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November 6, 2015

-VIA ELECTRONIC FILING-

Ms. Carlotta S. Stauffer
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 150196-EI

Dear Ms. Stauffer:

Attached for filing in the above docket is Florida Power & Light Company's Motion to Strike or Exclude Portions of the Direct Testimony of Natalie A. Mims filed on behalf of the Southern Alliance for Clean Energy. This letter, the Motion to Strike with Attachment A, and certificate of service are being submitted via the Florida Public Service Commission's Electronic Filing Web Form as a single PDF file.

Attachment A to this Motion consists of a comparison of Natalie A. Mims' testimony filed in Docket No. 150196-EI to that filed in Docket No. 130199-EU.

If there are any questions regarding this filing, please contact me at 561-304-5662.

Sincerely,

s/ William P. Cox

William P. Cox
Senior Attorney
Florida Bar No. 0093531

WPC/msw

Enclosures
cc: Counsel for Parties of Record (w/encl.)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for determination of need for Okeechobee Clean Energy Center Unit 1, by Florida Power & Light Company.	Docket No. 150196-EI Filed: November 6, 2015

Florida Power & Light Company's Motion to Strike or Exclude Portions of the Direct Testimony of Natalie A. Mims Filed on behalf of the Southern Alliance for Clean Energy

Florida Power & Light Company ("FPL") hereby moves to strike or exclude from the record portions of the pre-filed testimony of Natalie A. Mims filed in this proceeding on behalf of the Southern Alliance for Clean Energy ("SACE"). The portions of Ms. Mims' testimony that FPL moves to strike or exclude are those where she essentially argues for the Florida Public Service Commission's ("FPSC" or "Commission") reconsideration of decisions it made in the most recent DSM Goals proceeding (Docket No. 130199-EI) or where she presents evidence that was presented in the DSM Goals proceeding and the Commission appropriately determined that her evidence was not persuasive. Clearly, it is untimely for SACE essentially to seek reconsideration of a final order issued over ten months ago, the DSM Goals order, Order No. PSC-14-0696-FOF-EU, issued December 16, 2014. Moreover, reintroduction of the same evidence in this proceeding that was considered, rebutted, and rejected in the DSM Goals proceeding is improper and inconsistent with the doctrines of administrative finality, collateral estoppel, and res judicata. SACE offers no evidence of changed circumstances since the December 16, 2014 Commission decision. Finally, it would be an inefficient use of the Commission's time and resources to consider a second time evidence that it previously considered and declined to adopt. The specific passages of Ms. Mims' testimony that FPL seeks to strike or exclude from inclusion in the record in this docket are Page 5, line 9 (starting at "In

the FEECA docket, …") through Page 17, line 18. The grounds for FPL's motion are further set forth below.

Untimely and Improper Reconsideration

1. The final order in FPL's most recent DSM Goals proceeding, Docket No. 130199-EI, was Order No. PSC-14-0696-FOF-EU issued on December 16, 2014. In her Direct Testimony in this proceeding, Ms. Mims essentially requests the Commission to reconsider its decision in Order No. PSC-14-0696-FOF-EU. Specifically, she maintains that the DSM Goals established in PSC-14-0696-FOF-EU do not reflect all reasonably achievable DSM available to FPL because the Commission improperly rejected evidence that she presented in the DSM Goals case, which she attempts to reintroduce in this proceeding.

2. The Commission's rule on Reconsideration is Rule 25-22.060, Florida Administrative Code ("F.A.C."). Under the rule, any party to a proceeding that is adversely affected by a final order may request reconsideration. Rule 25-22.060(1)(a), F.A.C. SACE was a party to Docket No. 130199-EI.

3. Under Rule 25-22.060, F.A.C., a petition for reconsideration must be filed within 15 days of the issuance of the final order. Rule 25-22.060(3), F.A.C. The time to file a petition for reconsideration of Order No. PSC-14-0696-FOF-EU expired on December 31, 2014. SACE did not file a petition for reconsideration of Order No. PSC-14-0696-FOF-EU, nor did it appeal that order.

4. As Ms. Mims correctly points out in her pre-filed Direct testimony in this case, "FPL relies on its energy efficiency goals from the 2014 FEECA docket to determine the level of efficiency that is used as 'all cost-effective efficiency' in this docket." However, what she fails to point out is that those DSM goals were established not by FPL, but by the Commission. They

were established by the Commission pursuant to Rule 25-17.0021(1), F.A.C., which requires the Commission to establish DSM goals that are "based on an estimate of the total cost effective kilowatt and kilowatt-hour savings reasonably achievable through demand-side management in each utility's service area over a ten-year period." Pursuant to this rule, the DSM goals established in Order No. PSC-14-0696-FOF-EU represent the reasonably achievable DSM in FPL's service area over the ten years 2015-2024. More importantly, the time to ask the Commission to reconsider FPL's DSM goals ran out on December 31, 2014, some ten months ago. Ms. Mims' attack on the DSM goals established in Order No. 14-0696-FOF-EU is clearly an improper and untimely request for reconsideration of Order 14-0696-FOF-EU, and her testimony should be struck or precluded from being inserted into the record.

Consideration of the Same Evidence from the Same Party in the DSM Goals Docket that Was Considered and Rejected in the DSM Goals Docket Is Barred under the Doctrines of Administrative Finality, Collateral Estoppel and Res Judicata

5. The Commission has a long history of applying the doctrine of administrative finality. Indeed, the doctrine arose in Florida, in part, from judicial review of cases from the Commission. One of the earliest articulations of this doctrine is found in Peoples Gas System, Inc. v. Mason, 187 So.2d 335, 339 (Fla. 1966) where the Supreme Court of Florida in reviewing a Commission order stated:

> "…orders of administrative agencies must eventually pass out of the agency's control and become final and no longer subject to modification. The rule assures that there will be a terminal point in every proceeding at which the parties and the public may rely on a decision of such an agency as being final and dispositive of the rights and the issues involved therein. This is, of course, the same rule that governs the finality of decisions of courts. It is essential with respect to orders of administrative bodies as with those of courts."

In Austin Tupler Trucking, Inc. v. Mason, 377 So.2d 679 (Fla. 1979), the Supreme Court of Florida applied the doctrine of administrative finality again and held that an issue fully litigated in an earlier proceeding should not be re-litigated.

6. More recently, the Supreme Court of Florida applied the doctrine of administrative finality in the review of another Commission decision in Florida Power Corporation v. Garcia, 780 So.2d 45 (Fla. 2001). There the Court restated the doctrine and then noted there was an identity of essential facts and identity of the substance of the issue presented. In this case, not only is the evidence the same and the issue the same, but also both parties contesting the issue are the same (SACE and FPL). Moreover, FPL clearly relied upon the Commission's DSM Goals order, Order 14-0696-FOF-EU, in this case, and the fundamental purpose of the doctrine of administrative finality is to allow the parties and the public to rely on a decision.

