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COMMISSION  
CLERK

October 24, 2011

Ms. Ann Cole, Director  
Division of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850


Re: Southern Alliance for Clean Energy's brief and appendix supporting its  
protest of Commission Order Nos. PSC-11-0346-PAA-EG and PSC-11-0347-  
PAA-EG. **Docket Nos. 100155-EG; 100160-EG**

Dear Ms. Cole,

Enclosed for filing in the above dockets is one original and 7 copies of Southern Alliance for  
Clean Energy's brief and appendix supporting its protest of Commission Order Nos. PSC-11-  
0346-PAA-EG and PSC-22-0347-PAA-EG.

Thank you for your assistance in this matter.

Sincerely,

  
George Cavros

GSC/kf  
Enclosure

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RAD \_\_\_\_\_  
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DOCUMENT NUMBER-DATE

07757 OCT 24 =

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: October 24, 2011**

**In re: Petition for Approval of Demand-side  
Management Plan of Progress Energy  
Florida, Inc.**

**DOCKET NO. 100160-EG**

**Dated: October 24, 2011**

**SOUTHERN ALLIANCE FOR CLEAN ENERGY'S BRIEF  
SUPPORTING THE PROTEST OF ORDER NOS. PSC-11-0346-PAA-EG  
AND PSC-11-0347-PAA-EG**

Pursuant to Sections 120.569 and 120.57, Fla. Stat., and Commission Order No. PSC-11-0469-PCO-EG, the Southern Alliance for Clean Energy ("SACE"), by and through its undersigned counsel, respectfully submits its brief and attached appendix supporting the protest of Order Nos. PSC-11-0346-PAA-EG and PSC-11-0347-PAA-EG.

**I. Statement of Issues and Positions**

Issue 1: Whether the Commission violated Fla. Stat. §366.82(7) by ordering a "Newly Modified DSM Plan" for FPL that matches its DSM Plan currently in place?

**SACE Position: Yes. Fla. Stat. §366.82(7) requires FEECA utilities, following the adoption of conservation goals by the Commission, to develop demand side management (DSM) plans and programs to meet those goals. However, the "newly modified DSM plan" approved by the Commission for FPL, in Order No. PSC-11-0346-PAA-EG, is nothing more than FPL's previously approved DSM Plan, which was originally approved to meet numeric conservation goals adopted in 2004 as opposed to the currently applicable goals adopted in 2009. The statute is clear on its face that the Commission can only adopt new goals pursuant to §§366.82(2) & (3), and can only change goals only pursuant to §366.82(6). Thus, by its reliance on §366.82(7) as authority for approval and extension of FPL's previously approved DSM plan, which will not meet currently applicable goals, the Commission has violated Fla. Stat. §366.82(7) by using the same as a de-facto goal setting provision in excess of its statutory authority.**

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Issue 2: Whether the Commission violated Fla. Stat. § 366.82(7) by not requiring FPL to submit a modified plan following denial of FPL's "Modified DSM Plan" and "Alternate DSM Plan" submitted on March 25, 2011?

**SACE Position: Yes. Fla. Stat. § 366.82(7) provides that a utility whose plan is disapproved shall resubmit its modified plan within 30 days. However, in Order No. PSC-11-0346-PAA-EG, the Commission disapproved FPL's "Modified DSM Plan" and "Alternate DSM Plan," but did not require FPL to resubmit a modified DSM plan as required by Fla. Stat. § 366.82(7).**

Issue 3: Whether the Commission violated Fla. Stat. §366.82(7) by ordering a "Newly Modified DSM Plan" for PEF that matches its DSM Plan currently in place?

**SACE Position: Yes. Fla. Stat. §366.82(7) requires FEECA utilities, following the adoption of conservation goals by the Commission, to develop demand side management (DSM) plans and programs to meet those goals. However, the "newly modified DSM plan" approved by the Commission for PEF, in Order No. PSC-11-0347-PAA-EG, is nothing more than PEF's previously approved DSM Plan, which was originally approved to meet numeric conservation goals adopted in 2004 as opposed to the currently applicable goals adopted in 2010. The statute is clear on its face that the Commission can only adopt new goals pursuant to §§366.82(2) & (3), and can only change goals only pursuant to §366.82(6). Thus, by its reliance on §366.82(7) as authority for approval and extension of PEF's previously approved DSM plan, which will not meet currently applicable goals, the Commission has violated Fla. Stat. §366.82(7) by using the same as a de-facto goal setting provision in excess of its statutory authority.**

Issue 4: Whether the Commission violated Fla. Stat. § 366.82(7) by not requiring PEF to submit a modified plan following denial of PEF's "Original Goals Scenario DSM Plan" and "Revised Goal DSM Plan" submitted on March 25, 2011?

**SACE Position: Yes. Fla. Stat. §366.82(7) provides that a utility whose plan is disapproved shall resubmit its modified plan within 30 days. However, in Order No. PSC-11-0347-PAA-EG, the Commission disapproved PEF's "Original Goals Scenario DSM Plan" and "Revised Goals DSM Plan," but did not require PEF to resubmit a modified DSM plan as required by Fla. Stat. §366.82(7).**

## **II. Statement of the Case and Facts**

### **A. Florida Power and Light**

The 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").<sup>1</sup> Florida Power & Light ("FPL"), the largest investor-owned utility in the state, is a FEECA-regulated utility. On June 26, 2008, the Commission established a conservation goal setting docket, Docket No. 080407-EF, to adopt goals for FPL, and held proceedings and adopted goals on December 30, 2009 as set out in Commission Order No. PSC-09-0855-FOF-EG. Pursuant to this Order and Rule 25-17.0021(4), F.A.C., FPL was then required, within 90 days, to submit a demand-side management (DSM) plan to the Commission in order to implement the goals adopted in the conservation goal setting docket. The Commission established Docket No. 100155-EG for the filing and consideration of FPL's DSM plan.

In that docket, 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. The Commission, pursuant to § 366.82(7), Fla. Stat. required FPL to resubmit a DSM plan within thirty days that would comply with goals adopted in Commission Order No. PSC-09-0855-FOF-EG.<sup>2</sup> On March 25, 2011, FPL submitted two plans, a "Modified DSM Plan" that modified certain programs to fulfill the requirements of Commission Order No. PSC-09-0855-FOF-EG, and an "Alternate DSM Plan." Commission Staff, based on its finding that the Modified DSM Plan was projected to achieve all goals, and would not create an undue rate impact, recommended that the Commission approve FPL's Modified DSM Plan.<sup>3</sup> Furthermore, to the extent the Commission had any

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<sup>1</sup> §§366.81 -85, 403.519, Fla.Stat.

<sup>2</sup> It is noteworthy that the Commission, pursuant to § 366.82(7), Fla. Stat., required FPL to resubmit a modified plan after denying FPL's initial filing due to the fact that it was insufficient to meet the applicable numerical conservation goals.

<sup>3</sup> See Docket No. 100155-EG, *Staff Recommendation*, May 12, 2011.



concern about rate impacts, SACE argued in both written and oral comments that Commission should approve the FPL “Modified DSM Plan” but that costs to ratepayers could be reduced through better program selection and design, without reducing energy savings to customers.<sup>4</sup>

In Order No. PSC-11-0346-PAA-EG, issued August 16, 2011, the Commission denied FPL’s “Modified DSM Plan.”<sup>5</sup> In the same order, the Commission, erroneously relying on §366.82(7), Fla. Stat., further ordered that a “newly modified DSM Plan *consisting of programs currently in effect*” be approved.<sup>6</sup> Thus, the effect of the order is to have a DSM Plan in place, which is nothing more than FPL’s previously approved DSM plan, which was designed to implement goals adopted in the 2004 conservation goal setting proceeding.<sup>7</sup> The 2004 goals, which were adopted before the Legislature amended §366.82 in 2008 in order to require the Commission to adopt more meaningful conservation goals, are in sharp contrast to the new, more robust, conservation goals adopted by the Commission in Order No. PSC-09-0855-FOF-EG. Thus, the Commission, through its approval and extension of FPL’s existing DSM Plan, utilized improper procedure to change FPL’s goals, and thus has exceeded its statutory authority by utilizing § 366.82(7), Fla. Stat., as a de-facto goal setting provision. In order to properly adopt new goals for FPL, or change FPL’s goals, the Commission would have had to acted pursuant to § 366.82(2) & (3), Fla. Stat., or §366.82(6), Fla. Stat., and followed all corresponding procedural requirements. However,

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<sup>4</sup> See SACE Comments filed in Docket No. 100155-EG on July 15, 2010; August 3, 2010; December 23, 2010; and March 25, 2011.

<sup>5</sup> 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.

<sup>6</sup> Commission Order No. PSC-11-0346-PAA-EG, August 16, 2011, p.5 (emphasis added).

<sup>7</sup> Commission Order No. PSC-04-0763-PAA-EG.

the Commission instead erroneously relied on \$366.82(7) in excess of its statutory authority.

The Commission's approval and extension of FPL's previously approved DSM plan, which implements the goals adopted in Commission Order No. PSC-04-0763-PAA-EG, will result in considerably less energy savings to residential, commercial and industrial customers in Florida as opposed to the energy savings required in Commission Order No. PSC-09-0855-FOF-EG, issued in 2009.<sup>8</sup> Due to this fact, and moreover the Commission's violation of law, SACE, on September 6, 2011, filed a protest challenging the legal basis for Commission Order No. PSC-11-0346-PAA-EG.

#### **B. Progress Energy Florida**

Progress Energy Florida, Inc. ("PEF"), the second-largest investor-owned utility in the state, is a FEECA-regulated utility. On June 26, 2008, the Commission established a conservation goal setting docket, Docket No. 080408-EF, to adopt goals for PEF, and held proceedings and adopted goals for PEF on March 31, 2010<sup>9</sup> as set out in Commission Order No. PSC-10-0198-FOF-EG. Pursuant to this Order and Rule 25-17.0021(4), F.A.C., PEF was then required, within 90 days, to submit a demand-side management (DSM) plan to the Commission in order to implement the goals adopted in the conservation goal setting docket. The Commission established Docket No. 100160-EG for the filing and consideration of PEF's DSM plan.

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<sup>8</sup> Compare the annual and cumulative GWh energy savings in Commission Order No. 04-0763-PAA-EG, p.3 to the significantly more robust annual and cumulative GWh energy savings in Commission Order No.09-0855-FOF-EG, p.17.

<sup>9</sup> 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.

In that docket, the Commission issued Order No. PSC-10-0605-PAA-EG, which denied PEF'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-10-0198-FOF-EG. 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 Commission Order No. PSC-10-0198-FOF-EG.<sup>10</sup> PEF's submitted two plans on November 29, 2010, an "Original Goal Scenario DSM Plan," that modified certain programs to fulfill the requirements of Commission Order No. PSC-10-0198-FOF-EG, and a "Revised Goal DSM Plan." SACE provided timely, detailed comments to Commission staff in regards to these submittals, and relied upon the analysis submitted in those comments to recommend that the Commission approve the PEF "Original Goal Scenario DSM Plan, which met the newly adopted goals as required by §366.82(7), Fla. Stat." Furthermore, to the extent that the Commission had concerns about the rate impacts associated with the "Original Goal Scenario" plan, SACE commented that costs to ratepayers could be reduced through better program selection and design, without reducing energy savings to customers.<sup>11</sup>

In Order No. PSC-11-0347-PAA-EG, issued August 16, 2011, the Commission denied PEF's "Original Goal Scenario DSM Plan." <sup>12</sup> In the same order, the Commission, erroneously relying on §366.82(7), Fla. Stat., further ordered that a "newly modified DSM Plan

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<sup>10</sup> It is noteworthy that the Commission, pursuant to § 366.82(7), Fla. Stat., required PEF to resubmit a modified plan after denying PEF's initial filing due to the fact that it was insufficient to meet the applicable numerical conservation goals.

<sup>11</sup> See SACE Comments filed in Docket No. 100160-EG on July 15, 2010; August 3, 2010; December 23, 2010; March 25, 2011; and June 3, 2011.

<sup>12</sup> Although the Commission disapproved the Original Goal Scenario DSM Plan, it did not require PEF to submit a modified plan within 30 days as required by §366.82(7), Fla. Stat.

*consisting of programs currently in effect*" be approved.<sup>13</sup> The effect of the order is have a DSM Plan in place, which is nothing more than PEF's previously approved DSM plan, which was designed to implement goals adopted in the 2004 conservation goal setting proceeding.<sup>14</sup> The 2004 goals, which were adopted before the legislature amended §366.82 in 2008 in order to require the Commission to adopt more meaningful conservation goals, are in sharp contrast to the new, more robust, conservation goals adopted by the Commission in Order No. PSC-10-0198-FOF-EG. Thus, the Commission, through its approval and extension of PEF's existing DSM Plan, utilized improper procedure to change PEF's goals, and thus has exceeded its statutory authority by utilizing §366.82(7), Fla. Stat., as a de-facto goal setting provision. In order to properly adopt new goals for PEF, or change PEF's goals, the Commission would have had to acted pursuant to § 366.82(2) & (3), Fla. Stat., or §366.82(6), Fla. Stat., and followed all corresponding procedural requirements. However, the Commission instead erroneously relied on §366.82(7) in excess of its statutory authority.

The Commission's approval and extension of PEF's previously approved DSM plan, which implements the goals adopted in Commission Order No. PSC-04-0769-PAA-EG, will result in considerably less energy savings to residential, commercial and industrial customers in Florida as opposed to the energy savings required in Commission Order No. PSC-10-0198FOF-EG, issued in 2010.<sup>15</sup> Due to this fact, and moreover the Commission's

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<sup>13</sup> Commission Order No. PSC-11-0347-PAA-EG, August 16, 2011, p.5 (emphasis added).

<sup>14</sup> See Commission Order No. PSC-04-0769-PAA-EG.

<sup>15</sup> Compare the annual and cumulative GWh energy savings in Commission Order No. 04-0769-PAA-EG, p.3 to the significantly more robust annual and cumulative GWh energy savings in Commission Order No.10-0198-FOF-EG, p.12.

violation of law, SACE, on September 6, 2011, filed a protest challenging the legal basis for Commission Order No. PSC-11-0347-PAA-EG.

### **III. Summary of Argument**

On August 16, 2011, the Public Service Commission ("Commission") issued Order Nos. PSC-11-0346-PAA-EG and PSC-11-0347-PAA-EG in the instant dockets that denied PEF's "Original Goals Scenario DSM Plan" and FPL's "Modified DSM Plan" respectively and purported to create a "newly modified DSM Plan" for both utilities, which is nothing more than FPL's DSM plan and PEF's DSM plan currently in place. The Commission order violates §366.82(7), Fla. Stat. because it requires that FEECA utilities, following Commission adoption of conservation goals, to develop plans and programs that *meet* those goals; instead, the Commission utilized §366.82(7) as a de-facto goal setting provision. The law is clear and unambiguous that §366.82(7), Fla. Stat. requires the Commission to approve, deny or modify utility DSM plans that implement the most recently adopted goals, in the instant matters, the goals adopted for FPL in 2009 in Order No. 09-0855-FOF-EG and the goals adopted for PEF in 2010 in Order No. PSC-10-0198-FOF-EG. However, in Order Nos. PSC-11-0346-PAA-EG and PSC-11-0347-PAA-EG, the Commission exceeded its authority under § 366.82(7), Fla. Stat., by denying FPL's "Modified DSM Plan" and PEF's "Original Goal Scenario DSM Plan" and approving a "newly modified DSM plan" for both utilities that does nothing more than extend FPL's and PEF's 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.<sup>16</sup> In

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<sup>16</sup> PEF petitioned the Commission in 2006 for approval of two new DSM programs and revisions to six existing DSM programs. The DSM modifications were granted pursuant to Commission Order No. PSC-06-1018-TRF-EG;

so doing, the Commission changed FPL's and PEF's numeric conservation goals, and thus violated §366.82(7), Fla. Stat., because the Commission simply does not have the authority to adopt or change goals pursuant to this provision. Rather, the Commission is required to adopt goals pursuant to the provisions of §§366.82(2) & (3), Fla. Stat., and furthermore can change goals for reasonable cause pursuant to §366.82(6).

Fla. Stat. § 366.82(7) is plain on its face. There is no authority in this statutory provision that would permit the Commission to adopt or change *goals* through the modification of DSM *plans*. In sharp contrast, the limit of the Commission's authority under this subsection is to approve, deny or modify plans, and the Commission simply cannot revisit previously adopted conservation goals through §366.82(7), Fla. Stat. This is plainly evidenced by the fact that the Legislature has established a specific statutory provision requiring the Commission to adopt goals, §366.82(2), Fla. Stat., and another provision, §366.82(3), Fla. Stat., setting forth the factors that the Commission should consider when adopting goals. Moreover, §366.82(6), Fla. Stat., allows the Commission to change the goals "for reasonable cause." However, the Commission's Order at issue made no reference whatsoever to these goal setting provisions, and instead relied on §366.82(7) to effectuate an improper change in FPL's and PEF's goals. This is a clear procedural violation that is in excess of the Commission's statutory authority, because in order to adopt new goals for FPL or PEF, or to change FPL's or PEF's goals, the Commission should have acted pursuant to §§366.82(2), (3) or (6), and complied with all applicable procedural and due process

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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.



requirements. Ultimately, the Commission simply misapplied §366.82(7), Fla. Stat. in order to circumvent the goals setting provision(s) contained in the statute.

Stated simply, the plain language of §366.82, Fla. Stat. is unambiguous in establishing the proper procedures by which the Commission can adopt or change goals, as well as the Commission's authority to approve, deny or modify DSM plans. As a result, there is no need to resort to the legislative intent of the statute or for statutory interpretation. However, should the Commission determine that a review of the legislative intent is required to determine the meaning of the statute, the legislative history indicates that the 2008 amendments<sup>17</sup> to §366.82, Fla. Stat., required the Commission to set more meaningful conservation goals. This intent is evidenced, for instance, in the House of Representatives Staff Analysis of HB 7135.<sup>18</sup> Furthermore, the Commission's deliberations during the 2009 goals setting process are replete with references acknowledging the need for more robust goals to meet legislative intent.<sup>19</sup> Nevertheless, in the instant docket, this Commission disregarded legislative intent by approving and extending a plan that implements much weaker goals based on the so-called Rate Impact Measure (RIM) cost-effectiveness test. The Commission in 2009 moved away from the RIM test to the Total Resource Cost (TRC) cost-effectiveness test to encourage more energy efficiency implementation in Order Nos. PSC-09-0855-FOF-EG and PSC-10-0198FOF-EG.<sup>20</sup>

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<sup>17</sup> H.B. 7135 (2008), line 2396 (adding provision §366.82(3)).

<sup>18</sup> House of Representatives Staff Analysis of HB 7135, March 16, 2008. ("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.")

<sup>19</sup> Docket Nos. 080407, 080408, *Transcript, Agenda Conference, Item 9*, November 10, 2009, pp. 26, 86, 89 & 98.

<sup>20</sup> Docket No. 080407, 080408, Commission Order No. PSC-09-0855-FOF-EG, p. 15 ("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

Ultimately, the Commission violated §366.82(7), Fla. Stat., by utilizing the same as a de-facto goal setting provision and defied legislative intent for more robust goals by approving and extending FPL's and PEF's previously approved DSM plans that implement goals established in 2004 based on the rejected RIM test.

Similarly, should the Commission determine that statutory construction is required, the only reasonable conclusion of such an analysis is that the Commission order violates §366.82(7), Fla. Stat. by failing to construe the related goals setting provisions in the statute *in pari materia*. This failure renders §§366.82(2), (3), and (6), Fla. Stat. meaningless and furthermore produces an absurd result. The Commission establishes goals through a proceeding where it can weigh complex and extensive evidence and reach conclusions based on the evidence. The Commission must also consider a host of factors prior to establishing goals that includes the cost and benefits to the general body of ratepayers as a whole for specific energy efficiency measures. § 366.82(3), Fla. Stat. If the Commission were able to circumvent that process, as it has done in this case, it renders §§366.82 (2), (3), and (6), Fla. Stat., meaningless. Not only has it rendered these sections meaningless but has produced an absurd result whereby the Commission purports to create a "newly modified DSM plan," which is nothing more than FPL's and PEF's previously approved DSM plans, which implement goals set in 2004 and thereby ignores the recent goal setting Order Nos. PSC-09-0855-FOF-EG and PSC-10-0198-FOF-EG.

Moreover, the Commission has manipulated the penalty provisions of §366.82(8), Fla. Stat., in an attempt to justify its misapplication of §366.82(7), Fla. Stat. The penalty

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than what each utility proposed. Therefore, we approve goals based on the unconstrained E-TRC Test for PEF, PEF, TECO, Gulf, and FPUC.")

provision clearly states that the Commission may authorize financial penalties for “those utilities that fail to meet their *goals*.” §366.82(8), Fla. Stat. (emphasis added). Commission Order Nos. PSC-11-0346-PAA-EG and PSC-11-0347-PAA-EG allegedly do not change the FPL or PEF conservation *goals*, but rather modify the FPL and PEF DSM *Plan*. Yet in its orders, the Commission establishes that FPL and PEF will only be subject to financial penalty if they do not meet the “savings projections” (goals) in the “newly modified DSM plan,” which essentially implements the 2004 goals.<sup>21</sup> This ploy renders the goal setting and penalty provisions in §§366.82 (8), Fla. Stat., meaningless and produces an absurd result never intended by the Legislature.

Finally, §366.82(7), Fla. Stat. is clear on its face that if the Commission disapproves a plan, “the utility whose plan has been disapproved shall resubmit its modified plan within 30 days.” In Order Nos. PSC-11-0346-PAA-EG and PSC-11-0347-PAA-EG, the Commission denied FPL’s and PEF’s DSM plans yet did not require that FPL and PEF submit a modified DSM plan within the statutory 30 day time frame. Since the Commission denied FPL’s “Modified DSM Plan,” and PEF’s “Original Goal Scenario DSM Plan” FPL and PEF were required to resubmit a modified plan within 30 days, but never did so. The Commission’s failure to require FPL and PEF to resubmit a modified plan is a violation of § 366.82(7), Fla. Stat.

The Commission should 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 adopted in Commission Order No. PSC-09-0855-FOF-EG. In the alternative, the Commission should approve the portions of the FPL “Modified DSM Plan” which meet

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<sup>21</sup> Commission Order Nos. PSC-11-0346-PAA-EG and PSC-11-0347-PAA-EG, August 16, 2011, p.5

Commission approval and order FPL to resubmit a modified DSM Plan that addresses specific deficiencies identified by the Commission, including concerns about rate impacts. The Commission should also vacate Commission Order No. PSC-11-0347-PAA-EG; and order the approval of the PEF "Original Goal Scenario DSM Plan" that meets the energy savings goals adopted in Commission Order No. PSC-10-0198-FOF-EG. In the alternative, the Commission should approve the portions of the PEF "Original Goals Scenario DSM Plan" which meet Commission approval and order PEF to resubmit a modified DSM Plan that addresses specific deficiencies identified by the Commission, including concerns about rate impacts.

**IV. Argument 1: The Commission Violated §366.82(7), Fla. Stat. By Utilizing This Provision as a De-Facto Goal Setting Provision.**

**A. The statute is plain on its face: the Commission can only adopt or change goals pursuant to the goal setting provisions contained in §§366.82(2), (3), and (6), Fla. Stat.**

§366.82, Fla. Stat. is plain on its face that the Commission has the authority, and moreover is required, to establish conservation goals. "The commission shall adopt appropriate goals for increasing the efficiency of energy consumption ...." §366.82(2), Fla. Stat. Furthermore, the statute sets out specific factors the Commission must consider before setting conservation goals. §366.82(3), Fla. Stat. The Commission may also change conservation goals when reasonable cause exists pursuant to Fla. Stat. § 366.82(6), and 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.<sup>22</sup> Thus, the statute and the Commission's rules clearly authorize the Commission, pursuant to the statute's goal setting provisions in §§366.82(2), (3), and (6), Fla. Stat., to adopt or change goals. There is no other provision in §366.82, Fla. Stat. or Commission rules that contemplates adoption of goals, or a change in goals, except through these provisions.

Likewise, the language in §366.82(7) Fla. Stat. is equally unambiguous. After the conservation goals are set, the electric utility must submit a DSM plan to implement the currently applicable goals. §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...If the commission disapproves a *plan*, it shall specify the reasons for the disapproval, and the utility whose *plan* is disapproved shall resubmit its modified *plan* within 30 days. (emphasis added).

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Thus, following adoption of goals, and submission of plans and programs by utilities, the Commission then has the authority to approve, deny, or modify the plans for the reasons specified in the statute. However, §366.82(7) simply does not provide a basis for the Commission to adopt or change goals, as it has done in the instant matter. Rather, the

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<sup>22</sup> For instance, 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 and 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..

Commission would have had to acted pursuant to §366.82(2), (3), or (6), and followed all procedural and due process requirements associated with these provisions.

The meanings of §§366.82(2), (3), (6) & (7), Fla. Stat. are plain on their face and require no statutory construction in order to determine legislative intent. In attempting to discern legislative intent, a court must first look at the actual language used in the statute. *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 such instance, the statute's plain and ordinary meaning must control, unless this leads to an unreasonable result or a result clearly contrary to legislative intent. *See State v. Burris*, 875 So. 2d 408, 410 (Fla. 2004).

In the instant cases, the Commission violated the plain language of Fla. Stat. §366.82(7) by relying on this provision to change FPL's and PEF's goals. The Commission denied FPL's "Modified DSM Plan" and PEF's "Original Goal Scenario DSM Plan," which were intended to appropriately implement the goals adopted in the most recent conservation goal setting order,<sup>23</sup> and instead approved and extended FPL's and PEF's previously approved DSM plans, which were intended to implement the goals adopted in 2004. Therefore, the Commission impermissibly substituted § 366.82(7) for §§ 366.82(2), (3) and/or (6), Fla. Stat., which is a clear procedural violation and an abuse of the Commission's statutory authority.

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<sup>23</sup> Commission Order Nos. PSC-09-0855-FOF-EG and PSC-10-0198-FOF-EG.



In fact, the Commission's own staff found it difficult to justify circumvention of the statute's goal setting provisions by utilizing the Commission's authority to deny or modify plans. For instance, in supporting the Commission order for PEF, staff indicated that "[w]e find that the programs currently in effect, contained in PEF's existing Plan, are cost effective and accomplish the *intent* of the statute."<sup>24</sup> (emphasis added). However, the intent of the statute is irrelevant when the Commission is violating the *letter* of the statute, as it has done in the instant matter. Moreover, there is no need for analysis of statutory intent when the statute is clear on its face. When the statute is plain on its face, utilizing statutory construction constitutes an abrogation of legislative power. *Nicoll v. Baker*, 668 So. 2d 989, 990-91 (Fla. 1996). Ultimately, the Commission has utilized administrative contortionism to circumvent the plain meaning of the statute, and as such, has violated the law in order to improperly change FPL's and PEF's goals.

**B. Legislative intent never contemplated the "status quo."**

Should the Commission decide that §366.82, Fla. Stat., is not plain on its face and requires statutory interpretation, it is well-settled that beyond looking at the plain meaning of the statute, legislative intent is the polestar that guides a statutory construction analysis. *See State v. Rife*, 789 So. 2d 288, 292 (Fla. 2001); *McLaughlin v. State*, 721 So. 2d 1170, 1172 (Fla. 1998). At the July 26, 2011, Agenda Conference, the Commission made it very clear that its intent was on maintaining the "status quo"<sup>25</sup> in

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<sup>24</sup> Commission Order No. 11-0347-PAA-EG, p.7.

<sup>25</sup> Docket No. 100160-EG, *Agenda Conference Transcript, Item No. 5*, July 26, 2010, p. 82; Docket No. 100155-EG; *See Agenda Conference Transcript, Item No. 6*, July 26, 2010, p. 2-10

regards to FPL's and PEF's goals, which is in direct contravention to the legislative intent of the 2008 amendments of FEECA.

In 2008, the legislature amended §366.82, Fla. Stat. to add subsection (3) which specifically enumerates certain factors that the Commission must consider when adopting goals. The 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.

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#### §366.82(3) Fla. Stat.

These factors were added to the statute to encourage the Commission to set more meaningful conservation goals.<sup>26</sup> This intent is evidenced in the House of Representatives Staff Analysis of HB 7135,<sup>27</sup> and the Commission's deliberations during the 2009 goals setting process, which are replete with references acknowledging the need for more robust goals to meet legislative intent.<sup>28</sup> Increased energy efficiency implementation required that the Commission move away from the so-called Rate Impact Measure (RIM) cost-effectiveness test and instead utilize the more expansive Total Resource Cost (TRC) cost-effectiveness test. The Commission decided that it would reject the RIM test that it had relied on in past conservation goal setting proceedings and embrace the TRC test in

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<sup>26</sup> H.B. 7135 (2008), line 2396.

<sup>27</sup> House of Representatives Staff Analysis of HB 7135, March 16, 2008. ("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.")

<sup>28</sup> Docket No. 080408-EG, *Transcript from Agenda Conference, Item 9*, November 10, 2009, pp. 26, 86, 89 & 98.

the 2009 goal setting proceedings.<sup>29</sup> Thus, the goals set in the past, such as in 2004, provide much weaker energy savings for utility customers than do the conservation goals set in 2009. Nevertheless, the Commission, in Order Nos. PSC-11-0346-PAA-EG and PSC-11-0347-PAA-EG, defied legislative intent by effectuating a de-facto change in FPL's and PEF's conservation goals through a clear procedural violation.

Specific concerns over costs of the FPL "Modified DSM Plan" were not raised by the Commission during its July 26, 2011 Agenda Conference.<sup>30</sup> In fact, the Commission's own staff indicated that the FPL "Modified DSM Program" would not create an undue rate impact for FPL customers.<sup>31</sup> At that same Agenda Conference, the Commission expressed concern over the cost of the PEF DSM plans. However, the legislative intent of FEECA requires that the Commission explore ways in which to make FEECA-regulated utilities' plans, like PEF's and FPL's DSM plans, the most cost-effective and most cost-efficient conservation plans. The legislative intent of FEECA 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. (emphasis added).

§366.81, Fla. Stat.

Moreover, SACE offered numerous comments, prior to the Agenda Conference, on how the PEF programs, and FPL's programs, could be made more cost-efficient. However, rather

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<sup>29</sup> The Commission approved DSM plans for all the FEECA-regulated utilities that implement goals based on the TRC test, except for PEF and Florida Power and Light. Oddly enough, the Commission chose to handle these DSM plans of FPL and PEF differently.

<sup>30</sup> Docket No. 100155-EG, *Transcript from Agenda Conference, Item No. 6*, July 26, 2010, pp. 2-10. The total transcript for the FPL DSM Plan portion of the Agenda Conference amounts to 9 pages.

<sup>31</sup> Docket No. 100155-EG, Staff Recommendation, May 12, 2011. p.4

than exercising its authority under § 366.82(7), Fla. Stat., to approve, deny or modify plans or programs to meet the more robust conservation goals adopted in Order Nos. PSC-09-0855-FOF-EG and PSC-10-0198-FOF-EG most cost-effectively and efficiently, as the Legislature intended, the Commission violated §366.82(7) in order to effectuate a de-facto goals for the state's two largest utilities. Stated differently, the Commission maintained the "status quo" goals in violation of the plain language of the statute and the legislative intent in the 2008 FEECA amendments.

**C. The Commission's violation of law produces an absurd result and renders the statute's goal-setting provisions meaningless.**

Should the Commission decide that §366.82, Fla. Stat. requires statutory interpretation beyond looking at legislative intent, it is well-settled 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. *See 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"). The doctrine of *in pari materia* requires that related statutes be read together to give effect to legislative intent. *See McGhee v. Volusia County*, 679 So. 2d 729, 730 (Fla. 1996).

It is important to read related subsections of statute in harmony (*in pari materia*) so as to avoid producing a patently absurd result or rendering statutory provisions meaningless. Statutory interpretations that lead to absurd results should be avoided. *City of St. Petersburg v. Siebold*, 48 So. 2d 291, 294 (Fla. 1950); *see also Johnson v. State*, 91 So.2d

185 (Fla. 1956). A statutory provision should not be construed in such a way that it renders meaningless or absurd any other statutory provision. *See Amente v. Newman*, 653 So. 2d 1030, 1032 (Fla. 1995) ("If possible, the courts should avoid a statutory interpretation which leads to an absurd result.")

In the instant cases, the Commission exceeded its authority under §366.82(7), Fla. Stat., by using this provision as the basis for adopting or changing *goals* through the modification of DSM *plans*. Not only is this a clear procedural error, but this interpretation turns the FEECA goal setting process on its head and renders the statute's goal setting provisions meaningless. The Commission engaged in an extensive goal setting process for FPL and PEF.<sup>32</sup> At the conclusion of the goal-setting process, the Commission issued Order No. PSC-09-0855-FOF-EG that adopted goals for FPL, and Order No. PSC-10-0198FOF-EG that adopted goals for PEF. Once the goals were adopted, FPL and PEF was required to "develop plans and programs *to meet the overall goals*." §366.82(7), Fla. Stat. (emphasis added). FPL and PEF fulfilled that obligation by filing a "Modified DSM Plan" and an "Original Goal Scenario DSM Plan" respectively. The Commission, pursuant to §366.82(7), Fla. Stat., may modify or deny programs when in the public interest, or when the plans or programs would have an undue rate impact, but nowhere in this subsection does it provide authority for the Commission to modify plans or programs in such a way that would change goals. In fact, such an interpretation, which was adopted by the Commission in the instant dockets, would lead to an absurd result by permitting the Commission to adopt conservation goals without utilizing the appropriate goal setting process spelled out in

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<sup>32</sup> See Docket Nos. 080407-EG and 080408-EG. The dockets were opened on June 26, 2008.

§§366.82(2) & (3), or by using its authority to change goals pursuant to under §366.82(6) or Commission Rule 25-17.0021, F.A.C.

Proponents of the Commission's order may argue that an agency is entitled to great deference to interpret a statute it is charged with enforcing. *See BellSouth Telecommunications, Inc. v. Johnson*, 708 So.2d 594, 596 (Fla.1998). Such reliance is misplaced. It is important to note that such deference is only granted if the agency's interpretation of statute is not clearly unauthorized or erroneous. *P.W. Ventures, Inc. v. Nichols*, 533 So.2d 281, 283 (Fla.1988). In the instant cases, no deference is due to the Commission as the statute is clear on its face that adopting or changing goals pursuant to §366.82(7), Fla. Stat. is unauthorized and clearly erroneous. Rather, it is clear that the Commission can only adopt or change goals pursuant to §§366.82(2), (3) or (6). Alternatively, if statutory construction were needed to determine if the Commission's interpretation of §366.82, Fla. Stat. was correct, the Commission's construction would still fail as it renders the statute's goal setting provisions meaningless and produces an absurd result.

Additionally, proponents of the Commission's order may argue that the Commission's order is appropriate given its authority to set just and reasonable rates. §366.041, Fla. Stat. Reliance on this principle is again misplaced. Another rule of statutory construction which is relevant in this inquiry is that where two statutory provisions are in conflict, the specific provision controls the general provision. *See State ex rel. Johnson v. Vizzini*, 227 So. 2d 205, 207 (Fla. 1969); *see also State v. J.M.*, 824 So. 2d 105, 112 (Fla. 2002) (noting the "long-recognized principle of statutory construction that where two statutory provisions are in conflict, the specific statute controls over the general statute"). In the



instant case, the Commission's duty in setting goals and approving DSM plans is specifically dictated in §366.82, and therefore prevails over claims of general ratemaking authority as set forth in §366.041, Fla. Stat.

**D. The Commission's manipulation of the statute's penalty provision further reinforces the fact that the Commission violated § 366.82(7), Fla. Stat., by utilizing that provision as a de-facto goal setting provision.**

In order to support its erroneous application of Fla. Stat. § 366.82(7), the Commission further misapplied the penalty provisions of §366.82(8), Fla. Stat. The penalty provision states in pertinent part that the Commission may authorize financial penalties for "those utilities that fail to meet their goals." §366.82(8), Fla. Stat. (emphasis added). §366.82(8) also allows for financial rewards should the utility exceed its goals. While this subsection is permissive in that it does not mandate penalties for non-attainment of goals, its misapplication by the Commission further reinforces the fact that the Commission violated § 366.82(7) by utilizing the same as a de-facto goal setting provision.

Commission Order Nos. PSC-11-0346-PAA-EG and PSC-11-0346-PAA-EG were carefully crafted in an attempt to demonstrate that the Commission was not changing FPL's or PEF's conservation *goals*, but rather simply modifying the FPL and PEF DSM *Plans*. Yet in its order, the Commission establishes that FPL and PEF will only be subject to financial penalty if they do not meet the "savings projections" (goals) in the "newly modified DSM plan."

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).*<sup>33</sup>

FPL's reward and penalty provision is structured identically.<sup>34</sup> In effect, this arrangement essentially constructs two sets of goals: one set of goals (the currently applicable goals adopted in Order No. PSC-10-0198FOF-EG) to serve as the basis for PEF's financial reward if exceeded; and one set of goals (the goals previously adopted in Order No. PSC-04-0769-PAA-EG) as the basis for PEF's financial penalty if not attained. This of course begs the question that, if the Commission did not intend to change the PEF goals, or FPL goals, then why are there two sets of energy savings goals that apply to FPL and PEF in determining financial penalty and reward? Furthermore, why is there no penalty for PEF for failing to attain the energy savings goals established in Order No. PSC-10-0198-FOF-EG, or for FPL for failing to attain the energy savings goals established in Order No. PSC-09-0855-FOF-EG as is clearly envisioned by the statute? The Commission's penalty / reward arrangement with FPL and PEF signals a clear intent to change the 2009 goals through denying FPL's "Modified DSM Plan" and PEF's "Original Goal Scenario DSM Plan" and substituting a "newly revised DSM plan" for FPL and PEF that was intended to meet goals established in 2004. This administrative contortionism is the only way that the Commission can carry out its procedurally impermissible de-facto goal setting without unduly punishing the utilities for being required to do nothing more than continue to implement their previously approved DSM plans.

This provision of the order renders the goal setting provisions in §§366.82(2) and (3), Fla. Stat., meaningless since the Commission has set two sets of goals as the basis for

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<sup>33</sup> Commission Order No. PSC-11-0347-PAA-EG, p.7.

<sup>34</sup> Commission Order No. PSC-11-0346-PAA-EG, p.5.

which FPL and PEF will be rewarded or penalized. FEECA contemplates only one set of goals, which are set through the goal setting provisions of §§366.82(2) and (3) Fla. Stat. FEECA further contemplates that following the adoption of goals, each utility shall develop plans and programs *to meet* the goals. §366.82(7), Fla. Stat. (emphasis added). The establishment of two sets of goals, with no penalty for attaining the currently applicable goals for which the DSM proceeding was intended to implement, creates an absurd result which was never intended by the plain language of the statute.

**V. Argument 2: The Commission Violated § 366.82(7), Fla. Stat., by not Requiring FPL or PEF to Resubmit Modified Plans Following Denial of FPL's "Modified DSM Plan" and "Alternate DSM Plan and PEF's "Original Goals Scenario Plan" and "Revised Goals DSM Plan."**

If the Commission disapproves a plan, "the utility whose plan has been disapproved shall resubmit its modified plan within 30 days." §366.82(7), Fla. Stat. The statute is plain on its face on this point. In Order No. PSC-11-0347-PAA-EG, the Commission denied PEF's "Original Goal Scenario DSM Plan," therefore PEF was required to resubmit a modified plan within 30 days. Similarly, in Order No. PSC-11-0346-PAA-EG, the Commission denied FPL's "Modified DSM Plan," therefore FPL was required to resubmit a modified plan within 30 days. However, the Commission did not require that FPL or PEF resubmit a modified DSM plan within the statutory 30 day time frame, and thus violated §366.82(7), Fla. Stat.

As referenced *supra*, it is extremely telling that when the Commission denied PEF's original DSM plan submittal in Order No. PSC-10-0605-PAA-EG and denied FPL's original DSM plan submittal in Order No. PSC-11-0079-PAA-EG, it required PEF and FPL to resubmit a modified plan because their proposed plans were insufficient to meet the goals as required by Order No. PSC-10-0198-FOF-EG and Order No. PSC-09-0855-FOF-EG

respectively. However, when the Commission denied PEF's "Original Goal Scenario DSM Plan" and "Revised Goal DSM Plan" and FPL's "Modified DSM Plan" and "Alternate DSM Plan" at issue in this protest, it did not require PEF or FPL to resubmit a modified plan that was intended to meet the applicable goals. Rather, it simply allowed PEF and FPL to revert to their previously approved DSM plan which does not meet the applicable goal setting orders. Ultimately, the failure of the Commission to require the refilling of a modified DSM plan that meets the applicable goals adopted in 2009 not only violates the plain language of §366.82(7), Fla. Stat, but moreover showcases the confusion of violating the law in order to effectuate a procedurally improper de-facto goal change.

## **VI. Conclusion**

The Commission violated Fla. Stat. §366.82(7) in Commission Order Nos. PSC-11-0346-PAA-EG and PSC-11-0347-PAA-EG by relying on this statutory provision as authority to effectuate a change in FPL's and PEF's applicable conservation goals. This is a clear procedural violation as §366.82(7) only allows the Commission to, following the adoption of goals pursuant to the goal setting provisions of the statute, approve, modify, or deny DSM plans submitted by utilities to ensure the plans meet applicable goals. The Commission simply cannot adopt or change goals pursuant to §366.82(7); rather, the statute is clear and unambiguous in that goals can only be adopted or changed pursuant to §§366.82(2), (3) and (6), Fla. Stat.

Therefore, the Commission has violated the plain language of §366.82, Fla. Stat., by attempting to set or modify goals pursuant to §366.82(7). Though the plain language of the statute is clear, should the Commission determine that statutory construction is required, the legislative history of the 2008 amendments to the statute is clear that the Legislature

intended for more robust conservation goals to be set, and that the Commission must find ways to meet the goals in the most efficient and cost-effective manner. Thus, the Commission's orders are in direct contravention to legislative intent. Moreover, a statutory construction analysis clearly reveals that the Commission orders violate §366.82(7), Fla. Stat. by failing to construe the goal setting subsections *in pari materia*, which renders §§366.82(2), (3), (6) and (8), Fla. Stat. meaningless and produces an absurd result. Finally, the Commission violated § 366.82(7), Fla. Stat., by failing to require and FPL and PEF to resubmit a modified plan following denial of PEF's "Original Goal Scenario DSM Plan" and "Revised Goal DSM Plan, " and FPL's "Modified DSM Plan" and "Alternate DSM Plan" as is required by the statute.

**Wherefore,** SACE respectfully requests that the Commission vacate Commission Order Nos. PSC-11-0346-PAA-EG and PSC-11-0347-PAA-EG; and order the approval of: (1) the FPL "Modified DSM Plan" that meets the energy savings goals in Commission Order No. PSC-09-0855-FOF-EG; or in the alternative, the Commission 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; and (2) the PEF "Original Goals Scenario DSM Plan" that meets the energy savings goals in Commission Order No. PSC-10-0198-FOF-EG; or in the alternative, the Commission approve a portion of the PEF "Original Goal Scenario DSM Plan" which meet Commission approval and order PEF to submit a modified DSM Plan that addresses specific deficiencies identified by the Commission.

Respectfully submitted this 24<sup>th</sup> day of October, 2011.

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### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by US Mail and email on this 24th day of October 2011, to the following:

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/s/ George Cavros

George Cavros, Esq.

**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: October 24, 2011**

**In re: Petition for Approval of Demand-side  
Management Plan of Progress Energy  
Florida, Inc.**

**DOCKET NO. 100160-EG**

**Dated: October 24, 2011**

**APPENDICES TO SOUTHERN ALLIANCE FOR CLEAN ENERGY'S  
BRIEF SUPPORTING THE PROTEST OF ORDER NOS. PSC-11-0346-PAA-EG  
AND PSC-11-0347-PAA-EG**

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**DOCUMENT NO.    DATE**

**07757-11 10/24/11  
FPSC - COMMISSION CLERK**

## **APPENDIX A**

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for approval of numeric  
conservation goals by Florida Power & Light  
Company.

DOCKET NO. 040029-EG  
ORDER NO. PSC-04-0763-PAA-EG  
ISSUED: August 9, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman  
J. TERRY DEASON  
LILA A. JABER  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING NUMERIC CONSERVATION  
GOALS FOR FLORIDA POWER & LIGHT COMPANY

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Case Background

Section 366.82, Florida Statutes, part of the Florida Energy Efficiency and Conservation Act (FEECA), requires us to adopt goals to increase the efficiency of energy consumption, increase the development of cogeneration, and reduce and control the growth rates of electric consumption and weather-sensitive peak demand. Pursuant to Section 366.82(2), Florida Statutes, we must review a utility's conservation goals not less than every five years. Rules 25-17.001 and 25-17.0021, Florida Administrative Code implement these statutes.

We first established numeric conservation goals for Florida Power and Light Company (FPL) in Order No. PSC-94-1313-FOF-EG, issued October 25, 1994, in Docket No. 930548-EG, In Re: Adoption of Numeric Conservation Goals and Consideration of National Energy Policy Act Standards (Section 111) by Florida Power and Light Company, aff'd, Legal Environmental

Assistance Foundation, Inc. v. Susan F. Clark, et al. as Florida Pub. Serv. Comm'n, 668 So. 2d 982 (Fla. 1996). In that order, we found:

We will set overall conservation goals for each utility based on measures that pass both the participant and RIM tests. The record in this docket reflects that the difference in demand and energy savings between RIM and TRC portfolios are negligible. We find that goals based on measures that pass TRC but not RIM would result in increased rates and would cause customers who do not participate in a utility DSM measure to subsidize customers who do participate. Since the record reflects that the benefits of adopting a TRC goal are minimal, we do not believe that increasing rates, even slightly, is justified.

We set numeric conservation goals for FPL a second time in Order No. PSC-99-1942-FOF-EG, issued October 1, 1999, in Docket No. 971004-EG, In Re: Adoption of Numeric Conservation Goals by Florida Power and Light Company. In setting FPL's numeric goals, we accepted a stipulation between FPL and the Legal Environmental Assistance Foundation. Again, FPL's numeric goals were based on measures that passed the participant and Rate Impact Measure (RIM) tests.

The instant docket, opened on January 13, 2004, represents the third time that we will set numeric conservation goals for FPL. On June 1, 2004, FPL timely filed its new numeric goals. FPL also filed testimony and exhibits in support of the proposed goals.

This Order addresses FPL's petition for approval of its numeric conservation goals. We have jurisdiction over this matter pursuant to Sections 366.81 and 366.82, Florida Statutes.

#### Numeric Conservation Goals

FPL used a multi-stage analysis in developing its proposed demand-side management (DSM) goals. FPL first selected the potential measures to be analyzed for cost-effectiveness. FPL included the 205 measures analyzed in our two previous goal setting proceedings. FPL also included 124 additional measures, for a total of 329 measures. Each potential measure was then evaluated for cost-effectiveness against a base-case, supply-side only expansion plan.

FPL calculated RIM and participant test values for each potential measure. FPL also screened out measures which would have a payback period of less than two years for consumers. FPL's analysis resulted in 92 measures which passed the RIM test and did not have payback periods less than two years. The seasonal demand and annual energy savings associated with these cost-effective measures were then summed by market segment to arrive at FPL's proposed goals.

FPL's goals are as follows:

PROPOSED CONSERVATION GOALS - CUMULATIVE

Year	Residential			Commercial / Industrial		
	Summer MW	Winter MW	Annual GWh	Summer MW	Winter MW	Annual GWh
2005	47.8	26.0	90.3	26.3	12.8	31.5
2006	91.9	55.6	166.0	49.8	23.7	50.8
2007	140.6	89.2	246.9	71.3	33.3	59.1
2008	194.6	127.3	333.3	92.6	43.2	67.8
2009	252.1	168.0	424.1	113.8	53.5	77.0
2010	313.2	211.3	519.5	134.6	63.9	86.5
2011	377.1	256.5	617.9	155.1	74.4	96.4
2012	443.6	303.3	719.3	175.2	85.1	106.5
2013	512.8	352.0	823.7	195.1	96.1	116.9
2014	586.9	405.1	931.0	214.9	107.3	127.6

A comparison of FPL's current and proposed conservation goals is shown below. As shown in the table, FPL's proposed residential demand goals are higher than its existing goals, while FPL's proposed energy and commercial/industrial demand goals are lower than existing goals. FPL attributed the decrease primarily to the new minimum efficiency levels in the Florida State Energy Code, which will take effect in 2005. The increased efficiency level required by Florida's energy code will reduce the potential demand and energy savings of several of FPL's programs. The greatest impact of the building code changes can be seen in FPL's Commercial/Industrial Building Envelope; Heating, Ventilating, and Air-Conditioning; and Efficient Lighting programs. It should be noted that, according to FPL's most recent FEECA report, FPL has been successful in surpassing all six of its existing numeric demand and energy goals.

### COMPARISON OF PROPOSED AND EXISTING CONSERVATION GOALS

Year	Residential			Commercial / Industrial		
	Summer MW	Winter MW	GWh	Summer MW	Winter MW	GWh
Existing ( <i>cumulative 2000-2009</i> )	485.9	372.4	943.2	278.8	133.0	343.4
Proposed ( <i>cumulative 2005-2014</i> )	586.9	405.1	931.0	214.9	107.3	127.6

We have reviewed the programs, assumptions, and evaluation methodology used by FPL and find them to be reasonable. The DSM measures evaluated are based on an adequate assessment of the market segments and major end-use categories in accordance with Rule 25-17.0021(3), Florida Administrative Code. In addition, as required by the rule, FPL's analysis adequately reflects consideration of overlapping measures, rebound effects, free riders, interactions with building codes and appliance efficiency standards, and FPL's latest monitoring and evaluation of conservation programs and measures. FPL appropriately used the RIM and participant tests to determine the cost-effective level of achievable DSM goals. Therefore, we find that FPL's proposed annual residential and commercial/industrial winter and summer kW and annual kWh conservation goals for the period 2005 through 2014 shall be approved.

Rule 25-17.0021(4), Florida Administrative Code, requires each FEECA utility to submit for our approval a demand-side management plan designed to meet the utility's approved goals, within 90 days of the issuance of our order approving conservation goals. In accordance with the rule, FPL is required to submit its demand-side management plan within 90 days of the issuance of the order consummating this Proposed Agency Action Order. FPL's plan shall also specify the DSM programs which will be offered by FPL in order to meet its approved DSM goals for 2005 through 2014. The plan shall provide information about each program, as specified in Rule 25-17.0021(4), Florida Administrative Code, including: 1) details of the policies and procedures of the program; 2) the number of eligible customers; 3) participation estimates; 4) demand and energy savings estimates; 5) a methodology for measuring the actual program savings; and, 6) cost-effectiveness estimates.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's proposed annual numeric residential winter demand, summer demand, and annual energy conservation goals for the period 2005 through 2014 shall be approved as set forth in the body of this Order. It is further

ORDERED that Florida Power & Light Company's proposed annual numeric commercial/industrial winter demand, summer demand, and annual energy conservation goals for the period 2005 through 2014 shall be approved as set forth in the body of this Order. It is further

ORDERED that Florida Power & Light Company is required to file a demand-side management plan within 90 days of the issuance of the order consummating this Proposed Agency Action Order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that this docket shall remain open to allow the Commission to address Florida Power & Light Company's demand-side management plan.

By ORDER of the Florida Public Service Commission this 9th day of August, 2004.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

By: /s/ Marcia Sharma  
Marcia Sharma, Assistant Director  
Division of the Commission Clerk  
and Administrative Services

This is a facsimile copy. Go to the Commission's Web site, <http://www.floridapsc.com> or fax a request to 1-850-413-7118, for a copy of the order with signature.

( S E A L )  
AEV



NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, 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 will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 30, 2004.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

## **APPENDIX B**

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Commission review of numeric conservation goals (Florida Power & Light Company).	DOCKET NO. 080407-EG
In re: Commission review of numeric conservation goals (Progress Energy Florida, Inc.).	DOCKET NO. 080408-EG
In re: Commission review of numeric conservation goals (Tampa Electric Company).	DOCKET NO. 080409-EG
In re: Commission review of numeric conservation goals (Gulf Power Company).	DOCKET NO. 080410-EG
In re: Commission review of numeric conservation goals (Florida Public Utilities Company).	DOCKET NO. 080411-EG
In re: Commission review of numeric conservation goals (Orlando Utilities Commission).	DOCKET NO. 080412-EG
In re: Commission review of numeric conservation goals (JEA).	DOCKET NO. 080413-EG ORDER NO. PSC-09-0855-FOF-EG ISSUED: December 30, 2009

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman  
LISA POLAK EDGAR  
NANCY ARGENZIANO  
NATHAN A. SKOP  
DAVID E. KLEMENT

APPEARANCES:

R. WADE LITCHFIELD and JESSICA CANO, ESQUIRES, 700 Universe Blvd., Juno Beach, Florida 33408; and CHARLES A. GUYTON, ESQUIRE, Squire, Sanders & Dempsey, LLP, 215 South Monroe Street, Suite 601, Tallahassee, Florida 32301  
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On behalf of Progress Energy Florida, Inc. (PEF)

LEE L. WILLIS and JAMES D. BEASLEY, ESQUIRES, Ausley & McMullen, Post Office Box 391, Tallahassee, Florida 32302

On behalf of Tampa Electric Company (TECO)

JEFFREY A. STONE, RUSSELL A. BADDERS, and STEVEN R. GRIFFIN, ESQUIRES, Beggs & Lane, Post Office Box 12950, Pensacola, Florida 32591-2950

On behalf of Gulf Power Company (GULF)

NORMAN H. HORTON, JR., ESQUIRE, Messer, Caparello & Self, P.A., Post Office Box 15579, Tallahassee, Florida 32317

On behalf of Florida Public Utilities Company (FPUC)

ROY C. YOUNG, ESQUIRE, Young vanAssenderp, P.A., 225 South Adams Street, Suite 200, Tallahassee, Florida 32301; W. CHRIS BROWDER, ESQUIRE, Orlando Utilities Commission, 100 W. Anderson Street, Orlando, Florida 32802

On behalf of Orlando Utilities Commission (OUC)

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On behalf of JEA

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On behalf of ITRON, Inc.

JEREMY SUSAC, Executive Director, Florida Energy and Climate Commission, 600 South Calhoun Street, Suite 251, Tallahassee, Florida 32399-0001

On behalf of the Florida Energy and Climate Commission (FECC)

VICKI GORDON KAUFMAN, JON C. MOYLE, JR., ESQUIRES, Keefe Anchors Gordon & Moyle, P.A., 118 North Gadsden Street, Tallahassee, Florida 32301; and JOHN W. MCWHIRTER, JR., ESQUIRE, McWhirter Law Firm, Post Office Box 3350, Tampa, Florida 33601-3350

On behalf of the Florida Industrial Power Users Group (FIPUG)

SUZANNE BROWNLESS, ESQUIRE, Suzanne Brownless, PA, 1975 Buford Blvd., Tallahassee, Florida 32308

On behalf of the Florida Solar Coalition (FSC)

E. LEON JACOBS, JR., ESQUIRE, Williams & Jacobs, LLC, 1720 S. Gadsden St., MS 14, Suite 201, Tallahassee, Florida 32301; BENJAMIN LONGSTRETH, Natural Resources Defense Council, 1200 New York Avenue NW, Washington, DC 20005; BRANDI COLANDER, Natural Resources Defense Council, 40 West 20th Street, New York, NY 10011; DANIEL WEINER, Jenner & Block, 1099 New York Avenue NW, Washington, DC; and GEORGE S. CAVROS, ESQUIRE, 120 E. Oakland Park Boulevard, Suite 105, Fort Lauderdale, Florida 33334

On behalf of the Natural Resources Defense Council (NRDC) and Southern Alliance for Clean Energy (SACE)

KATHERINE E. FLEMING and ERIK L. SAYLER, ESQUIRES, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399

On behalf of the Florida Public Service Commission (Staff)

MARY ANNE HELTON, DEPUTY GENERAL COUNSEL, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399

Advisor to the Florida Public Service Commission

### FINAL ORDER APPROVING NUMERIC CONSERVATION GOALS

BY THE COMMISSION:

#### BACKGROUND

Sections 366.80 through 366.85, and 403.519, Florida Statutes (F.S.), are known collectively as the Florida Energy Efficiency and Conservation Act (FEECA). Section 366.82(2), F.S., requires us to adopt appropriate goals designed to increase the conservation of expensive resources, such as petroleum fuels, to reduce and control the growth rates of electric consumption and weather-sensitive peak demand. Pursuant to Section 366.82(6), F.S., we must review the conservation goals of each utility subject to FEECA at least every five years. The seven utilities subject to FEECA are Florida Power & Light Company (FPL), Progress Energy Florida, Inc. (PEF), Tampa Electric Company (TECO), Gulf Power Company (Gulf), Florida Public Utilities Company (FPUC), Orlando Utilities Commission (OUC), and JEA (referred to collectively as the FEECA utilities). Goals were last established for the FEECA utilities in August 2004 (Docket Nos. 040029-EG through 040035-EG). Therefore, new goals must be established by January 2010.

In preparation for the new goals proceeding, we conducted a series of workshops exploring energy conservation initiatives and the requirements of the FEECA statutes. The first workshop, held on November 29, 2007, explored how we could encourage additional energy conservation. A second workshop held on April 25, 2008, examined how the costs and benefits of utility-sponsored energy conservation or demand-side management (DSM) programs, that target end-use customers, should be evaluated.

In 2008, the Legislature amended Section 366.82, F.S., such that when goals are established, we are required to: (1) evaluate the full technical potential of all available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy systems, (2) establish goals to encourage the development of demand-side renewable energy systems, and (3) allow efficiency investments across generation, transmission, and distribution as well as efficiencies within the user base. The Legislature also authorized us to allow an investor-owned electric utility (IOU) an additional return on equity of up to 50 basis points for exceeding 20 percent of their annual load-growth through energy efficiency and conservation measures and may authorize financial penalties for those utilities that fail to meet their goals. The additional return on equity shall be established by this Commission through a limited proceeding. Finally, the amendments to Section 366.82, F.S., provided funds for this Commission to obtain professional consulting services if needed. These statutes are implemented by Rules 25-17.001 through 25-17.0015, Florida Administrative Code (F.A.C.).

