

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 120002-EI

ENERGY CONSERVATION COST
RECOVERY CLAUSE.

_____ /

RECEIVED-FPSC
12 OCT 23 AM 10:21
COMMISSION
CLERK

PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONER
PARTICIPATING: COMMISSIONER EDUARDO E. BALBIS
PREHEARING OFFICER

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

TIME: Commenced at 9:30 a.m.
Concluded at 10:17 a.m.

DATE: Wednesday, October 17, 2012

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 APPEARANCES:

2 JAMES D. BEASLEY, ESQUIRE and J. JEFFRY
3 WAHLEN, ESQUIRE, Ausley Law Firm, Post Office Box
4 391, Tallahassee, Florida 32302, appearing on behalf
5 of Tampa Electric Company.

6 JEFFREY A. STONE, ESQUIRE, RUSSELL A.
7 BADDERS, ESQUIRE and STEVEN R. GRIFFIN, ESQUIRE,
8 Beggs & Lane Law Firm, Post Office Box 12950,
9 Pensacola, Florida 32591-2950, appearing on behalf
10 Gulf Power Company.

11 JAMES W. BREW, ESQUIRE and F. ALVIN TAYLOR,
12 ESQUIRE, c/o Brickfield Law Firm, 1025 Thomas
13 Jefferson Street, NW, Eighth Floor, West Tower,
14 Washington D.C., 20007 appearing on behalf of White
15 Springs Agricultural Chemicals, Inc.

16 KAREN WHITE, ESQUIRE, CAPTAIN SAMUEL MILLER,
17 STAFF ATTORNEY, MAJOR CHRISTOPHER THOMPSON, ESQUIRE,
18 Federal Executive Agencies, c/o USAF/AFLOA/JACL/ULFSC,
19 139 Barnes Drive, Suite 1, Tyndall AFB, Florida
20 32403-5319, appearing on behalf of Federal Executive
21 Agencies.

22 JON C. MOYLE, JR., ESQUIRE, Moyle Law
23 Firm, 118 North Gadsden Street, Tallahassee, Florida
24 32301, appearing on behalf of Florida Industrial
25 Power Users Group.

1 APPEARANCES (continued):

2 KENNETH M. RUBIN, ESQUIRE and JOHN T.
3 BUTLER, ESQUIRE, Florida Power & Light Company, 700
4 Universe Boulevard, Juno Beach, Florida 33408-0420,
5 appearing on behalf of Florida Power & Light Company.

6 BETH KEATING, ESQUIRE, Gunster Law Firm,
7 215 South Monroe Street, Suite 618, Tallahassee,
8 Florida 32301, appearing on behalf of Florida Public
9 Utilities Company.

10 CHARLES REHWINKEL, ESQUIRE, and JOSEPH A.
11 MCGLOTHLIN, ESQUIRE, and PATTY CHRISTENSEN, ESQUIRE,
12 Office of Public Counsel, c/o The Florida
13 Legislature, 111 W. Madison St., Room 812,
14 Tallahassee, Florida 32399-1400, appearing on behalf
15 of the Citizens of Florida.

16 JOHN T. BURNETT, ESQUIRE and DIANNE M.
17 TRIPLETT, ESQUIRE, Progress Energy Service Company,
18 LLC, Post Office Box 14042, Saint Petersburg, Florida
19 33733-4042, appearing on behalf of Progress Energy
20 Florida, Inc.

21 GEORGE CAVROS, ESQUIRE, Southern Alliance
22 for Clean Energy, 120 East Oakland Park Blvd., Suite
23 105, Fort Lauderdale, Florida 33334, appearing on
24 behalf of Southern Alliance for Clean Energy.

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES (continued):

LEE ENG TAN, ESQUIRE, FPSC General
Counsel's Office, 2540 Shumard Oak Boulevard,
Tallahassee, Florida 32399-0850, appearing on behalf
of the Florida Public Service Commission Staff.

MARY ANNE HELTON, Deputy General Counsel,
Florida Public Service Commission, 2540 Shumard Oak
Boulevard, Tallahassee, Florida 32399-0850, Advisor
to the Florida Public Service Commission.

