

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Commission review of numeric conservation goals (Florida Power & Light Company)	Docket No. 130199-EI
In re: Commission review of numeric Conservation goals (Duke Energy Florida, Inc.)	Docket No. 130200-EI
In re: Commission review of numeric conservation goals (Tampa Electric Company)	Docket No. 130201-EI
In re: Commission review of numeric Conservation goals (Gulf Power Company)	Docket No. 130202-EI
In re: Commission review of numeric conservation goals (JEA)	Docket No. 130203-EI
In re: Commission review of numeric conservation goals (Orlando Utilities Commission)	Docket No. 130204-EI
In re: Commission review of numeric conservation goals (Florida Public Utilities Company)	Docket No. 130205-EI

Filed: September 30, 2014

**DUKE ENERGY FLORIDA, INC.'S
POST-HEARING STATEMENT AND BRIEF**

Duke Energy Florida, Inc. (“DEF” or the “Company”), submits its Post-Hearing Statement of Issues, Positions, and Brief in this matter and states as follows:

I. Introduction

DEF’s proposed goals were developed using a rigorous process that has been approved by this Commission in previous proceedings. Unlike the results-driven goals proposed by the Sierra Club and the Southern Alliance for Clean Energy (“SACE”), DEF worked through a methodical process to determine the achievable potential. DEF identified a number of factors that are contributing to DEF’s lower goals in this cycle, but contrary to the intervenors’

arguments, FEECA does not obligate the Florida Public Service Commission (the “Commission” or “PSC”) to approve ever-increasing goals, especially when such goals would create cross-subsidization and increased rate impact for non-participants.

II. DEF’s proposed RIM goals are supported by an analytic and well-vetted process and should be approved by this Commission.

a. DEF’s process for developing its proposed energy efficiency goals complies with the fundamental legal requirements of FEECA and the Commission’s rules.

Florida utilities and this Commission are guided by statutory requirements of the Florida Energy Efficiency and Conservation Act, commonly known as “FEECA” (Sections 366.80-366.85 and 403.519, Florida Statutes (F.S.)), and the remainder of Chapter 366, F.S. which gives the Commission the fundamental responsibility of assuring that customers are charged fair, just, and reasonable rates by public utilities. Along with those statutory requirements, utilities and the Commission are also guided by the Commission’s Demand Side Management (“DSM”) goals rule which was adopted to implement FEECA, Rule 25-17.0021, F.A.C.

At least once every five years, Florida utilities are required to propose numeric goals for a ten-year period and provide ten-year projections of the total cost-effective, winter and summer peak demand savings and annual energy savings reasonably achievable in the residential and commercial/industrial classes through DSM based upon the utility’s most recent planning process. *See* § 366.82(6), F.S.; Rule 25-17.0021, F.A.C.

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;
- (c) The need for incentives to promote both customer-owned and utility-owned energy efficiency and demand-side renewable energy systems; and
- (d) The costs imposed by state and federal regulations on the emission of greenhouse gases.

§ 366.82(3), F.S. Further, the rules establish that utility goals must be cost-effective, reasonably achievable, and must consider free riders, interactions with building codes and appliance efficiency standards, and the utility's latest monitoring and evaluation of DSM programs. *See* Rule 25-17.0021(1) & (3), F.A.C.

In 2008, the legislature amended FEECA to refine and clarify the statute. However, the amendments did not substantively change the scope or intent of the statute, nor did the amendments mandate the use of a particular cost-effectiveness test or otherwise direct the Commission to adopt specific goals (such as a percentage of sales as advocated by the Sierra Club and SACE). (*See, e.g.*, Tr. Vol. I, pp. 107, ll. 23-25¹; *id.* at p. 108, ll. 3-10, 17-19; *id.* at p. 168, ll. 14-22).

It is helpful to understand the context of the FEECA statutes, both the original statutes and the 2008 Amendments, when considering the Commission's authority to set goals pursuant to the FEECA statutes. In essence, the 2008 Amendments only made some clarifying changes to the existing FEECA framework. There were no fundamental changes to the existing structure of the statutes governing the Commission's setting of DSM goals and programs.

Specifically, the legislative intent for FEECA is set forth in Section 366.81, Legislative findings and intent. Before the 2008 Amendments, the legislature intended that the PSC adopt goals and approve plans to conserve electric energy. The legislature had also recognized, even before the 2008 Amendments, that it was critical to utilize the most efficient and cost-effective energy conservation systems. Thus, the 2008 Amendments only made one real change to the legislative intent contained in section 366.81, which was to add "demand-side renewable energy

¹ Citations to the record are to Transcript Volume number, Page(s), and Line(s) in the following format: (Tr. Vol. xx, pp. yy, ll. zz). Exhibits are numbered as provided in Staff's Comprehensive Exhibit List.

systems” so that the FEECA statutes involved both energy conservation systems as well as demand-side renewable energy systems. Ch. 2008-277, Laws of Fla. (2008) (HB 7135).

The 2008 Amendments also resulted in changes to Section 366.82. Specifically, subsection (1)(b) was added to define “demand-side renewable energy.” Subsections (3) through (5) were also added, with other subsections re-numbered. The 2008 Amendments added additional factors for the PSC to consider when setting goals in Subsection (3). Subsections (4) and (5) regard funds to be appropriated for technical consulting assistance and participation by the Florida Energy and Climate Commission in the proceeding, respectively. The 2008 Amendments also re-numbered subsection (7), which largely stayed the same with the exception of two added sentences: “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.” Finally, the 2008 Amendments added subsections (8) and (9), which state that the PSC is allowed, but not required, to establish financial rewards and penalties associated with the utilities’ performance in relation to the goals.

Thus, the overall framework for establishing and implementing conservation goals had already been in place for decades before the 2008 Amendments. While the 2008 Amendments increased focus on demand-side renewable energy and provided additional guidance on what the PSC needed to consider when setting goals and adopting plans, they also provided the PSC with additional flexibility to consider things like cost and impacts to customers.

Therefore, neither FEECA nor the Commission’s rules require the Commission to set ever increasing DSM goals. This is not surprising in light of the standards described above; both

FEECA and the Commission's rules identify issues and criteria that the Commission must consider without mandating any end result other than the Commission's obligation to set "appropriate goals." (*See* § 366.82(2), F.S.; Tr. Vol. I, p. 94, ll. 1-10).

