State of Florida

Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: June 23, 2008

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Harlow, Devlin, Futrell)
Office of the General Counsel (Fleming, Hartman)

RE: Docket No. 070626-EI – Review of Florida Power and Light Company's Sunshine Energy Program

AGENDA: 7/1/08– Regular Agenda – Proposed Agency Action for Issue 1 and Tariff Filing for Issue 3 - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 08/04/08 (60-Day Suspension Date)

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\070626.RCM.DOC

Case Background

On November 6, 2006, the Commission approved Florida Power and Light Company's (FPL) green pricing program, the Sunshine Energy Program.[1] In general, green pricing programs allow interested customers to voluntarily contribute towards renewable generating resources, which are often higher in cost than fossil-fuel based generation. The Sunshine Energy Program is a voluntary program, in which participating residential and commercial customers are charged $9.75 per month in addition to each customer's charges under the applicable rate schedule. In return for each $9.75 customer contribution, the renewable energy credits associated with 1,000

[1] See Order No. PSC-06-0924-TRF-EI, issued November 6, 2006, in Docket No. 060577-EI, In Re: Petition to convert green power pricing research project to permanent program and to extend program to commercial customers, by Florida Power and Light Company.

kilowatt-hours (kWhs) of renewable energy are purchased. In addition, FPL has committed to the development or purchase of 150 kilowatts (kW) of solar capacity within Florida for every 10,000 participating residential customers. Under the program's tariff, participants may make multiple contributions of $9.75 per month, for which multiple 1,000 kWh blocks of renewable energy credits are purchased.

Commission Actions

The Commission first encouraged FPL to consider green pricing options in June 1995.[2] At the time, green pricing was a relatively new concept. In response, FPL requested, and the Commission approved, a two-year Green Pricing Research and Development Project to test customer response to a green pricing initiative.[3] Customer contributions received as a result of the program were used to construct a 10 kW photovoltaic system at FPL's Martin generating site.

In August 1997, as a part of the demand-side management goal setting proceeding, the Commission approved a stipulation between FPL and the Legal Environmental Assistance Foundation.[4] Under the stipulation, FPL agreed to "[i]nvestigate and, if feasible, implement a Green Energy Program under which FPL would purchase energy generated from new renewable resources." The Commission subsequently approved a three-year green energy research program as a part of FPL's demand-side management plan.[5] Under this program, FPL performed additional research on customer preferences regarding renewable energy and the potential for developing a green pricing program. FPL used this customer preference information to design a three-year pilot green pricing program.

The Commission approved FPL's voluntary pilot green pricing program on December 22, 2003.[6] FPL's pilot green pricing program was available only to residential customers, and was based primarily on tradable renewable energy credits (TRECs). TRECs are financial instruments used to promote renewable generation by providing an additional revenue source to renewable generators. TRECs are essentially formed by separating the environmental attributes from the actual energy produced by renewable generating resources. Residential customers who chose to participate were charged $9.75 per month. In return, FPL made two commitments: (1) to purchase the TRECs associated with 1,000 kWh of renewable energy for each $9.75 contribution, and (2) to develop or purchase 150 kW of solar capacity within Florida for every 10,000 participating customers. In its order, the Commission allowed FPL to recover reasonable and prudent project administrative costs through its Energy Conservation Cost Recovery (ECCR) clause up to $1.5 million if project administrative costs exceeded revenues received. The Commission also ordered FPL to provide marketing materials to staff prior to distribution to

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[2] See Order No. PSC-95-0691-FOF-EG, issued June 9, 1995, in Docket No. 941170-EG, In Re: Approval of demand-side management plan of Florida Power and Light Company.
[3] See Order No. PSC-97-0528-FOF-EG, issued May 7, 1997, in Docket No. 960624-EG, In Re: Petition for approval of Green Pricing Research and Development Project by Florida Power and Light Company.
[4] See Order No. PSC-99-1412-S-EG, issued August 6, 1997, in Docket No. 971004-EG, In Re: Adoption of numeric conservation goals by Florida Power and Light Company.
[5] See Order No. PSC-00-0915-PAA-EG, issued May 8, 2000, in Docket No. 991788-EG, In Re: Approval of demand-side management plan of Florida Power and Light Company.
[6] See Order No. PSC-03-1442-TRF-EI, in Docket No. 030752-EI, In Re: Petition for approval of green power pricing research project as part of Demand-Side Management Plan by Florida Power and Light Company.

customers. Finally, the Commission required FPL to file detailed semi-annual progress reports, and to provide the Commission with a schedule for expanding the program to include commercial customers.

