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August 28, 2009

VIA HAND DELIVERY

Ms. Ann Cole, Director
Division of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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COMMISSION
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RE: Docket No. 080407-EG
In re: Florida Power & Light Company's Petition for Approval of Numeric Conservation Goals

Dear Ms. Cole:

Enclosed for filing on behalf of Florida Power & Light Company ("FPL"), please find the original and fifteen (15) copies of FPL's Post-Hearing Brief and Statement of Issues and Positions. Also enclosed is a CD in which the document referenced above appears in Word 2003.

Please contact me should you or your Staff have any questions regarding this filing.

Sincerely,

Nanci Rednick
for Jessica Cano

- COM _____
- BOB _____
- BOB (2) CD _____
- OPC _____
- POP _____
- SAC _____
- SGA _____
- ADM _____
- CLK _____

JC:nn
Enclosures

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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

Filed: August 28, 2009

**FLORIDA POWER & LIGHT COMPANY'S
POST-HEARING BRIEF AND STATEMENT OF ISSUES AND POSITIONS**

Introduction and Overview

The Commission has a long, rich, consistent and successful history implementing the Florida Energy Efficiency and Conservation Act ("FEECA"), Sections 366.80-366.85, 403.519, Florida Statutes (hereinafter, Fla. Stat.). Tr. 1215-29 (Dean). The Commission's aggressive implementation of FEECA has led Florida and FPL to be national leaders in cumulative demand side management ("DSM") implementation, in both the reduction of demand and energy consumption. Tr. 233 (Haney); Exhibits 17-19. FPL alone has used DSM to avoid the

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equivalent of 12 power plants. Tr. 237 (Haney). Florida's and FPL's success in aggressively pursuing cost-effective DSM is all the more impressive because it has been accomplished without creating DSM-related rate increases, customer cross-subsidization and DSM "winners and losers" – meaning that for those who participate in the programs, non-participants subsidize their costs. Tr. 1227-33 (Dean). The primary tools that have achieved such impressive results are a cost recovery clause to recover program costs and the use of measures that pass both the Participant and Rate Impact Measure ("RIM") tests in approving DSM goals. The use of the RIM test has repeatedly been challenged before the Commission and has been affirmed by the Florida Supreme Court. Tr. 1219-27 (Dean); *Legal Environmental Assistance Foundation v. Clark*, 668 So.2d 982 (Fla. 1996).

FPL is asking the Commission to build on this rich tradition by implementing the new legislative direction to consider expected costs during this goals-setting period of greenhouse gas ("GHG") emissions when establishing DSM goals without abandoning sensitivity to customer rate impacts and projected needs for additional resources. FPL has accomplished this by moving from the original RIM test to the new enhanced E-RIM test. Recognizing avoidance of GHG emissions costs as a benefit of DSM has an immense impact in terms of increasing the number of cost-effective DSM measures. The number of measures cost-effective under the E-RIM test is essentially the same as the number of measures under the original TRC test. Tr. 1704-05 (Sim). So, adding GHG emissions costs, which was clearly contemplated by the legislature, increases the level of cost-effective DSM without imposing any of the adverse rate impacts and related cross-subsidization problems encountered with the TRC test.

The Commission is being asked by the National Resources Defense Counsel ("NRDC"), the Southern Alliance for Clean Energy ("SACE") and GDS Associates ("GDS") to abandon its

almost thirty-year history of reasoned implementation of FEECA and embrace new practices and regulatory tools that would result in significant rate impacts and the acquisition of unneeded DSM. These new practices do not serve the interests of FPL's customers, nor are they consistent with FEECA and the DSM Goals Rule. These new practices would unnecessarily raise customer rates (both ECCR factors and base rates) enormously over the next ten years (**almost \$4 billion in base rates alone for the FEECA utilities if the position of GDS is approved**), substantially increase customer cross-subsidization, and assure that there would be DSM "winners and losers." Tr. 2034-2038, 2044, 2048 (Dean). They would also result in customers being forced to acquire far more DSM than is needed to meet their forecasted demand. Tr. 1679-80 (Sim).

The vehicles employed by NRDC, SACE and GDS are seriously flawed. They offer, primarily through witnesses who are not lawyers, let alone lawyers licensed to practice in Florida, a "legal analysis" that is tortured and grievously incomplete. On the technical side, they offer proposals that are totally devoid of analysis and based solely on opinions of self-proclaimed experts whose testimony is rife with errors. Simply put, the proposals offered by NRDC, SACE and GDS are "legally bankrupt and analytically baseless." Tr. 1639 (Silagy).

NRDC and SACE are surprisingly candid regarding their motivation – they want the Commission to order acquisition of more DSM because they believe it will reduce air emissions. Tr. 1432 (Wilson), 1412 (Cavanagh). Ironically, they offer no quantification of any increased air emission reduction that would supposedly accrue from their proposals, while steadfastly refusing to quantify the staggering rate impacts that would be associated with their proposals. This reveals an incredible insensitivity to the customers of FPL, particularly given that FPL's and the other FEECA utilities' use of the new E-RIM test has already captured in their analyses the full cost of GHG emissions expected during this DSM goals period. Tr. 1710-13, 1770-75 (Sim).

The house of cards built by NRDC, SACE and GDS lays on the sandy foundation of its egregiously flawed legal analysis. There are two basic flaws in their legal analysis. First, they seriously misconstrue the effect of the modest amendments to FEECA as a result of the passage of House Bill (“HB”) 7135 in 2008. Second, they completely disregard the requirements of the Commission’s DSM Goals rule. Once these intrinsic defects are exposed, the remainder of their cases cannot withstand any critical scrutiny.

THE PROPER EFFECT OF HB 7135 ON A DSM GOALS PROCEEDING

During the 2008 legislative session, the Florida Legislature passed Ch 2008-227, Laws of Florida, which has commonly been referred to as HB 7135 during this proceeding. All of the parties acknowledge that it amended FEECA and those amendments must be considered in this proceeding. However, at that point the parties split into two very distinctive camps.

NRDC and SACE, and to a lesser extent GDS and the Florida Solar Coalition (“FSC”), argue that the amendments to FEECA in HB 7135 fundamentally changed how the Commission is to establish DSM goals. Incredibly, they argue that HB 7135 not only precludes the Commission from using its approved RIM cost-effectiveness test in establishing DSM goals, but also prohibits the Commission from considering the rate impact of its DSM goals decisions. Tr. 1449 (Wilson). They argue that the new amendments to FEECA, specifically Section 366.82(3)(b), Fla. Stat., require the Commission to use only the Total Resource Cost (“TRC”) test to establish DSM goals.

In making this argument, they cobble together selective portions of HB 7135, several of which have no impact on the Public Service Commission (specifically, amendments to Chapters 187 and 377, Fla. Stat.), to argue that the Commission must now focus on aggressive reduction of energy consumption through DSM. This is inconsistent with FEECA’s unamended language

that both “[r]eduction in, and control of, the growth rates of electric consumption and of weather-sensitive peak demand are of primary importance.” Section 366.81, Fla. Stat. Therefore, they are wrong to argue that reduced energy consumption, but not peak demand reduction, should be the basis of the Commission’s decision.

When these amendments are placed in context, several factors readily emerge. First, most of HB 7135 focused on matters other than FEECA and the Commission’s implementation of FEECA. Second, there has been no wholesale legislative repudiation of either the Commission’s implementation or the Supreme Court’s interpretation of FEECA. Third, most of the existing provisions of FEECA have been left intact, and most of the statement of legislative intent in Section 366.81, Fla. Stat., has been only slightly modified. Fourth, most of the amendments clarify rather than change the fundamental focus of FEECA. Finally, the single most important revision to FEECA in the context of DSM goals setting is that the Commission is to consider the cost of GHG emission controls.

FPL urges the Commission to look carefully at what HB 7135 did and did not do to FEECA. There were a number of small amendments and several new subsections added.¹ Most of the amendments to FEECA were made in Section 366.82, Fla. Stat., and most of those amendments were the addition of new sections,² not the repeal of existing sections.² Three new subsections were added to Section 366.82 that affect DSM goals setting: subsection 366.82(3) addresses four factors the Commission is to evaluate or consider when setting goals; subsection 366.82(4) authorizes the PSC to retain a consultant when setting DSM goals; and Subsection 366.82(5) sets forth the role of the newly created Florida Energy and Climate Commission in the

¹ For instance, Section 366.81 was amended slightly to emphasize the encouragement of cost-effective demand-side renewables and to de-emphasize cogeneration.

