IN THE SUPREME COURT
STATE OF FLORIDA

Case No. SC12-94
PSC Docket Nos. 100155-EG & 100160-EG

SOUTHERN ALLIANCE FOR
CLEAN ENERGY

Appellant,

vs.

ART GRAHAM, ETC., ET AL.

Appellees.
_____/

ON APPEAL FROM THE PUBLIC SERVICE COMMISSION

INITIAL BRIEF OF APPELLANT SOUTHERN ALLIANCE FOR CLEAN ENERGY

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PRELIMINARY STATEMENTS

For the purposes of this Brief, references to the record will be according to the Record on Appeal provided by the Commission Clerk to the parties. References to the record will be cited as R. Vol. #, p. ## denoting the volume number and page number.

I. STATEMENT OF THE CASE AND FACTS

This is an appeal of a Final Order by the Florida Public Service Commission ("Commission"), pursuant to the provisions of Sections 366.10, 120.68, Florida Statutes; Rules 9.190(b), 9.030(a)(1)(B)(ii) and 9.110 of the Florida Rules of Appellate Procedure. The Commission violated §366.82, Fla. Stat., by failing to require two electric utilities, Florida Power and Light Company ("FPL") and Progress Energy Florida, Inc. ("PEF"), to implement the conservation goals adopted by the Commission.

The Florida Public Service Commission ("Commission") is required to adopt conservation goals, at least every five years, for electric utilities regulated under the Florida Energy Efficiency and Conservation Act ("FEECA").[1] The initial FEECA statutes were enacted in 1980 and amended in 2008. The legislative intent and findings of FEECA direct the Commission to develop and adopt overall conservation goals for FEECA regulated utilities, and further mandates that the Commission require each regulated utility to develop plans and implement programs that meet these goals and increase energy efficiency and conservation within its service area. Both electricity customers and the state benefit when

[1] §§366.80 -85, 403.519, Fla. Stat.; Rule 25-17.0021(2), F.A.C. (The goals are set for a ten-year time frame).

energy is conserved and used more efficiently. The legislative finding states in part:

> The Legislature finds and declares that it is critical to utilize the most efficient and cost-effective demand-side renewable energy systems and conservation systems in order to protect the health, prosperity, and general welfare of the state and its citizens.

§366.81, Fla. Stat. The 2008 FEECA amendments increased Florida's energy conservation efforts by changing the way conservation goals are set, §366.82(3), Fla. Stat., and by providing the Commission the authority to modify or deny plans or programs submitted by utilities in limited circumstances. §366.82(7), Fla. Stat.[2]

Conservation goals can be described as: (1) number of gigawatt hours ("GWh") of electricity that residential, commercial and industrial customers are anticipated to save ("energy savings") through the implementation of a demand-side management ("DSM") plan over a ten-year time period; and (2) the number of megawatts (MW) of new power plant construction that can be avoided during Summer and Winter peak periods through the implementation of the DSM plan over the same ten-year time period.[3] The GWh energy savings and the MWs of avoided power plant construction are collectively called "savings projections." A

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[2] FL. Legis. 2008-277, H.B. 7135 (2008).

[3] Rule 25-17.0021(1), F.A.C. ("Overall Residential KW and KWH goals and overall Commercial/Industrial KW and KWH goals shall be set by the Commission for each year over a ten-year period.") A MW(h) is 1,000 KW(h) and a GW(h) is 1,000 MW(h).

DSM plan is comprised of programs intended to implement and achieve the savings projections in the conservation goals set by the Commission.[4] The two most recent conservation goal setting proceedings occurred in 2004 and 2009.[5]

A. Florida Power and Light Company

Florida Power and Light Company ("FPL"), the largest investor-owned utility in the state, is a FEECA-regulated utility. On June 26, 2008, the Commission established conservation goal setting Docket No. 080407-EF for the purpose of adopting conservation goals for FPL. The Commission held an evidentiary proceeding and adopted goals on December 30, 2009, as set out in Commission Order No. PSC-09-0855-FOF-EG ("FPL Goal Setting Order"). R. Vol. 1, p. 77, 93. Pursuant to this Order and Rule 25-17.0021(4), F.A.C., FPL was required, within 90 days, to submit a DSM plan to the Commission in order to meet and implement the goals adopted in the FPL Goal Setting Order. R. Vol. 1, p. 113. The Commission established Docket No. 100155-EG for the filing and consideration of FPL's DSM plan.

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[4] *Id.* at (4). ("Within 90 days of a final order establishing or modifying goals, or such longer period as approved by the Commission, each utility shall submit for Commission approval a demand side management plan designed to meet the utility's approved goals") (Emphasis added).

[5] *See* consolidated Docket Nos. 040029–35-EG for the 2004 goals setting proceeding, and consolidated Docket Nos. 080407-13-EG for the 2009 goals setting proceeding.

In that docket, the Commission, on January 31, 2011, issued Order No. PSC-11-0079-PAA-EG, which denied FPL's initial DSM plan submission because it was insufficient to meet the Commission's annual savings projections for multiple customer class categories in multiple years as required by the conservation goals adopted in the FPL Goal Setting Order. R. Vol. 1, p. 31. The Commission stated:

> By Order No. PSC-09-0855-FOF-EG, we established annual goals for the FEECA Utilities for the period 2010 through 2019….FPL is responsible for meeting its required conservation goals, yet the projections provided by the Company show that they plan to fail.

R. Vol. 1, 30 (emphasis added). Due to the fact that FPL's initial DSM plan would not meet its conservation goals as required, the Commission, pursuant to §366.82(7), Fla. Stat.,[6] required FPL to resubmit a DSM plan within thirty days that would comply with the goals adopted in the FPL Goal Setting Order. On March 25, 2011, FPL submitted a "Modified DSM Plan" that modified certain programs to fulfill the savings projections and meet the conservation goals set out in the FPL Goal Setting Order.

Instead of approving FPL's Modified DSM Plan, which was designed to meet the approved conservation goals, on August 16, 2011, the Commission issued Order No. PSC-11-0346-PAA-EG ("FPL DSM Order") denying FPL's "Modified

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[6] §366.82(7), Fla. Stat. ("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").