We held a third workshop on June 4, 2008, focused on appropriate methodologies for collecting information for a technical potential study. On June 26, 2008, seven dockets (080407-EG through 080413-EG) were established and represent the fourth time that we will set numeric conservation goals for each of the FEECA utilities. On November 3, 2008, we held a fourth workshop on the development of demand-side and supply-side conservation goals, including demand-side renewable energy systems. The results of the Technical Potential Study, conducted by the consulting firm ITRON on behalf of the seven FEECA utilities were presented at a fifth Commission workshop held on December 15, 2008.

On November 13, 2008, our staff contracted with GDS Associates, Inc. (GDS) to provide independent technical consulting and expert witness services during the conservation goal-setting proceeding. GDS is a multi-service engineering and management consulting firm, headquartered in Marietta, Georgia, with offices in Alabama, Texas, Maine, New Hampshire, Wisconsin, and Virginia. The firm has a broad array of management, strategic, and programmatic consulting expertise and specializes in energy, energy efficiency, water and utility planning issues. GDS was retained to review and critique the overall goals proposed by each utility, provide expert testimony and recommendations on alternative goals, where warranted. As an independent consultant, GDS was neither a separate party nor a representative of the staff. As such, GDS did not file post-hearing position statements or briefs.

By Order No. PSC-08-0816-PCO-EG, issued December 18, 2008, these dockets were consolidated for purposes of hearing and controlling dates were established. By Order No. PSC-09-0152-PCO, issued March 12, 2009, the controlling dates were revised, requiring the utilities

to file direct testimony and exhibits on June 1, 2009. FPUC requested, and was granted, an extension of time to file its direct testimony on June 4, 2009.

The Natural Resources Defense Council and the Southern Alliance for Clean Energy (NRDC/SACE) were granted leave to intervene by the Commission on January 9, 2009.<sup>1</sup> The Florida Solar Coalition (FSC) was granted leave to intervene on January 27, 2009.<sup>2</sup> We acknowledged the intervention of the Florida Energy and Climate Commission (FECC) on March 11, 2009.<sup>3</sup> The Florida Industrial Power Users Group (FIPUG) was granted leave to intervene on July 15, 2009.<sup>4</sup>

An evidentiary hearing was held on August 10 - 13, 2009. We have jurisdiction over this matter pursuant to Sections 366.80 through 366.82, F.S.

On August 28, 2009, the FECC filed post-hearing comments in the proceeding. While the FECC took no position on any issues, the FECC concluded in its post-hearing comments that:

The PSC should approve a level of goals for each utility that satisfies the utility's resource needs and results in reasonably achievable lower rates for all electric customers. As called for in the recent legislation, the PSC should also take into account environmental compliance costs that are almost a certainty over this goals-planning horizon. In this regard, the FECC supports a reasonably achievable level of DSM Goals based on measures that pass the E-RIM and Participants Tests to achieve the least-cost strategy for the general body of ratepayers. Additionally, the FECC believes that coupling cost-effective measures that satisfy E-RIM with solar measures that do not satisfy E-RIM will increase the customer take rate of solar applications at the lowest possible cost.

#### TECHNICAL POTENTIAL STUDY

For the current goal setting proceeding, the seven FEECA utilities invited NRDC/SACE to form a Collaborative to conduct an assessment of the technical potential for energy and peak demand savings from energy efficiency, demand response, and customer-scale renewable energy in their service territories.<sup>5</sup> The Collaborative then developed a request for proposal to conduct the study. The proposals were evaluated and the ITRON team was selected by the Collaborative to conduct the Technical Potential Study.<sup>6</sup>

FPL contended that the Technical Potential Study employed an iterative process that began with a list of measures that were provided within its original request for proposal (RFP).

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<sup>1</sup> Order No. PSC-09-0027-PCO-EG, issued January 9, 2009 (NRDC/SACE).

<sup>2</sup> Order No. PSC-09-0062-PCO-EG, issued January 27, 2009 (FSC).

<sup>3</sup> Order No. PSC-09-0150-PCO-EG, issued March 11, 2009 (FECC).

<sup>4</sup> Order No. PSC-09-0500-PCO-EG, issued July 15, 2009 (FIPUG).

<sup>5</sup> Technical Potential for Electric Energy and Peak Demand Savings in Florida, Final Report, pp. 1-1.

<sup>6</sup> Technical Potential for Electric Energy and Peak Demand Savings in Florida, Final Report, pp. 1-1 – 1-2.

PEF stated that the study focuses on measures that will work in Florida, have the greatest potential impact, and have a realistic possibility for adoption. TECO argued that using the collaborative process allowed each member to draw upon the collective judgment of the group, which would insure the ultimate proposals were the product of a rigorous and orderly process. Gulf asserted that NRDC/SACE were able to submit additional measures to be considered for analysis in the technical potential. FPUC argued that the study provides an adequate assessment of the technical potential. JEA/OUC argued that the study used measures and assessment techniques that were fully vetted through the collaborative process. The FEECA utilities contended that the study commissioned by the Collaborative satisfies Section 366.82(3), F.S.

NRDC/SACE argued that the study did not provide an adequate assessment of the technical potential. NRDC/SACE stated that the technical potential does not consider the full technical potential of all available demand- and supply-side efficiency measures. FSC argued that ranking measure savings by the use of "stacking" by the Collaborative is incorrect. FSC also criticized the study for omitting solar hybrid systems. FIPUG's brief and the comments filed by the FECC did not specifically address the Technical Potential Study.

### Analysis

Witness Rufo, Director in the Consulting and Analysis Group at ITRON, stated that the technical potential is a theoretical construct that represents an upper limit of energy efficiency. Technical potential is what is technically feasible, regardless of cost, customer acceptance, or normal replacement schedules. The Technical Potential Study was conducted for each FEECA utility and then combined to create a statewide technical potential.

According to the testimony of witness Rufo, the Collaborative's first step was to identify and select the energy efficiency, demand response, and solar photovoltaic (PV) measures to be analyzed. The energy efficiency measures were developed with the FEECA utilities, ITRON, and NRDC/SACE, all proposing measures. Once a master list was developed, ITRON conducted assessments of data availability and measure specific modeling issues. Demand response measures were identified using a combination of literature reviews of current programs and discussions within the Collaborative. The PV measures were identified by explicitly considering six characteristics specific to PV electrical systems. The six characteristics are: (1) PV material type, (2) energy storage, (3) tracking versus fixed, (4) array mounting design, (5) host sites, and (6) on- versus off-grid systems.

The ITRON assessment of the full technical potential included 257 unique energy efficiency measures, seven demand response programs, and three unique PV measures. Included in the energy efficiency list were 61 residential measures, 78 commercial measures, and 118 industrial measures. The demand response list included five residential, and two commercial/industrial measures. The PV list included one residential (roof top application) and two commercial measures (one rooftop application and one parking lot application).



Some of the 257 measures, such as Seasonal Energy Efficiency Ratio (SEER) 19 central air conditioners, hybrid desiccant-direct expansion cooling systems, and heat pump water heaters are likely to face supply constraints in the near future. The energy efficiency list also includes some end-use specific renewable measures, e.g., solar water heating and PV-powered pool pumps. While some measures may have obstacles to overcome regarding customer acceptance, it is appropriate to include them in the technical potential.

The table below shows the results of the Statewide Technical Potential Study. Baseline energy is the total electricity sales for the FEECA utilities in 2007.<sup>7</sup>

Sector	Annual Energy			Summer System Peak			Winter System Peak		
	Base line (2007)	Technical Potential		Base line (2007)	Technical Potential		Base line (2007)	Technical Potential	
	(GWh)	(GWh)	(%)	(MW)	(MW)	(%)	(MW)	(MW)	(%)
Residential	94,745	36,584	38.6%	22,263	10,032	45.1%	22,728	6,461	28.4%
Commercial	65,051	19,924	30.6%	9,840	4,079	41.5%	7,490	2,206	29.5%
Industrial	11,877	2,108	17.7%	1,721	265	12.8%	1,289	217	17.5%
Total	171,672	58,616	34.1%	33,825	14,375	42.5%	31,508	8,883	28.2%

None of the parties offered any alternatives that were Florida-specific. They only showed that other states showed greater potential. They were unable to show how savings in other states could be achieved in Florida. Witness Rufo testified that criticisms of the ITRON data and modeling methods by NRDC/SACE and the staff witness are either without merit, inaccurate, or insignificant. Witness Rufo further testified that the baseline and measure data used in the Technical Potential Study reflect the best available data given the time and resources available.

The FEECA utilities did not develop supply-side conservation or efficiency measures to the same degree that they did demand-side measures. Generating utilities made note of their ongoing or planned efficiency and savings projects, but did not subject supply-side measures to the same analysis, nor did they develop the extensive lists of measures, that were examined by ITRON for demand-side savings. Supply-side measures require substantially different analytical methods than do demand-side systems and provide results that are difficult to combine with conservation goals. Supply-side efficiencies and conservation, rendered properly, would result either in less fuel being required or less loss along the transmission and distribution network. The Commission routinely addresses opportunities for supply-side efficiency improvements in our review of Ten-Year Site Plans. Therefore, such measures are better addressed separately from demand-side measures where their options can be better explored.

<sup>7</sup> Technical Potential for Electric Energy and Peak Demand Savings in Florida, Final Report, pp. 3-14.

### Conclusion

Based on the record, we find that the Collaborative provided an adequate assessment of the technical potential of all available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy systems, pursuant to Section 366.82(3), F.S.

### ACHIEVABLE POTENTIAL

Each of the FEECA utilities agreed that an adequate assessment of achievable potential was provided. The FEECA utilities that addressed the supply-side options, likewise, agreed that it was better addressed through a separate proceeding.

FSC, in its post-hearing brief, found the assessment insufficient for the five IOUs. FSC took no position on the municipal utilities. FSC's objection in the case of the IOUs mainly related to problems it had with the cost-effectiveness testing used in the process, which is further addressed below. NRDC/SACE, in its post-hearing brief, argued that the achievable potential was insufficient across the board and cited opposition to the cost-effectiveness testing.

Following the development of the DSM technical potential, previously discussed, three steps were used to develop the achievable potential: initial cost-effectiveness screening, determination of incentive levels, and development of achievable potential for six separate scenarios. Discussion of each step follows. FPUC, JEA, and OUC did not use this process and are discussed separately.

### Initial Cost-Effectiveness Screening

During this phase of the process, the four generating IOUs (FPL, PEF, TECO, and Gulf) applied three cost-effectiveness tests to each measure: Enhanced Rate Impact Measure Test (E-RIM), Enhanced Total Resource Cost Test (E-TRC), and the Participants Test. None of the three tests included incentives that could be provided to participating customers. During this phase of the testing, the utilities also identified measures that had a payback period of less than two years in order to identify the free riders. Rule 25-17.0021(3), F.A.C., reads, in part:

Each utility's projection shall reflect consideration of overlapping measures, rebound effects, free riders, interactions with building codes and appliance efficiency standards, and the utility's latest monitoring and evaluation of conservation programs and measures.

In order to meet the requirements of this Rule, the four generating IOUs removed certain measures because of participant "payback" periods of less than two years. Savings realized from such measures exceeded their costs within two years, according to utility analysis. These savings result from reduced kWh usage and, resultantly, a lower bill. The costs of such measures are up-front capital costs, where they exist, of installing or beginning the measure. Measures must both pass the Participants Test and have a payback of two years or less without any incentives to

be removed during this step. We initially recognized a two-year payback period to address the free-ridership issue following the 1994 conservation goals hearing. By Order No. PSC-94-1313-FOF-EG,<sup>8</sup> we initially recognized FPL's use of the two-year payback period, and it has been used consistently ever since.

The two-year payback period was agreed to by the Collaborative as a means of addressing the free-ridership issue. In his testimony, FPL witness Dean described the rationale for the two-year period. He noted that estimates of the annual return on investment required to spur purchase of energy efficiency measures range from approximately 26 percent, which represents a payback period of just under four years, to over 100 percent, which represents a payback period less than a year. He further noted that most studies place the annual return on investment necessary to incent purchase in the 40 to 60 percent range. A 50 percent figure, which represents a payback of exactly two years, is squarely in the middle of that range.

The two-year payback criterion identified a substantial amount of energy savings from demand-side measures. For an illustrative example, the following chart demonstrates the amount of energy savings that could potentially be achieved from such measures:

Utility	(A) Maximum Achievable E-TRC (GWh)*	(B) E-TRC + 2-year payback measures (GWh)*	(C) Amount excluded due to 2-year screen (GWh) (B-A)	(D) Percent excluded due to 2-year screen (C/B)
FPL	2177.0	12066.9	9889.9	82.0%
PEF	1584.5	4689.8	3105.3	66.2%
TECO	310.3	1939.9	1629.6	84.0%
Gulf	251.4	1279.9	1028.5	80.4%
JEA	138.5	1070.7	932.2	87.1%
OUC	78.8	511.2	432.4	84.6%
FPUC	12.9	59.2	46.3	78.2%
Total	4553.4	21617.6	17064.2	78.9%

Even though the utilities did not include such measures in their proposed goals, customers are still free to adopt such measures and realize the resultant financial savings the measures represent. We are concerned that the utilities' use of the two-year payback criteria had the effect of screening out a substantial amount of potential savings. In order to recognize this potential, we have included in the residential goals for FPL, PEF, Gulf and TECO, savings from

<sup>8</sup> Order No. PSC-94-1313-FOF-EG, issued October 25, 1994, Docket No. 93-0548-EG, 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. 93-0549-EG, In re: Adoption of Numeric Conservation Goals and Consideration of National Energy Policy Act Standards (Section 111) by Florida Power Corporation; Docket No. 93-0550-EG, In re: Adoption of Numeric Conservation Goals and Consideration of National Energy Policy Act Standards (Section 111) by Gulf Power Company; Docket No. 93-0551-EG, In re: Adoption of Numeric Conservation Goals and Consideration of National Energy Policy Act Standards (Section 111) by Tampa Electric Company.

the residential measures included in the top-ten energy savings measures that were screened-out by the two-year payback criterion.

### Incentive Levels

The second step in the process for the four generating IOUs was to establish proper incentive levels. As a result, incentive levels for measures that did not pass the Participants Test during the initial cost-effectiveness screening (without incentives) were adjusted until the measures passed. Following this action, the E-RIM and E-TRC tests were re-run using costs that included the resulting incentive. Some measures that could not pass the Participants Test cost-effectiveness screening without incentives were removed from the achievable potential at this stage. Because measures were required to pass the Participants Test as well as E-RIM or E-TRC, incentives added to measures to allow them to be cost-effective for customers rendered some measures no longer cost-effective under either the E-RIM or E-TRC tests.

### Scenario Analysis

In the third step of the process, the four generating IOUs analyzed measures that passed cost-effectiveness screening with incentives, in order to develop six scenarios for achievable potential. These utilities developed low, mid, and high incentive scenarios for both E-RIM and E-TRC. From these six scenarios, the achievable potential was developed. This achievable potential formed the basis of the goals proposed by the utilities in the next step of the overall process.

### Other FEECA Utilities

FPUC, OUC, and JEA allowed ITRON to develop the achievable potential for them. ITRON followed a similar process in developing the achievable potential for the three small utilities that was followed for the generating IOUs in making their calculations. In each of these three cases, ITRON found no DSM measures that passed the E-RIM Test. As a result, the achievable potential for each of these three utilities was zero in all categories. These utilities are all smaller than the generating IOUs. Because of fewer customers, administrative costs and program development tend to render measures less cost-effective than they are for the generating IOUs.

### Demand-Side Renewable Energy Systems

The Collaborative analyzed a small range of renewable energy systems in their analysis of achievable potential.<sup>9</sup> These measures were confined to geothermal heat pumps, solar water heaters, and small photovoltaic (PV) systems. These renewable energy systems were subjected to the same range of cost-effectiveness testing as the DSM measures discussed above. The generating IOUs found that some geothermal heat pumps did pass the cost-effectiveness tests

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<sup>9</sup> Technical Potential for Electric Energy and Peak Demand Savings in Florida, Final Report, pp. A1 – A27.

and were included in the achievable potential. PEF also included some solar thermal measures in its achievable potential. No FEECA utility found that Solar PV measures passed the economic screening and thus should not be included in the achievable potential. Renewable energy systems were subject to the same analysis as conventional energy efficiency measures and either were incorporated into or excluded from achievable potential by the same standards.<sup>10</sup>

### Conclusion

Each of the FEECA utilities, with the aid of ITRON, performed an adequate analysis of the demand-side conservation and efficiency measures, including demand-side renewable energy systems. The FEECA utilities did not provide an analysis of supply-side measures. We agree, however, that the methods appropriate to analyze demand-side measures are not well-suited to weighing supply-side measures. As a result, supply-side measures are best addressed in a separate proceeding.

### REQUIRED COST-EFFECTIVENESS TESTS

Recent amendments to Section 366.82, F.S., provide greater specificity as to what we must consider when establishing conservation goals. The recent amendments, in relevant part, are as follows:

- (3) In developing the goals, the commission shall evaluate the full technical potential of all available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy systems. In establishing the goals, the commission shall take into consideration:
  - (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.

### Appropriate Test for Section 366.82(3)(a), F.S.

All parties, except FSC, agreed that the Participants Test captures all of the relevant costs and benefits for customers who elect to participate in a DSM measure. The parties further agreed that the requirements of Section 366.82(3)(a), F.S., are reflected in the proposed goals because all included measures pass the Participants Test.

FSC argued that the goals proposed by FPL, PEF, TECO, Gulf, and FPUC do not adequately reflect the costs and benefits to customers participating in the measures pursuant to Section 366.82(3)(a), F.S. FSC appears to take issue with the techniques employed by the IOUs in calculating the energy savings and incentives for solar measures and argued that these flawed calculations cause solar measures to fail the Participants Test. In its analysis, FSC explained

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<sup>10</sup> Technical Potential for Electric Energy and Peak Demand Savings in Florida, Final Report, pp. ES5 – ES 6.

how the impact of “stacking” increases the necessary incentive and lowers the energy savings attributed to solar technologies, thereby increasing the likelihood that these measures will fail the Participants Test. FSC took no position regarding OUC and JEA.

Section 366.82(3)(a), F.S., requires that we take into consideration the costs and benefits to customers participating in any measure to be included in a utility’s DSM program. In addition, Rule 25-17.008, F.A.C., incorporates our Cost Effectiveness Manual.<sup>11</sup> The Cost Effectiveness Manual requires the application of the Participants Test in order to determine the cost-effectiveness of conservation programs by measuring the impact of the program on the participating customers. The customers’ benefits of participation in programs may include bill reductions, incentives, and tax credits. Customer’s costs may include bill increases, equipment and materials, and operations and maintenance.

Although FSC expressed its opinion that the inputs to the Participants Test are flawed, it agreed with the application of this test in general, along with the E-TRC Test. However, FSC offered no alternative inputs for the investor-owned utilities, nor did it provide any alternative to the results obtained from the application of the Participants Test. The FSC questioned ITRON on its use of “stacking” in the Technical Potential Study. Stacking is a means to understand the interaction between available measures to make sure that savings are not double counted. Witness Rufo testified that the use of “stacking” is an accepted practice to eliminate double counting that could occur if the measures were not stacked. We believe that “stacking” is useful and justified as it is a means to ensure that the savings from a program are not counted if those savings would be offset by the savings in a different measure.

We find that the Participants Test, as used by the utilities in this proceeding, satisfies the requirements of Section 366.82(3)(a), F.S. As described in Rule 25-17.008, F.A.C., the Participants Test measures the impact of the program on the participating customers. Based on the evidence in the record, as well as existing Commission Rules, we find that the Participants Test must be considered when establishing conservation goals in order to satisfy Section 366.82(3)(a), F.S.

Appropriate Test for Section 366.82(3)(b), F.S.

The FEECA utilities agreed that Section 366.82, F.S., does not specify or require a single cost-effectiveness test, but that a combination of two tests is sufficient to meet the requirements, specifically the RIM and Participants Tests. The TRC Test is considered by the utilities to be insufficient to meet the statute, and goals based upon it would have an upward pressure on rates. They also agreed that their analysis was comprehensive, including effects from a variety of sources, such as building codes, overlapping measures, appliance standards, and other sources. Four of the seven FEECA utilities filed “enhanced” versions of the RIM and TRC tests, referenced as E-RIM and E-TRC. These tests included benefits from avoided carbon compliance costs.

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<sup>11</sup> Florida Public Service Commission Cost Effectiveness Manual for Demand Side Management Programs and Self-Service Wheeling Proposals, effective July 17, 1991.



NRDC/SACE asserted that the language found in Section 366.82(3)(b), F.S., clearly describes the TRC Test. NRDC/SACE argued that the TRC Test is the cost-effectiveness test that focuses on the “general body of ratepayers as a whole.” NRDC/SACE further elaborated that the TRC Test, unlike the RIM Test, includes both “utility incentives and participant contributions.” In addition, a flaw in the calculation of benefits is the denial of value for reduced demand until the in-service date of the avoided unit. Also, the possibility of avoiding units that are already approved but have not yet finished construction should be considered. Finally, NRDC/SACE contended that administrative costs allocated to measures were unreasonable and caused an inappropriate reduction of the goals.

FIPUG suggested that we primarily consider the final impact on customers, and that any goals should not present an undue rate impact upon customers. FIPUG contended that we should continue to give significant weight to the RIM Test. FIPUG asserted, however, that the test should be performed consistently and uniformly between utilities.

FSC asserted that the analysis by the investor-owned utilities was insufficient, and that the reduction of savings associated with solar measures was reduced by inappropriately stacking measures. FSC supported the E-TRC and Participants Tests, and further suggested that measures should be considered in combination or on a portfolio basis.

Section 366.82(3)(b), F.S., requires this Commission to consider “[t]he costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions.” Both the RIM and TRC Tests address costs and benefits beyond those associated solely with the program participant. Four of the seven FEECA utilities filed “enhanced” versions of the RIM and TRC tests, referenced as E-RIM and E-TRC. These tests are identical to the RIM and TRC tests but include an estimate of avoided carbon compliance costs. As such, E-RIM and E-TRC portfolios will have greater savings than RIM or TRC portfolios respectively.

Rule 25-17.008, F.A.C., and the Cost Effectiveness Manual were adopted as part of the implementation of Section 366.82, F.S., prior to the recent amendments. Rule 25-17.008(3), F.A.C., directs us to evaluate the cost-effectiveness of conservation measures and programs utilizing the following three tests: (1) the Participants Test, (2) the Total Resource Cost Test (TRC), and (3) the Rate Impact Measure Test (RIM). Rule 25-17.008(4), F.A.C., allows a party to provide additional data for cost-effectiveness reporting, such as the E-RIM and E-TRC tests. The figure below provides an illustration of the costs and benefits evaluated under each test.

**Summary of Cost Effectiveness Test Components**

	Participant	Total Resource Cost	Rate Impact Measure
	Benefits		
	Bill Savings	Avoided Generation	Avoided Generation
	Incentives	Avoided Distribution	Avoided Distribution
	Tax Credits	Net System Fuel	Net System Fuel
Costs	Measure Cost	Equipment	Equipment
		Administrative	Administrative
		Measure Cost	Incentives
			Lost Revenues

It should first be noted that the RIM and TRC tests both consider benefits associated with avoiding supply side generation, i.e., construction of power plants, transmission, and distribution. The RIM and TRC tests also consider costs associated with additional supplies and costs associated with the utilities cost to offer the program. While some similarities exist between the two tests, it is the differences that are significant in determining which one, if not both, complies with Section 366.82(3)(b), F.S., and should be used to establish goals. The table below focuses on the differences in costs between the two tests.

**Difference Between RIM and TRC Tests**

	Total Resource Cost	Rate Impact Measure
Costs	Measure Cost	Incentives
		Lost Revenues

As illustrated above, the RIM Test considers utility offered incentives which are specifically required in Section 366.82(3)(b), F.S. Utility offered incentives are recovered through the Energy Conservation Cost Recovery clause and are a cost borne by all ratepayers. Therefore, a customer participating in a program, which is incentivized by the utility, receives a benefit; however, the incentive paid by the utility results in a cost to the general body of ratepayers. The TRC Test does not consider costs associated with utility incentives.



The TRC Test, as described in Rule 25-17.008, F.A.C., measures the net costs of a conservation program as a resource option based on the total costs of the program, including both the participants' and the utility's costs. The consideration of costs incurred by the participant is specifically required by Section 366.82(3)(b), F.S. Because the TRC Test excludes lost revenues, a measure that is cost-effective under the TRC Test would be less revenue intensive than a utility's next planned supply-side resource addition. However, the rate impact may be greater due to the reduced sales.

When establishing conservation goals, Section 366.82(3)(d), F.S., requires us to consider the costs imposed by state and federal regulations on the emission of greenhouse gases. The statute does not define "greenhouse gases," nor requires us to consider projected costs that may be imposed. However, in considering this requirement, the utilities viewed CO<sub>2</sub> as one of the generally accepted greenhouse gases close to being regulated. Other regulated gases, such as sulfur dioxide (SO<sub>x</sub>) and nitrous oxides (NO<sub>x</sub>), are already regulated by federal statute and the costs are included in the standard RIM and TRC tests. Each utility's calculation of a measures' cost-effectiveness employed modified versions of the RIM and the TRC tests that added a cost impact of CO<sub>2</sub> to the calculations. The revised tests are referred to as the E-RIM and E-TRC Tests. The utilities used different sources to establish the cost of CO<sub>2</sub> emissions, thereby employing different values in their cost-effectiveness testing. Therefore, FPL's goals could not be determined using TECO's estimated CO<sub>2</sub> costs.

### Conclusion

While all parties agreed that the Participants Test is required by Section 366.82(3)(a), F.S., the same consensus does not exist when determining the appropriate test or tests for Section 366.82(3)(b) and (d), F.S. The seven FEECA utilities believe that the E-RIM Test satisfies the requirements of the statute while NRDC/SACE and FSC believe the E-TRC Test satisfies the requirements. We would note that the language added in 2008 did not explicitly identify a particular test that must be used to set goals. Based on the analysis above, we find that consideration of both the RIM and TRC tests is necessary to fulfill the requirements of Section 366.82(3)(b), F.S. Both the RIM and the TRC Tests address costs and benefits beyond those associated solely with the program participant. By having RIM and TRC results, we can evaluate the most cost-effective way to balance the goals of deferring capacity and capturing energy savings while minimizing rate impacts to all customers. The "enhanced" versions of the RIM and TRC tests, referenced as E-RIM and E-TRC, are identical to the RIM and TRC tests, but include an estimate of avoided carbon compliance costs. As such, E-RIM and E-TRC portfolios will have greater savings than RIM or TRC portfolios respectively.

### COMMISSION APPROVED GOALS

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. The unconstrained E-TRC test is cost effective, from a system basis, and does not limit the amount of energy efficiency based on resource reliability needs. The E-TRC test

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includes cost estimates for future greenhouse gas emissions, but does not include utility lost revenues or customer incentive payments. As such, the E-TRC values are higher than the utility proposed E-RIM values. In addition, we have included the saving estimates for the residential portion of the top ten measures that were shown to have a payback period of two years or less in the numeric goals for FPL, PEF, TECO, and Gulf. When submitting their programs for our approval, the utilities can consider the residential portion of the top ten measures, but they shall not be limited to those specific measures.

OUC and JEA proposed goals of zero, yet committed to continue their current DSM program offerings. We are setting goals for OUC and JEA based on their current programs so as not to unduly increase rates. The annual numeric goals for each utility are shown below:

**Commission-Approved Conservation Goals for FPL**

<b>Residential</b>									
<b>Summer (MW)</b>				<b>Winter (MW)</b>			<b>Annual (GWh)</b>		
<b>Year</b>	<b>E-TRC</b>	<b>Residential &lt;2-Yr. Payback</b>	<b>Commission Approved Goal</b>	<b>E-TRC</b>	<b>Residential &lt;2-Yr. Payback</b>	<b>Commission Approved Goal</b>	<b>E-TRC</b>	<b>Residential &lt;2-Yr. Payback</b>	<b>Commission Approved Goal</b>
2010	25.2	42.5	67.7	20.9	12.3	33.2	29.1	90.5	119.6
2011	37.2	42.5	79.7	30.1	12.3	42.4	55.3	90.5	145.8
2012	47.7	42.5	90.2	38.0	12.3	50.3	78.3	90.5	168.8
2013	56.0	42.5	98.5	44.0	12.3	56.3	96.2	90.5	186.7
2014	61.8	42.5	104.3	47.9	12.3	60.2	109.5	90.5	200.0
2015	58.2	42.5	100.7	43.6	12.3	55.9	102.5	90.5	193.0
2016	53.4	42.5	95.9	39.0	12.3	51.3	92.9	90.5	183.4
2017	48.9	42.5	91.4	34.7	12.3	47.0	83.7	90.5	174.2
2018	44.9	42.5	87.4	30.9	12.3	43.2	75.9	90.5	166.4
2019	40.8	42.5	83.3	27.1	12.3	39.4	67.0	90.5	157.5
<b>Total</b>	<b>474.0</b>	<b>425.0</b>	<b>899.0</b>	<b>356.0</b>	<b>123.0</b>	<b>479.0</b>	<b>790.3</b>	<b>905.0</b>	<b>1,695.3</b>

<b>Commercial/Industrial</b>									
<b>Summer (MW)</b>				<b>Winter (MW)</b>			<b>Annual (GWh)</b>		
<b>Year</b>	<b>E-TRC</b>	<b>Residential &lt;2-Yr. Payback</b>	<b>Commission Approved Goal</b>	<b>E-TRC</b>	<b>Residential &lt;2-Yr. Payback</b>	<b>Commission Approved Goal</b>	<b>E-TRC</b>	<b>Residential &lt;2-Yr. Payback</b>	<b>Commission Approved Goal</b>
2010	42.7	0.0	42.7	8.1	0.0	8.1	84.7	0.0	84.7
2011	62.5	0.0	62.5	9.9	0.0	9.9	149.4	0.0	149.4
2012	76.3	0.0	76.3	11.6	0.0	11.6	191.5	0.0	191.5
2013	81.3	0.0	81.3	13.1	0.0	13.1	202.7	0.0	202.7
2014	79.3	0.0	79.3	14.4	0.0	14.4	194.1	0.0	194.1
2015	71.5	0.0	71.5	15.1	0.0	15.1	167.5	0.0	167.5
2016	60.0	0.0	60.0	15.0	0.0	15.0	134.2	0.0	134.2
2017	48.7	0.0	48.7	14.1	0.0	14.1	104.8	0.0	104.8
2018	41.3	0.0	41.3	13.2	0.0	13.2	86.9	0.0	86.9
2019	35.0	0.0	35.0	12.0	0.0	12.0	71.0	0.0	71.0
<b>Total</b>	<b>598.7</b>	<b>0.0</b>	<b>598.7</b>	<b>126.3</b>	<b>0.0</b>	<b>126.3</b>	<b>1,386.7</b>	<b>0.0</b>	<b>1,386.7</b>

**Commission-Approved Conservation Goals for PEF**

<b>Residential</b>									
<b>Summer (MW)</b>				<b>Winter (MW)</b>			<b>Annual (GWh)</b>		
<b>Year</b>	<b>E-TRC</b>	<b>Residential &lt;2-Yr. Payback</b>	<b>Commission Approved Goal</b>	<b>E-TRC</b>	<b>Residential &lt;2-Yr. Payback</b>	<b>Commission Approved Goal</b>	<b>E-TRC</b>	<b>Residential &lt;2-Yr. Payback</b>	<b>Commission Approved Goal</b>
2010	40.6	43.9	84.5	63.7	19.0	82.7	99.6	190.3	289.9
2011	42.5	43.9	86.4	69.2	19.0	88.2	105.6	190.3	295.9
2012	45.5	43.9	89.4	73.2	19.0	92.2	114.7	190.3	305.0
2013	47.5	43.9	91.4	75.9	19.0	94.9	120.7	190.3	311.0
2014	49.4	43.9	93.3	78.6	19.0	97.6	126.8	190.3	317.1
2015	54.8	43.9	98.7	83.3	19.0	102.3	147.9	190.3	338.2
2016	63.3	43.9	107.2	94.1	19.0	113.1	135.8	190.3	326.1
2017	62.9	43.9	106.8	93.5	19.0	112.5	129.8	190.3	320.1
2018	57.4	43.9	101.3	86.0	19.0	105.0	117.7	190.3	308.0
2019	42.9	43.9	86.8	61.5	19.0	80.5	108.6	190.3	298.9
<b>Total</b>	<b>506.6</b>	<b>439.0</b>	<b>945.6</b>	<b>779.1</b>	<b>190.0</b>	<b>969.1</b>	<b>1,207.1</b>	<b>1,903.0</b>	<b>3,110.1</b>

<b>Commercial/Industrial</b>									
<b>Summer (MW)</b>				<b>Winter (MW)</b>			<b>Annual (GWh)</b>		
<b>Year</b>	<b>E-TRC</b>	<b>Residential &lt;2-Yr. Payback</b>	<b>Commission Approved Goal</b>	<b>E-TRC</b>	<b>Residential &lt;2-Yr. Payback</b>	<b>Commission Approved Goal</b>	<b>E-TRC</b>	<b>Residential &lt;2-Yr. Payback</b>	<b>Commission Approved Goal</b>
2010	13.7	0.0	13.7	5.3	0.0	5.3	31.1	0.0	31.1
2011	16.2	0.0	16.2	5.3	0.0	5.3	33.0	0.0	33.0
2012	25.5	0.0	25.5	11.4	0.0	11.4	35.9	0.0	35.9
2013	25.9	0.0	25.9	11.5	0.0	11.5	37.7	0.0	37.7
2014	26.4	0.0	26.4	11.5	0.0	11.5	39.6	0.0	39.6
2015	27.6	0.0	27.6	11.7	0.0	11.7	46.2	0.0	46.2
2016	27.1	0.0	27.1	11.6	0.0	11.6	42.5	0.0	42.5
2017	27.0	0.0	27.0	11.6	0.0	11.6	40.6	0.0	40.6
2018	25.7	0.0	25.7	11.4	0.0	11.4	36.8	0.0	36.8
2019	22.3	0.0	22.3	11.3	0.0	11.3	34.0	0.0	34.0
<b>Total</b>	<b>237.3</b>	<b>0.0</b>	<b>237.3</b>	<b>102.6</b>	<b>0.0</b>	<b>102.6</b>	<b>377.4</b>	<b>0.0</b>	<b>377.4</b>



**Commission-Approved Conservation Goals for TECO**

<b>Residential</b>									
<b>Year</b>	<b>Summer (MW)</b>			<b>Winter (MW)</b>			<b>Annual (GWh)</b>		
	<b>E-TRC</b>	<b>Residential &lt;2-Yr. Payback</b>	<b>Commission Approved Goal</b>	<b>E-TRC</b>	<b>Residential &lt;2-Yr. Payback</b>	<b>Commission Approved Goal</b>	<b>E-TRC</b>	<b>Residential &lt;2-Yr. Payback</b>	<b>Commission Approved Goal</b>
2010	2.7	1.9	4.6	2.8	3.6	6.4	4.8	5.0	9.8
2011	4.7	1.9	6.6	4.9	3.6	8.5	9.0	5.0	14.0
2012	6.5	1.9	8.4	6.6	3.6	10.2	12.7	5.0	17.7
2013	8.0	1.9	9.9	7.9	3.6	11.5	15.6	5.0	20.6
2014	8.9	1.9	10.8	8.6	3.6	12.2	17.6	5.0	22.6
2015	9.0	1.9	10.9	8.0	3.6	11.6	18.0	5.0	23.0
2016	7.9	1.9	9.8	6.5	3.6	10.1	16.3	5.0	21.3
2017	7.1	1.9	9.0	5.2	3.6	8.8	14.4	5.0	19.4
2018	6.4	1.9	8.3	4.4	3.6	8.0	13.3	5.0	18.3
2019	5.9	1.9	7.8	3.8	3.6	7.4	12.3	5.0	17.3
<b>Total</b>	<b>67.1</b>	<b>19.0</b>	<b>86.1</b>	<b>58.7</b>	<b>36.0</b>	<b>94.7</b>	<b>134.0</b>	<b>50.0</b>	<b>184.0</b>

<b>Commercial/Industrial</b>									
<b>Year</b>	<b>Summer (MW)</b>			<b>Winter (MW)</b>			<b>Annual (GWh)</b>		
	<b>E-TRC</b>	<b>Residential &lt;2-Yr. Payback</b>	<b>Commission Approved Goal</b>	<b>E-TRC</b>	<b>Residential &lt;2-Yr. Payback</b>	<b>Commission Approved Goal</b>	<b>E-TRC</b>	<b>Residential &lt;2-Yr. Payback</b>	<b>Commission Approved Goal</b>
2010	2.5	0.0	2.5	0.9	0.0	0.9	6.5	0.0	6.5
2011	3.6	0.0	3.6	1.1	0.0	1.1	10.6	0.0	10.6
2012	4.3	0.0	4.3	1.4	0.0	1.4	15.4	0.0	15.4
2013	5.1	0.0	5.1	1.3	0.0	1.3	16.2	0.0	16.2
2014	5.4	0.0	5.4	1.5	0.0	1.5	19.5	0.0	19.5
2015	6.0	0.0	6.0	1.7	0.0	1.7	20.9	0.0	20.9
2016	6.2	0.0	6.2	1.6	0.0	1.6	21.6	0.0	21.6
2017	6.3	0.0	6.3	1.6	0.0	1.6	21.8	0.0	21.8
2018	6.4	0.0	6.4	1.7	0.0	1.7	22.1	0.0	22.1
2019	6.3	0.0	6.3	1.7	0.0	1.7	21.7	0.0	21.7
<b>Total</b>	<b>52.1</b>	<b>0.0</b>	<b>52.1</b>	<b>14.5</b>	<b>0.0</b>	<b>14.5</b>	<b>176.3</b>	<b>0.0</b>	<b>176.3</b>

**Commission-Approved Conservation Goals for Gulf**

Year	Residential								
	Summer (MW)			Winter (MW)			Annual (GWh)		
	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal
2010	1.90	5.60	7.50	1.90	4.00	5.90	2.8	32.20	35.00
2011	2.70	5.60	8.30	2.50	4.00	6.50	5.4	32.20	37.60
2012	3.80	5.60	9.40	3.40	4.00	7.40	8.4	32.20	40.60
2013	4.90	5.60	10.50	4.50	4.00	8.50	11.6	32.20	43.80
2014	6.10	5.60	11.70	5.50	4.00	9.50	14.6	32.20	46.80
2015	7.20	5.60	12.80	6.90	4.00	10.90	18.0	32.20	50.20
2016	8.40	5.60	14.00	8.10	4.00	12.10	21.4	32.20	53.60
2017	9.10	5.60	14.70	8.70	4.00	12.70	23.2	32.20	55.40
2018	9.30	5.60	14.90	9.30	4.00	13.30	24.0	32.20	56.20
2019	9.50	5.60	15.10	9.70	4.00	13.70	24.5	32.20	56.70
Total	62.90	56.00	118.90	60.50	40.00	100.50	153.9	322.00	475.90

Year	Commercial/Industrial								
	Summer (MW)			Winter (MW)			Annual (GWh)		
	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal
2010	1.20	0.00	1.20	0.50	0.00	0.50	3.20	0.00	3.20
2011	1.60	0.00	1.60	0.60	0.00	0.60	5.60	0.00	5.60
2012	2.10	0.00	2.10	0.80	0.00	0.80	7.70	0.00	7.70
2013	2.40	0.00	2.40	0.90	0.00	0.90	9.50	0.00	9.50
2014	2.70	0.00	2.70	1.00	0.00	1.00	10.80	0.00	10.80
2015	2.90	0.00	2.90	1.00	0.00	1.00	11.70	0.00	11.70
2016	3.00	0.00	3.00	1.20	0.00	1.20	12.30	0.00	12.30
2017	3.20	0.00	3.20	1.10	0.00	1.10	12.70	0.00	12.70
2018	3.10	0.00	3.10	1.10	0.00	1.10	12.50	0.00	12.50
2019	3.10	0.00	3.10	1.10	0.00	1.10	11.90	0.00	11.90
Total	25.30	0.00	25.30	9.30	0.00	9.30	97.90	0.00	97.90



**Commission-Approved Conservation Goals for FPUC**

<b>Residential</b>									
<b>Year</b>	<b>Summer (MW)</b>			<b>Winter (MW)</b>			<b>Annual (GWh)</b>		
	<b>E-TRC</b>	<b>Residential &lt;2-Yr. Payback</b>	<b>Commission Approved Goal</b>	<b>E-TRC</b>	<b>Residential &lt;2-Yr. Payback</b>	<b>Commission Approved Goal</b>	<b>E-TRC</b>	<b>Residential &lt;2-Yr. Payback</b>	<b>Commission Approved Goal</b>
2010	0.2	N/A	0.2	0.1	N/A	0.1	0.5	N/A	0.5
2011	0.2	N/A	0.2	0.1	N/A	0.1	0.5	N/A	0.5
2012	0.2	N/A	0.2	0.1	N/A	0.1	0.5	N/A	0.5
2013	0.2	N/A	0.2	0.1	N/A	0.1	0.5	N/A	0.5
2014	0.2	N/A	0.2	0.1	N/A	0.1	0.5	N/A	0.5
2015	0.2	N/A	0.2	0.1	N/A	0.1	0.5	N/A	0.5
2016	0.2	N/A	0.2	0.1	N/A	0.1	0.5	N/A	0.5
2017	0.2	N/A	0.2	0.1	N/A	0.1	0.5	N/A	0.5
2018	0.2	N/A	0.2	0.1	N/A	0.1	0.5	N/A	0.5
2019	0.2	N/A	0.2	0.1	N/A	0.1	0.5	N/A	0.5
<b>Total</b>	2.0	N/A	2.0	1.3	N/A	1.3	5.1	N/A	5.1

<b>Commercial/Industrial</b>									
<b>Year</b>	<b>Summer (MW)</b>			<b>Winter (MW)</b>			<b>Annual (GWh)</b>		
	<b>E-TRC</b>	<b>Residential &lt;2-Yr. Payback</b>	<b>Commission Approved Goal</b>	<b>E-TRC</b>	<b>Residential &lt;2-Yr. Payback</b>	<b>Commission Approved Goal</b>	<b>E-TRC</b>	<b>Residential &lt;2-Yr. Payback</b>	<b>Commission Approved Goal</b>
2010	0.2	N/A	0.2	0.1	N/A	0.1	0.8	N/A	0.8
2011	0.2	N/A	0.2	0.1	N/A	0.1	0.8	N/A	0.8
2012	0.2	N/A	0.2	0.1	N/A	0.1	0.8	N/A	0.8
2013	0.2	N/A	0.2	0.1	N/A	0.1	0.8	N/A	0.8
2014	0.2	N/A	0.2	0.1	N/A	0.1	0.8	N/A	0.8
2015	0.2	N/A	0.2	0.1	N/A	0.1	0.8	N/A	0.8
2016	0.2	N/A	0.2	0.1	N/A	0.1	0.8	N/A	0.8
2017	0.2	N/A	0.2	0.1	N/A	0.1	0.8	N/A	0.8
2018	0.2	N/A	0.2	0.1	N/A	0.1	0.8	N/A	0.8
2019	0.2	N/A	0.2	0.1	N/A	0.1	0.8	N/A	0.8
<b>Total</b>	2.3	N/A	2.3	0.6	N/A	0.6	7.8	N/A	7.8

**Commission-Approved Conservation Goals for OUC**

Year	Residential			Commercial/Industrial		
	Summer (MW)	Winter (MW)	Annual (GWh)	Summer (MW)	Winter (MW)	Annual (GWh)
2010	0.50	0.20	1.80	0.70	0.70	1.80
2011	0.50	0.20	1.80	0.70	0.70	1.80
2012	0.50	0.20	1.80	0.70	0.70	1.80
2013	0.50	0.20	1.80	0.70	0.70	1.80
2014	0.50	0.20	1.80	0.70	0.70	1.80
2015	0.50	0.20	1.80	0.70	0.70	1.80
2016	0.50	0.20	1.80	0.70	0.70	1.80
2017	0.50	0.20	1.80	0.70	0.70	1.80
2018	0.50	0.20	1.80	0.70	0.70	1.80
2019	0.50	0.20	1.80	0.70	0.70	1.80
Total	5.00	2.00	18.00	7.00	7.00	18.00

**Commission-Approved Conservation Goals for JEA**

Year	Residential			Commercial/Industrial		
	Summer (MW)	Winter (MW)	Annual (GWh)	Summer (MW)	Winter (MW)	Annual (GWh)
2010	2.0	1.6	6.9	2.4	1.4	22.1
2011	2.0	1.6	6.9	2.4	1.4	22.1
2012	2.0	1.6	6.9	2.4	1.4	22.1
2013	2.0	1.6	6.9	2.4	1.4	22.1
2014	2.0	1.6	6.9	2.4	1.4	22.1
2015	2.0	1.6	6.9	2.4	1.4	22.1
2016	2.0	1.6	6.9	2.4	1.4	22.1
2017	2.0	1.6	6.9	2.4	1.4	22.1
2018	2.0	1.6	6.9	2.4	1.4	22.1
2019	2.0	1.6	6.9	2.4	1.4	22.1
Total	20.3	15.5	69.0	24.0	14.3	221.0

**INCENTIVES**

FPL, PEF, TECO, and Gulf took the position that incentives do not need to be established at this time, but rather should be evaluated and established, if necessary, through a separate proceeding. FPUC argued that utility-owned energy efficiency and renewable energy systems are supply-side issues that are not applicable to it as a non-generating utility. Both OUC and JEA argued that, because municipal utilities are not subject to rate-of-return regulation, the issue



of incentives is not relevant to them. According to FIPUG, the type and amount of incentives and their impact on rates should determine whether incentives are established. FIPUG provided no additional comments on the issue of incentives for utilities in its brief or direct testimony. FSC argued that incentives should be established but offered no supporting comments in its brief and did not file testimony. While NRDC/SACE argued that we should establish an incentive that will allow utilities an opportunity to share in the net benefits that cost-effective efficiency programs provide customers, it agreed with the FEECA utilities that the issue of financial incentives should be deferred to a subsequent proceeding, with the caveat that incentives are only appropriate if linked to the achievement of strong goals.

Section 366.82(3)(c), F.S., requires this Commission to consider whether incentives are needed to promote both customer-owned and utility-owned energy efficiency and demand-side renewable energy systems. In addition, Section 366.82(9), F.S., authorizes this Commission to allow an investor-owned electric utility an additional return on equity of up to 50 basis points for exceeding 20 percent of its annual load-growth through energy efficiency and conservation measures. The statute further states that this Commission shall establish such additional return on equity through a limited proceeding. This provision clearly allows us to award an incentive based upon a utility's performance and specifies the procedural mechanism for doing so.

None of the parties favored establishing incentives as part of this proceeding, with the exception of FSC, who filed no supporting comments and did not file testimony. In addition, staff witness Spellman recommended that if we believe that at some point incentives are necessary and appropriate, then the specific mechanism can be developed, in accordance with the FEECA statutes, in a separate proceeding, but not at this time. There is limited discussion in the record regarding the need for performance incentives or penalties, or analysis of how they should be structured. We agree with witness Spellman that a more appropriate course of action is to address the issue of incentives in a future proceeding when the necessary analysis has been done and all interested stakeholders can participate.

Section 366.82(8), F.S., states:

The commission may authorize financial rewards for those utilities over which it has rate setting authority that exceed their goals and may authorize financial penalties for those utilities that fail to meet their goals, including, but not limited to, the sharing of generation, transmission, and distribution cost savings associated with conservation, energy efficiency, and demand-side renewable energy systems additions.

An IOU may choose to petition this Commission for an additional return on equity based upon its performance at any time the company believes such an incentive to be warranted. This Commission, on its own motion, may initiate a proceeding to penalize a utility for failing to meet its goals.

We believe establishing incentives during this proceeding would unnecessarily increase costs to ratepayers at a time when consumers are already facing financial challenges. Increasing rates in order to provide incentives to utilities is more appropriately addressed in a future proceeding after utilities have demonstrated and we have evaluated their performance.

With regard to customer-owned energy-efficiency and demand-side renewable energy systems, incentives are typically provided through each DSM program. Our staff evaluates each program proposed by a utility prior to making a recommendation as to whether it should be approved. Part of our staff's evaluation process includes an analysis of the cost-effectiveness tests performed by the utility, including the appropriateness of any incentives the utility proposes to offer to customers taking advantage of a particular program as well as the cost and benefits to all customers. Therefore, in our view, a mechanism for providing customers with incentives is already in place and we should continue to make decisions about customer incentives on an individual program basis. We find that it is not necessary to establish additional incentives for customers at this time as doing so would result in higher rates for all customers.

### Conclusion

We find that incentives to promote energy efficiency and demand-side renewable energy systems should not be established at this time. We have met the requirements of Section 366.82(3)(c), F.S., by considering, during this proceeding, whether incentives are needed to promote energy efficiency and demand-side renewable energy systems. We will be in a better position to determine whether incentives are needed after we review the utilities' progress in reaching the goals established in these dockets. We may establish, through a limited proceeding, a financial reward or penalty for a rate-regulated utility based upon the utility's performance in accordance with Section 366.82(8) and (9), F.S. Utility customers are already eligible to receive incentives through existing DSM programs, and should not be harmed by considering additional incentives in a separate proceeding.

### CONSIDERATION TO IMPACT ON RATES

The four generating IOUs agreed that the impact on rates should be considered in the goal setting process. FPUC, JEA, and OUC believed that we must continue to consider the impact on rates as a primary determinant in setting goals under FEECA.

FIPUG claimed that it is important that rate impact not be overlooked when conservation goals are set and programs are evaluated. FSC believed there are also other factors to be considered by us when setting conservation goals for the public utilities.

NRDC/SACE contended that consideration of the impact on rates does not belong in the goal setting process because of the 2008 FEECA amendments. Further, NRDC/SACE contended that customers are more interested in their monthly utility bills than in rates and would benefit most if energy efficiency programs are widely available.

As specified in Section 366.01, F.S., the regulation of public utilities is declared to be in the public interest. Chapter 366 is to be liberally construed for the protection of the public welfare. Several sections within the Chapter, specifically Sections 366.03, 366.041, and 366.05, F.S., refer to the powers of the Commission and setting rates that are fair, just, and reasonable. The 2008 legislative changes to FEECA did not change our responsibility to set such rates.

Under FEECA, we are charged with setting goals and approving plans related to the promotion of cost-effective demand-side renewable energy systems and the conservation of electric energy. The 2008 changes to FEECA specified that this Commission is to take into consideration the costs and benefits of ratepayers as a whole, in addition to the cost and benefits to customers participating in a measure. FEECA makes it clear that we must consider the economic impact to all, both participants and non-participants. This can only be done by ensuring rates to all are fair, just, and reasonable.

When setting conservation goals there are two basic components to a rate impact: Energy Conservation Cost Recovery and base rates. The costs to implement a DSM Program consist of administrative, equipment, and incentive payments to the participants. These costs are recovered by the utility through the Energy Conservation Cost Recovery clause. Cost recovery is reviewed on an annual basis when true-up numbers are confirmed. When approved, the utility allocates that expense to its general body of ratepayers and rates immediately go up for all ratepayers until that cost is recovered. When new DSM programs are implemented or incentive payments to participants are increased, the cost of implementing the program will directly lead to an increase in rates as these costs are recovered.

Base rates are established by this Commission in a rate case. Between rate cases, we monitor the company's Return on Equity (ROE) within a range of reasonable return, usually + or - 1 percent or 100 basis points. If the ROE of a utility exceeds the 100 basis point range, we can initiate a rate case to adjust rates downward. If the ROE falls below the 100 basis point range, the utility may file a petition with this Commission for a rate increase.

Energy saving DSM programs can have an impact on a utility's base rates. Utilities have a fixed cost of providing safe, reliable service. When revenues go down because fewer kWh were consumed, the utility may have to make up the difference by requesting an increase in rates in order to maintain a reasonable ROE.

The downturn of the present economy, coupled with soaring unemployment, make rates and the monthly utility bill ever more important to utility customers. When speaking about customers who participate in a utility program and receive an incentive, FPL witness Dean testified that utility customers generally will use less energy and even though rates are higher for everyone, program participants purchase less energy and thus are net beneficiaries of the program because their lower consumption lowers their total bill. Witness Dean further testified that these costs disproportionately fall upon those who are unable to participate in programs. Similarly, JEA witness Vento testified that customers such as renters who do not or cannot implement a DSM measure, and therefore have no corresponding benefit of reduced consumption to offset the rate increase, will be subject to increased utility bills.

Witness Pollock also recognized the importance of conservation in lowering utility bills as all consumers “face challenging economic times.” Witness Pollock testified that the importance of pursuing conservation programs must be balanced against their cost and impact of that cost on ratepayers. Witness Pollock further testified that consideration of rate impacts in the evaluation of conservation programs helps to minimize both rates and costs for ratepayers. Finally, PEF witness Masiello testified that this Commission should also balance the needs of all stakeholders and minimize any adverse impacts to customers.

### Conclusion

As provided in Section 366.04, F.S., we are given “. . . jurisdiction to regulate and supervise each public utility with respect to its rates and service.” In past FEECA proceedings, the impact on rates has been a primary consideration of this Commission when establishing conservation goals and approving programs of the public utilities. The 2008 legislative changes to FEECA did not diminish the importance of rate impact when establishing goals for the utilities.

Those who do not or cannot participate in an incentive program will not see their monthly utility bill go down unless they directly decrease their consumption of electricity. If that is not possible, non-participants could actually see an increase in the monthly utility bill. Since participation in DSM programs is voluntary and this Commission is unable to control the amount of electricity each household consumes, we should ensure the lowest possible overall rates to meet the needs of all consumers.

Section 366.82(7), F.S., states that this Commission can modify plans and programs if they would have an undue impact on the costs passed on to customers. We believe that the Legislature intended for this Commission to be conscious of the impact on rates of any programs we evaluate to meet goals.

### SEPARATE GOALS FOR DEMAND-SIDE RENEWABLE ENERGY SYSTEMS

All seven FEECA utilities took the position that we should not establish separate goals for demand-side renewable energy systems. FPL believed that the FEECA amendments, in particular, Section 366.82(3), F.S., “. . . require this Commission to consider renewable energy systems in the conservation goal setting process.” FPL contended that this statutory requirement was met because ITRON and FPL evaluated these resources in this goal setting process. FPL, PEF, TECO, and Gulf contended that demand-side renewable resources were evaluated as a part of the conservation goals analysis and these measures were not found to be cost-effective; therefore, a separate goal is not necessary. Gulf asserted that demand-side renewables should be evaluated with the same methodology that is used to evaluate energy efficiency measures. PEF currently offers demand-side renewable programs and is developing new initiatives. FPL noted that it will consider demand-side renewable measures in the program development stage. Gulf is currently evaluating a pilot solar thermal water heating program.

FPUC, OUC, and JEA contended that, in setting goals, there should not be a bias toward any particular resource. Otherwise, FPUC, OUC, and JEA stated that goals could be set without appropriate consideration of costs and benefits to the participants and customers as a whole as required by Section 366.82(a) and (b), F.S. In addition, JEA and OUC argued that as municipal utilities, they cannot recover costs for demand-side renewable programs through the Energy Conservation Cost Recovery clause. JEA and OUC also noted that both companies offer demand-side renewable programs.

FSC contended that Section 366.82, F.S., requires this Commission to establish separate goals for demand-side renewables. FSC recommended that to meet this statutory obligation, we should require the FEECA IOUs to offer solar PV and solar water heating rebate programs to both residential and commercial customers. Further, FSC stated that we should authorize each IOU to recover up to 1 percent of annual retail sales revenue (based on 2008 revenues) to fund rebates for the next five years. FSC suggested a rebate of \$2 per watt for PV systems with a capacity up to 50 kW. FSC contended that we should establish a performance-based incentive program for PV systems with a capacity greater than 50 kW. FSC recommended that incentives be reduced over the five years to account for market development and any resulting reduction in PV prices. FSC did not take a position with respect to OUC and JEA, which each currently have programs to encourage customers to install solar resources.

Section 366.82(2), F.S., was amended in 2008. The entire text of Section 366.82(2), F.S., follows, with the amendments underlined.

The Commission shall adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of demand-side renewable energy systems, specifically including goals designed to increase the conservation of expensive resources, such as petroleum fuels, to reduce and control the growth rates of electric consumption, to reduce the growth rates of weather-sensitive peak demand, and to encourage development of demand-side renewable energy resources. The Commission may allow efficiency investments across generation, transmission, and distribution as well as efficiencies within the user base.

Because of the revisions to the statute, we requested that the utilities address demand-side renewables in their cost-effectiveness analyses. As previously discussed, the first step in the utilities' cost-effectiveness analysis for demand-side renewables was the Technical Potential Study performed by ITRON. Witness Rufo testified that ITRON estimated the technical potential for one residential rooftop PV system, one commercial rooftop PV system, one commercial ground-mounted PV system, and solar domestic hot water heaters. Witness Rufo testified that ITRON did not estimate the achievable potential for PV systems "due to the fact that PV measures did not pass the cost-effectiveness criteria established by the FEECA utilities for purposes of this study, i.e., TRC, RIM, and/or the Participants Test." Witness Rufo further testified that incentive levels were not calculated for solar measures (for JEA and OUC) because these measures did not pass RIM or TRC without incentives.

FPL, TECO, Gulf, FPUC, OUC, and JEA did not include savings from solar measures toward their goals because no solar measures were found to be cost-effective. However, PEF, OUC, and JEA have existing solar programs. PEF currently offers two solar programs. PEF's Solar Water Heater with EnergyWise program combines a demand-response program with a rebate for solar water heaters. PEF's SolarWise for Schools program allows interested customers to donate their monthly credits from participating in a load control program to support the installation of PV systems in schools. Witness Masiello testified that PEF has also developed new solar initiatives that will possibly be included in PEF's DSM program filing. Witness Masiello further testified that a separate goal for demand-side renewables is not needed because PEF included these resources in its goals.

