

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for approval of ) DOCKET NO. 930424-EI  
proposal for incentive return on )  
demand-side management )  
investments by Florida Power )  
Corporation. )

In Re: Request for approval of ) DOCKET NO. 930444-EI  
proposal for revenue decoupling ) ORDER NO. PSC-94-0058-PHO-EI  
by Florida Power Corporation. ) ISSUED: 1/18/94

Pursuant to Notice, a Prehearing Conference was held on January 6, 1994, in Tallahassee, Florida, before Commissioner Julia L. Johnson, as Prehearing Officer.

APPEARANCES:

JAMES A. MCGEE, Esquire, Post Office Box 14042, St. Petersburg, Florida 33733-4042  
On behalf of Florida Power Corporation.

JOHN W. MCWHIRTER, JR., Esquire, McWhirter, Reeves, McGlothlin, Davidson & Bakas, Post Office Box 3350, Tampa, Florida 33601-3350 and JOSEPH A. MCGLOTHLIN, Esquire and VICKI GORDON KAUFMAN, Esquire, McWhirter, Reeves, McGlothlin, Davidson & Bakas, 315 South Calhoun Street, Suite 716, Tallahassee, Florida 32301  
On behalf of Florida Industrial Power Users Group.

DEBRA SWIM, Esquire, Legal Environmental Assistance Foundation, Inc., 1115 North Gadsden Street, Tallahassee, Florida 32303-6327  
On behalf of Legal Environmental Assistance Foundation, Inc.

BENJAMIN OCHSHORN, Esquire, Florida Legal Services, 511 Beverly Street, Tallahassee, Florida 32301  
On behalf of Florida Client Council.

MICHAEL A. PALECKI, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0863  
On behalf of the Commission Staff.

PRENTICE P. PRUITT, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-0862  
On behalf of the Commissioners.

DOCUMENT NUMBER-DATE

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FPSC-REG/03/REPORTING

PREHEARING ORDER

I. CASE BACKGROUND

In Florida Power Corporation's Rate Case, Docket No. 910890-EI, the Company agreed to file a demand-side management incentive proposal and a revenue decoupling proposal for the Commission's subsequent review, independent of the rate proceeding. In April of 1993 FPC submitted its proposals to the Commission. This matter is scheduled for hearing on January 19 and 20, 1994.

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 366.093, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the

confidential nature of the information is preserved as required by statute.

- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

#### Post-hearing procedures

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in

conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

### III. PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by the parties and Staff has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

### IV. ORDER OF WITNESSES

<u>Witness</u>	<u>Appearing For</u>	<u>Issues #</u>
<u>DOCKET NO. 930424-EI -- DSM INCENTIVES</u>		
Wallace L. Barron, Jr.	FPC	ALL
Terry L. Murray	FIPUG	1,2
Dr. John Stutz	LEAF	1,2,4,5

<u>Witness</u>	<u>Appearing For</u>	<u>Issues #</u>
<b><u>REBUTTAL</u></b>		
Wallace L. Barron, Jr.	FPC	Rebuttal to FIPUG and LEAF witnesses

**DOCKET NO. 930444-EI -- REVENUE DECOUPLING**

Karl H. Wieland	FPC	ALL
Terry L. Murray	FIPUG	2-5, 9-10
Dr. John Stutz	LEAF	1,2,3,7,8,9,10
Michael S. Haff	Staff	1-6, 9-11

**REBUTTAL**

Karl H. Wieland	FPC	Rebuttal to Staff witness Haff
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V. BASIC POSITIONS

**DOCKET NO. 930424-EI -- DSM INCENTIVES**

**FLORIDA POWER CORPORATION (FPC):** FPC's proposed mechanism for providing an incentive return on DSM investments by the Company is reasonable and appropriate for the purposes of a pilot program and should be approved in order to provide the Commission and interested parties meaningful actual data on the value of DSM shareholder incentives as a regulatory tool.

**FLORIDA INDUSTRIAL POWER USERS GROUP (FIPUG):** In this case, the Commission will consider Florida Power Corporation's (FPC) proposal to receive a financial reward for engaging in DSM programs. Increasing rates to reward utilities for DSM will decrease the benefits of otherwise cost-effective DSM measures and rewards linked to expenditures rather than results can reduce the cost-effectiveness of DSM even further.

Additionally, it is FIPUG's position that FPC should not be paid for engaging in prudent utility behavior, which includes the pursuit of cost-effective DSM. Pursuing the most cost-effective

alternative is the utility's job. It should not be necessary to bribe the utility to do what it is already required to do.

The best way for the Commission to insure that FPC pursues cost-effective behavior is to subject FPC to the forces of the competitive marketplace. This will force FPC to compete to retain customers and thus keep its costs as low as possible.

**LEGAL ENVIRONMENTAL ASSISTANCE FOUNDATION, INC. (LEAF):** Under current regulation, even with decoupling, the market acceptance and financial risks associated with demand-side resource investments discourage FPC's investments in cost-effective DSM. Positive incentives are needed to offset these DSM-related risks and help level the playing field for FPC's DSM investments. If supply and demand are to be treated equally, both decoupling and incentives need to be adopted. Experience elsewhere shows that, while decoupling alone is insufficient, together, decoupling and incentives can cause utilities which have been active in DSM to increase their achievements. Both decoupling and incentives are needed if regulation is to successfully motivate utilities to follow their least-cost plants and market cost-effective DSM to their customers. LEAF's incentive proposal is preferable to the FPC proposal. However, the FPC proposal can easily be modified to incorporate the key aspects of the LEAF approach.