Through the Commission's leadership, DEF has been successfully and aggressively conducting energy efficiency and demand response programs for over 30 years. (Tr. Vol. III, p. 484, ll. 2-3; *id.* at p. 485, ll. 18-19). As a direct result of this effort, DEF has delivered significant savings and benefits to its customers. (*See id.* at p. 485, ll. 19-23). Additionally, changes in building codes and standards and economic conditions have increased the amount of efficiency that customers are undertaking on their own, without incentive from the utility. These factors reduce the number of programs and measures that DEF can cost-effectively offer its customers. (*See id.* at p. 484, ll. 3-7).

This Commission has established a well-reasoned and consistent implementation of FEECA. This precedent is reflected in Order Nos. PSC-94-1313-FOF-EG, PSC-99-1942-FOF-EG, and PSC-04-0769-PAA-EG. For example, in Order No. PSC-94-1313-FOF-EG, the Commission stated "We will set overall conservation goals for each utility based on measures that pass both the Participant and RIM^[2] tests ... 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."

In addition, the Florida Supreme Court has squarely supported the Commission's fair and equitable rulings. In its 1996 decision, the Court held:

In instructing the Commission to set conservation goals for increasing energy efficiency and conservation, the legislature directed the Commission to not approve any rate or rate structure which discriminates against any class of customers. *See* § 366.81, Fla. Stat. (1993). The Commission was therefore compelled to determine the overall effect on rates, generation expansion, and

² The Rate Impact Measure test ("RIM").

revenue requirements. Based on our review of the record, we find ample support for the Commission's determination to set conservation goals using RIM measures.³

In this decision, the Court clearly recognized the Total Resource Cost ("TRC") test, but in weighing and comparing the results, the Court found that measures passing the TRC test, 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. The Court concluded that the benefits of adopting a TRC goal were minimal and that increasing rates based on the TRC test was unjustified.⁴

The only departure from this consistent approach was in the 2009 goal-setting docket. There, the Commission set goals using the "enhanced TRC" test, which included consideration of "emission costs", a partial rejection of the two-year payback screen, and a departure from the utility's planning process. (*See* Tr. Vol. I, p. 109, ll. 6-10). However, when a plan was proposed to meet those goals, the Commission rejected the plan because of the undue adverse impacts on customers. (*See id.* at ll. 10-12; Tr. Vol. III, p. 494, ll. 5-10).

Thus, with the exception of the 2009 goal-setting docket, this Commission has consistently followed the well-reasoned policy of protecting customers by aggressively pursuing DSM that is cost-effective. Additionally, neither FEECA nor the Commission's rules require the Commission to set ever increasing DSM goals. This is not surprising in light of the standards described above; both FEECA and the Commission's rules identify issues and criteria that the Commission must consider without mandating any end result other than the Commission's obligation to set "appropriate goals." (*See* § 366.82(2), F.S.; Tr. Vol. I, p. 94, ll. 1-10). How the Commission chooses to weigh these criteria in setting the goals is, as with any other proceeding

³ *Legal Envtl. Asst. Found. v. Clark et al.*, 668 So. 2d 982, 988 (Fla. 1996).

⁴ *Id.* at 987.

under Chapter 366, left to its discretion with two caveats, the goals must be “appropriate” and the Commission must heed its fundamental responsibility of assuring that customers are charged fair, just, and reasonable rates.

b. Using the RIM test to establish goals reduces cross-subsidization and ensures that no customer is harmed by the implementation of DSM.

The objective of the DSM goals setting process is to establish appropriate goals that meet the criteria set forth in the fundamental legal requirements of the DSM goals rule and FEECA. It is important to note that the analysis, methodology, and considerations used by DEF fully complied with FEECA and the parties’ agreement with Commission Staff. (*See* Tr. Vol. III, p. 484, ll. 6-24; *id.* at pp. 498-501, 502-10).

The Commission should continue to set goals using the RIM and Participants tests. As Mr. Duff testified,⁵ “to account for rate impacts and other inequities that may arise when using cost effectiveness tests other than RIM, goals should be set based on measures that only pass the Participant and RIM tests.” (Tr. Vol. III, p. 541, ll. 5-8). This proposal will ensure that the DSM plan designed to achieve these goals will result in all customers, participants and non-participants alike, receiving rates and bills that are at worst no higher than they would have been without the programs. (*See id.* at p. 543, ll. 8-11).

That is, the RIM test is designed to eliminate the subsidization of participants by non-participants. The TRC test, to the contrary, benefits participants to the detriment of non-participants. It is fundamentally unfair to require non-participating customers (those who have no interest in participating or possibly cannot afford to participate) to subsidize other customers’ participation in voluntary programs. (*See* Tr. Vol. III, p. 493, ll. 4-9; *id.* at p. 494, ll. 1-4).

⁵ On May 15, 2014, DEF filed its Notice of adoption of testimony, exhibits, and discovery affidavits of Helena Guthrie by Tim Duff, document number 02310-14. At the hearing in this docket, Mr. Duff therefore sponsored Ms. Guthrie’s pre-filed testimony and exhibits (which exhibits retained their original designation of “HG-x”).

Moreover, there is a cost difference of \$161 million between the RIM and TRC portfolios over the 2015-2024 period. (*See* Tr. Vol. III, pp. 496-97).

Therefore, goals based on the RIM and Participant tests eliminate the problem of cross-subsidization, and implementation of these goals will ensure that all customers, including low income customers who may be the least likely to implement these measures, will not be harmed by their costs.

The Company's proposed goals are based on a collection of measures and programs that pass both the Participant and RIM tests. (*See* Tr. Vol. III, p. 485, ll. 1-3; *id.* at p. 566, ll. 9-11; *id.* at p. 598, ll. 13-16). Specifically, DEF is proposing a goal of 419 MW of winter peak demand reduction, 259 MW of summer peak demand reduction, and 195 GWh of energy reduction over the 2015-2024 time period. (*See id.* at p. 485, ll. 3-5; *id.* at p. 494, ll. 12-19). The proposed cost-effective DSM goals meet the requirements of Chapter 25-17, F.A.C. DEF proposes that the Commission set DSM goals using the Participant and RIM tests, because these tests are well-balanced and ensure that the perspectives of participants and all other ratepayers (including non-participants) are fairly considered. (*See id.* at p. 485, ll. 4-7). Using RIM ensures that non-participating customers will not subsidize participating customers, and it reasonably limits overall rates to our customers. (*See id.* at p. 543, ll. 8-24). As an example of this difference, DEF's proposed RIM portfolio represents an average of \$22.5 million per year lower cost to customers as compared to a TRC portfolio, or a total of \$112 million over the first five years of the planning period. (*See id.* at p. 493, ll. 9-12).

