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Electronic Filing

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b. Docket No. 080412-EG & 080413-EG

In re: Commission review of numeric conservation goals (JEA)

c. Document being filed on behalf of JEA and OUC.

d. There are a total of 25 pages.

e. The document attached for electronic filing is the Joint Post-Hearing Brief of JEA and Orlando Utilities Commission (OUC).

Thank you,

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FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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

DOCKET NO. 080407-EG

In re: Commission review of numeric conservation goals (Progress Energy Florida, Inc.).

DOCKET NO. 080408-EG

In re: Commission review of numeric conservation goals (Tampa Electric Company).

DOCKET NO. 080409-EG

In re: Commission review of numeric conservation goals (Gulf Power Company).

DOCKET NO. 080410-EG

In re: Commission review of numeric conservation goals (Florida Public Utilities Company).

DOCKET NO. 080411-EG

In re: Commission review of numeric conservation goals (Orlando Utilities Commission).

DOCKET NO. 080412-EG

In re: Commission review of numeric conservation goals (JEA).

DOCKET NO. 080413-EG

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**JOINT POST-HEARING BRIEF OF JEA AND  
ORLANDO UTILITIES COMMISSION (OUC)**

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FPSC-COMMISSION CLERK

## **JOINT POST-HEARING BRIEF**

JEA and Orlando Utilities Commission (“OUC”), pursuant to Rule 25-22.056, Florida Administrative Code (F.A.C.), Order No. PSC-09-0152-PCO-EG (First Order Revising Order Establishing Procedure) and Order No. PSC-09-0545-PHO-EG (Prehearing Order) respectfully submit the following Joint Post-hearing Brief in the above-captioned consolidated docket.

### **INTRODUCTION AND SUMMARY**

This proceeding presents the Commission with important decisions that could significantly impact the customers of all utilities regulated under the Florida Energy Efficiency and Conservation Act (“FEECA”). Intervenors Natural Resources Defense Council and Southern Alliance for Clean Energy (“NRDC/SACE”) ask the Commission to reject long-standing administrative and judicial precedent that calls for use of the Rate Impact Measure (“RIM”) test to ensure that impacts on customer rates are appropriately considered in setting FEECA goals. Instead, NRDC/SACE ask the Commission to rely primarily on the Total Resource Costs (“TRC”) test, which wholly fails to consider potential rate impacts. Furthermore, the witnesses presented by NRDC/SACE and Staff recommend that the Commission adopt FEECA goals that would drastically increase rates at a time when utility customers, especially those with low-incomes, can ill afford them.

As municipal utilities over which the Commission has no rate-setting authority, JEA and OUC have a special interest in the potential rate impact of FEECA-imposed conservation goals. Independent rate-setting authority is a fundamental aspect of public power. [T.1999 (Vento)]<sup>1</sup> It provides the necessary latitude to make local decisions regarding the community’s investment in

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<sup>1</sup> References to transcript of the proceeding are indicated by “T.”, the appropriate page number of the transcript, and the witness testifying in parentheses. References to exhibits are indicated by “EX.” followed by the exhibit number.

energy efficiency that best suit local needs and values. [Id.] Local decisions are based on input from citizens who can speak out on electric power issues at governing board meetings. [Id.] Imposition of FEECA goals that would place upward pressure on rates would undercut the independent rate-setting and local decision-making processes that are the hallmark of municipal utilities. [Id.] In other words, to set goals that will force JEA and OUC to raise rates is simply doing indirectly what the Commission can not do directly. Accordingly, as the Commission has recognized in prior FEECA goal-setting proceedings, it is appropriate to set goals for JEA and OUC based on the RIM test, but to defer to the municipal utilities' governing bodies to determine the level of investment in any non-RIM-based measures. *See, In re: Adoption of Numeric Conservation Goals and Consideration of National Energy Policy Act Standards (Section 111)*, Order No. PSC-95-0461-FOF-EG, p. 3 (April 10, 1995).

The NRDC/SACE witnesses are simply wrong in asserting the recent amendments to FEECA in 2008 House Bill 7135 somehow require rejection of the RIM test in favor of the TRC test. As codified in Section 366.82(3), F.S., House Bill 7135<sup>2</sup> added two specific cost-effectiveness criteria for the Commission to consider in establishing goals: (a) the costs and benefits to the customers participating in the measure; and (b) the costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions. When used in conjunction with the Participant test, the RIM test satisfies these statutory criteria. Specifically, the Participant test includes all of the relevant benefits and costs that a customer who is considering participating in a demand-side management ("DSM") measure would consider; whereas the RIM test includes all of the relevant benefits and costs that all of the utility's customers as a whole would incur if the utility implements a particular measure. [T.1998-1999 (Vento); T.1930 (Halley)] By contrast, the TRC test disregards incentive