**FLORIDA CLIENT COUNCIL (FCC):** We support the revenue decoupling proposal of Florida Power Corporation (FPC), as currently amended, and request its approval by the Commission.

**STAFF:** FPC filed its decoupling and DSM incentives proposals to honor an agreement with the Legal Environmental Assistance Foundation (LEAF) for them not to appeal FPC's last rate case or the site certification of its Polk County power plants.

Staff believes that the Commission should defer any decision on FPC's decoupling and DSM incentives proposals until after a decision is made on whether conservation programs should be screened by the Rate Impact Measure (RIM) test or the Total Resource Cost (TRC) test. This decision on RIM vs. TRC should be made pursuant to the conservation goals dockets, whose hearings are set for June, 1994. If the RIM vs. TRC decision is not made, we will not have numerical conservation goals. The issue of decoupling/incentives will be addressed on a broad policy basis by the other three investor-owned utilities in the conservation goals docket pursuant to Section 111 of the Energy Policy Act of 1992.

**Alternate Statement of Basic Position (Legal):** Incentives to conservation, and removal of disincentives to conservation through



decoupling, are both appropriate means of fostering the intent of the Florida Energy Efficiency and Conservation Act to increase energy efficiency and conservation in Florida and the intent of the Federal Energy Act of 1992.

**DOCKET NO. 930444-EI -- REVENUE DECOUPLING**

**FLORIDA POWER CORPORATION (FPC):** FPC's proposed decoupling mechanism is reasonable and appropriate for the purposes of a pilot program and should be approved in order to provide the Commission and interested parties meaningful, actual data on the value of revenue decoupling as a regulatory tool.

**FLORIDA INDUSTRIAL POWER USERS GROUP (FIPUG):** FPC's proposed experimental decoupling mechanism should not be approved because it is not in the best interests of the utility's customers. Despite assertions to the contrary, there is little evidence to suggest that decoupling encourages cost-effective DSM. Much more significant is the degree of regulatory interest in such programs. In addition, decoupling shifts risks (many of which are controlled by FPC) to ratepayers from FPC stockholders. FPC is clearly as interested in decoupling because of the revenue stability the mechanism provides as it is because of any relationship the mechanisms may have to DSM programs. FPC proposes to shift these risks without any corollary reduction in ROE.

Further, as noted in the incentive docket, the most important measure that the Commission can take to be sure that FPC minimizes the cost of energy services is to move toward a competitive electricity market. Rather than shielding FPC from market forces through decoupling by guaranteeing FPC's revenue stream, exposure to a competitive market will force FPC to choose the least-cost resource mix because FPC's survival as a company will depend upon it reducing its cost to retain customers.

**LEGAL ENVIRONMENTAL ASSISTANCE FOUNDATION, INC. (LEAF):** The economic incentives created by regulatory policies exert a powerful influence on utility actions. The current connection between utility revenues and sales gives Florida Power Corporation ("FPC") a strong between-rate-case incentive to maximize electric sales, rather than to minimize the long term costs of providing reliable energy services. Every additional kWh FPC sells between rate cases increases its profits, and every kWh customers do not buy due to conservation reduces its bottom line. As a result, one of the strongest economic incentives in place under current regulation discourages investment in even low cost energy conservation and

creates a powerful disincentive to demand-side programs that reduce energy usage -- even when it would be less expensive to provide reliable energy services by investing in demand-side efficiency measures rather than new generating units.

Two regulatory policies are essential to correcting current incentives -- to level the playing field so that demand-side resources as well as supply-side resources can help meet the energy service needs of FPC's customers in the most cost-effective manner. Decoupling utility revenues from sales is a necessary first step, and providing economic rewards for delivering cost-effective demand-side efficiency measures is another. The experience of other states indicates that both decoupling and incentives are essential to aligning FPC's interests with those of its customers. Since utility regulation ought to provide the greatest rewards for utility actions which lead to energy services at least cost to customers, FPC's decoupling proposals should be approved, and positive incentives, as proposed by LEAF, should be provided.

**FLORIDA CLIENT COUNCIL (FCC):** We support the revenue decoupling proposal of Florida Power Corporation (FPC), as currently amended, and request its approval by the Commission.

**STAFF:** FPC filed its decoupling and DSM incentives proposals to honor an agreement with the Legal Environmental Assistance Foundation (LEAF) for them not to appeal FPC's last rate case or the site certification of its Polk County power plants. Now FPC is using this decoupling proposal in an attempt to shield stockholder earnings from the impact of weather, the economy, and electricity prices on revenues and earnings.

Staff believes that the Commission should defer any decision on FPC's decoupling and DSM incentives proposals until after a decision is made on whether conservation programs should be screened by the Rate Impact Measure (RIM) test or the Total Resource Cost (TRC) test. This decision on RIM vs. TRC should be made pursuant to the conservation goals dockets, whose hearings are set for June, 1994. The issue of decoupling/incentives will be addressed on a broad policy basis by the other three investor-owned utilities in the conservation goals docket pursuant to Section 111 of the Energy Policy Act of 1992.

