

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS : COMMISSION CONFERENCE AGENDA
ITEM NO. 8

COMMISSIONERS
PARTICIPATING : CHAIRMAN ART GRAHAM
COMMISSIONER JULIE I. BROWN
COMMISSIONER DONALD J. POLMANN
COMMISSIONER GARY F. CLARK
COMMISSIONER ANDREW GILES FAY

DATE : Tuesday, November 5, 2019

PLACE : Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY : ANDREA KOMARIDIS WRAY
Court Reporter and
Notary Public in and for
the State of Florida at Large

PREMIER REPORTING
114 W. 5TH AVENUE
TALLAHASSEE, FLORIDA
(850) 894-0828

1 P R O C E E D I N G S

2 CHAIRMAN GRAHAM: Okay. Let's move on to Item
3 No. 8.

4 MR. ELLIS: Good morning, Commissioners.
5 Phillip Ellis with Commission staff.

6 Item 8 is staff's recommendation for the
7 Florida Energy Efficiency and Conservation Act
8 conservation goals dockets. Pursuant to the FEECA
9 statute, conservation goals must be established at
10 least once every five years by the Commission.

11 Staff rec- -- staff's recommendation addresses
12 all seven electric FEECA utilities: Florida
13 Power & Light, Duke Energy Florida, Tampa Electric
14 Company, Gulf Power Company, Florida Public
15 Utilities Company, JEA, and Orlando Utilities
16 Commission.

17 The recommendation is broken up into 11
18 issues. Issues 1 through 6 are based on the FEECA
19 statute; Issue 7 addressed the Commission's rule
20 implementing the FEECA statute; and Issues 8
21 through 10 reflect the final goal values; and last,
22 Issue 11 is close the docket.

23 At this time, based on the Commission's
24 preference, staff is prepared to provide a summary
25 of the recommendation as a whole or on an issue-

1 by-issue basis.

2 Staff is available for any questions.

3 CHAIRMAN GRAHAM: Just give us a summary on
4 the whole.

5 MR. ELLIS: Demand-side management, or DSM, is
6 the result of customers modifying their consumption
7 of electricity. As customers have voluntarily
8 engaged in conservation and have been impacted by
9 rising efficiency from building codes and
10 appliance-efficiency standards, average usage has
11 been declining over the last decade for all
12 customer classes.

13 Utility-sponsored DSM goes above and beyond
14 those conservation measures but, like any other
15 resource, it is evaluated to determine if it
16 benefits all customers. Many factors impact this
17 analysis, including the cost of fuel, emissions,
18 and planned generating units.

19 Since the last goal-setting proceeding,
20 several factors have decreased the cost-
21 effectiveness of the utility-sponsored DSM. This
22 was not disputed by any witness during the
23 proceeding.

24 For example, natural gas is forecasted to be
25 approximately half of the value projected in 2014.

1 Using a similar methodology as in the 2014 goal-
2 setting dockets, the FEECA utilities performed a
3 technical analysis -- analysis, including a
4 technical-potential analysis, an economic-potential
5 analysis, and finally, an achievable-potential
6 analysis using the participant's test, the rate
7 impact measure, or RIM, test and the total resource
8 cost or, TRC, test.

9 The RIM-test analysis, based on current
10 economic assumptions, showed that there would be
11 zero values in one or more categories for four
12 utilities: Gulf, FPUC, JEA, and OUC.

13 Staff notes that the Commission has approved
14 goals of zero before, based on the results of a RIM
15 analysis, but this would be the first time for an
16 investor-owned utility.

17 FEECA requires the Commission to adopt cost-
18 effective and appropriate goals based on analysis
19 of DSM savings and utility costs. Staff recommends
20 the Commission adopt the RIM and participant test
21 achievement-potential values as the conservation
22 goals.

23 By using the RIM and participant's tests
24 together, the Commission would -- would address
25 concerns regarding cross-subsidies between those

1 who can participate in DSM and those who cannot,
2 such as renters.

3 While this recommendation results in zero
4 goals, it is based on a technical analysis that
5 utilizes current economic inputs and is consistent
6 with all legal requirements.

7 The next phase after this proceeding is the
8 DSM plan dockets where the Commission will have the
9 opportunity to review the DSM programs meant to
10 implement these goals.

11 For those plans, staff recommends the
12 Commission encourage the utilities to engage in
13 customer education and highlight those measures
14 with a short payback period.

15 Further, the FEECA utilities should be
16 creative with their program design and seek to
17 maximize opportunity for customers to participate
18 in DSM. For those programs that -- for those
19 programs that do not pass the RIM test, staff
20 recommends that the IOUs should demonstrate that
21 they are in the public interest in their filings in
22 order to determine if costs should be recovered
23 from all ratepayers.

24 Last, as the DSM goals would be based on the
25 RIM test, staff recommends the IOUs would not be

1 eligible for financial rewards for meeting these
2 targets.

3 Regarding demand-side renewable energy, the
4 cost-effectiveness analysis showed that they are
5 not cost-effective either RIM or TRC test; however,
6 renewable-energy systems continue to grow without
7 direct utility incentives. Staff recommends that
8 the Commission's net-metering rule is the
9 appropriate mechanism to continue the development
10 of these systems.

11 Staff is available for any questions.

12 CHAIRMAN GRAHAM: Thank you, staff.

13 Commissioners, questions of staff.

14 Then, I'll entertain a motion.

15 Commissioner Polmann.

16 COMMISSIONER POLMANN: I'm sorry,
17 Mr. Chairman -- Mr. Ellis, could you go back to the
18 enumeration -- you said Issues 1 through 6 were
19 based on the FEECA statute and -- and Issue
20 No. 7 -- could you just repeat those for me,
21 please?

22 MR. ELLIS: Issues 1 through 6 refer to the
23 FEECA statute and various components of it,
24 specifically 366.82 and 3, I believe. Issue 7
25 addresses free-ridership, which is referenced

1 specifically in the Commission's rules implementing
2 the statute. And the remaining issues, 8, 9, and
3 10, represent the residential goals, the
4 commercial/industrial goals, and the renewable
5 goals, respectively.

6 COMMISSIONER POLMANN: So, the sector --
7 sector goals, essentially. Thank you.

8 Mr. Chairman, for discussion purposes, I'd
9 like to get all issues on the table -- I would move
10 the staff recommendation of all issues.

11 CHAIRMAN GRAHAM: It's been moved and second,
12 staff recommendation of all issues.

13 Further discussion.

14 Commissioner Brown.

15 COMMISSIONER BROWN: Well, I am -- I'm not
16 seconding that motion, but I do want to make some
17 general comments here, first.

18 I have been ruminating on this particular
19 docket for months and months upon end. It was
20 filed back in January. I think staff had informal
21 proceeding or meetings with the utilities. I've
22 been thinking about this since back in 2014, when
23 Commissioner -- Chairman Graham and I had an
24 opportunity to vote on that goal proceeding. This
25 is such an important issue to me, personally, and

1 to the state of Florida. I am extremely passionate
2 about it.

3 I'll say, the issue and the petition and
4 the -- that the utilities filed and the staff
5 recommendation that we ultimately are presented
6 puts us at a critical juncture for our state.

7 So, here is what I think. We are, in essence,
8 economic regulators. So, obviously, rate-making is
9 paramount to us, but we also have a very important
10 role in protecting the health, prosperity, and the
11 general welfare of the state and the citizens of
12 Florida, as it relates to conservation, per 366.81
13 of the Florida Statutes.

14 So, it kind of puts us in a very challenging
15 role here, dealing with a somewhat- -- and I'll
16 just say it -- it's an outdated statute that needs
17 modernizing -- along with the need to balance any
18 significant rate impacts to all of the customers,
19 along with the overarching goal of achieving energy
20 savings and shifting demand and reducing carbon.
21 Those are tho- -- those are aspirational -- those
22 are notable measures. That is what's going on
23 around the rest of the country.

24 I'm -- I'm sitting here just in a different
25 posture than some of my fellow Commissioners who

1 didn't have an opportunity to go through the 2014
2 goal-setting proceeding. I certainly know more
3 today about DSM and energy efficiency than I did
4 back in 2014, not just of -- in Florida, but across
5 the country, and really, the decarbonization
6 movement that is going on everywhere in our nation.
7 So, I have a different perspective today.

8 I think that it is absolutely clear, and
9 there's uncontroverted evidence, that aggressive
10 and beneficial codes, standards, and lower fuel
11 costs have continued to challenge the DSM programs'
12 ability to achieve additional savings. So,
13 that's -- I acknowledge that. That's not just in
14 Florida; that's happening everywhere.