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<sup>2</sup> Ch. 2008-227, Laws of Fla.

payments made by the utility to DSM program participants and the economic impact of unrecovered revenue requirements on the utility's electric rates. [T.1230 (Dean); T.85-86 (Sim)] As such, the TRC test does not include all DSM-related costs and therefore does not comply with the Section 366.82(3)(b), F.S. [T.95-96 (Sim)]

In response to the recent FEECA amendments, OUC and JEA worked with a Collaborative consisting of the FEECA-regulated utilities and NDRC/SACE, as well as Itron, a well-respected energy efficiency consulting firm, to develop and implement a comprehensive study designed to estimate the full Technical, Economic and Achievable Potential of DSM measures, including demand-side renewable energy systems for JEA and OUC. The Itron study was much more robust than the analyses used in the past conservation goal dockets. Yet it yielded the same results. No measures passed the RIM test for either JEA or OUC. [T.828 (Vento); EX.72; T.770 (Halley); EX.73] Accordingly, the DSM goals for JEA and OUC should remain at zero through the current evaluation period ending in 2019.

That does not mean that JEA and OUC are against energy efficiency and conservation. To the contrary, both JEA and OUC offer -- and will continue to offer -- DSM programs, including demand-side renewable programs, to their customers. [T.821-822, 829 (Vento); EX.61; T.787, 795 (Halley); EX.58] However, as the Commission recognized when it set JEA's and OUC's goals at zero in the most recent goal-setting proceedings, it is reasonable to allow JEA and OUC to determine the extent to which they should offer non-RIM-based DSM programs, as they are "in the best position to determine [their] customers' needs." *In re: Petition for approval of numeric conservation goals by JEA*, Order No. PSC-04-0768-PAA-EG, at p.3 (Aug. 9, 2004); *In re: Petition for approval of numeric conservation goals by OUC*, Order No. PSC-04-0767-PAA-EG, at p.4 (Aug. 9, 2004).

## ISSUES AND POSITIONS

**ISSUE 1:** Did the Company provide an adequate assessment of the full technical potential of all available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy systems, pursuant to Section 366.82(3), F.S.?

**JEA/OUC:** \*\*Yes. Itron's study adequately assessed the full technical potential of all available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy systems. The scope of work and assessment techniques were vetted by the Collaborative. Itron utilized state-of-the-art models to determine the full technical potential of available measures.\*\*

The technical potential study performed by Itron provided an adequate assessment of the full technical potential of available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy systems. [T.826 (Vento); T.791-792 (Halley)] The scope of the study, the measures to be analyzed, and the assessment techniques were fully vetted through the Collaborative process which included input from all of the FEECA-regulated utilities and other interested parties including NRDC/SACE. [T.2005 (Vento; T.1956-1957 (Halley)] Drawing upon their recognized expertise, Itron utilized its state-of-the-art models to comprehensively analyze the full technical potential of energy efficiency, demand response, and demand-side renewable energy technologies. [T.826 (Vento); T.792 (Halley)]

The first step in Itron's study was to identify and select the energy efficiency, demand response ("DR") and photovoltaic ("PV") measures to be analyzed consistent with statutory and Commission requirements. [T.876 (Rufo)] Energy efficiency measures were developed through an exhaustive collaborative process, with the FEECA-regulated utilities, Itron and NRDC/SACE proposing measures. [T.877-878 (Rufo)] DR measures were identified using a combination of literature review, reviews of current DR program activities, and discussions. [T.878 (Rufo)] The PV technologies were identified by explicitly considering six characteristics specific to PV electrical systems. [T.878-879 (Rufo)] The final measures list was comprehensive and broad,

providing an aggressive yet reasonable assessment of the full technical potential of DSM for the FEECA utilities. [T.879, 903 (Rufo)] Indeed, the final list of measures included 257 unique energy efficiency measures, seven unique DR measures and three unique PV measures. [T.879-880 (Rufo)] Further, the list included 25 residential measures and 24 commercial measures that Itron had not previously analyzed in potential studies for other clients. [T.879 (Rufo)]

The next step was to develop measure cost and savings data for each measure and develop bottom-up baseline estimates of end-use energy consumption and peak demand savings for all in-scope market segments. [T.880 (Rufo)] Using this end-use baseline and measure data, Itron then estimated technical potential. Technical potential is defined as the complete penetration of all measures analyzed in applications where they were deemed technically feasible from an engineering perspective. [T.881 (Rufo)] Technical potential is a theoretical construct representing the upper bound of energy efficiency potential from a technical feasibility sense – regardless of cost, acceptability to customers, or normal replacement of equipment. [Id.] As such, technical potential does not reflect – and is not intended to reflect – the amount of energy efficiency potential that is actually achievable or cost-effective relative to other resource options. [Id.] As discussed below with regard to Issue No.2, however, Itron performed additional analyses for JEA and OUC to analyze achievable potential and cost-effectiveness.

