



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

## -M-E-M-O-R-A-N-D-U-M-

**DATE:** SEPTEMBER 24, 1998

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

**FROM:** DIVISION OF ELECTRIC AND GAS (FUTRELL, HAFF, LOWER) *JPP RLDJ*  
DIVISION OF LEGAL SERVICES (ELIAS, PAUGH)

**RE:** DOCKET NO. 971004-EG - ADOPTION OF NUMERIC CONSERVATION GOALS BY FLORIDA POWER & LIGHT COMPANY.

RECEIVED-PSC  
SEP 24 11:11 AM '98  
PROCEDURAL REPORTING

DOCKET NO. 971005-EG - ADOPTION OF NUMERIC CONSERVATION GOALS BY FLORIDA POWER CORPORATION.

DOCKET NO. 971006-EG - ADOPTION OF NUMERIC CONSERVATION GOALS BY GULF POWER COMPANY.

DOCKET NO. 971007-EG - ADOPTION OF NUMERIC CONSERVATION GOALS BY TAMPA ELECTRIC COMPANY.

**AGENDA:** 10/06/98 - REGULAR AGENDA - PROCEDURAL - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\EAG\WP\971004.RCM

### CASE BACKGROUND

Rule 25-17.0021, Florida Administrative Code, requires the Commission to set numeric conservation goals for each jurisdictional utility at least once every five years. As such, these four dockets were opened and formal evidentiary hearings have been set for May, 1999, for Florida Power & Light Company (FPL), Florida Power Corporation (FPC), Gulf Power Company (Gulf), and Tampa Electric Company (TECO). The Order Establishing Procedure (Order) for these dockets, Order No. PSC-98-0384-PCO-EG, was issued on March 10, 1998.

DOCUMENT NUMBER-DATE  
10561 SEP 24 98  
PSC-RECORDS/REPORTING

DOCKET NOS. 971004-EG, 971005-EG, 971006-EG, 971007-EG  
DATE: September 24, 1998

On July 21, 1998, the Legal Environmental Assistance Foundation, Inc., (LEAF) filed a Motion For Procedural Order and Brief In Support Of LEAF's Motion For Procedural Order. On July 31, 1998, Gulf filed its Response To Motion For Procedural Order By Legal Environmental Assistance Foundation, Inc. On August 3, 1998, TECO filed a Memorandum In Opposition To Legal Environmental Assistance Foundation's Motion For Procedural Order and FPL filed its Response To LEAF's Motion For Procedural Order. On August 10, 1998, LEAF filed a Reply To Utility Responses To Leaf's Motion For Procedural Order. On August 14, 1998, FPL filed a Motion To Strike LEAF's Reply To Utility Responses To LEAF's Motion For Procedural Order. On August 26, 1998, LEAF filed a Response In Opposition To FPL's Motion To Strike LEAF's Reply. The Prehearing Officer determined that the decisions regarding these pleadings should be made by the full Commission. This recommendation addresses all seven pleadings.

#### DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission grant Florida Power & Light's Motion To Strike LEAF's Reply To Utility Responses To LEAF's Motion For Procedural Order?

**RECOMMENDATION:** Yes. Uniform Rule of Procedure 28-106.204, Florida Administrative Code, like its predecessor Commission Rule 25-22.037, Florida Administrative Code, does not provide for the filing of replies to responses to filed motions. Therefore, the Commission should grant FPL's Motion To Strike LEAF's Reply. If the Commission grants FPL's Motion To Strike, LEAF's Response In Opposition To FPL's Motion To Strike LEAF's Reply is rendered moot.

**STAFF ANALYSIS:** As stated in the case background, FPL, Gulf and TECO filed responses in opposition to LEAF's Motion For Procedural Order. Thereafter, LEAF filed a Reply To Utility Responses To LEAF's Motion For Procedural Order. FPL filed a Motion To Strike LEAF's Reply To Utility Responses To LEAF's Motion For Procedural Order and LEAF filed a Response In Opposition To FPL's Motion To Strike LEAF's Reply. This portion of the recommendation addresses LEAF's Reply, FPL's Motion To Strike LEAF's Reply, and LEAF's Response To FPL's Motion To Strike.

