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July 30, 2009

VIA HAND DELIVERY

Ms. Ann Cole, Director
Division of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RE: Docket Nos. 080407-EG, 080408-EG, 080409-EG, 080410-EG, 080411-EG, 080412-EG and 080413-EG

Dear Ms. Cole:

Enclosed for filing on behalf of the four investor-owned electric utilities, Florida Power & Light Company ("FPL"), Progress Energy Florida, Inc. ("PEF"), Tampa Electric Company ("TECO") and Gulf Power Company ("Gulf"), please find the original and fifteen (15) copies of the rebuttal testimony and exhibits of James W. Dean.

Please contact me should you or your Staff have any questions regarding this filing.

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ECR 2
GCL 2
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RCP
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ADM
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Sincerely,

Jessica Cano

JC:nn
Enclosures

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail this 30th day of July, 2009, to the following:

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By: _____ for
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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080407-EG
DOCKET NO. 080408-EG
DOCKET NO. 080409-EG
DOCKET NO. 080410-EG
DOCKET NO. 080411-EG
DOCKET NO. 080412-EG
DOCKET NO. 080413-EG

IN RE: COMMISSION REVIEW OF NUMERIC CONSERVATION GOALS

REBUTTAL TESTIMONY & EXHIBITS OF:

JAMES W. DEAN

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

REBUTTAL TESTIMONY OF JAMES W. DEAN

DOCKET NO. 080407-EG (Florida Power & Light Company)

DOCKET NO. 080408-EG (Progress Energy Florida, Inc.)

DOCKET NO. 080409-EG (Tampa Electric Company)

DOCKET NO. 080410-EG (Gulf Power Company)

DOCKET NO. 080411-EG (Florida Public Utilities Company)

DOCKET NO. 080412-EG (Orlando Utilities Commission)

DOCKET NO. 080413-EG (JEA)

JULY 30, 2009

Q. Please state your name and business address.

A. My name is James W. Dean. My business address is 2227 Shirley Ann Court, Tallahassee, Florida, 32308.

Q. Have you previously submitted direct testimony in this proceeding?

A. Yes.

Q. Are you sponsoring any rebuttal exhibits?

A. Yes. I am sponsoring the following rebuttal exhibits:

- Exhibit JWD - 2 Rate Impacts of GDS Proposal
- Exhibit JWD – 3 Tax Impacts of GDS Proposal
- Exhibit JWD - 4 Comparison of FPL's Systems and Planning Methodologies

Q. What is the purpose of your rebuttal testimony?

A. My rebuttal testimony is being offered on behalf of Florida Power & Light Company, Progress Energy Florida, Inc., Tampa Electric Company and Gulf Power Company. I address five areas in my rebuttal testimony.

First, I first respond to the extreme goals proposed by GDS. They are premised upon erroneous statutory and rule interpretations; they disregard significant analytical work performed by the Collaborative; they are based on an unusual and unsubstantiated "gross-up to goals" method seemingly designed solely to increase the resulting goals; they are offered with little if any consideration of the utilities' planning processes; and they completely fail to quantify the enormous rate impacts customers would face if they were adopted.

Second, I respond to the testimony of Witness Steinhurst who argues the entire goal setting methodology used by the Collaborative is fundamentally flawed and should be rejected in favor of goals set as a fixed percentage of future utility sales growth. Witness Steinhurst's proposal is devoid of analyses. Witness Steinhurst's recommended goals are as extreme as GDS's and suffer from even less analytical basis. They are premised upon an even more flawed legal analysis than GDS's proposal, and they are inconsistent with the Commission's DSM Goals Rule and FEECA as amended by HB 7135. They are completely at odds with twenty-nine years of well reasoned implementation of FEECA by this Commission and provide no information for the Commission to assess customer rate impacts.

Third, I address the self-acknowledged narrow interest of the Southern Alliance for Clean Energy (SACE) and the National Resource Defense Council (NRDC) in this proceeding and how their singular interest of reducing greenhouse gas emissions through conservation causes them to disregard completely, (a) the DSM Goals Rule, Rule 25-17.0021, Florida Administrative Code (F.A.C.), which the Commission must follow in this proceeding (b) the statute governing this proceeding, the Florida Energy Efficiency and Conservation Act (FEECA) (Sections 366.80-366.85 and 403.519, Florida Statutes (F.S.)), and (c) the remainder of Chapter 366, F.S., which gives the Commission the fundamental responsibility of assuring customers are charged fair, just and reasonable rates by public utilities. In that discussion, I point out that Witness Wilson's testimony represents a selective and ultimately misleading interpretation of various Florida statutes, including the recent additions to 366.82(3)(a)-(d), F.S.. I also address his inappropriate invitation for the Commission to use DSM goals to create a carbon dioxide reduction regime, any consideration of which has been entrusted to another legislative agency.

Fourth, I rebut NRDC/SACE Witnesses Wilson, Cavanagh, and Mosenthal testimony that the new, statutory language in 366.82(3)(a) and (b), Florida Statutes has superimposed a new Total Resource Cost (TRC) standard that the Commission must use exclusively in establishing DSM goals. Likewise, I challenge GDS's argument that while perhaps the statute does not "require" the exclusive use of the TRC test, these changes "give the Commission broader

authority to maximize the achievement of energy efficiency in Florida" and create a new standard of "maximum achievable" savings for approving FEECA goals. Their interpretation of these changes would preclude the Commission from even considering the Rate Impact Measurement (RIM) in establishing FEECA goals. These witnesses fundamentally mischaracterize the additional factors the Commission is only called upon to consider under Section 366.82(3)(a) – (b), Florida Statutes as part of the DSM goal setting process.

Finally, I offer some observations addressing NRDC/SACE Witness Mosenthal's criticism of the use of the two year payback. In that discussion, I note that (a) the DSM Goals rule requires a consideration of free riders when setting goals, (b) NRDC/SACE agreed to the use of this analytical technique to address free-ridership, and (c) free-ridership is not a matter that can be ignored for later treatment in program design.

Because my rebuttal testimony is responsive to several witnesses who have testified on multiple topics, it is structured by topic areas and by the name of the witness's testimony that I rebut. However, the absence of a response to any particular argument offered by the NRDC/SACE or GDS witnesses should not be construed as agreement or acquiescence on my part.

REBUTTAL OF GDS's GOALS PROPOSAL

Q. What mistakes does GDS make in its interpretation of the changes that were made to 366.82(3)(b) which requires the Commission to consider, "the costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions?"

A. Unlike Witness Wilson, who asserts the change at 366.82(3)(b) "mandates" a dramatically different regulatory standard be used to establish DSM goals, GDS argues that a somewhat less compulsory interpretation should be afforded to the language. Essentially, GDS argues that 366.82(3)(b) requires a new emphasis by this Commission to aggressively pursue energy efficiency as a matter of policy. They argue the new consideration "has given the Commission broader authority to maximize the achievement of energy efficiency in Florida." (Page 11, Lines 17-21) From there they go on to define a new goals standard described as the "maximum achievable cost-effective energy savings" (Page 5, Line 23-24 and Page 60, Line 15-16).

GDS relies on a novel interpretation of 366.81, F.S. to justify this new found standard. Specifically, they cite the intent language that reads, "it is critical to utilize the most efficient and cost-effective demand-side renewable energy systems and conservation systems in order to protect the health, prosperity, and general welfare of the state and its citizens." Except for the addition of "demand-side renewable energy systems", which was added by HB 7135, the other part of

this citation is original to the 1980 Act. Given the unabridged language has been interpreted by this Commission for almost 29 years to mean "reasonably achievable", as specified in the Commission's rule, GDS's not so subtle implication is that the Commission has incorrectly interpreted the FEECA statute and has not adopted the appropriate rules to implement the FEECA. Despite the deliberations of five different Commissions and over 400 orders that the Commission has issued addressing this statute, GDS believes the Commission has gotten it wrong the entire time.

With these interpretations of FEECA under their belt, GDS concludes that only the TRC test should be used to evaluate cost-effective goals and thereby implement the maximum achievable standard. Presumably adopting the TRC standard remedies the errors the Commission has made in every previous FEECA docket by not correctly interpreting the original intent language.

Q. Does GDS's "maximum achievable" standard agree with existing Commission rules?

A. It certainly does not. Commission Rule 25-17.0021(3) requires the Commission to set goals based on "...winter and summer peak demand (kW) and annual energy (kWh) savings reasonably achievable in the residential and commercial/industrial classes through demand side management." Obviously, the Commission has not initiated a rule change to this section replacing the "reasonably achievable" standard with the "maximum achievable" standard articulated by GDS.