NRDC/SACE admits that Itron’s technical potential study was “conducted in a professional and thorough manner,” that the collaboration among the FEECA utilities and NRDC/SACE was “generally productive,” and that “communications within the Collaborative were effective for the most part.” [T.26 (Wilson)]. Moreover, NRDC/SACE witness Wilson admitted that “we were generally satisfied with the decision to include or exclude measures from the Technical Potential Study.” [T.30 (Wilson)] Nevertheless, the NRDC/SACE and GDS witnesses contend that the assessment was unnecessarily conservative due to certain perceived

“omissions.” However, the NRDC/SACE and GDS witnesses did not consider or acknowledge that some measure savings and feasibility estimates included in Itron’s study may be optimistic and could possibly overestimate technical potential. [T.1028 (Rufo)] In other words, the NRDC/SACE and GDS critiques of Itron’s technical potential estimates focus only on underestimation and, therefore, are asymmetric. [Id.] As NRDC/SACE witness Mosenthal stated, “it is impossible to accurately account for every possible opportunity in every market segment. As a result, for reasonable resource and other reasons, any analysis is somewhat constrained in its comprehensiveness.” [T.1321 (Mosenthal)] The record demonstrates that Itron’s Technical Potential estimates are reasonable and very consistent with results from previous studies by Itron and other leading analysts in the industry. [T.1029 (Rufo)]

The NRDC/SACE and GDS witnesses also criticized use of a two-year payback criterion to address “free-riders” in accordance with Rule 25-17.0021(3), F.A.C. However, the record demonstrates that the two-year payback criterion is consistent with long-established Commission precedent [T.2074 (Dean)] and is an accepted industry method for minimizing free-riders. [T.1652 (Haney)] Furthermore, the types of measures that were screened out using the two-year payback criterion are already the focus of existing JEA and OUC educational programs and other outreach efforts. [T.2006 (Vento); T.1958 (Halley)]

For these reasons, none of the criticisms of the Itron Technical Potential Estimates have merit. To the contrary, the scope of measure analyzed was comprehensive and consistent with the requirements of FEECA and Rule 25-17.0021, F.A.C.

**ISSUE 2:** Did the Company provide an adequate assessment of the achievable potential of all available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy systems?

**JEA/OUC:** \*\*Itron's study adequately assessed the full achievable potential of all available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy systems. The scope of work and assessment techniques were vetted by the Collaborative. Itron utilized state-of-the-art models to determine the full achievable potential of available measures.\*\*

The methodology and models used by Itron to develop Achievable Potential Estimates for the FEECA utilities are analytically sound and have been used by Itron and KEMA to develop energy efficiency potential estimates and energy efficiency goals in a variety of jurisdictions. [T.898-899 (Rufo)] The methods and models used have a history of success because they appropriately blend theory and practice. [T.898 (Rufo)] The models use advanced stock and awareness accounting along with measure-specific adoption curves that reflect real-world differences in end user adoption of efficiency measures as a function of direct and indirect measure attributes. [Id.]

After developing Technical Achievable Estimates for all of FEECA-regulated utilities, Itron performed additional analyses for JEA and OUC to assess the cost-effectiveness for each measure based on the results of the technical potential analysis using the RIM and TRC tests, and to determine the incentive levels to be applied in the adoption forecast. For JEA and OUC, Itron performed the cost-effectiveness tests for efficiency measures, including demand-side renewable energy measures, using avoided cost and retail rate forecasts. Itron also determined the maximum incentive levels for each measure for JEA and OUC, according to the incentive scenarios defined by the utilities. [T.890 (Rufo)] For purposes of evaluating the cost-effectiveness to estimate economic potential, the measure-specific RIM values were calculated without administrative costs or incentive costs in the denominator. [T.888 (Rufo)] Similarly, the measure-specific TRC values were calculated without administrative costs in the denominator.

[Id.] In these respects, the cost-effectiveness screening was based on purposefully liberal implementations of standard RIM and TRC tests. [Id.] To comply with the Commission's rule to avoid free riders, measures that demonstrated simple payback periods of less than two years, in the absence of program incentives, were excluded from the RIM and TRC portfolios. [T.889 (Rufo)] Additionally, measures with Participant test values of less than 1.01 were also screened from the achievable potential analysis. [Id.]