On August 29, 2006, FPL filed a petition to convert its pilot green pricing program to a permanent program under its demand-side management plan, and to expand the program to include commercial customers. The Commission approved FPL's permanent green pricing program, the Sunshine Energy Program, and the associated tariff in November 2006.[7] Unlike the pilot program, the Commission's order did not require FPL to file semi-annual progress reports for the permanent program. Instead, FPL committed to record revenues and expenses, and provide status reports as part of its ECCR clause filings.

Staff's Review of the Program

In 2007, staff opened a docket and gathered information to determine if FPL's Sunshine Energy Program fully conformed to the Commission's order and continued to be in the best interest of the program's participants. On September 27, 2007, staff filed a recommendation that certain modifications should be made to the Sunshine Energy Program. Many of staff's concerns involved FPL's contract with Green Mountain Energy Company (Green Mountain). On October 4, 2007, FPL requested that the recommendation be deferred in order for FPL to address the issues raised in staff's recommendation.

In an effort to fully evaluate the Sunshine Energy Program, staff also initiated an audit for the purpose of identifying, to the extent possible, how these voluntary contributions were being used and whether there is a clear and transparent accounting for these monies. This audit was completed on May 30, 2008. FPL has claimed that some of the information contained in the audit report is confidential. On June 16, 2008, FPL filed a response to staff's audit of the Sunshine Energy Program.

As mentioned above, in October 2007, FPL requested deferral of consideration of staff's recommendation. Subsequently, over the following eight month period, FPL provided verbal updates to staff on the status of its efforts to renegotiate its contract with Green Mountain. On June 5, 2008, FPL filed a petition to modify the Sunshine Energy Program. The petition included a proposed revised tariff sheet no. 8.841. Pursuant to Section 366.06(3), Florida Statutes (F.S.), the Commission may withhold consent to the operation of all or any portion of a new rate schedule, delivering to the utility making the request a reason or written statement of a good cause for doing so within 60 days.

This recommendation will address staff's concerns regarding FPL's implementation of its existing Sunshine Energy Program, as well as FPL's petition to modify the program and the associated tariff. The Commission has jurisdiction over this matter under Sections 366.04, 366.05, 366.06, 366.80, 366.81, and 366.82, F.S.

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[7] See Order No. PSC-06-0924-TRF-EI, issued November 6, 2006, in Docket No. 060577-EI, In Re: Petition to convert green power pricing research project to permanent program and to extend program to commercial customers, by Florida Power and Light Company.

Discussion of Issues

Issue 1: Does FPL's Sunshine Energy Program, as currently designed and administered, continue to be in the best interest of the program's participants?

Recommendation: No. The Sunshine Energy Program does not currently serve the interest of the program's participants and it does not align with current state renewable energy policies. FPL should redesign the program along the following guidelines: (1) limit the level of administrative and marketing cost to 20 percent of the overall voluntary contributions with the remaining portion to be used for project costs; (2) provide semi-annual reports to the Commission in order to improve monitoring of program expenses and progress toward meeting program goals; (3) funds for renewable energy should facilitate the construction of new renewable energy projects in the state; (4) excess revenues should be directed to support additional renewable energy projects in Florida; (5) stronger provisions to ensure that renewable projects are installed in a timely manner; and, (6) provisions that allow for greater Commission oversight in the development of renewable projects.

FPL should modify the program following the above guidelines within 60 days of the issuance of the order codifying the Commission's vote. If FPL cannot or chooses not to modify the program to meet the guidelines by the established deadline, the Commission may choose to terminate the program. (Harlow, Devlin, Futrell)

Staff Analysis: Since mid-2007, staff has obtained information about the Sunshine Energy Program that has led staff to conclude that the program does not currently serve the interest of the program's participants and that it does not align with current state renewable energy policies. In addition, based upon the contract with the third party involved, it became apparent that the order approving the permanent program did not provide for adequate Commission monitoring and oversight. The following analysis details the basis for staff's conclusions.

The following sections of the analysis include a description of the Sunshine Energy Program, the results of staff's audit, and staff's concerns regarding implementation of the program.