We believe that the amendments to Section 366.82(2), F.S., clearly require us to set goals to increase the development of demand-side renewable energy systems. As indicated above, the Section states that the "Commission shall adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of demand-side renewable energy systems. . . ." (Emphasis added) We believe that in making these amendments to Section 366.82(2), F.S., the Legislature has placed additional emphasis on encouraging renewable energy systems. FSC and NRDC/SACE argued that the amendments to 366.82(2), F.S., require goals for these resources. Witness Spellman testified that "the legislation clearly requires the Commission to focus some specific attention on demand-side renewable energy resources as part of its goal setting process."

As discussed above, none of the demand-side renewable resources were found to be cost-effective under any test in the utilities' analyses. In the past, we have set goals equal to zero in cases where no DSM programs were found to be cost-effective, for example, for JEA and OUC. Therefore, based purely on the cost-effectiveness test results, we have the option to set goals equal to zero for demand-side renewable resources. However, we note that by amending FEECA, the Legislature placed added emphasis on demand-side renewable resources. The Legislature has also recently placed emphasis on these resources by funding solar rebates through the Florida Energy and Climate Commission.

In its brief, FSC recommended that we should require the four largest IOUs to spend a specified annual amount on solar PV and solar thermal water heating programs. NRDC/SACE agreed with FSC's position. FSC suggested that solar water heaters and PV systems under 50 kW in capacity should receive an up-front rebate, while financial support to larger PV systems up to 2 MW should be performance-based. FSC recommended a rebate of \$2 per watt for residential and commercial PV systems up to 50 kW in capacity. FSC suggested that annual support should continue for five years, and decrease every year to account for market development and reductions in technology costs. FSC took no position on requiring programs for FPUC, JEA, and OUC.

Witness Spellman acknowledged that none of the solar PV and solar thermal technologies included in the ITRON study and utility cost-effectiveness analyses were found to be cost-effective. However, witness Spellman testified that research and development programs on these technologies will provide benefits "because of their potential for more efficient energy

production, the environmental benefits, and the conservation of non-renewable petroleum fuels.” Witness Spellman believed that support for these technologies could result in lower costs over time. He also recommended that OUC and JEA be required to offer demand-side renewable programs, but recognized that we do not have ratemaking authority over these utilities. In order to protect the IOUs’ ratepayers, utilities would be allowed to recover a specified amount of expenses through the Energy Conservation Cost Recovery clause. Witness Spellman did not advocate specific demand or energy savings goals for demand-side renewables. Witness Spellman suggested that these programs should focus on solar PV and solar water heating technologies, and did not believe that the demand and energy savings resulting from these programs should be counted toward a utility’s conservation goals.

Witness Spellman recommended that expenditures on these solar programs should be capped at 10 percent of each IOU’s five-year average of Energy Conservation Cost Recovery expenses for 2004 through 2008. These dollar amounts should be constant over the five year period until goals are reset. Witness Spellman recommended that the funds be used for up-front rebates on solar PV and solar water heating technologies for both residential and commercial customers.

### Conclusion

We find that the amendments to Section 366.82(2), F.S., require us to establish goals for demand-side renewable energy systems. None of these resources were found to be cost-effective in the utilities’ analyses. However, we can meet the intent of the Legislature to place added emphasis on these resources, while protecting ratepayers from undue rate increases by requiring the IOUs to offer renewable programs subject to an expenditure cap. We direct the IOUs to file pilot programs focusing on encouraging solar water heating and solar PV technologies in the DSM program approval proceeding. Expenditures allowed for recovery shall be limited to 10 percent of the average annual recovery through the Energy Conservation Cost Recovery clause in the previous five years as shown in the table below. Utilities are encouraged to design programs that take advantage of unique cost-saving opportunities, such as combining measures in a single program, or providing interested customers with the option to provide voluntary support.



Utility	Commission Approved Annual Expense
<b>FPL</b>	\$15,536,870
<b>Gulf</b>	\$900,338
<b>PEF</b>	\$6,467,592
<b>TECO</b>	\$1,531,018
<b>FPUC</b>	\$47,233
<b>Total</b>	\$24,483,051

**ADDITIONAL GOALS FOR EFFICIENCY IMPROVEMENTS IN GENERATION,  
TRANSMISSION, AND DISTRIBUTION**

We agree with FPL, PEF, TECO, and Gulf that goals need not be established for generation, transmission, and distribution in this proceeding. Gulf expanded the discussion arguing that guidelines have not been developed that would provide a methodical approach to identifying, quantifying, and proposing goals for supply-side conservation and energy efficiency measures. OUC and JEA both offered only that efficiency improvements in generation, transmission, and distribution are supply-side issues which are more appropriately addressed in the utilities' resource planning processes, thereby seeming to imply that such goal-setting has no place in a conservation goal-setting proceeding. FPUC, a non-generating IOU, took no position.

FSC's position suggested that the IOUs should conduct technical potential studies of efficiencies in generation, transmission, and distribution. Afterwards, this Commission should establish efficiency improvement goals in a separate proceeding. FSC took no position on the issue as it pertains to the two municipal utilities.

NRDC/SACE went a step further, arguing that increasing generating plant efficiency and reducing transmission and distribution losses benefit customers and the environment. They recommended that we set a date certain by which the companies will perform technical economic and potential studies for efficiency improvements at their existing facilities. However, they did not specifically suggest that we should set goals in these areas.

State legislative direction provides, "[t]he commission may allow efficiency investments across generation, transmission, and distribution . . . ." (Section 366.82(2), F.S.) Section 366.82(3), is more affirmative stating: "[i]n developing the goals, the commission shall evaluate the full technical potential of all available demand-side and supply-side conservation and efficiency measures . . . ." (Emphasis added) The FEECA utilities performed no technical



potential study of supply-side measures for this docket. The potential for supply-side improvements is an inherent element of the annual Ten-Year Site Plan submitted by each FEECA utility. Supply-side efficiency and conservation is also analyzed in every need determination for new sources of generation. In addition, efficiency improvements in generation, transmission, and distribution tend to reduce the potential savings available via demand-side management programs.

We believe that the utilities' motivation to deliver electric service to their customers in the most economically efficient means possible makes efficiency improvements in generation, transmission, and distribution a naturally occurring result of their operations. In the case of the five IOUs, such efficiency is inextricably tied to their efforts to make a profit. The two municipal utilities, while not driven by a profit motive per se, must still provide electrical service as efficiently and inexpensively as possible. Rule 25-17.001, F.A.C., supports this proposition because the rule states: "... general goals and methods for increasing the overall efficiency of the bulk electric power system of Florida are broadly stated since these methods are an ongoing part of the practice of every well-managed electric utility's programs and shall be continued."

Despite NRDC/SACE's observation that customers and the environment will benefit from facility efficiencies, they offer no evidence that utilities are not routinely seeking those efficiencies. FSC, in arguing that we should set goals in this area, likewise offers no support to suggest such action is warranted.

### Conclusion

Efficiency improvements for generation, transmission, and distribution are continually reviewed through the utilities' planning processes in an attempt to reduce the cost of providing electrical service to their customers. With no evidence to suggest efficiency improvements in generation, transmission, and distribution are not occurring, we find that goals in these areas will not be set as part of this proceeding.

### SEPARATE GOALS FOR ENERGY AUDIT PROGRAMS

The FEECA utilities, FIPUG, and FSC all agreed that separate goals for energy audits are not necessary. NRDC/SACE asserted that separate goals for residential and commercial/industrial customer participation in utility energy audit programs should be established by this Commission.

Section 366.82(11), F.S., mandates that we require utilities to offer energy audits and to report the actual results as well as the difference, if any, between the actual and projected results. The statute is implemented by Rule 25-17.003, F.A.C., which specifies the minimum requirements for performing energy audits as well as the types of audits that utilities offer to customers, and also details the requirements for record keeping regarding the customer's energy use prior to and following the audit. The utility can thereby ascertain whether the customer actually reduced his energy usage subsequent to the audit.

Witness Steinhurst testified that utility energy audit programs by themselves do not provide any direct demand reduction and energy savings. In order to conserve energy, the customer must implement some form of an energy saving measure. Witness Masiello testified that most if not all utilities require that an audit be performed before a customer can participate in DSM programs administered by the utility. This requirement means that having separate goals for audits would be duplicative, because the energy savings and demand reduction following the audits would be attributed to the individual measures that were recommended and implemented as a result of the audit, and therefore would already be counted towards savings goals. Witness Spellman testified that savings associated with energy saving measures installed by customers following a utility audit should be counted towards the savings of the particular program through which they obtained the measure and not the energy audit service. Witness Bryant testified that this is the method typically used to account for these savings.

### Conclusion

The energy conservation achieved through customer education is included in the overall conservation goals and should be credited to the specific program into which the customer enrolls. In order to avoid duplication of demand reduction and energy savings, we find that no separate goals for participation in utility energy audit programs need be established.

### EFFICIENT USE OF COGENERATION

FPL, PEF, Gulf, and TECO argued that no further action is needed concerning cogeneration due to the 2008 Legislative changes that were made to the FEECA statutes. Further, the Commission has addressed cogeneration in Chapter 25-17, F.A.C. FPUC, OUC, and JEA took no position on the issue of cogeneration. NRDC/SACE and FIPUG contended that there are barriers to the cogeneration process due to the unfair compensation rates afforded cogenerators by rule. Other parties were silent on the issue.

The Legislature recognizes the benefits of cogeneration in Section 366.051, F.S., where utility companies are required to purchase all electricity offered for sale by the cogenerator as outlined in Rule 25-17.082, F.A.C. We periodically establish rates for cogeneration equal to the utilities full avoided cost as guidelines for the purchase of energy. Rule 25-17.015, F.A.C., also allows each utility to recover its costs for energy conservation through cost recovery.

The FEECA utilities agree that this Commission need not take action regarding cogeneration in this goal setting proceeding. The 2008 Florida Legislature removed the term "cogeneration" from the FEECA statute, Section 366.82(2), F.S., replacing it with "demand side renewable energy systems." The utilities contend that cogeneration is not to be considered part of the FEECA ten-year goal setting process. The utilities also contend that cogeneration systems must be evaluated on a site-specific, case-by-case basis, which does not lend itself to the FEECA conservation goals-setting process. The FEECA proceedings were commenced to set overall conservation goals for the FEECA utilities, and not designed as proceedings to focus on promoting cogeneration.

FIPUG believes there are barriers to the cogeneration process established by Commission Rule, which prevent industrial customers from full compensation for electricity generated by their cogeneration processes. FIPUG also believes it is a disadvantage if customers operate facilities at two or more different locations and cannot construct their own transmission lines to those locations. FIPUG contended cogenerator repayment at the utility's average fuel cost is much lower than the utility rate and that the reimbursement rate does not encourage cogeneration. The Legislature addressed the transmission and compensation issue of cogenerators in Section 366.051, F.S. This Commission has established "Conservation and Self-service Wheeling Cost" in Rule 25-17.008 F.A.C., "Energy Conservation Cost Recovery" in Rule 25-17.015 F.A.C., and "The Utility's Obligation to Purchase" in Rule 25-17.082 F.A.C.

### Conclusion

The Florida Legislature recognizes cogeneration in Section 366.051, F.S., and in 2008 removed the term "cogeneration" from the FEECA statutes, Section 366.82, F.S. Cogeneration is encouraged by this Commission as a conservation effort, as evidenced by Rules 25-17.080 – 25-17.310, F.A.C. Therefore, the goals set do not need to address issues relating to cogeneration in this proceeding.

### COMMISSION AUTHORITY OVER OUC AND JEA

Under FEECA, we have jurisdiction over OUC and JEA's conservation goals and plans. Section 366.81, F.S. (2008), states in pertinent part:

The Legislature . . . finds that the Florida Public Service Commission is the appropriate agency to adopt goals and approve plans . . . . The Legislature directs the commission to develop and adopt overall goals and authorizes the commission to require each utility to develop plans and implement programs for increasing energy efficiency and conservation and demand-side renewable energy systems within its service area, subject to the approval of the commission. . . . The Legislature further finds and declares that ss. 366.80-366.85 and 403.519 [FEECA] are to be liberally construed . . . .

(Emphasis added)

For purposes of the FEECA statutes, Section 366.82(1)(a), F.S. (2008), defines a utility as being:

"Utility" means any person or entity of whatever form which provides electricity or natural gas at retail to the public, specifically including municipalities or instrumentalities thereof . . . specifically excluding any municipality or instrumentality thereof, . . . providing electricity at retail to the public whose annual sales as of July 1, 1993, to end-use customers is less than 2,000 gigawatt hours.

(Emphasis added)<sup>12</sup> Section 366.82(2), F.S., provides “[t]he commission shall adopt appropriate goals for increasing the efficiency of energy consumption . . . .”

Our statutory jurisdiction to set goals under FEECA is clear. The Legislature has required that we develop, establish, and adopt appropriate conservation goals for all utilities under the jurisdiction of FEECA. According to Section 366.82(1)(a), F.S., both OUC and JEA, as municipal utilities with sales exceeding 2,000 gigawatt hours, fall under our FEECA jurisdiction. Therefore, we must adopt appropriate conservation goals for OUC and JEA pursuant to Section 366.82(2) and (3), F.S.

Furthermore, this Commission has previously addressed whether it is prohibited under FEECA from considering conservation programs, and by correlation, goals that would increase rates for municipal and cooperative electric utilities. In Order No. PSC-93-1305-FOF-EG, issued September 8, 1993, this Commission considered that question and determined that FEECA contains no such prohibition, but this Commission would, as a matter of policy, attempt to set conservation goals that would not result in rate increases for municipal utilities.<sup>13</sup>

We disagree with OUC and JEA’s assertion that, because we lack ratemaking authority over these utilities, we are prohibited from establishing goals that might put upward pressure on rates. Ratemaking for public utilities is governed under Sections 366.06 and 366.07, F.S. Pursuant to Section 366.02(2), F.S., municipal and cooperative electric utilities are specifically excluded from the definition of public utility, and thus, we do not have ratemaking jurisdiction over these utilities. We believe that adopting conservation goals, or approving conservation programs, pursuant to FEECA is not ratemaking within the meaning of Chapter 366, F.S. We believe that the setting of conservation goals under FEECA for municipal electric utilities, therefore, does not infringe upon the municipal electric utilities’ governing boards’ authority to set rates.

At this time, it would be difficult to ascertain what affect, if any, the approved conservation goals would actually have upon OUC and JEA’s rates. Given the multitude of variables which also place upward and downward pressure on rates, we believe that OUC and JEA’s assertions that conservation goals alone would add upward pressure on rates is speculative at best. In the instant case, we believe that the proposed conservation goals for OUC and JEA should not apply upward pressure on the rates of OUC and JEA’s customers, especially

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<sup>12</sup> The language of Section 366.82(1)(a), F.S., was amended in 1996 by the Legislature to exclude municipal electrics and Rural Cooperatives with annual sales less than 2,000 gigawatt hours. See s. 81, Ch. 96-321, Laws of Florida.

<sup>13</sup> See Order No. PSC-93-1305-FOF-EG, issued September 8, 1993, in Docket Nos. 930553-EG, 930554-EG, 930555-EG, 930556-EG, 930557-EG, 930558-EG, 930559-EG, 930560-EG, 930561-EG, 930562-EG, 930563-EG, 930564-EG, In re: Adoption of Numeric Conservation Goals and Consideration of National Energy Policy Act Standards (Section 111) by City of Gainesville, City of Jacksonville Electric Authority, Kissimmee Electric Authority, City of Lakeland, Ocala Electric Authority, Orlando Utilities Commission, City of Tallahassee, Clay Electric Cooperative, Lee County Electric Cooperative, Sumter Electric Cooperative, Talquin Electric Cooperative, Withlacoochee River Electric Cooperative (hereinafter, 1993 FEECA Municipal DSM Goals Proceedings), at 5.

considering that the approved goals are based upon the conservation programs that OUC and JEA are currently implementing.

With regard to Order No. PSC-95-0461-FOF-EG, issued April 10, 1995, cited by OUC and JEA, the Commission stated:

We believe that as a guiding principle, the RIM test is the appropriate test to rely upon at this time. The RIM test ensures that goals set using this criteria would result in rates lower than they otherwise would be. All the municipal and cooperative utilities, with the exception of Tallahassee, stipulated to cost-effective demand and energy savings under the RIM test. However, Tallahassee's stipulated goals are higher than that cost-effective under RIM. . . . The Commission does not have rate setting authority over municipal and cooperative utilities. Therefore, we find it suitable to allow the governing bodies of these utilities the latitude to stipulate to the goals they deem appropriate regardless of cost-effectiveness.

Id. at 4-5 (Emphasis added) In 1995, this Commission recognized the RIM test as a “guiding principle” for setting goals for municipal and cooperative electric utilities, but the 2008 Legislative changes to FEECA have superseded this “guiding principle” consideration. We are now required to establish goals for all FEECA utilities pursuant to the requirements of Section 366.82(3), F.S., as amended and previously discussed.

Moreover, the order cited by OUC and JEA is distinguishable from the instant case because this Commission did not “set goals” for OUC and JEA but merely approved stipulated goals for these two utilities. The stipulated goals resulted from a settlement between OUC and JEA and the Florida Department of Community Affairs (DCA).<sup>14</sup> Here, the goals being proposed for these utilities are not stipulated goals but are proposed goals following a full evidentiary hearing.

### Conclusion

We have the authority to adopt conservation goals for all electric utilities under the jurisdiction of FEECA. OUC and JEA come within the meaning of utility as defined by FEECA. Developing, establishing, and adopting conservation goals is a regulatory activity exclusively granted to this Commission by FEECA and is not ratemaking within the meaning of Chapter 366, F.S. Therefore, we find that we have the authority to develop, establish, and adopt conservation goals for OUC and JEA as required by Section 366.82, F.S.

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<sup>14</sup> See Order No. PSC-95-0461-FOF-EG, issued April 10, 1995, In re: 1993 FEECA Municipal DSM Goals Proceedings. The DCA intervened in the 1993 DSM Goals Proceedings on behalf of the Governor of Florida. All the municipal and cooperative electric utilities who were parties to the 1993 DSM Goals Proceedings reached joint stipulations with DCA regarding conservation goals.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's residential winter demand, summer demand, and annual energy conservation goals for the period 2010-2019 are hereby approved as set forth herein. It is further

ORDERED that Florida Power & Light Company's commercial/industrial winter demand, summer demand, and annual energy conservation goals for the period 2010-2019 are hereby approved as set forth herein. It is further

ORDERED that Progress Energy Florida, Inc.'s residential winter demand, summer demand, and annual energy conservation goals for the period 2010-2019 are hereby approved as set forth herein. It is further

ORDERED that Progress Energy Florida, Inc.'s commercial/industrial winter demand, summer demand, and annual energy conservation goals for the period 2010-2019 are hereby approved as set forth herein. It is further

ORDERED that Gulf Power Company's residential winter demand, summer demand, and annual energy conservation goals for the period 2010-2019 are hereby approved as set forth herein. It is further

ORDERED that Gulf Power Company's commercial/industrial winter demand, summer demand, and annual energy conservation goals for the period 2010-2019 are hereby approved as set forth herein. It is further

ORDERED that Tampa Electric Company's residential winter demand, summer demand, and annual energy conservation goals for the period 2010-2019 are hereby approved as set forth herein. It is further

ORDERED that Tampa Electric Company's commercial/industrial winter demand, summer demand, and annual energy conservation goals for the period 2010-2019 are hereby approved as set forth herein. It is further

ORDERED that Florida Public Utilities Company's residential winter demand, summer demand, and annual energy conservation goals for the period 2010-2019 are hereby approved as set forth herein. It is further

ORDERED that Florida Public Utilities Company's commercial/industrial winter demand, summer demand, and annual energy conservation goals for the period 2010-2019 are hereby approved as set forth herein. It is further

ORDERED that OUC's residential winter demand, summer demand, and annual energy conservation goals for the period 2010-2019 are hereby approved as set forth herein. It is further

ORDERED that OUC's commercial/industrial winter demand, summer demand, and annual energy conservation goals for the period 2010-2019 are hereby approved as set forth herein. It is further

ORDERED that JEA's residential winter demand, summer demand, and annual energy conservation goals for the period 2010-2019 are hereby approved as set forth herein. It is further

ORDERED that JEA's commercial/industrial winter demand, summer demand, and annual energy conservation goals for the period 2010-2019 are hereby approved as set forth herein. It is further

ORDERED that within 90 days of the issuance of this Order, each utility shall file a demand-side management plan designed to meet the utility's approved goals. It is further

ORDERED that these dockets shall be closed if no appeal is filed within the time period permitted for filing an appeal of this Order.

By ORDER of the Florida Public Service Commission this 30th day of December, 2009.

/s/ Ann Cole

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ANN COLE  
Commission Clerk

This is an electronic transmission. A copy of the original signature is available from the Commission's website, [www.floridapsc.com](http://www.floridapsc.com), or by faxing a request to the Office of Commission Clerk at 1-850-413-7118.

( S E A L )

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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 the Commission's final action in this matter may request:

- 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or
- 2) 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 and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.



## **APPENDIX C**

COMMISSION REVIEW OF NUMERIC DOCKET NO. 080407-EG  
CONSERVATION GOALS (FLORIDA  
POWER & LIGHT COMPANY).

COMMISSION REVIEW OF NUMERIC DOCKET NO. 080408-EG  
CONSERVATION GOALS (PROGRESS  
ENERGY FLORIDA, INC.)

COMMISSION REVIEW OF NUMERIC DOCKET NO. 080409-EG  
CONSERVATION GOALS (TAMPA  
ELECTRIC COMPANY).

COMMISSION REVIEW OF NUMERIC DOCKET NO. 080410-EG  
CONSERVATION GOALS (GULF  
POWER COMPANY).

COMMISSION REVIEW OF NUMERIC DOCKET NO. 080411-EG  
CONSERVATION GOALS (FLORIDA  
PUBLIC UTILITIES COMPANY).

COMMISSION REVIEW OF NUMERIC DOCKET NO. 080412-EG  
CONSERVATION GOALS (ORLANDO  
UTILITIES COMMISSION).

COMMISSION REVIEW OF NUMERIC DOCKET NO. 080413-EG  
CONSERVATION GOALS (JEA).

PROCEEDINGS: AGENDA CONFERENCE  
ITEM NO. 9

COMMISSIONERS  
PARTICIPATING: CHAIRMAN MATTHEW M. CARTER, II  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER NANCY ARGENZIANO  
COMMISSIONER NATHAN A. SKOP  
COMMISSIONER DAVID E. KLEMENT

DATE: Tuesday, November 10, 2009

FLORIDA PUBLIC SERVICE COMMISSION

DOCUMENT 41 MAY 20 11 49 8 NOV 20 0

FD-350 (Rev. 5-22-64)

1 PLACE: Betty Easley Conference Center  
2 Room 148  
3 4075 Esplanade Way  
4 Tallahassee, Florida

5 REPORTED BY: JANE FAUROT, RPR  
6 Official FPSC Reporter  
7 (850) 413-6732  
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## P R O C E E D I N G S

**CHAIRMAN CARTER:** With that, Commissioners and staff, we will now move to Item 9. Does anyone need a break before we --

**COMMISSIONER SKOP:** Yes.

**CHAIRMAN CARTER:** Let's take a five-minute break, Commissioners, and then we will go to Item 9.

(Off the record.)

**CHAIRMAN CARTER:** We are back on the record, Commissioners and staff. And when we last left we had directed that we would go now to Item 9. Staff, you're recognized.

**MR. BALLINGER:** Good morning, Commissioners. My name is Tom Ballinger with staff.

Item 9 is staff's recommendation in the DSM goals dockets. But, first, I would like to give you some quick background information.

Pursuant to the statutes, the Commission must review conservation goals from each utility at least every five years. The DSM goals were last established for the FEECA utilities in 2004, starting in 2005 obviously, to become effective. So we're due again to establish them by 2010, by January 2010.

Section 366.81 lays out what these goals

1 are meant to do, and the goals are designed to  
2 increase the conservation of expensive resources  
3 such as petroleum fuels, control the growth rate of  
4 electric consumption and peak demand, that's of  
5 particular importance, and to encourage the  
6 development of demand-side renewable resources such  
7 as solar water heaters and small solar PV systems.

8 This process started back, actually, in  
9 November of 2007. And from November 2007 through  
10 December 2008 the Commission conducted about five  
11 workshops talking about ways to improve energy  
12 efficiency initiatives and improve our process. In  
13 2008, the Legislature amended the FEECA statutes,  
14 which modified directions to the Commission and the  
15 FEECA utilities. These dockets were opened in June  
16 of 2008, and the Commission held a four-day  
17 evidentiary hearing in August of 2009.

18 I'll now give you a brief synopsis of  
19 staff's overall recommendation. I believe the staff  
20 has crafted a recommendation that is well balanced.  
21 It balances the need to further encourage energy  
22 efficiency as well as minimizing the rate impacts on  
23 all customers. The FEECA utilities have proposed  
24 goals that would result in a reduction of future  
25 energy efficiency savings. The intervenors propose

1 goals that would significantly increase the amount  
2 of projected energy efficiency savings due primarily  
3 by including measures known as free riders, and we  
4 will get to that a little later.

5 Furthermore, the goals proposed by the  
6 intervenors would result in substantial immediate  
7 increases in rates with incentives through the ECCR  
8 clause as well as additional potential for  
9 additional base rate increases in the future due to  
10 lost sales. Based on the evidence in this  
11 proceeding, the staff is recommending that the  
12 Commission reject the goals proposed by both the  
13 utilities and the intervenors, and instead continue  
14 on with the current programs that have been used in  
15 prior need determination proceedings and other  
16 proceedings before the Commission.

17 We believe this recommendation, keeping it  
18 at the same level, has many benefits. Such as it  
19 would continue the momentum of successful programs  
20 that are already out there and being used today.  
21 The values are consistent with prior estimates used  
22 in nuclear need determinations and prior natural gas  
23 need determination proceedings. Staff's  
24 recommendation, we believe, would achieve the  
25 overarching concern of minimizing rates to all

1 customers. And, finally, continuing the current  
2 programs that utilities are currently doing provides  
3 a rational means to set goals above zero that was  
4 goals proposed by JEA, OUC, and FPUC.

5 Several days ago I brought each of your  
6 offices some colored charts like these. You should  
7 see the bar charts, and if you don't have them, I  
8 have a few extra copies here, as well. And what  
9 this was intending to do was put graphically kind of  
10 your range of options that you have in this  
11 proceeding based on the evidence today. If you  
12 start at the left end of each of the utilities you  
13 will see values --

14 **CHAIRMAN CARTER:** Tom, hang on one second.  
15 I was going to ask staff if they had an extra one  
16 that I could look on with you. I think I left mine  
17 upstairs. Does anyone else need one, Commissioners?

18 Okay. Thank you. You may proceed.

19 **MR. BALLINGER:** Has everybody got it?

20 **CHAIRMAN CARTER:** Thank you.

21 **MR. BALLINGER:** Sure. If you start at the  
22 left of these charts for each utility -- and, first,  
23 let me explain. There's three categories at the  
24 bottom. There's summer demand, winter demand, and  
25 annual energy in gigawatt hours. Those are the

1 three components that we are charged with the  
2 statute to set goals for. The first two are the  
3 peak demand reductions, as I mentioned earlier. The  
4 third one is the annual energy consumption, which is  
5 the kind of the two-pronged test we have to look at.

6 Our rules require residential and  
7 commercial values for each of these. I have  
8 combined everything into one for ease of  
9 explanation. If you start at the left you will see  
10 the blue column where it says RIM. That was staff's  
11 attempt to calculate what the goals would be if you  
12 used a traditional RIM approach to setting goals.  
13 And you heard in the hearing utilities have coined a  
14 new test called the E-RIM, or the E-TRC, and what  
15 that meant is they included an estimated cost of  
16 carbon to the two traditional tests.

17 Staff was trying to get a handle on what  
18 would it be if we did not include carbon in our  
19 analysis. So those first two columns give you a  
20 clean RIM -- I shouldn't say clean -- let me just a  
21 plain RIM and a plain TRC test. As you move to the  
22 right, then you will see the utility's goals, which  
23 are all proposed on using an E-RIM test where they  
24 included an estimate price for carbon. And you can  
25 see, for example, for FPL the summer demand number



1 slightly increased. It went from a RIM value of 547  
2 to an E-RIM value of 607, so it does increase the  
3 amount of conservation programs that would be  
4 cost-effective. The same for the TRC. It's is the  
5 same basic test, you have added a cost of carbon.

6 Then your next column would be staff's  
7 recommendation for each utility as you go through.  
8 And I would recommend to you that as you move  
9 through these things, every reason up to -- or every  
10 column up to that standpoint would be cost-effective  
11 from a system basis. The difference comes into how  
12 much subsidization we have between nonparticipating  
13 customers and participating customers, and that's  
14 the difference between the RIM and TRC tests. The  
15 further you move towards a TRC type of goal, you're  
16 asking customers who do not participate in  
17 conservation programs or cannot participate in  
18 conservation programs to subsidize those who are.  
19 Yes, it does benefit the overall system, but you  
20 have this tension between rates and discrimination.

21 I would point out to you as you go through  
22 these you will notice that some of staff's goals are  
23 higher than the utilities, some are lower. So we  
24 did not pick our numbers just to be higher than the  
25 utilities overall. We did it based on the evidence

1 we didn't feel was supported on either party. We  
2 didn't believe the utilities' numbers for their  
3 inconsistent use of carbon, and we didn't believe  
4 the intervenors' numbers for their inclusion of free  
5 riders. So staff's recommendation picked numbers  
6 that had been approved by the Commission and in use  
7 today.

8 Our goals on an individual basis are  
9 higher than the goals proposed by FPL, FPU, OUC, and  
10 JEA, but they are lower than the goals proposed by  
11 PEF, TECO, and Gulf. However, on an aggregate basis  
12 our energy goals are about 40 percent higher than  
13 the aggregate goals proposed by the FEECA utilities.

14 Staff also found that the majority of  
15 measures that passed the TRC test or even the E-TRC  
16 test, but failed the RIM test were mainly for  
17 commercial/industrial programs. So what that means  
18 is if you were to move to that type of an E-TRC type  
19 of goal-setting, you would be asking residential  
20 customers to subsidize programs for  
21 commercial/industrial customers. We also found that  
22 measures that passed the TRC test but failed the RIM  
23 on the residential side were mainly for multi-family  
24 programs. And those may be measures that may not be  
25 able to be implemented. For example, a lot of

1       renters, while they may have savings in their  
2       buildings due to air conditioners and pool pumps at  
3       the facility, they are not the deciding factor of  
4       making those capital improvements, it's the  
5       landlord.

6               In addition to our numeric goals, which  
7       are shown in Issues 9 and 10 of staff's  
8       recommendation, staff has recommended that the IOUs  
9       expand their education programs to include measures  
10      which customers should be willing to implement on  
11      their own. That is really the significant  
12      difference between staff's recommendation and goals  
13      proposed by the intervenors.

14             If you recall, GDS, our independent  
15      consultant, was retained and he identified -- or the  
16      firm identified numerous measures that would result  
17      in significant energy savings mainly from the  
18      inclusion of free riders. A free rider is someone  
19      who would adopt a measure even without an incentive.  
20      The inclusion of such measures in a utility's  
21      numeric goals would result in a substantial  
22      cross-subsidization by nonparticipating customers  
23      and increase rates imposed on all customers. Staff  
24      believes that education programs can achieve the  
25      same level of savings with minimal

1 cross-subsidization by nonparticipants, and that is  
2 why we are recommending increasing and enhancing the  
3 education programs of the utilities.

4 Recent amendments to FEECA that I  
5 mentioned back in 2008 focused on demand-side  
6 renewable energy systems, such as solar water  
7 heaters and small PV systems. However, the evidence  
8 in the record in these cases shows that such  
9 measures are not cost-effective by either the  
10 Participant Test, the RIM test, or the TRC test.

11 Despite these results, staff is also  
12 recommending in Issue 11 that IOUs be authorized to  
13 provide up to \$12.2 million of funding of incentives  
14 for customer-owned solar water heaters and PV  
15 systems. Such incentives would almost double the  
16 current rebates available from the Governor's Energy  
17 Office and have minimal impact, less than ten cents  
18 a month, on a typical customer's bill. We are  
19 acknowledging that it is above the cost of service.  
20 It is a subsidization, but it is minimal, and staff  
21 is also recommending that it be a pilot program, and  
22 that it can be stopped at any time if we see that  
23 the costs are getting too excessive. But we did  
24 feel it was a way to reflect the Legislature's focus  
25 on these types of systems and also minimize rates to

1 all customers.

2 Your real charge today is to establish  
3 numeric goals, which is Issues 9 and 10. The other  
4 issues are supporting issues or complimentary  
5 issues, if you will. I would recommend to you that  
6 if it's your pleasure that we engage in kind of a  
7 general dialogue of the overall goals and  
8 philosophies, stuff like that, before we move on to  
9 individual issue summations. An.

10 D with that, staff is ready for your  
11 questions.

12 **CHAIRMAN CARTER:** Thank you.

13 Commissioner Skop.

14 **COMMISSIONER SKOP:** Thank you, Mr.

15 Chairman.

16 In terms of the philosophies, I'll get to  
17 that in a second. I think we sat through lengthy  
18 hearings, heard testimony at length from not only  
19 the intervenors, but also from the company, but I  
20 want to get to the nuts and bolts of what the staff  
21 recommendation is, which seems to more parallel what  
22 the utilities want as opposed to some of the other  
23 suggestions that other parties may have made.

24 If I could ask staff to turn to the charts  
25 on Issue 9, which are Pages 57 through 60 of the

1 staff recommendation. And on those respective  
2 charts there seemed to be instances, or quite a few  
3 instances of the staff's goals for energy and demand  
4 which are actually lower than the utilities' goals.  
5 And I know that staff had mentioned that or conceded  
6 that point in their opening comments, but it would  
7 seem to me since the utility would not propose any  
8 goals based on programs that are lower than avoided  
9 costs, there should be no reason why this Commission  
10 should adopt goals lower than those proposed by the  
11 utilities themselves, especially in light of the  
12 recent direction that the Legislature provided in  
13 Sections 366.82, 366.91, and 366.92 of the Florida  
14 Statutes which speak to conservation, efficiency of  
15 energy consumption, and the need to promote  
16 renewables. At least from my perspective -- and I  
17 would like to get staff's comment on this, it  
18 appears that adopting the higher of staff's or the  
19 utility goals would increase the goals by a  
20 substantial margin for some utilities.

21 **MR. BALLINGER:** Okay. So your question is  
22 compare the two numbers, the utility versus the  
23 staff, to pick the higher goal to further increase  
24 conservation?

25 **COMMISSIONER SKOP:** Well, in some

1 instances staff took a lower goal than those  
2 proposed by the utility, which seems  
3 counterproductive to advancing energy efficiency and  
4 conservation measures.

5 **MR. BALLINGER:** Correct. And staff's  
6 recommendation was not picking a number that would  
7 always further encourage it. We looked at the  
8 evidence in the record. And let me back up and  
9 explain a little bit. Our recommendation is really  
10 almost a default recommendation. The evidence  
11 provided, we thought, by the utilities did not  
12 support using the E-RIM test with the inconsistent  
13 use of the carbon and the varying numbers in there.  
14 So I'm basically saying the preponderance of the  
15 evidence -- I couldn't rely on their numbers. As  
16 well I couldn't rely on the intervenors.

17 The numbers selected by staff were not  
18 because of a particular test. It was a fallback, if  
19 you will. The reason why they come out some lower  
20 and some higher is you really are done on two  
21 different time frames as far as avoided costs. The  
22 ones from the Ten-Year Site Plan were done  
23 continuing the existing goals and existing programs.  
24 You continue on those savings, and then you look at  
25 when do I need a power plant. That is how those

1 are.

2 In the DSM goals proceeding, the way it  
3 started is you start at ground zero. You freeze  
4 conservation at the existing levels as it is today.  
5 You don't allow any new participants in any of your  
6 existing programs because you are testing not only  
7 the existing programs for cost-effectiveness, but  
8 your future incremental ones.

9 Since the utilities have a lot of  
10 generation units certified, you find your avoided  
11 cost drops way off. They don't need as much  
12 resources to meet their needs. That's why a lot of  
13 their numbers on some of them would be lower.

14 **COMMISSIONER SKOP:** Okay. I had the same  
15 concern -- in the interest of time, because I know  
16 my colleagues will probably have a lot of  
17 questions -- the same concerns as to Issue 10, the  
18 chart in Issue 10, which is on Pages 64 through 67.  
19 Again, many instances of where the staff goals for  
20 energy and demand are lower than those requested by  
21 the utility. Again, I'm having some trouble trying  
22 to rationalize why they would not pick the higher of  
23 the two numbers, even the numbers that the utility  
24 proposed.

25 Let me move on to another issue. You



1 mentioned in the response to that part of the  
2 analysis is when do I need a new power plant. And I  
3 know a lot of the discussion focused on what the  
4 appropriate test methodology to be used, whether it  
5 be departing from the RIM test, or the E-RIM, or  
6 adopting the TRC test, which many of the intervenors  
7 have requested that the Commission take a hard look  
8 at trying to change the status quo and look at  
9 things that would do more to promote energy  
10 conservation and efficiency.

11 I guess from the traditional perspective  
12 it seems that the use of the RIM -- and I'd like to  
13 get staff's feedback on this. This is the first  
14 opportunity we have had to really kind of debate the  
15 issue from staff to the Commission, notwithstanding  
16 the hearing process. But from my perspective it  
17 seems as if the sole use of the RIM test will  
18 actually expose consumers to rate increases later  
19 and miss opportunities now to achieve cost-effective  
20 savings that would be substantially less than that  
21 future cost of new generation. And has staff  
22 embodied that? I mean, it seems to me that that is  
23 one of the best arguments from -- you know, from  
24 looking beyond the RIM test is that under the  
25 avoided cost argument, energy efficiency costs today

1 are cheaper than building new generation later.

2 **MR. BALLINGER:** For some. I think what we  
3 found and why this whole process was useful is the  
4 Legislature required the Commission to look at the  
5 full technical potential that is out there in the  
6 world. And technical potential is what could you do  
7 absent any cost constraints? So what is physically  
8 achievable out there? And there were significant  
9 savings that were identified.

10 Then as you start applying economics and  
11 rational behavior to it, we found that a majority of  
12 those savings could be done from measures that have  
13 a very quick payback that consumers should be doing  
14 on their own. So the process was very good on  
15 identifying these huge amount of savings that are  
16 there, but the bulk of them are measures that could  
17 be done by a person's own responsibility.  
18 Installing their own light bulbs, getting their AC  
19 systems checked, things of this nature that are very  
20 simple, have a very quick payback for them, and will  
21 benefit them. It will also benefit the rest of the  
22 system.

23 But staff's recommendation is premised on  
24 trying to capture those benefits through education  
25 programs rather than setting numeric goals which

1 then you're faced with the decision in two or three  
2 years to reward or penalize a utility for exceeding  
3 or not meeting the goals. And that's where we are  
4 trying to make sure we set something that is  
5 attainable and that is reasonable, because we also  
6 have to monitor this, and we are going to be faced  
7 with decisions in a few years to reward or penalize  
8 utilities.

9 **COMMISSIONER SKOP:** Okay. One quick  
10 intervening question, and then I'll touch upon  
11 something you just mentioned. With respect to  
12 setting goals, why not set stretch goals? Or what  
13 is the parallel of setting stretch goals as opposed  
14 to, you know, even adopting numbers that are less  
15 than -- that staff has adopted that are less than  
16 what the utilities have proposed in some instance,  
17 and what is the penalty for not meeting goals?

18 **MR. BALLINGER:** I think that's the dilemma  
19 you are in. Before FEECA was modified this past  
20 year, if a utility did not meet its goals, then the  
21 Commission had the authority to mandate a specific  
22 program to the utility. To say, okay, go out and  
23 give away light bulbs, or go out and do a load  
24 management program, you didn't meet your goals.

25 In my history here that has not happened

1 because, quite frankly, DSM is a voluntary program.  
2 You can put incentives out there. It's very hard  
3 sometimes to get everybody to do. You may think you  
4 have the right numbers of participants you'll get,  
5 but it's not -- something is going to happen.  
6 There's also other market things; you have  
7 manufacturing problems, things of this nature.

8 Now the FEECA statute has changed, though,  
9 to where the Commission is authorized to do a  
10 financial reward or penalty. That is a more serious  
11 nature in my opinion. If you are going to ask  
12 somebody to write a check for not meeting a goal,  
13 you have to make that goal reasonable and you have  
14 to be able to monitor it with some specificity. So  
15 I think setting a stretch goal makes it difficult  
16 for you down the road if they are not meeting it.

17 **COMMISSIONER SKOP:** But as the staff  
18 recommendation would have it, given the ability now  
19 for the Commission to establish rewards for  
20 compliance, if you set the goals so low then, of  
21 course, they are going to get the reward in some  
22 instances. Again, where staff is setting goals  
23 lower than those proposed by the utility themselves.

24 **MR. BALLINGER:** That is possible. But,  
25 remember, there's three categories you are looking

1 at, too. There's demand, there's winter/summer  
2 demand and energy.

3 **COMMISSIONER SKOP:** Okay. Well, let's  
4 talk about that a little bit because you mentioned  
5 technical potential, and if I could ask you to turn  
6 to Page 18 of the staff recommendation, the chart on  
7 Page 18.

8 **MR. BALLINGER:** Correct.

9 **COMMISSIONER SKOP:** Okay. Now, in that  
10 chart on Page 18, staff used the 2007 baseline data  
11 to calculate the 2019 achievable potential. And  
12 these data sets, I believe they were used to  
13 calculate percentages shown in the table, is that  
14 correct?

15 **MR. BALLINGER:** Yes. On Page 18 is the  
16 achievable potential. If I could, if I could turn  
17 you to Page 10 of the recommendation, that's the  
18 technical potential. We tried to put these two  
19 charts in there to give you an order of magnitude of  
20 what's going on. And I'll stick to one number. I  
21 am at Page 10, the residential sector, I'm looking  
22 at just annual energy, but the way this goes, this  
23 is telling me or what we found in the hearing is  
24 that of the technical potential is 36,584 gigawatt  
25 hours of potential savings. Compare that to the

1 baseline total sales of 94,745 gigawatt hours. You  
2 could save 38.6 percent of the energy if you did  
3 everything that's technically potential.

4 Now, when you go to the achievable  
5 potential, which does two things, it takes out the  
6 free riders and it takes out some cost-effectiveness  
7 measures based on the RIM and TRC tests. That  
8 number shrinks down to 1 percent. And the bulk of  
9 that is the free-ridership, and that is shown on  
10 Page -- I believe it is later on in Issue 2. Page  
11 15 of the recommendation. And there you can see of  
12 the maximum achievable, if you added back in the  
13 free riders, you are adding in sometimes 60 to  
14 80 percent.

15 So your difference from technical  
16 potential to achievable, 80 percent of that  
17 shrinkage is due to this free rider issue. That's  
18 the main policy thing. I want you to all understand  
19 that's the big focus of the difference there.

20 **COMMISSIONER SKOP:** Okay. On the chart on  
21 Page 18 in terms of achievable potential, how does  
22 that chart or the presentation of that data not  
23 cause the reader -- or not mislead the reader or  
24 cause the reader to draw inaccurate conclusions to  
25 the extent that the achievable potential for energy

1 is really not 1.6 percent, it's just under the  
2 constraints that staff would impose getting rid of  
3 the free ridership and looking to other things that  
4 is only thing that could be accomplished.

5 **MR. BALLINGER:** I understand. To the  
6 layperson you don't understand the intricacies of  
7 what's going on, and that's why it is difficult to  
8 explain this, that the bulk of the savings is the  
9 free riders that got screened out.

10 **COMMISSIONER SKOP:** Okay. If I could now  
11 just ask you -- and I am almost done, Mr. Chair --  
12 on Page 4 of the staff recommendation there is a  
13 chart there, and on that chart at the bottom of the  
14 page showing aggregate goals, I'm wondering how that  
15 chart in itself may not be misleading to the extent  
16 that -- would a better way to present that data show  
17 the four IOU goals versus staff goals which are  
18 exclusive to the munis, which had zero goals, and it  
19 would seem to me that perhaps the incremental  
20 difference between the IOU goals and the staff  
21 recommendation for the IOU goals is much smaller and  
22 provides an accurate comparison to the point to see  
23 whether the goals by staff are higher or lower than  
24 the utilities.

25 **MR. BALLINGER:** I understand, and we are

1 charged with setting goals for the seven FEECA  
2 utilities, and that's why I provided the colored  
3 charts to show you each individual utility with  
4 staff's comparison. I thought it would be a bit  
5 complicating to have it in the recommendation. This  
6 thing was already about 80 pages. We tried to just  
7 put it altogether as one overall thing. And, yes, a  
8 lot of this comes from the FPUC, OUC, and JEA  
9 proposing zero goals, and staff recommending that  
10 they just continue their programs that they said  
11 they were going to do anyway and actually putting a  
12 number to what they are doing. That's a big chunk  
13 of it.

14 **COMMISSIONER SKOP:** Okay. But by adopting  
15 goals lower than those proposed by the utilities, I  
16 mean, how does staff advance the legislative intent  
17 that we have been asked to do in terms of energy  
18 conservation and efficiency?

19 **MR. BALLINGER:** I think we do in that as  
20 you see in aggregate, they are greater for the  
21 utilities.

22 **COMMISSIONER SKOP:** Not initially, though.  
23 I mean, there are instances where on those charts it  
24 starts out lower and then ultimately it gets there.

25 **MR. BALLINGER:** And for some individual



1 utilities they would be overall lower even over the  
2 ten years. It does promote energy efficiency in  
3 that it's continuing their existing programs. You  
4 have these programs that have been brought before  
5 the Commission as a means to mitigate the need  
6 before building a nuclear power plant.

7 Again, our numbers were not to pick a  
8 number to set aggressive goals. This is not an  
9 open-ended just pick a number. It has to be based  
10 on evidence in the record, and we are looking at  
11 what the utilities proposed. We weren't convinced  
12 by their numbers nor were we convinced by the  
13 intervenors. So, again, this is something that we  
14 reset again in five years. We are also free to  
15 change it at any time. Utilities are free to  
16 propose changes, too, to their goals.

17 **COMMISSIONER SKOP:** Okay. Let me turn to  
18 my last question which, again, is about the only  
19 bright spot that I see in the staff recommendation,  
20 and that's on Issue 11 and Page 73. And there is a  
21 table there, and basically Issue 11 is in addition  
22 to the megawatt hour -- I mean, megawatt and  
23 gigawatt hour goals established in Issues 9 and 10,  
24 should the Commission establish separate goals for  
25 demand-side renewable energy systems. And Table 1-1

1 on Page 73 speaks to the staff recommendation, which  
2 is, I believe, setting a 5 percent target over the  
3 four year previous revenue, or five year average of  
4 the IOUs' energy conservation and cost-recovery  
5 expenses.

6 I guess adopting the staff recommendation  
7 on this point, at least from my perspective,  
8 facilitates solar PV and solar thermal within the  
9 state. It's very analogous to using the 5 percent,  
10 or the 2 percent RPS cap and allocating that for  
11 solar rebates that was in the alternate RPS  
12 recommendation that the Commission sent over to the  
13 Legislature. At 5 percent, as staff has  
14 recommended, at least providing rebates commensurate  
15 with those currently offered by the state, that  
16 number could support the annual deployment of  
17 approximately 3 megawatts distributed solar PV  
18 generation. Adopting Witness Spellman's  
19 recommendation of 10 percent, again, seems to have  
20 nominal rate impact, some as little as 4 cents, but  
21 would facilitate approximately 6 megawatts of solar  
22 PV distributed generation throughout the state on an  
23 annual basis.

24 So, again, to me, you know, moving in the  
25 right direction, although this recognizes it is

1 slightly above avoided cost, you know, staff to me  
2 is at least being somewhat innovative here in terms  
3 of trying to facilitate the adoption of more  
4 renewables, solar PV based, solar thermal within the  
5 state, distributed generation, which I think is a  
6 positive. I'm not really convinced as to Issues 9  
7 and 10, whether those goals are robust.

8 And I think at this point, Mr. Chair, I am  
9 going to turn it over back to you and hear the views  
10 of my colleagues, but part of me would favor  
11 deferring this item and sending staff back to the  
12 drawing board to adopt more robust goals consistent  
13 with some of the legislative direction that this  
14 Commission has received.

15 I know that cost is an important  
16 consideration, and by no means do I support adopting  
17 the intervenors recommended goals wholeheartedly,  
18 but instances where staff has adopted goals less  
19 than the utilities propose themselves gives me great  
20 concerns, and I think it's the subject of quite a  
21 little bit of controversy as it pertains to this  
22 recommendation. So, I'll turn over to you.

23 Thank you, Mr. Chair.

24 **CHAIRMAN CARTER:** Thank you.

25 Commissioner Argenziano, you're

1 recognized.

2 **COMMISSIONER ARGENZIANO:** Thank you, Mr.  
3 Chair.

4 I'm going to go through several things  
5 that give me some heartburn and some things I have  
6 questions on and see if I can get some answers to.  
7 And I think can Commissioner Skop hit some of them  
8 on the chart, so I won't go back to that, and as I  
9 have them written down I'll go through several  
10 items.

11 On Issue 1, it indicated on Page 7 --  
12 well, the question, of course, was did the company  
13 provide an adequate assessment of the full technical  
14 potential of all available demand-side and  
15 supply-side conservation and efficiency measures,  
16 including demand-side renewable energy systems  
17 pursuant to the statute. And it seems that on Page  
18 7 it indicates that a supply-side technical  
19 potential was not calculated. And then on Page 17,  
20 and I quote, "It did not develop supply-side  
21 conservation or efficiency measures to the same  
22 degree they did demand-side measures." And on Page  
23 17, again, quote, Supply-side efficiencies and  
24 conservation -- it goes further to say would result  
25 either in less fuel being required or less -- or

1 less loss along the transmission and distribution  
2 network.

3 And I guess we talk about how the public  
4 can conserve and change its habits, and I'm  
5 wondering if we were to look at Section 366.82(3),  
6 it basically states that we shall evaluate the full  
7 technical potential of all available demand-side and  
8 supply-side conservation and efficiency measures,  
9 including demand-side renewable energy systems. And  
10 why wouldn't we want to consider all options before  
11 setting goals?

12 **MR. BALLINGER:** If I can address it. This  
13 was a little awkward when the statute was revised.  
14 Traditionally, this has been the FEECA looking at  
15 demand-side calling it reducing the load portion of  
16 it. If you go to supply-side conservation measures,  
17 that has a chilling effect on conservation. In  
18 other words, if I make my generation and  
19 transmission system very efficient, I don't need  
20 conservation. So they are counter -- they work  
21 against each other, if you will, in two separate  
22 scenarios. So it is a little awkward to consider  
23 them together in this one setting supply-side goals.  
24 So even we had more measures of supply-side  
25 efficiency and the utilities would do them, all

1 that, in my mind, would do is reduce your DSM goals.

2 Staff has also noted that supply-side  
3 efficiency is taken up in other measures. We look  
4 at it in need determination cases, we look at it in  
5 the ten year site plan to see which units are  
6 getting old and aged. Could they be candidates for  
7 retrofits. And you have had a couple of need  
8 determinations come through here that do exactly  
9 that, of repowerings to make the units more  
10 efficient.

11 When you look at transmission lines, is  
12 there a shorter route you can do that minimizes  
13 losses. Can you look at improved transformers and  
14 things of this nature. So the supply-side is done,  
15 it's done in other forums. In my view and I think  
16 in staff's view it is really not appropriate to look  
17 at here. Let's focus on DSM, let's focus on energy  
18 efficiency and set those goals.

19 **COMMISSIONER ARGENZIANO:** That's what I'm  
20 having a hard time with, because I understand that  
21 you say it is not appropriate and the goals says do  
22 it separate. I don't understand how it is not  
23 then -- how is it in harmony with the statute that  
24 says that you shall evaluate the full technical  
25 potential of all available demand-side and

1 supply-side conservation and efficiency measures,  
2 including -- and it goes on and on.

3 **MR. BALLINGER:** I understand. And we  
4 noted it, and I'm dealing with the hand I'm dealt  
5 with, the cards I'm getting and the evidence here.  
6 Utilities do not produce a supply-side technical  
7 potential.

8 **COMMISSIONER ARGENZIANO:** Okay. So we  
9 don't have that and the statute says we should have  
10 that. Let me move on. You have answered my  
11 question. I'm not trying to cut you off. I  
12 appreciate that, I just don't want to waste time.  
13 You have answered the question and I got it.

14 The -- hang on one second. I don't want  
15 to ask the same question over again. One other  
16 issue on the technical issues were not included in  
17 the study. Fifty percent of the total consumption  
18 of electricity is residential, is that correct,  
19 pretty much, or close?

20 **MR. BALLINGER:** Approximately, yes.

21 **COMMISSIONER ARGENZIANO:** Yet small  
22 changes that could have large gains for residents  
23 were not included. You know, certain things that I  
24 look at as far as measures that were not included.  
25 You know what, hang onto that a second. Hang on.

1 Let me go back to that because I have another page  
2 that I'm missing on that. Hold on.

3 We will go to Issue 2, if we could. Did  
4 the company provide an adequate asset of the  
5 achievable potential of all available demand-side  
6 and supply-side conservation efficiency measures  
7 including -- on the two-year payback period, that  
8 was an order, it is not a statutory mandate, right?

9 **MR. BALLINGER:** It has been used before by  
10 utilities in setting goals and recognized by the  
11 Commission when setting goals as a way to address  
12 free riders, which is specific in our rules that  
13 says we must try to account for the impact of free  
14 riders in setting goals.

15 **COMMISSIONER ARGENZIANO:** But it's not a  
16 statutory mandate, is it?

17 **MR. BALLINGER:** Correct.

18 **COMMISSIONER ARGENZIANO:** Okay. Isn't it  
19 somewhat in tension with the legislative intent in  
20 Section 366.81, which says, quote, the Legislature  
21 finds and declares that it is critical to utilize  
22 the most efficient and cost-effective demand-side  
23 renewable energy systems and conservation systems in  
24 order to protect the health, prosperity, and general  
25 welfare of the state and its citizens. If it



1 eliminates most of the efficiencies and  
2 cost-effective measures available, how does that --  
3 explain to me -- give me some --

4 **MR. BALLINGER:** It's a matter of how you  
5 address it. It's not that we don't recognize it as  
6 there, and I think this whole process gave you the  
7 information to identify these measures that are out  
8 there and make people aware and make the utilities  
9 and the Commission aware of what measures really are  
10 the most cost-effective ones out there. The  
11 difference in opinion comes in do I pay an incentive  
12 to get people to do that, or do I educate them to do  
13 it on themselves. And staff is recommending that  
14 the better way, the most cost-effective way to  
15 capture those savings is through education programs.

16 **COMMISSIONER ARGENZIANO:** Well, don't you  
17 think that most people who would have done that  
18 already have?

19 **MR. BALLINGER:** Obviously not, and that is  
20 troubling. The bulk of the measures were compact  
21 fluorescent light bulbs. And, yes, we are being  
22 inundated with ads about them and it's starting to  
23 catch on; I think you are starting to see that in  
24 society. But the key on this is while there may be  
25 efficiency gains out there, utilities and the

1 Commission's policy in the past has been utilities  
2 should provide incentives for measures that go  
3 beyond the norm.

4 In other words, you have building codes  
5 and appliance efficiency standards. You can't buy a  
6 heat pump now that has a SEER of less than 13. So  
7 utility programs only provide a rebate if you go to  
8 a 15 or a 17, a more efficient unit. You wouldn't  
9 want to pay a rebate to just meet the building code.  
10 It's kind of a silly thing; you are kind of doubling  
11 up on these. And I think staff is seeing these  
12 quick payback measures as a way to do that.

13 A better way to try to capture those  
14 savings is to educate people and have people have  
15 the personal responsibility to go ahead and take  
16 charge of this, and that's just the approach we have  
17 taken on it.

18 **COMMISSIONER ARGENZIANO:** Right. And I  
19 understand. I believe in personal responsibility,  
20 except that you understand that a lot of people  
21 don't have that same maybe --

22 **MR. BALLINGER:** The means to do it.

23 **COMMISSIONER ARGENZIANO:** The means is  
24 one, and that's why rebates and incentives help  
25 those people who may not be as motivated.

1           **MR. BALLINGER:** But the problem with --  
2           the other problem we saw is that the measures are a  
3           lot in the industrial and commercial sector. So if  
4           the utilities are giving out light bulbs to the  
5           industrial/commercial sector, the residential  
6           customer who is out of a job struggling is paying  
7           for those incentives and is subsidizing that, and we  
8           don't think that is correct, either. And that is  
9           why we are thinking education of these people to let  
10          those customers know, hey, you can install these  
11          light bulbs and save your bill and it benefits you  
12          and it will pay you back in less than two years.  
13          You need to be doing this.

14          **COMMISSIONER ARGENZIANO:** And for those  
15          people what can't afford that, what do we have  
16          currently -- what are our utilities doing currently  
17          to help in that area as far as people who cannot  
18          afford --

19          **MR. BALLINGER:** There's a lot of programs.  
20          Utilities have voluntary programs where other  
21          customers can add a dollar or five dollars to their  
22          bill and it goes into a pot of money basically to  
23          help pay for bills for people who can't pay their  
24          bill.

25          **COMMISSIONER ARGENZIANO:** Are there any

1 rebates currently, rebates that the utilities give  
2 now to incentivize, either CFLs or LEDs?

3 **MR. BALLINGER:** I don't know about CFLs,  
4 but there is basically programs out there for attic  
5 insulation, adding that, window pane changing out --

6 **COMMISSIONER ARGENZIANO:** Programs. Are  
7 you talking about learning programs --

8 **MR. BALLINGER:** No, rebates. Rebates.