After the cost-effectiveness screenings and incentive level estimation were complete, the next step in the study was to forecast customer adoption of all passing measures using measure-specific adoption curves that take into account direct and indirect economic factors, and then estimate the achievable potential for energy efficiency measures. [T.891 (Rufo)] Itron developed the achievable potential using KEMA's DSM ASSYST model, which is generally recognized as a leading model of this type in the industry. [T.891-892 (Rufo)] The achievable potential results were developed for multiple scenarios, which is an effective way of testing sensitivities and increasing the robustness of the results. [T.900 (Rufo)] Itron's study results provide directly relevant estimates of achievable potential for the measures passing the cost-effectiveness and screening criteria. [T.901 (Rufo)] The resulting estimates of achievable potential are a reasonable basis for the FEECA utilities to use in proposing DSM goals given the criteria that define each scenario. [Id.]

None of the NRDC/SACE or GDS witnesses demonstrated that the data inputs, assumptions, methods, and models used by Itron to estimate potential are flawed or produce biased results. [T.1044 (Rufo)] Neither the NRDC/SACE nor the GDS witnesses provided any evidence that alternative models offer superior features or parameters to the DSM ASSYST model or that the input data are inaccurate or biased. [Id.] Itron staff has used the same models and quality of data in this study as they have in previous potential studies. [Id.] Itron has

produced a wide range of efficiency potential estimates within and across studies as a function of differences in project scopes and efficiency scenario definitions. [T.1044-1045 (Rufo)] The underlying data and modeling methods are consistent across these studies. [T.1045 (Rufo)] Itron staff has been industry leaders in the development and implementation of efficiency potential studies for over twenty years. [Id.] Itron's documentation and results have been accepted and used for goal setting in jurisdictions throughout the United States. [Id.]

For these reasons, contrary to the assertions of the NRDC/SACE and GDS witnesses, Itron's study adequately assessed the full achievable potential of all available DSM and supply-side conservation and efficiency measures, including demand-side renewable energy systems.

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

**JEA/OUC:**     **\*\*Yes. The proposed goals of JEA and OUC are based on achievable potential developed based on Itron's cost-effectiveness evaluations, which included consideration of the costs and benefits to customers participating in the measures through use of the Participant test.\*\***

The proposed goals of JEA and OUC are based on estimates of achievable potential developed by Itron as part of its comprehensive and analytically sound studies. The cost-effectiveness evaluations performed by Itron included consideration of the costs and benefits to customers participating in the measures through use of the Participant test. [T.889 (Rufo); T.1998 (Vento)] There does not appear to be any dispute that Itron appropriately utilized the Participant test for JEA and OUC to address the costs and benefits to customers participating in the measure, pursuant to Section 366.82(3)(a), F.S. *See, NRDC/SACE Prehearing Statement*, at p.8 (Doc. # 07836-09 filed July 31, 2009) ("We do not object to how the participant test was conducted for JEA, OUC and FPU.").

**ISSUE 4: Do the Company's proposed goals adequately reflect the costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions, pursuant to Section 366.82(3)(b), F.S.?**

**JEA/OUC:** \*\*Yes. The proposed goals of JEA and OUC are based on achievable potential developed based on Itron's cost-effectiveness evaluation, which included consideration of the costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions, through use of the RIM and Participant tests.\*\*

The proposed goals of JEA and OUC are based on the achievable potential estimates developed by Itron through its comprehensive and analytically sound studies. Itron's analyses appropriately included consideration of the costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions, through use of the RIM and Participant tests. In that regard, the Participant test includes all of the relevant benefits and costs that a customer who is considering participating in a DSM measure would consider. [T.87 (Sim)] Similarly, the RIM test includes all of the relevant benefits and costs that all of the utility's customers would incur if the utility implements a DSM measure. [Id.] Both RIM and the Participant tests account for utility incentives paid to customers, with the RIM test treating them as a cost and the Participant test treating them as a benefit. As such, when used in conjunction with each other, the RIM and Participant tests satisfy the Commission's statutory obligation, under Section 366.82(3)(b), F.S., to consider the costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions. [T.1949 (Halley); T.1998 (Vento)]

By contrast, as discussed more fully below in Issue No. 8, the TRC test advocated by NRDC/SACE omits both the incentives paid to participating customers and the economic impact of unrecovered revenue requirements on electric rates – costs borne by all electric customers. [T.86 (Sim)] It also accounts for participants' out of pocket costs which are already reflected in

the Participant test. [Id.] The TRC test, therefore, does not adequately reflect the costs or the benefits to the general body of ratepayers as required by Section 366.82(3)(b), F.S.