DSM Plan," R. Vol. 2, p. 367, and further ordered that a "newly modified DSM Plan consisting of programs currently in effect" be approved. R. Vol. 2, p. 372 (emphasis added). This was in direct contravention to its finding in Order No. PSC-11-0079-PAA-EG that FPL was required to submit a DSM plan to meet its applicable goals and savings projections, and, furthermore, was against its own staff's recommendation to approve the modified plan. Thus, the effect of the order is to approve and extend FPL's previously approved DSM Plan, which was designed to implement goals adopted in the 2004 conservation goal setting proceeding, not the applicable goals adopted in the 2009 FPL Goal Setting Order.

The Commission's approval and extension of FPL's previously approved DSM plan, which implements the 2004 conservation goals, will result in about 45% less savings projections by residential, commercial and industrial customers in Florida as opposed to the savings projections required in the 2009 FPL Goal Setting Order. Compare the cumulative ten-year GWh energy savings for residential customers in Commission Order No. 04-0763-PAA-EG, p. 3 (931 annual GWh) to the significantly more robust cumulative ten-year GWh energy savings for residential customers in Commission Order No. 09-0855-FOF-EG, p. 17 (1,695 annual GWh). R. Vol. 1, p. 72; R. Vol. 1, p. 93.

B. Progress Energy Florida, Inc.

A similar Commission order was issued for Progress Energy Florida, Inc. ("PEF"), the second-largest investor-owned utility in the state. PEF is also a FEECA-regulated utility. On June 26, 2008, the Commission established conservation goal setting Docket No. 080408-EF, to adopt conservation goals for PEF. The Commission held proceedings and adopted goals for PEF on March 31, 2010, as set out in Commission Order No. PSC-10-0198-FOF-EG.[7] ("PEF Goal Setting Order"). R. Vol. 2, p. 358. Pursuant to this Order and Rule 25-17.0021(4), F.A.C., PEF was required, within 90 days, to submit a DSM plan to the Commission in order to meet and implement the goals adopted in the PEF Goal Setting Order. The Commission established Docket No. 100160-EG for the filing and consideration of PEF's DSM plan.

In that docket, on October 4, 2010, the Commission issued Order No. PSC-10-0605-PAA-EG, which denied PEF's initial DSM plan submission because it was insufficient to meet the Commission's savings projections for multiple customer class categories in multiple years as required by the conservation goals adopted in the PEF Goal Setting Order. R. Vol. 1, p. 18. The Commission stated:

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[7] The goals were originally adopted on December 30, 2009 as set out in Commission Order No. PSC-09-0855-FOF-EG, but later adjusted through Order No PSC-10-0198-FOF-EG to correct a double-counting error.

> By Order No. PSC-09-0855-FOF-EG, we established goals for the FEECA Utilities for the period 2010-2019….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.

R. Vol. 1, p. 20 (emphasis added). Due to the fact that PEF's initial DSM plan would not meet its conservation goals as required, the Commission, pursuant to §366.82(7), Fla. Stat., required PEF to resubmit a DSM plan within thirty days that would comply with goals adopted in the PEF Goal Setting Order. On November 29, 2010, PEF submitted an "Original Goal Scenario DSM Plan," that modified certain programs to fulfill the savings projections and meet the conservation goals set out in the PEF Goal Setting Order.

Instead of approving PEF's Original Goal Scenario DSM Plan, which was designed to meet the approved conservation goals, the Commission, on August 16, 2011, issued Order No. PSC-11-0347-PAA-EG ("PEF DSM Order") denying PEF's Plan and further ordered that a "newly modified DSM Plan consisting of programs currently in effect" be approved R. Vol. 2, p. 375. This was in direct contravention to its finding in Order No. PSC-10-0605-PAA-EG that PEF was required to submit a DSM plan that would meet its current applicable goals and savings projections. Thus, as was the case with FPL, the effect of the order is to approve and extend PEF's previously approved DSM Plan, which was designed to implement goals adopted in the 2004 conservation goal setting proceeding, not the applicable goals adopted in the PEF 2009 Goal Setting Order.

The Commission's approval and extension of PEF's previously approved DSM plan, which implements the conservation goals adopted in Commission Order No. PSC-04-0769-PAA-EG, will result in 94% less savings projections by residential, commercial and industrial customers in Florida as opposed to the savings projections required in the PEF Goal Setting Order, issued in 2010. R. Vol. 2, p. 334; R. Vol. 2, p. 358. Compare the cumulative ten-year GWh energy savings for residential customers in Commission Order No. 04-0769-PAA-EG, p. 3 (161 annual GWh) to the significantly more robust cumulative ten-year GWh energy savings for residential customers in Commission Order No. 10-0198-FOF-EG, p. 12. (2,827annual GWh).

C. Challenge to Commission's FPL and PEF DSM Orders and Disposition by the Commission.

On September 6, 2011, the Southern Alliance for Clean Energy ("SACE") filed a protest challenging the legal basis for the Commission's FPL and PEF DSM Orders (collectively "PAA Orders"). On December 22, 2011, the Commission issued Order No. PSC-11-0590-FOF-EG ("Final Order"), which denied SACE's protest of the PAA Orders. R. Vol. 3, p. 476, 478. As discussed *supra,* the PAA Orders approved what the Commission termed as "newly modified DSM plans"[8]

[8] It is interesting that the Commission refers to these DSM plans as "newly modified," when, as discussed *supra,* they are simply the DSM plans that were already in effect for FPL and PEF and extended in the PAA Orders.

for FPL and PEF that will not meet the conservation goals and associated savings projections adopted by the Commission in the 2009 FPL and PEF Goal Setting Orders, which are the applicable goals that the utilities' DSM plans must be developed to meet. SACE timely filed its Notice of Appeal on January 17, 2012, pursuant to the judicial review provision of the Notice of Further Proceedings or Judicial Review in the Final Order.