15 But in many parts of the country -- and we
16 kind of talked about this very generally, during
17 the hearing. We were talking about next-gen
18 energy-efficiency programs. Well, many parts of
19 the country, energy-efficiency programs of the past
20 have been evolving with the technologies that
21 customers want, and they can benefit from behind
22 the meter. With a smarter, much more integrated
23 grid comes the need to modernize thinking behind
24 DSM and energy efficiency.

25 Beneficial offerings are out there for

1 customers that give and reap system-wide benefits,
2 not just to the end user. They're out there.
3 Utilities in our state have traditionally been, and
4 are, I w- -- very customer-centric. They care
5 about what the customer wants. As the con- -- as
6 the grid continues to evolve, though, I think the
7 method for evaluating cost-effectiveness of energy
8 efficiency will also need to change.

9 We're in a different environment today, but
10 optimizing energy use within a home or even a
11 commercial business, a retail, will continue to be
12 important to the customers, even with the ability
13 for customers to manage their own energy use or
14 even self-generate. That's going to be an
15 important component.

16 And I think customers want these energy-
17 efficiency programs available, whether they know it
18 or not, and that's why the education component is
19 so critical. They need to be robust in educating
20 their customers. So, it's, to me, all kind of
21 counterintuitive, the DSM and energy-efficiency,
22 in -- in its nature and principle.

23 But I personally think that utilities in our
24 state and around the nation who embrace energy-
25 efficiency and DSM programs for their customers and

1 who set reasonable goals with the regulators will
2 further develop the relationship with your customer
3 to increase the value you can provide to them as
4 the future continues to change and -- and business
5 models con- -- continue to change -- pardon me. I
6 think utilities here cannot be shortsighted in this
7 regard. This is an important part of your
8 business.

9 So, there are several flaws with what we have
10 before us today. We've got a jigsaw puzzle that,
11 if you change one little piece, just one piece,
12 it -- it changes the whole picture of the puzzle.
13 It's very complicated, very complex. It's hard to
14 communicate that to customers who care about this
15 issue.

16 The fact is we're -- we'd be in a much
17 different position today, we'd have a much
18 different recommendation if we truly explored the
19 different tests other than RIM and the participant
20 test and if we looked at a different payback period
21 and the free-ridership period -- which I believe,
22 by the way, is clearly warranted.

23 Even the utilities acknowledged during the
24 hearings -- Dr. Sim said, you know, energy codes
25 and standards have changed so much; it makes sense

1 that there's a natural, escalated buy-in by
2 customers that gives an opportunity to look at a
3 more appropriate period, like one year. It just
4 makes sense, given the dynamics of today. That
5 mechanism has been used since the nineties and
6 everything has changed in this regard.

7 So -- so, going back to that test, you move
8 that test and it does move the needle. I just
9 don't believe the evidence supports an even-lesser
10 goal as is being proposed than what we approved in
11 2014, which, by the way, was projected to last for
12 ten years.

13 So, it is a drastic reduction to our state and
14 conservation efforts, apart from one utility, that
15 I frankly do not believe is what the customers
16 want. I don't think it meets the intent behind the
17 state's conservation principles. And I don't
18 believe it is in the public interest of what is
19 being -- the request is.

20 I'm really cautious here to be part of this
21 legacy for future generations that reduces such
22 aspirational measures like conservation and energy
23 efficiency when the tests and the principles here
24 that we -- that we heard seems just too tenuous to
25 support.

1 As you can tell, I'm very passionate about
2 this issue. I have three additional points I want
3 to make. I don't know if I can persuade you all on
4 this me- -- I don't know if you're married to it,
5 but I just want to make three additional points
6 before I have -- I throw out my little proposal
7 here. And it's not little. It -- it's an effort
8 to deviate from the staff recommendation.

9 So, the three additional comments that I want
10 to make with regard to OUC and JEA -- I don't
11 believe -- they have their own governing boards.
12 They -- they're not subject to our rate-making. I
13 think OUC and JEA should be exempt from the FEECA
14 statute. It really isn't -- I -- I've felt that
15 for a long time.

16 We need to really look at how we can modernize
17 the FEECA statute. And that is the key component.
18 I -- I think that they -- their governing boards
19 are the more-appropriate body for determining their
20 energy-efficiency goals.

21 FPUC -- I do want to make a point -- they've
22 proposed zero goals, but they still want to do
23 programs for cost recovery. And they did
24 acknowledge during the hearing that they've
25 surpassed their goals from 20- -- 2014, but it just

1 didn't make sense, to me, to have zero goals. It's
2 like running a marathon at zero miles per hour.
3 You're -- you're never going to get to the finish
4 line. You've got to increase that speed a little
5 bit.

6 So, you're going to have to -- need to do
7 something. How can we approve the cost recovery if
8 they have no goals to achieve. You may -- you may
9 all differ with me on that, but it just doesn't
10 make sense to me.

11 My desire would be, at a very minimum, just to
12 maintain the current goals that we have today, that
13 we approved in 2014, that were found to be cost-
14 effective, approve those proposed goals, which
15 is -- it's a -- it would not be what the utilities
16 have requested, but I think that is in the public
17 interest, and this Commission found it to be in the
18 public interest in the past. And it's supported by
19 the record evidence that we have as well.

20 And if you all feel differently, I -- I do
21 have a few additional suggestions regarding
22 penalties and rewards that we really haven't delved
23 into, but other parts of the country are
24 incentivizing utilities to strive towards these
25 goals because it's what their customers want and

1 they do incentivize them, whether it's by an ROE
2 adder or a -- a different type of financial reward.

3 I -- I -- we're here in a posture -- this is
4 going to be a monumental change for us. And it's
5 something I can't support. And that's all I have
6 to say.

7 CHAIRMAN GRAHAM: Okay. We have a motion on
8 the floor, duly second. Any further comments?

9 Commissioner Clark?

10 COMMISSIONER CLARK: Wow. That's a lot to, I
11 guess, kind of try to digest in a short period of
12 time. I -- I would agree with Commissioner Brown's
13 comments regarding the process and regarding FEECA,
14 in general. There -- there has to be some updates.
15 There has to be some changes.

16 I think FEECA, under its established criteria,
17 back in the eighties, when it was first introduced,
18 was a noble cause. It was in the right direction,
19 and -- and I still think that it has moved the
20 state of Florida in the right direction.

21 I think where we are right now, in the
22 capacity of lower average kilowatt-hour
23 consumption, lower BTU consumption per consumer, is
24 a direct result of what we have done through FEECA.

25 I agree wholeheartedly that it does need some

1 substantive changes to it. And that, I think, is
2 where I get a little bit confused as it relates to
3 the direction that FEECA sent this Commission in
4 terms of approving goals based on a specific set of
5 standards. And we can debate RIM test, total
6 resource cost -- we could go through all of those.
7 I think we would probably all have a different
8 opinion.

9 It gets back down to what affects the
10 ratepayer and how does a particular program
11 implement -- implement and impact everybody in the
12 system, whether they're a participant or not.
13 And -- and I really, really kind of focus back on,
14 you know, what's the real impact to the guy that's
15 at the end of the line, as I used to call it.

16 You look at efficiency programs -- and I think
17 our utilities do a pretty admirable job in terms of
18 continuing to promote efficiency.

19 Look, everybody knows this whole process has
20 gotten some really, really bad press over the last
21 six months, and there have been a lot of things
22 that have been taken out of context and exaggerated
23 way, way beyond, I believe, what they actually are,
24 but with that said, I do believe that there are
25 some things that our utility companies can do. I

1 just don't think we're including them in this
2 particular goal-setting measure.

3 If you look at those things that are required
4 through FEECA, under the goal-setting measures,
5 they have to be cost-effective and appropriate.
6 That's the debatable part. It doesn't say that the
7 utilities still aren't promoting energy efficiency
8 and still don't have DSM programs and direct load-
9 control programs and those kinds of things in
10 place.

11 And I think, if we could show and somehow
12 analyze those -- those programs, sitting alongside
13 of the FEECA program, I think we would see that
14 we're still doing good things. We haven't given up
15 on energy efficiency; we've just picked all of the
16 low-hanging fruit.

17 Everything that we're going to be doing from
18 this point in -- in time is going to take, as you
19 said, Commissioner Brown, a completely different
20 strategy than we've used in the past, but we're
21 still riding in the same 1950-model car. It's just
22 not getting us there as fast.

23 So, I would encourage us to take a look at
24 what we can do and how we can be an impact in
25 making some changes to FEECA, but I can't answer

1 how we get through today's objective of evaluating
2 the current goals and measures under this program
3 today. I'm -- I'm not sure where I am on that.

