State of Florida

Public Service Commission

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

DATE: September 22, 2008

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Devlin)
Division of Regulatory Compliance (Salak)
Office of the General Counsel (Fleming)

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

AGENDA: 09/29/08 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

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

Case Background

By Order No. PSC-06-0924-TRF-EI, issued on November 6, 2006, in Docket No. 060577-EI, the Commission approved Florida Power & Light Company's (FPL) green pricing program, the Sunshine Energy Program or (Program), and the associated tariff. The Sunshine Energy Program was a voluntary program, in which participating residential and commercial customers were 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 kilowatt-hours (kWhs) of renewable energy would be purchased.[1] By that Order, FPL committed to develop 150 kW of in-state photovoltaic capacity for every 10,000 participating residential customers. In addition, the order also contemplated that FPL would develop three new projects with Green Mountain Energy Company (Green Mountain), such as a 250 kW solar array in Sarasota's Rothenbach Park, four schools in Broward County for the SunSmart School Program, and approximately 90 homes for photovoltaic production. Under the Sunshine Energy Program's tariff, participants could make multiple contributions of $9.75 per month, for each of which an additional 1,000 kWh blocks of renewable energy credits (RECs) would be purchased.

Staff notes that FPL's Sunshine Energy Program is similar to a demand-side management program (DSM) because once a DSM program and its associated tariff are approved by the Commission, the utility may execute its program by in-house means or it may seek to enter into contracts with non-regulated entities. In this instance, FPL chose to enter into a contract with Green Mountain, a non-regulated entity, to implement its Commission-approved Sunshine Energy Program. The order approving the Sunshine Energy Program did not incorporate the contract by reference; thus, the contract between FPL and Green Mountain Energy Company (Green Mountain) is not part of the Commission's order.

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. On October 4, 2007, FPL requested that the recommendation be deferred in order for FPL to address the issues raised in 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.

When no resolution was forthcoming by the Spring of 2008, staff also initiated an audit for the purpose of identifying, to the extent possible, how the voluntary contributions were being used and whether there was a clear and transparent accounting for the monies. This initial audit effort was completed on May 30, 2008.

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. On June 16, 2008, FPL filed a response to staff's audit of the Sunshine Energy Program.

On June 23, 2008, staff filed a recommendation which addressed 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. This recommendation was considered at the July 1, 2008, Agenda Conference. At that conference, the Commission denied FPL's request to modify the Sunshine Energy Program and directed staff to provide an analysis of issues associated with possible termination of the program. On July 15, 2008, the staff provided the Commission an analysis entitled "Issues Associated with Termination of the Sunshine Energy Program."

[1] By Order No. PSC-08-0600-PAA-EI, issued September 16, 2008, in Docket No. 070626-EI, the Commission terminated the program effective July 29, 2008.

On July 29, 2008, the Commission voted to terminate the program and directed staff to complete the audit of the costs incurred by Green Mountain Energy. During the July 29, 2008 Agenda Conference, Green Mountain committed to open its books and records to Commission audit staff.

In August 2008, Commission staff auditors continued their audit of Green Mountain. This audit included an on-site review at Green Mountain's headquarters in Austin, Texas. The audit was completed and the audit report was filed on September 8, 2008. Additionally, staff has researched similar green energy programs in other states and have reviewed marketing techniques and materials used by Green Mountain. The purpose of this recommendation is to address the audit and other possible outstanding issues related to the program. The Commission has jurisdiction over this matter under Sections 366.04, 366.05, 366.06, 366.80, 366.81, and 366.82, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Did the Staff audit account for all monies expended by Green Mountain and were those expenditures related to the Sunshine Energy Program?

Recommendation: Yes, the audit results indicate Green Mountain used the monies for purposes related to the Sunshine Energy Program. (Devlin, Salak)

Staff Analysis:

At the July 29, 2008 Agenda Conference, the Commission instructed staff to complete the unfinished part of the financial audit conducted in this case. This includes auditing the administrative and marketing costs incurred by Green Mountain. In May 2008, staff was unable to complete the audit because Green Mountain was unwilling or unable due to contract provisions with FPL to provide access to basic records and limited access to supporting detail associated with REC purchases. However, at the July 29, 2008 Agenda Conference, Green Mountain offered staff's auditors access to its records.