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

**JEA/OUC:** **\*\*Because no federal or state regulations currently impose costs on GHG emissions, it is not appropriate to establish DSM goals based on speculation as to what costs may be imposed in the future. For informational purposes, however, Itron performed analyses utilizing different CO<sub>2</sub> allowance costs.\*\***

Greenhouse gases (GHG) are not currently regulated at either the state or federal level, and there currently are no costs imposed on the emissions of greenhouse gases. Based on the plain language of Section 366.892(3)(d), F.S., which requires consideration of “costs imposed by state and federal regulations on the emission of greenhouse gases” (emphasis added), it would be *inappropriate to establish DSM goals that would increase customer rates based on speculation as to what costs may be imposed on GHG emissions in the future.* However, for informational purposes, Itron performed additional analyses for JEA and OUC using several different combinations of fuel and carbon dioxide (CO<sub>2</sub>) emissions allowance prices. Based on three different levelized CO<sub>2</sub> emissions allowance price projections, Itron’s economic potential *analyses indicated only small amounts of savings may be economical for JEA and OUC, but those analyses did not address whether even that small level of savings would be achievable.* [EX.2, No.31 (JEA’s Resp. to Staff Int. No. 29)] Although NRDC/SACE witness Steinhurst criticized the CO<sub>2</sub> allowance costs utilized by all FEECA utilities, the CO<sub>2</sub> allowance costs that Itron used in its analyses for JEA and OUC align well with and are actually slightly higher than those suggested by Dr. Steinhurst. [T.2014, 2019 (Kushner)]

**ISSUE 6:** Should the Commission establish incentives to promote both customer-owned and utility-owned energy efficiency and demand-side renewable energy systems?

**JEA/OUC:** \*\*No. Incentives to utilities involving rate of return are not relevant to municipal utilities. As part of this Docket, JEA and OUC have comprehensively analyzed customer-owned energy efficiency and demand-side measures and none were found to be cost-effective. Utility-owned energy efficiency and renewable energy systems are supply-side issues.\*\*

The incentives contemplated in Section 366.82(8) and (9), F.S., are only applicable to investor-owned utilities over which the Commission has rate-setting authority. Because the Commission has no rate-setting authority over municipal utilities, it cannot authorize financial rewards or allow an additional return on equity for JEA and OUC. Furthermore, the comprehensive analyses of customer-owned energy efficiency and demand-side renewable energy systems performed for JEA and OUC indicated that none were cost-effective. [T.828 (Vento); T.794 (Halley)]

**ISSUE 7:** In setting goals, what consideration should the Commission give to the impact on rates?

**JEA:** \*\*The Commission must consider the impact on rates as a primary determinant in setting goals. For municipal utilities over which the Commission has no ratemaking authority, the Commission should reject DSM measures that fail the RIM test.\*\*

Consistent with the plain language of FEECA, as well as established administrative and judicial precedent, the Commission must continue to consider rate impacts as a primary determinant in setting DSM goals. Section 366.81, F.S., specifically states that “in exercising its jurisdiction, the commission shall not approve any rate or rate structure which discriminates against any class of customers on account of the use of such facilities, systems, or devices.” (Emphasis added). In *Legal Environmental Assistance Foundation, Inc. (“LEAF”) v. Clark*,

668 So. 2d 982, 987-988 (Fla. 1996), the Florida Supreme Court held that this language compels the Commission to consider “the overall effect on rates, generation expansion, and revenue requirements” in setting conservation goals. Based on this reading of the statute and the Commission’s finding “that goals based on measures that pass TRC but not RIM would result in increased rates and would cause customers who do not participate in a utility DSM measure to subsidize customers who do participate,” the Court affirmed the Commission’s original decision to set conservation goals using RIM. *Id.*

Although NRDC/SACE now argue that RIM is inappropriate because “[n]owhere in the [2008 FEECA] amendments is there any discussion concerning impacts on rates,” [Tr. 415 (Cavanaugh); *see also* T.1449 (Wilson)], they conveniently ignore the fact that the very same language in Section 366.81, F.S., relied upon by the Court in *LEAF v. Clark* was not amended by House Bill 7135. They also ignore the fundamental rule of statutory construction that the Legislature is presumed to know of the construction placed on a statute by the courts. *Dickinson v. Davis*, 224 So. 2d 262, 264 (Fla. 1969) (“In re-enacting a statute the Legislature is presumed to be aware of constructions placed upon it by the Court.”). Indeed, the Legislature is presumed to know of judicial constructions of a law and to have adopted those constructions unless a contrary intent is expressed. *See, e.g., Essex Ins. Co. v. Zota*, 985 So. 2d 1036, 1043 (Fla. 2008). House Bill 7135 expresses no such intent. In fact, it reaffirmed the Legislature’s concern about customer rate impacts by adding subsection 366.83(3)(b), F.S., to now explicitly require the Commission to consider costs and benefits “to the general body of ratepayers as a whole[.]”<sup>3</sup> Thus, contrary to the assertions of NRDC/SACE, in reenacting FEECA without amending the

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<sup>3</sup> The Legislature expressed further concern about rate impacts by amending what is now Section 366.82(7), F.S., to provide that “[i]n approving plans and programs for cost recovery, the commission shall have the flexibility to modify or deny plans or programs that would have an undue impact on the costs passed on to customers.”

language relied upon by the Court in *LEAF v. Clark*, the Legislature reaffirmed that consideration of rate impacts is a primary determinant in setting conservation goals. Furthermore, as discussed below in Issue No. 15, consideration of rate impacts is particularly important in setting goals for municipal utilities over which the Commission has no ratemaking authority.