7. Parties are entitled to be aware of an agency's prior decisions and have them apply; an agency's failure to follow its own precedent on similar facts is contrary to administrative principles and sound public policy. Villa Capri Associates, LTD. v. Florida Housing Finance Corp., 23 So.3d (Fla 1st DCA 2009). In this proceeding, FPL has recently had its DSM goals established by the Commission in a contested case. The Commission found that the goals it established for FPL reflected FPL's reasonably achievable conservation or DSM potential. If FPL's DSM goals reflect its reasonably achievable potential of DSM and FPL assumed achievement of those goals in its analysis in this proceeding (a fact not in dispute), then there are no conservation measures "reasonably available" to FPL "which might mitigate the need for the proposed plant" under Section 403.519(3), Florida Statutes. FPL is relying upon its Commission-approved DSM goals as its reasonably achievable level of conservation in this case,

just as the Commission and a number of applicants have used the applicants' DSM goals as reasonably achievable in other need determination proceedings.[1]

8. It is not surprising that the Commission has historically used an applicant's DSM goals as the level of reasonably achievable conservation measures in prior need determinations, because Section 403.519, Florida Statutes, was adopted not as part of the Florida Electrical Power Plant Siting Act, Section 403.501-.539, Florida Statutes, but as a part of the Florida Energy Efficiency Conservation Act ("FEECA"). Section 366.80, Florida Statutes; Laws of Florida Chapter 80-65. It is under FEECA that the Commission sets conservation goals, and it is under FEECA that the Commission is instructed to consider conservation measures that might mitigate the need for a unit. The Commission has correctly concluded for decades that this does not require multiple litigation of the same issues; instead, an applicant can reasonably rely upon the Commission's findings from the DSM Goals proceeding. See cases in footnote 1.

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[1] *In re: Petition to determine need for an electrical power plant in Martin County by Florida Power & Light Company; In re: Petition to determine need for an electrical power plant in Manatee County by Florida Power & Light Company,* ORDER NO. PSC-02-1743-FOF-E1, December 10, 2002*; In re: Petition to determine need for Hines Unit 3 in Polk County by Florida Power*, ORDER NO. PSC-03-0175-FOF-E1, February 4, 2003*; In re: Petition to determine need for Turkey Point Unit 5 electrical power plant, by Florida Power & Light Company,* ORDER NO. PSC-04-0609-FOF-E1, June 18, 2004; *In re: Petition for determination of need for West County Units 1 and 2 electrical power plants in Palm Beach County, by Florida Power & Light Company,* ORDER NO. PSC-06-0555-FOF-E, June 28, 2006; *In re: Petition for determination of need for expansion of Turkey Point and St. Lucie nuclear power plants, for exemption from Bid Rule 25-22.082, F.A.C., and for cost recovery through the Commission's Nuclear Power Plant Cost Recovery Rule, Rule 25-6.0423, F.A.C.,* ORDER NO. PSC-08-0021-FOF-E1, January 7, 2008; *In re: Petition to determine need for Turkey Point Nuclear Units 6 and 7 electrical power plant, by Florida Power & Light Company;* ORDER NO. PSC-08-0237-FOF-E1, April 11, 2008; *In re: Petition to determine need for West County Energy Center Unit 3 electrical power plant, by Florida Power & Light Company, In re: Petition for determination of need for conversion of Riviera Plant in Palm Beach County, by Florida Power & Light Company, In re: Petition for determination of need for conversion of Cape Canaveral Plant in Brevard County, by Florida Power & Light Company,* ORDER NO. PSC-08-0591-FOF-EI, September 12, 2008; *In re: Joint petition for modification to determination of need for expansion of an existing renewable energy electrical power plant in Palm Beach County by Solid Waste Authority of Palm Beach County and Florida Power & Light Company, and for approval of associated regulatory accounting and purchased power agreement cost recovery*, ORDER NO. PSC-I1-0293-FOF-EU, July 6, 2011; *In re: Petition to determine need for modernization of Port Everglades Plant, by Florida Power & Light Company,* ORDER NO. PSC-12-0187-FOF-EI, April 9, 2012; *In re: Petition to determine need for Polk 2-5 combined cycle conversion, by Tampa Electric Company*, ORDER NO. PSC-13-0014-FOF-EI, January 8, 2013.

9. The most commonly cited exception to the application of the doctrine of administrative finality is changed circumstances. However, SACE does not even attempt to argue that there are changed circumstances or offer any evidence in Ms. Mims' testimony to demonstrate the same. Instead, SACE argues the Commission's DSM goals were wrong when they were set, and they continue to be wrong now for essentially the same reasons SACE litigated (and lost) in the DSM Goals proceeding. Given the absence of changed circumstances, the identity of the parties (SACE and FPL), the identity of the issue, and that the purpose of the administrative finality doctrine is to provide finality that parties may rely upon, this is a classic case where the doctrine should be invoked, and Ms. Mims' evidence should be stricken or excluded.

10. The doctrine of administrative finality is the administrative counterpart of the doctrines of collateral estoppel and res judicata, similar preclusion doctrines most often applied by courts. However, the Commission has also found the doctrines of collateral estoppel and res judicata applicable in its proceedings. *In Re Turkey Creek, Inc.* 95 FPSC 11: 625, 628 (November 28, 1995), Order No. PSC-95-1445-FOF-WS*; In Re Tamiami Village Utility, Inc*., 94 FPSC 2: 358, 364-65 (February 21, 1994), Order No. PSC-94-0210-FOF-WS.

11. Collateral estoppel, also known as issue preclusion, applies to matters in issue between the same parties in different causes of action, and requires showing the following elements: (1) the issues are identical; (2) the particular issue must have been actually litigated; (3) the determination of the issue in the prior proceeding must have been necessary and critical to the outcome; (4) the party against whom the earlier decision is asserted must have had a full and fair opportunity to litigate the issue in the prior proceeding. *In Re Turkey Creek, Inc.*

12. In this case, all the elements of collateral estoppel are met. The issue in the DSM goals case is the same issue SACE attempts to re-litigate in this case – what is FPL's reasonably achievable DSM. That particular issue was thoroughly litigated in the DSM goals case (with the same witnesses and essentially the same evidence). The determination of the issue went to the heart of the matter in the DSM goals case. SACE, which lost the issue in the DSM goals case, had a full and fair opportunity to litigate the issue in the DSM goals case. The doctrine of collateral estoppel bars re-litigation of this issue in this case as between SACE and FPL. Ms. Mims' testimony should be stricken or excluded from the record.

