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July 22, 2019

-VIA ELECTRONIC DELIVERY-

Adam Teitzman
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RE: Docket 20190015-EG

Dear Mr. Teitzman:

Attached for filing in the above docket is Florida Power & Light Company's Prehearing Statement. This letter, Prehearing Statement, and certificate of service are being submitted via the Florida Public Service Commission's Electronic Filing Web Form as a single PDF file.

If there are any questions regarding this transmittal, please contact me at (561) 691-7144.

Sincerely,

s/ Christopher T. Wright
Christopher T. Wright
Fla. Auth. House Counsel No. 1007055

Enclosure

cc: Parties of Record

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Commission review of numeric conservation Goals (Florida Power & Light Company).

Docket No. 20190015-EG

Filed: July 22, 2019

**FLORIDA POWER & LIGHT COMPANY'S
PREHEARING STATEMENT**

Florida Power & Light Company ("FPL"), by and through its undersigned counsel, hereby submits this Prehearing Statement pursuant to Order No. PSC-2019-0062-PCO-EG, and states:

1. FPL WITNESSES

A. Direct Testimony

| <u>Witness</u> | <u>Subject Matter - Direct</u> | <u>Issue #</u> |
|-------------------|---|----------------------------|
| Thomas R. Koch | Describes FPL's historical Demand Side Management ("DSM") achievements implemented in accordance with the Florida Energy Efficiency and Conservation Act ("FEECA"). Provides an overview of the 2019 DSM Goals development process. Discusses impacts of significant market forces on utility-sponsored DSM. Discusses the Achievable Potential development, including the impact of significant market forces. Summarizes FPL's proposed 2020-2029 DSM Goals. Supports proposals to increase assistance for Low Income customers and an electric vehicle research & development pilot project. | 1, 2, 3, 4, 6, 7, 8, 9, 10 |
| Andrew W. Whitley | Provides an overview of FPL's resource planning process and DSM Goals evaluation process. Reviews the relevant assumptions used in FPL's resource planning process. Presents the results of the Economic Potential preliminary screening analysis for all of the DSM Goals measures which served as inputs for the Achievable Potential. Reviews the resource plans that are based on the results of the Achievable Potential analyses and how these resource plans meet FPL's resource needs and how they compare based on economic and non-economic factors. | 2, 3, 4, 5, 6, 7, 10 |
| Steven R. Sim | Explains why it is logical and appropriate for FPL's proposed DSM Goals to be lower than the Goals set by the FPSC in the last DSM Goals docket in 2014. Discusses the "benefits" side of benefit-to-cost (or cost-effectiveness) analyses of DSM measures that is a major topic in this docket. Explains why the potential benefits of DSM measures, particularly on FPL's system, have decreased so significantly. | 3, 4, 6 |
| Jim Herndon | Summarizes and sponsors the Market Potential Study conducted for FPL, which includes the Technical Potential for FPL. | 1 |