As grounds for its Motion To Strike, FPL states that Uniform Rule 28-106.204, Florida Administrative Code, provides only for

DOCKET NOS. 971004-EG, 971005-EG, 971006-EG, 971007-EG  
DATE: September 24, 1998

motions and responses in opposition to motions. The Rule does not recognize the filing of replies to responses to filed motions. FPL Motion To Strike, pg. 1. FPL further states that the Commission's procedural rule, Rule 25-22.037(2), Florida Administrative Code, the predecessor to the Uniform Rule, likewise did not recognize replies to responses to filed motions. FPL Motion To Strike, pgs. 1-2. FPL cites several Commission orders which have interpreted the predecessor procedural rule as not allowing replies to responses.

Staff finds FPL's arguments compelling. The Commission precedent cited by FPL clearly states that replies are not permitted under our rules. In In Re: Application for amendment of Certificate No. 427-W to add territory in Marion County by Windstream Utilities Company, Docket No. 960867-WU, Order NO. PSC-97-0470-FOF-WU, issued April 23, 1997, the Commission held: "...pursuant to Rule 25-22.037(2), Florida Administrative Code, parties may file motions in opposition to a motion within seven days; this rule, however, does not allow parties to file a reply to a response. The pleading cycle must stop at a reasonable point and our rules reflect that." See also In Re: Application for a rate increase in Brevard County by GENERAL DEVELOPMENT UTILITIES INC. (Port Malabar Division), Docket NO. 911939-WS, Order NO. PSC-92-0205-FOF-WS, Issued April 14, 1992, and In Re: Application for amendment of Certificate No. 247-S by North Fort Myers Utility, Inc. and cancellation of Certificate No. 240-S issued to Lake Arrowhead Village, Inc. in Lee County, Docket No. 930373-SU, Order No. PSC-96-0348-FOF-SU, issued March 11, 1996.

The unequivocal Commission precedent disallowing replies to responses to filed motions should not be affected by the application of the Uniform Rules. This is so because the Uniform Rule language relating to responses to motions is substantially the same as the former Commission rule. Commission Rule 25-22.037(2)(b), Florida Administrative Code, states: "[o]ther parties to a proceeding may, within seven(7) days after service of a written motion, file written memoranda in opposition." Uniform Rule 28-106.204(1), Florida Administrative Code states: "[w]hen time allows, the other parties may, within 7 days of service of a written motion, file a response in opposition." Neither rule contemplates replies to responses. On the contrary, both rules address only a single response to a motion. As such, Staff believes that the Commission precedent interpreting its own rule of procedure on answers and motions applies with equal force and

DOCKET NOS. 971004-EG, 971005-EG, 971006-EG, 971007-EG  
DATE: September 24, 1998

effect to the Uniform Rule on motions which now governs formal Commission proceedings.

Based on the foregoing, Staff recommends that Florida Power & Light Company's Motion To Strike LEAF's Reply be granted. If the Commission grants FPL's Motion To Strike LEAF's Reply, LEAF's Response In Opposition To FPL's Motion To Strike LEAF's Reply is rendered moot.

DOCKET NOS. 971004-EG, 971005-EG, 971006-EG, 971007-EG  
DATE: September 24, 1998

**ISSUE 2:** Should the Commission grant Legal Environmental Assistance Foundation's Motion For Procedural Order.

**RECOMMENDATION:** No. The Motion For Procedural Order is an untimely motion for reconsideration, the Motion does not comport with Rule 25-17.0021, Florida Administrative Code, and the Motion misapprehends the substantive law of the case.

