

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Commission review of numeric conservation goals (Florida Power & Light Company).	DOCKET NO. 080407-EG
In re: Commission review of numeric conservation goals (Progress Energy Florida, Inc.).	DOCKET NO. 080408-EG
In re: Commission review of numeric conservation goals (Tampa Electric Company).	DOCKET NO. 080409-EG
In re: Commission review of numeric conservation goals (Gulf Power Company).	DOCKET NO. 080410-EG
In re: Commission review of numeric conservation goals (Florida Public Utilities Company).	DOCKET NO. 080411-EG
In re: Commission review of numeric conservation goals (Orlando Utilities Commission).	DOCKET NO. 080412-EG
In re: Commission review of numeric conservation goals (JEA).	DOCKET NO. 080413-EG ORDER NO. PSC-10-0198-FOF-EG ISSUED: March 31, 2010

The following Commissioners participated in the disposition of this matter:

NANCY ARGENZIANO, Chairman
LISA POLAK EDGAR
NATHAN A. SKOP
DAVID E. KLEMENT

FINAL ORDER GRANTING JEA'S AND PROGRESS ENERGY FLORIDA, INC.'S
MOTION FOR LIMITED REOPENING OF THE RECORD,
DENYING FLORIDA POWER & LIGHT COMPANY'S AND GULF POWER COMPANY'S
MOTION FOR RECONSIDERATION,
DENYING NATURAL RESOURCES DEFENSE COUNCIL AND THE SOUTHERN
ALLIANCE FOR CLEAN ENERGY'S MOTION FOR RECONSIDERATION,
AND
DENYING IN PART AND GRANTING IN PART PROGRESS ENERGY FLORIDA, INC.'S

DOCUMENT NUMBER-DATE

02319 MAR 31 2010

FPSC-COMMISSION CLEAR

MOTION FOR RECONSIDERATION

BY THE COMMISSION:

BACKGROUND

Sections 366.80 through 366.85, and 403.519, Florida Statutes (F.S.), are known collectively as the Florida Energy Efficiency and Conservation Act (FEECA). Section 366.82(2), F.S., requires us to adopt appropriate goals designed to increase the conservation of expensive resources, such as petroleum fuels, to reduce and control the growth rates of electric consumption and weather-sensitive peak demand. Pursuant to Section 366.82(6), F.S., we must review the conservation goals of each utility subject to FEECA at least every five years. The seven utilities subject to FEECA are Florida Power & Light Company (FPL), Progress Energy Florida, Inc. (PEF), Tampa Electric Company (TECO), Gulf Power Company (Gulf), Florida Public Utilities Company (FPUC), Orlando Utilities Commission (OUC), and JEA (referred to collectively as the FEECA utilities). Goals were last established for the FEECA utilities in August 2004 (Docket Nos. 040029-EG through 040035-EG). Therefore, new goals must be established by January 2010.

Intervention was granted to the Natural Resources Defense Council and the Southern Alliance for Clean Energy (NRDC/SACE), the Florida Solar Coalition (FSC), and the Florida Industrial Power Users Group (FIPUG).¹ By Order No. PSC-09-0150-PCO-EG, issued March 11, 2009, we acknowledged the intervention of the Florida Energy and Climate Commission (FECC).

A formal administrative hearing was held on August 10 through 13, 2009, and post-hearing briefs were filed on August 28, 2009. Staff's recommendation was to be considered at the October 27, 2009, Agenda Conference, but it was deferred to the November 10, 2009, Agenda Conference. At the November 10, 2009, Agenda Conference, we directed our staff to review Issues 2, 9, 10, and 11 to develop alternative conservation goals for each utility that were more robust. At the December 1, 2009, Agenda Conference, our staff provided a supplemental recommendation with the documentation and rationale supporting the selection of more robust conservation goals for each FEECA utility. At that Agenda Conference, we voted to approve conservation goals for each FEECA utility. By Order No. PSC-09-0855-FOF-EG, issued December 30, 2009, we set forth its approved conservation goals.

On December 11, 2009, JEA filed a motion for limited reopening of the record and for reconsideration. With its motion, JEA filed a corrected response to Staff's Seventh Set of Interrogatories, No. 50 (Interrogatory No. 50). On December 21, 2009, NRDC/SACE filed a response in opposition to JEA's motion. On January 12, 2010, PEF filed its Motion for

¹ Intervention was granted by Order No. PSC-09-0027-PCO-EG, issued January 9, 2009, with respect to NRDC/SACE; by Order No. PSC-09-0062-PCO-EG, issued January 27, 2009, with respect to the Florida Solar Coalition; by Order No. PSC-09-0500-PCO-EG, issued July 15, 2009, with respect to the Florida Industrial Power Users Group.

