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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20240012-EG

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

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PROCEEDINGS: COMMISSION CONFERENCE AGENDA  
ITEM NO. 5

COMMISSIONERS  
PARTICIPATING: CHAIRMAN MIKE LA ROSA  
COMMISSIONER ART GRAHAM  
COMMISSIONER GARY F. CLARK  
COMMISSIONER ANDREW GILES FAY  
COMMISSIONER GABRIELLA PASSIDOMO SMITH

DATE: Tuesday, December 3, 2024

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

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

PREMIER REPORTING  
TALLAHASSEE, FLORIDA  
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1 P R O C E E D I N G S

2 CHAIRMAN LA ROSA: Let's move to Item No. 5.

3 Mr. Rubottom, you are recognized when you are  
4 ready.

5 MR. RUBOTTOM: Good morning, Commissioners.

6 Item 5 is staff's recommendation on FPL's  
7 proposed numeric conservation goals for the 2025 to  
8 2034 period pursuant to the Florida Energy  
9 Efficiency and Conservation Act, or FEECA.

10 Specifically, staff's recommendation addresses  
11 whether a new demand-side management measure  
12 proposed by FPL, the HVAC On-Bill option, is within  
13 the Commission's regulatory jurisdiction and, as a  
14 fallout question, whether the conservation savings  
15 associated with the measure should count toward  
16 FPL's goals.

17 Staff recommends that the HVAC On-Bill option  
18 is not within the Commission's jurisdiction, and  
19 recommends that the Commission approve FPL's  
20 numeric goals for 2025 to 2034 without included the  
21 estimated savings associated with the HVAC On-Bill  
22 measure.

23 Staff is available for questions.

24 CHAIRMAN LA ROSA: All right. Commissioners,  
25 is there questions or thoughts on Item No. 5?

1           Commissioner Clark, you are recognized.

2           COMMISSIONER CLARK: I guess I will kind of  
3           lead this one off. I certainly want to say I thank  
4           staff, appreciate the diligence and hard work that  
5           you guys put into the recommendation. I know this  
6           was a -- kind of a controversial issue, and  
7           requires some pretty in-depth legal review in terms  
8           of interpretation, and I am not going to tend to  
9           second-guess, or question the decision you made in  
10          terms of whether this transaction constitutes a  
11          sale or not, but I do think that the overall intent  
12          and design of the program was certainly very well  
13          thought out. And I think that it certainly is a  
14          direct impact -- it was a direct result of what  
15          FEECA actually wants done.

16          If you go back and look at the language, I  
17          think that this type of program accomplishes --  
18          helps to accomplish FEECA goals. I certainly think  
19          that it's an important tool that not only the  
20          utility has to encourage conservation and demand  
21          savings, but more importantly, I think it's a  
22          positive thing for customers.

23          I don't know if anybody has bought a new HVAC  
24          system yesterday -- in the last year, but just a  
25          few years ago, \$4,500, \$5,500 was a pretty easy

1           number to get a system put in. Nowadays, I usually  
2           start at around \$10,000, and so many families just  
3           do not have the ability to fork that kind of money  
4           over for a new HVAC system, not only if one tears  
5           up, but if they are just looking for efficiency and  
6           improvements.

7                     This program, the way it's designed and the  
8           terms of the service contract for that customer, I  
9           think, lends itself to offering some great benefits  
10          for consumers, for families, and I am very much in  
11          support of allowing this program into the FEECA  
12          conservation goals and giving approval for it, Mr.  
13          Chairman.

14                    CHAIRMAN LA ROSA: Commissioners, further  
15          questions?

16                    Commissioner Graham.

17                    COMMISSIONER GRAHAM: Thank you, Mr. Chair.

18                    The first question I guess is to staff.  
19          Staff, if at the end of this service contract that  
20          if they are required to return the HVAC system,  
21          would that be in line to what you guys are talking  
22          about, that it would be more of a service and not a  
23          sale?