II. SUMMARY OF THE ARGUMENT

The Commission's PAA Orders rolling back the DSM plans for FPL and PEF to the 2004 goals are clearly erroneous, because they violate the plain language of FEECA, §366.82(7), Fla. Stat. The language of §366.82(7), Fla. Stat., is clear and unambiguous in mandating the Commission to require FEECA regulated utilities, including FPL and PEF, to develop DSM plans and programs that meet the most recently adopted and applicable conservation goals – in the instant matter, the goals adopted in the FPL and PEF Goal Setting Orders issued in 2009 and 2010, respectively. Moreover, the plain language of §366.82(7), Fla. Stat., does not authorize the Commission to modify a utility's DSM plan in a manner that relieves the utility of the statutory obligation to meet its applicable conservation goals. However, the Commission has done exactly this in the case at hand by approving the extension of DSM plans designed and approved to meet the

conservation goals adopted in 2004.[9] Thus, the Commission's action has effectuated an impermissible *de facto* goal change. The Commission's interpretation of §366.82(7) is not entitled to deference because it is contrary to the plain language of this statutory provision.

Should the Court decide that it needs to look beyond the plain wording of the statute to determine its meaning, the well-established means of statutory construction only further evidence the clearly erroneous nature of the Commission's interpretation of §366.82(7), Fla. Stat. The Commission's erroneous reliance on §366.82(7) as authority to carry out a *de-facto* goal change through a plan modification has rendered the statute's goal setting provisions in §§366.82(2), (3), Fla. Stat., completely meaningless. Similarly, this erroneous reliance has rendered §366.82(6), Fla. Stat., the statutory provision allowing for the changing of goals, completely meaningless. These are the only FEECA statutory provisions for adopting and changing conservation goals. Furthermore, the Commission's manipulation of §366.82(8), the statute's penalty/reward provision, in an attempt to

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[9] Appellant notes that FPL petitioned the Commission in 2006 for approval of two new DSM programs and revisions to seven existing DSM programs. The DSM modifications were granted pursuant to Commission Order No. PSC-06-0740-TRF-EI, and PEF petitioned the Commission in 2006 for approval of two new DSM programs and revisions to seven existing DSM programs. The DSM modifications were granted pursuant to Commission Order No. PSC-06-1018-TRF-EG. Neither Order relieved the utility of its statutory obligation to meet its conservation goals.

justify its clearly erroneous interpretation of §366.82(7), Fla. Stat., resulted in the creation of one set of goals applicable to rewards and one set of goals applicable to penalties, which is an absurd result not contemplated by the FEECA statutory scheme. Finally, the Commission's clearly erroneous interpretation of §366.82(7), Fla. Stat., in its Orders is wholly inconsistent with the legislative intent of the 2008 legislative amendments to the FEECA statute. These amendments required the Commission to change the way in which it evaluated the cost-effectiveness of conservation goals, which resulted in the more robust goals adopted by the Commission in the FPL and PEF Goal Setting Orders. Moreover, the amendments require FEECA-regulated utilities to meet these goals, not to simply maintain the status quo - as it did by rolling back the FPL and PEF goals.

As a result of the Commission's clearly erroneous Orders, which are based on the Commission's erroneous interpretation of §366.82(7), Fla. Stat., this Court should set aside these Orders and remand this matter back to the Commission for approval of DSM plans for FPL and PEF designed to meet the 2009 conservation goals adopted by the Commission, as required by the plain language of §366.82(7), Fla. Stat.

III. STANDARD OF REVIEW

The Commission's erroneous application of §366.82, Fla. Stat., and §366.82(7), in particular, in the challenged Orders is purely a question of law and thus subject to *de novo* review. *GTC Inc., v. Edgar,* 967 So.2d 781, 785 (Fla. 2007). Although an agency's contemporaneous interpretation of a statute it is charged with enforcing is usually entitled to great deference, *see, e.g., Verizon Florida v. Jacobs,* 810 So.2d 906, 908 (Fla. 2002), an interpretation contrary to the plain meaning of a statute is clearly erroneous and therefore not entitled to deference. *GTC, supra* at 785 (holding that when the language of statute is clear and unambiguous, the statute must be given its plain and obvious meaning and the Court need not follow a deferential principal of statutory construction); *Sullivan v. Florida Dep't of Environmental Protection,* 890 So.2d 417, 420 (Fla. 1st DCA 2004) (holding that nothing requires an appellate court to defer to an implausible and unreasonable statutory interpretation adopted by an administrative agency). Ultimately, in a case such as the instant matter, where the agency has erroneously interpreted a provision of law, and a correct interpretation compels particular action, the Court shall reverse or set aside the agency action at issue, and remand the matter to the agency for further proceedings consistent with the Court's decision. §120.68(7)(d), Fla. Stat.

IV. ARGUMENT: THE COMMISSION'S ORDERS ARE CONTRARY TO THE PLAIN MEANING OF THE STATUTE AND THUS CLEARLY ERRONEOUS.

In a surprising move, after first denying FPL's and PEF's DSM plans for failing to achieve the approved 2009 conservation goals as required by §366.82(7), Fla. Stat., the Commission rejected modified plans designed to meet these goals and, instead, reverted back to the utilities' previous DSM plans designed to meet the 2004 conservation goals. The Commission's Orders rolling back the conservation goals to be implemented by FPL and PEF to the 2004 goals are contrary to the plain meaning of §366.82(7), Fla. Stat. and, thus, clearly erroneous. Section 366.82(7), Fla. Stat., provides, in pertinent part:

> 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 … 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 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…. (emphasis added).

Section 366.82(7) plainly mandates that following the adoption of goals, the Commission "shall" require utilities to develop DSM plans and programs to meet these goals. Nothing in §366.82(7), or in any other section of FEECA, provides the Commission with the authority to modify a DSM plan in a manner which relieves a utility of this statutory obligation to meet the duly adopted goals. However, the Commission has done just that in the instant matter by effectuating a *de facto* goal change that allows FPL and PEF to continue employing DSM plans and programs that were developed to meet conservation goals adopted in 2004, as opposed to the applicable goals adopted in 2009.

In its Final Order, the Commission attempted to justify the roll back stating:

> [W]e find that the plain language of Section 366.82(7), F.S., specifically and unequivocally grants us authority to modify a company's DSM plans 'at any time it is in the public interest consistent with this act' or when plans or programs 'would have an undue impact on the costs passed on to customers.' Further, we reiterate that we did not in any way change the DSM goals….