ORDER NO. PSC-10-0198-FOF-EG

DOCKET NOS. 080407-EG, 080408-EG, 080409-EG, 080410-EG, 080411-EG, 080412-EG, 080413-EG

PAGE 3

Reconsideration. On January 14, 2010, FPL and Gulf filed their Motions for Reconsideration. On January 14, 2010, NRDC/SACE filed their joint motion for reconsideration and response in opposition to PEF's motion. On January 18, 2010, PEF filed its response in opposition to NRDC/SACE's motion. On January 21, 2010, FPL and Gulf filed their responses in opposition to NRDC/SACE's motion. On January 21, 2010, FIPUG filed its combined response in favor of FPL, PEF, and Gulf's motions and in opposition to NRDC/SACE's motion for reconsideration. On January 21, 2010, NRDC/SACE filed their response in opposition to FPL and Gulf's motions.

At the March 16, 2010 Agenda Conference, PEF made an oral motion for limited reopening of the record to correct its response to Staff's Seventh Set of Interrogatories, No. 66 (Interrogatory No. 66).

This Order addresses the Motions to Reopen the Record filed by JEA and PEF as well as the Motions for Reconsideration filed by FPL, PEF, Gulf, and NRDC/SACE. We have jurisdiction pursuant to Section 366.80-366.82, F.S.

JEA'S MOTION TO REOPEN RECORD

JEA's Motion

JEA requests that we reopen the record of this proceeding for the limited purpose of correcting a certain discovery response served by JEA regarding JEA's historical conservation savings. JEA's incorrect discovery response to Interrogatory No. 50 was entered into the record and relied upon by us to establish JEA's conservation goals. JEA was not aware that its response was in error until after we voted to establish JEA's goals. Our staff's discovery had requested *incremental* annual conservation savings over the past four years, and JEA inadvertently provided *cumulative* values instead, thereby overstating JEA's annual savings for all but the first year.

NRDC/SACE's Response

In its response, NRDC/SACE state that they do not object to the opening of the record to correct the error in the information previously filed by JEA. However, NRDC and SACE object to any reduction in the proposed energy efficiency goals for JEA. No other parties filed a response to JEA's motion.

Analysis and Conclusion

Although we are generally hesitant to reopen the record of any proceeding, we may do so under limited circumstances. We may reopen the record when new evidentiary proceedings are

warranted based on a change of circumstances not present at the time of the proceeding, or a demonstration that a great public interest will be served.²

The discrepancy in JEA's response to Interrogatory No. 50 was discovered after the record had closed and we had rendered our final decision. In this instance, the revised information provides new evidence that was material to our decision in this matter, thus warranting reopening the record. In addition, correcting JEA's incorrect discovery response, upon which we relied in rendering our decision, serves a great public interest because it ensures accuracy in the regulatory process. Although we have issued our final order in this proceeding, the doctrine of administrative finality has not attached because JEA timely filed motions to reopen the record and reconsideration to correct its discovery.³

In the interest of making a fully informed decision, we find that the record shall be reopened for the limited purpose of admitting JEA's corrected response to Interrogatory No. 50, thus correcting a material fact upon which we based our final decision in setting JEA's goals. JEA's corrected response to Interrogatory No. 50 is shown in Attachment A, appended hereto and incorporated herein by reference. The effect of this corrected information on JEA's goals is discussed later in this order.

MOTIONS FOR RECONSIDERATION

Standard of Review

The standard of review for reconsideration of a Commission order is whether the motion identifies a point of fact or law that we overlooked or failed to consider in rendering our order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 162 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex.rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc., 294 So. 2d at 317.

² Order No. PSC-07-1022-FOF-EI, issued December 28, 2007, in Docket No. 070299-EI, In re: Review of 2007 Electric Infrastructure Storm Hardening Plan filed pursuant to Rule 25-6.0342, F.A.C., submitted by Gulf Power Company; see also Order No. PSC-07-0483-PCO-EU, issued June 8, 2007, in Docket No. 060635-EU, In re: Petition for Determination of Need for Electrical Power Plant in Taylor County by Florida Municipal Power Agency, JEA, Reedy Creek Improvement District, and City of Tallahassee.

³ See McCaw Communications of Florida, Inc. v. Clark, 679 So. 2d 1177 (Fla. 1996); Austin Tupler Trucking, Inc. v. Hawkins, 377 So. 2d 679 (Fla. 1979); Peoples Gas System v. Mason, 187 So. 2d 335 (Fla. 1966).

JEA'S MOTION FOR RECONSIDERATION

JEA's Motion

JEA asserts that the conservation goals established by this Commission for JEA were based upon an incorrect discovery response in the record, and that JEA has served its corrected discovery response to Interrogatory No. 50. Thus, JEA respectfully moves for reconsideration of our decision regarding its residential and commercial/industrial conservation goals, and requests that we establish conservation goals based on the average of incremental annual savings over the past four years, as reflected in the corrected response to Interrogatory No. 50. Granting JEA's motion will satisfy the intent of the FEECA statute while precluding an impact on rates. JEA asserts that granting this motion is consistent with our prior orders.⁴ Furthermore, revising JEA's goals will not affect JEA's commitment to continue offering conservation programs to its customers.