24                    MR. RUBOTTOM: Just to clarify your question,  
25          Commissioner Graham, are you asking whether if,

1 under the circumstance of a particular agreement,  
2 at the end the customer is required in all cases,  
3 if the design of a program requires the return of  
4 the unit? Our -- staff's opinion in that case is  
5 that it would not constitute a sale. That's not  
6 the facts that are before the Commission in this  
7 case. The design of the program is not that way.  
8 It sounds like that's a suggestion of an alteration  
9 and modification to the program design.

10 COMMISSIONER GRAHAM: Well, I understand  
11 that's not currently what they have before us, but  
12 if that was before us, that they had to return it  
13 at the end of the 10 years, would that be  
14 considered service and not a sale?

15 MR. RUBOTTOM: It would -- our opinion is that  
16 that would not be a sale in that case, if that was  
17 the structure of the program.

18 COMMISSIONER GRAHAM: Because -- thank you.

19 I guess my issue with this is -- I think what  
20 they are saying, at least what I am reading into  
21 this -- they are saying the life of this system is  
22 10 years. So rather than having to pull out a  
23 defunct system that's already been -- that's had  
24 this livelihood and sending it back. They are just  
25 saying, okay, the 10 years is over, you get to keep

1           it. And so I don't see any difference between them  
2           having to pull it out and send it back, or them  
3           just saying, okay, just keep it, because I think  
4           that's pretty much a wash. And so I guess I agree  
5           with Commissioner Clark on this one.

6                     We have been asking them for a while to be  
7           innovative for the things that they are doing,  
8           doing something a little bit different. And as we  
9           have already experienced for some reason or another  
10          we can't go to zero goals, and so we got to come up  
11          with some things that are going to allow them to  
12          achieve these goals, and so I don't have a problem  
13          with this.

14                    CHAIRMAN LA ROSA: Commissioner Passidomo  
15          Smith.

16                    COMMISSIONER PASSIDOMO SMITH: Thanks, Mr.  
17          Chairman.

18                    I do have some thoughts on the legal analysis.  
19          I just kind of, as a preliminary matter, just  
20          wanted to first -- I really appreciate staff's  
21          thoroughness of this in going through, you know, a  
22          lot of legal research. I spent some time doing it  
23          myself, and it's not fun, but it is, I guess, for  
24          us, it's not for most, but as a preliminary matter,  
25          I just kind of want to go over staff's comments

1           regarding the due process concerns on page seven of  
2           the recommendation, as I had some similar concerns.

3           I recall at the hearing that, you know, we had  
4           a stipulated issue, and it wasn't clear at the time  
5           what staff's position really was. They didn't --  
6           staff wasn't really taking a position, nor did they  
7           say -- conduct any cross-examination, so I could  
8           kind of understand the difficulty to try to  
9           preemptively anticipate what staff's arguments are  
10          going to be in a recommendation that's going to be  
11          filed after a party files its own post-hearing  
12          brief. So I just wanted to kind of put that out  
13          there first.

14          Now regarding the legal analysis of whether  
15          it's a sale, I have a differing opinion than staff  
16          does on this. I read Section 672.412, and to me,  
17          it's a -- so it states: Unless otherwise  
18          explicitly agreed, title passes to the buyer at the  
19          time and place at which the seller completes his or  
20          her performance.

21          Per the tariff agreement here title of the  
22          HVAC equipment does not pass to the participant at  
23          the time of delivery, and FPL explicitly retains  
24          title and ownership of the equipment while it  
25          provides the services under the agreement. And so

1           any transfer -- in the tariff, any of transfer of  
2           ownership will not occur until after the service  
3           agreement has expired, which we have discussed is  
4           10 to 15 years.

5           Since, you know, with that in mind, I also  
6           agree with Commissioner Clark and Commissioner  
7           Graham on just the customer benefits of this  
8           program. I think it's really innovative. And  
9           since I don't think we are even under the purview  
10          of Chapter 672 in this, this is, I guess, just my  
11          legal analysis of it, I would say that, like,  
12          that's not -- Chapter 672 isn't governed here. We  
13          are under the -- it's clear that our jurisdiction  
14          is under FEECA in this situation.