² For instance, in Section 366.82(1) the definition of demand-side renewable was added; in Section 366.82(2) the term demand-side renewable was substituted for cogeneration and references to the Governor’s Energy office were removed.

goals setting process. The remaining subsections of 366.82 are either just renumbered or address matters to be considered by the Commission in other proceedings. The most significant amendment to FEECA for purposes of this goals proceeding is the effect of the additional language which is now Section 366.82(3)(b) and (d), Fla. Stat. However, before turning to a discussion of that new language, it is important to assess the portions of FEECA and the remainder of Chapter 366 that remain largely unchanged by HB 7135.

Section 366.81, Fla. Stat., provides a detailed statement of FEECA's legislative intent. This is the section that the Commission has repeatedly turned to in interpreting FEECA for almost thirty years. Most of it remains unchanged from its original adoption in 1980. The amendments to it in HB 7135 are quite limited. The touchstone of the Commission's historic interpretation of FEECA appears in the first sentence, where the Legislature declares it is critical to utilize "cost-effective" demand-side renewable and conservation systems. While demand-side renewable systems were added to this section by HB 7135, it is important to note that this section maintains the requirement that demand-side renewable systems, like conservation systems, be cost-effective.

Another aspect of Section 366.81, Fla. Stat., also remains unchanged by HB 7135. It is still to be "liberally construed to meet the complex problems of reducing and controlling the growth rates of electric consumption and reducing the growth rates of weather-sensitive peak demand...." The import of this original statutory language should not be lost. This almost thirty year old language is not a mandate for change or a radically different interpretation of FEECA.

Similarly, the basic scope of Section 366.82, Fla. Stat., remains essentially unchanged with the amendments in HB 7135. The Commission retains authority to establish DSM goals. The goals are still to address the factors set forth in Section 366.81, the most important of which

are the reduction in the growth rates of electricity consumption and weather sensitive peak demand. The Commission retains the authority to approve DSM plans and programs after goals are set. Finally, the Commission is to authorize recovery of reasonable and prudent program costs through an adjustment clause.

The real issue in this proceeding raised by the amendments to FEECA in HB 7135 focuses on the correct interpretation of Section 366.82(3), Fla. Stat. Because of its import, the entire subsection is set forth below:

(3) In developing the goals, the commission shall *evaluate* the full technical potential of all available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy systems. In establishing the goals, the commission shall *take into consideration*:

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

(Emphasis added.)

NRDC, SACE, GDS and FSC take the position that this new section, specifically subsection 366.82(3)(b), requires the Commission to use the Total Resource Cost (TRC) test exclusively to establish DSM goals and prohibits the use of the RIM test. Their argument is three fold. First, they argue the plain language of Section 366.082(3)(b) calls for use of the TRC test. Second, they argue that the underlying legislative intent of the new language is evidenced by a parenthetical observation in two legislative staff analyses that both refer to the language in Section 366.82(3)(b), “(similar to a Total Resource Cost test or TRC test but including the cost of incentives).” Third, they argue that the staff analyses on which they rely for their second arguments evidence a “misimpression” shared apparently by the PSC, legislative staff and the

Legislature that the TRC test does not include utility incentives, so the language in Section 366.82(3)(b) that refers to “utility incentives” is redundant and should be read out of the statute.

Each of their arguments is easily rebutted. Tr. 2067-68 (Dean). The plain language argument is clearly wrong on its face. The statute in question does not mention the TRC test or the RIM test. It neither mandates nor prohibits either test. Of course, the parenthetical references similarly do not state the TRC test is the test being referred to. They state that the test is “similar to” the TRC test, but it also includes utility incentives. However, even more damaging to their reliance on the legislative staff reports is that while they try to rely on the parenthetical references in those staff reports, they also argue that the staff reports contain “misimpressions” about what is in and is not in the TRC test. They urge the PSC to rely on staff reports that they, in their next breath, argue are wrong. “The NRDC/SACE interpretations of what this statute says and does not say are simply not credible.” Tr. 2068 (Dean).

FPL’s interpretation of Section 366.82(3), Fla. Stat., is much more reasonable. FPL urges that this new statutory subsection be read *in pari materia* with the remainder of FEECA and Chapter 366 as a whole.³ The Commission’s primary responsibility under Chapter 366 is to assure that public utility rates are fair just and reasonable. Thus, FEECA, which is in large part within Chapter 366, should be read as being consistent with the Commission’s ongoing responsibility to be concerned about rate impacts and customer cross-subsidization issues. These amendments to FEECA are not a major paradigm shift;⁴ they are largely clarifying. The only

³ Statutes relating to the powers of the PSC must be read together. *Stewart v. Mack*, 66 So.2d 811 (Fla. 1953).

⁴ If this is the legal paradigm shift which NRDC/SACE suggest, the legislature certainly enacted it quite subtly. There are no legislative findings that the Commission or the Supreme Court has misinterpreted FEECA. There are no legislative findings that the Commission has historically used the wrong DSM cost-effectiveness tests. There are no legislative findings that the TRC test is a better test than the RIM test. There is no clear legislative directive to use the TRC test. There is no clear or implicit prohibition of the RIM test. Indeed, neither the TRC test nor the RIM test is even mentioned. Of course, the Legislature is capable of making specific findings and using clear, unequivocal language. For this clarifying language to be a major paradigm shift as suggested by NRDC, SACE and GDS, much has to be read between the lines.

substantive change is the explicit new statutory language for the Commission to consider the cost of greenhouse gas emissions when setting DSM goals. Of course, that is precisely what FPL did in this DSM goals analysis by using the new enhanced-RIM or E-RIM test.

As to the proper interpretation of Section 366.82(3)(b), the E-RIM test used in conjunction with the Participant test does consider “the costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions.” Tr. 95 (Sim). The E-RIM test considers the costs and benefits to all ratepayers. *Id.* Indeed, it is more inclusive of costs than the E-TRC test, which does not explicitly include either utility incentives or foregone revenue requirements. Tr. 85-87, 96 (Sim), 1230-33 (Dean).⁵ The language of Section 366.82(b) more closely aligns with the E-RIM and Participants test than it does the TRC test advocated by NRDC/SACE, GDS and FSC. However, what the new statute clearly fails to do is (a) prohibit any specific test from consideration, (b) specifically identify any test as the exclusive measure of cost-effectiveness, (c) repeal the Commission’s DSM cost-effectiveness test rule or (d) explicitly call for the exclusive use of the TRC test. NRDC/SACE’s restrictive interpretation of Section 366.82(3)(b) simply is unpersuasive.

The even more telling aspect of the NRDC and SACE case is that their goals proposal clearly fails to meet the requirements of Section 366.82(3), Fla. Stat. Dr. Steinhurst’s 1% of sales goals proposal, (a) fails to evaluate the full technical potential for any FEECA utilities, (b) fails to consider the costs and benefits to customers participating in the programs, (c) fails to consider “the costs and benefits to the general body of ratepayers as a whole,” (d) fails to consider the need for incentives, and (e) fails to consider the costs imposed by regulation of greenhouse gases.” Tr. 2047 (Dean). Not only do NRDC and SACE offer an erroneous legal

⁵ Unlike the E-TRC test, as explained in more detail in response to Issue 8 below, the E-RIM test explicitly considers utility incentives as a cost, and a change in the level of incentives assumed actually makes a difference in the resulting benefit/cost ratio.

interpretation of Section 366.82(3), Fla. Stat., but also they advance a proposal that fails to meet each and every criterion of the new statute upon which they supposedly rely.

THE COMMISSION'S DSM GOALS
RULE CANNOT BE DISREGARDED.

The second fundamental flaw in the legal position of NRDC, SACE, GDS and FSC is that they have completely ignored and disregarded the Commission's DSM Goals Rule, Rule 25-17.0021, F.A.C. This rule, which was adopted in 1993, is the primary tool the Commission has used to implement FEECA. It was not amended at all by HB 7135, and the Commission has not amended the DSM Goals rule in response to HB 7135 – nor does it need to. The rule is very prescriptive. It sets forth some basic principles that the Commission has recognized are fundamental to the proper development of goals, and then it delineates a number of very specific requirements that must be met by utilities and the Commission in setting DSM goals.

Amazingly, none of the NRDC, SACE or GDS witnesses even mentioned the DSM Goals rule in offering their myriad criticisms of the extensive work performed by the Collaborative, Itron and the FEECA utilities. Some of the NRDC and SACE witnesses acknowledged that they had not even read or reviewed the DSM Goals rule at the time they prepared their testimony. Tr. 1148-49 (Steinhurst), 1380 (Mosenthal). Because they failed to read or disregard this basic legal requirement, it is not surprising that their proposals and criticisms run afoul of this rule.