NRDC/SACE's Response

NRDC/SACE assert that our approved goals for JEA were based on 290 gigawatt-hours (GWhs) of cumulative savings. NRDC/SACE assert that the goals were devised by taking the sum total of efficiency in the years 2005 through 2008 and dividing the total by four to get an average of the actual energy savings by JEA for those years. NRDC/SACE assert that JEA now proposes corrections to its approved goals to reduce the cumulative goal to 155 GWhs. NRDC/SACE object to any reduction in the energy efficiency goals for JEA.

NRDC/SACE further assert that we have the authority to set conservation goals for JEA and are legally obligated to set goals based on the factors identified in Section 366.82(3), F.S. If we are going to base goals based on past energy efficiency savings achieved by JEA, then the goal should be no less than actual savings achieved by JEA in 2008, which was 31.1 GWhs, as shown in JEA's corrected response to Interrogatory No. 50. This annual goal is more indicative of the level of energy efficiency savings JEA has achieved and can achieve in future years.

Analysis and Conclusion

In setting JEA's goals, we relied upon an incorrect discovery response which we used as the basis for our decision in setting JEA's conservation goals. We are not persuaded by NRDC/SACE's arguments. There was an error in fact (erroneous data provided by JEA) that should be corrected. In the order setting JEA's goals, we approved goals based on an incorrect discovery response. Correcting erroneous data used in arriving at a conclusion does not warrant changing the previously approved means of arriving at the conclusion. In addition, we are not persuaded by NRDC/SACE's assertion that we should change our methodology and establish goals based only on savings achieved in one year. Basing JEA's goals on average incremental

⁴ See Order No. PSC-07-0483-PCO-EU, issued June 8, 2007, in Docket No. 060635-EU, In re: Petition for Determination of Need for Electrical Power Plant in Taylor County by Florida Municipal Power Agency, JEA, Reedy Creek Improvement District, and City of Tallahassee; Order No. 10963, issued July 7, 1982, in Docket No. 810136-EU, In re: Petition of Gulf Power Company for an increase in its rates and charges.

savings over the past four years is consistent with our methodology for OUC and FPUC. Furthermore, NRDC/SACE is simply rearguing points previously considered by us in arriving at its decision which NRDC/SACE is not permitted to do. See Sherwood, 111 So. 2d at 97-98.

Accordingly, we find that JEA’s Motion for Reconsideration is hereby granted because it identifies a point of fact that we overlooked or failed to consider in rendering our decision. Therefore, JEA’s goals shall be established as shown below.

**Revised Commission-Approved Conservation Goals
for JEA**

Year	Residential			Commercial/Industrial		
	Summer (MW)	Winter (MW)	Annual (GWh)	Summer (MW)	Winter (MW)	Annual (GWh)
2010	1.2	1.0	5.4	0.6	0.4	10.1
2011	1.2	1.0	5.4	0.6	0.4	10.1
2012	1.2	1.0	5.4	0.6	0.4	10.1
2013	1.2	1.0	5.4	0.6	0.4	10.1
2014	1.2	1.0	5.4	0.6	0.4	10.1
2015	1.2	1.0	5.4	0.6	0.4	10.1
2016	1.2	1.0	5.4	0.6	0.4	10.1
2017	1.2	1.0	5.4	0.6	0.4	10.1
2018	1.2	1.0	5.4	0.6	0.4	10.1
2019	1.2	1.0	5.4	0.6	0.4	10.1
Total	12.0	10.0	54.0	6.0	4.0	101.0

MOTIONS FOR RECONSIDERATION – TECHNICAL VERSUS ACHIEVABLE

FPL’S MOTION FOR RECONSIDERATION

FPL’s Motion

FPL contends that there is a distinction between “technical potential” and “achievable potential” savings as it relates to measures screened out using the two-year payback criterion. FPL asserts that once the two-year payback measures were screened out at the technical potential, the achievable potential of those measures were not determined. FPL asserts that our order did not consider this when goals were based upon the technical potential savings associated with the screened-out two-year payback measures. FPL further asserts that, pursuant to Rule 25-17.0021(1), F.A.C., goals set by this Commission must be “reasonably achievable” and that undisputed record evidence shows that technical potential savings are not reasonably achievable. FPL asserts that witness Rufo stated that technical potential “is what is technically feasible, regardless of cost, customer acceptance, or normal replacement schedules.” Based on the

foregoing, FPL contends that we mistakenly increased FPL's goals based upon theoretical technical potential savings instead of achievable potential savings. Furthermore, FPL asserts that the goals set for FPL are in error and should be reduced and based upon achievable potential instead. Thus, FPL respectfully submits that the standard for reconsideration has been satisfied and our order should be revised.