For these reasons, the Commission must continue to consider the impact on rates as a primary determinant in setting goals under FEECA.

**ISSUE 8:      What cost-effectiveness test or tests should the Commission use to set goals, pursuant to Section 366.82, F.S.?**

**JEA/OU:**      **\*\*The Commission should use the RIM and Participant tests because they fulfill the obligation to consider the costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions. RIM is particularly appropriate for municipal utilities over which the Commission has no ratemaking authority.\*\***

As discussed above, consistent with FEECA and established precedent, the Commission has appropriately utilized RIM as the primary cost-effectiveness test in setting conservation goals for FEECA utilities. House Bill 7135 does not require, or even suggest, that the Commission must or should change this established practice.

As codified in Section 366.82(3), F.S., House Bill 7135 added two specific cost-effectiveness criteria for the Commission to consider in establishing goals: (a) the costs and benefits to the customers participating in the measure; and (b) the costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions. There does not appear to be any dispute that the Participant test is appropriate for use under subsection (3)(a). [See, e.g., T.1413 (Cavanaugh: “[I]n section 3(a), the legislature required the ‘Participant Test’ when it required the PSC to consider ‘the costs and benefits to customers

participating in the measure.”). Thus, the key issue is the proper interpretation of the legislative directive that the Commission consider the “costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions” in subsection (3)(b).

Both the RIM and TRC tests consider the benefits to the general body of customers. However, not all utility costs are included in a TRC calculation, but all are included under RIM. [T.1230 (Dean)] More specifically, the RIM and Participant tests account for utility incentives paid to customers, with the RIM test treating them as a cost and the Participant test treating them as a benefit. The TRC test, on the other hand, disregards incentive payments made to DSM program participants (costs recovered from all utility customers) and the economic impact of unrecovered revenue requirements on the utility’s electric rates. [T.1230 (Dean); T.85-86 (Sim)] As such, the TRC test does not include all DSM-related costs and therefore does not comply with the amended Section 366.82(3)(b). [T.95-96 (Sim)] Furthermore, because it does not consider “the overall effect on rates, generation expansion, and revenue requirements,” the TRC does not comply with Section 366.81, F.S., as interpreted by the Florida Supreme Court in *LEAF v. Clark*, 668 So. 2d 982, 987-988 (Fla. 1996). The Commission is bound by the Court’s interpretation. *Costarell v. Florida Unemployment Appeals Comm’n*, 916 So.2d 778, 782 (Fla. 2005) (Agencies of this state must follow the interpretations of statutes made by state courts)..

For the reason discussed above and in response to Issues 7 and 15, the Commission should continue to utilize the RIM test, in conjunction with the Participant test, to set goals pursuant to FEECA.

**ISSUE 9: What residential summer and winter megawatt (MW) and annual Gigawatt-hour (GWh) goals should be established for the period 2010-2019?**

**JEA/OUC:**

PROPOSED RESIDENTIAL CONSERVATION GOALS										
Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Summer MW	0	0	0	0	0	0	0	0	0	0
Winter MW	0	0	0	0	0	0	0	0	0	0
Annual GWh	0	0	0	0	0	0	0	0	0	0

Itron’s analysis indicated that there are no cost-effective measures residential efficiency for JEA or OUC based on the RIM and Participant tests. [T.828 (Vento); EX.72; T.770 (Halley); EX.73] Accordingly, the DSM goals for JEA and OUC should remain at zero through the current evaluation period ending in 2019.