While the DSM Goals rule contains many specific requirements, each of which FPL satisfied in making its DSM Goals proposal, there are three essential requirements of the DSM Goals rule that have been completely ignored or overlooked by NRDC, SACE and GDS. FPL addresses each of these core deficiencies in the NRDC, SACE and GDS "legal analyses," in turn.

Subsection (3) of the DSM Goals rule requires that goals be based upon a utility's most recent planning process. It states, "[i]n a proceeding to establish or modify goals each utility shall propose numeric goals for the ten-year period and provide ten-year projections, based upon the utility's most recent planning process...." Rule 25-17.0021(3), F.A.C. FPL's proposed goals were unquestionably based upon FPL's most recent planning process, as explained in detail in the direct testimony of Dr. Sim. Tr. 65-150 (Sim). Indeed, because of reduced system load as well as significant increases in energy efficiency savings due to the impacts of state and federal building and appliance and lighting efficiency standards, and other factors, the amount of DSM needed on FPL's system did not equal its full achievable potential. Rather, FPL's proposed level of goals equals FPL's unmet resource needs. Tr. 144-47 (Sim).

In stark contrast, neither the NRDC/SACE goals proposed by Witness Mosenthal nor GDS' goals proposed by Witness Spellman are based upon FPL's planning process. Witnesses Mosenthal and Spellman completely disregard FPL's unmet resource needs in proposing alternative DSM goals. They never confront the level of DSM needed for FPL's customers in order to meet their forecasted demand. They never confront what the resulting reserve margins would be on FPL's system if all the unneeded DSM were acquired. They never suggest that specific approved projects be supplanted by DSM, which is understandable, because such a suggestion would be an illegal collateral attack on prior Commission determinations of need. Dr. Sim addressed this serious deficiency in his rebuttal, noting that their proposals would result in reserve margins of roughly 44% on FPL's system. Tr. 1679. The NRDC, SACE and GDS proposals would result in serious over acquisitions of unnecessary resources at an immense cost with little or no value to customers. That is precisely the result the Commission intended to avoid with the provision in the DSM Goals rule that requires that proposed goals be based upon

the utility's most recent planning process. Because NRDC, SACE and GDS disregarded this clear directive, their proposals are legally infirm.

A second fundamental requirement of the DSM Goals rule is that the goals be "reasonably achievable." This term is used in several places in the DSM Goals rule. The first time it is used is in subsection (1), which provides, in pertinent part, "[t]he goals shall be based on an estimate of the total cost effective kilowatt and kilowatt-hour savings reasonably achievable through demand-side management in each utility's service area over a ten-year term." Rule 22-17.0021(1), F.A.C. The use of this term was intentional on the part of the Commission, and it was designed to give the Commission discretion. Order No. PSC-41-1313-FOF-EG, at 48, 49; Exhibit 76.

Instead of this "reasonably achievable" standard, GDS and Mr. Spellman articulate a "maximum achievable" standard. Tr. 1535-42. Their maximum achievable standard in kWh started out as being twelve and a half ($12\frac{1}{2}$) times as large as the goals proposed by FPL and six and a half ($6\frac{1}{2}$) times as large as FPL's full E-RIM achievable potential. Ex.172. As Mr. Spellman repeatedly corrected some, but not all, of his mistakes, the difference between his "maximum achievable" proposal and FPL's reasonably achievable proposal narrowed, but in its last, acknowledged erroneous version, his maximum achievable proposal was still more than eight (8) times greater than the level of FPL's proposed DSM goals. *Id.*

Similarly, NRDC and SACE's proposed level of DSM goals in kWh savings for FPL is some 10.3 times greater than FPL's proposed goals. Ex. 79. More significantly, NRDC and SACE's DSM goals proposal for FPL is not based upon the DSM Goals rule "reasonably achievable" standard but on a standard set forth in a National Action Plan for Energy Efficiency (NAPEE), which has not been adopted by the Florida Legislature or any federal governmental

body. Ex. 3, #13 at pages 62-66. The extreme FPL goals proposed by GDS, NRDC and SACE are not “reasonably achievable;” they are “reckless and irresponsible.” Tr. 1640 (Silagy). Once again, NRDC, SACE and GDS have ignored a directive in the DSM Goals Rule, and their proposals must be rejected.

A third critical aspect of the DSM Goals rule is that it requires a number of specific factors to be considered in the evaluation of goals. Subsection (3) of Rule 25-17.0021 requires:

Each utility’s projection shall reflect consideration of overlapping measures, rebound effects, free riders, interactions with building codes and appliance efficiency standards, and the utility’s latest monitoring and evaluation of conservation programs and measures.

The rule goes on to require that the assessment address specific market segments and major end uses within those market segments. FPL’s DSM evaluation and proposed DSM goals fully complied with all of these requirements.

The NRDC and SACE proposal made no effort to comply with any of these specific requirements of the DSM Goals rule. No doubt, that was due in part to Witness Steinhurst not having even read the DSM Goals rule before making his arbitrary proposal. Tr. 1148-9. Mr. Spellman’s goals proposal addressed some but not all of the numerous factors required to be addressed under the DSM Goals Rule, but he specifically reversed an adjustment made in FPL’s analysis to address free riders in the residential and small commercial classes, advancing a proposal that completely failed to address free riders in such classes. Tr. 1539 (Spellman). Consequently, his proposal runs afoul of the DSM Goals Rule.

There are two fatal flaws (and myriad mistakes) in the legal analyses underlying the NRDC, SACE, and GDS proposals. They fail to meet the requirements of FEECA, specifically Section 366.82(3) which they supposedly champion. They ignore and therefore fail to meet the requirements of the DSM Goals Rule. There is only one goals proposal before the Commission

which meets the applicable legal requirements: FPL's DSM goals proposal. The Commission should approve FPL's proposed DSM goals for the period 2010 through 2019. The record clearly demonstrates that FPL's proposed goals are the only proposed goals which fully comply with FEECA as amended and with the Commission's DSM Goals rule, and which recognize the Commission's obligation to set just and reasonable rates.

Statement of Basic Position

FPL: *FPL's proposed DSM goals meet FEECA requirements. They are the only FPL goals that satisfy the DSM Goals rule. They are analytically sound, minimize customer rate impacts and cross-subsidization, protect low-income customers, avoid creating DSM winners and losers, and acquire all the DSM needed to meet customer demand.*

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.?

FPL: *Yes. The Collaborative developed a comprehensive list of DSM and demand-side renewable energy measures to ensure all measures were adequately addressed. Itron then calculated the technical potential for energy savings and demand reduction in FPL's service territory. This process ensured a thorough assessment of the full technical potential available.*

The assessment of technical potential began with a collaborative effort to identify the conservation measures, demand reduction measures, and demand-side renewable energy systems which should be included in the calculation of each FEECA utility's technical potential. FPL and the other FEECA utilities formed a Collaborative with NRDC and SACE to address the technical potential for each FEECA utility. Tr. 240 (Haney). The Collaborative, including NRDC and SACE, retained a well known and highly respected consultant, Itron, Inc. ("Itron"), to perform the technical potential analysis. *Id.* The Collaborative approved the scope of the technical potential study. *Id.*; Tr. 1662-63 (Haney).

That study employed an iterative process that began with a list of measures provided in the original request for proposals issued to engage a consultant for this docket. Tr. 877 (Rufo). Itron, the FEECA utilities, NRDC and SACE then proposed additional measures. Tr. 877-78 (Rufo). Demand-side renewable energy systems were also included in this process. Tr. 878-879 (Rufo). The only limitation, which was agreed to by all members of the Collaborative, was that the included measures must be currently available in Florida and have independently-verified cost and energy savings data available. Tr. 878 (Rufo); 1649 (Haney). This process yielded a comprehensive list of 267 unique measures for inclusion in the technical potential studies, 58 of which Itron had not analyzed in any other study. Tr. 244 (Haney). When considering building types, the 267 measures expand to over 2,300 measures. Tr. 1649 (Haney); Ex. 28. This list also included three unique photovoltaic (“PV”) measures. Tr. 880 (Rufo). The final list of measures to be analyzed was approved by the Collaborative. Tr. 1660-63 (Haney).

After the Collaborative agreed to the final list of measures, Itron developed final measure cost and savings data and developed baseline estimates of end-use energy consumption and peak demand savings for all in-scope market segments. Tr. 876, 880 (Rufo). This was followed by Itron’s calculation of the technical potential for energy savings and demand reduction in FPL’s service territory. Ex. 2, #42. Itron’s technical potential report identifies the full technical potential of the measures analyzed for FPL. Ex. 2, #42; Tr. 882 (Rufo). This ensured a robust and thorough assessment of the full technical potential available. Tr. 879 (Rufo); 241 (Haney).