B. Rebuttal Testimony

| <u>Witness</u> | <u>Subject Matter - Rebuttal</u> | <u>Issue #</u> |
|-------------------|---|----------------------|
| Thomas R. Koch | Addresses certain assertions and proposals made by the Southern Alliance for Clean Energy (“SACE”) witnesses Bradley-Wright and Grevatt. Explains that FPL is empathetic to the financial challenges faced by low income customers and has proposed retention and expansion of its Low Income program, and explains why the low-income proposal by SACE witness Bradley-Wright is extreme, unreasonable, unsupported, procedurally improper, and beyond the scope of FEECA and the Commission’s Goals Rule. Demonstrates that the “benchmarking” relied upon by SACE witness Grevatt to justify his extreme 1.5% percent of sales Goal improperly violates the most basic benchmarking methodology principles, is an apples-to-oranges comparison, and appears to be nothing more than a thinly veiled attempt to mislead the Commission and the FEECA utilities. Responds to SACE witness Grevatt’s “generic concerns” regarding FPL’s analysis methodology, and explains that they are minor and incorrect quibbles that ultimately are meaningless and have no material impact on the outcome of the Achievable Potential. | 1, 2, 3, 4, 6, 7, 8 |
| Andrew W. Whitley | Addresses the following topics raised in the direct testimony of SACE witness Grevatt: the lack of any resource planning analysis in the development of his proposed Goals; the disregard for decades of reliance upon the cost-effectiveness tests used in Florida for DSM analysis; the logical fallacies the SACE witnesses attempted to use to diminish the electric rate impact of non-cost-effective DSM; the extreme rate and bill impacts resulting from Mr. Grevatt’s 1.5% of retail sales proposal; and several other à la carte points made by Mr. Grevatt that lack any kind of backup analysis or meaningful support. Also addresses the testimony of SACE witness Bradley-Wright regarding application of cost-effectiveness tests to his “deeper savings” plan for low income customers. | 2, 3, 4, 5, 6, 7, 10 |
| Steven R. Sim | Explains that SACE’s witnesses do not contest the fact that the cost effectiveness of utility DSM has been declining for some time and that this trend is continuing. Responds to SACE witness Grevatt’s recommended GWh Goal, which is based entirely on alleged savings realized by non-Florida utilities that are subject to entirely different regulatory schemes, and explains that the Goal is unreasonable, unsupported, and inconsistent with the State of Florida requirements for Goals-setting. Addresses and responds to numerous inaccurate misstatements made by the SACE witnesses. | 3, 4, 6 |
| Jim Herndon | Responds to SACE’s incorrect assertions that consideration of naturally-occurring efficiency accounts for free ridership and that the Achievable Potential is understated because the effect of early retirement of measures is not taken into account. Responds to SACE’s criticism regarding inclusion of non-electric impacts in the Total Resource Cost (“TRC”) test, and items on SACE witness Grevatt’s list of so-called “potential study conservatisms.” | 1 |

| <u>Witness</u> | <u>Subject Matter - Rebuttal</u> | <u>Issue #</u> |
|----------------|---|----------------|
| Terry Deason | Addresses cost effectiveness and the intervenor witnesses' ill-advised suggestion to chiefly rely on the TRC test. Addresses cross-subsidizations and the intervenor witnesses' unfounded assertions that cross-subsidies can and should be disregarded when setting conservation Goals. Addresses free-riders and the intervenor witnesses' recommendation to abandon the Commission's two-year payback screening criterion. Addresses the SACE witnesses' overarching and misapplied contention that other utilities' DSM Goals should be mimicked here in Florida. | 3, 4, 6, 7 |

2. EXHIBITS

| <u>Witness</u> | <u>Proffered By</u> | <u>Exhibit #</u> | <u>Description</u> | <u>Issue #</u> |
|-------------------|---------------------|------------------|---|----------------------------|
| Thomas R. Koch | FPL | TRK-1 | Current DSM Programs and Achievements | 1, 8, 9 |
| | FPL | TRK-2 | Current DSM Programs and Associated Measures | 1, 8, 9 |
| | FPL | TRK-3 | 2020-2029 Achievable Potential – RIM and 2020-2029 Achievable Potential – TRC | 1, 2, 3, 4, 6, 7, 8, 9, 10 |
| | FPL | TRK-4 | 2020-2029 Proposed DSM Goals | 1, 2, 3, 4, 6, 7, 8, 9, 10 |
| | FPL | TRK-5 | Estimated Cost to Achieve SACE's Proposed Low Income-Specific Goals | 2, 3, 4, 6, 7, 8, 9 |
| | FPL | TRK-6 | SACE response to FPL Interrogatory No. 1 | 8, 9 |
| Andrew W. Whitley | FPL | AWW-1 | FPL's Resource Planning Process as Applied to DSM Goals-Setting | 2, 3, 8, 9 |
| | FPL | AWW-2 | Economic Elements Accounted for in DSM Preliminary Screening Tests: Benefits & Costs | 2, 3, 6 |
| | FPL | AWW-3 | Summary Results of Preliminary Economic Screening of Individual DSM Measures | 3, 4, 6, 7, 10 |
| | FPL | AWW-4 | Summary Results of Preliminary Economic Screening of Individual DSM Measures: Sensitivity Cases | 4, 5, 7, 10 |
| | FPL | AWW-5 | Forecasted Fuel and Environmental Compliance Costs | 5 |
| | FPL | AWW-6 | Projection of FPL's Resource Needs for 2020-2031 with No Incremental Signups After 2019 | 3, 8, 9 |