**Alternate Statement of Basic Position (Legal):** The Federal Energy Policy Act requires the Commission to give consideration to revenues lost due to conservation measures when setting utility rates:



(8) INVESTMENTS IN CONSERVATION AND DEMAND MANAGEMENT. -- The rates allowed to be charged by a State regulated electric utility shall be such that the utility's investment in and expenditures for energy conservation, energy efficiency resources, and other demand side management measures are at least as profitable, giving appropriate consideration to income lost from reduced sales due to investments in and expenditures for conservation and efficiency, as its investments in and expenditures for the construction of new generation, transmission, and distribution equipment. Such energy conservation, energy efficiency resources and other demand side management measures shall be appropriately monitored and evaluated.

16 U.S.C. 2601 sec. 111(d)(8).

Legal staff believes that decoupling is one way in which the Commission can ensure that utility investment in conservation is at least as profitable as other utility investments. At this point, data simply does not exist on the effectiveness of decoupling in Florida. However, Section 366.81, Florida Statutes (1993) specifically allows the Commission to authorize experimental rates, rate structures or programs in order to increase energy efficiency and conservation. Legal staff believes that the Commission should authorize an experimental decoupling program limited to one rate class of one utility to obtain data. The Commission would then be able to comply with the Energy Policy Act and at the same time determine whether a broader adoption of decoupling would be effective to increase energy efficiency and conservation.

#### VI. ISSUES AND POSITIONS

Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

DOCKET NO. 930424-EI -- DSM INCENTIVES

ISSUE 1: Should the Commission approve a pilot DSM incentive mechanism for FPC?

FPC: Yes. A pilot program is the best way to test the merits of a DSM incentive mechanism. It provides a meaningful, practical application of DSM incentives that can be used to evaluate their merits before making a long-term commitment. (Barron)

FIPUG: No. The fundamental flaw in DSM incentive (reward) proposals is that they reward the utility for doing what it should already be doing -- that is pursuing the most cost-effective alternatives to serve its customers. Significantly, the funds for DSM programs come directly from the ratepayers (no investor funds are at risk), so, if anyone deserves a reward, it is the ratepayers! Rather than reward the utility for behaving prudently, the Commission should subject FPC to the competitive marketplace to insure that it makes the most cost-effective choices.

In addition, the rewards suggested by some parties in this docket will actually decrease the benefits of cost-effective DSM and might cause desirable programs to fail the appropriate cost-effectiveness test.

Finally, Florida's utilities have spent millions of dollars on conservation programs without the incentive mechanism proposed in this docket. Before embarking on a program to reward utilities for such spending, the Commission should carefully analyze past programs to see if they were successful. (Murray)

LEAF: Yes. In addition to the disincentive to DSM eliminated by decoupling, there are other economic and institutional barriers that cause FPC to favor investments in power supply resources over investments in demand-side resources. These barriers include utility perceptions of market and financial risks. A reasonable DSM incentive mechanism would help to overcome these barriers and put DSM on a par with supply-side resources in utility planning. (STUTZ)

**TECHNICAL**

**STAFF:**

No. The issue of conservation incentives is intertwined with the issue of screening conservation programs for cost-effectiveness with the RIM or TRC test. Consideration of the decoupling and incentive standards required by the 1992 National Energy Policy Act has been scheduled for the June 1994 goal hearings. There is no urgency to make a decision on conservation incentives prior to making a decision on the RIM vs. TRC issue.

It would be inefficient and duplicative to address these issues at this time.

**LEGAL**

**STAFF:**

Yes. In order to obtain data to determine whether a DSM incentive mechanism can increase energy efficiency and conservation in compliance with FEECA while at the same time satisfying the requirements of the federal Energy Policy Act, the Commission should authorize a pilot DSM mechanism for FPC.

**ISSUE 2:** What pilot DSM incentive proposal should be approved for FPC?

**FPC:**

The proposal submitted by FPC. FPC's proposal rewards good performance, benefits all customers, and avoids windfall profits. It is also simple to implement, administratively feasible, and procedurally consistent with existing recovery mechanisms. In contrast, the proposal presented by LEAF is relatively complex and offers a greater potential for controversy. If issue 1 is decided in the affirmative.

**FIPUG:**

No pilot DSM incentive mechanism should be approved for the reasons discussed in Issue 1 above. However, if the Commission approves the program proposed by FPC it should not permit FPC to receive a return 200 basis points higher than its return on other rate base investments. Such a proposal excessively tilts the playing toward DSM and provides FPC with an infinite return on its "investment" at no risk.

Nor should the Commission permit FPC's earnings on such programs to be excluded from the determination of FPC's achieved regulatory rate of return. This would simply increase the likelihood that FPC will overearn. (Murray)

**LEAF:** Because the incentive proposal recommended by LEAF would provide reasonable incentives for FPC, along with the assurance that FPC customers receive at least 80% of the benefits created by DSM investments, the Commission should adopt LEAF's proposal. In the alternative, an approach which combines the LEAF shared savings limitation and performance threshold requirement with the company's basic approach would also be reasonable. (STUTZ)

**TECHNICAL**

**STAFF:** As long as the incentives are small in comparison to the utility's total revenues, staff is indifferent whether LEAF's or FPC's incentive proposal is adopted.

**LEGAL**

**STAFF:** The DSM incentive proposal submitted by LEAF should be approved in order to obtain data to determine whether DSM incentives can increase energy efficiency and conservation in compliance with FEECA while at the same time satisfying the requirements of the Federal Energy Policy Act.