13. Res judicata, also known as claim preclusion, bars re-litigation of causes of action between the same parties if there has been a final judgment on the merits and requires meeting the following elements: (1) there must have been a previous final judgment on the merits; (2) the decision must have been rendered by a court of competent jurisdiction; (3) the parties must be identical in both suits; and (4) the same cause of action must be involved in both cases. *In Re Turkey Creek, Inc*. Even under the res judicata doctrine the first three of the four elements are the satisfied in this case.

14. In this proceeding, SACE attempts to re-litigate the amount of reasonably achievable DSM available to FPL. SACE does it through Ms. Mims' testimony at page 5, line 9, through page 17, line 18. After correctly asserting that FPL relies upon its energy efficiency goals from Docket No. 130199-EI as "all cost-effective efficiency" in this docket (page 5, lines 7-9), Ms. Mims spends the next twelve pages addressing all the alleged errors in FPL's methodology in the DSM Goals proceeding. All the arguments Ms. Mims makes from Page 5, line 9 through page 17, line 18 were arguments made by Ms. Mims on behalf of SACE in Docket 130199-EI. The similarity of the arguments by the same witness on behalf of the same party in both of these

proceedings is apparent and is set forth on Attachment A to this motion. Attachment A is a comparison of Ms. Mims' arguments in her testimony in this case to Ms. Mims' arguments in her testimony in the DSM goals case.

15. All the elements of administrative finality and collateral estoppel and all but one of the elements of res judicata are met. (1) The issue is identical – what is FPL's reasonably achievable DSM potential; (2) the particular issue must have been actually litigated – the issue was fully litigated by SACE and FPL, with Ms. Mims' now redundant testimony having been considered and rejected by the Commission; (3) the determination of the issue in the prior proceeding must have been necessary and critical to the outcome – the determination of FPL's reasonably achievable level of DSM was a critical issue in the DSM goals case; (4) the party against whom the earlier decision is asserted must have had a full and fair opportunity to litigate the issue in the prior proceeding – SACE was given every opportunity to litigate the issue in the DSM goals case; it simply made Ms. Mims' arguments raised again in this proceeding, which the Commission rejected. Importantly, SACE offers no argument of changed circumstances since the December 16, 2014 Commission decision.

16. The entire argument set forth in the portion of Ms. Mims' testimony that FPL seeks to strike or exclude is that FPL's analysis of, and the Commission's determinations concerning, the level of cost-effective DSM were wrong in the DSM goals case, and they remain wrong now. Ms. Mims' summaries of her argument are most telling. At page 5, lines 9-11, where she begins the passage of testimony FPL seeks to strike, Ms. Mims states, "In the FEECA docket, the Company used an erroneous methodology to calculate its DSM potential, and thus vastly underestimated the amount of cost-effective DSM available." At page 17, line 18, she closes these sections of her testimony that FPL seeks to strike with the following statement. "Quite

simply, FPL had the opportunity to seek and obtain much higher levels of energy efficiency [in the DSM Goals proceeding], at a much lower cost than building new power plants, like the OCEC Unit 1, and did not do so."

17. Having heard the evidence once and rejected it, the Commission should not permit SACE to present the same evidence yet again and to argue in effect for reconsideration of the Commission's decision. FPL and all other parties should be able to rely on the DSM Goals decision as final and should not have to re-litigate a decided issue.

Administrative Economy Warrants
Preclusion of Portions of Ms. Mims' Testimony

18. The timing of this hearing is subject to constraint by rule. Two days have been set aside for hearing, the last two days available to meet the rule-mandated timeline. That leaves a limited amount of time for litigation of properly contested matters in this proceeding. Of course, the Commission, its Staff, and the parties have to prepare for that hearing in advance. It would save the Commission (and parties) both preparation time prior to hearing and hearing time if it were determined that Ms. Mims' redundant testimony that has previously been presented, rebutted, and rejected by the Commission in the DSM Goals docket should not be re-litigated in this proceeding.

19. Because FPL could not secure a ruling on a motion to strike or exclude testimony of Ms. Mims before the deadline for filing rebuttal testimony, FPL has filed rebuttal testimony by Dr. Steven R. Sim. In the event the Commission grants FPL's motion, FPL will appropriately withdraw the portions of Dr. Sim's testimony and exhibits in which he rebuts Ms. Mims' testimony that FPL has moved to strike or exclude. This also would promote administrative

efficiency. The specific passages of Dr. Sim's rebuttal that FPL would withdraw include part or all of the following:

- Direct Testimony of Dr. Steven R. Sim: Page 4, Lines 4-6; Page 6, Line 14; Page 8, Lines 17-23; Page 51, Line 8; Page 51, Lines 10-13; Page 53, Line 19 – Page 58, Line 12; Page 58, Line 17; Page 62, Line 20; Page 62, Line 22 – Page 63, Line 7; Page 63, Lines 8-9; and Page 64, Lines 20-22
- Exhibit SRS-6: Pages 10-14
- Exhibit SRS-12 in its entirety

20. Counsel for FPL has conferred with counsel for the other parties to this proceeding regarding the relief requested in this motion. Counsel for SACE and the Environmental Confederation of Southwest Florida, Inc. object to the motion. Counsel for Commission Staff, the Office of Public Counsel, and the Florida Industrial Power Users Group take no position on this motion.

Wherefore, for the reasons set forth above FPL moves to strike or otherwise exclude Page 5, line 9 through page 17, line 18 of the Direct Testimony of Natalie A. Mims filed on behalf of SACE in this proceeding.

Respectfully submitted this 6th day of November, 2015.

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By *s/ William P. Cox*
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CERTIFICATE OF SERVICE
Docket No. 150196-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail on this 6th day of November, 2015 to the following:

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Attachment A

Comparison of Natalie A. Mims' Testimony
In Docket 150196-EI to Docket 130199-EU

Docket 150196-EI **(Page 5, Line 9 – Page 17, Line 18)**	**Docket 130199-EU**
I. Did FPL Account for All Cost-Effective Potential?	
Q. FPL states that they took account of all identified cost-effective conservation measures prior to determining the need for the proposed OCEC Unit 1. Is this true? A. No, they did not. FPL relies on its energy efficiency goals from the 2014 FEECA docket to determine the level of efficiency that is used as "all cost-effective efficiency" in this docket. In the FEECA docket, the Company used an erroneous methodology to calculate its DSM potential, and thus vastly underestimated the amount of cost-effective DSM available.	**Q. Are the Utilities evaluating *all* cost-effective potential, as required by the statute?** A. No. The fact that sectors are explicitly excluded from the technical potential illustrates that not all potential was evaluated. In addition, the convoluted and inappropriate screens for the economic and achievable potential result in the Utilities not evaluating all cost effective potential. (Page 50, Lines 14-18)
II. FPL Failed to Update its 2009 Potential Study	
Q. What was the process that FPL used to determine its DSM potential? A. First, the Company resurrected a five-year old DSM potential study to evaluate its technical potential, which I will refer to as the "2009 Potential Study," and utilized the 2009 Potential Study as the starting point for its 2014 Potential Study. In a DSM potential study, technical potential should take into account all of the savings that are available, regardless of economics or concerns about participation. The EPA's National Action Plan for Energy Efficiency ("NAPEE") defines technical potential as, "the theoretical maximum amount of energy use that could be displaced by efficiency, disregarding all non-engineering constraints such as cost-effectiveness and willingness of end-users to adopt the efficiency measures."	**Q. Did the Utilities perform a new technical, economic, and achievable potential study for this proceeding?** A. No. The Utilities only updated their 2009 potential study. They eliminated measures that have become the baseline because of codes and standards and added in some new measures, and adjusted the participation and customer growth rates. (Page 40, Lines 16-20) …The Utilities' Technical, Economic and Achievable Potential is conservative, and does not accurately depict the amount of energy efficiency the Utilities are able to cost-effectively capture in the 2015-2024 time period. Further, the methodology that the Utilities use to determine their proposed energy efficiency goals is flawed, resulting in underutilization of energy efficiency as a resource… (Page 7, Lines 18-22)

III. Alleged Flaws in FPL's Potential Analysis

Q. What flaws are there in FPL's technical potential analysis?

A. There were several. The most significant was the flawed assumption that codes and standards reduce FPL's technical potential by 4200 GWh. The existence of a code or standard is not an engineering constraint, and therefore should not be an element in determining technical potential. Table 2 displays FPL's conclusion that summer MWs were reduced by 14%, winter MWs by 12% and energy savings by 13% due to this inaccurate assumption.

Table 2. FPL's flawed reduction in 2014 technical potential due codes and standards

	Summer MW	Winter MW	Annual GWh
2009 Potential Study Technical Potential Reduction due to codes and standards	1,086	575	4,183
2014 Potential Study Technical Potential, reduced from codes and standards	6914	4209	27,666

This flaw was both methodologically and statutorily incorrect. The statutory guidance for the technical potential study in Florida is Section 366.82, F.S., which directs the Commission to evaluate the technical potential of *all* demand side and supply side energy conservation measures, including demand side renewable energy systems. Clearly, eliminating measures associated with codes and standards results in the evaluation of less than *all* demand side and supply side conservation measures.

The second major flaw in the technical potential that FPL calculated for its 2014 Potential Study was the limited amount of efficiency measures evaluated. Again, the technical potential should, if properly calculated,

…The Utilities' Technical, Economic and Achievable Potential is conservative, and does not accurately depict the amount of energy efficiency the Utilities are able to cost-effectively capture in the 2015-2024 time period. Further, the methodology that the Utilities use to determine their proposed energy efficiency goals is flawed, resulting in underutilization of energy efficiency as a resource…
(Page 7, Lines 18-22)

See also:

- **The Utilities potential studies does not satisfy the statutory requirements, and are overly conservative, resulting in an underestimation of the efficiency potential in Florida**

Q. What is the statutory guidance for the technical potential study in Florida?

A. Section 366.82, F.S. directs the Commission to evaluate the technical potential of *all* demand side and supply side energy conservation measures, including demand side renewable energy systems.
(Page 40, Lines 9-15)

See also:

Q. Are the Utilities evaluating *all* cost-effective potential, as required by the statute?

A. No. The fact that sectors are explicitly excluded from the technical potential illustrates that not all potential was evaluated. In addition, the convoluted and inappropriate screens for the economic and achievable potential result in the Utilities not evaluating all cost effective potential.
(Page 50, Lines 14-18)

See also:

…Again, as in the 2009 study, the Utilities have excluded several measures from the technical (and therefore economic and achievable) potential. SACE reviewed the measures from the 2009 energy efficiency

include all energy efficiency measures except those that are impossible due to engineering constraints. SACE reviewed the measures from the 2009 Potential Study, as they were the starting point for the 2014 Potential Study, and compared them to recent energy efficiency potential studies for TVA and Georgia Power. There are many measures that appear to have been excluded from both the 2009 and 2014 Potential Studies that were included in the TVA and Georgia Power energy efficiency potential studies, a list of which measures are included as Exhibit NAM-2.*
Finally, as in the 2009 Potential Study, FPL excluded several sectors from the technical potential in the 2014 Potential Study. As stated in the 2009 Potential Study:

> It should also be noted that energy and peak savings opportunities in a few end-use sectors were specifically excluded from this study. These sectors were agriculture, transportation, communications and utilities (TCU), construction, and outdoor/street lighting…the out-of-scope sectors accounted for just over 10% of total sales [for FEECA utilities].

Q. What is the impact of the technical potential, the starting point for determining the amount of energy efficiency that is available to FPL, being fundamentally flawed and inaccurate?

> A. The technical potential is the first calculation that is made when determining energy efficiency potential, thus all other calculations are dependent on that calculation. This means that FPL's entire 2014 Potential Study is flawed, and furthermore, the basis for FPL's statement that it evaluated all cost-effective energy efficiency prior to determining its need for the proposed OCEC Unit 1 is inaccurate.

Q. Putting aside the fact that the rest of the 2014 Potential Study was flawed from the start, were there other flaws when FPL moved to the second step of the potential study, calculating the economic potential?
A. Yes. The NAPEE defines economic potential as:

> the subset of the technical potential that is economically cost effective as compared to conventional supply side energy resources…they [technical and economic potential] ignore market

potential study and compared them to recent energy efficiency potential studies for TVA and Georgia Power. There are many measures that appear to have been excluded from the 2009 energy efficiency potential study that were included in the TVA and Georgia Power energy efficiency potential study. SACE has provided a list of these measures in SACE-NAM Exhibit 8.*
Finally, as in the 2009 technical potential, there are several sectors excluded completely from the energy efficiency potential when the Utilities evaluated technical potential for the 2014 energy efficiency goals. As stated in the 2009 Itron technical potential study:

> It should also be noted that energy and peak savings opportunities in a few end use sectors were specifically excluded from this study. These sectors were agriculture, transportation, communications and utilities (TCU), construction, and outdoor/street lighting…the out-of-scope sectors accounted for just over 10% of total sales [for FEECA utilities].