| <u>Witness</u> | <u>Proffered By</u> | <u>Exhibit #</u> | <u>Description</u> | <u>Issue #</u> |
|----------------------------------|---------------------|------------------|---|---|
| Andrew W. Whitley (continued) | FPL | AWW-7 | Comparison of DSM Achievable Potential Summer MW with FPL's Projected Summer Resource Needs | 3, 8, 9 |
| | FPL | AWW-8 | Overview of Supply Only and With DSM Resource Plans | 3, 8, 9 |
| | FPL | AWW-9 | Example of Levelized System Average Electric Rate Calculation for the RIM Resource Plan | 3 |
| | FPL | AWW-10 | Comparison of the Resource Plans: Economic Analyses Results and Consequences | 3, 6, 8, 9 |
| | FPL | AWW-11 | Additional Cost Needed to be Added to the RIM Plan to Increase its Levelized System Average Electric Rate to That of the TRC Plan | 3, 6, 8, 9 |
| | FPL | AWW-12 | Comparison of the Resource Plans: Projection of System Average Electric Rates and Customer Bills | 3, 6, 8, 9 |
| | FPL | AWW-13 | Comparison of the Resource Plans: Projection of System Emissions | 3, 5 |
| | FPL | AWW-14 | Comparison of the Resource Plans: Projection of System Oil and Natural Gas Usage | 3 |
| | FPL | AWW-15 | SACE 1.5% Plan Analysis: Levelized System Average Electric Rate Calculation | 3 |
| | FPL | AWW-16 | SACE 1.5% Plan Analysis: Comparison of Levelized System Average Electric Rates | 3, 6, 8, 9 |
| | FPL | AWW-17 | SACE 1.5% Plan Analysis: Additional Cost Needed to be Added to RIM Plan to Increase its Levelized System Average Electric Rate to That of the 1.5% Plan | 3, 6, 8, 9 |
| | FPL | AWW-18 | SACE 1.5% Plan Analysis: Comparison of the Resource Plans: Projections of System Average Electric Rates and Monthly Customers Bills | 3, 6, 8, 9 |
| | Steven R. Sim | FPL | SRS-1 | Comparison of 2009, 2014, and 2019 Natural Gas Cost Forecasts for the Years 2020-2029 |
| FPL | | SRS-2 | Comparison of 2009, 2014, and 2019 CO ₂ Compliance Cost Forecasts for the Years 2020-2029 | 3, 5, 8, 9 |

| <u>Witness</u> | <u>Proffered By</u> | <u>Exhibit #</u> | <u>Description</u> | <u>Issue #</u> |
|------------------------------|---------------------|------------------|---|----------------|
| Steven R. Sim (continued) | FPL | SRS-3 | Comparison of 2009, 2014, and 2019 System Average Heat Rates for FPL's Gas-Fueled Generation Fleet | 3, 8, 9 |
| | FPL | SRS-4 | Comparison of 2009, 2014, and 2019 In-Service Year Capital Costs for Avoided CC Unit | 3, 8, 9 |
| | FPL | SRS-5 | A comparison of a benefits only calculation for a proxy DSM measure using system cost values from the 2014 and 2019 Goals Dockets | 3, 5, 8, 9 |
| | FPL | SRS-6 | List of Inaccurate and/or Misleading Statements Made by SACE witness Grevatt | 3, 4, 6, 8, 9 |
| Jim Herndon | FPL | JH-1 | Herndon Background and Qualifications | 1, 3, 6 |
| | FPL | JH-2 | Market Potential Study for FPL | 1 |
| | FPL | JH-9 | 2019 Measures List | 1 |
| | FPL | JH-10 | Comparison of 2014 Measures List to 2019 Measures List | 1 |
| Terry Deason | FPL | JTD-1 | Biographical Information for Terry Deason | |

In addition to the above pre-filed exhibits, FPL reserves the right to utilize any exhibit introduced by any other party. FPL additionally reserves the right to introduce any additional exhibit necessary for cross-examination or impeachment at the final hearing.

3. STATEMENT OF BASIC POSITION

Pursuant to the FEECA and Rules 25-17.001 and 25-17.0021, F.A.C., FPL has proposed numeric conservation Goals for reasonably achievable demand savings (kW) and annual energy savings (kWh) for the next ten years. These Goals are based upon FPL's most recent planning process, as required by Rule 25-17.0021(3), F.A.C.

