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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

Docket No. 20200053-EG

Petition for approval of
demand-side management
plan, by Tampa Electric
Company.

_____ /

Docket No. 20200054-EG

Petition for approval of
proposed demand-side
management plan, by Duke
Energy Florida, LLC.

_____ /

Docket No. 20200055-EG

Petition for approval of
proposed demand-side
management plan, by Gulf
Power Company.

_____ /

Docket No. 20200056-EG

Petition for approval of
demand-side management
plan and request to modify
residential and business on
call tariff sheets, by Florida
Power & Light Company.

_____ /

Docket No. 20200060-EG

Petition for approval of
demand-side management
plan, by Florida Public
Utilities Company.

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 7

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

4
DATE: Tuesday, July 7, 2020

5
PLACE: Betty Easley Conference Center
6 Room 148
4075 Esplanade Way
7 Tallahassee, Florida

8 REPORTED BY: DEBRA R. KRICK
Court Reporter and
9 Notary Public in and for
the State of Florida at Large

10
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114 W. 5TH AVENUE
TALLAHASSEE, FLORIDA
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1 P R O C E E D I N G S

2 CHAIRMAN CLARK: Okay. I believe that
3 everyone is back now and all the players are in
4 their places in this room, so we will go ahead
5 and -- and get started again.

6 All right. Next item up is Item No. 7. This
7 is the DSM petitions.

8 Mr. Futrell, will you introduce this item for
9 us, please?

10 MR. FUTRELL: Yes, sir.

11 Item 7 is staff's recommendation on the
12 proposed 2020 demand-side management plans of the
13 five investor-owned electric utilities.

14 The Commission's rule requires that subsequent
15 to a decision to establish goals, the utilities
16 must submit proposed DSM plans and programs
17 designed to meet the goals.

18 In the most recent goal setting proceeding,
19 the Commission reviewed the utilities' analyses
20 based on current data on the cost and benefits of
21 DSM measures. The proposed goals differed from the
22 existing goals, and in differing magnitudes among
23 the utilities.

24 The Commission ultimately applied a consistent
25 rationale to the utilities' proposed goals, and

1 found it was in the public interest to continue
2 with the existing goals that were established in
3 2014 for the period 2020 through 2024.

4 The utilities' proposed DSM plans and programs
5 before you today are designed to meet the goals.
6 However, the Commission is presented with divergent
7 results.

8 In some DSM plans, all or a majority of the
9 plans are cost-effectiveness. In other DSM plans,
10 some or a majority of the programs are not
11 cost-effective. In these cases, the Commission is
12 presented with petitions to approve programs that
13 are not cost-effective in order to meet the goals.

14 Staff recommends the Commission continue the
15 existing programs that are available to customers
16 as they are consistent with and adequate to meet
17 the goals established in 2019.

18 Inherent in staff's recommendation is that the
19 Commission rely on the same rationale in its
20 decision-making on the DSM plans as it did in the
21 goals setting docket, and apply a consistent and
22 uniform approach to all utilities.

23 Staff also recommends that the Commission
24 initiate rule-making to explore possible rule
25 revisions to Rule 251-70021, Florida Administrative

1 Code, that would consolidate the DSM plan and goal
2 setting processes.

3 A number of comments have been filed in the
4 respective dockets. Utilities have filed written
5 comments, and their representatives would like to
6 address the Commission. Bradley Marshall, Jon
7 Moyle and Schef Wright also would like to address
8 the Commission, and staff is available for
9 questions.

10 CHAIRMAN CLARK: Thank you, Mr. Futrell.

11 All right. We do have several folks that are
12 going to -- have asked to address the Commission.
13 I am going to go through the list. If you would
14 like to make a comment, you may do so. Then we
15 will call on Commissioners for their comments.

16 We will begin with Mr. Beasley. Are you
17 available, Mr. Beasley?

18 MR. BEASLEY: Yes, sir --

19 CHAIRMAN CLARK: You are recognized.

20 MR. BEASLEY: -- chairman Clark.

21 Thank you, Chairman Clark, Commissioners. I
22 am Jim Beasley for Tampa Electric Company. With me
23 on the line is Mark Roche, who is in charge of the
24 company's DSM programs.

25 Tampa Electric has submitted written comments

1 regarding the Commission's staff recommendation.
2 As we stated in these written comments, there are
3 several reasons why the company believes the
4 proposed DSM plan that the company has proposed
5 should be approved.

6 The company's proposed DSM plan is a
7 reasonable, cost-effective plan, and is designed to
8 be more relevant to today's technological, economic
9 and customer acceptance conditions than the
10 previous DSM plan that's been in place for some
11 time.

12 The company believes that approving our
13 proposed plan now will allow the company to the
14 bring new program offerings to the marketplace
15 sooner, and will therefore allow the company to
16 meet customer satisfaction objectives more effic --
17 effectively and efficiently.

18 The company has been a consistent supporter of
19 this commission's efforts to promote cost-effective
20 demand-side management programs, and the
21 significant energy conservation results that have
22 been achieved as a result of those programs over
23 the years. We would encourage you to approve the
24 company's proposed DSM plans that's before you
25 today.

1 And Mr. Roche and I will be happy to answer
2 any questions you may have.

3 CHAIRMAN CLARK: Thank you, Mr. Beasley.

4 All right. Mr. Griffin, representing Gulf.

5 MR. GRIFFIN: Thank you, Mr. Chairman. Good
6 morning, Commissioners. This is -- this is Steven
7 Griffin on behalf of Gulf Power Company, and we,
8 too, are here today to urge the Commission to
9 approve the company's DSM plan as proposed.

10 We -- we did file very brief written comments
11 in the docket file on July 2nd. And as we said
12 there, Gulf, in particular, has experienced some
13 challenges over the past few years in achieving our
14 approved DSM goals. We -- we believe that those
15 challenges are due, at least in part, to decreased
16 customer interest in -- in the programs that we are
17 currently offering.

18 The -- the proposed program, on the other
19 hand, we believe is very new, exciting, robust. We
20 put a lot of thought into it, all with an eye
21 toward overcoming some of the challenges that we've
22 experienced in the past. And quite frankly, absent
23 some change in the company's program offerings, we
24 do not feel it's likely that we are going to meet
25 our approved demand-side management goals.

1 We -- we recognize that cost is a concern.
2 And to that point, we think it's important to note,
3 as staff does in the staff recommendation, that the
4 clause impacts on a 1,000 kilowatt hour residential
5 bill are actually projected to decrease under our
6 proposed DSM plan as compared to maintaining the
7 status quo.

8 And so for -- for all of those reasons, we
9 would -- we would urge the Commission to approve
10 our plan as filed, and we, too, are here to answer
11 any questions that you may have.

12 Thank you.

13 CHAIRMAN CLARK: Thank you, Mr. Griffin.

14 Mr. Cox, from FPL, are you available?

15 MR. COX: I am. Thank you Chairman Clark,
16 Commissioners. Good morning.

17 With me on the line today is also our senior
18 manager for demand-side management, strategy, costs
19 and performance, Tom Koch.

20 Chairman Clark and Commissioners, FPL would
21 ask that the Commission, consistent with what you
22 heard from TECO and Gulf, reject staff's
23 recommendation instead approve the proposed plan
24 that FPL has filed in full for the 2020 to 2024
25 time period. It's the most cost-effective plan

1 that we have been able to put together to meet the
2 Commission's approved goals that were approved in
3 2019.

4 FPL understands staff's recommendation about
5 keeping the current 2015 DSM plan in place for the
6 next five years to meet the goals that were
7 approved by the Commission, but in the spirit of
8 compromise, FPL is prepared to suggest a compromise
9 to the staff recommendation that would be
10 consistent with the comments that we filed in this
11 docket for FPL on July 2nd, and that would allow
12 FPL to meet the approved goals and avoid the need
13 for FPL file any additional filings additional of
14 the Commission to conduct any additional
15 proceedings regarding modifications to FPL's DSM
16 plan.

17 There are three key elements to that
18 compromised proposal I will just go through
19 briefly.

20 We would ask that the Commission would first
21 address FPL's proposal to bring its
22 commercial/industrial demand response and
23 commercial/industrial load control credit levels to
24 a lower level, as we proposed, consistent with the
25 principles of cost-effectiveness in the approved

1 goals of the Commission.

2 The decision the Commission made on FPL's 2016
3 rate case settlement states that any proposed
4 changes to these current levels would be an issue
5 at FPL's next DSM proceeding, which is where we
6 find ourselves today. It's of course recognized in
7 the settlement that no approved changes would take
8 effect until the next FPL base rate proceeding when
9 rates were reset.

10 FPL's proposal on this issue would result in,
11 again, FPL meeting the Commission's approved goals,
12 as well as saving the general body of FPL's
13 customers an estimated \$21 million, while
14 maintaining credit levels that are 30 percent
15 higher than 90 percent of the existing CDR and CILC
16 customers were signed up for these programs.