NRDC/SACE's Response

NRDC/SACE assert that we used our discretion to reintroduce a portion of the achievable potential eliminated by the two-year payback criteria in order to increase FPL's goals. NRDC/SACE assert that FPL's "reasonably achievable goal" requirement of Rule 25-17.0021, F.A.C., is rebutted by the record because the goals set by this Commission are on the low end of achievable potential. NRDC/SACE contend that the transcript and record before this Commission indicate that we intended to increase the DSM goals for FPL and the other IOUs by using tables which exhibited the energy savings from a selection of measures excluded by the two-year payback. They further contend that the hearing transcripts indicate that we intended to approve an additional amount of energy savings from the two-year payback measures but did not intend to approve individual measures. Accordingly, NRDC/SACE respectfully request that we deny FPL's motion for reconsideration because it does not show any error.

PEF'S MOTION FOR RECONSIDERATION

PEF's Motion

PEF asserts that we based PEF's conservation goals on an enhanced total resource test (E-TRC) and increased PEF's goals further by adding PEF's "Top Ten Residential Free Rider" (Top Ten) measures. PEF contends that its approved conservation goals are based on programs that are technically possible rather than using savings goals based on programs that are achievable for PEF. The use of technical data instead of achievable data appears to be a mistake because technical data reflects what savings could conceivably be attained without any real world constraints, while achievable data reflects what savings a utility can reasonably expect to achieve in real world application. PEF believes that we did not intend to set goals based on technical savings figures. As such, PEF asserts that we mistakenly included technical savings figures in its final Order rather than achievable goals that it intended.

NRDC/SACE's Response

NRDC/SACE oppose PEF's motion for reconsideration. NRDC/SACE dispute PEF's contention that the currently approved goals will raise rates \$5.00 per month. NRDC/SACE assert that because PEF's goals are based on measures which pass the TRC test, these measures will result in lower total system costs. NRDC/SACE contend that these energy savings will result in lower customer bills. NRDC/SACE assert that we did not inadvertently approve goals based on the residential measures in the list of top ten two-year payback measures. NRDC/SACE further assert that the transcript and record before this Commission indicate that we intended to increase the DSM goals for PEF and the other IOUs by using tables which

exhibited the energy savings from a selection of measures excluded by the two-year payback. They further contend that the hearing transcripts indicate that we intended to approve an additional amount of energy savings from the two-year payback measures but did not intend to approve individual measures.

GULF'S MOTION FOR RECONSIDERATION

Gulf's Motion

Gulf asserts that established goals for Gulf included energy and demand savings associated with eight residential "Two-Year Payback Measures," submitted as a late-filed deposition exhibit. These measures used in establishing Gulf's goals reflect the "technical potential" for energy and demand savings and not the "achievable potential." Gulf asserts that it did not provide the achievable potential savings for the Two-Year Payback Measures because those measures were screened out and excluded from Itron's analysis of Gulf's achievable potential savings. Gulf asserts that it included a disclaimer with the late-filed exhibit, explaining that the achievable potential was not developed for these measures and that the technical potential reflected the upper bound of potential savings associated with the measure and that the value did not reflect the achievable potential. Gulf asserts that the technical potential does not represent what amount of savings could be achieved through voluntary programs. Gulf further asserts that the approximate achievable potential value for the Two-Year Payback Measures is 12.2 percent of its technical potential value. Gulf requests that we reconsider our decision and adopt Gulf's revised residential goals as attached to Gulf's motion. Alternatively, Gulf would ask that we bifurcate Gulf's residential goals showing the difference between the E-TRC goals and Two-Year Payback Goals.

NRDC/SACE's Response

NRDC/SACE assert that we used our discretion to reintroduce a portion of the achievable potential eliminated by the two-year payback criteria in order to increase Gulf's goals. NRDC/SACE assert that record evidence shows that the goals set for Gulf are well within the achievable range.

Contrary to Gulf's assertion that we overlooked or failed to consider our goals on the technical potential of the top ten residential measures, NRDC/SACE contend that the transcript and record before us indicate that we intended to increase the DSM goals for Gulf and the other IOUs by using tables which exhibited the energy savings from a selection of measures excluded by the two-year payback. They further contend that the hearing transcripts indicate that we intended to approve an additional amount of energy savings from the two-year payback measures but did not intend to approve individual measures. Accordingly, NRDC/SACE respectfully request that we deny Gulf's motion for reconsideration because it does not show any error.

FIPUG's Response

FIPUG filed one consolidated response in support of FPL, PEF, and Gulf. FIPUG's arguments in support of FPL, PEF, and Gulf are summarized below.

