

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Commission Review of Numeric
Conservation Goals for Orlando Utilities
Commission

DOCKET NO. 20190019-EG

FILED: September 20, 2019

**ORLANDO UTILITIES COMMISSION'S POST-HEARING
STATEMENT AND BRIEF**

The Orlando Utilities Commission (“OUC”),¹ by and through its undersigned counsel and pursuant to the Order Establishing Procedure (“OEP”) in the consolidated Conservation Goals Dockets for the utilities subject to the Florida Energy Efficiency and Conservation Act, Order No. PSC-2019-0062-PCO-EG, issued February 18, 2019, and the Prehearing Order, Order No. PSC-2019-0323-PHO-EG, issued August 7, 2019, hereby

¹ In this Post-Hearing Statement and Brief, OUC will use the following abbreviations: “OUC” means the Orlando Utilities Commission; “FEECA” means the Florida Energy Efficiency and Conservation Act, Sections 366.80-.83 and 403.519, Florida Statutes; “PSC” means the Florida Public Service Commission; “Goals Dockets” means PSC Dockets 20190015-EG through 20190021-EG; “FEECA Utilities” means the utilities subject to the Goals Dockets, i.e., Florida Power & Light Company (“FPL”), Gulf Power Company (“Gulf”), Florida Public Utilities Company (“FPUC”), Duke Energy Florida (“DEF”), OUC, JEA, and Tampa Electric Company (“Tampa Electric”); “SACE/LULAC” means the Southern Alliance for Clean Energy (“SACE”) and the League of United Latin American Citizens (“LULAC”), two aligned intervenor parties in the Goals Dockets; “DSM” means Demand-Side Management, which generically includes energy conservation or energy efficiency (“EE”) measures, demand reduction (“DR”) measures, and Demand-Side Renewable Energy (“DSRE”) measures; “DSM Goals” means the goals for EE, DR, and DSRE achievements to be set by the PSC for the FEECA Utilities in these Goals Dockets; “RIM” means or refers to the Rate Impact Measure cost-effectiveness test; “TRC” means or refers to the Total Resource Cost cost-effectiveness test; and “Participant Test” or “PCT” means or refers to the cost-effectiveness test from the perspective of a customer who participates in a given program or measure. Other terms may be abbreviated as shown within OUC’s Brief. References to the hearing transcript are in the form TR [page nos.], and references to hearing exhibits are in the form EXH [exhibit no. at page no.]. All references to the Florida Statutes are to the 2019 edition.

submits its Post-Hearing Statement and Brief.

INTRODUCTION

OUC is an electric utility within the meaning of Section 366.02(2), Florida Statutes, and is subject to FEECA. OUC's electric service area includes the City of Orlando, portions of unincorporated Orange County, and portions of Osceola County. Additionally, pursuant to an Interlocal Agreement, OUC serves the entire electric service requirements of St. Cloud and treats the St. Cloud load and customers as part of OUC's retail obligations for planning and energy conservation purposes. TR 678. OUC currently serves approximately 242,000 electric customer accounts, including approximately 211,000 electric residential customers, 25,000 electric commercial customers, and 5,700 electric industrial customers. TR 680. More than 50 percent of OUC's residential customers (including those in St. Cloud) live in multi-family residences, and many of these are rental units. TR 680. Additionally, a significant number of single-family residences served by OUC are renter-occupied. TR 680. Approximately 33 percent of OUC's residential customers have household incomes less than \$35,000, which is approximately 1.4 times the Federal Poverty Level for a family of four. TR 680.

OUC currently offers a number of programs that promote energy conservation and peak demand reductions in both the residential and commercial/industrial sectors. OUC continually seeks and implements supply-side efficiency measures. OUC also has extensive solar energy initiatives, including both demand-side and supply-side solar power projects, and OUC also obtains renewable electricity generated using landfill gas.

In the best interests of all of OUC's customers, OUC believes that the PSC should continue using the Rate Impact Measure, or RIM, cost-effectiveness test as the primary measure for establishing energy conservation, demand reduction, and demand-side renewable energy goals for OUC. Competent, substantial evidence of record in these proceedings establishes that Nexant completed a thorough analysis of the full technical potential DSM savings available to OUC from 248 unique DSM measures, and 4,164 permutations of those measures. Applying the RIM Test and the Participant Test, the record evidence further shows that: (a) there is no cost-effective Achievable Potential DSM savings from residential EE or DR measures; (b) there is no cost-effective Achievable Potential available from any DR measures from any sector; (c) the Achievable Potential DSM savings from commercial/industrial EE measures are truly negligible - only one out of all of the EE measures studied (a commercial/industrial exterior lighting measure) passed the RIM test, and that measure would provide negligible energy savings (600 kilowatt-hours per year); and (d) there are no cost-effective Achievable Potential savings for OUC from demand-side renewable energy ("DSRE") systems, including solar PV, battery storage, and Combined Heat & Power ("CHP") systems.

The competent, substantial evidence documenting these results, along with OUC's proven track record of energy conservation achievements, demonstrate that the PSC should set OUC's DSM goals at zero for this goal-setting period. Even so, the PSC must recognize that OUC has consistently exceeded its FEECA Goals with measures developed on OUC's initiative. OUC will continue to develop and implement energy conservation, demand reduction, and demand-side renewable measures, as well as supply-side solar and other

renewable energy initiatives, based on OUC's unique characteristics, OUC's knowledge of its system and customer base, and changing circumstances in the energy sector. TR 699, 705, 734-35. Allowing OUC to pursue this course, as it has successfully done for years, will serve the State's policies set forth in FEECA and meet the needs and circumstances of OUC's customers better and more effectively than if OUC were required to comply with non-cost-effective mandatory goals.

OUC continues with its Brief, which includes discussion of all issues in the consolidated Goals Dockets and concludes with its Post-Hearing Statement of Issues and Positions.

BRIEF OF ORLANDO UTILITIES COMMISSION

SUMMARY OF ARGUMENT

The Orlando Utilities Commission respectfully asks that the Commission set conservation goals of zero for OUC for summer and winter peak demand reductions, energy savings, and demand-side renewable energy measures for the goal-setting period 2020 through 2029. OUC's request is fully supported by competent, substantial evidence and by directly applicable Commission precedent and policy: zero goals are appropriate for OUC here because there is no meaningful, reasonably cost-effective achievable potential for DSM available to OUC. Moreover, in substantively identical circumstances, the PSC has recognized that the Orlando Utilities Commission is in the best position to determine the needs of its customers and to determine what DSM programs and measures to continue in serving its customers and the public interest. By this request, OUC is not seeking to be excused in any way from continuing its long-standing policy and record of

achieving substantial energy conservation and renewable energy to serve the purposes of FEECA: far from it, OUC has for decades developed and implemented extensive DSM conservation programs and measures that have consistently exceeded its PSC-approved goals, OUC has consistently developed and encouraged both demand-side and supply-side renewable energy, and as explained in uncontroverted testimony in the hearing record and in this Brief, OUC will continue to do so.

The key, albeit simple, facts that support OUC's request are these: there are no meaningful demand reduction, energy conservation, or demand-side renewable energy measures that are cost-effective to OUC's general body of customers, as indicated by the RIM test. The cost-effectiveness of DSM measures fails primarily because OUC's avoided capacity costs are very low because OUC's next generating capacity need is not until 2032, and OUC's avoided fuel costs are low because of the dominant position of natural gas in OUC's generation mix. In effectively identical circumstances where there is no cost-effective achievable potential for DSM or DSRE, the PSC has approved zero goals, recognizing that OUC is in the best position to determine its customers' needs and to determine what conservation programs and measures OUC should continue. SACE/LULAC's criticisms are not well-founded, and their arguments for goals based on a broad-brush percentage of total energy consumption are simplistic and unsupported by competent, substantial evidence, and the PSC should accordingly reject them and approve OUC's request for zero goals.

OUC's request is based on complete and thorough analyses of all matters set forth in FEECA and the PSC's rules, including the technical and achievable potential for energy

conservation by residential, commercial, and industrial customers in OUC's service area; the cost-effectiveness of potential measures to participating and non-participating customers, including express consideration of the costs of potential greenhouse gas regulations; the need for and costs associated with incentives; and free riders.

SACE and LULAC simplistically wish to substitute their policy agenda for the PSC's long-standing policies that favor energy conservation programs and measures that are cost-effective to all customers and that attempt to avoid, to the extent practicable, cross-subsidization. The PSC should reject SACE/LULAC's simplistic and unsupported arguments, just as it has in the past.

