

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:

DOCKET NO. 20190015-EG

COMMISSION REVIEW OF  
NUMERIC CONSERVATION GOALS  
(FLORIDA POWER & LIGHT  
COMPANY).

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DOCKET NO. 20190016-EG

COMMISSION REVIEW OF  
NUMERIC CONSERVATION GOALS  
(GULF POWER COMPANY).

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DOCKET NO. 20190017-EG

COMMISSION REVIEW OF  
NUMERIC CONSERVATION GOALS  
(FLORIDA PUBLIC UTILITIES  
COMPANY).

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DOCKET NO. 20190018-EG

COMMISSION REVIEW OF  
NUMERIC CONSERVATION GOALS  
(DUKE ENERGY FLORIDA, LLC).

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DOCKET NO. 20190019-EG

COMMISSION REVIEW OF  
NUMERIC CONSERVATION GOALS  
(ORLANDO UTILITIES  
COMMISSION).

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DOCKET NO. 20190020-EG

COMMISSION REVIEW OF  
NUMERIC CONSERVATION GOALS  
(JEA).

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DOCKET NO. 20190021-EG

COMMISSION REVIEW OF  
NUMERIC CONSERVATION GOALS  
(TAMPA ELECTRIC COMPANY).

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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

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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 reimaging 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.)

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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.



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