15          And as we have already pointed out, 6 --  
16          366.81 specifically tells the Commission to  
17          construe programs liberally, and not to preclude  
18          experimental rates rate structure or programs, and  
19          I believe the HVAC On-Bill option is.

20          So I think it's probably pretty clear my  
21          opinion on this. I support this program, and I am  
22          ready to make a motion, Mr. Chairman, but I imagine  
23          y'all have some more comments to say.

24                 CHAIRMAN LA ROSA: Sure. I have got  
25                 Commissioner Fay with comments. Sir, you are



1 recognized.

2 COMMISSIONER FAY: Sure. Thank you,  
3 Commissioner La Rosa.

4 Just first to follow up on Commissioner  
5 Passidomo's comments. Mr. Rubottom, can you just  
6 elaborate a little bit on the due process component  
7 that you touch on the analysis, and maybe just sort  
8 of walk us through the beginning of the FEECA file  
9 -- the rule obviously changed. The FEECA filing  
10 comes in, and then the process for where engagement  
11 can occur for the party.

12 MR. RUBOTTOM: In terms of opportunities for  
13 parties to get involved, this is the goal setting  
14 proceeding, and so these petitions were filed back  
15 in April, I believe. And so the parties have been  
16 involved. The utility's petition was filed.  
17 Discovery happened. The initial issue list was  
18 released at the time of the Order Establishing  
19 Procedure.

20 This particular issue it, Issue 10, was added  
21 after a meeting with all the parties. And so the  
22 utility was aware that staff had concerns about the  
23 jurisdictional aspects related to this program.  
24 Discovery was conducted, and then the hearing was  
25 schedule and took place.

1           So I don't if that's responsive to your  
2           question, or if you had -- yeah, so -- and just to  
3           add on as well. There was a deposition conducted  
4           on this issue on the program specifically that  
5           touched on many of these issues. So I don't know  
6           if that answers your question, or if there is  
7           something more specific.

8           COMMISSIONER FAY: Yeah, I do have something  
9           more specific, but just to confirm, that's the same  
10          process as pretty much any docket that we would  
11          handle. Like, did you have a deviation in what we  
12          would kind of normally do from a due process  
13          perspective?

14          MR. RUBOTTOM: No, Commissioner. We conducted  
15          it according to the normal process. And in all the  
16          Commission's dockets, the utility has the burden to  
17          prove their case, and it's staff's role to provide,  
18          after receiving and analyzing the evidence and the  
19          arguments in the case, to provide a recommendation  
20          to the Commission based on what's been filed, and  
21          so that's the typical process for the Commission.

22          COMMISSIONER FAY: Okay. And would it be fair  
23          to say that maybe the jurisdictional question is a  
24          little bit of a deviation from most questions that  
25          we see? Like, typically we have, you know,

1 something put in front of us about a program, or a  
2 generation asset, and we look to see if it meets  
3 the statute and then determination approval or not.  
4 With this, it's a question of does the Commission  
5 actually have authority to move -- even if you  
6 argue the policy arguments later, do we have  
7 authority to make the decision to approve this, is  
8 that --

9 MR. RUBOTTOM: Correct. When the  
10 circumstances of a case, or what's been filed  
11 present -- when staff identifies a potential  
12 problem with a jurisdictional question. That gets  
13 analyzed. It was included in discovery, things  
14 like that. It's not always an issue in every case.  
15 In this instance, staff thought it was worth  
16 pursuing and presenting it as a stand-alone issue  
17 in the docket.

18 COMMISSIONER FAY: Yeah. And it seems like  
19 you did have all of this communication on the front  
20 end. It does seem like a relevant distinction. I  
21 mean, if we have a docket where a utility files  
22 something and presents evidence for -- to meet the  
23 burden, there is nobody who challenges that  
24 evidence, then the Commission takes that up in a  
25 certain way.