Based on these analyses, including sound assumptions and forecasts regarding OUC's customer characteristics, load growth, avoided power supply costs, and conservation measure costs, and relying on the PSC's long-standing policy favoring the use of the RIM test as the appropriate measure of cost-effectiveness, OUC finds itself in the same position it experienced in 2004. For all practical purposes, there are no cost-effective demand reduction, energy conservation, or demand-side renewable energy measures that pass the RIM test.² Faced with virtually identical facts in 2004, the PSC granted OUC's request that its FEECA goals be set at zero, specifically finding that "it is reasonable to allow OUC to determine whether or not such programs should be continued

² There is one measure, a commercial sector exterior lighting measure, that barely passes the RIM test, but that measure would provide truly negligible energy savings: a total of 6,000 *kilowatt-hours* over the entire ten-year goals period. Annually, this is 600 *kilowatt-hours* per year, which is less in a year than a single home uses in a month. EXH 31 at 55; TR 701.

because OUC is in the best position to determine its customers’ needs” and specifically ordering that OUC’s proposed annual numeric residential and commercial/industrial goals “shall be set at zero for the period 2005 through 2014.” In re: Petition for Approval of Numeric Conservation Goals by Orlando Utilities Commission, Order No. PSC-2004-0767-PAA-EG (August 9, 2004) at 4-5.

OUC respectfully asks the PSC to apply these precedents to the specific evidence in this case and reach the same result. In doing so, the PSC can rely on the competent, substantial evidence of record in this docket that setting OUC’s goals at zero as requested will not “translate into zero DSM.” The evidence demonstrates that OUC will continue its extensive and successful implementation of meaningful DSM programs, its encouragement of demand-side renewables as well as its implementation of extensive supply-side renewable energy resources, and its DSM programs and other activities and efforts that directly benefit OUC’s low-income customers.

ARGUMENT

I. The Florida PSC Should Set OUC’s DSM Goals at Zero for the Period 2020 Through 2029.

The PSC should set OUC’s DSM Goals for 2020-2029 at zero because the evidence demonstrates that there is no meaningful, cost-effective achievable potential for DSM savings – including EE, DR, and DSRE savings – by OUC for this period under the base case assumptions for fuel costs and free ridership.³ With the exception of the single lighting

³ For convenience, and because the base case assumptions are inherently those most likely to apply, the discussion throughout this Brief is based on those assumptions. Additional information on the impacts of varying assumptions is presented in Appendix E

measure noted above, none of the many (248) EE and DR measures and none of the DSRE measures evaluated by Nexant are cost-effective to OUC's general body of ratepayers. Pursuant to FEECA and the PSC's rules, and consistent with directly applicable PSC precedent, goals of zero are entirely appropriate where, as here, no cost-effective energy efficiency savings, demand reductions, and demand-side renewable energy measures are reasonably achievable by the utility, i.e., OUC in this instance. Under facts virtually identical to those here, the PSC has approved zero goals for OUC and other utilities in prior FEECA goal-setting proceedings. The analyses by Nexant and OUC that support OUC's request for zero goals fully satisfy all of the criteria and considerations identified in FEECA, in PSC rules, and in the OEP for consideration in setting DSM Goals in these dockets. Finally, clear and uncontroverted evidence demonstrates that zero goals for OUC will not translate into zero DSM for OUC and its customers. OUC has a decades-long track record of substantial and significant energy conservation achievements, and OUC will continue virtually all of its existing DSM programs, and other activities outside its DSM Plans, if the PSC grants OUC's request for zero goals. Noonan, TR 744-45.

A. The PSC Should Set OUC's DSM Goals at Zero Because There Are No Meaningful, Cost-Effective DSM Savings Available to OUC for 2020-2029.

As the petitioning utility, OUC has the burden of demonstrating, by a preponderance of the evidence, that its request for zero goals is appropriate and should be granted. As discussed in more detail below, OUC has fully met its burden of proof with competent,

of Exhibit 31, and this information shows what one would expect: marginally greater savings with higher fuel costs and a shorter free rider exclusion period, and zero savings with lower fuel costs and a longer free rider exclusion period.

substantial evidence addressing all ten of the substantive issues in this docket. Most significantly, as to the ultimate issues of establishing appropriate DSM Goals (OEP Issues 8, 9, and 10) for OUC pursuant to FEECA and PSC Rule 25-17.0021(3), F.A.C., OUC's evidence, including the analyses, testimony, and evidence submitted by Nexant on behalf of OUC, demonstrates the following.

- ▶ There is zero cost-effective achievable potential for any residential energy efficiency or demand reduction measures over the 2020-2029 goal-setting period. (OEP Issue 8)
- ▶ There is zero cost-effective achievable potential for any demand-side renewable energy measures over the goal-setting period. (OEP Issue 10)
- ▶ There is zero cost-effective achievable potential for commercial or industrial demand reduction measures over the goal-setting period. (OEP Issue 9, in part)
- ▶ The amount of cost-effective energy efficiency savings reasonably achievable from commercial or industrial measures is objectively negligible: only one measure barely passes RIM, and that measure would yield an average of 600 kilowatt-hours per year over the ten-year goal-setting period, which is less than a single home uses in a month. (OEP Issue 9, in part)

Setting OUC's goals at any level greater than zero would directly harm OUC's general body of customers by increasing the rates paid by all customers, leaving all non-participating customers worse off. FEECA expressly requires the PSC to consider the impact of DSM measures and goals on the general body of a utility's customers as a whole – which impacts the PSC has consistently measured as rate impacts using the RIM Test for more than 25 years. Fla. Stat. § 366.82(3)(b). The PSC implements this statutorily required consideration by requiring the results of the RIM Test (along with the results of the TRC Test and Participant Test) per PSC Rule 25-17.008, F.A.C.

1. The PSC Should Set OUC's Goals for Residential Energy Efficiency Measures and for Residential Demand Reduction Measures at Zero Because there are Zero Cost-Effective Achievable Potential Savings Available to OUC from Such Measures.

Applying the RIM Test,⁴ consistent with long-standing PSC policy and supported by extensive evidence in the record of these Goals Dockets, there are no reasonably achievable savings available to OUC from any residential DSM measures, including both Energy Efficiency measures and Demand Reduction measures, for the period 2020 through 2029. Nexant's Market Potential Study ("MPS") evaluated 91 unique residential EE measures, EXH 31 at 22, and its analyses conclude that there are zero measures and zero achievable potential energy savings reasonably achievable for OUC for the period 2020-2029. *Id.* at 54. Nexant also evaluated ten unique residential DR measures (*id.* at 23, EXH 33 at 9), and, just as for EE measures, the MPS likewise shows zero MW of cost-effective potential summer peak demand savings and zero MW of cost-effective winter peak demand savings available for OUC. EXH 31 at 55. Accordingly, the PSC should set OUC's goals for residential EE and DR measures at zero for the period 2020 through 2029, because no residential measures provide cost-effective, reasonably achievable energy savings or demand reduction savings available for OUC for 2020-2029. Noonan, TR 700, 709.

In summary, the PSC should set OUC's residential DSM Goals at zero, because doing so would not cause customer bills to increase, whereas adopting goals greater than zero would put upward pressure on OUC's rates. *See* Noonan, TR 699. In contrast, setting

⁴ OUC's discussion of the appropriateness of using the RIM test (OEP Issue 6) is discussed in detail in Section II below.

goals based on the measures that pass the TRC Test would result in substantial rate impacts on OUC's customers, increasing from 0.4 percent in 2020 to 10.6 percent in 2029 for a typical 1,000 kWh per month residential customer. EXH 52.

2. The PSC Should Set OUC's Goal for Commercial/Industrial Demand Reduction Measures at Zero Because there are Zero Cost-Effective Achievable Potential Savings Available to OUC from Such Measures.

Nexant's Market Potential Study also evaluated demand reduction measures for small and large commercial/industrial ("C/I") applications. The measures analyzed for small C/I applications included load shedding, cycling, smart thermostats, and pricing options. EXH 33 at 9. None of these were cost-effective under the RIM Test. EXH 31 at 61. The measures analyzed for large C/I applications included pricing, utility load control, and contractual load reduction options. EXH 33 at 9. While some of these passed the AP screening, "the incentive values were so low that there was no participation expected for these measures." EXH 31 at 61. Accordingly, Nexant concluded that there is no DR achievable potential available for OUC. Id.

Accordingly, since there are zero cost-effective, reasonably achievable savings available to OUC from commercial and industrial applications, the PSC should set OUC's goal for such measures at zero.

3. The PSC Should Set OUC's Goal for Commercial/Industrial Energy Efficiency Measures at Zero Because There are No Meaningful, Cost-Effective Achievable Potential Savings Available to OUC from such Measures.

Nexant's analyses of EE measures for the commercial/industrial sector indicated that there was one measure that passed the RIM Test and thus offers some achievable

potential savings to OUC. EXH 31 at 54. However, the total energy savings available from this measure, a commercial lighting measure, are objectively negligible: 0.006 gigawatt-hours, *id.*, which is equal to 6,000 *kilowatt*-hours, over the entire ten-year period from 2020 through 2029. This equates to 600 *kilowatt*-hours of savings per *year*, which is less than a single typical (1,000 kWh per month) residential customer uses in a month. EXH 31 at 55; TR 701. This objectively minimal, negligible amount of savings affords no basis for establishing a goal greater than zero for OUC's commercial/industrial energy efficiency uses.

4. The PSC Should Set OUC's Goal for Demand-Side Renewable Energy Systems at Zero Because there are No Cost-Effective Achievable Potential Savings Available to OUC from Such Measures.

