

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: ADOPTION OF NUMERIC CONSERVATION GOALS BY:

Filed: December 30, 1998

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

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Motion to Extend Discovery Schedule and Filing Date for LEAF's Testimony & Exhibits

LEAF files this Motion to Extend Discovery Schedule and Filing Date for LEAF's Testimony & Exhibits and as grounds therefore states:

1. This motion asks that the Commission provide a reasonable opportunity for LEAF to secure the information it needs to develop its testimony, and a reasonable opportunity for LEAF to prepare its testimony and exhibits.

2. Each of the four utilities whose conservation goals are to be set in this proceeding must provide three filings: 1) a "savings potential projection" (i.e., the utility's ten year projection, based on its planning process, of the total cost-effective energy and demand savings reasonably achievable in its service area); 2) a "goals proposal" (i.e., the utility's proposed numeric energy and demand savings goals; and 3) the utility's direct testimony and exhibits. Order No. PSC-98-0384-PCO-EG and Rule 25-17.0021(3), FAC.

3. As an intervenor, LEAF has an opportunity to file testimony in this proceeding. Before LEAF's testimony can be prepared the following events must occur: First, LEAF must have a

ACK reasonable opportunity to review and become informed about the substance and assumptions
AFA underlying each of these three filings from the each of the four utilities. Second, LEAF must
APP complete the technical analyses upon which LEAF's testimony is to be based (e.g., we need a
CAF reasonable opportunity to complete the number crunching to show why the Commission should
CMU reject, or adopt an alternative to, any utility-proposed goals or savings potential projection).

CTR Third, LEAF must prepare its testimony and exhibits.

LEG 1
LIN 5 4. Each of the four utilities will have had over a year to develop its savings potential

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projection, goals proposal, and testimony (hereinafter "utility filings"). Due process requires that the Commission permit LEAF a reasonable opportunity both to become informed about the utility filings and to complete its own technical analyses, testimony, and exhibits.

5. Becoming informed about the utility filings and completing the necessary technical analyses, testimony, and exhibits are no simple matter. Until utility filings are in hand, the time required can only be estimated roughly. However, it is clear that the current schedule does not provide a reasonable opportunity for LEAF to conduct the following necessary activities prior to filing its testimony:

**a. *Reviewing the filings will take time.***

Each of the four utilities will file three separate documents that will either contain, or be based on, extensive analyses and assumptions that will vary for each utility. Each utility's filings must be reviewed to see what was provided and what must be ascertained through discovery. This review will likely take longer than in the last goals case since the Commission has not here specified how much information is to be provided with the filings and each utility may provide differing degrees of information.

**b. *Conducting discovery to secure relevant information that is necessary to develop LEAF's position and testimony will take time.***

Discovering the bases for each utility's conclusions regarding DSM cost effectiveness is likely to involve many complex matters. For example: What specific costs and benefits did each utility assume for each measure whose cost effectiveness was tested?; How did each utility determine what generation, transmission, and distribution resources were needed?; How did each utility calculate avoided generation, transmission and distribution costs?; What DSM benefits were included and how were they calculated? How did each utility deal with overlapping measures, rebound effects, free riders, interactions with building codes and appliance efficiency standards? Discovery of such matters in the last goals case took numerous rounds of interrogatories and depositions. Even though LEAF does not anticipate as lengthy a process in this case, it is clear that the current schedule is inadequate.

In the last goals case, utilities filed cost effectiveness test results for Commission-

approved savings measures before filing their goals proposals. In this case, the Commission declined to specify up front which measures merit testing for cost effectiveness. There is no specific requirement that utilities file cost effectiveness test results, either before or with the utility filings. Therefore, additional time will likely be needed to discover things that, in many cases, were determined before utility goals proposals were even filed in the last goals case. For example, in this case it will be necessary to discover things like: What savings measures did each utility test for cost-effectiveness?; What cost-effectiveness test(s) did each utility use on each measure?; If a utility did not test the cost-effectiveness of a savings measure that offers reasonably achievable savings, what was that utility's rationale for *not* testing the measure's cost effectiveness?; Did any utility bundle measures together before testing for cost effectiveness, and if so, how and why?

Discovery to discern the substance and bases of the utility filings cannot start until the filings are received and reviewed. Utilities' responses to LEAF's First Interrogatories (dated October 27, 1998) indicate utility savings potential projections and goals proposals will not be completed until immediately before they are filed on the February 1, 1999 deadline. Conducting further discovery before utility proposals and projections are completed would be unproductive and wasteful of LEAF's limited resources -- until a utility commits to its proposal or projections it could provide only tentative responses.

