

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE:

ADOPTION OF NUMERIC CONSERVATION GOALS
FLORIDA POWER & LIGHT COMPANY
FLORIDA POWER CORPORATION
GULF POWER COMPANY
TAMPA ELECTRIC COMPANY

DOCKET NO. 971004-EG
DOCKET NO. 971005-EG
DOCKET NO. 971006-EG
DOCKET NO. 971007-EG

MOTION FOR PROCEDURAL ORDER

The Legal Environmental Assistance Foundation, Inc., ("LEAF"), files this Motion for Procedural Order and as grounds states:

1. By this motion LEAF asks the Commission to:
 - a) establish procedures to guide which energy and demand savings measures (including measure combinations) merit cost-effectiveness evaluation in this case so Commission review of utility goals proposals is not based on incomplete and legally insufficient information; and
 - b) either provide a reasonable opportunity for all parties to provide input to the Commission on said measures (as provided on Attachment A) or, in the alternative, direct utilities to test the cost-effectiveness of specific measures as provided on Attachment B.

The rationale for these actions is set forth more fully in the attached "Brief in Support of LEAF's Motion for Procedural Order" (incorporated herein by this reference). LEAF plans to file another motion in the near future asking the Commission to establish procedures to guide cost-effectiveness evaluation and reporting.

Respectfully submitted this 22nd day of July, 1998.

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REGISTRATION/REPORTING

ATTACHMENT A

1. The Commission should direct utilities to file a report addressing which of the following measures (including measure combinations) they propose to evaluate for cost-effectiveness in this case:

- a. Measures identified in Order No. PSC-93-1679-PCO-EG (4th procedural order) as "UP" measures for any utility;
- b. Measures identified in Order No. PSC-93-1679-PCO-EG (4th procedural order) as a "CUE" measure;¹
- c. Measures now included in Commission-approved DSM programs that were not analyzed for cost-effectiveness in the last goal-setting proceeding;
- d. Measures which the utility considers a viable candidate measure in view of its technical potential to offer reasonably achievable energy or demand savings;
- e. Measures which LEAF considers viable candidate measures² in view of their technical potential to offer reasonably achievable energy or demand savings (on Exhibit I, attached hereto and adopted by this reference); and
- f. Other measures which the Commission, to follow up on directives in the last goal-setting proceeding³ or otherwise,

¹In the last goal-setting proceeding utilities argued these measures should be in the building code rather than evaluated for inclusion in utility programs. The Commission required utilities to evaluate cost-effectiveness of these measures and arranged for an interagency task force to evaluate including the measures in the building code. Since then, the Commission adopted the report of that task force -- including a recommendation against revising the building code to include "CUE" measures.

²In the last goal-setting proceeding, LEAF proposed additional measures meriting cost-effectiveness evaluation. To avoid delaying the proceeding, LEAF voluntarily requested withdrawal of these measures and in granting LEAF's request, the Commission's noted that the LEAF measures "can be considered in future goal setting proceedings" Order No. PSC-93-1679-PCO-EG, issued 11/19/93, at p. 4. Exhibit I contains the measures so withdrawn with a few updates.

³The Commission's Final Order in the last goal-setting proceeding contained several directives that warrant review now. Of key importance to LEAF are 1) that utilities were to assure low income customers had a fair opportunity to participate in utility DSM programs and 2) that utilities should investigate solar green

determines should be considered in this case (e.g., solar/natural gas substitution, solar green pricing, low income, R&D measures).

2. If a utility proposes NOT to run each of the Commission's three cost-effectiveness tests⁴ on any of the aforesaid measures, it shall identify each such measure or test and explain its rationale for not so testing the measure.

3. Each utility should describe the method it proposes to use to determine potential for competing measures.

4. Once utility reports are filed, the Commission should, after providing a reasonable opportunity for staff and other parties to provide input, determine which measures the utilities are to test for cost-effectiveness.

pricing. Order No. PSC-94-1313-FOF-EG, 10/25/94.

⁴These tests, the TRC, RIM, and Participants Test, are described in the Commission's DSM Cost-Effectiveness Manual, adopted in Rule 25-17.008, F.A.C.

ATTACHMENT B

1. Before developing its goals proposal in this case, each utility shall perform each of the Commission's three DSM tests¹, on the following measures:

a. Measures identified in Order No. PSC-93-1679-PCO-EG (4th procedural order) as "UP" measures for any utility;

b. Measures identified in Order No. PSC-93-1679-PCO-EG (4th procedural order) as a "CUE" measure;

c. Measures now included in Commission-approved DSM programs that were not analyzed for cost-effectiveness in the last goal-setting proceeding;

d. Measures which the utility considers a viable candidate measure in view of its technical potential to offer reasonably achievable energy or demand savings;

e. Measures which LEAF considers viable candidate measures in view of their technical potential to offer reasonably achievable energy or demand savings (on Exhibit I, attached hereto and adopted by this reference); and

f. Other measures which the Commission, to follow up on directives in the last goal-setting proceeding or otherwise, determines should be considered in this case (e.g., R&D, solar/natural gas substitution measures).

2. Each utility should describe its approach to complying with the Commission's directives in Order No. PSC-94-1313-FOF-EG, 10/25/94 addressing low income customers and green pricing or other methods to promote solar energy.

¹These tests, the TRC, RIM, and Participants Test, are described in the Commission's DSM Cost-Effectiveness Manual, adopted in Rule 25-17.008, F.A.C.