In support of the proposed DSM goals, DEF utilized the agreed-upon methodology to establish the proposed reasonably achievable, cost-effective goals. (*See* Tr. Vol. III, pp. 480-481; *id.* at p. 484, ll. 10-12). DEF first updated the Technical Potential Study completed by Itron

in the 2009 goal-setting proceeding (the “Updated Study”). (*Id.* at p. 484, ll. 12-13). The Updated Study resulted in the removal, addition, and adjustment of several measures due to changes in building codes and standards, new available technologies, and marketplace changes. (*Id.* at ll. 13-16). DEF then took the resulting measures from the Updated Study and performed Economic Potential and Achievable Potential analyses. (*Id.* at ll. 16-18). In the Economic Potential analysis, DEF accounted for free-ridership by screening out measures with a participant payback of less than two years without a utility incentive. (*Id.* at ll. 18-20). In the Achievable Potential analysis, DEF considered administrative costs and participant incentives to evaluate the cost-effectiveness of the remaining measures. (*Id.* at ll. 20-22). At this step DEF also applied a market penetration analysis to estimate the participation projections for each DSM measure. (*Id.* at ll. 22-24).

SACE has taken issue with the fact that DEF’s proposed goals are lower than both the goals approved in the last goal-setting docket and the overall technical potential; indeed SACE spent a good deal of time at hearing establishing these facts mathematically. (*See, e.g.*, Tr. Vol. III, pp. 608-30). As Mr. Duff explained, goals will vary in each respective goals-setting proceeding, either increasing or decreasing, because they are a function of what measures remain cost-effective, market saturation of existing programs, changes in building codes, and other factors. (*See* Tr. Vol. III, p. 484, ll. 3-7; *id.* at pp. 487-490). If the legislature had intended for the Commission to establish increased goals in each goal-setting proceeding, it easily could have drafted the FEECA statutes to so provide, yet it did not. Additionally, the proposed goals will *necessarily* be a percentage of, and not equal to, the full technical potential. The full technical potential assumes a perfect world in which every available megawatt can be saved through DSM measures. This is simply not the case for a number of reasons, including the costs to the general

body of customers and the infeasibility of achieving 100% customer participation for all measures.

Sierra Club and SACE also disparage the proper implementation of FEECA and the DSM goals rule by erroneously suggesting that the Commission should embark on a radical new approach that would no longer minimize rate impacts or rely on utility planning processes but would instead set goals by selecting an arbitrary percentage of sales goal. (*See, e.g.*, Tr. Vol. III, p. 538, ll. 11-17; *id.* at p. 541, ll. 19-24; *id.* at p. 544, ll. 1-5; *id.* at p. 546, ll. 4-14; *id.* at pp. 555-556; *id.* at p. 567, ll. 13-22). In fact, Sierra Club and SACE did not perform any meaningful study at all to support their proposals. (Tr. Vol. IV, p. 1012, ll. 20-21 (“In the ***absence of any meaningful analysis***, Florida Utilities should aspire to achieve 1% of retail sales annually.”)).⁶ Their approach is based on an arbitrary goal of one percent of sales per year that is simply baseless and unsupported by any “meaningful analysis,” as Ms. Mims candidly admitted. It is inherently contradictory to argue that DEF’s goals should be rejected based on alleged flaws in the analysis that produced them⁷ while simultaneously advocating on behalf of goals that are not based on any analysis whatsoever.

As they are not based on any meaningful analysis, their goals are unsurprisingly significantly greater than the achievable potential presented in the Updated Study. Also, due to the lack of analysis underpinning their proposed goals, Sierra Club and SACE are unable to calculate the rate impact such goals would have on DEF’s customers. (Tr. Vol. III, p. 553, ll. 5-12). Although DEF is likewise unable to make such a calculation at this point, DEF can say that implementing the proposed percentage of sales goal would require DEF to force non-cost-

⁶ As discussed above, *see* § II.A., *supra*, FEECA and the Commission’s rules establish criteria that must be considered in setting goals but do not mandate what those goals should be nor do they establish arbitrary percentage of sales goals as Sierra Club and SACE have proposed.

⁷ *See, e.g.*, Tr. Vol. III, p. 1026, ll. 14-15; *id.* at pp. 1028–30.

effective measures on its customers in contravention of FEECA and the Commission's Rule. (*See id.* at p. 546, ll. 4-20). Additionally, DEF does not know what measures would be required to attempt to meet the proposed annual energy goals that Sierra Club and SACE have proposed in this matter apart from the ones that DEF would otherwise use to meet the goals that DEF has proposed. However, to attempt to meet the goals that Sierra Club and SACE have advocated, DEF can logically assume that it would have to deploy multiple measures that are not cost effective and not achievable at the levels that would be required. (*See Ex. 102*, DEF's responses to questions 104 and 105).

Further, neither Sierra Club nor SACE has submitted any specifics to the Commission as to how their proposals would work in Florida, what programs and measures would be used to achieve their proposals, or what their proposals would mean to Florida customers. (Tr. Vol. III, p. 545, ll. 15-22). Instead, they point to goals in other jurisdictions as authority for their proposals. (*See, e.g.*, Tr. Vol. IV, pp. 1012-13 (noting that 14 states are saving at least 1% of electricity sales each year, and that five states reached this level of savings in 2009)). However, there are a number of differences between Florida and other jurisdictions that render such comparisons inappropriate and potentially misleading. For example, individual states have different legislative and regulatory policies, climate and weather, and different experiences implementing energy efficiency – including different time periods over which the individual states have had policies in place to support energy efficiency programs. (*See, e.g.*, Tr. Vol. III, pp. 541-42). For these reasons, comparisons to other states cannot be made on an apples-to-apples basis but instead must be tempered by an understanding of the differences between each state. (*See id.* at p. 541, ll. 19-23 (noting that other states do not have an official goal setting proceeding like this docket)).