4 CHAIRMAN GRAHAM: Commissioner Polmann.

5 COMMISSIONER POLMANN: Mr. Chairman,
6 respectfully, I -- I would like to give an
7 opportunity to Commissioner Fay, and then I do have
8 additional comments.

9 CHAIRMAN GRAHAM: Commissioner Fay.

10 COMMISSIONER FAY: Thank you, Mr. Chairman.

11 And the discussion is -- it's an important
12 one. I -- I agree with you, Commissioner Brown, it
13 is very challenging. You look back to, I guess,
14 about 1980 when it was implemented and the amount
15 of gigawatts saved under the -- these DSM
16 programs -- it's over 10,000 gigawatts. It has had
17 a significant purpose.

18 And I think the criticisms are founded. I
19 think any time you get a zero for a number in a
20 calculation, you have to give it some -- some
21 scrutiny to determine what that process was to get
22 to that number. And I think that's what this
23 process is, in front of us, based on staff's
24 recommendation.

25 I think that it's a calculation, like

1 Commissioner Clark said, using either the RIM or
2 the TRC and the participant test. We can debate
3 about that and we can debate about the payback
4 period for -- for the years, but that process is
5 what gives you the data.

6 My issue is that I -- when I look at the FEECA
7 statute, I don't necessarily agree that -- that the
8 process, itself, is limited to just that -- that
9 narrow DSM analysis. I think the statute
10 specifically talks about the audits that are
11 mandated within the statute and -- and the rule.
12 And I think those are extremely significant.

13 And even on -- on other items, I've been
14 publicly educated here about the value of having
15 someone come to your house and -- and walk through
16 and -- and really help you improve your efficiency
17 in your home. And I think that does have a huge
18 value. And I think that's a mandated thing within
19 the statute and the rule.

20 So, I think, when we start talking about these
21 broad perspectives and opinions on this issue, I
22 think we have to be thoughtful about what that
23 means within the legal parameters of our role here
24 on the Commission and the process that gets us to
25 these numbers. We can't ignore those just because

1 we don't like the result. It's -- it's a process
2 that has been debated on lots of different sides,
3 and we have a recommendation in front of us.

4 My concern with Commissioner Brown's proposal,
5 moving forward, is I'm not sure what that proposal
6 is. I -- I'm not sure what we would be changing
7 here to -- to resolve that.

8 And my other concern is that, if we move back
9 to those original numbers -- I think we need a
10 calculated basis to do so. And I'll lead a -- I'd
11 like to ask a question of staff about that because
12 if -- if that's something that is feasible, based
13 on what's in front of us, then I think it's a -- a
14 different discussion.

15 I also respectfully acknowledge that there's a
16 motion pending right now, and so, I'll -- I'll do
17 my best not to -- to hijack the discussion with
18 staff, but I do think, Mr. Chairman, that I'd like
19 to -- to get an answer to that question, as far as,
20 if those adjustments were made to what's in front
21 of us, how we would even do that.

22 MR. ELLIS: Phillip Ellis with staff.

23 To my understanding, within the record, you --
24 you have a -- the wide range from the utilities'
25 proposal, the RIM and TRC-achievable potentials.

1 You have a proposal from SACE's Witness Grevatt for
2 a net-energy-for-load basis as well as SACE and
3 LULAC's brief proposal.

4 To -- to my understanding -- and I -- I'm not
5 a lawyer. I'm doing my best. I believe it's --
6 anywhere within those range of bounds is an
7 acceptable value.

8 COMMISSIONER FAY: Well, just really quickly,
9 couldn't that lead us to an analysis we're
10 including things that, by definition, are not cost-
11 effective?

12 MR. ELLIS: Potentially, the -- there -- the
13 question of cost-effectiveness varies based upon
14 which analysis one is using; RIM, TRC, which sets
15 of values are -- are being input to those
16 equations.

17 The consider- -- and my understanding of the
18 statute is that the Commission shall consider the
19 benefits and costs. So, so long as a consideration
20 occurs, I believe that -- that's the primary
21 component.

22 COMMISSIONER FAY: Any addition- -- Ms. DuVal,
23 maybe from legal or --

24 MR. BALLINGER: Good morning, Commissioner.

25 I think another consideration is what you

1 raised earlier, is the reasoning for doing that,
2 the departure. If you've gone through the process
3 in the hearing and the values fell out, what
4 rationale do you have to go to something else. So,
5 you'd have to come up with that as -- as the
6 reasoning why we're doing this. Is it because you
7 didn't like the value that it produced.

8 To me, that kind says that the -- the process,
9 then -- you're acknowledging there's flaws in the
10 process.

11 COMMISSIONER FAY: So, you have to kind of
12 back it all out and re- -- rerun it to get a
13 separate analysis; is that --

14 MR. BALLINGER: Right -- well, it's not that.
15 It's -- it's why -- why are you departing from the
16 process you went through.

17 COMMISSIONER FAY: Okay. Mr. Chairman, I'm --
18 I -- I have more questions about the audits, but I
19 don't know if you want to limit it to further
20 discussions on this issue.

21 CHAIRMAN GRAHAM: Well, let's -- let's deal
22 with the motion that's on the floor.

23 Commissioner Polmann.

24 COMMISSIONER POLMANN: Thank you,
25 Mr. Chairman.

1 I -- I'd like to understand what the
2 requirements are, if we can explore that just a
3 moment. We have a motion that I made -- let me
4 reflect for -- for a moment on Commissioner Brown's
5 comments. And I agree, I've been thinking about
6 this across the entire spectrum of the item before
7 us. And it's a very, very difficult matter and
8 to the -- to all comments that have been made.

9 The notion of having a zero goal and trying to
10 explain what that means, quite frankly, puts us in
11 an interesting predicament. The -- the notion of
12 demand-side management, energy-efficiency
13 conservation seems, in today's circumstances, like
14 mom and apple pie. It's like, why would you not
15 want that. But then we have to consider the public
16 interest in -- and the public benefit of a program
17 that, in fact, costs money.

18 So, I'm struggling with the distinction
19 between a -- a customer- behavior type of DSM,
20 which saves the customer and -- and benefits the
21 customer for what they choose to do on their own
22 versus a utility- -- a utility-based and utility-
23 influenced program that costs all the customers on
24 their bill.

25 My concern is that somehow there -- there's a

1 public notion that the utility funds this program
2 and -- and that the customer receives a benefit of
3 this program that is somehow provided by the
4 utility and -- and that that's a gross
5 misunderstanding. That is not at all what this is.

6 The analysis that we're doing is, in fact,
7 based on a cost-effectiveness test as to which
8 customers are -- are paying for the benefit of
9 demand reductions and -- and conservation for all
10 customers.

11 So, it really comes back to us to determine
12 what's in the public interest in the -- in the
13 broadest possible sense. And I -- I believe that's
14 what's before us today is how are we going to make
15 the decision and -- and what's been presented to us
16 is based on the cost-effectiveness and -- and the
17 appropriateness of these goals from a detailed
18 analysis.

19 And the question is: Given this detailed
20 analysis and the results, how do we judge that.
21 And I think, to Tom's point a moment ago, if we
22 have the answer, and to Commissioner Fay's point,
23 is there a basis on which we look at the numbers
24 and say, well, that's not the outcome that we
25 desire here today, and is it in the public interest

1 for us to set some other goal, other than the one
2 that the numeric analysis provides.

3 So, Commissioner Brown raised the issue and --
4 and I do not disagree that the statute may be out
5 of date; however, we don't control that.

6 Commissioner Clark raised the issue as well
7 reflecting on that, that it -- in my word, we have
8 the statute and the FEECA results in the programs
9 and projects that were implemented from yesterday.

10 And we have what we have today, which is kind
11 of this -- and I said it, the predicament we're in
12 where things don't match up. And then we have
13 the -- the FEECA of the future, which I think does
14 require the change of statute.

15 So, here we are today with a conundrum of what
16 to do because we're looking at it and saying,
17 things don't match up and something needs to be
18 changed.

19 And I'll challenge Commissioner Brown's
20 perspective with, I -- I don't know -- and this has
21 been raised -- how do we take the answer that we
22 have today -- and I'll simply call it the answer --
23 and -- and back up and say, well, let's take an
24 answer from -- from a previous time and it -- and
25 it was in the public interest then, and say it's in

1 the public interest today.

2 And I'll ask -- I'll ask staff whether it's a
3 legal or technical question, where Mr. Ellis said,
4 the goals need to be set at least every five years.
5 What does "at least every five years" mean? It
6 means -- to me, "at least every five years," is
7 five years or fewer years.

