

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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IN RE: ADOPTION OF NUMERIC CONSERVATION GOALS BY:

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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

RECORDS AND REPORTING

MOTION FOR RECONSIDERATION

Intervenor, the Legal Environmental Assistance Foundation, Inc. ("LEAF"), pursuant to Rule 25-22.060, FAC and the Notice of Further Proceedings or Judicial Review in Order No. PSC-98-1435-PCO-EG, files this Motion for Reconsideration of the Order Granting Motion to Strike Reply and Denying Motion For Procedural Order, Order No. PSC-98-1435-PCO-EG, ("Order").

LEAF seeks reconsideration of the bases for denial of its Motion to Establish Procedure and the striking of its Reply as stated in the Order, which impair the correctness of the Order. As grounds therefore, LEAF states:

1. The Order misstates LEAF's proposal and the scope of the Commission's jurisdiction.

a. The Order improperly limits the scope of the Commission's jurisdiction.

LEAF's motion asked the Commission to establish a procedure for the Commission's early input on which measures merit cost effectiveness evaluation. The procedure LEAF proposed built on and was similar to (but much less comprehensive than) the one the Commission followed in the last goals case¹. It is also similar to what the Commission staff initially proposed in this case².

¹Through its First and Fourth Procedural Orders in the last goals case the Commission required each utility to analyze the technical potential of 110 savings measures, to evaluate which of those measures had potential as utility programs, to test the cost-effectiveness of measures which the Commission found had potential as utility programs, and to provide other analyses which the Commission considered relevant to its goal-setting responsibilities, Order Nos. PSC 93-0953-PCO-EG and PSC 93-1679-PCO-EG.

²Notice of Staff's Second Workshop in this case (which proposes a list of measures for utilities to test).

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FPSC-RECORDS/REPORTING

The Order states that the procedure LEAF proposed is inconsistent with Rule 25-17.0021 and would exceed the Commission's jurisdiction³. If LEAF's proposal is inconsistent with the rule and beyond the Commission's jurisdiction, then the Commission's orders⁴ in the last goals case are also inconsistent with the rule and in excess of the Commission's jurisdiction. Ruling that the Commission lacks jurisdiction to have utilities provide cost effectiveness information could set a dangerous precedent. Though the Commission decided not to adopt LEAF's proposal, it should find another basis for its denial. The Commission should not interpret its rule in a way that renders its past actions illegal -- and precludes the Commission from specifying the information it may want utilities to provide in the future.

The Commission clearly has authority to ask utilities to provide cost-effectiveness information. To set goals, the Commission has a legal obligation to become informed about the cost-effectiveness of measures that offer reasonably achievable savings. The rule requires that the Commission's 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 service area over a ten year period." Rule 25-17.0021(1), FAC (emphasis added). LEAF's Motion took the position that, to secure the information needed to set goals, the Commission has the authority to request cost-effectiveness information from utilities. LEAF asked that the Commission use this authority to provide early input on which measures merit cost effectiveness testing, as it did in the last goals case⁵. Rather than merely declining to request the information as LEAF had proposed, the Order erroneously implies that the Commission lacks jurisdiction to ask utilities to provide the information.

The rule also requires that each utility "propose numerical goals for the ten year period and provide ten year projections, based on the utility's most recent planning process, of the total, cost-effective, [demand and energy] savings reasonably achievable..." 25-17.0021(3), FAC (emphasis added). The rule directive that a utility's goals and savings projections be based on its planning process should not be read to bar the Commission from establishing goals that include savings measures that were not

³The order on reconsideration states, 1) that LEAF's Motion is "...a request that we compel utilities to evaluate substantially more data than is currently required by the Order or Rule 25-17.0021, FAC" (p. 3); 2) that "...LEAF's motion requests us to take action inconsistent with Rule 25-17.0021, FAC" or "...is inconsistent with Rule 25-17.0021, FAC;" (p. 7); and 3) that LEAF's Motion "...is tantamount to a request that we exceed our jurisdiction in these goals setting proceedings.." (p. 9); and 4) that "the rule only required the utilities (in the last goals case) to propose goals, based on the utility's planning process, which were cost-effective and reasonably achievable." (p. 10, emphasis added).

⁴Order Nos. PSC 93-0953-PCO-EG; PSC 93-1584-PCO-EG; PSC 93-1626-PCO-EG; PSC 93-1679-PCO-EG.

⁵LEAF's Motion proposed two alternative procedures to provide Commission input on candidate measures. Both procedures built significantly on the work completed in the last case and both procedures are much shorter than the procedures followed in the last goals case.

previously included in a utility's plans. The Order implies that the Commission believes its jurisdiction is so limited. If the Commission decides to interpret this language at this time, it should recognize its authority to have utilities test the cost effectiveness of a savings measure which the Commission finds has potential as a utility program, whether or not that measure is now part of utility plans.