FPL followed a rigorous, six-step analytical process similar to the process it has used in past DSM Goal-setting proceedings to develop its DSM Goals. This process utilizes current forecasts and assumptions and appropriately reflects FPL's specific resource needs and system

costs. Several factors have significantly affected the cost-effectiveness of DSM measures, and ultimately, FPL's proposed level of DSM Goals since the last DSM Goals proceeding. For example, current forecasted fuel costs are lower, current projected carbon dioxide emission compliance costs are lower, and FPL's generating system is more fuel-efficient. Additionally, the amount of energy efficiency projected to be delivered by federal and state codes and standards over the 10-year Goals period has increased. Each of these factors greatly benefits customers, but at the same time reduces the cost-effectiveness and availability of DSM options.

FPL's analyses demonstrate that FPL's proposed Goal of 352 MW (Summer) for the 2020-2029 DSM Goals period is the right level of DSM for FPL's customers. The resource plan that includes the RIM-based 352 MW portfolio of DSM is projected to result in the lowest levelized system average electric rates of all the resource plans analyzed and the lowest annual electric rates of any of the DSM-based resource plans analyzed. Additionally, the proposed Goals avoid cross-subsidization of DSM program participants by customers who do not participate.

SACE was the only intervenor to oppose FPL's proposed DSM Goals. However, SACE's DSM proposals are contrary to Florida Law and the Commission's rules, and would be outrageously expensive for FPL's customers. SACE did not perform Florida-specific economic evaluations that meet the criteria of Section 366.82, F.S., and Rule 25-17.0021, F.A.C. Rather, SACE recommends an arbitrary gigawatt-hour (GWh) savings Goal of 1.5% of retail sales and a low-income DSM program in which the utility's non-low-income customers and non-participating low-income customers pay the entire cost for appliance replacements for participating low-income customers.

SACE's recommended 1.5% of sales Goal is based entirely on what SACE claims two other non-Florida utilities were able to achieve in 2018. The savings that SACE claims these two non-Florida comparison utilities achieved is overstated (by as much as 60%), an improper

benchmarking approach, an apples-to-oranges comparison, not compliant with FEECA or the Commission's Rules, and cannot be reasonably relied upon with any credibility. Moreover, SACE's arbitrary savings as a percent of sales proposal would significantly increase electric rates for FPL's customers.

SACE's low-income DSM proposal is unsupported by meaningful data, beyond the scope of this Goals proceeding, and unnecessary. SACE's proposal completely abandons any meaningful consideration of cost-effectiveness and would essentially result in free appliances for participating low-income customers. SACE's low-income proposal would cost approximately \$4.1 billion over and above the 2020-2029 Goals, which would be paid for by all non-low-income customers, as well as low-income customers that do not or cannot participate.

For all the reasons discussed above, and as explained in more detail in the direct and rebuttal testimony provided by its witnesses, FPL's proposed DSM Goals should be approved. FPL's proposed Goals comply with the requirements of Section 366.82, F.S., comply with Rule 25-17.0021, F.A.C., and will result in the lowest levelized average electric rates for the benefit of all of FPL's customers, both DSM program participants and non-participants alike.

4. STATEMENT OF ISSUES AND POSITIONS

A. STAFF'S ISSUES

Issue No. 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.?

FPL Position: Yes. An outside consultant, Nexant, performed the Technical Potential Study for each of the FEECA Utilities. The analysis required extensive iterative work and

continuous collaboration to ensure that it was comprehensive and resulted in a thorough and wide-ranging reassessment of conservation and efficiency measures. (*Koch, Herndon*)

Issue No. 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.?

FPL Position: Yes. In developing its proposed DSM Goals, FPL used the Participant screening test to analyze the potential cost-effectiveness of DSM measures. The Participant screening test fully accounts for all potential benefits and costs that are received and/or incurred by a potential participant in a DSM measure. Only those measures which pass the Participant screening test have been included in FPL's proposed Goals. (*Koch, Whitley*)

Issue No. 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.?

