

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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COMMISSION
CLERK

In re: Commission Review of Numeric) DOCKET NO. 080407-EG
Conservation Goals)
Florida Power & Light Company)
_____)

In re: Commission Review of Numeric) DOCKET NO. 080408-EG
Conservation Goals)
Progress Energy, Florida, Inc.)
_____)

In re: Commission Review of Numeric) DOCKET NO. 080409-EG
Conservation Goals)
Tampa Electric Company)
_____)

In re: Commission Review of Numeric) DOCKET NO. 080410-EG
Conservation Goals)
Gulf Power Company)
_____)

In re: Commission Review of Numeric) DOCKET NO. 080411-EG
Conservation Goals)
Florida Public Utilities Company)
_____)

In re: Commission Review of Numeric) DOCKET NO. 080412-EG
Conservation Goals)
Orlando Utilities Commission)
_____)

In re: Commission Review of Numeric) DOCKET NO. 080413-EG
Conservation Goals)
Jacksonville Electric Authority)
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**THE NATURAL RESOURCES DEFENSE COUNCIL, INC.'S AND
THE SOUTHERN ALLIANCE FOR CLEAN ENERGY, INC.'S
AMENDED PREHEARING STATEMENT**

The Natural Resources Defense Council, Inc. ("NRDC"), and the Southern Alliance for Clean

DOCUMENT NUMBER-DATE

07836 JUL 31 08

FPSC-COMMISSION CLERK

Energy, Inc. ("SACE"), by and through their undersigned counsel, and pursuant to Order No. PSC-08-0816-PCO-EG, Order Establishing Procedure in these consolidated dockets, hereby submit their joint Amended Prehearing Statement.

A. APPEARANCES

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B. WITNESSES

Witness	Subject Matter	Issue Nos.
Phil Mosenthall Optimal Energy 14 School St. Bristol, VT 05443	The appropriateness and accuracy of FEECA utilities' potential analyses, and consistency of these analyses with accepted DSM industry practice	1,2,3,4,7,8,9,15,16

<p>William Steinhurst, PhD Synapse Energy Economics 45 State Street #394 Montpelier, VT 05602</p>	<p>Appropriateness of FEECA utilities' economic and achievable potential analyses, specifically looking at key inputs, along with a review of the industry best practices in DSM program design of programs, goals and implementation</p>	<p>2,4,5,7,8,9, 10,11,12,13, 15,16</p>
<p>Ralph Cavanagh Natural Resources Defense Council 111 Sutter St. 20th Fl San Francisco, CA 94104</p>	<p>Appropriateness of cost-effectiveness analysis and program incentives</p>	<p>6,7</p>
<p>John Wilson Southern Alliance for Clean Energy 34 Wall St., Suite 607 Ashville, NC 28801</p>	<p>Appropriateness of FEECA utilities DSM program analysis, design and implementation with revised Florida policy for energy efficiency</p>	<p>1,2,3,4,5,6,7,13, 14,15,16</p>

C. PREFILED EXHIBITS

NRDC and SACE will sponsor the direct exhibits as set out below. However NRDC-SACE reserve the right to use other exhibits during cross examination of the FEECA utilities' witnesses, and will file a notice in accordance with the orders governing procedure identifying any documents that the utilities claim to be confidential which NRDC-SACE may use during cross examination.