R. Vol. 3, p. 478. The Commission is correct that the language of §366.82(7) is plain and unambiguous; however, the Commission's interpretation of §366.82(7) is contrary to the plain language of the statute. The Commission has in fact changed the 2009 conservation goals by reapproving outdated DSM plans which were never designed to achieve them, and its contention that it did not change the goals is disingenuous semantics. Therefore, the Court should set aside the Commission's Orders and remand this matter to the Commission for approval of DSM plans for

FPL and PEF that will meet the conservation goals adopted in the current 2009 FPL and PEF Goal Setting Orders.

A. The Plain Language of Section 366.82(7), Fla. Stat., is Clear and Unambiguous.

It is axiomatic that the plain language of a statute is the starting point in statutory interpretation. *Joshua v. City of Gainesville*, 768 So. 2d 432, 435 (Fla. 2000); *accord BellSouth Telecomms., Inc. v. Meeks*, 863 So. 2d 287, 289 (Fla. 2003). When the statute is clear and unambiguous, it is not necessary to look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent. *See Lee County Elec. Coop., Inc. v. Jacobs*, 820 So. 2d 297, 303 (Fla. 2002).

In the instant matter, the language of §366.82(7), Fla. Stat., is clear and unambiguous in that it mandates that the Commission, following adoption of conservation goals, require FEECA-regulated utilities to develop DSM plans or programs that meet these goals. Furthermore, while the statute does provide discretion to the agency to modify a utility's DSM plans or programs, it certainly does not allow the Commission to do so in a manner that relieves a FEECA-regulated utility of its statutory obligation to develop DSM plans and programs that meet the applicable goals. Thus, the Commission's interpretation of this statutory provision as providing it with the authority to carry out a *de facto* goal change that

relieves FPL and PEF of their statutory obligation to develop DSM plans to meet applicable conservation goals is clearly unauthorized, clearly erroneous, and should be reversed.

1. **Section 366.82(7), Fla. Stat., requires that utilities develop DSM plans to meet the most recently adopted goals.**

The first sentence of §366.82(7), Fla. Stat., plainly provides that, following the adoption of goals pursuant to the provisions of §366.82(2) and (3), the Commission "shall require" each utility to develop plans and programs to meet these overall goals within its service area. This sentence creates a statutory obligation on the part of the Commission to require FEECA-regulated utilities, including FPL and PEF, to develop DSM plans and programs to meet the applicable conservation goals and the savings projections contained therein. Moreover, this statutory obligation is borne out by the sentence of §366.82(7), Fla. Stat., which provides that "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." (Emphasis added). Thus, the plain language of §366.82(7) not only mandates that the Commission require each utility to develop DSM plans and programs to meet the most recently adopted conservation goals, but it further requires the Commission to adopt programs required for a utility to meet its goals

if the utility is not doing so itself. Had the Legislature not contemplated that DSM plans and programs be developed to meet the applicable goals, it certainly would not have created an affirmative obligation on the part of the Commission to adopt programs to meet the applicable goals for a utility that was not doing so. The plain language of §366.82(7), Fla. Stat., clearly and unambiguously requires that a utility's DSM plans and programs meet the applicable goals, in this case, those adopted in the 2009 FPL and PEF Goal Setting Orders.

FPL and PEF are expected to argue, as they did in front of the Commission, that the mere "submittal" of a DSM plan meets the statutory requirement of the first sentence of §366.82(7), Fla. Stat., without any requirement for the utility to actually meet the conservation goals.[10] R. Vol. 3, p. 416; R. Vol. 2, p. 400. This argument ignores the plain language of §366.82(7) and is transparently wrong. The plain language of the statute requires the Commission to approve the plans and the utilities to implement them in order to achieve the conservation goals; and, if the plans are not implemented by the utility so as to meet applicable conservation goals, the Commission has an affirmative duty to adopt DSM programs that will have the effect of achieving the overall conservation goals.

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[10] "Following the 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."

2. Section 366.82(7), Fla. Stat., does not provide the Commission the authority to modify a DSM plan in a manner that relieves a utility of its statutory obligation to meet the utility's applicable conservation goals.

Appellant recognizes that §366.82(7), Fla. Stat. provides the Commission with the authority to modify a utility's DSM plans or programs in limited circumstances. However, this statutory provision does not provide the Commission with the authority to relieve the FEECA-regulated utilities of their statutory obligation to develop DSM plans to meet the utility's applicable conservation goals. Section 366.82(7) provides, in pertinent part:

> 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 rate impact on the costs passed on to customers. [Emphasis added].

Thus, while §366.82(7), Fla. Stat., does grant the Commission authority to modify a utility's plans or programs in certain circumstances, this statutory provision does not provide the Commission with the authority to relieve the FEECA-regulated utilities of the statutory requirement to develop DSM plans that meet the applicable conservation goals set by the Commission. In sharp contrast, as discussed in more detail *supra,* §366.82(7), Fla. Stat., plainly and unambiguously requires that utilities develop DSM plans and programs to meet the applicable

goals, and moreover that the Commission adopt plans and programs for a utility that is not meeting its goals.[11]

Therefore, while the Commission has some discretion to modify plans or programs in limited circumstances, there are other means (as opposed to impermissibly carrying out a *de facto* goals change) by which a utility can mitigate rate impacts and still meet its applicable goals and associated savings projections. Such means would include, but certainly not be limited to, designing more cost-efficient DSM programs, relying on a different mix of DSM programs, or relying on lower cost programs. R. Vol. 3, p. 442. However, in the instant matter, the Commission erroneously concluded that the only way to mitigate rate impacts from DSM programs was to simply slash projected energy savings benefits to utility ratepayers. In fact, the Commission never once inquired during its deliberations if the state's largest utilities could make their programs more cost-efficient. R. Vol. 2, p. 229. The legislative intent of FEECA, discussed *infra*, should have acted as a guide for the Commission. It requires that the Commission explore ways in which to make FEECA-regulated utilities' DSM plans the most cost-effective and most cost-efficient conservation plans. §366.81, Fla. Stat. (emphasis added). Instead,

[11] Notably, these are only two places where the word "goals" appears in §366.82(7), Fla. Stat.

the Commission chose the easy way out and caved to the demands of the utilities,[12] and slashed the savings projections of the FPL[13] and PEF DSM plans without considering how to make them more cost-efficient for customers. In not doing so, it failed to explore whether the unnecessarily over-priced plans and programs submitted by the utilities could be improved to achieve the required projected savings at a lower cost. In the end, the Commission had options to mitigate rates which it chose not to implement.