FPL Position: Yes. FPL's proposed DSM Goals reflect measures that passed the RIM screening test. The RIM screening test accounts for all of the benefits and costs that are received and/or incurred by all of a utility's customers, both participants and nonparticipants alike, that result from a specific DSM measure. The TRC screening test, on the other hand, does not account for all of the relevant DSM-related cost impacts that will be incurred by the utility's customers. The TRC test omits incentive payments made to DSM program participants, which are costs that are recovered from all of the utility's customers. The TRC test also omits the impact of unrecovered revenue requirements on a utility's electric rates. Thus, the TRC screening test does not appropriately assess the cost impacts of DSM measures on the general body of customers as a whole. Use of the RIM

test, in conjunction with the Participant test, appropriately satisfies the criteria in Section 366.82(3)(b) at the measure screening stage. Importantly, the costs and benefits to the general body of customers is also assessed by FPL in the subsequent system analysis stage of its Integrated Resource Planning (IRP) work and reflected in FPL's proposed Goals. In that IRP stage, various DSM portfolios and a supply-only portfolio were analyzed to determine which would be the best portfolio for FPL's customers. FPL's proposed Goals reflect the RIM 352 Summer MW portfolio, which results in the lowest levelized average electric system rate for all customers. *(Koch, Whitley, Sim, Herndon, Deason)*

Issue No. 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(3)(c), F.S.?

FPL Position: Yes. Cost-effective incentives for participating customers are reflected in FPL's proposed Goals because they are included and considered in the Participant and RIM screening tests. There is no need to establish incentives for utilities in this proceeding. *(Koch, Whitley, Sim, Deason)*

Issue No. 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.?

FPL Position: Yes. FPL accounted for forecasted CO₂ compliance costs in a sensitivity screening analysis. The forecast is a "composite" CO₂ cost forecast based on separate forecasts from FPL and Duke Energy Florida ("DEF"), which allowed FPL, DEF, and Orlando Utility Commission ("OUC) to utilize a single CO₂ compliance cost forecast in their analyses as directed by Order No. PSC-2019-0062-PCO-EI. Forecasted CO₂ compliance costs are currently projected to be zero until the late 2020s when non-zero costs

begin to appear and then gradually increase over time. FPL's sensitivity screening analysis demonstrated that the number of measures passing changed only slightly when CO₂ compliance costs were included. Accordingly, FPL's proposed Goals adequately reflect these forecasted costs. (*Whitley*)

Issue No. 6: What cost-effectiveness test or tests should the Commission use to set Goals, pursuant to Section 366.82, F.S.?

FPL Position: The Commission should use the RIM preliminary economic screening test in setting DSM Goals pursuant to Section 366.82, F.S., consistent with its historic policy decisions and rationale for doing so. The RIM test accounts both for the cost of incentives paid to program participants, which are paid for by the general body of customers through the ECCR, and unrecovered revenue requirements, which puts upward pressure on rates for the general body of customers. Both of these extremely important considerations are ignored by the TRC test. Relying on the TRC test results in cross subsidies between customers. FPL's proposed DSM Goals minimize rate impacts to its customers and avoid cross subsidies between non-participants and participants because they are based on measures that passed the RIM economic screening test and because they reflect FPL's resource planning process. FPL's proposed Goals are projected to result in the lowest levelized system average electric rates of all the resource plans analyzed. (*Koch, Whitley, Sim, Herndon, Deason*)

Issue No. 7: Do the Company's proposed Goals appropriately reflect consideration of free riders?

FPL Position: Yes. FPL's proposed Goals reflect consideration of free riders, as required by Rule 25-17.0021(3), F.A.C. For each DSM measure that survived the prior economic

screening steps, a calculation was made to see if a participant’s incremental out-of-pocket costs will be fully recovered from bill savings and, if applicable, tax savings, in two years or less without any incentive payment from the utility. DSM measures for which the participant’s costs are not fully recovered in two years without an incentive payment pass this final step in the screening process. This process, applied to each individual measure at this screening step, helps protect FPL’s general body of customers from paying incentives to program participants that would already be economically motivated to participate in the program without incentives (*i.e.*, “free riders”). (*Koch, Whitley, Deason*)

Issue No. 8: What residential summer and winter megawatt (MW) and annual Gigawatt-hour (GWh) Goals should be established for the period 2020-2029?