I. Description of FPL's Existing Sunshine Energy Program

FPL contracted with Green Mountain to fulfill its obligations to residential participants in the program. Under the existing contract, Green Mountain is responsible for:

- developing marketing plans and materials
- marketing the program to residential customers
- providing customer sign-up and account services
- purchasing tradable renewable energy credits (TRECs) for these customers
- developing 150 kW of solar capacity for each 10,000 participating residential customers

FPL's contract with Green Mountain is basically a turn-key agreement in which Green Mountain is responsible for meeting all of FPL's commitments for use of residential participants' contributions. In exchange, Green Mountain receives the vast majority of each participant's monthly $9.75 contribution as a flat fee; FPL receives a small portion of each contribution to cover internal administrative expenses and any associated taxes. FPL has a separate contract with Sterling Planet to meet its commitments with respect to commercial participants. Sterling Planet is responsible for purchasing all TRECs for participating commercial customers. Under the existing Sunshine Energy Program, FPL does not count commercial participants toward its solar development obligation.

Program Participation, Revenues and Expenses

Table 1 below displays the data FPL provided on program enrollments, revenues, and expenses, from the beginning of the pilot program in 2004, through May 31, 2008.

Table 1

	2004	2005	2006	2007	2008	Total
Cumulative Participants	10,674	23,066	28,742	37,184	38,929	
Revenues	$514,642	$2,258,751	$2,928,225	$3,900,993	$1,833,288	$11,435,899
Expenses	$476,590	$2,101,449	$2,819,106	$3,915,094	$1,579,228	$10,891,467
Net Revenues	$38,052	$157,302	$109,119	$(14,101)	$254,060	$544,432

Revenues for the program are obtained from the $9.75 per month contributed by participating customers. Total program revenues through May 31, 2008, were $11,435,899, with total expenses of $10,891,467. As of May 31, 2008, total program revenues (including pilot years) exceeded total expenses by $544,432. Program expenses during this time period included FPL's payments to its third party contractors Green Mountain and Sterling Planet, FPL's internal administrative expenses and Gross Receipts taxes.

TREC Purchases

As discussed above, Green Mountain and Sterling Planet purchase TRECs associated with 1,000 kWh of renewable energy for each $9.75 customer contribution. These TRECs can be purchased from in-state or out-of-state renewable facilities. FPL provided the data in Table 2 regarding annual in-state and out-of-state TREC purchases from the start of the pilot program in 2004, through June 20, 2008.

Table 2					
	In-State TRECs	**% of Total**	**Out-of-State TRECs**	**% of Total**	**Total**
2004	20,531	40.0%	30,797	60.0%	51,328
2005	106,885	47.6%	117,709	52.4%	224,594
2006	136,257	45.0%	166,535	55.0%	302,792
2007	97,017	26.0%	276,730	74.0%	373,747
Jan-June 2008	50,000	100.0%	0	0.0%	50,000

Solar Capacity Commitment

Staff requested that FPL provide an update on its progress to meet its commitment to develop 150 kW of solar capacity within Florida for every 10,000 participating residential customers. On June 16, 2008, FPL reported that 513 kW of solar projects have been completed or are in progress as a result of the Sunshine Energy Program. FPL is counting the following projects toward its solar commitment.[8]

- 8 kW of solar installed in cooperation with SunSmart Schools – 2 kW at 4 schools
- 2 kW of solar installed at the Miami Science Museum
- 54 kW of rooftop solar installed on homes at The Quarry residential subdivision in Naples, Florida
- 250 kW solar array at Rothenbach Park in Sarasota
- 75 kW Publix Supermarkets project – 50 kW complete, 25 kW in progress
- 124 kW of solar photovoltaic systems under the Sun Funds Program[9]

[8] Note: the 10 kW photovoltaic system FPL installed at its Martin generating site as a result of an earlier pilot program is not counted toward FPL's solar commitment in its Sunshine Energy Program.
[9] Staff's audit shows that 100 kW of solar photovoltaic systems are to receive funding through the Sun Funds rebate program.

These projects have been financed in various ways, including contributions to capital costs, long-term agreements to purchase TRECs, and leveraging state solar rebates and tax incentives. FPL believes that leveraging Sunshine Energy funds with other sources provides an opportunity to increase the solar projects developed as a result of the program at a reduced cost. To support its view on leveraging, FPL referred to the 124 kW of customer-owned solar photovoltaic systems listed above which received rebates through the Sun Funds Program. The Sun Funds Program is a solar rebate program that Green Mountain initiated on FPL's behalf under the Sunshine Energy Program in late 2007. The Department of Environmental Protection's Energy Office currently administers a state program which offers a rebate of $4 per watt for solar photovoltaic systems. The Sun Funds Program offers an additional rebate of $1.50 per watt to FPL customers that install solar photovoltaic systems and are approved to receive the state's $4 per watt rebate. The Sun Funds rebates were initially limited to a total of $150,000. Staff's analysis of this project is discussed in Section III below.

