

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Adoption of Numeric  
Conservation Goals by Florida  
Power & Light Company.

DOCKET NO. 971004-EG

In re: Adoption of Numeric  
Conservation Goals by Florida  
Power Corporation.

DOCKET NO. 971005-EG

In re: Adoption of Numeric  
Conservation Goals by Gulf Power  
Company.

DOCKET NO. 971006-EG

In re: Adoption of Numeric  
Conservation Goals by Tampa  
Electric Company.

DOCKET NO. 971007-EG  
ORDER NO. PSC-99-0956-PCO-EG  
ISSUED: May 11, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
JULIA L. JOHNSON  
E. LEON JACOBS, JR.

ORDER DENYING  
LEGAL ENVIRONMENTAL ASSISTANCE FOUNDATION'S  
MOTION FOR RECONSIDERATION

BY THE COMMISSION:

On October 26, 1998, Order No. PSC-98-1435-PCO-EG (Order) was issued in these dockets denying Legal Environmental Assistance Foundation's (LEAF) Motion For Procedural Order and granting Florida Power & Light Company's Motion To Strike LEAF's Reply. LEAF requested that the Commission require the four investor owned electric utilities to file total resource cost (TRC) portfolios on a broad range of conservation measures suggested by LEAF. We held that cost-effectiveness testing on conservation measures was neither required nor was it prohibited by the applicable rules governing these goals proceedings or Supreme Court precedent on the

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issue. LEAF disagrees with our holding and on November 9, 1998, filed a Motion For Reconsideration (Motion) of the Order. On November 16, 1998, Tampa Electric Company (TECO) filed a Memorandum In Opposition To LEAF's Motion For Reconsideration. No other party to these dockets filed a responsive pleading to LEAF's Motion For Reconsideration. This Order addresses the Motion and the Memorandum In Opposition.

I. Standard For Reconsideration.

LEAF's Motion For Reconsideration of Order No. PSC-98-1435-PCO-EG fails to meet the standard for reconsideration because it does not demonstrate that we overlooked or failed to consider any fact or law. LEAF's Motion For Reconsideration merely asserts LEAF's disagreement with the Order and therefore should be denied.

The purpose of a reconsideration proceeding is to bring to the attention of the agency some matter which it overlooked or failed to consider when it rendered its order. Diamond Cab Co. v. King, 146 So.2d 889(Fla. 1962). The mere fact that a party disagrees with the order is not a basis for rearguing the case. Id. Nor is reweighing the evidence a sufficient basis for reconsideration. State v. Green, 104 So.2d 817 (Fla. 1st DCA 1958).

II. LEAF's Motion and TECO's Response.

LEAF's Motion For Reconsideration is based on several points of contention. First, the Motion states that the Order improperly limits the scope of our jurisdiction and misstates LEAF's proposal. Second, the Motion states that the Order misstates LEAF's position contained in its Motion For Procedural Order and errs in its analysis of precedent established in the last goals case. Finally, LEAF disagrees with our holding on the law on replies.

TECO's Memorandum In Opposition To LEAF's Motion For Reconsideration states that LEAF's Motion should be denied because it reargues matters that have already been considered.

... LEAF simply vents its disagreement with the outcome of the decision embodied in the Order and attempts to reargue the basis for the relief sought in LEAF's Motion to Establish Procedure....The Order properly interprets

all of the arguments presented and sets forth a well reasoned basis for the relief it grants.

(TECO Memorandum, pg. 1)

We agree with TECO's analysis of LEAF's Motion For Reconsideration.

### III. Analysis.

LEAF's first assertion, the alleged improper limitation of our jurisdiction and alleged misstatement of LEAF's proposal, merely reargues points LEAF made in its Motion For Procedural Order. In both pleadings, LEAF asks us to determine which DSM measures utilities would test for cost-effectiveness. Two procedures for making that determination are advocated by LEAF. In our Order, we declined to require the utilities in these dockets to exceed the requirements of the Rule. (Order pgs. 8, 10) LEAF disagrees with our decision and reargues the points it made in its prior Motion. As such, LEAF has not demonstrated a basis for reconsideration.

LEAF also argues that the Order misstates LEAF's proposal. LEAF states that the Order "erroneously assumes that LEAF requested program/DSM Plan type evaluation as contemplated by Rule 25-17.008, FAC." (Motion pg. 3) Then, in the same paragraph, LEAF states that it does, in fact, assume that the cost-effectiveness tests of Rule 25-17.008, Florida Administrative Code, should be used to evaluate conservation measures. The Order specifically rejected this argument in response to LEAF's prior Motion. Rather than identifying a point of fact or law which we may have overlooked in rendering our decision, this argument merely reaffirms the soundness of the reasoning of the Order.

LEAF's second argument, that we misstate LEAF's position and the scope of our findings in the last goals case, likewise fails to establish a basis for reconsideration. LEAF is merely attempting to relitigate issues raised in its unsuccessful Motion For Procedural Order. LEAF believes that we "must become informed about which TRC measures meet the DSM policy". (Motion pg. 4) (emphasis added) LEAF is mistaken. The effect of LEAF's position would be to exceed the requirements of the rule and dictate analyses of a list of measures. We chose not to dictate the utilities' analyses of a list of measures. However, if a party in these proceedings proposes a measure with large savings and small rate impacts, we do have jurisdiction to evaluate those measures

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for consistency with our DSM policy. The "DSM policy" as set forth in Legal Environmental Assistance Foundation, Inc. v. Clark, 668 So.2d 982 (Fla. 1996) encourages, but does not require, "utilities to evaluate implementation of TRC measures when it is found that the savings are large and the rate impacts are small." Id. at 988. The Order in the instant dockets reaffirms our policy: "[o]ur policy, as demonstrated herein, does not require nor does it preclude utilities from proposing programs which pass TRC but fail RIM." (Order pg. 11) LEAF's Motion For Reconsideration fails because it merely attempts to relitigate its position on TRC.

LEAF's third argument, is that the Order misstates the law on replies. In Order No. PSC-98-1435-PCO-EG, we held that "parties may file motions in opposition to a motion within seven days; this rule, however, does not allow parties to file a reply to a response." at 3, quoting In Re: Application for Amendment of Certificate No. 427-W To Add Territory In Marion County by Windstream Utilities Company, Docket No. 960867-WU, Order No. PSC-97-0470-FOF-WU. Only a single response to a motion is contemplated by the rules.

LEAF's contention in its two sentence claim is that we have discretion to grant replies. In support of its argument, LEAF provides only a footnote string citation to Commission and court orders. LEAF does not distinguish or analyze any of the cited orders or demonstrate their applicability in this case. In fact, a number of the holdings cited by LEAF are inapposite to its unsupported assertion. As such, LEAF's third argument fails to plead a cognizable claim.

In sum, LEAF's Motion For Reconsideration fails to meet the standard for reconsideration because it does not demonstrate that we overlooked or failed to consider any fact or law. Therefore, LEAF's Motion For Reconsideration is denied. These dockets are scheduled for hearings in August, 1999, and should remain open pending resolution of all issues.

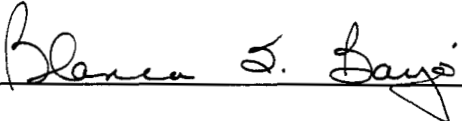
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Legal Environmental Assistance Foundation's Motion For Reconsideration of Order No. PSC-98-1435-PCO-EG, issued October 26, 1998, is denied. It is further

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ORDERED that this docket shall remain open pending resolution of all issues at hearing.

By ORDER of the Florida Public Service Commission this 11th day of May, 1999.



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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

LJP/RVE

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in

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the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.