FPL Position: The Commission should approve the following residential Goals for the period 2020-2029:

| Year | Summer MW | | Winter MW | | Annual MWh | |
|-------------|-----------|--------------|-----------|--------------|------------|------------|
| | Annual | Cumulative | Annual | Cumulative | Annual | Cumulative |
| 2020 | 24.0 | 24.0 | 20.7 | 20.7 | 12 | 12 |
| 2021 | 24.0 | 48.1 | 20.7 | 41.5 | 12 | 23 |
| 2022 | 24.0 | 72.1 | 20.7 | 62.2 | 12 | 35 |
| 2023 | 24.0 | 96.1 | 20.7 | 82.9 | 12 | 47 |
| 2024 | 24.0 | 120.1 | 20.7 | 103.7 | 12 | 58 |
| 2025 | 24.0 | 144.2 | 20.7 | 124.4 | 12 | 70 |
| 2026 | 24.0 | 168.2 | 20.7 | 145.1 | 12 | 81 |
| 2027 | 24.0 | 192.2 | 20.7 | 165.9 | 12 | 93 |
| 2028 | 24.0 | 216.2 | 20.7 | 186.6 | 12 | 105 |
| 2029 | 24.0 | 240.3 | 20.7 | 207.4 | 12 | 116 |

(*Koch, Deason*)

Issue No. 9: What commercial/industrial summer and winter megawatt (MW) and annual Gigawatt hour (GWh) Goals should be established for the period 2020-2029?

FPL Position: The Commission should approve the following commercial/industrial

Goals for the period 2020-2029:

| Year | Summer MW | | Winter MW | | Annual MWh | |
|------|-----------|------------|-----------|------------|------------|------------|
| | Annual | Cumulative | Annual | Cumulative | Annual | Cumulative |
| 2020 | 11.2 | 11.2 | 5.1 | 5.1 | 91 | 91 |
| 2021 | 11.2 | 22.4 | 5.1 | 10.3 | 91 | 181 |
| 2022 | 11.2 | 33.6 | 5.1 | 15.4 | 91 | 272 |
| 2023 | 11.2 | 44.7 | 5.1 | 20.6 | 91 | 363 |
| 2024 | 11.2 | 55.9 | 5.1 | 25.7 | 91 | 453 |
| 2025 | 11.2 | 67.1 | 5.1 | 30.8 | 91 | 544 |
| 2026 | 11.2 | 78.3 | 5.1 | 36.0 | 91 | 635 |
| 2027 | 11.2 | 89.5 | 5.1 | 41.1 | 91 | 725 |
| 2028 | 11.2 | 100.7 | 5.1 | 46.2 | 91 | 816 |
| 2029 | 11.2 | 111.9 | 5.1 | 51.4 | 91 | 906 |

(Koch, Deason)

Issue No. 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.?

FPL Position: Goals of zero should be established for demand-side renewable energy systems because such systems are not cost-effective for FPL’s customers. They fail both the RIM and the TRC economic screening tests. Setting Goals at zero for demand-side renewable energy systems would be consistent with past Commission practice of setting DSM Goals at zero for FEECA Utilities when no DSM measures are cost-effective. For example, as part of the 1999 and 2004 Goals setting proceedings, the Commission set DSM Goals at zero for both JEA and the Orlando Utilities Commission. A Goal level of zero would best protect the general body of customers and minimize cross-subsidies between participants and non-participants. *(Koch, Whitley)*

Issue No. 11: Should these dockets be closed?

FPL Position: Yes. This docket should be closed upon the issuance of an appropriate order approving FPL's proposed numeric conservation Goals set forth in Exhibit TRK-4 for the years 2020-2029.

B. CONTESTED ISSUES

SACE Proposed

Issue No. 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.?

FPL Position: FPL objects to SACE's proposed modification of Issue No. 10. SACE proposes to delete the phrase "if any" from Staff's proposed Issue No. 10. FPL submits that this proposed edit is entirely unnecessary and inappropriate. The fundamental error with SACE's proposed edit is that, much like its recommended Goal and Low-Income proposal in this proceeding, it completely disregards the requirement in both the FEECA and Commission's Goals Rule that the demand-side renewable energy systems be cost-effective. If the evidence of record demonstrates that no demand-side renewable energy systems are cost effective, then no Goals for increasing the development of demand-side renewable energy systems should be established. The phrase "if any" in Issue No. 10 correctly contemplates the requirement for cost effectiveness and the potential that demand-side renewable energy systems may not be cost effective. If the phrase "if any" is deleted from Issue No. 10 as proposed by SACE, the issue would suggest that Goals for demand-side renewable energy systems must be established even if they are not cost effective, which is directly contrary to and in violation of both the FEECA and Commission's Goals Rule. Further, retaining the phrase "if any" has absolutely no impact on Goals to be established for cost-effective demand-side renewable energy system...if

any. Finally, FPL notes that this is the same issue, including the “in any” language, that was used in the last DSM Goals proceeding, Docket No. 20130199-EI. The “if any” language in no way impacted the Commission’s or any of the parties’, including SACE, ability to address Goals to be established for cost-effective demand-side renewable energy system. For these reasons, SACE’s proposed modification of Issue No. 10 is unnecessary, inappropriate, and should be rejected.