II. Staff's Audit Results

Staff began requesting the information discussed above as a part of its normal ongoing review process for an existing utility program. However, staff determined that further scrutiny was warranted for two reasons. Available data suggested that Green Mountain was initially behind schedule on solar project development. In addition, there appeared to be excess revenues that could have been used to provide greater benefits to program participants through additional renewable project development. These points are discussed further in Section III of the analysis.

These initial concerns prompted staff to conduct further discovery and an audit to more fully understand how the program's revenues were being used and whether the use of these revenues was in accordance with the Commission's order, as well as in the best interest of the program's participants. This audit was completed on May 30, 2008. FPL has requested that portions of the results of staff's audit be held confidential. Of primary concern, however, is the audit's finding that the vast majority of the program's revenues have been spent on marketing and administrative costs. Table 3 below displays the total revenues and cost breakdown by categories from 2004 through 2007, as determined by the Commission's audit.

Table 3				
		% of Costs to Total Costs	**% of Costs to Payments to Green Mountain**	**% of Costs to FPL Revenues**
Revenues	$9,578,895			$9,578,895
Payments to Green Mountain	$8,614,950		$8,614,950	
Project Costs Paid	$431,504	4.99%	5.01%	4.50%
TREC Costs	$1,803,620	20.87%	20.94%	18.83%
Marketing and Other Costs	$6,408,070	74.14%	74.38%	66.90%
Total	$8,643,194	100.0%	100.33%	90.23%

Note: The audit did not address the portion of customer contributions directed to FPL's administrative costs. Also, the data provided does not include Green Mountain's estimated $1 million for its corporate overhead in support of the program through 2007.

On June 16, 2008, FPL filed a response to staff's audit. FPL takes issue with the audit report's finding on marketing expenses associated with the program. FPL states that the audit mischaracterized "direct costs and general and administrative costs" as marketing costs. FPL provided its own breakdown of program expenditures, as shown on the attached document prepared by FPL. (See Attachment 1, portions of document provided by FPL and entitled "Comparison of Key Program Features of the Existing Sunshine Energy Program & the Proposed Program Revisions.") FPL lists the following cost breakdown for the existing program:

- 7 percent – FPL program management
- 68 percent – marketing and administration
- 24 percent – TRECs and renewable projects

III. Staff's Concerns Regarding FPL's Implementation of the Existing Program

Staff has several concerns, which have been identified briefly above and are addressed in detail below. It is appropriate to note, however, that the Sunshine Energy Program has been successful on certain levels. The program stimulated customer awareness and support for

renewable energy. Participation in the program has been significant, with 38,929 participants as of May 31, 2008. The program has proven that there is strong interest among FPL's customers in renewable energy development. In addition, the program has provided funds for the development of the renewable projects discussed above, as well as an additional revenue stream for renewable generators (both in-state and out-of-state) through the purchase of TRECs.

But, upon a more thorough review of the program's effectiveness and in light of recent legislative policies concerning renewable energy, if the Sunshine Energy Program is to continue, the program must be redesigned to address state renewable energy policies and to better serve the interest of the program's participants. Needed changes are discussed below.

High Marketing and Administrative Expenses

According to staff's audit results, it appears that a large percentage of the program's revenues were spent on marketing and program administration, rather than on solar project development or TREC purchases. FPL's own estimate states that to date only 24 percent of program revenues have gone toward the purchase of TRECs and renewable development. (See Attachment 1) It is understandable that program development and marketing costs would initially be high for a voluntary program in which participants do not receive direct benefits. Over time, however, the administrative and marketing costs per customer contribution should decrease substantially as successful marketing materials are developed and customer awareness of the program builds. Reduced marketing costs over time should free up additional revenues for greater support of renewable development.

FPL's Sunshine Energy Program is now in its fifth year; yet approximately 80 percent of the voluntary contributions are expended for marketing and administrative purposes. This includes amounts expended by FPL and Green Mountain. This severely limits the amount of contributions available for solar projects. Staff understands there is a continuing need for marketing and administration activities but the current level is highly excessive. As a point of comparison, FPL spends between 13 percent and 18 percent of monies received from its various conservation programs for administrative and marketing purposes. About 3.9 percent of conservation program revenues is spent on marketing. A higher level of marketing costs for the Sunshine Energy Program may be warranted.