NRDC and SACE attempted to demonstrate that despite this iterative and collaborative effort – which their representative participated in – certain additional measures should have been included in the technical potential analysis. However, the record clearly shows that the process worked precisely as intended and resulted in a complete, rigorous assessment of the technical

potential in each FEECA utility's service area. Tr. 1014 (Rufo). There is a specific, sound rationale for excluding each of the measures identified by NRDC/SACE. Tr. 1024 (Rufo); Ex. 110. Each measure was eliminated due to a lack of reliable and readily available cost, savings, or baseline data sufficient to support a robust analysis and/or evidence that the incremental energy savings associated with particular measures overlapped and was being captured by other measures in the analysis. Tr. 1026-28 (Rufo); Ex. 110 (pp. 3-10).

NRDC and SACE also contend that certain sectors for which no information was available could have been included by using the industrial sector as a proxy. First, Witness Wilson agrees that "where there was insufficient data to study an end-use sector, then it would not have been a useful exercise to apply the detailed study methods to those sectors." Tr. 1454. But he then asserts that the statewide industrial technical potential would have been an appropriate proxy for those sectors. Tr. 1455. NRDC/SACE presented no evidence to demonstrate that the excluded sectors are sufficiently similar to the Florida industrial sector to justify using estimates of industrial technical potential as a proxy. Tr. 1023 (Haney). Rather, this suggestion conforms to the generic approach NRDC/SACE took throughout this docket and their failure to perform any substantive analyses. No evidence showed that either the excluded measures or sectors resulted in any significant underestimation of technical potential.

GDS similarly took issue with the measures included in the technical potential study, claiming many were excluded. Tr. 1497 (Spellman/Guidry). GDS' assertions are inaccurate. Only a small number of measures were determined to be inappropriate for further evaluation due to their lack of availability in Florida or lack of specific cost, savings, or baseline data. Tr. 1650 (Haney). Moreover, certain measures claimed to be excluded by GDS were in fact included in the study. *Id.* This fact was undisputed by GDS, and is an indefensible oversight on GDS' part.

Regardless, any measure's inclusion or exclusion was based on sound, reasoned criteria established and agreed to by the Collaborative to ensure the integrity of the study. Tr. 1649 (Haney). GDS also attempted to cast doubt on the baseline estimates used by Itron. Tr. 1498-99 (Spellman/Guidry). However, as explained by Witness Rufo, GDS' attempted comparison of residential, commercial, and industrial sales as reported in the latest Ten Year Site Plans with the bottom-up baseline estimates developed by Itron is invalid. Tr. 1015-16. Itron's bottom-up baseline estimates were very well calibrated to actual historical sales and constitute an appropriate input into FPL's technical potential study. Tr. 1014 (Rufo).

The inclusive, iterative, and thorough development of technical potential study utilized by FPL and the other utilities with the assistance of Itron, and with NRDC/SACE input, was conducted to ensure a robust evaluation of each utility's full technical potential. NRDC/SACE and GDS failed to present any convincing evidence that the total technical potential for FPL was understated or that the exclusion of certain measures or sectors was improper.

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?

FPL: *Yes. FPL performed cost-effectiveness analyses to determine which conservation, efficiency, and demand-side renewable measures should be included in the achievable potential analysis and to determine appropriate incentive levels. Itron then calculated FPL's achievable potential with its industry-leading DSM ASSYST model.*

In order for Itron to develop FPL's achievable potential, FPL performed cost-effectiveness screenings to determine which measures would be potentially cost-effective on FPL's system. FPL screened using a combination of the E-RIM test and Participant Test, and a combination of the E-TRC test and Participant Test. Tr. 105-107 (Sim). These "enhanced" versions of the original RIM and TRC tests account for the impact of environmental compliance costs associated with emissions of sulfur dioxide, nitrogen oxides, and carbon dioxide. Tr. 90-91

(Sim). Incentive levels were also determined to ensure that each DSM measure results in positive net benefits to customers. Tr. 107 (Sim).

One input into the cost-effectiveness analysis is the “avoided unit” against which the DSM measures are evaluated. FPL used a 2019 gas-fired combined cycle avoided unit; as such a unit is the first unapproved capacity addition in FPL’s current generation expansion plan. Tr. 108-09 (Sim). NRDC/SACE took issue with the fact that FPL’s Turkey Point Units 6 and 7 project was not used as the avoided unit in its analysis. Tr. 1450-51 (Wilson); Tr. 1727 (Sim). First, it is important to point out that Turkey Point 6 & 7 have been found to be the most cost-effective resource available to meet FPL’s 2018 and 2020 resource needs and have been granted a determination of need by the Commission. Docket No. 080650-EI, Order No. 08-0237-FOF-EI (April 11, 2008). FPL and the Commission assumed a large amount of DSM in examining the need for the project, and then reached the conclusion that despite that large assumed amount of DSM, the project was still needed for the reliability, fuel diversity, and economic benefits that would inure to customers. *Id.*; Tr. 1728 (Sim). Second, even if FPL had used that nuclear project as the avoidable unit in this proceeding and examined DSM against it, less DSM would have been found to be cost effective. Tr. 175, 1728 (Sim). Less DSM is surely not the goal of NRDC/SACE. Any suggestion that the nuclear plant should be considered as the avoidable unit for purposes of calculating DSM benefits in this docket would be contrary to NRDC/SACE’s position. Third, any attempt to suggest in the DSM Goals docket that a prior determination of need finding should be reconsidered is not only an untimely request for reconsideration,⁶ but also an impermissible collateral attack on the Commission’s prior determination of need order.⁷

⁶ Reconsideration of a final order must be requested within 15 days of the order’s issuance. Rule 25-22-060(3). Failure to timely file is a waiver of the right. Rule 25-22.060(1)(d).

⁷ Allegations that there have been “substantial and materials changes” in the facts underlying a determination of need, even if accepted as true, are not a legally sufficient basis to reopen an administrative proceeding which has

Another important step in the economic screening of measures was the application of a two-year payback criterion to address and reduce potential “free-riders.” Rule 25-17.0021(3), F.A.C. expressly requires FPL to address free riders in this DSM goal setting proceeding. Tr. 2073 (Dean). Free riders are people who have a sufficient economic incentive to utilize an efficiency measure without any additional utility incentive. Tr. 249 (Haney). By the free rider taking the utility incentive, the utility’s general body of customers is paying that participant for something he/she would or should have done anyway – and not realizing any incremental energy and/or demand savings benefit. Tr. 249-50 (Haney). FPL’s customers should not be asked to subsidize other customers’ bill savings with an incentive in such circumstances. Tr. 250 (Haney).

FPL has utilized a two-year payback criterion for at least the last fifteen years because it is the best, most analytically sound means of avoiding free riders, as required by the Rule. Tr. 249 (Haney). The assumption underlying the two-year payback criterion is that a reasonable customer will adopt a DSM measure if the DSM measure provides the customer with a payback of incremental costs in terms of lower bills or bill savings within two years or less of adoption. Tr. 250 (Haney). This criterion has been tested analytically through research. *Id.*; 289 (Haney), 1249-60 (Dean). No Collaborative member, including the NRDC/SACE representative, objected to the use of this criterion at the time it was determined to be utilized.⁸ Tr. 1663-64 (Haney); 1750 (Sim); 2074 (Dean); 1862 (Bryant); 1886-87 (Floyd).

been closed. *In re: Florida Power Corporation Need Determination Request for Tarpon-Kathleen 500 kV Electrical Transmission Line*, 87 FPSC 12:357, 358 (12/18/87), citing *Peoples Gas System, Inc. v. Mason*, 187 So.2d 335 (Fla. 1966); *Austin Tupler Trucking, Inc. v. Hawkins*, 377 So.2d 679 (Fla. 1979).

⁸ NRDC-SACE attempted to demonstrate that the use of the two-year payback criterion was disputed by Mr. Wilson. Ex. 144-45. These exhibits, however, only show that the Collaborative ran some (but not all) of the sensitivity scenarios requested by Mr. Wilson. They do not demonstrate a lack of agreement on the use of the two year payback criterion. *See*, Tr. 297-310.