The Order should be amended to state a basis for its decision other than inconsistency with the rule and exceedence of the Commission's jurisdiction. The language suggesting that the Commission lacks jurisdiction to do as LEAF has asked could set an unfortunate precedent that will haunt the Commission in future cases. The Commission can simply decline, in its discretion, to grant LEAF's request without such radical findings⁶.

b. The Order misstates LEAF's proposal.

The Order erroneously assumes that LEAF requested program/DSM Plan type evaluation as contemplated by Rule 25-17.008, FAC (p. 8). LEAF fully understands that program evaluation follows adoption of goals and submission of utility DSM plans containing programs to meet those goals. The Order seems to object to LEAF's assumption that the cost-effectiveness tests Rule 25-17.008, FAC sets forth by reference be used to define the cost-effectiveness of savings measures that the Commission will evaluate to set goals in this case.

Rule 25-17.008, FAC sets forth by reference the Total Resource Cost Test (TRC), the Rate Impact Measure (RIM) and the Participants test. Nothing in the Commission's rules prohibits using these tests when setting goals -- and using these tests would be within the Commission's discretion under Rule 25-17.0021, FAC. The Commission required utilities to use these tests to screen and analyze measures in the last goals case⁷. Staff and utilities have stated on the record in this case that utilities will use these tests to analyze cost effectiveness of savings measures in this proceeding. In ruling on LEAF's Motion the Commission did not discuss which cost-effectiveness tests are to be used in this proceeding (though various Commissioner's reference to the tests implies the Commission assumed the utilities would use them). Nonetheless, the Order states the tests set forth by reference in 25-17.008, FAC, "...are not required by the Rule to be performed by utilities for establishing numeric goals" and infers, in the next paragraph, that requiring utilities to use these tests as part of their analyses in this proceeding would exceed the Commission's jurisdiction. (p. 9). As noted above, such a ruling would make the

⁶For example, when initially proposing denial of LEAF's Motion to Establish Procedure, Commissioner Clark stated as a basis "...we do not wish at this time to dictate what measures have to be evaluated..." (Quoting from the tape of the Commission's October 6, 1998 Agenda Conference).

⁷See Orders cited at footnote four, above.

Commission's orders in the last goals case illegal.

The Order also erroneously implies that LEAF proposed that the Commission "dictate the content and analyses of the utility's filings" (p. 7). LEAF's proposal does not go that far. LEAF asked that the Commission provide guidance to utilities in the form of a process for review and input (as was done in the last goals case - see Order No. PSC-93-0953-PCO-EG, 6/28/93) or a minimum standard in the form of a list (as was done in the last goals case through Order No. PSC-93-1679-PCO-EG, 11/19/93). LEAF's proposal was to build on the work done in the last goals case and is a much narrower version of the process the Commission adopted in the last goals case.

2. The Order misstates LEAF's motion regarding the law of the case and Commission policy.

a. The Order misstates LEAF's position.

LEAF argued:

- * That a RIM-Only Measure Screen would fail to provide the Commission with the information it needs regarding total cost-effective savings reasonably achievable, as required by Rule 25-17.0021, FAC.
- * That the Commission's DSM policy includes TRC-passing measures when savings are large and rate impacts are small⁸. Though the Commission set RIM-based goals, its policy left the door open for TRC measures.
- * That the Commission should provide early input on which measures merit testing by following a scaled-down version of the measure screening process it adopted in the last goals case.

LEAF did not intend by this argument to claim, as the Order states, that "Commission policy is to require TRC portfolios in these goals dockets." (p. 9). LEAF's point was that the Commission must become informed about which TRC measures meet the DSM policy the Commission adopted in the last goals case -- and that, if utilities conduct RIM-Only screening, the information the Commission receives may be so limited that it cannot make a rational decision in compliance with Rule 25-17.0021(1), FAC.

LEAF did not, as the Order states, seek to "reargue matters which are stare decisis." The

⁸Order No. PSC 94-1313-FOF-EG, p. 22 and ordering paragraphs.

Commission's final order in the last goals case did not state that the Commission would consider *only* RIM-based conservation, or that it would allow implementation of *only* RIM based conservation, or that its adoption of RIM-based goals was an exclusion of TRC measures forever. To the contrary, the Commission's order specifically included opportunities for TRC measures in its DSM policy⁹.