Q. Does GDS's "maximum achievable" standard ignore other relevant sections of 366, F.S.?

A. Yes. GDS conveniently overlooks several statutes that do not comport with its interpretation. As I discuss in detail in my rebuttal of Witness Wilson, GDS first assumes that the new statutory language that the Commission "shall take into consideration" means a new mandatory standard is in place. This construction somehow leads to their new "maximum achievable" standard. I am puzzled why the Legislature was so subtle in articulating what GDS believes is a watershed new standard. If the new language at 366.82(3)(b) is a clarion's call for a new standard, the statute is not very forceful in announcing it.

Second, since its inception FEECA has contained the language that it is to be "liberally construed in order to meet the complex problems of reducing and controlling the growth rates of electric consumption and reducing the growth rate of electric demand...." That language remains unchanged by HB 7135, and it has historically been construed by the Commission, the agency charged with implementing the statute, as calling for reasonably achievable goals. The Commission has further implemented that statutory language by setting goals that were based on the use of the RIM and Participant tests. GDS's suggestion that a new standard has been promulgated (without even being mentioned) and that the new standard requires exclusive use of the TRC test (which also is not mentioned) strains credulity given that the Commission's statutory interpretation mandate remains unchanged.

But far more deleterious to GDS's construction is the language that was not modified in Chapter 366. Section 366.81, F.S., the legislative intent section of FEECA, refers twice to the electricity consumption goals to be addressed. The second sentence of the section states: "Reduction in, and control of, the *growth rates* of electric consumption and of weather-sensitive peak demand are of particular importance." (emphasis added.) The last sentence of Section 366.81, F.S., also speaks of "reducing and controlling the growth rates of electric consumption...." Similarly, Section 366.82, F.S., which is the Commission's explicit authority to adopt the goals in this proceeding, authorizes the Commission to adopt goals designed, among other things, "to reduce and control the growth rate of electric consumption...."

Q. And why does this language conflict with GDS's new construction of FEECA?

A. This language is important because of its legislative history. The original FEECA statute passed in 1980 called for goals to "reduce the growth rates of electric consumption and especially of weather sensitive peak demand." 366.82(2), F.S. (1981). In 1989, the legislature revised this statute to include the additional focus to "reduce and control" consumption; it left untouched the language addressing the Commission's focus to reduce the growth rate of "weather sensitive peak demand". Nowhere does the language speak to reducing "off-peak" demand which is exactly the consequences of implementing programs that overly focus on saving energy instead of reducing weather driven peak demand.

Furthermore, the statute was changed in 1989 to provide the Commission with direction not to waiver from its existing policy that placed a higher emphasis on reducing "the growth rate" of weather sensitive peak demand over that of reducing "the growth rate" of consumption. The legislature did not intend that goals be so aggressive that electric demand or consumption growth would be negative. The addition of the modifier "control" was even more directive that energy savings goals should not result in negative energy growth.

Q. And why did the legislature want to ensure that consumption not be negative?

A. The Commission's original FEECA implementation rules adopted for the period from 1980 to 1989 included a mathematical formula that resulted in goals that reduced peak demand growth rates faster than the energy growth rates. Under both goals, energy and demand were allowed to grow, albeit at lower rates. There was a concern with the expiration of the Commission's goals in 1989, that the Commission might require such unreasonable goals as to threaten the construction of new generating units or new natural gas capacity that would be needed for economic growth and provide much needed fuel diversity. Florida was trying to diversify its generation fleet from an over dependence on oil. This is similar to the current legislative expression in several recent new statutes that Florida diversify its generating fuel mix.

Q. You characterized GDS's goals as extreme. Please elaborate.

A. GDS's goals are extreme in their magnitude and create huge uncertainty as to their effects. As previously stated, after criticizing Itron's methodology and the

utilities' goal setting methodologies, GDS appears to use some parts of those analyses, adds some measures, makes some poorly explained and ill-conceived "adjustments," and then grosses up the respective market sector goals to reach what I refer to as a "gross-up to goals" recommendation.

One obvious problem, besides the very incomplete description how GDS performed the adjustments, is the notable absence of any analyses describing the economic consequences in adopting these goals. The sheer magnitude of their proposal is audacious. Just to convey the size of the differences, the following table is taken directly from GDS's numbers in Exhibit SRS-21 and compares the winter, summer and energy goals recommended by Witness Spellman to the four investor-owned utilities' proposed goals.

	2019 Winter MW Goal	2019 Summer MW Goal	2019 GWh Goal
GDS Proposed Goals	4368.3	6442.3	17,667
IOU Proposed Goals	984.4	1277.9	1852.7
Factor Difference	4.43X	5.04X	9.53X

The winter and summer demand goals are four to five times greater than the goals derived from the goals setting process used by the four largest investor owned utilities, and the energy goals are a factor of nine times greater than the goals based on individual utility achievable results. Accepting these levels of proposed goals without a shred of documentation as to their impact or detailed evaluation of

their reasonableness would be a risky proposition for this Commission to entertain.

It is exactly this "make up any goals you want" kind of approach to goal setting dockets that the Commission was trying to avoid by adopting Rule 25-17.0021, Florida Administrative Code, which requires goals to a) be based on each utility's most recent planning process and b) be based on the cost-effective savings reasonably achievable over a ten year period. In addition, many specific issues are to be addressed when proposing goals such as free-riders, specific customer sectors and technologies, building codes, mandatory appliance standards, overlapping measures, and rebound effects. GDS's proposal does not address any of these required topics; it is just silent on them. The rule was adopted to require a predictable, deliberative process for determining if the goals the utilities proposed were reasonable and accounted for the important variables that would determine what amount of DSM savings was reasonably achievable and cost-effective. It is clear that GDS's proposal fails to comply with many of the requirements prescribed by 25-17.0021, F.A.C.

Q. You have mentioned cost impacts several times. Please articulate the likely rate impacts of these kinds of goals.

A. I will describe and partially quantify the likely rate impacts and the probable direction of these rate impacts from GDS's proposal. Even this incomplete assessment shows that the rate impacts will be enormous.

Almost by definition, customer rates would be higher. There are two reasons this is the case. First, achieving DSM goals this severe would require a massive expansion of utility resources to design, implement and manage the new generation of DSM programs. Moreover, to encourage participation, incentives such as rebates would also be dramatically larger. Second, reduction in energy sales and associated revenue over the goals horizon would force the utilities to seek rate relief to support their continued obligation to reliably serve the public. With GDS's dramatic reduction in sales, the fixed costs to operate a utility would not disappear and some means to recover these costs would be needed. I refer to this shortfall as unrecovered Commission approved revenue.

Q. Why would the utilities need rate relief?

A. The amount of revenue required by a utility to provide service is established by the Commission during each rate case. Recurring expenses such as fuel, environmental costs, and capacity costs are recovered each year through adjustment clauses subject to the Commission's review and approval. Base rate revenue and annual expenses taken together comprise the required revenue to provide service. The extreme DSM energy goals proposed by NRDC/SACE and GDS would substantially reduce the number of kilowatt-hours the utility sells. Therefore, the rate for each kilowatt-hour that is sold must be reset higher through some mechanism to collect enough money to meet the required revenue. The math is indisputable.

Q. Wouldn't the utility's revenue requirements go down because of fuel savings and potential demand savings?

A. Yes, fuel expenses would go down since the utility would be purchasing less fuel. But the other components of the revenue requirements would not disappear when fewer kilowatt-hours are sold. Remember, the rate must be set to recover such things as transmission and distribution costs, customer service costs, billing and metering, certain unavoidable annual expenses like environmental costs, and DSM program costs must be recovered. These costs are not typically reduced when customers use less energy.

Q. Then who benefits from energy efficiency programs?

A. Those customers who participate in a utility program and receive an incentive. They generally will use less energy and even though rates are higher for everyone, program participants purchase less energy and thus are net beneficiaries of the program because their lower consumption lowers their total bill. This is why the intervenors always like to say that bills would be lower. Bills would be lower for *some*, but rates would be higher for *everyone*.

Thus, there are two issues that create fairness or equity problems with DSM programs -- the use of incentives (subsidies) to benefit some customers and the increase in rates that affect all customers. These costs disproportionately fall upon those who are unable to participate in programs. Examples of these kinds of customer would include lower income customers, seasonal customers, or renters.

Using the RIM test, or as I called it in my pre-filed testimony, the "no losers" test, assures that all customers benefit, those who participate in the program and those who do not. That is why I recommend this remain the standard for establishing goals.

Q. Have you quantified the impact on rates of GDS's proposed goals?

A. Yes. My attached Exhibit JWD-2 compares the GDS energy goals with the four investor owned utilities proposed E-RIM goals over the ten-year horizon. Let me emphasize that this is just an estimate of the magnitude of the required rate increases. I made a number of very conservative assumptions. First, I took the current residential rates for the four investor owned utilities and subtracted those items that do not have to be recovered or may not be on future bills. The excluded items were fuel charges, storm recovery charges, and the gross receipts tax. Next, I assumed that the Energy Conservation Cost Recovery Clause would not increase. We know this is not true because to achieve the goals proposed by the intervenors large increases in DSM program costs will be necessary. Finally, I assumed that the base rates currently in effect and other approved expenses collected through clauses would not increase over the next ten years. Thus, my estimate of the unrecovered Commission approved revenues resulting from the GDS goals is a conservative, lower end magnitude estimate.