SACE Proposed

New Issue: Should distinct goals for low income customers be established, and if so, what should those goals be?

FPL Position: FPL objects to SACE’s proposed new low-income issue for multiple reasons. First, SACE’s proposed issue is beyond the scope of this proceeding and is contrary to the Commission’s Goals Rule. Indeed, there is no provision in the Goals Rule for establishing a set of secondary Low Income-specific Goals. Rule 25-0021(1), F.A.C., provides that “[o]verall Residential KW and KWH goals and overall Commercial/Industrial KW and KWH goals shall be set by the Commission for each year over a ten-year period.” Similarly, Rule 25-0021(3), F.A.C., states that the Commission shall set Goals based on “the total, cost-effective, winter and summer peak demand (KW) and annual energy (KWH) savings reasonably achievable in the residential and commercial/industrial classes.” The express language of the Commission’s Goals Rule clearly provides that Goals be established for only two categories: (1) Residential classes and (2) Commercial/Industrial classes. Despite this clear and unambiguous language, SACE’s proposed issue seeks to establish a new, separate, third category of DSM Goals – Low Income Goals. However, the Commission’s Goals Rule clearly does not include a category for Low-Income Goals. Under the legal maxim and well-recognized statutory

construction principle *expressio unius est exclusio alterius*, the express inclusion of specific matter in a statute implies the exclusion of others not mentioned – meaning that the omission of Low Income Goals from the Commission’s Goals Rule was deliberate.¹

Second, SACE is essentially asking the Commission to evaluate a new rule or an amendment to the existing Goals Rule, without a rulemaking proceeding, that would create an entirely new category of Goals. Any potential further action by the Commission in response to this issue should properly begin with the rulemaking/workshop process where all interested parties would be afforded notice and the opportunity to participate and comment on the risks and benefits of the proposal.

Third, SACE is not only asking the Commission to adopt a new requirement without a rulemaking proceeding, SACE is also improperly asking that this new requirement be applied retroactively. Adopting and retroactively applying new requirements after the FEECA utilities have filed their petitions and testimonies based on the existing Goals Rule raises serious due process concerns and is contrary to the Commission’s statutory rulemaking authority.² Thus, even if the Commission were to adopt the new requirement proposed by SACE in this proceeding, which it should not absent a formal rulemaking proceeding, any such new requirement should be prospective and should not be retroactively applied.

Fourth, this is not the appropriate stage of this proceeding to address specific plans for customers. The purpose of this docket is to set Summer kW, Winter kW, and annual GWh Goals for Residential and Commercial/Industrial customer classes. The specific

¹ “[R]ules of construction applicable to statutes also apply to the construction of rules.” *DOT v. SouthTrust Bank*, 886 So. 2d 393, 395 (Fla. Dist. Ct. App. 2004) (quoting *Brown v. State*, 715 So. 2d 241, 243 (Fla. 1998)).

² See Section 120.54(1)(f), Florida Statutes (“an agency may not adopt retroactive rules, including retroactive rules intended to clarify existing law, unless that power is expressly authorized by statute”).

programs will be addressed and fully vetted in the forthcoming DSM Program proceeding that will be filed after the Goals are established. FPL submits that the DSM Program stage of this proceeding is the appropriate place to address specific programs, such as a Low Income program.

Finally, it should be noted that this issue rightfully has not been included in any of the prior Goals proceedings. Low Income customers are not a separate customer class; they are Residential customers. As such, and consistent with the Commission's Goals Rule, the Residential Goals to be established in this proceeding, *i.e.*, Issue No. 8, already include Low Income customers.

For these reasons, SACE's proposed new should be rejected as an issue in this proceeding.

