BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Adoption of Numeric Conservation Goals and Consideration of National Energy Policy Act Standards (Section 111) by Florida Power and Light Company.	DOCKET NO. 930548-EG ORDER NO. PSC-94-0458-PCO-EG ISSUED: April 15, 1994

ORDER DENYING MOTION FOR CONTINUANCE

On March 8, 1994, the Legal Environmental Assistance Foundation, Inc, (LEAF) filed a motion for continuance of the hearing in this docket. As grounds for a continuance LEAF states that the Cost-Effectiveness Goal Results Report (CEGRR) filed by Florida Power and Light Company (FPL) on February 18, 1994, is deficient, notwithstanding efforts by FPL to supplement its CEGRR at a later date. In its motion LEAF cites several examples of alleged deficiencies in FPL's CEGRR, and FPL's failure to comply with the procedural orders in this docket. LEAF requests a continuance until such time as FPL's filings are brought into compliance with the procedural orders in this docket, and parties have had the opportunity to review the filings, conduct discovery, and prepare testimony.

Also on March 8, 1994, LEAF, by letter, provided a sixty-day notice that it believes FPL's CEGRR is deficient pursuant to Section 120.69, Florida Statutes. LEAF urges the Commission to act expeditiously to address the merits of the notice letter.

On March 15, 1994, FPL filed a response to LEAF's motion for continuance. In its response FPL asserts that its CEGRR filing was not deficient; that it had supplemented its CEGRR filing with additional information, and "to put this matter to rest", and "to remove all controversy", it would provide additional information in its March 18, 1994 conservation goals filing. In its response FPL requests that the Commission deny LEAF's motion for continuance and rule that FPL's CEGRR is not deficient, but fairly complies with the procedural orders in this case. Like LEAF, FPL also asks the Commission to rule expeditiously on the adequacy of FPL's CEGRR filing.

On March 17, 1994, LEAF filed a reply to FPL's response to motion for continuance. In its reply LEAF reviews individual alleged deficiencies in FPL's CEGRR filing and asserts that FPL's filings are insufficient, at variance with Commission rules in many respects, and in violation of the procedural orders issued in this docket. LEAF reasserts that the Commission should grant a continuance of the hearing in this docket.

On March 21, 1994, FPL filed a motion to strike LEAF's reply to FPL's response to LEAF's motion for continuance. As grounds for its motion FPL asserts that LEAF's reply was an impermissible pleading.

On March 29, 1994, FPL filed a notice of withdrawal of its previous motion to strike LEAF's reply. FPL states that it withdraws its motion to strike, "because the parties to this case as well as a potential circuit court judge asked to enforce the Commission's procedural orders would benefit from having the Commission rule on every alleged deficiency LEAF has raised regarding FPL's CEGRR". FPL thereupon responds to each of the arguments made by LEAF in its Motion for Continuance and in its reply to FPL's response. FPL requests that the Commission rule on all of the deficiencies alleged by LEAF in FPL's filings in this docket.

Also on March 29, 1994, LEAF, by letter, requested an expeditious ruling on its motion, and urges that I consider moving back the due date for LEAF's testimony in the event that I am not inclined to grant LEAF's motion for continuance.

In this order, as requested by both LEAF and FPL, I will rule on each of the deficiencies alleged by LEAF in its Motion for Continuance, and in its 60-day notice letter. With regard to LEAF's request for an expeditious ruling on its motion, I note that as late as March 29, 1994, the Commission received a 29-page pleading (including appendixes) from FPL, responding to the assertions made by LEAF in its Reply to FPL's Response. Also, on March 29, 1994, I received a letter from LEAF asking for the first time for alternate relief in the form of "moving back the due date for LEAF's testimony". Without ruling on the question of whether LEAF's March 17, 1994 reply to FPL's response was a permissible pleading, I note that the reply opened the door for additional pleadings by FPL and delayed the disposition of this matter.

1. ASSERTION THAT FPL'S CEGRR FILING DOES NOT CONTAIN SEPARATE ANALYSES FOR NEW CONSTRUCTION AND EXISTING CONSTRUCTION

LEAF alleges that FPL's CEGRR is deficient in that there is no breakdown between the new construction and existing construction market segments. The Fourth Order on Procedure, issued in this Docket on November 19, 1993, contains an attachment that maps the measures according to new and existing construction. The order itself however does not specifically require that the reporting of

results be split between new construction and existing construction. Therefore, it cannot be said that FPL's CEGRR is in violation of the Fourth Order on Procedure.

