

Diamond Williams

From: George Cavros [george@cavros-law.com]
Sent: Tuesday, September 06, 2011 2:01 PM
To: Filings@psc.state.fl.us
Subject: SACE's Protest of Order No. PSC-11-0346-PAA-EG -- Docket No. 100155-EG
Attachments: SACE Protest of Order No. 11-0346-PAA-EG -- DN 100155.pdf

Dear Commission Clerk,

In accordance with the electronic filing procedures of the Florida Public Service Commission, the following filing is made:

A.

George Cavros, Esq.
120 E. Oakland Park Blvd, Ste. 105
Fort Lauderdale , FL 33334
Telephone: 954.563.0074
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B. This filing is made in Docket No. 100155-EG - In re: Petition for approval of demand-side management plan of Florida Power & Light Company.

C. This document is filed on behalf of Southern Alliance for Clean Energy (SACE).

D. The document is 7 total pages.

E. The attached document is SACE's Protest of Commission Order No.PSC-11-0346-PAA-EG .

Sincerely,

George Cavros

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DOCUMENT NUMBER-DATE

06384 SEP-6 =

9/6/2011

FPSC-COMMISSION CLERK

BEFORE THE PUBLIC SERVICE COMMISSION

**In re: Petition for Approval of Demand-side
Management Plan of Florida Power and
Light Company**

DOCKET NO. 100155-EG

Dated: September 6, 2011

**SOUTHERN ALLIANCE FOR CLEAN ENERGY'S PROTEST OF
ORDER NO. PSC-11-0346-PAA-EG**

Pursuant to sections 120.569, 120.57, Florida Statutes, and rule 28-106.201, Florida Administrative Code, Southern Alliance for Clean Energy (SACE), through its undersigned counsel, files its Protest of Order No. PSC-11-0346-PAA-EG and in support thereof states:

1. Name and address of agency affected by this petition is:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

2. Name and address of Petitioner is:

Southern Alliance for Clean Energy
P.O. Box 1842
Knoxville, Tennessee 37901
Telephone: 865-637-6055

3. The name and address of counsel for Petitioners, authorized to

receive all notices, pleadings, and orders in this docket is:

George Cavros, Esq.
120 E. Oakland Park Blvd, Ste. 105
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4. Petitioner received notice of this docket by a review of the Public Service Commission's (Commission) website.

5. Statement of Substantial Interests. SACE is a non-profit corporation organized under the laws of the State of Tennessee and authorized to conduct operations in Florida. The mission of SACE is to promote responsible energy choices that solve global warming problems and ensure clean, safe and healthy communities throughout the Southeast, including the State of Florida. SACE has staff working on this mission in Tennessee, North Carolina, Georgia, South Carolina, and Florida. SACE has a substantial membership base in Florida Power and Light's (FPL) service territory dedicated to the promotion of responsible energy choices.

6. SACE advocates for adoption, implementation, and enforcement of meaningful energy policy, during the course of which they have presented experts and provided testimony in numerous forums in Florida, including before the Governor's Climate and Energy Action Team, the Florida State Legislature, the Department of Environmental Protection, and this Commission. SACE places an especially high priority on the importance of thoroughly evaluating and implementing all cost-effective energy efficiency programs as a means of mitigating or displacing the need for new more costly electricity generation. SACE has been granted party status in numerous dockets before the Commission, including: *In re: Commission Review of Numeric Conservation Goals*, Docket No. 080407-EG which set conservation goals for FPL from 2010 to 2019 through Commission Order No. PSC-09-0855-FOF-EG; and *In re: Petition for Approval of Demand-side Management Plan of Florida Power and Light Company*, Docket No. 100155-EG which was intended to approve, deny or modify demand-side management (DSM) plans for FPL and produced the proposed agency action order that is being protested by SACE.

7. In Docket No. 100155-EG, the Commission issued Order No. PSC-11-0079-PAA-EG, which denied FPL's initial DSM plan filing because it was insufficient to meet the Commission's annual goals for multiple customer class categories in multiple years as required by Commission Order No. PSC-09-0855-FOF-EG. In that Order, the Commission required FPL to resubmit a DSM plan within thirty days that would comply with goals established in Commission Order No. PSC-09-0855-FOF-EG. FPL's "Modified DSM Plan," submitted on March 25, 2011, modified certain programs to fulfill the requirements of Commission Order No. PSC-09-0855-FOF-EG. Yet, the Commission abruptly changed course and through Commission Order No. PSC-11-0346-PAA-EG, issued August 16, 2011, denied FPL's "Modified DSM Plan."¹ In the same order, the Commission further ordered that a "newly modified DSM Plan consisting of programs currently in effect" be approved. The effect of the order is have a DSM Plan in place, which is nothing more than FPL's existing DSM programs currently in effect, which were designed to implement goals set in the 2004 goal conservation goal setting proceeding set in Commission Order No. PSC-04-0763-PAA-EG.