My Exhibit JWD-2 shows that the total 10 year reduction in Commission approved revenue that would have to be recovered through higher rates is about $3.8 billion. Through base rate proceedings or higher recovery charges, the

utilities would require on average about $380 million per year in additional revenue to recover their Commission approved revenue requirement.

Q. Are there other impacts because of these extreme goals?

A. Yes, there would be direct losses in state and local revenue. The legislature and local governments tax electric sales. The gross receipts tax (GRT) is 2.5 percent of all electric bills and these funds are earmarked for the Public Education Capital Outlay and Debt Service Trust (PECO) to fund public education. With a few statutory exceptions commercial and industrial sales are taxed at 7 percent. Most municipal governments impose franchise fees and local sales tax on the bill. Many franchise fees are up to 10 percent of the total bill. Some local governments impose a municipal services tax. The bottom line is revenue to public entities will go down because of the proposed GDS goals. Given the current economic climate and the formidable funding challenges facing the legislature and local government as they seek to maintain funding of essential public services, it is important the Commission be aware of these economic impacts on state and local revenue.

Q. Have you quantified the impact of the GDS goals on local and state revenues?

A. Yes and I have again been extremely conservative in estimating this impact. It is conservative because I ignored municipal taxes and franchise fees since, while they are imposed on most customer bills, there are some customers in rural areas who do not pay them. In addition, I only applied the sales tax to commercial sales and not industrial sales. There are a number of agricultural and manufacturer

exemptions that apply to some customers in the industrial class, but to be overly cautious in my lost public revenue estimate, I assumed the entire industrial sector was exempt. Thus, my Exhibit JWD-3 only includes the loss of public revenue to the state of Florida from the GRT and the sales tax on commercial electric accounts. The estimated loss in state taxes over the ten-year goals period is at least $183 million. If one assumed conservatively that even half of lost electric sales would be subject to franchise fees and local sales tax, then foregone public revenue could easily top $276 million.

Q. Should the Commission adopt Mr. Spellman's recommendation to require customers to spend over $24 million annually to fund photovoltaic (PV) and solar thermal programs?

A. The Commission should dismiss this proposal. Even Mr. Spellman admits that neither of these programs passes the Participant test implying the program costs are never recovered by the long term energy savings. Nonetheless, he defends ratepayer funding because he perceives these two products need additional research and development support. He claims that by providing such support the ratepayers will enjoy environmental benefits and reduced petroleum use.

Q. Why should the Commission not fund these kinds of programs?

A. There are numerous reasons. First of all, the 10 percent funding formula is completely arbitrary. It has no basis for even being considered and the proposal does not result in any tangible benefits for the ratepayers. Moreover, these kinds of technologies are being supported by a variety of sources including the Department of Energy, the Florida Energy Office, economic stimulus money, tax

credits, and equity capital from the private sector. Finally, PV and solar thermal are not experimental or embryonic technologies warranting R&D funding. The PV industry is running at near full capacity and attracts investment capital. Solar thermal is a well established technology and can and does compete in niche markets.

REBUTTAL OF WITNESS STEINHURST'S ARBITRARY ENERGY GOALS

Q. Please summarize your rebuttal to Witness Steinhurst's proposed DSM goals.

A. Witness Steinhurst asserts that the entire goals setting methodology employed by the FEECA utilities, Itron and NRDC/SACE as part of the collaborative is so flawed it should be rejected by the Commission. The FEECA utilities have invested almost a year of work effort (including presentations and workshops with the Commission and its staff), engaged a well-respected outside consulting firm to assist in developing DSM goals, worked in good faith with a collaborative including NRDC/SACE, and followed every requirement of the Commission's DSM Goals Rules in proposing goals. Witness Steinhurst rejects all of this and recommends a one percent of annual electricity sales energy goal with a ramp up rate of either two or three years for all seven utilities. Over the ten-year goals period he proposes an energy reduction that is actually more extreme than GDS's proposal. He does not even bother to quantify his companion demand reduction

goals, which could be developed any number of different ways depending upon what measures and programs were used to meet energy goals.

Witness Steinhurst's proposal is, at best, arbitrary. It is entirely devoid of any of the analytics or evaluation required by the DSM Goals rule. It even fails to meet the DSM goals standard of Section 366.82(3) which he and other NRDC/SACE witnesses seemingly champion. His recommendation should not be adopted by this Commission. Most importantly, this proposal has an even greater adverse impact on customer rates than the GDS goals.

Q. Doesn't Witness Steinhurst base his recommendation to reject FPL's proposed goals on the experiences of the Northwest Power Planning Council?

A. Not exactly. He seemingly discusses the Northwest Power Planning Council (NWPPC) for the purposes of highlighting the exemplary way they do conservation planning and to serve as a counterpoint to his perceived flaws in the Collaborative used in Florida. However, what Witness Steinhurst fails to identify is that the NWPPC is not even a utility – it is a federally mandated planning agency housed operationally within the Bonneville Power Authority (BPA). Its statutory mission is to make recommendations in the four northwestern states (Washington, Idaho, Montana, and Oregon) to balance the use of water resources for hydro-electric production with the protection of fish and wildlife. While BPA is a wholesale utility serving about 148 wholesale customers such as distribution cooperatives and municipal systems, it only has some 5 retail customers, mostly legacy aluminum smelters from the 1940s. It does not directly deliver DSM

programs and services to retail customers because it has no residential or commercial retail customers.

Moreover, the NWPPC Sixth Power Plan is not binding on utilities that BPA serves. It assumes an integrated transmission grid and a centralized, generation dispatch for the entire Northwest states (which is not true), and there are no mandatory goals implemented from the plan subject to regulatory review. In sum, the entire Sixth Power Plan is an "advisory" document. The FEECA utilities' goals, on the other hand, are mandatory and the utilities can be penalized for failing to meet them.

This is not to diminish some innovative planning concepts used by the NWPPC. In fact, FPL has studied the Plan and talked with staff of the NWPPC. The important point is that neither the design nor purpose of the NWPPC plan is applicable to utilities in Florida who are required to adopt DSM goals specific to their own service area and integrate the goals with their individual resource plans.

Q. Have you prepared a document describing the differences between the advisory plan of the NWPPC and FPL's Commission reviewed planning process?

A. Yes. I have attached Exhibit JWD - 4 labeled Comparison of Systems and Planning Methodologies which illustrates many differences between the two planning approaches. It is attached to this testimony.

Q. Do you believe the planning approach recommended by Witness Steinhurst and used by the New England ISO is appropriate for Florida?

A. One cannot tell from the very brief characterization of the New England ISO's planning approach in witness Steinhurst's testimony if it is better or worse than the approach used in Florida. Most, if not all of the states in this region, have unbundled the integrated utilities as part of the process of adopting retail competition in the late 1990s. Typically under deregulation, there is no direct linkage between the generating, wholesale utility and the end use customer. Thus, an unbundled utility model creates some strange incentives in pursuing DSM between the customer, retail distribution utility and wholesale generator. I would not recommend the Commission require Florida utilities to adopt the New England ISO collaborative approach without careful consideration of how their goals setting process would work in Florida where vertically integrated utilities continue to have the obligation to plan for and serve their native load in a cost-effective manner. Indeed, given NRDC/SACE's apparent willingness to attack decisions to which they agreed during the most recent Collaborative, I am not certain I would encourage any Florida utility to participate in a Collaborative.

Q. Should the Commission accept Witness Steinhurst's proposal to reject FPL's proposed DSM goals and instead establish a fixed percentage energy goal with a ramp up rate?

A. Absolutely not. The Commission should reject this proposal for many reasons. Witness Steinhurst's proposal represents a repudiation of the many months of work by the FEECA utilities, Itron and the Commission staff. In addition, the

very parameters for performing the technical and achievable potential that Witness Steinhurst criticizes in his testimony are the ones agreed to by NRDC/SACE when they participated in the Collaborative.

The entire goals Collaborative/development process was done with full disclosure and inclusion, and now that the achievable goals have been filed, witness Steinhurst, on behalf of NRDC/SACE, wants to disregard the results, start the process over, and in the interim arbitrarily establish a one percent of annual sales energy goal. His demand goals are equally arbitrary and devoid of any type of evaluation.

As with GDS, Witness Steinhurst's arbitrary proposal is submitted without any information as to the economic consequences on rates, changes in supply resource options, environmental emissions, and DSM program implementation costs of imposing such goals. The Commission is ill-served by such incomplete and unsupported recommendations.

Q. Are you familiar with the requirements of the Commission's DSM Goals Rule?

A. Yes, I am familiar with the requirements of Rule 25-17.0021, Goals for Electric Utilities, F.A.C. Witness Steinhurst's proposal conflicts with almost all of these requirements.