MARY ANNE HELTON, Deputy General Counsel,
Florida Public Service Commission, 2540 Shumard Oak
Boulevard, Tallahassee, Florida 32399-0850, Advisor to
the Florida Public Service Commission.

P R O C E E D I N G S

1
2 **COMMISSIONER BALBIS:** Good morning. I'd like
3 to call this clause prehearing conference to order.

4 Staff, could you please read the notice.

5 **MS. BROWN:** By notice issued September 18th,
6 2012, this time and place is set for a prehearing
7 conference in the following dockets: 120001-EI,
8 120002-EG, 120003-GU, 120004-GU, 120007-EI. The
9 purpose of the prehearing conference is set out in the
10 notice.

11 **COMMISSIONER BALBIS:** Okay. Thank you.

12 We can now take appearances. We have,
13 obviously, five dockets to address today, and I assume
14 staff recommends that we take appearances at once, and
15 all parties should enter their appearances and declare
16 the dockets that they are entering an appearance for.

17 So we'll start with Florida Power and Light.

18 **MR. BUTLER:** Thank you.

19 Good morning, Commissioner. John Butler and
20 Ken Rubin appearing on behalf of FPL in the 01, the 02,
21 and the 07 dockets.

22 **MS. TRIPLETT:** Good morning. Dianne Triplett
23 on behalf of Progress Energy Florida, and also I would
24 like to make an appearance for John Burnett also on
25 behalf of Progress Energy Florida in the 01, 02, and 07

1 dockets. And then also in the 07 docket, Gary Perko.

2 **MR. BEASLEY:** Good morning, Commissioner.
3 James D. Beasley and J. Jeffry Wahlen for Tampa
4 Electric Company in the 01, 02, and 07 dockets.

5 **MR. GRIFFIN:** Good morning, Commissioner.
6 Steven Griffin with the law firm of Beggs and Lane on
7 behalf of Gulf Power. Also appearing in the dockets
8 with me are Jeffrey Stone and Russell Badders in 01,
9 02, and 07.

10 **MS. KEATING:** Good morning, Commissioner.
11 Beth Keating with the Gunster Law Firm. I'm here today
12 on behalf of FPUC in the 01 and 02 dockets; for FPUC in
13 the 03 docket, as well as Florida City Gas; and in the
14 04 docket, FPU, FPU Indiantown, Chesapeake, and Florida
15 City Gas.

16 **MS. WHITE:** Good morning, Commissioner. I'm
17 Karen White on behalf of Federal Executive Agencies.
18 I'm also entering an appearance for Major Christopher
19 Thompson and Captain Samuel Miller in the 01, 02, and
20 07 dockets.

21 **MR. BREW:** Good morning, Commissioner. I'm
22 James Brew of the firm of Brickfield, Burchette, Ritts,
23 and Stone. I'm here for White Springs Agricultural
24 Chemicals, PSC Phosphate. I'd like to also make an
25 appearance for F. Alvin Taylor, and we're here in the

1 01, 02, and 07 dockets.

2 **MR. REHWINKEL:** Good morning, Commissioner.
3 Charles Rehwinkel with the Office of Public Counsel.
4 I'd like to enter an appearance in 01, 02, and 07. And
5 I would also like to enter an appearance for Mr.
6 McGlothlin, Joe McGlothlin in 01, 02, and 07, and I'll
7 let Ms. Christensen tell you hers.

8 **MS. CHRISTENSEN:** And Patty Christensen also
9 on behalf of the Office of Public Counsel in the 01,
10 02, 03, 04, and 07 dockets.

11 **MR. WRIGHT:** Good morning, Commissioner.
12 Robert Scheffel Wright, and I'd also like to enter an
13 appearance for my partner John T. LaVia, III, on behalf
14 of the Florida Retail Federation in the fuel
15 cost-recovery docket, 0001. Thank you.

16 **MR. MOYLE:** Good morning. Jon Moyle with the
17 Moyle Law Firm representing the Florida Industrial
18 Power Users Group. I'd like to enter an appearance in
19 the 01, 02, 07, and 09 dockets.