The Commission should reject the goals proposed by NRDC/SACE witness Steinhurst and GDS witnesses Spellman and Guidry. Dr. Steinhurst admitted that he performed no analysis specific to any of the FEECA-regulated utilities beyond reading portions of their pre-filed testimony. [T.1147 (Steinhurst)] Instead, without regard to any of the specific criteria set forth in FEECA and Rule 25-17.0021, F.A.C., he arbitrarily proposed goals based on 1.0 percent of annual electricity sales. [See T.1115-1120 (Steinhurst)] Similarly, the GDS witnesses performed no study of their own. Instead, they developed their proposed goals by starting with the highest level of Achievable Potential they could find and then made a series of arbitrary adjustments that only move the Achievable Potential in one direction – higher. [T.1674 (Haney)] Moreover, neither Dr. Steinhurst nor GDS considered the significant impact their proposed goals would have on customer rates. As explained by JEA witness Vento and OUC witness Halley, as based on the projected rates utilized by Itron in their cost-effectiveness analyses and the

projected energy savings associated costs developed by Itron for DSM measures passing both the TRC and Participant tests, the GDS proposal would increase the annual bills for JEA's and OUC's average residential customers by about \$60 to \$70 in 2010 and by about \$1,200 to \$1,300 in 2019. Likewise, Dr. Steinhurst's proposal would increase the average residential bills by about \$40 to \$45 in 2010 and by over \$1,400 in 2019. [T.2002-2003 (Vento); T.1952-1954 (Halley)] While the near term bill impacts of the GDS and Steinhurst proposals may not seem substantial, when coupled with recent rate increases, they would disproportionately burden lower income and rental customers. [T.1955 (Halley)]

For these reasons, the Commission should reject the goals proposed by the NRDC/SACE and GDS witnesses and set JEA's and OUC's goals at zero through 2019.

**ISSUE 10: What commercial/industrial summer and winter megawatt (MW) and annual Gigawatt hour (GWh) goals should be established for the period 2010-2019?**

**JEA/OUC:**

PROPOSED COMMERCIAL CONSERVATION GOALS										
Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Summer MW	0	0	0	0	0	0	0	0	0	0
Winter MW	0	0	0	0	0	0	0	0	0	0
Annual GWh	0	0	0	0	0	0	0	0	0	0

Itron's analysis indicated that there are no cost-effective measures for commercial/ industrial energy efficiency for JEA or OUC based on the RIM and Participant tests. [T.828 (Vento); T.770 (Halley)] Accordingly, the DSM goals for JEA and OUC should remain at zero through the current evaluation period ending in 2019. The Commission should reject the goals proposed by NRDC/SACE and GDS witnesses for the reasons discussed in Issue No. 9.

**ISSUE 11:** In addition to the MW and GWh goals established in Issues 8 and 9, should the Commission establish separate goals for demand-side renewable energy systems?

**JEA/OUC:** \*\*No. The Commission should not establish separate goals for demand-side renewable energy systems. Goals should promote cost-effective DSM without bias toward any particular technology. \*\*

The Commission should not establish separate goals for demand-side renewable energy systems. All goals should be established to promote cost-effective DSM without bias toward any particular technology. [T.827 (Vento); EX.72; T.793 (Halley); EX.73] Otherwise, goals could be set without appropriate consideration of costs and benefits to the participants and customers as a whole as required by Section 366.82(a) and (b), F.S.

As the GDS witnesses admitted, no demand-side renewable measures were found to be cost-effective under either the RIM or TRC test. [T.827 (Vento); T.793 (Halley); T.1549 (Spellman & Guidry)] Nevertheless, they recommend that the Commission require the investor-owned FEECA utilities to establish demand-side renewable programs and that the Commission “direct” JEA and OUC to implement an unspecified “R&D program” to encourage demand-side renewable systems. [T.1550-1552 (Spellman & Guidry)] However, the GDS witnesses fail to recognize that, in response to community input, both JEA and OUC already offer demand-side renewable energy programs, such as incentives which encourage installation of solar thermal water heating systems.<sup>4</sup> [T.2009 (Vento); T.1961-1962 (Halley)] Moreover, although the GDS witnesses recognize that the Commission lacks rate-setting authority over JEA and OUC, they ignore the fact that any costs that JEA and OUC would incur as a result of a Commission-

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<sup>4</sup> For example, JEA has budgeted \$250,000 toward incentives for residential and commercial installation of demand-side thermal projects, include solar water heaters. [T.838 (Vento)] Under that program, residential customers are eligible for an \$800 incentive per installation. [T.839 (Vento)] As a result of this program, 9 MW worth of solar thermal projects have been installed in JEA’s service territory. [Id.] OUC also offers solar PV and solar thermal incentive programs to its customers. [T.803-811 (Halley); EX.58]

imposed renewable “R&D program” would cause an upward pressure on rates because, unlike the investor-owned FEECA utilities, JEA and OUC cannot recoup such costs via the Commission’s Energy Conservation Cost Recovery (ECCR) Clause. As a result, imposition of GDS’ proposed “R&D program” would directly impact JEA’s and OUC’s independent ratemaking authority and community-based decision-making processes.

For these reasons, the Commission should not establish separate goals for demand-side renewable energy systems and should reject GDS’ proposed renewable DSM “R&D” program.

**ISSUE 12:** In addition to the MW and GWh goals established in Issues 9 and 10, should the Commission establish additional goals for efficiency improvements in generation, transmission, and distribution?