Additionally, FPL agreed to run three achievable potential scenarios – one with maximum incentives based on use of the two-year payback criterion, one using the lesser of the two-year payback incentive or an incentive equal to 33% of a measure’s incremental cost, and one using the lesser of the two-year payback incentive or an incentive equal to 50% of the measure’s incremental cost. Tr. 251, 289 (Haney). The scenario based on the two-year payback criterion resulted in the greatest estimated achievable potential for FPL, and that scenario formed the basis for FPL’s goals. *Id.*; Tr. 328 (Haney).

The fact that measures with a payback of two years or less are excluded from FPL’s DSM goals does not mean that such measures are absent from FPL’s DSM activities. To the contrary, through its energy audits, through its website, and with advertising, FPL recommends a multitude of measures that have a two-year or less payback period. Tr. 284 (Haney). But ultimately, it would not be a cost-effective or fair use of the general body of customers’ funds to provide financial incentives for the adoption of these measures. *Id.* It is also important to note that customers choose not to adopt efficiency measures for a variety of reasons. It would be overly simplistic to assume that financial incentives would necessarily increase penetration rates. Tr. 287-88 (Haney).

After FPL identified the measures that were cost-effective under either the E-RIM/Participant test path or the E-TRC/Participant test path, and determined the appropriate incentive levels, this information was provided to Itron to calculate FPL’s achievable potential. Tr. 249 (Haney). Itron utilized its industry-leading DSM ASSYST model in this effort. Tr. 892 (Rufo). The DSM ASSYST achievable potential model is a well-proven and updated model used on a wide variety of energy efficiency potential and goals-setting related projects over the past decade. Tr. 891-892 (Rufo); Ex 75.

GDS proposed a four-step adjustment to FPL's proposed goals. Tr. 1540-41 (Spellman); Ex 106. It should be summarily rejected. It has been thoroughly rebutted by Witnesses Rufo, Sim, Dean, Haney and Silagy. Moreover, the adjustments were rife with errors; there is no accurate quantification of a GDS alternative. Tr. 1565-96; Ex. 4, #1, pages 27-71 .

Step one of GDS' adjustment to FPL's proposed goals was to move from FPL's proposed goals to Itron's E-TRC Achievable Potential. Ex. 106. This step was flawed because it replaced goals based upon FPL's planning process to goals totally divorced from FPL's planning process. Tr. 1677-81, 1713 (Sim). In addition, GDS initially overstated this adjustment by 38% due simply to sloppy data entry errors. Tr. 1570 (Spellman).

Step two of GDS' adjustment was an attempt to add back some, but not all, of the measures removed through the use of the minimum two year payback criterion. GDS testified that the two year payback criterion was an appropriate means of addressing free riders for large industrial customers, but took issue with its use for residential and small commercial customers. Tr. 1539 (Spellman). Conceptually, this adjustment is wrong. Tr. 1651-53, 1663-65 (Haney), 2073-75 (Dean). Free riders must be addressed under the DSM Goals rule, and the attempt to back out the only analytical effort to address free riders for residential and small commercial customers is inconsistent with the DSM Goals rule and is a poor and insensitive use of customer funds. Tr. 2073-75 (Dean). It results in customers providing incentives to other customers who already should have a sufficient economic incentive to undertake DSM without a customer provided incentive. Tr. 249-51, 1651-53 (Haney).

On the quantification side, GDS made a number of errors in step two. GDS corrected its 100% overstatement of the savings for the residential measures. Tr. 1575 (Spellman). However, GDS admitted two other calculation errors that remain uncorrected. First, GDS did not correct

for its use of the wrong decay factors, which were overstated by a factor of ten. Tr.1575-76 (Spellman). Second, GDS did not remove the Naturally Occurring savings for these measures. Tr. 1576-79. Exhibit 168 provided the Naturally Occurring values for the measures excluded by the two year payback criterion. Tr. 1061-64 (Rufo). GDS did not bother to correct for either known mistake, even though GDS had the data available to it. Tr. 1576,1580 (Spellman).

GDS' third step in its adjustment was a uniform 10% adjustment to all penetration rates employed by Itron. Mr. Rufo addressed in rebuttal why this adjustment of Itron's penetration rates was in error. Tr. 1042-43 (Rufo). Mr. Spellman could not even state what the range of penetration rates was that Itron used, and he acknowledged that unlike his uniform, across the board gross adjustment, each Itron penetration rate was developed using individual measure input data and the sophisticated DSM ASSYST model. Ex. 4, #1, at pages 51-53. On the quantification side, Mr. Spellman overstated this step by 272 %. Tr. 1570-72 (Spellman).

GDS' final step in its adjustment was intended to add back an estimate of achievable potential for measures that Mr. Spellman believed were inappropriately were taken out of the Itron analysis. Of course, this adjustment disregarded that the selection of measures for analysis was not an FPL decision but a Collaborative decision. Tr. 1660-63 (Haney). Mr. Rufo's rebuttal testimony explained in exhaustive detail why all excluded measures were excluded; moreover, it documented that Mr. Spellman was simply in error regarding his assumptions about a number of measures actually having been excluded. Tr. 1024-30 (Rufo); Ex. 110. During cross, more quantification errors on late provided work papers were documented, with one overstatement of 929%. Tr. 1580 - 94 (Spellman); Ex. 173. This adjustment stands uncorrected and unquantified.

NRDC/SACE also failed to demonstrate any inadequacies of the achievable potential process utilized by the FEECA utilities. In fact, NRDC/SACE chose to completely ignore this

robust analytical process and instead recommended an arbitrary 1% of sales goal for FPL and the other utilities. Tr. 1771 (Sim). The analytical process utilized by the Collaborative is clearly superior to any alternative suggested in this proceeding.

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.?

FPL: *Yes. FPL used the Participant test in its economic screening process. The Participant test includes all relevant DSM-related costs and benefits for a customer participating in a DSM program. Measures which are not cost-effective to the participating customer are therefore not reflected in FPL's proposed DSM goals.*

The subsections of 366.82(3), Fla. Stat., do not require the application of a single, specific cost-effectiveness test to comply with each subsection. Tr. 166-67 (Sim). Nonetheless, FPL's use of the Participant test in each of its cost-effectiveness screening paths adequately covers all costs and benefits to customers participating in the measure. Tr. 85 (Sim). The intent of the Participant test is to determine if it makes economic sense for a potential participant to participate in a specific DSM program. Tr. 83 (Sim). The Participant test accounts for all relevant DSM-related benefits and costs that will be received and/or incurred by participating customer. Tr. 85 (Sim). FPL's goals are based on a combined application of the Participant test and the E-RIM test. Because FPL's goals are based in part on the use of the Participant test, the requirements of Section 366.82(3)(a), Florida Statutes, are reflected in FPL's proposed goals.

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.?

FPL: *Yes. The E-RIM test utilized by FPL includes all relevant DSM-related benefits and costs that will be incurred by the utility and all of its customers – both participants and non-participants. Accordingly, the achievable potential calculated and the resulting goals proposed reflect those measures which are cost-effective to all customers.*

The subsections of 366.82(3), Fla. Stat., do not require the application of a single, specific cost-effectiveness test to comply with each subsection. Tr. 166-67 (Sim). To ensure

that FPL's proposed goals adequately reflect the costs and benefits to its general body of customers as a whole, including utility incentives and participant contributions, FPL utilized a combination of the Participant test and the E-RIM test. Tr. 167 (Sim). This approach is the only approach which fully considers the costs and benefits to its general body of customers as a whole, including utility incentives. As explained by Witness Sim:

The application of the combination of E-RIM and Participant Tests fully covers Section (b), because those are the only tests that cover the most important part of Subsection (b), the costs and benefits to the general body of ratepayers as a whole. The E-TRC Test ...does not specifically include utility incentives and definitely does not include in any shape or form the unrecovered revenue requirements that will impact customers putting upward pressure on rates.

Tr. 167 (Sim). The TRC or E-TRC test, does not reflect all DSM-related costs to the general body of ratepayers as required by Section 366.82(3)(b). The TRC test omits both the incentives paid to participating customers and the economic impact of unrecovered revenue requirements on electric rates – costs which are borne by all of FPL's customers. Tr. 167 (Sim). This omission is also evident on the face of the Commission's cost-effectiveness manual and within the legislative notes NRDC/SACE relies so heavily on. It is the TRC test, therefore, that does not adequately reflect the costs or the benefits to the general body of ratepayers.

FPL's proposed goals also reflect the costs and benefits to the general body of ratepayers in another important manner – the use of the proposed goals will provide the most cost-effective mix of resources on FPL's system. As described further in Issues 9 and 10, the resource plan incorporating FPL's proposed goals will provide the lowest levelized system average electric rate among all considered plans. Tr. 1779-80 (Sim). Goals which produce the lowest levelized system average electric rate clearly benefit FPL's general body of customers. The requirements of Section 366.82(3)(b), Fla. Stat., are therefore reflected in FPL's proposed goals.