<u>Exh. Number</u>	<u>Witness</u>	<u>Description</u>
PHM-1	Mosenthal	States Energy Efficiency Resource Standards

WS-1	Steinhurst	Recommended Utility DSM Goals
JDW-1	Wilson	Estimate of Annual Incremental Energy Savings for FPL 2001-2008
JDW-2	Wilson	Estimate of Planned Annual Incremental Energy Savings for FPL 2010-2019
JDW-3	Wilson	"Energy Efficiency Program Impacts and Policies in the Southeast," SACE, May, 2009
JDW-4	Wilson	Utility-Specific data identifying states where DSM results exceed FPL's program impact
JDW-5	Wilson	Florida House of Representatives, 2008 Session Summary (excerpt)
JDW-6	Wilson	Florida House of Representatives Staff Analysis, HB 7135
JDW-7	Wilson	Florida Public Service Commission, Presentation to the Senate Committee on Environmental Preservation and Conservation, February 21, 2008

D. STATEMENT OF BASIC POSITION

The Legislature recognized the extraordinary potential for increasing energy efficiency in Florida and the tremendous benefits that would accrue to utility customers and the State in passing the 2008 Energy Act (HB 7135), which amended the Florida Energy Efficiency and Conservation Act ("FEECA"). NRDC and SACE have intervened in order to help ensure that the promise of this bill is achieved by setting strong energy efficiency goals and providing the framework that will encourage Florida's utilities to dramatically increase their cost-effective energy efficiency accomplishments. Our members are utility customers who place a high value on a clean and healthy environment, and our interest is in maximizing utility investments in cost-

effective energy efficiency, which is both the cleanest and cheapest resource to meet customers' needs. Indeed, as the legislature has recognized, energy efficiency is the most cost-effective way to reduce greenhouse gas emissions and other pollutants associated with power generation, while also strengthening Florida's economy, improving its energy security and reducing costs for consumers.

However, in their testimony, the seven FEECA utilities propose energy efficiency goals that are astonishingly low. While other utilities in Florida have recently achieved energy efficiency gains of close to one percent of electricity sales per year, the seven utilities ask for goals of between zero and 1.5% over *ten* years. These proposed goals, if adopted, would violate the plain language of the FEECA statute. The utilities arrived at such low goals by applying a series of arbitrary screens and assumptions that eliminated almost all of the technical potential, and also omitting several energy efficiency measures from the technical analysis. Three flaws stand out: First, all seven of the utilities relied on the rate impact measure test in setting their DSM goals. This decision violates the clear language of the amended FEECA statute.¹ Second, all seven utilities eliminated all of the most cost-effective measures which have a payback of less than two years. This reverse cost-effectiveness test arbitrarily eliminated hundreds of measures from consideration despite the fact that, as the utilities themselves admit, these measures will not be significantly adopted unless they are promoted through an energy efficiency program. Third, the utilities significantly under-estimated avoided supply costs, thereby reducing the benefits of all efficiency measures. There are two utilities currently in the process of constructing extraordinarily expensive nuclear plants, yet they ignore the benefit of deferring those capital

¹ § 366.82(3)(b), Fla. Stat. 2008.

costs by basing their avoided generation unit benefit exclusively on the capital costs of natural gas plants.

By systematically suppressing the economic and achievable energy efficiency potential, the utilities would condemn Floridians to a future of ever continuing growth in electricity demand and, with it, the need for additional sources of more expensive energy supplies. Had the utilities aggressively pursued energy efficiency in the past, rather than simple reductions in peak demand, they would have insulated Florida's families from volatile fuel cost hikes and soaring construction costs for new generation units. The Commission should adopt aggressive goals that require the FEECA utilities to aggressively and broadly market energy efficiency. Broad and well-run programs will allow all customers, including both those who are low-income and those who are well-off, to take advantage of energy savings and enjoy the benefits of lower electricity bills.

NRDC and SACE's experts offer goals based on the data presented by the utilities and the analysis conducted by Itron. While they are substantially more ambitious than the FEECA utilities goals, these goals are well within the range of what can be achieved based on the evidence in this case. While our goals are substantially similar to Staff witnesses Richard F. Spellman and Caroline Guidry, we believe that the five year phase-in advocated by the Staff is unnecessarily long and recommend that the Commission adopt the shorter and graduated phase-in advocated in the testimony of Dr. William Steinhurst.