8. The "newly modified DSM Plan" that implements the goals in Commission Order No. PSC-04-0763-PAA-EG, will deliver considerably less energy savings to residential, commercial and industrial customers in Florida than the energy savings required in Commission Order No. PSC-09-0855-FOF-EG, issued in 2009. The lowered energy savings to Florida customers directly impacts the mission of SACE and its members which advocate for all cost-effective energy efficiency programs as a means for displacing more costly new generation projects. Moreover, SACE members' cost of service in FPL's

¹ Although the Commission disapproved the Modified DSM Plan, it did not require FPL to submit a modified plan within 30 days as required by § 366.82(7), Fla. Stat.

territory will be higher because the Commission's order encourages continued reliance on more costly new generation options to meet electricity demand in lieu of capturing less costly energy savings through DSM plans. In fact, the Commission's order guarantees the "status quo" of relatively weak efficiency programs which were intended to meet much weaker conservation goals established in 2004. SACE and its members believe that offering less energy savings opportunities to Floridians is contrary to the Florida Energy and Conservation Act (FEECA) amendments of 2008. SACE and its members' substantial interest will be substantially and directly affected by the proposed agency action because it will negatively impact the role of energy efficiency as resource in meeting electricity demand in FPL's territory. Capturing all cost-effective energy efficiency is a core interest to SACE and its members. Additionally, SACE members in FPL's territory will have a higher cost of service due to continued reliance on more costly new generation projects to meet electricity demand, in lieu of energy efficiency which can defer or displace the need for such projects.

9. The interests of members of SACE are the type of interests this proceeding is designed to protect. *Ameristeel Corp. v. Clark*, 691 So.2d 473 (Fla. 1997); *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So.2d 478 (Fla. 2d DCA 1981), reh. denied, 415 So.2d 1359 (Fla. 1982); *Florida Home Builders Ass 'n v. Department of Labor and Employment Security*, 412 So.2d 351, 353-54 (Fla. 1982). SACE has a substantial number of members in FPL's territory that will be directly and negatively affected by Commission Order No. PSC-11-0346-PAA-EG. A core interest of SACE and its members is advocacy for cost-effective energy efficiency as a primary resource in meeting electricity demand. The Commission's proposed agency action takes state energy efficiency policy

backwards. Additionally, pursuant to the order, SACE members in FPL's territory will have a higher cost of service due to continued reliance on new costly generation projects to meet electricity demand, in lieu of more cost-effective energy efficiency options. The Commission's proposed agency directly affects a substantial number of SACE members and is well within the organization's scope and interest.

10. Disputed Issues of Material Fact.

While SACE does not agree with the material facts the Commission utilized to reach its decision, SACE is not alleging any disputed issues of material fact in this protest in order to focus on the legal infirmity of the Commission's decision.

11. Statement of Ultimate Facts Alleged.

While SACE does not agree with the material facts the Commission utilized to reach its decision, SACE is not alleging any disputed issues of material fact in this protest in order to focus on the legal infirmity of the Commission's decision.

12. Rules and statutes that require reversal or modification of the agency's proposed action include, but are not limited to:

- a. The Commission misapplied § 366.82(7), Fla. Stat. as a de-facto goal setting provision;
- b. The Commission misapplied § 366.82(7), Fla. Stat. to render §§ 366.82(3), (6) Fla. Stat. meaningless;
- c. The Commission misapplied § 366.82(7), Fla. Stat. in denying the FPL program but not requiring FPL to resubmit a plan within 30 days; and
- d. The Commission misapplied the financial reward and penalty provision pursuant to § 366.82(8), Fla. Stat.

13. Relief. SACE respectfully requests that:

a. The Commission vacate Commission Order No. PSC-11-0346-PAA-EG; and order the approval of the FPL “Modified DSM Plan” that meets the energy savings goals in Commission Order No. PSC-09-0855-FOF-EG;

b. In the alternative, the Commission should approve a portion of the FPL “Modified DSM Plan” which meet Commission approval and order FPL to submit a modified DSM Plan that addresses specific deficiencies identified by the Commission.

WHEREFORE, SACE respectfully request that the Commission grant the protest petition, provide SACE the opportunity to provide written and oral evidence to the Commission protesting the Commission order solely on legal grounds, and grant the relief requested above.

s/ George Cavros
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Attorney for Southern Alliance for
Clean Energy

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Electronic mail and US Mail on this 6th day of September 2011, to the following:

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