FIPUG asserts that it supports cost-effective conservation and an approach to conservation that keeps rates reasonable and competitive while striking the appropriate balance between conservation and rate impact. FIPUG asserts that our conservation goals fail to maintain that balance and will result in a large rate impact on all customers.

FIPUG's response is supportive of FPL, PEF, and Gulf. FIPUG asserts that the "technically possible" goals set by this Commission for FPL, PEF, and Gulf ignore the real-world constraints and assume that 100 percent of the measures will be adopted by all ratepayers. This is unreasonable and burdens ratepayers with unnecessary costs. FIPUG contends that the use of "technically possible" goals are inappropriately inflated and will require ratepayers to pay for conservation measures that will never be implemented at the "technically possible" level. Thus, FIPUG asserts that we should clarify that such an approach was not our intent.

Analysis – Technical versus Achievable

The standard of review for reconsideration is whether the motion identifies a point of fact or law that we overlooked or failed to consider in rendering our order.

FPL, PEF, and Gulf contend that the approved conservation goals are based on programs that are technically possible rather than achievable. They also contend that the portion of the energy conservation goals associated with the less than two-year payback criteria that were approved by this Commission in Order No. PSC-09-0855-FOF-EG are overstated. Gulf further contends that its goals should be reduced to 12.2 percent of the measures' technical potential value.

In rendering our decision, we considered our staff's illustration of savings associated with applying the two-year payback criteria that eliminated many residential measures with considerable potential for energy savings. FPL's, PEF's, and Gulf's arguments overlook our discussion of the issue and subsequent decision that omitted reference to any particular measures or limitation on the number of those measures used.

In Order No. PSC-09-0855-FOF-EG, issued on December 30, 2009, on page 9, we found:

We are concerned that the utilities' use of the two-year payback criteria had the effect of screening out a substantial amount of potential savings. In order to recognize this potential, we have included in the residential goals for FPL, PEF, Gulf and TECO, savings from the residential measures included in the top-ten energy savings measures that were screened-out by the two-year payback criterion.

In that same order, on page 15, we further found:

Our intention is to approve conservation goals for each utility that are more robust than what each utility proposed. Therefore, we approve goals based on the unconstrained E-TRC Test for FPL, PEF, TECO, Gulf, and FPUC. The unconstrained E-TRC test is cost effective, from a system basis, and does not limit the amount of energy efficiency based on resource reliability needs. The E-TRC test includes cost estimates for future greenhouse gas emissions, but does not include utility lost revenues or customer incentive payments. As such, the E-TRC values are higher than the utility proposed E-RIM values. In addition, we have included the saving estimates for the residential portion of the top ten measures that were shown to have a payback period of two years or less in the numeric goals for FPL, PEF, TECO, and Gulf. *When submitting their programs for our approval, the utilities can consider the residential portion of the top ten measures, but they shall not be limited to those specific measures.*

(Emphasis added.)

As explicitly stated in our order, we intended the two-year payback element of our goals to be nothing more than a numerical representation of the savings we expect the utilities to be able to realize by including one or more of those identified measures in their energy conservation programs. Our inclusion of the residential portion of the two-year payback was not intended to limit or bind the utilities to specific measures; rather, our use of the numeric values of the residential portion of the two-year payback measures was merely intended for purposes of establishing the numeric goals that the utilities are required to achieve. Moreover, it is clear from the two Agenda Conference transcripts that we considered and understood the differences between technical and achievable potential savings when we decided to establish the conservation goals.⁵

We believe that FPL, PEF, and Gulf have not identified a point of fact or law that we overlooked or failed to consider in rendering our order. The matters raised in FPL's, PEF's, and Gulf's motions were considered by us and it is not proper for FPL, PEF, and Gulf to reargue these matters again upon reconsideration. See Sherwood, 111 So. 2d at 97-98. With regard to Gulf's disclaimer argument, as discussed above, we were aware of the differences between technical and achievable potential. With regard to Gulf's request to bifurcate its goals, the possibility of setting separate sets of goals was considered, but ultimately not implemented.⁶ Accordingly, we find that the motions for reconsideration filed by FPL, PEF, and Gulf regarding the argument technical versus achievable are hereby denied because the motions fail to identify any point of fact or law that we overlooked or failed to consider in rendering our order.

⁵ November 10, 2009, Agenda Conference Transcript, Item No. 9, at 17-31, 51-60, 98-101; December 1, 2009, Agenda Conference Transcript, Item No. 12, at 19-23, 43-49, 58-61, 78-80.

⁶ November 10, 2009, Agenda Conference Transcript, Item No. 9, at 96-98.

PEF'S MOTION FOR RECONSIDERATION – DOUBLE-COUNTED MEASURES

PEF's Motion

PEF asserts that in setting its goals we double-counted three measures, once in PEF's E-TRC goals and again in PEF's Top Ten goals. The double-counting of these measures also appears to be a mistake because double-counting results in higher DSM goals for PEF than would have been the case absent the double-counting error.