There was also discussion at the July 29, 2008 Agenda Conference about the percent of monies which were used by Green Mountain for marketing and administrative expenses. During the second phase of the audit, Green Mountain provided a presentation for Commission auditors and technical staff on its efforts to market the program and to identify and enroll FPL customers. Following the presentation, staff requested from Green Mountain and FPL additional specific information on those marketing efforts. In addition, staff researched similar programs being conducted in other states for comparison purposes.

The staff analysis below will describe: (1) the audit results, (2) the marketing efforts of Green Mountain, (3) information on similar programs, and (4) National Renewable Energy Laboratory (NREL) benchmarks and rankings.

Audit Results

The purpose of the audit was to identify how Green Mountain expended monies received from FPL and whether the expenditures related to the Sunshine Energy Program. The audit did not address whether such expenditures were reasonable and prudent. Since Green Mountain's expenditures relate to a turn-key performance based contract, such a review of specific expenditures is not as relevant as it would be in a traditional cost recovery scenario.

The final audit report was issued on September 8, 2008. All of Green Mountain's transactions from 2003 to July 31, 2008, were subject to audit. A representative sample was taken to verify these costs. For instance, the auditors checked to ensure adequate supporting documentation existed and that these costs related to the Florida program and not one of the other Green Mountain programs.

The audit report disclosed a multi-million dollar future liability for Green Mountain associated with termination of the Program. The major portion of the liability is associated with the 250 kw solar array at Rothenbach Park in Sarasota, Florida. Subsequent to the filing of the

audit report, Green Mountain informed staff that it has exercised its option under the FPL and Green Mountain Services Agreement to assign to FPL all of Green Mountain's rights and obligations under the Solar Tag Agreement. The Solar Tag Agreement is an agreement between Green Mountain and the owner-developer of the Rothenbach Park Project. Based on this recent assignment to FPL, Green Mountain no longer has a liability associated with this project.

The following conclusions are based on the actual costs incurred through July 31, 2008:

- The overall level of administrative and marketing expense for the life of the Program was about 74% based on the initial audit and changed to 69% in the final audit due to the inclusion of 2008 activity.

- The level of marketing expense was high in the early years (2003-2005) and significantly dropped off in 2006 and 2007 as the Program and customer base matured.

- Based on the audit results, all of the Program revenues were used for purposes related to the Sunshine Energy Program.

- 73% of Green Mountain's administrative and marketing costs involve third party contracts, whereas the other 27% of these costs relate to Green Mountain's internal costs.

- Green Mountain's operating profit as a percentage of revenue fluctuated from year to year and was minimal over the life of the Program.

The Marketing Efforts of Green Mountain

FPL contracted with Green Mountain to, among other things, develop a marketing program. Green Mountain used several techniques including telemarketing, bill inserts, bangtails (tear-off envelope flaps) and direct mail. In promoting a new program such as the Sunshine Energy Program, one would expect marketing costs to be relatively high in the early periods and decline as the program matures. The audit results support this proposition. In 2004 and 2005, the marketing costs were close to $1.8 million a year. In contrast, in 2006 and 2007, marketing costs were between $.9 and $1 million. This decline is due, primarily, to the discontinuance of expensive telemarketing activities after 2005. However, marketing costs per customer remain high for this Program (see page 9).

Marketing expense is sometimes referred to as acquisition costs. According to a report by NREL, the acquisition costs per new contributor for the Sunshine Energy Program in 2006 were far in excess of the nationwide average (see page 9). This may be due, in part, to a difference in demographics between areas of the country.