9 **COMMISSIONER ARGENZIANO:** The rebates.

10 **MR. BALLINGER:** Rebates for attic  
11 insulation, rebates for energy efficient air  
12 conditioners, rebates for getting your ducts  
13 repaired in your attic. We found that to be a big  
14 problem. Window film. Changing out windows. There  
15 might be even incentives for shade trees, reflective  
16 roof coating, attic barriers. All these carry  
17 incentives that go with them, both in the new  
18 construction and in the retrofits. Water heater  
19 efficiency improvements, things of this nature. So  
20 there's a variety of incentives and rebates out  
21 there.

22 The first key to it is the audit that the  
23 utility gets by the request of a customer, that a  
24 customer can either do their own audit on-line.  
25 They can sit at their computer, enter in data about

1 their house, and it will come back with  
2 recommendations and suggestions. They can schedule  
3 an appointment with a utility auditor to come in.  
4 They will go through the house measure insulation  
5 and make suggestions, and say here is a list of our  
6 programs and rebates. Give us a call, or line up,  
7 here is a contractor that will do it, and it gets  
8 done like that. So, yes, there is a lot of  
9 rebates/incentives. Utilities are spending about  
10 \$250 million a year on primarily rebates and  
11 incentives.

12 **COMMISSIONER ARGENZIANO:** I noticed --  
13 because I have been using CFLs for a long time now,  
14 and at first they were very expensive and I bought a  
15 few at a time and then waited, and finally got my  
16 whole house taken care of. Now I'm moving towards  
17 LEDs. And it was at first hard to find LEDs that  
18 fit in the current sockets that you had and in  
19 different shapes and bulb sizes. And they are out  
20 there now, and I know that they are still more  
21 expensive for some people to be able to afford, and  
22 I wonder if any of our utilities have moved towards  
23 that type of incentive or rebate. I know some other  
24 states have that type of rebate in place, especially  
25 for light bulbs and the most cost-efficient light

1 bulbs.

2 **MR. BALLINGER:** I don't believe for LED.  
3 There might have been a program or two for like LED  
4 traffic signals, looking at replacing them.

5 **COMMISSIONER ARGENZIANO:** I mean, LEDs are  
6 so -- they are so cost efficient and so beneficial  
7 to use.

8 **MR. BALLINGER:** The problem right now is  
9 we are at the goal-setting phase, we are not looking  
10 at individual programs. Once you establish numbers  
11 of kilowatts and kilowatt hours that they have to  
12 save, utilities come back with programs to meet  
13 those goals and you sum up all the parts. So we  
14 might see an LED program. Right now I don't believe  
15 we have any.

16 **COMMISSIONER ARGENZIANO:** Well, that's  
17 what I'm saying. And I think that we are kind of  
18 behind the curve on some things, and I know it has  
19 been awhile and the LEDs are just surfacing for more  
20 home use, and to me if the goal is really to reduce  
21 consumption --

22 **MR. BALLINGER:** Well, it's to reduce the  
23 growth of consumption and the growth of peak demand.  
24 And I would also suggest to you that a lighting load  
25 in a residential house is the small component.

1                   **COMMISSIONER ARGENZIANO:** But when you put  
2 them altogether you can save a lot. Well, yes, if  
3 you look at the amount of savings. I could show you  
4 my bills. I've saved a lot just by changing  
5 lighting.

6                   **MR. BALLINGER:** Your bigger ones are your  
7 air conditioner.

8                   **COMMISSIONER ARGENZIANO:** Of course.

9                   **MR. BALLINGER:** Your refrigerator. The  
10 second refrigerator in the garage.

11                   **COMMISSIONER ARGENZIANO:** But you are not  
12 saying that you should neglect the lighting?

13                   **MR. BALLINGER:** No.

14                   **COMMISSIONER ARGENZIANO:** Okay. So you  
15 want total conservation. You want to try to make  
16 the best efforts you can. And I think every little  
17 bit -- it just gets to where you want to go.

18                   **MR. BALLINGER:** I think part of it, too,  
19 is for a lot of us, thankfully, our electric bill is  
20 not a major burden, and we are very fortunate to be  
21 that, but there are some that it is, and they have  
22 got to look at every way to do it.

23                   **COMMISSIONER ARGENZIANO:** Well, you do  
24 have a lot of people out there, I'm sure, with very  
25 old AC units and so on and so on. And did you

1 indicate that there were incentives or rebates --

2 **MR. BALLINGER:** There are.

3 **COMMISSIONER ARGENZIANO:** -- for the --  
4 well, I'm trying to think of how they really work.  
5 If you are really in the lower income bracket and  
6 you really can't afford a new air conditioning unit,  
7 what type of rebates are available for that, or  
8 incentives?

9 **MR. BALLINGER:** Rebates are based on going  
10 above and beyond the minimum efficiency standards  
11 when you replace it. So right now --

12 **COMMISSIONER ARGENZIANO:** No. Let me  
13 rephrase that. To the dollar to the pocket to the  
14 person who doesn't have the money to replace a unit  
15 that's poor in energy efficiency, what kind of  
16 savings are there realized there? Is there a way to  
17 get those people who have old units using new energy  
18 efficient units with the least amount of cost?

19 **MR. BALLINGER:** The amount of incentive is  
20 not based on an income level or a needs based. It  
21 is based on if I improve the efficiency of the unit,  
22 I'm going to save so much demand and energy.

23 **COMMISSIONER ARGENZIANO:** And I understand  
24 that, but that's what I'm getting at. That is part  
25 of the problem. If people can't afford it, it



1 doesn't matter how much it is going to improve their  
2 energy efficiency if they don't have the money to  
3 put out there. And that's what I'm trying to figure  
4 out.

5 **MR. BALLINGER:** Correct.

6 **COMMISSIONER ARGENZIANO:** What type of  
7 incentives, either state, federal, utility are there  
8 available.

9 **MR. BALLINGER:** And that's where the  
10 Legislature has apportioned money like through the  
11 energy office to do rebates for solar water heaters  
12 and things of that nature, because you are getting  
13 into a social aspect, if you will, of providing for  
14 this.

15 **COMMISSIONER ARGENZIANO:** Right.

16 **MR. BALLINGER:** And I personally  
17 believe -- I think that is what the legislatures  
18 decide to do. If they want to set up a program to  
19 have \$10 million or whatever for rebates for this,  
20 they could do it. I'm looking -- (simultaneous  
21 conversation) -- from the Commission.

22 **COMMISSIONER ARGENZIANO:** Right. That's  
23 what I'm asking you. Federal, state, utilities, are  
24 there any such out there now in the state of Florida  
25 that helps the families that are struggling more

1           today to be able to make the changes?

2                   **MR. BALLINGER:** Yes. DCA has the LIHEAP  
3           program which helps families who are struggling.  
4           There's other social agencies that go through and  
5           they identify -- and utilities work with these  
6           social agencies. In fact --

7                   **COMMISSIONER ARGENZIANO:** But you know  
8           what, I know those, and those aren't really going to  
9           replace air conditioning units and water heaters. I  
10          think some of them may be now with the water heaters  
11          with the solar panels, but I don't think we are on  
12          the same page of what I'm asking.

13                   **MR. BALLINGER:** But, again, the decision  
14          is should the utility ratepayers do it or should it  
15          be a legislative call to do it as a societal  
16          benefit.

17                   **COMMISSIONER ARGENZIANO:** Right. And I  
18          understand that. I'm just trying to get to where  
19          the use really is and how we get to be more energy  
20          efficient. And then, of course, the policymakers  
21          are going to have to figure out where that one goes.

22                   **MR. BALLINGER:** But, again, what we found  
23          was the bulk of this was in the  
24          commerical/industrial sector, not the mom and pop  
25          residences. So that was an eye-opening --

1                   **COMMISSIONER ARGENZIANO:** By that kind  
2 of -- and I understand what you're saying, but  
3 neglecting to look at the mom and pop, or the homes,  
4 the residential sections, I think, or minimizing the  
5 aggregate savings or to the peak demand by the  
6 residential users is probably problematic for me. I  
7 think that it all adds up. I understand what you're  
8 saying, the bulk in the commercial area, and I  
9 agree. But I think what I'm trying to do is figure  
10 out for every residence that we have in the state of  
11 Florida, how do you get --

12                   **MR. BALLINGER:** I think for every customer  
13 class there is some form of conservation program  
14 that they can participate in. Now, I can't  
15 participate in a pool pump program because I don't  
16 have a pool, okay? So there's varieties like that,  
17 but I think there is coverage among everybody to  
18 where there are utility programs available to every  
19 customer class.

20                   **COMMISSIONER ARGENZIANO:** And I agree to  
21 some degree, because if you are really a poor family  
22 out there you can't ask the company to give you  
23 something for free. That's where the Legislature  
24 has to come in and say how do we make policy to  
25 allow this to happen. But I don't see where you

1 have hardworking families out there who are  
2 struggling that can make those changes to become  
3 more energy efficient without some kind of help.  
4 And I'm not saying it has to be a give-away from the  
5 utility. I'm trying to figure out as a whole how we  
6 get to really these conservation goals if we are  
7 really serious about it.

8 But, let me ask you, I have heard it a  
9 number of times in regards to the two-year payback  
10 and the -- that, you know, if we go with aggressive  
11 conservation goals that rates are going to be  
12 impacted because the companies have, you know, fixed  
13 costs and they have to recover those fixed costs.  
14 So if we go to more aggressive conservation goals, I  
15 have heard that rates would jump up.

16 And I understand that, but isn't it kind  
17 of a balancing act that if you have -- that if  
18 consumers decrease their usage that even if rates  
19 had to go up -- which a lot of people have a hard  
20 time understanding, because they are trying to  
21 conserve and yet the company has fixed costs, so  
22 they say, gee, we are being penalized for conserving  
23 because the company still has to recover. And if  
24 everybody conserved all at once the company still  
25 has to recover those costs. But if it was a

1 balancing act that the consumer used less, does it  
2 necessarily mean that it would be higher cost to  
3 consumers? If rates went up and yet they used less  
4 wouldn't it -- couldn't it balance out?

5 **MR. BALLINGER:** You're correct. The  
6 participating customer might still see a net benefit  
7 even with an increased rate, but what we are saying  
8 is the nonparticipating customer who either cannot  
9 or chooses not to participate, their rates go up.

10 **COMMISSIONER ARGENZIANO:** Right. But then  
11 the goal is when you look at that and say, okay, how  
12 do you get the nonparticipating customer to  
13 participate? Well, the ones who can't afford it,  
14 that is more difficult. That is a policy decision  
15 on how you are going to help those who can't afford  
16 it to become more energy efficient so that it  
17 benefits everybody later somewhere down the road.  
18 And those who maybe are just not inclined to  
19 participate, well, then maybe they have to -- maybe  
20 they will pay more. If you are not inclined to  
21 participate when you can, then perhaps you should  
22 pay more. I don't know. But, also, when it came  
23 to -- I guess it was the rental, because a lot of  
24 people in the rental community would be, as you say,  
25 subsidizing. Are there any incentives for apartment

1 complexes to be more energy conservation minded?

2 **MR. BALLINGER:** There are, but you have  
3 the disconnect between the owner of the equipment  
4 and the user of the services. So even though the  
5 landlord pays the money, does a rebate for an  
6 efficient air conditioner, he is not seeing any  
7 savings. Now, true, he might have happier tenants,  
8 he might have -- or they can pay the rent instead of  
9 paying an electric bill, but it's a hard market to  
10 crack.

11 **COMMISSIONER ARGENZIANO:** And maybe that's  
12 another policy call where the Legislature should be  
13 thinking that maybe there is some kind of a tax  
14 incentive or another incentive for the landlord to  
15 be more energy --

16 **MR. BALLINGER:** Or your building code.

17 **COMMISSIONER ARGENZIANO:** Or your building  
18 code, right. Okay.

19 Just a couple of more. In Issue 4, the  
20 statutes indicate that all three tests should be  
21 used to set goals. Were all three tests utilized in  
22 the studies?

23 **MR. BALLINGER:** There was a lot of debate  
24 at the hearing about which tests did the statute  
25 really tell us to do, and it wasn't totally clear,

1 but I think it does tell you to use all three. And  
2 I think all three give you valuable information.  
3 Obviously, the Participant Test tells you about is  
4 it beneficial to a person using this program. We  
5 don't want to promote a program if it is not going  
6 to be beneficial to somebody. That's just going to  
7 create a lot of hate mail for us.

8 The TRC test tells you from a societal  
9 standpoint does it look like a good thing to do, and  
10 then the RIM test tells you the amount of  
11 cross-subsidization you are looking at, and rate  
12 impact that you are dealing with. And are you being  
13 fair to the nonparticipating customers who are  
14 having to pay for some of these incentives, but may  
15 not be seeing a benefit. So I think all three tests  
16 give you valuable information and should continue to  
17 be used. I don't think the statute said  
18 specifically do these.

19 **COMMISSIONER ARGENZIANO:** Well, I think it  
20 does.

21 **MR. BALLINGER:** All right. And I agree,  
22 it could read that.

23 **COMMISSIONER ARGENZIANO:** 366.82, I'm  
24 going to read it to you. Let's see. "To comply  
25 with the statute --" hang on. I don't have it front

1 of me.

2 **MR. BALLINGER:** I have it here. It is the  
3 cost and benefits to customers participating in the  
4 measure, and the cost and benefits to the general  
5 body of ratepayers as a whole, including utility  
6 incentives and participant contributions.

7 And I agree. I think staff reads that in  
8 total that all three tests are required to be  
9 considered by the Commission.

10 **COMMISSIONER ARGENZIANO:** Okay. That's  
11 how I read it. To what extent were the tests  
12 utilized in the studies?

13 **MR. BALLINGER:** The utilities provided  
14 Participant values, RIM values, and TRC values, so  
15 they did use all three tests.

16 **COMMISSIONER ARGENZIANO:** They did? You  
17 are saying they did use all three tests. And were  
18 they separately calculated according to each test?

19 **MR. BALLINGER:** Yes. They gave us --  
20 obviously the Participant test is your first level  
21 of screening, and all measures that pass the  
22 Participant test, you go on to the next level. And  
23 then they also proposed a RIM portfolio, things that  
24 pass the RIM test, and measures that passed the TRC  
25 test. So you had both levels, if you will, to



1 choose from.

2 And if you look at the colored charts  
3 that's show on the E-RIM and the E-TRC values,  
4 that's what the utilities had proposed using the two  
5 different tests.

6 **COMMISSIONER ARGENZIANO:** It just seemed  
7 like the staff analysis didn't really break down on  
8 a docket-by-docket basis whether the RIM and the TRC  
9 analysis had been performed.

10 **MR. BALLINGER:** Well, I apologize on that,  
11 it was --

12 **COMMISSIONER ARGENZIANO:** Maybe I just  
13 didn't get it right.

14 **MR. BALLINGER:** It was. It was performed.  
15 The utilities proposed using the RIM to set goals,  
16 the intervenors wanted to use the TRC test to set  
17 goals.

18 **COMMISSIONER ARGENZIANO:** Okay. But  
19 you're saying all three were --

20 **MR. BALLINGER:** Yes. Were provided, yes.

21 **COMMISSIONER ARGENZIANO:** Hang on one  
22 second. I think that's it for now, Mr. Chair.

23 **CHAIRMAN CARTER:** Okay. That's fine.

24 Commissioners, anything further?

25 Tom, I wanted you to kind of go through

1 the -- you were talking about the changes in the  
2 FEECA statute. Could you kind of go through that  
3 again in terms of the --

4 **MR. BALLINGER:** On what was changed?

5 **CHAIRMAN CARTER:** Yes.

6 **MR. BALLINGER:** The primary change was  
7 they added in the term demand-side renewable energy  
8 systems to consider as part of our goals. It's  
9 nothing new. The utilities when they have looked at  
10 conservation programs have always looked at solar  
11 water heaters and things of that nature on the  
12 demand-side. It added a little tweak to looking at  
13 solar PV and some other household things. So that  
14 was a new twist added to it.

15 The second part would be these four  
16 criteria that were listed in 366.82, Sub 3, and it  
17 was basically four things that the Commission must  
18 consider when setting the goals. The cost and  
19 benefits to customers participating, the customers  
20 and general body of ratepayers as a whole, the need  
21 for incentives to promote both customer-owned and  
22 utility-owned energy efficiency and demand-side  
23 renewable energy systems, that's addressed in Issue  
24 6 in the recommendation, and then the cost imposed  
25 by state and federal regulations on the emission of

1 greenhouse gases, and that's addressed in Issue 5 in  
2 the recommendation.

3 So those specific categories were laid out  
4 by the Legislature for the Commission to consider.  
5 On that they also authorized us to spend \$250,000  
6 for a consultant, which we spent some of that money  
7 to hire GDS Associates. It mandated that the  
8 Florida Energy and Climate Commission be party to  
9 the proceeding and comment on specific things, which  
10 they did.

11 **CHAIRMAN CARTER:** Commissioner.

12 **COMMISSIONER ARGENZIANO:** The consultant,  
13 are you talking about Witness Spellman?

14 **MR. BALLINGER:** Yes.

15 **COMMISSIONER ARGENZIANO:** Okay. Didn't he  
16 express a concern that leaving off certain measures,  
17 I guess, when it came to the supply-side  
18 conservation issues -- and let me see if I got this  
19 right. That is the page I was missing before. Let  
20 me try to put it together.

21 **MR. BALLINGER:** He also recommended that  
22 the free riders be included as part of the  
23 goal-setting, and staff disagreed with his  
24 recommendation on that.

25 **COMMISSIONER ARGENZIANO:** I thought

1       that -- yes, I guess that was part of it, but he  
2       expressed a concern that leaving those measures and  
3       other measures off resulted in the study  
4       underestimating achievable potential, and that  
5       concerned me.

6               **MR. BALLINGER:** He identified, I believe,  
7       a few measures that he thought should have been  
8       included in the technical potential, that perhaps --  
9       however, I would point out to you the technical  
10      potential study was done as a collaborative between  
11      the utilities and SACE working together to identify  
12      measures to come up with it.

13              **COMMISSIONER ARGENZIANO:** But if you leave  
14      off those type of measures that he is talking about,  
15      like smart strips, phantom load switch, second  
16      refrigerators, all those other little things,  
17      doesn't that then underestimate the achievable  
18      potential?

19              **MR. BALLINGER:** It may. Those are more  
20      specific programs, I think, that can get to design  
21      and they may have been ones eliminated from the free  
22      riders that were taken out. I'm drawing a blank now  
23      specifically on those, but -- if I can continue on,  
24      Chairman, too, that other additions were specific.  
25      The Commission was authorized to issue financial

1 rewards or penalties for utilities where I talked  
2 earlier where we could have the authority to impose  
3 a program, not financial rewards and penalties. So  
4 that was another change that was done in 2008.

5 **COMMISSIONER ARGENZIANO:** Mr. Chair, can I  
6 but in there?

7 **CHAIRMAN CARTER:** Commissioner.

8 **COMMISSIONER ARGENZIANO:** The program  
9 meaning a teaching program, kind of like quit  
10 smoking?

11 **MR. BALLINGER:** Yes. Or it could be once  
12 you set a goal for a utility, they decide the best  
13 way to meet that control is to have a program that  
14 pays a rebate to get rid of the second refrigerator.  
15 That's the program specific type of thing that you  
16 look at. When you are looking at energy efficiency  
17 measures you are looking at general technologies and  
18 things like this. When you get to the program level  
19 you may combine some of these and put them together  
20 to determine what the rebate should be.

21 **COMMISSIONER ARGENZIANO:** So there are no  
22 program like that right now as far as like getting  
23 rid of the second refrigerator or a rebate. I'm  
24 trying to figure out --

25 **MR. BALLINGER:** I don't believe so.

1                   **COMMISSIONER ARGENZIANO:** -- how long it  
2 takes people to learn, or for us to learn what it  
3 takes to be more energy conservationist. It seems  
4 like we are always doing studies or saying, you  
5 know, let's have a program to teach people. And if  
6 they haven't learned by now -- I mean, I think now  
7 it's time to kick in with the rebates and the  
8 incentives, and that is kind of a message for the  
9 Legislature, too.

10                   **MR. BALLINGER:** I can tell you from  
11 personal experience, I think it is really at our  
12 children's level as where we are starting. And I  
13 have done several talks at schools with  
14 middle-aged -- middle school, elementary, and  
15 even --

16                   **COMMISSIONER ARGENZIANO:** Middle-aged?  
17 (Laughter.)

18                   **MR. BALLINGER:** Yes, middle-aged high  
19 schoolers. With middle school, and elementary, and  
20 even high school kids about energy efficiency and  
21 conservation. And I'm amazed that they are -- and I  
22 guess it is from the way our economy has gone over  
23 the last years, they are oblivious to the cost of  
24 electricity and what it costs. But they realize  
25 there is little things that they can do to save, and

1 that they will be paying these bills in the near  
2 future. So I think if our focus is there, we can  
3 get a lot done.

4 It was amazing to me just how out of touch  
5 they were with it. And I think if education is  
6 focused there, that will make a huge difference.  
7 And, like I said earlier, quite frankly, a lot of us  
8 are very fortunate to have jobs that our electric  
9 bill is not a huge percentage of our disposable  
10 income.

11 **COMMISSIONER ARGENZIANO:** But I'm not sure  
12 we can wait for those kids to grow up.

13 **MR. BALLINGER:** I agree. I think everyone  
14 needs to get the message. There's a lot that you  
15 can do on your own and you need to do on your own.

16 **COMMISSIONER ARGENZIANO:** And I agree with  
17 that. I mean, there is a lot of people who have  
18 taken steps to do things on their own, but what I'm  
19 afraid of is that we are not moving aggressively  
20 enough to really have meaningful conservation goals,  
21 because there are some people that simply can't  
22 afford it, and that, like we said before, probably  
23 is going to be a policy decision. How do you give  
24 them the opportunity to be able to join in and be  
25 more conservation oriented, and those who just

1 simply choose not to. But at some point the state  
2 has to, you know, move forward.

3 Can I ask one other question, Mr. Chair?

4 **CHAIRMAN CARTER:** Yes, ma'am.

5 **COMMISSIONER ARGENZIANO:** As far as other  
6 states are concerned, when we talk about -- and I  
7 have seen it that other states have saved, you know,  
8 a certain percentage of their energy demand through  
9 efficiency every year. What are we talking about as  
10 far as percentage in the state of Florida, and how  
11 far behind other states are we really?

12 **MR. BALLINGER:** I have seen the same data  
13 turned different ways and give you different  
14 results. What I can say for Florida is I believe  
15 the number is about -- on a cumulative basis about  
16 7,000 gigawatt hours a year that we are saving from  
17 existing programs that have continued on and new  
18 programs adding. That is a significant amount of  
19 savings. In terms of percentage, I don't have the  
20 number off the top of my head. And, unfortunately,  
21 I don't know what the statutory requirements are in  
22 other states as far as setting those goals.

23 You also have to look at some states may  
24 not have the electric load that Florida has. You  
25 know, the average consumer uses about 1,200 kilowatt



1 hours a month in Florida. In states like Tennessee  
2 it might be 600. So you can do a little bit and it  
3 is a huge percentage. So the numbers sometimes  
4 don't give you the total meaning of it.

5 Bottom line, we all have the same types of  
6 houses. You have a little bit different load in  
7 Florida. You have more air conditioning load than  
8 you do in the midwest or the northeast, and we have  
9 seen housing size grow, which is a big driver of  
10 demand and energy.

11 **COMMISSIONER ARGENZIANO:** What percentage  
12 would you say that we are aiming at with what staff  
13 has before us today as far as energy demand per year  
14 that we are trying to save, or how would you  
15 calculate it?

16 **MR. BALLINGER:** If you will give me --

17 **COMMISSIONER ARGENZIANO:** Where are we  
18 currently and --

19 **MR. BALLINGER:** If we could take a  
20 five-minute break, I could give -- I have the  
21 numbers. What I did is for like SACE, I took their  
22 energy number and turned it into equivalent number  
23 of residential customers. Typically what that would  
24 do is give you an order of magnitude. I haven't  
25 done that yet for staff's number, but I can. It

1 would take me just a couple of minutes.

2 **COMMISSIONER ARGENZIANO:** And if you  
3 could, when you do that, could you tell me where we  
4 are currently today and how much of an increase in  
5 savings that would be percentage-wise when you give  
6 me the number?

7 **MR. BALLINGER:** Oh, I can give you that  
8 number. The growth, staff's number is about  
9 6 percent of our growth, our estimated growth.

10 **COMMISSIONER ARGENZIANO:** You say  
11 estimated growth, I'm talking about savings.

12 **MR. BALLINGER:** The next ten years,  
13 staff's goal is -- or staff's proposed goal would  
14 save about 6 percent of the anticipated growth.

15 **COMMISSIONER ARGENZIANO:** So that's less  
16 than a percent a year.

17 **MR. BALLINGER:** Yes.

18 **COMMISSIONER ARGENZIANO:** I'm trying to  
19 get at a yearly --

20 **MR. BALLINGER:** Yes.

21 **COMMISSIONER ARGENZIANO:** And where are we  
22 now? Is that what you are going to get for me?

23 **MR. BALLINGER:** No, that's another number  
24 I'm going to have to go find.

25 **COMMISSIONER ARGENZIANO:** Okay. You

1 understand what I'm asking.

2 **MR. BALLINGER:** Yes.

3 **COMMISSIONER ARGENZIANO:** Because if we  
4 are talking about a .02 percent savings a year, I  
5 don't think that's aggressive at all.

6 **MR. BALLINGER:** The numbers -- and, again,  
7 it goes back to what the statute requires. The  
8 statute requires us to set goals to control the  
9 growth rate of electric consumption. The numbers  
10 you have seen of .2 percent is comparing it overall  
11 sales.

12 **COMMISSIONER ARGENZIANO:** Doesn't the  
13 statute also say to get the most efficient --

14 **MR. BALLINGER:** Most cost-effective.

15 **COMMISSIONER ARGENZIANO:** Most  
16 cost-effective and most cost-efficient -- I'm sorry.

17 **MR. BALLINGER:** It's most cost-effective.  
18 To me that means avoided cost is your comparison.  
19 It's not that it's the most efficient measure to do,  
20 it's is it cost-effective from the general body of  
21 ratepayers.

22 **CHAIRMAN CARTER:** I'm going to go back  
23 into the statute when we come back and read  
24 something that sounds a little conflicting to me, or  
25 asking us to do both.

1                   **MR. BALLINGER:** Yes. It's a balancing  
2 act.

3                   **CHAIRMAN CARTER:** Let me do this just in  
4 case you might need to do some more computations.

5                   Commissioners, before we take a break and  
6 let staff do that, let me see if there are any  
7 questions along this line.

8                   Commissioner Skop.

9                   **COMMISSIONER SKOP:** Thank you, Mr. Chair.

10                  I just wanted to go back to Page 15 with  
11 respect to the achievable potential by a utility.  
12 There is chart at the bottom of Page 15, and it  
13 looks at the TRC test, and looks at the -- Column D  
14 looks at the percent excluded due to the two-year  
15 screen, which seems to be the majority of any  
16 achievable potential under Column B.

17                  So I guess the question I have for staff  
18 is on Page 15 in the middle of the page, it says  
19 that the two-year payback period was agreed to by  
20 the collaborative as a means of addressing the  
21 free-ridership issue. Who is the collaborative, is  
22 it the utilities?

23                  **MR. BALLINGER:** And SACE, also.

24                  **COMMISSIONER SKOP:** All right. And with  
25 respect to the two-year payback period, would not

1 implementation of some of these measures,  
2 particularly by low-income consumers, result in  
3 additional achievable or realized efficiency savings  
4 if some of these were not excluded up front?

5 For instance, some of the consumers, low  
6 income, what have you, that don't really have all  
7 the money to put in, you know, a 16, 17 SEER air  
8 conditioning, but could benefit by upgrading their  
9 old dilapidated energy inefficient air conditioning  
10 system to something that meets current building code  
11 standards -- I mean, I have recently replaced my  
12 heat pump or my old AC a couple of years back with a  
13 high-efficiency -- not super high efficiency, but  
14 higher than code heat pump, and the savings were  
15 tremendous, not only on heating and cooling, but,  
16 again, I had the means to do that.

17 Somebody that is a senior citizen that may  
18 have one of those window unit air conditionings that  
19 certainly is not efficient trying to cool their home  
20 that might benefit from getting something more  
21 efficient, but doesn't have the means or the  
22 resources to do so without some sort of rebates  
23 or -- you know, looking at the payback. Are there  
24 additional things that could be done there that have  
25 been just excluded up front that would make a

1 difference in terms of moving the needle?

2           **CHAIRMAN CARTER:** Before you answer that,  
3 I lost my train of thought, Commissioner Argenziano,  
4 when you asked the question, is that I found that  
5 last year when I replaced my HVAC unit for the  
6 house, the contractor told me, he said they have got  
7 a program with the city. And so, you know, like  
8 everybody else, I wanted to save money, but when I  
9 called the city they had oversubscribed all of the  
10 low-interest loans, so I was not able to get one of  
11 the low-interest loans.

12           And I think that probably -- and I know  
13 during the context of the questions we seem to keep  
14 coming back to the fact that the Legislature or  
15 someone needs to provide some resources for folk to  
16 be able to do that. Obviously, you know, because I  
17 had a higher authority, which is my wife saying you  
18 better get some air conditioning or you are going to  
19 be in here by yourself, so I had a different  
20 motivation for doing that, but I think that a lot of  
21 people couldn't do that because of the financing.  
22 And as I said, the city had already oversubscribed  
23 all the low-interest loan money that they had there.

24           So, I don't know, but I think that it  
25 would be incumbent to find those kind of resources

1 and more people would participate in it, because  
2 senior citizens will say, you know, if I've got to  
3 choose between medicine and buying another air  
4 conditioning, I'll just have to suffer with this one  
5 for another couple of years or so. But I do think  
6 that that is a critical issue in terms of -- I  
7 think, Tom, you referred to the issue being social,  
8 but I think there is a critical issue in terms of  
9 the resources for that because I think with the  
10 Governor's Energy Office that money was out in less  
11 than two months or so that the Legislature had  
12 appropriated for that.

13 **COMMISSIONER ARGENZIANO:** Which shows you,  
14 Mr. Chair, that there are a number of people who  
15 cannot, especially now, who cannot afford to change  
16 over to more energy efficient. And while there is  
17 not enough money to go around, you know, the money  
18 doesn't grow on trees, as we know, huh, only if it  
19 did we would be much greener to begin with.

20 **CHAIRMAN CARTER:** Everybody would be green  
21 then.

22 **COMMISSIONER ARGENZIANO:** But there are  
23 ways of doing that, you know, incentivizing it. And  
24 I believe -- the next question I was just going to  
25 ask if I could real quickly was I believe in the

1 statute it authorizes the Commission to -- we may  
2 authorize financial rewards for those utilities over  
3 which it has rate-setting authority to exceed their  
4 goals -- that exceed their goals and may authorize  
5 financial penalties -- the other way around. Have  
6 we done anything in that regard? Are we looking at  
7 that at all to offer rewards for utilities who may  
8 get to exceed that 20 percent or --

9 **MR. BALLINGER:** That was an issue in the  
10 hearing, and all parties agreed that that should be  
11 an issue for a later date to see where we fall,  
12 because --

13 **COMMISSIONER ARGENZIANO:** Well, we are  
14 never going to get -- we are never going to get to  
15 conserve anything if everything is a later date.

16 **MR. BALLINGER:** Even the utilities agreed  
17 they don't need really need an incentive yet. It  
18 was really because it is complicated. How do  
19 structure the incentives? The statute was pretty  
20 clear that the reward would be up to 50 basis  
21 points, I believe it was, if you exceeded growth by  
22 20 percent, and it would be done through a limited  
23 proceeding. So I think the statute has laid out if  
24 you are going to do an incentive, first you have to  
25 prove that you have exceeded the goals --



1                   **COMMISSIONER ARGENZIANO:** But does it take  
2 ten years to get this? I think we are beyond that.  
3 I think we are already at the point where I think we  
4 can figure out that if we have created this  
5 incentive that it should be moving forward. And if  
6 we wait for a later date it is never going to move  
7 forward.

8                   Just one other question. Do we know  
9 that -- do the utilities expend any dollars on  
10 research and development, any R&D on real  
11 conservation goal --

12                  **MR. BALLINGER:** Yes, they do. All  
13 utilities have R&D programs. They look at emerging  
14 technologies.

15                  **COMMISSIONER ARGENZIANO:** But I never look  
16 at them. I would love to be able to get some  
17 information on what they are really, you know,  
18 spending R&D dollars on.

19                  **MR. BALLINGER:** Typically, they are an  
20 umbrella program that looks at it, and they will  
21 give ideas, and they will do pilots, they will set  
22 up a thing to do measuring, monitoring, and report  
23 back to us on the results of that. How much energy  
24 did it save; how much demand it save; what was the  
25 cost, pros and cons. And a lot of them have evolved

1       into realtime programs, and that's the goal of it is  
2       to get the information on the technology or the  
3       method and somehow structure it into an evolving  
4       program.

5               One example has been the realtime pricing  
6       I think TECO has. They first did it as a pilot  
7       program. They put it out there with thermostats and  
8       they would send price signals to the thermostat  
9       which would be programmed to automatically shut off  
10      an air conditioner if the price got too high. They  
11      wanted to see the customer response to that. How  
12      actually did it work, things like that. And that  
13      has evolved into a full-time program now. So, yes,  
14      they do do R&D.

15             **CHAIRMAN CARTER:** Commissioner Skop, I had  
16      interrupted you. You were asking a question, but I  
17      had one of my over-50 moments and I had to ask it  
18      before I forgot it again. You're recognized, sir.

19             **COMMISSIONER SKOP:** That's fine. Just two  
20      follow-up questions.

21             I guess with respect to the Itron study,  
22      Itron performed that on behalf of the utilities, is  
23      that correct?

24             **MR. BALLINGER:** It was the collaborative,  
25      but I believe the utilities were the only ones who

1       paid for it.

2                   **COMMISSIONER SKOP:** Okay. So it was a  
3 joint collaborative effort? Okay. All right. I  
4 guess just one observation that stems to a point  
5 that Commissioner Argenziano made and the one I was  
6 trying to allude to. It seems to me that the  
7 fundamental difficulty of goals setting is that all  
8 of the ratepayers contribute to energy efficiency  
9 and conservation type programs through the  
10 assessment in their rates.

11                   Unfortunately, because of the way things  
12 are structured, whether it be the exclusion of the  
13 two-year payback period, or not looking at all the  
14 tests, it seems that only those ratepayers with the  
15 means to implement change or avail themselves of  
16 rebates or benefits are able actually to be  
17 participants and get some value. So it's more of  
18 how do you look at bringing value to the entire  
19 class of ratepayers for something that promotes  
20 energy efficiency and conservation in a relatively  
21 cost-effective manner. Because, again, in my  
22 particular instance, and, again, Chairman Carter  
23 mentioned the same experience. You know, if you  
24 want to upgrade your AC, which for somebody living  
25 in a mobile home with a window unit can be a

1 significant cost driver in their total electric  
2 bill, whether they are using that or a portable  
3 heater for heat, you know, that can be a major  
4 driver.

5 At least for me, as a homeowner, I was  
6 faced with the rebates are set on units that are  
7 super-efficient that cost far more than the modern  
8 code unit that are almost -- you know, you have to  
9 do a payback analysis to see if you will even  
10 break-even. If you're not going to be in your home  
11 for 20 years, or 10, or 15 years you might not even  
12 see payback or be able to reach those elusive  
13 rebates. So to me it seems that there is some  
14 benefit to be derived from merely encouraging  
15 homeowners to adopt more efficient methods of  
16 heating and cooling or other energy efficiency  
17 measures, but those aren't often available to the  
18 people that really need it, or could really take  
19 advantage of it because of the screenings that are  
20 done and the exclusions. So how can we do more to  
21 get wider adoption of energy efficiency and  
22 conservation by the entire class of ratepayers, not  
23 strictly limited to the industrial consumer or the  
24 ultra rich consumer that has a lot of disposable  
25 income? But to Commissioner Argenziano's point, to

1 bring it down to the mom and pop consumer, senior  
2 citizens that want to help, you know, save energy  
3 and lower their bill but, you know, don't really  
4 have the means to make the quantum leap changes.

5 **MR. BALLINGER:** Correct. First, let me be  
6 clear rebates and incentives for high-efficiency AC  
7 units were not part of the two-year screen out. The  
8 measures that came out of that were your CFL light  
9 bulbs, tune-ups on air conditioners, just having  
10 somebody service, make sure they have the proper  
11 refrigerant charge, very simple things, and pool  
12 pump -- efficient pool pump motors, which obviously  
13 is not in a low income is not going to apply there,  
14 I don't think. So those were the types of measures  
15 that were screened out that saw this huge savings.  
16 They are very simple.

17 And, again, it comes down to the  
18 philosophy if there is a measure available that is  
19 going to give me a very quick payback from a  
20 financial incentive, the capital outlay should not  
21 be that much if I'm going to get it back real quick.  
22 So the financial barrier really is not there for  
23 those types of things. And then I don't think it's  
24 fair that if it is there for me that Katherine here  
25 should have to pay for that incentive. That is the

1 issue you are faced with is that if there is  
2 something out there that is that much of a savings,  
3 which tells you that it is not a huge capital  
4 incentive to do, is it fair to have other ratepayers  
5 pay for that? And that is the issue before you.

6 **CHAIRMAN CARTER:** Commissioner Argenziano,  
7 and then I will come back to you, Commissioner.

8 **COMMISSIONER ARGENZIANO:** When the country  
9 is trying to move forward on changing the way we  
10 have used energy, and if the country does not  
11 recognize, or if the state does not recognize that  
12 there are some who are going to sit on their duffs  
13 and do nothing, then perhaps, well, then they are  
14 going to pay. And there are many people who just  
15 simply cannot do something. If we are not willing  
16 to help them change over, then we are never going to  
17 get to those goals.

18 **MR. BALLINGER:** And I agree with you. I  
19 think the place for that is at the Legislature.

20 **COMMISSIONER ARGENZIANO:** You know how I  
21 feel about that, and that is what I have been saying  
22 all day here. There are policy changes that are  
23 going to have to be the Legislature's decision. But  
24 also I think I heard you say that to change over  
25 that it's not that --

1           **MR. BALLINGER:** If something has a  
2 two-year payback or less, that means the capital  
3 outlay -- you are going to recover back, it's a  
4 return on your investment. It's a very quick --

5           **COMMISSIONER ARGENZIANO:** Yes, but I don't  
6 maybe -- I had a Senate district of 13 counties,  
7 okay, and some of those counties were the most poor  
8 counties. Five dollars means a great deal to some  
9 people at the end of the month. So to consider or  
10 to say what may be not that hard to achieve for you  
11 or for me or for someone else is really -- I need to  
12 take you to some of those counties.

13           **MR. BALLINGER:** No, I understand. There  
14 are some close by Tallahassee here that are at that  
15 level.

16           **COMMISSIONER ARGENZIANO:** Well,  
17 Tallahassee was part of one of my counties.

18           **MR. BALLINGER:** There are other social  
19 agencies that help with things like that to allow  
20 people to get the upfront capital to replace their  
21 light bulbs and help them with that.

22           **COMMISSIONER ARGENZIANO:** But it's not  
23 working. What I'm trying to tell you is that it's  
24 not working. It's working to some degree, but it is  
25 almost minutia compared to where we need to go. And

1 if we continue with the same thinking because we're  
2 afraid that other people are going to subsidize it,  
3 well, we subsidize people all the time. If the  
4 country needs to get to a concern goal, some people  
5 are going to have to subsidize, I guess.

6 **MR. BALLINGER:** I would also let you know  
7 each utility has its own low-income program where  
8 they specifically --

9 **COMMISSIONER ARGENZIANO:** Oh, I know. I'm  
10 well aware of that.

11 **MR. BALLINGER:** -- work with agencies, and  
12 also I would suggest to you that the low-income  
13 portion, or the people who can't afford this is a  
14 small portion of their overall ratepayers.

15 **COMMISSIONER ARGENZIANO:** You know, I  
16 think what you're not understanding, and I  
17 understand where you're coming from, what you're  
18 saying, the low income is a small -- but it is a lot  
19 bigger than you think, especially today. Even the  
20 middle income, there is a lot of people in the  
21 middle income who are falling between the cracks.  
22 As you heard the Chairman say, there are some --  
23 some programs are available and they are quickly  
24 scooped up because people cannot afford it. So on  
25 one hand we're saying we have to reach these goals,



1 and it can't be all on the utilities, and the policy  
2 is going to have to change, but you can't -- keeping  
3 blinders on and thinking that, you know, it's just a  
4 small portion. A lot more people are falling into  
5 those categories, and that's why we are not making  
6 headway, and that's why those programs that are out  
7 there are being taken up so quickly.

8 It's so easy to see that there are many  
9 more people who fall in that category now than just  
10 the lower income. There is people working out there  
11 who have higher incomes that are just strapped.  
12 Whatever it is, their own decision, or personal, I'm  
13 just trying to focus on how do you get to where --  
14 and I see some of the stumbling blocks being that we  
15 can't solve it all. The utilities can't solve it  
16 all. I understand the Legislature has to get in  
17 there and that it is not an easy task when there is  
18 not money to go around to give to everybody, but --  
19 and I guess I don't know how else to express it  
20 other than we have to move forward and it has to be  
21 a combination of events that occur to actually get  
22 to conservation goals.

23 **MR. BALLINGER:** I agree with you. And  
24 it's not just the utilities out there. You have  
25 building code changes.

1                   **COMMISSIONER ARGENZIANO:** Of course.

2                   **MR. BALLINGER:** I heard a gentleman a few  
3 weeks ago talking about in certain states they made  
4 it mandatory that new buildings have solar water  
5 heaters on them.

6                   **COMMISSIONER ARGENZIANO:** Right.

7                   **MR. BALLINGER:** I personally think that is  
8 a great idea. And if you want to make changes,  
9 that's what you need to do.

10                  **COMMISSIONER ARGENZIANO:** So do I.

11                  **MR. BALLINGER:** It reduces the capital  
12 impact for putting in solar water heaters. It  
13 spreads it over the 30-year mortgage. It makes  
14 sense to me.

15                  **COMMISSIONER ARGENZIANO:** Right.

16                  **MR. BALLINGER:** That's not that we are  
17 faced with here. You know, that is for another day,  
18 another time. But I think it is the right direction  
19 to move in. But the utility programs are just one  
20 component of an overall. You have the building  
21 codes, you have appliance efficiency standards,  
22 which have been improving better and better. You  
23 heard that in this hearing with FPL. But that is  
24 taking up a significant portion of new appliance  
25 efficiency standards over the next couple of years

1 with air conditioners and light bulbs and thinks  
2 like that. You won't be able to buy an incandescent  
3 bulb in the next few years. So it's slowly getting  
4 there, and I am faced with what we have got today in  
5 the record with the stacks of papers we have.

6 **COMMISSIONER ARGENZIANO:** But it just  
7 seems -- and forgive me, but it just seems like we  
8 are moving horribly slow. And I understand you  
9 can't move sometimes too quick because of financial,  
10 but that's the message that I think the Legislature  
11 needs to hear also is that while we can do what we  
12 can do here at the PSC, and what the utilities can  
13 do, and what the public can do, and the commercial  
14 areas can do, there needs to be more done as far as  
15 policy is concerned to figure out if there aren't  
16 real dollars out there how do we -- give us the  
17 tools to give to the utilities.

18 And we have some of them which we are not  
19 utilizing in some of the incentives that we have,  
20 and financial rewards and so on, to move forward  
21 with conservation goals quicker if we can, so that  
22 it is not all on the utilities, or it is not all on  
23 the Legislature with general revenue to say here,  
24 here is money we are doling out. It can't work that  
25 way. But, I just think -- I guess overall what I

1 see in the staff's recommendation -- and I  
2 understand the staff's desire right now, we are all  
3 very conscious of the financial burdens on the  
4 consumers right now, and not wanting to overburden  
5 them, but if we don't move forward and keep the  
6 status quo, we are never ever going to get there.  
7 It's just never going to happen.

8 We are going to hear five years from now  
9 that we have to develop the programs and we have to  
10 keep moving in the same direction. And I have seen  
11 that before too many times and then we never get to  
12 where we need to go. And I'm just worried that we  
13 are not using some of the tools we have right now to  
14 move forward to maybe get the policy decisions made  
15 that will help us to move it a step further in five  
16 years rather than waiting five years.

17 **CHAIRMAN CARTER:** Okay. Commissioner  
18 Klement and then Commissioner Skop.

19 **COMMISSIONER KLEMENT:** Thank you, Mr.  
20 Chairman.

21 It seems that we're in familiar territory  
22 here between a rock and a hard place. I'm getting  
23 used to it.

24 Commissioner Argenziano has summed up the  
25 problem fairly well. I agree with her, and I agree

1 with the statements that have been made about the  
2 status of the low income consumers, and I empathize  
3 with the staff on the work that they put in.  
4 They've been trying to follow the, the mandates and  
5 the statutes to the best of their ability.

6 It seems to come down to whether -- there  
7 is no free lunch. Where is the money going to come  
8 from? Does it have to come from additional rates to  
9 consumers, additional costs? If that's the case,  
10 how much are we talking about? Last -- two weeks  
11 ago when we were talking about TECO's solar plant,  
12 to, to help them pay for that, we were talking in  
13 terms of 40 cents per month, something like that. I  
14 was ready to say yes to that. I think we were close  
15 to doing that before it was deferred.

16 But on Page 73 we've got some figures.  
17 These are the only figures per customer, average  
18 customer that I see that would be for solar, annual  
19 solar expenditures. Can we get some, some other  
20 estimates or consequences to, or some other measure  
21 that would provide more incentive money so that  
22 there would be more money? And maybe that would  
23 send a message to the Legislature too to increase  
24 their contribution. We can beat up on them, but we  
25 know that they're in the same budget quandary that

1 everyone else is. They don't have a lot of money  
2 for this either.

3 If we're going to lead, we're going to  
4 have to do something to provide at least some  
5 additional money. And is nine cents, ten cents,  
6 five cents going to really make a difference to even  
7 the low income customer? Yes, \$5 does. But what  
8 are we talking about? That's, I guess I would like  
9 some figures there.

10 **CHAIRMAN CARTER:** Tom.

11 **MR. BALLINGER:** I'm not quite sure I  
12 understand the charge of figures, of questions or  
13 dollars for which types of programs.

14 **CHAIRMAN CARTER:** From -- he's on Table  
15 11.

16 **MR. BALLINGER:** Yeah. That's, that's the  
17 figures for the pilot programs established  
18 recommending for solar water heaters and solar PV  
19 systems. The estimated bill impact would be between  
20 four and ten cents a month. But you asked for  
21 figures for other programs, and I'm not quite sure  
22 what you mean.

23 **COMMISSIONER KLEMENT:** Well, isn't the  
24 problem that we, that there's not enough money in  
25 the incentive pools to help people replace their,

1       their outdated air conditioners and so forth?

2               **MR. BALLINGER:** I think there is. I think  
3       there's programs out there that provide incentives  
4       to replace your air conditioner, things of that  
5       nature. And here's typically the way the scenario  
6       goes. Your air conditioner is working fine. One  
7       day it breaks. Okay. You're in that quandary. You  
8       need to get an air conditioner now. The appliance  
9       efficiency standard says I can replace that only  
10      with a CR-13, okay, which costs, let's say, \$4,000  
11      to replace it.

12              If I go to a CR-15, I might get a  
13      \$500 rebate from the utility. It might cost me an  
14      extra thousand dollars to go to that CR-15, but I  
15      get some money to offset it and I make that  
16      conscious decision do I want to go to the next level  
17      of energy efficiency.

18              But the bottom line, it usually doesn't  
19      get -- it might be a difference in numbers, I'm just  
20      picking these up, but there are programs out there  
21      to do that. And, again, the utilities are offering  
22      programs that go above and beyond what is required  
23      by either appliance efficiencies or building codes.  
24      They're not duplicating the efforts of those other  
25      conservation programs that are out there. So

1       there's -- there are programs available that are  
2       eligible to people.

3               Now if it comes to the point that my  
4       financial situation, my air conditioner breaks and I  
5       can't afford even the CR-13, then my house stays  
6       warm and that's what I have to do. If we're looking  
7       at replacing just that, that's a whole different  
8       program I guess and that's what I'm --

9               **COMMISSIONER ARGENZIANO:** Mr. Chair, can I  
10      ask --

11              **CHAIRMAN CARTER:** Commissioner Argenziano,  
12      then I'll come back to you, Commissioner Klement,  
13      then Commissioner Skop.

14              **COMMISSIONER ARGENZIANO:** Basically I  
15      would like to answer the Commissioner's question.

16              **CHAIRMAN CARTER:** You're recognized.

17              **COMMISSIONER ARGENZIANO:** The programs  
18      he's describing are limited, very limited, and they  
19      get taken up very quickly. What I'm talking about  
20      is people's air conditioners who are not broken, who  
21      are horribly inefficient, who would love to be able,  
22      that's where we have no programs for those people  
23      who cannot, cannot change over. It's not broken  
24      down -- and heaven forbid in Florida if we have  
25      people without air conditioning during the summer



1 because we're going to lose a lot of our residents,  
2 especially senior citizens, and I don't take that  
3 lightly, I really don't. I think that's a horrible  
4 thing to have to happen and we need to help those  
5 people if we're, if we're human in any, by any  
6 means. I'm not saying that everybody can afford to  
7 pay for everybody else, but that's what we're  
8 supposed to be about.

9           What I'm talking about is when you have  
10 many homes, and there are many that have not been  
11 able to switch over to the more energy efficient air  
12 conditioners, solar water heaters, which I remember  
13 a discussion here a couple of years ago about how  
14 much money would it take to put a solar water heater  
15 on everybody's house and how much power, you know,  
16 how much would that save us in our, in our energy in  
17 our utility companies. It was quite a bit. But  
18 what he's describing to you is limited and not to  
19 the many homes that have functioning air  
20 conditioners or functioning electric using devices  
21 that are not energy efficient, and that's where the  
22 problem I'm talking about, the low income families  
23 and even some of the middle income families. Many  
24 of the middle income families say they cannot afford  
25 that right now to say I'm going to go -- and there

1 are no programs really available. That's where I  
2 was trying to get to somehow with what the statute  
3 allowed us to do in authorizing the Commission to  
4 give financial rewards to the utilities. 50 basis  
5 points, up to 50 basis points, that's an incredible  
6 amount of money. Okay? And trying to get the  
7 utilities, helping them so it doesn't come say, oh,  
8 just give us, you know, just give money out, allow  
9 them this incentive, but you've got to have  
10 something in, in return for that. And to get them  
11 to get to where they're exceeding their 20 percent  
12 of their annual load growth, however the statute is  
13 written up, I thought maybe that's a way. Maybe  
14 there's some kind of incentive there. And I would  
15 think that each basis point, if staff can tell me  
16 what each basis point is really -- what are we  
17 talking about financially? Isn't it an incredibly  
18 large amount of money for each basis point?

19 **MR. BALLINGER:** Yes. We have that number.  
20 Actually it's in one of your attachments, the  
21 dollars per basis points, I believe. Yes. If you  
22 go to Page 91.

23 **COMMISSIONER ARGENZIANO:** Okay. And what  
24 I'm saying is that since the Legislature decided,  
25 the policymakers decided to give us that tool,

1 perhaps this is a way. We know the companies have  
2 fixed costs that they have to, they have to --  
3 excuse me. Let me get to 91. I went too far. And  
4 I'm trying to find ways, because we have bunches of  
5 people out there, many families that can't get to  
6 changeover, and, and those programs where they,  
7 where the air conditioner does die, they get taken  
8 up so quickly. Perhaps this is a mechanism to get  
9 us to that point and allow the company the higher  
10 ROE in basis points in helping us to get there. Not  
11 asking them to do it on the goodness of their own --  
12 you know, they can't do that. They've got fixed  
13 costs and I understand that. We have a tool here  
14 and we're not using it.

15 **COMMISSIONER KLEMENT:** Mr. Chairman.

16 Wouldn't, wouldn't that, if there were such a  
17 program, wouldn't that spread the costs around to  
18 the whole base while bringing the benefits to those  
19 who need it the most?

20 **CHAIRMAN CARTER:** It would. I'm thinking,  
21 because I think for FPL that would be 1.3 million;  
22 is that right, Tom?

23 **MR. BALLINGER:** No. For FPL --

24 **CHAIRMAN CARTER:** Am I reading it wrong?

25 **MR. BALLINGER:** 50 basis points would be

1       about \$65 million.

2               **CHAIRMAN CARTER:**   \$65 million?

3               **MR. BALLINGER:**   Yes.

4               **CHAIRMAN CARTER:**   That's even better.   And  
5       then for Progress?

6               **MR. BALLINGER:**   Progress, it would be 27  
7       million.   It's about half of that top number that  
8       says 100 basis points.   I'm doing -- TECO would be  
9       about 13 million and Gulf would be about 5 million.

10              **CHAIRMAN CARTER:**   Okay.   Commissioner  
11       Skop, and then what we're going to do,  
12       Commissioners, we're going to take a break after  
13       then because we're kind of dancing in the dark.  
14       Commissioner Skop.

15              **COMMISSIONER SKOP:**   Thank you, Mr. Chair.  
16       I just wanted to touch upon four quick points.

17              First, Commissioner Argenziano's point  
18       about the ability to switch out an air conditioner.  
19       That's exactly the point I'm trying to make also.

20              Actually GRU, who has a pretty broad-based  
21       list of incentives that seem to be available to all  
22       ratepayers, actually in a mailer recently had a  
23       program where they're actually exchanging window air  
24       conditioners for free.   You brought your old one in,  
25       you took home a new one.   It's obviously limited in

1 quantities, but that was something to address that,  
2 that very same, I think, common mutual concern that  
3 we have.

4 And like I say, all of our other IOUs are  
5 doing different programs and some are doing some  
6 innovative things that others aren't and vice versa.  
7 It might be good, you know, if there were some  
8 standardization or what have you, but I know the  
9 utilities propose them. And we're in goal setting,  
10 not the actual programs now, so I would defer that.  
11 But I would recognize that GRU seems to have a  
12 broad-based type of, incentive type programs for  
13 energy efficiency and conservation.

14 Secondly, to the point of Chairman Carter  
15 and Commissioner Argenziano about the incentive and  
16 the ability under now the new FEECA to reward or  
17 penalize, the problem I'm having with this goes to  
18 my opening comment to the extent that if we're  
19 setting the goals so low that they can be achieved,  
20 then we're inviting somebody to capture a reward and  
21 it's somewhat counterproductive. So, again, I'm  
22 going to have to think long and hard about where we  
23 are in terms of goal setting if there's some  
24 incentives involved. Because, again, when you have  
25 incentives, the goals need to be robust, not less

1       than what the utilities have proposed in some  
2       instances, which is embodied in the staff  
3       recommendation. So, again, I have some concerns  
4       there.

5               **COMMISSIONER ARGENZIANO:** And I understand  
6       your concerns. But if you're not going to move  
7       forward at all, then you have to, you have to -- I  
8       mean, I think the goals are low here that staff  
9       recommended. I don't think they're all we could  
10      bring to the table or should be bringing to the  
11      table. But in order to get movement, I mean the  
12      policymakers said here's a mechanism. And I agree  
13      with you, you don't want to be -- that's a lot of  
14      money. But -- and we're not -- but we're not even  
15      moving.

16             **COMMISSIONER SKOP:** Right. And --

17             **COMMISSIONER ARGENZIANO:** We're not --  
18      even with low goals they don't want to look at the  
19      rewards.

20             **COMMISSIONER SKOP:** And I think -- no, I  
21      do want to look at the rewards and I'm all about  
22      carrots, but I'm not going to set the goal so low  
23      that, you know, an ant could climb over it.

24             **COMMISSIONER ARGENZIANO:** Right.

25             **COMMISSIONER SKOP:** Again, I think there

1 are some problems there with these goals. And I  
2 think the way to deal with that, you know,  
3 effectively, at least from my perspective as I said  
4 initially, is to send staff back to the drawing  
5 board and have them adopt more robust goals  
6 consistent with the intent of the Legislature.

7 **COMMISSIONER ARGENZIANO:** I think you  
8 missed my point. I wasn't -- I agree with what  
9 you're saying. The goals need to be higher. But  
10 what I'm saying is even the way it is right now,  
11 staff just said the companies weren't interested in  
12 those rewards right now and the staff said that's  
13 for a later time. So even with the goals being low  
14 there's no takers.

15 **COMMISSIONER SKOP:** Right. Right. Right.

16 **COMMISSIONER ARGENZIANO:** You know, and  
17 that was the point I was making.

18 **COMMISSIONER SKOP:** I understand. And I  
19 think that, again, these, these goals are set and  
20 renewed every five years. But, you know, we're  
21 setting goals now through 2019, yet we're going to  
22 review them five years from now. So, so, again, I'm  
23 all for, you know, either -- I prefer the carrot  
24 approach, but, you know, as people see, I'm not  
25 afraid to get out the stick when it comes to

1 regulation. I don't like to have to do that, but I  
2 think that we need to incentivize appropriately but  
3 not make it where it's, where the utility has become  
4 a free rider getting incentives for doing nothing.

5 But the other two points I want to make  
6 briefly, because I know the Chairman wants to break,  
7 goes to Commissioner Klement's points. In terms of  
8 the dollars for the solar on Page 73, you know, I  
9 would even support adopting Mr. Spellman's position  
10 about the 10 percent over the staff recommended  
11 5 percent. Again, I think that portion of this is  
12 somewhat innovative and we do have some flexibility  
13 there, assuming that the solar programs be vetted  
14 for cost-effectiveness in the, in the proposal phase  
15 of this. I know we're in goal setting now. But,  
16 again, it's finding that happy balance between  
17 promoting those things that are ripe for renewables  
18 and energy conservation, but also making sure that  
19 there's good value there for the consumers.