Since the filing of its CEGRR, FPL has provided supplemental data to the parties in this docket. According to FPL:

> On March 18th, FPL provided three different breakdowns of the results of its analyses between New Construction and Existing Construction. In the testimony of Henry Hugues, Document No. 3 shows for both the DSM-RIM portfolio and the DSM-TRC portfolio developed in FPL's planning process the breakdown of savings and market penetration, by measure, between New Construction and Existing Construction. In addition, on March 18th FPL filed a breakdown, by measure, of savings and market penetration of its entire 1994-2003 DSM-RIM achievable potential for both the New Construction and Existing Construction market segments. This supplemental data was provided as a result of an FPL offer at a March 11, 1994 settlement discussion of the LEAF allegations. (FPL's March 29, 1994 Notice of Withdrawal at p.2)

As stated earlier, FPL's CEGRR was not technically in violation of the Fourth Order on Procedure, since that order did not require that reporting of results be split between new and existing construction. FPL's provision of supplemental data showing a breakdown between new and existing construction demonstrates FPL's intent to comply with the spirit of the Fourth Order on Procedure, despite the fact that the order does not explicitly require such a breakdown.

2. ASSERTION THAT FPL'S CEGRR DOES NOT PROVIDE PROJECTIONS OF MARKET PENETRATION FOR EACH YEAR FOR EACH MEASURE

LEAF asserts that FPL's CEGRR is deficient in that it does not provide projections of market penetration for each year for each measure. FPL responds that Appendix J of the CEGRR provided cumulative installations or participants for each measure found to be cost-effective under both the RIM scenario and the TRC scenario. According to FPL, those installations or participants are FPL's projected market penetration for each measure. FPL states that values were not shown for 1994 because the projections for that

year were based upon existing program installation, and that some other values were not shown because they remained the same as the previous year's values.

Whether or not FPL's CEGRR was sufficient at the outset, FPL supplemented its market penetrations with its March 18, 1994 filings. Values are now shown for every year from 1994 through 2003. As supplemented, FPL's filing is sufficient.

LEAF also argues that in Appendix K, FPL provided different levels of participation. The penetrations in Appendix K however, were from an intermediate step in FPL's planning process, and were not the final product of FPL's planning process. Appendix J of FPL's CEGRR provided the market penetrations required by the procedural order. I have previously found that as supplemented on March 18, 1994, these are sufficient.

3. ASSERTION THAT COST-EFFECTIVENESS DATA WAS NOT PROVIDED FOR LOAD CONTROL MEASURES

LEAF alleges that FPL's CEGRR is deficient in that for four measures (RSC-8, RSC-26, PP-3 and WH-10), energy and demand savings projections, rate impacts, benefit cost ratios and market penetrations were not supplied. FPL responds that it provided the data collectively for these four measures:

> All of the measures identified are residential load control measures currently offered by FPL under its Residential Load Control Program. Because cost and other data for this program were available to FPL at the program level and there are common costs, such as transponders, FPL analyzed these measures collectively and reported the energy and demand savings projections, rate impacts, benefit cost ratios and market penetrations collectively. (Response to Motion for Continuance at p.4)

In its March 18, 1994, supplemental filing, FPL provided the individual cost-effectiveness analysis information on a measure-by-measure basis. I find that the data provided by FPL for the four load control measures is in compliance with the procedural orders entered in this docket.

4. ASSERTION THAT FPL FAILED TO TIMELY FILE AND SERVE APPENDIX K

LEAF contends that FPL failed to timely file and serve upon the parties Appendix K, which LEAF states contained information required by Rule 25-17.008, Florida Administrative Code.

FPL responds that Appendix K contains its cost-effectiveness runs and that neither the rule, nor the procedural orders in this docket require the filing of its cost-effectiveness runs. FPL contends that it filed Appendix K as a courtesy to the parties, as a supplement to its CEGRR. FPL also states that because of insufficient postage, the eleven volumes of Appendix K were not timely served on LEAF and certain other parties, but that FPL corrected this by personally serving LEAF a copy of Appendix K as soon as it learned of the problem.

The procedural orders in this docket have required the utilities to provide the parties, the Commission, and the Commission staff, with a tremendous volume of information. They have not, however, required the utilities to provide the parties with every piece of data produced by the utilities in developing proposed numerical goals. The cost-effectiveness runs of the various DSM measures were not specifically required to be filed. While I can understand the desire of the parties to obtain this information, the procedural orders in this docket were not intended to replace conventional discovery as a means of obtaining data from the utilities. Nonetheless, here FPL referred to Appendix K in its CEGRR filing. Due to the volume of the information, and problems with postage, FPL was unable to serve the documents concurrently with its CEGRR filing. While this is perhaps an unfortunate circumstance, it is not a violation of any Commission rule, or procedural order in this docket. Likewise, it is not grounds for a continuance of the hearing.