(Page 42, Lines 6-20)

See also:
Q. How did the Utilities determine the economic and achievable potential in their energy efficiency potential studies?
A. In order to determine the economic and achievable potential the Utilities used 4-5 screens to eliminate measures…
Q. Do you have concerns about the screens the Utilities use to create their economic and achievable potential?
A. Yes, I have several: (1) the screens are opaque, (2) as I discussed earlier, administrative costs should not be included in a measure level analysis, and the two year screen should not be used as a proxy for free-ridership, (3) the incentive level should not be used as a screen to eliminate measures, (4) the Utilities are not considering the benefits of measures correctly, and (5) the obfuscation of participation data, a key component in the potential 1 study, makes evaluation difficult…
Q. Can you restate why administrative costs should not be included in measure level analysis?
A. The programs and overall portfolio screening should include all program costs, including, but not limited to, that spent on marketing,

barriers to ensuring actual implementation. Finally, they only consider the costs of energy efficiency measures themselves, ignoring any programmatic costs (e.g. marketing, analysis, administration) that would be necessary to capture them. Again, FPL did not use the best practices outlined by the EPA when it calculated economic potential in its 2014 Potential Study. FPL Witness Koch stated: After the TP [technical potential] was updated, FPL's Resource needs during the DSM Goals timeframe were determined and other facets of FPLs resource planning process were then used to conduct an Economic Potential (EP) or cost effectiveness screening of the DSM measures. It is inappropriate to evaluate the Company's resource needs prior to determining if measures are economic. The only factor that should be considered when calculating economic potential is whether or not the energy efficiency is less expensive than avoided cost. By creating, and using, additional criteria to define both the technical and economic potential, FPL invalidated its 2014 Potential Study. **Note: Exhibit NAM-2 in Docket 150196-EI is identical to SACE-NAM Exhibit 8 in Docket 130199-EI*	administration, monitoring and evaluation, technical analysis, data tracking, and other necessary program costs (collective referred to as program administrative costs). As noted earlier, Section 366.82(7) provides for the further review of costs at the program level, and therefore it is appropriate to exclude program costs at this point. (Page 44, Line 10 – Page 46, Line 17) **Note: Exhibit NAM-2 in Docket 150196-EI is identical to SACE-NAM Exhibit 8 in Docket 130199-EI*
IV. Free Ridership / Two-Year Payback Screen	
FPL further miscalculated the amount of cost-effective energy efficiency in the 2014 Potential Study by applying yet another inappropriate screen to calculate the economic potential – the "years to payback screening to account for free riders." As explained by FPL: the intent of the years-to-payback test is to address the "free rider" issue so that the utility, and all of its customers, are not making incentive payments and incurring administrative costs, for DSM measures that customers will likely purchase even without an incentive payment. Evaluating free ridership, in every other jurisdiction I am aware of, is a component of utility evaluation, measurement and verification of energy	…Free-ridership should be considered in program planning, and the appropriate methodology for doing so involves using survey and billing data from customers that have participated in the Utilities energy efficiency programs. Using a payback period screen for a "proxy" of free-ridership; regardless of the number of years, is an archaic and inaccurate way to determine free-ridership. (Page 7, Lines 13-17) See also: **Q. What is the Two-Year Payback screen?** A. The Utilities use a "two-year payback" screen as an alleged proxy for free-ridership. There are no other utilities in the Southeast, or the country

efficiency programs. It is completely invalid and a flawed methodology to include this screen when calculating economic potential. As shown in Table 3 and 4, this screen eliminated 1,550 - 6,392 GWh from FPL's energy efficiency potential under the Company's RIM and TRC portfolio.

Table 3. FPL's flawed reduction in 2014 technical potential due to free rider screen (RIM)

	Summer MW	Winter MW	Annual GWh
2014 Technical Potential	7,146	4,410	31,468
Reduction due to free riders – RIM portfolio	374	39	1,550
Technical potential reduced due to free riders – RIM portfolio	6,772	4,371	29,918

Table 4. FPL's flawed reduction in 2014 technical potential due to free rider screen (TRC)

	Summer MW	Winter MW	Annual GWh
2014 Technical Potential	7,146	4,410	31,468
Reduction due to free riders – RIM portfolio	374	39	1,550
Technical potential reduced due to free riders – TRC portfolio	6,772	4,371	29,918

I am aware that Florida utilities are required to consider free riders when

that use this methodology. Using a two-year screen as a proxy for free-ridership is ridership is a seriously flawed approach to addressing free-ridership.
(Page 35, Line 23 – Page 36, Line 4)

See also:
Q. Why is the two-year payback methodology flawed?
A. First, it uniformly applies the same free-ridership rate to every measure that is economic, which is too broad. There are no other utilities in the Southeast that use a blanket methodology to identify free-ridership for all measures. Second, it is also inaccurate because it eliminates entire measures because of the *potential* for free-ridership. This is also too broad, and again, there are no other utilities in the Southeast that eliminate entire measures from their achievable potential or energy efficiency programs because there *might* be free-ridership. Every other regulated utility in the Southeast uses surveys and gather data through their EM&V process at the measure or program level to determine how much the utility incentive influenced the customer's decision to purchase an energy efficiency measure.
(Page 36, Line 15 – Page 37, Line 1)

See also:
Q. What is the impact of using a two-year payback as a proxy for free-ridership?
A. Beyond being an ineffective and archaic policy, the two-year payback significantly reduces the achievable potential identified by the Utilities... FPL eliminated over 26,000 GWh of potential based on its "preliminary economic and screens," some component of which is the two year screen.
(Page 39, Lines 10-15)

See also:
COMMISSIONER BALBIS: So is SACE proposing then that we include all of the measures that did not pass the two-year screening test and then perform surveys, gather data and information?
THE WITNESS [Mims]: I've been thinking about that a lot. I think EM&V should definitely be completed in the next ECCR proceeding. I