20 **MR. CAVROS:** Good morning, Commissioner.
21 George Cavros appearing on behalf of Southern Alliance
22 for Clean Energy in the 02 docket.

23 **MR. HORTON:** Norman H. Horton, Jr., appearing
24 on behalf of Sebring Gas System, Inc. in the 04 docket.

25 **COMMISSIONER BALBIS:** Okay. Any other

1 parties before I move to staff?

2 **MS. BROWN:** Martha Carter Brown and Michael
3 Lawson in the 02 docket -- 03 docket, I'm sorry.

4 **MR. MURPHY:** Charles Murphy in the 07 docket.

5 **MS. ROBINSON:** Pauline Robinson in the 04
6 docket.

7 **MS. TAN:** Lee Eng Tan for the 02 docket.

8 **MS. BARRERA:** Martha Barrera in the 01
9 docket, and also I would like to enter an appearance
10 for Lisa Bennett.

11 **MS. HELTON:** And Mary Anne Helton, I'm here
12 to advise you in all the dockets.

13 * * * * *

14 **COMMISSIONER BALBIS:** We will move on to the
15 02 docket, energy conservation clause. Okay. Are
16 there any preliminary matters in this docket?

17 **MS. TAN:** At this point there are none, and
18 none are expected. Staff would note that there are no
19 stipulations at this time, but staff will continue to
20 work with the parties to stipulate issues and
21 witnesses, if possible.

22 **COMMISSIONER BALBIS:** Okay. Then we'll move
23 through the draft prehearing order following the same
24 procedure as the previous two. We'll start with
25 Section I, case background. Any questions or comments?

1 Section II, conduct of proceedings.

2 Section III, jurisdiction.

3 Section IV, procedure for handling
4 confidential information.

5 Section V, prefiled testimony and exhibits.

6 Section VI, order of witnesses.

7 **MS. TAN:** Staff would point out that on Page
8 4 of the draft prehearing order that witnesses may be
9 excused if no Commissioners seek cross-examination.
10 The testimony of the excused witnesses would be
11 inserted into the record as though read, and all the
12 exhibits submitted with the potential excused witnesses
13 will be identified in the prehearing order.

14 **COMMISSIONER BALBIS:** Any other questions or
15 comments on order of witnesses?

16 Moving on to Section VII, basic positions.

17 Section VIII, issues and positions.

18 **MR. RUBIN:** Commissioner Balbis, Ken Rubin
19 for FPL. FPL has moved to -- or objects to and moves
20 to strike the proposed generic issues that SACE has
21 raised. I think the other utilities have done the
22 same. I'm prepared to argue if you would like me to at
23 this point.

24 **MS. CHRISTENSEN:** Commissioner, before we get
25 to the SACE issues, Office of Public Counsel had one

1 question of clarification. I think there -- I'm not
2 sure that the CILC credits that were proposed in the
3 FPL settlement which still has yet to be decided upon
4 were included as part of Issue 3 in the conservation
5 factors. We had not taken a position on those rates,
6 but as I think the Commissioner is aware, we have taken
7 a position on the overall settlement agreement.

8 And I'm not sure whether or not that's an
9 issue that's being impacted in this docket, but we just
10 wanted to bring that to the attention of the
11 Commissioner today. And if we need to take a position,
12 we can. If we can get clarification on that, whether
13 or not there are any settlement rates that are being
14 requested or being asked to be flowed through this
15 docket, then we can take the appropriate action as
16 necessary.

17 **COMMISSIONER BALBIS:** Okay.

18 **MR. RUBIN:** Commissioner Balbis, if I could
19 clarify to the point that has just been made. In the
20 testimony that was filed we have indicated that
21 depending upon the Commission's ruling on Issue 166 in
22 the rate case or the settlement, that there would be a
23 true-up next year to reflect whatever the potential
24 increase in the CILC and CDR would be. So there is
25 nothing in this docket this year that would pertain to

1 what has been raised.