1           If it's a jurisdictional question as to, you  
2           know, can we even make this decision or not, I am  
3           not sure it really requires some intervenors,  
4           somebody to say on the front end, we disagree with  
5           that. I mean, the Commission still is has to make  
6           a determination within the purview of the law that  
7           we have in front of us, and if we don't have a  
8           specific authority to make that decision, we need  
9           the Commission to say in a recommendation that  
10          there is concerns about this.

11          We can't just sort of lightheartedly accept  
12          maybe we can do that. And so I think that's what  
13          you did here, and, you know, I take the due process  
14          question really seriously. It seems like it's been  
15          satisfied from a number of different directions.  
16          But I can respect the fact that the utility is  
17          saying we don't know what we are supposed to argue,  
18          push back against. We don't know what issue like  
19          we would normally have in a docket.

20          So this jurisdictional thing I think is  
21          unique, and I think the recommendation handled it  
22          pretty well, but I can appreciate that it's hard to  
23          argue against the other side when you don't know  
24          really what's going to be presented. Maybe that's  
25          what their point was with this.

1           I did want to ask -- Commissioner Passidomo  
2           mentioned the interpretation about the statute and  
3           everything put forward depending on what we would  
4           do or not do. That is -- a decision based on the  
5           program determinants, if approved today, would be  
6           made at a later date, correct?

7           MR. RUBOTTOM: Yes, sir. The details of the  
8           program, the outlines and the design of the program  
9           will be handled in the plan approval proceeding  
10          that follows the goal -- the goal established --  
11          the goal setting proceeding here.

12          Staff's recommendation is limited to just the  
13          relevance to whether it's appropriate to include  
14          these savings and goals. And so we just dealt with  
15          the jurisdictional question, and not the details  
16          and policy questions related to the program itself.

17          COMMISSIONER FAY: Okay. Because arguably, if  
18          we accepted it and made the change, there would be  
19          some fallout to changing of the goals based on  
20          those numbers, is that --

21          MR. RUBOTTOM: That's correct. It would  
22          modify FPL's proposed goals.

23          COMMISSIONER FAY: Okay. And I -- you know, I  
24          don't want to get too into the program details. I  
25          mean, I -- Commissioner Clark was mentioning a

1           situation. I -- you know, when my wife and I  
2           bought a house in downtown Tallahassee, a historic  
3           home, it -- you know, we thought it was great.  
4           Well, the AC was not. And so after we had moved  
5           in, we paired with the utility, which was the City,  
6           to be able to get new ACs in a loan program that  
7           they have, which I think was some percentage that  
8           we paid back. And if we weren't able to do that, I  
9           don't know really what our resolution would have  
10          been to that.

11                 This seems like the intent is really in the  
12           right place, to try to provide some alternative for  
13           customers to have the choice. It's probably in  
14           large response to what this commission has had, I  
15           think we sort of -- Commissioner Clark mentioned,  
16           or Commissioner Graham mentioned zero goals. I  
17           mean we sort of beat the utilities over the head  
18           with this idea that we need more with FEECA. Bring  
19           something forward. And now we have got it, and the  
20           lawyers are ruining it all because we are looking  
21           at it basically saying, great, this is great for  
22           customers. It's a good option. It seems like you  
23           put all of this together, but we have limitations  
24           that are placed within the jurisdiction and what we  
25           can do.

1           And, you know, I think this was explicitly  
2 placed into statute as a limitation a long time  
3 ago. Is it a question should it be expanded or  
4 not? That's a whole different policy debate of  
5 what that would include or not.

6           But, you know, unlike Commissioner Passidomo,  
7 I think good lawyers can disagree. I think we hit  
8 our limitation with something like this based on  
9 what's in the statutes. And I really struggle to  
10 find a way to make it work.

11           Commissioner Graham asked the appropriate  
12 question. If this doesn't, how can we make it  
13 work, right? What change would be required to make  
14 it work going in the future? And, yeah, I don't  
15 know how that's presented. I don't even know if  
16 it's worth the Commission revisiting it at some  
17 point.

18           Let me ask this: Is there any prohibition  
19 where if the program looked differently and came  
20 back before us that would preclude them from being  
21 able -- preclude the Commission from being able to  
22 review it?