proposing their energy efficiency goals. There are other ways to "consider free riders" than using a proxy that arbitrarily eliminates energy efficiency and capacity savings. As I have suggested in the past, including free rider rates from other utilities in the Southeast would be more accurate than what FPL current uses. The free rider rates from other southeastern utilities could be applied at the residential, commercial and industrial class level as the last step of setting the goal, and that would also be more accurate than the two year proxy. Further, Southeastern utilities have found that with free ridership and spillover, their realization rates go above 100%, meaning that no savings would be eliminated from the energy efficiency goals when considering free ridership.	think that's the most appropriate place to do that, and that's where it's done in all of the other Southeastern utilities in their cost recovery proceeding. I think for this proceeding at hand… that it is too late to probably calculate free-ridership based on a evaluate [sic], 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 in this proceeding. So I think using a reduced payback period for this proceeding and then fixing it and moving forward is the most important thing, is to get, you know, real analysis and look at the evaluation, measurement, and verification of the programs moving forward.... (Hearing Transcript Page 1053, Line 23 – 1054, Line 22)
V. Achievable Potential	
Q. How does the National Action Plan for Energy Efficiency define achievable potential? **A.** The NAPEE breaks achievable potential into two categories, achievable potential and program potential. Based on these two definitions, FPL completely omitted calculating the achievable potential and instead moved directly to calculating the program potential. Achievable potential is defined as: the amount of energy use that efficiency can realistically be expected to displace assuming the most aggressive program scenario possible. This is often referred to as maximum achievable potential. Achievable potential takes into account real world barriers to convincing end users to adopt energy efficiency measures, the non-measure costs of delivering programs and the capability of programs and administrators to ramp up program activity over time. In contrast, Program potential is defined as "the efficiency potential possible given specific program funding levels and designs." **Q. Did FPL's methodology have errors in its achievable potential?** A. FPL's calculation of achievable potential is very illogical, and	**Q. How did the Utilities determine the economic and achievable potential in their energy efficiency potential studies?** A. In order to determine the economic and achievable potential the Utilities used 4-5 screens to eliminate measures… **Q. Do you have concerns about the screens the Utilities use to create their economic and achievable potential?** 7 A. Yes, I have several: (1) the screens are opaque, (2) as I discussed earlier, administrative costs should not be included in a measure level analysis, and the two year screen should not be used as a proxy for free-ridership, (3) the incentive level should not be used as a screen to eliminate measures, (4) the Utilities are not considering the benefits of measures correctly, and (5) the obfuscation of participation data, a key component in the potential 1 study, makes evaluation difficult… **Q. Can you restate why administrative costs should not be included in measure level analysis?** A. The programs and overall portfolio screening should include all program costs, including, but not limited to, that spent on marketing, administration, monitoring and evaluation, technical analysis, data tracking, and other necessary program costs (collective referred to as program administrative costs). As noted earlier, Section 366.82(7) provides for the further review of costs at the program level, and

unconventional. FPL's ten year 2015-2024 Achievable Potential "is determined based on the maximum rebate levels for all measures that passed the prior [economic] screening." I am not aware of any other utility that use this criteria to establish its achievable potential. Somehow, FPL managed to whittle its Summer MW savings from over 7,100 MW (technical potential) to a goal of approximately 50 MW a year of achievable potential.	therefore it is appropriate to exclude program costs at this point. (Page 44, Line 10 – Page 46, Line 17) **Q. What is the impact of the Utilities assuming the maximum incentive level possible for the cost-tests?** A. It likely overstates the costs of achieving the Utilities proposed goals. This approach is like assuming that a hotel room is rented at the "rack rate," when in reality the hotel nearly always offers the room for a price that is much lower than the rate listed on the back of the hotel room door. I did not receive granular enough information to assess exactly how overstated the Utilities' incentive levels are, but if the maximum available incentive level is assumed, then cost component cannot get any higher. The Utilities use this maximum incentive level is used [sic] regardless of the level of incentive that best practices would suggest is needed to motivate the customer to install an efficiency measure. (Page 34, Lines 7-17)
VI. Summary of Alleged Flaws	
Q. Please summarize the flaws present in FPL's energy efficiency potential study. A. There are many flaws, including: (1) removing savings from codes and standards prior to calculating technical potential; (2) excluding entire sectors and measures from the technical potential; (3) determining utility resource needs prior to calculating economic potential; and (4) using a two year payback proxy to calculate economic potential. Finally, FPL used maximum rebate levels to determine achievable potential. While this is not necessarily impermissible, it is certainly not a best practice methodology. **Q. Do you believe that the flaws referenced above result in an inaccurate representation by FPL as to whether or not there are energy efficiency measures that are reasonably available to the Company that might mitigate the need for OCEC Unit 1?** A. Yes. Based on the erroneous methodology used by FPL to calculate its energy efficiency potential, there are additional measures that are	*See all corresponding testimony of SACE witness Mims in docket No. 130199-EI provided above.*

reasonably available. First, there are savings associated with codes and standards. While FPL may capture the reduction in consumption due to codes and standards in its load forecast, and not in its efficiency forecast, it could still implement an energy efficiency program to improve and assist in code compliance, therefore generating additional reasonable savings. Second, FPL did not include reasonably available energy efficiency measures in its 2014 Potential Study, and completely excluded several sectors from the 2014 Potential Study. Finally, FPL further miscalculated the amount of reasonably available energy efficiency in the 2014 Potential Study by applying yet another inappropriate screen to calculate the economic potential – the "years to payback screening to account for free riders." This inappropriate screen eliminated between 1,550 - 6,392 GWh from FPL's energy efficiency potential under the Company's RIM and TRC portfolio.	
VII. Appropriate Cost-Effectiveness Test (RIM vs. TRC)	
IV. THE PROPOSED PLANT IS NOT THE MOST COST-EFFECTIVE OPTION AVAILABLE. **Q. Please summarize FPL's interpretation of "cost-effective" DSM?** A. FPL's interpretation of "cost-effective" DSM relies on the very restrictive perspective of the Ratepayer Impact Measure ("RIM") test. The RIM test focuses on the "cost" of reducing the Company's electricity sales and revenues over the lifetime of the demand-side measure. Under this view, both customer-side energy efficiency and renewables result in unrecovered revenue requirements for the utility and upward pressure on rates for non-participating customers. FPL's narrow perspective, however, disregards the overall and longer term savings and benefits to all customers and society as a whole, which is the goal of the Total Resource Cost ("TRC") test. The use of TRC to determine energy efficiency investments is a well-established best practice in the nation. In contrast, besides FPL and other Florida utilities, only one other state (Virginia) relies on the RIM test to make investment decisions. FPL has aggressively opposed the use of the TRC test to determine energy efficiency investments in Florida for many years. In 2014, FPL insisted	**Q. Do the Utilities' energy and peak demand reduction goals reflect the intent of the statute?** A. The Utilities argue that level of utility energy efficiency and peak demand reduction goals should be based on a very restrictive benefit-cost test, known as the Ratepayer Impact Measurement ("RIM") test. While I am not offering a legal interpretation, it seems to me that the narrow view taken by the Utilities will not result in significantly reducing the consumption of electricity nor conserving fuel used in the generation of electricity. The RIM test fails to achieve these objectives because it does not quantify all of the costs and benefits of conserving finite resources. (Page 14, Lines 2-10) See also: **Q. Which component of the costs drives the RIM test score in Florida?** A. The difference in the cost component of RIM and TRC, as I stated above, is lost revenues. "Lost revenue" is a term of art that is used in energy efficiency policy discussions to describe the revenue that the utility does not earn by saving energy instead of selling energy. Lost