Nexant examined DSRE systems (measures) for residential applications, including solar photovoltaic ("PV") systems and battery storage from PV systems, and also examined DSRE measures for commercial and industrial applications, including PV systems, battery storage from PV systems and several Combined Heat and Power ("CHP") technologies. EXH 33 at 10. Based on its analyses, Nexant found there to be no cost-effective achievable potential savings attainable for OUC from any of the DSRE technologies evaluated, for either the RIM scenario or the TRC scenario. EXH 31 at 61.

Moreover, setting DSRE goals or requiring DSRE programs for OUC is unnecessary because, even offering no incentives at all, OUC's system is experiencing substantial growth in solar PV adoption by its customers. Noonan, TR 738-39. The record evidence shows that through 2016, OUC had 371 residential and 7 business/commercial solar PV customers interconnected to its system, and that from the beginning of 2017

through May 31, 2019, the numbers of customers with interconnected solar PV systems had roughly quadrupled, growing to 1,509 residential customers and to 29 business/commercial customers. EXH 335 at 3. These fairly dramatic results were achieved without paying any incentives, TR 738-39, clearly indicating that requiring any DSRE goals or programs to be funded by OUC's general body of customers would be unnecessary.⁵

Accordingly, the PSC should set OUC's goal for Demand-Side Renewable Energy systems (measures) at zero for 2020-2029.

B. Goals of Zero Are Appropriate Under FEECA and PSC Precedent.

DSM Goals of zero for OUC and other utilities⁶ are entirely appropriate under and consistent with FEECA and fully supported by substantial expert testimony in the record evidence of these Goals Dockets, as well as by ample PSC precedent. FEECA requires that the PSC is to “adopt appropriate goals” for increasing the efficiency of energy consumption and the development of demand-side renewable energy systems, Fla. Stat. § 366.82(2), taking into consideration:

- (a) The costs and benefits to customers participating in the measure.

⁵ Consistent with the policies favoring solar and renewable energy in FEECA, the PSC will also note that OUC developed the first community solar farm in Central Florida and that OUC has added and committed to more than 120 MW of additional supply-side solar generating resources. TR 687-91.

⁶ In addition to OUC, JEA (Docket No. 20190020-EG), Florida Public Utilities Company (Docket No. 20190017-EG), and Gulf Power Company (Docket No. 20190016-EG) have proposed zero DSM Goals for some or all of the sectors for which DSM Goals are to be established.

- (b) The costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions.
- (c) The need for incentives to promote both customer-owned and utility-owned energy efficiency and demand-side renewable energy systems.
- (d) The costs imposed by state and federal regulations on the emission of greenhouse gases.

Fla. Stat. § 366.82(3).

PSC Rule 25-17.0021(3), F.A.C., implements FEECA by requiring the FEECA Utilities to propose numeric goals based upon the “total, cost-effective, winter and summer peak demand (KW) and annual energy (KWH) savings reasonably achievable in the residential and commercial/industrial classes through demand-side management.” (Emphasis supplied.) The Rule thus makes clear that “appropriate” goals are goals that are cost-effective. Moreover, as a matter of logic and common sense, efficient use of electricity means that it be used cost-effectively; otherwise, such use would not be efficient. If there are no reasonably achievable cost-effective savings available to a utility, then the “appropriate goals” required by FEECA must be zero. As FPL’s witness Steven R. Sim testified, “if a measure is not cost-effective, . . . there shouldn’t be a goal set for it because you’re just harming your ratepayers” by setting such a goal. TR 311-12.

Former PSC Chairman Terry Deason testified to the same point on behalf of OUC and five of the other FEECA Utilities: that appropriate goals, based on the appropriate cost-effectiveness test, which is the RIM Test, can be expected to result from the process in these Goals Dockets, TR 1089-91, and that “cost-effectiveness is one of the requirements to set appropriate goals.” TR 1093. Former Chairman Deason went on to testify that the utilities’ proposals in these Goals Dockets are “definitely consistent with FEECA and . . .

would meet the requirements of FEECA.” TR 1097.

PSC precedent supporting zero goals for FEECA Utilities dates from the very first proceedings in which the PSC set numeric conservation goals under FEECA. In re: Adoption of Numeric Conservation Goals for Orlando Utilities Commission, Docket No. PSC-19930558-EG (also establishing goals for a number of municipal utilities that were then subject to FEECA in consolidated Docket Nos. 19930552-EG through 19930564-EG, 19930922-EG, and 19940828-EG), Order No. PSC-1995-0461-FOF-EG (“1995 Goals Order-Municipals”) (April 10, 1995). In the 1995 Goals Order-Municipals, the PSC set DSM Goals of zero for all end-use sectors and categories for the City of Ocala, City of Vero Beach, and the Kissimmee Utilities Authority where those utilities’ avoided costs did not justify positive goals, expressly noting that “zero goals . . . will not translate into zero DSM.” Id. at 3-4 (emphasis supplied). In the 1995 Goals Order-Municipals, the PSC also established: (a) zero goals for OUC for megawatt-hour (“MWH”) energy savings for all sectors for the entire 1996-2005 goal-setting period; (b) zero goals for OUC for Commercial/Industrial winter peak demand reductions for the entire 1996-2005 period; and (c) zero goals for OUC for summer peak demand reductions for the period 1996-1999. Id. at 46. (At that time, FEECA did not require goals for demand-side renewables.)

In 2004, presented with facts virtually identical to those in this docket, the PSC granted OUC’s request that its FEECA goals be set at zero, specifically finding that “it is reasonable to allow OUC to determine whether or not such programs should be continued because OUC is in the best position to determine its customers’ needs” and specifically ordering that OUC’s proposed annual numeric residential and commercial/industrial goals

“shall be set at zero for the period 2005 through 2014.” In re: Petition for Approval of Numeric Conservation Goals by Orlando Utilities Commission, Docket No. 20040035-EG, Order No. PSC-2004-0767-PAA-EG (August 9, 2004) at 4-5; see also In re: Petition for Approval of Numeric Conservation Goals by JEA, Docket No. 20040030-EG, Order No. PSC-2004-0768-PAA-EG (August 9, 2004) at 2 (setting JEA’s DSM Goals at zero for 2005-2014).

In summary, FEECA itself, the PSC’s rules implementing FEECA, and PSC precedent support the conclusion that DSM Goals of zero are appropriate and consistent with FEECA. The testimony of multiple credible witnesses supports the obvious conclusion that goals must be cost-effective to be appropriate. The obverse is also true: that non-cost-effective goals are not appropriate under FEECA. See Deason, TR 1081 (SACE/LULAC’s proposed goals “do not meet the requirements of FEECA.”) Any suggestion that the Legislature intended otherwise or that the statute requires otherwise should be rejected. The PSC should follow its precedents and set goals of zero for OUC for 2020-2029.

C. OUC Has Fully Satisfied Its Burden of Proof Under FEECA, the PSC’s Rules, and the OEP.

FEECA requires the PSC to consider the full technical potential of savings available to utilities in setting DSM Goals pursuant to the statute. FEECA also requires the PSC to consider the costs and benefits of potential measures to participating customers, to the utility’s “general body of ratepayers as a whole” (non-participating customers), the need for incentives to promote EE and DSRE systems, and costs imposed by regulations on the

emission of greenhouse gases such as carbon dioxide. The PSC’s rules require additional specific information, including the cost-effectiveness analyses required pursuant to Rule 25-17.008, F.A.C., i.e., the results of the RIM Test, the TRC Test, and the Participant Test as required by the PSC’s Cost Effectiveness Manual for Demand Side Management Programs and Self Service Wheeling Proposals (“PSC Cost-Effectiveness Manual”), which is adopted and incorporated by reference as part of that Rule. The OEP required the FEECA Utilities to address these factors and also whether their proposed goals “appropriately reflect consideration of free riders.” OEP at 14; Rule 25-17.0021(3), F.A.C.

As demonstrated below, with respect to these issues, competent, substantial evidence of record demonstrates that OUC has fully met its burden of proof, as follows.

1. OUC’s proposed zero goals are based on an adequate assessment of the full technical potential of all available DSM measures. (OEP Issue 1; Section 366.82(3), Fla. Stat.)
2. OUC’s proposed zero goals adequately reflect the costs and benefits to customers participating in potential measures. (OEP Issue 2)
3. OUC’s proposed zero goals adequately reflect the costs and benefits to the general body of OUC’s customers, with full consideration given to utility-paid incentives and participant contributions. (OEP Issues 3 and 4)
4. OUC’s proposed zero goals are based on reasonable and appropriate consideration of the need for incentives for both customer-owned and utility-owned energy efficiency and DSRE. (OEP Issue 4; Section 366.82(3)(c), Fla. Stat.)
5. OUC’s proposed zero goals adequately reflect the potential costs imposed by state and federal regulations on the emission of greenhouse gases. (OEP Issue 5; Section 366.82(3)(d), Fla. Stat.)
6. OUC’s proposed zero goals appropriately reflect consideration of free riders. (OEP Issue 7)

Other than the appropriate cost-effectiveness tests, which are discussed separately in Section II, each of the foregoing elements of OUC's evidence is discussed in its own section below.