**STAFF ANALYSIS:**

**I. LEAF's Motion and Brief**

LEAF's Motion For Procedural Order is essentially a request that the Commission compel the utilities to evaluate substantially more data than is currently required by the Order or Rule 25-17.0021, Florida Administrative Code. LEAF's Motion requests the Commission to:

- a) establish procedures to guide which energy and demand savings measures (including measure combinations) merit cost-effectiveness evaluation in this case so Commission review of utility goals proposals is not based on incomplete and legally insufficient information; and
- b) either provide a reasonable opportunity for all parties to provide input to the Commission on said measures (as provided on Attachment A) or, in the alternative, direct utilities to test the cost-effectiveness of specific measures as provided on Attachment B.

LEAF Motion, pg. 1.

Appended to the one page Motion are Attachments A and B and a Brief In Support Of Leaf's Motion For Procedural Order.

The Attachments describe two alternative courses of action LEAF proposes the Commission take with respect to the substantive and procedural requirements for these four dockets. Attachment A allows the utilities to select, from the extensive list supplied by LEAF, which conservation measures to evaluate and test for cost effectiveness. Attachment A states that the Commission should require the utilities to file a report detailing the specific measures that the utilities will be evaluating. LEAF Attachment A,

DOCKET NOS. 971004-EG, 971005-EG, 971006-EG, 971007-EG  
DATE: September 24, 1998

pg. 1. After the utilities' reports are filed, according to LEAF, the Commission must then order the utilities to test selected measures for cost-effectiveness based on the Total Resource Cost (TRC), Rate Impact Measure (RIM) and Participants Tests. LEAF Attachment A, pg. 2.

Attachment B requires the Commission to dictate, in advance, the specific conservation measures which must be considered by the utilities. Attachment B lists the measures which, in LEAF's opinion, must be analyzed by the utilities. LEAF's list includes 98 specific measures as well as all of the measures set forth in Attachment A.

The Brief In Support Of Leaf's Motion For Procedural Order expands upon LEAF's positions set forth in the Attachments. LEAF opines that the Commission should (1) determine which measures merit cost effectiveness testing; and (2) solicit input from non-utility parties on proposed candidate measures before the Commission specifies which measures are to be tested for cost effectiveness. LEAF Brief, pgs. 2-4. If the Commission does not solicit input from non-utility parties, according to LEAF, it should at a minimum, prohibit a RIM-only measure screen. LEAF Brief, pgs. 5 - 13. In short, LEAF is advocating that the Commission require the utilities to generate TRC portfolios.

## II. Utilities' Responses To LEAF's Motion and Brief.

FPL, TECO and Gulf filed separate responses in opposition to LEAF's Motion For Procedural Order. Each Response is summarized below.

### A. Florida Power & Light.

FPL's Response To LEAF's Motion For Procedural Order advances five points of opposition to LEAF's proposal. First, FPL states that LEAF has requested the Commission to issue a procedural order which is inconsistent with Rule 25-17.0021, Florida Administrative Code. FPL states that issuance of an order inconsistent with a Commission rule would be reversible error. FPL Response, pg. 2. As grounds for its position, FPL cites subsection (3) of Rule 25-17.0021, Florida Administrative Code:

In a proceeding to establish or modify goals, each utility shall propose numerical goals for the ten year

DOCKET NOS. 971004-EG, 971005-EG, 971006-EG, 971007-EG  
DATE: September 24, 1998

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. (emphasis supplied by FPL)

FPL states that LEAF's Request For Procedural Order requires the Commission to improperly interject itself into the utilities' planning processes. "If LEAF's motion were granted, FPL's projections would not be premised upon FPL's planning process as contemplated by Rule 25-17.0021, Florida Administrative Code; FPL's projections would be based upon a planning process conceived by LEAF and imposed upon FPL by the Commission." FPL Response, pg.2 In short, FPL's position is that the Commission would commit error by superceding the controlling rule if it complied with LEAF's proposal.