that, between the RIM and TRC tests, "only the RIM test really addresses the issue of whether it makes sense for a utility to offer a [demand-side management] measure when considering all customers on a utility system." By focusing on the impacts on customers that do not participate in demand-side programs, FPL's narrow perspective ignores opportunities for benefits and savings for all customers. Likewise, by focusing on lost revenues, FPL's perspective does little to promote reduced customer usage and fossil fuel consumption, but rather serves to protect its utility business model against the impacts of reduced usage, whether through energy efficiency or renewable generation. Moreover, policy solutions are available to address the financial impact demand-side resources can have on electric utilities, yet FPL has opposed exploring any such mechanism to make it financially neutral to such resource decisions. The use of TRC and utility incentives to support efficiency adoption are not novel or advanced concepts, and have been recognized in the industry for decades, beginning in the early 1990s.	revenues should only apply to fixed costs, as variable costs will be reduced as energy is saved. It is important to note that lost revenues are not new costs, as energy efficiency program costs are. They are costs that have already been incurred through prior capital expansion by the utility, or sometimes called "sunk costs." As it is in society's interest for the utility to remain financially health, some regulators allow utilities to recover some of the "lost revenue" from energy efficiency, through a lost revenue adjustment mechanism (LRAM). Simply put, a LRAM allows the utility to recovery a component of the electricity cost, even though the customer did not consume it, to ensure the financial stability of the utility. (Page 20, Lines 1-13) See also: **Q. What are the other policy options to address lost revenues?** A. There are a variety of regulatory policies that the Commission could implement or explore to remove the Utilities disincentive to promote all cost-effective energy efficiency. In several states, utilities are decoupled, meaning that their revenues are no longer tied to their sales – they are tied to their customers. Another option is to more frequently review the utilities rates to ensure that they are adequately recovering their fixed costs even if sales are decline due to energy efficiency. (Page 21, Lines 10-16)
Q. Is the RIM test used as the primary cost-effective test to make energy efficiency decisions by regulators in the United States? A. No. Only one state, Virginia, relies on the RIM test as its primary benefit-cost test. 71% of states that have designated a primary cost-test use the Total Resource Cost ("TRC") test.	See also: **Q. Is the RIM test used as the primary cost-effective test to make energy efficiency decisions by regulators in the United States?** A. No. Only one state, Virginia, relies on the RIM test as its primary benefit-cost test. 71% of states that have designated a primary cost-test use the Total Resource Cost ("TRC") test... (Page 14, Lines 19-24)
Q. How does FPL justify this extreme perspective? A. FPL justifies its reliance on this extremely conservative perspective by citing that the Commission found that "consideration of both the RIM and TRC is necessary to fulfill the requirements of Section 366.82(3)(b), F.S."	See also: **Q. What benefit-cost test should be the primary test to determine energy efficiency policy?** A. As the Commission ruled in 2009, the total resource cost test. Further,

Q. How does FPL interpret the word "consideration"?
A. FPL's interpretation of the word "consideration" clearly shows their conservative perspective on energy efficiency economics. Using FPL's interpretation, to "consider" the RIM tests means that energy efficiency goals are "set based on the use of the RIM test." That does not appear to me to be the same as "taking into consideration the TRC test" and in fact, appears to be only using the RIM test.

Q. What was the difference between FPL's TRC and RIM DSM goals in the 2014 FEECA proceeding?
A. The energy savings FPL projected from 2015-2017, under the TRC test was 23-46 GWh higher than when using the RIM test. As FPL noted, there are not significant differences between the summer MW in the RIM and TRC cases – about 50 MW over the ten year planning period – but this is due to the flawed modeling I discussed above. FPL's refusal to allow energy efficiency to reduce the size of a natural gas power plant is just one of the factors that FPL used to undervalue energy efficiency in its 2014 ten year site plan, and subsequently in this docket.

Table 4 shows the difference in the number of measures, and Table 5 and 6 shows the difference in the energy and capacity savings using TRC and RIM to define cost-effectiveness.

Table 4. Number of measures included in FPL's FEECA analysis under TRC and RIM tests

	RIM	TRC
With CO2 Costs	124	301
Without CO2 Costs	120	300

Table 5. Energy and capacity savings in FPL's FEECA Achievable Potential analysis using TRC Test

FPL Achievable Potential - Combined (TRC)

	Summer MW		Winter MW		Annual GWh	
Year	Annual	Cumulative	Annual	Cumulative	Annual	Cumulative
2015	47.4	47.4	38.1	38.1	64.0	64.0

the issue is not that RIM is "right" or "wrong", it is simply that, as a benefit-cost test: (1) it does not depict an appropriate picture of energy efficiency costs and benefits, and the impact of efficiency on utility system costs; (2) it does not reflect the intent of the Legislature or the Commission, and (3) it is a moot issue in this hearing. The Commission already determined what test to rely on in the last energy efficiency goals proceeding, and it is the Total Resource Cost test.
(Page 23, Lines 12-20)

See also:
Q. That 2019 combined cycle unit is in fact FPL's avoided unit for purposes of screening DSM measures, correct?
A. Yes, it is. And as a result of the few Strategist report FPL gave SACE, it does not appear that FPL can demonstrate that its choice of this unit for avoided cost purposes was the best choice for the system and customers.
Q. Does the choice of the combined cycle in 2019 otherwise materially affect FPL's DSM goal setting?
A. Yes, it does. As I mentioned above, FPL Witness Sim states that DSM resources cannot meet projected needs then a supply option is added first and DSM resources are reduced to exactly meet FPL's need...

…This approach is fatally flawed and completely ignores economic considerations. It has nothing to say about the cost-effectiveness of DSM instead relying entirely on the metric of whether peak needs are met or not. As a result, Dr. Sim has no basis upon which to conclude that "FPL could not have cost-effectively accommodated more than 337 MW of DSM in the 2015-2025 period" since that conclusion is based solely on FPL's calculation of need remaining after considering the supply-side resources it intends to add, and not on the cost-effectiveness of resources.