**ISSUE 3:** Does the Commission have the legal authority to approve FPC's proposed DSM incentive measure?

**FPC:** Yes.

**FIPUG:** No. FPC's proposal to provide a "return" greater than the level the Commission deems fair and reasonable, and apply that high "return" -- not to shareholders' investment -- but to monies provided by ratepayers at no cost, would violate provisions of Chapter 366, Florida Statutes.

**LEAF:** Yes, the Commission has clear legal authority to adopt DSM incentives for FPC.

**STAFF:** Yes.

**ISSUE 4:** Other than any benefits that may be related to barriers discussed above, is implementation of either LEAF or FPC's incentive proposal likely to create additional benefits?

**FPC:** FPC does not understand what "barriers discussed above" refers to and, therefore, is unable to state a position on this issue.

**FIPUG:** FIPUG denies that either of the proposed incentive measures would result in benefits to customers. Ratepayers should not be required to pay incentives to induce the utility to do its job in any event. In this case (where FPC claims national leadership in conservation efforts), there is no indication that they would lead to incremental conservation. (Murray)

**LEAF:** Yes. By increasing the likelihood that FPC will successfully "sell" energy use-reducing measures to its customers, decoupling would help assure that many opportunities to save significant amounts of money and pollution are not lost. (STUTZ)

**STAFF:** No position at this time.

**ISSUE 5:** Is implementation of either LEAF or FPC's incentive proposals likely to create adverse impacts? If so, are adequate safeguards in place?

**FPC:** The DSM incentive proposal presented by LEAF is relatively complex and offers a greater potential for controversy, which, in turn, would impose a significant administrative burden on Staff. FPC's proposal would regard good performance, benefit all customers, and avoid windfall profits, while being simple to implement, administratively feasible and procedurally consistent with existing recovery mechanisms.

**FIPUG:** A program has value if benefits exceed its costs. The incentive is an additional cost. For each program to which this cost is attached, the incentive would either reduce DSM benefits the program would otherwise yield or possibly render marginal programs of no value. Also, FPC proposes to exclude the incentive from the calculation of earned rate of return, making "surveillance" ineffectual. (Murray)

**LEAF:** There is no guarantee that the incentive proposed by FPC represents a reasonable portion of the net benefits created by DSM nor under FPC's incentive proposal is there a threshold below which an incentive would not be available. LEAF's proposals assure that FPC's customers

share in benefits created and discourage "cream-skimming" by FPC. (STUTZ)

**STAFF:** No position at this time.

**ISSUE 6:** Should this docket be closed?

**FPC:** Yes.

**FIPUG:** No position at this time.

**LEAF:** The docket should be closed after the Commission's final action on FPC's incentives proposals.

**TECHNICAL**

**STAFF:** Yes. Conservation incentives are required to be considered by the National Energy Policy Act. The issues in this docket should be combined into Docket No. 930549-EG, FPC's Conservation Goals docket, which has already been set for hearing in June 1994. There is no need to decide these issues prior to that hearing.

**LEGAL**

**STAFF:** No. FPC should be required to file periodic reports on implementation of the pilot incentive mechanism. This docket should be kept open to facilitate Commission and staff review of the incentive procedures and fine-tuning of the mechanism if necessary.

**DOCKET NO. 930444-EI -- REVENUE DECOUPLING**

**ISSUE 1:** Is it appropriate for the Commission to make a decision on FPC's pilot decoupling proposal prior to determining the RIM vs. TRC screening issue?

**FPC:** Yes. The merits of a decoupling mechanism do not depend on any particular DSM cost effectiveness test.

**FIPUG:** FIPUG has no objection to deferring a decision on the decoupling issue until after resolution of the RIM v. TRC screening issue.

**LEAF:** Yes. In the first place, the Commission's decision on whether to use the RIM or TRC cost-effectiveness test to screen DSM programs is not relevant to whether FPC's



current disincentive to pursue energy efficiency should be removed. Without regard to whether a DSM measure or program passes the RIM, FPC's earnings drop with every kWh that its DSM investments help customers save between rate cases. While FPC's loss in earnings is likely to be smaller with RIM-passing DSM than with DSM that fails the RIM, the loss is a significant disincentive to capturing all of the kWh (and cost) savings available under the RIM. In addition, eliminating FPC's disincentive to pursue energy efficiency could have significant impacts on the way FPC participates in the Conservation Goals Rule proceeding -- the aggressiveness of its DSM savings goals, the approach it takes to mitigating negative rate or bill impacts, and the information and analyses it provides for PSC review. It should be instructive to the Commission to see whether different incentives for FPC lead to different approaches to DSM goals. Further, the Commission may want to decide the RIM-TRC issue on a program by program or measure by measure basis, depending on the rate and bill impacts of specific DSM measures or programs year to year, instead of choosing one test as the only screening tool. (STUTZ)

**FCC:**

Yes. We understand that the purpose of the pilot program is to gather information necessary to evaluate the effectiveness of decoupling in Florida and to determine the extent to which decoupling should be implemented on a broader basis. DSM programs would not supplant the need for the pilot because, whether they are RIM- or TRC-based, they will not remove the financial incentive for utilities to increase power consumption.

**TECHNICAL  
STAFF:**

No. The issue of revenue decoupling is intertwined with the issue of screening conservation programs for cost-effectiveness with the RIM or the TRC test. Consideration of the decoupling and incentive standards required by the 1992 National Energy Policy Act has been scheduled for the June 1994 goal hearings. There is no urgency to make a decision on a decoupling experiment prior to making a decision on the RIM vs. TRC issue. It would be inefficient and duplicative to address these issues at this time.