FPL's second objection to LEAF's Motion For Procedural Order is that it is an untimely motion for reconsideration. FPL states that the Order specifically addressed the manner in which the utilities are to perform their projections for these proceedings. The Order instructs the utilities to follow Rule 25-17.0021, Florida Administrative Code. As such, the Order requires the utilities to propose numerical goals and provide ten year projections of demand and energy savings reasonably achievable through demand-side management (DSM), based on the utility's most recent planning process. LEAF's Motion, according to FPL, requests the Commission to reconsider its directives regarding that planning process. "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." FPL Response, pg. 4

FPL's third objection to LEAF's request is that it would delay the proceeding. FPL states that it identified its candidate measures by the end of May, 1998, by building upon the planning processes approved in the prior goals proceedings. FPL's planning process started with measures identified in the prior goals docket, screened those measures and added new, potentially viable measures. Having identified a list of candidate measures, FPL states that it will analyze them using all of the Commission's approved cost

effectiveness methods. "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." FPL Response, pg. 7. If LEAF's request is granted, according to FPL, it will more than triple the analyses to be performed and time required to perform them with no positive result. FPL Response, pg. 8.

FPL's fourth objection is that LEAF's proposal is wasteful. FPL argues that the extensive analyses performed during the last goals proceeding should provide a basis of data and decisional precedent in the instant proceeding. Reanalysis of measures found not to be cost effective in the last proceeding, particularly in light of the decline in avoided costs, would be unnecessary and very costly with no discernable benefit. FPL Response, pg. 9.

FPL's fifth point of contention relates to LEAF's arguments against the RIM screen. FPL points out that 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. FPL disagrees with LEAF's conclusion. FPL states that the conservation goals rule does not require or reject any specific cost-effectiveness measures. Rather, the rule simply requires cost effective DSM. Likewise, in the last goals proceeding, the Commission specifically addressed the question of whether the RIM or TRC approaches resulted in more cost effective DSM. The Commission decided that the difference between the RIM and TRC portfolios was negligible. LEAF appealed that decision to the Supreme Court and the Commission's order was affirmed. Legal Environmental Assistance Foundation, Inc. v. Clark, 668 So.2d 982 (Fla. 1996).

B. Tampa Electric Company.

TECO's Memorandum in Opposition to LEAF's Motion contains two primary objections. First, TECO avers that LEAF's motion is an attempt by LEAF to mandate the substantive requirements of the proceedings. TECO states that: "...LEAF's motion appears to be more of a request that the Commission dictate which conservation measures are required to be evaluated....[T]his is an effort to dictate the content of a utility's direct testimony and exhibits." TECO Memorandum, pg.1. Second, TECO objects to the fact that LEAF's Motion does not recognize the data and analysis gleaned from the prior proceeding which should form the basis for the instant



DOCKET NOS. 971004-EG, 971005-EG, 971006-EG, 971007-EG  
DATE: September 24, 1998

goals dockets. TECO states that LEAF has demonstrated no basis to alter the procedural schedule and that the substantive modifications advocated by LEAF are unnecessary. TECO Memorandum, pg. 2.

C. Gulf Power Company.

Gulf Power Company offers four objections to LEAF's Motion For Procedural Order. First, Gulf states that LEAF's Motion should be denied for failure to state a legal basis upon which relief can be granted. Gulf Response, pg. 1. Second, Gulf states that LEAF should not be permitted to direct Gulf's planning process through a procedural order. Gulf, like FPL, cites Rule 25-17.0021, Florida Administrative Code, which states that the utilities should develop their proposed plans based on the utility's planning process. "The Commission should not specify through a procedural order which savings measures must be tested by the utilities for cost-effectiveness" Id. Third, Gulf takes issue with LEAF's proposal that the utilities must develop a TRC portfolio. The RIM cost-effectiveness test is the appropriate screening mechanism, according to Gulf. In support of its position, Gulf cites Legal Environmental Assistance Foundation, Inc. v. Clark, supra, which upheld the Commission's policy of not requiring TRC. Fourth, like FPL and TECO, Gulf advocates that the Order properly enables the utilities to build upon the considerable experience gained during the last goals proceeding. "The exhaustive technical potential phase undertaken in the prior proceeding is not necessary at this time. Information learned in the prior proceeding should be utilized in this proceeding." Gulf Response, pg. 3.