20 And that goes to two points that I thought  
21 I heard you make when you, when you framed it in  
22 terms of, you know, nominal increase, whether it be  
23 nine cents or 18 cents, you know, that's just the  
24 cost associated with this one item within this  
25 entire recommendation. So that's 18 cents or nine



1 cents on top of everything else that flows through  
2 the energy conservation cost recovery clause, as  
3 well as the other clauses, as well as the fuel  
4 clauses, and as well as the proposed increases to  
5 base rates. So it does add up quick to where it  
6 becomes more than \$5. So this is just a mere  
7 portion of that but a very important one.

8           The other point that you had brought up  
9 that I thought was a good one was analogizing it in  
10 terms of a discretionary expenditure, i.e. the cost  
11 of a soda, and I'm fine with that too. There was an  
12 item that was deferred, but I want to emphasize that  
13 my concern going to your concern on that was that,  
14 you know, if I went to the concession stand and I  
15 bought a soda and I overpaid for that soda, that  
16 wouldn't represent good value as opposed to if I  
17 went to the same concession stand and can get a soda  
18 and a candy bar for the same amount of money. So  
19 it's important to me, although, you know, I'm very  
20 supportive of renewables, is establishing that  
21 levelized cost as a benchmark to evaluate that we're  
22 not overpaying for any given renewable resource.  
23 Because I'd hate to, hate to be paying twice as much  
24 or ask consumers to pay twice as much for something  
25 that they could get for, you know, half the cost if,

1 if a thorough analysis was done.

2 But those are just the points. Again, I  
3 think that I'm very supportive of Issue 11 and  
4 probably some discussion there. But the goals in  
5 Issues 9 and 10, I have some significant  
6 reservations. And perhaps, you know, when we come  
7 back from break we can talk about what the  
8 appropriate action would be. But, you know, my gut  
9 tells me perhaps it might be better to defer this.  
10 I know we need to set goals by January 1st, but I  
11 think we have some adequate time to send staff back  
12 to the drawing board to see if some more robust  
13 goals that are consistent with the intent of the  
14 Legislature could be adopted here. Because, again,  
15 I see the goals coming up short. In some instances  
16 they're less than what the utility proposed  
17 themselves, and to me that's giving me some, some  
18 heartburn.

19 **CHAIRMAN CARTER:** Let me, Commissioners  
20 and staff, let me give y'all a heads up. Be  
21 prepared for some heavy lifting when we come back  
22 because we need to fish or cut bait. And so, staff,  
23 you've got a couple, I think there's some points  
24 that you need to make when we get back with those  
25 numbers.

1           **MR. BALLINGER:** Yes. There's one I'm a  
2 little concerned -- Commissioner Argenziano, I want  
3 to get you the information. I'm not sure if it's in  
4 the record in this proceeding, and that's what I've  
5 got to check with, and that was our current savings  
6 compared to our -- where we are today as far as  
7 savings. I don't know if that's in the record.  
8 It's, it's available here. I don't know if it's  
9 part of this proceeding and I have to check with  
10 them. So I wanted to let you know that one.

11           And the other one I can do is calculate  
12 from what's in the record staff's goal in terms of  
13 number of customers equivalent that it represents  
14 versus the Intervenor, and I can give you that to  
15 give you some, some relative numbers.

16           **CHAIRMAN CARTER:** Okay. Commissioner.

17           **COMMISSIONER ARGENZIANO:** Okay.  
18 Comparison to some other states?

19           **MR. BALLINGER:** Comparisons was in the  
20 record. There was an exhibit that I think Witness  
21 Spellman had.

22           **COMMISSIONER ARGENZIANO:** I saw that. I'm  
23 sorry. I saw that.

24           **MR. BALLINGER:** That's, that's it.

25           **COMMISSIONER ARGENZIANO:** That's it?

1 Okay.

2 **MR. BALLINGER:** Yeah.

3 **COMMISSIONER ARGENZIANO:** All right.

4 **CHAIRMAN CARTER:** But do this though,  
5 Commissioners, and I'm prepared to go in whatever  
6 direction you wish to go, but let's be prepared to  
7 go in a direction when we come back. And, staff,  
8 we'll do that.

9 Mark, you were going to ask that question  
10 about -- remember the question I asked earlier about  
11 the Governor's Energy Office, about those grants?  
12 Were you going to answer that?

13 **MR. FUTRELL:** I can do it now or when we  
14 come back.

15 **CHAIRMAN CARTER:** Yeah. How about do that  
16 now so we can see, Commissioners, just how fast,  
17 when the money is appropriated, how fast it goes  
18 out. Mark.

19 **MR. FUTRELL:** Yes. As far as their solar  
20 rebate program that provided rebates for  
21 photovoltaic and solar thermal installations, they  
22 were appropriated \$14.4 million beginning July 1st,  
23 and the current balance as of yesterday was \$12,000  
24 that's left.

25 They also have a couple of other programs,

1 a new program they're starting for appliances, a  
2 rebate program they'll be rolling out in the spring  
3 that will address some of these concerns you've  
4 talked about this morning about trying to reach out  
5 and address some areas that are not necessarily  
6 covered or accessible by utility customers. We, we  
7 can get into that, excuse me, when we come back.

8 **CHAIRMAN CARTER:** Okay. Staff, would you  
9 guys -- do you guys need about 15 minutes? Would  
10 that give you ample time to be prepared as we go  
11 forward? Would that work?

12 Okay. Commissioners, five after we'll be  
13 back.

14 (Recess taken.)

15 We are back on the record. And,  
16 Commissioners, just kind of for planning purposes,  
17 you know, I rarely get hungry, so I had totally  
18 forgotten all about lunch. I'm hopeful that we can  
19 press on and then take a break after then. But  
20 let's, let's kind of go for what we know here and  
21 see if lunch will be a reward.

22 Mr. Ballinger.

23 **MR. BALLINGER:** Commissioner Argenziano, I  
24 got a couple of answers to your questions. I hope  
25 they answer them.

1           The one on the percent of savings that we  
2 currently are at, I did a quick calculation based on  
3 what's in the record for FPL. I didn't have time to  
4 do the other utilities. We had some information.  
5 But they're a little over about 4.3 percent of  
6 current sales is being met through conservation,  
7 which is a significant number.

8           And then I talked about, to kind of give  
9 you a perspective of the relative magnitude of  
10 goals, and if you look at the goals proposed by SACE  
11 for FPL again, of 10,797 gigawatt hours of savings,  
12 energy savings, that's kilowatt hours. If you look  
13 at an average customer who uses about 1,200 kilowatt  
14 hours a month, over a year they'd use about 14,400  
15 kilowatt hours. So that goal of 10,797 gigawatt  
16 hours represents roughly the energy equivalent of  
17 750,000 residential customers, which is about  
18 20 percent of FPL's current customer base. So that  
19 goal would basically wipe out 20 percent of FPL's  
20 residential customers in ten years, to give you a  
21 perspective.

22           Staff's number of 1,549 gigawatt hours  
23 comes to about 107,000 equivalent residential  
24 customers or about 2.7 percent reduction in customer  
25 base. And that's -- be careful with that number.

1 It's a, it's trying to give you just relative. It's  
2 not an absolute. So I hope that helped.

3 **COMMISSIONER ARGENZIANO:** Got it. Thank  
4 you.

5 **MR. TRAPP:** Chairman Carter, if I might be  
6 allowed --

7 **CHAIRMAN CARTER:** Hey, Bob Trapp. Good  
8 morning. Good afternoon. You're recognized.

9 **MR. TRAPP:** I'd like to respond to all  
10 that we've heard here this morning.

11 **CHAIRMAN CARTER:** Okay.

12 **MR. TRAPP:** And in particular the  
13 challenge for staff to come up with something unique  
14 and different in hopes that this might bring the  
15 discussion back to what we're here for, which is to  
16 set goals, recognizing that that's only the first  
17 step. After goals we have to establish programs,  
18 and the programs is where the rubber really meets  
19 the road. That's where the money comes to play.  
20 That's when you'll know how much you're going to  
21 have to spend to achieve, you know, the aspirations  
22 that we've heard here today with respect to low  
23 income customers, with respect to subsidies, with  
24 respect to commercial versus residential and with  
25 respect to free riders. So before I give you the

1 grand idea, I want to preface it with one other  
2 thought, and that's it occurs to me the discussion  
3 this morning has not been about the  
4 cost-effectiveness of conservation goals and  
5 programs. It more has been to the point of subsidy,  
6 rate equity, balance, fairness with respect to  
7 individual customers, groups of customers by class  
8 and in personal responsibilities, things of that  
9 nature. We're really here discussing what goal  
10 level should be set that takes into consideration  
11 fairness for as many as possible and equity in the  
12 goal setting process.

13 And so with that in mind, here's the grand  
14 idea. In the past we've set single goals for  
15 demand, summer, winter and energy goals, and we've  
16 expected those goals to be met. Fortunately they  
17 for the most part have been.

18 I would start with that. And taking into  
19 consideration some of the comments we've heard  
20 today, I would propose, if you believe that carbon  
21 considers consideration in this, I would propose  
22 that you establish a baseline hard-wired, this is  
23 it, guys, goal of E-RIM. That's your baseline.  
24 Now, remember, the RIM test is the all-winners test.  
25 Everybody wins under RIM. There's no



1 cross-subsidization that goes on. That's our  
2 baseline. But we want to see if we can go beyond  
3 that to address some of these other concerns that  
4 we've heard today. So let's think about two other  
5 tiers to the goal setting process. You got your  
6 base, E-RIM. Let's think about going to TRC as the  
7 first level of what I will call aspirational goals  
8 at this point for lack of a better word. That would  
9 be the second tier.

10 What programs do we think we can afford  
11 that pass the TRC test that minimize the  
12 subsidization that might occur?

13 Then let's go to the next tier. I would  
14 propose the next tier to be basically the -- I'm not  
15 sure what color that is, but it's kind of pink,  
16 pinky orange -- the FSC line on your charts. That's  
17 the one that includes some element of free riders.  
18 And, again, I would call those more aspirational  
19 goals, and have the Commission say what programs  
20 make sense to address the issue of, well, people  
21 don't want to accept light bulbs. Let's see if we  
22 can get them to accept light bulbs and let's call  
23 that the third tier of our aspirational goals.

24 Now I think what that does for you is we  
25 know based on the technical potential study and the

1 economic potential study that was done that, and if  
2 you believe in the carbon assumptions, that E-RIM is  
3 our base. And we know that we've got existing  
4 programs out there that can meet E-RIM. What we  
5 don't know is what, what these air conditioner  
6 replacement programs, these light bulb programs,  
7 these, you know, residential supporting commercial  
8 type programs, what we don't know is what that's  
9 going to cost us. So let's go to the next step of  
10 this process, which is program development, and  
11 challenge the utilities to come in with programs  
12 that will address all of those concerns, that will  
13 price out what it will cost to get there, and let's  
14 have the Commission have a menu of programs above  
15 RIM that meet the TRC and the free rider caps to  
16 select from.

17 So in program development you would select  
18 then how much, how many soda cans you're going to  
19 buy basically, how much are you willing to spend to  
20 get to air conditioning replacement, light bulb  
21 replacement, that type of thing, and that's the  
22 grand idea in a nutshell.

23 **CHAIRMAN CARTER:** Commissioner Skop.

24 **COMMISSIONER SKOP:** Thank you, Mr. Chair.

25 I hear that, but also it seems as if that

1 mixes goals with, with program development, and at  
2 least for me, you know, this exercise is supposed to  
3 be about goal setting.

4 Again, we sat through a lengthy  
5 proceeding, heard days of testimony from the  
6 Intervenor as well as the utilities. The proposed  
7 goals that staff has adopted in the staff  
8 recommendation seem to be based in the most part on  
9 the E-RIM methodology that the utilities advocated.  
10 At least from my perspective I don't want to lock  
11 myself into an E-RIM test when there may be  
12 opportunities on a case-by-case basis to consider a  
13 TRC or to consider something that would constitute a  
14 waiver to a two-year payback period to capture some  
15 achievable potential when it might benefit low  
16 income or senior citizen members on a case-by-case  
17 basis.

18 So I'm going to take a stab at this and,  
19 you know, like I say, we talked about it, but I  
20 would make a motion to defer this item with  
21 direction to staff to adopt more robust goals  
22 consistent with the intent of the Legislature for  
23 energy and conservation, I mean, energy efficiency  
24 and conservation, with specific direction to staff  
25 to take a critical look at Issues 9 and 10 as it

1       pertains to adopting goals that are less than those  
2       proposed by the utility.

3               Issue 2, looking at the achievable  
4       potential in relation to a two-year payback period,  
5       I know that could be done mainly in a program  
6       development phase, but I don't think it should be a  
7       complete, absolute bar to things that might benefit  
8       the wide base of ratepayers, including those low  
9       income or senior citizens that otherwise would be  
10      denied the opportunity to, or have the means to  
11      implement some of those changes.

12              And as to Issue 11, taking a critical look  
13      as to whether the 5 percent as recommended by staff  
14      is the best practice as opposed to the 10 percent by  
15      Witness Spellman in terms of the, looking at the  
16      solar PV and solar thermal options.

17              **COMMISSIONER ARGENZIANO:** Second.

18              **CHAIRMAN CARTER:** It's been moved and  
19      properly seconded.

20              Now, staff, do this one favor for me. Now  
21      we have two agendas set in December. Those dates,  
22      please.

23              **MS. FLEMING:** December 1st and  
24      December 15th.

25              **CHAIRMAN CARTER:** Do you think you'll have

1 it ready for the 1st?

2 **MS. FLEMING:** Commissioners, I think at  
3 this junction I think we would have to have it ready  
4 by December 1st.

5 **CHAIRMAN CARTER:** Because we've got --

6 **MS. FLEMING:** I have serious concerns with  
7 pushing this item past to the December 15th Agenda  
8 Conference. And I would allow Mr. Ballinger to --

9 **CHAIRMAN CARTER:** Go ahead.

10 **MR. BALLINGER:** If I could ask some, some  
11 clarification because I think the charts before you  
12 show you what's in the record as those goals  
13 proposed by all the parties in the case. If staff  
14 is being asked to go and pull bits and pieces from  
15 ones, I'm not sure, one, if we can do that in that  
16 amount of time, especially with the two-year  
17 payback. Are you asking us to look at, let's say  
18 there's 200 measures, to identify 50 of them that  
19 should be included in our goal, something of that --  
20 I'm just --

21 **COMMISSIONER SKOP:** No. What I'm asking  
22 for -- again, that would stem on a case-by-case  
23 basis in the, in the program development phase. But  
24 what I see is an absolute bar to the two-year  
25 payback period free riders that would completely

1 decimate the majority of the achievable potential  
2 that's identified I believe on Page 15. And so it  
3 seems to me, instead of an absolute no, you know,  
4 perhaps a better approach would be that we would be  
5 willing to look at something critically on a  
6 case-by-case basis as to what might provide the  
7 best, most cost-effective alternative for  
8 implementing things that could help advance the  
9 energy conservation and efficiency goals in terms of  
10 providing savings from energy consumption or  
11 efficiency and things like that, not specific  
12 programs.

13 But what I see here is just there's a  
14 two-year bar, a two-year payback bar. We're not  
15 going to look at anything that has free riders. We  
16 completely shut that down. And if you look at  
17 Column D on Page 15, the percent excluded due to the  
18 two-year screen is like 80 percent in most cases of  
19 any achievable potential. So it seems to me very  
20 severe.

21 Like, you know, for instance, if you  
22 wanted to put a compact fluorescent bulb or some  
23 other program or even something as analogous to what  
24 GRU did with exchanging window air conditioners on a  
25 very limited basis, you bring your old one, we'll

1 give you a new one, no cost to you type of thing,  
2 you know, certainly those programs could be  
3 considered in the program stage on a case-by-case  
4 basis to try and make -- I guess what I see is the  
5 general body of ratepayers are paying for these type  
6 programs but not the entire body of ratepayers is  
7 able to avail themselves. So in terms of maybe an  
8 equitable distribution between those who are being  
9 asked to pay it and who gets the benefits.

10 I'm not saying that it should be, you  
11 know, social things should come in. But I'm saying  
12 that, you know, I'm willing to look at a program  
13 that has potential on a case-by-case basis,  
14 irrespective of what test is used, as long as it  
15 makes sense and as long as it doesn't drive rates  
16 through the roof. I don't think that we should  
17 leave any stone unturned in terms of looking at  
18 something that makes sense, whether it be, you know,  
19 compact fluorescent light bulbs or other programs.  
20 But that's later. Where we're at now is goal  
21 setting, and what I'm telling you directly is I  
22 believe your goals are too low.

23 **MR. BALLINGER:** I understand.

24 **COMMISSIONER SKOP:** I think they need to  
25 be more robust.

1           **MR. BALLINGER:** And I think you, I think  
2 you could pick in instances where they were below  
3 the utility's goals, you could pick the utility  
4 either ERIM or ETRC goal. That's perfectly fine and  
5 within the record and you can do that today.

6           I was questioning the part about looking  
7 at the two-year payback, of how to include part of  
8 that in my goals. If you want to include two-year  
9 paybacks as part of the goals, then you would pick  
10 the numbers proposed by GDS or FRC and that's --

11           **COMMISSIONER SKOP:** I'm not saying pick  
12 the numbers at the high end again which would have  
13 substantial rate impacts. But what I am saying is  
14 that, you know, staff has adopted a position which,  
15 I'm going to be blunt, which seems to align, from  
16 everything I heard, with what the utilities wanted.  
17 And, you know, I think that we can do better. We  
18 can set more aggressive goals. These are just  
19 goals.

20           And I see heads shaking from staff there,  
21 and I'm not happy about that. So please don't let  
22 me see that again, because I'm a Commissioner and  
23 I'm entitled to state my opinion for the record as  
24 an appointed state official. So I'm not going to  
25 take kindly to that. And, Dr. Bane, I would expect



1       you to talk to staff. That's inappropriate.

2               So let me get on point. Again, I think we  
3       can do better as a Commission. I think from staff's  
4       perspective we can do a little bit better. I'm not  
5       asking you to reinvent the wheel. I'm asking you to  
6       take a critical look at what's going on and try and  
7       set the numbers on something that's a little bit  
8       more robust. Again, these are goals, they're not  
9       mandates, and, you know, we should be looking at  
10      stretch goals giving effect to the legislative  
11      intent, being ever diligent on cost-effectiveness.

12              But I do see instances where staff has  
13      adopted a position less than what the utility asked  
14      for to begin with, which completely undermines the  
15      intent of moving forward, as Commissioner Argenziano  
16      said.

17              **MR. BALLINGER:** And I would --

18              **CHAIRMAN CARTER:** Hang on a second.

19              **MR. TRAPP:** Chairman Carter? Chairman  
20      Carter, if I may.

21              **CHAIRMAN CARTER:** Mr. Trapp.

22              **MR. TRAPP:** What I'm hearing is I think  
23      the Commission is asking for alternatives, and staff  
24      is happy to provide another look at this record and  
25      to provide reasonable defendable alternatives. But

1 I would remind you that you're the Commissioners.  
2 You vote. We don't. All we can do is provide you  
3 with our, our best assessment of alternatives that  
4 may be in the record, and we will be more than happy  
5 to go back and try to do that.

6 **CHAIRMAN CARTER:** Okay. Commissioner  
7 Argenziano.

8 **COMMISSIONER ARGENZIANO:** You know, when  
9 you, when you look at the statutes and basically the  
10 emphasis is on cost-effectiveness, and I can  
11 understand the staff, because in our recent  
12 discussions on many hearings we're very concerned  
13 with the impact on, on the consumers, and I can  
14 understand that. And we may get to some point that  
15 the message may have to be to the Legislature, you  
16 guys are going to have to make some policy  
17 decisions. Instead of dumping it on the PSC and  
18 saying here's where we want to go but we want to  
19 keep you restrained to very much cost-effectiveness  
20 where you can never get there, okay, that's what I  
21 see as a past legislator. If you're not willing as  
22 the policymakers to say, okay, you have to go a  
23 little further, then you can't ask the PSC to make  
24 the tough decisions and actually get there.

25 I agree with Commissioner Skop that the

1 goals are too low. In my opinion they're just not,  
2 they're not high enough. But I can understand  
3 staff's trying to look at the statutes. When you  
4 read it, it says, you know, cost-effectiveness,  
5 cost-effectiveness. It may have to be that the  
6 Legislature says -- we have to let the Legislature  
7 know that, you know, here you are saying we need to  
8 get to these conservation goals, but you restricted  
9 us because when you have cost-effectiveness as the  
10 only or the main driving factor, you may not ever be  
11 able to get there. So that may be done -- that may  
12 have to be changed at the legislative area.

13 And in the meantime I do agree with  
14 Commissioner Skop that the goals are too low,  
15 understanding what staff had to, had to look at.

16 Now if we can get there and try to get  
17 those goals beefed up, and then with the, I guess  
18 the understanding that the Legislature wants us to  
19 look at cost-effectiveness, well, let's look at some  
20 of those other ways, alternatives and see what the  
21 costs are. Let's give it a shot. I agree with  
22 Commissioner Skop that let's try to look at  
23 everything and then look at the cost-effectiveness.  
24 And then the result may be to the Legislature that,  
25 you know, if cost-effectiveness is the primary

1 driving goal, and the media out there needs to  
2 understand that if that's the legislative intent  
3 that cost-effectiveness is the driving or the  
4 motivating goal, then our hands are tied.

5 **COMMISSIONER SKOP:** Mr. Chair.

6 **CHAIRMAN CARTER:** Okay. One second,  
7 Commissioner. I'll come back to you in a second.

8 I wanted to, I wanted to make sure, first  
9 of all, before any further discussion, staff, are  
10 you clear on the spirit of the motion? I just want  
11 to make sure.

12 **MR. TRAPP:** Yes, sir.

13 **CHAIRMAN CARTER:** Okay. Good. Good.

14 Now, Commissioner Skop, question?

15 **COMMISSIONER SKOP:** Thank you, Mr. Chair.

16 And just to staff, again, I appreciate the  
17 hard work and the tensions and the challenges staff  
18 has faced, as Commissioner Argenziano mentioned,  
19 between balancing between making something  
20 cost-effective and trying to further the goals of  
21 the Legislature.

22 I guess in a nutshell what I'm trying to  
23 say is that I do feel the goals could be made more  
24 robust. I think there's some opportunity there,  
25 some low-hanging fruit in Issues 9 and 10, Issues

1       2 and Issues 11 as just some specific guidance. But  
2       I think the takeaway is that what I see within the  
3       staff recommendation, and maybe staff can take a  
4       look at that, is an absolute bar as it pertains to  
5       free riders in a two-year payback and also a glowing  
6       endorsement of the utility proposed E-RIM test. And  
7       I'm not so sure that on every individual case I want  
8       to be bound to an E-RIM standard.

9               Again, Mr. Trapp's suggestion that TRC may  
10       be appropriate on a case-by-case basis on certain  
11       select programs, I want that flexibility at least  
12       from my perspective as a Commissioner. I don't want  
13       to have my hands tied by adopting something that's  
14       been embraced by the utilities. I want to give,  
15       adopt something that has flexibility where we can  
16       look on an individual basis and program development  
17       and say this is a good idea. Yeah, it costs a  
18       little bit more, but we have some flexibility here  
19       because we have other E-RIM or RIM type programs  
20       also in place. And hopefully in the aggregate it  
21       balances out to where you're achieving more, but at  
22       the same hopefully constant cost without, you know,  
23       driving costs higher unnecessarily.

24               Because, again, cost considerations are  
25       equally important, and I'm trying to strike that

1 fine balance between moving the Commission ahead and  
2 embracing the intent of the Legislature as it  
3 pertains to energy efficiency and conservation, but  
4 also trying to keep rates somewhat stable.

5 So, again, I appreciate the hard work and  
6 tension, but, again, I think we need to look at  
7 setting more robust goals. Thank you.

8 **CHAIRMAN CARTER:** Thank you. And, staff,  
9 I mean continue to do the good work. But the bottom  
10 line, Commissioners, is that the buck stops here at  
11 the bench. Staff can make all the recommendations  
12 they want, but the buck stops here. We're going to  
13 have to cut the Gordian Knot. But I do believe that  
14 staff is comfortable in terms of what we've asked  
15 them to do, and they can bring that back to us as we  
16 proceed further.

17 Commissioners -- Commissioner Edgar,  
18 you're recognized.

19 **COMMISSIONER EDGAR:** Thank you. Just a  
20 procedural question to staff, if I may, Mr.  
21 Chairman.

22 Realizing that this is, as has been  
23 pointed out, just one step in a larger process and  
24 that the utilities will be required to submit  
25 proposed programs and there will be a staff review

1 and there will be another discussion, can you walk  
2 me through the timeline from, say,  
3 January 1 forward, for instance?

4 **MR. BALLINGER:** Yes, ma'am. Our rules say  
5 that 90 days from establishing goals, I would  
6 presume that would be 90 days from the final order  
7 adopting goals, utilities file new programs to meet  
8 those goals. Staff intends to bring those programs  
9 back to you as PAA items, so not have a hearing, but  
10 that would take, you know, a couple of months to go  
11 through. So you're looking at, if this goes  
12 December 1, you get an order out end of December,  
13 let's say January 1 the order is effective. 90 days  
14 from that, so you're looking at March. As far as  
15 filing the programs you're talking probably May I'm  
16 guessing.

17 **COMMISSIONER EDGAR:** As an item on a, as  
18 you said, an item as a PAA on a regularly scheduled  
19 Agenda Conference, is that what we're talking about?

20 **MR. BALLINGER:** Right. Yes. And I think  
21 it would be staff's intent to bring all seven  
22 program approvals to you at one time, kind of  
23 en masse.

24 **COMMISSIONER EDGAR:** Thank you.

25 **CHAIRMAN CARTER:** Good. Commissioners,

1 we're in debate. We have a motion and a second on  
2 the, on the floor. We're in debate. Any further  
3 debate? Any questions? Any discussion? Hearing  
4 none, all in favor of the motion, let it be known by  
5 the sign of aye.

6 (Simultaneous vote.)

7 All those opposed, like sign. Show it  
8 done.

9 Commissioners, I'm going to let staff go  
10 ahead and have a lunch break. And then we'll pick  
11 up, we'll pick up Internal Affairs at, I'm looking  
12 at probably 2:40.

13 (Proceeding adjourned.)  
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1  
2 STATE OF FLORIDA )

3 : CERTIFICATE OF REPORTERS

4 COUNTY OF LEON )

5  
6 WE, JANE FAUROT, RPR, and LINDA BOLES, RPR,  
7 CRR, Official Commission Reporters, do hereby  
8 certify that the foregoing proceeding was heard at  
9 the time and place herein stated.

10 IT IS FURTHER CERTIFIED that we  
11 stenographically reported the said proceedings; that  
12 the same has been transcribed under our direct  
13 supervision; and that this transcript constitutes a  
14 true transcription of our notes of said proceedings.

15 WE FURTHER CERTIFY that we are not a relative,  
16 employee, attorney or counsel of any of the parties,  
17 nor are we a relative or employee of any of the  
18 parties' attorneys or counsel connected with the  
19 action, nor are we financially interested in the  
20 action.

21 DATED THIS 20th DAY OF NOVEMBER, 2009.

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JANE FAUROT, RPR  
Commission Reporter  
(850) 413-6732

LINDA BOLES, RPR, CRR  
Commission Reporter  
(850) 413-6734

## **APPENDIX D**

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 100160-EG

PETITION FOR APPROVAL OF DEMAND-  
SIDE MANAGEMENT PLAN OF PROGRESS  
ENERGY FLORIDA, INC.

---

PROCEEDINGS: AGENDA CONFERENCE  
ITEM NO. 5

COMMISSIONERS  
PARTICIPATING: CHAIRMAN ART GRAHAM  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER RONALD A. BRISÉ  
COMMISSIONER EDUARDO E. BALBIS  
COMMISSIONER JULIE I. BROWN

DATE: Tuesday, July 26, 2011

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR  
Official FPSC Reporter  
(850) 413-6732

FLORIDA PUBLIC SERVICE COMMISSION

DOCUMENT NUMBER-DATE

05298 JUL 29 =

FPSC-COMMISSION CLERK

## P R O C E E D I N G S

CHAIRMAN GRAHAM: All right. Let's get to Item Number 5.

MS. LEWIS: Good morning, Chairman; good morning, Commissioners. Kathy Lewis, Commission staff. I'm here for Progress Energy's demand-side management plan.

Progress has proposed two DSM plans for the Commission's consideration: The compliance plan, which meets the Commission-established goals, and the rate mitigation plan which does not fully meet the goals, but has a lower rate impact.

In Issue 1, staff recommends that the compliance plan imposes an undue rate impact on customers, noting that Florida Statutes give the Commission flexibility to modify or deny plans that would have an undue rate impact on costs passed on to customers. Staff recommends denial of the compliance plan.

In Issue 2, staff recommends that the Commission approve the rate mitigation plan. The monthly bill impact for the rate mitigation plan would be about \$6 by 2014, which is more in line with the DSM plans the Commission has approved for the other investor-owned utilities to date. If you approve Issue

1 2, the goals previously established for Progress in the  
2 2009 goal-setting order remain in effect, and staff  
3 recommends that Progress should strive to meet those  
4 goals.

5 Also, Progress Energy will not be eligible  
6 for any financial reward unless its achievements exceed  
7 the Commission-established goals. And Progress could  
8 face financial penalties if its achievements fall below  
9 the projections contained in the rate mitigation plan.

10 Finally, Progress must demonstrate during  
11 energy conservation cost-recovery proceedings that its  
12 expenditures for implementing these programs are  
13 reasonable and prudent. And staff is ready to answer  
14 your questions.

15 **CHAIRMAN GRAHAM:** Thank you, Ms. Lewis.  
16 Let's start with SACE.

17 **MR. JACOBS:** Good morning, Mr. Chairman,  
18 Commissioners. My name is Leon Jacobs. I'm here on  
19 behalf of Southern Alliance for Clean Energy. I'm  
20 making an appearance today; I haven't been in the  
21 docket before. Also with me today is Mr. Tom Larson,  
22 who will also be addressing you.

23 Thank you.

24 **CHAIRMAN GRAHAM:** FIPUG.

25 **MS. KAUFMAN:** Mr. Chairman, Commissioners.

1 Vicki Gordon Kaufman. I'm here on behalf of the  
2 Florida Industrial Power Users Group.

3 MS. TRIPLETT: Good morning, Commissioners.  
4 Dianne Triplett on behalf of Progress Energy Florida.

5 CHAIRMAN GRAHAM: All right.

6 Commissioners? Commissioner Edgar.

7 COMMISSIONER EDGAR: Thank you, Mr. Chairman.

8 And I'm glad to see that we have  
9 representatives from a number of the parties that  
10 participated in this docket and in this effort. As we  
11 all know, this has been a multi-step and now a  
12 multi-year process to get us to this point. And I  
13 think that we have all learned a lot, but yet I know in  
14 my mind I still have some questions. And I'm hoping  
15 that we can have a good discussion and that I can learn  
16 from the thoughts and questions and maybe even answers  
17 that we get today.

18 You know, recognize that in my mind the  
19 purpose of the statute that we are operating under has  
20 a number of pieces, one of which is to increase  
21 conservation and to, therefore, decrease the use of  
22 expensive resources, fuel in particular. Also,  
23 particularly to help lower peak demand and the growth  
24 rate in consumption, and certainly to help us encourage  
25 efficiencies in the use of demand-side renewables, all

1 of which I know I strongly favor, and probably  
2 everybody in this room does, but yet we also recognize  
3 that with all of it there are costs involved.

4 I know that when the Commission first took up  
5 this effort, we had at least, I think, seven dockets  
6 that were going forward looking toward setting goals  
7 and then coming back. I know I asked questions at the  
8 time, as did a number of the Commissioners who are not  
9 here with us today, but who participated in the steps  
10 to get us to this process, about what will the costs be  
11 and will we have the chance to evaluate those costs and  
12 weigh in.

13 I have gone back and looked at the  
14 transcripts, and I know that one Commissioner, in  
15 particular, made numerous comments about wanting to  
16 make sure that the Commission retains some flexibility,  
17 that our hands were not tied as we went forward and  
18 gained additional information. So here we are today.  
19 We have approved plans in the past for the municipals  
20 that are included under the statute, and also for the  
21 smaller IOUs, for TECO, for Gulf, and for FPUC with the  
22 two IOUs that have larger geographic service area and  
23 larger number of customers, those are now before us  
24 today. And I will point out that I don't have in front  
25 of me the date that we started with the technical

1 feasibility study steps, but I do know that the docket  
2 that first came before us to establish the goals was  
3 back in November of 2009. And here we are over a year  
4 and a half later, and we are still looking at the first  
5 round of new plans or programs under those new goals as  
6 we were directed under the statute to review and to  
7 establish.

8           So with all of that said, I think this is a  
9 good opportunity for us to take a little time this  
10 morning to look back at the steps that we took as a  
11 Commission and the policy decisions that were inherent  
12 in that, realizing that each step of the way we all  
13 receive a little more information and times change. I  
14 know that, gosh, I think it was my first or second year  
15 here we had an issue in telecom that, as required under  
16 the statute, there was going to be a short-term  
17 additional charge of 30 cents per bill. And we  
18 agonized about how and when and how to reduce the  
19 timing of the impact of that, and that was for a  
20 short-term finite period of time.

21           As time has marched on, I'm sure we all have  
22 stories like this, but I know in my own personal life,  
23 I have more friends and colleagues and family members  
24 and acquaintances and family members of friends who are  
25 out of work, certainly to a degree that I have never



1 experienced in my lifetime. And I'm sure we all have  
2 similar experiences. And so when I put that on top of  
3 the realization that if we are to adopt programs and  
4 plans today that will result in some additional monthly  
5 costs, recognizing, of course, the ultimate goal to be  
6 savings over the long-term both in demand and in  
7 consumption. And ultimately, hopefully, that will  
8 weigh out.

9 But usually, Commissioners, in situations  
10 like that, you know, there are -- I hesitate to use the  
11 terms winners and losers, so let me rephrase and say  
12 generally there are going to be some groups or  
13 subgroups that will be better able to take advantage of  
14 those potential savings opportunities than others,  
15 recognizing that there probably will be some  
16 subsidization within a class and between classes.

17 And so recognizing that, I'm hoping that  
18 today we can kind of tee up some of those issues and  
19 just see what we think the careful and thoughtfully  
20 considered best steps are on a go-forward basis. And  
21 so with that, if I may, Mr. Chairman, would welcome the  
22 thoughts of any of you, and certainly, of course, look  
23 forward to hearing from the party representatives that  
24 are here.

25 **CHAIRMAN GRAHAM:** Commissioner Balbis.

1                   **COMMISSIONER BALBIS:** Thank you, Mr.  
2 Chairman.

3                   And thank you, Commissioner Edgar, for those  
4 comments. Again, as a senior member, I'm glad that you  
5 are on this Commission and can provide comments as to  
6 where we were and how we got here, so I appreciate  
7 that.

8                   And, Mr. Chairman, if I may, I'd like to hear  
9 from the parties first, before I get into questions of  
10 staff, et cetera, so I will reserve my comments until  
11 then.

12                  **CHAIRMAN GRAHAM:** Commissioner Brisé.

13                  **COMMISSIONER BRISÉ:** Thank you, Mr. Chairman.

14                  I, too, would like to hear from the parties,  
15 but I think there are a couple of things that come to  
16 mind as we begin this conversation, and I'm hoping that  
17 we will have a full conversation on this issue for two  
18 reasons: Obviously our responsibility is protecting  
19 the public interest, and that includes ensuring that we  
20 are moving in a direction with respect to energy to  
21 make sure that our demand isn't too high and all of  
22 those type of things, and we can serve as much as  
23 responsible. But at the same time we have the  
24 responsibility of making sure that people can actually  
25 afford to do what we are saying that they ought to do

1 with respect to their bills.

2 So I certainly hope that as this discussion  
3 moves forward that all of the parties that will present  
4 before us today and participate in this conversation  
5 will be cognizant of that, and that when we get the  
6 discussion back that we will be fully cognizant of the  
7 times which we are in right now. Because sometimes  
8 certain things work during certain periods and they  
9 make sense in terms of policy, but when things change,  
10 sometimes we may have to change with the times to  
11 address the issues that are before us.

12 **CHAIRMAN GRAHAM:** Thank you, Commissioner.  
13 Let's start with SACE.

14 **MR. JACOBS:** Thank you, Mr. Chairman.  
15 Commissioners, I'm going to defer to Mr.  
16 Larson to begin our discussion, and I will come back  
17 with some overall procedural issues.

18 **CHAIRMAN GRAHAM:** Okay. Mr. Larson.

19 **MR. LARSON:** Good morning, Mr. Chairman. I'm  
20 Tom Larson, a resident of Jacksonville, Florida. I  
21 work for and am speaking on behalf of the Southern  
22 Alliance for Clean Energy. SACE is a regional  
23 nonprofit organization celebrating its 25th year  
24 promoting responsible energy choices. I have been  
25 engaged in this effort since the beginning, since July

1 of 2008, and am pretty imbued with the details about  
2 the technical and -- potential and all the way through  
3 now to this docket. And it's good to see things coming  
4 to fruition. The citizens of Florida will benefit  
5 greatly from moving forward in this arena.

6 SACE strongly advocates for meaningful energy  
7 efficiency, because it's the lowest-cost resource  
8 available to a utility. An efficiency program can meet  
9 electricity demand at a fraction of the cost of meeting  
10 consumer power needs through costly new generation  
11 systems. The reason utility-sponsored programs are so  
12 important is that most Floridians don't have the  
13 information and/or the resources to implement energy  
14 efficiency measures on their own. They want to save  
15 money on their bills, but they are looking at their  
16 hometown utility to help them lower their energy use  
17 and save money on their bills, especially low income  
18 and fixed income customers.

19 We hope to see Progress Energy Florida  
20 expeditiously implement meaningful energy efficiency  
21 programs. We know that the programs already costs less  
22 than new generation because they pass the TRC  
23 cost-effectiveness test, but that's a first-tier test.  
24 The second test is to determine if the programs are  
25 designed in a way to meet the goals at the lowest

1 practical cost to customers. That's the only way these  
2 programs can be sustainable. In this respect, both  
3 Progress Energy and Commission staff have failed the  
4 Commission, because there is no analysis to determine  
5 whether the mix of efficiency programs and the design  
6 of those programs will capture energy savings at the  
7 lowest costs.

8 While PEF's goals are higher than its peer  
9 utilities, the starting point should not be to slash  
10 the goal level. The goal level already has been  
11 determined in another proceeding. Rather, demand-side  
12 management plan approval should focus on PEF providing  
13 evidence that it has submitted a DSM plan with good  
14 program design, and a program mix that delivers energy  
15 savings most cost-effectively, and for staff to conduct  
16 an analysis to confirm that programs are designed in a  
17 cost-effective fashion using best industry practices  
18 and are cost competitive with similar programs  
19 conducted by peer utilities in other states. Neither  
20 has been done effectively in this case.

21 Staff points out that because of the undue  
22 rate impact of the compliance plan, the Commission can  
23 deny or modify a plan because of its statutory  
24 authority in FS 366.82, Sub 7. The only option you  
25 have been provided is to deny. No information is

1 offered by Staff by which you can modify plans for  
2 undue rate impact because of poor program design. In  
3 fact, the Legislature intended that such scrutiny would  
4 take place in order to protect the public interest.

5 The statute states -- this is 366.81 -- the  
6 Legislature finds and declares it is critical to  
7 utilize the most efficient and cost-effective  
8 demand-side renewable energy systems and conservation  
9 systems in order to protect the health, prosperity, and  
10 general welfare of the state and its citizens.

11 As for undue rate impacts, SACE would argue  
12 that any DSM plan with energy efficiency programs that  
13 are not cost-effectively designed causes an undue rate  
14 impact regardless of the level of the goals.

15 SACE compared PEF costs to the cost of its  
16 sister utility, Progress Energy Carolinas, in its most  
17 recent comments in this docket. PEF is planning to  
18 achieve approximately 10 percent greater energy savings  
19 than PEC annually, yet PEF is planning to spend  
20 50 percent more than PEC in the same year. This is  
21 indicative of PEF's opportunity to reduce DSM program  
22 costs, when its sister utility can achieve 90 percent  
23 of the savings at 50 percent of the cost.

24 Other examples of opportunities that PEF has  
25 to increase savings and reduce costs that SACE provided

1 in its April 25th and December 23 comment letters  
2 include bringing its home energy comparison report  
3 program costs in line with those of other utilities in  
4 the southeast. Gulf Power is implementing the same  
5 program for about half the cost.

6 Rebalancing PEF's portfolio is another area  
7 to leverage low-cost measures such as reflective roofs,  
8 low-flow showerheads, and residential lighting. In  
9 other words, relying more on these lower-cost programs  
10 for energy savings and relying less on higher-cost  
11 programs.

12 PEF only includes these lower-cost measures  
13 in its low-income programs, weatherization assistance  
14 and the neighborhood energy savings program, despite  
15 the measures being applicable and efficient for all  
16 income levels.

17 And, third, reevaluating whether the  
18 escalation values that PEF included in their cost  
19 analysis are necessary or accurate. The staff  
20 recommendation doesn't address the unexplained use of  
21 escalation factors by Progress Energy in the  
22 development of its energy efficiency programs. We had  
23 urged the Commission to seek to understand the use of  
24 escalation values by PEF, yet no clear explanation has  
25 been forthcoming from PEF, and no analysis by staff

1       regarding this issues has been evidenced.

2               It's important to note that no other FEECA  
3       utility used an escalation factor in developing their  
4       programs. The challenge to Commission staff is that  
5       the unnecessary cost problems are embedded deeply  
6       within the program design process used by the utilities  
7       and cannot be easily extracted and addressed.

8               SACE strongly encourages the Commission, or  
9       the Commissioners, if it approves PEF's rate mitigation  
10      plan, to direct PEF to revisit the rate mitigation plan  
11      for additional energy savings opportunities that will  
12      not increase costs with program design changes which  
13      will be more productive of savings. We believe there  
14      are many opportunities for PEF to do so.

15              We do not believe that this problem should  
16      inhibit PEF from undertaking these programs  
17      immediately, or from continuing or expanding existing  
18      programs. While it is within the prerogative of the  
19      Commission to approve DSM program portfolios that are  
20      unlikely to achieve its goal, it should only consider  
21      such a step after it has been shown that all program  
22      options have been exhausted to meet the utility's goals  
23      at the lowest cost to customers.

24              Thank you very much.

25              MR. JACOBS: Thank you.



1           Mr. Chairman, very quickly. I'll suggest  
2     that, first of all, staff and the Commission applies  
3     some important scrutiny to these programs. You have  
4     looked at some issues with regard to the cost of the  
5     programs, and you have made some requests to address  
6     those. We would humbly suggest to you that that  
7     process is not completed yet. As Mr. Larson has  
8     correctly pointed out, there are some significant and  
9     we think measurable opportunities to improve on these  
10    programs.

11           With all due respect, I think the approach of  
12    moving forward is the correct approach. We do need to  
13    get programs working. Staff's proposal to put in place  
14    the re-mitigation plan is one option to do that. It  
15    purports to say that it is not an adjustment of the  
16    goals. I would humbly suggest to you that if it walks  
17    like a duck, and quacks like a duck, it probably is,  
18    and so you are choosing not to enforce the goals in  
19    some way, form, or fashion immediately.

20           Now, rather than be totally critical of that,  
21    I see this maybe -- well, how could that be helpful?  
22    Because I think what ought to happen in that analysis  
23    is not only are you looking at ways to observe and  
24    mitigate the rate, I will suggest to you that you  
25    should also be looking for ways to maximize the

1 benefits to the public interest. And Mr. Larson has  
2 suggested to you ways that that can be done.

3 And so in addition to observing and  
4 monitoring the rate impact, we believe you ought to  
5 also be observing and monitoring ways that the cost  
6 structures of these programs can be further enhanced.  
7 That's what -- Commissioner Edgar, I was very happy to  
8 hear you cite to the intent of statute. That is what  
9 this statute says. It's not about -- totally, I should  
10 say, about rate impact, it's a balancing statute. You  
11 do have the opportunity to balance whether or not you  
12 do a rate case to bring about more energy efficiency.  
13 You can do that. And on Page 11 of the recommendation  
14 that seems to be not an option.

15 But if this statute tells you bring about  
16 more energy efficiency, and you can see ways that you  
17 can do that, and yet ensure that these companies can  
18 achieve a meaningful and a reasonable rate of return  
19 you can do that. It's not against the law. You may  
20 not want to do that in the interest of efficiency, but  
21 that's an option that you have. It is not off the  
22 table.

23 So what we want to suggest to you is that we  
24 believe -- this is perhaps a positive direction, but we  
25 are very concerned that it takes in consideration and

1 embrace the full scope of what we believe you have the  
2 authority to do here, and that is to figure out how to  
3 achieve that intent in that statute. And that, we  
4 believe, is not reflected fully in what you have before  
5 you today.

6 We want to applaud you for where you are.  
7 You have come a long way, and it has been interesting,  
8 but I think the Legislature clearly in 2008 made a  
9 change. They said we want to do more. We have to  
10 diversify. We have to figure out how to reduce our  
11 exposure to fuel volatility. That's what this is  
12 about. And I will end with this note. There was  
13 article in the paper, I think, just yesterday or the  
14 day before citing that they intended -- there was fear  
15 that in the northeast grid they will have outages based  
16 on the heat surge. And this article presupposed that  
17 one of the reasons those outages weren't realized was  
18 because New York, the District of Columbia, and other  
19 states embarked on aggressive energy efficiency and DSM  
20 programs previously and saw their peaks managed.

21 I suggest to you Florida has that same  
22 opportunity here, and we believe that we can achieve  
23 that and probably with even more pressing concerns.  
24 Florida imports all of its fossil fuels. It's a grid  
25 that is pretty much isolated, so I think those concerns

1 will be much more processing here in Florida. And with  
2 that, we thank you very much for your time.

3 **CHAIRMAN GRAHAM:** Thank you.

4 Ms. Kaufman.

5 **MS. KAUFMAN:** Good morning, Mr. Chairman and  
6 Commissioners. I am Vicki Gordon Kaufman, I'm with the  
7 law firm of Keefe Anchors Gordon and Moyle, and I'm  
8 here on behalf of the Florida Industrial Power Users  
9 Groups.

10 And like some of my colleagues at the table,  
11 we have been in this docket since its inception. And  
12 one thing I wanted to say as a preliminary matter, I  
13 know that you probably know that FIPUG is an  
14 organization of large industrial consumers. And  
15 sometimes we might forget, for example, one of our  
16 members is Publix, and Publix creates a lot of jobs.  
17 Publix has, you know, upper management, obviously, and  
18 they have maybe some of your children that, you know,  
19 work there while they're in college. They look where  
20 they are going to expand their stores, contract their  
21 stores, open new stores.

22 We have hospitals that are members of our  
23 group. NASA is a member of our group. So even though  
24 we are thought of as large consumers, and we are, at  
25 the end of the day these companies create jobs and

1 employ people, and many of them have opportunities to  
2 locate in other states. And I can assure you that when  
3 they make that decision, one of the many things they  
4 look at is the cost of electricity, because for FIPUG  
5 members, the cost of electricity is, in most instances,  
6 their largest variable cost.

7 If you look at the original plan of Progress,  
8 and you look at what has now been called the rate  
9 mitigation plan, we think you're moving in the right  
10 direction, but we don't think that you have gone far  
11 enough. And I just want you to look at the chart on  
12 Page 18, which is Table 13. As I understand that  
13 chart, that's based on 1,200 kilowatts, which is what  
14 you typically consider to be the average residential  
15 customer. And, for example, you can see in 2012 that  
16 average customer is -- their bill is going to go up  
17 over \$5.

18 Now, I want to tell you that for FIPUG  
19 members, depending on their size, their bills are going  
20 to go up by thousands of dollars. Maybe, again,  
21 depending on the size, hundreds of thousands of  
22 dollars. And clearly that has an impact on all the  
23 decisions that they make. And so I think as  
24 Commissioner Edgar and others might have suggested, we  
25 need to take a hard look at whether now is the time to

1 impose these kind of costs.

2 It was interesting to me to hear the prior  
3 item and the interest, rightly so, in economic  
4 development, which we all know is important in terms of  
5 job creation. That was a step that may create more  
6 jobs. You also have to look to the other side of the  
7 equation, which is, perhaps, inhibiting job growth; or,  
8 as we all know, companies have shut down, and they have  
9 let people go, they have downsized. So we think that  
10 rate mitigation, and we have said this from the  
11 beginning, is very important. And I don't disagree  
12 that it has to be balanced with conservation, but I  
13 think you also have to take into account the era that  
14 we are in right now, and ask yourself is this the time  
15 that we want to be imposing these kind of costs.

16 Not to stray into another docket, but soon  
17 you will be hearing the nuclear cost-recovery docket,  
18 which imposes additional charges. So, again, this  
19 isn't a big charge, but it is one of many charges that  
20 all ratepayers face.

21 In regard to Progress Energy's plan, as  
22 Commissioner Edgar mentioned, it has been a long time  
23 in this process. We think a lot of the data may be out  
24 of date. We think that there are issues that have not  
25 been addressed or looked at. We have discussed with

1 you in the past what we call the opt-out for industrial  
2 customers that have their own conservation programs and  
3 pay for those programs out of their own capital.

4 That's something that hasn't been looked at. We have  
5 been concerned for a long time about value of the  
6 interruptible credit and the fact that it is way below  
7 what it should be. Again, that is something that has  
8 not been looked at.

9 So we think that the company is going to  
10 offer you some options of ways that we might proceed,  
11 and some of those FIPUG would support because we think  
12 we need to look at what the current situation is now,  
13 not only in terms of our economy, but in terms of what  
14 the data is today.

15 As for SACE's comments, certainly we are in  
16 favor of effective, efficient program design. So if  
17 there are places in program design that should be  
18 reviewed because they are not as cost-effective as they  
19 should be, I'm sure that we support that, and I  
20 wouldn't doubt that the company would support that, as  
21 well.

22 So I guess my message to you is to think and  
23 look carefully at the costs that these type of  
24 programs, even in the rate mitigation plan, would  
25 impose on all consumers in Florida, including big

1 business. And I think it might be time for a relook.  
2 And if I have the opportunity, I would appreciate a few  
3 minutes to perhaps comment on what Progress Energy is  
4 going to tell you. Thank you.

5 CHAIRMAN GRAHAM: So, Ms. Kaufman, you plan  
6 on going back to your clients and letting them know  
7 that Florida Power and Light is offering 20 percent  
8 rebates on economic development?

9 MS. KAUFMAN: They already know that.

10 CHAIRMAN GRAHAM: Okay. I just want to make  
11 sure that we are moving.

12 MS. KAUFMAN: As soon as that tariff popped  
13 up, they knew about it.

14 CHAIRMAN GRAHAM: Okay. Thank you.  
15 Progress.

16 MS. TRIPLETT: Thank you, Mr. Chairman and  
17 Commissioners. Again, Dianne Triplett for Progress  
18 Energy. And we appreciate the opportunity today to  
19 provide comments.

20 I agree this has been a complex and iterative  
21 process and one that -- it started before I even joined  
22 the company, and so it has been interesting to read the  
23 history of the development. And I do think that there  
24 is a balance that needs to be struck between achieving  
25 energy efficiencies and determining the appropriate



1 rate impact to customers in particular during these  
2 difficult economic times.

3           You know, Ms. Kaufman referenced -- she maybe  
4 stole a little bit of my thunder about our ideas on  
5 further ways that the Commission could -- to strike the  
6 appropriate balance and perhaps get the rate down a  
7 little bit more. I certainly agree that there are some  
8 things that have changed in the more than a year and a  
9 half, I think, that has passed since the initial  
10 technical potential study and the development of the  
11 goals. And I think it would be helpful to perhaps  
12 consider taking a look at that. Either completely  
13 redoing, or perhaps just, you know, not recreating the  
14 wheel, but updating what makes sense and plugging in  
15 new information. I think that would also give us the  
16 opportunity to address the disparities in the goals.

17           And I think that we have presented that  
18 information, and I've got graphs I can show you again.  
19 But, you know, as a percentage of retail sales,  
20 Progress Energy is much higher than other utilities,  
21 and we have theories about why that is, but it is not  
22 entirely clear as to why that happens. So going back  
23 to the beginning, so to speak, perhaps could help clear  
24 that up on a going-forward basis.

25           We also, you know, at the beginning of this

1 process, after the technical potential study was  
2 completed, Progress came in with a plan that was based  
3 on E-RIM, which was the traditional test that the  
4 Commission was familiar with in terms of approving  
5 plans, and so that could be an option to go back and  
6 look at that.

7 I certainly think that, Commissioner Edgar, I  
8 was taking notes when you were writing about -- when  
9 you were speaking, rather, about the fact that some  
10 groups are able to take advantage of programs more than  
11 others. And I certainly think that with the rate  
12 mitigation plan we developed a plan that limited  
13 cross-subsidization, but it didn't completely eliminate  
14 it. And the problem with setting a goal that's too  
15 high is that you are going to have to offer programs  
16 that not everybody can take advantage of. You now, a  
17 lot of our customers don't have pools, so they can't  
18 take advantage of a pool pump, yet, you know, they may  
19 be paying for that. So I would certainly agree that  
20 that is an important consideration.

21 I just wanted to also briefly touch on a few  
22 of the things that Mr. Larson said. I thought it was  
23 interesting that he mentioned that SACE has been  
24 involved with energy efficiency issues for 25 years,  
25 because Progress Energy has been doing demand-side

1 reductions and running programs for 30 years. So we,  
2 too, have a lot of experience in the entire state of  
3 Florida, not only Progress Energy, but with  
4 implementing good demand-side management programs and  
5 plans and really achieving a lot of energy savings.

6 And I think that that's one of the reasons  
7 why SACE has pointed out a lot of comparisons to our  
8 plans as compared to other utilities in the southeast,  
9 some in the midwest, and out in Arizona. And I think  
10 you have to be careful when you compare Florida  
11 utilities, in particular, to other jurisdictions  
12 because there are so many differences. One of the  
13 differences is that we have been doing this for  
14 30 years, so when you already have a plan in place that  
15 you are already getting a lot of market penetration, it  
16 takes more money, and it takes different strategies to  
17 implement -- to go to the next level.

18 I also think, in particular, with respect to  
19 the comments on the comparisons of PEC, or Progress  
20 Energy Carolinas, in essence, it's an apples to oranges  
21 comparison. You know, they're looking at a savings of  
22 one year of actual data for Progress Energy Carolinas  
23 as compared to a ten-year average for Florida.

24 In addition, the lighting aspect is different  
25 for the two utilities. In Florida, 70 percent of our

1 customers already have at least one CFL light bulb, so  
2 you are not going to get the market penetration that  
3 you can see in another jurisdiction that folks are not  
4 already putting in the light bulbs.

5 And as far as the escalation factors and the  
6 costs overall, I mean, I believe that it's a little  
7 insulting to staff and to everyone involved in this  
8 process to imply that everyone has not taken a really  
9 hard look at our numbers and the costs that are in our  
10 programs. We have answered multiple data requests. We  
11 have had lots of informal meetings. I think it has  
12 been a really good exchange of information. And I  
13 think that our programs are solidly developed, they are  
14 cost-effective, and they're the low-cost option.

15 It just so happens that when you are trying  
16 to hit a high goal, you have to spend more money, and  
17 so the goal -- it goes hand-in-hand. The higher the  
18 goal, the more money you have to spend. And that's the  
19 balance that you will have to strike, and hopefully  
20 this conversation will be helpful.

21 We're ready to answer any other questions.  
22 Thank you.

23 **CHAIRMAN GRAHAM:** Thank you.

24 Commissioner Balbis.

25 **COMMISSIONER BALBIS:** Thank you, Mr.

1 Chairman.

2 And I appreciate all the comments from the  
3 parties. It's very helpful for me, personally, and I'm  
4 sure the other Commissioners to get a reminder of the  
5 positions. And, you know, unfortunately what I have  
6 found in my eight or nine months that I have been here  
7 is that I agree with each one of the parties. You all  
8 make very valid points, and so now my job and our job  
9 is difficult in trying to find a balance.

10 So with that, and there has been a lot of  
11 discussion about the current goals, and the -- I  
12 believe the term was slashing of the current goals, and  
13 I personally don't feel it is appropriate at this time  
14 to discuss the goals. The goals were set through a  
15 lengthy process that I believe are updated every four  
16 to five years, and the next upcoming goal process will  
17 be in the next two to three years. So I'd rather focus  
18 on the plan we have in front of us and look at what is  
19 an undue rate impact and what do we need to implement  
20 now and kind of focus. So my comments are really  
21 focusing on that rather than what the goals should be,  
22 because I think we will do that on a later date.

23 You know, several points I want to make  
24 starting with the compliance plan, and Progress'  
25 compliance plan. And staff can correct me if I'm

1 incorrect, but in looking at Table 1 on Page 5, again,  
2 focusing on undue rate impact, it looks like the  
3 maximum monthly rate impact is \$16.94 per month with  
4 the compliance plan. In a similar table for the rate  
5 mitigation plan, that results in a monthly increase as  
6 high as \$6.13. There has been a lot of discussion here  
7 on conservation measures and implementing conservation  
8 measures, which I think the statute is very clear on,  
9 but I want to be clear that Progress Energy and all the  
10 utilities currently have a DSM program in place.

11 And in reviewing what has been spent over the  
12 past five years, you know, I summarized based on the  
13 FEECA report, the latest FEECA report, that over the  
14 past five years customers have paid an average of two  
15 dollars per month for the implementation of these  
16 successful programs, and it has resulted in a 392  
17 megawatt reduction in winter demand. We have data on  
18 this. It is summarized in the FEECA report, which was  
19 submitted to the leadership in the legislature.

20 So we currently have successful programs in  
21 place. Again, at a cost of an average of two dollars  
22 per month, and I believe in 2011 the ECCR clause, which  
23 recovers that, is \$2.99 per month. And, again, staff  
24 can correct me if I'm wrong on that.