1. OUC's Proposed Zero Goals are Based on an Adequate Assessment of the Full Technical Potential for DSM Savings Available to OUC.

OUC provided, and its proposed zero goals are based on, a sound, appropriate assessment of the full technical potential for DSM savings as required by FEECA. Fla. Stat. § 366.82(3). In developing its Market Potential Study for OUC, Nexant used its Technical/Economic/Achievable POTential modeling tool ("TEA-POT" or "TEA-POT Model"), with which it evaluated a comprehensive set of 278 DSM measures and associated permutations and combinations of those unique measures. EXH 31 at 22-23; EXH 33 at 1-10. The TEA-POT Model has undergone extensive regulatory review in other jurisdictions. TR 353. The measures that Nexant evaluated in developing its Technical Potential estimates included 91 residential EE measures, 127 commercial EE measures, and 30 industrial EE measures (*id.*), including 4,164 combinations and permutations of the EE measures. TR 324, EXH 31 at 22. The DSM measures evaluated also included 10 residential DR measures, 11 commercial and industrial DR measures, and 9 DSRE measures. EXH 31; EXH 33. Nexant's set of measures included 107 measures that were not included in the technical potential analyses in the 2014 goals dockets and eliminated 12 measures that were previously included in the 2014 analyses. In short, the set of measures that were evaluated for the current Goals Dockets included a net of nearly 100 more measures than were evaluated in 2014. TR 324.

The Technical Potential was estimated as the total savings potential that would be available to a utility when all technically feasible DSM measures were implemented at their full market potential without regard to cost-effectiveness or customer acceptance. This TP estimate thus provides a theoretical upper limit on the total amount of electricity savings that could be realized on a technically possible basis. EXH 31 at 25. By virtue of the breadth of Nexant's TP analyses for these DSM Goals Dockets, including the fact that its estimates were based on a vastly broader set of potential DSM measures than that considered by the PSC in 2014, Nexant's TP analysis for OUC is a reasonable and appropriate estimate of the "full technical potential" required by FEECA. Fla. Stat. § 366.82(3).

SACE Witness Grevatt's allegation of double counting in assessing technical potential, TR 950, is merely a distraction that misses the point and misapprehends the facts. OUC's load forecasts did indeed take account of projected efficiency gains that would occur in the absence of utility incentives or promotions; this is a natural consequence of using historical trends in projecting load growth in OUC's load forecasts. EXH 333 at 1-2. Nexant's consideration of naturally occurring efficiency inherent in utility load forecasts calibrates measure parameters, including baseline efficiency and saturation, to align with trends including historic customer behavior, but this does not address the likelihood of future free ridership if the measure were included in a utility-sponsored DSM program. TR 1103-04. The two-year payback screen is subsequently applied in determining Achievable Potential savings in order to appropriately address free ridership as required by the PSC's Rules. TR 1106. Therefore, Grevatt's allegation misses the point: there is no double-

counting of baseline efficiency and free ridership in Nexant's analyses. TR 1106.

Additionally, OUC's load forecasts, which were used by Nexant in developing its TP estimates, are based on sound, reliable processes that have been consistently approved by the PSC in its review of OUC's Ten Year Site Plans. Kushner, 662-65, 695. OUC's load forecasts – demand and energy projections – are based on a set of forecasting models that OUC uses each year to support its budgeting and financial planning processes and to evaluate its long-term planning requirements. Noonan, TR 683. The information that OUC furnished to Nexant is the same reliable information that OUC uses in making its system planning decisions and preparing its Ten Year Site Plans and other reports to the PSC. Noonan, TR 694.

In summary, OUC has fully met its burden of providing a sound, appropriate estimate of the full technical potential for DSM savings available to OUC for purposes of setting goals in these proceedings.

2. OUC's Proposed Zero Goals are Based on an Adequate Assessment of Participant Costs and Benefits.

Competent, substantial evidence of record, including OUC's and Nexant's testimony and exhibits, demonstrates that OUC's proposed zero goals are based on a sound and appropriate assessment of the costs and benefits to customers participating in DSM measures, as required by FEECA. Fla. Stat. § 366.82(3)(a). Nexant's analyses of Economic Potential and Achievable Potential savings incorporated the results of Participant Cost Test (or simply Participant Test) analyses using methods consistent with the PSC Cost-Effectiveness Manual. EXH 31 at 3, 8, 41-43; TR 345-46. This satisfies

OUC's burden of proof regarding consideration of costs and benefits to customers who participate in DSM measures and programs.

3. OUC's Proposed Zero Goals are Based on Appropriate Assessment and Consideration of Costs and Benefits to OUC's General Body of Ratepayers.

Record evidence demonstrates that OUC's proposed zero goals are based on a sound and appropriate assessment of the costs and benefits to OUC's general body of ratepayers, as a whole, including incentives and participant contributions, as required by FEECA. Fla. Stat. § 366.82(3)(a). FEECA requires this consideration of costs and benefits to each FEECA Utility's general body of ratepayers, and the PSC implements this statutory requirement by considering the results of the RIM Test of cost-effectiveness. The RIM Test measures impacts on a utility's general body of ratepayers as a whole, by measuring the impact on general customer rates. Under the RIM Test, benefits to all customers include decreases in electric utility supply costs (costs avoided as a result of a DSM measure, which are thus no longer borne by the general body of customers) and, where applicable, any increases in utility electric revenues (more revenues resulting from a measure implies lower revenue or cost responsibility for the general body of ratepayers). Costs include any decreases in utility electric revenues ("lost revenues"); any increases in electric supply costs; and utility program costs including development, administrative costs, and the costs of incentives paid to participating customers. EXH 31 at 41-42; PSC Cost-Effectiveness Manual at 5, 11-14.

Nexant's RIM Test analyses and results for OUC are based on sound and appropriate estimates of all variables in the RIM Test formula, and on accurate calculations

of the RIM benefit-cost ratios. OUC's avoided power supply costs are presented and described in the testimony and exhibits of Bradley Kushner. TR 648-53; EXH 48. In summary, OUC has no avoided generation capacity costs because OUC has no capacity needs until 2032. TR 649-50; EXH 48.⁷ The projected energy costs used in the cost-effectiveness tests are developed using "GenTrader®, a widely used and recognized power production cost model," TR 651-52. OUC's fuel cost projections are based on reputable, recognized, and widely used industry sources, the New York Mercantile Exchange ("NYMEX") futures prices for natural gas and gas price projections provided by PIRA Energy Group ("PIRA"), adjusted for delivery to OUC's power plants. TR 651-52. OUC's projected coal costs are based on projections by Energy Ventures Analysis, Inc. and recent offers from coal suppliers. TR 652. The energy cost projections used in Nexant's cost-effectiveness analyses are the same data that OUC uses in preparing its Ten Year Site Plans, TR 652, which have consistently been approved by the PSC. TR 665.

Nexant performed RIM Test analyses for DSM measures in developing the Achievable Potential DSM savings for OUC per Rule 25-17.0021(3), F.A.C. These analyses included estimated program costs, including administrative costs and customer incentives. TR 336. The program costs and administrative costs were developed by Nexant using data from OUC and other utilities, and also using data from other regional utility

⁷ The PSC has specifically recognized comparable facts, namely, avoided capacity costs "far out in the future" causing "reduced cost-effectiveness of the DSM measure," as an appropriate basis for approving zero FEECA Goals for utilities. 1995 Goals Order-Municipals at 4.

program offerings. EXH 31 at 53. Program costs were estimated on the basis of historic program savings and program budgets from individual utilities and similar utilities. TR 358-64.⁸

Incentive values were based on the lower of (a) the maximum net RIM benefit (i.e., the difference between RIM Test benefits and RIM Test costs) and (b) the incentive that could be paid to a participating customer such that the customer would realize a simple payback of the customer's out of pocket costs in two years. EXH 31 at 53.

Administrative Costs. SACE does not argue that OUC misapplied the RIM Test; rather, SACE complains that the RIM Test is inappropriate. SACE's witness Grevatt also complained that, at least for FPL, administrative or non-incentive program costs appeared to be unreasonably high. TR 962. Mr. Herndon testified that the administrative costs used by Nexant for OUC, FPUC, JEA, and Gulf were based on kilowatt-hour savings of the measure, and that this is a reasonable approximation because Nexant generally does not have specific program costs at the potential study stage of analysis (as distinguished from the program design phase). TR 358-59. He further testified that this methodology is similar to what Nexant has done in other DSM potential studies, and that he believes this to be a standard approach. TR 417-18. Additionally, in response to Staff's Interrogatory No. 55 to OUC, which is included in Hearing Exhibit 197, Mr. Herndon explained that Nexant's methodology estimating measure administrative costs on a per-savings unit basis was

⁸ Apparently owing to a scrivener's or administrative error in transmitting a table of program costs in a discovery response, Exhibit 284 shows some reference errors in certain cells. However, Mr. Herndon clarified in cross-examination that Nexant's analyses were based on the correct values, and those were the same values as used for JEA. TR 365-66.

determined to be the most fair and objective method for estimating program costs in the Achievable Potential analysis. EXH 197 at 8. He further stated that this methodology for estimating measure administrative costs in market potential studies has been used by Nexant in numerous recent studies, including studies for Duke Energy's service areas in North Carolina, South Carolina, Ohio and Indiana, and also in Nexant's 2018 market potential study for Georgia Power Company. Id.