III. Staff Analysis.

Staff agrees with all of the arguments in opposition to LEAF's Motion For Procedural Order raised by the utilities. However, Staff finds the arguments raised by FPL that LEAF's motion is an untimely motion for reconsideration and that the motion requests the Commission to take action inconsistent with Rule 25-17.0021, Florida Administrative Code, to be the most compelling basis for denying LEAF's Motion.

A. Untimely Motion For Reconsideration.

Pursuant to Rules 25-22.038(2) and 25-22.0376, Florida Administrative Code, any party adversely affected by an Order

DOCKET NOS. 971004-EG, 971005-EG, 971006-EG, 971007-EG  
DATE: September 24, 1998

Establishing Procedure may request reconsideration within ten days after issuance of the Order. Failure to timely file a motion for reconsideration constitutes a waiver of the right to do so.. Rule 25-22.0376(3), Florida Administrative Code. The Order Establishing Procedure was issued on March 10, 1998. LEAF's Motion For Procedural Order was filed on July 21, 1998; 123 days after the time required for filing.

That LEAF's Motion For Procedural Order is a motion for reconsideration is clear. The Motion requests the Commission to dictate the planning processes of the utilities in the manner advocated by LEAF. By requiring the utilities to comply with Rule 25-17.0021, Florida Administrative Code, which requires the utilities to provide projections based on the *utilities'* most recent planning process, the Order specifically declines to dictate the utilities' planning processes. Staff concurs with FPL's argument on this issue:

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(sic), 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 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....

FPL Response, pgs 4-5.

In short, LEAF's Motion For Procedural Order merely asserts LEAF's disagreement with the Order. Even if LEAF's motion had been timely filed, it would not have met the standard for reconsideration. State v. Green, 105 So.2d 817 (Fla. 1st DCA 1958); Diamond Cab. Co.

DOCKET NOS. 971004-EG, 971005-EG, 971006-EG, 971007-EG  
DATE: September 24, 1998

v. King, 146 So.2d 889 (Fla. 1962); Peoples Gas System, Inc. v. Mason, 187 So.2d 335 (Fla. 1966)

The time permitted to file a motion for reconsideration is not discretionary. In City of Hollywood v. Public Employee Relations Commission, 432 So. 2d 79 (Fla. 4th DCA 1983), the appellate court dismissed an appeal because the appellant had filed an untimely motion for reconsideration with the agency. The Public Employee Relations Commission's (PERC) procedural rules permitted a 15 day period for the filing of such a motion, but did not permit an extension of time for the filing. Analogizing the situation to a motion for a new trial in circuit court, the appellate court held that while PERC had the authority to reconsider its decision, it lacked the authority to extend the filing period. More recently, in Citizens of the State of Florida v. North Fort Myers Utility, Inc. and the Public Service Commission (Fla. 1st DCA, Case No. 95-1439, Nov. 16 1995) the court dismissed an appeal of a Commission order filed by the Office of Public Counsel because the motion for reconsideration had not been filed within 15 days of the issuance of a final order. Thus, in the instant case, LEAF's failure to file its Motion within ten days of the date of issuance of the Order constitutes a waiver of its right to do so and the Commission may not extend the time for filing.

It is recognized that in the prior goals proceeding, six procedural orders as well as an order on natural gas measures, were issued by the Commission. During that proceeding, a proscriptive approach to implementing the Commission's new numeric DSM goals rule was taken to ensure a comprehensive analysis of DSM measures, and to uncover the potential savings under the RIM and TRC tests. However, as is set forth in more detail below, the proscriptive approach is neither necessary nor justified in the instant goals proceeding.

