

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Adoption of Numeric
Conservation Goals and
Consideration of National Energy
Act Standards (Section 111) by
Orlando Utilities Commission.

DOCKET NO. 990722-EG
ORDER NO. PSC-00-0314-PHO-EG
ISSUED: February 17, 2000

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on January 24, 2000, in Tallahassee, Florida, before Commissioner Susan F. Clark, as Prehearing Officer.

APPEARANCES:

ROY C. YOUNG, ESQUIRE, Young Law Firm, 225 S. Adams Street,
Suite 200, Tallahassee, Florida 32301
On behalf of Orlando Utilities Commission (OUC).

WM. COCHRAN KEATING, Esquire, Florida Public Service
Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida
32399-0850
On behalf of the Commission Staff (Staff).

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

Pursuant to Rule 25-17.0021, Florida Administrative Code, the Commission opened Docket No. 990720-EG to establish numerical conservation goals for the Orlando Utilities Commission (OUC). The Commission originally established numerical goals for OUC, pursuant to this rule, by Order No. PSC-95-0461-FOF-EG, issued April 10, 1995. Pursuant to the rule, the Commission is required to set goals for each jurisdictional utility at least once every five

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years. To meet this requirement, a formal evidentiary hearing has been set.

Pursuant to Section 366.82(2), Florida Statutes, the Executive Office of the Governor (Governor's Office) is a party to this proceeding. The Governor's Office did not file a Prehearing Statement in this docket and did not make an appearance at this Prehearing. The Governor's Office has represented to Staff that it does not intend to participate at hearing, take positions, or take an active role in this docket and is simply monitoring the docket. To date, no other person has intervened in this docket.

Based on staff's review of the prefiled testimony and exhibits filed by OUC, staff believes that the positions set forth in this Order are appropriate. Therefore, staff is prepared to present the Commission with a recommendation at hearing for approval of the positions set forth herein.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 366.093, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the

Division of Records and Reporting's confidential files.

IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

* Each witness whose name is preceded by an asterisk (*) has been excused from this hearing, if no Commissioner assigned to this case seeks to cross-examine the particular witness. Parties shall be notified as to whether any such witness shall be required to be present at hearing. The testimony of excused witnesses will be inserted into the record as though read, and all exhibits submitted with those witnesses' testimony shall be identified as shown in Section IX of this Prehearing Order and be admitted into the record.

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
*Robert L. Aasheim	OUC	1, 2, 3, 4, and 5
*Myron R. Rollins	OUC	1, 2, 3, 4, and 5

VII. BASIC POSITIONS

In accordance with Rule 25-17.0021, Florida Administrative Code, the Commission must establish numeric conservation goals for OUC for the period 2001 - 2010. The Commission initiated Docket No. 990722-EG to implement the requirements of Rule 25-17.0021 for OUC. On November 29, 1999, OUC submitted proposed numeric conservation goals to the Commission for approval.

OUC studied numerous demand-side management measures, evaluated the measures using the Commission-approved Florida Integrated Resource Evaluator (FIRE) Model, and developed goals and a demand-side management plan based on the results. OUC appropriately used the rate impact measure (RIM) test to determine the cost-effective level of achievable demand-side management (DSM) goals. OUC focused on demand-side alternatives that were the most likely to be cost-effective for a municipal utility in the state of Florida. Specifically, OUC studied the following: (1) measures previously tested or previously found cost-effective by OUC; (2) Florida Power & Light Company's (FPL) most cost-effective measure from its 1999 goals; and (3) FPL's residential direct load control program. None of these measures was found cost-effective.

Based on previous studies by Kissimmee Utility Authority (Docket No. 980802-EM) and City of Lakeland (Docket No. 990023-EM), OUC did not expect to find any cost-effective DSM measures. Both utilities evaluated dozens of similar DSM measures and found that

none was cost-effective. The inability to find cost-effective DSM measures is primarily the result of the lower cost of new generation, greater efficiency of new generation, lower interest rates, and lower fuel costs and fuel price projections. The lack of cost-effective DSM measures results in decreased conservation goals.

Although OUC found no DSM measures to be cost-effective, OUC is proposing the continuation of several DSM programs it currently offers. These programs include the residential energy survey, residential heat pump, residential weatherization, residential low income home energy fix-up, residential education outreach, and commercial energy survey programs. OUC believes these programs continue to meet the overall needs of its customers at this time.

Because no DSM measures were found cost-effective for OUC using the RIM test, it is not appropriate to establish conservation goals for OUC. As to those DSM programs that OUC wishes to continue to offer, it is reasonable to allow OUC to determine whether or not such programs should be continued because OUC is best-situated to determine its customers' needs. OUC is not a rate-regulated utility and does not recover costs through the Energy Conservation Cost Recovery Clause.