Additionally, SACE and Sierra Club advocate for Florida to follow the lead of certain states that have set arbitrary percentage of sales goals but they do not present the outcomes some of those states have encountered. For example, Indiana utilities have been unable to meet the mandated targets and the legislature recently repealed them by statute due to concerns regarding the feasibility and the magnitude of costs projected to meet the goals. (*See* Tr. Vol. III, p. 542, ll. 1-4). In Ohio, where utilities have been able to meet the rising goals (0.3%-0.9% from 2009-2013) due to the rising costs associated with complying with these mandates, the legislature passed a two-year hiatus from the mandates. (*See id.* at ll. 4-8; *see also id.* at pp. 589-90).

Of course, while this Commission should not accept arbitrary standards not grounded in any analysis simply because they are used in other states, it is proper to review approaches taken in other states to gain an understanding of how those policies are implemented. Ohio, for example, allows over-achievement to carry forward and allows for energy efficiency achievements that predate the mandates by up to three years to count towards annual compliance. These policies recognize that once a measure is implemented there are no longer savings available to count from that measure; that is, it is important to consider what has already been achieved when setting future energy efficiency goals and achievement – particularly so in Florida where energy efficiency measures have been achieving savings for more than three decades. (*See id.* at p. 542, ll. 8-21; *see also id.* at p. 589, ll. 16-24 (noting that Ohio allows utilities to count savings from non-utility sponsored activities)). As Mr. Duff testified, “Most of the low hanging fruit is gone, so the additional savings will be much more expensive and challenging to obtain.” (*Id.* at p. 542, ll. 20-21).

The Commission should approve DEF’s overall Residential MW and GWH goals and overall commercial/Industrial MW and GWH goals set forth in Mr. Duff’s testimony. These

goals, based on an analytic application of the RIM and Participant tests, reflect the reasonably achievable demand side management potential in DEF's service territory over the ten year period 2015-2024 developed in DEF's planning process.

c. DEF's proposed goals provide adequate consideration for and protection of low-income customers.

As discussed above, DEF's proposed goals are based on measures that are cost-effective under both the RIM and Participants tests. The very nature of those tests, particularly the RIM test, ensures that implementation of those goals will not harm any customers, including low-income customers who may be least able to participate. Using RIM ensures that non-participating customers will not subsidize participating customers, and it reasonably limits overall rates to our customers. (Tr. Vol. III, p. 543, ll. 8-24).

Moreover, DEF remains committed to providing Energy Efficiency options to our low income customers. When DEF presents its plan to the Commission in the next phase of this process, it will include measures to encourage low income participation. (*See id.* at p. 606, ll. 4-9) For example, although none of the current measures aimed at lower-income customers pass the RIM test, once the goals are set and DEF moves into the plan development phase, it will evaluate whether there are low income measures that can be bundled with other measures to create an overall cost effective program. That is, if DEF is able to leverage a cost-effective measure to support the cost-effectiveness of other measures that are not cost effective on their own, it would consider bundling those measures to create an overall offering that will allow DEF to reach more customers and increase participation. (*See, e.g.*, Ex. 141, pp. 180-82; Tr. Vol. III, pp. 605-06, 650).

d. DEF complied with Rule 25-17.0021 by considering the impacts of free ridership using a two-year payback screen.

Pursuant to Rule 25-17.0021(3), DEF and the other FEECA utilities are required to consider free riders when developing DSM goals. In the simplest terms, a free rider is someone who would undertake a measure absent the Company's program. (*See* Tr. Vol. III, p. 603, ll. 16-17). Since 1991, this Commission has used a payback period of two-years or less to ensure that customers are not provided incentive payments to undertake measures that they would, or perhaps should, do on their own absent the incentive. The premise is that it is a reasonable assumption that a customer will act in an economically rational manner and undertake cost savings initiatives that will pay for themselves in two years or less. (*See id.* at p. 547, ll. 13-19). Certain industrial and commercial customers are likely to have the means to undertake measures with a longer payback period and may have the financial strategy in place to do so. However, it is probably not reasonable to assume that residential customers have the ability to do so. Therefore, a two-year payback period is a reasonable proxy to account for free riders in all customer classes. (*See id.* at p. 548, ll. 12-24).

Additionally, it is noteworthy that some measures that do not pass the two-year screen are still supported by the Company through its ongoing education efforts. When DEF performs residential or commercial energy audits, its energy advisors educate and encourage customers to undertake appropriate measures with a two-year or less payback period. (*See id.* at p. 547, ll. 19-21). DEF also utilizes advertisements across multiple media platforms to inform customers of the availability of these measures as energy and cost savings tools and makes presentations at trade shows with vendors to educate them on different options. (*See id.* at p. 651-52).

Notwithstanding the Commission's history of using a two-year payback screen and the fact that it is a reasonable proxy for rational customer behavior, the intervenors have taken issue

with its use. Sierra Club and SACE have advocated for the use of Evaluation, Measurement, and Verification (“EMV”) methodologies to screen out free riders based on the fact that EMV is used in other states. (*See* Tr. Vol. IV, p. 1023, ll. 19-22). However, as Mr. Duff explained, EMV reports from other jurisdictions cannot simply be imported into Florida. For example, an EMV report is specific to a particular program designed on a specific sample of customers and those program-specific factors need to be considered before the free ridership issue can be addressed. (*See* Tr. Vol. III, p. 652, ll. 14-24). Along the same lines, an EMV report would need to be developed for every single measure, and each measure could have a different EMV report from each different state where the measure is employed. (*See id.* at p. 653, ll. 3-11). Finally, each state has different characteristics, meaning that an EMV report from a different jurisdiction may not take into account Florida-specific issues – such as Florida’s high number of cooling days. (*See id.* at pp. 652-53).

Moreover, when questioned about the mechanics of using EMV methodology in a goals setting proceeding such as this one, SACE witness Ms. Mims candidly admitted:

I think for the proceeding at hand, I think that witness Duff is correct that it is too late to probably calculate free-ridership based on a evaluate, measurement, and verification. So I think that using a six-month or one-year payback might be more appropriate. I don’t think that it’s probably feasible to take EM&V from the other jurisdictions and apply it to the measure. I think that at the program level it could be done, but not at this proceeding.

(Tr. Vol. IV p. 1054, ll. 8-17). Therefore, while still advocating for the use of EMV reports going forward, i.e., during the ECCR docket, Ms. Mims conceded that it is not appropriate or even possible to do so in this proceeding. She instead opined that a six-month or 1-year payback screen was more appropriate, but offered no analysis to support the shorter timeframe. (*See id.*).

