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August 3, 1998

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By Hand Delivery

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 RECORDS AND REPORTING

**Re: Adoption of Numeric Conservation Goals
for Florida Power and Light Company
Docket Number 971004-EG**

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company ("FPL") in Docket No. 971004-EG are the original and fifteen copies of Florida Power & Light Company's Response to LEAF's Motion for Procedural Order. Also enclosed is an additional copy of the Response which we request that you stamp and return to our runner.

If you or your staff have any questions regarding this transmittal, please contact me at 222-2300.

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[Signature]
FPSC-BUREAU OF RECORDS

Very truly yours,

[Signature: Charles A. Guyton]

Charles A. Guyton

- ACK ✓
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FPSC-RECORDS/REPORTING

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Adoption of Numeric Conservation Goals) Docket No. 971004-EG
for Florida Power & Light Company) Filed: August 3, 1998

RESPONSE OF FLORIDA POWER & LIGHT COMPANY
TO LEAF'S MOTION FOR PROCEDURAL ORDER

Pursuant to Florida Administrative Code Rule 28-106.204(1), Florida Power & Light Company ("FPL") files this response to the Motion For Procedural Order filed by the Legal Environmental Assistance Foundation, Inc. ("LEAF") on July 21, 1998.

I

LEAF HAS REQUESTED A PROCEDURAL ORDER
WHICH IS INCONSISTENT WITH RULE 25-17.0021

This proceeding is being conducted by the Commission pursuant to Florida Administrative Code Rule 25-17.021. Subsection (3) of that rule addresses the projections required to be filed by utilities in conservation goals proceedings. It contains extensive prescriptions as to matters which must be addressed in each utility's projections. However, that subsection of the rule also provides that the utility's projections are to be based upon the utility's most recent planning process:

In a proceeding to establish or modify goals, each utility shall propose numerical goals for the ten year period and provide ten year projections, **based upon the utility's most recent planning process**, of the total, cost-effective, winter and summer peak

demand (KW) and annual energy(KWH) savings reasonably achievable in the residential and commercial/industrial classes through demand-side management.

The procedural order sought by LEAF is inconsistent with Rule 25-17.021, Florida Administrative Code. LEAF seeks by Commission order to prescribe the planning process of Florida utilities, removing from the utilities the choice of which measures to screen and how the screening should be performed. It also seeks to have the Commission modify FPL's planning process to allow not only the Commission to prescribe measures, but also to have LEAF participate in the planning process by being allowed to critique FPL's measure identification and selection before further analysis is performed. LEAF's so called procedural request is nothing less than a request for the Commission to prescribe an essential part of FPL's planning process. If LEAF's motion were granted, FPL's projections would not be premised upon FPL's planning process as contemplated by Rule 25-17.021, Florida Administrative Code; FPL's projections would be based upon a planning process conceived by LEAF and imposed upon FPL by the Commission. Such a result is more than an intrusion; it is inconsistent with the clear language of Rule 25-17.021, Florida Administrative Code, which requires the utility's projections to be premised upon the utility's planning process.

Adoption of an order inconsistent with a Commission rule is grounds for a court to set aside or remand a Commission decision. Section 120.68(7)(e)2., Florida Statutes (1997) provides, [t]he court shall remand a case to the agency for further proceedings consistent with the court's decision or set aside agency action, as appropriate, when it finds that: ... the agency's exercise of discretion was ... inconsistent with agency rule." LEAF's attempt to have the Commission begin this proceeding with reversible error should be rejected.

II

LEAF'S MOTION FOR A PROCEDURAL ORDER IS AN UNTIMELY REQUEST FOR RECONSIDERATION

LEAF has filed a motion for a procedural order as if the Commission has not issued a procedural order in this proceeding. LEAF conveniently ignores in its motion that the Commission has already issued a procedural order addressing the very issues that LEAF seeks to have the Commission address - how the utilities are to perform their projections. In Order No. PSC-98-0384-PCO-EG, the Commission addressed the procedure to be followed by utilities in this proceeding. Simply stated, the utilities were told to follow Rule 25-17.021, Florida Administrative Code:

Each utility subject to this order shall comply with the requirements of Rule 17.021, [sic] Florida Administrative Code. Specifically, each utility shall propose numerical goals for the ten year period 2000-2009 and provide ten year projections, based upon the utility's most recent planning process, of the total, cost-effective, winter and summer peak demand (KW) and annual energy (KWH) savings reasonably achievable in the residential and commercial/industrial classes through demand-side management (DSM). ... Each utility's projections shall be based upon an assessment of, at a minimum, the market segments and major end-use categories listed in the rule.