Q. Which of the specific requirements in 25-17.0021 are in conflict with Witness Steinhurst's recommended goals?

A. Section (1) of the Rule requires, "The goals shall be based on an estimate of the total cost effective kilowatt and kilowatt-hour savings reasonably achievable through demand-side management in each utility's service area over a ten-year period." Witness Steinhurst's proposed goals are not based on any demonstration of what savings are reasonably achievable.

Section (3) requires, ". . . each utility shall propose numerical goals for the ten year period and provide ten year projections, based upon the utility's most recent planning process, of the total, cost-effective, winter and summer peak demand (kW) savings reasonably achievable in the residential and commercial/industrial classes through demand-side management." Witnesses Steinhurst's proposed goals are not based on any specific utility planning process, he makes no analytical demonstration that the savings are reasonably achievable, and while he suggests that goals be allocated between residential and commercial/industrial sectors, he provides no analysis of the reasonably achievable savings between these sectors.

Section (3) also requires, "Each utility's projection shall reflect consideration of overlapping measures, rebound effects, free riders, interactions with building codes and appliance efficiency standards, and the utility's latest monitoring and

evaluation of conservation programs and measures. Witness Steinhurst's proposed goals fail to incorporate any of these considerations.

Section (3) also requires, "Each utility's projections shall be based upon assessment of, at a minimum, the following market segments and major end-use categories.

> Residential Market Segment:
>
> (Existing Homes and New Construction should be separately evaluated)
>
> Major End-Use Category
>
> (a) Building-Envelop Efficiencies (b) Cooling and Heating Efficiencies (c) Water Heating Systems (d) Appliance Efficiencies (e) Peak load Shaving (f) Solar Energy and Renewable Energy Sources (g) Renewable/Natural gas substitutes for electricity (h) Other."

Witness Steinhurst's proposed residential goals are not based on projections of any of these mandatory end use categories.

Section (3) has a similar directive to develop commercial and industrial goals for 13 major end-use categories. Witness Steinhurst's proposed commercial/industrial goals are not based on projections of any of these mandatory end-use categories.

Q. Does witness Steinhurst's proposal evaluate the full technical potential of any or all Florida utilities?

A. No.

Q. Does Witness Steinhurst's proposal consider, "the costs and benefits to customers participating in the measure?"

A. Again, no.

Q. Does Witness Steinhurst's proposal consider, "the costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions?"

A. Clearly not.

Q. Does Witness Steinhurst's proposal consider "the need for incentives to promote customer-owned and utility-owned energy efficiency and demand-side renewable energy systems."

A. No, once again.

Q. Does Witness Steinhurst's proposal consider, "the costs imposed by state and federal regulations on the emission of greenhouse gases?"

A. No. His proposal does a clean sweep of ignoring statutory consideration.

Q. Does Witness Steinhurst's proposal meet any of the criteria set forth in Section 366.82(3)?

A. No. Witness Steinhurst's proposal does not meet the criteria set forth in section 366.82(3) as adopted in HB 7135, a statute that both NRDC/SACE championed in this proceeding.

Q. Is Witness Steinhurst's proposal essentially the advocacy of an Energy Efficiency portfolio standard for Florida?

A. Yes, without specific statutory authority. Indeed, it should be noted that the Legislature considered and specifically rejected such an Energy Efficiency portfolio standard in the session in which it passed HB 7135. So, Witness Steinhurst's proposal is both inconsistent with Section 366.82(3) created by HB 7135 and has been rejected before by the Legislature.

Q. What is the likely rate impact of the NRDC/SACE recommended goals?

A. I used the same procedure that I used with Mr. Spellman's goals to calculate the unrecovered Commission approved revenue and the uncollected public revenue. Since the total energy savings goals are higher for the NRDC/SACE proposal, the revenue impacts are commensurately larger. The utility would need to recover around $4 billion in unrecovered revenue requirements and Florida tax collections would be reduced by some $186 million over this time period not including foregone local taxes and franchise fees.

Q. Please summarize your rebuttal testimony of Witness Steinhurst?

A. Witness Steinhurst's proposed goals are not based on any analyses; the states he selects as examples to arrive at the one percent figure are not valid comparisons to Florida; his proposed goals violate the standards for establishing FEECA goals required by the Commission's rules and Section 366.82(3), F.S. as adopted by HB 7135; and his proposal is nothing more than an Energy Efficiency Portfolio Standard, which has previously been rejected by the Florida Legislature. His arbitrary and baseless proposal should be rejected out of hand. It is far inferior to

the deliberative, utility specific process used by the Collaborative and presented in the testimony of the FEECA utilities and Witness Rufo.

REBUTTAL OF WITNESS WILSON'S TESTIMONY ON THE APPLLICABILITY OF THE STATE COMPREHENSIVE PLAN

Q. Please address Witness Wilson's attempt to invoke the State Comprehensive Plan as guidance to the Commission in interpreting the recent amendments to FEECA.

A. Witness Wilson begins his testimony not with the Commission Rule being implemented, the DSM Goals Rule, and not the statute being implemented, FEECA. Instead, he begins with selective excerpts of the State Comprehensive Plan. I found this curious since even he acknowledged that the State Comprehensive Plan is merely a "direction-setting document" which, as he fails to acknowledge, "does not create regulatory authority or authorize the adoption of agency rules, criteria, or standards not otherwise authorized by law."

I remained puzzled by this focus on essentially inapplicable statutes until I read further and found a concise statement of NRDC/SACE's interest in this proceeding. Once one understands what NRDC/SACE hope to accomplish through this proceeding, it becomes clear why they refer to inapplicable statutes and only selective portions of recently amended statutes rather than the requirements of the rule actually being implemented, which has not been amended

at all, and the statute being implemented, FEECA, only small portions of which were even amended.

Witness Wilson states NRDC/SACE's interest in this proceeding very clearly on Page 5, Lines 9 – 11, of his Testimony:

> *"NRDC/SACE advocate for the reduction in greenhouse gas emissions*, and share a history of advocating for energy conservation in the interests of reducing air pollution and protecting consumers from unnecessary, risky and costly energy choices." (emphasis added).

This statement is reiterated at the NRDC's national web page where they list curbing global warming as their first mission priority. Indeed, Witness Cavanagh confirms this narrow interest in his testimony. When asked why NRDC/SACE intervened in this proceeding he responded: "*Energy efficiency is the most cost-effective way to reduce greenhouse gas emissions and other pollutants associated with power generation*, while also strengthening our economy, improving our energy security and reducing costs for consumers." (Cavanagh, Page 2, Lines 12 – 16).

Thus, the testimony of all of NRDC/SACE witnesses must be viewed with their narrow objective of reducing greenhouse gas emissions through DSM. They want to maximize DSM in Florida to maximize reductions of greenhouse gas emissions. They do not advocate for lower rates; indeed what they propose would

result in higher rates, which, in turn, would reduce consumption and greenhouse gas emissions. They advocate against the Commission even considering rate impacts of DSM, saying that such a consideration is against the law. They reject the rule-prescribed goal setting process in which they actively participated and advocate a goal setting approach that is without analytical support, at odds with the DSM goals rule, at odds with FEECA and even at odds with the portions of HB 7135 they seemingly champion. Why? I conclude that they are only being true to their self-acknowledged, narrow focus, because their approaches maximize DSM and reduce greenhouse gases. I urge the Commission to carefully consider the myopic goal of these groups and whether it will allow its prescriptive and well reasoned DSM Goals Rule and the FEECA goal setting to become instruments solely for reducing greenhouse gas (GHG) emissions.

Q. Please evaluate Witness Wilson's citation of statutory authority and claim that the Commission has authority to make GHG reductions the priority goal when setting DSM goals.

A. Witness Wilson bases his argument primarily on statutes that provide no authority to the Florida Public Service Commission. For example, he carefully selects sections from 187.201(11)(b), F.S.. Chapter 187 is identified as the State Comprehensive Plan. The chapter identifies 24 goals with over 277 policies that cover everything from children's issues to urban revitalization to public safety. There is an "Energy" section of the statute, Section 187.201(11). In subsection 187.201(11)(b) there are 10 "policies" listed, but Witness Wilson only identifies seven he believes to be relevant to this proceeding.

Witness Wilson only quotes the subsections that appear to apply to electricity without ever noting that the entire section applies not just to electricity, but to all energy consumption in the state. If he had included the subsections he left out, that would have been clear, but, instead, he left the reader with the impression that this statute was only directed to the consumption of electricity.

He does provide a brief disclaimer on Page 4 of his testimony that the State Comprehensive Plan is only a "direction-setting document," but that disclaimer is woefully incomplete and hardly a fair summary of the various statutory limitations found in the statute.

Q. What are the specific limitations contained in Chapter 187, State Comprehensive Plan with respect to agencies adopting the policies?