**LEGAL  
STAFF:**

Deciding the RIM vs. TRC issue is not necessary before implementing, decoupling on an experimental basis. In addition it is not legally necessary for the Commission

to decide between the RIM and TRC tests in the goals dockets, and in fact, the Commission has already declined to restrict itself to either test in the rulemaking docket (Docket No. 920606-EG) and in the goals dockets for munis and coops (Order No. PSC-93-1305-FOF-EG, Issued September 8, 1993).

**ISSUE 2:** Will FPC's decoupling proposal reduce economic disincentives to DSM?

**FPC:** Yes. The proposal will make DSM programs income neutral to FPC and thereby reduce the economic disincentive to DSM that currently exists. (Wieland)

**FIPUG:** FIPUG disagrees with the premise of this issue. FPC has not proven that the potential for lost revenues is a significant disincentive to cost-effective DSM. Even if it is an disincentive, any disincentive is present only between rate cases and is accounted for in each rate case through the sales forecast. FPC has not proven that any short-run disincentive that may exist between rate cases is large enough to affect its DSM efforts, which in its last rate case it touted as so outstanding as to be deserving of a reward. (Murray)

**LEAF:** Yes, no credible testimony suggests otherwise. Under current regulatory practice every additional kWh Florida Power sells between rate cases increases profits and every additional kWh customers do not buy due to efficiency or conservation reduces the company's bottom line. This direct connection between revenues and sales strongly discourages FPC's investments in DSM resources that would reduce kWh sales and encourages FPC to maximize sales rather than minimize the long-term costs of providing reliable energy services. While the FPC decoupling proposal would not eliminate all disincentives to DSM, it would eliminate the most powerful economic disincentive to efficiency measures that reduce kWh consumption. (STUTZ)

**FCC:** Yes.

**TECHNICAL STAFF:** FPC's decoupling proposal will likely result in a minimal, if any, increase in conservation activities. The primary disincentive for FPC to engage in conservation programs is not regulatory but, instead,

end-use competition. FPC is committed to RIM programs, and there appears to be few programs left that would pass RIM. However, this is an issue for the June, 1994 conservation goals hearings.

**LEGAL**  
**STAFF:**

The Commission cannot determine the extent to which decoupling will reduce economic disincentives without data upon which to base its decision. A limited decoupling program would provide data which would allow the Commission to make this determination.

**ISSUE 3:** What risks would FPC's decoupling proposal shift to customers that are presently borne by the utility? Is any shift reasonable in view of the magnitude of the risk and the safeguards proposed?

**FPC:** FPC will retain economic risk (full risk for customer growth and economic risk for use per customer growth due to the economy). Only weather risk is shifted to the customer. FPC has demonstrated that shifting weather uncertainty to customers has minimal impact on rate volatility and can benefit customers by actually reducing rate volatility. FPC further protects customers by limiting the true-up so that the Company does not exceed the upper limit of its authorized ROE range by reason of the true-up. (Wieland)

**FIPUG:** FPC's proposal would guarantee FPC a level of revenue between rate cases and therefore shift the risk of ant revenue shortfall for any reason to ratepayers. Therefore, ratepayers would bear the risk of variations in customer demand, weather, economic downturns, customer-financed conservation programs, changes to alternative energy sources, customer bypass and any other cause, not just shortfalls related to DSM.

FIPUG believes that the shifting of such risks is inappropriate for several reasons. First, many of these risks are within FPC's control not the ratepayers. Second, stockholders are better equipped to deal with such risks because they can diversify to minimize risks whereas ratepayers cannot. Third, stockholders choose to invest in FPC; ratepayers have little choice of electric provider. Finally, FPC is compensated for these risks through its allowed rate of return. If the Commission transfers these risks to ratepayers, it should lower

FPC's ROE when decoupling is implemented, not wait until FPC's next rate case. (Murray)

**LEAF:**

In addition to removing lost revenue risks associated with FPC's investments in DSM, the FPC proposal would shift the cost and benefit risks of annual weather variations to customers, along with part of the cost and benefit risks of short-term changes in the local economy. The magnitude of the lost revenue risk, while significant to the company, is minimal for customers, and the benefits related to eliminating the disincentive to DSM make the shift reasonable. The magnitude of the weather risk is large for the company and small for customers and, since the revenue stability benefits of the change may inure to the benefit of customers over time, the shift is reasonable at least on a pilot basis. The magnitude of the economic risk appears to be small, and the FPC has proposed an annual adjustment that minimizes it further and makes it reasonable on a pilot basis. Finally, FPC has proposed an earnings cap to assure that decoupling adjustments do not permit its earnings to fall outside the range authorized by the PSC. Thus, reasonable safeguards are built into FPC's proposal to minimize the customer impacts of any risk shift related to decoupling. (STUTZ)

**FCC:**

The proposal, on paper, shifts weather risk to the customer, although, overall, we believe that it reduces consumer risk in the manner discussed in Questions 1 and 2 above.

**TECHNICAL  
STAFF:**

FPC's decoupling proposal will transfer, from the utility to its residential customers, revenue risks associated with the weather, economy, and electricity prices. Such a shift is not reasonable considering that FPC has not offered anything, such as a reduction in ROE, to its customers in return for their accepting the additional risks.

**LEGAL  
STAFF:**

Although the decoupling proposal shifts risks to some extent, Section 366.80 - 366.85, Florida Statutes (FEECA), encourages adoption of experimental programs designed to increase energy efficiency and conservation.