***c. Completing the computer based technical analyses that form the basis for LEAF's testimony and exhibits will take time.***

LEAF's testimony and exhibits will be based on technical analyses. These analyses are dependent on information that forms the bases for each utility's filings (e.g., analyses could include critiquing and developing alternative estimates of costs and benefits used in the utility-run cost effectiveness tests or testing measures that were not tested by the utility using the utility's own avoided cost assumptions). They cannot be conducted until the substance and bases of the utility filings are known. Unless the utility filings contain the relevant information necessary to conduct these technical analyses (an unlikely event), discovery must be completed before the analyses are conducted. After the necessary information is secured, time is needed

to input the data, review the output, and complete the analyses.

**d. *Preparing and distributing LEAF's testimony and exhibits will take time.***

After the underlying analyses are completed, it will take time to prepare and make multiple (24) copies of LEAF's testimony and exhibits for filing and distribution.

The aforesaid activities are each essential parts of presenting LEAF's position and testimony in this case. The current schedule should be modified to provide a reasonable opportunity for these essential activities to take place.

6. The current schedule provides only 49 calendar days (35 business days) between the date utility filings are to be mailed to LEAF and the date that LEAF's testimony is due. Even if the utility filings contain all the relevant information that is necessary to develop LEAF's testimony, the current schedule will not permit LEAF a reasonable opportunity to review the filings, complete the necessary computer-based technical analyses, and timely prepare and distribute testimony and exhibits. If, as seems most likely, utility filings lack the necessary information, additional time will also be required to ascertain what information is lacking and to complete the discovery necessary to secure the information needed to conduct the technical analyses that will form the basis of LEAF's testimony

7. LEAF has good cause not to raise this issue by motion before now. Before filing LEAF's Motion to Establish Procedure, LEAF was, in good faith and consistent with staff's urging, negotiating with the utilities to develop a list of measures that merit cost effectiveness testing and a mutually agreeable cost effectiveness testing method. When negotiations failed, LEAF filed its Motion to Establish Procedure asking the Commission to establish a procedure wherein it could provide some cost-effectiveness testing criteria before utility filings are made in this case. At the agenda conference where the Commission denied LEAF's Motion to Establish Procedure, LEAF advised the Commission the schedule was a problem. Immediately after that agenda conference LEAF filed interrogatories to ascertain when utility goals proposals and savings potential projections would be complete so that discovery could commence. The utility responses indicate utility savings potential projections and goals proposals will not be completed until immediately before they are filed on the February 1, 1999 deadline. After receipt of utility

responses to these interrogatories, LEAF filed this motion.

8. Without the utility filings in hand, it is not possible to specify the exact discovery and testimony extension times needed. However, given the matters at issue and prior experience, LEAF anticipates that, **at minimum:** a) three weeks will be needed to review the three separate filings from the four separate utilities and prepare written discovery ; b) for each utility, two rounds of interrogatories, followed by two depositions, will be needed to develop the information needed to conduct the technical analyses upon which LEAF's testimony will be based (this could be quickened by requiring either hand or overnight delivery and expediting response times to written discovery); c) two months will be needed to complete the technical analyses; and d) three weeks will be needed to finalize LEAF's testimony and exhibits.

9. Therefore, the Commission should establish a discovery and testimony filing schedule that provides a reasonable opportunity for LEAF to conduct the above-described activities that are essential to presenting LEAF's position and testimony in this case, allowing, at least, the minimum times specified in paragraph 8 above.

10. Pursuant to Rule 28-106.204, FAC, prior to filing this motion LEAF conferred, or attempted to confer, with the other parties to this proceeding and states that: OPC has no objection to the motion: FPL has an objection to the motion; and that LEAF was not able to reach the legal representatives for FPC, TECO, Gulf, and FIPUG.

WHEREFORE, LEAF moves that the Commission Extend the Discovery Schedule and Filing Date for LEAF's Testimony as herein requested.

Respectfully submitted,

*Debra Swim*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that true and correct copies of LEAF's Motion to Extend Discovery Schedule and Filing Date for LEAF's Testimony was hand delivered (when indicated by \*) or sent by overnight mail (when indicated by \*\*) this 30th day of December, 1998 to:

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