5. ASSERTION THAT VALUE OF DEFERRAL COST-EFFECTIVENESS ANALYSES ARE REQUIRED IN FPL'S CEGRR

The Cost-Effectiveness Manual incorporated by reference into Rule 25-17.008, Florida Administrative Code, requires that calculation of demand reduction benefits on a value of deferral basis when "the demand reduction achieved by a program cannot be reasonably projected to extend for the life of the avoided generating unit".

In its analyses here, FPL projected that the demand reduction achieved by the program would extend for the life of the avoided generating unit by assuming that the measure being analyzed would be replaced at the end of the measure's life by the same measure.

I find that FPL's revenue requirements analysis is adequate for screening purposes. The purpose of the rule is to establish minimum filing requirements for reporting cost-effectiveness data for any DSM program proposed by the utility pursuant to Rule 25-17.002 (Goals for Electric Utilities). Our rule requires this information only in those specific instances when the analysis of an existing, new, or modified demand side management program is required by the Commission. The screening of UP measures to set goals is not the same evaluation or analysis of DSM programs as envisioned by the rule. Section I Introduction page 3 of the Cost-Effectiveness Manual for Demand Side Management Programs requires a value of deferral analysis only in instances where the utility can not reasonably project the demand reductions of the measure to extend for the life of the avoided unit.

> The calculation of demand-reduction benefits for cost-effectiveness analysis performed under FPSC Rule 25-17.008 shall be on a revenue requirements basis for all programs under consideration. However, when the demand reduction achieved by a program cannot be **reasonably** projected to extend for the life of the avoided generation unit, the demand-reduction benefits shall **also** be calculated on a value of deferral basis. (emphasis added)

FPL is required to run the revenue requirements test as the primary test. Only when a utility cannot reasonably project demand reductions over the life of the unit is it required to run the value of deferral analysis. FPL has projected the demand savings for the measure by assuming that the measure will be replaced by a second identical measure at the end of the first measure's useful life. This is similar to performing a 30-year avoided unit analysis and comparing two heat pumps against the supply side option, one heat pump for the first fifteen years, its useful life, and a second for years 16-30. I find that this is a "reasonable" projection of the demand reduction achieved by a program for the life of the avoided unit, as contemplated by the Cost-Effectiveness Manual.

FPL argues that its analyses will only optimize the number of cost-effectiveness DSM measures, while value of deferral analyses will only lower the amount of DSM that is cost-effective. While

this may intuitively appear to be valid, I cannot accept this assertion without seeing comparative results of the two analyses. The Fourth Order on Procedure issued in this docket provides:

> The rulings I have made in this order are procedural in nature. They deal with the information the utilities are required to provide to the parties, Commission, and Commission staff to facilitate the Commission's efforts to set numeric goals. Any party that wishes to present its own analysis on the cost-effectiveness and market penetration analysis on those measures not evaluated by the IOUs may be presented through testimony at the hearings scheduled for June of 1994. (Fourth Order on Procedure at p.10)

Should LEAF wish to present its own value of deferral cost-effectiveness analysis, or demonstrate that the analysis performed by FPL is faulty in some way, it may do so through its testimony. I find however, that FPL's revenue requirements analysis is not in violation of the procedural orders issued in this docket.

6. REQUEST FOR ALTERNATE RELIEF IN THE FORM OF MOVING BACK THE DUE DATE FOR LEAF'S TESTIMONY

Certainly I would have preferred that these issues be addressed to the prehearing officer first rather than in the 60-day notice letter. It must be kept in mind that the Commission and the parties are setting conservation goals for the first time and that there may be more than one correct way to go about it. All parties and the Commission need to be flexible and work together to achieve a common goal.

FPL supplemented its CEGRR filing with additional filings on February 25, 1994, and March 18, 1994. I find that LEAF has raised valid questions that needed to be resolved. While FPL's CEGRR is not deficient, I find that LEAF's request to move back its testimony is reasonable in light of the volume of material that has been filed by FPL and the other utilities in these numeric goals dockets. LEAF and the other intervenors in this docket shall therefore be given until the close of business (4:30 p.m.) on April 25, 1994 to file direct testimony and rebuttal to the testimony filed by FPL in this docket.

It is therefore,

ORDERED that the Motion For Continuance filed by the Legal Environmental Assistance Foundation on March 8, 1994, is hereby denied. It is further

ORDERED that the Cost-Effectiveness Goal Results Report filed by Florida Power & Light Company on February 18, 1994, and subsequently supplemented by Florida Power & Light Company. is hereby found to be in compliance with the procedural orders issued in this docket.

ORDERED that the request to postpone the filing of testimony, made by the Legal Environmental Assistance Foundation by letter dated March 29, 1994, is hereby granted. The intervenors in this docket shall file their testimony on or before the close of business on April 29, 1994.

By ORDER of Chairman J. Terry Deason, as Prehearing Officer, this 15th day of April, 1994.

J. TERRY DEASON, Chairman and
Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial

review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.