**ISSUE 4:** What major factors should be considered in any comparison of conservation programs between Florida utilities and utilities in other states that have adopted decoupling and incentives?

**FPC:** FPC believes that comparing conservation programs of Florida utilities with those of utilities in other states is inappropriate whether or not those utilities have decoupling and incentive programs.

**FIPUG:** Factors which must be considered in comparing other states with decoupling and incentives to Florida include, but are not limited to: the level of conservation existing in those states prior to the institution of decoupling and/or incentives, the growth rate of those states, the customer mix of those states, the quality of service in those states, the price of electricity in those states, differences in resource mix, differences in procurement processes, and types of resources available. (Murray)

**LEAF:** This issue should be eliminated because no party has filed testimony on it. That program comparisons may be made in the testimony of a party does not constitute testimony on what factors should be considered in making comparisons between utilities. While the Commission may find it helpful to consider parties' testimony on DSM program activity in states with and without decoupling and incentives, weighing its probative value for determining relevant issues, deciding what should and should not be considered in any such comparison would take this proceeding far beyond the scope of any of the testimony filed in this case.

**FCC:** This docket does not involve a comparison of different states' utility energy conservation programs. The presence and effectiveness of such programs depends upon a number of factors, only one of which is the incentive structure of power rates. This question should be removed as irrelevant and leading.

**TECHNICAL  
STAFF:**

Florida's electric utilities are much more involved in conservation at this time than utilities in other states were at the time decoupling and incentives were adopted in those states. We believe it may be inaccurate to infer a cause-and-effect relationship between decoupling and incentives and the change in conservation

achievements experienced (or projected) by certain other states. Even without decoupling and incentives, Florida's electric utilities are comparably involved in conservation efforts. The conservation achievements made by Florida's utilities should factor in this Commission's current policy that conservation in new buildings should be achieved pursuant to the State of Florida's Building Code, not by utility conservation programs.

Furthermore, states that have adopted decoupling are air-quality non-attainment states that, in effect, internalize many environmental "costs" that would likely be considered external costs in Florida. As a result, RIM and TRC conservation programs will be more cost-effective.

**LEGAL  
STAFF:**

Rather than compare conservation programs, the Commission should examine the results of an experimental decoupling program to determine if decoupling would increase energy efficiency and conservation in Florida.

**ISSUE 5:** If decoupling is to be experimented with, what criteria should be approved at the outset to determine whether the experiment is a success or a failure?

**FPC:** FPC does not believe that criteria to determine success or failure should be approved at the outset. Such an evaluation should be conducted at the end of the experiment using factors deemed appropriate at the time.

**FIPUG:** Whatever factors the Commission adopts should be objective and quantifiable. However, the Commission should be aware that it is not conducting a controlled experiment and that it will be impossible to determine at the end of the experimental period whether decoupling and/or incentives or other unrelated factors resulted in an increase or decrease in DSM during the experimental period. (Murray)

**LEAF:** This issue should be eliminated because no party has filed testimony on what criteria, if any, should be used.

**FCC:** We are not aware of a need for prior criteria to be developed for FPC's pilot decoupling program. We agree that there should be an evaluation of the program upon the conclusion of the pilot period.



**TECHNICAL**

**STAFF:** Many experiments provide no useful information because of flaws in their design. FPC should propose a protocol at the experiment's outset, with criteria for success or failure and provisions for data gathering. The criteria should be objective/quantitative to the extent possible and subjective/qualitative where appropriate. The criteria must be able to screen out exogenous factors.

**LEGAL**

**STAFF:** The criteria should be based on FEECA and the Federal Energy Policy Act.

**ISSUE 6:** If decoupling and incentives are adopted or to be experimented with, should low-use customers be excluded from any adoption or experimentation, and if so, below what KWh level should the exclusion be?

**FPC:** Low use customers should not be excluded because decoupling does not place any economic burden on customers. To the contrary, if removing disincentive for conservation results in increasing cost-effective conservation programs, customers will benefit.

**FIPUG:** No position at this time.

**LEAF:** This issue should be eliminated because no party has filed testimony on whether low-use customers should be excluded or how such an exclusion should be accomplished if desirable. Moreover, the testimony that was filed demonstrates that decoupling is likely to have little or no rate impact on low-use customers and that the impact might well be beneficial -- i.e., reduced rate and bill impacts.

**FCC:** No. FPC's decoupling proposal does not create any new effects which low-use customers need to be shielded from. Further, other, equally strapped households of a larger size would have increased fluctuation in their energy bill as a consequence of the exclusion of low-use customers. We appreciate the sensitivity which Commissioners have displayed toward low-use customers on limited budgets. However, the Commission should understand that these persons are forced into drastic conservation practices by Florida's utter failure to provide assistance to low income persons in increasing the energy efficiency of their dwellings, and in reducing

or paying their energy bills. Florida is one of only five states in the country that does not involve its major utilities in such programs. We believe that the Commission should address low income persons' energy needs in a truly meaningful manner, through specifically including consideration of low-income households' participation in conservation programs in the DSM dockets; and through opening a separate docket to investigate the nature of low-income persons' energy difficulties in Florida, and to develop effective approaches to meeting their needs.

**TECHNICAL**

**STAFF:**

Yes, residential customers whose energy consumption is less than 2000 KWh per month (24,000 KWh per year) should be excluded from the decoupling proposal.