17 Now, that being said, FPL is not opposed to
18 the Commission addressing these current levels in
19 FPL's next base rate proceeding in lieu of
20 addressing it today, with the Commission clarifying
21 today that addressing these issues in the upcoming
22 base rate case is permissible under the approved
23 FPL base rate settlement that the Commission had
24 previously approved. And we do not believe that
25 such a clarification would be objectionable any of

1 signatories to that -- to that settlement.

2 Second, we ask that the Commission approve the
3 modifications related to our programs for
4 residential and business on-call, which are load
5 management programs for residential and business
6 customers.

7 There has been no objection raised so far in
8 the proceeding by staff or any other party to the
9 modifications we are proposing. And like the CDR
10 and CILC programs, the proposed reduction in credit
11 level we proposed associated with those programs
12 would -- would both allow FPL to meet the approved
13 goals and, at the same time, save our customers an
14 estimated three-and-a-half million dollars.

15 Third and lastly, we would ask that in
16 approving staff's recommendation to continue FPL's
17 current conservation research and development
18 program, our R&D program associated with DSM which
19 we use for evaluating next generation efficiency
20 and load control programs, we would ask that the
21 Commission authorize the program funding as
22 requested in our proposed plan. Our -- our current
23 plan's funding would end at the end of this year if
24 it were adopted. So we would ask that you continue
25 that authorization of funding consistent with what

1 we have requested in our proposed plan.

2 With these additions to staff's
3 recommendation, we believe it would enable FPL to
4 save our customers, again, almost \$25 million. We
5 would meet the approved goals, and we would be able
6 to invest in developing next generation DSM
7 programs, as well as avoid the need for any
8 additional separate DSM proceedings on the plan,
9 and the modifications to the plan.

10 Again, Chairman Clark, thank you, and
11 Commissioners, thank you so much for your
12 consideration of our compromised proposal, for
13 listening to me today. And Mr. Koch and I are
14 available on the line to answer any questions that
15 you might have.

16 Thank you.

17 CHAIRMAN CLARK: Thank you, Mr. Cox.

18 Mr. Bernier and Ms. Keating, I had both of you
19 down as just available to answer questions. Did
20 you have any comments, or is that good with you?

21 MR. BERNIER: Good morning. Mr. Chairman,
22 Matt Bernier with Duke Energy, just very brief
23 comment.

24 We also filed comments in the docket. I
25 won't -- I won't repeat them here. But similar to

1 my -- my friends who have just spoken, I would
2 point out that DEF went through and proposed
3 cost-effective programs that are designed to meet
4 the goals that this commission has set. We do not
5 believe that an extension of the current programs
6 without the modifications we proposed would meet
7 those goals.

8 Similar to what I've also heard, our proposed
9 programs would result in an expected decrease in
10 the monthly ECCR factor over current rate, and
11 result in greater gigawatt kilowatt hour savings.

12 So we would urge the Commission to approve the
13 plan that we have -- that we put forward -- excuse
14 me, the programs we put forward. And Ms. Loris
15 Cross and I are available for any questions you may
16 have.

17 Thank you.

18 CHAIRMAN CLARK: Thank you, Mr. Bernier.

19 Ms. Keating.

20 MS. KEATING: Good morning, Mr. Chairman and
21 Commissioners. Beth Keating here for FPUC.

22 FPUC doesn't take issue with staff
23 recommendation, given that FPUC's proposed plan
24 essentially carries forward its existing plan; but
25 I, as well as Scott Ranck and Mike Cassel are here

1 to answer any questions that you may have.

2 CHAIRMAN CLARK: Thank you, Ms. Keating.

3 Okay. Let's move on to Mr. Marshall.

4 MR. MARSHALL: Good morning, Commissioner,
5 thank you. Bradley Marshall on behalf of the
6 League of Latin American Citizens of Florida, the
7 Southern Alliance for Clean Energy, and the
8 Environmental Consideration of Southwest Florida.

9 Today, we are addressing the Commission for
10 approval of demand-side management plans by Duke,
11 Gulf, TECO and FPL.

12 Commissioners, you have stressed the
13 importance of meaningful low income efficiency
14 programs in past dockets. In response, all of the
15 utilities have proposed improvements to their low
16 income programs. We agree and support these
17 improvements because these programs serve the
18 people in our communities that often have to make
19 the decision between paying a power bill or
20 purchasing essential needs like food or medicine.
21 We only disagree with the utilities on whether
22 there is more to do. We believe there is.

23 You have a recommendation before you from
24 staff to freeze the programs in place based on the
25 Commission's decision based on the 2015 goals.

1 Yet, there is no basis for this in law or logic.
2 Technologies can and do change. The needs of the
3 communities the utilities serve can and do change.
4 Programs to change to meet these changing
5 circumstances.

6 Given the current public health and economic
7 crises, staff's call to cut low income programs
8 could not come at a worse time. We believe, as do
9 the utilities through their program filings, that
10 we should be looking to improve the low income
11 program, not continue to rely on programs that are
12 outdated and in need of enhancement or replacement.
13 We urge you not to adopt staff's -- staff's
14 recommendation.

15 In our more detailed written comments, we show
16 that the utilities should be striving to improve
17 their low income programs even more. The utilities
18 should be striving to reach the number of low
19 income customers that TECO reaches, and provide the
20 meaningful amount of energy savings that Duke plans
21 to provide.

22 FPL stands out for not doing much for their
23 low income customers as compared to the other
24 utilities, although their plan is significantly
25 improved over their 2015 plan.

1 FPL also stands out as the only utility not to
2 file written comments defending their program plan
3 in its entirety. FPL's proposed compromise would
4 see FPL revert to the 2015 low income plan of
5 serving only one percent of their eligible low
6 income customers over the next five years.

7 FPL stands out even more for pledging to cut
8 off access to their low income program if they meet
9 their residential goals for the year. That is, if
10 one of their other residential programs exceed
11 projected sign-ups, all of their residential
12 programs will be shut down, including their low
13 income program. That's not fair, and we urge you
14 to instruct FPL to keep access to their low income
15 programs open.

16 Commissioners, there is a critical need out
17 there right now. It is unconscionable to go
18 backwards on energy efficiency programs. If the
19 Commission rolls back proposed programs, thousands
20 of hard-working Florida families will lose access
21 to measures that make their homes more efficient,
22 safe and secure. Therefore, we ask that you not
23 adopt staff's recommendation to slash low income
24 programs, and we also ask you to require FPL to
25 keep access to its low income programs open for its

1 customers.

2 Thank you.

3 CHAIRMAN CLARK: Thank you, Mr. Marshall.
4 Mr. Moyle.

5 MR. MOYLE: Thank you. Thank you, Mr.
6 Chairman. On behalf of the Florida Industrial
7 Power Users Group, FIPUG, we have some comments we
8 would like -- like to make.

9 We did file written comments with the
10 Commission and provided copies of a letter to all
11 Commissioners on June 19th. I will try not to be
12 repetitive on that, but I want to -- I want to make
13 a couple of points.

14 We support the staff recommendation. You
15 know, you hear a lot of parties saying, well,
16 change this and change that. You know, staff took
17 a well-reasoned approach to things, I believe
18 consistent with the direction that you gave in the
19 goals proceeding, which was largely keep the status
20 quo.

21 And I think it's particularly pertinent as the
22 staff is recommending that you engage in
23 rule-making to put these two proceedings together,
24 the -- the goals and the programs. And I think,
25 you know, part of that reason relates to the

1 evidence that you heard in the goals proceeding.
2 You know, there was a lot of evidence that was
3 presented. The credits were talked about during
4 the goals proceeding. That's the CILC credits and
5 the CDR credits that Mr. Cox mentioned. All of the
6 utilities have programs like that, and all of them
7 said we are going to keep the status quo except
8 FPL. But the record of that prior proceeding had
9 FPL witnesses saying that these programs are -- are
10 cost-effective.

11 And in the letter, Chairman Clark, you asked
12 Mr. Sim questioned about where the interruptible
13 rates fall on the TRC and the RIM test, and you
14 asked if both of them passed. And he said, yes.
15 They are among the most cost-effective programs
16 we -- we offer.

17 So we -- we think that those programs are good
18 programs, that this is surely not the time to go
19 make an ad hoc adjustment to them. And, you know,
20 they can be discussed and considered at a later
21 point in time.

22 You know, FPL has -- has sent signals that
23 they will be filing a rate case in 2021. These
24 matters have been considered in your past prior
25 rate case. The current level was -- was arrived at

1 through part of a settlement in 2012, when FIPUG
2 and FPL entered into a settlement agreement.

3 Just -- just so, you know, that the record is
4 clear on that, FIPUG had put a number out that was
5 a lot higher than the number that's currently
6 there. It was darn near, I think, double that
7 number. But as part of negotiations and
8 compromise, that -- the number was set, and it's
9 been reviewed. It -- it met all of the tests, and
10 I think it continues to meet all the tests. So
11 it's a -- it's a number that is surely -- surely
12 does not need changing today.