It is important to note that if an "undue rate impact" can trigger modification of DSM plans in a way that reduces projected savings, then there is no incentive for the state's largest utilities to offer cost-efficient DSM programs. Both FPL and PEF have been resistant to their conservation goals set by the Commission in the most recent goal setting proceeding.[14] SACE additionally discovered in the DSM

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[12] The conservation goals set for FPL and PEF by the Commission, based on a more expansive cost-effectiveness test, were significantly higher than the goals FPL and PEF had requested for themselves during the goal setting proceeding. R. Vol. 1, pp. 87 – 91.

[13] It is notable that Commission Staff recommended adoption of the FPL DSM plan that met the Commission goals. R. Vol. 2. P. 318. In fact, FPL's rate impact was less than Gulf Power's DSM plan which the Commission had earlier approved. *Id.* The Commission's willingness to ignore its Staff recommendation raises questions as to the legitimacy of its concerns over rate impacts, at least for FPL. The entire transcript of the deliberations for the FPL DSM plan "modification" consists of less than 10 pages. R. Vol. 2. P. 315-323.

[14] The FEECA-regulated utilities argued for a less expansive cost-effectiveness test during the goal setting proceedings that would have produced less savings projections. R. Vol. 1, pp. 87 – 91. In the DSM docket FPL offered the

Plan dockets that the utilities' DSM program costs were excessively high when compared to peer utilities in other states, and that there was no Commission analysis of whether the energy savings could be captured at a lower cost. R. Vol. 2, p. 239-240 (highlighting PEF's unnecessarily costly DSM programs). If the Commission, under its statutory interpretation, can change applicable goals and slash savings projections in responding to "undue rate impacts" pursuant to §366.82(7), Fla. Stat., then a utility that resists its conservation goals can simply fail to make a good-faith effort to control the costs of its DSM plan. The Legislature could have not envisioned the possibility of such an absurd result when it drafted the statute.

The plain and unambiguous meaning of the statute is that the Commission can deny or modify DSM plans or programs in order to mitigate costs to customers. However, it cannot do so in way that relieves FPL and PEF of their statutory obligation to develop DSM plans to meet the applicable conservation goals and associated savings projections. Thus, as discussed in more detail *infra,* the Commission's reliance on §366.82(7) as authority to carry out a *de facto* goal change is contrary to the plain meaning of this statutory provision and moreover

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Commission an "Alternate Plan" that would significantly reduce projected savings from its conservation goals. R. Vol. 3, p. 416. Likewise, PEF offered the Commission a "Revised Goals Scenario Plan" that would significantly reduce projected savings from its conservation goals. R. Vol. 2, p. 396.

inconsistent with FEECA. Therefore, it is clearly unauthorized and erroneous for the Commission to use §366.82(7), Fla. Stat., as authority to modify DSM plans in a manner that results in a change to the applicable goals which a utility is required to meet. Thus, no deference is due to the Commission as the statute is clear on its face - the savings projections in conservation goals and DSM plans must be aligned.[15]

B. The Commission's Interpretation of Section 366.82(7) is Not Entitled to Deference, Because it Has Been Inconsistent and is Clearly Erroneous.

An agency's interpretation of its statute is not entitled to deference if it is clearly erroneous. *GTC Inc., v. Edgar,* 967 So.2d at 785. In this case, the Commission's clearly erroneous interpretation of §366.82(7) in the Final Order, and the underlying PAA Orders, is inconsistent with its own previous interpretation of this statutory provision in these same dockets. The Commission previously properly interpreted §366.82(7) in the dockets at issue to require FPL and PEF's DSM plans to meet the savings projections in the conservation goals adopted in the FPL and PEF Goals Setting Orders. In Order No. PSC-10-0605-

[15] Proponents of the Commission's Final Order and underlying PPA Orders will likely argue that statue allows the Commission to modify DSM plans pursuant to its general ratemaking authority – even if it lowers the projected savings of the DSM plans. This line of argument is fatally flawed in three respects and should be rejected: 1) it is well established law that specific statutes control over more general statutes; 2) it assumes that slashing projected savings is the only way to mitigate rate impacts to customers; and 3) such an interpretation can produce, as it did in the instant case, an absurd public policy result.

PAA-EG, issued October 4, 2010, the Commission denied DSM plans submitted by PEF because the plans failed to meet the applicable goals adopted in the most recent goal setting proceedings. R. Vol. 1, p. 18. Specifically, the Commission found that:

> 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.

R. Vol. 1, p. 21 (emphasis added). Similarly, in Order No. PSC-11-0079-PAA-EG, issued several months later, the Commission denied FPL's proposed DSM plan because it failed to satisfy the numeric conservation goals adopted for FPL as set out in the FPL Goal Setting Order. R. Vol. 1, p. 31, 32. Thus, the Commission ordered FPL to "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." R. Vol. 1, p. 35.

However, despite these Orders properly interpreting §366.82(7), Fla. Stat., the Commission inexplicably reversed course several months later and approved DSM plans for both FPL and PEF which will not meet the utilities' currently applicable conservation goals. The Commission attempted to justify this complete

reversal with a new interpretation of §366.82(7), Fla. Stat., created just for FPL and PEF, wholly undermining any deference to be paid to the Commission's current interpretation of this provision.

C. The Commission's Clearly Erroneous Interpretation of Section 366.82(7) in the Final Order and Underlying PAA Orders Effectuates Improper De-Facto Goals Changes and Renders Other Statutory Provisions Meaningless and Produces Absurd Results.