2 **MR. MOYLE:** And FIPUG, that's an issue that
3 we have actively litigated in the rate case, which is
4 still open and before the Commission. And as I
5 understand, to the extent that the agreement were
6 approved that it would not delay the implementation of
7 it. It would just simply be a matter of a true-up at
8 next year's proceeding.

9 **MS. CHRISTENSEN:** And the Office of Public
10 Counsel has no issue with it as far as the true-up
11 proceeding once the decision has been made. We just
12 wanted to make sure it wasn't being -- because they are
13 taking a slightly different approach in the 01 docket,
14 and I wanted to make sure that for this docket it
15 wasn't being prefiled, so to speak, here with these
16 figures. So with that clarification, then we will
17 maintain our no position. Thank you.

18 **COMMISSIONER BALBIS:** Okay. And I'm glad
19 that was clarified, because I was slightly confused
20 because the 01 docket was handled differently, and I
21 didn't see anything that showed that in this docket the
22 same attempt was being made. So I'm glad that's
23 clarified and all the parties are in agreement with
24 that.

25 **MR. BREW:** Mr. Commissioner, just a

1 clarification matter. On Issues 8, 9, and 10, PCS
2 should be reflected as having no position.

3 **COMMISSIONER BALBIS:** Okay.

4 **MS. WHITE:** Commissioner Balbis, on the
5 generic position, Issues 1 through 7, FEA had reflected
6 no position at this time, but we are going to change
7 that to agree with PCS Phosphate.

8 **COMMISSIONER BALBIS:** Okay. Any other
9 changes to issues and positions before we move on to
10 the SACE generic issues?

11 **MS. CHRISTENSEN:** For clarification of the
12 record, Issues 1 through 7, OPC would change from no
13 position at this time to no position. And we have also
14 taken no position on 8 through 10, depending on how the
15 Commission makes its determination on whether those
16 remain included or are removed from the proceeding.

17 **COMMISSIONER BALBIS:** Any other changes?

18 **MR. BEASLEY:** Jim Beasley for Tampa Electric.
19 Just to know where we are, I know there are other
20 parties, intervenors who have continued to say no
21 position at this time, and I wondered if any of them
22 are changing to no position in addition to Public
23 Counsel?

24 **COMMISSIONER BALBIS:** Well, I guess staff can
25 correct me if I'm wrong, but this is the opportunity to

1 set your position, and if it stays no position at this
2 time that is their final position, but --

3 **MS. TAN:** It would have to be changed to no
4 position, but, yes.

5 **COMMISSIONER BALBIS:** Okay. So last chance
6 for everyone. Okay. So then the record should reflect
7 that since positions have not been changed, those
8 listed as no position at this time will be changed to
9 no position. Would that be correct?

10 **MS. TAN:** That is correct.

11 **MR. BEASLEY:** Thank you.

12 **MR. CAVROS:** I'm sorry, Commissioner. Can I
13 get a clarification on what you just stated and what
14 staff agreed to? Our position is we have no position
15 at this time, and I just want to ensure that I'm not
16 waiving my client's rights to maintain that position
17 until the conclusion of this prehearing conference, or
18 as we go through the issues.

19 **COMMISSIONER BALBIS:** It's my understanding
20 that that is correct, that at this prehearing
21 conference is the opportunity to enter your position
22 and at the conclusion of it then it would switch to no
23 position if it has not been changed.

24 **MR. CAVROS:** Thank you.

25 **COMMISSIONER BALBIS:** Okay. Let's move on to

1 the proposed generic issues. It was my understanding
2 from staff that SACE has indicated that it will be
3 providing modified language for those generic issues.
4 So before we get into arguing these issues, I'd like to
5 make sure everyone understands what the final language
6 would be, or SACE's proposed language.

7 **MR. CAVROS:** Sure. Commissioner, what we
8 have done is we have offered three generic issues, and
9 in offering them -- at least to Issue 8 and Issue 9,
10 they may have not been worded as directly as I would
11 have liked. So if there is objection from the other
12 parties, which there is, and the Prehearing Officer
13 sides with the other parties in their objection as to
14 how in particular Issue 8 and Issue 9 are worded, I
15 would like to offer modified language to that.