In summary, OUC has fully met its burden of providing sound and appropriate analyses, using the RIM Test that has long been followed by the PSC, of the benefits and costs to its general body of ratepayers as a whole.

4. OUC's Proposed Zero Goals are Based on Appropriate Consideration of the Need for Incentives to Promote DSM Measures, Including DSRE Systems.

Nexant's MPS adequately and appropriately reflects the need for incentives to encourage participation in DSM measures. In the RIM Test analyses, Nexant analyzed alternative incentive values: the net RIM benefit and the incentive that could be paid to a customer so as to provide the customer with a two-year payback of the customer's expenditure to implement a measure. EXH 31 at 53. In the TRC analyses, the incentive amount required to produce a two-year simple payback was used. Id. The logic of considering the net RIM benefit as a maximum incentive is self-evident: if the utility offered an incentive greater than the net RIM benefit, the measure would not be cost-effective to the utility's general body of ratepayers.

The use of the two-year payback limit is discussed further in Section III below, relating to consideration of free riders, but the logic of using the two-year payback as a

limiting value is simple: a two-year payback means that the customer will get a 50 percent per year return on the customer's initial investment in the measure. As Mr. Noonan testified, OUC believes that "most people, when faced with an investment that has less than a two-year payback would do that on their own," and that "a 50-percent return on their investment . . . [is] very generous." Mr. Noonan further noted that using this limit on incentives follows the PSC's precedent in other DSM goals dockets. TR 733-34. JEA's witness Donald Wucker similarly testified that "A 50 percent return is very attractive. I wish my retirement gave me that. And I think it's tried and true in Florida" TR 795.

That OUC's consideration of incentives is appropriate is further demonstrated by the fact that OUC does not offer direct incentives to customers to implement solar PV systems, yet OUC is experiencing substantial growth in customer-owned installation of solar PV facilities. TR 738-39, EXH 335.

In summary, OUC has fully met its burden of providing appropriate consideration of incentives for DSM measures, including DSRE systems or measures, in support of its proposal that the PSC set its DSM Goals at zero in these proceedings.

5. OUC's Proposed Zero Goals are Based on Appropriate Consideration of Regulatory Costs Imposed on Emissions of Greenhouse Gases.

OUC's cost-effectiveness analyses also provided appropriate consideration of the potential regulatory costs associated with the emission of greenhouse gases, such as carbon dioxide. Mr. Kushner testified that there are presently no regulations that would apply or impose costs on OUC for emissions of greenhouse gases, and that there is substantial uncertainty surrounding any potential impacts of such regulatory measures on OUC's

costs. TR 653-54. Even in light of these uncertainties, OUC included an average of the values prepared and used in these Goals Dockets by FPL and Duke. TR 654. These values begin at \$2.50 per ton of carbon dioxide emissions in 2025 and escalate to \$63.15 per ton in 2050. EXH 49.

6. OUC's Proposed Zero Goals are Based on Appropriate Consideration of Free Riders.

The general issue of free riders and free ridership is discussed in more detail in Section III below. This brief section makes this point: OUC's use of the two-year payback limitation on incentives paid to customers to implement any DSM measure, and OUC's further consideration of sensitivity cases applying one-year and three-year payback screens (EXH 31 at E-3 and E-4) fully satisfies OUC's burden of proof to adequately consider free ridership as required by Rule 25-17.0021(3), F.A.C. This methodology has been approved by the PSC since the very first DSM goals proceedings and followed throughout the proceedings through and including the 2014 DSM goals dockets, where the PSC stated:

We approved goals based on a two-year payback criterion to identify free riders since 1994 and we find it appropriate to continue this policy.

In re: Commission Review of Numeric Conservation Goals for Orlando Utilities Commission, Docket No. 20130204-EM (which was consolidated with Docket Nos. 20130199-EI through 20130205-EI for the other FEECA Utilities), Order No. PSC-2014-0696-FOF-EU at 27 ("2014 Goals Order"). OUC's consideration of the two-year payback screen, along with the one-year and three-year payback limits, also fulfills the minimum testimony requirement of the OEP. OEP at 15.

In short, OUC has fully met its burden of appropriately considering free riders as required by the PSC's Rules and the OEP.

D. The PSC Should Set OUC's DSM Goals at Zero Because OUC Is In the Best Position To Determine Its Customers' Needs and To Determine What Programs and Measures to Continue to Offer.

In Docket No. 20040035-EG, the Commission approved zero goals for OUC, stating as follows:

OUC appropriately used the RIM test to determine the cost-effective level of achievable DSM goals, and found that none of the tested measures were cost-effective.

Because no DSM measures were found to be cost-effective, we find that it is not appropriate to establish positive conservation goals for OUC. Therefore, we approve OUC's proposed annual residential winter and summer kW and annual residential kWh conservation goals of zero for the period 2005 through 2014. We also approve OUC's proposed annual commercial/industrial winter and summer kW and annual commercial/industrial kWh conservation goals of zero for the period 2005 through 2014.

* * *

We find that it is reasonable to allow OUC to determine whether or not such programs should be continued because OUC is in the best position to determine its customers' needs. Further, OUC does not recover the costs of such programs through the Energy Conservation Cost Recovery Clause.

Order No. 2004-0767 at 3-4.

The facts in this 2019 Goals Docket for OUC are virtually identical to those presented to the PSC in 2004: Other than a single commercial/industrial lighting measure that would provide objectively negligible savings, there are no cost-effective, reasonably achievable DSM savings available to OUC through either Energy Efficiency, or Demand Reduction, or Demand-Side Renewable Energy measures. Other than the lighting measure,

nothing passed the RIM Test, which indicates that anything other than zero goals will fail the RIM Test, putting upward pressure on the rates of OUC's general body of ratepayers, see Wucker, TR 1345-46. From the PSC's recognition that "the RIM test eliminates cross-subsidies," 2014 Goals Order at 40, it follows directly that setting OUC's goals above zero will result in cross-subsidies. OUC has a robust portfolio of DSM programs in place and has established, via the explicit and uncontroverted testimony of its witness Kevin Noonan, that OUC will continue all of its DSM programs except its LED streetlighting program, which is nearly complete for practical purposes. TR 734-35. Moreover, OUC has consistently exceeded its FEECA goals, e.g., exceeding its current FEECA energy savings goal by more than 25 times in recent years. TR 726.

As in 2004, OUC is in the best position to determine what programs to continue. OUC is responsible to the customers it serves. TR 731. As Mr. Noonan stated, the citizens of Orlando are, in a meaningful sense, the shareholders of OUC. TR 731-32. The Mayor of Orlando serves on OUC's Board, and OUC is a direct partner with the City of Orlando in the City's efforts to become the greenest city in the southeastern U.S. TR 735.

Uncontroverted record evidence demonstrates that OUC will continue all but one of its existing programs, the one exception being its LED streetlighting program, through which almost every streetlight in OUC's service area has already been replaced by LED bulbs, and which will likely be complete by the time these proceedings are concluded. TR 734-35, 744-45; EXH 197 at 6. As Mr. Noonan explained, OUC proposes zero goals because mandatory goals might force OUC to implement some programs over others, and OUC wants to maintain local control and have its Board make these decisions. TR 735.

Finally, zero goals are also appropriate for OUC because the PSC has no rate jurisdiction over OUC or other municipals. TR 770; Fla. Stat. §§ 366.04(2) & 366.11 Accordingly, neither OUC nor JEA participates in the PSC's Energy Conservation Cost Recovery proceedings. By their nature as municipal utilities, OUC and JEA have to recover their fixed costs, even if the units of sales over which those costs are recovered decline for any reason. See Wucker, TR 1345-46.

II. Consistent with FEECA and the PSC's Sound, Long-Standing Policy Against Cross-Subsidization, the PSC Should Use the RIM Test and the Participant Test as the Primary Criteria for Establishing Conservation Goals in These Proceedings.

In setting DSM goals, FEECA requires the PSC to consider the costs and benefits to customers who participate in DSM measures and programs and the costs and benefits to the general body of a utility's ratepayers as a whole. Fla. Stat. § 366.82(3)(a)&(b). In other words, FEECA specifically requires the PSC to consider the results of the RIM Test and the Participant Test, TR 1051, and the PSC is allowed to, and does, consider other measures including the TRC Test. With a limited exception in 2009, the PSC has consistently set DSM goals under FEECA using the RIM Test and the Participant Test since the first numeric goal-setting proceedings in 1993-94. TR 1048. The PSC's precedents and competent, substantial expert testimony support the continued use of the RIM Test and Participant Test in these 2019 Goals Dockets.

