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May 18, 2010

VIA HAND DELIVERY

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COMMISSION  
CLERK

Ann Cole,  
Office of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0800


Re: Docket Nos. 080407-EG, 080408-EG, 080409-EG, 080410-EG, 080411-EG, 080412-EG,  
080413-EG

Dear Ms. Cole:

Attached please find the original and seven copies of page 5 which was inadvertently not included in the filing on May 17, 2010 of your document number 04145-10, Florida Solar Energy Industries Association's Response in Opposition to Progress Energy Florida, Inc.'s Motion for Stay of Proceedings Pending Judicial Review. Please file with the original and include with the additional seven copies.

Should you have questions or need any additional information, please contact me.

Very truly yours,

  
Suzanne Brownless  
Attorney for Florida Solar Energy Industry Association

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cc: All parties of record

DOCUMENT NUMBER-DATE

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Commission conducted a fair evidentiary hearing in that case and afforded all parties due process. There has been no departure from the essential requirements of law in the procedural process followed by the Commission in the goals dockets which would require the Florida Supreme Court to set aside Orders Nos. 09-0855 and 10-0198. *AmeriSteel Corp. v. Clark*, 691 So.2d 473, 477 (Fla. 1997). Finally, the Florida Supreme Court “will not depart from the contemporaneous construction of a statute by a state agency charged with its enforcement unless the construction is ‘clearly unauthorized or erroneous.’” *GTC, Inc. v. Edgar*, 967 So.2d 781, 785 (Fla. 2007).

12. While neither the IOUs nor SACE/NRDC are pleased with the demand side management goals established by the Commission - the IOUs convinced that they are preposterously high when compared to goals set in 1994 and SACE/NRDC convinced that hundreds of MW per year could be saved cost-effectively if the two-year payback period screen was not used in the economic potential analysis - the decision is based on credible evidence of record and is not clearly erroneous. The Florida Supreme Court is not allowed to re-weigh all of the evidence presented at the final hearing in the DSM Goals dockets, thereby potentially reaching a different decision on MW goals, but must uphold the Commission’s decision if adequately supported by competent and substantial evidence of record. *Sprint-Florida, Inc. v. Jaber*, 885 So.2d 286, 290 (Fla. 2004). For these reasons, the likelihood of success of SACE/NRDC’s appeal is virtually nil.

13. Second, there is no irreparable harm if the orders are not stayed. One assumes that SACE/NRDC’s arguments on appeal, if found persuasive by the Florida Supreme Court, will ultimately result in an increase in PEF’s MW demand side management goals for the next five years. The ultimate result of a successful appeal will be to add demand side management programs to those currently proposed in PEF’s DSM Plan, not to dismantle the demand side management programs currently included. PEF expanded and reworked many of its existing 1994 DSM programs in developing its current DSM Plan. The cost of expanding and reworking its currently proposed DSM programs if DSM