In response to a staff data request, FPL provided monthly subscription data (goal and actual) for the Sunshine Energy Program beginning with the year 2004. This data was broken down by sales channel, thereby giving staff an opportunity to see the relative emphasis placed on

different channels over time. A review of the data shows that telemarketing was the heaviest used channel at first, followed by direct mail and direct sales (at store fronts). Bill inserts were introduced in 2005, and telemarketing was discontinued after 2005. Direct sales marketing has been minimal since 2005. Direct mail and bill inserts were the most frequently used channels for 2006, and direct mail and bangtails (tear-off envelope flaps) were the channels of emphasis in 2007. The various forms of written, direct marketing proved to be the most effective in recruiting new customers.

A 2002 report by Dan Lieberman at the Center for Resource Solutions, titled "Green Pricing at Public Utilities: A How-To Guide Based on Lessons Learned to Date," gives outbound telemarketing an effectiveness score of 0, on a 4-point sliding scale, based on a survey of green pricing managers. A report by the National Renewable Energy Laboratory entitled "Trends in Utility Green Pricing Programs (2003)" also indicates that top performing programs use telemarketing less frequently than various forms of written, direct marketing. A 2006 edition of the same report indicates that telemarketing is less useful than most other strategies and mentions that some of the most effective techniques, such as bangtails, are not commonly used. One could question why Green Mountain chose telemarketing. Because Green Mountain was funding the initial marketing efforts before any customer base was established, the firm had an incentive to use the most effective marketing techniques.

Staff also has reviewed a variety of marketing materials used with the Sunshine Energy Program to help assess if any representations made to customers were misleading. In response to a data request, FPL and Green Mountain produced copies of bangtails, bill inserts, direct mail pieces, and scripts used in marketing the Sunshine Energy Program. Additionally, FPL provided a copy of its January 2008 message map, which was designed to ensure consistency, efficiency, and strength in its marketing messages for the program.

The marketing materials reviewed by staff indicate to potential participants that participation in the program would result in 1,000 kWh of electricity being produced each month from cleaner generation sources, which may or may not be located in Florida. Order No. PSC-03-1442-TRF-EI[2] required that the materials specify the program is based primarily on renewable energy credits, which may be obtained from out-of-state generators. Accordingly, it appears that the marketing messages are generally consistent with the parameters originally set by this Commission.

Staff did not previously review information about the Sunshine Energy Progam on FPL's website. Staff was concerned about FPL's assertion on its website that there would only be "nominal" administrative costs associated with the program. In response to a staff inquiry, FPL states "[a]dministrative costs represent only a minor portion of the overall costs. In particular, FPL's administrative costs for the residential program were slightly less than $0.65 per customer contribution." Staff believes that FPL's answer is technically accurate in that administrative costs are different than marketing costs. However, staff also believes that this statement could be misinterpreted by a potential contributor.

[2] Issued on December 22, 2003, 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 & Light Company.

Information on Similar Programs

There has been much discussion about the high level of administrative and marketing costs. The question is whether this level of administrative and marketing costs over the life of the program is reasonable. To address this question, staff reviewed similar programs in this state and other states. In addition, staff reviewed reports by the Department of Energy.

TECO

TECO's Renewable Energy program includes voluntary contributions of $5.00 for 200 kWh block of renewable generation. Since its inception in 2001, 39.5 kW of solar generation facilities have been developed. At year-end 2007, 2,350 customers were enrolled in this program which represents about .60% of TECO's total customer base.

Based on information filed in Docket No. 080367-EG, it appears that for the period January 2001 through June 2008, approximately 59% of the program revenue is used for administration (40% or $281,600) and marketing (19% or $135,785). Additionally, $287,899 or 41% of the contributions were used for four solar-related renewable generation projects. Total program revenue was $705,284 for this time period.

Oregon

In Oregon, PGE and PacifiCorp offer green power rates for all of their customers. PGE has more than 50,000 participants and PacifiCorp has about 29,000 participants. It is reported that this represents 6.7% and 5.1% of "small" customers for each of these utilities, respectively. Oregon uses a "Portfolio Options Committee" to oversee program performance on a quarterly basis. This committee is comprised of members from various state agencies, consumer groups and utilities.