PSC Precedents. In the first FEECA goal-setting proceedings, the PSC determined to set overall conservation goals for the investor-owned utilities ("IOUs") based on measures that pass both the Participant and RIM Tests, with the following specific finding:

We find that goals based on measures that pass TRC but not RIM would result in increased rates and would cause customers who do not participate in a utility DSM measure to subsidize customers who do participate.

In re: Adoption of Numeric Conservation Goals and Consideration of National Energy Policy Act Standards by Florida Power & Light Company, Docket No. 19930548-EG (also establishing goals for Florida Power Corporation, Tampa Electric, and Gulf Power in consolidated Docket Nos. 19930549-EG through 19930551-EG), Order No. PSC-1994-1313-FOF-EG (“1994 Goals Order-IOUs”) at 22. In 1997, the PSC approved stipulations between the utilities and intervenors and cited favorably the 1994 Goals Order-IOUs, which stated that “goals based on measures that pass TRC but not RIM would result in increased rates and would cause customers who do not participate in a utility DSM measure to subsidize customers who do participate.” In re: Adoption of Numeric Conservation Goals by Florida Power & Light Company (and other FEECA Utilities), Docket Nos. 19971004-EG through 19971007-EG, Order No. PSC-1999-1942-FOF-EG at 3. In the 2004 goal-setting proceedings, the PSC approved Tampa Electric’s proposed goals, which were based on RIM and Participant test results, stating: “TECO appropriately used the RIM and participant tests to determine the cost-effective level of achievable DSM goals. Therefore, TECO’s proposed conservation goals are hereby approved.” In re: Petition for Approval of Numeric Conservation Goals by Tampa Electric Company, Docket No. 20040033-EG, Order No. PSC-2004-0765-PAA-EG at 4. In that order, the PSC stated that the goals approved for TECO in the 1997-99 cycle, pursuant to a stipulation with intervenor parties, were “based on measures that passed the participant and Rate Impact Measure (RIM) tests.” Id. at 2. Further, as noted above, in the 2004 goal-setting cycle, the PSC

approved zero goals for OUC and JEA because none of the measures analyzed passed the RIM test, and because, given that fact, these municipal utilities were determined by the PSC to be in the best position to determine what programs to continue. Order No. PSC-2004-0767-PAA-EG at 4; and Order No. PSC-2004-0768-PAA-EG at 2.

In 2009, the PSC tested a different approach by using the TRC test for some of the FEECA Utilities. TR 1048. This approach, however, resulted in significant rate increases that led FPL and Duke to seek relief, which the PSC granted, requiring “FPL and Duke to implement DSM programs that had been determined to be cost-effective under the RIM test in a previous DSM proceeding.” *Id.* In 2014, the PSC again used the RIM Test as the basis for DSM goals, in that instance finding that “annual goals based upon the unconstrained RIM achievable potential be adopted,” because “the RIM test eliminates cross-subsidies,” and also applying the use of a two-year payback as the free-ridership screen. 2014 Goals Order at 40.

Former Chairman Deason testified that “RIM continues to be the appropriate . . . cost-effectiveness test,” TR 1091, and that “the RIM test is best suited to account for the cost of incentives, to minimize rate impacts, and to avoid subsidies between participating and non-participating customers.” TR 1054. He further testified that “Setting goals based on the TRC test *will* result in a greater level of lost revenues, *will* result in a greater likelihood of a rate case . . . and *will* result in higher bills for non-participants because of the cross-subsidies between participants and non-participants.” TR 1061 (emphasis in original). To the same points, FPL’s witness Steven R. Sim testified that “if high levels of DSM that do not pass the RIM test were to be mandated in Florida, total utility cumulative

present value of revenue requirements (CPVRR) could go down more than would be the case with DSM programs that pass the RIM test,” TR 1251, but that such mandatory goals “will raise rates and will increase cross-subsidization.” TR 1267.

SACE/LULAC object to the use of the RIM Test, arguing that that reliance on the RIM test is “misguided,” Grevatt, TR 934, that the RIM Test it is not a cost-effectiveness test at all, TR 934, 937, but rather that “it is a test of a measure’s or program’s potential to cut into utility profits (i.e., lost revenue), which would only effect [sic] rates if it caused utilities to seek” rate increases to maintain their profits, TR 934. Mr. Grevatt goes on to downplay the rate impacts on non-participating customers from programs or measures that do not pass RIM, saying that “the RIM test is really a test of impact on those customers who choose not to participate in an efficiency program.” TR 938 These arguments are specious and misplaced.

In the first instance, Grevatt’s argument that the RIM Test is actually a test of potential impacts on utility profits is specious as applied to investor-owned utilities and patently false as applied to municipal utilities such as OUC and JEA. It is specious as applied to IOUs because reductions in sales will result in average fixed costs per unit of sales (e.g., per kilowatt-hour) to increase, which will put upward pressure on rates that will show up sooner or later. It may be true that a small rate impact, where a utility was earning at or near the top of its authorized return range, would not immediately precipitate a rate case, but a large rate impact can and even a small impact on sales will be reflected in rates in any future rate case. Grevatt’s argument should be rejected.

Further, his argument that RIM is a test of impacts on utility profits is entirely misplaced as applied to municipal utilities such as OUC and JEA. As JEA's witness Donald Wucker testified, municipal utilities must recover all of their costs, including fixed costs, through customer rates. TR 1345. Mr. Wucker went on to explain, accurately, that "Because the RIM test accounts for lost revenues resulting from reduced energy sales, the use of the RIM test assures that our [JEA's] rates will not increase due to mandated conservation programs. From JEA's perspective as a municipal utility, RIM most assuredly is a cost-effectiveness test." TR 1346. Mr. Grevatt's contrived argument that RIM is not a cost-effectiveness test is thus debunked as applied to municipal utilities.

Further, his argument would not carry any weight for those utility customers – the utility's general body of ratepayers as a whole, to use the statutory phrase – whose rates would increase if non-RIM goals were mandated. He is free to argue the semantics of the word "cost," but from the perspective of a non-participating customer, an increase in the customer's bill is surely recognized as a cost. Of course, he appears to suggest that the PSC can simply discount or disregard the impacts on non-participants, because they "choose not to participate in an efficiency program." TR 938.

In summary, the RIM Test, in tandem with the Participant Test, is the most appropriate cost-effectiveness test for the PSC to use in establishing goals in these proceedings. Because no DSM or DSRE measures would provide meaningful, cost-effective savings for OUC and its customers, the PSC should adhere to its long-standing policies, follow RIM, and approve OUC's request that the PSC set its goals at zero.

III. Consistent with FEECA and the PSC’s Sound, Long-Standing Policy Against Cross-Subsidization, the PSC Should Approve the Continued Use of the Two-Year Payback Screen in Setting Goals and to Address Free Ridership.

PSC Rule 25-17.0021(3), F.A.C., requires consideration of free riders in establishing DSM goals for the FEECA Utilities. In the context of setting conservation goals and establishing conservation programs, a free rider is a customer who would accept an incentive payment from a utility upon implementing a conservation measure even though the customer would have implemented the measure without the incentive. 2014 Goals Order at 23. The free rider issue ultimately addresses whether a measure supported by customer-funded incentives is cost-effective to the general body of a utility’s customers who pay for the incentives; if incentives are paid unnecessarily, customers’ money is wasted, because the conservation benefits would be realized without incentive payments supported by non-participating customers. Moreover, by definition, free rider program participants are subsidized by non-participating customers. In the most recent goal-setting proceedings, the PSC stated, “We approved goals based on a two-year payback criterion to identify free rides since 1994 and we find it appropriate to continue this policy,” id. at 27, further recognizing the appropriateness of the two-year payback limitation on incentives to limit free ridership and to minimize undue subsidies. Id. at 26-27.

The PSC’s continued use of the two-year payback criterion as a screen in setting goals and as a limit on incentives limit is further supported by extensive testimony in these Goals Dockets. An incentive providing for a two-year simple payback means that 100 percent of the customer’s out of pocket cost of implementing a measure would be paid for,

in simple payback terms, in two years. Obviously, this means that a customer implementing a measure would earn a 50 percent per year return on the customer's investment in the measure. Noonan, TR 733-34. A rational customer, acting in his or her self-interest, should implement a measure with this "sufficient economic incentive." See 2014 Goals Order at 26-27, Deason, TR 1066. If a customer is not rational, there is no way to determine whether the customer would implement a measure under any scenario. TR 1066. Applying the two-year payback screen will yield achievable potential estimates to be used in goal-setting excluding measures for which customers already have (i.e., without additional utility support) this "sufficient incentive," and applying the two-year payback criterion to limit utility-paid incentives will limit free ridership and undue subsidies. (Applying the two-year payback criterion in setting incentives for cost-effectiveness analyses, Nexant's Achievable Potential analysis allowed for incentives equal to the lesser of the net RIM benefit, i.e., RIM benefits minus RIM costs, or the amount that produces a two-year payback, and the associated 50 percent per year return, to the customer. EXH 31 at 53.)

Former Chairman Terry Deason further testified that while some customers will not adopt a measure regardless of its payback, with or without an incentive, and some will adopt measures with paybacks longer than two years, "[t]wo years has been consistently used as a reasonable point to make that differentiation" to predict where customers are likely to adopt a measure based on the measure's own inherent economic attractiveness. TR 1065 This avoids unnecessary costs imposed on the utility's customers who fund incentives and thus avoids undue subsidies. Id.