**JEA/OUC:** \*\*No. Efficiency improvements in generation, transmission, and distribution are supply-side issues which are more appropriately addressed in the utilities’ resource planning processes.\*\*

Efficiency improvements in generation, transmission, and distribution are supply-side issues which are more appropriately addressed in the utilities’ resource planning processes.

[T.827 (Vento); T.793 (Halley)] This is consistent with Rule 25-17.001(5), F.A.C., which states, “general goals and methods for increasing the overall efficiency of the bulk electric power system of Florida are broadly stated since these methods are an ongoing part of the practice of every well-managed electric utility’s programs and should be continued.”

**ISSUE 13:** In addition to the MW and GWh goals established in Issues 9 and 10, should the Commission establish separate goals for residential and commercial/industrial customer participation in utility energy audit programs for the period 2010-2019?

**JEA/OUC:** \*\*No. Energy audits are performed as a result of customer interest in such audits, and the utility cannot dictate that customers have interest in receiving energy audits. Utilities should be allowed the flexibility to integrate energy audits into conservation programs as appropriate.\*\*

Rule 25-17.003, F.A.C., sets forth the minimum requirements for performing energy audits for the FEECA utilities. JEA and OUC both currently offer and plan to continue to offer energy audits to their residential and commercial/industrial customers in compliance with these requirements. [EX.61; EX.58] However, utility energy audits are performed as a result of customer interest which the utility cannot dictate. [T.827 (Vento); T.793 (Halley)] Rather than set goals for residential and commercial/industrial participation in energy audits, the Commission should provide utilities the flexibility to integrate energy audits into conservation programs as appropriate. [Id.]

**ISSUE 14: What action, if any, should the Commission take in this proceeding to encourage the efficient use of cogeneration?**

**JEA/OUC:** No position.

**ISSUE 15: Since the Commission has no rate-setting authority over OUC and JEA, can the Commission establish goals that puts upward pressure on their rates?**

**JEA/OUC:** \*\*No. For municipal utilities over which the Commission has no ratemaking authority, the Commission should reject DSM measures that put upward pressure on rates. Imposition of FEECA goals that place upward pressure on rates would undercut the independent ratemaking and local decision-making processes that are the hallmark of municipal utilities.\*\*

For municipal utilities over which the Commission has no rate-setting authority, the Commission should reject DSM measures that put upward pressure on rates. Independent rate-setting and local governance are fundamental aspects of public power. [T.1999 (Vento)] They provide the necessary latitude to make local decisions regarding the community's investment in energy efficiency that best suit local needs and values. [Id.] Local decisions are based on input

from citizens who can speak out on electric power issues at governing board meetings. [Id.] Imposition of FEECA goals that would place upward pressure on rates would undercut the independent ratemaking and local decision-making processes that are the hallmark of municipal utilities. [Id.] Accordingly, as the Commission has recognized in prior FEAC goal-setting proceedings, it is appropriate to set goals based on the RIM test to ensure no upward pressure on rates, but to defer to the municipal utilities' governing bodies to determine the level of investment in any non-RIM based measures. *See, In re: Adoption of Numeric Conservation Goals and Consideration of National Energy Policy Act Standards (Section 111)*, Order No. PSC-95-0461-FOF-EG, p.3 (April 10, 1995).

**ISSUE 16:    Should this docket be closed?**

**JEA/OUC:**    **\*\*Yes.\*\***

### **CONCLUSION**

For the reasons discussed above, the Commission should use both the RIM and Participant tests to set DSM goals because, unlike the TRC test, they appropriately account for the costs and benefits to the participating ratepayers as well as the general body of ratepayers as a whole, including utility incentives and participant contributions. Use of the RIM test to prevent increased rates is particularly appropriate for municipal utilities over which the Commission does not have ratemaking authority. Itron's analysis indicated that there is no achievable potential for residential and commercial/industrial energy efficiency or demand-side renewable energy for JEA or OUC based on the RIM and Participant tests. Accordingly, the DSM goals for JEA and OUC should remain at zero through the current evaluation period ending in 2019. As the Commission appropriately concluded in its orders setting JEA's and OUC's

goals at zero for the period of 2005–2014, it is reasonable to allow JEA and OUC to determine the extent to which they should offer non-cost-effective DSM programs, as they are “in the best position to determine [their] customers’ needs.” *In re: Petition for approval of numeric conservation goals by JEA*, Order No. PSC-04-0768-PAA-EG, at p.3 (Aug. 9, 2004); *In re: Petition for approval of numeric conservation goals by Orlando Utilities Commission*, Order No. PSC-04-0767-PAA-EG, at p.4 (Aug. 9, 2004). The same holds true today.

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