16 In fact, in order to just maybe move this
17 process along, it might be prudent to offer that
18 modified language right now. And I could do that by
19 passing that language out to the parties, to the staff,
20 and to you.

21 **COMMISSIONER BALBIS:** Yes, I think that would
22 speed things along.

23 **MR. CAVROS:** Okay.

24 (Pause.)

25 **COMMISSIONER BALBIS:** So there are no

1 modifications to Issue 10?

2 **MR. CAVROS:** Correct.

3 **COMMISSIONER BALBIS:** Okay. Let me make sure
4 everyone has had a chance to read the proposed
5 modification.

6 **MR. RUBIN:** Commissioner Balbis, I'm not sure
7 that it really makes any significant difference to
8 FPL's position, so I'm prepared to argue if you would
9 like to hear that at this point.

10 **COMMISSIONER BALBIS:** Yes, I think now would
11 be appropriate now that we have read the proposed
12 modifications, and I think it's relatively
13 self-explanatory unless SACE would like to expand upon
14 it. But I think it's --

15 **MR. CAVROS:** Yes, Commissioner, actually I
16 would like the opportunity to describe why these issues
17 were offered.

18 **COMMISSIONER BALBIS:** Okay.

19 **MR. CAVROS:** The issues proposed by SACE
20 really go to very basic consumer concerns in this
21 docket. The utility parties are coming to you in this
22 annual docket and asking for recovery of their costs
23 related to the implementation of their DSM plans. And
24 in doing that they filed direct testimony where they
25 justified their costs and also provide a program

1 description and accomplishments, and those DSM plans
2 are supposed to achieve certain energy savings.

3 Now, during the course of the docket, the
4 Commission staff conducts a financial audit of the
5 revenues and expenses related to the execution of those
6 plans. So if the costs are what the utility said the
7 costs are, generally the utility will be granted
8 cost-recovery. But what about the analysis of the
9 energy savings related to the programs for which the
10 utility is seeking to recover costs? What is the
11 annual Commission process for looking at whether the
12 utility parties have properly measured and properly
13 verified the energy savings for which they are seeking
14 recovery?

15 And the answer to that question,
16 Commissioner, unfortunately is that there is no annual
17 process which looks at that, and that's what the SACE
18 issues go to.

19 Issue 8 asks has the utility accurately
20 measured the energy savings associated with its ECCR
21 factors? Issue 9, has the utility accurately verified
22 the energy savings associated with its ECCR factors?
23 And Issue 10, does the utility have an evaluation plan
24 in place to ensure optimal program impacts and
25 performance? And the focus of Issue 10 is essentially

1 what has the utility learned by measuring and verifying
2 it's past performance, and how have they applied it to
3 the 2013 projections? Because after all, the ECCR
4 process is not only backwards looking, but it also
5 projects forward.

6 Now, the utility parties and staff have
7 objected to the introduction of these issues, and the
8 objections generally focus in two areas. Number one,
9 that the issue is outside the scope of this docket and
10 the DSM plan approval docket is the more appropriate
11 docket for that. And, number two, the argument that
12 SACE has submitted similar issues in last year's docket
13 and they were denied by the prehearing officer then, so
14 you should do so as well.

15 In response to the first objection, it is
16 important to understand that there is no evaluation
17 measurement and verification plan that is submitted as
18 part of the DSM plan approval docket. So that, for
19 instance, consumer groups, SACE, can't challenge an EMV
20 plan, per se, in the DSM plan approval docket. Now,
21 that's not to say that there aren't processes in place
22 that each utility utilizes to measure and evaluate
23 their program performance, but the only, quote,
24 unquote, plan that has been memorialized in writing
25 was -- at least through our discovery we were only able

1 to discern that only one company has filed such a plan,
2 and that is TECO, and they filed a five-page EMV plan
3 in a 1994 docket. But even if there is a plan or a
4 process, which there are, there's no way to tell if it
5 is being executed in a way that accurately measures and
6 verifies energy savings for programs for which the
7 utility is seeking cost-recovery annually.