13 And we think that, you know, FPL, they are
14 going to be filing a rate case petition. They are
15 the masters of what they put in that rate case
16 petition. And if they so desire to, you know, put
17 the credits at issue, then we can deal with it
18 then, but it surely should not be something that
19 you weigh in on today, and we would -- we would
20 encourage you to adopt the staff recommendation.

21 You know, the status quo, I think, is -- is
22 something you all debated at length. And you said,
23 look, I am not sure it does any harm. It sends the
24 right signal. And I think consistent with your
25 prior action, you should adopt the staff

1 recommendation without change.

2 So I am happy to answer any questions anybody
3 may have.

4 CHAIRMAN CLARK: Thank you, Mr. Moyle.

5 Mr. Wright, are you available?

6 MR. WRIGHT: Yes, sir, Mr. Chairman. Good
7 morning.

8 CHAIRMAN CLARK: Good morning.

9 MR. WRIGHT: Commissioners, Mr. Chairman,
10 thank you very much for the opportunity to address
11 you today on behalf of the Florida Retail
12 Federation.

13 To be efficient and direct, the Retail
14 Federation supports the staff's recommendation with
15 specific emphasis on the staff's recommendation to
16 keep FPL's DSM plan and the CDR, CILC programs in
17 place as they are today.

18 As thoroughly explained by the staff, the
19 utility's plans and programs are consistent with
20 your 2019 goals order. The plans and programs have
21 met the Commission's approval of criteria, and
22 including approval for cost-effective through the
23 ECCR clause, and they are designed to meet the
24 current Commission approved goals.

25 Regarding the looming potential dispute

1 between FPL and several consumer parties, including
2 FIPUG, Walmart and the Retail Federation, I submit
3 to you that overall sound rate-making policy
4 strongly supports putting the issue of the proper
5 CDR and CILC credits that would be effective in
6 2022 off to the FPL rate base that will be
7 litigated next year for new rates to go into effect
8 a year-and-a-half from now, in January of 2022.

9 Accordingly, the FRF will cheerfully take FPL
10 up on its written offer to, quote, "address the CDR
11 and CILC credit levels in FPL's next rate
12 proceeding," unquote.

13 Commissioners, there are very good reasons to
14 follow this course. In the big picture, these
15 credit levels are unequivocally rates, and the
16 right place to set rates is in a rate case. In a
17 rate case, all rate issues are designed within the
18 context of all costs, rates and usage variables and
19 factors that serve in rates.

20 There are many, many moving parts in the very
21 large set of rate-making equations at issue in the
22 rate case, and many things can change in the 14
23 months or so before we will even have the hearing
24 on FPL's next rate case, and in the 17 months or so
25 before you will be called on to vote on new rates.

1 These include overall usage and billing
2 determinants, capital, operating and maintenance
3 costs, avoided units and avoided cost benefits and
4 costs CDR and CILC values, and so on.

5 Sound rate-making policy embodied in the
6 matching principle long recognized by this
7 commission and many, probably most other
8 commissions, requires the same result. Sound
9 rate-making policy is to base rates on the
10 conditions rate determinative factors that will
11 exist and be in effect when the rates are -- when
12 the rates are going to be in effect.

13 As to former Chairman Terry Deason testified
14 in sworn testimony to the Commission just two years
15 ago, quote, "from a regulatory rate-making
16 standpoint, the matching principle requires that
17 the utility's rates be set using the utility's
18 costs, investment, revenues and sales units from
19 the same time period, and that they be
20 representative of the time period in which the
21 rates will be -- new rates will be in effect,"
22 unquote.

23 That's from Docket 20170141-SU transcript at
24 page 403.

25 We ask that you follow this matching principle

1 of sound rate-making policy here and put this issue
2 off to the next FPL rate case so that these rates
3 can be set properly following the matching
4 principle. That is, based on all the usage and
5 cost factors and variables that will exist in 2022,
6 a year-and-a-half from now, when these rates would
7 take effect.

8 We support the staff's recommendation very
9 strongly as applied to FPL's plan, and specifically
10 to the CILC and CDR credits. We generally support
11 the staff's recommendation but don't have strong
12 positions on the other utilities.

13 Thank you very much.

14 CHAIRMAN CLARK: Thank you, Mr. Wright.

15 Ms. Eaton, any comments?

16 MS. EATON: Yes, Chairman. Thank you again
17 for the opportunity to address the Commission.

18 Walmart also filed written comments in support
19 of FIPUG's position that has -- that has already
20 been laid out by Mr. Moyle and Mr. Wright. Our
21 comments were filed June 23rd.

22 And the only other point I would like to make
23 to the Commission is that it's also a matter of
24 efficiency, whereas three of the utilities did not
25 recommend a change to the credits that we are

1 talking about, the CDR credits and the CILC
2 credits, only FPL did. And so as a matter of
3 efficiency for this -- for this commission, we
4 would request that -- that the issue of FPL
5 change -- proposed change in those credits be moved
6 to its rate case, and -- and otherwise do not have
7 any -- any change in -- of staff recommendation one
8 way or another.

9 CHAIRMAN CLARK: Thank you, Ms. Eaton.

10 MS. EATON: That's all we wanted to add.

11 CHAIRMAN CLARK: Okay. Thank you, Ms. Eaton.

12 MS. EATON: Thank you.

13 CHAIRMAN CLARK: All right. Commissioners,
14 any comments or discussion?

15 Commissioner Brown.

16 COMMISSIONER BROWN: Thank you so much. I
17 have a lot of thoughts on this.

18 You guys know how I felt back in 2019. I was
19 very passionate about this issue. We did keep the
20 goals where they were, but I don't think that there
21 was ever an expectation that we would continue
22 having the same programs moving forward. In fact,
23 I recall that there was party discussion about
24 having the utilities come up with innovative
25 offerings and changes to their plans, programs.

1 That was also part of the reason we kind of craved
2 having a more thorough review of the program plans
3 and goals together. So I want to give staff just
4 the opportunity -- I am sorry, I think my video
5 fell, but I want to give staff an opportunity to
6 explain how the recommended continuation of the
7 goals.

8 CHAIRMAN CLARK: Mr. Futrell.

9 MR. FUTRELL: Okay. Commissioner Brown, I
10 will take a shot, and perhaps Mr. Ballinger may
11 want to weigh in.

12 Again, we -- we certainly agree with you that
13 once the goals were set, the rule specified that
14 the utilities take a look at their -- all the
15 analysis coming out of the goal setting proceeding,
16 and with updated information and understanding of
17 new technology, new customer desires as far as
18 types of measures of programs that may fulfill
19 customer expectations, while layering on the
20 traditional criteria of cost-effectiveness and
21 others, and to see what we would get.

22 We certainly we had no idea we would be
23 presented with the results that we -- we have
24 before us today. So in -- in assessing with the
25 plans that were presented to us, as I mentioned in

1 the intro, we have plans that include programs are
2 that are in the cost-effective. In some cases,
3 substantial numbers of programs are not
4 cost-effective. And those are there, without
5 speaking for the utilities, are there in order to
6 meet the goals. And so we are placed in this
7 conundrum of cost-effectiveness, which is an
8 underpinning of FEECA. It's been a criteria that
9 this commission has used as a principle in
10 analyzing DSM for decades of contrasting that
11 principle against the order establishing the goals,
12 in the numeric goals.

13 And so in assessing what was presented to us,
14 we -- we kind of landed at the approach the
15 Commission took in November in the goal setting,
16 which was a consistent uniform approach to dealing
17 with the goals that were presented to its -- to it
18 in that case, and apply that same approach in
19 assessing the plans assessing the plans.

20 The plans that are in place that were approved
21 in 2015 were designed to meet those goals. They
22 were found to be cost-effective. Those orders are
23 still valid. The staff's recommendation
24 essentially recognizes those orders -- the validity
25 of those orders going forward for purposes of

1 determining cost-effectiveness, for purposes of
2 approving those programs for cost recovery through
3 the ECCR clause, and should give the companies
4 confidence and the ability to seek cost recovery
5 for those programs going forward.

6 CHAIRMAN CLARK: Thank you, Mr. Futrell.

7 Commissioner Brown.

8 COMMISSIONER BROWN: Thank you. And -- and
9 when you talk about cost-effectiveness, of course
10 your -- we are still using the RIM test to measure
11 cost-effectiveness, which is, by the way, the only
12 state in the country that still does that, and
13 makes some of the utilities' analysis starkly
14 different than others.

15 For example, all of Duke's programs pass the
16 RIM test the -- and as well as the participant, the
17 CR test -- CRC test, and most of TECO's do, but
18 then Florida Power & Light and Gulf have barely
19 none that pass the RIM test for similar types of
20 programs. I don't understand the vast discrepancy
21 on that front.