E. STATEMENT OF ISSUES AND POSITIONS

ISSUE 1: Did the Company provide an adequate assessment of the full technical potential of all available demand-side and supply-side conservation and efficiency measures,

including demand-side renewable energy systems, pursuant to Section 366.82(3), F.S.?

POSITION: No. While conducted in a professional manner, we believe that, as a direct result of specifications imposed on the analyses by the utilities, the assessment was unnecessarily conservative and, consequently, undermines Florida's full technical potential for efficiency measures. As explained by NRDC-SACE witness John D. Wilson in his pre-filed testimony, the overall technical potential should be increased by at least 8%, from 34% to 42% statewide due to a number of measures that were omitted. Because the analysis does not consider "the full technical potential of *all* available demand-side and supply-side conservation and efficiency measures," it does not comply with Section 366.82(3), F.S.

ISSUE 2: Did the Company provide an adequate assessment of the achievable potential of all available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy systems?

POSITION: No. We believe the achievable potential analysis suffers from several major flaws and as a result the utilities have dramatically under-estimated the maximum amount of DSM resources that could be captured cost-effectively in Florida. We highlight the most significant flaws here, although additional flaws are identified in the testimony we have submitted. First, we should note that the flaws in the technical analysis were carried forward into the achievable analysis.

Second, the achievable analysis is radically under-estimated because of the utilities' decision to arbitrarily eliminate all measures with a simple payback period (excluding incentives) of less than two years. This is a reverse cost-effectiveness test that eliminates the most cost-effective measures from consideration. Eliminating these measures, which reflect the most cost-effective way to increase energy efficiency is contrary to the intent of the Legislature in passing the FEECA statute.

The utilities attempt to defend this arbitrary decision by arguing that it is needed to avoid free riders and because customers should adopt these measures without any incentives or other intervention from the utilities. This claim is not supported by the evidence in this case, which shows that these measures would not be fully adopted unless they are included in an energy efficiency program, and that the energy efficiency industry has developed more effective means of controlling costs associated with free riders than arbitrary measures screens.

Third, the utilities unreasonably constrained the achievable potential by limiting the success of the future programs to the level of success achieved by the utilities in the past. However, the utilities past performance should not be the measure of their future success. In particular, the utilities past performance occurred when primarily only measures that passed the RIM test were offered and when the overall goals were far lower than we suggest they should be in the current

proceeding. If the Commission requires more ambitious goals, as we and the Staff witness recommend, then the utilities will respond by improving their program incentives and marketing and accordingly will achieve substantially increased success in future penetration rates.

In sum, because of these and other flaws, the Companies did not conduct a credible estimate of the achievable potential of demand-side and supply side conservation and efficiency measures.

ISSUE 3: Do the Company's proposed goals adequately reflect the costs and benefits to customers participating in the measure, pursuant to Section 366.82(3)(a), F.S?

POSITION: We do not object to how the participant test was conducted for JEA, OUC and FPU. For these utilities, the test was performed by Itron, which appropriately included the incentives in the calculation. However, the participant test employed by FPL to screen out measures does not "reflect the costs and benefits to customers participating in the measure." This is because according to FPL witness Steve R. Sim, as an initial screen, the participant test was applied without incentives. Omitting incentives from the participant test is contrary to the amended FEECA statute as well as the PSC's cost-effectiveness manual. Moreover, this improperly applied screen eliminated fully 45 percent of the technical potential measures.

We take no position at this time with respect to PEF, Gulf, and TECO.

ISSUE 4: Do the Company's proposed goals adequately reflect the costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions, pursuant to Section 366.82(3)(b), F.S.?

POSITION: No. Rather than focus on the costs and benefits of energy efficiency to the "general body of ratepayers as a whole, all seven of the FEECA utilities chose to rely on the RIM test to screen the measures that form the basis for their goals. This is inconsistent with amended Section 366.82(3)(b), F.S., because the RIM test does not reflect "costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions." Instead, RIM focuses exclusively on rates, and particularly on potential impacts to non-participants. RIM is further inconsistent with 366.82(3)(b) because it excludes both the participants' contributions and the participants' benefits, which come in the form of reduced energy expenditures and lower energy bills. As described in detail in response to issue 7 below, the test that does satisfy the language of 366.82(3)(b) is the Total Resource Cost ("TRC") test.