8 And, number two, the issue that you should
9 reject or deny SACE's generic issues because they are
10 similar to last year's issues. Last year's issues went
11 to program design and the prehearing officer denied
12 them and we respect that decision. This year's issues
13 are much more narrow. The issues are in no way
14 similar. The only similarity is they would expand,
15 admittedly, the scope of how things have been
16 historically done in this docket. And I'm not sure
17 that is necessarily a bad thing, especially when the
18 issue goes to whether customers are getting the energy
19 savings that they are being charged for.

20 I think that customers deserve to know if
21 they are getting the most bang for their buck, and
22 that's why we have submitted these generic issues for
23 your consideration because simply they cannot be
24 addressed in any other docket, and this is the most
25 appropriate docket for consideration of those issues.

1 **COMMISSIONER BALBIS:** Okay. Thank you. Now,
2 Florida Power and Light.

3 **MR. RUBIN:** Thank you, Commissioner Balbis.
4 First of all, the docket that we are here about, the 02
5 docket is defined by Rule 25-17.015. That defines the
6 scope of the ECCR proceedings, and the rule indicates
7 that in this docket the utilities may seek to recover
8 its costs for energy conservation programs, and that is
9 the scope of this docket.

10 The rule very specifically points this out
11 and the utility, FPL has complied with all the
12 obligations it has under the rule. It has filed its
13 true-up testimony. It has filed its projection
14 testimony.

15 I would mention, and I want to come back to
16 this, that SACE has not challenged any particular
17 expenditure. They have not challenged a single dollar
18 of any expenditures made by FPL under any of its
19 programs.

20 Next, the list of issues, and this
21 Commission's order establishing procedure identifies in
22 Section III the tentative list of issues with
23 Attachment A, which are the traditional issues that we
24 have been here to litigate every year, the
25 cost-recovery and the setting of factors for next year.

1 Last year we were here, and although SACE argues that
2 these issues are different, they are significantly
3 similar. The issues attempted to go into DSM type of
4 issues, and the Prehearing Officer, Chairman Brisé, at
5 that time felt and ruled that it was not appropriate to
6 litigate those issues in this docket.

7 In fact, the DSM rule, which is 25-17.0021,
8 goals for electric utilities, which defines the scope
9 of the DSM dockets, specifically indicates that in
10 proceedings to establish or modify goals, the
11 Commission should identify and look at things like
12 monitoring and evaluation of conservation programs,
13 that's from Subsection 3 of that rule. So that's
14 exactly what SACE is asking the Commission to do in
15 this docket. It's clear that the proceedings should be
16 in a DSM docket, not in this docket.

17 I also want to add that in addition to those
18 legal arguments from a factual perspective, even if you
19 felt the issues were appropriate in this docket and we
20 do not believe that they are, up until this moment in
21 time, SACE still has taken no position on its own
22 generic issues that it has proposed, so we don't have a
23 position from them at this point in time.

24 They have not filed any testimony. They have
25 not identified any witness or anybody to address their

1 proposed issues, so those issues have not been raised
2 in any context that could be litigated in this
3 proceeding.

4 FPL filed its testimony on the issues that
5 are appropriate for this docket. Because there was no
6 rebuttal -- I'm sorry, there was no intervenor
7 testimony filed by SACE, there was nothing for FPL to
8 rebut. There is no witnesses to address the issue even
9 if the Commission felt they were appropriate. So for
10 all of those reasons, from FPL's perspective those
11 issues are objectionable and they should not be
12 addressed in this docket.

13 **MS. TRIPLETT:** Thank you, Commissioner.
14 Dianne Triplett for Progress. As much as I know you
15 love to hear from lawyers, I'm going to not repeat
16 everything that he just said. I'm just going to say
17 us, too. In particular, I would note that SACE has not
18 challenged any of Progress Energy's costs as well on
19 the first seven issues.

20 Just two additional points. Mr. Cavros
21 admitted that the utilities do have processes in place
22 to verify the energy savings, but his argument is sort
23 of a nonstarter that there is not an official plan that
24 he can go point to and can challenge.