25 So over the past five years, Progress'

1 customers have paid upwards of \$340 million in  
2 implementation of these programs. So I want to be  
3 clear that there are programs in place. They are  
4 successful. You know, they have a two-dollar average  
5 impact. But now we are starting to get data coming in  
6 of the true effectiveness of these programs, which I  
7 believe, and, Commissioner Edgar, correct me if I'm  
8 wrong, at the time these goals were established that  
9 data was not there. So we are getting to the point  
10 where we are having true data. We are looking at the  
11 effectiveness, we are looking at the cost, and we are  
12 able to move forward.

13 And SACE made a couple of very good comments  
14 on avoiding the cost of new generation units, so I have  
15 a couple of questions for staff. And according to  
16 Progress' latest Ten-Year Site Plan, when is the next  
17 unit scheduled to come on-line?

18 **MR. BALLINGER:** Tom Ballinger for staff.  
19 That's a little lengthy question. The current Ten-Year  
20 Site Plan assumes CR-3 coming back into service  
21 shortly. With recent events, now we know that is not  
22 going to happen until 2014 or 2015. So the current  
23 Ten-Year Site Plan shows the next need, I believe, is  
24 in 2020 -- and I'll turn to my staff here. That's  
25 assuming CR-3 coming back on-line in the near term.

1           If CR-3 does not come back on-line, we have  
2       looked at it and the reserve margin shows that they  
3       would have adequate capacity above a 20 percent reserve  
4       margin until the year 2016. So even with CR-3 being  
5       off-line, they have enough generation resources to  
6       reliably serve through 2016. That's the preliminary  
7       numbers that they are showing there in the Ten-Year  
8       Site Plan.

9           **COMMISSIONER BALBIS:** Okay. And the  
10      incremental increase in demand-side management programs  
11      with either the compliance plan or the rate mitigation  
12      plan over and above the current DSM programs that are  
13      in place. If we continue with the current plan and not  
14      implement either the mitigation plan or the compliance  
15      plan, does that accelerate the need for that unit in  
16      2016?

17           **MR. BALLINGER:** It would accelerate it  
18      slightly. I don't think it would do much to it,  
19      because we are only talking a two or three-year window  
20      until we reset goals again to relook at this. The  
21      existing plans are also fairly entrenched and  
22      significant in providing savings, and a lot of these  
23      plans don't really provide the bulk of the savings  
24      until the outer years. So my guess is, yes, it would  
25      accelerate the need for power somewhat. Would it shift



1       it a year? I don't think it would, in my judgment.

2               **COMMISSIONER BALBIS:** So the next unit would  
3 continue to be 2016, in your estimation?

4               **MR. BALLINGER:** From what I know today, yes.

5               **COMMISSIONER BALBIS:** And you mentioned the  
6 reserve margin. What is Progress' current reserve  
7 margin?

8               **MR. BALLINGER:** Hold on, I have that. It's  
9 around 25 percent, I believe.

10              **COMMISSIONER BALBIS:** And I asked that  
11 question based on --

12              **MR. BALLINGER:** I'm sorry, and that's without  
13 CR-3.

14              **COMMISSIONER BALBIS:** Without CR-3, okay.  
15 And I based that question on SACE's very valid argument  
16 on what's happening in New York, and the avoidance of  
17 blackouts, et cetera, and I believe the reserve margin  
18 does play into that. And keeping an adequate reserve  
19 margin, which this Commission does not set, is to avoid  
20 those types of situations. So I thank SACE for  
21 bringing up that point.

22              I just want to summarize that my points are  
23 made, and leave it up to the remainder of the board,  
24 but just summarizing, Progress' customers in 2011 are  
25 paying \$2.99 for current DSM programs that, based on

1 the latest FEECA report, have been successful and have  
2 resulted in significant savings. And, again,  
3 implementation of either the compliance plan or rate  
4 mitigation plan, which range in monthly impacts of  
5 \$6.13 all the way up to \$6.94 does not accelerate  
6 significantly even a year the next unit that is  
7 planned, and we will be undertaking a thorough goals  
8 review in the next couple of years. I just wanted to  
9 summarize at this point, and turn it over to the  
10 remainder of the board.

11 **CHAIRMAN GRAHAM:** Tom, I've got a question  
12 for you. When did the reserve margin go from  
13 15 percent to 20 percent?

14 **MR. BALLINGER:** I want to say early '90s.

15 **CHAIRMAN GRAHAM:** And why did it go up from  
16 15 to 20?

17 **MR. BALLINGER:** Excuse me?

18 **CHAIRMAN GRAHAM:** Why did it go from 15 to  
19 20?

20 **MR. BALLINGER:** Why did it go? I'll give you  
21 my opinion of what was involved in the hearing. That  
22 was a time where there was competition, or the thought  
23 of inducing competition or introducing more competition  
24 in the generation market. We had nonutility  
25 generators, private entities wanting to build

1 generating plants and sell on the spot market, if you  
2 will. We were also seeing utilities, at that the time,  
3 seeing reserve margins decline significantly and not  
4 building facilities. We will saw reserve margins --  
5 projected reserve margins getting down to 10, or  
6 8 percent in the near term, and no plans for that  
7 because everybody was kind of frozen because of this  
8 competition thing.

9 We had a hearing, a process to look at what  
10 should the reserve margin be. At that time at the  
11 conclusion of it there was a stipulation reached by the  
12 three large investor-owned utilities -- Florida Power  
13 and Light, Progress Energy Florida, and TECO -- to go  
14 from their current planning assumption of 15 percent to  
15 20 percent and use that as their planning criteria. It  
16 was adopted by the Commission, and that's what's in  
17 place now.

18 **CHAIRMAN GRAHAM:** Were we having blackout  
19 problems or anything along those lines when they were  
20 set at 15 percent?

21 **MR. BALLINGER:** No. We weren't having  
22 blackout problems. We were, as we were getting closer  
23 to 15 and down, we were getting some more interruptions  
24 of the interruptible customers. They were starting to  
25 complain a little bit, so that was going on. Other

1       than that, no.

2               **CHAIRMAN GRAHAM:** If we were at 15 percent  
3       reserve, how long would Progress have? Rather than  
4       2016, how far would that push that back?

5               **MR. BALLINGER:** If you were to go to a  
6       15 percent reserve margin? Without CR-3, they would be  
7       good until 2018.

8               **CHAIRMAN GRAHAM:** Okay. Thank you.

9               Commissioner Brown.

10              **COMMISSIONER BROWN:** I did want to thank the  
11      parties for coming out and speaking. And I, like  
12      Commissioner Balbis, also agree with pretty much  
13      everything that each of you have said, at least a  
14      little bit. But talking about the goals and when they  
15      were originally set, I wanted to get a little bit more  
16      historical knowledge about that. And really a question  
17      for staff or Mr. Ballinger. When these goals were  
18      originally set, were they readily achievable from a  
19      cost-effective measure when they were initiated?

20              **MR. BALLINGER:** Maybe it would be better if I  
21      tell you the history of how we got there before I  
22      answer yes or no.

23              **COMMISSIONER BROWN:** That would be great.

24              **MR. BALLINGER:** We had the hearing, there was  
25      a new statute in 2008 the Legislature passed, and this

1 was the first time that we had to implement the  
2 statute. It previously took us about 18 months,  
3 actually almost two years from the start, and we had  
4 workshops well before the dockets were established to  
5 talk about how to encourage more conservation. We were  
6 hearing the message that the legislature wanted more  
7 conservation. So we took the initiative even before  
8 the dockets were open to hold workshops with all  
9 parties and to discuss ways we could do things.

10 The new legislation required a technical  
11 potential study, which many of these parties were  
12 involved in as a collaborative effort to help develop  
13 the methodology for doing it. A consultant, Itron, was  
14 hired to put together the technical potential study,  
15 which is basically what is physically achievable in the  
16 State of Florida. If you replaced every light bulb,  
17 all those kinds of things. So it gives you the broad  
18 net. From that you would whittle down, based on  
19 economics, of what becomes achievable and economic to  
20 customers based on certain cost-effectiveness tests.

21 At the conclusion of the hearing, staff in  
22 the original recommendation was basically a compromise,  
23 if you will, or a no, we didn't believe either side.  
24 The utilities came in with what Ms. Burnett said was an  
25 E-RIM, which is, yes, it's based a bit on the

1 Commission's traditional thing of using RIM, which is  
2 the rate impact measure test, but it added the E  
3 component, which was adding cost estimates for carbon  
4 and greenhouse gases.

5 The new legislation said the Commission  
6 should consider cost of federal and state cost of  
7 greenhouse gases. They went ahead and included it.  
8 But in staff's mind, it was a little unclear because of  
9 a couple of reasons. One, there is no legislation yet  
10 imposing costs of greenhouse gases. There was thought  
11 to be some, so it is a valid concern to look at, but  
12 it's not a known yet.

13 The utilities all varied in their methodology  
14 of how they did it. They had it starting in different  
15 years in their tests and different amounts. It was all  
16 over the board, and staff was saying we can't believe  
17 any of these, really, so we don't really believe the  
18 E-RIM numbers that were proposed.

19 On the other end of the spectrum, you had  
20 intervenors of SACE and other ones proposing goals  
21 closer to the technical potential, which was much  
22 higher. They were also goals based not so much on the  
23 technical potential, but on percent of sales. To just  
24 say make the goals one percent of sales, and that's how  
25 you get the goal. It totally -- I don't want to say

1 ignored cost-effectiveness, but it went about it in a  
2 whole different approach. So staff said no, I don't  
3 trust those numbers. And our original recommendation  
4 to the Commission was to -- given that we have existing  
5 programs that are going on, we don't really have enough  
6 to be persuaded one way or the other. Keep the  
7 existing programs going.

8 The end result of that was, believe it or  
9 not, some of the goals that would have come out of that  
10 recommendation were higher for some utilities, but they  
11 were lower for some others. That concerned the  
12 Commission, so they direct staff to go back and come  
13 back with goals that were higher than what the  
14 utilities proposed across the board.

15 Staff went back and came back with a  
16 recommendation that was based on the E-TRC test. That  
17 resulted in getting you numbers that were higher across  
18 the board. There was also discussion at the prior  
19 agenda about how to address an issue called free riders  
20 that's in our rule, or it's free riders. It's the  
21 concept. And that is the concept of people who will do  
22 a conservation program anyway without any incentive,  
23 and the thought being you don't need to provide an  
24 incentive to somebody to do that. A subsidization, if  
25 you will, to do that.

1           Traditionally, how that has been done is  
2 looking at payback. If you take something with a quick  
3 payback of two years, you could do one year or three  
4 years, but three years has been used for many years to  
5 screen that out. But if a measure is so cost-effective  
6 that it pays for itself in two years, you don't need an  
7 incentive, an additional incentive to do that. You  
8 should do that on your own.

9           Through the technical potential and that, it  
10 was found that a lot of the technical potential that  
11 was available fell into that two-year payback. And  
12 staff's original recommendation said those measures  
13 that created that, such as air conditioning  
14 maintenance, efficient pool pumps, some other things  
15 like that, compact fluorescent bulbs, rather than  
16 addressing those incentives, address that through  
17 education. Talk about those measures, and make sure  
18 the public knows about it and are aware of it, that it  
19 is cost-effective for them, and then they do it on  
20 their own.

21           There was discussion about that, that the  
22 Commission wanted to maybe put those in the goals  
23 somehow. So at our second recommendation, we had a  
24 couple of options that the Commission wanted to do  
25 that. We parceled out the top ten measures of the



1 two-year payback that we had gotten through data  
2 requests through the hearing and broke them into  
3 residential and commercial. The first tier being  
4 residential, and the second would be the whole thing.  
5 And the two options that the Commission presented at  
6 that time is if you wanted to add some two-year payback  
7 measures, you could take just the residential portion,  
8 or you could take the whole top ten list for each  
9 company, and they chose to take the top ten  
10 residential. So the two-year payback measure was only  
11 added to the residential goal of each utility. That's  
12 how we got to where we are at.

13 So cost-effective, yes. Cross-subsidization,  
14 yes. So that's why it's a yes and no question,  
15 depending on what you mean by cost-effective.

16 COMMISSIONER BROWN: Well, I guess when these  
17 goals were established, were they a little lofty? You  
18 said that the Commission, the previous Commission had  
19 set the goals at a higher level than what the current  
20 DSM programs were in place. Were they a little lofty?

21 MR. BALLINGER: They were higher than what we  
22 have seen. But, again, the original recommendation  
23 came up with some goals that were higher than what the  
24 utilities have proposed in this proceeding, which  
25 didn't surprise me at the time. In 2008 and 2009 we

1        were just entering the recession we have been into. We  
2        have seen load decrease. We had also, the previous  
3        years before that, certified the need for several power  
4        plants. We didn't have a need for generation for many  
5        years. So if you have a lot of generation, you don't  
6        really need to do a lot of conservation as well. So it  
7        didn't strike me as odd that we saw some reduced goals  
8        for the next ten-year period.

9                **COMMISSIONER BROWN:** Okay. Thank you.

10              And I just have a question for Progress  
11              regarding the current -- the rate mitigation plan that  
12              we have before us. I'm trying to understand what  
13              happened. Why are Progress' goals so much higher than  
14              the other IOUs?

15              **MS. TRIPLETT:** That's the million-dollar  
16              question. You know, that's something that we have  
17              tried to look at. The problem is that Progress knows  
18              what we provided to Itron to do the technical potential  
19              study, and then we don't know what the other utilities  
20              provided. We can see everybody's output, but we don't  
21              know what the inputs were.

22              But based on some of the things we can look  
23              at and some of the trends we can see, we think a couple  
24              of things may have happened. The first thing being  
25              that we bundled measures together and then put them

1 forward as here is one program that has a lot -- when  
2 you unbundle it, it has a lot of potential. And a  
3 program may have the same name as another utility's  
4 program, but when you unbundle it, we just have a lot  
5 more packed in. So that may be driving some of it.

6 And to be clear -- let me back up. However  
7 much you say is technically potential in your territory  
8 for a particular utility, the higher that number is  
9 then the higher, you know, the corresponding goal will  
10 be. So if we had bundled measures and programs that  
11 had higher technical potential, then the goal would be  
12 higher.

13 I think that the other thing that happened  
14 was with the ten-year paybacks, as Mr. Ballinger  
15 mentioned, the eight of the ten, that just happened to  
16 be, you know, happenstance were residential, and they  
17 just had a very high impact for us. So I think that,  
18 coupled with the bundling, it just exacerbated the  
19 problem. But, again, it's hard for us to definitively  
20 say that this is what is driving the disparity, but  
21 that is sort of our best guess.

22 COMMISSIONER BROWN: And Ms. Kaufman  
23 referenced that the data -- I think it was Ms.  
24 Kaufman -- referenced that the data is inaccurate or  
25 may not be the most accurate information at this point.

1           **MS. TRIPLETT:** Right, and let me be clear.  
2           It was certainly not accurate at the time we presented  
3           it, but it has been, you know, a year and a half, you  
4           know, maybe almost two years since some of that initial  
5           data was developed. Certainly for the rate mitigation  
6           plan, that data is now a year old, and technology has  
7           changed. This is a very fast-moving market. I mean,  
8           an example I think that is relevant is the Commission  
9           approved the 10 percent spend for renewables, the PV  
10          programs. And we have just seen, you know, vast  
11          changes with what suppliers are willing to put on  
12          folks' home and what the cost -- you know, their impact  
13          is, and what customers are actually doing. And that  
14          has just been in the span of, you know, six months. So  
15          it's just a combination of just the time and things are  
16          changing quickly.

17                 So I don't know if it is inaccurate, but I  
18          think it would probably be fair to say that  
19          technologies have changed, and that it could stand to  
20          be updated and, you know, be brought up to date.

21                 **COMMISSIONER BROWN:** Okay, thank you.

22                 **MS. TRIPLETT:** You're welcome.

23                 **CHAIRMAN GRAHAM:** Commissioner Edgar.

24                 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.  
25          I would like to say I think that Tom did an excellent,

1 accurate synopsis of the process that we went through  
2 as a Commission with participants and staff looking at  
3 the goals, and, again, kind of bringing us to where we  
4 are today. And I appreciate that.

5 Commissioner Brown, you asked and used the  
6 term lofty. I don't know that I had thought of it as  
7 lofty, but I can say this -- and I have refreshed my  
8 memory by going back through the transcripts -- that  
9 the term aspirational and robust were used frequently  
10 during the discussions. And certainly driven by the  
11 language of the statute and coupled with a renewed  
12 interest in looking at demand-side management, and  
13 energy efficiencies, and then how also to bring  
14 renewables into that discussion. My belief is that  
15 when those goals were adopted that it was with the  
16 intent of the Commission to push some, and that we did  
17 adopt three changes in policy that are significant.  
18 And one is by using what we call the E version of the  
19 three review tests. I note in the statute it does say  
20 that we are to consider the cost of those by state and  
21 federal regulation on the emission of greenhouse gases.

22 I will point out that at that point in time  
23 there were proposals pending at the federal level and  
24 at the state level. Certainly none of us, me included,  
25 have that crystal ball. But from my own perspective, I

1 believe that there was a belief by many that there was  
2 a strong possibility that at the federal level, in  
3 particular, there would be some additional regulation  
4 passed on that count. That, as we all know, has since  
5 not occurred. Again, changed circumstances.

6 So that was a change in policy. I do believe  
7 that by considering it, we did follow the statute. I  
8 also believe, if that is something that we wanted to  
9 take a look at and consider, that that would be in  
10 keeping with the statute, as well.

11 The other two were the use of the RIM and the  
12 TRC test. As has been stated, I think, traditionally  
13 for many, many, many reasons, the Commission has used  
14 RIM as kind of the standard for review, although  
15 looking at other tests for analysis and comparative  
16 purposes. With the adoption of the goals, the  
17 Commission did take into account and move towards the  
18 TRC, and, again, including the E or carbon cost  
19 component with it.

20 And then -- and Tom did an excellent job on  
21 this -- the discussion with what I would term the  
22 two-year payback measures, and that is something that  
23 is, you know, kind of a philosophical well-minded  
24 like-minded people could disagree on whether that is a  
25 good policy and who benefits and who doesn't, and if

1 the ultimate goals are more readily achievable, if  
2 indeed that is a good way to move forward. Again, that  
3 is a discussion.

4 But my point being I believe that the goals  
5 that we established were considered to be robust and  
6 aspirational, as I believe a goal should be. A goal  
7 should be aspirational. And that we did incorporate  
8 three changes in policy that were very much in keeping  
9 with the statute, and very much in keeping with our  
10 understanding of the information in the world as we  
11 knew it at the time.

12 But I also would reiterate that we had ample  
13 discussion about trying to reserve flexibility as  
14 dictated by the statute, and that as we moved forward  
15 we would look seriously at the potential rate impact,  
16 and inclusive in that is the benefit to the ratepayers  
17 and to the customers.

18 I have now had some discussion with  
19 Mr. Cavros who was representing SACE, and some of the  
20 pieces as we moved forward about the need for value to  
21 the customers and cost-effective programs and that  
22 review. I'm not as sure how to take that to the next  
23 level, but I very much agree that that is a very  
24 important component and necessary for these programs to  
25 be successful and achieve the efforts that we're all

1       trying to.

2               So I just wanted to sort of add that to Tom's  
3       explanation of what we looked at and where we got to.  
4       And, again, say I do believe the goals at the time were  
5       and still are robust and aspirational. I think that is  
6       in keeping with the statute, and we did incorporate  
7       what I would term three changes in policy with the  
8       understanding that we would continue to be looking as  
9       we moved forward.

10              **COMMISSIONER BROWN:** Thank you, Commissioner  
11       Edgar.

12              And just as a follow up to Mr. Ballinger,  
13       given that times have changed, would it make sense to  
14       reopen the goal proceeding now rather than wait until  
15       2000-and-what, '14 or '15? Does it make sense now that  
16       we have changes?

17              **MR. BALLINGER:** That is your choice.

18              (Laughter.)

19              **COMMISSIONER BROWN:** Yes, it is.

20              **MR. BALLINGER:** I have learned. Let me  
21       explain where you are faced now. The current schedule,  
22       we are required by statute to review goals at least  
23       every five years. So the next proceeding would require  
24       new goals and new programs by January 1, 2015. If you  
25       back up from that, that means we have to have new goals



1 in place by third quarter 2014 for this kind of new  
2 programs and all that stuff. Take back the 18 months  
3 or so, that means about mid-2013 we are going to be  
4 starting the process up with the technical potential at  
5 that point. But 2015 is when you would do that.

6 If you were to start a proceeding today and  
7 open a proceeding today, it's really driven by when you  
8 can get a technical potential study done. Could that  
9 take a month, six months, I don't know. That's a  
10 question I would suggest you ask the utilities, but --

11 **COMMISSIONER BROWN:** How long did it take  
12 previously, nine months?

13 **MR. BALLINGER:** It took almost a year, but  
14 that was also developing the methodology of how to do  
15 it and discussions. Hopefully, we've learned a lot.  
16 Maybe the methodology part can be done, maybe it's just  
17 as simple as updating the population forecast, and if  
18 there is any other new things out there, I don't know.  
19 That is an unknown. But if we were to get that updated  
20 technical potential study in, say, later this year,  
21 it's a possibility we could be done by 2012 with the  
22 proceeding, and have new goals and new programs by  
23 2013. So the real answer, I think, to your question is  
24 if you start it now you save yourself maybe two years  
25 of staying with the staff where we are at now.

1                   **COMMISSIONER BROWN:** I would be interested to  
2 hear from the parties on the feasibility of completing  
3 a technical feasibility study.

4                   **MR. JACOBS:** Thank you, Commissioner Brown,  
5 for that question, and also for your other inquiry.  
6 Let me directly answer your first question, if I may,  
7 your earlier question. The last potential study had a  
8 substantial rigor and controversy. I suggest to you,  
9 given this outcome, that very little of that has gone  
10 away. I can assure you that many of the issues that  
11 were raised, excuse me, with regard to the potential  
12 study from our perspective are even more focused, given  
13 now where we sit today, given how we see the programs  
14 coming about, how things are occurring. So I would  
15 suggest to you that it would not be a simple process.

16                   Now, to go back, if I may, just briefly. The  
17 statute -- and I think, Commissioner Edgar, I would  
18 adopt her interpretation, the statute was not looking  
19 to say how do we impose higher goals. I think the  
20 intent of the statute was to say we, as a state, have  
21 elected to rely more on these resources in contrast  
22 with fossil fuels. And so that I would suggest to you  
23 that the perspective of the statute is -- and, quite  
24 frankly, really interesting now with such a high  
25 reserve margin based on installed units, and you do now

1 have rules, which I'm sure you are aware of that, you  
2 do now have rules that are going to begin to take  
3 effect.

4 And now the trend of those rules is to take  
5 off-line sitting plants. So the real question here  
6 today is what's going to happen when you start doing  
7 that, and what is going to be the costs you occur? Are  
8 you going to go with all new fossil fuel plants for  
9 these plants that you may take off-line to comply with  
10 the rules, or are you going to look at a more diverse  
11 portfolio. So I would suggest to you that's a much  
12 broader perspective than maybe we may be looking at and  
13 that we will bring to the table if we were to reopen  
14 these proceedings.

15 MS. KAUFMAN: Thank you, Commissioners.

16 I can't really give you, you know, a time  
17 frame for the technical potential study, because I was  
18 not heavily involved in that. But what I can tell you,  
19 and I think what we have all heard just from the  
20 discussion among all the parties here is a number of  
21 very, very large assumptions and events have occurred  
22 since the last time. And so however we get to it, I  
23 think that it is incumbent upon you to make your  
24 decision on the best information that you have. And I  
25 have to say again, yes, I was involved in all of that

1 policy that Commissioner Edgar discussed, and at times  
2 it was contentious, but the circumstances were very  
3 different at that time.

4 The changes that were made, particularly the  
5 change from the RIM to the TRC test was a very large  
6 shift in policy at a time that's very different from  
7 where we are right now. And I would suggest to you  
8 that it would be better, regardless of whether it's  
9 contentious or not, to move forward with a new study  
10 that would be more up-to-date and reflect more of the  
11 circumstances where the companies and all the customers  
12 are.

13 So that would be our position. Whether it  
14 just takes an update, or whether it will be another --  
15 you know, there will be some dissension, as Mr. Jacobs  
16 described, I don't think that should be the focal point  
17 of the decision. The focal point should be let's get  
18 the information that we need to make a decision that's  
19 appropriate for consumers today. Thank you.

20 MS. TRIPLETT: Thank you, Commissioners.  
21 Thank you, Mr. Chairman.

22 Yes, we do think it's feasible to go back and  
23 take a look and redo the technical study. In terms of  
24 timing, I think it depends on whether you are talking  
25 about an entirely new study, I mean, disregarding the

1 previous one and starting afresh. I think that also  
2 depends on are we going to go with the same vendor, or  
3 is there an RFP process. But assuming that we use the  
4 same vendor and start anew, ballpark I would say 10 to  
5 12 months just on the work needed to do the study. And  
6 then you would have the additional hearing time which,  
7 you know, would be subject to the Commission's calendar  
8 and how fast we want the proceeding to go.

9 If we were to just update the existing study,  
10 that, again, work needed to do it, it would probably be  
11 more like six months. But, again, those are ballpark,  
12 and it depends on how involved we want to get. But  
13 that is my best guess. And certainly Progress is  
14 willing, if that's the Commission's pleasure, to go  
15 back and take a look at that. We would be fine with  
16 that.

17 **MR. LARSON:** Mr. Chairman.

18 **CHAIRMAN GRAHAM:** (Inaudible; microphone  
19 off.)

20 **COMMISSIONER BROWN:** Well, if there is a  
21 question, I'd like to hear it first.

22 **MR. LARSON:** If I may just add a little bit  
23 on the potential for a new goals docket. The issue  
24 wasn't really more in the technical area, and there may  
25 be very much the need to review or update some things

1 in that area. The issue we had was in transparency,  
2 and stakeholder engagement, and dealing with the  
3 economic and achievable potential in a more open way.  
4 We felt that the process was not complete in that area  
5 before, and that led, I think, to some of where we are.

6 I mean, really we entered the technical  
7 potential two-year payback items almost as an  
8 afterthought, and it really wasn't evaluated  
9 economically properly. And if we were to move into  
10 considering new goals at this time, I would urge you to  
11 advance the programs temporarily or provisionally or  
12 conditionally so that we can continue to gain energy  
13 efficiency, even though we may accelerate the schedule  
14 for a new goals docket. But I would urge you to do it  
15 in a more transparent and open stakeholder way.

16 **CHAIRMAN GRAHAM:** Thank you.

17 **COMMISSIONER BROWN:** Thank you.

18 And I would just like to make a comment to my  
19 fellow Commissioners that I do believe it is incumbent  
20 upon us to make a decision based on the best  
21 information we have and the most current information  
22 that we have. So I would entertain opening up a new  
23 docket to revisit the goals at this point.

24 **CHAIRMAN GRAHAM:** Commissioner Brisé.

25 **COMMISSIONER BRISÉ:** Thank you, Mr. Chairman.

1           This is to staff. In talking about the  
2 goals, we have talked specifically about Progress, but  
3 we can talk about all seven that the goals are  
4 applicable to. Are any of the utilities in line to  
5 effectively meet the goals at any point during the  
6 period that we're talking about?

7           **MR. BALLINGER:** I think we had a workshop and  
8 we have gotten some preliminary data. It's a little  
9 difficult. TECO might be reaching the annual goals,  
10 even with their existing programs, and they have just  
11 started implementing some new programs. Some of the  
12 others I'm not quite sure of. We are collecting data  
13 to present you the FEECA report later this year. And,  
14 again, it's going to depend on what year. The new  
15 goals were in place for 2010, but some of these  
16 utilities didn't have programs approved until 2011, so  
17 to say that they didn't meet the goals, would that be a  
18 fair -- that is what I am faced with is, is that a fair  
19 comparison or not.

20           **COMMISSIONER BRISÉ:** Okay. With that, I  
21 think it probably would make sense to take a second  
22 look at the goals. I'm not sure we want to go as far  
23 as opening a docket, but I think I would potentially be  
24 open to looking at that.

25           The other thing I want to talk about, the

1 context of the statutes. I happened to be in the House  
2 at the time and on the committee at the time that that  
3 discussion was taking place. And I think, as Ms.  
4 Kaufman said, it was a completely different time.  
5 There were different trends that were working over  
6 there. And if we look at the statute, it talks about  
7 DSM, but it also includes the use of solar, renewable  
8 energy sources, cogeneration, load control systems. So  
9 I think we are looking at this at this moment from the  
10 perspective of we have to accomplish all of this  
11 conservation and energy efficiency from DSM.

12 And I think the Legislature was looking at a  
13 much broader perspective at the time to include some  
14 other components that they thought would have come into  
15 line at this point. And I think it's almost unfair to  
16 look at this from the perspective of we are going to  
17 achieve all of this efficiency strictly through DSM.  
18 So with that, and if the goals were established based  
19 upon that concept, I think that the goals may need  
20 revisiting just to make sure that we are all on the  
21 same page with respect to what we ought to be looking  
22 at at this particular time.

23 **CHAIRMAN GRAHAM:** Commissioner Edgar.

24 **COMMISSIONER EDGAR:** Thank you.

25 And thank you, Commissioner Brisé. That was



1 very helpful.

2 I think what's before us falls into three  
3 pieces, in my mind, the way I look at things. One is  
4 the information that we have, information that  
5 decisions were based upon, changed circumstances, et  
6 cetera. And in that, the technical feasibility study  
7 was certainly a core piece of everything that moved  
8 forward. And, yes, things have changed.

9 The second piece is the goals themselves,  
10 which, again, are based upon the process and the  
11 considerations laid out in the statute, but yet, again,  
12 recognizing were considered to be aspirational. As a  
13 sideline, Commissioner Brisé, I had a conversation with  
14 the staff the other day about my understanding at the  
15 time of those discussions that we were supposed to look  
16 a little more and try to incorporate some supply-side  
17 measures and efforts. And the way the statute was  
18 written, I know the staff struggled, and we struggled  
19 with how to do that, but that is just another piece  
20 that isn't really before us with what we have now, but  
21 that I do believe was intended to be part of the larger  
22 thought process and the larger intention.

23 So the core information, technical  
24 feasibility update is one piece, the goals themselves,  
25 and what exactly a goal means, and then the third is

1 the plans and programs. And it's the plans and the  
2 programs that are a part of those plans that is  
3 actually for these two companies before us today. So I  
4 think it is what is the best, most effective way to  
5 move forward, recognizing those separate pieces.

6 We have talked a little bit about should we  
7 open a docket, or seven dockets, and we would need to  
8 talk procedurally with our legal staff as to what would  
9 be the best way and pros and cons, if, indeed, they  
10 exist, over one or seven if we wanted to go forward  
11 with that.

12 I will say I always have some hesitation,  
13 because you never know for sure where that's going to  
14 take you, and how much else is going to change in that  
15 process. Not meant as a slight, because as I have  
16 said, I think our staff and Mr. Ballinger have done an  
17 excellent job with all of this, but I can point out  
18 that back in November of 2009, and the Commission was  
19 debating a goal proposal, and we, as a body, directed  
20 our staff to go back, revise, and bring something back  
21 in December, a month later, or a couple of weeks later.  
22 And at the time I asked on the record, okay, if we do  
23 that how long will it be before these plans and  
24 programs are before us and put in place. And Mr.  
25 Ballinger said May. Now, that would have been May of

1 2010, and here we are in the end of July of 2011 and we  
2 still have plans and programs.

3 And I apologize, Mr. Ballinger. It was the  
4 best answer at the time, and it could have been, but we  
5 had reconsiderations. You know, some things that as  
6 part of due process draw out and drag out. Again, well  
7 intentioned, but longer than sometimes we would  
8 foresee. And to open up the whole goals docket and  
9 processes, I think Commissioner Balbis said earlier  
10 that -- I think you said that you have some hesitation  
11 about doing that for those reasons. But that is one  
12 option that is before us. And realizing that we did  
13 have some changes in policy at the time, RIM and TRC,  
14 and the carbon or E-version, and the two-year payback,  
15 which I agree with SACE was something that came up a  
16 little later in the process and does, perhaps, warrant  
17 some additional analysis and thought processes.

18 So with all of that said, let me ask this  
19 question of staff. Separating the goals themselves and  
20 the plans and programs for the moment, if the  
21 Commission had a desire to look at the technical  
22 feasibility study and want to update that information,  
23 what would we need to do to do that? And I don't think  
24 I have asked that question before, but I'm wondering if  
25 there is a way to do that without necessarily

1 determining right now that we want to open all of the  
2 dockets to look at the goals. But if, then, we could  
3 get that update -- and six months, I know, was one time  
4 line that was put out.

5 I want us to be able to move forward. I want  
6 us to be able to have good information. I don't want  
7 to necessarily be stuck for two and a half or three  
8 years without being able to look at plans and programs  
9 that may make sense and be cost-effective and give good  
10 options to consumers and consumer groups, but I'm not  
11 sure that opening everything up would accomplish all of  
12 that.

13 **MR. HARRIS:** Larry Harris on behalf of staff.  
14 I had not actually thought about the question that you  
15 just raised. One thing I was thinking about in  
16 response to some of the discussion I heard by  
17 Commissioner Brown's question and Commissioner Brisé's  
18 comment that perhaps we need to take a second look at,  
19 and perhaps this would answer your question. I am  
20 going to use the dreaded eight-letter word that I'm  
21 sure somebody is going to stick me in the back for, but  
22 I'm thinking workshop.

23 (Laughter.)

24 **MR. HARRIS:** No, no. Commissioner Brown  
25 asked a question and said what do you think it would

1 take for the updated technical potential study. And we  
2 heard three different answers, all of which seemed to  
3 be, well, we're not really sure, but it could take a  
4 while. I'm hearing that is it a good idea to open the  
5 goals? Maybe it is, maybe it isn't. We should maybe  
6 get some more information on that.

7 Commissioner Edgar your question is  
8 excellent. What would it take to reopen the  
9 technical -- to get a new technical potential study?  
10 Could we just order that, you know, go and do this. We  
11 are not opening a docket, but just go do it. Would  
12 that need to be some type of a -- you know, be a  
13 Commission order, or how do we get there?

14 One thing that I'm thinking, and I can feel  
15 Bob Trapp staring at me in the back right now, but a  
16 set workshop with very specific questions that the  
17 Commission has. How long will it take to do a goals  
18 proceeding? And we get all the players at the table to  
19 answer what they think. Would we need to do a new  
20 technical potential study, or an update, or some  
21 combination, and how long will that take? What would  
22 we look at? Let's talk about specific things. You had  
23 mentioned a couple of items, policy choices. How long  
24 do you all think you could take to do this? What type  
25 of a time frame? Let's throw out some schedule, and,

1 you know, looking at the Commission calendar, which I  
2 believe is fairly booked up next year, let's throw out  
3 some time frames. There is a party sitting here, and  
4 you parties who will be intervening, what do you think  
5 you can do? Let's put your cards on the table. Can  
6 you do this in three months; can you do it in nine  
7 months; can you do it in 18 months; can you do it in 24  
8 months?

9 If we start looking at scheduling dates, can  
10 you meet these dates? Get some answers to these  
11 questions you have. And we could probably do this  
12 workshop fairly quickly and give you the information  
13 that you need to make a decision. That doesn't answer  
14 your question, but I'm not sure how --

15 COMMISSIONER EDGAR: No, it doesn't, but I do  
16 hear you. I'm not sure -- again, just thinking out  
17 loud a little bit here, which is always risky -- I'm  
18 not sure -- let me put it this way. As of this moment,  
19 I'm not prepared to go quite that far. But I do, I  
20 understand what you are saying, and it is always good  
21 to get everybody to the table and kind of thrash these  
22 things through.

23 I feel like from my office, I have been  
24 asking these questions, though, for a number of months.  
25 And I'm not sure that just having more meetings and

1 more discussions and more discussions is going to get  
2 us a whole lot more clearer answers on some of those  
3 points. So I'm going to -- my questions, I think, at  
4 the moment fall into this category. If the Commission  
5 wanted to request direct, whatever the verb is, an  
6 update of the technical feasibility study, I think we  
7 can do that. What we want to do is obtain additional  
8 updated information. What would be the mechanism or  
9 vehicle to do that and to accomplish it in the most  
10 efficient manner? That is one question.

11 The second is when we're looking at what is  
12 before us now, which is the plans and the individual  
13 program components for Progress now and FPL here  
14 shortly, later today, I think it kind of falls into  
15 three options. Continue forward with the programs that  
16 are in place now; adopt or approve the plan that is  
17 before us that is intended to come closer to meeting  
18 the goals, but does have, obviously, a higher cost and  
19 a cost to consumers to it; or some middle ground, which  
20 for Progress what's before us is what has been termed a  
21 rate mitigation plan, or set of programs, and for FPL I  
22 think it's called an amended plan, and we will get to  
23 that in a few minutes. And I think that -- I'm not  
24 trying to oversimplify, but as I have gone around and  
25 around on this in my own mind, and being helped by this

1 discussion that we have had this morning, I think it  
2 kind of falls into those three options for each.

3 And then the third piece of that being  
4 whichever we decide to do with the plans and programs,  
5 do we want to reopen the goals now, realizing the time  
6 that would go into that. Or another option being to  
7 wait on that, knowing that by the requirements of the  
8 statute we will be doing that at some point not all  
9 that far away anyway. Or do we have the option of  
10 having in six months to twelve months or so an updated  
11 feasibility information, and then have the option to  
12 look at that and make some adjustments.

13 I do want us to be cognizant, of course, as  
14 we are directing programs to either, you know,  
15 continue, start new ones, continue for a period of  
16 time, and then maybe stop as additional information  
17 comes in, that there is, of course, start-up costs and  
18 administrative costs, and we lose something,  
19 potentially, if we are educating people about this,  
20 there are these programs, and then we may make some  
21 adjustments.

22 So with all of that, again, I think these  
23 three areas I would really want to hear your thoughts  
24 on how to proceed with the plans and the programs. And  
25 I would very much like to know when we can, Mr.



1 Chairman, from our staff what our options are as far as  
2 getting some updated feasibility information so that we  
3 have the best information possible today and as we go  
4 forward.

5 **MR. BALLINGER:** Commissioner Edgar, on that  
6 part about the updated technical feasibility, you have  
7 heard from two of the parties who were part of the  
8 technical potential study and the goals. You have six  
9 other utilities. I would think you would want to hear  
10 from them about what they think it would take to do  
11 that, as well. Just something -- one way may be a data  
12 request for the FEECA report and we get input that way.  
13 One may be to direct everybody, or I go send a data  
14 request out tomorrow asking everybody when could we do  
15 this, that kind of thing, and we can get back to you.  
16 But I just wanted you to be aware that there's other  
17 people that may have a different take.

18 **COMMISSIONER EDGAR:** I think the other  
19 question is is that a direction that the full  
20 Commission may be interested in, realizing that we have  
21 heard from many that there have been changed  
22 circumstances in a variety of levels? I would think  
23 that through staff data requests on our own volition as  
24 per our direction to staff that we could accomplish a  
25 good amount. I would also hope and ask and request

1 that we would get some additional citizen  
2 representative input. That is something that as we  
3 went through the technical feasibility study and the  
4 hearing process the first go-around, I felt like was a  
5 little lacking. Certainly we have FIPUG representing  
6 their client base. But, you know, these questions of,  
7 you know, do I pay now and save later or do I not; do I  
8 pay less, or do I pay more, or do I -- clearly, all  
9 citizens and customers and customer groups may have  
10 different opinions, but that perspective was something  
11 through the hearing process may have not been  
12 represented as robustly as I would have liked.

13 I don't know if there's a mechanism. I may  
14 be jumping way ahead of myself, but, you know, we often  
15 have the Attorney General, and the Retail Federation,  
16 and FIPUG, and OPC representing the consumers and  
17 consumer groups, we did not have all of those in this  
18 particular docket, FIPUG being an exception. There are  
19 other groups, the Consumer Action Network and other  
20 consumer organizations that maybe we could reach out  
21 to, and OPC, and urge their participation, but that may  
22 be a point for another day.

23 I would think if the Commission wanted to  
24 embark on trying to update the information in that  
25 technical feasibility study, that at our direction to

1 staff we could accomplish a good amount of that, but I  
2 welcome if there are other thoughts on that.

3 **MR. BALLINGER:** Again, thinking out loud, it  
4 is one thing to ask the companies when it could be  
5 done, it is another thing that once you get it, what  
6 are you going to do with it; is that going to be in a  
7 docket. And I think we have to be mindful of that, of  
8 how it's developed, if it's going to be used --  
9 (inaudible)

10 **CHAIRMAN GRAHAM:** Commissioner Balbis.

11 **COMMISSIONER BALBIS:** Thank you, Mr.  
12 Chairman.

13 And I have tried to organize my thoughts as  
14 best I could, and I kind of want to focus on responding  
15 to some comments that were made today both by the  
16 parties and other Commissioners. And so I will start  
17 with that first, and then go into the discussion on  
18 possibly looking at the goals.

19 There was a lot of discussion about concerns  
20 about effective management of these programs and the  
21 types of programs. And, again, my focus on undue rate  
22 impact. And, Commissioner Edgar, I appreciate your  
23 comment on start-up time and costs associated with  
24 implementation of new programs. And, again, whether we  
25 do a goal-setting process sooner rather than later,

1 even if we wait until 2014 or 2015. By the time, since  
2 we are already in 2011, new programs get started, et  
3 cetera, it's going to be a short window. And I think  
4 for the customers, I don't think that's fair to them to  
5 start a program and then stop it. So I'm hopeful the  
6 Commission will take that into consideration.

7 And as far as the effective management of the  
8 programs, and I want staff to confirm this, but at the  
9 end of the year, at a period of time in the year we do  
10 review the costs associated with these programs and the  
11 prudence of those expenditures. So, again, we do have  
12 that review process in place, and we do scrutinize  
13 their costs, so then if something is out of line, I  
14 would assume staff recommends to us that, you know, we  
15 disallow those costs, et cetera. So I think that our  
16 focus should be on continuing that annual scrutiny,  
17 regardless of what the goals are and the programs that  
18 are in place, because times do change.

19 And I kind of want that to lead into my  
20 discussion on the goals-setting process, and one of the  
21 comments made by the representative from Progress was  
22 that technology is changing. And I think that  
23 especially in this sector of business, you know, there  
24 are a lot of people working very hard to come up with a  
25 better mousetrap. And my concern, if we go into any

1 type of goal-setting procedure and technical potential  
2 study, is even if it takes six months, even if it takes  
3 a year, you are now going to have a document that is  
4 immediately outdated when it is handed to us. And if  
5 we base our decision on that document or other  
6 testimony that may take 18 months, by definition with  
7 the fast-paced world of this technology it's going to  
8 be outdated.

9           So what I would like that we have in place  
10 now, and I appreciate your clarification on the terms  
11 used in setting goals, and I, unfortunately, listened  
12 to most of those hearings, and the fact that these  
13 goals are aspirational and robust, but we still have  
14 the flexibility to revise them if we find there is an  
15 undue rate impact. Which brings me to another point,  
16 is that -- which is why I made the comment not to  
17 really discuss the goals now, because we do have the  
18 flexibility. They are aspirational, and they should  
19 be. If Progress and other utilities exceed those  
20 goals, which, you know, we are not resetting today,  
21 then they are rewarded. So there is an incentive in  
22 place.

23           But whether or not they are achievable,  
24 again, without an undue rate impact, I have no question  
25 that any utility could meet any goal for a price, but

1 that's where the discussion needs to go. Undue rate  
2 impact, which is where I'm trying to -- I'm struggling  
3 now with what is justifying a \$6.13 monthly increase,  
4 and how do we minimize the stopping and starting of  
5 programs like many new programs where even in 2014 or  
6 2015 may change.

7 So, again, I just want to summarize the very  
8 good points from the other Commissioners and parties.  
9 And one question, you did mention, Commissioner Edgar,  
10 about other parties, and I would like to hear from OPC  
11 on this in that they are supposed to represent the  
12 residential ratepayers. So I don't know if they can  
13 come up now, or if they just decided not to, but I  
14 would appreciate their input, as well. I know there  
15 are some representatives here.

16 **CHAIRMAN GRAHAM:** Commissioner Balbis, it  
17 looks like you're getting your wish.

18 J. R., welcome. We have a mike over here  
19 next to Progress.

20 **MS. TRIPLETT:** Oh, he doesn't want to come  
21 sit next to me. (Laughter.) Oh, thank you.

22 **CHAIRMAN GRAHAM:** Mr. Kelly, welcome.

23 **MR. KELLY:** Thank you, Commissioner.

24 Commissioners, we did not get involved in the  
25 DSM docket. We have obviously followed it very

1 closely, and to start off, we have always been  
2 concerned about the impact that the rates will have on  
3 the residential ratepayers, but all ratepayers, because  
4 we do represent all ratepayers.

5 One of the reasons we did not get involved  
6 is, quite honestly, I get contacts, calls, to my office  
7 from consumers on both sides of the issue. The  
8 long-time Assistant Public Counsel Charlie Beck and I  
9 had many, many conversations back two years ago when  
10 this docket first opened about whether we should  
11 intervene or whether we should not. And Charlie gave  
12 me a very long and a very good history of our office's  
13 participation, and it was ultimately my decision and we  
14 did not intervene. And, basically, the main reason we  
15 didn't, because we had clients, if you will, on both  
16 sides of the issue. I mean, that's the quick answer.

17 You know, I know that you have a very tough  
18 balancing act to do here, because we all want more  
19 conservation; we want more efficiency. I don't think  
20 there is anybody in this room that would argue that.  
21 And certainly the hard question is how do you get  
22 there. And I think, Commissioner Balbis, you hit the  
23 nail on the head. I think any utility can meet any  
24 goal that they wish, to if the price is right. And the  
25 price has got to be right not to the utility, but to

1 the ratepayer, because they are the ones that are  
2 paying it. And, again, I think we all agree with that.

3 You know, it has been very interesting  
4 listening to your deliberations today, and the comments  
5 of the parties. And I think, as Commissioner Brown  
6 said, I think a lot of them make -- every one of the  
7 folks up here have made some very good points, along  
8 with staff. And I know your staff have worked very,  
9 very hard on this issue, and I commend Mr. Ballinger,  
10 because I do agree with Commissioner Edgar, he gave a  
11 great recap.

12 Because although we didn't participate, I was  
13 here for just about every one of the meetings, and the  
14 workshops, and the hearings. But I don't know that I  
15 have a recommendation of where you go from here. You  
16 know, I think you have got some tough choices to make.  
17 I think you have got some good choices in front of you,  
18 good options, I just don't know exactly where you go.

19 You know, I tend to agree with -- that you  
20 want to use and have the best information you have in  
21 front of you to make a decision. I know that that has  
22 always been my goal, and I try never to make a  
23 knee-jerk decision. I like to get the input of all of  
24 my staff. So part of me, you know, leans that way.  
25 Get the best information you can. And it has been, I



1 think as Commissioner Edgar pointed out, over two years  
2 ago that all the evidence and the testimony and  
3 everything came in. But I know you don't also want to  
4 wait another year or year and a half to make your  
5 decision.

6 So, I'm sorry, I'm probably not being any  
7 help here, but -- I don't know, Commissioner Balbis, if  
8 I answered your question. But, I mean, we typically  
9 have not gotten involved in this docket, because we  
10 would fall on both sides of the issues. We'd have  
11 people arguing to us, and I do have consumers calling  
12 me, I will tell you, saying we need more robust goals.  
13 We need more efficiency, more conservation. We  
14 don't -- I don't want to say we don't care what it  
15 costs, but we don't mind paying it. I have other  
16 people calling me saying I can't afford it right now.  
17 If you raised my rates a dime, I can't afford it. And  
18 I think that's -- I mean, I will echo what we have said  
19 in several of the recent rate cases, and you will  
20 probably hear us say it again in the next six months to  
21 a year, and, that is, times are hard out there. And  
22 while we all want efficiency and conservation, we do  
23 have to realize the impact it is going to have in on  
24 the pocketbook of the consumers.

25 **COMMISSIONER BALBIS:** Thank you.

1           And, again, that did answer my question. And  
2 with football season thankfully approaching, I consider  
3 that a punt is the answer to the question.

4           **MR. KELLY:** I would agree with you.

5           **CHAIRMAN GRAHAM:** You know, it's quite  
6 interesting, the difference between engineers and  
7 attorneys. You said that, and summed it up in about  
8 five seconds. You took five minutes to not answer the  
9 question.

10           (Laughter.)

11           **CHAIRMAN GRAHAM:** Okay.

12           **MR. HARRIS:** Mr. Chairman, Larry Harris. In  
13 defense of attorneys, we do actually have an answer for  
14 Commissioner Edgar, her first question, if now is an  
15 appropriate time to throw that in.

16           Staff would recommend that you do have  
17 discretion to order a new technical potential study.  
18 The way we suggest very strongly you do this would be  
19 to instruct us today to open a docket with the goal of  
20 accomplishing a new technical potential study. That  
21 would give us an opportunity to get it noticed, get the  
22 parties, and either have a workshop and bring a  
23 recommendation to you that is a consensus, or we could  
24 bring a very quick, very quick turn-around  
25 recommendation to you as to what we would suggest you

1 do, and the parties would have a chance to participate.

2 We do feel that today, given the procedural  
3 posture we are in, it would be less than ideal to just  
4 issue an order that requires a new technical potential  
5 study. We have also identified sort of informally just  
6 among ourselves the numbers of issues that would need  
7 to be answered by you all. I mean, what that means,  
8 just to order a new technical potential study. So we  
9 would suggest that if that is the intent and the will  
10 of the Commission, that you all order -- instruct us to  
11 open a docket with the goal of accomplishing a new  
12 technical potential study expeditiously.

13 **CHAIRMAN GRAHAM:** Do we want to find out how  
14 long it's going to take to get all of that information  
15 in before we order a new study?

16 **MR. HARRIS:** That's, I would suggest, a part  
17 of what staff would try to figure out and bring -- we  
18 would try to turn a recommendation around quickly. One  
19 of the things I suggest we would recommend to you is  
20 this is a question that needs to be answered. We would  
21 either answer it through participation from the  
22 parties, or have an estimate, or the parties would be  
23 lined up at this table, and you could ask each one them  
24 how long is it going to take. And have some record  
25 evidence, because right now we just don't have that.

1 That's one of the questions that needs to be answered.  
2 Or we would suggest needs to be answered. You all  
3 don't need to answer that. You could just order a new  
4 technical potential study and tell us to do it quickly,  
5 and tell the parties to do it quickly, and go. That is  
6 not our recommendation for today, but --

7 **CHAIRMAN GRAHAM:** Attorneys.

8 **MR. HARRIS:** Well, I've given you an answer,  
9 I mean --

10 (Laughter.)

11 **MR. JACOBS:** Mr. Chairman.

12 **CHAIRMAN GRAHAM:** Commissioner Balbis, you  
13 still have the floor.

14 **COMMISSIONER BALBIS:** Thank you, Mr. Chair.

15 Just one last comment, and not to hopefully  
16 be too redundant, but, you know, again, if you walk  
17 through this process, we are going to get the technical  
18 potential study done in a certain period of time. And  
19 then if we start the goals-setting proceeding, if that  
20 is what the Commission wants to do, early or when we do  
21 it as required by statute, that's going to take some  
22 time. And then we are going to ask the utilities to  
23 come forward with a DSM plan of meeting those goals,  
24 and we are going to be in the same place where a period  
25 of time has passed that the technology may be outdated.

1 The technical potential study will certainly be  
2 outdated looking at what we did just recently. So I  
3 just want to provide those comments.

4 I'm certainly open to getting as much  
5 information as possible, but I want to maintain the  
6 flexibility that we have in reviewing the rate impact  
7 or the undue rate impact. So with that, I'll close my  
8 comments for now.

9 **CHAIRMAN GRAHAM:** Mr. Jacobs.

10 **MR. JACOBS:** Mr. Chairman, really just a  
11 matter of clarification. I want to be clear that we  
12 are all on the same sheet of music. We have asked --  
13 the proposal that's before us is whether or not to do a  
14 new technical potential. I want to be sure that staff  
15 agrees that there has to be both the technical  
16 potential and achievable potential processes involved  
17 in that. And, lastly, Subsection 2 of the statute has  
18 some other ingredients that I believe have to be  
19 addressed if you want to redo the goals.

20 So just to make sure what is in the pot, I  
21 believe Subsection 2, 3, 4, and an interesting  
22 side-note, 5, I don't know how you do that now, since  
23 that Commission is gone. But the idea that there's a  
24 recipe for setting the goals, and do we do the whole  
25 recipe, rather than just doing a technical potential

1 study.

2 **CHAIRMAN GRAHAM:** Thank you, sir. Okay.

3 Commissioner Brown is going to make a motion.

4 **COMMISSIONER BROWN:** I'm not making a motion.

5 I just have a follow-up question to Mr.  
6 Harris regarding what -- can we do a data request  
7 gauging from the utilities how long it would take to do  
8 a technical potential study?

9 **MR. HARRIS:** The answer is yes, we can do a  
10 data request. What information will come back, I can't  
11 answer. But we could send out a data request very,  
12 very quickly to all the utilities and ask them what  
13 they would estimate.

14 **COMMISSIONER BROWN:** Okay. And then we could  
15 revisit that after we get that time frame, this body  
16 could revisit that based on the time frame and whether  
17 it meshes with -- we're going to be revisiting the  
18 goals in 2014, and gauge whether it makes sense. I  
19 think what we struggle with here is it is important for  
20 us to have the most updated facts at this point. If it  
21 takes six months, as Commissioner Balbis says, they are  
22 going -- the data is going to change. It's always  
23 going to be changing. But I would rather have the most  
24 recent information in six months versus two years, so  
25 I'm inclined to issue, if that's the correct form,

1 action to have a data request depart to the seven IOUs.

2 MR. HARRIS: You would be instructing staff  
3 to issue data requests to the IOUs regarding the time  
4 frames for a technical potential study. I think you  
5 can instruct staff to do that.

6 COMMISSIONER BROWN: I'd like to hear from my  
7 fellow Commissioners, if they are amenable to that.

8 CHAIRMAN GRAHAM: So your motion is just to  
9 get data, information on how long it would take for the  
10 technical study, and you want to do just the IOUs?  
11 There's only five IOUs.

12 MR. HARRIS: We would probably issue it to  
13 all the FEECA utilities.

14 COMMISSIONER BROWN: Sorry, I meant --

15 CHAIRMAN GRAHAM: Well, now the problem you  
16 run into is the only thing that we have control over,  
17 for the most part, is the five IOUs. The two  
18 municipalities, I don't see pushing them back through  
19 this whole technical thing, because basically all we  
20 did is tell them to go ahead and stick with the status  
21 quo anyway. I mean, so I wouldn't even reach out to  
22 those two for the data request. I would only reach out  
23 to the five IOUs.

24 MR. HARRIS: We would take whatever  
25 instruction the Commission gives us; yes, sir.

1           MR. BALLINGER: Yes. Commissioner, if I may,  
2 I hate to -- you're on a roll, I hate to mess it up,  
3 but if we don't do all seven, we get off in a timing  
4 when we do goals, perhaps. Because the statute is  
5 clear that a technical potential study needs to be  
6 done, in my mind, for all seven. I would like to get  
7 the input from the municipals as well as to how long  
8 that would take, if they want to participate or not,  
9 things of that nature.

10           The other thing I would like you to consider  
11 is what Commissioner Brown said about having up-to-date  
12 information. If we get the technical potential study,  
13 let's say it can be done in six months, an updated one.  
14 If you are not going to then immediately go into  
15 setting goals with the achievable and all that, as Mr.  
16 Jacobs said, if you wait another year or two, that  
17 technical potential study becomes stale. So you need  
18 to -- I think you have to have that answer to that  
19 second question in your mind before we take the next  
20 step.

21           I think asking for the data request is fine.  
22 We can do that and get you a better feel for how long  
23 it takes, because I really don't have an idea. So that  
24 is a good first step, I think, but I want you  
25 understand that there's other things that fall in



1 place.

2 CHAIRMAN GRAHAM: Well, we have got an idea  
3 for one of them. I'm sure we can have an idea for two  
4 of them before this day is over.

5 Commissioner Balbis.

6 COMMISSIONER BALBIS: Thank you, Mr.  
7 Chairman.

8 And I'd like to, I think, kind of gauging the  
9 comments from the Commission, kind of handle what we  
10 have before us, and then we can proceed to a discussion  
11 on what we would do as far as technical potential and  
12 starting the goal-making process.

13 I think with the information that was  
14 submitted by Progress and the comments that were made  
15 here from the parties and staff and from the other  
16 Commissioners, and me, personally, I cannot find, you  
17 know, based on the fact an additional \$6.13 does not  
18 accelerate the need or delay the need for Progress'  
19 next plant, I cannot see where that is justified at  
20 this time, especially with the questions on where the  
21 goals are at this time. And also with the concern  
22 about starting and stopping programs, if we implement  
23 programs immediately, and then a year from now, six  
24 months from now change them. You know, I would  
25 recommend that Progress continues with their current

1 successful programs until at which time we reestablish  
2 the goals, if that's what we want to do. And,  
3 procedurally, I think we can accomplish that. And,  
4 Staff, correct me if I'm wrong, that if -- again, if I  
5 make a motion that we approve staff's recommendation on  
6 Issue 1, which would not approve the compliance plan,  
7 and that -- and I believe we have to modify the plan,  
8 but move that we modify Progress' DSM plan to match the  
9 plan currently in place, including the solar rebate  
10 program previously approved by the Commission, and that  
11 we deny staff's recommendation on Issue 2, which would  
12 be -- their recommendation was to approve the  
13 mitigation plan, so we deny that with the modification  
14 previously stated, and then approve Issue 3, which is  
15 to close the docket.

16 **CHAIRMAN GRAHAM:** That has been moved and  
17 seconded.

18 **MS. TRIPLETT:** Mr. Chairman.

19 **CHAIRMAN GRAHAM:** Hold on a second. Staff,  
20 do we close this docket if this motion is to go  
21 through?