Because of this mistake, PEF respectfully requests that we reconsider our decision and issue corrected conservation goals for PEF.

NRDC/SACE's Response

NRDC/SACE contend that PEF fails to explain the origin of the double counting error. PEF failed to explain whether PEF was responsible for the error or provide any documents demonstrating the alleged error. Moreover, the savings data presented in PEF's motion does not match the savings data presented in staff's November 20, 2009, supplemental recommendation. Moreover, NRDC/SACE assert that PEF should not be permitted to selectively revise its data which it presented to the Commission. To the extent the Commission considers PEF's request, it should only do so as part of a full review of the two-year payback screen and require PEF to fully explain its alleged errors.

FIPUG's Response

FIPUG filed one response in support of FPL, PEF, and Gulf. FIPUG's arguments are summarized above.

Oral Motion to Reopen Record

At the March 16, 2010 Agenda Conference, PEF made an oral motion to reopen the record for the limited purpose of admitting PEF's corrected response to Staff's Seventh Set of Interrogatories, No. 66. Consistent with our decision with respect to JEA's motion to reopen the record, we find that the record shall be reopened for the limited purpose of admitting PEF's corrected response to Interrogatory No. 66, thus correcting a material fact upon which we based our final decision in setting PEF's goals. PEF's corrected response to Interrogatory No. 66 is shown in Attachment B, appended hereto and incorporated herein by reference. The effect of this corrected information on PEF's goals is discussed later in this order.

Analysis and Conclusion

Based on its oral motion to reopen the record, PEF contends that the conservation goals established were based on an incorrect discovery response provided by PEF. In setting PEF's goals, we relied upon an incorrect discovery response as a basis for our decision in setting PEF's conservation goals. Accordingly, we find that PEF's Motion for Reconsideration is hereby

granted with respect to the double-counted measures because it identifies a point of fact that we overlooked or failed to consider in rendering our decision. Therefore, PEF's goals shall be established as shown below.

Revised Commission-Approved Conservation Goals for PEF

Year	Residential				Commercial/Industrial		
	Summer (MW)	Winter (MW)	Annual (GWh)		Summer (MW)	Winter (MW)	Annual (GWh)
2010	79.6	81.3	261.6		13.7	5.3	31.1
2011	81.5	86.8	267.6		16.2	5.3	33.0
2012	84.5	90.8	276.7		25.5	11.4	35.9
2013	86.5	93.5	282.7		25.9	11.5	37.7
2014	88.4	96.2	288.8		26.4	11.5	39.6
2015	93.8	100.9	309.9		27.6	11.7	46.2
2016	102.3	111.7	297.8		27.1	11.6	42.5
2017	101.9	111.1	291.8		27.0	11.6	40.6
2018	96.4	103.6	279.7		25.7	11.4	36.8
2019	81.9	79.1	270.6		22.3	11.3	34.0
Total	896.6	955.1	2827.1		237.3	102.6	377.4

NRDC/SACE'S MOTION FOR RECONSIDERATION

NRDC/SACE's Motion

NRDC/SACE assert that the two-year payback screen used by PEF, FPL, TECO, and Gulf should not be employed because it is arbitrary, does not achieve the claimed purpose of limiting free riders, and eliminates the most cost-effective efficiency measures. NRDC/SACE assert that several Commissioners had expressed strong concerns about the use of the two-year payback screen in this case, and that even a former Commissioner during the 1994 goals proceeding expressed concerns about its use. Thus, we should reconsider our use of the two-year payback screen in general. NRDC/SACE assert that there is a question of whether we intended to include ten residential two-year payback measures or a variable number with respect to all four utilities. NRDC/SACE argue that if we wish to approve some but not all of the energy savings screened by the two-year payback measures, we should approve for each utility a portion of achievable potential results for the two-year payback, as identified by Witness Spellman. NRDC/SACE assert that during the pendency of the reconsideration of the two-year payback criteria, we should retain the currently approved conservation goals for each of the utilities.

FPL's Response

FPL asserts that NRDC/SACE fail to point to any fact or law that was overlooked. First, NRDC/SACE reargue their position on the use of the two-year payback screen. The two-year

payback screen was thoroughly litigated during the DSM proceeding and NRDC/SACE initially agreed to the use of the two-year payback screen. Despite NRDC/SACE's assertions to the contrary, we chose to accept, in part, the use of the two-year payback screen. FPL asserts that NRDC/SACE's two-year payback argument does not raise a point of law or mistake; thus, it fails to satisfy the standard for reconsideration.