Although not controlling, another point of comparison would be use of funds by charitable organizations. For instance, the majority of charities rated by Charity Navigator spend less than 10 percent of their budget on fundraising costs, less than 15 percent on administration costs, and at least 75 percent on the programs they exist to provide. Founded in 2001, Charity Navigator has become the nation's largest and most-utilized evaluator of charities. In light of the levels of administrative and marketing costs for FPL's conservation programs and charitable organizations, staff recommends that FPL should be held to a limit on administrative and marketing costs of 20 percent for its Sunshine Energy Program with FPL having the responsibility to demonstrate the 20 percent is not reasonable.

Staff is also concerned that the pricing structure of the contract with Green Mountain does not provide FPL with enough flexibility to increase the proportion of customer contributions used to support renewables as marketing costs decline over time. The contract

provides a high percentage of each customer contribution to Green Mountain in the form of a flat fee and requires fixed obligations with respect to solar project development by Green Mountain. At this point in the program's development, a higher percentage of revenues should be available to support renewable generation projects in Florida. However, as the contract is currently structured, Green Mountain is able to retain additional monies that result from reductions in marketing or administrative costs, and is not required to direct these monies to renewable projects. Staff recommends that going forward, any contracts with third party service providers must allow the flexibility for program participants to benefit from reduced administrative and marketing costs over time in the form of greater support for renewable generation.

Difficulty in Tracking Costs

It has been difficult for staff to track how program revenues are used to support specific costs incurred. First, it was difficult to determine how the substantial customer contributions ($11,435,899 through May 31, 2008) were allocated because virtually the entire program, including solar project development, was handled by third party contractors over which the Commission does not have jurisdiction. This hindered staff's efforts to determine whether revenues were spent in the best interest of program participants.

Second, unlike the pilot program, there was no formal reporting provision whereby the Commission could easily monitor the program. The order[10] approving FPL's request to convert the pilot program to the permanent Sunshine Energy Program did not require FPL to file semi-annual progress reports as in the pilot program. Instead, FPL provided limited information as a part of its ECCR filings. As stated in the order, "FPL proposes to record revenues and expenses for the project in its ECCR clause filings and will prepare a status report of the project for each of its ECCR true-up proceedings." The order is silent on the specific information FPL is required to provide in its ECCR filings. Reinstating detailed reporting requirements will facilitate the Commission's oversight of the program's revenues and expenditures, along with FPL's progress toward meeting its renewable development commitment.

Support for Out-of-State Renewable Generators

As discussed above, FPL's program provides revenues to both in-state and out-of state renewable generators through the purchase of TRECs. Staff is concerned that in 2007 there was a substantial shift to out-of-state TREC purchases, and away from in-state TRECs, as shown in Table 2. Staff believes program participants and the state as a whole receive greater benefits from development of in-state projects, including enhanced fuel diversity and energy security, as well as greater employment and economic development benefits. In addition, the Florida Legislature has recently shown a clear preference for in-state renewable projects. Section 366.92, F.S., expresses the Legislature's intent to promote the development of renewable energy, diversify the types of fuel used to generate electricity in Florida, lessen Florida's dependence on natural gas and fuel oil for the production of electricity, and encourage investment within the state. Also, HB 7135, enacted during the 2008 regular session, requires the Commission to

[10] See Order No. PSC-06-0924-TRF-EI, issued November 6, 2006, in Docket No. 060577-EI, In Re: Petition to convert green power pricing research project to permanent program and to extend program to commercial customers, by Florida Power and Light Company.

develop a renewable portfolio standard. While the bill includes a renewable energy credit trading system, the bill restricts utilities to meet their obligations with in-state renewable generation. HB 7135 also authorizes the Commission to allow utilities to recover costs for 110 megawatts of solar projects developed within Florida. In light of these legislative policies, FPL's program should be focused on promoting the development of in-state renewables.

Uncertainty regarding FPL's plans for excess revenues

FPL reported that as of May 31, 2008, total program revenues exceeded expenses by $544,432 as shown in Table 1. Pursuant to the order approving the permanent program[11], FPL "planned to defer excess revenues as a regulatory liability and reinvest these revenues to increase participation, reduce the monthly fee to participants, or invest in renewable resources." FPL has not provided staff with its specific plans to use these excess revenues under the existing program. FPL stated that the revenues have been used to reduce customer costs through the ECCR clause. When staff recommended approval of FPL's petition to convert its pilot program to a permanent program, it was staff's understanding that excess program revenues would be used by FPL to develop solar projects. However, the information provided by FPL in response to staff's 2007 discovery indicates that the contract requires Green Mountain to fulfill FPL's entire obligation with respect to developing solar projects. In response to staff's most recent discovery, FPL stated that it planned to use $34,000 of these revenues to place a solar photovoltaic array at the Florida Atlantic University campus building in Ft. Lauderdale, Florida.