The PGE program involves TRECs and an optional Healthy Habitat and Green Source Development fund. Green Mountain Energy is the contractor, and for the period 2004 through 2006, about 33% of the voluntary contributions were spent on marketing and 18% relate to administrative costs, for a combined total of 51%.

PacifiCorp's program also involves TRECs and the Habitat option. For years 2004 through 2006, administrative and marketing costs ranged from 34% to 43%.

Missouri

The Missouri PSC has approved a green pricing program for AmerenUE. Like FPL, AmerenUE uses a contractor, 3Degrees. 3Degrees is Green-e certified by the non-profit Alliance for Resource Solutions. According to the Missouri PSC staff, being Green-e certified lessens the need for regulatory oversight since this certification provides certain protective measures.

The AmerenUE program is similar to FPL's in that it is voluntary and monies are used for RECs. For each $15 contribution, AmerenUE retains $1 for internal administrative expenses

and turns over $14 to 3Degrees. For each $14 payment, 3Degrees is obligated to buy 1 MWH block of "Pure Power." Unlike the Sunshine Energy Program, there is no commitment for the construction of solar or other renewable facilities.

The cost of the RECs and administrative/marketing costs associated with the AmerenUE program is confidential. Based on testimony by the Missouri PSC staff, in case number ER-2008-0318, a wholesale REC price of $2 is relevant for this program. As a point of reference, Green Mountain purchased RECs on an average for $1.90 through 2007. Assuming 3Degrees purchased TRECs at a price of $2 on average, the percent retained for administrative, profits and marketing is 87%.

Georgia

In 2003, the Georgia PSC approved a Green Pricing program for Georgia Power. The program was designed to allow customers on a voluntary basis to support green energy by purchasing 100 kWh blocks to be used to foster renewable energy. In 2006, the Georgia PSC approved a tariff rate of $4.50 per month for 100kWh of renewable energy. From the inception of the new tariff in October 2006 through June 2008, marketing expense as a percentage of total program revenue was 27.6% and administrative costs were about 1% of program expenses. It would be a slightly higher percent if compared to program revenue. The marketing expense has been declining over time since marketing activities are front end loaded with respect to a new program. Administrative costs represented only 1% of program revenue; however, they are expected to increase since, according to Georgia PSC staff, not all administrative costs related to the program appear to be allocated to the program.

In 2007, Georgia Power sought and received national Green-e status. According to the Georgia PSC, "the Green-e accreditation has become the nation's leading independent consumer protection program for the sale of renewable energy in the retail market."

On August 29, 2008, Georgia Power filed a petition to modify its Green Energy tariff. In its petition, Georgia Power requests that administrative and marketing costs be recovered in base rates. The Company stated that it will continue to monitor program administrative and general expenses to maximize the efficient use of resources and will continue to file quarterly program reports to the Commission.

In summary, there is wide variation in the proportion of "green energy" program revenue used for administrative and marketing for a low of 29% to a high of 87%. This is due to various factors including ratemaking treatment and age of the program. For instance, Georgia Power appears to have the lowest level of costs, but most of its administrative costs are allocated to base rates. Missouri appears to have the highest level of administrative and marketing costs but their program is relatively new, started in June 2007.

NREL Benchmarks

Staff reviewed FPL performance associated with several green pricing benchmarks tracked by the NREL of the Department of Energy. NREL is the U.S. Department of Energy's primary national laboratory for renewable energy and energy efficiency research and development. NREL performs analyses of green power market trends. The data from NREL was gathered by an annual questionnaire distributed to green pricing program managers with voluntary programs. NREL states it can be used by utilities to benchmark the success of their green power program. Three benchmarks will be discussed below: customer acquisition cost, marketing and administrative expenditures, and customer participation.

One measure of the cost of marketing a green pricing program is customer acquisition cost. Customer acquisition cost is defined as marketing expenditures divided by the number of new customers that enroll in the program each year. For 2007, utilities providing data reported an average residential acquisition cost for green pricing programs of $32 for all utilities and $26 for larger utilities (greater than 1 million customers). Utilities with programs which started the same year as FPL's had average acquisition costs of $18 with a range between $15 and $25. FPL's customer acquisition cost was $170 in 2006 and it dropped to $110 in 2007, much higher than the NREL average.