8 So, to Commissioner Brown's point, would you
9 be amenable to approving this today and coming back
10 next year with -- under a new statute and doing it
11 again? Because I would propose right now that I --
12 and I'm not doing it, but I'm going to suggest to
13 the board that I'm willing to withdraw the motion,
14 approve this on a one-year basis, and we come back
15 here and we actually go to the Legislature -- we
16 never do this and -- go to the Legislature and
17 advocate for a change in the statute that makes
18 sense, and we redo this next year because this is
19 not working. And I know Commissioner Clark knows
20 it's not working because he just said so a few
21 minutes ago.

22 Now, why are we not advocating for a statute
23 that works in a manner that we know works? Because
24 this doesn't work. And why can we not come back
25 here next year and come up with -- with a FEECA

1 process and FEECA goals that work for the state of
2 Florida that's in the public interest of the state
3 of Florida because what we're about to do does not
4 make any sense.

5 We do not have to wait five years to come back
6 here. Are we that busy that staff and the
7 utilities are unwilling to do the right thing for
8 the state of Florida? You identified the right
9 things that need to be done for the state of
10 Florida. Under the current circumstances, we
11 cannot do it.

12 And this is me being enthusiastic. And
13 Mr. Chairman, I withdraw my motion.

14 (Laughter.)

15 CHAIRMAN GRAHAM: Okay. So, that motion has
16 been withdrawn.

17 A little perspective: What we have before us
18 is what we have before us. I can't say I disagree
19 with Commissioner Brown. I -- I tried turning this
20 ship nine years ago. The biggest problem I run
21 into is the RIM test and the two-year payback.

22 My -- my biggest argument is, with the
23 two-year payback, this is like the reverse
24 Robinhood. You're taking from the poor and giving
25 to the rich. And so, I don't like the way the

1 program is set up at all. So, that's why I don't
2 have any problem with lowering the goals because
3 it's impacting the wrong people.

4 If there's a solution before us, I'm willing
5 to hear it, but we -- I'm still waiting on a
6 motion.

7 Commissioner Brown.

8 COMMISSIONER BROWN: So -- so, I just want to
9 provide some clarity because I was trying to figure
10 out a way that is in the public interest when I
11 threw out my proposal. And I didn't talk to Tom
12 Ballinger on it, deliberately, but I will point out
13 that the 2015 goals that were approved were based
14 on the unconstrained RIM achievable potential.
15 Okay. And they're set for a period of ten years,
16 right. So, the Commission found that they were
17 cost-effective, based on the, again, unconstrained
18 RIM test. Okay.

19 I'm not saying that the RIM test is
20 necessarily the right test. Most of the country
21 uses TRC and participants. I -- I'm just saying
22 it -- and we take into consideration all of that in
23 this docket. We do.

24 Whether the RIM test is the accurate test, I
25 still don't know. I -- I really don't know if it

1 is because I'd like to see what the cost impact is
2 of the TRC test, the actual cost impact.

3 Again, we're economic regulators, but we have
4 an overarching goal here to protect the public
5 interest. So, my proposal would be, since this
6 Commission has found the 2014 -- 2015 goals to be
7 cost-effective, they are within the range, just a
8 continuation while we deal with possibly looking at
9 the FEECA statute and how we can modernize it.

10 I think that suggestion would make a lot more
11 sense than approving goals that are not in the
12 public interest.

13 CHAIRMAN GRAHAM: Was that a motion?

14 COMMISSIONER BROWN: I mean, I don't want
15 Commissioner Clark to go, so I'm not -- I don't
16 know if I want him to go yet. I see him jumping
17 out and he's ready to make a motion -- so, I
18 would -- before I make a motion --

19 COMMISSIONER CLARK: (Inaudible.)

20 COMMISSIONER BROWN: Thank you. Thank you.

21 I would like to talk to legal first to make
22 sure we have some clarity. I know that we are
23 within our rights here, but I would like to hear it
24 from you all.

25 MS. DuVAL: I believe you're corr- -- correct

1 in what you say; however, the -- the old technical-
2 potential study that was reviewed in the last
3 proceeding did set the goals for the ten-year
4 period. So, at this point, I believe what we would
5 have to look at would be that those prior goals
6 could only be used for this last -- the second half
7 of the five-year period, so --

8 COMMISSIONER BROWN: That -- but that's okay,
9 though. That would have to be -- so, the -- the
10 goals would be cut in half.

11 MS. DuVAL: Right. So, for the -- the first
12 five-year period for this proceeding -- those old
13 goals could be used, but I believe, for the second
14 half of the five-year -- or the second half of the
15 ten-year period, for the second five years -- that
16 might be where we don't have any of the study to
17 rely upon in -- for this proceeding.

18 COMMISSIONER BROWN: Mr. Chairman, could we
19 maybe take a ten-minute break, five-minute break
20 so --

21 CHAIRMAN GRAHAM: Hold on a second. Let's see
22 what staff has got to stay.

23 MS. TAN: I agree with Ms. Duval. The only
24 that thing we would note is that we do have a rule
25 that says that we're looking at proposing goals

1 in -- for a ten-year span. So, we would have to
2 come back within five years --

3 COMMISSIONER BROWN: Right. Right.

4 MS. TAN: -- to be able to readdress those
5 numbers available to us.

6 COMMISSIONER BROWN: Which -- which would be
7 the intention of this -- I mean, of the motion.

8 If we could take a five-minute break --

9 CHAIRMAN GRAHAM: Sure. We'll take a five-
10 minute break. That clock in the back says 13
11 after. So, at 18 after.

12 (Brief recess.)

13 CHAIRMAN GRAHAM: All right. Commissioner
14 Clark.

15 COMMISSIONER CLARK: Thank you, Mr. Chairman.

16 I -- I have a couple of questions, a couple
17 for Mr. Ellis that he might could answer. I just
18 want to point out a couple of things, a couple of
19 facts regarding where we are in the FEECA process,
20 and -- and a couple of observations, understanding,
21 to begin with, absolutely nothing that this
22 Commission does or adopts stops consumers from
23 taking energy-efficiency steps in their homes. It
24 also doesn't stop the utility companies from
25 promoting and educating about energy efficiency.

1 The question is, and where we're trying to
2 draw this line in the sand today is, who gets to
3 pay for energy efficiency, who gets to pay for the
4 savings.

5 And -- and probably most of the people in this
6 room have participated in their utility in some
7 form of conservation program at the utility
8 company. And if you haven't, guess what, you're
9 paying for that. And so, that's one of the key
10 things that -- that we have to keep in mind here.

11 There's a couple of really kind of simple
12 examples -- I wanted to ask Mr. Ellis if he could
13 give us just a couple of examples of efficiency
14 programs that are going to be eliminated if we
15 adopt the zero goals for the utility companies.

16 MR. ELLIS: In terms of DSM programs that
17 would be eliminated, it would be hard to say at
18 this stage. Unfortunately, staff won't know
19 precisely what the DSM plans will be until the next
20 proceeding.

21 We are encouraging creativity on behalf of --
22 of the utilities up to that stage, but precisely
23 which programs will go and which ones will stay,
24 it -- it will -- it will vary by utility, and we
25 just do not have that information, unfortunately,

1 in -- in this record.

2 COMMISSIONER CLARK: Can -- can you give me
3 names of a couple of specific programs, DSM or
4 otherwise, that do not pass the RIM test under most
5 scenarios?

6 MR. ELLIS: Un- -- unfortunately --

7 COMMISSIONER CLARK: Well -- well --

8 MR. ELLIS: -- I do not have the measure list
9 with me --

10 COMMISSIONER CLARK: Could -- could --

11 MR. ELLIS: -- at this stage. It is within
12 the record. I know we did collect that
13 information. I just -- I don't have it right now
14 in front of me. My apologies.

15 MR. FUTRELL: Commissioner Clark, if I could
16 just offer a couple of examples. For example, I
17 know analysis of rooftop solar is analyzed. That
18 does not pass the RIM test, for example. Certainly
19 some very-high-efficiency heat-pump equipment that
20 has very high efficiency but high up-front costs to
21 customers --

22 COMMISSIONER CLARK: When you say it doesn't
23 pass, are you saying that the utility company
24 paying for that or rebating that is what doesn't
25 pass; not the consumer's right to purchase that

1 equipment?

2 MR. FUTRELL: Absolutely. Again --

3 COMMISSIONER CLARK: And -- and the same thing
4 with rooftop solar; it's not that we're prohibiting
5 or --

6 MR. FUTRELL: Right.

7 COMMISSIONER CLARK: -- forbidding rooftop
8 solar; it is that the utility company -- non-
9 participants are not going to be the ones that have
10 to burden that cost.