**LEGAL**

**STAFF:**

No. The purpose of the experimental program is to increase energy efficiency and conservation in compliance with FEECA. The utility should not be prohibited from using decoupling to increase energy efficiency and conservation among low use customers.

**ISSUE 7:**

Other than any reduction in economic disincentives to efficiency that may occur, are any other benefits likely to result from implementation of FPC's decoupling proposal?

**FPC:**

Yes. Gaming concerns associated with load forecasting in rate cases would be eliminated; risks associated with innovative rate designs would be significantly reduced; and uncertainties related to within-year weather fluctuations would be eliminated. (Wieland)

**FIPUG:**

The impact of conservation on sales can adequately be taken into account in test year projections, so FIPUG disagrees that any significant efficiencies would be gained. FPC's projections of modest RDM true-ups also implicitly belie the claim of a significant disincentive "problem." Many claimed "benefits" inure to the utility, not the ratepayers. (Murray)

**LEAF:**

Yes, at least five additional benefits would be created. The controversy and "gaming" surrounding load forecasting in rate cases would be removed. The risk of innovative rate designs would be reduced. FPC's ability to compete

would be enhanced. The uncertainties associated with within-year weather fluctuations --uncertainties that create incentives for FPC to forego actions that are in the long term interests of customers -- would be, removed. Further, by increasing the likelihood that FPC will successfully "sell" energy use-reducing measures to its customers, decoupling would help assure that many opportunities to save significant amounts of money and pollution are not lost. (STUTZ)

**FCC:** The decoupling proposal will remove a regulatory disincentive for FPC to engage in energy conservation measures and programs. FPC, as it has represented, will gain certain planning and stability benefits from the proposal. And FPC's inclusion of an economic adjustment mechanism, and its agreement to spread out over two years changes in power rates, offers better price security to customers, especially in recessionary times, than the current risk-laden process of utility companies requesting interim rate adjustments to account for reduced electricity sales. The 3.0% annual growth in residential customer revenues on which the FPC proposal is based is reasonable because it approximates the historic growth rate of this amount.

**STAFF:** No position at this time.

**ISSUE 8:** Beside any risk shift discussed above, is any harm likely to result from implementation of FPC's decoupling proposal? If so, are adequate safeguards in place?

**FPC:** No. (Wieland)

**FIPUG:** The decoupling proposal would sacrifice more important incentives that would yield benefits to ratepayers. The best way to create desirable incentives is to expose the utility to greater market forces. The decoupling is designed to shelter the utility from such competitive forces. (Murray)

**LEAF:** FPC's decoupling proposal contains safeguards adequate to prevent any harm likely to result from its implementation. (STUTZ)

**FCC:** Should a weather condition occur in the FPC service area on the magnitude of Hurricane Andrew, it is possible that FPC would obtain revenues in excess of the amount which

would be granted under the existing rate adjustment process. There is little likelihood of noticeable reductions in energy use due to conservation measures during the pilot period. Any such new programs will require substantial periods of development, marketing, saturation and implementation; and most of the conservation obtained from such measures will occur subsequent to the pilot period. Following the pilot period, the recalculation of the annual increase in residential customer revenues should take into account the effect of conservation measures.

**TECHNICAL**

**STAFF:**

Yes there is additional harm. Decoupling results is a surcharge when usage is low due to economic downturns as well. Customers rebel at the concept of paying higher rates to reimburse a utility for electricity they do not use in periods of economic difficulties. This is the reason decoupling has met with significant controversy in states that have adopted such programs. No, an ROE cap is not an adequate safeguard without specifying how the ROE is to be calculated, taking into account future item-by-item issues of prudence.

**LEGAL**

**STAFF:**

Legal staff agrees that the level of customer acceptance of decoupling is a factor that should be considered. At this time the level of customer acceptance in Florida is unknown. A limited decoupling experiment would provide data which would allow the Commission to make a determination on the level of customer acceptance. Experimental programs designed to increase energy efficiency and conservation are encouraged by FEECA.

**ISSUE 9:** Is it appropriate to adopt a decoupling mechanism for FPC?

**FPC:** Yes. (Wieland)

**FIPUG:** No. FPC has not proven that its experimental decoupling proposal would insure cost-effective conservation. Further, decoupling provides FPC with a guaranteed revenue stream while shifting risk to ratepayers without an attendant reduction in ROE. See Issue 3. In addition, while decoupling might remove short-term (between rate case) incentives to increase sales, it can also eliminate other incentives which would result in

lower costs for customers. For example, because decoupling would fix revenue but not costs, a utility may try to increase profits by cutting back on services to customers. Thus, the Commission would need a service quality measurement to add back into the decoupling picture. Decoupling may require additional regulatory targets, monitoring and measurement and a consequent increase in regulatory complexity which is unnecessary. (Murray)

**LEAF:** Yes. The benefits of decoupling are substantial and the risks are minimal -- especially in the proposed 3 year pilot. (STUTZ)

**FCC:** Yes, the advantages outweigh the disadvantages.

**TECHNICAL**

**STAFF:** No. A decoupling mechanism should not be considered until after the Commission decides the RIM vs. TRC issue pursuant to the June, 1994 conservation goals hearings.

**LEGAL**

**STAFF:** Yes. The decoupling should be approved on an experimental basis in order to obtain data to determine whether it can increase energy efficiency and conservation in compliance with FEECA while at the same time satisfying the requirements of the Federal Energy Policy Act.