Project-Related Concerns

Staff also has concerns about the program's development of solar projects. As mentioned above, Green Mountain was initially behind schedule to meet its solar project development obligation. In 2007, staff expressed concern to FPL about whether Green Mountain was on schedule to meet its commitment to develop 150 kW of solar capacity for every 10,000 residential participants. For example, by December 31, 2005, FPL had enrolled over 20,000 participants in the program, indicating a commitment for the development of 300 kW of solar capacity. However, the following information provided by FPL shows that no solar projects were completed until 2007.[12]

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[11] See Order No. PSC-06-0924-TRF-EI, issued November 6, 2006, in Docket No. 060577-EI, In Re: Petition to convert green power pricing research project to permanent program and to extend program to commercial customers, by Florida Power and Light Company.

[12] Late Filed Exhibit Number 1 to Dennis Brandt's deposition in Docket No. 070650-EI, In Re: Petition to determine need for Turkey Point Nuclear Units 6 and 7 electrical power plant, by Florida Power & Light Company. As indicated, no solar projects had been completed at the time FPL sought approval of the permanent program in August 2006. In semi-annual monitoring reports filed pursuant to the order that authorized the pilot program (Order No. PSC-03-1442-TRF-EI), FPL attributed the delay to the 2005 hurricane season. The projects referenced were not completed until the end of 2007.

Table 4		
Sunshine Energy Program Solar Capacity		
Year	**kW Capacity**	**Cumulative Participants**
2005	0	23,066
2006	0	28,742
2007	319	37,184

Staff's audit found that as of February 2008, Green Mountain had arranged for the installation of 487 kW of solar capacity. Also, FPL had arranged for an additional 2 kW for a total of 489 kW of solar capacity.[13] However, the audit indicated that not all of these projects had been completed as of February 2008. The audit also found that, according to the contract, Green Mountain has one year after attaining each 10,000 participants to complete the required 150 kW of solar capacity. Staff recognizes that it is important for FPL to have some timing flexibility for project development in order to take advantage of larger projects and the potential for cost reductions due to economies of scale. However, it is important for participants to see timely results, so they know that their voluntary funds are put to good use.

In addition, staff has several concerns about project oversight. First, it is difficult to determine how much monetary support was provided to each solar project by Green Mountain. As discussed above, the projects have been financed in various ways, including contributions to capital costs, long-term agreements to purchase TRECs, and leveraging state solar rebates and tax incentives. Staff agrees that leveraging Sunshine Energy funds with other private and public sources can provide an opportunity to increase the solar projects developed as a result of the program at a reduced cost. However, it is important that sufficient funding be provided by the program to prompt new projects that would not have been installed in the absence of Sunshine Energy funding. Staff believes there has not been enough transparency in the current program to determine if these projects were prompted by the funds provided by program participants, or if the projects would have been developed even in the absence of these funds. Furthermore, given the current contract with Green Mountain, any benefits of project cost leveraging would not necessarily result in greater renewable development over time. Green Mountain is not required by the contract to use any residual revenues resulting from project cost reductions to support additional renewable projects.

The solar projects were developed without the Commission's input, which resulted in the installation of a project on an upscale residential development in Naples. Staff believes that

[13] As noted on page 6, FPL reported on June 16, 2008, that an additional 24 kW are to receive rebates per the Sun Funds Program for a total of 513 kW.

there could have been other projects that would have provided greater benefits to the program's participants. For example, solar projects installed on public buildings have the added benefits of increasing public awareness of renewable energy and reducing operating costs borne by taxpayers. Staff also believes the most benefits will be obtained by projects owned by FPL, located on public facilities, or developed in concert with state or local programs (such as the Sun Funds solar rebate program). As discussed above, oversight of the pilot program, including project development, was facilitated by the semi-annual reports required by the Commission's order. The reporting requirements should be reinstated. In addition, FPL should be required to notify staff of planned projects in advance of implementation. Staff intends to bring any concerns about specific projects to the Commission's attention.