22 MR. BALLINGER: Commissioner Brown, this is
23 Tom Ballinger. Can I address that?

24 COMMISSIONER BROWN: Please.

25 MR. BALLINGER: You are correct. We do use

1 the RIM test, and the Commission has for many
2 decades used that. The difference being, the RIM
3 test focuses more on demand reduction programs, and
4 is also a way to look at nonparticipants to make
5 sure they are not overpaying for a resource.
6 Because remember, DSM in Florida is a resource,
7 just like generation, so it's treated equally.

8 I would like to talk a little bit about -- you
9 mentioned the cost-effectiveness, especially for
10 Duke. I am trying to pull it up here. I believe
11 they had eight programs, and of the eight, all of
12 them were cost-effective under the RIM and
13 Participant tests, but four of the eight showed a
14 RIM value of 1.0, that to me means that the
15 benefits and costs are equal, it's a break-even
16 program. It leaves very little room for error in
17 your estimates, things of that nature. By all
18 means, it does pass the test, and it is
19 cost-effective.

20 I think I would also like to add that doing
21 these analyses under the assumptions and current
22 economic condition is apples and oranges compared
23 to how the goals are done. The goals, those same
24 types of assumptions were presented in the
25 utilities' proposed goal and were not adopted by

1 the Commission. The Commission instead continued
2 the goals that were already approved in 2015.

3 That is really a -- a foundation in past
4 recommendation of consistency of Commission
5 decision. And I think -- I don't know if legal
6 wants to chime in on the consistency threshold or
7 level that the Commission must adhere to.

8 MS. WEISENFELD: This is Ashley with legal.
9 To chime in to Tom's points, in the 2019 DSM goal
10 proceeding, the Commission was presented with
11 proposed goals for the utilities that diverged from
12 the existing goals for each utility. The proposed
13 goals were, in some cases, lower than the existing
14 goals, in other cases, higher than the existing
15 goals.

16 The Commission considered the proposed goals
17 of each utility, the underlying analyses and the
18 entire record of evidence, and decided to continue
19 with the existing goals for each utility for the
20 period 2020 through 2024.

21 The decision treated all utilities
22 consistently, even those whose goals were higher
23 than the existing goals, in response to the
24 shortcomings of the underlying process, rather than
25 the individual results of any single utility's

1 goals under that process.

2 The utility's proposed DSM plans and programs
3 again present the Commission with divergent
4 results. They include a number of new programs,
5 some of which may be cost-effective and some of
6 which are not. But they contain underlying data
7 and analysis that is not based upon the same data
8 and analysis which form the basis for establishing
9 and continuing existing goals as adopted by the
10 Commission in the November 2019 goal setting
11 docket. Thus, notwithstanding the efforts made,
12 there still remains a disconnect between the new
13 programs and continuation of existing goals.

14 Therefore, staff recommends in these dockets
15 that the Commission again apply the same rationale
16 in its decision-making on the DSM plan as it did in
17 the going setting docket. Continuing existing
18 programs for all utilities would be consistent with
19 the Commission's decision made in November 2019,
20 which continued and uniformly applied existing
21 goals to all utilities, and is a uniform approach,
22 which is based upon rational data and analysis
23 which has already been found by the Commission to
24 be consistent with existing goals.

25 While the Commission has flexibility and

1 discretion to approve or deny plans pursuant to
2 Section 366.82 subsection (7) Florida Statutes, it
3 is -- it's discretion is not unbridled. All
4 decisions must be supported by logic and necessary
5 facts, and must be rational and arrived at based
6 upon reasoned analyses in order to not be arbitrary
7 and capricious under Chapter 120.

8 Consideration of individual programs in this
9 case, whether within an individual -- an individual
10 utility utility's proposal, or among the utilities
11 themselves, would involve validating an overall
12 process of this docket which was deemed
13 insufficient or inadequate in the goal setting
14 docket, and would be inconsistent with the
15 rationale applied in the goals docket.

16 Inconsistent treatment of the different
17 utility programs could be viewed by an appellate
18 court as unbridled discretion and arbitrary and
19 capricious.

20 Staff's recommendation urges the Commission to
21 make a decision that is based upon firm foundation
22 supported by law and facts presented to it in the
23 instant docket.

24 COMMISSIONER BROWN: Thank you, Ashley. I did
25 not ask for that thorough explanation, but I

1 appreciate it nonetheless. You went a little bit
2 further than what I -- what I asked for. So now I
3 am going to have to ask the utilities to respond to
4 those assertions that what they have proposed is
5 arbitrary and capricious. Any utility would like
6 to respond to Ashley's opinion?

7 MR. COX: Commissioner Brown, this is Will Cox
8 for FPL. I will briefly respond.

9 We don't believe what we filed is arbitrary
10 and capricious. We believe we filed a -- a plan
11 designed to meet the goals approved by the
12 Commission in the most cost-effective way that we
13 could. Cost-effectiveness is one of the three
14 criteria that the Commission has considered over
15 the years in looking at reviewing the DSM plans.

16 And again, we would ask that you -- our first
17 recommendation, despite what you heard from -- from
18 some others, we -- we would ask that you would
19 approve our proposed plan, which would include
20 higher low income increase in our low income
21 program.

22 Thank you.

23 COMMISSIONER BROWN: Thank you.

24 MR. BEASLEY: Commissioner Brown, this is Jim
25 Beasley for Tampa Electric.

1 Just four points on our proposal. It includes
2 six new cost-effective rebate programs for current
3 technologies. It's all updated.

4 Secondly, it includes some integrated
5 renewable energy system pilot program.

6 Thirdly, it discontinues nine rebate programs
7 that are no longer cost-effective.

8 And fourthly, it modifies existing programs as
9 needed to ensure that they are cost-effective over
10 the five-year horizon.

11 So it's all updated. It's good, and we urge
12 you to approve it.

13 COMMISSIONER BROWN: Thank you.

14 MR. BERNIER: Commissioner Brown, Matt Bernier
15 for Duke Energy.

16 I would echo what you just heard, and note
17 that our current programs that we have proposed are
18 based on the current data and efficiency standards
19 as those have changed since the goals were
20 originally set this 2015. We used the most recent
21 available underlying data to provide this, so I
22 would probably counter that basing the programs on
23 the, you know, the facts and data available to us
24 now is less than arbitrary and capricious results
25 than just maintaining the status quo based on

1 programs that were set years in the past.

2 Thank you.

3 COMMISSIONER BROWN: Thank you. That was
4 my --

5 MR. GRIFFIN: Commissioner Brown, very, very
6 quickly. This is -- this is Steve Griffin on
7 behalf of Gulf.

8 I -- I concur with everything my friends have
9 said. You know, we wouldn't be advocating for the
10 Commission to approve a program that we believed
11 was arbitrary and capricious. We, as I mentioned
12 earlier, put a lot of thought into this, and
13 followed to the same processes we followed for
14 years in developing DSM programs. So to your
15 point, we -- we do not agree with that contention.

16 Thank you.

17 COMMISSIONER BROWN: Thank you all. I
18 appreciate the -- the responses, because that was
19 my understanding as well, that the information has
20 been updated. And, again, we said back in
21 November, you know, we wanted to have plans and
22 programs that were designed to be more relevant to
23 today's customers, more innovative. I think what
24 we have been provided with by the utilities tries
25 to -- strives to do just that.

1 And I also think that when we look at the
2 programs as a whole, as opposed to, say, just each
3 different program, whether it's cost-effective
4 under the RIM test, is it -- you know, it's
5 cost-effective under the TRC and the participant, I
6 think you look at the failed impacts, and many --
7 in the case of many of the utilities, they are
8 going down. Even though some individual programs
9 may not be deemed cost-effective, as a collective
10 whole, the bills are going down, or minusculely
11 going up by a penny. So to reject them as not
12 being cost-effective would be imprudent on our part
13 when taken together as a whole.

14 I want to also just say a couple more things
15 on the low income front.

16 (Inaudible) -- even more pressing now, today,
17 than ever before for utilities to be promoting
18 conservation and offering energy efficiency
19 programs for its customers, I think with regard to
20 these low income folks, offering energy efficiency
21 programs, rather than scaling back what was in
22 place in 2015, would -- would be a tremendous
23 oversight on our part. I think the programs
24 provide good timing and they are critical to these
25 customers who can benefit more from reducing

1 energy. So I appreciate the utilities having more
2 robust low income programs.

3 Specific questions, though, for -- I have just
4 a few, Mr. Chairman. And I -- I appreciate the
5 latitude you have given me.

6 For FPL first, just you have a few things that
7 jumped out at me as being a little odd in -- in
8 your proposal. You are capping participation on --
9 on some programs. You are not decreasing the
10 revenue requirement, though, for those programs.
11 So what's the intent behind capping the component?

12 MR. COX: Thank you, Commissioner Brown.

13 The intent of the cap in our proposed plan was
14 focused on the fact that, you know, some of the
15 programs are cost-effective, some are not. So when
16 we reached the goals, we didn't want to continue to
17 put those costs of non-cost-effective programs on
18 our general body of customers. So, you know, we
19 see -- we see that there is a benefit to
20 potentially limiting at a certain point.