25 The processes that we have in place were

1 implicitly approved by the Commission during the DSM
2 program design and the goals setting process and the
3 program plan approval process, so absolutely there is a
4 forum for SACE and other intervenors to raise
5 challenges to those processes.

6 The other issue as far as the last year's
7 issues that were appropriately excluded by the
8 prehearing officer, Mr. Cavros said that those issues
9 went to program design, well, so does this issue.
10 These issues about verification, how much energy
11 savings that we project to save with various programs,
12 that is a key component of the cost-effectiveness tests
13 that were run to develop the plans and choose the
14 programs that have been implemented by Progress and are
15 the subject of the cost recovery. So we agree with FPL
16 and we believe that these issues are beyond the scope
17 of this proceeding.

18 **MR. BEASLEY:** Commissioner, Tampa Electric
19 likewise agrees with not only FPL and Progress, but
20 your staff that these issues are beyond the scope of
21 this proceeding, and we would urge that they be
22 considered at some other time, perhaps in the program
23 design phase which is upcoming in a year or so.

24 **MR. GRIFFIN:** Gulf Power likewise agrees. I
25 would also point out that back in December of 2010 in

1 the context of the DSM plan approval documents, SACE
2 made these very same arguments about more robust and
3 the measures in place, and the Commission had those
4 comments in front of them and they did not act on them
5 at that point in time. But if they wish to raise those
6 issues again that would be the appropriate docket, not
7 this one.

8 **MS. KEATING:** Beth Keating for FPU. And we
9 likewise agree with the other IOUs, and I can't really
10 say it any more elegantly than my colleagues. These
11 issues still go to the operation and function of the
12 programs themselves, not the cost-recovery, and,
13 therefore, they are not appropriate.

14 **COMMISSIONER BALBIS:** Any other parties wish
15 to comment? Okay. And, you know, one thing that I
16 have heard from all the parties is that they seem to be
17 in agreement that the evaluation of the programs is
18 something that either is being done and needs to be
19 done, and there seems to be a difference in which is
20 the appropriate docket. And I believe Florida Power
21 and Light indicated that during the DSM plan approval
22 process is the appropriate venue, if you will, to
23 discuss these issues. And yet I believe, Progress, you
24 indicated that it was more in the goal-setting process.

25 And one of the challenges that I have seen

1 that face this Commission during the DSM approval
2 process is that we have a myriad of programs and plans
3 with projected costs and projected energy savings, the
4 cost-effectiveness tests, and that is one process. And
5 then the recovery of those costs are through this
6 docket, and I tend to agree with the parties that it
7 may not be appropriate for this docket. However, my
8 initial inclination is that this is more appropriate in
9 the goal-setting process on looking at what are the
10 programs that are out there, what is the effectiveness
11 of the program, setting appropriate goals that don't
12 provide an undue rate impact.

13 And I think it might be better to be
14 addressed in that docket, because I do think that these
15 are important issues to look at, you know,
16 verification, and if there is an accurate measurement
17 process in place, and I think that I'm glad to hear
18 there's agreement that it needs to be done. It sounds
19 like that is what I am hearing, but I agree with the
20 utilities that this may not be the appropriate docket
21 to discuss those issues, and I'll give staff an
22 opportunity to provide their input on these generic
23 issues.

24 **MS. TAN:** Staff believes that this docket is
25 limited to the cost-recovery of the approved

1 conservation programs pursuant to the Rule 25-17.0105,
2 or 015, and we further believe that it is the
3 individual demand-side plans that may be more
4 appropriate. But we can also look into the
5 goal-setting process. But we do not believe in it is
6 appropriate in this docket.

7 **MR. CAVROS:** Commissioner, if I could just
8 respond.

9 **COMMISSIONER BALBIS:** Yes.

10 **MR. CAVROS:** The DSM plan approval process,
11 the goal-setting process, those are processes that are
12 looking out five and ten years, and the issues that are
13 raised here are the execution of those plans, have they
14 been executed. And there is no process in place to
15 determine whether those processes where they measure,
16 where they evaluate have been executed and have
17 accurately determined, accurately measured, accurately
18 verified the energy savings that the utilities come
19 back for each year.