A. No summary I could provide would be as descriptive as the plain language in the statute. Here is the entire section of 187.101, F.S.:

> 187.101 Description of plan; legislative intent; construction and application of plan.--
>
> (1) The State Comprehensive Plan shall provide long-range policy guidance for the orderly social, economic, and physical growth of the state. *It shall be reviewed biennially by the Legislature, and implementation of its policies shall require legislative action unless otherwise specifically authorized by the constitution or law.*

(2) The State Comprehensive Plan is intended to be a direction-setting document. Its policies may be implemented only to the extent that financial resources are provided pursuant to legislative appropriation or grants or appropriations of any other public or private entities. *The plan does not create regulatory authority or authorize the adoption of agency rules, criteria, or standards not otherwise authorized by law.*

(3) The goals and policies contained in the State Comprehensive Plan shall be reasonably applied where they are economically and environmentally feasible, not contrary to the public interest, and consistent with the protection of private property rights. *The plan shall be construed and applied as a whole, and no specific goal or policy in the plan shall be construed or applied in isolation from the other goals and policies in the plan.* (emphasis added)

Q. Does Witness Wilson rely on other statutory authority outside Chapter 366 which he believes directs the Commission to adopt energy consumption goals to achieve a carbon reduction policy for Florida?

A. Yes. Witness Wilson again selectively takes language from Chapter 377.601(2), F.S., which, among other things, established the Florida Energy and Climate Commission (FECC). He assigns particular weight to the Legislative intent

section of 377.601(1), F.S., and two policy goals described in 377.601(2), F.S.. These two statutory subsections are essentially the preamble provisions of the statute establishing the FECC.

Once again Witness Wilson only quotes two of eleven policies mentioned in Section 377.601(2), F.S., leaving the reader with the mistaken impression that this statute is only about energy conservation. Of course, the statute and its policies are much broader. While Witness Wilson is correct that this statute creating the FECC was a modest part of HB 7135, what Witness Wilson completely overlooks and fails to disclose to the reader is that this portion of HB 7135 pertaining to Chapter 377, F.S., did not extend any new statutory authority to the Florida Public Service Commission.

Q. Does Witness Wilson mention that the Florida Public Service Commission is specifically exempted from this the statute creating and governing the FECC?

A. No. He completely ignores 377.703, F.S., which is fully cited here:

> 377.703 Additional functions of the Florida Energy and Climate Commission.
>
> (1)LEGISLATIVE INTENT.--Recognizing that energy supply and demand questions have become a major area of concern to the state which must be dealt with by effective and well-coordinated state action, it is the intent of the Legislature to promote the efficient, effective, and economical management of energy problems,

centralize energy coordination responsibilities, pinpoint responsibility for conducting energy programs, and ensure the accountability of state agencies for the implementation of s. 377.601(2), the state energy policy. *It is the specific intent of the Legislature that nothing in this act shall in any way change the powers, duties, and responsibilities assigned by the Florida Electrical Power Plant Siting Act, part II of chapter 403, or the powers, duties, and responsibilities of the Florida Public Service Commission.* (emphasis added.)

Q. What Commission obligations would be overlooked if the Commission were to adopt Witness Wilson's interpretation that the Florida Legislature has given a new mandate to pursue an energy reduction/carbon reduction program by use of the FEECA statute?

A. The Commission would essentially have to ignore most of its statutory ratemaking responsibilities under Chapter 366; disregard its own rules in 25-17.001 through 25-17.008, Florida Administrative Code, particularly its DSM Goals rule that is being implemented here; disregard the portions of FEECA that were not amended by HB 7135; and reject a 29 year history of legal precedents and orders implementing the FEECA statute.

Q. Are there any especially misleading aspects of Witness Wilson's discussion of the recent statutory changes?

A. There are four I would like to discuss.

First, I take issue with Witness Wilson's leaving the erroneous impression that the State Comprehensive Plan calls for the reduction in the use of electricity or in the per capita consumption of electricity. It does not. The two subsections quoted by Witness Wilson, that refer to "reducing energy requirements" (Section 187.201(11)(a)) and continuing "to reduce per capita energy consumption" (section 187.201(11)(b)(1)), address all cumulative uses of energy in Florida and not just the consumption of electric energy. But even if leaving the impression that this statute applied only to electricity consumption and not overall energy consumption was unintended, it is misleading. It is particularly misleading when one reads the applicable provisions of FEECA that apply to electricity consumption and finds that they do not call for reducing overall energy consumption or per capita energy consumption. Instead, they call for growth in consumption, only at a lower rate due to conservation. That leads me to the most egregious flaw in Witness Wilson's legal "analysis."

Second, instead of quoting Section 187.201(11) and its inapplicable references to reducing energy consumption, Witness Wilson should have quoted the applicable sections of FEECA that were not amended by HB 7135. It is those provisions which govern the Commission's interpretation of FEECA, not Section 187.201. The FEECA provisions that address the electricity or energy consumption goals under FEECA are found in Section 366.81 (1) and 366.82(2), F.S., which Witness Wilson conveniently ignored.

Section 366.81, F.S., the legislative intent section of FEECA, refers twice to the electricity consumption goals to be addressed by the Commission. The second sentence of the section states: "Reduction in, and control of, the *growth rates* of electric consumption and of weather-sensitive peak demand are of particular importance." (emphasis added.) The last sentence of Section 366.81, F.S., also speaks of "reducing and controlling the growth rates of electric consumption...." Similarly, Section 366.82, F.S., which is the Commission's explicit authority to adopt the goals in this proceeding, authorizes the Commission the adopt goals designed, among other things, "to reduce and control the growth rate of electric consumption...." These standards do not call for the reduction in electricity consumption, a matter repeatedly suggested by Witness Wilson. They call for a reduction in the *growth rate* of electricity consumption due to DSM. This is a much different standard than what Witness Wilson suggests, and it is a standard unchanged by HB 7135, yet Witness Wilson looks to inapplicable standards that speak of reductions in energy requirements. Ignoring the specific language of the applicable statute, FEECA, and focusing on the language of an inapplicable statute, Section 187.201(11), is at best, disingenuous.

Third, in dismissing the use of the RIM test by the Commission, Witness Wilson offers the following incomplete and highly misleading observation: "in my review of the new statutory language and legislative history relating to the FEECA goals, I see nothing to suggest that the PSC should focus on lost revenues, electricity rates or impacts to non-participants and accordingly, nothing

to suggest that the PSC should employ the RIM test in the FEECA goal-setting process." (Wilson, page 22, lines 13-16). Why is this misleading? It is misleading because he treats the language of HB 7135 and the underlying staff legislative analyses as the only applicable legal authority. This ignores (a) the Commission's significant rate authority under Chapter 366 to assure fair, just and reasonable rates, (b) the provisions of FEECA that were not amended by HB 7135 (most of the FEECA statute, including rate recovery of conservation program costs), and (c) the Commission's DSM cost-effectiveness rule that requires the use of the RIM, TRC and Participant tests in analyzing DSM programs. If he had looked beyond the selective statutory sections that he cobbled together to support his myopic approach and looked at FEECA in context, his "analysis" might not have been so misleading.

Finally, in their lengthy discussion of the law they consider to be applicable, neither Witness Wilson nor the other NRDC/SACE Witnesses make a single reference to the Commission's DSM Goals Rule, Rule 25-17.0021, and the very specific goal setting requirements it contains. That is the fundamental legal requirement being implemented in this proceeding. It is unchanged by the recent adoption of HB 7135. The Commission has chosen not to amend that rule in response to HB 7135, and that fact alone tells me that the Commission either believes the rule complies with HB 7135 or that the Commission does not care about statutory compliance, which I do not believe. I read the Commission's decision not to amend Rule 25-17.0021 as an interpretation that it considers its

rule to be in compliance with FEECA as amended by HB 7135. What I find incredible is that there is not a single mention of this rule and its legal requirements in their testimony. That alone is misleading.

Q. What would be the effect of the Commission following Witness Wilson's proposals?

A. Acceptance of Witness Wilson's argument would require the Commission to abandon its obligations under Chapter 366, F.S., and in its place use 187.101 and 377.601, F.S., to set energy reduction goals to pursue a carbon dioxide reduction regime. The FPSC is not even mentioned in 187.101, F.S., and the Commission is expressly exempted from any requirements identified in 377.601, F.S. FEECA does not call for DSM to be used for the exclusive purpose of reducing carbon dioxide emissions; at most it requires Commission consideration of prospective greenhouse gas regulation costs when considering goals, something that the FEECA utilities did for the first time in their analyses in this proceeding and for which NRDC/SACE completely fail to give them credit.