11 MR. FUTRELL: Absolutely, Commissioner.

12 COMMISSIONER CLARK: Those are the type of
13 goals that, when we look at those overall FEECA
14 goals, by taking those specific outcomes from those
15 type programs are what creates these goals; is that
16 a correct statement?

17 MR. FUTRELL: Absolutely. I think that's
18 correct.

19 COMMISSIONER CLARK: And I think my -- my
20 final point is, I use a pretty simple analogy of
21 your own home. If you take and -- and you do an
22 energy exam on your house, and you come up with,
23 you know, all of those cost savings that you can do
24 and you do those and you achieve them and then,
25 next year, you say well, I want to achieve even

1 more, there is -- there is a way that you can
2 continue to achieve savings, theoretically
3 practically down to zero.

4 But at a point in time, you begin to give some
5 things up, and -- and the cost of those
6 improvements is no longer economical and the
7 negative effects of that -- I -- I'll tell everyone
8 how to cut your utility bill by almost half: Cut
9 your heating-and-cooling system off. Nobody wants
10 to suffer the outcomes related to that, but there
11 are still things we can do.

12 And I kind of see that as where we go with the
13 overall FEECA goals. We've reached a point where
14 we've done all of the really cool things. You can
15 keep adding insulation in your attic until you
16 reach the peak of the roof; that doesn't make it
17 cost-effective to do so.

18 There are things that we need to be
19 considering and looking at through this program --
20 and that's why I understand the -- the concept of
21 saying, okay, there's really not a goal we need to
22 be locked in and bound to based on the criteria of
23 the programs that are being laid out in front of
24 us. Let's reexamine this. Let's look at it from a
25 different perspective, then we'll come back and --

1 and establish some real goals in the future.

2 And I would still advocate -- I -- I still
3 don't know where Commissioner Brown is coming on a
4 motion here on how we're going to do this, but I
5 think that, in our requirements, we have to look at
6 adopting what was set forth under the existing
7 criteria.

8 I would be a huge advocate that we immediately
9 move into first of the year with some sort of
10 strategy to help to change FEECA, help to reshape
11 FEECA, and help to come back with maybe a new set
12 of cost measures, a new set of -- of goals for our
13 utility companies in the next year, but I don't see
14 how we get away from agreeing to and establishing
15 this particular base as our -- our FEECA goals for
16 this year.

17 Thank you, Mr. Chairman.

18 CHAIRMAN GRAHAM: Commissioner Clark, I -- I
19 agree with you. I -- with the growth that we have
20 in Florida -- and we were speaking about that with
21 one of the other items that came before us -- that
22 the big opportunity here is doing it through the --
23 the building codes.

24 It's just like what you did with water
25 conservation. You put it through the building

1 codes. Everybody has got the low-flow this and the
2 low-flow that and, you know, by the end of the day,
3 we've saved so much -- we've saved so much water in
4 doing it through the building codes, that this
5 stuff should also be through the building code.

6 You know, you should not allow them to do like
7 a 13 or 14 SEER air conditioning system. It should
8 be something with a higher standard. All these
9 things should be something that's higher
10 efficiency, higher standard.

11 But, once again, that's not here in these four
12 walls; that's in the building code. What we have
13 here before us is the hearing that we had, whatever
14 is in the current record, and we have a
15 recommendation before us.

16 I mean, I think we need to move forward. Now,
17 granted, there's nothing telling us that you have
18 to wait every five years to do this. We can do
19 this in six months, we can do this next year, we
20 can do this whenever you guys want to pick it up
21 again, but right now, the facts that you're talking
22 about is in not in the record.

23 Commissioner Brown.

24 COMMISSIONER BROWN: So, some of the points
25 that you made with Commissioner Clark, I agree

1 with. I do think -- it sounds like there's general
2 consensus here on at least looking at the FEECA
3 statute, looking at how the Commission can play a
4 role, coming up in this legislative session, on
5 improving it, modernizing it. It's dated. I think
6 there's consensus in that regard.

7 Where -- where -- where we may not all agree
8 on is what's before us today. We used to have a
9 process where we actually had the programs
10 considered with the goals so you got a holistic
11 approach to what is before us.

12 We have, since that time, bifurcated it with
13 these goals, which are -- of course, goals are
14 aspirational, by its very nature. And then we
15 consider the programs.

16 It does make sense to consider them together.
17 You get a much more complete picture of some of
18 these questions that you're asking because I wasn't
19 talking about solar when I was talking about the --
20 the discussion.

21 There are -- like I said in my comments, there
22 are next-gen programs that are benefits -- that are
23 providing systemwide benefits that do go to energy
24 savings, that do go to shifting demand, that do go
25 to reducing carbon. They are out there. We don't

1 know because we're not talking programs here; we're
2 talking goals.

3 So, I -- I would love to -- Mr. Chairman, if
4 we could talk -- I had an opportunity to talk to
5 Mr. Ellis and Ms. DuVal. Just a conceptual of --
6 of how to proceed, with the caveat, knowing -- oh,
7 Mr. Futrell wants to talk -- with the caveat -- as
8 long as it's not Mr. Ballinger. Okay.

9 (Laughter.)

10 COMMISSIONER BROWN: So -- so, with the caveat
11 that the Commission would like to take an active
12 role in looking at the FEECA statute, okay, over
13 the next year -- I did want to see how we could go
14 about that.

15 If this body -- I don't know if they agree
16 with me, they -- you -- I don't think it would be
17 prudent to just go ahead and approve what's before
18 us. So, using what we've approved previously with
19 the -- the -- and then the Commission can go and
20 pursue how to make the statute more modernized.

21 CHAIRMAN GRAHAM: Keith.

22 MR. HETRICK: Mr. Chairman, Commissioner
23 Brown, I might help you frame the motion you want
24 to make and then you can get a reaction from Mark
25 and Tom, just so we get this in the correct

1 posture, and that might be to reinstate the goals
2 based on the most-recent DSM orders for the last
3 five years until a new proceeding can take place
4 for the next five years.

5 I think the statute talks about -- in -- in
6 developing goals, establishing goals, the
7 Commission shall take into consideration a variety
8 of factors here. And you've certainly taken into
9 consideration those factors already in all of the
10 work that's been done.

11 So, by going back and reinstating the goals, I
12 think it -- from that perspective, it would be
13 legally defensible and gets you in the posture
14 maybe that you want to be, Commissioner Brown. And
15 that's up to your fellow Commissioners to decide
16 whether they would support that motion.

17 COMMISSIONER BROWN: Thank you. And I think
18 it was stated earlier that we do have -- the record
19 supports a vari- -- a range of goals from what SACE
20 has proposed to what the utilities and staff is
21 recommending, has proposed. So, there -- we have a
22 range here and tho- -- correct?

23 MR. HETRICK: And that -- that's --

24 COMMISSIONER BROWN: Legally.

25 MR. FUTRELL: That's correct, Commissioner.

1 You have -- you have existing goals in place, as
2 Keith said, that are pursuant to the 2014 order.
3 So, you have goals in -- annual goals in place
4 from -- that will extend through 2024.

5 COMMISSIONER BROWN: Which the Commission
6 found to be cost-effective --

7 MR. FUTRELL: Correct.

8 COMMISSIONER BROWN: -- back then.

9 MR. FUTRELL: Correct.

10 COMMISSIONER BROWN: And --

11 MR. FUTRELL: And so, that su- -- goes to
12 Keith's suggestion is that you could find that
13 you've consider- -- you've met the statutory
14 requirements to consider new information, to look
15 at the -- all the specific points that are required
16 by the statute in making a -- make a consideration
17 when you ultimately decide goals. And you could,
18 perhaps, consider a motion to -- to keep the
19 existing goals in place until the next process that
20 will be in fi- -- at least five years.

21 MS. CIBULA: And I would just add that I think
22 that the existing goals would still be based on the
23 prior record; that we have record support for that
24 and that we're just kind of comparing this record
25 with that -- those prior goals, but the goals are

1 based on that prior record that we've established.

2 COMMISSIONER BROWN: And that's legally
3 defensible.

4 MS. CIBULA: I think so.

5 COMMISSIONER BROWN: Does anybody -- there's
6 lots of lights. I won't make a motion. I'll just
7 wait.

8 CHAIRMAN GRAHAM: Commissioner Polmann.

9 COMMISSIONER POLMANN: I'm glad you didn't
10 make a motion. I -- I think I understand what was
11 going on until Ms. Cibula made her comment about
12 that being based on the prior record. So, let me
13 just make that comment and put that aside because I
14 don't -- I don't know what to do with that. It
15 suggests that all the work that we just did doesn't
16 count, although I know it does.