B. LEAF's Proposal Is Inconsistent With Rule 25-17.0021, Florida Administrative Code.

LEAF's proposal that the Commission dictate the content and analyses of the utility's filings in this goals proceeding is inconsistent with Rule 25-17.0021, Florida Administrative Code. The Rule establishes bifurcated conservation proceedings. Sections (1) through (3) of the rule establish the procedures and guidelines for the conservation goals dockets. Sections (4) and (5) govern the utilities' actual conservation plans, containing specific

DOCKET NOS. 971004-EG, 971005-EG, 971006-EG, 971007-EG  
DATE: September 24, 1998

programs, which are designed to meet the utilities' goals. The conservation plans and other post-goals proceedings filings are separate, docketed matters and subject to different requirements than the goals-setting process. The utilities' numeric goals are to be set based on the utilities' planning processes. The specific plans filed by the utilities following the establishment of numeric goals are the forum in which the Rule requires evaluations of specific programs of the nature advocated by LEAF.

The clear language of Rule 25-17.0021, Florida Administrative Code demonstrates the bifurcated structure of the rule. With respect to utilities' conservation goals, the Rule states:

- (1) The Commission shall establish numerical goals for each affected electric utility....
- (2) The Commission shall set goals for each utility at least once every five years....
- (3) 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 on the utility's most recent planning process.... Each utility's projections shall be based upon an assessment of, at a minimum, the following market segments and major end-use categories.

Section (3) of the Rule concludes with the specific market segments (residential and commercial/industrial) to be evaluated and a listing of the major end-use categories to be considered by the utilities. There is no reference in the goals-setting portion of the Rule regarding the requirements for evaluation of specific programs to be included in utilities plans.

The requirements regarding specific programs designed to meet utilities' established goals and the manner of evaluation those programs are contained in the second part of the Rule, Sections (4) and (5). Section (4) states, in part:

- (4) Within 90 days of a final order establishing or modifying goals,...each utility shall submit for Commission approval a demand side management plan designed to meet the utility's approved goals....

DOCKET NOS. 971004-EG, 971005-EG, 971006-EG, 971007-EG  
DATE: September 24, 1998

Section (4) of the Rule then sets forth in detail the information utilities are required to file in conjunction with programs specified in their plans. The filing requirements include, among other things, "(j) an estimate of the cost-effectiveness of the program using the cost-effectiveness tests required pursuant to Rule 25-17.008...." The cost-effectiveness tests referred to in subsection (j) are the RIM test, the TRC test and the participant tests. The cost-effectiveness tests are not required by the Rule to be performed by the utilities for establishing numeric goals.

The language of Rule 25-17.0021, Florida Administrative Code, clearly distinguishes the goals setting proceedings from the plan submission proceedings and the requirements for the two proceedings are vastly different. It is the requirements relating to utilities plans which LEAF is requesting the Commission to apply to the utilities' goals. As such, LEAF's Motion should be denied because it is tantamount to a request that the Commission exceed its jurisdiction in the goals setting proceeding.

C. LEAF's Motion Misapprehends The Substantive Law of The Case.

As previously stated, LEAF's Motion should be denied on procedural grounds. In addition, and for the reasons set forth below, the Motion should be denied on substantive grounds. LEAF's Motion misapprehends and requests the Commission to misapply the law of the case. The fundamental substantive premises of LEAF's pleadings are: a RIM-only screen is improper; the Commission policy is to require the TRC test on all DSM programs; and the Commission should require the utilities to perform cost effectiveness testing on a broad range of programs suggested by LEAF. Staff disagrees with LEAF's arguments. It is not Commission policy to require TRC portfolios on the broad range of programs suggested by LEAF. A brief analysis of the prior goals setting proceeding is instructive to understanding Commission precedent in the goals proceedings.