As set out above, the language of §366.82(7), Fla. Stat., is plain and unambiguous in creating a statutory obligation for FEECA-regulated utilities, like PEF and FPL, to develop plans and programs that meet the applicable conservation goals adopted by the Commission. If the Court finds that it must look beyond the plain meaning of §366.82(7), the Court should look to how the Commission's interpretation of its authority in the challenged Orders turns the FEECA goal-setting process on its head by effectuating a *de-facto* goals change through §366.82(7), and thus renders other provisions of §366.82, Fla. Stat., meaningless. Specifically, the Commission has created absurd results by using §366.82(7), Fla. Stat., as the basis for changing applicable goals through the modification of DSM plans permitting both PEF and FPL to continue utilizing outdated DSM plans approved to meet 2004 conservation goals adopted as opposed to the currently applicable goals adopted in the 2009 FPL and PEF Goal Setting Orders.

1. **The "newly modified DSM plans" approved by the Commission for PEF and FPL do not meet the 2009 conservation goals and savings projections contained therein, but rather were developed to meet the 2004 conservation goals and savings projections.**

The Commission's PAA Orders effectuate impermissible *de facto* goal changes for FPL and PEF by rolling back the conservation goals to be met in the DSM plans. In the PAA Orders the Commission approved what it termed "newly modified" DSM plans for PEF and FPL. However, these "newly modified" plans are nothing more than the utilities' 2004 DSM programs which were already in effect at the time of these Orders. Thus, the Commission's PAA Orders do nothing more than roll back the DSM plans to the previous DSM plans that were approved to meet significantly weaker goals set in the 2004 conservation goal setting proceeding as adopted in Order Nos. PSC-04-0763-PAA-EG and PSC-04-0769-PAA-EG, respectively. R. Vol. 1, p. 72; R. Vol. 2, p. 334.

In the FPL and PEF Goal Setting Orders, the Commission, pursuant to the provisions of §366.82(2) and (3), Fla. Stat., adopted new conservation goals for both FPL and PEF that provided more meaningful energy savings for customers as opposed to the goals adopted in 2004. However, by its approval and extension of FPL and PEF's existing DSM plans in the PAA Orders, the Commission failed, as required by §366.82(7), to align the savings projections of the approved DSM plans with the most recent conservation goals set by the Commission. Thus, while the Commission might not have explicitly changed FPL and PEF's conservation

goals, it certainly carried out a *de-facto* goal changes for both utilities. For instance, as cited *supra*, FPL's ten year-year cumulative GWh energy savings for residential customers in Order No. PSC-04-0763-PAA-EG is 931 annual GWh, compared to the significantly more robust cumulative ten-year GWh energy savings for residential customers in in FPL's recent Goal Setting Order of 1,695 annual GWh. Similarly, PEF's ten-year cumulative GWh energy savings for residential customers in Order No. PSC-04-0769-PAA-EG is 161 annual GWh, compared to the significantly more robust cumulative ten-year GWh energy savings for residential customers in PEF's recent Goal Setting Order of 2,827 annual GWh.

Based on its clearly erroneous interpretation of its authority under §366.82(7), Fla. Stat., the Commission has impermissibly excused PEF and FPL from the utilities' statutory obligation to develop DSM plans and programs that meet the utilities' applicable conservation goals.

2. The Commission could have changed PEF and FPL's conservation goals pursuant to §366.82(6), Fla. Stat., or could have adopted new goals pursuant to §366.82 (2), (3), Fla. Stat., but instead utilized §366.82(7), as a goal setting provision, thereby rendering other statutory provisions meaningless.

Had the Commission desired to properly change the applicable conservation goals for PEF and FPL, or wished to adopt new goals for these utilities, it could have done so pursuant to the proper subsections contained in §366.82, Fla. Stat.

However, the Commission simply cannot, as it did in the instant matter, pursuant to §366.82(7), relieve regulated utilities of their obligation to meet the applicable conservation goals. By effectuating a *de facto* goal change based on its erroneous interpretation of its authority under §366.82(7), the Commission has rendered other subsections of §366.82 meaningless.

It is well-settled law that to ascertain the meaning of a specific statutory section, beyond looking at the plain meaning of the statute, the section should be read in the context of its surrounding sections. *Rollins v. Pizzarelli*, 761 So. 2d 294, 298 (Fla. 2000) (stating that "statutes must be read together to ascertain their meaning"); *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 455 (Fla. 1992) (stating that, "[w]here possible, courts must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another"). Moreover, the doctrine of *in pari materia* requires that related statutes be read together to give effect to legislative intent. *McGhee v. Volusia County*, 679 So. 2d 729, 730 (Fla. 1996). It is important to read related subsections of statue in harmony, *i.e.,* in *pari materia*, so as to avoid rendering statutory provisions meaningless or producing a patently absurd result. Statutory interpretations that lead to absurd results should be avoided. *City of St. Petersburg v. Siebold*, 48 So. 2d 291, 294 (Fla. 1950).

Applying this doctrine to the instant matter further demonstrates the fact that the Commission's interpretation of §366.82(7) is clearly erroneous. The Legislature has established a specific statutory provision requiring the Commission to adopt goals. It provides that the "[t]he commission shall adopt appropriate goals for increasing the efficiency of energy consumption . . . ." §366.82(2), Fla. Stat. The Legislature has also established a statutory provision setting forth the factors that the Commission should consider when adopting goals pursuant to §366.82(2), Fla. Stat. The factors include the costs and benefits to the general body of ratepayers . . . ." §366.82(3), Fla. Stat. In 2009, the Commission conducted a lengthy goal setting proceeding where it heard and considered complex testimony from a number of expert witnesses and carefully considered all the factors before adopting conservation goals for the utilities. R. Vol. 1, p. 87- 91. It would be absurd for the statute to require such a lengthy and intensive goal setting process to set utility conservation goals, only to allow the Commission to selectively change the goals at the "11th hour" for FPL and PEF through a different statutory provision for modifying DSM plans. Moreover, if the Commission was not satisfied with the conservation goals it adopted, the statute specifically provides a mechanism by which it can change goals. Section 366.82(6), Fla. Stat., permits the Commission to change the goals "for reasonable cause." In fact, the Commission may also, on its own motion or petition by a substantially affected person or a utility, initiate a

proceeding to review and, if appropriate, modify the goals. Rule 25-17.0021(2), F.A.C. Yet, the Commission did not invoke any of these provisions; rather, it misinterpreted its authority under §366.82(7) as allowing it to modify DSM plans in a manner that changes applicable conservation goals. R. Vol. 2, p. 367; R. Vol. p. 375.