Order No. PSC-98-0384-PCO-EG at 2,3.

Order No. PSC-98-0384-PCO-EG explicitly addressed each party's right to request reconsideration of the order. It stated at page 8:

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 the Prehearing Officer...
... 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.

LEAF chose not to request reconsideration of the Commission's procedural order. Instead, four months later, well after the time had run for requesting reconsideration, LEAF filed a motion for a procedural order which would have the Commission change its instruction to utilities in Order No. PSC-98-0384-PCO-EG. Instead of having the utilities follow Rule 25-17.021, Florida Administrative Code and exercise the discretion given utilities to base their projections on the utilities' planning processes, LEAF seeks an order which would prescribe a significant part of the utility's planning process.

LEAF's motion is nothing more than an untimely request for reconsideration of Order No. PSC-98-0385-PCO-EG. It addresses the very issues that the Commission addressed in that order. That order was the result of two workshops at which LEAF and all the utilities addressed the need for a procedural order in these proceedings. At those workshops and in the post workshop comments, numerous proposals were made as to how the utilities should perform the analyses contemplated by Rule 25-17.021, Florida Administrative Code. It is particularly telling to contrast LEAF's Overview from its Brief In support of LEAF's Motion For Procedural Order with LEAF's post workshop comments considered in Order No. PSC-98-0384-PCO-EG:

LEAF's Brief Overview

The Commission is to base its energy conservation goals on the "total cost effective (energy and demand) savings reasonably achievable ... in the residential and commercial/industrial classes" Rule 25-17.021(1), F.A.C. To identify these savings, the Commission must determine both:

LEAF's Post Workshop Comments

The Commission is to base its conservation goals on the "total cost effective (energy and demand) savings reasonably achievable ... in the residential and commercial/industrial classes" Florida Admin. Code Rule 25-17.021(1). To identify these savings, the Commission must determine both:

1. Which energy and demand savings measures (including combinations of measures) warrant cost-effectiveness evaluation (measure screening); and

2. How to evaluate cost-effectiveness, including:

- a. How to use the three cost-effectiveness tests in the Commission's Demand Side Management Cost-Effectiveness manual [footnote omitted];
- b. Which assumptions to use in these cost-effectiveness tests; and
- c. What other DSM cost-effectiveness factors warrant review.

In sum, to identify reasonably available cost effective savings, the Commission must determine both what to test for cost effectiveness and how to test.

1. Which DSM measures warrant cost-effectiveness review; and

2. How to analyze the cost-effectiveness, including:

- a. How to use the three cost-effectiveness tests in the Commission's DSM cost-effectiveness manual;
- b. Which assumptions to use in these cost-effectiveness tests; and
- c. What other DSM cost-effectiveness factors warrant review.

In sum, to identify reasonably available cost effective savings, the Commission must determine both how to test cost-effectiveness and what to test. [footnote omitted]

As can be seen from the foregoing comparison, LEAF is asking for the same relief in its current filing that it sought in its post workshop comments. The Commission considered LEAF's request in its post workshop comments and issued a procedural order, Order No. PSC-98-0834-PCO-EG. LEAF is now advancing the same arguments in its Motion For A Procedural Order, conveniently ignoring the existence of Order No. PSC-98-0834-PCO-EG. LEAF's Motion for a Procedural Order is an untimely request for reconsideration of Order No. PSC-98-0834-PCO-EG. It should be denied.