ISSUE 5: Do the Company's proposed goals adequately reflect the costs imposed by state and federal regulations on the emission of greenhouse gases, pursuant to Section 366.82(3)(d), F.S.?

POSITION: No. As more fully explained in the testimony of Dr. William Steinhurst, the Companies all used projections of the costs of carbon dioxide emissions that were on the extreme low end of the spectrum of potential costs.

ISSUE 6: Should the Commission establish incentives to promote both customer-owned and utility-owned energy efficiency and demand-side renewable energy systems?

POSITION: Yes. Performance-based incentives are needed to help Florida capture all cost effective efficiency savings and the accompanying economic and environmental benefits. But performance-based incentives should only be adopted if the Commission first sets strong efficiency goals. At present, the utilities have proposed goals of between zero and just over 0.1 percent of sales per year. These goals are appallingly low and their achievement would not merit payment of any reward. However, if the Commission were to adopt more aggressive goals it would be appropriate, in a future proceeding, to establish an incentive that will allow utilities an opportunity to share in the net benefits that cost-effective efficiency programs provide customers while concurrently encouraging the utilities to excel at delivering energy efficiency programs that lower customer bills.

ISSUE 7: What cost-effectiveness test or tests should the Commission use to set goals, pursuant to Section 366.82, F.S.?

POSITION: The Commission should use the Total Resource Cost ("TRC") test and the Participant test to set goals. The legislature required that the PSC "evaluate the full technical potential of all available demand-side and supply-side conservation and energy efficiency measures" and then set goals using two cost-effectiveness tests, articulated in amended sections 366.82 (3)(a) and 3(b). First, in section 3(a), the legislature required the "Participant Test" when it directed the PSC to consider "the costs and benefits to customers participating in the measure." Second, in section 3(b), the legislature required the Total Resource Cost ("TRC") Test. This is readily apparent from the language of the amendment statute. Section 3(b) mandates that the PSC consider "[t]he costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions." TRC is the cost effectiveness test that focuses on the "general body of ratepayers as a whole." It does this by considering the total costs of an energy-efficient measure, no matter who pays for it, as well as the cost of implementing the efficiency program, and comparing that to the benefit the measure provides to the participant and all the utility's customers including avoided generation, transmission, distribution, and environmental costs. In addition, TRC, in contrast to the RIM test, includes both utility incentives and participant contributions. It does this by considering the total cost of the measure regardless of how that cost

may be divided between the utility and participants. The Commission's Cost-Effectiveness Manual defines the TRC to be "based on the total costs of the program, including both the participants' and the utility's costs."

In addition to being mandated by law, use of the TRC test is the appropriate test to apply as a matter of policy. The Commission's objective should be to minimize the total cost to customers of receiving reliable energy services. The TRC test is the only cost-effectiveness test that takes this perspective; it evaluates efficiency from the perspective of all customers and includes the total costs (including both program and incremental measure costs) and benefits to customers.

ISSUE 8: What residential summer and winter megawatt (MW) and annual Gigawatt-hour (GWh) goals should be established for the period 2010-2019?

POSITION:

We recommend that the Commission set interim savings goals of not less than 1.0% per year on an interim basis while the flaws in the potential studies conducted by the companies are corrected. In addition, we recommend a three year phase-in period.