17 So, my desire here today is to make it clear,
18 through this discussion -- and I think we've
19 already stated this, but that we are being
20 proactive. We need to be proactive from this point
21 forward with regard to FEECA, not wait five for
22 years to do -- to revisit this, to revisit the --
23 the tests that we use -- quite frankly, it doesn't
24 matter what tests we use.

25 Commissioner Brown has brought this up. Other

1 states use different tests. We need to have a
2 basis on -- on what tests we use for setting goals.
3 We happen to use a particular combination of tests,
4 we do an analysis, we pick the test. That --
5 that's up to the Commission as to how we decide
6 what it is that we're going to base decisions on.

7 And we have a particular issue about reducing,
8 eliminating, or precluding cross-subsidy. I think
9 that's -- that's an entirely appropriate thing for
10 us to -- to do because that's what we've decided to
11 do.

12 The point being that -- that being proactive
13 and continuing to examine this and -- and then
14 looking at it sooner rather than later, not waiting
15 five years, is the appropriate thing to do.

16 I mentioned this before, I've heard it
17 mentioned by others, to -- to be involved in
18 examining and hoping, expecting some changes in the
19 FEECA statute and then, as appropriate, taking a
20 look at the rules that we use and the procedures
21 that we're using to implement that.

22 In terms of a motion, for -- for the moment,
23 as I said, I -- I was prepared five minutes ago to
24 move forward, but given the comments from -- from
25 the legal staff, I'm stuck.

1 CHAIRMAN GRAHAM: Commissioner Clark.

2 COMMISSIONER CLARK: I guess I kind of have a
3 question, and maybe I can help Commissioner Brown
4 get where we're trying to go here. The outline
5 that -- that was presented to me basically said
6 that our responsibility was to review these
7 conservation goals every five years, but that new
8 conservation goals had to be set by 2020.

9 If we adopt the existing goals that were
10 adopted in 2015, running through 2024, as
11 Ms. Cibula said, based on the record of evidence at
12 that time, are we in a sound legal posture?
13 Because I do not want to adopt the old goals based
14 on the new information. I think that's factually
15 incorrect.

16 COMMISSIONER BROWN: Right.

17 MS. CIBULA: What I think Commissioner Brown
18 is suggesting is that we have the existing goals.
19 The existing goals were based on a prior record.
20 And what you're doing here is basically evaluating
21 the goals, pursuant to the statute, like we're
22 required to do under Subsection 3.

23 And we made that evaluation. And based on
24 that evaluation, we've decided that we're going to
25 continue to keep the prior goals and that those

1 prior goals were established based on that other
2 record.

3 COMMISSIONER CLARK: Great. I'm liking what
4 I'm hearing. I can -- I can almost live with this,
5 with an understanding that it is the intent of the
6 Commission to come back and address this
7 immediately through some sort of FEECA resolution
8 or whatever.

9 CHAIRMAN GRAHAM: You're chairman.

10 COMMISSIONER CLARK: With assurances.

11 CHAIRMAN GRAHAM: Mr. Baez.

12 MR. BAEZ: I -- Commissioner Clark, I would --
13 I think I would suggest, perhaps, a -- I want to
14 understand what you just said, that --

15 COMMISSIONER CLARK: Me, too.

16 MR. BAEZ: That a clear -- a clear commitment
17 to come back within a certain period of time.

18 The -- the downside of that or -- or the -- or
19 the peril of that is -- is that we're -- the
20 Commission would be coming back within a certain
21 period of time with the same constraints, with the
22 same frustrations built in that -- that you -- so
23 many of you, if not all, have -- have expressed.

24 COMMISSIONER CLARK: So, I think that's
25 depending on how far we take pursuing a --

1 CHAIRMAN GRAHAM: Legislative --

2 COMMISSIONER CLARK: -- legislative resolution
3 to FEECA in general.

4 MR. BAEZ: That's -- that's sort of -- and --
5 and maybe -- maybe that discussion, in depth,
6 probably doesn't have to take place --

7 COMMISSIONER CLARK: Sure.

8 MR. BAEZ: -- at -- at -- at the --

9 COMMISSIONER CLARK: Right now.

10 MR. BAEZ: -- moment, but -- but the mere
11 whisper of it, I think, you know, certainly has
12 attention. And I certainly hear where -- where all
13 of you seem to be on that, and we can have further
14 discussions.

15 So -- so, my point was that -- that some
16 changes to the statute -- to the underlying statute
17 would probably be necessary in order for your, then
18 again, returning to evaluate the -- the notion of
19 goals could be a productive one.

20 COMMISSIONER CLARK: Well, I think so. And I
21 think what I've heard here today is that the
22 Commission is much more interested in getting
23 involved in evaluating all the potential cost
24 tests.

25 I think we -- and going back to Commissioner

1 Brown's point right on, separating strategies from
2 goals is kind of not a really good idea and
3 bringing that back together and looking and
4 evaluating this from a little bit more
5 comprehensive approach and then coming back in full
6 Commission agenda and -- and establishing a set of
7 goals maybe in a year -- and it may be prior to
8 the -- a legislative fix --

9 MR. BAEZ: Perhaps.

10 COMMISSIONER CLARK: -- or post-legislative
11 fix.

12 MR. BAEZ: If --

13 COMMISSIONER CLARK: Either one.

14 MR. BAEZ: Because a lot of the things that
15 you just suggested or have been suggested are, I
16 tend to think, more of as the mechanics of our
17 process, that -- that may have advantages.

18 COMMISSIONER CLARK: And this --

19 MR. BAEZ: And that may make your decision --

20 COMMISSIONER CLARK: And this is, I guess, a
21 legal question. Can we keep the record -- does --
22 I assume can we keep this docket open? How does
23 that work? Can we keep the -- the stuff that has
24 been filed and everything that we've done so far so
25 we don't have to start back over from scratch

1 there?

2 CHAIRMAN GRAHAM: The record -- the docket is
3 close- -- the record is closed.

4 MR. FUTRELL: Yeah.

5 COMMISSIONER CLARK: The record is closed,
6 yes, but can we keep -- does that close the docket,
7 too? The docket is --

8 MR. FUTRELL: That's what we're proposing is
9 to close the docket and then if -- and then when
10 the time comes to reopen a new proceeding, we'll
11 start -- start there. And then whatever the goals
12 are that were in effect will kind of be a starting
13 point going forward, but it will be whole -- it
14 will be fresh analysis.

15 I would point out, Commissioner, you made
16 some -- you made some points about what would be in
17 the program filing and asked some questions about
18 that. And that's something that, when -- when
19 staff first saw some of these proposed goals was --
20 we immediately went to, what does this mean for
21 programs. Well, we're going to find out in,
22 perhaps, three months.

23 And at that point, you know, one of the -- the
24 ideas that staff has knocked around is -- is what
25 do we see in those filings and would that

1 potentially entertain the possibility of using that
2 information to inform the Commission on a potential
3 decision to revise the goals.

4 And that's something that -- again, that may
5 coming in the program-filing phase that will be
6 upon us shortly.

7 COMMISSIONER CLARK: I -- I think
8 understanding and seeing the programs applied to
9 each specific goal will help the Commission make
10 that decision. There's -- there are some things
11 we -- we make decisions on that may not make total
12 economic sense --

13 MR. FUTRELL: Right.

14 COMMISSIONER CLARK: -- but they make social
15 sense.

16 MR. FUTRELL: Right.

17 COMMISSIONER CLARK: In certain cases.
18 There's trade-offs there. I think that this
19 Commission certainly is -- be interested -- would
20 be interested in entertaining.

21 MR. FUTRELL: Right, because I think there's a
22 whole -- part of the -- the reimagining of FEECA is
23 this disconnection between individual measure
24 analysis at least to goals and then leads to
25 programs, which are paid for by customers and are

1 ultimately -- the utility performance is judged by
2 program performance.

3 COMMISSIONER CLARK: Okay. Thank you, Mark.
4 Thank you, Mr. Chairman.

5 CHAIRMAN GRAHAM: Commissioner Fay, do you
6 have a motion for me, please?

7 (Laughter.)

8 COMMISSIONER FAY: I motion that you are a
9 great chairman, Mr. Chairman.

10 I just -- I want to limit my comments just to
11 the legal analysis of using the prior record. I --
12 I -- I think I understand the answer to that
13 question. I just want to make sure that the debate
14 that we're having about the item that's in front of
15 us has -- has not been separated from what the
16 legal sufficiency is to satisfy both the DMS -- DSM
17 goals and the supply-side goals, which are mandated
18 by statute every five years for our approval.