20 So I concede that there are DSM plans filed.
21 That this is perhaps part of the goal-setting process
22 and the DSM plan approval process, but it begs the
23 question when is the execution of the plan reviewed.
24 And there is no process for annual review of the
25 execution of this evaluation measurement process and

1 that's why we offer it in this docket.

2 **COMMISSIONER BALBIS:** I tend to disagree with
3 you, though. Because when the DSM plans are reviewed,
4 I mean, that is when the detailed analysis of each
5 individual program, each dollar that is spent for the
6 program and projected energy savings for each one is
7 reviewed in detail. Testimony is entered into the
8 record, and then that program is approved or modified.
9 And then the annual recovery is to make sure that, yes,
10 those dollars were spent and that the savings was
11 realized.

12 So I disagree that these programs are not
13 analyzed. I just think that here is just the final,
14 you know, an annual check that, yes, X amount was spent
15 and that matches the DSM program that was approved, and
16 they realized that savings. So I think that there is
17 that review, and I think that if looking at the
18 individual programs, the verification methods, whether
19 or not it is effective, it is more appropriate in the
20 goal setting of the DSM plan approval process.

21 So with that, I agree with the utilities that
22 these issues are not appropriate and with staff that
23 these issues are not appropriate for this docket and
24 that they should be eliminated, if that is the
25 appropriate process to follow.

1 **MS. TAN:** Yes. We can reflect that in the
2 ruling section of the prehearing order.

3 **COMMISSIONER BALBIS:** Okay. Are there any
4 other comments on questions on issues and positions?

5 Moving on to Section IX, exhibit list.

6 **MS. TAN:** Commissioner, staff would note for
7 the record that we have prepared a Comprehensive
8 Exhibit List which consists of all the prefiled
9 exhibits for the purposes of numbering and identifying
10 the exhibits at hearing. Staff will provide the
11 exhibit list to the parties as soon as possible.

12 **COMMISSIONER BALBIS:** Okay. Section X,
13 proposed stipulations.

14 **MS. TAN:** There are no stipulations at this
15 time. However, staff will continue to work with the
16 parties.

17 **COMMISSIONER BALBIS:** Section XI, pending
18 motions.

19 **MS. TAN:** There are no pending motions.

20 **COMMISSIONER BALBIS:** Section XII, pending
21 confidentiality motions.

22 **MS. TAN:** There are four pending requests for
23 confidential classification which will be addressed by
24 separate order.

25 **COMMISSIONER BALBIS:** Okay. Section XIII,

1 post-hearing procedures.

2 Section XIV, rulings.

3 **MS. TAN:** Staff recommends that if there are
4 opening statements that they should be limited to four
5 minutes per party.

6 **COMMISSIONER BALBIS:** Does anyone have any
7 objections to that? Well, let me start with how many
8 parties will be making opening statements, so we can
9 see how much --

10 **MR. RUBIN:** FPL will not be making an opening
11 statement.

12 **MS. TRIPLETT:** Neither will Progress.

13 **MR. BEASLEY:** Nor will Tampa Electric.

14 **MR. GRIFFIN:** Nor will Gulf Power.

15 **MS. KEATING:** Nor FPU.

16 **COMMISSIONER BALBIS:** Okay. Can I conclude
17 that everyone is waiving opening statements? Okay.
18 Let the record reflect that all parties have agreed to
19 waive opening statements.

20 Are there any other matters to address at
21 this conference?

22 **MS. TAN:** There are no other matters to
23 address.

24 **COMMISSIONER BALBIS:** Okay. So seeing none,
25 we are going to conclude the prehearing in the 02

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

docket and move on to the 07 docket.

(The prehearing concluded at 10:17 a.m.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF FLORIDA)
 : CERTIFICATE OF REPORTER
COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 23rd day of October, 2012.



JANE FAUROT, RPR
FPSC Official Commission Reporter
(850) 413-6732