Total-Statewide

PROPOSED RESIDENTIAL CONSERVATION GOALS										
Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Summer MW	105	322	655	1,013	1,404	1,802	2,216	2,645	3,102	3,622
Winter MW	124	383	784	1,209	1,659	2,133	2,618	3,125	3,648	4,222
Annual GWh	304	932	1,883	2,890	3,916	4,961	6,053	7,201	8,414	9,675

FPL

PROPOSED RESIDENTIAL CONSERVATION GOALS										
Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Summer MW	51	156	320	486	686	880	1,083	1,296	1,524	1,792
Winter MW	57	176	364	556	781	1,009	1,240	1,480	1,732	2,027
Annual GWh	170	517	1,049	1,579	2,113	2,654	3,217	3,797	4,414	5,051

Progress

PROPOSED RESIDENTIAL CONSERVATION GOALS										
Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Summer MW	28	86	177	273	366	466	568	675	785	913
Winter MW	39	121	251	387	515	659	805	959	1,117	1,281

Annual GWh	65	200	415	636	861	1,084	1,318	1,573	1,840	2,119
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TECO

PROPOSED RESIDENTIAL CONSERVATION GOALS										
Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Summer MW	12	37	75	114	155	198	242	285	333	383
Winter MW	16	49	99	151	204	261	319	380	437	495
Annual GWh	31	95	195	299	409	524	645	773	907	1,048

Gulf

PROPOSED RESIDENTIAL CONSERVATION GOALS										
Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Summer MW	7	23	46	70	96	122	149	178	209	242
Winter MW	8	26	53	82	112	142	175	210	246	283
Annual GWh	19	61	125	193	263	337	416	501	591	687

Orlando

PROPOSED RESIDENTIAL CONSERVATION GOALS										
Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Summer MW	2	7	13	24	35	47	60	73	87	101
Winter MW	0	0	0	1	1	2	2	3	3	4
Annual GWh	6	18	30	56	84	113	144	177	212	249

JEA

PROPOSED RESIDENTIAL CONSERVATION GOALS										
Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Summer MW	5	14	25	45	67	89	113	138	164	191
Winter MW	3	10	17	31	46	61	77	94	112	132
Annual GWh	14	41	70	127	186	248	312	379	449	522

FPUC

PROPOSED RESIDENTIAL CONSERVATION GOALS										
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Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Summer MW	-	-	-	-	-	-	-	-	-	-
Winter MW	-	-	-	-	-	-	-	-	-	-
Annual GWh	-	-	-	-	-	-	-	-	-	-

ISSUE 9: What commercial/industrial summer and winter megawatt (MW) and annual Gigawatt hour (GWh) goals should be established for the period 2010-2019?

POSITION: NRDC-SACE propose commercial and industrial goals as follows:

Total-Statewide

PROPOSED COMMERCIAL & INDUSTRIAL CONSERVATION GOALS										
Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Summer MW	36	111	225	349	486	624	769	919	1,078	1,260
Winter MW	15	47	88	146	208	273	340	410	485	565
Annual GWh	293	908	1,842	2,866	3,944	5,055	6,216	7,445	8,747	10,115

FPL

PROPOSED COMMERCIAL & INDUSTRIAL CONSERVATION GOALS										
Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Summer MW	19	58	119	181	255	328	403	483	568	668
Winter MW	5	15	31	47	66	85	104	124	145	170
Annual GWh	162	503	1,043	1,597	2,198	2,824	3,490	4,190	4,946	5,746

Progress

PROPOSED COMMERCIAL & INDUSTRIAL CONSERVATION GOALS										
Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Summer MW	8	24	50	77	104	132	161	191	223	259
Winter MW	1	4	7	11	15	19	23	28	32	37
Annual GWh	52	164	336	519	699	876	1,053	1,247	1,447	1,653

TECO

PROPOSED COMMERCIAL & INDUSTRIAL CONSERVATION GOALS										
Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Summer MW	3	10	20	30	41	53	65	76	89	102
Winter MW	1	3	6	9	12	15	19	22	26	29
Annual GWh	31	94	191	292	396	504	616	732	851	974