21 I think as we responded to staff to some
22 inquiries that we received in the docket. And we
23 indicated to them that typically, if that -- if
24 that did occur, it would be late in the year, so we
25 don't anticipate that being, you know, a big issue

1 throughout the year. It would only occur, you
2 know, in certain instances.

3 And -- and Mr. Koch is on the line. He could
4 respond maybe in a little more detail than I could
5 on that, if you could, Mr. Koch.

6 MR. KOCH: Thanks, Will.

7 Yeah, I would agree with what Will said, and
8 more importantly focused on -- (inaudible) -- but
9 that was exactly the intention of this, was to, you
10 know, recognizing there is both participating and
11 the nonparticipating general body of customers who
12 fund these activities, was trying to mitigate
13 any -- any impact that are -- and again, we would
14 expect that to be minimal.

15 COMMISSIONER BROWN: That's -- okay. Thank
16 you.

17 And then, Mr. Koch, why have the participants
18 occupied the premises for at least nine months for
19 the residential load management programs? How
20 would you derive that particular -- (inaudible) --

21 MR. KOCH: That particular parameter, I think,
22 was in there from previous, and it's to address
23 customers who are seasonal in nature; because
24 obviously, for a load management program, you want
25 to be able to, if you need that load relief, be

1 able to rely upon it, and so you are looking for
2 customers who actually utilize the appliances
3 during that period of time.

4 COMMISSIONER BROWN: Yeah, we were just
5 looking at a rule earlier today that kind of
6 addressed seasonal customers at the six-month
7 benchmark, so I wanted to see how you got that
8 nine-month period.

9 MR. KOCH: I -- that's been -- I think that's
10 been a longstanding practice for that. I don't --
11 I don't have a more specific answer for you.
12 Sorry.

13 COMMISSIONER BROWN: Thank you.

14 Moving on to Gulf. Regarding programs that
15 you replaced with the new programs, I -- I think
16 they do kind achieve what we were looking for, but
17 obviously, your programs that you have are not
18 meeting the cost-effectiveness test under the RIM
19 criteria.

20 So you -- I just kind of want to get an
21 understanding why with your proposing them when --
22 I know you said in your comments that you have had
23 challenges because of the decreased customer
24 interest, and -- and assuming your DSM goals, but
25 you think having the programs will allow you to --

1 to get that customer interest, and -- and how did
2 you vim those programs?

3 MR. GRIFFIN: Commissioner, Steve Griffin
4 here. Thank you.

5 Well, as -- as you know, yes, we are -- we are
6 actually offering a -- a new portfolio of DSM
7 programs that carries forward some of the existing
8 programs that we've had in the past, but not all of
9 them, so we are proposing to discontinue six
10 existing programs. We are proposing to add four
11 new ones, and continue five, and modify two of the
12 existing programs.

13 And you are correct, that of those 11
14 programs, 10 do not currently pass the RIM test.
15 The one that does is our curtailable load
16 management program. The remaining 10 do not, but
17 they get as close to passing RIM as we could to
18 develop a program -- portfolio of programs that
19 could meet our goals.

20 And so that is -- that is what you see there
21 before you. That is what the analysis bore out
22 in -- in the case of developing this portfolio.
23 And so unfortunately, there really was no RIM
24 passing offering that would enable us to -- I mean,
25 we are close to meeting the goals that the

1 Commission approved back in 2019. This is our best
2 shot.

3 COMMISSIONER BROWN: Thank you. And I know
4 many of us previously expressed frustration with
5 the outdated FEECA statute that we have in place.
6 Part of that is the way that we evaluate
7 cost-effectiveness. And it's not to say that TRC
8 participant is a better test, but RIM does place a
9 more stringent test for measuring
10 cost-effectiveness.

11 And, again, you know, I know staff is
12 proposing that we have a process oriented
13 rule-making review to consolidate goals in the
14 plans process, which we contemplated previously as
15 being a more complete review. But, you know, I
16 just kind of wanted to get our staff's perspective
17 of what is our feel about how we are addressing
18 moving forward with FEECA.

19 CHAIRMAN CLARK: Mr. Futrell.

20 MR. FUTRELL: As far as the rule-making,
21 Commissioner, certainly, we have monitored interest
22 by the Legislature to take up potential amendments
23 to FEECA. We have not observed an interest in
24 opening up that statute.

25 We have been, as staff, discussing options for

1 improving the process, or addressing some of the
2 concerns that have been raised through the recent
3 process. I think that's one thing we are curious
4 about, if the Commission wishes to open up the
5 rule, is to explore options for making the process
6 more transparent, more accessible to the Commission
7 and -- and parties to -- to better assess the
8 impact of programs on potential goals, and get the
9 focus, perhaps, back on to the programs that the
10 customers actually have available to them, and
11 better understand options within those programs,
12 how the utilities construct those programs; and
13 perhaps entertain better aligning the goals with
14 the savings that are actually achieved by the
15 programs, and putting those more -- perhaps putting
16 those on a one-to-one basis, where the savings that
17 come from the participation in the programs are
18 more directly connected to the goals that are
19 established by the Commission.

20 And so those are some of the highlight ideas
21 we've -- we've -- we've put -- we've discussed in
22 entertaining a potential rule proceeding.

23 CHAIRMAN CLARK: Thank you, Mr. Futrell.

24 COMMISSIONER BROWN: Thank you.

25 And, Mark, what is your timeframe of

1 initiating that rule proceeding?

2 MR. FUTRELL: Certainly, if the Commission
3 wishes to -- to give us direction today, or in the
4 near future, we will -- we will get started
5 certainly in a timely manner. We've got a little
6 bit of time before the next goal setting process
7 begins, so we certainly don't want to -- to waste
8 time, but I think it's something where there will
9 be a lot of --

10 COMMISSIONER BROWN: We won't be here, so I
11 would hope to see it before we -- we have to
12 depart.

13 MR. FUTRELL: No, we want to get this started
14 because it's going to be something that we need a
15 lot of input on, a lot of -- there are a lot of
16 folks who are interested in this topic. So we
17 certainly want to take time to get everyone's input
18 and make sure we understand all of the -- the
19 nuances and the potential effects it could have on
20 all parties, most importantly the Commission in the
21 future.

22 COMMISSIONER BROWN: Thank you.

23 And, Mr. Chairman, thank you again for the
24 latitude that you have given me. Again, an issue
25 that's very close to my heart here. I don't think

1 that the recommendation that staff is giving us
2 gets us to where we need to be in our state, and I
3 support the utilities' proposal for the programs
4 with the caveat that the FPL CDR and CILC credits
5 be addressed duration the FPL base rate -- next
6 base rate proceeding under -- pursuant to FPL's
7 prior settlement.

8 CHAIRMAN CLARK: All right. Thank you,
9 Commissioner Brown.

10 Are there other Commissioners that have
11 questions or comments?

12 While you are thinking, I will go ahead and --
13 and throw my couple out. I do is a couple of
14 questions I want to ask.

15 Mr. Futrell, in looking at the RIM test, is
16 one of the reasons that -- and this is just
17 theoretical -- one of the reasons that some of the
18 programs don't pass the RIM test is because of the
19 significant kilowatt hour savings they produce and
20 the fact that that we load our cost recovery system
21 through the kilowatt hour approach as opposed to a
22 fixed facility charge?

23 MR. FUTRELL: Certainly you are correct that
24 the RIM test has -- includes lost revenues as a
25 cost of the program, and so that's generally

1 generated from kilowatt hour sales, and so that's
2 certainly a component in assessing the impact of
3 the RIM test. There is other costs as well that
4 are included, other benefits, but that's a
5 significant component of the RIM test that's not
6 present in the other two tests.

7 CHAIRMAN CLARK: Okay. Actually, I want to
8 make an observation as well. Commissioner Brown
9 talked about the issues that we dealt with and
10 discussed in November when we addressed this issue.

11 I think that a lot of us had a lot of
12 hesitation, reservation and all sorts of
13 qualifications when we looked at approving the
14 original DSM goals measures back then. I was
15 definitely one of those. And I think that part of
16 our analysis in that was not necessarily a -- a
17 desire to see the status quo, but more of a
18 reflection on my part that I wanted to see change
19 in the system. I wanted to see us make some moves.

20 And I commend our staff for the position they
21 took. They -- they read the Commission's decision
22 and -- and made a recommendation that was based on
23 what they saw us do as a direction that we were
24 leaning. I don't think that we were probably as
25 clear as we could have been at that particular time

1 about what our real anticipation -- our real goal
2 was there.

3 So I do want the staff to -- to know and
4 understand that. I do want to see the adoption of
5 a higher level of DSM programs. This is one of the
6 things that -- that I am very passionate about.
7 But I also want to make sure we understand that the
8 adoption of these programs is a major benefit to
9 the customers.