Development of regulations establishing carbon reduction goals is currently being undertaken by the Florida Department of Environmental Regulation (FDEP). As Witness Wilson must be aware, HB 7135 requires that any FDEP rules addressing carbon reduction be ratified by the Florida legislature. Yet, Witness Wilson and the NRDC/SACE witnesses want this Commission to use its authority to establish energy and peak demand goals to indirectly adopt energy reduction goals for the purpose of advancing a carbon reduction agenda which has statutorily been

assigned to the FDEP, subject to legislative review. I urge the Commission to be extremely cautious given SACE's and NRDC's invitation to act where the Legislature has authorized another agency to act.

Q. Please summarize your rebuttal of Witness Wilson's testimony?

A. Witness Wilson of NRDC/SACE has one paramount interest - to reduce the consumption of electric energy for the sake of reducing greenhouse gases. He clearly states this in his testimony. He tries to use non-applicable, selective statutory references and a fanciful interpretation of legislative actions with HB 7135 to conclude that the Commission's required role of balancing the goal setting process with cost impacts, rate impacts, system reliability, utility resource needs and reductions in the growth rates of demand and electricity consumption is no longer required. A simple reading of the relevant sections of Chapter 187 and 377, F.S. makes clear that the Florida Legislature did not superimpose these statutes above or instead of the Commission's lawfully delegated goal setting authority as contained in FEECA and the remainder of Chapter 366, nor did the new additions to FEECA limit the Commission's authority to use its own discretion in deciding the standards to be used in establishing DSM goals. Witness Wilson's selective statutory review is as misleading as it is myopic. As laudable as reducing GHG emissions may be, it is not the be all and end all of FEECA and the DSM goals rule, and that rule is the basic legal requirement this Commission is called to implement in this proceeding.

REBUTTAL OF WITNESSES ADVOCATING THE EXCLUSIVE USE OF THE TOTAL RESOURCE COST TEST

Q. Please summarize your rebuttal to GDS that the TRC test be used as the primary determinant of cost-effective, achievable goals.

A. The GDS witnesses cite a GDS survey of the different states and describe which states rely on the different cost effectiveness tests. (Page 43 – 45, Line 9). They report that some 12 states rely on the TRC as the "primary" test and this practice is codified by rule in 9 of these states. In addition, 9 other states use the Societal Cost test. They point out that only two jurisdictions use the RIM test - Washington D.C. and Florida – as the primary mandated standard.

However, a more careful reading of their Exhibit RFS-12 and testimony indicates far more diversity exists with respect to which tests are used. Four other states in addition to the District of Columbia and Florida use the RIM test as the primary standard in evaluating cost-effectiveness. Eight other states give equal or near equal weight to the RIM test along with the other tests. In total, 23 other states as a matter of practice use or consider the RIM test as one standard to evaluate programs. GDS's witness continues highlighting his preference for the TRC test by noting that the National Action Plan for Energy Efficiency Report (NAPEE) commends the use of the TRC test because the RIM test is the most restrictive. GDS does not yet recommend that the Commission change its existing goals and program approval criteria to require the TRC test based on what other states are doing or what the NAPEE recommends. Apparently, his treatise on other states is

intended to leave the Commission with the impression that Florida is some kind of outlier state because it uses RIM as one of three cost-effectiveness standards used to evaluate DSM goals and programs. Notwithstanding Witness Spellman's criticisms, the truth of the matter is it does not matter what other states are doing as long as what this Commission and the utilities it regulates are doing is consistent with Florida law.

The successful history of the Florida Commission in setting DSM goals and the utility's acknowledged efforts to meet those goals bear witness to the RIM test being a fair and successful test. According to GDS, this Commission can also take comfort that far from being some kind of outlier, Florida is one of 23 other states that rely on the RIM test as a DSM evaluation tool. And in fact, in this proceeding, DSM Goals are based on an enhanced version of the RIM test, which includes prospective GHG costs.

Later in its testimony GDS unequivocally recommends that the E-TRC test be the primary cost-effectiveness standard. (Page 50, Line 11-12). Florida's utilities should be unapologetic for the historical use of the RIM test, and the Commission can take pride in focusing first and foremost on not increasing customer rates while pursuing aggressive DSM goals. It is the RIM standard that successfully helps make all of Florida ratepayers' beneficiaries under DSM programs. Now the customers of utilities stand to be the beneficiaries of the E-RIM test, which retains the myriad benefits of the RIM test while also recognizing GHG costs.

Q. Is GDS wrong in its conclusion that the Commission required TRC programs as part of the 2004 goals proceedings?

A. Yes. The GDS witnesses state on Page 50, Line 16- 19, that in the 2004 goals docket the Commission ordered that "energy savings programs that did not have significant impact on rates should be included in the goals of the FEECA utilities." They are mistaken. For example, the Commission approved FPL's goals in Docket No. 040029 with this language:

> FPL appropriately used the RIM and participant tests to determine the cost-effective level of achievable DSM goals. Therefore, we find that FPL's proposed annual residential and commercial/industrial winter and summer kW and annual kWh conservation goals for the period 2005 through 2014 shall be approved.

Perhaps what GDS meant to address was a statement in the final order from the 1994 DSM Goals proceeding. Because of its historic import, I attached a complete copy as an exhibit to my direct testimony. The language they selectively quote is indeed found in that order, but the quoted language is badly taken out of context. The language selectively quoted is an observation by the Commission that if utilities choose to propose TRC based programs, then the savings of such programs would be counted toward their RIM-based goals. See page 26 of Exhibit JWD-1. What is omitted from this selective quote is an entire paragraph on the prior page of the order where the Commission explained that it

was consciously choosing to set goals based upon the RIM and Participant test rather than upon the TRC test. It was this language, which is quoted below, that was appealed to and affirmed by the Supreme Court of Florida:

> We will set overall conservation goals for each utility based in measures that pass both the participant and RIM tests. The record in this docket reflects that the difference in demand and energy savings between the 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 TRC goals are minimal, we do not believe that increasing rates, even slightly, is justified.

Q. Why do you recommend that the Commission reject GDS's recommendation to adopt a TRC only standard for establishing goals?

A. As described in my pre-filed direct testimony and supported by numerous other utility witnesses, the RIM test is the appropriate test to use to establish goals. It completely reveals the cost of the DSM programs by accounting for the cost of incentives and the potential increase in rates due to the utility's declining energy sales. Because of the full disclosure of these impacts, the Commission is in a position to evaluate the equity consequences or fairness to all customers of DSM

programs and can appropriately balance the costs that will be passed through the ECCR clause and ultimately be paid by customers, and the RIM test appropriately treats loss revenues as a cost since these too must be recovered in the form of higher rates.

In addition, as discussed in my pre-filed testimony, RIM based goals more closely align the interest of the customer and the utility and avoid the need to "incentivize" utilities to aggressively implement DSM programs. Florida utilities widely acknowledged success over the last 29 years to implement aggressive DSM goals without the need for financial incentives is evidence of the wisdom of not abandoning this standard.

Q. Please summarize your rebuttal of the NRDC/SACE witnesses regarding their advocacy of a TRC only standard?

A. Unlike the GDS witnesses who recommend the Commission voluntarily adopt the TRC standard, Witnesses Cavanagh, Wilson and Mosenthal all argue that the Commission is bound by new statutory language that requires the Commission to use the TRC test as the "only" standard in setting DSM goals. (Witness Wilson, Page 22, Lines 18-20). NRDC/SACE would have the Commission believe that a watershed change in FEECA regulatory policy was precipitated by the modest changes to FEECA in HB 7135. One of those modest changes was the amendment of F.S. 366.82(3) to require the Commission's consideration of four new items when adopting DSM goals. My rebuttal responds to NRDC/SACE's interpretation of one of these four new items.

The first amendment at 366.82(3)(a), requires the Commission, in establishing goals, to consider, "The costs and benefits to customers participating in the measure." There is not a lot of disagreement about this language. The Commissions Cost- Effectiveness Reporting Rule (25-17,008, F.A.C.) already prescribes this kind of analysis. This test is generically called the Participant Cost test and the parties generally agree that this new statutory language, while not specifically mentioning the Participant test captures the information required by the Commission's cost-effectiveness reporting rule. The NRDC/SACE witnesses would argue that this is now a mandatory test. I do not share their conclusion that the Participant test is a mandatory test. I do agree that the Commission is required to give consideration to it, which it does and always has done.

The second amendment in question is the addition of Section 366.82(3)(b), which calls for the Commission to consider, "The costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions." It is the import of this amendment upon which NRDC/SACE and the four largest investor-owned utilities dramatically disagree.

The NRDC/SACE witnesses all argue that this new language is not only a statutory enactment of the Total Resource Cost test, but also a statutory rejection of the Rate Impact Measure test. How they get to this strained conclusion is telling.

First, they argue this is apparent on the plain language of the statute. That is easily rebutted. The statute does not mention either the TRC or the RIM test.