19 And -- and I think what I hear is that, by
20 continuing the previous goals, we are legally
21 satisfying those mandates that are in statute.

22 MS. CIBULA: Under the statute, we're supposed
23 to consider the criteria set forth in Subsection 3.
24 And I think what we're seeing here today is that we
25 did evaluate that criteria.

1 And after evaluating that criteria, we have
2 decided to keep our current goals. And those
3 current goals are going to be based on that prior
4 record that we had. So, we're just going to go
5 forward with our -- our existing goals after doing
6 this analysis required by the statute.

7 COMMISSIONER FAY: And is there any benefit
8 to -- to waiting and doing that at the same time we
9 do a program analysis or is it something we need to
10 do today?

11 MS. DuVAL: We need to set goals before the
12 end of the year in order to -- to meet that
13 requirement.

14 COMMISSIONER FAY: Okay. Mr. Chairman, I --

15 COMMISSIONER CLARK: Mr. Chairman, that was
16 the same question I asked, but it sounded so much
17 better when he asked it. I don't understand that.

18 COMMISSIONER BROWN: Lawyers.

19 COMMISSIONER FAY: Lawyer talk, yeah, exactly.

20 Mr. Chairman, I -- I'll allow someone else on
21 the Commission to make the motion who, I think -- I
22 think would like to do -- do so. I just -- I would
23 ask, as we move forward with this -- I know we have
24 a lot of discussion about changing the statute and
25 what changes might be made.

1 I know, five years from now, some of us may be
2 here, some of us may not, and so that might -- it
3 may change the dialogue about having this come back
4 in five years and -- or having the statute changed,
5 but I think -- I mean, what I'm hearing from the
6 Commission is a -- a commitment to trying to get
7 this right.

8 And what -- I -- what bothers me so much about
9 it is I, unfortunately, can't take off my legal
10 lens on something like this. And the statute is
11 pretty proscriptive about what we're -- we're
12 doing. And when I looked at the data and what it
13 came back with, based on the RIM and participant
14 test and you have those zeroes, you
15 quantitatively -- it's hard to argue against that,
16 other than applying a separate test. And so, it
17 leaves you with education all in components, which
18 are very limited in their nature, to improve the
19 conservation.

20 I think Ch- -- I want to call you Chairman
21 Clark. I apologize. Not yet -- Commissioner Clark
22 stated, you know, that -- that we have to look at
23 these programs to try to figure out what is
24 actually going to benefit them instead of force-
25 feeding something that -- essentially teaching the

1 test to get to a number. You're doing it even
2 though it might not be fulfilling that
3 conservation.

4 And so, I think with legal's direction about
5 moving forward, I would be supportive to continuing
6 those goals, but I also would ask that, when we
7 move forward to see these programs, that there
8 really is a strong focus, which is mandated in
9 statute, on the audit process. I think that it's
10 extremely beneficial to customers.

11 And the reason I struggle so much with this
12 topic, which I know we've all said, is that you're
13 trying to predict human behavior. And when you do
14 that quantitatively, it's extremely flawed.

15 And so, empowering consumers through the audit
16 process allows them to make decisions as to what
17 conservation they choose would be appropriate for
18 both their budget and their beliefs and having that
19 conservation applied to their home.

20 And I know that's being done now. And I know
21 we can consider different methods, electronically,
22 by phone, whatever method we have, but I think when
23 those programs come forward, I think a serious
24 consideration on that area, which is in statute,
25 would be beneficial.

1 So, with that, Mr. Chairman, I will defer to
2 my fellow legal colleague.

3 COMMISSIONER BROWN: I think the engineer
4 wants to speak.

5 CHAIRMAN GRAHAM: Commissioner Polmann.

6 COMMISSIONER POLMANN: Thank you,
7 Mr. Chairman. I'm prepared to make a motion,
8 unless somebody else wants to.

9 CHAIRMAN GRAHAM: It's all you, please, sir.

10 COMMISSIONER POLMANN: Additional comments --
11 Mr. Chairman, I would make the following remarks:
12 This Commission, having heard evidence in 2019,
13 finds that it is in the public interest to continue
14 with the 2014 goals under the FEECA statute and
15 simultaneously continue its review of the FEECA
16 statute with the intention of assisting with
17 updates and revisions, as may be appropriate, for
18 the forthcoming five-year period.

19 And I make that motion for the Commission's
20 consideration and approval.

21 CHAIRMAN GRAHAM: Commissioner Brown.

22 COMMISSIONER BROWN: So, I would just offer a
23 friendly amendment to reject the staff
24 recommendation before us -- add that to your motion
25 as well so that it's clear that the Commission

1 considered the staff recommendation and -- and the
2 petitions, and rejected what was proposed, in
3 addition to your motion.

4 And I think -- does that encompass everything
5 else, Keith?

6 MR. HETRICK: Just a clarification, I'm told
7 that the order actually went into effect in 2015 --

8 COMMISSIONER BROWN: That's true.

9 MR. HETRICK: Or 2014?

10 COMMISSIONER BROWN: But they're 2015 --

11 MR. HETRICK: 2015 goals.

12 COMMISSIONER BROWN: But -- but anything else,
13 legally?

14 COMMISSIONER FAY: And the docket -- close the
15 docket.

16 COMMISSIONER BROWN: And the -- close the
17 docket?

18 MS. DuVAL: Right. So, on the -- on the final
19 issue, I think we would still need to direct the
20 utilities to file their plans within 90 days of the
21 issuance of the order and close the docket after
22 the time for filing an appeal has run.

23 COMMISSIONER BROWN: Does that need to be
24 modified at all?

25 CHAIRMAN GRAHAM: Do we have to change the

1 plan if we're going with the same goals?

2 MR. FUTRELL: I'm sorry, Mr. Chairman. Would
3 you repeat that?

4 CHAIRMAN GRAHAM: Do they have to change the
5 plans, if we're going with the same goals?

6 MR. FUTRELL: I guess we didn't know what kind
7 of plans they were going to propose, based upon the
8 goals they had proposed to the Commission in this
9 particular proceeding.

10 So, it's -- it's still a bit of a mystery
11 about whether they will keep -- choose to keep the
12 existing programs in place or to react and make
13 some updates and changes.

14 CHAIRMAN GRAHAM: All this is a mystery to me.

15 MR. FUTRELL: Yes, sir.

16 MR. ELLIS: It -- it would seem --

17 CHAIRMAN GRAHAM: But -- but -- but what I'm
18 hearing is that the Commission wants to go with the
19 status quo. And so, is it necessary for them to
20 come back before us if the goals are staying the
21 same?

22 COMMISSIONER POLMANN: I -- Mr. Chairman, I
23 would anticipate that there may be -- because of
24 the evolution and passage of time, that there may
25 new programs that would be appropriate for the

1 public to -- to --

2 CHAIRMAN GRAHAM: So, you're giving the option
3 of -- giving the option within 90 days, if they
4 choose to change their plans.

5 MR. FUTRELL: And particularly, since they're
6 going to be -- they may be seeking cost recovery,
7 would be probably an opportunity to look at
8 everything to make sure it remains cost-effective
9 and to see if anything new needs to be added to
10 their suite of programs or modified in some -- in
11 some way. So, this is an opportunity to take a
12 fresh look at their programs so that they can
13 receive approval to get cost recovery in the
14 future.

15 CHAIRMAN GRAHAM: I ask that question because
16 if the goal is for us to immediately get back in to
17 help facilitate the changing of the FEECA statute,
18 do they necessarily want to go through changing all
19 of their plans, knowing that they have to come back
20 here again in nine -- in nine months and -- and
21 change it all again.

22 MS. DuVAL: My understanding of the statute as
23 well is -- is that, following the adoption of the
24 goals, the Commission must review the -- the
25 company's plans -- whether those are the same plans

1 that they presented last time, that may be the
2 case, but I believe they still need to at least
3 file them for the Commission to review.

4 CHAIRMAN GRAHAM: Okay.

5 MR. FUTRELL: Mr. --

6 COMMISSIONER POLMANN: Mr. Chairman, we --

7 MR. FUTRELL: Go ahead.

8 COMMISSIONER POLMANN: I'm sorry. Did you
9 have an additional comment?

10 MR. FUTRELL: I did want to raise one question
11 about Issue 10, which is the demand-side-renewable-
12 systems goals.

13 Certainly, I think the discussion has
14 primarily been on the numeric goals for the
15 residential and commercial/industrial class. And I
16 think that seems to be covered by the motion, as
17 I'm understanding it, but Issue 10 still is -- is
18 there.