IV. Conclusion

The Sunshine Energy Program does not currently serve the interest of the program's participants and it does not align with current state renewable energy policies. FPL should be required to redesign the Sunshine Energy Program to address the concerns discussed above. Specifically, FPL should limit the level of administrative and marketing costs to 20 percent of the overall voluntary contributions with the remaining portion to be used for project costs. FPL should also be required to provide semi-annual reports to the Commission to improve monitoring of program expenses and progress toward meeting program goals. Program funds should be used to facilitate the construction of new renewable energy projects in Florida. Excess revenues should be directed toward support of additional renewable energy projects in the state. Finally, FPL should take steps to ensure that projects are installed in a timely manner and that the Commission has greater oversight in the early stages of project development. The program should be modified along the above guidelines within 60 days of the issuance of the order codifying the Commission's vote. If FPL cannot or chooses not to modify the program to meet the guidelines by the established deadline, the Commission may choose to terminate the program.

Issue 2: Should the Commission direct FPL to provide additional information regarding the modifications to the Sunshine Energy Program proposed in its June 5, 2008 petition?

Recommendation: Yes. The Commission should direct FPL to provide detailed information on (1) how projects will be selected and financed, (2) any payments or ongoing obligations between FPL and other parties, (3) documentation for the estimated proportion of revenues to be spent on marketing and administrative expenses, (4) any obligation FPL holds with respect to existing projects, and (5) any impacts associated with terminating the Sterling Planet contract. FPL should provide this information within 30 days of the issuance of the order codifying the Commission's vote. FPL should follow the guidelines established in Issue 1 in developing its responses concerning the modifications or any further modifications to the program presented for the Commission's approval. (Harlow, Devlin, Futrell)

Staff Analysis: Staff communicated its initial concerns regarding the Sunshine Energy Program to FPL in 2007. On September 27, 2007, staff filed a recommendation to address its concerns and suggested certain program modifications. On October 4, 2007, FPL requested that this recommendation be deferred in order for FPL to address the issues raised in the recommendation. Subsequently, FPL advised staff that the company was negotiating contract revisions with Green Mountain. On June 5, 2008, FPL filed a petition to modify the Sunshine Energy Program and a revised tariff for the program. In response to staff's request, FPL also filed its amended contract with Green Mountain.[14] As addressed further below, additional information is necessary for staff to make a fully informed recommendation to the Commission regarding FPL's petition.

I. FPL's Proposed Modifications to the Sunshine Energy Program

In its petition, FPL states that the goals of the modified program are similar to those of the existing program – to increase renewable generation within Florida and to increase customer awareness of renewable energy. FPL intends to retain the current customer contribution level of $9.75 per month in addition to each participant's charges under the applicable rate schedule. FPL also provided the attached comparison of the existing program and proposed program modifications. (See Attachment 1) Staff's initial understanding of the primary modifications to the program follows:

- Green Mountain will retain responsibility for marketing, sales, customer retention, public relations, and customer account management services. Green Mountain will now perform these functions for all participants, including residential, commercial, and industrial customers. Green Mountain will receive a "monthly services fee" for these services based on customer participation levels. It appears that Green Mountain will receive a substantially smaller proportion of each $9.75 customer contribution. Green Mountain will no longer purchase TRECs or develop solar projects.

- FPL will retain the majority of program revenues to develop in-state renewable projects. FPL proposes that 25 kW of solar or other renewable projects will be developed within

[14] FPL has filed an intent to request confidentiality on some portions of the amended contract. The Commission has not yet issued an order on confidentiality.

one year after FPL receives each $250,000 in program contributions, excluding marketing and administrative costs.

- Program funds will not be used to support purchases of TRECs from out-of-state renewable facilities.

- Eligible renewable projects have been expanded to include facilities utilizing biomass fuel, land-fill gas, wind, solar, solar thermal, ocean currents, tides, and other hydrological applications, and other renewable energy sources as identified by FPL.

- FPL may also use program funds to provide supplemental rebates to state rebates on residential or business solar systems.

- Program modifications would take effect October 1, 2008, to provide FPL with time to notify participating customers of the program's changes.

- FPL intends to continue to record program revenues and expenses in its ECCR filings. FPL will also provide a program status report as a part of its ECCR filings. FPL will track customer sign-ups, removals, and the total renewable kW supported by customer contributions.

FPL's amended contract with Green Mountain has other provisions that staff believes are germane to the Commission's decision on FPL's petition. The specifics of these provisions are currently confidential per FPL's request. In general terms, there are key contract provisions regarding: (1) payments and ongoing financial obligations between the parties, (2) assignments of assets, (3) the use of trademark materials, and (4) contract default and termination conditions. FPL has stated that the "Sterling Planet contract will be terminated for convenience upon approval of the revised program." Staff needs additional time to fully explore the implications of FPL's amended contract with Green Mountain and the potential termination of the contract with Sterling Planet.

