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May 23, 1997

Leslie J. Paugh, Esq.
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 970046-EI

Dear Ms. Paugh:

The Legal Environmental Assistance Foundation, Inc. (LEAF) has the following informal comments in response to questions posed by Staff at the end of the May 7, 1997 workshop in the docket. We believe that the questions are irrelevant and seek to impose a solution to a problem that has not been identified.

Staff's concerns, as expressed in the workshop, focused on two issues: the cost-effectiveness of DSM programs (particularly those for commercial/industrial customers) and the competitive aspects of electric DSM in relation to natural gas end uses. We submit that these two issues are only tangentially related; that the Staff review of utility DSM programs does not support the thrust of this docket; and that the "cure" envisioned by Staff may be worse than the "disease" for which it is designed.

WACK 1 Are the general body of ratepayers at greater risk in terms of
AFA realizing benefits from DSM programs as the RIM cost-effectiveness
APP ratio approaches 1.0?
CAF LEAF's response is an emphatic "NO". The merits of various cost-
CMU effectiveness tests were treated at length in the conservation
CTR goals dockets. In setting goals for the individual electric
utilities, the Commission stated in its order:

EAG Futrell
LEG 1 We find that goals based on measures that pass the TRC but not
LIN 5 RIM would result in increased rates and would cause customers
OPC who do not participate in a utility DSM measure to subsidize
RCH based solely on RIM measures, we encourage utilities to
SEC 1 evaluate implementation of TRC measures when it is found that
the savings are large and the rate impacts are small. Order
No. PSC-94-1313-POF-EG (10/25/94) at p. 22.

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The inverse of the Commission's first statement is that RIM-passing measures cannot result in subsidy by non-participants or increased rates to any customer¹. The second statement also clearly shows that the Commission did not intend a 1.0 RIM ratio as an absolute minimum threshold in every case.

The conclusion we draw from these statements in the Commission order is that the Commission is encouraging DSM options with high energy savings -- even if they fail RIM -- so long as total costs are less than power plants and rate impacts are low. Rigid adherence to only RIM-passing measures creates a significant disincentive to electric utilities to follow the Commission's encouragement to consider TRC-passing programs. Now Staff seeks to raise the existing 1.0 RIM threshold even higher in some cases; a higher threshold would create a similar disincentive, thereby also reducing the potential benefits of any RIM-based DSM.

We must also note at this point the different treatment of DSM programs from other aspects of utility regulation and the costs associated therewith. While DSM programs are held strictly to a standard that prohibits rate impacts to non-participants, that cost-effectiveness standard is not applied to power plant construction, fuel cost pass-through and other costs.

There is no documentary or other basis on which to conclude that DSM programs place ratepayers at risk as their cost-effectiveness ratios approach 1.0 RIM. The Review of Commercial/Industrial Demand-Side Management Programs of Six Florida Utilities (9/96) ("Review"), prepared by Staff, contains no analysis of this theory and Staff presented no support in the May 7, 1997 workshop for such a conclusion.

Staff stated in the workshop that its proposed solution for this alleged problem was to allocate the costs of DSM programs by customer class. As an alternative, Staff suggested that only programs that fell below 1.2 RIM have their costs allocated. Changing cost allocation will not resolve the alleged problem. While a change in allocation may change the costs for each customer class, the DSM would continue to benefit all classes of customers.

The suggested re-allocation would have inconsistent and perverse effects in relation to current allocations. For example, in all cases residential customers will pay more; for Tampa Electric customers, their responsibility will almost double, while for FPC customers, the change is slight. The impact on commercial customers is quite uneven, with significant reductions for FPC commercial customers but a significant increase for its interruptible customers. Again, there is no justification for the

¹ As Staff is aware, LEAF does not agree with the substance of the Commission's order, but we take it as a given since the order is in effect.

hypothetical re-allocation and the effects would seem to put more of a cost burden on residential customers than commercial/industrial customers. No empirical basis was provided for either the 1.2 ratio as a threshold or the methodology for allocation.