Based on the foregoing, OUC's proposed numeric conservation goals for the period 2001-2010 should be approved.

VIII. ISSUES AND POSITIONS

OUC and Staff agree that the position listed for each issue below is appropriate. Staff recommends approval of all positions.

ISSUE 1: Is the planning process and data used by Orlando Utilities Commission (OUC) in evaluating demand-side measures reasonable?

POSITION: Yes. OUC used the Commission-approved Florida Integrated Resource Evaluator (FIRE) model to evaluate potential cost-effective DSM measures. The FIRE model considers the costs of an identified avoided unit versus program costs. OUC's 1999 Ten Year Site Plan (TYSP) does not require any unit additions between 1999 and 2008. However, since the submittal of OUC's TYSP, OUC sold its Indian River plant. As part of that transaction, OUC

agreed to purchase capacity from that plant for four years. At the expiration of that agreement, OUC will have an option to construct a new facility or sign another four year purchase power agreement. For analysis purposes in this docket, OUC assumed the construction of a new combined cycle facility as its next avoided unit rather than renewal of its purchased power agreement. OUC's analysis was appropriate and reasonable in determining the costs and benefits associated with DSM measures.

ISSUE 2: Do OUC's proposed goals adequately reflect consideration of overlapping measures, rebound effects, free riders, interactions with building codes and appliance efficiency standards, and OUC's latest monitoring and evaluation of conservation programs and measures?

POSITION: Yes. OUC's proposed goals take into consideration overlapping measures, rebound effects, free riders, interactions with building codes and appliance efficiency standards, and the latest monitoring evaluation of conservation measures.

ISSUE 3: Are OUC's proposed goals based upon an adequate assessment of the market segments and major end-use categories pursuant to Rule 25-17.0021(3), Florida Administrative Code?

POSITION: Yes. OUC tested all of its existing DSM measures in addition to the most cost-effective measure from FPL's 1999 goals. OUC also tested FPL's residential direct load control measure. None of the tested measures passed the RIM test for cost-effectiveness. By testing FPL's most cost-effective measure along with its direct load control measure, OUC effectively screened all of FPL's measures for cost-effectiveness. In establishing its 1999 conservation goals, FPL tested approximately 230 DSM measures. As such, OUC adequately assessed all market segments and end-use categories pursuant to Rule 25-17.0021(3), Florida Administrative Code.

ISSUE 4: What should be OUC's annual residential winter and summer kW and annual residential kWh conservation goals for the period 2001-2010?

POSITION: OUC's annual residential winter and summer kW and kWh conservation goals for the period 2001-2010 should be zero, as shown in Exhibit RLA-1.

ISSUE 5: What should be OUC's annual commercial/industrial winter and summer kW and annual commercial/industrial kWh conservation goals for the period 2001-2010?

POSITION: OUC's annual commercial/industrial winter and summer kW and kWh conservation goals for the period 2001-2010 should be zero, as shown in Exhibit RLA-1.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
OUC	OUC	_____ (OUC-1)	OUC 2000 Demand-Side Management (DSM) Plan
Robert L. Aasheim	OUC	_____ (OUC-1)	Section 6.0
		_____ (RLA-1)	Proposed Numeric Goals
Myron R. Rollins	OUC	_____ (OUC-1)	Sections 1.0, 2.0, 3.0, 4.0, 5.0, 6.0, Appendix A, Appendix B

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

Based on staff's review of the prefiled testimony and exhibits filed by OUC, staff believes that the positions set forth above are appropriate. Therefore, staff is prepared to present the Commission with a recommendation at hearing for approval of the positions set forth herein.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality matters at this time.

XIII. OTHER MATTERS

As stated above, staff is prepared to present the Commission with a recommendation at hearing for approval of the positions set forth herein. At the Prehearing Conference, the possibility that the Commission may wish to render a bench decision at the conclusion of the hearing was discussed. Counsel for OUC had no objection to preserving the option of a bench decision. In addition, the Governor's Office has indicated to staff counsel that it has no objection to this procedure. Accordingly, the Commission has the option to render a bench decision in this matter.

It is therefore,

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

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By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 17th day of February, 2000.



SUSAN F. CLARK
Commissioner and Prehearing Officer

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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 the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of

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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.

M E M O R A N D U M

February 17, 2000

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TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (C. KEATING) *WCK RUE*

RE: DOCKET NO. 990722-EG - Adoption of Numeric Conservation Goals and Consideration of National Energy Act Standards (Section 111) by Orlando Utilities Commission.

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Attached is a PREHEARING ORDER to be issued in the above-referenced docket. (Number of pages in order - 11)

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Attachment
cc: Division of Electric and Gas
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