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?

FPL: *Yes. FPL enhanced both the original RIM and original TRC tests by creating the E-RIM and E-TRC tests, to specifically account for future environmental compliance costs associated with greenhouse gases and other emissions. The E-RIM test provides the basis for FPL's proposed goals.*

FPL used a reasonable forecast of future environmental compliance costs. This forecast is the same as one being used in FPL's current nuclear cost recovery filing. Tr. 125 (Sim). By incorporating such costs, the value of high kWh reduction DSM programs in regard to reduced emissions is fully captured, and the cost-effectiveness of these DSM programs is appropriately increased. Tr. 92 (Sim). Because such compliance costs are incorporated in the cost-effectiveness tests of supply-side options, use of the E-RIM test is a significant advancement in regard to continuing to analyze DSM programs and supply options on a level playing field. Tr. 91-92 (Sim).

The only criticism on this point was that, according to NRDC/SACE witness Steinhurst, FPL's projected carbon dioxide compliance costs are too low.⁹ Tr. 1723 (Sim). As a cross check, FPL compared its projections to the projects developed by the Congressional Budget Office ("CBO"). FPL's projections and the CBO's projections are very close. Tr. 1724-25 (Sim); Ex. 124. FPL's values are \$1 lower than CBO's values for 2013, identical to CBO's values for the years 2014 through 2016, and \$1 higher for the years 2017 through 2019. FPL's projections for the 2013 – 2019 time period are apparently very close to the CBO's projections. *Id.*

Additionally, FPL's projections of CO₂ compliance costs in the analyses presented in this docket are identical to projections and assumptions used in FPL's recent Need Determination

⁹ This is a particularly ironic criticism by a SACE/NRDC witness as a different witness for SACE in FPL's Nuclear Cost Recovery Clause docket claims that FPL's projected compliance costs are too high. Tr. 1726 (Sim). Apparently, SACE will take whatever position is convenient to make its ideological points.

filings. Tr. 1725 (Sim). Thus, FPL is evaluating DSM and Supply options on a consistent basis in regard to projected CO₂ compliance costs. *Id.*; 1705 (Sim).

By accounting for these environmental impacts, many more DSM measures pass the E-RIM test compared to the number that would have formerly passed the original RIM test. Tr. 1704-05 (Sim). While 166 measures would have passed the original RIM test, 279 measures passed the enhanced E-RIM test. *Id.* This is almost as many as would have passed the original TRC test. *Id.* Further, environmental compliance costs were carried through the entirety of the analysis. It affected the creation of DSM portfolios, the creation of resource plans, and the analysis of the resource plans. Tr. 172 (Sim). Accordingly, the evidence shows that FPL's proposed goals appropriately reflect the costs imposed by state and federal regulations on the emission of greenhouse gases.

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

FPL: *There is no need to establish incentives in this proceeding. Consideration of incentives, based on the goals that are established in this proceeding, would be more appropriately addressed in the plan phase of this docket or otherwise in a subsequent proceeding.*

House Bill 7135 encourages the Commission to consider the need for incentives to promote both customer-owned and utility-owned energy efficiency and demand-side renewable energy systems. 366.82(3)(c), Fla. Stat. Appropriate consideration of incentives, based on the goals that are established in this proceeding, could occur in the plan phase of this docket or otherwise in a subsequent proceeding. Tr. 261 (Haney).

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

FPL: *The Commission must consider the impact on rates caused by DSM goals and should continue to set DSM goals which minimize rate impacts and avoid cross subsidization. FPL's proposed goals will result in lowest levelized system average electric rate, and will help avoid subsidization of participants by non-participants.*

The Commission is charged with determining and setting just and reasonable rates pursuant to its authority granted by Chapter 366, Fla. Stat., and the recent amendments to FEECA did not change that. This responsibility is to be exercised under FEECA, as noted in Section 366.82(7), Fla. Stat., where the Commission is given explicit authority to modify DSM plans “that would have an undue impact on costs passed to customers.” Tr. 2071 (Dean).

The alternative goals proposed by GDS, SACE and NRDC would impose unnecessary and immense rate impacts on FPL’s customers, which is one of many reasons that they should be rejected. Mr. Spellman noted that his proposal would increase customer rates in two significant ways. First, it would increase the rates that recover DSM program costs. Tr. 1528 (Spellman). In Florida, those costs are recovered through the Energy Conservation Cost recovery (“ECCR”) clause. Second, it would increase customer rates by reducing consumption and resulting in unrecovered revenue requirements that would have otherwise have been recovered through those lost sales. Tr. 1528 (Spellman.) Mr. Spellman made no attempt to quantify either or both of these rate impacts he testified would occur.¹⁰ Ex. 4, #1 at pages 84-85.

Despite the short time available to respond to this glaring deficiency in the testimony offered by GDS, NRDC and SACE, the FEECA utilities attempted to put the immediate and intermediate rate impacts of the GDS, NRDC and SACE proposals in perspective. Mr. Dean testified that given a very conservative calculation and set of assumptions, **the base rate impact on the four investor owned utilities of the GDS and NRDC/SACE proposals over the next ten years was \$ 3.9 billion and \$ 4.0 billion, respectively.** Tr. 2037-38, 2048 (Dean); Ex. 130.

¹⁰ Instead, he cited (but did not provide to the Commission) a study done not for a Florida utility, but for a prototypical southwestern utility, that he suggested concluded that the result of his radical proposal would be to have modest “long-term” rate impacts. Tr. 1528-32 (Spellman). Of course, such a “long-term” perspective, which is still negative, totally disregards the immense short and intermediate term rate impact of such proposals. Given the enormous short and intermediate term rate impacts documented in this case, it is understandable why Mr. Spellman looks well into the future rather than confronting immediate realities. However, the Commission is not afforded such a luxury; it must confront the enormous immediate impact of the NRDC, SACE and GDS proposals.

Those are DSM-related base rate increases over and above what FEECA utilities have already sought and are seeking and otherwise would seek. Mr. Dean also quantified the projected adverse impact of these same proposals on Florida tax revenues during the goals period at \$183 to \$276 million. Tr. 2038-39; Ex. 131. Various utilities also testified as to the impact the GDS, SACE and NRDC proposals would have on ECCR costs, and the evidence in the record allows a conservative calculation of those costs as well. Mr. Spellman's Ex. 108 shows that in 2008 the FEECA utilities recovered approximately \$268 million for program costs through ECCR. The GDS, NRDC and SACE proposals advocate that energy savings from GDS be increased anywhere from seven to 14 times levels experienced in 2008. If one conservatively concluded that ECCR costs would only increase by a factor of five instead of seven to fourteen, then ECCR costs would increase by over a billion dollars in 2010 and then grow further under the GDS, NRDC and SACE proposals as they ramp up over time. **So, the total short to intermediate term rate impact to the two rate factors Mr. Spellman acknowledges would be impacted would, very conservatively, exceed over \$ 5 billion for the state of Florida.**

As Witnesses Dean and Silagy noted, there could hardly be a worse time for such an unnecessary, discretionary rate increase. Tr.1228-29, 1642. Nonetheless, NRDC and SACE would choose to have utility customers finance the purchase of unnecessary DSM so that air emissions can be reduced (even though FPL's analysis already captures the cost of GHG emissions). The Commission can, and must, consider the rate impact of the GDS, NRDC and SACE proposals before it. That very conservative \$5 billion rate impact alone shows that these proposals must be rejected.

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

FPL: *A combination of the E-RIM and Participant test is consistent with the Commission's obligation to set just and reasonable rates, meets the specific requirements of FEECA, and includes all relevant costs and benefits for both participants and non-participants. The E-TRC test achieves none of these objectives.*

The combination of the E-RIM test and Participant test is the only cost-effectiveness screening approach that is consistent with the Commission's obligation to set just and reasonable rates pursuant to Chapter 366, Fla. Stat. It is also the only approach that meets the specific requirements of FEECA, as amended. Tr. 1702 (Sim). Finally, this approach avoids cross-subsidization of participants by non-participants. This approach was utilized by FPL in the development of its DSM goals.

