



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: May 5, 1995

TO: Parties to IOU Electric Utility Conservation Program Dockets Nos. 941170-EG, 941171-EG, 941172-EG & 941173-EG

FROM: Joseph D. Jenkins, Director *MP*
Division of Electric and Gas

RE: Staff Communications

Although staff communications Rule 25-22.033 does not apply to PAA dockets, I am none-the-less hereby informing current and potential parties of communications received from the following:

1. Gulf Power Company. Docket No. 941172-EG. On May 4, 1995 I received a fax saying my April 14, 1995 comments were incorrect. This fax is on file in with Records and Reporting.
2. Florida Power & Light Company. Docket No. 941170-EG. On May 1, 1995, I received a letter saying the Commission does not need to rule the many measurement issues raised by LEAF and that doing so may make measurement changes administratively burdensome. The letter is in file with Records and Reporting.

cc:

- ACW* _____ Records and Reporting
- AS* _____ Palecki
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MAY 1995

May 1, 1995

FILED 5/1/95

Mr. Joe Jenkins, Director
Division of Electric and Gas
Florida Public Service Commission
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BY HAND DELIVERY

Re: Docket No. 941170-EG

Dear Mr. Jenkins:

On April 17, 1995 you received extensive comments from LEAF regarding the DSM plans filed by investor owned electric utilities, asking you to include in your recommendation to the Commission three specific recommendations. Given the length of LEAF's filing, FPL will not attempt a detailed rebuttal of all points. However, FPL does have a summary response, which is set forth in the remainder of this letter.

LEAF's suggestions reflect an overengineered approach to utility DSM offerings. LEAF's micromanagement of DSM is inconsistent with the discretionary regulatory approach to DSM set forth in FEECA and the rules implementing FEECA. In addition, LEAF is attempting to have the Commission adopt through backdoor arguments positions which LEAF has previously advocated and not succeeded in having the Commission embrace. In one instance LEAF is even cynically urging a penalty mechanism on the Commission which LEAF at the same time is arguing to the Supreme Court the Commission is not authorized to adopt. FPL urges you not to make any of LEAF's recommendations.

There is no need to direct each utility to file a monitoring and evaluation plan. The purpose of this docket is plan review and approval. Approval should not be conditioned upon the filing and approval of a monitoring and evaluation plan. LEAF is essentially urging the Commission to engage in program design, an area clearly left by FEECA to utilities, unless they fail to follow their approved plans. To be able to satisfy Commission reporting requirements, FPL will have to conduct monitoring and evaluation, and it plans to do so. However, preapproval of monitoring and evaluation is micromanagement of plan implementation which is not contemplated or needed anymore than approving the number of employees used to deliver DSM. FPL has real concerns whether there is a need to create an additional filing requirement. Submission of a monitoring and evaluation plan will delay an already incomprehensibly slow process to set goals and get a new DSM plan in the field. It will heighten controversy at a time when it seems that most fundamental policy issues have been resolved. In all likelihood it will cause all parties to expend resources better spent on program implementation and administration.

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Rather than set up additional opportunities for litigation (perhaps relitigation) of issues, the Staff should recommend to the Commission getting these DSM plans into the field.

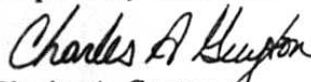
The Commission should use the same approach to measuring goals achievement that was used in setting goals. LEAF postulates a manifestly unfair proposition. They maintain that free riders were counted in setting goals but argue that free riders should not be recognized in determining whether goals are met. They compound the inequity by acknowledging that "free-ridership estimation... is still an inexact science." LEAF is really advocating that the Commission should change the rules of the game so that utilities have to perform TRC DSM to be able to meet RIM based goals. They have simply disguised their continued attempt to extend the RIM vs TRC debate. If the Commission has set goals including free-riders using 100% of RIM potential, but utilities are not allowed to count part of that potential toward their goals because it includes free-riders, the only way left to achieve the goals is for utilities to engage in DSM that failed RIM but passed TRC. FPL has other problems with LEAF's arguments regarding free-riders, which for brevity are omitted, but this obvious attempt by LEAF to relitigate the RIM vs TRC controversy by creating a circumstance where utilities cannot achieve their goals even if they capture the entire potential used to set their goals shows why this LEAF recommendation should not be embraced by the Staff.

Under the Commission's conservation rules there is already a meaningful annual review of goals compliance, and LEAF's suggestion of a formal penalty/incentive mechanism has already been considered by the Commission. LEAF urged in the conservation goals rulemaking a formal goals compliance review process with an incentive/penalty mechanism. The Commission declined to adopt LEAF's suggestion. Now LEAF urges the Commission to transform its ECCR proceeding. The Commission has already identified in its conservation rule its annual goals compliance mechanism - reporting of extensive program and goals achievements through a prescribed report. There is no need at this time to commit to more. Right now the Commission has a wide range of available responses, including, but not limited to, looking at goals compliance in the ECCR proceedings. It only limits Commission flexibility to commit to a specific approach at this time when it is not apparent that there needs to be any additional proceeding (goals may actually be achieved). It is amazing that LEAF urges the Staff to recommend to the Commission that it adopt a formal penalty mechanism for failure to achieve goals, given that LEAF is currently arguing to the Supreme Court that the creation of a pass/fail automatic penalty approach exceeds the Commission's authority. An automatic penalty approach rather than a case by case consideration of whether a penalty may be appropriate would be inconsistent with FEECA and the conservation rules, but the Commission has declined to go that far in its goals orders, and it should not be led by LEAF to such a position now. Where LEAF is ultimately headed, to a penalty/reward mechanism to provide DSM incentives, has been considered by the Commission in at least two other proceedings when advocated by LEAF and should not be resurrected at the tail end of the process to get DSM plans approved and operational.

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The Legislature's approach in FEECA **was not to create a micromanaged approach to utility DSM. Considerable discretion was intentionally left to the utilities.** The Commission's role is to set goals, review and approve plans, allow cost recovery, and consider performance in rate cases. The Commission's authority to **actually design programs** is very narrow, essentially reserved for utility failure to follow the **plans they designed.** There are no statutory references to the far more intrusive steps of requiring the **submission, review and approval** of monitoring and evaluation plans or the creation of **annual formal compliance reviews** with incentive /penalty mechanisms. LEAF's attempt to overengineer DSM delivery simply is not contemplated under FEECA and is not necessary. We urge the Staff not to incorporate LEAF's suggestions in Staff's recommendation.

Respectfully submitted,



Charles A. Guyton
Attorney for Florida Power &
Light Company

cc: Parties of Record