Thus, the totality of the record supports the continued use of the two-year payback screen to address the issue of free riders as required by the Commission’s Rule. It would not be

appropriate to set any goals based on inclusion of measures with less than a two-year payback period because any additional goals or requirements based on these measures would unnecessarily add costs to all customers, both participants and non-participants alike, for measures that customers should undertake without an incentive to do so. As discussed by Mr. Duff, if these measures can be bundled together with cost-effective measures at the planning stage, they may still be part of the overall DSM portfolio. (*See* Tr. Vol. III, pp. 605-06, 650). As stand-alone measures, DEF has demonstrated that it has sufficient educational outreach to inform customers that these measures are available. However, at this stage in the proceedings, the only principled way to account for free ridership is to use a two-year payback screen and to eliminate all measures that have less than a two-year payback.

e. DEF's goals appropriately considered the costs imposed by state and federal regulations on the emission of greenhouse gases.

As discussed in Mr. Duff's direct and Mr. Borsch's rebuttal testimonies, DEF ran a sensitivity analysis that reflected an expected carbon cost but ultimately did not base its goals upon that sensitivity. As Mr. Duff explained, the future of carbon regulation and the potential corresponding value has only become more speculative. (*See* Tr. Vol. III, p. 519, ll. 5-6). That is, with momentum in Congress for climate change legislation gone at least for now, the task of deriving a CO₂ price trajectory becomes much more challenging and must be based much more on judgment than in the past because there are currently no active policy proposals. (*See* Ex. 100, DEF's responses to questions 50 & 51). As such, the RIM and TRC cost effectiveness sensitivity analysis including carbon considerations do not significantly impact the number of programs that DEF could offer if those were used as the sole view of cost effectiveness. (*See* Tr. Vol. III, p. 519, ll. 6-11; Tr. Vol. VI, pp. 1518-19).

The uncertainty of the potential cost of carbon is highlighted by the fact that the intervenor witnesses, while opining that DEF should include the cost of potential future regulations, either fail to offer any actual cost component that should be included as part of the calculation (*See* Tr. Vol. VI, p. 1519, ll. 9-11), or fail to offer any company-specific cost of compliance – but rather offer a “social cost of carbon” estimate (*See id.* at pp. 1519-20).

SACE and the Sierra Club questioned several witnesses regarding the recently proposed Environmental Protection Agency (“EPA”) Clean Power Plan. (Tr. Vol. VI, pp. 1473-82, 1531-42; Tr. Vol. VII, pp. 1594-96, 1599-1612, 1641-46). The Commission should decline the Sierra Club’s and SACE’s apparent invitation to set goals or take any action based on this EPA rule for several reasons.

First, what the EPA released on June 18, 2014 is simply the first proposed rule, not a final, binding regulation. Just like any proposed agency rule, it is not only highly likely but virtually certain that the final rule will be different in some way from this initial proposal. With respect to this Commission’s rulemaking process, the initial version of a rule can look very different from the final approved rule once it has gone through the rulemaking process. Here, the EPA must issue a rule and then consider comments to that rule. Given the nature of the proposed Clean Power Plan, the EPA is likely to receive many comments from various affected parties, indeed as of the filing of this brief, the EPA has received over 17,425 comments.⁸ The Commission must set goals based on known or reasonably known information, not speculation as to how a final rule will impact carbon costs in Florida. (Tr. Vol. VII, p. 1625, ll. 22-24).

Second, under the current timeline for finalizing the rule, the EPA is not scheduled to issue a final rule until June 2015. Then, under the rule as currently drafted, the states would have

⁸ *See* <https://www.federalregister.gov/articles/2014/06/18/2014-13726/carbon-pollution-emission-guidelines-for-existing-stationary-sources-electric-utility-generating#h-21>, (last visited Sept. 29, 2014).

one to three years to develop a specific implementation plan for meeting the rule's requirements.⁹ (*See id.* at p. 1596, ll. 10-13; *See also id.* at p. 1642, ll. 8-20). So even if the current schedule remains intact (which is questionable, given the potential for multiple comments and court challenges, *see, e.g.*, the prolonged litigation surrounding the Clean Air Interstate Rule ("CAIR") and the Cross-State Air Pollution Rule ("CSAPR")),¹⁰ this Commission will not have Florida-specific data regarding how the state intends to comply until the summer of 2016 at the earliest.

Next, there is no information in this record as to the basis of the various statements made by the EPA in its proposed Clean Power Plan. Specifically, SACE and the Sierra Club would point to the comments indicating that the cost of energy efficiency is less than new power plants (Tr. Vol. VII, pp. 1603-06; pp. 1644-45) or that the plan indicates that states could use energy efficiency as one of the "building blocks" to meet the plan's requirements (*See id.* at p. 1603-1606; *id.* at p. 1643, ll. 18-25). However, these statements are unsubstantiated and unsupported by any record evidence in this case. No witness could identify the source of the data used by the EPA. No witness could explain how the EPA conducted its analysis or otherwise came to these conclusions. Perhaps most importantly, no witness offered any explanation as to whether the EPA considered Florida specific data or information when making these conclusions.

Finally, there is also no information in the record upon which the Commission could base goals even if it wanted to consider the dubious and speculative nature of the proposed EPA Clean Power Plan. No witness presented evidence as to what the utilities should have included as an

⁹ *See id.*

¹⁰ *See EPA, et al. v. EME Homer City Generation, L.P., et al.*, 134 S.Ct. 1584 (2014) (reversing the D.C. Circuit's vacatur of the CSAPR, *see EME Homer Generation, L.P. v. EPA, et al.*, 696 F.3d 7 (D.C. Cir. 2012), which the EPA enacted in response to the D.C. Circuit's original vacatur of the CAIR, *see State of North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008) (*per curiam*), modified on rehearing to allow the rule to remain intact while the EPA addressed the court's concerns, *see State of North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir. 2008) (*per curiam*)).

assumed carbon cost when completing the cost-effectiveness tests. At best, Dr. Fine offered a White House document to support his claim that the utilities should have assumed a higher carbon cost. However, on cross, he admitted that he did not translate those costs into what goals the Commission should impose on any of the utilities, including DEF. (*See* Tr. Vol. IV, p. 957, ll. 2-12). When asked how the Commission could set goals based on unquantified costs, Dr. Fine's response was that EPA guidance stated that "estimating what the appropriate social cost of greenhouse gas pollution should be in the analysis of policy decisions, such as these." (*See id.* at ll. 18-21). He then described what those potential social costs could be, albeit in vague, qualitative terms. (*See id.* at p. 958, ll. 2-18). Notably, to support his argument that utilities' goals should be higher to account for future carbon costs, Dr. Fine mischaracterized an FPSC presentation. (*See id.* at pp. 954-55). In the end, when asked what the rate impact to customers is that the Commission should use for this proceeding, Dr. Fine responded that "[u]ltimately, we're going to have to make a subjective judgment about what the economists call the discount rate you use for future costs and benefits." (*See id.* at p. 960, ll. 2-5).