Finally, we note that, to the extent Staff's concern is with the current cost-effectiveness of DSM programs, there are two counter-vailing concerns: 1) programs should be cost-effective over a reasonable time period in order to benefit ratepayers; and 2) programs need some stability in order to operate effectively -- constant tinkering to make them instantaneously cost-effective will often cost more than it is worth and may not allow the utility sufficient experience with the program.

2. Recognizing the unavoidable competitive impact of DSM programs, should ratepayers continue to pay for DSM programs through the ECCR clause absent an analysis showing the benefit of such competition? Why or why not?

LEAF believes that DSM programs that are cost-effective should be paid for by all ratepayers and that no analysis is needed. We again remind Staff of the Commission's 1994 order and the conclusion that RIM-based DSM, by definition, benefits all ratepayers. Staff here would improperly put the burden of proof on the parties to show that which the Commission has already concluded.

We also reiterate our comment above about the different standard applied to DSM programs. All aspects of utility regulation have unavoidable competitive effects -- rate setting, fuel pass-through allowances and many other aspects of utility regulation make electric service more or less competitive than other fuels for applicable end uses. Only DSM seems to be the target of concern. A review of the costs of current programs, as set forth in the tables provided by staff clearly shows that DSM is a very small part of rates and of utility costs. Although C/I participation rates vary among programs, it also seems clear that if utilities are trying to use DSM to compete with natural gas, they are not having great success.

We note that the Staff Review concludes that promotion, advertising and operation of commercial/industrial DSM programs play significant roles in electric v. gas competition. However, a close review of the report does not support that general conclusion. In reviewing FPC's programs, the report notes a decrease in participation among C/I customer in DSM programs. It also notes that audit and lighting programs account for 78% of total participation. It is difficult to see how these programs compete with gas. Staff found no anti-competitive or unduly discriminatory methods used, but did find that any DSM operations "unavoidably intertwine conservation and competition." If this effect is unavoidable, how does Staff propose to avoid the effect without destroying utility DSM? Its proffered solution is not the answer.

Similarly, Staff found no problem with Gulf's programs, noting it has not made aggressive use of rebates or other incentives. For Tampa Electric, the report found lighting the major success. Even for FPL, with which Staff had some concerns, nearly all energy savings were from lighting, with some from C/I HVAC; demand reductions were from a load management program (now closed to new participants) and lighting. The 1996 reports on DSM compliance by the utilities shows that commercial lighting programs were, far and away, the major success among C/I DSM programs. Other programs were often below anticipated participation levels and had lesser impacts on goal achievement. It is hard to see how this implies some significant impact on competition with the gas industry. We also note that if any utility, gas or electric, is engaging in improper promotion or marketing practices, the Commission has ample authority to curtail and sanction that behavior.

Again, there is no rationale to support re-allocation of DSM costs as the solution to this "problem". As noted above, in most cases, the C/I class would pay less for DSM benefits. This could have the unintended effect of making DSM even more competitive since customers would be getting the same benefit at a lower rate. Neither is there any critique by Staff of current allocation methodologies employed.

Finally, we must also note that the alleged fuel neutrality policy of the Commission does not appear in any conservation-related statutory authority nor in any rule. The Commission orders cited by Staff as the basis for this policy merely reference some criteria "announced" elsewhere by the Commission, so it is unclear what the legal basis for this policy is on which so much of Staff's concerns are based.

3. Staff expressed its concern regarding the marginal RIM cost-effectiveness of DSM programs, and the competitive nature of DSM programs. Assuming these are problems, what solutions should the Commission consider?

Given the above, we are unable to make the assumption demanded by this question and do not believe it appropriate to suggest solutions beyond monitoring cost-effectiveness of programs and utility marketing practices.

This letter has been filed with Records and Reporting and copied to all persons listed on your May 8, 1997 memo.

Sincerely,



Gail Kamaras, Director
Energy Advocacy Program