**ISSUE 10:** If the Commission adopts a decoupling mechanism, what is the appropriate methodology?

**FPC:** The appropriate methodology is the one proposed by FPC. (Wieland)

**FIPUG:** The Commission should not adopt an experimental decoupling mechanism for FPC. See Issues 2, 3, and 7. However, if the Commission does adopt an experimental decoupling mechanism, it should not approve FPC's guaranteed escalation factor because FPC has offered no evidence to demonstrate that its costs per customer would increase in revenues. Ironically, the 1.5% escalation factor contradicts the premise of decoupling which is allegedly that decoupling leads to less energy usage. (Murray)

**LEAF:** There are many effective ways to decouple revenues from sales (and the PSC may want to implement other methods for other utilities), but the approach proposed by FPC is reasonable and should be approved by the Commission. (STUTZ)

**FCC:** The issue on the table is whether to approve the FPC proposal, or to approve it with amendments, not to start from scratch. FCC supports the FPC proposal, as currently amended, and request its approval by the Commission.

**TECHNICAL**

**STAFF:** Staff would reluctantly recommend that the Commission adopt a mechanism that allows the recovery of conservation lost revenues only. This method will force FPC to increase its efforts to measure the effects of conservation programs. This proposed conservation lost revenue recovery mechanism should have the following attributes:

- A. The same engineering estimates and other data used to calculate lost revenues would be used to determine whether FPC meets its conservation goals.
- B. Lost revenue recovery would be limited to large-use residential customers (those whose consume more than 2000 KWh per month or 24,000 KWh per year).
- C. FPC would propose success/fail criteria to monitor the results.
- D. The lost revenue recovery mechanism would start on January 1, 1995 and last for three years until December 31, 1997 unless otherwise ordered by the Commission.

**LEGAL**

**STAFF:** Generally the decoupling mechanism proposed by FPC should be adopted.

**ISSUE 11:** Should this docket be closed?

**FPC:** Yes, if FPC's decoupling proposal is considered at this time. The docket should remain open if consideration is deferred until the June 1994 conservation goals hearing.



**FIPUG:** No position at this time.

**LEAF:** The docket should be closed after the Commission's final action on FPC's decoupling proposal.

**FCC:** We consider this to be primarily a procedural issue. It may be that the annual rate recalculation and economic adjustment mechanism, and the evaluation of the program at the conclusion of the pilot period, would be most economically be handled through the keeping open of this docket, and throughout these events, there may be a benefit to the retention of the same hearing officer.

**TECHNICAL**

**STAFF:** Yes, Conservation decoupling is required to be considered by the National Energy Policy Act. The issues in this docket should be combined into Docket No. 930549-EG, FPC's Conservation Goals docket which has already been set for hearing in June 1994. There is no need to decide these issues prior to that hearing.

**LEGAL**

**STAFF:** No. This docket should remain open and FPC should be required to submit periodic reports to the Commission.

VII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<b><u>DOCKET NO. 930424-EI -- DSM INCENTIVES</u></b>			
Barron	FPC	<u>(WLB-1)</u>	Encouragement of Investments in Conservation Energy Efficiency by Electric Utilities
Barron	FPC	<u>(WLB-2)</u>	States with DSM incentive mechanisms or states who are considering them
Barron	FPC	<u>(WLB-3)</u>	Proposal for Incentive Return on DSM Investments
Barron	FPC	<u>(WLB-4)</u>	Illustrative Example of DSM vs. Supply: Rate Impact Components

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Murray	FIPUG	<u>(TLM-1)</u>	Qualifications of Terry L. Murray
Stutz	LEAF	<u>(JS-1)</u>	Sales Increases Between Rate Cases Can Be Very Profitable: An Example
Stutz	LEAF	<u>(JS-2)</u>	Discussion of Shared Savings Cap Proposed By LEAF

DOCKET NO. 930444-EI -- REVENUE DECOUPLING

Wieland	FPC	<u>(KHW-1)</u>	Proposal for Revenue Decoupling
Wieland	FPC	<u>(KHW-2)</u>	Decoupling: Risks and Price Volatility
Wieland	FPC	<u>(KHW-3)</u>	Hypothetical Calculation of Impact of Revenue Decoupling for Historical Period 1988-1992
Wieland	FPC	<u>(KHW-4)</u>	Analysis of Price Volatility
Wieland	FPC	<u>(KHW-5)</u>	Proposed Adjustment to RPC for Changes in Economic Conditions
Murray	FIPUG	<u>(TLM-1)</u>	Qualifications of Terry L. Murray
Stutz	LEAF	<u>(JS-1)</u>	Sales Increases Between Rate Cases Can Be Very Profitable: An Example
Stutz	LEAF	<u>(JS-2)</u>	The Effect of ERAM on PG & E's Historic Rates

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Haff	Staff	<u>(MSH-1)</u>	Division of Conservation Program Dollar Savings Among Participants and Non-Participants
Haff	Staff	<u>(MSH-2)</u>	RIM and TRC Conservation Programs
Haff	Staff	<u>(MSH-3)</u>	Daily News clipping: "Think of it as paying for foam"

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

VIII. PROPOSED STIPULATIONS

None.

IX. PENDING MOTIONS

None.

It is therefore,

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 18th day of JANUARY, 1994.

  
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JULIA L. JOHNSON, Commissioner and  
Prehearing Officer

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ORDER NO. PSC-94-0058-PHO-EI  
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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.