23           MR. RUBOTTOM: Not at all. In this docket,  
24 the Commission is establishing the goals, and the  
25 plan approval proceeding would happen later, with

1 all the details of the programs and measures that  
2 the utility would include in their plan, would come  
3 before the Commission at that time for approval.

4 COMMISSIONER FAY: Okay. I appreciate that.

5 Okay. Mr. Chairman, I am, unfortunately, not  
6 going to be able to support this today, but I also  
7 realize that I am probably on a small little island  
8 based on what my colleagues said, and, you know,  
9 depending what can be put forward, I am open to  
10 suggestions, but I think, you know, I have  
11 presented my position on the item and I am good.  
12 Thank you .

13 CHAIRMAN LA ROSA: I am going to go to  
14 Commissioner Passidomo Smith.

15 COMMISSIONER PASSIDOMO SMITH: Okay. Thank  
16 you.

17 I appreciate Commissioner Fay's comments, and  
18 I understand. He makes a good point. You know,  
19 this is a legal interpretation. I think, like I  
20 said, staff did a really good job of laying out  
21 their position in the recommendation, and did all  
22 of the necessary legal research, and, you know,  
23 lawyers can disagree.

24 And so, I guess with that, I would move to  
25 deny staff's recommendation and approve the



1 stipulation as presented.

2 CHAIRMAN LA ROSA: Hearing a motion, is there  
3 a second?

4 COMMISSIONER CLARK: Second the motion.

5 CHAIRMAN LA ROSA: So the motion on the table.  
6 All those in favor signify by saying yay.

7 (Chorus of yays.)

8 CHAIRMAN LA ROSA: Yay.

9 Opposed no?

10 (No response.)

11 CHAIRMAN LA ROSA: No.

12 Show that the motion passes.

13 So I am going to go back to staff. Do we have  
14 to address the other issues within the item?

15 MR. RUBOTTOM: Mr. Chairman, the Issue 10  
16 being denied, and the stipulation being approved,  
17 there is no further decision required for Issue 12  
18 because of the stipulation previously approved by a  
19 bench vote, and so all that remains is Issue 14,  
20 which is the close docket issue.

21 CHAIRMAN LA ROSA: Is there any change to your  
22 recommendation that the docket should be closed?

23 MR. RUBOTTOM: No, sir. No change.

24 CHAIRMAN LA ROSA: Okay. So then I will --

25 COMMISSIONER CLARK: Move staff

1 recommendation, Mr. Chairman.

2 CHAIRMAN LA ROSA: There we go. There is a  
3 motion.

4 Is there a second?

5 COMMISSIONER GRAHAM: Second.

6 CHAIRMAN LA ROSA: Hearing a motion and  
7 hearing a second.

8 All those in favor signify by saying yay.

9 (Chorus of yays.)

10 CHAIRMAN LA ROSA: Yay.

11 Opposed no?

12 (No response.)

13 CHAIRMAN LA ROSA: Show that the motion passes  
14 on Issue No. 14.

15 All right. So I think that closes us out for  
16 Item No. 5. I am double checking because I know we  
17 have a lot going on today. There is nothing before  
18 us in this Agenda Conference.

19 Let's say in 10 minutes, is that fair? We  
20 will go ahead and start our Special Agenda meeting.

21 Seeing no further business, see that this  
22 meeting is adjourned. Thank you.

23 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

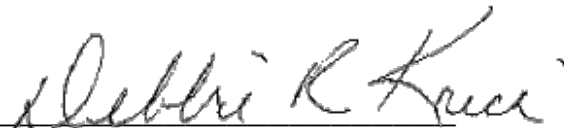
STATE OF FLORIDA )  
COUNTY OF LEON )

I, DEBRA KRICK, Court Reporter, do hereby  
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time and place herein stated.

IT IS FURTHER CERTIFIED that I  
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same has been transcribed under my direct supervision;  
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DEBRA R. KRICK  
NOTARY PUBLIC  
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