Parties have previously advocated before the Commission the untapped benefits of utilizing DSM measures which passed the TRC test, but failed the RIM test. The Commission's implementation of its numeric DSM goals rule, became the forum in which the Commission would fully and finally determine the savings difference between the RIM and TRC tests.

DOCKET NOS. 971004-EG, 971005-EG, 971006-EG, 971007-EG  
DATE: September 24, 1998

Before the commencement of the prior goals proceedings, the Synergic Resources Corporation (SRC), with funding provided by the Florida Energy Office (FEO), produced a report on potential DSM savings in Florida. During the project, meetings were held between representatives of SRC, utilities, the FEO, other interested parties, and staff to comment on the assumptions and methodologies of the report. The report attempted to quantify the potential demand and energy savings from a wide variety of DSM measures in the state of Florida.

It was agreed by the Commission and the parties, that in implementing the new numeric DSM goals rule, the SRC report would provide a common baseline from which the utilities would perform analyses. It was the Commission's intent that a comprehensive analysis, in a formal docketed proceeding, would be performed of DSM measures which would ultimately provide the Commission with the evidence of the potential savings under the RIM and TRC tests.

Through its procedural orders, the Commission required extensive analyses and production of information, even though the rule only required the utilities to propose Residential and Commercial/Industrial numeric goals, based on the utility's planning process, which were cost-effective and reasonably achievable. The results of each utilities' individual DSM measure analyses were aggregated into those measures passing RIM and TRC, and those measures passing TRC but failing RIM. The estimated savings from the two portfolios of measures provided the Commission the answer to how much additional savings was available under a TRC policy. The Commission ultimately set goals based solely on RIM measures:

We will set overall conservation goals for each utility based on measures that pass both the participant and RIM tests. The record in this docket reflects that the differences in demand and energy saving between RIM and TRC portfolios are negligible. We find that goals based on measures that pass TRC but not RIM would result in increased rates and would cause customers who do not participate in a utility DSM measure to subsidize customers who do participate. Since the record reflects that the benefits of adopting a TRC goal are minimal, we do not believe that increasing rates, even slightly, is justified....

DOCKET NOS. 971004-EG, 971005-EG, 971006-EG, 971007-EG  
DATE: September 24, 1998

Although we are setting goals based solely on RIM measures, we encourage utilities to evaluate implementation of TRC measures when it is found that the savings are large and the rate impacts are small.

Order No. PSC-94-1313-FOF-EG, Docket Nos. 930548-EG, 93-549-EG, 930550-EG and 980551-EG, issued October 25, 1994, pg. 22. In short, savings from TRC measures were not sufficient to overcome rate impact considerations and the issue of cross-subsidization.

The Commission's decision was upheld on agency reconsideration and by the Supreme Court of Florida. In Legal Environmental Assistance Foundation, Inc. v. Clark, 668 So.2d 982 (Fla. 1996) quoting the same language as that set forth above, the Supreme Court stated that it rejected as without merit LEAF's 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. Id. at 987. The Supreme Court specifically found the Commission's policy to be based on competent, substantial evidence in the record and upheld it in its entirety.

The Commission's policy, as demonstrated herein, does not require nor does it preclude utilities from proposing programs which pass TRC but fail RIM. Pursuant to FEECA and Commission precedent, utilities may propose for Commission approval, any program it wishes to offer its customers. In sum, LEAF's argument that the Commission has a policy of requiring TRC portfolios in these goals dockets is incorrect and merely attempts to reargue matters which are stare decisis. For this reason, and because of the procedural infirmities demonstrated herein, LEAF's Motion should be denied.

DOCKET NOS. 971004-EG, 971005-EG, 971006-EG, 971007-EG  
DATE: September 24, 1998

**ISSUE 3:** Should these dockets be closed?

**RECOMMENDATION:** No. These dockets are scheduled for hearings in May of 1999.

**STAFF ANALYSIS:** These dockets are scheduled for hearings in May, 1999 and should remain open pending resolution of all issues.