Second, FPL disagrees with NRDC/SACE's assertion that we may have erred in setting goals based on the variable number of residential two-year payback measures screened out for each utility. FPL asserts this argument is inconsistent with NRDC/SACE's argument that we set goals based on energy savings and not particular measures. FPL also asserts that NRDC/SACE's argument is baseless as we were aware that some utilities had more residential measures when it set conservation goals. FPL asserts that NRDC/SACE's "arbitrary feeling that a mistake may have been made. . ." fails to provide an appropriate basis for reconsideration. Stewart Bonded Warehouse, 294 So. 2d at 317. FPL respectfully requests that NRDC/SACE's motion be denied.

PEF's Response

PEF asserts that the arguments offered by NRDC/SACE do not state a proper ground for reconsideration. First, that several Commissioners allegedly expressed "strong concerns" regarding the two-year payback screen means that we did consider the two-year payback screen when making its decision. Second, the allegation that a former Commissioner in 1994 allegedly expressed concerns about the two-year payback screen is irrelevant to our decision in this proceeding. Finally, NRDC/SACE's opinion that the two-year payback screen does not make sense does not constitute proper grounds for reconsideration. PEF asserts that NRDC/SACE made these two arguments at the hearing and we already considered both when we made our decision. PEF respectfully requests that we deny NRDC/SACE's motion for reconsideration.

Gulf's Response

Gulf asserts that NRDC/SACE are seeking a wholesale reconsideration of our treatment of the two-year payback measures and that we should reverse our ruling on the treatment of those measures. Gulf asserts that NRDC/SACE do not base their request on points of law or fact overlooked by this Commission. Gulf asserts that reconsideration is proper where we overlooked or failed to consider specific facts or points of law in rendering its order. See Order No. PSC-09-0571-FOF-EI, issued August 21, 2009, in Docket No. 080317-EI, In re: Petition of Rate Increase by Tampa Electric Company (citing Stewart Bonded Warehouse, Inc. v. Bevis, 291 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); Pingre v. Quaintance, 394 So.2d 161 (Fla. 1st DCA 1981). Moreover, Gulf asserts it is not appropriate to reargue matters which have already been considered and doing so is reversible error. See Order No. PSC-08-0304-PCO-TX, issued May 8, 2008, in Docket No. 080065-TX, In re Investigation of Vilaire Communication, Inc. (denying motion for reconsideration). Because NRDC/SACE's motion does not properly state grounds for reconsideration and fails as a matter of law, Gulf respectfully requests that we deny NRDC/SACE's motion.

FIPUG's Response

FIPUG's argues that we should reject NRDC/SACE's suggestion that rate impact is irrelevant. FIPUG asserts that the record shows that costs due to the new goals will increase. Moreover, FIPUG contends that goals should be set based on parameters that can actually be met and consider real world conditions, not simply programs which have "technical potential."

Analysis and Conclusion

As previously stated, the standard of review for reconsideration is whether the motion identifies a point of fact or law that we overlooked or failed to consider in rendering our order. In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959), citing State ex rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based on an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974). Moreover, reconsideration granted based on reweighing or rearguing evidence is reversible error on appeal. See Stewart Bonded Warehouse, Inc., 294 So. 2d 315 at 317.

NRDC/SACE's assertions that the use of the two-year payback screen is arbitrary or that goals should have been established based on Witness Spellman's achievable potential results are not points of fact or law that we overlooked or failed to consider. The decision to screen out measures using the two-year payback criteria was a decision by the Collaborative of which NRDC/SACE was a participant; it was not our decision. With regards to basing goals on Witness Spellman's achievable potential results which was in the record, we were within our statutory discretion not to base conservation goals on Witness Spellman's results and to approve conservation goals based on other competent, substantial evidence in the record. NRDC/SACE are simply rearguing matters that have been previously considered by this Commission. As discussed above, reargument of matters already considered is not an appropriate basis for reconsideration.

Accordingly, we find that NRDC/SACE's motion for reconsideration is hereby denied because the motion is essentially reargument, and fails to identify any point of fact or law that we overlooked or failed to consider in rendering our order.

ORDER NO. PSC-10-0198-FOF-EG

DOCKET NOS. 080407-EG, 080408-EG, 080409-EG, 080410-EG, 080411-EG, 080412-EG, 080413-EG

PAGE 15

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that JEA's motion for limited reopening of the record is hereby granted as set forth herein. It is further

ORDERED that JEA's Motion for Reconsideration is hereby granted as set forth herein. It is further

ORDERED that JEA's numeric conservation goals shall be revised as set forth herein. It is further

ORDERED that Florida Power & Light Company's Motion for Reconsideration is hereby denied as set forth herein. It is further

ORDERED that Progress Energy Florida, Inc.'s motion for limited reopening of the record is hereby granted as set forth herein. It is further

ORDERED that Progress Energy Florida, Inc.'s Motion for Reconsideration is denied in part and granted in part as set forth herein. It is further

ORDERED that Progress Energy Florida, Inc.'s numeric conservation goals shall be revised as set forth herein. It is further

ORDERED that Gulf Power Company's Motion for Reconsideration is hereby denied as set forth herein. It is further

ORDERED that the Natural Resources Defense Council and the Southern Alliance for Clean Energy's Motion for Reconsideration is hereby denied as set forth herein. It is further

ORDERED that all attachments appended hereto are incorporated herein by reference. It is further

ORDERED that these dockets shall be closed after the time for filing an appeal has run.