It should go without saying that it is wholly inappropriate to ask the Commission to set aside facts and use speculative and uncertain information to require the utilities to increase their EE goals, just to be in a better position to possibly comply with a non-final rule, both the substance and timing of which could change. The Commission should not base goals, and require customers to pay more, based on such speculation.

III. The Commission should discontinue the current solar set-aside programs and approve DEF's proposed conceptual pilot.

The Commission should eliminate the non-cost effective solar set-aside pilot programs created in 2009 (indeed, the solar set-aside pilot programs were not cost effective under any of the three tests (RIM, Participants, and TRC) when the programs were implemented in 2009).

(Tr. Vol. III, pp. 530, ll. 10-20). As demonstrated by Mr. Duff, the set-aside pilot programs remain non-cost-effective¹¹ and improperly result in a cross-subsidization of program participants by non-participants (including, potentially, those whom are financially unable to participate in the program themselves). (*See id.* at pp. 527-28; *id.* at p. 530, ll. 6-8). Moreover, customer-owned solar installations have continued to become more viable and less expensive on their own over time. (*See id.* at p. 528, ll. 13-19; *id.* at p. 530, ll. 3-4).

Further, the solar set-aside pilot programs approved in 2009 should not be continued for any additional period of time, under a sunset or other mechanism, because the longer the programs are continued, the more harm inures to non-participants. (*See id.* at p. 530, ll. 1-8) This is especially true given that, as discussed below, DEF's proposed community solar pilot program will provide for a fairer and more efficient use of the solar set-aside ECCR dollars while eliminating the problems that plague the current programs.

Conceptual Pilot Program

As discussed above, FEECA requires this Commission to set appropriate goals – not ever-increasing goals – and it requires the Commission to evaluate the cost-effectiveness of those goals on the whole body of customers. (*See* section II.a, *supra*). It follows that what constitutes an appropriate goal is left to the determination of the Commission, and if a goal or a measure is not cost-effective, it is appropriate to exclude it. The intervenors argue that this is not the case for demand-side renewables and that, since 2008, the Commission is now required to set ever-increasing goals for promoting demand-side renewable generation. The problem with this argument is that it ignores the remainder of the FEECA framework, in violation of the rule of

¹¹ DEF's solar pilot programs, except the Solar Water Heating with Load Management, currently pass the Participant test primarily due to the availability of tax credits and DEF's incentive to help program participants offset the cost of purchasing and installing the solar energy equipment. Without those subsidies, none of the pilot programs pass the Participant test. (Tr. Vol. III, p. 527, ll. 22-23).

statutory construction that requires all provisions of a law to be read in harmony.¹² In essence, the intervenors ask the Commission to read an exception to the cost-effectiveness requirement as it pertains to demand-side renewable generation; the problem is no such exception appears in the statute.

Further, and contrary to the intervenor witnesses' suggestions, the Commission does not need to increase solar in Florida just for the sake of increasing solar. As Mr. Woolf admitted, of the 18 states he cited with more solar generation than Florida, 13 of those states have a renewable energy portfolio standard. (*See* Tr. Vol. V, pp. 1222-23). This also highlights the importance of not comparing Florida to other states without a full understanding of the differences that impact the various jurisdictions – for example, the price per kilowatt hour of electricity in an individual state, which Mr. Woolf admitted he did not analyze when formulating his testimony. (*See id.* at p. 1223, ll. 19-21). There are a number of factors that influence the amount of solar that a state has, and utility-subsidized solar programs is not the best way to increase solar in Florida. By contrast, DEF's conceptual pilot will provide real benefits to all customers and will allow DEF to leverage the information gained to address the natural increase of distributed solar generation to DEF's system without harming non-participants.

Additionally, the intervenors also fail to recognize that a "goal" need not be limited to a numeric figure; in fact, as the Commission recognized in the 2009 goal-setting, an appropriate action for the Commission for purposes of this proceeding can be approval of pilot programs intended to fulfill the goal's purpose.

Therefore, in lieu of continuing the current solar set-aside pilot programs, which are not now and never have been cost effective and which create cross-subsidization of participants by

¹² *See Leftwich v. Fla. Dep't of Corrections*, -- So. 3d --, 2014 WL 4638692, at *7 (Fla. Sept. 18, 2014) ("All statutory provisions must be given their full effect by the courts, and related statutory provisions must be construed in harmony with one another." (citing *Larimore v. State*, 2 So. 3d 101, 106 (Fla. 2008))).

non-participants, the Commission should approve DEF's conceptual pilot program. The conceptual program, which if approved will be further developed in the plan development phase with opportunity for the Commission to review and provide feedback on the plan, solves the cross-subsidization issues inherent with the current solar pilot programs by allowing all customers to benefit from the pilot. It also leverages scale and scope in a manner that lowers the installed cost per watt, minimizes the costs of integrating solar into the distribution system, and provides an opportunity to gather and analyze data regarding solar development. (*See Tr. Vol. III, pp. 554-56*).

Mr. Duff's rebuttal testimony details further conceptual pilot program attributes, including but not limited to, the opportunity of any retail customer to voluntarily contribute funds toward a community solar program and the opportunity to locate several large scale community sited solar on utility- or customer-owned property. (*See id.* at p. 555, ll. 5-20). These additional attributes have multiple effects that will further DEF's understanding of solar development going forward. First, DEF will be able to gauge customers' willingness to voluntarily contribute to solar development in their community. (*See id.* at ll. 11-13). Second, these voluntary contributions will reduce the revenue requirements of the community solar asset investment, reducing the costs to other customers, including non-participating customers. (*See id.* at ll. 19-24). Third, DEF will be able to locate these facilities at multiple locations which will facilitate not only an understanding of the optimal positioning and location of panels, but also the effect solar will have on DEF's distribution system and issues inherent with larger solar facilities being cited on customer-owned property. (*See id.* at p. 634). These and other attributes of the program could be considered in the plan phase of the process. (*See id.* at pp. 634-36).