FDACS Proposed

Issue 7(a): Do the Company's proposed goals appropriately consider customer education and measures targeted to low-income customers as required by the Commission in the prior FEECA goals proceeding (Order No. PSC-14-0696-FOF-EU), and should the Company be required to continue to consider and develop customer education and measures targeted to low-income customers in the future?

FPL Position: FPL objects to FDACS' proposed new issue for the same reasons stated above in response and objection to SACE's proposed new low-income issue. FPL incorporates its position and argument to SACE's proposed new low-income issue as though fully set forth herein. For those reasons, which are equally applicable here, FDACS' proposed new issue should be rejected as an issue in this Goals stage of this proceeding.

In addition, FDACS' proposed new issue should be rejected because it misapplies the Commission's Order PSC-2014-0696-FOF-EU. With respect to the Low-Income

measures proposed by FDACS, the Order makes it clear that any such programs should be addressed and fully vetted in the forthcoming DSM Program development stage when the FEECA Utilities file proposed implementation plans after the Goals are established:

[W]hile the record indicates that the FEECA Utilities have programs and measures to assist their low income customers, the Utilities should continue to evaluate and develop measures that will assist and educate such groups. The FEECA Utilities shall be required to address measures targeted for this customer segment in their proposed plans during the program development stage of this proceeding.

See Order PSC-2014-0696-FOF-EU, p. 27 (emphasis added). Thus, the Commission has made it clear that any such Low-Income programs or measures such be addressed in the DSM Program stage, not the Goals stage.

Similarly, with respect to customer education, the Commission did not adopt specific customer education measures in Order PSC-2014-0696-FOF-EU, as suggested by FDACS' proposed issue. Rather, the Commission merely found that the FEECA Utilities should continue to educate customers regarding the benefits of energy efficiency opportunities. *See id.* As explained above, the specific programs will be addressed and fully vetted in the forthcoming DSM Program stage that will be filed after the Goals are established. Thus, the DSM Program stage is the appropriate place to address specific programs, such as customer education measurers.

5. STIPULATED ISSUES

FPL is not aware of any stipulated issues at this time. However, FPL remains willing and available to discuss settlement and/or stipulated facts and issues with the parties.

6. PENDING MOTIONS

On July 16, 2019, SACE filed a Motion to Request Allowance of Public Participation at the evidentiary hearing. On July 17, 2019, a Petition to Intervene was filed by the League of United Latin American Citizens. As of the date of this filing, FPL is not aware of any other motions that remain pending.

7. PENDING REQUESTS FOR CONFIDENTIALITY

As of the date of this filing, the following Requests for Confidential Classification (“RFCC”) filed by FPL are pending:³

- RFCC filed May 16, 2019, for certain information provided in FPL’s response to Staff Requests for Production of Documents No. 4 [DN 04362-2019]
- RFCC filed June 27, 2019, for certain information provided in FPL’s response to Staff’s Interrogatory No. 67 [DN 05201-2019]
- RFCC filed July 18, 2018, for certain information provided in FPL’s response to Staff Interrogatory Nos. 8889 [DN 05666-2019]

8. OBJECTIONS TO WITNESS QUALIFICATIONS AS AN EXPERT

FPL has no objections to the qualifications of any witness at this time.

9. REQUEST FOR SEQUESTRATION OF WITNESSES

None at this time.

³ FPL notes that it will also be filing an additional RFCC on July 23, 2019, for certain information provided in FPL’s response to Staff Interrogatory No. 94.

10. STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE

There are no requirements of the Order Establishing Procedure with which FPL cannot comply.

Respectfully submitted this 22nd day of July, 2019

By: *s/ Christopher T. Wright*
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**CERTIFICATE OF SERVICE
DOCKET NO. 20190015-EG**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic delivery this 22nd day of June, 2019 to the following:

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| <p>Margo A. DuVal, Esq. Ashley Weisenfeld, Esq. Division of Legal Services Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, Florida 32399-0850 Mduval@psc.state.fl.us Aweisenf@psc.state.fl.us</p> | <p>J.R. Kelly, Esq. Patricia Christensen, Esq. Office of the Public Counsel c/o The Florida Legislature 111 W. Madison Street, Rm 812 Tallahassee FL 32399 christensen.patty@leg.state.fl.us kelly.jr@leg.state.fl.us</p> |
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