10 And I wanted to ask each of the utilities just
11 a very quick yes/no response, understanding the
12 impact of the RIM test, Participant test and the
13 TRC test, overall we are going to see as a result
14 of the implementation of the programs that you are
15 recommending and suggesting, will the overall cost
16 to the consumer go down over the remainder of this
17 rate cycle?

18 Could each of the utilities address that for
19 me?

20 MR. ROCHE: Yeah, Chairman Clark. This is
21 Mark Roche with Tampa Electric.

22 Our current ECCR rate at a thousand kilowatt
23 hours is \$2.32, and our projected ECCR rate for the
24 same thousand kilowatt hours over the five-year
25 horizon through 2024 will be \$2.34, so an increase

1 of about two cents a month.

2 CHAIRMAN CLARK: So yours is actually going to
3 increase by two cents through the adoption of these
4 programs?

5 MR. ROCHE: Yes, sir.

6 CHAIRMAN CLARK: Okay. That's TECO.

7 Who else we got?

8 MR. GRIFFIN: Mr. Chairman, this is Steve
9 Griffin on behalf of Gulf. And the answer to --
10 your to your question is yes. Our goal impact is
11 projected to decrease under our proposed offering.

12 CHAIRMAN CLARK: Okay.

13 MR. COX: Chairman Clark, this is Will Cox for
14 FPL. Tom Koch will provide an answer for FPL.

15 MR. KOCH: You beat me to the mute button
16 there, Will. Thank you.

17 Yes, Chairman Clark, the -- yeah, FPL would
18 expect that, if this is adopted, that our CCR costs
19 would be very similar or decline slightly.

20 CHAIRMAN CLARK: And Duke?

21 MR. BERNIER: Mr. Chairman, Matt Bernier for
22 Duke Energy -- I am sorry.

23 We are expecting a slight decrease as well, I
24 believe roughly four cents per thousand kilowatt
25 hours.

1 CHAIRMAN CLARK: Did you say increase or
2 decrease?

3 MR. BERNIER: Pardon me, a decrease.

4 CHAIRMAN CLARK: Decrease. Okay, thank you.

5 So we are expecting the three -- FPU, I am
6 sorry. I didn't mean to forget you Beth.

7 MS. KEATING: That's quite all right. FPUC is
8 also expecting a -- a slight decrease.

9 CHAIRMAN CLARK: Okay. So four of the five
10 utilities, by the adoption of these programs, we
11 could actually expect the impact to our consumers
12 to go down as a result of the Commission adopting
13 these programs. Okay, I just wanted to make sure
14 we had that on the record.

15 Okay, other Commissioners, any questions?

16 Commissioner Polmann, I believe we had you
17 next.

18 COMMISSIONER POLMANN: Thank you, Mr.
19 Chairman.

20 I have heard quite a lot today, and on staff
21 recommendation, as it's written, I -- I think I
22 agree in part, and I am questioning -- I have a lot
23 of questions on the other part. I heard a lot of
24 significant contribution from Commissioner Graham's
25 inquiry.

1 The -- the response on rule-making, I gather
2 from Mr. Futrell's response that -- that we can
3 initiate that fairly soon, whatever that means.
4 And the end date of that I am a little bit unclear,
5 but we will -- we will move forward expeditiously,
6 given -- given that.

7 My question is, when we conclude rule-making,
8 a can we, and then how would we initiate new goals
9 and plans? This is intended on a five-year cycle,
10 but can we at any point initiate the establishment
11 of new goals and subsequently have new plans?

12 CHAIRMAN CLARK: Mr. Futrell.

13 MR. FUTRELL: The answer, Commissioner, is
14 yes, the Commission has discretion to initiate
15 goals on its own motion. The -- the statute just
16 merely provides an end date by which it must review
17 goals, which is at least every five years. And
18 that has been the -- the tradition since this rule
19 has been in place. But again, the Commission has
20 discretion to initiate rule-making on its own
21 motion if it wishes to do so earlier than the
22 five-year cycle.

23 COMMISSIONER POLMANN: Thank you.

24 Now, we focus on the RIM test, and -- and is
25 that the particular reason, because we -- we don't

1 want to burden the nonparticipants? Is that really
2 the purpose or the focuses using that test? We
3 have other tests available.

4 MR. FUTRELL: Yes, sir. This is -- the
5 Commission's rule requires that the utilities file,
6 at a minimum, the results of the Participant test,
7 the Total Resource Cost test and the RIM test. It
8 is open to information from other perspectives as
9 well. But again, each of these tests is a measure
10 of cost-effectiveness from different perspectives.

11 The Participant test economic interest of the
12 participating customer to be part of the program.
13 In what's before you, you have one program that
14 fails the Participant test, so therefore, it's
15 not -- it would not be in the economic interest of
16 the customer to participate in that program.

17 The Total Resource Cost test looks at it from
18 the perspective of all ratepayers, and whether all
19 ratepayers will receive -- whether the benefits are
20 greater than the costs. And we have results before
21 us that there are some programs that are not
22 cost-effective under TRC.

23 The RIM test, again, looks at it from the
24 impact on rates. And as Mr. Ballinger said, the
25 nonparticipants' perspective as well, and whether,

1 as a participant who pays for these programs
2 through their ECCR factor, their benefits will be
3 greater than their costs.

4 And we have heard -- this commission heard
5 many times through the years, in recent years,
6 eloquent testimony from former Commissioner Deason
7 regarding the importance of the RIM test, at least
8 as it being a consideration, and that it -- it
9 helps to inform the Commission on the potential
10 impacts of subsidies that may occur between
11 nonparticipating customers and those who
12 participate in the program, and benefit directly
13 through energy savings and bill savings.

14 And so I certainly understand the controversy.
15 I have been through this many times. And the
16 Commission has faced these -- these issues many
17 times through the years. And -- and they are
18 always uncomfortable because we certainly
19 understand, and the staff understands the -- the
20 benefits of DSM to customers, but the statute deals
21 with DSM as a resource. It's part of the -- fits
22 into the 10-year site plan process, into the power
23 plant need determination process, and it's all
24 interconnected together as a resource, and it's
25 been analyzed as a resource over the -- over the

1 yeah.

2 And that's staff's perspective of the statute
3 and the Commission's implementation. And so that's
4 hopefully helpful, sir.

5 COMMISSIONER POLMANN: Well, thank you.

6 I gather from all that, that the Commission
7 has some flexibility in -- in how we use and
8 interpret and apply the various tests that are in
9 the rule. And I -- I recognize the importance of
10 the RIM test, and -- and the consideration for
11 nonparticipants.

12 But from my perspective, I -- I think we do
13 have some flexibility. You know, there -- there is
14 a standard practice, there is a tradition, but
15 there is certainly some policy. And over time, a
16 sitting commission can -- can certainly review and
17 take the opportunity to make some adjustments in --
18 in the policy application.

19 The -- as to DSM being considered as a
20 resource, as you said, different people have
21 different opinions, and I will sit silent on that
22 for a moment.

23 We've -- we've heard a lot of discussion here,
24 a lot of input from the parties. We've gotten
25 written comments from the utilities, and they have

1 a required timeframe in which to submit, I believe,
2 but nonetheless, we -- we have the material in
3 hand. We have the staff recommendation, and I
4 think there is -- there is a lot of thought in --
5 in different peoples mind here as to what to do
6 with that.

7 I -- I have a lot under consideration in my
8 mind, but I am not entirely clear on which way I
9 want to go on that. I'm -- I am most interested
10 in -- in the rule-making, and bringing together the
11 goal setting and the plan proceedings. I am not
12 going to say I am -- I am anxious, but I am looking
13 forward to getting that started and concluded as
14 quickly as possible. I think it will be very
15 beneficial.

16 So my question, is there a particular
17 timeframe for us to take action on the plans before
18 us? If you can answer that.

19 CHAIRMAN CLARK: Mr. Futrell.

20 MR. FUTRELL: Commissioner, there is no
21 time -- timeframe on this. You are not under a
22 statutory deadline to rule on -- on the petitions
23 before you.

24 COMMISSIONER POLMANN: I -- I know the staff
25 has done a great job in compiling information that

1 was provided in the plans. I -- I have heard a lot
2 of discussion here and feedback from the utility
3 answering questions. We have letters to -- to the
4 docket. And -- and my question from staff first,
5 and then I would like to hear from my colleague.

6 But, staff, do you believe that you have
7 sufficiently understood from your review, and --
8 and essentially tabulated all of the information
9 provided in -- in the written comments? Is there
10 something else that -- that you feel you could do
11 to better inform us, and would there, from your
12 perspective, be -- be some value for a deferral,
13 perhaps, for another meeting?

14 And, Mr. Chairman, if -- if we can have an
15 opportunity, I am sure there is more questions. We
16 haven't heard from everybody, but I would just like
17 to have that be considered, sir.

