

**ORIGINAL**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

IN RE:

ADOPTION OF NUMERIC CONSERVATION GOALS  
FLORIDA POWER & LIGHT COMPANY  
FLORIDA POWER CORPORATION  
GULF POWER COMPANY  
TAMPA ELECTRIC COMPANY

DOCKET NO. 971004-EG  
DOCKET NO. 971005-EG  
DOCKET NO. 971006-EG  
DOCKET NO. 971007-EG

**LEAF'S REPLY TO UTILITY RESPONSES  
TO LEAF'S MOTION FOR PROCEDURAL ORDER**

Intervenor, the Legal Environmental Assistance Foundation, Inc. ("LEAF"), files this Reply to Utility Responses to LEAF's Motion for Procedural Order (responses were filed by Florida Power & Light, Tampa Electric Company, and Gulf Power Company) and states:

**I. The procedures LEAF proposes are necessary and efficient.**

The procedures proposed by LEAF and the utility industry responders both draw heavily on finding from the last goals case<sup>1</sup>. The two main differences in the proposed procedures concern:

whether, and if so when, the Commission should determine which energy conservation measures warrant cost-effectiveness testing ("candidate measures"), and

whether measures which passed the Total Resource Cost ("TRC") test in the last goals case should be tested for cost effectiveness in this case (i.e., whether to use a Rate Impact Measure ("RIM")-Only Measure Screen as utilities propose).

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The responding utilities would either prohibit Commission input on candidate measures entirely or allow such input only after utilities have completed cost-effectiveness test runs and proposed goals. Utilities would also exclude the many measures which passed TRC in the last goals case by using a RIM-Only Measure Screen in this case. LEAF urges the Commission to again reject a RIM-Only Measure

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<sup>1</sup>Both build on measure classifications the Commission made and rely on analyses found reasonable by the Commission in the last goal-setting proceeding -- see footnote 6 and associated text of LEAF's Motion to Establish Procedure and the second paragraph on page 6 of FPL's reply.

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Screen and to provide its input on which measures merit testing before testing is conducted because:

**A. A RIM-Only Measure Screen would Preclude the Commission's Policy on TRC Cost-Effective DSM.**

The Commission has adopted a DSM Cost-Effectiveness policy favoring both RIM-passing DSM and TRC-passing DSM which offers large energy savings and low rate impacts. To implement its policy on TRC-passing DSM, the Commission must know which TRC-passing measures offer high energy savings and low rate impacts. That requires that the Commission become informed on two topics: 1) what savings measures now pass TRC; and 2) the current energy savings and rate impacts of TRC-passing measures<sup>2</sup>.

The RIM-Only Measure Screen proposed by utilities would make implementation of the Commission's policy on TRC-passing DSM impossible. By excluding the many measures which passed TRC in the last goals case from consideration in this case, the RIM-Only Measure Screen would make it impossible for the Commission to know what passes TRC under current conditions<sup>3</sup>.

FPL's proposal (stated for the first time on the record in its reply) to run the TRC test only on measures which passed RIM last time (i.e., which survive the RIM-Only Measure Screen) would not provide the information the Commission needs. With FPL's approach, the Commission would know which of the measures that passed RIM last time would pass TRC under current conditions. However, **the Commission would not know which of the**

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<sup>2</sup>The first topic ("what" measures merit cost-effectiveness evaluation is the focus of LEAF's pending Motion to Establish Procedure). The second topic (savings and rate effects) are part of "how" to evaluate cost-effectiveness. Though LEAF will more fully address such "how" issues in a subsequent motion, clearly the Commission's procedures must secure information about cost/energy savings and rate impacts to implement its policy to encourage TRC-based DSM.

<sup>3</sup>FPL's unproven claim about current avoided costs is irrelevant to determining whether a measure merits cost-effectiveness evaluation (i.e., whether a measure offers reasonably achievable savings). Thus, FPL's claim cannot justify excluding any measure from cost-effectiveness evaluation in this case (even if true, FPL's avoided claim would not justify excluding measures which passed TRC in the last goals case from testing in this case). In any event, FPL's claim is now unproven. The Commission should consider when and how to determine which avoided cost assumptions are appropriate in this case as it decides "how" to evaluate cost-effectiveness in this case (a topic not addressed in the pending motion, see footnote 2, supra).

**many measures that passed TRC last time would pass TRC under current conditions.** Attempts to keep this information from the Commission should be rejected.

The Commission's policy favoring TRC-passing DSM was developed through extensive hearings and deliberations while adopting the conservations goals rule (in Docket No. 920606-EI) and setting conservation goals (in Docket Nos.: 930548-EG - 930551-EG). Ignoring this policy now would waste not only that massive effort but also the significant amounts of money that could be saved by maximizing Florida's investment in DSM that costs less than power plants<sup>4</sup>.

**B. Commission input on candidate measures is legally required and and most practically provided before testing is conducted.**

**1. Commission input on candidate measures is legally required.**

The Commission's rules state:

The goals shall be based on an estimate of the total cost effective kilowatt and kilowatt-hour savings reasonably achievable through demand side management in each utility's service area over a ten-year period. Rule 25-17.0021(1), F.A.C.

...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/industrialclasses through demand-side management. Rule 25-17.0021(2), F.A.C.