II. Conclusion

Given that FPL's proposed modifications and the associated revised tariff will substantially alter the Sunshine Energy Program, staff needs additional time and information regarding the changes in order to bring back a fully informed recommendation for the Commission's review. As such, in Issue 3, staff has recommended that the Commission should suspend the submitted revisions to the Sunshine Energy tariff, pursuant to Section 366.06(3), F.S. Staff recommends that the Commission should require FPL to provide additional information to the Commission and its staff regarding the effect of the proposed program modifications, amended contract, and revised tariff, including more detailed information on the following:

- How FPL plans to select and finance renewable facilities, including whether or not FPL intends to purchase TRECs as a means of financing new projects.

- Any payments and ongoing financial obligations between FPL, Green Mountain, or other parties.

- Support for the change in the proportion of marketing and administrative costs as shown in Attachment 1, and whether the new level of these costs is appropriate.

- Any obligation FPL holds with respect to projects developed under the existing Sunshine Energy Program and how these obligations will be funded.

- Any financial impact associated with terminating the Sterling Planet contract.

FPL should provide this information within 30 days of the issuance of the order codifying the Commission's vote. FPL should follow the guidelines established in Issue 1 in developing its responses concerning the modifications or any further modifications to the program presented for the Commission's approval.

Issue 3: Should the Commission suspend FPL's revised tariff for the Sunshine Energy Program?

Recommendation: Yes. (Harlow)

Staff Analysis: Pursuant to Section 366.06(3), F.S., the Commission may withhold consent to the operation of all or any portion of a new rate schedule, delivering to the utility making the request a reason or written statement of a good cause for doing so within 60 days. Staff recommends that the revised tariff for the Sunshine Energy Program should be suspended. As discussed in Issue 2, FPL should be required to provide additional information to the Commission regarding the effect of the proposed program modifications, amended contract, and revised tariff. Suspending the tariff will allow staff adequate time to review the proposed modifications to the Sunshine Energy Program and the associated revised tariff so that staff can bring back a fully informed recommendation for the Commission's review.

Issue 4: Should this docket be closed?

Recommendation: No. If no substantially affected person files a protest to Issue 1, this issue will become final upon the issuance of a consummating order. If the Commission approves staff's recommendation on Issue 2, FPL should provide the required information within 30 days of the Commission's order. However, the docket should remain open pending the Commission's decision on the proposed tariff and staff's verification that the required information has been provided. (Fleming, Hartman)

Staff Analysis: No. If no substantially affected person files a protest to Issue 1, this issue will become final upon the issuance of a consummating order. If the Commission approves staff's recommendation on Issue 2, FPL should provide the required information within 30 days of the Commission's order. However, the docket should remain open pending the Commission's decision on the proposed tariff and staff's verification that the required information has been provided.

Attachment 1

Comparison of Key Program Features of the Existing Sunshine Energy Program & the Proposed Program Revisions

(Information Provided by FPL)

Feature	**Current Program**	**Revised Program**
Customer Segment	Residential and business customer	Residential and business customer
Vendor Support	Green Mountain for residential • TRECs • Solar development • Turn key marketing • Sterling Planet for business • TRECs	Green Mountain for both residential and business • Marketing, sales, customer retention, public relations, and customer account management services. (See Green Mountain Responsibilities below) Sterling Planet agreement will be terminated for convenience upon approval of revised program
FPL Responsibilities	Overall program management • Review and approval of market plan and strategies, including collateral, sales channels and campaigns • Selection and approval of solar development sites	Overall program management • Review and approval of market plan and strategies, including collateral, sales channels and campaigns • Funding of marketing tactics • Development of renewable sites
Allocation of Program Expenses	• FPL program management – 7% • Marketing & Other – 68% • TRECs & Renewables – 24%	• FPL program management – 7% • Marketing & Other – 35% • Renewables – 58% Synergies will potentially increase renewable project funding
Contractual Commitments	• Green Mountain for residential • Sterling Planet for business • Miami Museum solar site	• Green Mountain • Agreement for Rothenbach Park • New renewable site agreements
Renewables Commitment	• 150 kw / 10,000 participants	• 25 kw / $250,000 of renewable funds within one year • Dependent on ability to site and construct facilities at public places • Total kw of site will count toward commitment • Cost sharing will allow for the funding of sites greater than 25 kw (See Site Selection Criteria below)