18 That's all I have.

19 CHAIRMAN CLARK: Thank you, Commissioner
20 Polmann.

21 Mark, can you address that?

22 MR. FUTRELL: First, I will do part of this
23 and then let Mr. Ballinger chime in.

24 I think the Commission has discretion if it
25 wishes to defer the item. As far as additional

1 information, I will let Mr. Ballinger and perhaps
2 Mr. Ellis answer those questions.

3 MR. BALLINGER: This is Tom Ballinger.

4 Staff did extensive discovery with the
5 utilities trying to look at modifications to
6 programs to make them more cost-effective, and --
7 and things of that nature.

8 So to answer your first question, I think we
9 have got all we have or need to make a decision. I
10 don't know if a deferral to get any more
11 information would -- would help.

12 I would like to clarify that what we found is
13 the -- the dilemma of the non-RIM passing programs
14 for each utility. And while you heard rates are
15 projected to go down, I want you to be aware of the
16 cost impact of meeting these goals.

17 In other words, for FPL, for example, I think
18 in the recommendation it had the RIM failing
19 programs was about 9.3 percent of their budget.
20 That's about \$71 million over the five-year period.
21 In other words, that's costing extra to meet the
22 goal.

23 For TECO, it would be about \$27 million, or
24 12.3 percent of their budget. And for Gulf, it
25 would be about \$45 million, or 77 percent of their

1 budget.

2 So that -- to give you a context of what it's
3 costing ratepayers above and beyond the RIM test,
4 if you will, to meet the goal.

5 But again, back to your question. I don't
6 think a deferral would give us any more
7 information. I think the Commission has what it
8 needs before it to make a decision, and we can move
9 forward.

10 COMMISSIONER POLMANN: Well, thank you for
11 that answer. I -- I appreciate it.

12 CHAIRMAN CLARK: Okay. Commissioners, any
13 other questions?

14 Commissioner Fay.

15 COMMISSIONER FAY: Thank you, Mr. Chairman.
16 Just -- just two quick questions.

17 When we approved the goals back in 2019, there
18 was a lot of discussion about the -- the specific
19 programs themselves, and what it would look like in
20 the future, but also the discussion of education
21 and auditing. And I know the recommendation
22 addresses for each utility the record where they --
23 they are going to continue the auditing for
24 customers, but back when we approved the goals, I
25 made the point that I had some concerns about

1 customers not having the ability to -- to utilize
2 that information, have the power to make
3 conservation decisions for themselves.

4 And I -- I would be remiss if I didn't take
5 the opportunity, looking at the options that are in
6 front of us, just to have the utilities just
7 briefly opine if they are -- they have adjusted and
8 moving forward, no matter what proposal goes
9 forward, they will be continuing, or at least
10 considering the electronic form of audits so
11 customers who do not want people in their home in
12 the -- the near future, and essentially sometime
13 unknown in the future, still have the ability to
14 receive that information and make those
15 conservation decisions for themselves.

16 MR. ROCHE: Commissioner Fay, this is Mark
17 Roche with Tampa Electric.

18 Tampa Electric does have a very robust on-line
19 energy auditing tool that would continue either way
20 with how you make the decision today. We will
21 always have the ability to also assist those
22 customers that may be having difficulty with the
23 on-line tool. They can phone in and our support
24 back office staff will actually help them.

25 Thank you.

1 COMMISSIONER FAY: Great, thank you.

2 MR. KOCH: Commissioner Fay, this is Tom with
3 FPL, and similar to what Mark said, FPL offers both
4 phone and on-line channels, and that has been
5 continuing on over the past few months during the
6 pandemic, and we have been servicing tens of
7 thousands of customers that way on a monthly basis.

8 COMMISSIONER FAY: Thank you.

9 MR. GRIFFIN: Commissioner, this is -- this is
10 Steve Griffin on behalf of Gulf. The same is true
11 with Gulf Power.

12 MR. BERNIER: Commissioner Fay, Matt Bernier.
13 The same is true for Duke Energy, on-line and phone
14 audits are available.

15 MS. KEATING: And, Commissioner, this is Beth
16 Keating. I believe FPUC also does both as well. I
17 will defer to Scott Bryant to correct me if I am
18 wrong.

19 MR. BRYANT: You are correct.

20 COMMISSIONER FAY: Great. And -- and I
21 appreciate that, because I think that's something
22 that that going forward is going to be really
23 critical to make sure customers have that -- that
24 information and that -- the ability to make those
25 decisions as they look for ways for conservation in

1 will their own -- their own homes.

2 The other comment that I wanted to make --
3 well, first, would like to point out I think
4 Commissioner Brown has shown great leadership on
5 this issue, and is obviously very passionate about
6 it, and so I appreciate and respect her -- her
7 thoughts on this going forward.

8 But I think part of what is the reality of the
9 decision we made on the goals is that when you
10 create a decision that is, quote/unquote, the
11 status quo, there is an interpretation on -- on
12 multiple sides that that's either a good or a bad
13 thing. And I think it's often considered a bad
14 thing, because that decision that we made related
15 to the status quo included having programs -- or
16 having more conservation for certain utilities
17 going forward than what was proposed at the time.
18 And now when we have the decision for the programs
19 in front of us, our Chair has made a -- I think a
20 very relevant and persuasive point, that we look at
21 the cost to -- to the ratepayer and what's passed
22 on as potential adjustments of what those -- those
23 programs do as far as impacting their -- their
24 world. So I think that's something we have to keep
25 in mind.

1 So the extremes of both sides, I think, are
2 not necessarily where this commission and -- and
3 this body have -- have landed in this discussion.
4 And I think that there is a balance in between
5 there, and the analysis of the programs to make
6 decision best that they are appropriate or not
7 seems to make since to me.

8 And I think legal pointed out some -- some
9 relevant points about moving forward, and -- and
10 what our options are based on the decisions that
11 were previously made.

12 I -- I would like to be very clear that an
13 arbitrary and capricious threshold is a -- is a
14 very high one, and -- and it would -- it would be
15 something that I think would be somewhat unordinary
16 for the Commission to not have that put in to -- to
17 make that decision. And I think fellow legal
18 colleague, Commissioner Brown, would probably a
19 yeah that we, you know, our decision today, we want
20 to make sure it's consistent with those -- those
21 legal parameters that are -- that are set out for
22 us.

23 But I do think that going forward, the
24 rule-making process does allow for some discussion
25 to better analyze these. As from the beginning,

1 I -- I have taken issue with separation in the goal
2 setting process and the program setting process in
3 that the time changes even between those decisions
4 that we make at this point, and we are -- we are
5 seeing information that isn't consistent with that
6 time period when those goals decisions were made.

7 So that's -- that's a flaw in the, you know,
8 the premise of what we are doing here, and should
9 probably be addressed through rule-making. So I
10 think that's a great option.

11 I do leave it up to my colleagues maybe for
12 better direction on how that option would
13 intertwine with what the decision we make today,
14 but I do think that there are alternative programs
15 in front of us, and there is also the option to
16 accept staff's recommendation for what -- what --
17 what staff has pointed out is -- is a consistent
18 option with the decision that we made for the --
19 the goal setting back in -- back in 2019.

20 So with that, Mr. Chairman, I appreciate the
21 time. Thank you.

22 CHAIRMAN CLARK: Thank you, Commissioner Fay.
23 Commissioner Graham.

24 COMMISSIONER GRAHAM: Thank you, Mr. Chairman.
25 I have three different things I need to talk about.

1 Number one is the rule-making. Maybe I walked
2 away after we set the goals in November with the
3 wrong impression, but I though we gave staff
4 direction at that point to start going down the
5 path of rule-making and fixing this problem. I
6 guess the question I have to staff is what -- what
7 do we need to do today to start that process
8 tomorrow?

9 CHAIRMAN CLARK: Mr. Futrell.

10 MR. FUTRELL: I think if you -- if you wish to
11 give us direction to open rule-making, we will
12 initiate rule-making today, tomorrow, and get that
13 process started.

14 COMMISSIONER GRAHAM: Okay. Because once
15 again, I -- I thought we -- I thought we were going
16 down that path back in November when we approved
17 these things. I didn't realize we hadn't started
18 that -- that process.

19 CHAIRMAN CLARK: One of the -- one of the
20 things we discussed at this time, Commissioner
21 Graham, was whether this was a rule fix or a
22 legislative fix, if I remember right, and we were
23 trying to come up with the strategy as to how it
24 would best be it approached. It's probably a
25 two-pronged approach, there is really no question,

1 right, it's probably -- Mr. Baez is -- is -- I see
2 the wheels turning, so I am going to let him
3 comment on this.

4 MR. BAEZ: I -- I apologize, Chairman. I'm --
5 my shaking my head was not to cut you off. Please,
6 I -- I beg you, finish your thought.