III

LEAF'S RELIEF WOULD DELAY THE PROCEEDING

The Commission's Procedural Order sets forth an aggressive schedule for this proceeding, with the utilities' projection filings being made on February 1, 1999. To meet this date, FPL needed to identify and select measures for analysis by the end of May or early June 1998. This was disclosed to LEAF. LEAF and FPL made significant efforts to reach consensus on the measures to be analyzed in FPL's planning process and the means by which the potential of measures would be quantified. When it became apparent that there was no consensus to be reached, FPL proceeded with its DSM measure selection and analysis, which is ongoing.

To meet the Commission's schedule, FPL is following, with a few refinements, the DSM measure selection procedure FPL proposed at the earlier Commission workshop in this proceeding. That process starts with all U P and CUE measures from the last proceeding, reduces those measures with reasonable screens and then adds new measures adopted since then, measured identified in R&D and measures suggested by others which are viable, have Florida specific data and which have measurable potential. Once the measures for analysis are identified, **each measure will be analyzed using all the Commission's approved cost-effective methods including the RTC test.** That process has several advantages. (1) It builds upon the determinations the Commission made in the last case as to measure classification. (2) It relies upon analyses found reasonable by the Commission in the last Goals Proceedings. (3) It avoids repeating time consuming costly analyses which yield no measurable results. (4) It leaves FPL's planning process where the rule being implemented intended for it to be - with FPL.

If LEAF's motion were granted, FPL's planning process would have to be revised and significantly restarted. The work FPL would face would expand almost exponentially. Time would have to be added to the already tight schedule, and the hearing schedule would have to be revised.

LEAF's first alternative of requiring a utility report and a procedure for parties' review and the Commission's ultimate determination of measures to be analyzed (a procedure not contemplated in Rule 25-17.021, Florida Administrative Code) would significantly delay FPL's planning process and the progression of this proceeding. LEAF's first alternative is a very time consuming process. FPL has already informed LEAF of the measures it intends to analyze and its rationale for the selection of those measures. LEAF has already been afforded the opportunity for input. They simply want an opportunity to argue to the Commission that FPL should change its planning process to accommodate LEAF's view of how DSM should be analyzed. In the meantime, nothing can move forward. The remainder of FPL's planning process will either be delayed or FPL will have to run two processes: one for the remainder of FPL's planning needs treating DSM as it believes it should be analyzed and a second addressing whatever measures ultimately come out of LEAF's process. Either course will delay the schedule in this proceeding.

LEAF's second alternative of the Commission prescribing LEAF's comprehensive list of measures for each utility to analyze would also significantly delay this proceeding. Given the roughly twenty four percent decline in avoided costs since the last Goals Proceeding, it makes absolutely no sense to reanalyze measures found in the last Goals Proceeding not be cost effective. Setting aside for the moment the waste involved, the sheer volume of analyses which

this would require would more than triple the analyses to be performed. Three times the analyses will require more time than currently contemplated and delay the proceeding. However, perhaps the most time consuming aspect of LEAF's second proposal is its proposed prohibition of a RIM cost-effectiveness screen (a step not explicitly shown on LEAF's Attachment B but fully developed in LEAF's Brief). The single most time consuming (and ultimately wasteful) aspect of the analysis in the prior Goals Proceeding was the requirement that each utility develop a TRC DSM portfolio along with the RIM portfolio each would normally perform in their planning process. This single requirement, which is not in Rule 25-17.021 but was added in an early procedural order in the last Goals Proceeding, more than doubled the analyses required. It would have the same effect if followed in this proceeding. The ultimate result - delay of the proceeding.

IV

LEAF'S PROPOSAL IS WASTEFUL

The last Conservation Goals Proceeding consumed enormous resources. More than two years were taken to set goals; millions of dollars were spent; countless hours of resources were poured into a black hole of analysis and argument. It culminated in the longest hearing ever before the Commission. When all was said and done, the Commission ended up essentially where it had started. DSM portfolios were not significantly expanded, because Florida's utilities were already National DSM leaders. The resulting DSM goals and portfolios were RIM based as they had been previously. The utilities' planning processes were relatively unchanged and found to be reasonable.

