Residential Photovoltaics	\$2,491,855	16.0%
Business Photovoltaics	\$1,885,252	12.1%
Business Photovoltaics for Schools	\$1,347,755	8.7%
Solar Research and Demonstration	\$0	0.0%
Administrative & Education/Marketing Costs	\$3,001,407	19.3%
Total	\$13,978,079	90.0%

The variations between utilities represent different service territories and program designs. Because of the variations between the utilities, we direct our staff to conduct a workshop to address how the distribution of funds should be allocated and to determine the appropriate split between these technological and customer categories.

Conclusion

FPL's proposed DSM Plan includes pilot programs that encourage the development of solar water heating and solar PV technologies. The cost of the proposed pilot programs is within the annual expenditure cap specified by Order No. PSC-09-0855-FOF-EG. Accordingly, we find that the solar pilot programs included in FPL's proposed DSM Plan are hereby approved. However, the allocation of funds to: (1) solar thermal vs. solar PV, (2) private customers vs. public institutions, and (3) low-income residential varies widely among the investor-owned utilities. Therefore, we direct our staff to conduct a workshop to address how the distribution of funds should be allocated and to determine the appropriate split between these technological and customer categories.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's Proposed Demand-Side Management Plan does not satisfy the numeric conservation goals set forth in Order No. PSC-09-0855-FOF-EG. It is further

ORDERED that Florida Power & Light Company shall file specific program modifications or additions that are needed in order for the 2010 DSM Plan to be in compliance with Order No. PSC-09-0855-FOF-EG. It is further

ORDERED that as part of its filing, to the extent possible, Florida Power & Light Company shall provide information on the estimated job creation impact for each program of the modified DSM plan. It is further

ORDERED that Florida Power & Light Company's solar pilot programs contained in its Proposed Demand-Side Management Plan are hereby approved as set forth herein. It is further

ORDERED that the solar pilot programs shall be effective on the date of the Consummating Order. It is further

ORDERED that all attachments contained herein are incorporated by reference. It is further

ORDERED that if a protest is filed, the solar pilot programs shall not be implemented until after resolution of the protest. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate

366.82 Definition; goals; plans; programs; annual reports; energy audits.—

(1) For the purposes of ss. 366.80-366.85 and 403.519:

(a) "Utility" means any person or entity of whatever form which provides electricity or natural gas at retail to the public, specifically including municipalities or instrumentalities thereof and cooperatives organized under the Rural Electric Cooperative Law and specifically excluding any municipality or instrumentality thereof, any cooperative organized under the Rural Electric Cooperative Law, or any other person or entity providing natural gas at retail to the public whose annual sales volume is less than 100 million therms or any municipality or instrumentality thereof and any cooperative organized under the Rural Electric Cooperative Law providing electricity at retail to the public whose annual sales as of July 1, 1993, to end-use customers is less than 2,000 gigawatt hours.

(b) "Demand-side renewable energy" means a system located on a customer's premises generating thermal or electric energy using Florida renewable energy resources and primarily intended to offset all or part of the customer's electricity requirements provided such system does not exceed 2 megawatts.

(2) The commission shall adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of demand-side renewable energy systems, specifically including goals 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. The commission may allow efficiency investments across generation, transmission, and distribution as well as efficiencies within the user base.

(3) In developing the goals, the commission shall evaluate the full technical potential of all available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy systems. In establishing the goals, **the commission shall take into consideration:**

(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.

(4) Subject to specific appropriation, the commission may expend up to \$250,000 from the Florida Public Service Regulatory Trust Fund to obtain needed technical consulting assistance.

(5) The Department of Agriculture and Consumer Services shall be a party in the proceedings to adopt goals and shall file with the commission comments on the proposed goals, including, but not limited to:

(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.

(6) The commission may change the goals for reasonable cause. The time period to review the goals, however, shall not exceed 5 years. After the programs and plans to meet those goals are completed, the commission shall determine what further goals, programs, or plans are warranted and adopt them.

(7) 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. 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. If any plan or program includes loans, collection of loans, or similar banking functions by a utility and the plan is approved by the commission, the utility shall perform such functions, notwithstanding any other provision of the law. However, no utility shall be required to loan its funds for the purpose of purchasing or otherwise acquiring conservation measures or devices, but nothing herein shall prohibit or impair the administration or implementation of a utility plan as submitted by a utility and approved by the commission under this subsection. If 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. Prior approval by the commission shall be required to modify or discontinue a plan, or part thereof, which has been approved. **If any utility has not implemented its programs and is not substantially in compliance with the provisions of its approved plan at any time, the commission shall adopt programs required for that utility to achieve the overall goals. Utility programs may include variations in rate design, load control, cogeneration, residential energy conservation subsidy, or any other measure within the jurisdiction of the commission which the commission finds likely to be effective; this provision shall not be construed to preclude these measures in any plan or program.**

(8) The commission may authorize financial rewards for those utilities over which it has ratesetting authority that exceed their goals and may authorize financial penalties for those utilities that fail to meet their goals, including, but not limited to, the sharing of generation, transmission, and distribution cost savings associated with conservation, energy efficiency, and demand-side renewable energy systems additions.