The Commission has a duty to base its goals on the total savings reasonably achievable and cost-effective in each utility's service area over the next decade. To meet

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<sup>4</sup>Because TRC-based DSM is, by definition, the utility's least-cost (less dollars, not counting external costs like environmental harm or reduced employment benefits) energy option it has broad public support. During those proceedings TRC-based DSM was recommended by many parties, including the U.S. Department of Energy, the Florida Department of Community Affairs, the Florida Department of Environmental Protection, LEAF, the Florida Client Counsel (representing low income consumers), and the Florida Solar Energy Industries Association. At public hearings, other groups (including the American Association of Retired Persons/AARP, the Florida Consumer Action Network/FCAN, and the Florida League of Women Voters and many other groups and individuals) also urged TRC-based DSM.

this duty the Commission must determine what savings measures merit cost-effectiveness evaluation<sup>5</sup> (i.e., candidate measures). In LEAF's view, Commission input on candidate measures is essential to meeting its legal obligation to base goals on the total savings as the rule requires. Otherwise, utilities could (as they now seek) prevent DSM which the Commission has encouraged from even being evaluated for cost-effectiveness as goals are set. In FPL's view, Commission input on such candidate measures is prohibited because utility goals proposals are also to be based on the utility' most recent planning processes. FPL's interpretation is seriously flawed and should be rejected.

Goals may **NOT** be based **SOLELY** on the utility's most recent planning process. The rule is clear. Goals must also be based on the TOTAL energy and demand savings reasonably achievable through cost-effective DSM. The Commission has a legal duty to identify, and base its conservation goals on, such savings. The Commission has established a policy in favor of TRC-passing DSM. Utilities' attempts to circumvent the Commission's rule and TRC policy by the mere claim that their planning process routinely excludes reasonably achievable TRC-passing DSM should be soundly rejected.

By directing that goals be, in part, based on the utility's most recent planning process, the Commission did not abdicate its responsibility to determine what measures offer reasonably achievable savings and merit cost effectiveness evaluation. The rule adoption proceeding transcript clearly indicates the Commission both believed it had this legal responsibility and intended to exercise it after the rule was adopted<sup>6</sup>. The purpose of connecting goals to the utility's MOST RECENT planning process was to connect goals to CURRENT utility-system-specific costs and benefits. The rule is intended to make the goals relevant and timely by connecting them to the current, territory-specific, costs and benefits of energy service options--not to make Florida's utilities the sole judge of which measures offer reasonably achievable savings.

After years of work in its last goals rule adoption and goal-setting proceedings, the Commission adopted a policy to encourage high-savings/low-impact TRC-passing DSM. Such TRC-passing DSM is clearly part of the total reasonably achievable and cost-effective savings on which Commission goals are to be based. It would be arbitrary for the Commission to set goals without evaluating the current cost-effectiveness of such DSM. Without Commission input, utilities will not test the cost-effectiveness of DSM that offers reasonably achievable savings and the Commission's goals would be vulnerable to challenge as arbitrary. The Commission's input on candidate measures is legally required

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<sup>5</sup>Determining how cost-effectiveness is to be evaluated is another part of this duty, though that issue is not addressed in LEAF's pending motion.

<sup>6</sup>Transcript of Rule 25-17 adoption hearing, Docket No. 92606-EI, March 30, 1993.

to set conservation goals.

**2. Commission input on candidate measures is most practical before testing is conducted.**

Delaying Commission input on candidate measures until after utility goals proposals are filed would unduly complicate and delay this proceeding. Without Commission input early on, utilities may file widely varying measures and erroneously exclude measures from cost-effectiveness test runs. The current schedule would need extending to allow time for Staff and intervenors to conduct extensive discovery to learn what measures were evaluated and how that evaluation was conducted by each utility. If the Commission determined that appropriate candidate measures were not evaluated correctly, cost-effectiveness testing would have to be redone and the process restarted in a way that reasonably accommodates planning assumptions connected to the then current conditions. Delaying Commission input on candidate measures would be especially counterproductive in this case since each utility has stated it intends to screen out measures which the Commission, through its policy favoring TRC-passing DSM, has sought to promote.

FPL asserts that securing the Commission's input before developing and filing its goals proposal will require it to evaluate additional measures and cause delay. In evaluating FPL's assertion, the Commission should consider whether delay would be even greater were its input postponed. From LEAF's view, even if providing Commission input up front takes some time, it is time well spent to prevent more significant delays (and perhaps even prevent a reluctance or unwillingness to start over) later.

In sum, the Commission's input on candidate measures is necessary, and it is better provided now than later.

**II. LEAF's Motion to Establish Procedure is Timely.**

The Commission may in this case, as it has done in other cases (including the last goal-setting case), issue numerous procedural orders.

When the First Procedural Order in this case was issued, Commission staff, LEAF and the utilities expected that it would be possible to negotiate a list of candidate measures. Since then, despite LEAF's repeated efforts, there was virtually no substantive response from TECO, Gulf, or FPC regarding the candidate measures proposed by LEAF. Though LEAF had extensive discussions with FPL, and seemed close to consensus on many measures, it was ultimately not possible to reach agreement. Accordingly, LEAF filed the pending Motion to Establish Procedures.

LEAF objects to FPL's assertion that the Commission's first procedural order was a ruling on post-workshop comments. Post-workshop comments were addressed to staff

and sent to other parties. There was neither a staff recommendation nor a Commission vote on issues raised by the comments.

### **III. Summary**

To implement its policy on TRC-passing DSM the Commission must know which savings measures pass TRC now. Utility efforts to use a RIM-Only Measure Screen to keep such information from the Commission should be rejected.

Providing input on candidate measures is a necessary part of implementing the Commission's legal duty to base goals on the total savings reasonably achievable. Such input is better provided now than after utility's have completed cost-effectiveness testing and proposed goals.

The Commission may, as it has many times before, issue multiple procedural orders. The Commission should, as requested in LEAF's Motion for Procedural Order, issue an order establishing procedures to determine candidate measures in this case.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of LEAF's Response to Utility Responses to LEAF's Motion for Procedural Order were hand delivered (when indicated by \*) or mailed this 10th day of August, 1998 to the following:

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