Finally, this approach is even more illogical considering that FPL could build a combined cycle plant with total output less than 1,269 MW. Many other plants have been built at lower output, such as Duke Energy Carolina's recently approved Lee units.
(Page 54, Line 5 – Page 55, Line 9)

2016	52.2	99.7	41.4	79.5	87.2	151.2
2017	54.2	153.8	43.1	122.6	93.4	244.7
2018	55.6	209.4	44.5	167.2	99.9	344.6
2019	57.1	266.5	46.0	213.2	106.7	451.3
2020	58.6	325.2	47.6	260.8	113.7	565.0
2021	60.2	385.4	49.3	310.1	121.0	685.9
2022	61.9	447.3	51.0	361.1	128.5	814.4
2023	63.6	510.9	52.7	413.8	136.4	950.9
2024	65.5	576.4	54.6	468.4	144.7	1,095.6

Table 6. Energy and capacity savings in FPL's FEECA Achievable Potential analysis using RIM test

FPL Achievable Potential - Combined (RIM)

	Summer MW		Winter MW		Annual GWh	
Year	Annual	Cumulative	Annual	Cumulative	Annual	Cumulative
2015	48.1	48.1	29.2	29.2	41.1	41.1
2016	49.6	97.7	30.0	59.2	45.6	86.7
2017	50.8	148.5	30.9	90.1	47.5	134.2
2018	51.6	200.1	31.5	121.6	49.5	183.7
2019	52.3	252.4	32.1	153.7	51.5	235.3
2020	53.1	305.5	32.7	186.5	53.6	288.9
2021	53.9	359.3	33.4	219.9	55.8	344.7
2022	54.7	414.1	34.1	253.9	58.1	402.8
2023	55.6	469.6	34.8	288.7	60.5	463.3
2024	56.5	526.1	35.5	324.2	62.9	526.3

VIII. SACE's Proposed Energy Efficiency Goals

Q. Did SACE propose energy efficiency goals in the FEECA proceeding?

A. Yes, SACE proposed that FPL achieve 1% of prior year retail sales with energy efficiency. SACE proposed this level of savings because FPL's entire analysis was so flawed, that it could not be used as the basis for goal setting. I discuss these flaws above, and in particular the major

Q. What is an appropriate level of energy efficiency savings goals for Florida Utilities?

A. In the absence of meaningful analysis, Florida Utilities should aspire to achieve 1% of retail sales annually. Currently, 14 states are saving at least 1% of electricity sales each year, and the leading state saved upwards of 2% of electricity sales a year, based on the most recent data

flaw that the entire energy efficiency potential study is based on an inappropriate, inaccurate methodology that trickles down to the rest of the analysis. SACE's energy efficiency goal would have resulted in the company saving over 15,000 GWh more than what FPL proposed (60 GWh) and what the Commission ultimately approved (526 GWh).	available (2011). While it is not realistic to assume that the Florida Utilities could achieve 100% of cost-effective energy efficiency potential, 1% of sales is a reasonable annual savings target for what an innovative energy efficiency program could achieve over the next few years. Given that five states achieved this level of savings in 2009, it does not seem unreasonable that Florida Utilities could achieve 1% in upcoming years…. (Page 50, Line 19 – Page 51, Line 5)
IX. Customer Savings	
Q. Did FPL find that SACE's proposed level of savings would cost less than FPL's proposed goals? A. Yes. FPL found that the cumulative present value revenue requirement for SACE's energy efficiency goal would cost less than FPL's goal. This is particularly important because SACE's goal was 15,000 GWh more than the Commission approved FPL goal, and it still resulted in lower cumulative present value revenue requirements. Specifically, FPL witness Sim stated, "I would agree the SACE plan is lower in total cost or revenue requirements."	**Q. How does FPL evaluate the financial viability of the plans in Step 5?** A. The plans were evaluated on the basis of levelized system average electric rate. This is illogical because customers care about their bills, not their rates and since bills are a function of consumption *and* rates, FPL is painting an incomplete economic picture. **Q. What is a more appropriate metric than levelized system average electric rate to evaluate DSM in Step 5?** A. The present value of revenue requirements (PVRR) is the best way to evaluate cost from the customers' perspective. However, as Dr. Sim testified in Docket No. 130009-EI "From an economic standpoint or perspective, we look at resource options that provide our customers reliable service at the lowest possible electric rates, *not necessarily the lowest possible cost* [emphasis added in Mims testimony]." **Q. What, if anything, can you say about the PVRR of FPL's plans?** A. Despite the many flaws of FPL's DSM screening process, the PVRR results show exactly what one would expect – that higher levels of energy efficiency result in lower cost to customers. (Page 55, Line 18 – Page 56, Line 8)
X. Unrecovered Revenue Requirements	
Q. How does FPL use the cumulative present value revenue requirement in this proceeding? A. FPL uses the cumulative present value revenue requirement to determine the best generation option from a cost and electric rate perspective. FPL does not allow DSM to be part of this calculation by	**Q. Which component of the costs drives the RIM test score in Florida?** A. The difference in the cost component of RIM and TRC, as I stated above, is lost revenues. "Lost revenue" is a term of art that is used in energy efficiency policy discussions to describe the revenue that the

holding it constant across each option. The bottom line is that it is cheaper to operate FPL's system with more efficiency than with less. FPL continues to refuse to acknowledge this by falling back on to the argument that lost revenues, or "unrecovered revenue requirements" as FPL likes to call it, increase rates. However, the critical piece of knowledge that FPL refuses to discuss is that "unrecovered revenue requirements" result from policy decisions, not from resource decisions. The costs can be avoided or mitigated with minor changes to FPL's business model. These minor changes would result in a cleaner, cheaper, more efficient electric system.	utility does not earn by saving energy instead of selling energy. Lost revenues should only apply to fixed costs, as variable costs will be reduced as energy is saved. It is important to note that lost revenues are not new costs, as energy efficiency program costs are. They are costs that have already been incurred through prior capital expansion by the utility, or sometimes called "sunk costs." As it is in society's interest for the utility to remain financially health, some regulators allow utilities to recover some of the "lost revenue" from energy efficiency, through a lost revenue adjustment mechanism (LRAM). Simply put, a LRAM allows the utility to recovery a component of the electricity cost, even though the customer did not consume it, to ensure the financial stability of the utility. (Page 20, Lines 1-13) See also: **Q. What are the other policy options to address lost revenues?** A. There are a variety of regulatory policies that the Commission could implement or explore to remove the Utilities disincentive to promote all cost-effective energy efficiency. In several states, utilities are decoupled, meaning that their revenues are no longer tied to their sales – they are tied to their customers. Another option is to more frequently review the utilities rates to ensure that they are adequately recovering their fixed costs even if sales are decline due to energy efficiency. (Page 21, Lines 10-16)
XI. Overall Conclusions	
Q. What are your conclusions in this regard? A. Quite simply, FPL had the opportunity to seek and obtain much higher levels of energy efficiency, at a much lower cost than building new power plants, like the OCEC Unit 1, and did not do so. Thus, FPL, and more importantly its customers, missed out on more cost effective alternatives.	*(See all corresponding testimony of SACE witness Mims in docket No. 130199-EI provided above)*