Gulf

PROPOSED COMMERCIAL & INDUSTRIAL CONSERVATION GOALS										
Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Summer MW	3	9	18	27	37	47	58	69	81	94
Winter MW	1	4	7	11	16	20	24	29	34	40
Annual GWh	21	64	130	199	269	341	416	496	581	670

Orlando

PROPOSED COMMERCIAL & INDUSTRIAL CONSERVATION GOALS										
Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Summer MW	1	2	4	8	12	16	20	24	29	33
Winter MW	3	9	16	29	43	58	73	90	107	125
Annual GWh	10	29	49	91	134	180	227	276	325	377

JEA

PROPOSED COMMERCIAL & INDUSTRIAL CONSERVATION GOALS										
Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Summer MW	3	8	13	25	37	49	62	76	90	105
Winter MW	4	13	22	39	57	76	96	117	140	165
Annual GWh	18	55	93	169	248	330	415	504	597	694

FPUC

PROPOSED COMMERCIAL & INDUSTRIAL CONSERVATION GOALS										
Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Summer MW	-	-	-	-	-	-	-	-	-	-

Winter MW	-	-	-	-	-	-	-	-	-	-
Annual GWh	-	-	-	-	-	-	-	-	-	-

ISSUE 10: In addition to the MW and GWh goals established in Issues 7 and 8, should the Commission establish separate goals for demand-side renewable energy systems?

POSITION: Yes. Given the policy goals of FEECA, the Commission should do what it can to make this a priority in this proceeding primarily because of the long-term market transformation benefits that would flow from highlighting this demand-side renewable technology. A separate goal would ensure that the utilities and the Commission attend to this specific legislative policy goal and provide a forum for continuous improvement in that area.

ISSUE 11: In addition to the MW and GWh goals established in Issues 7 and 8, should the Commission establish additional goals for efficiency improvements in generation, transmission, and distribution?

POSITION: Yes. Increasing generating plant efficiency and reducing transmission and distribution losses benefit customers and the environment. We recommend that the Commission set a date certain by which the companies will perform technical economic and potential studies for efficiency improvements at their existing plants and in their existing transmission and distribution systems.

ISSUE 12: In addition to the MW and GWh goals established in Issues 7 and 8, should the Commission establish separate goals for residential and commercial/industrial customer participation in utility energy audit programs for the period 2010-2019?

POSITION: Yes. The technologies and human resources required for a useful audit of dwellings differs significantly from those required for auditing commercial facilities and therefore it makes sense to set goals separately for residential and commercial energy audits. We further recommend that the Commission set goals for the pace of audit delivery that are sufficient to fully utilize any available efficiency program resources for efficiency service delivery programs. It is also important to emphasize that for utility energy audits to provide useful benefits to participants and ratepayers as a whole, the audits must result in implementation of actual energy efficiency measures. This will naturally require a comprehensive suite of measures, programs and customer incentives that are attractive to customers to support these audits. Audits should not be limited to measures that pass only the RIM test and should definitely promote measures with payback periods of less than two years. We suggest that the Commission adopt goals that address not only the number of audits conducted but also the energy efficiency measures adopted as a result of those audits.

ISSUE 13: Should this docket be closed?

POSITION: No. The Commission should adopt the interim energy efficiency goals recommended in response to issues 8 and 9. Based on the evidence before the Commission, it is clear that it is possible to achieve at least one percent annual energy efficiency gains after a brief ramp up period. The Commission should therefore adopt such goals immediately. However, because of flaws in the companies' analyses, it is not possible to determine that 1% annual energy efficiency gains is the maximum amount that could be achieved. We therefore recommend that the docket should not be closed and the Commission should require that the companies to submit studies that correct the errors we have identified. In addition, we recommend that the Commission hold open this docket in order to revise Commission Rules 25-17.008, and 25-17.0021, Florida Administrative Code. We specifically recommend that the Commission revise the rules to 1) indicate that the TRC test, not the RIM test, must be used in setting goals; and 2) require that the potential for free riders should be considered at the program stage rather than at the goal stage.