As described above in response to Issue 3, the Participant test includes all of the relevant DSM-related costs and benefits that will be incurred or realized by a customer who may participate in a DSM program. Tr. 85-86 (Sim). The E-RIM test also fully accounts for all of the relevant DSM-related costs that will be incurred by the utility and its customers – both DSM participants and non-participants. *Id.* The combination of the Participant and E-RIM tests therefore correctly includes all of the economic impacts, benefits and costs, which are incurred by all of a utility's customers when DSM options are implemented. *Id.* This combination also achieves the objective of creating and maintaining a level playing field for both DSM and supply options in integrated resource planning analyses. *Id.*

The TRC and E-TRC tests, on the other hand, do not include all of the DSM-related costs that will be incurred by the utility and all of its customers. Tr. 86 (Sim). This so-called "total resource cost" test omits the incentive payments made to DSM program participants, which are costs that are recovered from all of FPL's customers. When asked directly, all but one witness

testified that incentive costs were not accounted for in the TRC test. Tr. 1784-85 (Sim); 1845 (Masiello); 1926-27 (Floyd). The outlier, Witness Mosenthal, attempted to explain that incentive costs were incorporated within the TRC test. Nonetheless, he correctly noted that “it doesn’t actually change the TRC result if you raise or lower an incentive”. Tr. 1391 (Mosenthal). And ultimately, the witness concluded his explanation by stating “just to be clear, mathematically the benefit/cost ratio won’t change if you raise the incentive...**what you are really doing is you are just transferring a little bit more money from the general body of ratepayers to that participant.**” Tr. 1399-1400 (Mosenthal) (emphasis added). This explanation makes it clear that the cost of incentives borne by the general body of customers is not reflected when using the TRC test. And, in addition to recognizing TRC’s failure to account for incentive costs in any meaningful way, Witness Mosenthal’s statement also illustrates the cross-subsidization problem caused by the TRC test.

The TRC test also omits the economic impact of unrecovered revenue requirements on the utility’s electric rates. *Id.* As testified to by Witness Dean, and as discussed further below in response to Issues 9 and 10, the unrecovered revenue requirements associated with either NRDC/SACE’s or GDS’ proposals would be enormous. Tr. 2037 (Dean). The final flaw is that the TRC test includes the participant’s out-of-pocket costs for participating in the DSM program. These participant’s out-of-pocket costs are not recovered from all of a utility’s customers, and are already captured in the Participant test. *Id.*

Despite NRDC/SACE’s best efforts to try to demonstrate that the amendments to FEECA in House Bill 7135 require use of the TRC test, the record is devoid of any credible evidence supporting that position. The amended language does not explicitly require use of the TRC test, but does explicitly require recognition of utility incentives. Section 366.82(3)(b), Fla. Stat.; Tr.

1731-32 (Sim). The explicit requirement to account for utility incentives cannot be met using the TRC test. NRDC/SACE try to avoid such a determination by claiming that incentive costs are “covered” within the TRC test. Tr. 1733-37 (Sim). However, as described above, the TRC equation simply does not recognize varying levels of incentives. Tr. 1399-1400 (Mosenthal). GDS, on the other hand, stops short of claiming the TRC test is now required. Instead, GDS interprets legislatively-required “considerations” as a grant of broader authority to maximize energy efficiency in Florida. Tr. 1486 (Spellman); 2028-31 (Dean). GDS fails to explain how additional parameters could broaden the Commission’s authority. *Id.* Finally, GDS took issue with the use of the E-RIM test by making a variety of misleading statements, each of which was easily corrected and/or refuted by Witness Sim. Tr. 1694-1701.

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

FPL: *The Commission should adopt FPL’s proposed residential summer and winter MW and annual GWh goals. These goals will contribute to the most cost-effective resource plan on FPL’s system, result in the lowest levelized system average electric rate, and will help avoid subsidization of participants by non-participants.*

FPL’s E-RIM 664 MW plan is clearly the best for FPL’s customers for three reasons: (i) it completely satisfies all of FPL’s remaining resource needs through 2019; (ii) it results in the lowest electric rates for all of FPL’s customers; and (iii) it best minimizes cross-subsidization of participants by non-participants. Tr. 154 (Sim). Within that plan are the following goals:

PROPOSED RESIDENTIAL CONSERVATION GOALS (at the meter)										
Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Summer MW	26.6	26.6	26.3	26.2	26.2	26.2	26.2	26.2	26.2	26.6
Winter MW	24.6	24.6	24.7	24.7	24.7	24.7	24.7	24.7	24.7	24.6
Annual GWh	33.1	33.1	32.8	32.7	32.7	32.7	32.7	32.7	32.7	33.1

GDS' proposed goals do not comply with the Rule, would have significant rate impacts for customers, and were calculated via a process plagued with errors. Rule 25-17.0021(3), requires that the proposed goals be based upon "the utility's most recent planning process." GDS' goals were derived from various adjustments to Itron's calculation of achievable potential for FPL. Tr. 1678 (Sim). However, the achievable potential is a step that occurs only halfway through the resource planning process. *Id.* GDS failed to address the rest of the process – which can be seen in the final three steps performed by FPL. Those steps included the creation of DSM portfolios, consideration of FPL's remaining resource needs in the year after the 2010-2019 time period and the development of resource plans to meet those needs, and the economic analysis of resource plans. *Id.* GDS either did not understand FPL's resource planning process or consciously chose to use a fabricated input value (adjusted achievable potential) as the final goal value. Tr. 1678 (Sim). The fact that GDS' proposed MW goals are seven times higher than FPL's total DSM resource needs during the 2010-2019 time period, and would result in a reserve margin of 44%, demonstrates GDS' failure to utilize FPL's resource planning process and system considerations such as reserve margin and reliability. Tr. 164; 1679-1680 (Sim).

Adoption of the GDS proposed goals would significantly increase ECCR costs and base rates. Tr. 165 (Sim). Witness Dean provided an estimate of the magnitude of the required rate increases, using a number of very conservative adjustments. Tr. 2037 (Dean). **The total ten year effect for the four investor owned utilities would be approximately \$3.8 billion in increased rates alone.** Tr. 2037-38 (Dean); Ex. 130. This equates to an average of \$380 million per year. *Id.* There would also be direct losses in state and local tax revenue. Tr. 2038-39 (Dean). Finally, it is important to note that even if GDS' *approach* was conceptually defensible (which it is not and is thoroughly rebutted), its *execution* was plagued with errors and remains

unquantified. Tr. 1569-83 (Spellman). GDS' proposed goals are therefore factually unreliable, in addition to being legally unsupportable and detrimental to customers.

NRDC/SACE's recommended goals are equally unsupported. NRDC/SACE recommend an arbitrary 1% of sales as a DSM goal for each FEECA utility, including FPL. NRDC/SACE Witness Steinhurst himself admitted to choosing the one percent figure because it was a nice round number. Tr. 1147 (Steinhurst). Such a proposal is nothing more than an energy efficiency portfolio standard – a concept rejected by the Florida Legislature. Tr. 2048 Dean).

NRDC/SACE ignored the requirements of Rule 25-17.0021, F. A. C. Tr. 1711 (Sim); Tr. 1379-81 (Mosenthal) (admitting that he did not review Rule 25-17.0021 or the Commission's cost effectiveness manual prior to developing his testimony and recommended goals). NRDC/SACE also failed to conduct any Florida or FPL-specific analyses. Tr. 1147-1149 (Steinhurst) (admitting that he did not perform any utility-specific analyses, did not read any of the Commission's rules, and did not analyze the bill or rate impact of his proposed goals). In sum, the NRDC/SACE proposal is "completely devoid of any of the analytics or evaluations required by the DSM goals rule." Tr. 2041 (Dean). *See also*, Tr. 2047 (Dean) (identifying each rule element overlooked or ignored by Witness Steinhurst). As explained by Witness Mosenthal, the bases for the NRDC/SACE proposed goals were "the technical potential study done by Itron...along with broad experience throughout the country on what is achievable, and what other jurisdictions are doing." Tr. 1385. Witness Rufo explains in great detail that technical potential is a theoretical construct that does not account for real-world constraints. Tr. 881 (Rufo). Moreover, what other jurisdictions are doing has no impact on the need to set goals for FPL which must be consistent with Florida law and this Commission's rules.

NRDC-SACE's goals would also result in significant rate increases. Tr. 1717 (Sim). Using the same methodology as that which was used to calculate the effect of the GDS goals, **Witness Dean calculated a rate increase impact of approximately \$4 billion.** Tr. 2048 (Dean). Since 1994, Florida has based its DSM goals on extensive analyses to determine what level of DSM is in the best interests of customers. Tr. 1717 (Sim). NRDC-SACE has provided no compelling reason to abandon such a logical approach in favor of an already rejected energy efficiency portfolio standard.