In contrast to §366.82(2) and (6), there is nothing in §366.82(7), Fla. Stat., that contemplates the adoption of goals, or changing of conservation goals. Thus, in the instant matter, the Commission, by carrying out a *de facto* goal change through the "modification" of FPL and PEF's DSM plans pursuant to §366.82(7), Fla. Stat., has rendered the specific goal setting and goal changing provisions of §366.82(2), (3) and (6), Fla. Stat. meaningless. These subsections specifically lay out the proper procedural framework for adopting or changing goals. The Legislature simply would not set out explicit statutory language for the adoption and changing of goals only to let the Commission impermissibly alter goals through a different provision intended to provide the Commission with limited authority to approve, deny or modify DSM plans. Moreover, the Commission has produced an absurd result, *i.e.*, the alteration of conservation goals through §366.82(7), Fla. Stat., that was not contemplated by the Legislature.[16]

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[16] Statements by the commissioners during deliberations on the PAA Orders suggesting that a goal change was not their intent should not be relied upon. R.

3. The Commission's manipulation of the penalty/reward provision contained in Section 366.82(8), Fla. Stat., produces an absurd result.

It is well-settled law that "[i]f possible, the courts should avoid a statutory interpretation which leads to an absurd result." *Amente v. Newman*, 653 So. 2d 1030, 1032 (Fla. 1995). In order to support its erroneous application of Fla. Stat. §366.82(7), the Commission further misapplied the reward and penalty provisions contained in §366.82(8), Fla. Stat., producing another absurd result. The penalty provision provides that "[t]he 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 …." §366.82(8), Fla. Stat. (emphasis added). While this subsection is permissive, in that it does not mandate penalties for non-attainment of goals, or rewards for exceeding goals, its meaning is plain and unambiguous. It contemplates one set of goals for which the Commission may set penalty or reward incentives, which, in the context of the statute as a whole, can only be the currently applicable goals adopted pursuant to §366.82(2) and (3). The statute does not explicitly, or by implication, provide discretion to the Commission to support rewards for reaching or exceeding one set of goals and penalties for failing to reach or exceed a completely different

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Vol. 2, p. 255, 311. To accept the statements at face value elevates form over substance. The effect of the Commission's Final Order and underlying PAA Orders was to change the goals for the state's largest utilities.

set of goals. Nevertheless, this is how the Commission has applied this provision in the instant case to support its clearly erroneous misapplication of §366.82(7).

In the PAA Orders, the Commission deftly, and purposefully, makes no mention of a change to the conservation goals for FPL or PEF. R. Vol. 2, p. 367; R. Vol. p. 375. Rather, the Commission simply claims to modify the FPL and PEF DSM Plans. However, the Commission establishes that FPL and PEF will only be subject to financial penalty if they do not meet the goals and associated savings projections in the "newly modified DSM plans." For example, in the case of PEF, the Commission states:

> As a result of our decision to modify PEF's 2010 Plan, we wish to clarify that PEF shall not be eligible for any financial reward pursuant to these statutory sections unless it exceeds the goals set forth in Order No. PSC-10-0198-FOF-EG. Conversely, PEF shall not be subject to any financial penalty unless it fails to achieve the savings projections contained in the existing DSM plan, which is approved and extended today. (emphasis added).

R. Vol. 2, p. 381. FPL's reward and penalty provision is structured identically. R. Vol. 2, p. 371.

In effect, this arrangement constructs two sets of goals for both utilities: one set of goals (the currently applicable goals adopted in the FPL and PEF Goal Setting Orders) to serve as the basis for any financial reward; and another set of goals (the goals previously adopted 2004 which are no longer applicable) as the basis for any financial penalty. This begs the question that, if the Commission did

not intend to change the applicable conservation goals, then why are there two sets of goals applicable to FPL and PEF in determining financial penalties and rewards? Furthermore, why is there no penalty for PEF or FPL for failing to attain the savings projections established in the utilities' currently applicable 2009 Goal Setting Orders, as is clearly envisioned by the statute? Section 366.82(8), Fla. Stat., may be permissive in nature, but it is clearly designed to encourage the attainment of goals – and only the applicable goals established in the most recent goal setting proceeding.

The Commission's penalty / reward construction as set out for FPL and PEF in the PAA Orders signals a clear intent to change FPL and PEF's applicable goals through denying FPL's "Modified DSM Plan" and PEF's "Original Goal Scenario DSM Plan" and substituting "newly revised DSM plans" intended to roll back the goals to 2004. The establishment of two sets of goals is nothing more than impermissible administrative contortionism that produces an absurd result, and is the only way that the Commission can carry out its impermissible *de facto* goal changes without unduly punishing the utilities for continuing to implement their previously approved DSM plans.

D. The Commission's Orders are Contrary to the Legislative Intent of the 2008 FEECA Amendments.

While SACE believes that §366.82(7), Fla. Stat., is clear and unambiguous on its face, should the Court find it necessary to look beyond the plain language, the legislative history also supports the position of SACE that §366.82(7) cannot be used to roll back conservation goals.

Among the amendments in 2008 to §366.82, Fla. Stat., was the enumeration of certain factors that the Commission must consider when adopting goals. The interpretation of the amendments by the Commission and the House Staff Analysis indicate that the factors were amended so as to require the Commission to set more meaningful conservation goals. The amended enumerated factors include:

> (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.
>
> ****

§366.82(3), Fla. Stat. In particular, subsection (b) required the Commission, for the first time, to consider the long-term benefits to all customers from the implementation of energy efficiency measures.

The House of Representative's Staff Analysis of the bill that became the 2008 FEECA amendments discussed that the law would require the Commission to set more robust conservation goals. R. Vol. 2, p. 326. The 2008 amendments to

FEECA were part of a comprehensive energy bill – HB 7135.[17] The House of Representative's Staff Analysis of the bill indicates that the portion of the bill dedicated to energy efficiency required the Commission to adopt goals that increase, among other items, demand side conservation programs.

> This bill builds on last year's legislation and includes: policies developed through these discussions, including: Requiring the PSC to adopt goals to increase and promote cost-effective demand-side and supply-side efficiency and conservation programs and renewable energy systems. (emphasis added).