OUC's witness Kevin Noonan testified that OUC believes that "most people, when faced with an investment that has less than a two-year payback would do that on their own," and that "a 50-percent return on their investment . . . [is] very generous." TR 733-34. Mr. Noonan further noted that using this limit on incentives follows the PSC's precedent in other DSM goals dockets. Id. JEA's witness Donald Wucker similarly testified that "A 50 percent return is very attractive. I wish my retirement gave me that. And I think it's tried and true in Florida" TR 795.

SACE/LULAC have tried to create the impression that other free rider evaluation techniques, e.g., survey research on program participants, are more appropriate. See, e.g., cross-examination by the SACE/LULAC attorneys confirming that the FEECA Utilities have not undertaken such survey research. TR 478,79, 720-24. This effort is misplaced, and the PSC should reject it as it has in the past. As FPL's witness Thomas Koch testified, such alternative methods are "costly, complex, and contentious," meaning that such research does not yield clear results and results in contested debate over the meaning of such results. TR 134. Further, there is no evidence that surveys produce better or more reliable results in identifying or limiting free ridership than the two-year payback screen. As former Chairman Deason observed, SACE/LULAC's witness James Grevatt did not provide any empirical study that would justify a change in the PSC's 25-year policy. TR 1067.

Finally, SACE/LULAC would apparently have the PSC simply abandon the two-year payback criterion. See Grevatt, TR 945-46; Forest Bradley-Wright, TR 1008 (advocating removal of the two-year payback screen). However, doing so "would result in

goals that are not the most efficient and cost-effective.” Deason, TR 1070. As the PSC noted in the most recent goal-setting proceedings, applying a shorter payback period will increase the number of measures and increase DSM goals. 2014 Goals Order at 25. The PSC immediately followed this observation with the obvious conclusion that “More aggressive goals inherently require higher utility expenditures, to increase the participation rates, resulting in higher program costs and greater cross subsidies between customer classes.” Id. at 26 (emphasis supplied).

In summary, as the PSC stated in the most recent proceedings,

We find that the two-year payback criterion provides sufficient economic incentive to convince a customer to participate in a given energy efficiency program while balancing the requirement to account for free riders and minimizing program costs and undue subsidies.

2014 Goals Order at 26-27. The PSC should continue this long-standing policy of setting goals and limiting incentive payments based on the two-year payback criterion.

IV. SACE/LULAC’s Proposed Percentage Conservation Goals Are Not Supported by Competent, Substantial Evidence and Would Result in Cross-Subsidization of Participants, Contrary to Commission Policy.

Through the testimony of James Grevatt, SACE/LULAC reject RIM, TR 934-38, argue that there are too many problems with the FEECA Utilities’ TRC tests⁹ to base goals on those results, TR 967-68, then argue that the PSC should order the utilities to perform

⁹ SACE/LULAC’s extensive criticisms of Nexant’s modeling and analysis is not based on any direct knowledge of Nexant’s TEA-Pot Model. Although they asked to have the model, they declined Nexant’s offers to show them the Model and to answer questions regarding it. Further, they never moved to compel any of the FEECA Utilities to produce the Model. TR 416-17.

SACE/LULAC's preferred version of TRC tests, TR 968, 974, and finally leap from there to their previously rejected tactic of arguing for percentage goals based on other states' experience. TR 968, 973. Their proposal lacks competent, substantial evidence and would result in dramatic cross-subsidization of participants by the utilities' general body (bodies) of ratepayers as a whole. FPL's witness Thomas Koch estimated that the SACE/LULAC percentage goal would have a rate impact of approximately \$28 billion on the customers of FEECA Utilities. TR 1133. Further, considering that their proposed percentage goals are significantly greater than Mr. Grevatt's claimed "partially corrected TRC achievable" potential savings, cf. Table 10, TR 973 to Table 7, TR 972, these more aggressive goals will require higher utility expenditures, resulting in higher program costs and even greater cross subsidies than would using his partially corrected TRC estimates. See 2014 Goals Order at 26.

As described in Section II above, Mr. Grevatt's rejection of the RIM test is based on contrived and specious arguments, and essentially asks the PSC to ignore FEECA's specific mandate to consider the impacts of any DSM goals on the utility's general body of ratepayers as a whole.

His proposal that the PSC should set goals for Florida's utilities based on his claims regarding what other utilities in other states may have achieved has been rejected, most recently in the last FEECA goal-setting proceedings. 2014 Goals Order at 36. There, the PSC observed that the goals proposed by the intervenors in those proceedings (which included SACE) were "not based on any cost-effectiveness test." Id. Given that Mr. Grevatt's testimony suffers from exactly the same defect, the PSC should reject his

proposals just as it rejected SACE's proposals in 2014. This result is further supported by the testimony of former Chairman Deason, that "Every state is different, and I think it's inappropriate to simply have a percentage of sales goal based upon what may have been achieved in another state and use that as a target for Florida." TR 1098.

Finally, comparing the numeric values in Mr. Grevatt's tables, there is no doubt that the percentage goals proposed by SACE/LULAC are more aggressive than goals based on measures that pass the RIM Test, and in fact more aggressive than goals based on TRC results. For example, Mr. Grevatt's estimated energy savings for FPL based on his "partially corrected TRC achievable" potential are 4,333 gigawatt-hours ("GWH") over the 2020-2029 period, TR 972, Table 7. However, his percentage energy savings goal for FPL is more than three times that amount, 13,022 GWH over the same period. TR 973, Table 10. (And, of course, the TRC goals are greater than RIM-based goals.) As the PSC observed in 2014, "More aggressive goals inherently require higher utility expenditures, to increase the participation rates, resulting in higher program costs and greater cross subsidies between customer classes." 2014 Goals Order at 26. Mr. Grevatt's percentage goals are vastly more aggressive than either the utilities' RIM-based goals or his claimed "partially corrected" TRC goals, and accordingly, the resulting program costs and cross-subsidies would be correspondingly greater. The PSC should reject SACE/LULAC's unsupported proposals for all of the FEECA Utilities and set their goals on the basis of the RIM Test and Participant Test.

**V. SACE/LULAC's Proposed Separate DSM Goals for Programs
Serving Low-Income Customers are Unnecessary, Counter-Productive,
and Unsupported by Competent, Substantial Evidence.**

Through the testimony of Forest Bradley-Wright, SACE and LULAC ask the PSC to establish separate goals for low-income customers. TR 997. Their proposal is based largely on their rejection of PSC precedents regarding cost-effectiveness tests (they favor TRC over RIM) and free ridership (they would eliminate the two-year payback limit and screens), as well as on an unsubstantiated blanket percentage assumption applied by SACE/LULAC witness Forest Bradley-Wright to translate Economic Potential to Achievable Potential, TR 1008, but not on any competent, substantial evidence relating to the criteria or considerations set forth in FEECA or in the PSC's Energy Conservation Rules. SACE/LULAC have provided no analysis of cost-effectiveness to either participating customers or the utility's general body of ratepayers as a whole. Mr. Bradley-Wright does assert that he started his "analysis" with the residential portion of utilities' TRC Achievable Potential, but then goes on to say that he recommends calculating AP simply by multiplying EP times 50%. TR 1008. He provides no specific measures or programs, and no analysis of bill impacts. As the PSC has done in the past, the PSC should again reject their unsupported proposals.

Moreover, separate goals for low-income customers are clearly unnecessary for OUC in light of OUC's extensive program offerings directed to low-income customers, including OUC's Multifamily Efficiency Program as well as the Efficiency Delivered Program, and OUC's broad and numerous additional efforts and outreach activities. TR 1322-23. Further, as it has in the past, the PSC should recognize that goals that do not pass

RIM will likely harm all customers, including low-income customers, by increasing rates and causing cross-subsidization. 1994 Goals Order-IOUs at 22; 2014 Goals Order at 26; see also Wucker, TR 1345 (half of JEA’s low-income customers do not participate in JEA’s no-cost, low-income DSM program, meaning that those non-participating low-income customers would subsidize participants).

PSC Precedent. Beginning with the first DSM goal-setting dockets, the PSC was asked to set separate end-use goals for low-income customers. 1994 Goals Order-IOUs at 44-45. In those proceedings, the PSC declined to set such goals, although naturally, the PSC encouraged and required utilities to address the availability and saturation of conservation programs for residential low-income customers. Id. Even so, the PSC noted that “All customers, including low-income customers, should benefit from RIM-based DSM programs. This is because RIM-based programs ensure that both participating and non-participating customers benefit from utility-sponsored conservation programs.” In the same order, rejecting proposals that DSM goals be based on the TRC test, the PSC stated the following:

We will set overall conservation goals for each utility based on measures that pass both the participant and RIM tests. . . . We find that goals based on measures that pass TRC but not RIM would result in increased rates and would cause customers who do not participate in a utility DSM measure to subsidize customers who do participate.