DEF's conceptual pilot program could increase and encourage the development of demand-side renewable generation systems, increase the conservation of fuel resources, and provide system fuel savings to customers, as called for in section 366.82(2). (*See id.* at p. 556). DEF would be able to study meaningful performance, acceptance, and educational information on larger, utility scale solar developments located at several locations, including commercial and industrial sites. (*See id.* at p. 556, ll. 7-11) DEF would also have an opportunity to collect and analyze meaningful information on the system impacts of larger scale solar devices on a distributed basis and potentially identify and possibly eliminate barriers to larger scale customer adoption of such systems. (*See id.* at p. 556, ll. 7-17).

In sum, DEF's proposed community solar program is a better alternative to the current solar set-aside pilot programs. The current programs are not cost-effective and result in the cross-subsidization of participants by non-participants. In contrast, the proposed solar pilot program would promote solar energy in Florida, eliminate cross-subsidization, and allow for educational opportunities to further evaluate the potential of larger-scale solar in Florida. DEF's proposed pilot-program is a fair and efficient use of ECCR dollars and should be approved by this Commission.

At hearing, both DEF witness Mr. Duff and FPL witness Mr. Koch were asked a series of questions regarding the companies' respective conceptual solar pilot proposals by counsel for EDF. For example, they were asked questions regarding the importance of the location of the solar installations (*see* Tr. Vol. III, pp. 635, ll. 9-14; Tr. Vol. VI, pp. 1324-26), the importance of the positioning of the solar panels (*See* Tr. Vol. III, p. 635, ll.1-8, 15-22), and questions regarding the importance of the installations being utility-owned (rather than customer-owned (*see* Tr. Vol. III, p. 632-34; Tr. Vol. VI, pp. 1336-37). As Mr. Duff explained, utility-owned

solar installations, such as DEF proposes, have two major benefits over distributed (customer-owned) solar: the first is that the installed cost is generally lower and the second is that utility-owned solar can be strategically located to reduce the costs on the transmission and distributions systems. (*See* Tr. Vol. III, p. 631, ll. 15-23). Mr. Koch also made the point that utility-owned solar installations will provide the utilities with a better means of studying the effects that solar installations have on the grid than distributed solar because the utilities will be able to locate a concentration of solar in a particular area or on a particular circuit, allowing analysis of effects such as voltage fluctuations, reliability, and equipment performance. (Tr. Vol. VI, pp. 1325-26, 1336-37).

Therefore, the record evidence supports the following points regarding the present solar set-aside pilot programs and DEF's proposed conceptual pilot program. First, the current solar set-aside pilot programs are not cost-effective and should be discontinued. Second, this Commission can continue to promote the development of demand-side renewable energy systems by approving DEF's proposed conceptual pilot program. DEF's proposed conceptual pilot program will eliminate the current cross-subsidization occurring with the solar set-aside pilot programs, will allow DEF to further study the effects of solar generation on the grid, and will continue to promote the development of demand-side renewable generation in Florida in a cost-effective manner.

IV. Post Hearings Statement of Issues and Positions

ISSUE 1: Are the Company's proposed goals based on an adequate assessment of the full 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.?

Yes. DEF provided an adequate assessment of the full technical potential pursuant to Section 366.82(3), F.S.

ISSUE 2: Do the Company's proposed goals adequately reflect the costs and benefits to customers participating in the measure, pursuant to Section 366.82(3)(a), F.S.?

Yes. DEF utilized the Participants' test as delineated in Rule 25-17.008, F.A.C., to adequately reflect the costs and benefits to customers participating in a DSM measure thereby adhering to the requirement of Section 366.82(3)(a), F.S.

ISSUE 3: Do the Company's proposed goals adequately reflect the costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions pursuant to Section 366.82(3)(b), F.S.?

Yes. DEF's proposed DSM goals are based on the RIM test as delineated in Rule 25-17.008, F.A.C., to adequately reflect the costs and benefits to the general body of ratepayers as a whole. The RIM test manages inclusion of utility incentives as well as other utility costs to create a benefit for all ratepayers while protecting participants and non-participants from rates that would be higher in the absence of the DSM program. Additionally, the Company utilized the Participants' test to adequately reflect participant contributions. DEF's utilization of these tests ensures that its proposed numeric goals balance all stakeholders' interests.

ISSUE 4: Do the Company's proposed goals adequately reflect the need for incentives to promote both customer-owned and utility-owned energy efficiency and demand-side renewable energy systems, pursuant to Section 366.82, F.S.?

Yes. The Company evaluated both customer-owned and utility-owned energy efficiency and demand-side renewable energy systems, pursuant to Section 366.82, F.S. under the RIM and Participants' tests to determine its cost-effective goals proposal. DEF believes the Participants' test addresses the need for customer incentives to invest in either energy efficiency or renewable systems and the RIM test balances the interest of all stakeholders. With respect to utility incentives, if DEF's proposed RIM-based goals are approved, then DEF does not believe utility incentives are needed.

ISSUE 5: Do the Company's proposed goals adequately reflect the costs imposed by state and federal regulations on the emission of greenhouse gases, pursuant to Section 366.82(3)(d), F.S.?

Yes.

ISSUE 6: What cost-effectiveness test or tests should the Commission use to set goals, pursuant to Section 366.82, F.S.?

The RIM test is the threshold measure that should be used in Florida as it reasonably balances the interests of all stakeholders.

ISSUE 7: Do the Company's proposed goals appropriately reflect consideration of free riders?

Yes. By using a two-year payback period to screen certain measures, DEF's proposed goals appropriately reflect consideration of free riders. The use of a two-year payback period to account for free riders has been employed by DEF and the Commission since 1991. It is reasonable to assume that customers will act in an economically rational fashion and implement measures with a two-year or less payback. Such a payback period is also supported by published customer adoption curves and ensures that the Company is not paying customers for measures they would do anyway.

ISSUE 8: What residential summer and winter megawatt (MW) and annual Gigawatt-hour (GWh) goals should be established for the period 2015-2024?

DEF's goals are listed in the table below.