Additional Issues

ISSUE 14: What action(s), if any, should the Commission take in this proceeding to encourage the efficient use of cogeneration? (FIPUG NEW ISSUE)

POSITION: We believe that the Commission should encourage the efficient use of cogeneration.

ISSUE 15: In setting goals, what consideration should the Commission give to the impact on rates? (OUC NEW ISSUE)

POSITION: This issue is encompassed by issue 7 and is furthermore governed by the direction provided in the amended statute. Therefore, NRDC-SACE does not believe that this issue should be added to the issue list. All the concerns that parties may have regarding potential impact on rates can be raised as part of the parties' positions to issue 7. To the extent the Commission accepts OUC's suggestion that a second issue on this topic is appropriate, NRDC-SACE asserts that the issue should be rewritten to identify not only potential changes to rates, but also potential changes to customer bills. Specifically, we propose that it be redrafted as follows: In setting goals, what should be the scope of the Commission's review of rate impact of goals, and its review of the impact of goals on customer bills, in the context of section 366.82(3), Florida Statutes?"

If this issue is included, our position is that, as a matter of law, the Commission is precluded from considering impacts on rates at the goal setting stage and also that, as a matter of policy, the appropriate time to consider rate impacts is at the program design stage. The Commission is legally precluded from considering impacts on rates as it has done in the past through application of the RIM test

because of the 2008 amendments to FEECA, which direct the Commission to consider “[t]he costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions.”§ 366.82(3)(b). By specifying that the Commission must consider impacts to the “general body of ratepayers as a whole,” the legislature implicitly prohibited the Commission from considering impacts on a particular class of ratepayers such as non-participants.

Furthermore, to the extent that the Commission wishes to consider the impact on customers, it should focus its attention on the bills that those customers will pay rather than electricity rates. After all, what customers care about is the services they obtain (lighting, heating and cooling) and the total bill that they pay for those services. Therefore the Commission should consider the total bills that customers will pay, not their rates. When viewed in this light, it is clear that customers benefit the most if energy efficiency programs are made widely available so that all customers – particularly low income customers – can easily take advantage of efficiency programs and, as a result, pay lower bills for the same or a greater level of services provided.

ISSUE 16: Since the Commission has no rate-setting authority over OUC and JEA, can the Commission establish goals that put upward pressure on their rates? (OUC NEW ISSUE)

POSITION: We do not believe that this issue should be included. Should the Commission include this issue, our position is that the Commission is required to set energy efficiency goals for OUC and JEA and to do so based on the criteria provided in amended Section 366.82, F.S. The Commission does not require any rate-setting authority in order to take such action because the act of setting goals, even if it may put upward pressure on rates, is not engaged in rate setting. The flaws in this argument are well illustrated by considering that, under OUC and JEA’s logic, the Department of Environmental Protection (DEP) would also lack authority to regulate their power plant emissions because such regulation might place upward pressure on rates, and the DEP has no rate-making authority.

F. STIPULATED ISSUES

NRDC and SACE have not stipulated to any issues at this time.

G. PENDING MOTIONS OR OTHER MATTERS

NRDC and SACE have no pending motions or other matters.

H. PENDING REQUESTS OR CLAIMS OF CONFIDENTIALITY

NRDC and SACE have no pending confidentiality requests or claims.

I. OBJECTIONS TO WITNESS' QUALIFICATIONS AS AN EXPERT

None at this time.

J. COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE

NRDC and SACE have complied with all applicable requirements of the order establishing procedure in this docket.

Dated: July 30, 2009.

Respectfully submitted,

By, /s/ E. Leon Jacobs, Jr.
E. Leon Jacobs, Jr. Esq.
Fla. Bar No. 0714682

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy and correct copy of the foregoing was served on this 30th of July, 2009, via the internet and via US Mail on:

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