ORDER NO. PSC-10-0198-FOF-EG

DOCKET NOS. 080407-EG, 080408-EG, 080409-EG, 080410-EG, 080411-EG, 080412-EG,
080413-EG

PAGE 16

By ORDER of the Florida Public Service Commission this 31st day of March, 2010.



ANN COLE
Commission Clerk

(S E A L)

KEF

NOTICE OF 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.

Any party adversely affected by the Commission's final action in this matter may request 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 by filing a notice of appeal with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

50. Please complete the table below by providing the existing and proposed annual demand goals for summer (MW), winter (MW), and as annual energy (GWh) incrementally for each year. Please also provide the actual annual savings achieved for summer (MW), winter (MW), and as annual energy (GWh) incrementally for each year.

Original Response: Please see the completed table below, which includes the requested information.

Year	Summer Demand (MW)			Winter Demand (MW)			Annual Energy (GWh)		
	Existing Goals	Proposed Goals	Actual Savings	Existing Goals	Proposed Goals	Actual Savings	Existing Goals	Proposed Goals	Actual Savings
2005	0		1.6	0		1.2	0		4.6
2006	0		4.4	0		2.4	0		18.0
2007	0		4.3	0		2.6	0		31.1
2008	0		7.4	0		5.7	0		62.1
2009	0			0			0		
2010	0	0		0	0		0	0	
2011	0	0		0	0		0	0	
2012	0	0		0	0		0	0	
2013	0	0		0	0		0	0	
2014	0	0		0	0		0	0	
2015		0			0			0	
2016		0			0			0	
2017		0			0			0	
2018		0			0			0	
2019		0			0			0	

Corrected Response: Please see the completed table below, which includes the requested information.

Year	Summer Demand (MW)			Winter Demand (MW)			Annual Energy (GWh)		
	Existing Goals	Proposed Goals	Actual Savings	Existing Goals	Proposed Goals	Actual Savings	Existing Goals	Proposed Goals	Actual Savings
2005	0		1.6	0		1.2	0		4.6
2006	0		2.7	0		1.3	0		13.4
2007	0		-0.1	0		0.1	0		13.0
2008	0		3.1	0		3.1	0		31.1
2009	0			0			0		
2010	0	0		0	0		0	0	
2011	0	0		0	0		0	0	
2012	0	0		0	0		0	0	
2013	0	0		0	0		0	0	
2014	0	0		0	0		0	0	
2015		0			0			0	
2016		0			0			0	
2017		0			0			0	
2018		0			0			0	
2019		0			0			0	

Progress Energy Florida, Inc.’s Corrected Supplemental Response to Staff’s Seventh Set of Interrogatories, No. 66

Residential Measure List: TRC Achievable Results NOT in the RIM portfolio *

Measure Information				Cost Effectiveness		Average Annual Savings *			Single**	Applicable	GWH	Single**	Summer	Single**	Winter
Measure Type	Customer Type	Measure #	Measure Name	E-TRC Test Value	E-RIM Test Value	Summer Demand (MW)	Winter Demand (MW)	Annual Energy (GWH)	Measure KWH	Households or Bulbs	Savings	Summer KW	MW Savings	Winter KW	MW Savings
EE	Res - Mobile Home	231	CFL (18-Watt integral ballast), 2.5 hr/day	5.81	0.65	0.04395	0.06266	0.84000	102.7	711,879	73.11	0.0053	3.80	0.0076	5.41
EE	Res - Single Detached	801	Two Speed Pool Pump (1.5 hp)	2.90	0.84	0.42533	0.16819	1.99217	820.5	251,878	206.67	0.1752	44.13	0.0341	8.59
EE	Res - Multi Attached	802	High Efficiency One Speed Pool Pump (1.5 hp)	5.67	0.86	0.00363	0.00071	0.01701	841.0	3,519	2.96	0.1796	0.63	0.0343	0.12

*Per Interrogatory question 66, these are the differences between E-RIM High and E-TRC High divided by the 10 Year Plan to get Annual Savings.

**The actual single measure annual savings per household.

Source – Staff’s 7th Set of ROGs to PEF (Nos. 41-80) Attachment H - 2 of 12; F_Saere_PEF_TRC_H.xls subtracting F_Saere_PEF_RIM_H.xls