R. Vol. 2, p. 326.

This Court has in the past utilized Legislative Staff Analysis of bills to guide its legislative intent analysis, although the Court is "not unified in its view on the use of legislative staff analysis to determine legislative intent." *Kasichke v. State*, 991 So. 2d 803, 810 (Fla. 2008) (quoting *GTC, Inc. v. Edgar*, 967 So. 2d 781, 789 n.4 (Fla. 2007)). However, the Court has recognized that staff analysis is "one touchstone of the collective legislative will." *Id.* (quoting *SunBank/South Fla., N.A. v. Baker*, 632 So. 2d 669, 671 (Fla. 4th DCA 1994)). Therefore, while the legislative analysis of HB 7135 may not be determinative as to legislative intent in and of itself, it is extremely telling when considered with the Commission's own interpretation of the legislative intent behind the FEECA amendments.

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[17] FL. Legis. 2008-277, H.B. 7135 (2008) Lines 2355 – 2546.

The Commission, during the 2009 goal setting proceedings, heard testimony from a host of expert witnesses on how to best interpret §366.82, Fla. Stat. R. Vol. 1, p. 87-91. After hearing and weighing complex evidence in this evidentiary proceeding, the Commission reached the conclusion that based on the new statutory language; it would implement more robust conservation goals than had been its historical practice. R. Vol. 1, p.91.

Thus, the Commissioners and its staff understood that the Legislature's amendments to FEECA were intended to seek more robust conservation goals. In response to the staff-recommended goals that mirrored utilities' proposed goals in the 2009 goal setting deliberations, Commissioner Skop stated that "I think there are some problems with these goals. And I think the way to deal with that . . . is to send staff back to the drawing board and have them adopt more robust goals consistent with the intent of the Legislature." R. Vol. 1, p. 200 – R. Vol. 2, p. 201. Commissioner Argenziano responded to Commissioner Skop's statement by simply stating "[t]he goals need to be higher." R. Vol. 2, p. 201. Commission staff, as late as July 26, 2011, acknowledged that the same. Commission staffer Tom Ballinger stated in describing the FEECA goal-setting proceedings during a Commission Agenda Conference: "[W]e were hearing the message that the legislature wanted more conservation." R. Vol. 2, p. 263. Ultimately, the Commission heard the message from the Legislature and adopted more stringent

and meaningful conservation goals for the state's utilities in the 2009 goal setting process. R. Vol. 1, p.77.

More meaningful projected savings in the conservation goals required that the Commission move away from the so-called Rate Impact Measure ("RIM") cost-effectiveness test, that it had historically utilized, to the more inclusive and expansive Total Resource Cost ("TRC") cost-effectiveness test. R. Vol. 1, p.91. The Commission decided that it would reject the RIM cost-effectiveness test that it had relied on in past conservation goal setting proceedings for the FEECA-regulated utilities and embrace the TRC cost-effectiveness test in the 2009 goal setting proceedings. The Commission stated:

> The goals proposed by each utility rely upon the E-RIM Test. Our intention is to approve conservation goals for each utility that are more robust than what each utility proposed. Therefore, we approve goals based on the unconstrained E-TRC Test for FPL, PEF, TECO, Gulf, and FPUC.

Id. (emphasis added)

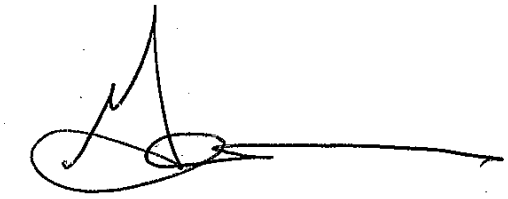
Therefore, as discussed *supra*, the goals set in 2009 provide significantly stronger energy savings benefits to utility customers as opposed to the past 2004 conservation goals. The Commission successfully implemented the TRC test-based goals by approving DSM plans for all the FEECA-regulated utilities - except for FPL and PEF. In the case of FPL and PEF, however, it rolled back to DSM plans and programs that utilized the RIM cost-effectiveness test, not the more expansive

TRC cost-effectiveness that the Commission had determined should be utilized following the 2008 FEECA amendments. In so doing, it violated the Legislature's intent in its amendment and insertion of subsection (3) to §366.82, Fla. Stat.

Specifically, the Staff Analysis provides strong corroborative evidence that the Commission properly interpreted the legislative intent when it issued the FPL and PEF Goals Setting Orders. Taken in totality, both the Commission's deliberations during the 2009 goals setting proceeding, its subsequent FPL and PEF Goal Setting Orders, and the House Staff Analysis collectively evidence a clear understanding that the legislative intent was to require the Commission to set meaningful and more stringent conservation goals for FEECA-regulated utilities. The Commission, in its PAA Orders, not only violated the clear meaning of the statute, but also clearly defied the Legislature's intent in requiring the Commission to set more meaningful conservation goals.

V. CONCLUSION

For the reasons set forth above, Appellant, Southern Alliance for Clean Energy respectfully requests that the Court set aside the Commission's Final Order and underlying PAA Orders and remand the matter back the to the Commission for the approval of DSM plans for FPL and PEF with savings projections that are aligned with the goals set out in the FPL and PEF Goals Setting Orders.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and seven copies of the INITIAL BRIEF OF APPELLANT SOUTHERN ALLIANCE FOR CLEAN ENERGY was sent to for filing with the Clerk of the Florida Supreme Court by Federal Express and electronic filing on April 25, 2012, and served by electronic and/ or US Mail to:

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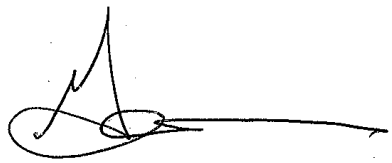

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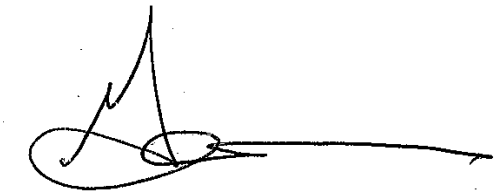
CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the Initial Brief of Appellant, Southern Alliance for Clean Energy is submitted in 14 point Times New Roman font in Microsoft Word format.



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