Second, implicitly acknowledging that their "plain language" interpretation does not hold water, they invoke two parenthetical references in two legislative staff analyses that refer to this language as being "(similar to a Total Resource Cost test or TRC test but including the cost of incentives)." This is their only evidence of legislative intent – a parenthetical observation of the legislative analyst and whose observation neither defines the test as a "TRC" nor precludes the use of the RIM test.

Third, they then impugn the staff analyses on which they rely, saying that the unidentified authors and the legislature were under a "misimpression" when they wrote this seemingly definitive parenthetical phrase. Witness Wilson and Witness Cavanagh say that the Legislature and the legislative analysts did not understand the TRC test, because if they had, they would not have included "utility incentives" as an element in this supposedly new test, because the TRC test already includes "utility incentives." So, their argument is that the Commission should rely upon a legislative staff analysis that was wrong in its understanding and characterization of the TRC test. This hardly requires rebuttal.

The parenthetical reference in the staff analysis does not say this is the TRC test, but if, as Witness Wilson and Witness Cavanagh suggest, neither the legislative

staff nor the Legislature understood the TRC test and the Staff analysis is flawed, how can the Commission rely on the analysis as evidence of legislative intent? Clearly, if the Legislature had intended these changes to be a direct reversal of 29 years of Commission's regulatory decisions and an equal number of years of legislative oversight with respect to the FEECA, it would have been less subtle and more direct in transforming the regulatory landscape. It could have and should have included findings that the current FPSC practice was inappropriate or that a different standard was being provided to supplant existing Commission policy or practice. Surely if it had intended that the Commission no longer consider the rate impact of conservation it would have explicitly banned the RIM test. It did none of these straightforward things. The NRDC/SACE interpretations of what this statute says and does not say are simply not credible.

Q. Does the NRDC/SACE interpretation limit the Commission's ability to consider other tests in approving DSM goals?

A. Yes. It is important for the Commission to appreciate the consequences of NRDC/SACE's interpretation of the legislative changes. Witness Cavanagh argues on Page 5, Lines 1 – 5 that the RIM test is not consistent with the changes brought about by HB 7135. Therefore, rate impacts on customers would not be a criterion for the Commission to consider in establishing goals. As discussed at length in my direct, pre-filed testimony and the testimony of other FEECA utility witnesses, the impact of DSM goals on rates and the amount of subsidies that transfer between participants and non-participants are critical public policy issues for this Commission to consider. As evidenced by Witness Wilson's testimony

quoted above, the NRDC/SACE interpretation would prohibit the Commission from taking such impacts into consideration in establishing goals and approving programs. Furthermore, the NRDC/SACE construction of this statute would preclude the Commission from using any other type of cost-effective evaluation such as the Societal Cost test or the Utility test.

Q. What do you believe the limited amendments to FEECA require?

A. I believe the only thing we know with certainty is the Commission is required to give "consideration" to four new items. I cannot conclude from Witness Wilson's tortured portrayal of legislative history or the plain language in the act that a mandatory new standard has been imposed on this Commission.

Q. Do you believe 366.82(3)(b) requires the Commission to give consideration to the TRC test?

A. I believe the language is vague and can be read in several ways. For example, both the TRC test and the RIM test look at costs and benefits to the general body of ratepayers. But within that broad group of a general body of ratepayers are two subgroups – customers who participate in the program and those who do not participate in a utility program. The participant group receives a disproportionate share of the benefits; the non-participant group pays a disproportionate share of the costs.

The TRC test lumps these two groups together and evaluates if the program is cost effective for the two groups combined. Incentives are not identified as a cost in the TRC test as they are in the RIM test and as such are not revealed. They are

part of the analysis but are "hidden" by being included as part of what participants would pay to install a utility recommended efficiency measure. This is what the PSC staff person stated to the legislature and perhaps is better described in the Commission's 2008 FEECA Conservation Report to the legislature. It reads:

> *TRC test* – The TRC test measures the overall economic efficiency of a DSM program from a societal perspective. This test measures the net costs of a DSM program based on its total cost, including both the participant's and utility's costs. Unlike the RIM test, however, incentives and decreased revenues are not included as costs in the TRC; instead, these factors are treated as transfer payments among ratepayers.

Thus, the TRC test does not provide full disclosure on how much of the participant's share of installing the program measure will ultimately be paid for as an incentive. The RIM test does this by again using the perspective of the general body of ratepayers but separately identifying incentives and unrecovered revenues as costs. Thus, the RIM evaluation fully reveals the impact of incentives and unrecovered Commission approved revenues on the overall cost-effectiveness of the program to the general body of ratepayers.

Q. Does this mean that the language in 366.82(3)(b) requires the Commission to consider the RIM test?

A. Given the legislative language to consider incentives as either a cost or benefit one could plausibly argue that this implies the consideration of a RIM type of

analysis because before one can consider incentives as a cost or benefit, they must be fully disclosed. However, even if this were the clear intent of the Legislature, and I will be the first to admit the language is extraordinarily vague, this would not bind the Commission to use the results of the RIM type of evaluation as a mandatory standard. The Commission has always used the RIM test as one of the three required evaluation tools. I do not believe this statutory change requires the Commission to depart from this practice.

I believe the RIM standard, and now the E-RIM standard, has a number of attributes that makes it a superior standard for establishing DSM goals and approving programs. These benefits are elaborated on in my pre-filed direct testimony.

Q. Does the NRDC/SACE argument that this new consideration mandates a TRC standard create conflicts with other statutory language?

A. Yes. There are several sections of 366, F.S. that were not amended by HB 7135. Several of these unequivocally focus on costs to customers, not lowering bills. The interveners ignore the Commission's authority to deny or modify programs once goals are set. At 366.82(7), F.S., the Commission is granted authority to "modify or deny plans or programs that would have an undue impact on costs passed to customers." The Commission has always used the RIM standard as a basis to prevent such "undue" costs from occurring.

The interveners ignore the directive reflected in 366.051, F.S., which was not amended or affected by HB 7135. In my pre-filed testimony I noted that the Cost Effectiveness Reporting format as required by Rule 25-17.008, F.A.C. calls for a similar cost-effectiveness reporting format to be used to provide information for the Commission to evaluate both DSM programs and self-service wheeling proposals. However, Section 366.051, F.S. specifically requires that self-service wheeling proposals can only be approved if, "the commission finds that the provision of this service, and the charges, terms, and other conditions associated with the provision of this service, are not likely to result in higher cost electric service to the utility's general body of retail and wholesale customers or adversely affect the adequacy or reliability of electric service to all customers."

What is significant about this charge is that unlike DSM programs, self-service wheeling programs do not involve any utility incentives being paid by the utility to the customer requesting wheeling. However, self-service wheeling proposals involve a reduction in revenues because the customer is essentially asking to serve his own electric load elsewhere on the grid with his own generation. This impact on the general body of ratepayers must be considered when evaluating whether the 366.051, F.S., criterion for approval has been met.

If the legislature had meant for the new cost and benefits "consideration" to become the new mandatory TRC standard, then it would have also modified this statute to make them compatible since unrecovered revenues would not be

considered as a cost under the TRC evaluation standard. Consequently, all self-service requests would automatically past the test and there would be no need for 366.051, F.S.

REBUTTAL OF WITNESS MOSANTHAL'S CRITICISM OF THE TWO YEAR PAYBACK SCREENING CRITERIA

Q. Please summarize your rebuttal of Witness Mosenthal's criticism of the Collaborative's use of the two year payback criterion.

A. Witness Mosenthal expounds for many pages in his testimony about his perceived flaws of using a two-year payback criterion to account for free riders in proposing DSM goals. Ultimately, he argues that free riders should be addressed in program design rather than in goal setting.

Once again a NRDC/SACE witness fails to understand the context of this proceeding. The Commission's DSM Goals Rule requires utilities to address free riders in setting goals. Addressing free riders cannot wait until the later program design stage, because that would not be in compliance with the DSM goals rule. The utilities are required by Commission rule to account for free riders. They did this through a Commission-approved vehicle, use of the two year payback criterion. To suggest it should have been done in program design is to disregard the DSM Goals Rule.

Perhaps not quite as important, but I think of real significance is the fact that NRDC/SACE agreed to the use of the two year payback criterion as the Collaborative's means of addressing free riders. So, Witness Mosenthal's lengthy attack on the use of the two year payback is either a fairly critical discussion of Witness Wilson's agreement to using the two year payback as a means of addressing free riders or an after the fact change in the position of NRDC/SACE. Neither picture is very flattering.

It should be noted that this is the fourth goal setting process where the two-year criterion has been used. It was initially used in the 1994 goal setting process (Docket 930548-EG and other dockets and whose order is included in as Exhibit JWD-1 of my pre-filed direct testimony). The Legal Environmental Assistance Foundation (LEAF) took issue with the use of this criterion, and the Commission approved DSM goals based upon the use of the two year payback. This criterion was again used in the 1999 and 2004 goal setting dockets. No challenges were forthcoming to the criterion and Commission staff was fully aware of the reasons it was used. So, this is not a novel issue, and the Collaborative's decision to use the two year payback is consistent with prior Commission approvals of DSM goals.