Over the life of the program, FPL has spent 69% on marketing and administrative expenses. Generally, these expenses trended down as the program matured. In 2004, FPL and Green Mountain spent over 410% on marketing and administrative expenses, in 2005 that number was reduced to 104% and to 47% in 2006. By 2007, FPL and Green Mountain's marketing and administrative expenses were down to 35%. By comparison, NREL trends show that the average marketing and administrative expenditures from their respondents was 20% in 2004, 15% in 2005, 23% in both 2006 and 2007. NREL 2007 data reflects that other utilities with programs that started the same year as FPL had an average percent of premium spent on marketing and administrative expenditure of 27%. According to NREL, the top performing utilities in 2007 had an average marketing and administrative expenditures as a percent of premium of 31.5%. NREL cautions that there may be wide variations in how well respondents to their survey track marketing costs. NREL also believes that there is some incentive for utilities and marketers to under-report these costs.

According to the NREL data, participation rates in utility green pricing programs among eligible customers was 2.0% on average with a median of 1.3% in 2007. Utilities that launched green pricing programs in 2004, the same year as FPL, experienced an average participation rate of 2.3%. The top 10 ranked programs in 2007 reported participation rates of 5.2% to 20.4%. FPL's participation rate was .93% in 2007 and had risen to .98% at the time the program was terminated in 2008. Given the higher than average marketing expenditures, staff would have expected to see a higher participation rate.

NREL Rankings

Using information provided by the utilities, NREL annually ranks the top ten utility green power programs in five categories:

- Total sales of renewable energy
- Total number of customer participants
- Customer participation rate
- Price premium charged for new, customer-driven renewable power
- Green Power sales as a percentage of total retail electricity sales (in kWh)

In 2007, FPL ranked fourth in renewable energy sales with sales of $373,596,000 (kWh/year). Only programs at PacifiCorp, Portland General Electric and Austin Energy had greater sales than FPL.

FPL's Sunshine Energy ranked sixth in the number of customer participants in 2007 with 37,184 participants as reported to NREL. Utilities that exceeded FPL's customer participation were Xcel Energy, Portland General Electric, PacifiCorp, Sacramento Municipal Utility District and PECO. Participation in these programs ranges between 38,548 and 75,534. According to NREL, approximately 600,000 customers are participating in these types of programs nationwide.

FPL did not rank in the top ten in customer participation rate or green sales as a percentage of total utility retail electricity sales for 2007. Additionally, FPL was also not considered for inclusion in the price premium charged for new, customer-driven renewable power ranking because not all of FPL green power sold was sourced from renewable power that was built or repowered after January 1, 1997.

Conclusion

In conclusion, the audit results indicate Green Mountain used the monies for purposes related to the Sunshine Energy Program. While staff believes that FPL's level of administrative and marketing costs was high relative to similar programs, staff also believes that FPL complied with the related tariff.

Although the Program was improving in the last year or so in terms of contributions to renewable energy, overall Program results were not in the public interest when compared to similar programs. With the recent legislation directing the PSC to promulgate rules for a Renewable Portfolio Standard (RPS) and a growing emphasis on developing renewable energy sources within the State, it is appropriate to critically reassess the use of "voluntary" customer contributions as a tool to promote renewable energy. Either significant change to the program structure or termination of the program was appropriate. The Commission opted for termination.

Issue 2: Should this docket be closed?

Recommendation: No. If no substantially affected person files a protest within 21 days of the issuance of the order, this issue will become final upon the issuance of a consummating order. However, the docket should remain open pending resolution of the amounts held in escrow pursuant to Order No. PSC-08-0600-PAA-EI. (Fleming)

Staff Analysis: If no substantially affected person files a protest within 21 days of the issuance of the order, this issue will become final upon the issuance of a consummating order. However, the docket should remain open pending resolution of the amounts held in escrow pursuant to Order No. PSC-08-0600-PAA-EI.