In ruling on LEAF's Motion, the Commission indicated that LEAF could pursue TRC-based measures through discovery and testimony in this case¹⁰. The Order, as written, appears to preclude that opportunity. The Commission should clarify the Order to recognize that its conservation policy includes some opportunity for TRC-based conservation measures, and that the Order is not intended to preclude LEAF from raising TRC-based measures later in this proceeding.

b. The Order misstates the scope of the Commission's findings in the last goals case.

The Order's statement that the last goals case was the forum "in which we fully and finally determined the savings difference between the RIM and TRC tests." (p. 9, emphasis added) is erroneous. In the last goals case the Commission set ten year goals after estimating the cost-effective savings potential at that time. The order in the last goals case does not purport to be the *final* word on either RIM or TRC savings potential. Nor could it -- the amount of cost effective savings reasonably achievable changes over time (because the costs and benefits used to measure the cost effectiveness of energy resource options change over time). There are many reasonable ways to build on the findings in the last goals case, however, it would be arbitrary to rule that the savings difference between RIM and TRC was forever determined in that case.

The Order cites a sentence from the last goals case order which states "the differences in demand and energy savings between RIM and TRC portfolios are negligible." (p. 10). Through a subsequent reconsideration order in that case, the Commission substantially clarified the meaning of the cited sentence.¹¹ If the Order in this case cites said sentence, it should also cite, or at least refer to, the

⁹See footnote 8, above.

¹⁰E.g., Commissioner Clark stated "Commissioner Deason is right, there's still an opportunity through discovery and other procedural matters, you (LEAF) can put on a witness and make suggestions that certain measures should be pursued and it may be that as a result of that we agree with you and we may say as part of your goals we're going to include those measures..."

¹¹The Order on Reconsideration states "...the substantial vs. negligible savings question cannot be answered solely through a comparison of TRC to RIM MW and MWH savings. Differences in MW and MWH savings may be substantial in isolation, but negligible when viewed from a rates, generation expansion, and revenue requirements perspective. In this docket, when we compared the MW and MWH savings in each RIM and TRC portfolio and the differences between the two, to each utility's system peak

subsequent reconsideration order which clarifies how the Commission interpreted the cited sentence.

3. *The Order misstates the law on replies.*

While the Commission's rules and orders allow replies that the Commission deems necessary¹², the Order states that replies are unequivocally disallowed. The Commission should recognize that granting replies is within its discretion.

4. LEAF is a party in the above-referenced dockets and is adversely affected by the Order.

5. Reconsideration is warranted because the Commission failed to consider the aforesaid matters of fact and law, and such failure impaired the Order's correctness. Rule 25-22.060, FAC, Order Nos. PSC-92-1493-FOF-EQ; PSC-94-0718-FOF-WS 94; Pingree v. Quaintance, 394 So. 2d. 161 (Fla. 1st DCA 1981); State v. Green, 106 So. 2d 817, 818 (Fla. 1st DCA); Fla. Dept. of Corrections v. Provin, 515 So. 2d 302, 304 (Fla. 1st DCA 1987); Hollywood Inc. v. Clark, 15 So. 2d 175 (Fla. 1943); Stewart Bonded Warehouse Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974).

6. Prior to filing this motion LEAF contacted, or attempted to contact, the other parties to this proceeding and states that FPL objects to the granting of the motion, and that LEAF has not been able to ascertain the position of the other parties.

Respectfully submitted,



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demand and energy sales, the savings are negligible." (emphasis added). Order No. PSC 12/20/94.

¹²See Rules 28.106.204 and 28-106.211, 28-106.101, F.A.C. (and the Commission's precursor rules in 25-22, FAC), Order Nos. PSC 92-0205-FOF-WS; PSC 96-0240-PCO-WS; PSC 95-0062-FOF-WS; PSC-97-0554-FOF-TI; In re: In re: Dade County Circuit Court Referral of Certain issues in Case No. 94-14234-CA-22 (S.H. Dohan & Co., vs. Transcall America, Inc., d/b/a ATC Long Distance), 97 FPSC 5:320, 321; In re: Application for transfer of facilities of Lake Utilities, Ltd., to Southern States Utilities, Inc., 95 FPSC 1:279, 281; Sunrise Community v. Florida Department of Health and Rehabilitative Services, 14 F.A.L.R. 5162, 5163 (1992); 1000 Friends of Florida v. City of Daytona Beach, 16 F.A.L.R. 2428, 2430 (1994) (relying on Rule 60Q-2.031, F.A.C., predecessor and virtually identical to Rule 28-106.211, F.A.C.); and Florida Department of Environmental Protection v. Brotherton, 20 F.A.L.R. 82 (1997).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of LEAF's Motion for Reconsideration were hand delivered to the Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0950, and that a copy was of said motion was also hand delivered (when indicated by *) or mailed this 9th day of November, 1998 to:

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