22 **MR. BALLINGER:** I think so. And another  
23 question I would have for Commissioner Balbis, does  
24 that include the dead band that was discussed in Issue  
25 2.

1           **COMMISSIONER BALBIS:** Yes, that's a good  
2 point. Since we -- my motion will include that if the  
3 incentive remain in place, whereas if Progress exceeds  
4 the goals that were previously set, and they received a  
5 financial incentive. However, if they do not meet  
6 those goals, that there is no financial penalty for the  
7 band in between the current goals that their DSM plan  
8 meets and the revised goals from 2009, if that's clear,  
9 or if staff is clear on that.

10           **MR. BALLINGER:** If I understand, it's the  
11 same concept that the goals remain in place, and they  
12 would only receive an incentive or be eligible for an  
13 incentive if they exceeded those goals. And they would  
14 not be subject to penalty unless they fell below  
15 achievements currently projected from their existing  
16 program.

17           **COMMISSIONER BALBIS:** That is correct.

18           **MR. BALLINGER:** Okay.

19           **MR. HARRIS:** And to answer your question,  
20 Chairman, about the closing the docket, we would  
21 suggest that that be, in fact, the motion and the vote.  
22 We have most of them closed already. This gets us in  
23 line with those other dockets, and we'll be coming back  
24 to you with a recommendation on what to do with these  
25 things, and this way we will be more able to treat

1 everyone similarly.

2 **CHAIRMAN GRAHAM:** Now, who was that that

3 --

4 **MS. TRIPLETT:** I'm sorry, sir, I was going to  
5 raise the same question that just now got addressed. I  
6 probably should have just sat quietly. Thank you. You  
7 know the lawyers, they can't help themselves.

8 (Laughter.)

9 **CHAIRMAN GRAHAM:** Yes. All right. So it has  
10 been moved and seconded. Any discussion?

11 Commissioner Edgar.

12 **COMMISSIONER EDGAR:** Thank you. I think I  
13 understand. I want to make sure, and I'll direct this  
14 to staff, but the results of the motion that  
15 Commissioner Balbis has laid out for us would basically  
16 be a status quo for Progress at this point in time,  
17 while we, perhaps, have additional discussion at some  
18 point about next steps and other ways.

19 **MR. BALLINGER:** Yes, ma'am, that's my  
20 understanding, is that existing programs would still be  
21 offered. You may see increases in the ECCR because of  
22 additional participation, but the programs will  
23 continue on where we are at today, basically.

24 **COMMISSIONER EDGAR:** Commissioners, I am so  
25 grateful for the discussion that we have had today, and

1 I know we will be having more here this morning. It  
2 has been very helpful to me to help clarify some of  
3 these and a path forward. I think we are pretty much  
4 all on the same page, and that's a wonderful thing.

5 So with that, I appreciate Commissioner  
6 Balbis helping us round it out, and I look forward to  
7 supporting the motion.

8 **CHAIRMAN GRAHAM:** Commissioner Brisé.

9 **COMMISSIONER BRISÉ:** Thank you, Mr. Chairman.

10 And I, too, look forward to supporting the  
11 motion. And one of the reasons that I'm supporting the  
12 motion is the fact that we are opening, or potentially  
13 opening a conversation or continuing the conversation.  
14 Had we not been doing that, I think we would have been  
15 doing some modifications today to the staff  
16 recommendation. So I'm glad to support the motion this  
17 morning.

18 **CHAIRMAN GRAHAM:** Commissioner Brown.

19 **COMMISSIONER BROWN:** And I also wanted to  
20 clarify my reason for supporting the motion, which I  
21 think is a good one, and I do believe we are all on the  
22 same page here. So I appreciate Commissioner Balbis  
23 summarizing it for us, because I would like the  
24 opportunity to revisit the goals. And I'd like the  
25 opportunity, also, for us to talk a little bit more

1 about it and get more information about the feasibility  
2 of getting that information to us, so that we can make  
3 the most informed decision. Thanks.

4 CHAIRMAN GRAHAM: All in favor say aye.

5 (Affirmative vote.)

6 CHAIRMAN GRAHAM: Any opposed? By your  
7 action, you have approved the Commissioner Balbis  
8 motion.

1  
2 STATE OF FLORIDA )

3 : CERTIFICATE OF REPORTER


4 COUNTY OF LEON )

5  
6 I, JANE FAUROT, RPR, Chief, Hearing Reporter  
7 Services Section, FPSC Division of Commission Clerk, do  
8 hereby certify that the foregoing proceeding was heard  
9 at the time and place herein stated.

10 IT IS FURTHER CERTIFIED that I  
11 stenographically reported the said proceedings; that  
12 the same has been transcribed under my direct  
13 supervision; and that this transcript constitutes a  
14 true transcription of my notes of said proceedings.

15 I FURTHER CERTIFY that I am not a relative,  
16 employee, attorney or counsel of any of the parties,  
17 nor am I a relative or employee of any of the parties'  
18 attorney or counsel connected with the action, nor am I  
19 financially interested in the action.

20 DATED THIS 29th day of July, 2011.

21  
22  
23  
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25  
  
\_\_\_\_\_  
JANE FAUROT, RPR  
Official FPSC Hearings Reporter  
(850) 413-6732

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 100155-EG

PETITION FOR APPROVAL OF DEMAND-  
SIDE MANAGEMENT PLAN OF FLORIDA  
POWER & LIGHT COMPANY.

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PROCEEDINGS: AGENDA CONFERENCE  
ITEM NO. 6

COMMISSIONERS  
PARTICIPATING: CHAIRMAN ART GRAHAM  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER RONALD A. BRISÉ  
COMMISSIONER EDUARDO E. BALBIS  
COMMISSIONER JULIE I. BROWN

DATE: Tuesday, July 26, 2011

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR  
LINDA BOLES, CRR, RPR  
Official FPSC Reporter  
(850) 413-6732/6734

FLORIDA PUBLIC SERVICE COMMISSION

DOCUMENT NUMBER-DATE

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## P R O C E E D I N G S

**CHAIRMAN GRAHAM:** Staff, let's get started on Item Number 6.

**MR. GARL:** Thank you, Mr. Chairman. And good morning, Commissioners. I'm Steve Garl from Commission staff.

Item 6 is Florida Power and Light Company's petition for approval of its demand-side management plan. On January 31st, 2011, the Commission denied approval of FPL's previously-filed DSM plan, because it did not meet the goals set by the Commission. The company was directed to modify its plan to meet the goals. FPL filed a modified plan and an alternate plan on March 25th, 2011. Staff recommends approval of the modified plan, because it is projected to meet or exceed all Commission-established savings goals, it is cost-effective, and it does not create an undue rate impact. The alternate plan need not be considered, because it fails to meet most goals.

Staff is available to answer any questions you may have, and representatives of the parties are also present.

**CHAIRMAN GRAHAM:** All right.

SACE.

**MR. JACOBS:** Thank you, Mr. Chairman. Leon

1 Jacobs here on behalf of the Southern Alliance for  
2 Clean Energy, and with me is Tom Larson, as well.

3 MS. KAUFMAN: Vicki Gordon Kaufman on behalf  
4 of the Florida Industrial Power Users Group.

5 CHAIRMAN GRAHAM: FPL.

6 MS. CANO: Good morning. My name is Jessica  
7 Cano, and I'm appearing on behalf of Florida Power and  
8 Light Company. With me today is Tom Coke (phonetic)  
9 from FPL's DSM group.

10 CHAIRMAN GRAHAM: Commission Board.  
11 Comments; questions; motions?

12 Commissioner Balbis.

13 COMMISSIONER BALBIS: Thank you, Mr.  
14 Chairman.

15 And I'm just going to, I guess, bring it up  
16 to the Commission. I have a feeling that we are going  
17 to have similar discussions as to Florida Power and  
18 Light as we did with Progress Energy. And with that,  
19 seeing some nods of the heads, I think we could save  
20 some time here, especially if we're moving forward with  
21 discussions on technical potential, or relooking at the  
22 goals. I think we could address this docket by, again,  
23 amending their DSM plan to match what they currently  
24 have in place, or maintain the status quo with the same  
25 band discussion pending closing the docket and moving

1 on with our other discussion.

2 CHAIRMAN GRAHAM: It has been moved and  
3 seconded.

4 MR. HARRIS: May I -- Larry Harris with  
5 staff. Is it your intent to offer essentially the same  
6 motion as you did for Progress?

7 COMMISSIONER BALBIS: Correct.

8 CHAIRMAN GRAHAM: Really, you had to ask that  
9 question?

10 MR. HARRIS: Yes, sir, I did.

11 CHAIRMAN GRAHAM: It would have been very  
12 clear before we passed it.

13 Commissioner Edgar.

14 COMMISSIONER EDGAR: I did have one question  
15 that I wanted to ask staff to clarify for me.

16 I think, Mr. Garl, I just heard you say that  
17 the amended plan submitted by FPL may not be considered  
18 because it doesn't meet the goals, but yet the staff  
19 recommendation on the last item was to approve a rate  
20 mitigation plan for Progress that did not meet the  
21 goals. And I absolutely recognize that each case is  
22 separate and distinct, but yet there seems to be some  
23 inconsistency, in my mind, to that. Could you speak to  
24 it?

25 MR. GARL: Yes. Primarily, in the case of

1 FPL's DSM plan, the rate impact is probably the biggest  
2 player. And, of course, that was the biggest player in  
3 staff's recommendation to adopt Progress' alternate or  
4 rate mitigation plan. FPL's rate impact with their  
5 modified plan falls right in line with Gulf, right  
6 above them, and I believe TECO right below them, which  
7 the Commission has already approved. So that is why  
8 staff recommends adopting the plan, the modified plan  
9 which does meet the Commission goals, whereas the  
10 alternate plan does not meet most of those goals, so we  
11 recommend not even considering that.

12 COMMISSIONER EDGAR: But that's not the same  
13 as the Commission may not consider it.

14 MR. GARL: No. No. It should be considered,  
15 yes. Probably a misstatement there. It has been  
16 considered; we looked at it; it did not meet the goals,  
17 and pushed that aside.

18 COMMISSIONER EDGAR: Can you, very quickly,  
19 or briefly, or succinctly go over what the differences  
20 are generally between -- and I'm putting the modified  
21 plan aside for the moment -- but between the more  
22 status quo current programs continuing versus the  
23 alternate plan.

24 MR. GARL: Probably the best measure of that,  
25 Commissioner, would be looking at the new programs

1 under their modified plan. There are a total of 15 new  
2 programs, each of them, of course, carrying some cost  
3 and very -- relatively small cost. But 15 of them, the  
4 cost does add up, and that's where the rate impact  
5 comes from that we're discussing.

6 COMMISSIONER EDGAR: Okay. But I wasn't  
7 asking about the modified plan. I was asking about the  
8 alternate plan, the difference between the alternate  
9 plan and the, as has been suggested by Commissioner  
10 Balbis, the more what I would term status quo, current  
11 programs continuing.

12 MR. BALLINGER: If I may answer that,  
13 Commissioners, because in the recommendation we have a  
14 comparison of the alternate plan to the modified plan,  
15 which isn't compared to the status quo. I would refer  
16 you to FPL's petition that they filed in this docket  
17 where it describes the alternate plan on page 3. And  
18 it says, "FPL's alternate DSM plan continues the  
19 programs currently in place under FPL's existing DSM  
20 plan, includes the solar pilot programs approved by  
21 Order Number PSC-11-0079-PAA, and adds a new DSM  
22 program targeted at low income customers."

23 So to me, reading that, their alternate plan  
24 adds a low income program and then the solar programs  
25 that the Commission has already approved. And I'd, I'd

1 ask if we could get clarification from FPL if that's  
2 correct or not, but that's reading from their petition.

3 COMMISSIONER EDGAR: May I, Mr. Chairman?

4 CHAIRMAN GRAHAM: Sure.

5 MS. CANO: Good morning. Yes. I believe  
6 Staff's statement was correct. I would just add to  
7 that though that we do currently have a low income  
8 program, and that would remain in place if we went with  
9 the status quo approach that you're considering.

10 Additionally, I would just point out that the  
11 status quo as far as total achievement goes currently  
12 falls, I believe, somewhere between the two plans that  
13 we have before you. So it would be sort of a middle,  
14 middle-of-the-road type decision there.

15 COMMISSIONER EDGAR: Okay. Which of those  
16 three, if we have the modified, the alternate and the  
17 current, current programs, which did you say you  
18 thought would be more of the middle of the three?

19 MS. CANO: The status quo approach that's  
20 being considered is in between the alternate plan and  
21 the modified plan that meets the new higher goals.

22 COMMISSIONER EDGAR: Okay. And then just for  
23 clarification, since I understand and am supportive of  
24 kind of tracking in this docket what we did just in the  
25 previous issue that was before us, would that solar

1 piece need to be included or is that included in the  
2 way the motion was put before us? Do you understand  
3 where I'm --

4 COMMISSIONER BALBIS: Yeah. Mr. Chairman, is  
5 it for me or for --

6 CHAIRMAN GRAHAM: Well, I thought Staff was  
7 going to answer that.

8 COMMISSIONER BALBIS: Okay.

9 MR. HARRIS: This is Larry Harris. I  
10 understood that the solar pilot programs were part of  
11 that status quo motion that Commissioner Balbis made.

12 COMMISSIONER BALBIS: That is correct.

13 COMMISSIONER EDGAR: And I just wasn't sure  
14 if it -- I thought that was the intent, I just wasn't  
15 sure if it was included. So with all of that painful,  
16 detailed questioning -- sorry, Mr. Chairman -- I  
17 appreciate the chance and I'm ready to support the  
18 motion.

19 CHAIRMAN GRAHAM: Did you want to clarify  
20 something, Commissioner Balbis?

21 COMMISSIONER BALBIS: I did, and it just fled  
22 from my skull.

23 No, I just wanted to point out that the other  
24 benefit as far being, you know, the middle, middle of  
25 the road, if you will, with the status quo is that,

1 again, it alleviates my concern of starting and  
2 possibly stopping a program in a short period of time.

3 **CHAIRMAN GRAHAM:** And no other lights? All  
4 in favor of the Balbis amendment, say aye.

5 (Affirmative vote.)

6 Anybody opposed?

7 Okay. We are done with item number 6.

8 Staff, is that the agenda?

9 **MR. JACOBS:** Mr. Chairman, one point of  
10 clarification.

11 **CHAIRMAN GRAHAM:** Sure.

12 **MR. JACOBS:** In the, in the statutory  
13 provisions where you choose not to approve plans, it  
14 generally anticipates that those, that the company has  
15 to refile or, and this is a point of clarification, the  
16 Commission would adopt a plan because you're not  
17 requiring any refiling. I'm assuming that you're  
18 choosing to adopt the prior, prior DSM plans of the  
19 company for these goals.

20 **CHAIRMAN GRAHAM:** Is that your question?

21 **MR. JACOBS:** Yes, sir.

22 **CHAIRMAN GRAHAM:** Commissioner Brisé.

23 **COMMISSIONER BRISÉ:** Thank you, Mr. Chairman.

24 I think the intent of the motion and the  
25 intent of the vote is to continue to apply the current



1 plans as they stand at this time.

2 MR. JACOBS: Thank you.

3 CHAIRMAN GRAHAM: That all being said, we're  
4 adjourned.

5 (Proceeding adjourned at 11:58 a.m.)  
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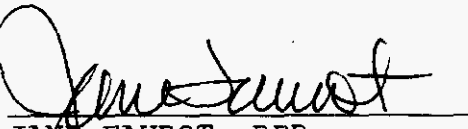
1 STATE OF FLORIDA )  
2 COUNTY OF LEON ) : CERTIFICATE OF REPORTERS


3  
4 WE, JANE FAUROT, RPR, and LINDA BOLES, RPR,  
5 CRR, Official Commission Reporters, do hereby certify  
6 that the foregoing proceeding was heard at the time and  
7 place herein stated.

8 IT IS FURTHER CERTIFIED that we  
9 stenographically  
10 reported the said proceedings; that the same has been  
11 transcribed under our direct supervision; and that this  
12 transcript constitutes a true transcription of our  
13 notes of said proceedings.

14 WE FURTHER CERTIFY that we are not a  
15 relative, employee, attorney or counsel of any of the  
16 parties, nor are we a relative or employee of any of  
17 the parties' attorneys or counsel connected with the  
18 action, nor are we financially interested in the  
19 action.

20 DATED THIS 29<sup>th</sup> day of July, 2011.

21  
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25  
  
JANE FAUROT, RPR  
FPSC Official Commission  
Reporter  
(850) 413-6732

  
LINDA BOLES, CRR, RPR  
FPSC Official Commission  
Reporter  
(850) 413-6734

## **APPENDIX E**

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7135      PCB ENRC 08-01      Energy  
**SPONSOR(S):** Environment & Natural Resources Council, Mayfield and Kreegel  
**TIED BILLS:** None.      **IDEN./SIM. BILLS:** CS/CS/CS/SB 1544

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Environment & Natural Resources Council	17 Y, 0 N	Blalock, Larson, Whittier, Perkins	Dixon / Hamby
Committee on Energy	13 Y, 0 N	Blalock, Larson, Whittier	Collins
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

### SUMMARY ANALYSIS

During the 2007 Legislative Session, the Legislature enacted comprehensive legislation to promote energy security and affordability by encouraging energy efficiency and diversity. Although this legislation was vetoed, approximately \$62 million in funds were made available to address energy goals. During the Summer of 2007, Governor Crist issued three executive orders addressing issues related to global climate change. The executive orders established reduction targets for greenhouse gas (GHG) emissions, directed the Department of Environmental Protection (DEP) to develop a regulatory rule to cap electric utility GHG emissions, and created the Governor's Action Team on Energy and Climate Change. The Action Team's initial report includes numerous recommendations, including the development of a "cap and trade" program to reduce GHG emission. The Florida Energy Commission, created by the 2006 Legislature, has also issued a series of recommendations addressing energy reliability, efficiency, affordability, and diversity and climate change.

In response to these developments, the Environment & Natural Resources Council and the Committee on Energy conducted a symposium on the "Science and Economics of Climate Change" and a series of workshops to discuss the interrelated issues of energy reliability, efficiency, affordability, and diversity and global climate change. These discussions focused on international, national and state options to mitigate climate change and their potential costs and benefits. This bill builds on last year's legislation and includes policies developed through these discussions, including:

- Creating a 9-member Florida Energy and Climate Commission.
- Creating the Florida Energy Systems Consortium with participation from five state universities.
- Authorizing the DEP to adopt rules for a Cap-and-Trade Regulatory Program to address GHG emissions from electric utilities, subject to legislative ratification and not prior to the 2010 Legislative Session.
- Revising the State Comprehensive Plan to include goals and policies addressing low carbon electricity generation.
- Authorizing the Public Service Commission to adopt a Renewable Portfolio Standard for public utilities.
- 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.
- Revising laws governing state lands and power plant and power line siting to facilitate expanded power generation.
- Providing for standardized interconnection agreements and net metering for all electric utilities.
- Reauthorizing an ad valorem tax exemption for renewable energy source devices.
- Extending the Public Service Commission's jurisdiction to municipal utilities meeting certain criteria.
- Creating a Renewable Fuel Standard requiring that beginning on December 31, 2010, all gasoline sold in Florida contain, at a minimum, 10 percent ethanol, by volume.
- Adopting energy standards for the construction of new state, county, municipal, school district, state university, community college, state court, and water management district buildings.
- Requiring all new construction and renovation of state agency buildings to meet increased energy standards.
- Revising current law governing guaranteed energy, water, and wastewater performance savings contracting.
- Adopting Climate Friendly Public Business requirements for the use of "green" products, lodging, vehicles, and fuel.

See Fiscal Analysis and Economic Impact Statement section of analysis for government and private sector impacts.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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**DATE:** 4/16/2008

## **FULL ANALYSIS**

### **I. SUBSTANTIVE ANALYSIS**

#### **A. HOUSE PRINCIPLES ANALYSIS:**

##### **Provide Limited Government –**

The bill combines a majority of the energy-area duties and responsibilities of the State Energy Program within the Department of Environmental Protection (DEP), and the statutory powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds for the administration of the Florida Energy Commission into a new 9-member commission – the Florida Energy and Climate Commission – which will develop, coordinate, and implement energy policies for the state. The bill also does the following:

- Subject to future Legislative ratification, directs the Public Service Commission (PSC) to establish a Renewable Portfolio Standard, which requires public utilities to provide to consumers a certain percentage of electricity generated from renewable energy sources.
- Requires that all gasoline sold or offered for sale in the state be 10 percent agriculturally-derived, denatured ethanol beginning December 31, 2010.
- Requires the Department of Environmental Protection (DEP) to establish reporting procedures and methodologies for electric utilities to report to The Climate Registry and authorizes the DEP to adopt rules to implement a state greenhouse gas (GHG) cap-and-trade regulatory program.
- Requires the Department of Management Services (DMS) to identify and compile a list of projects suitable for guaranteed energy, water and wastewater performance savings contracting and directs the DMS to furnish the Florida Energy and Climate Commission data on agencies' emissions of greenhouse gases.
- Requires all new construction and renovation of state agency buildings to meet increased energy standards.
- Requires state agencies to only contract for meeting and conference space with hotels or conference facilities that have received the "Green Lodging" designation from the DEP.
- Requires that green building standards be used for the construction of new county, municipal, school district, state university, community college, state court, and water management district buildings.
- Revises sections of the power plant siting and transmission line siting laws, which will result in a streamlining of those processes, for government as well as the private sector.
- Encourages Metropolitan Planning Organizations to consider strategies that integrate transportation and land use planning to provide for sustainable development and reduce greenhouse gas emissions.
- Directs the Agency for Enterprise Information Technology to define objective standards for measuring data center energy consumption and efficiency, and for calculating the total cost of ownership of energy efficient information technology products over the life-cycle of the products.
- Extends the jurisdiction of the PSC to any municipal utility that serve customers who reside both inside and outside the corporate boundaries of the municipality and 33% or more of the municipal utility's customers reside outside the corporate boundaries of the municipality.
- Creates a consortium which is designed to promote collaboration between experts in the state university system, the Florida Energy and Climate Commission, industry, and other affected parties, to develop and implement an energy strategic plan for the state.
- Eliminates a duplicative level of screening and interviewing in the Public Service Commission Nominating Council process.
- Requires municipal utilities meeting specified criteria to conduct referendum elections to decide whether a separate electric utility authority should be created to operate the business of the electric utility in the affected municipal electric utility.
- Requires state agencies to maintain a list of eligible positions for telecommuting.
- Requires the PSC to adopt goals to increase and promote cost-effective demand-side and supply-side efficiency and conservation programs and renewable energy systems.

electric customers as of September 30, 2007, and does not have a service territory that extends beyond its home county as of September 30, 2007, to conduct a referendum election of all its retail electric customers concurrent with the next regularly scheduled general election to vote "yes" or "no" on the following question:

"Should a separate electric utility authority be created to operate the business of the electric utility in the affected municipal electric utility?"

The bill also provides that the notice provisions in the Election Code must be followed, and cost of the referendum election must be paid by the affected municipal electric utility. If a majority of the retail electric customers vote "yes" on the question posed in the referendum, then the municipal electric utility must transfer operations of its electric utility business to a duly-created authority on or before July 1, 2009. The electric utility authority created must consist of a governing body with a membership that is proportionally representative of the number of county and city ratepayers, and has jurisdiction over electric, water, and sewer utilities.

#### **FLORIDA ENERGY EFFICIENCY AND CONSERVATION ACT (FEECA) (ss. 366.81-366.82, F.S.)**

##### **Present Situation**

Under the Florida Energy Efficiency and Conservation Act (FEECA),<sup>54</sup> the Florida Public Service Commission (PSC) is directed by the Legislature to develop and adopt overall goals. The PSC is authorized to require each utility to develop plans and implement programs for increasing energy efficiency and conservation within its service area, subject to the approval of the PSC. The Legislature intends that the use of solar energy, renewable energy sources, highly efficient systems, cogeneration, and load-control systems be encouraged. Accordingly, in exercising its jurisdiction, the PSC may not approve any rate or rate structure that discriminates against any class of customers on account of the use of such facilities, systems, or devices. However, this expression of legislative intent is not to be construed to preclude experimental rates, rate structures, or programs.

The PSC is required to adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of cogeneration, specifically including goals designed to increase the conservation of expensive resources, such as petroleum fuels; to reduce and control the growth rates of electric consumption; and to reduce the growth rates of weather-sensitive peak demand. Currently, the Executive Office of the Governor must be a party in the proceedings to adopt goals. The PSC may change the goals for reasonable cause. The time period to review the goals, however, may not exceed five years. After the programs and plans to meet those goals are completed, the PSC must determine what further goals, programs, or plans are warranted and, if any, must adopt them.

Following adoption of the goals, the PSC must require each utility to develop plans and programs to meet the overall goals within its service area. If the PSC disapproves a plan, it must specify the reasons for disapproval, and the utility whose plan is disapproved must resubmit its modified plan within 30 days. Prior approval by the PSC is required to modify or discontinue a plan, or part thereof, which has been approved. 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 PSC must adopt programs required for that utility to achieve the overall goals.

Section 366.82, F.S., requires utility conservation programs to be cost-effective. To comply with the statute, the PSC adopted Rule 25-17.008, F.A.C., which codifies the cost-effectiveness methodologies and cost/benefit information submitted by the utilities to the PSC. In order to obtain cost recovery for implementing conservation and energy efficiency programs, utilities must provide a cost-effectiveness analysis of each program using three tests:

- **Participant test:** Reviews costs and benefits from a demand-side management (DSM) program participant's point of view and ignores the impact on the utility and other ratepayers not participating in the program. Customers pay equipment and maintenance costs under the

<sup>54</sup> Sections 366.80-366.85, F.S. (FEECA)  
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participant test. Benefits include incentives that are paid by the utility to the customers and a reduction in customer bills.

- **Rate Impact Measure (RIM test):** Includes the costs associated with incentive payments to participants and decreased revenues to the utility which typically must be recovered from the general body of ratepayers at the time of a rate case. In particular, the RIM test ensures that all ratepayers benefit from a proposed DSM program, not just the participants. Because all customers ultimately pay the costs of DSM programs, the RIM test ensures that rates to all customers are lower than they otherwise would have been without the DSM program.
- **Total Resource Cost (TRC test):** Measures the overall economic efficiency of a DSM program from a societal perspective. This test measures the net costs of a DSM program based on its total cost, including both the participant's and utility's costs. Unlike the RIM test, however, incentives and decreased revenues are not included as costs in the TRC; instead, these factors are treated as transfer payments among ratepayers.<sup>55</sup>

The PSC must require periodic reports from each utility and provide the Legislature and the Governor with an annual report of the goals it has adopted and its progress toward meeting those goals. The PSC must consider the performance of each utility to FEECA when establishing rates for those utilities over which the PSC has rate-setting authority.

The PSC must also require each utility to offer, or to contract to offer, energy audits to its residential customers, as provided by statute. The PSC may extend this requirement to some or all commercial customers.

The PSC is the responsible legislative agency for performing, coordinating, implementing, or administering functions related to consumption, utilization, or conservation of electrical energy which are required or authorized under s. 377.703, F.S. The Governor is required to file with the PSC comments on the proposed goals including, but not limited to: an evaluation of load forecasts, including an assessment of alternative supply and demand-side resource options; and an analysis of various policy options that can be implemented to achieve a least-cost strategy.

The PSC is required to establish all minimum requirements for energy auditors used by each utility and to contract with any agency or other person to provide training, testing, evaluation or other steps necessary to fulfill those requirements.

#### **Effect of Proposed Changes**

The bill produces the following changes in legislative intent:

- Declares that it is critical to utilize the most efficient and cost-effective demand-side renewable energy and conservation systems.
- Finds that the PSC is the appropriate agency to adopt goals and approve plans related to the promotion of demand-side renewable energy systems.
- Directs the PSC to require each utility to develop plans and implement programs that include demand-side renewable energy systems.
- Encourages the development of demand-side renewable energy systems.

The bill defines the term "demand-side renewable energy system" as thermal or electric energy produced and consumed at a customer's premises.

In developing goals, which include encouraging development of demand-side renewable energy resources, the PSC may allow efficiency investments across generation, transmission, and distribution as well as efficiencies within the user base. When establishing goals, the PSC is required to evaluate the full technical potential of all available demand-side and supply-side conservation and efficiency

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<sup>55</sup> Annual Report on Activities Pursuant to the Florida Energy Efficiency and Conservation Act, by the PSC, February 2008.

measures. The bill provides that in developing these goals, the PSC is required to take into consideration the following:

- The costs and benefits to customers participating in the measure. (Participants test)
- The costs and benefits to the general body of ratepayers as a whole, including both utility incentives and participant contributions. (similar to a Total Resource Cost test or TRC test but including the costs of incentives)
- The need for incentives to utilities to promote energy efficiency and renewable energy systems.
- The costs imposed by state and federal regulations on the emissions of greenhouse gases.

The bill further provides budget authority for the PSC to expend up to \$250,000 from the Florida Public Service Regulatory Trust Fund to obtain technical consulting assistance.

The newly-created Florida Energy and Climate Commission, rather than the Executive Office of the Governor, must be included in the proceedings to adopt goals and file with the PSC comments on the proposed goals to include:

- An evaluation of utility load forecasts, including an assessment of alternative supply and demand side-side resource options.
- An analysis of implementable policy options that achieve a least-cost strategy, including non-utility programs targeted at reducing and controlling the per capital use of electricity in the state.
- An analysis of the impact of state and local building codes and appliance efficiency standards on the need for utility-sponsored conservation and energy efficiency programs.

Following the adoption of goals, the PSC may require modifications or additions to a utility's plans and programs when there is a public interest consistent with conservation, energy efficiency, and demand-side renewable energy system measures. In approving plans and programs for cost recovery, the PSC is granted the flexibility to modify or deny plans and programs that would have an undue impact on the costs passed on to ratepayers.

The bill also provides that the PSC may authorize financial rewards for those utilities over which it has rate-setting authority which exceed their goals and financial penalties for those utilities which fail to meet their goals, including but not limited to the sharing of generation, transmission, and distribution cost savings associated with conservation, energy efficiency, and demand-side renewable energy system additions.

## **ENVIRONMENTAL COST RECOVERY (s. 366.8255, F.S.)**

### **Present Situation**

Section 366.8255(1)(d), F.S., provides that "environmental compliance costs" includes all costs or expenses incurred by an electric utility in complying with environmental laws or regulations, including:

- In-service capital investments, including the electric utility's last authorized rate of return on equity thereon;
- Operation and maintenance expenses;
- Fuel procurement costs;
- Purchased power costs;
- Emission allowance costs;
- Direct taxes on environmental equipment; and
- Costs or expenses prudently incurred by an electric utility pursuant to an agreement entered into, on, or after the effective date of this act and prior to October 1, 2002, between the electric utility and the Florida Department of Environmental Protection or the United States Environmental Protection Agency for the exclusive purpose of ensuring compliance with ozone ambient air quality standards by an electrical generating facility owned by the electric utility.



## **APPENDIX F**

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for approval of numeric conservation goals by Progress Energy Florida, Inc.	DOCKET NO. 040031-EG ORDER NO. PSC-04-0769-PAA-EG ISSUED: August 9, 2004
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The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman  
J. TERRY DEASON  
LILA A. JABER  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING NUMERIC CONSERVATION GOALS AND DEMAND-SIDE  
MANAGEMENT PLAN FOR PROGRESS ENERGY FLORIDA

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Case Background

Section 366.82, Florida Statutes, part of the Florida Energy Efficiency and Conservation Act (FEECA), requires us to adopt goals to increase the efficiency of energy consumption, increase the development of cogeneration, and reduce and control the growth rates of electric consumption and weather-sensitive peak demand. Pursuant to Section 366.82(2), Florida Statutes, we must review a utility's conservation goals not less than every five years. These statutes are implemented by Rules 25-17.001 and 25-17.0021, Florida Administrative Code.

We first established numeric conservation goals for Progress Energy Florida, Inc. (PEF) in Order No. PSC-94-1313-FOF-EG, issued October 25, 1994, in Docket No. 930549-EG, In Re: Adoption of Numeric Conservation Goals and Consideration of National Energy Policy Act Standards (Section 111) by Florida Power Corporation, aff'd, Legal Environmental Assistance Foundation, Inc. v. Susan F. Clark, et al. as Florida Pub. Serv. Comm'n, 668 So. 2d 982 (Fla. 1996). In that order, we found:

We will set overall conservation goals for each utility based on measures that pass both the participant and RIM tests. The record in this docket reflects that the difference in demand and energy saving between RIM and TRC portfolios are negligible. We find that goals based on measures that pass TRC but not RIM would result in increased rates and would cause customers who do not participate in a utility DSM measure to subsidize customers who do participate. Since the record reflects that the benefits of adopting a TRC goal are minimal, we do not believe that increasing rates, even slightly, is justified.

We set numeric conservation goals for PEF a second time in Order No. PSC-99-1942-FOF-EG, issued October 1, 1999 in Docket No. 971005-EG, In Re: Adoption of Numeric Conservation Goals by Florida Power Corporation. In setting PEF's numeric goals, we accepted a stipulation between PEF and the Legal Environmental Assistance Foundation. Again, PEF's numeric goals were based on measures that passed the participant and Rate Impact Measure (RIM) tests.

The instant docket, opened on January 13, 2004, represents the third time that we will set numeric conservation goals for PEF. On June 1, 2004, PEF timely filed its new numeric goals.

Rule 25-17.0021(4), Florida Administrative Code, requires that, within 90 days of a final order establishing goals, a utility shall submit a demand-side management (DSM) plan which contains conservation and DSM programs designed to meet its numeric goals. As part of its numeric goals filing, PEF filed its DSM Plan. PEF also filed testimony and exhibits in support of its proposed numeric goals and DSM Plan.

This Order addresses PEF's petition for approval of its numeric conservation goals and approval of its DSM Plan. We have jurisdiction over this matter pursuant to Sections 366.81 and 366.82, Florida Statutes.

#### Numeric Conservation Goals

In developing its numeric conservation goals, PEF evaluated the measures identified by us when we set goals in 1994 and again in 1999. In addition, PEF separately identified and evaluated promising new measures. The evaluation considered the issues and end-use categories specified in Rule 25-17.0021(3), Florida Administrative Code. All potential measures were evaluated against a base case, supply-side only expansion plan for cost-effectiveness using the RIM, Total Resource Cost (TRC), and participant tests. From PEF's analysis, twenty-nine residential and nineteen commercial/industrial measures passed the RIM test. The seasonal demand and annual energy savings associated with these cost-effective measures were summed by market segment to arrive at PEF's proposed goals.

PEF's goals are as follows:

**PROPOSED CONSERVATION GOALS - CUMULATIVE**

Year	Residential			Commercial / Industrial		
	Summer MW	Winter MW	Annual GWh	Summer MW	Winter MW	Annual GWh
2005	13	43	21	4	3	3
2006	21	75	35	7	7	6
2007	30	108	50	11	10	9
2008	38	142	65	14	14	12
2009	47	175	80	18	17	15
2010	55	210	95	21	20	18
2011	65	248	112	25	24	20
2012	74	287	128	29	28	23
2013	83	324	144	32	31	26
2014	92	366	161	36	34	29

According to its most recent FEECA report, PEF has been successful in surpassing all six of its current numeric demand and energy conservation goals that were set by us in 1999. Nonetheless, five of the six numeric goals proposed by PEF are slightly lower than the current goals. The primary reasons for this reduction are: (1) the forecasted impact of more stringent energy codes, particularly on residential air conditioning systems; and, (2) decreased participation in certain existing DSM programs due to saturation. A comparison of PEF's current and proposed conservation goals is shown below.

COMPARISON OF CURRENT AND PROPOSED CONSERVATION GOALS

Year	Residential			Commercial / Industrial		
	Summer MW	Winter MW	Annual GWh	Summer MW	Winter MW	Annual GWh
Current (cumulative 2000-2009)	125	389	185	38	37	19
Proposed (cumulative 2005-2014)	92	366	161	36	34	29

We have reviewed the programs, assumptions, and evaluation methodology used by PEF and find them to be reasonable. The DSM measures evaluated are based on an adequate assessment of the market segments and major end-use categories in accordance with Rule 25-17.0021(3), Florida Administrative Code. In addition, as required by the rule, PEF's analysis adequately reflects consideration of overlapping measures, rebound effects, free riders, interactions with building codes and appliance efficiency standards, and PEF's latest monitoring and evaluation of conservation programs and measures. PEF's chosen avoided units and the associated assumptions reflect the information provided in PEF's latest Ten-Year Site Plan and is reasonable. PEF appropriately used the RIM and participant tests to determine the cost-effective level of achievable DSM goals. Therefore, PEF's proposed conservation goals are hereby approved.

Demand-Side Management Plan

PEF's DSM Plan contains five residential programs, seven commercial and industrial (C/I) programs, a qualifying facilities program, and a research and development program. These programs are summarized in Attachment A to this Order. Tables illustrating each DSM program's projected demand and energy savings and contribution towards PEF's numeric conservation goals are also included in Attachment A. Demand and energy savings from PEF's DSM Plan are expected to meet or exceed the summer demand, winter demand, and energy savings goals approved for both the residential and commercial/industrial segments.

Pursuant to Order No. 22176, issued November 14, 1989 in Docket No. 890737-PU, In Re: Implementation of Section 366.80-.85, F.S., Conservation Activities of Electric and Natural Gas Utilities, we stated that conservation programs will be evaluated using the following criteria:

- Whether the program advances the policy objectives of Rule 25-17.001, Florida Administrative Code, and Sections 366.80 through 366.85, Florida Statutes, also known as the "Florida Energy Efficiency and Conservation Act" (FEECA);
- Whether the program is directly monitorable and yields measurable results; and
- Whether the program is cost-effective.

PEF's DSM programs are designed to minimize free riders, minimize rate impacts, and meet our prescribed conservation goals. The programs contained in PEF's DSM plan appear to meet the policy objectives of Rule 25-17.001, Florida Administrative Code, and FEECA. PEF's measurement plan to evaluate assumed demand and energy savings for each program appears reasonable. Each program included in PEF's DSM plan is cost-effective under the RIM, TRC, and participant tests. However, it must be emphasized that we are not addressing the prudence of expenditures for the programs contained in PEF's DSM plan; such a review is performed annually in the Energy Conservation Cost Recovery Clause docket.

All fourteen programs contained in PEF's DSM Plan are existing programs we approved in 2000 as part of PEF's current DSM Plan. Ten of these programs remain unchanged from that time. The remaining four programs have been modified because, due to small demand or energy savings and historically low participation rates, certain components of these four programs were no longer cost-effective. Two of the four modified programs also contain new measures to replace those that were removed. The modifications are:

- Residential New Construction program -- no longer includes the high efficiency alternate water heating component.
- Home Energy Improvement program -- no longer includes the high efficiency alternate water heating component.
- Better Business program -- no longer includes the high-efficiency motors or window film components, but now includes energy recovery ventilation (installation of high-efficiency energy recovery ventilation units that remove heat and humidity from conditioned space) and cool roofs (installation of "cool roof" coating which reflects heat).
- C/I New Construction program -- no longer includes the high-efficiency motors or heat recovery equipments, but now includes energy recovery ventilation and cool roofs.

PEF's Qualifying Facilities program is essentially unchanged from what we approved in 1995 and again in 2000. This program allows PEF to meet its obligations under Section

366.051, Florida Statutes, and Chapter 25-17, Florida Administrative Code, regarding the purchase of as-available energy and firm capacity and energy from qualifying facilities. Under the program, PEF develops standard offer contracts and administers existing standard offer and negotiated contracts.

PEF's Technology Development program, a research & development program, is essentially unchanged from what we approved in 1995 and again in 2000. Under this program, PEF will research, develop, and demonstrate potential cost-effective conservation programs. Program expenses are again capped at \$800,000 per year, with a \$100,000 annual cap on expenditures for any single project. PEF does not count any kW and kWh savings from its proposed Technology Development program toward its numeric conservation goals. If a legitimate DSM program results from PEF's research efforts, the program would be incorporated into the DSM Plan and its kW and kWh savings would be applied toward the goals. Examples of potential projects under the Technology Development program include demand reduction energy efficiency techniques, market transformation initiatives, indoor air quality measures, thermal energy storage technologies, and innovative metering techniques. PEF will provide a final report on each demonstration project or file and offer a permanent conservation program for each program investigated.

The programs contained in PEF's DSM Plan meet the policy objectives of Rule 25-17.001, Florida Administrative Code, and FEECA. The programs are cost-effective and are expected to allow PEF to meet the conservation goals approved in this Order. Therefore, we hereby approve PEF's DSM Plan, including approval for cost recovery.

PEF shall file program participation standards with the Division of Economic Regulation within 30 days of the issuance of the Consummating Order in this docket. PEF's program standards shall clearly state the requirements for participation in the programs, customer eligibility requirements, details on how rebates or incentives will be processed, technical specifications on equipment eligibility, and necessary reporting requirements. Our staff shall administratively approve PEF's program participation standards if they conform to the description of the programs contained in PEF's DSM Plan.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Progress Energy Florida, Inc.'s proposed annual numeric residential winter demand, summer demand, and annual energy conservation goals for the period 2005 through 2014 shall be approved as set forth in the body of this Order. It is further

ORDERED that Progress Energy Florida, Inc.'s proposed annual numeric commercial/industrial winter demand, summer demand, and annual energy conservation goals for the period 2005 through 2014 shall be approved as set forth in the body of this Order. It is further

ORDERED that Progress Energy Florida, Inc.'s demand-side management plan is hereby approved as set forth in the body of this Order. It is further

ORDERED that Progress Energy Florida, Inc. shall file program participation standards with the Division of Economic Regulation within 30 days of the issuance of the Consummating Order in this docket. It is further

ORDERED that the Commission staff shall have administrative authority to approve Progress Energy Florida, Inc.'s program participation standards if they conform to the description of the programs contained in Progress Energy Florida, Inc.'s demand-side management plan. It is further

ORDERED that Attachment A to this Order is hereby incorporated by reference. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 9th day of August, 2004.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

By: /s/ Marcia Sharma  
Marcia Sharma, Assistant Director  
Division of the Commission Clerk  
and Administrative Services

This is a facsimile copy. Go to the Commission's Web site,  
<http://www.floridapsc.com> or fax a request to 1-850-413-  
7118, for a copy of the order with signature.

( S E A L )

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, 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 will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 30, 2004.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

**ATTACHMENT A**

**PROGRESS ENERGY FLORIDA / DEMAND-SIDE MANAGEMENT PLAN**

**RESIDENTIAL DEMAND-SIDE MANAGEMENT PROGRAMS**

**Home Energy Check:** Residential energy audit program. Company auditor examines home and makes recommendations on low-cost or no-cost energy-saving practices and measures. Offers six types of audits: free walk-through, customer-completed (mail-in), customer-completed (online), phone-assisted customer survey, paid walk-through (\$15 cost), and home energy rating (BERS audit promoted by DCA).

**Home Energy Improvement:** Umbrella program for existing homes. Combines thermal envelope efficiency improvements with upgraded equipment and appliances. Offers choice of rebates, as described below, or interest-free installment billing over 12 months. Promotes the following energy-efficiency measures:

**Attic Insulation Upgrade:** Encourages customers who have electric space heat to add ceiling insulation. PEF pays portion of the installed cost. Specific incentive amount based on increase in insulation amount above a maximum of R-12, with maximum incentive amount of \$100 per customer.

**Duct Test and Repair:** Promotes energy efficiency through improved duct system sealing. Program helps identify and reduce energy loss by measuring air leakage rate through the central duct system. Customer must have electric heating and centrally-ducted cooling system to participate. PEF pays up to \$30 for the first unit (\$20 for each additional unit at same address) for duct leakage test and up to \$100 per unit for duct repair.

**High Efficiency Electric Heat Pumps:** Pays financial incentive, not exceeding \$350 per unit, to replace existing electric heating equipment with high-efficiency electric heat pumps. Specific incentive based on minimum heating and/or cooling efficiency levels. Indoor air handler and outdoor condenser must both be replaced with new equipment to qualify for this rebate.

**Supplemental Incentive Bonus:** Encourages adoption of several energy-efficiency measures through an additional incentive of up to \$50. Incentive is paid to a participant in PEF's high efficiency electric heat pump program who also implements the ceiling insulation upgrade, duct leakage repair, or both, within 90 days.

**Residential New Construction:** Umbrella program for new home construction, multi-family, and manufactured homes. Promotes energy-efficient construction which exceeds the building code. Provides information, education, and advice to home builders and contractors on energy-

related issues and efficiency measures. Promotes energy-efficient electric heat pumps with an incentive identical to that offered in the Home Energy Improvement program for existing homes.

**Low Income Weatherization Assistance (LIWAP):** Umbrella program to improve the energy efficiency of low-income family homes. Efficiency measures and incentives are identical to those offered in PEF's Home Energy Improvement Program, with the following additions:

**Reduced Air Infiltration:** A \$75 incentive is paid for work which reduces air infiltration by a minimum specified amount.

**Water Heater Wrap / Replacement:** Provides wrap for water heater and associated piping near the tank. A \$25 incentive may be paid towards the purchase of a high-efficiency water heater in lieu of an insulating jacket.

**High-Efficiency Alternate Water Heating:** Promotes installation of high-efficiency alternative electric water heating equipment. Provides incentive of \$100 for each heat recovery unit and \$200 per unit for each dedicated heat pump water heater unit.

**Heating and Air Conditioning Maintenance:** A \$40 incentive is paid for service/tune-up maintenance on an existing electric central heating and air conditioning system.

**Residential Energy Management:** Voluntary load control program in which PEF reduces winter peak demand by interrupting electric service to water heaters and central electric heating units. Program is offered only during winter months (November through March). Maximum monthly bill credit is \$11.50, but is paid only during winter months when customer usage exceeds 600 kWh per month.

RESIDENTIAL DEMAND-SIDE MANAGEMENT PROGRAMS

DSM PROGRAM	Summer Peak Demand		Winter Peak Demand		Annual Energy Consumption		Benefit / Cost Ratio (RIM)
	Savings (MW)	% of Goal	Savings (MW)	% of Goal	Savings (GWh)	% of Goal	
Home Energy Check	11.186	12.2%	11.186	3.1%	36.550	22.7%	N/A
Home Energy Improvement	51.948	56.5%	157.298	43.0%	82.920	51.5%	1.05
Residential New Construction	31.700	34.5%	111.962	30.6%	46.548	28.9%	1.28
Low Income Weatherization Assistance	1.032	1.1%	2.814	0.8%	1.967	1.2%	1.01
Residential Energy Management	0.000	0.0%	95.872	26.2%	0.000	0.0%	1.51
TOTAL SAVINGS	95.866	104.2%	379.132	103.6%	167.985	104.3%	
GOAL	92.0		366.0		161.0		

## COMMERCIAL / INDUSTRIAL DEMAND-SIDE MANAGEMENT PROGRAMS

**Business Energy Check:** C/I energy audit program. Offers a free walk-through audit (inspection), a paid walk-through audit (energy analysis), and an online business energy check (customer-completed internet audit).

**Better Business:** Umbrella efficiency program for existing C/I buildings. Gives customers information and advice on energy-related issues and efficiency measures. Offers choice of rebates, as described below, or interest-free installment billing over 12 months. Promotes the following energy-efficiency measures:

**HVAC Equipment:** Pays financial incentive, of up to \$100 per kW reduced, for the purchase of high-efficiency HVAC equipment such as packaged terminal heat pumps, packaged rooftop units, water-cooled and air-cooled chillers, and unitary heat pumps and air conditioners.

**Energy Recovery Ventilation:** Pays financial incentive of up to \$1,500 for the installation of high-efficiency energy recovery ventilation units that remove heat and humidity from conditioned space. Customer must have electric heating and cooling system to participate.

**Duct Leakage Test and Repair:** Promotes energy efficiency through improved duct system sealing. Program helps identify and reduce energy loss by measuring air leakage rate through the central duct system. Customer must have electric heating and centrally-ducted cooling system to participate. PEF pays up to \$30 per unit for duct leakage test and up to \$100 per unit for duct repair.

**Roof Insulation Upgrade:** Encourages customers who have electric space heat to add roof insulation. PEF pays portion of the installed cost. Eligibility based on demonstration that additional insulation results in heating and/or cooling use reductions. Specific incentive amount based on increase in insulation amount above a maximum of R-12, with maximum incentive amount of \$100 per customer.

**Cool Roof:** Promotes the installation of “cool roof” coating which reflects heat and sun. Customer must have electric cooling system to participate. PEF pays \$50 per 1,000 square foot of cool roof coating installed up to a maximum of \$1,000.

**C/I New Construction:** Umbrella efficiency program for new C/I buildings. Provides information, education, and advice on energy-related issues and efficiency measures. Allows PEF to be involved early in the building’s design process. Also provides incentives for energy-efficient equipment, such as HVAC equipment, energy recovery ventilation, and cool roof coating. Incentive levels are identical to those offered in the Better Business program for existing buildings.

**Innovation Incentive:** Provides incentives for customer-specific demand and energy conservation projects, on a case-by-case basis, where cost-effective to all PEF customers. To be eligible, projects must reduce or shift a minimum of 10 kW of peak demand. Rebates will be limited to \$150 per kW reduced or shifted. Focuses on measures not offered in PEF's other DSM programs. Examples include refrigeration equipment replacement, thermal energy storage, microwave drying systems, and inductive heating (to replace resistance heat).

**Standby Generation:** Voluntary demand control program available to all C/I customers having on-site generation capability. Customer controls the equipment but operates it when needed by PEF. Incentive based on the load served by the customer's generator and is based on PEF's GSLM-2 rate schedule.

**Interruptible Service:** Direct load control program. PEF interrupts service by disconnecting electric service at the breaker during peak or emergency conditions. Offered under PEF's IS-2 and IST-2 tariffs. Available to any non-residential customer with an average billing demand of at least 500 kW. Monthly credit paid based on level of billing demand and load factor.

**Curtable Service:** Direct load control program that is similar to interruptible service, only the customer's entire load is not shed. Offered under the CS-2 and CST-2 tariffs. Available to any non-residential customer with an average billing demand of at least 500 kW. Customer must be willing to reduce 25% of its average monthly billing demand upon request by PEF. Monthly credit paid to customer based on level of curtable demand.

COMMERCIAL / INDUSTRIAL DEMAND-SIDE MANAGEMENT PROGRAMS

DSM PROGRAM	Summer Peak Demand		Winter Peak Demand		Annual Energy Consumption		Benefit / Cost Ratio (RIM)
	Savings (MW)	% of Goal	Savings (MW)	% of Goal	Savings (GWh)	% of Goal	
Business Energy Check	2.345	6.5%	2.345	6.9%	5.000	17.2%	N/A
Better Business	6.912	19.2%	5.926	17.4%	11.948	41.2%	1.20
C/I New Construction	4.685	13.0%	6.321	18.6%	10.407	35.9%	1.20
Innovation Incentive	0.840	2.3%	0.840	2.5%	1.441	5.0%	N/A
Standby Generation	18.600	51.7%	17.760	52.2%	0.250	0.9%	1.22
Interruptible Service	0.880	2.4%	1.000	2.9%	0.009	0.0%	1.04
Curtable Service	0.880	2.4%	1.000	2.9%	0.017	0.1%	1.27
TOTAL SAVINGS	35.142	97.6%	35.192	103.5%	29.072	100.2%	
GOAL	36.0		34.0		29.0		

## **APPENDIX G**



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Commission review of numeric conservation goals (Florida Power & Light Company).	DOCKET NO. 080407-EG
In re: Commission review of numeric conservation goals (Progress Energy Florida, Inc.).	DOCKET NO. 080408-EG
In re: Commission review of numeric conservation goals (Tampa Electric Company).	DOCKET NO. 080409-EG
In re: Commission review of numeric conservation goals (Gulf Power Company).	DOCKET NO. 080410-EG
In re: Commission review of numeric conservation goals (Florida Public Utilities Company).	DOCKET NO. 080411-EG
In re: Commission review of numeric conservation goals (Orlando Utilities Commission).	DOCKET NO. 080412-EG
In re: Commission review of numeric conservation goals (JEA).	DOCKET NO. 080413-EG ORDER NO. PSC-10-0198-FOF-EG ISSUED: March 31, 2010

The following Commissioners participated in the disposition of this matter:

NANCY ARGENZIANO, Chairman  
LISA POLAK EDGAR  
NATHAN A. SKOP  
DAVID E. KLEMENT

FINAL ORDER GRANTING JEA'S AND PROGRESS ENERGY FLORIDA, INC.'S  
MOTION FOR LIMITED REOPENING OF THE RECORD,  
DENYING FLORIDA POWER & LIGHT COMPANY'S AND GULF POWER COMPANY'S  
MOTION FOR RECONSIDERATION,  
DENYING NATURAL RESOURCES DEFENSE COUNCIL AND THE SOUTHERN  
ALLIANCE FOR CLEAN ENERGY'S MOTION FOR RECONSIDERATION,  
AND  
DENYING IN PART AND GRANTING IN PART PROGRESS ENERGY FLORIDA, INC.'S

MOTION FOR RECONSIDERATION

BY THE COMMISSION:

BACKGROUND

Sections 366.80 through 366.85, and 403.519, Florida Statutes (F.S.), are known collectively as the Florida Energy Efficiency and Conservation Act (FEECA). Section 366.82(2), F.S., requires us to adopt appropriate goals designed to increase the conservation of expensive resources, such as petroleum fuels, to reduce and control the growth rates of electric consumption and weather-sensitive peak demand. Pursuant to Section 366.82(6), F.S., we must review the conservation goals of each utility subject to FEECA at least every five years. The seven utilities subject to FEECA are Florida Power & Light Company (FPL), Progress Energy Florida, Inc. (PEF), Tampa Electric Company (TECO), Gulf Power Company (Gulf), Florida Public Utilities Company (FPUC), Orlando Utilities Commission (OUC), and JEA (referred to collectively as the FEECA utilities). Goals were last established for the FEECA utilities in August 2004 (Docket Nos. 040029-EG through 040035-EG). Therefore, new goals must be established by January 2010.

Intervention was granted to the Natural Resources Defense Council and the Southern Alliance for Clean Energy (NRDC/SACE), the Florida Solar Coalition (FSC), and the Florida Industrial Power Users Group (FIPUG).<sup>1</sup> By Order No. PSC-09-0150-PCO-EG, issued March 11, 2009, we acknowledged the intervention of the Florida Energy and Climate Commission (FECC).

A formal administrative hearing was held on August 10 through 13, 2009, and post-hearing briefs were filed on August 28, 2009. Staff's recommendation was to be considered at the October 27, 2009, Agenda Conference, but it was deferred to the November 10, 2009, Agenda Conference. At the November 10, 2009, Agenda Conference, we directed our staff to review Issues 2, 9, 10, and 11 to develop alternative conservation goals for each utility that were more robust. At the December 1, 2009, Agenda Conference, our staff provided a supplemental recommendation with the documentation and rationale supporting the selection of more robust conservation goals for each FEECA utility. At that Agenda Conference, we voted to approve conservation goals for each FEECA utility. By Order No. PSC-09-0855-FOF-EG, issued December 30, 2009, we set forth its approved conservation goals.

On December 11, 2009, JEA filed a motion for limited reopening of the record and for reconsideration. With its motion, JEA filed a corrected response to Staff's Seventh Set of Interrogatories, No. 50 (Interrogatory No. 50). On December 21, 2009, NRDC/SACE filed a response in opposition to JEA's motion. On January 12, 2010, PEF filed its Motion for

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<sup>1</sup> Intervention was granted by Order No. PSC-09-0027-PCO-EG, issued January 9, 2009, with respect to NRDC/SACE; by Order No. PSC-09-0062-PCO-EG, issued January 27, 2009, with respect to the Florida Solar Coalition; by Order No. PSC-09-0500-PCO-EG, issued July 15, 2009, with respect to the Florida Industrial Power Users Group.

Reconsideration. On January 14, 2010, FPL and Gulf filed their Motions for Reconsideration. On January 14, 2010, NRDC/SACE filed their joint motion for reconsideration and response in opposition to PEF's motion. On January 18, 2010, PEF filed its response in opposition to NRDC/SACE's motion. On January 21, 2010, FPL and Gulf filed their responses in opposition to NRDC/SACE's motion. On January 21, 2010, FIPUG filed its combined response in favor of FPL, PEF, and Gulf's motions and in opposition to NRDC/SACE's motion for reconsideration. On January 21, 2010, NRDC/SACE filed their response in opposition to FPL and Gulf's motions.

At the March 16, 2010 Agenda Conference, PEF made an oral motion for limited reopening of the record to correct its response to Staff's Seventh Set of Interrogatories, No. 66 (Interrogatory No. 66).

This Order addresses the Motions to Reopen the Record filed by JEA and PEF as well as the Motions for Reconsideration filed by FPL, PEF, Gulf, and NRDC/SACE. We have jurisdiction pursuant to Section 366.80-366.82, F.S.

### JEAS MOTION TO REOPEN RECORD

#### JEAs Motion

JEAs requests that we reopen the record of this proceeding for the limited purpose of correcting a certain discovery response served by JEA regarding JEAs historical conservation savings. JEAs incorrect discovery response to Interrogatory No. 50 was entered into the record and relied upon by us to establish JEAs conservation goals. JEA was not aware that its response was in error until after we voted to establish JEAs goals. Our staffs discovery had requested *incremental* annual conservation savings over the past four years, and JEA inadvertently provided *cumulative* values instead, thereby overstating JEAs annual savings for all but the first year.

#### NRDC/SACEs Response

In its response, NRDC/SACE state that they do not object to the opening of the record to correct the error in the information previously filed by JEA. However, NRDC and SACE object to any reduction in the proposed energy efficiency goals for JEA. No other parties filed a response to JEAs motion.