19 Now, certainly, there was a similar issue and,
20 I believe, a similar conclusion in the previous
21 order. I just wanted to raise that for your
22 attention, that if you --

23 CHAIRMAN GRAHAM: You were amending the
24 motion.

25 COMMISSIONER BROWN: So, I am --

1 Commissioners, I am fine with Issue 10, as
2 presented by the staff recommendation, which, of
3 course, promotes the net-metering policy. So, I
4 would say that, Commissioner Polmann, that we would
5 reject the staff recommendation on all issues
6 except for Issues 10 and 11, with the rest of your
7 language that you had in your motion.

8 CHAIRMAN GRAHAM: That was offered as a
9 friendly amendment. Is that accepted, Mr. Pol- --
10 Commissioner Polmann?

11 COMMISSIONER POLMANN: Yes, Mr. Chairman.

12 CHAIRMAN GRAHAM: We have a motion and a
13 second on the floor.

14 COMMISSIONER POLMANN: Can I make a request?
15 We -- we've had a few minutes worth of discussion
16 and I just want to make sure that we've covered
17 everything that staff needs. And -- and if the
18 Commissioners don't mind, can we take five minutes
19 and have the staff write down -- if you need five
20 minutes --

21 CHAIRMAN GRAHAM: I think the staff has got it
22 clear.

23 COMMISSIONER POLMANN: Do you have everything?

24 MR. HETRICK: Yes, we're good.

25 CHAIRMAN GRAHAM: I think we're ready for a

1 vote.

2 COMMISSIONER POLMANN: At your discretion.

3 CHAIRMAN GRAHAM: Okay. We've got a motion,
4 duly second, on the floor.

5 All in favor, say aye.

6 (Chorus of ayes.)

7 CHAIRMAN GRAHAM: Any opposed?

8 Nay.

9 The ayes have it. The motion is there.

10 Okay. Now --

11 COMMISSIONER POLMANN: May I --

12 CHAIRMAN GRAHAM: -- we'll take a --

13 COMMISSIONER POLMANN: May I? One comment.

14 CHAIRMAN GRAHAM: Sure.

15 COMMISSIONER POLMANN: I -- I just want to
16 reflect to -- to our executive director --

17 CHAIRMAN GRAHAM: Okay. So, the motion
18 passed.

19 Did you have a comment, Mr. --

20 COMMISSIONER POLMANN: I -- I -- I did.

21 We've had quite a bit of discussion about
22 FEECA and statute. And some of us have -- have
23 made some comments and -- and you said a whisper
24 would be sufficient. And I just want to be clear,
25 on the record, in the public, I'm not whispering.

1 And I sincerely believe the -- that the FEECA
2 statute is ripe for thorough review and substantive
3 change and that the Florida Public Service
4 Commission, as the implementing body, should be
5 advising the Florida Legislature on appropriate
6 statutory updates.

7 And I would hope and expect that we will do
8 that. So, I just want to be clear that that's my
9 position, as a Commissioner. So, for whatever
10 that's worth.

11 MR. BAEZ: Thank you, Commissioner.

12 CHAIRMAN GRAHAM: Okay. Privilege of Chair
13 here, I got a phone call from Senator Rodriguez,
14 and I told him that if he could get down here, I
15 would allow him to speak to us for five minutes.

16 So, Senator, we have a podium set up for you.
17 And so, we will recess this agenda for -- briefly
18 and listen to the Senator for five minutes.

19 Senator.

20 SENATOR RODRIGUEZ: Thank you, Chair,
21 Commissioners. And I'm also here with Rep.
22 Eskamani. And congratulations, incoming Chair.
23 Thank you for your public service. I'll be as
24 brief as possible. I thank you for your treatment
25 of very difficult and complicated issues.

1 I -- with respect to the conservation
2 renew- -- renewable-energy goals, I -- the -- the
3 message from myself, representing my constituents,
4 and -- and also Rep. Eskamani, is to push for as
5 aggressive goals as possible.

6 And I think the old goals are better than what
7 was being proposed of -- of, effectively, a zero
8 goal. When you look at the FEECA statute, it's
9 hard to read it in a way that allows zero goals to
10 be compliant, from my perspective.

11 I think the other important thing is that
12 nobody in the Legislature is proposing getting rid
13 of FEECA. What is being proposed are more
14 aggressive models. We -- we have proposed a --
15 sort of a portfolio model. Others have proposed
16 other things that would yield more renewable-energy
17 standards. And there's ample information in front
18 of you as to other mod- -- other tests within FEECA
19 that yield better results.

20 And so, to the extent that you're going to
21 take the time to look at that, I -- I hope to be a
22 resource and -- and engage in that. With your
23 indulgence, I appreciate your giving the five
24 minutes.

25 As I am here as well, something that is very

1 important in my district as well is the -- the
2 hardening, which is not before you right now, but
3 will be.

4 And 30 seconds, the reason why I dissented on
5 that legislative enactment that -- that now creates
6 the cost-recovery mechanism is that, in my view,
7 pulling hardening out of -- of -- of the rate
8 yields two things: One, it effectively increases
9 rates for the payers, but it also can have the
10 impact of reducing the scrutiny on those costs
11 re- -- recoverable.

12 And so, to the extent that there's any way to
13 put in place in your rulemaking ways --
14 requirements that these costs be proved up, that
15 there's an opportunity for expert examination
16 and -- and rebuttal -- that would be the only
17 recommendation on that front.

18 But once again, I thank you for -- for the
19 privilege. And I appreciate your service.

20 CHAIRMAN GRAHAM: Ma'am?

21 REPRESENTATIVE ESKAMANI: Thank you -- thank
22 you so much, Senator. And thank you, Chairman and
23 to the entire board. Representative Anna Eskamani,
24 freshman lawmaker from the City Beautiful, in
25 Orlando.

1 I want to thank for -- thank all of you for
2 this dialogue. And it seems like you're taking
3 public comments very seriously with the goals that
4 were before you. I appreciate Commissioner Brown's
5 point about net metering. I think it was Staff
6 Recommendation 11 around we have to protect net
7 metering and encourage utility companies to promote
8 that. So, I appreciate that notion.

9 One of the letters that came to you was from
10 an organization called ACEEE. And we also sent in
11 our own letter that kind of reflected some of their
12 ideas and some of their perspectives.

13 And just for the record, some of the ideas
14 they had within FEECA today include, to echo the
15 Senator's point, setting energy-saving targets for
16 utilities having some aspirational goal to
17 accomplish, but also including specific
18 requirements for delivery of those comprehensive
19 programs, so more accountability on how those
20 programs actually roll out.

21 Unfortunately, we know Florida is not one of
22 the best states with program implementation. We
23 have a lot of potential in the southeast to be
24 leading the charge, and we're not quite there yet.

25 And then the RIM test was mentioned more than

1 once. And I just want to echo the notion that we
2 need to fairly apply cost-effectiveness tests. And
3 the RIM test -- I think Florida is the only state
4 right now that has the RIM test. And it doesn't
5 make sense.

6 It -- it does not measure efficiency. I --
7 you ask any of our utility-company experts. I'm
8 sure they would agree. They probably prefer the
9 RIM test, but this is not an area for us to do what
10 utility companies necessarily prefer. It's an area
11 to listen to consumers and really do our best for
12 the public of our constituencies, but also for the
13 great state of Florida.

14 And so, that is the feedback that I have. I
15 look forward to working with each one of you from
16 the legislative perspective. We solve problems
17 together through collaboration. And so, know that
18 my office is always open.

19 I do not come from an energy background, but
20 I've learned a lot in my first year, now as an
21 elected official, and so I'm really excited to
22 continue the dialogue with each one of you. And
23 you know, thank you for put- -- putting the pause
24 for today because I do think that the public spoke
25 that this was not the right direction to go.

1 Thank you.

2 CHAIRMAN GRAHAM: I want to thank you both for
3 coming down. And, once again, I -- it's just one
4 of those things -- I can only speak for me, as
5 chair, but usually I try to accommodate any elected
6 official who wants to come down to speak.

7 A lot of times, because of our rules, it's got
8 to be outside of a specific hearing or agenda that
9 we're in. And so, that's why we recessed where we
10 were. And we'll restart again, afterwards, but we
11 do appreciate, No. 1, that -- that it matters to
12 you and that you took the time and effort to come
13 down here and talk to us.

14 SENATOR RODRIGUEZ: Thank you.

15 REPRESENTATIVE ESKAMANI: Thank you.

16 (Agenda item concluded.)

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, ANDREA KOMARIDIS WRAY, Court Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 14th day of November, 2019.



ANDREA KOMARIDIS WRAY
NOTARY PUBLIC
COMMISSION #GG365545
EXPIRES February 9, 2021