7 CHAIRMAN CLARK: No problem.

8 MR. BAEZ: I was, in a manner, agreeing with
9 you.

10 Commissioner Graham, I -- I don't want the --
11 the fact that the staff is requesting authority,
12 or -- or recommending that the Commission direct us
13 to -- to start -- to begin rule-making, to initiate
14 rule-making to suggest that all along this time on
15 day, you know, goal setting plus one, the -- the
16 staff has been discussing process-wise how we could
17 improve it to give you as much advantage in making
18 your decisions as -- as possible, paying close
19 attention obviously to the frustration that the
20 Commission, as a whole, had expressed when they
21 made a very difficult decision back in 2019.

22 And -- and I would say further that we are
23 sitting here, once rule-making will get initiated,
24 I think we've got a good -- we've already got a
25 good concept of what -- what we would like to see

1 and suggest for consideration.

2 So the -- the act of beginning the rule-making
3 doesn't -- doesn't remotely represent the beginning
4 of this process. This process certainly of sorting
5 out what kind of things we would try to improve,
6 and how we could capture advantages for -- for the
7 Commission has been going on for months.

8 And so, Commissioner Graham, we've got a head
9 start, I guess. What we don't have is -- is
10 official -- you know, there wasn't an explicit
11 begin rule-making kind of thing. This is more
12 formality than -- than anything else.

13 CHAIRMAN CLARK: This might be a great
14 opportunity to -- to -- to host a workshop at maybe
15 our next IA and have a brief discussion so we can
16 work this timeline out and decide on those two
17 approaches.

18 MR. BAEZ: We would be happy -- we would be to
19 lay things out as -- as we see them in terms of --
20 of timing and such with you at any -- at any time,
21 and IA would --

22 CHAIRMAN CLARK: If you could bring that back
23 to us at the next IA. Commissioner Graham, would
24 that be a good starting point?

25 COMMISSIONER GRAHAM: It works for me, just as

1 long as I know we are moving forward.

2 CHAIRMAN CLARK: You got it.

3 MR. BAEZ: Thank you.

4 CHAIRMAN CLARK: Continue, sir.

5 COMMISSIONER GRAHAM: Thank you.

6 The second one was low income, and I think
7 Commissioner Brown pretty much addressed my
8 concerns and questions and comments on that, so I
9 will leave that one alone.

10 The third one was -- I guess the question is
11 more for Mr. Cox or Mr. Koch, the load control and
12 demand reduction.

13 From the letter that you sent, you pretty much
14 doubled the credits that were given, but only
15 increased the participation by 10 percent. Why
16 would that -- why was that added to your 2016 rate
17 case?

18 MR. KOCH: I'm sorry, could you -- why was
19 what added to our -- provisioned in the settlement?

20 COMMISSIONER GRAHAM: That's correct.

21 MR. KOCH: Okay. So, you know, over time
22 that -- that -- the credit level actually went up
23 substantially in 2012, if you recall, Commissioner
24 Graham, from where it had been historically. And
25 then from there, at the time of the -- the

1 settlement, adjustments from made for generation
2 additions to our -- our plant, both through the
3 GBRA and SoBRA, and that's what's taken us to the
4 level that we are at today.

5 And it was agreed in that settlement provision
6 that if there were going to be any adjustments to
7 the current levels going forward, it would be the
8 DSM -- it would be an issue, I should say, so it
9 would be an issue in the DSM proceeding. That's
10 why we had asked that it be addressed in this
11 proceeding. But again, we are amenable to it being
12 addressed in our next rate case, if that's the
13 Commission's preference.

14 COMMISSIONER GRAHAM: So because the goals
15 were not changed, then the -- this settings was not
16 going to be changed; is that what you are saying?

17 MR. KOCH: I am -- maybe I am losing your
18 question. I am sorry. The -- the proposed --

19 (Multiple speakers.)

20 CHAIRMAN CLARK: Restate your question,
21 Commissioner.

22 COMMISSIONER GRAHAM: Since the Commission
23 decided not to change the DSM goals, was it the
24 position of your company that you were not going to
25 change the program, and wait until the -- wait

1 until the next rate case?

2 MR. KOCH: No. We actually proposed in our
3 plan to change the credit levels in the plan that's
4 before you today. And we recognize, though, that
5 the settlement says that those rates would not
6 actually not take effect until the rates are reset
7 in the next rate case.

8 So, again, approved in the DSM proceeding, but
9 actually reset with a formal tariff approved would
10 be a result of the next rate case.

11 COMMISSIONER GRAHAM: Okay. Because we are
12 talking about a significant amount of money here,
13 and I was kind of curious what the position was of
14 the company.

15 All right. Mr. Chairman, that's all I had.

16 CHAIRMAN CLARK: Thank you.

17 All right. Commissioners, are you ready for a
18 vote? I will entertain a motion if you have one,
19 if there are no other questions.

20 COMMISSIONER BROWN: Mr. Chairman, I am
21 ready -- prepared to make a motion.

22 CHAIRMAN CLARK: You are recognized.

23 COMMISSIONER BROWN: Thank you.

24 I would move to reject the staff
25 recommendation and adopt the programs by the

1 utilities as filed with the caveat that the FPL CDC
2 and CILC programs will be addressed in the next
3 base rate proceeding for FPL, in accordance with
4 FPL's prior settlement agreement.

5 CHAIRMAN CLARK: Is there a second to the
6 motion?

7 COMMISSIONER POLMANN: (Raised hand.)

8 CHAIRMAN CLARK: I have a motion and a second.
9 Is there any discussion?

10 I want to make sure that -- did we get that
11 recorded correctly? We are -- we are good with --
12 okay. Adam has got it recorded.

13 COMMISSIONER FAY: Mr. Chairman.

14 CHAIRMAN CLARK: Yes. I will start with
15 Commissioner Polmann.

16 COMMISSIONER POLMANN: Well, I was -- I was
17 going to ask Commissioner Brown about the
18 rule-making, but I would like to hear from -- go
19 ahead, Commissioner Fay.

20 CHAIRMAN CLARK: I am sorry, Commissioner
21 Polmann.

22 COMMISSIONER POLMANN: That was not a
23 second -- yeah, that is not a second. That was a
24 question.

25 CHAIRMAN CLARK: Oh, my apologies. Then --

1 then hold on do.

2 We have a second to the motion?

3 COMMISSIONER GRAHAM: I will second the
4 motion.

5 CHAIRMAN CLARK: Thank you. We have a motion
6 and a second. Now, any discussion?

7 I am sorry, Commissioner Polmann. Anything
8 else?

9 Commissioner Fay?

10 COMMISSIONER FAY: Commissioner Polmann read
11 my mind, so I was just making sure I have
12 clarification that the motion on the table, since
13 it rejects staff's recommendation, I thought I
14 understood from Commissioner Brown and Commissioner
15 Graham that they -- they would not only support,
16 but encourage the rule-making process to start
17 immediately, so it would reject it except for that
18 component of the recommendation.

19 COMMISSIONER BROWN: No. Thank you. No.
20 Thank you, Commissioner Fay, for pointing that out.

21 Like Commissioner Graham, I thought we had
22 already given them direction in the goals setting
23 proceeding to begin rule-making. I did not know
24 that they were not given that direction. So
25 obviously, I would support them moving forward,

1 like, tomorrow.

2 COMMISSIONER FAY: Okay. Great.

3 That's all I had, Mr. Chairman. Thank you.

4 CHAIRMAN CLARK: All right. So now I need a
5 clarification.

6 Just a couple moments ago we directed staff to
7 bring us back a schedule at IA. So do you want to
8 forget that and let's go ahead and authorize
9 rule-making? Is that what's in your motion,
10 Commissioner Brown?

11 COMMISSIONER BROWN: I just wanted to make it
12 very clean. I thought that we had an agreement
13 amongst the Commissioners. I didn't know if it had
14 to be in the order, but if it has to be in the
15 order, then I would add to the motion --

16 CHAIRMAN CLARK: It does not have to be. I
17 just want -- I just want to clarify. We -- I don't
18 want to go to the trouble of doing a presentation
19 ready for IA if we are telling them to go ahead and
20 move forward. So we are all in agreement to
21 instruct staff to move forward with rule-making and
22 don't worry about bringing the IA proposal back.

23 Now, okay, any other questions on the motion?

24 Are we clear on the motion?

25 Commissioner Polmann, are we comfortable with

1 that? Did that answer your question? I couldn't
2 hear you. I didn't want to cut you off, but I
3 didn't think I could hear you.

4 COMMISSIONER POLMANN: No, I -- I am satisfied
5 with the motion and the second, and we have
6 addressed the -- the rule-making issue. I believe
7 you clarified staff has the direction. What we are
8 doing in IA it's up to you, Mr. Chairman, so thank
9 you very much.

10 CHAIRMAN CLARK: All right. Thank you.

11 Any other comments or questions on the motion?

12 All in favor, say aye.

13 (Chorus of ayes.)

14 CHAIRMAN CLARK: Any opposed to the motion?

15 (No response.)

16 CHAIRMAN CLARK: The motion is approved
17 unanimously.

18 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

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

IT IS FURTHER CERTIFIED that I
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DATED this 17th day of July, 2020.



DEBRA R. KRICK
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