#### Analysis and Conclusion

Although we are generally hesitant to reopen the record of any proceeding, we may do so under limited circumstances. We may reopen the record when new evidentiary proceedings are

warranted based on a change of circumstances not present at the time of the proceeding, or a demonstration that a great public interest will be served.<sup>2</sup>

The discrepancy in JEA's response to Interrogatory No. 50 was discovered after the record had closed and we had rendered our final decision. In this instance, the revised information provides new evidence that was material to our decision in this matter, thus warranting reopening the record. In addition, correcting JEA's incorrect discovery response, upon which we relied in rendering our decision, serves a great public interest because it ensures accuracy in the regulatory process. Although we have issued our final order in this proceeding, the doctrine of administrative finality has not attached because JEA timely filed motions to reopen the record and reconsideration to correct its discovery.<sup>3</sup>

In the interest of making a fully informed decision, we find that the record shall be reopened for the limited purpose of admitting JEA's corrected response to Interrogatory No. 50, thus correcting a material fact upon which we based our final decision in setting JEA's goals. JEA's corrected response to Interrogatory No. 50 is shown in Attachment A, appended hereto and incorporated herein by reference. The effect of this corrected information on JEA's goals is discussed later in this order.

### MOTIONS FOR RECONSIDERATION

#### Standard of Review

The standard of review for reconsideration of a Commission order is whether the motion identifies a point of fact or law that we overlooked or failed to consider in rendering our order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 162 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex.rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc., 294 So. 2d at 317.

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<sup>2</sup> Order No. PSC-07-1022-FOF-EI, issued December 28, 2007, in Docket No. 070299-EI, In re: Review of 2007 Electric Infrastructure Storm Hardening Plan filed pursuant to Rule 25-6.0342, F.A.C., submitted by Gulf Power Company; see also Order No. PSC-07-0483-PCO-EU, issued June 8, 2007, in Docket No. 060635-EU, In re: Petition for Determination of Need for Electrical Power Plant in Taylor County by Florida Municipal Power Agency, JEA, Reedy Creek Improvement District, and City of Tallahassee.

<sup>3</sup> See McCaw Communications of Florida, Inc. v. Clark, 679 So. 2d 1177 (Fla. 1996); Austin Tupler Trucking, Inc. v. Hawkins, 377 So. 2d 679 (Fla. 1979); Peoples Gas System v. Mason, 187 So. 2d 335 (Fla. 1966).

### JEA'S MOTION FOR RECONSIDERATION

#### JEA's Motion

JEA asserts that the conservation goals established by this Commission for JEA were based upon an incorrect discovery response in the record, and that JEA has served its corrected discovery response to Interrogatory No. 50. Thus, JEA respectfully moves for reconsideration of our decision regarding its residential and commercial/industrial conservation goals, and requests that we establish conservation goals based on the average of incremental annual savings over the past four years, as reflected in the corrected response to Interrogatory No. 50. Granting JEA's motion will satisfy the intent of the FEECA statute while precluding an impact on rates. JEA asserts that granting this motion is consistent with our prior orders.<sup>4</sup> Furthermore, revising JEA's goals will not affect JEA's commitment to continue offering conservation programs to its customers.

#### NRDC/SACE's Response

NRDC/SACE assert that our approved goals for JEA were based on 290 gigawatt-hours (GWhs) of cumulative savings. NRDC/SACE assert that the goals were devised by taking the sum total of efficiency in the years 2005 through 2008 and dividing the total by four to get an average of the actual energy savings by JEA for those years. NRDC/SACE assert that JEA now proposes corrections to its approved goals to reduce the cumulative goal to 155 GWhs. NRDC/SACE object to any reduction in the energy efficiency goals for JEA.

NRDC/SACE further assert that we have the authority to set conservation goals for JEA and are legally obligated to set goals based on the factors identified in Section 366.82(3), F.S. If we are going to base goals based on past energy efficiency savings achieved by JEA, then the goal should be no less than actual savings achieved by JEA in 2008, which was 31.1 GWhs, as shown in JEA's corrected response to Interrogatory No. 50. This annual goal is more indicative of the level of energy efficiency savings JEA has achieved and can achieve in future years.

#### Analysis and Conclusion

In setting JEA's goals, we relied upon an incorrect discovery response which we used as the basis for our decision in setting JEA's conservation goals. We are not persuaded by NRDC/SACE's arguments. There was an error in fact (erroneous data provided by JEA) that should be corrected. In the order setting JEA's goals, we approved goals based on an incorrect discovery response. Correcting erroneous data used in arriving at a conclusion does not warrant changing the previously approved means of arriving at the conclusion. In addition, we are not persuaded by NRDC/SACE's assertion that we should change our methodology and establish goals based only on savings achieved in one year. Basing JEA's goals on average incremental

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<sup>4</sup> See Order No. PSC-07-0483-PCO-EU, issued June 8, 2007, in Docket No. 060635-EU, In re: Petition for Determination of Need for Electrical Power Plant in Taylor County by Florida Municipal Power Agency, JEA, Reedy Creek Improvement District, and City of Tallahassee; Order No. 10963, issued July 7, 1982, in Docket No. 810136-EU, In re: Petition of Gulf Power Company for an increase in its rates and charges.

savings over the past four years is consistent with our methodology for OUC and FPUC. Furthermore, NRDC/SACE is simply rearguing points previously considered by us in arriving at its decision which NRDC/SACE is not permitted to do. See Sherwood, 111 So. 2d at 97-98.

Accordingly, we find that JEA's Motion for Reconsideration is hereby granted because it identifies a point of fact that we overlooked or failed to consider in rendering our decision. Therefore, JEA's goals shall be established as shown below.

**Revised Commission-Approved Conservation Goals  
for JEA**

Year	Residential				Commercial/Industrial		
	Summer (MW)	Winter (MW)	Annual (GWh)		Summer (MW)	Winter (MW)	Annual (GWh)
2010	1.2	1.0	5.4		0.6	0.4	10.1
2011	1.2	1.0	5.4		0.6	0.4	10.1
2012	1.2	1.0	5.4		0.6	0.4	10.1
2013	1.2	1.0	5.4		0.6	0.4	10.1
2014	1.2	1.0	5.4		0.6	0.4	10.1
2015	1.2	1.0	5.4		0.6	0.4	10.1
2016	1.2	1.0	5.4		0.6	0.4	10.1
2017	1.2	1.0	5.4		0.6	0.4	10.1
2018	1.2	1.0	5.4		0.6	0.4	10.1
2019	1.2	1.0	5.4		0.6	0.4	10.1
Total	12.0	10.0	54.0		6.0	4.0	101.0

MOTIONS FOR RECONSIDERATION – TECHNICAL VERSUS ACHIEVABLE

FPL'S MOTION FOR RECONSIDERATION

FPL's Motion

FPL contends that there is a distinction between “technical potential” and “achievable potential” savings as it relates to measures screened out using the two-year payback criterion. FPL asserts that once the two-year payback measures were screened out at the technical potential, the achievable potential of those measures were not determined. FPL asserts that our order did not consider this when goals were based upon the technical potential savings associated with the screened-out two-year payback measures. FPL further asserts that, pursuant to Rule 25-17.0021(1), F.A.C., goals set by this Commission must be “reasonably achievable” and that undisputed record evidence shows that technical potential savings are not reasonably achievable. FPL asserts that witness Rufo stated that technical potential “is what is technically feasible, regardless of cost, customer acceptance, or normal replacement schedules.” Based on the

foregoing, FPL contends that we mistakenly increased FPL's goals based upon theoretical technical potential savings instead of achievable potential savings. Furthermore, FPL asserts that the goals set for FPL are in error and should be reduced and based upon achievable potential instead. Thus, FPL respectfully submits that the standard for reconsideration has been satisfied and our order should be revised.

NRDC/SACE's Response

NRDC/SACE assert that we used our discretion to reintroduce a portion of the achievable potential eliminated by the two-year payback criteria in order to increase FPL's goals. NRDC/SACE assert that FPL's "reasonably achievable goal" requirement of Rule 25-17.0021, F.A.C., is rebutted by the record because the goals set by this Commission are on the low end of achievable potential. NRDC/SACE contend that the transcript and record before this Commission indicate that we intended to increase the DSM goals for FPL and the other IOUs by using tables which exhibited the energy savings from a selection of measures excluded by the two-year payback. They further contend that the hearing transcripts indicate that we intended to approve an additional amount of energy savings from the two-year payback measures but did not intend to approve individual measures. Accordingly, NRDC/SACE respectfully request that we deny FPL's motion for reconsideration because it does not show any error.

PEF'S MOTION FOR RECONSIDERATION

PEF's Motion

PEF asserts that we based PEF's conservation goals on an enhanced total resource test (E-TRC) and increased PEF's goals further by adding PEF's "Top Ten Residential Free Rider" (Top Ten) measures. PEF contends that its approved conservation goals are based on programs that are technically possible rather than using savings goals based on programs that are achievable for PEF. The use of technical data instead of achievable data appears to be a mistake because technical data reflects what savings could conceivably be attained without any real world constraints, while achievable data reflects what savings a utility can reasonably expect to achieve in real world application. PEF believes that we did not intend to set goals based on technical savings figures. As such, PEF asserts that we mistakenly included technical savings figures in its final Order rather than achievable goals that it intended.

NRDC/SACE's Response

NRDC/SACE oppose PEF's motion for reconsideration. NRDC/SACE dispute PEF's contention that the currently approved goals will raise rates \$5.00 per month. NRDC/SACE assert that because PEF's goals are based on measures which pass the TRC test, these measures will result in lower total system costs. NRDC/SACE contend that these energy savings will result in lower customer bills. NRDC/SACE assert that we did not inadvertently approve goals based on the residential measures in the list of top ten two-year payback measures. NRDC/SACE further assert that the transcript and record before this Commission indicate that we intended to increase the DSM goals for PEF and the other IOUs by using tables which

exhibited the energy savings from a selection of measures excluded by the two-year payback. They further contend that the hearing transcripts indicate that we intended to approve an additional amount of energy savings from the two-year payback measures but did not intend to approve individual measures.

### GULF'S MOTION FOR RECONSIDERATION

#### Gulf's Motion

Gulf asserts that established goals for Gulf included energy and demand savings associated with eight residential "Two-Year Payback Measures," submitted as a late-filed deposition exhibit. These measures used in establishing Gulf's goals reflect the "technical potential" for energy and demand savings and not the "achievable potential." Gulf asserts that it did not provide the achievable potential savings for the Two-Year Payback Measures because those measures were screened out and excluded from Itron's analysis of Gulf's achievable potential savings. Gulf asserts that it included a disclaimer with the late-filed exhibit, explaining that the achievable potential was not developed for these measures and that the technical potential reflected the upper bound of potential savings associated with the measure and that the value did not reflect the achievable potential. Gulf asserts that the technical potential does not represent what amount of savings could be achieved through voluntary programs. Gulf further asserts that the approximate achievable potential value for the Two-Year Payback Measures is 12.2 percent of its technical potential value. Gulf requests that we reconsider our decision and adopt Gulf's revised residential goals as attached to Gulf's motion. Alternatively, Gulf would ask that we bifurcate Gulf's residential goals showing the difference between the E-TRC goals and Two-Year Payback Goals.

#### NRDC/SACE's Response

NRDC/SACE assert that we used our discretion to reintroduce a portion of the achievable potential eliminated by the two-year payback criteria in order to increase Gulf's goals. NRDC/SACE assert that record evidence shows that the goals set for Gulf are well within the achievable range.

Contrary to Gulf's assertion that we overlooked or failed to consider our goals on the technical potential of the top ten residential measures, NRDC/SACE contend that the transcript and record before us indicate that we intended to increase the DSM goals for Gulf and the other IOUs by using tables which exhibited the energy savings from a selection of measures excluded by the two-year payback. They further contend that the hearing transcripts indicate that we intended to approve an additional amount of energy savings from the two-year payback measures but did not intend to approve individual measures. Accordingly, NRDC/SACE respectfully request that we deny Gulf's motion for reconsideration because it does not show any error.



FIPUG's Response

FIPUG filed one consolidated response in support of FPL, PEF, and Gulf. FIPUG's arguments in support of FPL, PEF, and Gulf are summarized below.

FIPUG asserts that it supports cost-effective conservation and an approach to conservation that keeps rates reasonable and competitive while striking the appropriate balance between conservation and rate impact. FIPUG asserts that our conservation goals fail to maintain that balance and will result in a large rate impact on all customers.

FIPUG's response is supportive of FPL, PEF, and Gulf. FIPUG asserts that the "technically possible" goals set by this Commission for FPL, PEF, and Gulf ignore the real-world constraints and assume that 100 percent of the measures will be adopted by all ratepayers. This is unreasonable and burdens ratepayers with unnecessary costs. FIPUG contends that the use of "technically possible" goals are inappropriately inflated and will require ratepayers to pay for conservation measures that will never be implemented at the "technically possible" level. Thus, FIPUG asserts that we should clarify that such an approach was not our intent.

Analysis – Technical versus Achievable

The standard of review for reconsideration is whether the motion identifies a point of fact or law that we overlooked or failed to consider in rendering our order.

FPL, PEF, and Gulf contend that the approved conservation goals are based on programs that are technically possible rather than achievable. They also contend that the portion of the energy conservation goals associated with the less than two-year payback criteria that were approved by this Commission in Order No. PSC-09-0855-FOF-EG are overstated. Gulf further contends that its goals should be reduced to 12.2 percent of the measures' technical potential value.

In rendering our decision, we considered our staff's illustration of savings associated with applying the two-year payback criteria that eliminated many residential measures with considerable potential for energy savings. FPL's, PEF's, and Gulf's arguments overlook our discussion of the issue and subsequent decision that omitted reference to any particular measures or limitation on the number of those measures used.

In Order No. PSC-09-0855-FOF-EG, issued on December 30, 2009, on page 9, we found:

We are concerned that the utilities' use of the two-year payback criteria had the effect of screening out a substantial amount of potential savings. In order to recognize this potential, we have included in the residential goals for FPL, PEF, Gulf and TECO, savings from the residential measures included in the top-ten energy savings measures that were screened-out by the two-year payback criterion.

In that same order, on page 15, we further found:

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. The unconstrained E-TRC test is cost effective, from a system basis, and does not limit the amount of energy efficiency based on resource reliability needs. The E-TRC test includes cost estimates for future greenhouse gas emissions, but does not include utility lost revenues or customer incentive payments. As such, the E-TRC values are higher than the utility proposed E-RIM values. In addition, we have included the saving estimates for the residential portion of the top ten measures that were shown to have a payback period of two years or less in the numeric goals for FPL, PEF, TECO, and Gulf. *When submitting their programs for our approval, the utilities can consider the residential portion of the top ten measures, but they shall not be limited to those specific measures.*

(Emphasis added.)

As explicitly stated in our order, we intended the two-year payback element of our goals to be nothing more than a numerical representation of the savings we expect the utilities to be able to realize by including one or more of those identified measures in their energy conservation programs. Our inclusion of the residential portion of the two-year payback was not intended to limit or bind the utilities to specific measures; rather, our use of the numeric values of the residential portion of the two-year payback measures was merely intended for purposes of establishing the numeric goals that the utilities are required to achieve. Moreover, it is clear from the two Agenda Conference transcripts that we considered and understood the differences between technical and achievable potential savings when we decided to establish the conservation goals.<sup>5</sup>

We believe that FPL, PEF, and Gulf have not identified a point of fact or law that we overlooked or failed to consider in rendering our order. The matters raised in FPL's, PEF's, and Gulf's motions were considered by us and it is not proper for FPL, PEF, and Gulf to reargue these matters again upon reconsideration. See Sherwood, 111 So. 2d at 97-98. With regard to Gulf's disclaimer argument, as discussed above, we were aware of the differences between technical and achievable potential. With regard to Gulf's request to bifurcate its goals, the possibility of setting separate sets of goals was considered, but ultimately not implemented.<sup>6</sup> Accordingly, we find that the motions for reconsideration filed by FPL, PEF, and Gulf regarding the argument technical versus achievable are hereby denied because the motions fail to identify any point of fact or law that we overlooked or failed to consider in rendering our order.

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<sup>5</sup> November 10, 2009, Agenda Conference Transcript, Item No. 9, at 17-31, 51-60, 98-101; December 1, 2009, Agenda Conference Transcript, Item No. 12, at 19-23, 43-49, 58-61, 78-80.

<sup>6</sup> November 10, 2009, Agenda Conference Transcript, Item No. 9, at 96-98.

PEF'S MOTION FOR RECONSIDERATION – DOUBLE-COUNTED MEASURES

PEF's Motion

PEF asserts that in setting its goals we double-counted three measures, once in PEF's E-TRC goals and again in PEF's Top Ten goals. The double-counting of these measures also appears to be a mistake because double-counting results in higher DSM goals for PEF than would have been the case absent the double-counting error.

Because of this mistake, PEF respectfully requests that we reconsider our decision and issue corrected conservation goals for PEF.

NRDC/SACE's Response

NRDC/SACE contend that PEF fails to explain the origin of the double counting error. PEF failed to explain whether PEF was responsible for the error or provide any documents demonstrating the alleged error. Moreover, the savings data presented in PEF's motion does not match the savings data presented in staff's November 20, 2009, supplemental recommendation. Moreover, NRDC/SACE assert that PEF should not be permitted to selectively revise its data which it presented to the Commission. To the extent the Commission considers PEF's request, it should only do so as part of a full review of the two-year payback screen and require PEF to fully explain its alleged errors.

FIPUG's Response

FIPUG filed one response in support of FPL, PEF, and Gulf. FIPUG's arguments are summarized above.

Oral Motion to Reopen Record

At the March 16, 2010 Agenda Conference, PEF made an oral motion to reopen the record for the limited purpose of admitting PEF's corrected response to Staff's Seventh Set of Interrogatories, No. 66. Consistent with our decision with respect to JEA's motion to reopen the record, we find that the record shall be reopened for the limited purpose of admitting PEF's corrected response to Interrogatory No. 66, thus correcting a material fact upon which we based our final decision in setting PEF's goals. PEF's corrected response to Interrogatory No. 66 is shown in Attachment B, appended hereto and incorporated herein by reference. The effect of this corrected information on PEF's goals is discussed later in this order.

Analysis and Conclusion

Based on its oral motion to reopen the record, PEF contends that the conservation goals established were based on an incorrect discovery response provided by PEF. In setting PEF's goals, we relied upon an incorrect discovery response as a basis for our decision in setting PEF's conservation goals. Accordingly, we find that PEF's Motion for Reconsideration is hereby

granted with respect to the double-counted measures because it identifies a point of fact that we overlooked or failed to consider in rendering our decision. Therefore, PEF's goals shall be established as shown below.

### **Revised Commission-Approved Conservation Goals for PEF**

Year	Residential				Commercial/Industrial		
	Summer (MW)	Winter (MW)	Annual (GWh)		Summer (MW)	Winter (MW)	Annual (GWh)
2010	79.6	81.3	261.6		13.7	5.3	31.1
2011	81.5	86.8	267.6		16.2	5.3	33.0
2012	84.5	90.8	276.7		25.5	11.4	35.9
2013	86.5	93.5	282.7		25.9	11.5	37.7
2014	88.4	96.2	288.8		26.4	11.5	39.6
2015	93.8	100.9	309.9		27.6	11.7	46.2
2016	102.3	111.7	297.8		27.1	11.6	42.5
2017	101.9	111.1	291.8		27.0	11.6	40.6
2018	96.4	103.6	279.7		25.7	11.4	36.8
2019	81.9	79.1	270.6		22.3	11.3	34.0
Total	896.6	955.1	2827.1		237.3	102.6	377.4

### **NRDC/SACE'S MOTION FOR RECONSIDERATION**

#### **NRDC/SACE's Motion**

NRDC/SACE assert that the two-year payback screen used by PEF, FPL, TECO, and Gulf should not be employed because it is arbitrary, does not achieve the claimed purposed of limiting free riders, and eliminates the most cost-effective efficiency measures. NRDC/SACE assert that several Commissioners had expressed strong concerns about the use of the two-year payback screen in this case, and that even a former Commissioner during the 1994 goals proceeding expressed concerns about its use. Thus, we should reconsider our use of the two-year payback screen in general. NRDC/SACE assert that there is a question of whether we intended to include ten residential two-year payback measures or a variable number with respect to all four utilities. NRDC/SACE argue that if we wish to approve some but not all of the energy savings screened by the two-year payback measures, we should approve for each utility a portion of achievable potential results for the two-year payback, as identified by Witness Spellman. NRDC/SACE assert that during the pendency of the reconsideration of the two-year payback criteria, we should retain the currently approved conservation goals for each of the utilities.

#### **FPL's Response**

FPL asserts that NRDC/SACE fail to point to any fact or law that was overlooked. First, NRDC/SACE reargue their position on the use of the two-year payback screen. The two-year

payback screen was thoroughly litigated during the DSM proceeding and NRDC/SACE initially agreed to the use of the two-year payback screen. Despite NRDC/SACE's assertions to the contrary, we chose to accept, in part, the use of the two-year payback screen. FPL asserts that NRDC/SACE's two-year payback argument does not raise a point of law or mistake; thus, it fails to satisfy the standard for reconsideration.

Second, FPL disagrees with NRDC/SACE's assertion that we may have erred in setting goals based on the variable number of residential two-year payback measures screened out for each utility. FPL asserts this argument is inconsistent with NRDC/SACE's argument that we set goals based on energy savings and not particular measures. FPL also asserts that NRDC/SACE's argument is baseless as we were aware that some utilities had more residential measures when it set conservation goals. FPL asserts that NRDC/SACE's "arbitrary feeling that a mistake may have been made. . ." fails to provide an appropriate basis for reconsideration. Stewart Bonded Warehouse, 294 So. 2d at 317. FPL respectfully requests that NRDC/SACE's motion be denied.

#### PEF's Response

PEF asserts that the arguments offered by NRDC/SACE do not state a proper ground for reconsideration. First, that several Commissioners allegedly expressed "strong concerns" regarding the two-year payback screen means that we did consider the two-year payback screen when making its decision. Second, the allegation that a former Commissioner in 1994 allegedly expressed concerns about the two-year payback screen is irrelevant to our decision in this proceeding. Finally, NRDC/SACE's opinion that the two-year payback screen does not make sense does not constitute proper grounds for reconsideration. PEF asserts that NRDC/SACE made these two arguments at the hearing and we already considered both when we made our decision. PEF respectfully requests that we deny NRDC/SACE's motion for reconsideration.

#### Gulf's Response

Gulf asserts that NRDC/SACE are seeking a wholesale reconsideration of our treatment of the two-year payback measures and that we should reverse our ruling on the treatment of those measures. Gulf asserts that NRDC/SACE do not base their request on points of law or fact overlooked by this Commission. Gulf asserts that reconsideration is proper where we overlooked or failed to consider specific facts or points of law in rendering its order. See Order No. PSC-09-0571-FOF-EI, issued August 21, 2009, in Docket No. 080317-EI, In re: Petition of Rate Increase by Tampa Electric Company (citing Stewart Bonded Warehouse, Inc. v. Bevis, 291 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); Pingre v. Quaintance, 394 So.2d 161 (Fla. 1st DCA 1981). Moreover, Gulf asserts it is not appropriate to reargue matters which have already been considered and doing so is reversible error. See Order No. PSC-08-0304-PCO-TX, issued May 8, 2008, in Docket No. 080065-TX, In re Investigation of Vilaire Communication, Inc. (denying motion for reconsideration). Because NRDC/SACE's motion does not properly state grounds for reconsideration and fails as a matter of law, Gulf respectfully requests that we deny NRDC/SACE's motion.

FIPUG's Response

FIPUG's argues that we should reject NRDC/SACE's suggestion that rate impact is irrelevant. FIPUG asserts that the record shows that costs due to the new goals will increase. Moreover, FIPUG contends that goals should be set based on parameters that can actually be met and consider real world conditions, not simply programs which have "technical potential."

Analysis and Conclusion

As previously stated, the standard of review for reconsideration is whether the motion identifies a point of fact or law that we overlooked or failed to consider in rendering our order. In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959), citing State ex rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based on an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974). Moreover, reconsideration granted based on reweighing or rearguing evidence is reversible error on appeal. See Stewart Bonded Warehouse, Inc., 294 So. 2d 315 at 317.

NRDC/SACE's assertions that the use of the two-year payback screen is arbitrary or that goals should have been established based on Witness Spellman's achievable potential results are not points of fact or law that we overlooked or failed to consider. The decision to screen out measures using the two-year payback criteria was a decision by the Collaborative of which NRDC/SACE was a participant; it was not our decision. With regards to basing goals on Witness Spellman's achievable potential results which was in the record, we were within our statutory discretion not to base conservation goals on Witness Spellman's results and to approve conservation goals based on other competent, substantial evidence in the record. NRDC/SACE are simply rearguing matters that have been previously considered by this Commission. As discussed above, reargument of matters already considered is not an appropriate basis for reconsideration.

Accordingly, we find that NRDC/SACE's motion for reconsideration is hereby denied because the motion is essentially reargument, and fails to identify any point of fact or law that we overlooked or failed to consider in rendering our order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that JEA's motion for limited reopening of the record is hereby granted as set forth herein. It is further

ORDERED that JEA's Motion for Reconsideration is hereby granted as set forth herein. It is further

ORDERED that JEA's numeric conservation goals shall be revised as set forth herein. It is further

ORDERED that Florida Power & Light Company's Motion for Reconsideration is hereby denied as set forth herein. It is further

ORDERED that Progress Energy Florida, Inc.'s motion for limited reopening of the record is hereby granted as set forth herein. It is further

ORDERED that Progress Energy Florida, Inc.'s Motion for Reconsideration is denied in part and granted in part as set forth herein. It is further

ORDERED that Progress Energy Florida, Inc.'s numeric conservation goals shall be revised as set forth herein. It is further

ORDERED that Gulf Power Company's Motion for Reconsideration is hereby denied as set forth herein. It is further

ORDERED that the Natural Resources Defense Council and the Southern Alliance for Clean Energy's Motion for Reconsideration is hereby denied as set forth herein. It is further

ORDERED that all attachments appended hereto are incorporated herein by reference. It is further

ORDERED that these dockets shall be closed after the time for filing an appeal has run.

By ORDER of the Florida Public Service Commission this 31st day of March, 2010.

/s/ Ann Cole

ANN COLE

Commission Clerk

This is an electronic transmission. A copy of the original signature is available from the Commission's website, [www.floridapsc.com](http://www.floridapsc.com), or by faxing a request to the Office of Commission Clerk at 1-850-413-7118.

( S E A L )

KEF

NOTICE OF JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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 the Commission's final action in this matter may request 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 by filing a notice of appeal with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.



50. Please complete the table below by providing the existing and proposed annual demand goals for summer (MW), winter (MW), and as annual energy (GWh) incrementally for each year. Please also provide the actual annual savings achieved for summer (MW), winter (MW), and as annual energy (GWh) incrementally for each year.

**Original Response:** Please see the completed table below, which includes the requested information.

Year	Summer Demand (MW)			Winter Demand (MW)			Annual Energy (GWh)		
	Existing Goals	Proposed Goals	Actual Savings	Existing Goals	Proposed Goals	Actual Savings	Existing Goals	Proposed Goals	Actual Savings
2005	0		1.6	0		1.2	0		4.6
2006	0		4.4	0		2.4	0		18.0
2007	0		4.3	0		2.6	0		31.1
2008	0		7.4	0		5.7	0		62.1
2009	0			0			0		
2010	0	0		0	0		0	0	
2011	0	0		0	0		0	0	
2012	0	0		0	0		0	0	
2013	0	0		0	0		0	0	
2014	0	0		0	0		0	0	
2015		0			0			0	
2016		0			0			0	
2017		0			0			0	
2018		0			0			0	
2019		0			0			0	

**Corrected Response:** Please see the completed table below, which includes the requested information.

Year	Summer Demand (MW)			Winter Demand (MW)			Annual Energy (GWh)		
	Existing Goals	Proposed Goals	Actual Savings	Existing Goals	Proposed Goals	Actual Savings	Existing Goals	Proposed Goals	Actual Savings
2005	0		1.6	0		1.2	0		4.6
2006	0		2.7	0		1.3	0		13.4
2007	0		-0.1	0		0.1	0		13.0
2008	0		3.1	0		3.1	0		31.1
2009	0			0			0		
2010	0	0		0	0		0	0	
2011	0	0		0	0		0	0	
2012	0	0		0	0		0	0	
2013	0	0		0	0		0	0	
2014	0	0		0	0		0	0	
2015		0			0			0	
2016		0			0			0	
2017		0			0			0	
2018		0			0			0	
2019		0			0			0	

**Progress Energy Florida, Inc.'s Corrected Supplemental Response to Staff's Seventh Set of Interrogatories, No. 66****Residential Measure List: TRC Achievable Results NOT in the RIM portfolio \***

Measure Information				Cost Effectiveness		Average Annual Savings *			Single**	Applicable	GWH	Single**	Summer	Single**	Winter
Measure Type	Customer Type	Measure #	Measure Name	E-TRC Test Value	E-RIM Test Value	Summer Demand (MW)	Winter Demand (MW)	Annual Energy (GWH)	Measure KWH	Households or Bulbs	Savings	Summer KW	MW Savings	Winter KW	MW Savings
EE	Res - Mobile Home	231	CFL (18-Watt integral ballast), 2.5 hr/day	5.81	0.65	0.04395	0.06266	0.84000	102.7	711,879	73.11	0.0053	3.80	0.0076	5.41
EE	Res - Single Detached	801	Two Speed Pool Pump (1.5 hp)	2.90	0.84	0.42533	0.16819	1.99217	820.5	251,878	206.67	0.1752	44.13	0.0341	8.59
EE	Res - Multi Attached	802	High Efficiency One Speed Pool Pump (1.5 hp)	5.67	0.86	0.00363	0.00071	0.01701	841.0	3,519	2.96	0.1796	0.63	0.0343	0.12

\*Per Interrogatory question 66, these are the differences between E-RIM High and E-TRC High divided by the 10 Year Plan to get Annual Savings.

\*\*The actual single measure annual savings per household.

Source – Staff's 7th Set of ROG's to PEF (Nos. 41-80) Attachment H - 2 of 12; F\_Saere\_PEF\_TRC\_H.xls subtracting F\_Saere\_PEF\_RIM\_H.xls

## **APPENDIX H**

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of demand-side management plan of Florida Power & Light Company.	DOCKET NO. 100155-EG ORDER NO. PSC-11-0346-PAA-EG ISSUED: August 16, 2011
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The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman  
LISA POLAK EDGAR  
RONALD A. BRISÉ  
EDUARDO E. BALBIS  
JULIE I. BROWN

**NOTICE OF PROPOSED AGENCY ACTION**  
**ORDER MODIFYING AND APPROVING DEMAND-SIDE MANAGEMENT PLAN**

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

**Case Background**

As required by the Florida Energy Efficiency and Conservation Act (FEECA), Sections 366.80 through 366.85 and 403.519, Florida Statutes (F.S.), we have adopted annual goals for seasonal peak demand and annual energy consumption for the FEECA Utilities. They are Florida Power & Light Company (FPL), Progress Energy Florida (PEF), Tampa Electric Company (TECO), Gulf Power Company (Gulf), Florida Public Utilities Company (FPUC), JEA, and Orlando Utilities Commission (OUC).

Pursuant to Rule 25-17.008, Florida Administrative Code (F.A.C.), in any conservation goal setting proceeding, we require each FEECA utility to submit cost-effectiveness information based on, at a minimum, three tests: (1) the Participants test; (2) the Rate Impact Measure (RIM) test, and (3) the Total Resource Cost (TRC) test. The Participants test measures program cost-effectiveness to the participating customer. The RIM test measures program cost-effectiveness to the utility's overall rate payers, taking into consideration the cost of incentives paid to participating customers and lost revenues due to reduced energy sales that may result in the need for a future rate case. The TRC test measures total net savings on a utility system-wide basis. In past goal setting proceedings, we established conservation goals based primarily on measures that pass both the Participants test and the RIM test.

The 2008 Legislative Session resulted in several changes to the FEECA Statute, and our most recent goal-setting proceeding was the first implementation of these modifications. By Order No. PSC-09-0855-FOF-EG, issued December 30, 2009, in Docket No. 080407-EG, we established annual numeric goals for summer peak demand, winter peak demand, and annual energy consumption for the period 2010 through 2019, based upon an unconstrained Enhanced-Total Resource test (E-TRC) for the investor-owned utilities (IOUs). The E-TRC test differs from the conventional TRC test by taking into consideration an estimate of additional costs imposed by the potential regulation of greenhouse gas emissions. In addition, the numeric impact of certain measures with a payback period of two years or less was also included in the goals. Further, we authorized the IOUs to spend up to 10 percent of their historic expenditures through the Energy Conservation Cost Recovery (ECCR) clause as an annual cap for pilot programs to promote solar water heating (Thermal) and solar photovoltaic (PV) installations.

On January 14, 2010, FPL filed a Motion for Reconsideration of our goal setting decision in Docket No. 080407-EI; we denied Reconsideration in Order No. PSC-10-0198-FOF-EG, issued March 31, 2010. On March 30, 2010, FPL filed a petition requesting approval of its Demand-Side Management (DSM) Plan pursuant to Rule 25-17.0021, F.A.C. The Florida Industrial Users Group (FIPUG), the Southern Alliance for Clean Energy (SACE), the Florida Solar Energy Industry Association (FlaSEIA), and Wal-Mart Stores East, LP, and Sam's East, Inc. (Walmart) were all granted leave to intervene in this proceeding.

On July 14, 2010, SACE filed comments on the FEECA Utilities' DSM Plans. These comments were amended on August 3, 2010, to include comments regarding FPUC. No other interveners filed comments. On July 28, and August 12, 2010, PEF and Gulf, respectively, filed responses to SACE's comments. On December 22, 2010, SACE filed additional comments on the FEECA Utilities' DSM Plans. On April 25, 2011, SACE filed comments similar to those it submitted in December 2010 on FPL and PEF's revised plans.

On January 31, 2011, we issued Order No. PSC-11-0079-PAA-EG, declining to approve FPL's Demand-Side Management Plan for failure to satisfy the numeric conservation goals set forth in Order No. PSC-09-0855-FOF-EG. In that Order, we required FPL to re-file its Demand-Side Management Plan within 30 days from the date of the Consummating Order, and also approved FPL's seven proposed solar pilot programs for immediate implementation. FPL filed a Modified DSM Plan on March 25, 2011; along with the Modified DSM Plan, FPL also filed an Alternate Plan which has a lower rate impact but reduced projected savings compared to the Modified Plan. We have jurisdiction over this matter pursuant to Sections 366.80 through 366.85 and 403.519, F.S.

### **FPL's Modified Plan**

As stated in the Case Background, FPL's initial DSM filing submitted March 30, 2010, was insufficient to meet several of the annual goals in multiple categories and multiple years. By Order No. PSC-09-0855-FOF-EG, we directed FPL to file specific program modifications or additions needed for the Company's DSM Plan to comply with the goals established in the Order. FPL's Modified DSM Plan, submitted on March 25, 2011, modified certain programs to comply with the goals. FPL projects the Modified Plan will meet all annual residential and

commercial/industrial goals, and the Modified Plan represents an increase of approximately 11.6 megawatts (MW) of summer peak demand, 18.1 MW of winter peak demand, and 57.6 gigawatt-hours (GWh) of annual energy, over the original DSM plan filed on March 30, 2010.

### Modified Plan Programs

FPL's Modified Plan contains the same 34 energy and demand saving programs FPL proposed in its March 30, 2010, Plan, including the seven solar pilot programs we approved in Order No. PSC-11-0079-PAA-EG. In revising the March 30, 2010, DSM Plan, FPL increased participation levels in three of the energy and demand saving programs of the Modified Plan.

### Modified Plan Rate Impact

The costs to implement a DSM program consist of administrative expenses, equipment costs, and incentive payments to the participants, all of which is recovered by the Company through the ECCR clause proceeding. This clause represents a monthly bill impact to customers as part of the non-fuel cost of energy on their bill. Utility incentive payments are not included in the E-TRC test but are recovered through the utility's ECCR factor and have an immediate impact on customer rates.

Much like investments in generation, transmission, and distribution, investments in energy efficiency have an immediate rate impact but produce savings over time. Table 1 shows the ECCR Expenditures and Rate Impact on a typical residential customer's bill under the Modified Plan over ten years. The monthly bill impact of FPL's ECCR factor would range from \$3.70 in 2011 (3.08 percent of the entire bill) to \$4.11 (3.41 percent of the bill) in 2014, when we are due to revisit the conservation goals as required by Section 366.82(6), F.S.

Table 1  
Estimated Rate Impact of FPL's Modified Plan  
(1,200 kWh Residential Bill)

	<b>ECCR Component</b>	<b>Estimated Residential Bill</b>	<b>Percent of Bill</b>
<b>Year</b>	<b>(\$/Mo.)</b>	<b>(\$/Mo.)</b>	<b>(% Bill)</b>
<b>Current</b>	\$2.26	\$116.33	1.94%
<b>2011</b>	\$3.70	\$120.03	3.08%
<b>2012</b>	\$3.94	\$120.27	3.28%
<b>2013</b>	\$4.07	\$120.40	3.38%
<b>2014</b>	\$4.11	\$120.44	3.41%
<b>2015</b>	\$3.86	\$120.19	3.21%
<b>2016</b>	\$3.62	\$119.95	3.02%
<b>2017</b>	\$3.36	\$119.69	2.81%
<b>2018</b>	\$3.14	\$119.47	2.63%
<b>2019</b>	\$2.91	\$119.24	2.44%

While not immediately applied to customer's bills, energy saving DSM programs can also have an impact on a utility's base rates. When revenues go down because fewer kWh were consumed, the utility may have to make up the difference by requesting an increase in rates to maintain a reasonable Return on Equity (ROE). If a company's ROE falls below the 100 basis point range we authorize, the utility may file a petition for a rate increase. Table 2 below shows that based on FPL's Modified Plan projections, the Company's lost revenue from energy savings may have an impact of more than 100 basis points after 2016.

Table 2  
FPL Basis Point Impact of Goals  
Modified Plan

Year	Lost Revenue (\$000)	Basis Points
2010	5,133.8	3.9
2011	18,900.7	14.5
2012	39,964.8	30.7
2013	63,568.6	48.9
2014	91,409.8	70.3
2015	119,224.8	91.7
2016	<b>141,685.2</b>	<b>109.0</b>
2017	164,320.2	126.4
2018	188,692.1	145.1
2019	208,114.1	160.1

We believe the increase to an average residential customer's monthly bill that would result from implementing FPL's Modified Plan constitutes an undue rate impact on customers. Florida Statutes provide a remedy for addressing such cases of conservation plans having an undue impact on customer rates.

#### **Modification and Approval of Demand-Side Management Plan**

Section 366.82(7), Florida Statutes, states:

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. . . .

As we noted above, the Modified Plan filed by FPL is projected to meet the goals we previously established, but at a significant increase in the rates paid by FPL customers. We find that both Plans filed by FPL (Modified and Alternative) will have an undue impact on the costs passed on



to consumers, and that the public interest will be served by requiring modifications to FPL's DSM Plan. Therefore, we hereby determine to exercise the flexibility specifically granted us by statute to modify the Plans and Programs set forth by FPL.

Currently, FPL has an approved Plan as a result of our 2004 goal setting proceeding, and the programs contained in that Plan have yielded significant increases in conservation and decreases in the growth of energy and peak demand. FPL's Modified Plan includes many of these existing Programs, with some modifications. We therefore conclude that the Programs currently in effect, even without modification, are likely to continue to increase energy conservation and decrease seasonal peak demand. The rate impacts of the existing Plan are relatively minor. We find that the Programs currently in effect, contained in FPL's existing Plan, are cost effective and accomplish the intent of the statute. Therefore, exercising the specific authority granted us by Section 366.82(7), F.S., we hereby modify FPL's 2010 Demand-Side Management Plan, such that the DSM Plan shall consist of those programs that are currently in effect today.

We do wish to specifically note that Order No. PSC-11-0079-PAA-EG, while denying the Petition to approve the DSM Plan, did specifically approve seven solar pilot programs. Those programs have been implemented to date. Given that they are pilot programs, we believe they should be continued, and reaffirm that provision of Order No. PSC-11-0079-PAA-EG.

#### **Financial Reward or Penalty under Section 366.82(8), Florida Statutes**

Section 366.82(8), F.S., gives us the authority to financially reward or penalize a company based on whether its conservation goals are achieved, at our discretion. In Order No. PSC-09-0855-FOF-EG, we concluded that, "[w]e may establish, through a limited proceeding, a financial reward or penalty for a rate-regulated utility based upon the utility's performance in accordance with Section 366.82(8) and (9), F.S."

As a result of our decision to modify FPL's 2010 Plan, we wish to clarify that FPL shall not be eligible for any financial reward pursuant to these statutory sections unless it exceeds the goals set forth in Order No. PSC-09-0855-FOF-EG. Conversely, FPL 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.

#### **Closure of Docket**

By our vote today, we have taken action to approve a DSM Plan and continue existing Programs for FPL. If no person whose substantial interests are affected by this proposed agency action files a protest within 21 days of the issuance of this Order, we will issue a Consummating Order, and the docket shall be closed. If a protest is filed within 21 days of the issuance of this Order, however, the docket shall remain open to resolve the protest.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's March 25, 2011, Modified DSM Plan and Alternative DSM Plan are not approved as filed. It is further

ORDERED that a newly modified DSM Plan, consisting of existing Programs currently in effect, as detailed in the body of this Order, is Approved. It is further

ORDERED that Florida Power & Light Company shall only be eligible for a financial reward or penalty pursuant to Sections 366.82(8) and (9), Florida Statutes, as set forth in the body of this Order. It is further

ORDERED that the Solar Pilot Programs approved in Order No. PSC-11-0079-PAA-EG are continued. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that upon the issuance of a Consummating Order, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 16th day of August, 2011.

/s/ Ann Cole

---

ANN COLE

Commission Clerk

Florida Public Service Commission

2540 Shumard Oak Boulevard

Tallahassee, Florida 32399

(850) 413-6770

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LDH

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, 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 will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 6, 2011.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

## **APPENDIX I**

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of demand-side management plan of Progress Energy Florida, Inc.	DOCKET NO. 100160-EG ORDER NO. PSC-11-0347-PAA-EG ISSUED: August 16, 2011
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The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman  
LISA POLAK EDGAR  
RONALD A. BRISÉ  
EDUARDO E. BALBIS  
JULIE I. BROWN

**NOTICE OF PROPOSED AGENCY ACTION**  
**ORDER MODIFYING AND APPROVING DEMAND-SIDE MANAGEMENT PLAN**

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

**Case Background**

As required by the Florida Energy Efficiency and Conservation Act (FEECA), Sections 366.80 through 366.85 and 403.519, Florida Statutes (F.S.), we have adopted annual goals for seasonal peak demand and annual energy consumption for the FEECA Utilities. These include Florida Power & Light Company (FPL), Progress Energy Florida, Inc. (PEF), Tampa Electric Company (TECO), Gulf Power Company (Gulf), Florida Public Utilities Company (FPUC), JEA, and Orlando Utilities Commission (OUC).

Pursuant to Rule 25-17.008, Florida Administrative Code (F.A.C.), in any conservation goal setting proceeding, we require each FEECA utility to submit cost-effectiveness information based on, at a minimum, three tests: (1) the Participants test; (2) the Rate Impact Measure (RIM) test, and (3) the Total Resource Cost (TRC) test. The Participants test measures program cost-effectiveness to the participating customer. The RIM test measures program cost-effectiveness to the utility's overall rate payers, taking into consideration the cost of incentives paid to participating customers and lost revenues due to reduced energy sales that may result in the need for a future rate case. The TRC test measures total net savings on a utility system-wide basis. In past goal setting proceedings, we established conservation goals based primarily on measures that pass both the Participants test and the RIM test.

The 2008 Legislative Session resulted in several changes to the FEECA Statutes, and our 2008 goal-setting proceeding was the first implementation of these modifications. By Order No. PSC-09-0855-FOF-EG, issued December 30, 2009, in Docket Number 080408-EG, we established annual numeric goals for summer peak demand, winter peak demand, and annual energy conservation for the period 2010 through 2019, based upon an unconstrained Enhanced-Total Resource test (E-TRC) for the investor-owned utilities (IOUs). The E-TRC test differs from the conventional TRC test by taking into consideration an estimate of additional costs imposed by the potential regulation of greenhouse gas emissions. In addition, the numeric impacts of certain measures with a payback period of two years or less were also included in the goals. Further, the IOUs subject to FEECA were authorized to spend up to 10 percent of their historic expenditures through the Energy Conservation Cost Recovery (ECCR) clause as an annual cap for pilot programs to promote solar water heating (Thermal) and solar photovoltaic (PV) installations.

On January 12, 2010, PEF filed a Motion for Reconsideration of our goal setting decision in Docket No. 080408-EG. Order No. PSC-10-0198-FOF-EG, issued March 31, 2010, granted, in part, PEF's reconsideration which revised PEF's numeric goals to correct a discovery response that caused a double-counting error. On March 30, 2010, PEF filed a petition requesting approval of its Demand-Side Management (DSM) Plan pursuant to Rule 25-17.0021, Florida Administrative Code (F.A.C.) (Docket No. 100160-EG). The Florida Industrial Users Group (FIPUG), White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (PCS Phosphate), the Southern Alliance for Clean Energy (SACE), the Florida Solar Energy Industry Association (FlaSEIA), and Wal-Mart Stores East, LP, and Sam's East, Inc. (Walmart) were all granted leave to intervene in the proceeding.

On July 14, 2010, SACE filed comments on the FEECA Utilities' DSM Plans. These comments were amended on August 3, 2010, to include comments regarding FPUC. No other intervenors filed comments. On July 28, and August 12, 2010, PEF and Gulf, respectively, filed responses to SACE's comments.

On September 1, 2010, our staff filed a recommendation, noting that the DSM Plan filed by PEF on March 30, 2010, did not meet all annual goals we set for PEF in Order No. PSC-10-0198-FOF-EG. On October 4, 2010, we issued Order No. PSC-10-0605-PAA-EG approving six solar pilot programs but denying the remainder of PEF's petition and directing the Company to modify its DSM Plan to meet the annual goals we originally set. During the discussion at the September 14, 2010, Commission Conference, we also encouraged PEF to provide an alternative DSM Plan to reduce the customer rate impact in addition to the DSM Plan to meet our original goals. Therefore, on November 29, 2010, the Company filed two DSM Plans: an Original Goal Scenario DSM Plan and a Revised Goal DSM Plan. For clarity and ease of reference, the Original Goal Scenario DSM Plan, which features programs designed to meet the full demand and energy savings goals, will be referred to throughout the remainder of this Order as the "Compliance Plan" and the Revised Goal DSM Plan, which has a lower rate impact, but reduced projected savings, will be referred to as the "Rate Mitigation Plan."

On December 22, 2010, SACE filed a letter offering comments on the DSM plans submitted by PEF and several of the other IOUs. The letter references the August 3, 2010, filing by SACE relating to the PEF's initial DSM filing, and updates several issues relating to the Company's new DSM Plans. On April 25, 2011, SACE filed another letter offering similar comments and recommendations with regard to PEF's new DSM Plans filed on November 29, 2010, and FPL's modified and alternate DSM Plans filed March 25, 2011. On May 9, 2011, SACE filed a letter providing its comparison of PEF's proposed DSM plans filed on November 29, 2010, with Progress Energy Carolina's DSM/energy efficiency cost recovery rider application filed on May 2, 2011, with the South Carolina Public Service Commission. We have jurisdiction over this matter pursuant to Sections 366.80 through 366.85, F.S.

### **PEF's Compliance Plan**

As noted above, PEF's initial filing submitted March 30, 2010, was insufficient to meet several of the annual goals in multiple categories. We directed PEF, in Order No. PSC-10-0605-PAA-EG, to file a modified DSM Plan which would comply with the goal-setting Order. However, the Compliance Plan PEF filed on November 29, 2010, still failed to fully meet the goals we established. Specifically, PEF's filing failed to achieve the annual and cumulative summer and winter demand (MW) goals for the commercial sector. Consequently, our staff sent a data request<sup>1</sup> to PEF requesting an explanation for PEF's failure to comply with our Order. PEF responded that it had inadvertently developed the portfolio of commercial programs in the Compliance Plan based upon an estimate of the commercial summer and winter demand (MW) goals "at-the-meter" rather than targeting the actual Commission-established demand goals which are "at-the-generator." This resulted in the assumed commercial demand savings being less than the established demand goals. PEF modified anticipated participation levels for measures within its Better Business program which were sufficient to eliminate the deficiency. With the provision of these modifications, PEF's Compliance Plan satisfies our Order and features programs designed to fully meet the established demand and energy savings goals.

### **Compliance Plan Programs**

PEF's Compliance Plan includes seven residential programs and ten commercial/industrial programs. One of the residential programs, Technical Potential, is new. Three of the commercial/industrial programs are new: Commercial Green Building, Business Energy Saver, and Business Energy Response. Modifications, such as adding new measures, have been made to most of the programs. The status of each program relative to PEF programs currently in effect is indicated in Table 1, below.

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<sup>1</sup> Staff's 10<sup>th</sup> Data Request to PEF, Question Number 1 (a – d), issued December 9, 2010.

Table 1 – Compliance Plan Programs

Program Name	Program Status
<b>Residential Portfolio</b>	
1. Technical Potential	New
2. Home Energy Improvement	Modified
3. Residential New Construction	Modified
4. Neighborhood Energy Saver	Modified
5. Low Income Weatherization Assistance	Modified
6. Home Energy Check	Modified
7. Residential Energy Management	Existing
<b>Commercial/Industrial Portfolio</b>	
1. Business Energy Check	Modified
2. Commercial Green Building	New
3. Business Energy Saver	New
4. Commercial/Industrial New Construction	Modified
5. Better Business	Modified
6. Innovation Incentive	Modified
7. Business Energy Response	New
8. Interruptible Service	Modified
9. Curtailable Service	Modified
10. Standby Generation	Modified
<b>Renewable Portfolio</b>	
1. Qualifying Facilities	Existing
2. Technology Development	Modified

#### Rate Impact of Compliance Plan

The costs to implement a DSM program consist of administrative expenses, equipment costs, and incentive payments to the participants, all of which are recovered by the Company through its ECCR clause. This clause represents a monthly bill impact to customers as part of the non-fuel cost of energy on their bills. Utility incentive payments, not included in the E-TRC, are recovered through the utility's ECCR factor and have an immediate impact on customer rates.



Much like investments in generation, transmission, and distribution, investments in energy efficiency have an immediate rate impact but produce savings over time. Table 2 shows the ECCR Expenditures and Rate Impact on a typical residential customer's bill under the Compliance Plan over ten years. The monthly bill impact of PEF's ECCR factor would range from \$11.28 in 2011 to \$16.52 in 2014, when we are due to revisit the conservation goals as required by Section 366.82(6), F.S.

Table 2 - Estimated Rate Impact of PEF's Compliance Plan Associated with Goals  
(1,200 kWh Residential Bill)

Year	ECCR Component (\$/mo)	Estimated Residential Bill (\$/mo)	Percent of Bill (% Bill)
2010	\$3.24	\$154.58	2.10%
2011	\$11.17	\$162.51	6.88%
2012	\$12.59	\$163.93	7.68%
2013	\$13.31	\$164.65	8.08%
2014	\$14.28	\$165.62	8.62%
2015	\$16.34	\$167.68	9.74%
2016	\$16.20	\$167.54	9.67%
2017	\$16.94	\$168.28	10.06%
2018	\$16.46	\$167.80	9.81%
2019	\$16.20	\$167.54	9.67%

We believe the increase to an average residential customer's monthly bill that would result from implementing PEF's Compliance Plan is disproportionately high and clearly constitutes an undue rate impact on PEF's customers. As will be discussed below, Florida Statutes provide a remedy for addressing such cases of conservation plans having an undue impact on customer rates.

#### **PEF's Rate Mitigation Plan**

As mentioned in the case background, due to the significant rate impact associated with the initial filing, we also encouraged PEF to submit an alternative DSM Plan to lessen the rate impact over the planning period. The Company's Rate Mitigation Plan does not project achievement of our approved goals for residential customers. Residential goal achievement is forecast at less than 70 percent for each category, including 64.4 percent for summer peak demand, 69.8 percent for winter peak demand, and 48.8 percent for annual energy. However, goals for commercial/industrial customers are projected to be achieved or exceeded in each category under the Rate Mitigation Plan. Even so, combining the savings from the residential and commercial/industrial categories fails to result in the Rate Mitigation Plan meeting the goals we set.

#### **Mitigation Plan Programs**

PEF's Rate Mitigation Plan contains the same programs as the Compliance Plan, except that the Technical Potential program in the residential portfolio has been replaced with three

programs. Two of these programs, Residential Lighting and Appliance Recycling, were formerly measures within the Technical Potential program and have simply been converted to stand-alone programs. The third program, Residential Behavior Modification, is a newly designed program which will provide reports to customers that allow them to compare their energy use and consumption patterns with that of neighbors in similar homes.

#### Rate Impact of Mitigation Plan

As discussed above, the costs to implement a DSM program consist of administrative expenses, equipment costs, and incentive payments to the participants, which are recovered by the Company through its ECCR clause. This clause represents a monthly bill impact to customers as part of the non-fuel cost of energy on their bills. Table 4 shows the ECCR Expenditures and Rate Impact on a typical residential customer's bill under the Rate Mitigation Plan over ten years. Under the Rate Mitigation Plan, the monthly bill impact would range from \$4.73 in 2011 to \$6.13 in 2014, when we are due to revisit the conservation goals as required by Section 366.82(6), F.S.

Table 4 - Estimated Rate Impact of PEF's Rate Mitigation Plan Associated with Goals  
(1,200 kWh Residential Bill)

Year	ECCR Component (\$/mo)	Estimated Residential Bill (\$/mo)	Percent of Bill (% Bill)
2010	\$3.24	\$154.58	2.10%
2011	\$4.73	\$156.07	3.03%
2012	\$5.20	\$156.54	3.32%
2013	\$5.67	\$157.01	3.61%
2014	\$6.13	\$157.47	3.89%
2015	\$5.98	\$157.32	3.80%
2016	\$5.66	\$157.00	3.60%
2017	\$5.25	\$156.59	3.35%
2018	\$5.05	\$156.39	3.23%
2019	\$4.92	\$156.26	3.15%

As with our finding regarding PEF's Compliance Plan, discussed above, we believe the increase to an average residential customer's monthly bill that would result from implementing PEF's Rate Mitigation Plan is also high and constitutes an undue rate impact on customers. As will be discussed below, Florida Statutes provide a remedy for addressing such cases of conservation plans having an undue impact on customer rates.

#### Modification and Approval of Demand-Side Management Plan

Section 366.82(7), Florida Statutes, states as follows:

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. . . .

As we noted above, the Compliance Plan filed by PEF is projected to meet the goals we previously established, but at a significant increase in the rates paid by PEF customers. We further noted that PEF's Rate Mitigation Plan is not estimated to meet the goals we established, yet also has a substantial rate increase. After deliberation, we find that both Plans filed by PEF will have an undue impact on the costs passed on to consumers, and that the public interest will be served by requiring modifications to PEF's DSM Plan. Therefore, we hereby determine to exercise the flexibility specifically granted us by statute to modify the Plans and Programs set forth by PEF.

Currently, PEF has an approved Plan as a result of our 2004 goal setting process, and the programs contained in that Plan have yielded significant increases in conservation and decreases in the growth of energy and peak demand. As noted above, both the Compliance Plan and Rate Mitigation Plan substantially rely on these existing Programs, with some modifications, and only a few new programs. We therefore conclude that the Programs currently in effect, even without modification, are likely to continue to increase energy conservation and decrease seasonal peak demand. As further discussed above, the rate impacts of the existing Plan are relatively minor. We find that the Programs currently in effect, contained in PEF's existing Plan, are cost effective and accomplish the intent of the statute. Therefore, exercising the specific authority granted us by Section 366.82(7), F.S., we hereby modify PEF's 2010 Demand-Side Management Plan, such that the DSM Plan shall consist of those programs that are currently in effect today.

We do wish to specifically note that Order No. PSC-10-0605-PAA-EG, while denying the Petition to approve the DSM Plan, did specifically approve six solar pilot programs. Those programs have been implemented to date. Given that they are pilot programs, we believe they should be continued, and reaffirm that provision of Order No. PSC-10-0605-PAA-EG.

#### **Financial Reward or Penalty under Section 366.82(8), Florida Statutes**

Section 366.82(8), F.S., gives us the authority to financially reward or penalize a company based on whether its conservation goals are achieved, at our discretion. In Order No. PSC-09-0855-FOF-EG, we concluded that, "[w]e may establish, through a limited proceeding, a financial reward or penalty for a rate-regulated utility based upon the utility's performance in accordance with Section 366.82(8) and (9), F.S."

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-09-0855-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.

**Closure of Docket**

By our vote today, we have taken action to approve a DSM Plan and continue existing Programs for PEF. If no person whose substantial interests are affected by this proposed agency action files a protest within 21 days of the issuance of this Order, we will issue a Consummating Order, and the docket shall be closed. If a protest is filed within 21 days of the issuance of this Order, however, the docket shall remain open to resolve the protest.

Based on the foregoing, it is

**ORDERED** by the Florida Public Service Commission that Progress Energy Florida, Inc.'s November 29, 2010, Original Goal Scenario DSM Plan and Revised Goal DSM Plan are not approved as filed. It is further

**ORDERED** that a Modified DSM Plan, consisting of existing Programs currently in effect, as detailed in the body of this Order, is Approved. It is further

**ORDERED** that Progress Energy Florida, Inc. shall only be eligible for a financial reward or penalty pursuant to Section 366.82(8) and (9), Florida Statutes as set forth in the body of this Order. It is further

**ORDERED** that the Solar Pilot Programs approved in Order No. PSC-10-0605-FOF-EG are continued. It is further

**ORDERED** that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

**ORDERED** that upon the issuance of a Consummating Order, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 16th day of August, 2011.

/s/ Ann Cole

ANN COLE

Commission Clerk

Florida Public Service Commission

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Tallahassee, Florida 32399

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LDH

**NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW**

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Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 6, 2011.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.