Id. at 22. The principle underlying the PSC’s rejection of TRC-based goals – namely that TRC-based goals would “result in increased rates” and in cross-subsidization of participating customers by non-participating customers, is equally applicable to SACE/LULAC’s proposed low-income goals (and their proposed overall percentage goals)

in these Goals Dockets: RIM-based goals do not increase rates, and RIM-based goals do not cause cross-subsidies. It follows directly that where a utility's RIM-based goals are zero, imposing goals greater than zero will increase rates and cause non-participating customers to subsidize participants.

Low-Income Conservation Goals for OUC are Unnecessary. As explained in detail in the testimony of OUC's witness Kevin Noonan, OUC recognizes that a substantial percentage of OUC's customers have relatively lower incomes and accordingly acts to help low-income customers through many efforts and with many partners to promote energy efficiency and savings for low-income customers and basic support for these customer's energy needs. TR 1321. OUC's energy conservation programs and measures directed toward low-income customers include OUC's Efficiency Delivered Program, TR 1326-27; Multifamily Efficiency Program, which targets apartment complexes, TR 1327-29; distribution of conservation kits that include actual energy efficiency equipment, TR 1330, and partnering with the Village of Orlando and Hope Church to renovate and refurbish the once-vacant New Horizons Apartment Complex with LED lighting, energy efficiency appliances, low-flow water fixtures, ductless HVAC systems, high-efficiency water heaters, and a 52 kilowatt rooftop solar array. TR 1330. OUC's Power Pass program is an optional, prepaid program that allows customers to obtain their utility services on a pay-as-you-go basis. Statistics show that customers who use prepaid programs such as OUC's Power Pass tend to use less electricity because they are more aware of how much they are using. TR 1329. OUC also engages actively in numerous outreach activities to inform and

educate low-income customers about energy conservation and OUC's DSM programs. TR 1325-26.

The PSC will well note that OUC's existing low-income program, Efficiency Delivered, already surmounts SACE/LULAC's main criticisms of the FEECA Utilities' proposals to base goals on RIM and to apply the two-year payback criterion to address free ridership: OUC implements and will continue the program even though it does not pass RIM, TR 717, and even though participant customers realize a simple payback less than 2 years. Id. In fact, the costs to participating low-income customers are very low indeed: OUC pays for 85% of eligible costs, up to \$2,000 for customers with household income less than \$40,000 per year, and the customers are allowed to finance the balance at zero interest on their bills. TR 1326-27.

In light of OUC's extensive programs, offerings, and outreach activities, separate goals for residential low-income conservation programs for OUC are simply unnecessary.

Low-Income Conservation Goals Are Likely Counter-Productive. As Mr. Noonan testified, OUC is deeply concerned with the welfare of all of its customers, including low-income customers who represent a substantial proportion of OUC's customer population. TR 680-81, 1321-22. Recalling the PSC's findings that goals requiring DSM in amounts greater than are cost-effective per the RIM Test will increase rates and cause cross-subsidization, the PSC must recognize that some number (quite possibly a significant number) of low-income customers will likely not participate in DSM programs or measures, and the impacts of non-RIM-based goals on those customers will be higher rates and higher bills for any level of electricity consumption. For example, JEA's witness

Donald Wucker testified that, “Although JEA has aggressively marketed no-cost low-income offerings since 2009, 50% of eligible customers choose not to participate.” TR 1345. This non-participating half of JEA’s low-income customers would be worse off – paying higher rates and subsidizing program participants – if the PSC were to approve non-RIM-based goals, whether based on TRC results, on SACE/LULAC’s unsupported overall percentage goals, or on SACE/LULAC’s equally unsupported low-income goal proposals. The PSC will note that OUC’s Efficiency Delivered program offers conservation benefits of up to \$2,000 per household at virtually no cost to customers with household income up to \$40,000 per year – up to \$1,700 in direct financial support and the ability to finance the additional \$300 at zero interest over 12 months on the customer’s electric bill. TR 1326-27.

In summary, separate conservation goals for low-income residential customers are contrary to PSC precedent, contrary to the PSC’s longstanding policies favoring the use of RIM to prevent rate increases and cross-subsidization of participating customers by non-participants, almost certainly counter-productive in their impacts on non-participating low-income customers, and specifically unnecessary for OUC. The PSC should reject SACE/LULAC’s proposal.

OUC'S POST-HEARING STATEMENT OF ISSUES AND POSITIONS

ISSUE 1: Are the Company's proposed goals based on an adequate assessment of the full technical potential of all available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy systems, pursuant to Section 366.82(3), F.S.?

OUC Position: *Yes. OUC's proposed goals are based on a sound assessment of the full technical potential of all available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy resources.*

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

OUC Position: *Yes. OUC's proposed goals are based on a full consideration of Nexant's Participant Test analyses, and those analyses adequately and reasonably reflect the costs and benefits to customers who might participate in the DSM measures and programs studied. Thus, OUC's proposed goals adequately reflect the costs and benefits to participating customers.*

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

OUC Position: *Yes. OUC's proposed goals adequately and reasonably reflect the costs and benefits of potential customer-funded DSM measures to the general body of OUC's ratepayers considered as a whole, including consideration of utility incentives and participant contributions. In summary, OUC's proposed zero goals are specifically appropriate for OUC's general body of customers

because only one measure, which would provide negligible energy savings – 6,000 *kilowatt*-hours total over the ten-year goals period – passed the RIM test.*

ISSUE 4: Do the Company’s proposed goals adequately reflect the need for incentives to promote both customer-owned and utility-owned energy efficiency and demand-side renewable energy systems, pursuant to Section 366.82(3)(c), F.S.?

OUC Position: *Yes. OUC’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.*

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

OUC Position: *Yes. Even though there are no current or pending state or federal regulations applicable to greenhouse gas emissions, OUC’s proposed goals are based on cost-effectiveness analyses, conducted by Nexant, that include the projected costs of carbon dioxide (“CO₂”) emissions regulation based on the projected timing of CO₂ regulation and the projected CO₂ emissions prices, in dollars per ton, used by FPL and DEF in their cost-effectiveness analyses for these consolidated goals dockets.*

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

OUC Position: *The PSC should base any goals that it establishes for OUC on the RIM test, to ensure that any required measures must be cost-beneficial to OUC’s general body of customers. This is particularly important because

it will minimize or eliminate any cross-subsidization of participating customers by non-participating customers, and it is also important because the PSC does not have rate setting jurisdiction over OUC.*

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

OUC Position: *Yes. OUC’s proposed goals appropriately reflect consideration of free riders by application of the two-year payback screen that the Commission has approved for the past 25 years. The two-year screen strikes a reasonable balance between the desire for greater energy conservation and the desire to avoid the adverse economic effects of free ridership, i.e., that free riders cause all customers to pay more than necessary to achieve conservation benefits and to subsidize free riders.*

ISSUE 8: What residential summer and winter megawatt (MW) and annual Gigawatt-hour (GWh) goals should be established for the period 2020-2029?

OUC Position: *The PSC should establish goals of zero for OUC for residential summer and winter peak demand (“MW”) reductions and annual gigawatt-hour (“GWh”) savings.*

ISSUE 9: What commercial/industrial summer and winter megawatt (MW) and annual Gigawatt hour (GWh) goals should be established for the period 2020-2029?

OUC Position: *The PSC should establish goals of zero for OUC for commercial and industrial summer and winter peak demand reductions and annual energy savings.*

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

OUC Position: *The PSC should set goals of zero for OUC to increase its development of demand-side renewable energy systems. None of the demand-side renewable energy measures evaluated by Nexant, including solar photovoltaic, battery storage, and Combined Heat & Power (“CHP”) measures, passed the RIM test for OUC. OUC has already implemented and operates substantial demand-side and supply-side renewable energy measures using solar and landfill gas renewable energy technologies.*

ISSUE 11: Should these dockets be closed?

OUC Position: *Yes. When the Commission’s order approving OUC’s goals has become final and is not subject to any appeals or reconsideration, these dockets, specifically including Docket No. 20190019-EG, should be closed.*

CONCLUSION

For the reasons explained in OUC’s Brief and based upon resolution of the issues in these Goals Dockets, the PSC should establish DSM Goals of zero for OUC for residential energy savings, residential peak demand reductions, commercial/industrial energy savings, commercial/industrial peak demand reductions, and demand-side renewable energy measures. Any goals greater than zero would be non-cost-effective and unnecessary to achieve the purposes of FEECA for OUC’s customers and the State as a whole, and any goals greater than zero would reduce OUC’s flexibility in pursuing DSM and renewable energy measures in the best interests of its customers and the Orlando

community. As explained in its witnesses' testimony, OUC will continue to offer nearly all of its existing DSM programs even if the PSC grants OUC's request that its DSM Goals be set at zero, and as the PSC observed in previously approving DSM goals of zero for municipal utilities, "zero goals . . . will not translate into zero DSM." 1995 Goals Order-Municipals at 3-4. OUC will continue its long-standing record of DSM achievements and promotion of renewable energy, especially solar power.

Respectfully submitted this 20th day of September, 2019.

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail this 20th day of September, 2019, to the following parties.

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