Some might argue that very little was bought for the tremendous incremental expenditure of resources in the last Goals Proceeding. While that is a legitimate perspective given the results of the case, there were some intangibles purchased that should be applied in this case. If the matters seemingly settled by this prodigious expenditure of resources are brought forward and applied in this proceeding, then perhaps all the unused analyses performed in the last Goals Proceeding can be said to be of value. However, if this case treats nothing as settled and repeats the free-for-all experienced in the last case, then the only legitimate view of the last case will be as a monument to regulatory excess. Stated differently, perhaps we needed the additional analysis to address issues like rate versus bill impacts of measures, whether there was a significant difference between RIM and TRC portfolios, and whether gas and solar measures were cost-effective. However, if we repeat those analyses given the Commission's findings in the last case, then all the analyses eventually unused in the last case (TRC portfolios, individual measure rate impact computations, gas analyses and CUE analyses) were wasted, and we will be on the path of another tremendously wasteful exercise.

The Commission's procedural order which simply and appropriately orders utilities to follow Florida Administrative Code Rule 25-17.021, avoids many of the analyses which were so terrifically time consuming in the last case. As it now stands under that order, the TRC test will be used to calculate the cost-effectiveness of measures, but there will be no TRC portfolio and its result of more than doubling the analytical effort, for TRC portfolios are not typically performed in utilities' planning processes. That analysis was needed last time to address the then lingering question of whether the Commission had been "leaving DSM on the table" by allowing utilities to propose RIM based DSM. That question was answered by the Commission in the last case

and affirmed by the Supreme Court of Florida. Repeating that analysis in this case, an analysis not required by Rule 25-17.021, would be wasteful given the findings of the last case, yet LEAF seeks that directive. Quantifying individual measure rate impacts was also a costly and time consuming set of analyses performed in the last case that was not required by Rule 25-17.021. The analyses were never used. Reanalyzing measures found not to be cost effective in the last Goals Proceeding when avoided costs have declined 24% since the last case would also be wasteful, yet LEAF seeks to have the utilities examine any measures analyzed as UP or CUE measures last time, regardless of whether they were found not to be cost effective.

LEAF's process embraces parts of the last Goals Proceeding and conveniently rejects other parts. Instead, the Commission should build on its prior experience, recognize that many of the analyses that made that proceeding so demanding are not necessary or desirable and avoid LEAF's attempt to reanalyze measures simply because they were analyzed before. LEAF's proposal would be tremendously wasteful. It should be rejected.

V

A RIM SCREEN IS NOT INCONSISTENT WITH THE GOALS RULE, HAS NOT BEEN REJECTED BY THE COMMISSION, AND IS NOT ARBITRARY

LEAF spent almost half of its brief arguing that a RIM screen was rejected by the Commission in adopting the Conservation Goals Rule and in the last Goals Proceeding and that it would be arbitrary for the Commission to allow it to be employed in this case. FPL agrees that

the Commission did not embrace a RIM screen in adopting the Conservation Goals Rule or in its procedural order in the last Goals Proceeding. However, that does not lead to the conclusion that a RIM screen is inconsistent with the Conservation Goals Rule or is arbitrary if employed.

A major point of contention in the Conservation Goals Rule Proceeding was whether the TRC test or the RIM test should be identified as the measure of cost-effectiveness. As the language of the rule reflects, the Commission left the decision open, merely requiring cost-effective DSM. As the selective, edited excerpts quoted in the LEAF Brief point out, the Commission had never seen a TRC portfolio, and it wanted to know just what additional DSM potential there might be in a TRC portfolio; so the Commission adopted a rule that did not embrace either the RIM or the TRC test as the only cost-effectiveness tests to be used to set goals.