Witness Mosenthal concludes that the use of this screening measure is not consistent with the language in the FEECA statute. He fails to elaborate on his unsupported legal conclusion, but the decision in at least three prior FEECA goals

proceedings, one of which was appealed to the Florida Supreme Court on other grounds and was affirmed, seem to put that argument to rest.

Q. Does this conclude your rebuttal testimony?

A. Yes, it does.

ESTIMATED UNRECOVERED COMMISSION AUTHORIZED REVENUE FROM THE GDS PROPOSED GOALS			
Year	GWh Goals Cumulative Difference(1)	Average Approved Rated(2)	Unrecovered Revenue
2010	818	$58.24	$47,657,195
2011	1633	$58.24	95,109,402
2012	2463	$58.24	143,403,688
2013	3295	$58.24	191,907,619
2014	4223	$58.24	245,938,052
2015	6275	$58.24	365,424,625
2016	8461	$58.24	492,714,688
2017	10,734	$58.24	625,111,961
2018	13,215	$58.24	769,563,878
2019	15,813	$58.24	920,887,526
Total			**$3,897,718,632**

(1) Annual difference between four investor owned utilities E-RIM Gigawatt-hour (GWh) goals and GDS annual GWh goals with transition

(2) Average residential rate (July – December 2009) per megawatt-hour for the 4 investor owned utilities exclusive of fuel adjustment, storm recovery, and gross receipts tax. Analysis assumes no additional rate increases for either base rates or annual clauses over the goals horizon.

ESTIMATED FOREGONE FLORIDA TAXES FROM THE GDS PROPOSED GOALS					
Year	GWh Goals Cumulative Difference(1)	Average Approved Fuel Recovery Factor(2)	Unrecovered Gross Receipts Tax @ 2.5%	Unrecovered Florida Sales Tax @7% (3)	Unrecovered Revenue Taxes GRT + Sales
2010	818	$53.77	1,100,080	1,139,683	$2,239,764
2011	1633	53.77	2,195,429	2,274,465	4,469,894
2012	2463	53.77	3,310,216	3,429,383	6,739,599
2013	3295	53.77	4,429,941	4,589,316	9,019,157
2014	4223	53.77	5,677,037	5,881,410	11,558,447
2015	6275	53.77	8,435,169	8,738,835	17,174,004
2016	8461	53.77	11,373,430	11,782,874	23,156,304
2017	10,734	53.77	14,429,583	14,949,048	29,378,631
2018	13,215	53.77	17,763,995	18,403,499	36,167,494
2019	15,813	53.77	21,257,029	22,022,282	43,279,310
Total					**$183,182,602**

(1) Annual difference between four investor owned utilities E-RIM Gigawatt-hour (GWh) goals and GDS annual GWh goals with transition
(2) Average approved fuel recovery charge (July – December 2009) per megawatt-hour for the 4 investor owned utilities. Analysis assumes no additional fuel increases over the goals horizon.
(3) Sales tax applied to 37% of the Goals Difference which is approximate share of 4 utilities sales which are commercial.

Comparison of FPL's Systems and Planning Methodologies

Northwest Power Planning Council	Florida Power & Light	Significance
Comparison of Regulatory Framework		
As an entity funded by the Bonneville Power Administration, neither the Council nor BPA serve retail customers. They do not operate an integrated utility system and have no obligation to serve retail customers except for 5 direct serve loads.	Directly serves 4.5 million customers and is required by Florida law to maintain system reliability.	The Council Plan is "hypothetical" and has little relevance to operating and planning a vertically integrated, load serving utility. This plan can be thought of as essentially an academic exercise.
Planning results are not binding and estimates of conservation savings have no force or effect of law. There are no consequences for meeting/not meeting the Plan.	Planning results reviewed by FPSC and mandatory goals are derived from the results. There are consequences for non-compliance.	Council's Plan is "advisory" and has no regulatory authority or implementation oversight.
Comparison of Model Results		
Council does a regional, aggregated load forecast for the four states. Therefore any specific set of resource additions may not meet individual utility reliability criteria or be optimal for any individual utility system.	FPL forecasts load and energy growth for its system and selects resource additions that meet the reliability criteria (reserve margin) most economically.	Council has a mismatch that exists between matching load and resources. This approach makes it difficult/impossible to truly optimize a resource plan.

Output is a "generic" set of resource additions. The Plan does not optimize a resource plan for any one of the 148 utilities serving customers in the 4 state region.	Resource additions are most optimal set of additions for FPL's system. FPL's resource plan provides specific size, type and in-service year of new generation and develops optimal implementation time for, and magnitude of, efficiency programs.	Council's suggested resource additions are not specific to any load serving utility.
Comparison of Efficiency Planning and Evaluation		
Conservation programs are evaluated against a regional electric price forecast. With regional retail rates ranging between 7.4¢ and 9.3¢/kWh the aggregated Council TRC test results may or may not be applicable to any given load serving entity.	FPL's recommended program measures analyzed under the Participant Test and the RIM test is based on retail rate projections for the FPL system.	Without calculating specific benefits and costs for participating customers, Council's plan may overstate or underestimate both technical and achievable conservation potential for a given utility.
The Federal law establishing Council requires a 10% benefit be added to efficiency programs.	FPL uses all of the actual costs and benefits for both supply and DSM options. This allows a fair comparison of efficiency programs to other resources and ensures a level playing field on which resources can be evaluated.	Council's Plan is biased in that efficiency is assigned a 10 percent cost advantage under Federal law. This assignment is arbitrary and disadvantages other resource options, thus potentially overstating the value of efficiency.
Using a regional Total Resource Cost analysis does not adequately align who pays for efficiency with those who benefit. The Council's own report admits there is seldom alignment between who	FPL use of the Participant Test, the TRC Test and the Rate Impact Measurement Test provide a clear identification of who pays for and who benefits from efficiency programs.	Using a single test does not provide decision makers with a full understanding of the costs and benefits nor how those costs and benefits are distributed between customer classes i.e. rate and cross subsidization

pays for these benefits and who receives them.		impacts.
The Council's Plan evaluates and recommends efficiency programs over which the utilities have no direct control such as appliance standards and building codes. Thus, the amount of achievable efficiency that can be implemented by utilities may be overstated unless appropriate non-utility entities are held accountable for achieving the goals.	FPL's portfolio of programs identifies those measures and programs that can be implemented by the utility and FPL is held accountable for its performance by the FPSC	Council's Plan is more similar to a state energy office plan which makes broad policy recommendations. Plan does not designate what responsibilities are those of utilities.
BPA estimates it has spent approximately $2.2 billion on efficiency since 1981 and has saved some 995 MWs of capacity.	FPL has spent approximately $2 billion on DSM and efficiency since 1981 and has reported savings of some 4,000 MWs of capacity.	The implicit cost per kW saved for BPA programs is approximately $2,200 per kW; FPL's cost is about $500 per kW.
Comparison of Reliability and Resource Selection		
The Council's plan is evaluated for reliability using a 5.0% Loss of Load Probability (LOLP).	FPL uses 20% as its planning reserve margin. The equivalent LOLP associated with this reserve margin is typically several orders of magnitude less than 0.1%.	Council's reliability criteria is too high to be suitable to operate and plan FPL's system. The risk of failing to serve load would not be tolerated by customers or regulators.
The Council's Plan is highly sensitive to the risk associated with the variability of renewable resources especially hydro whose annual flows can vary dramatically due to drought. A primary focus of their plan is balancing uncertainty of resource availability with costs.	FPL's plan relies on firm resources whose availability is reasonably assured. FPL's plan optimizes both supply and demand resources to minimize cost with consideration for appropriate strategy concerns such as fuel diversity.	FPL carries fewer "reserves" (i.e. 20% reserves) to meet expected load and thus reduces overall number of megawatts required. Northwest region carries substantially higher reserves to account for uncertainty of hydro.

The Council's Plan recognizes that the region is electrically interconnected and has ties with both California and Canada. Thus, imports and wholesale resources play an important role in system expansion plans.	Florida is less integrated electrically with the Southern Company region and transmission limits reduce ability to rely on wholesale markets for supply.	Reserve margins and the ability to operate as a relatively independent system have been hallmarks of both regulatory objectives and Florida's utilities plans. More focus is placed on ensuring reliable fuel sources such as multiple and looped pipelines and carrying 20% reserve margins by the IOUs.
Utilities and non-utility entities who fail to implement required megawatts of efficiency may cause entire plan to fail as reliability criteria may not be met.	FPL efficiency plans are integrated with DSM programs and construction of new generation to ensure that reliability standards are not violated.	The more efficiency is used as a "firm" resource to meet reliability, the more accountability must be required of agents responsible for achieving prescribed amount of efficiency resources.