In stark contrast to the approaches of GDS and NRDC/SACE, FPL's proposed goals are the result of a year-long analytical process designed to (i) fully examine technical potential; (ii) perform initial cost-effectiveness screenings; (iii) determine maximum incentive levels and finalize cost-effectiveness screenings; (iv) determine achievable potential; (v) develop DSM portfolios for both the E-RIM/Participant path and the E-TRC/Participant path; (vi) create resource plans based on FPL's projected remaining resource needs; and (vii) evaluate the resource plans in a system analysis designed to determine the levelized system average electric rates, the ability to minimize or avoid cross-subsidization, the system emission levels, and the system usage levels of oil and natural gas for each resource plan. Tr. 98-103 (Sim). The selection of FPL's proposed E-RIM 664 MW plan is the result of this process. FPL's proposal will fully meet FPL's projected resource needs through 2019, will result in the lowest electric rates, and will minimize cross-subsidization between customers. Tr. 1779-1780 (Sim). For all of these reasons, the record supports adoption of FPL's proposed goals.

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

FPL: *The Commission should adopt FPL's proposed commercial/industrial summer and winter MW and annual GWh goals. These goals will contribute to the most cost-effective

resource plan on FPL’s system, result in the lowest levelized system average electric rate, and will help avoid subsidization of participants by non-participants.*

FPL’s E-RIM 664 MW plan is clearly the best option for FPL’s customers for three reasons: (i) it completely satisfies all of FPL’s remaining resource needs through 2019; (ii) it results in the lowest electric rates for all of FPL’s customers; and (iii) it best minimizes cross-subsidization of participants by non-participants. Tr. 154 (Sim). Within that plan are the following goals:

PROPOSED COMMERCIAL/INDUSTRIAL CONSERVATION GOALS (at the meter)										
Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Summer MW	33.4	33.4	33.7	33.8	33.8	33.8	34.3	34.7	35.8	36.6
Winter MW	8.5	8.5	8.5	8.6	8.9	9.0	9.2	9.6	10.1	10.2
Annual GWh	41.0	41.4	44.2	45.3	53.9	54.6	59.8	63.3	71.2	75.4

As described above in response to Issue 10, the goals recommended by GDS and by NRDC/SACE fail to comply with the Commission’s Rule because they are not based on FPL’s most recent planning process and would result in enormous rate impacts. FPL’s proposed goals, on the other hand, will fully meet FPL’s projected resource needs through 2019, will result in the lowest electric rates, and will minimize cross-subsidization between customers. Tr. 1779-1780 (Sim). For all the above reasons, the record supports adoption of FPL’s proposed goals.

ISSUE 11: In addition to the MW and GWh goals established in Issues 9 and 10, should the Commission establish separate goals for demand-side renewable energy systems?

FPL: *No. The technical potential and achievable potential for demand-side renewable energy systems have been addressed in the comprehensive process detailed in FPL’s response to Issue 1 and Issue 2 above, and is therefore reflected within FPL’s proposed goals.*

The recent amendments to FEECA require the Commission to consider renewable energy systems in the DSM goal setting process. Section 366.82(3), Fla. Stat. Accordingly, the

Collaborative and FPL evaluated renewable energy systems in this goal-setting process. Beginning with the technical potential study, Itron defined one residential rooftop PV system, one commercial rooftop PV system, and one ground-mounted PV system in commercial parking lots for purposes of assessing customer-scale PV technical potential. Tr. 879 (Rufo). FPL also examined a variety of demand-side renewable energy systems in its economic analyses. FPL examined residential solar water heating, residential photovoltaic powered pool pumps, residential rooftop photovoltaic systems, commercial solar water heaters, commercial rooftop photovoltaic systems, and commercial parking lot photovoltaic systems. Ex. 137. Based on the assumption that most customers would desire some economic benefit from a demand-side renewable system installation, FPL first developed an incentive level that would result in a Participant Test value of 1.0 after accounting for federal and state tax credits. Tr. 194 (Sim). As a result, no renewable energy system failed the Participant test. Tr. 316-17 (Haney). Then, each system was analyzed under both the E-RIM and the E-TRC tests. Ex. 137. Each renewable system failed both the E-RIM and the E-TRC tests. Tr. 197 (Sim); 316-17 (Haney).

GDS recommends arbitrary, large “spending goals” for FPL and the other FEECA utilities which clearly do not benefit the general body of customers. Tr. 1688 (Sim). First, GDS admitted that none of the renewable DSM measures they set goals for are cost-effective under either the E-RIM or the E-TRC test. Tr. 1549 (Spellman), 1684 (Sim). Then, GDS decided that each utility should annually spend 10% of its average annual ECCR expenditures for the last five years. Tr. 1549-52 (Spellman), 1685 (Sim). GDS offers no supporting analysis. It is as extreme and unsupported as GDS’ recommendation for non-renewable DSM goals. Tr. 1688 (Sim). There is a complete absence of any record support for GDS’ renewable DSM “spending goals”.

In the context of FPL's DSM goal setting process, DSM programs to encourage demand side renewable energy systems are simply not cost-effective. Tr. 316-17 (Haney); Ex. 137. Given all of the above considerations, the technical potential and achievable potential for demand-side renewable energy systems have been adequately addressed in FPL's proposed goals. Tr. 262 (Haney). FPL will continue to consider demand-side renewable measures in the DSM program development stage. Tr. 199 (Sim).

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?

FPL: *Not at this time. According to Rule 25-17.001, "general goals and methods for increasing the overall efficiency of the bulk electric power system...are an ongoing part of the practice of every well managed electric utility's programs." If such additional goals are desired, they should be considered in a subsequent proceeding.*

If goals for efficiency improvements in generation, transmission, and distribution are desired, they should be considered in a subsequent proceeding. Tr. 262 (Haney). No party to this proceeding advanced or recommended such goals, nor was the basis for such goals developed. As stated in Rule 25-17.001, "general goals and methods for increasing the overall efficiency of the bulk electric power system are broadly stated since they are an ongoing part of the practice of every well managed electric utility's programs." The record in this case supports the position that goals for efficiency improvements in generation, transmission, and distribution are unnecessary at this time.

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?

FPL: *Specific goals for customer participation in audit programs are unnecessary, but FPL would not oppose reasonably achievable energy audit goals. This issue should be considered, if at all, in a subsequent proceeding.*

Specific goals for customer participation in audit programs are unnecessary, but FPL would not oppose reasonably achievable energy audit goals. Tr. 262 (Haney). FPL already achieves high levels of participation in energy audits. On the average business day, more than 600 FPL customers take advantage of FPL's energy audits. Tr. 235 (Haney). Since FPL began offering audits in 1981, over 2.7 million customers have participated in an on-line audit, a phone-based audit, or an on-site audit. Tr. 235-36 (Haney). No party to this proceeding advanced or recommended energy audit participation goals, nor was the basis for such goals developed. The record demonstrates that goals for participation in energy audit programs are unnecessary.

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

FPL: *No actions are necessary to encourage the efficient use of cogeneration in this proceeding. Cogeneration systems must be evaluated on a site-specific, case-by-case basis, which does not lend itself to the goals-setting process. Nonetheless, FPL will continue to evaluate and assess cogeneration options.*

High thermal efficiency cogeneration must be evaluated as a supply-side alternative on a case-by-case basis. TR. 254 (Haney). At present, FPL has two cogeneration facilities under contract representing approximately 580 MW of firm generating capability. Tr. 253 (Haney). FPL has an additional four projects in its service territory with an installed generating capacity of approximately 168 MW, which sell their electric output to FPL on an as-available basis or use the electric output to offset their electric consumption. Tr. 253-54 (Haney). FIPUG attempted to compare each utility's projected future average fuel costs with historic as-available energy payments to cogenerating customers, as if they were directly comparable (which they are not), in an attempt to demonstrate some sort of disparate treatment. Tr. 273-274. Despite this effort, no actions are warranted by the Commission in this proceeding. From time to time, there are commercial or industrial customers who consider high thermal efficiency cogeneration as an

alternative. Tr. 254 (Haney). FPL assists these customers in the evaluation of its various cogeneration alternatives. *Id.* However, these site-specific and case-by-case evaluations do not lend themselves to the goals-setting process. *Id.* Consideration of the efficient use of cogeneration has thus been fully considered for purposes of this proceeding.

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

FPL: *FPL takes no position on this issue.*

ISSUE 16: Should this docket be closed?

FPL: *Yes.*

Respectfully submitted this 28th day of August, 2009.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Post-Hearing Brief has been furnished electronically and by U.S. mail this 28th day of August, 2009, to the following:

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