Because neither test was embraced in the rule, when the Commission came into the Conservation Goals Proceeding, it prescribed both RIM and TRC portfolios to answer the lingering question of whether there was a significant difference in portfolios using the different approaches. LEAF would have you stop there and conclude, therefore, that a RIM screen is inconsistent with the Conservation Goals Rule and the last Conservation Goals Proceeding. LEAF would have you ignore the most important development in the Conservation Goals Proceeding. LEAF would have you ignore the Commission's resolution of the lingering question of whether the RIM or the TRC approach results in more cost effective DSM. The Commission found:

The record in this docket reflects that the difference in demand and energy savings between RIM and TRC portfolios are negligible. We find that goals based on measures that pass TRC but fail RIM

would result in increased rates and would cause customers who do not participate in a utility DSM measure to subsidize customers who do not participate. Since the record reflects that the benefits of adopting TRC goals are minimal, we do not believe that increasing rates, even slightly, is justified.

Order No. PSC-94-1313-FOF-EG at 22. The Commission answered the outstanding question: the difference between the RIM and TRC portfolios was “negligible” and TRC goals were not “justified.”

LEAF took issue with this finding that the difference was “negligible” and asked for reconsideration and even appealed the matter to the Florida Supreme Court. On reconsideration the Commission reinforced its finding that the difference between the RIM and TRC portfolios was “negligible:”

[t]he “substantial” versus “negligible” savings question cannot be answered solely through a comparison of TRC to RIM MW and MWH (megawatt hour) savings. Differences in MW and MWH savings may be substantial in isolation, but negligible when viewed from a rates, generation expansion, and revenue requirements perspective. In this docket, when we compared the MW and MWH savings in each RIM and TRC portfolio and the differences between the two, to each utility’s system peak demand and energy sales, the savings were negligible. The use of the word “negligible” is the result of an overall cost-effectiveness evaluation, and not just the consideration of one piece, such as MW or MWH savings.

Order No. PSC-95-0075-FOF-EG. The Supreme Court rejected “as without merit LEAF’s third argument: that the Commission erred in finding there was a negligible energy and demand savings difference between demand side management portfolios based on the different cost-

effectiveness tests.” Legal Environmental Assistance Foundation, Inc. V. Clark, 668 So.2d 982, 987 (Fla. 1996). The Court affirmed the Commission’s determinations holding:

The Commission was therefore compelled to determine the overall effect on rates, generation expansion and revenue requirements. Based on our review of the record, we find ample support for the Commission’s determination to set conservation goals using the RIM measures.

668 So.2d at 988.

There is no reason in this proceeding to repeat the requirement of performing an expensive and purposeless TRC portfolio. The Commission has answered the question of whether there is a difference between the two portfolios that warrants the subsidy required by TRC measures. It found that there is not. It put that issue to rest and was affirmed by the Supreme Court of Florida. The Commission also answered the issue of whether goals could properly be set on a RIM portfolio, and the Supreme Court affirmed that they could. The Commission properly abandoned the requirement of a TRC portfolio in its procedural order in this case, and now prohibiting a RIM screen would not be an implementation of the Conservation Goals Rule, it would merely be an invitation to resurrect an important debate seemingly settled in the last Goals Proceeding. If you are to look to the past as LEAF urges, then look to all the past.

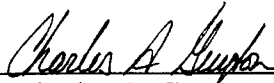
A RIM screen to exclude measures that did not pass last time is entirely consistent with the Conservation Goals Rule. It is a necessary step in identifying reasonably achievable potential and avoiding pointless reanalysis. It is a step which proceeds cost-effectiveness analysis. The measures ultimately chosen for analysis will be analyzed under all three of the Commission’s cost-effectiveness methodologies, including the TRC test, as contemplated by the Conservation Goals Rule. While the Commission did not embrace a RIM screen in the Goals Rule or the

procedural orders in the last Conservation Goals Proceeding, such a screen is not prohibited by the Goals Rule. The Commission should not go beyond its rule and prohibit a RIM screen. Such a prohibition, particularly in light of its ultimate decision to adopt RIM based goals in the last Goals Proceeding, would be the ultimate arbitrary act.

Respectfully submitted,

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Attorneys for Florida Power &
Light Company

By: 
Charles A. Guyton

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Response to LEAF's Motion for Procedural Order were served by Hand Delivery (when indicated with an *) or mailed this 3rd day of August, 1998 to the following:

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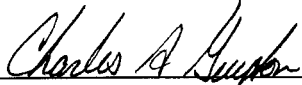
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