2015 - 2024 Proposed Residential DSM Goals At Generator						
	Summer Demand (MW)		Winter Demand (MW)		Annual Energy (GWH)	
Year	Incremental	Cumulative	Incremental	Cumulative	Incremental	Cumulative
2015	26.43	26.43	58.38	58.38	25.45	25.45
2016	23.97	50.39	53.09	111.47	23.78	49.22
2017	22.21	72.61	48.74	160.20	20.77	69.99
2018	20.02	92.62	43.23	203.44	16.98	86.97
2019	17.71	110.34	37.46	240.89	13.01	99.98
2020	15.53	125.86	32.15	273.05	9.29	109.27
2021	13.65	139.51	27.79	300.84	6.16	115.43
2022	12.23	151.74	24.53	325.36	3.79	119.23
2023	11.27	163.00	22.29	347.66	2.19	121.42
2024	10.66	173.67	20.89	368.55	1.18	122.60

ISSUE 9: What commercial/industrial summer and winter megawatt (MW) and annual Gigawatt hour (GWh) goals should be established for the period 2015-2024?

DEF's goals are listed in the table below.

2015 - 2024 Proposed Commercial/Industrial DSM Goals At Generator						
	Summer Demand (MW)		Winter Demand (MW)		Annual Energy (GWH)	
Year	Incremental	Cumulative	Incremental	Cumulative	Incremental	Cumulative
2015	11.97	11.97	5.42	5.42	14.47	14.47
2016	11.58	23.55	5.36	10.78	13.60	28.07
2017	11.03	34.58	5.56	16.34	11.99	40.06
2018	9.99	44.57	5.14	21.48	10.04	50.09
2019	9.09	53.67	5.01	26.49	7.98	58.07
2020	8.23	61.89	5.18	31.67	5.88	63.95
2021	6.89	68.78	4.78	36.45	3.92	67.87
2022	5.97	74.75	4.71	41.16	2.40	70.27
2023	5.59	80.35	4.95	46.11	1.40	71.67
2024	5.02	85.37	4.62	50.73	0.76	72.43

ISSUE 10: What goals, if any, should be established for increasing the development of demand-side renewable energy systems, pursuant to Section 366.82(2), F.S.?

DEF does not believe that the Commission should set goals or continue to require the solar set aside pilots, since the demand-side renewable energy market appears to have matured significantly over the last five years and the programs continue to fail the cost-effectiveness screens. However, should the Commission determine that it is still appropriate to establish goals designed to increase the development of demand-side renewable energy systems, DEF believes that the goals should be no larger than those currently in place.

ISSUE 11: Should the Company's existing Solar Pilot Programs be extended and, if so, should any modifications be made to them?

No, DEF's existing Solar Pilot Programs should not be extended; they are not cost-effective and customer-owned solar installations have become more viable and less expensive on their own over time. However, if the Commission continues the solar set aside, it should consider DEF's conceptual pilot program, which may lead to the development of a community solar offering. This conceptual pilot program is designed to better utilize the solar set-aside funds to promote increased PV development in a fair and equitable manner (so all customers share in the cost and benefit of solar) by designing utility-owned community-sited solar, grid tied solar PV facilities and passing on the benefit of reduced fuel expense to all customers.

RESPECTFULLY SUBMITTED this 30th day of September, 2014.

/s/ Dianne M. Triplett

Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on the following via electronic mail this 30th day of September, 2014.

/s/ Dianne M. Triplett

Attorney

<p>Lee Eng Tan Charles Murphy Shalonda Hopkins Office of General Counsel Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 ltan@psc.state.fl.us cmurphy@psc.state.fl.us shopkins@psc.state.fl.us</p> <p>Alisa Coe/David Guest Earthjustice 111 S. Martin Luther King Jr. Blvd. Tallahassee, FL 32301 acoe@earthjustice.org dguest@earthjustice.org bbeard@earthjustice.org</p> <p>Steven L. Hall, Senior Attorney Office of General Counsel 407 South Calhoun Street, Suite 520 Tallahassee, FL 32399 steven.hall@FreshFromFlorida.com</p> <p>Jon C. Moyle, Jr. / Karen Putnal Moyle Law Firm, P.A. 118 N. Gadsden Street Tallahassee, FL 32301 jmoyle@moylelaw.com kputnal@moylelaw.com</p>	<p>George Cavros Southern Alliance for Clean Energy 120 E. Oakland Park Blvd., Suite 105 Ft. Lauderdale, FL 33334 george@cavros-law.com</p> <p>John Butler/Jessica Cano 700 Universe Blvd Juno Beach, FL 33408 john.butler@FPL.com jessica.cano@FPL.com</p> <p>J. Beasley/J. Wahlen/A. Daniels Ausley McMullen Post Office Box 391 Tallahassee, FL 32302 jbeasley@ausley.com jwahlen@ausley.com adaniels@ausley.com</p> <p>Jeffrey A. Stone/ Russell A. Badders Steven R. Griffin Beggs & Lane Gulf Power P.O. Box 12950 Pensacola, FL 32591 srg@beggslane.com jas@beggslane.com rab@beggslane.com</p> <p>Robert L. McGee, Jr. Gulf Power Company One Energy Place Pensacola, FL 32520 rlmcgee@southernco.com</p>
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Robert Scheffel Wright/John T. LaVia
Gardner, Bist, Wiener, Wadsworth, Bodwden,
Bush, Dee, LaVia & Wright, P.A.
1300 Thomaswood Drive
Tallahassee, FL 32308
schef@gbwlegal.com
jlavia@gbwlegal.com

James W. Brew / F. Alvin Taylor
c/o Brickfield Law Firm
1025 Thomas Jefferson St., NW, Eighth
Washington, DC 20007
jbrew@bbrslaw.com
ataylor@bbrslaw.com

Diana Csank
Sierra Club
50 F St. NW, 8th Floor
Washington, DC 20001
diana.csank@sierraclub.org

Kevin Donaldson
4200 West Flagler Street
Miami, FL 33134
kevin.donaldson@fpl.com

Jill M. Tauber
Earthjustice
1625 Massachusetts Ave., NW Suite 702
Washington, DC 20036-2243
jtauber@earthjustice.org

J. R. Kelly/E. Sayler
Office of Public Counsel
111 W. Madison Street, Room 812
Tallahassee, FL 32393-1400
Sayler.erik@leg.state.fl.us
Kelly.jr@leg.state.fl.us

Paula K. Brown
P.O. Box 111
Tampa, FL 33602
Regdept@tecoenergy.com

Gary V. Perko
P O Box 6526
Tallahassee, FL 32314
gperko@hgslaw.com

John Finnigan
Environmental Defense fund
128 Winding Brook Lane
Terrace Park, Ohio 45174
jfinnigan@edf.org