LEAF's Supplemental Measures

Residential New Construction

- LEAF Blower door infiltration reduction
- LEAF Diagnostic guided duct leakage reduction
- LEAF Correction of pressure imbalance
- LEAF Heat Pump & A/C sizing, air flow, refrigerant charge
- LEAF Compact fluorescent bulbs
- LEAF Hard wire compact fluorescent fixtures
- LEAF Compact fluorescent outdoor bulbs
- LEAF Hard wire compact fluor. outdoor fixtures

Residential Existing Construction

- LEAF Blower door infiltration reduction
- LEAF Diagnostic guided duct leakage reduction
- LEAF Correction of pressure imbalance
- LEAF Heat Pump & A/C sizing, air flow, refrigerant charge.
- LEAF Compact fluorescent bulbs
- LEAF Hard wire compact fluorescent fixtures
- LEAF Compact fluorescent outdoor bulbs
- LEAF Hard wire compact fluor. outdoor fixtures

LEAF's Supplemental Measures

Commercial New Construction	Commercial Existing Construction
LEAF Exit Sign, Electroluminescent	LEAF Exit Sign, Electroluminescent
LEAF Exit Sign, LED	LEAF Exit Sign, LED
LEAF Halogen Lamps for Incandescent	LEAF Halogen Lamps for Incandescent
LEAF Ellipsoidal Reflector for Incandescent	LEAF Ellipsoidal Reflector for Incandescent
LEAF Incandescent Reflector	LEAF Incandescent Reflector
LEAF Ambient/Task Lighting Design	LEAF Ambient/Task Lighting Design
LEAF Loading Dock Seals/Thermal Curtains	LEAF Fluorescent to HID
LEAF Low Leakage Dampers	LEAF Incandescent to HID
LEAF Proper HVAC installation practices	LEAF Loading Dock Seals/Thermal Curtains
LEAF HVAC Controls and/or EMS:	LEAF Low Leakage Dampers
LEAF Optimum Start/Stop	LEAF Proper HVAC installation practices
LEAF Outside Air Economizer	LEAF Decrease Infiltration
LEAF Chilled Water Reset	LEAF HVAC Controls and/or EMS:
LEAF Wet-side Economizer	LEAF Optimum Start/Stop
LEAF Increase Delta-T	LEAF Outside Air Economizer
LEAF Desiccant Cooling	LEAF Chilled Water Reset
LEAF Correct Sizing of Cooling Equipment	LEAF Wet-side Economizer
LEAF Heat Recovery from Ventilation Exhaust	LEAF Increase Delta-T
LEAF Heat Recovery from Refrigeration for DHW	LEAF Desiccant Cooling
LEAF Comprehensive motor drive optimization	LEAF Correct Sizing of Cooling Equipment
LEAF Correct Sizing of Motors	LEAF Heat Recovery from Ventilation Exhaust
LEAF Low Temperature Dishwasher	LEAF Heat Recovery from Refrigeration for DHW
LEAF High efficiency packaged refrigeration	LEAF Comprehensive motor drive optimization
LEAF Refrigeration:	LEAF Correct Sizing of Motors
LEAF Clean Condenser & Evaporator Coils	LEAF DHW Setpoint Reduction
LEAF Floating Head Pressure Controls	LEAF Low Temperature Dishwasher
LEAF High Efficiency Stand Alone Compressor	LEAF High efficiency packaged refrigeration
LEAF Reciprocating to Screw Compressor	LEAF Refrigeration:
LEAF Evaporative Defrost Measures	LEAF Clean Condenser & Evaporator Coils
LEAF High Effic. Evaporator Fan Motors	LEAF Floating Head Pressure Controls
LEAF Evaporator Fan Cycling Control	LEAF High Efficiency Stand Alone Compressor
LEAF Reduce Fan HP on Evaporator	LEAF Reciprocating to Screw Compressor
LEAF Display Case High Effic. Fan Motor	LEAF Evaporative Defrost Measures
LEAF Display Case Vinyl Strip Curtains	LEAF High Effic. Evaporator Fan Motors
LEAF Display Case Dual Gaskets	LEAF Evaporator Fan Cycling Control
LEAF Cooking - Efficient Solid Element Burners	LEAF Reduce Fan HP on Evaporator
LEAF Improved Oven Insulation/Door Seals	LEAF Display Case High Effic. Fan Motor
LEAF Cooking - Solid State Temperature Controls	LEAF Display Case Vinyl Strip Curtains
LEAF Energy Efficient Clothes Washer	LEAF Display Case Dual Gaskets
LEAF Roof Wetting Devices	LEAF Cooking - Efficient Solid Element Burners
	LEAF Improved Oven Insulation/Door Seals
	LEAF Cooking - Solid State Temperature Controls
	LEAF Energy Efficient Clothes Washer
	LEAF Roof Wetting Devices


CERTIFICATE OF SERVICE

I hereby certify that the following LEAF motion for procedural order and brief in support were served by hand (*) or by mail to the following parties on July 21, 1998:

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BRIEF IN SUPPORT OF LEAF'S MOTION FOR PROCEDURAL ORDER

I. OVERVIEW

Through this proceeding the Commission will set energy conservation goals for Florida's investor-owned utilities over the next decade. Florida's legislature considers this to be of "critical importance" to our state. Section 366.81, F.S.

The Commission is to base its energy conservation goals on the "total cost effective (energy and demand) savings reasonably achievable...in the residential and commercial/industrial classes" Rule 25-17.021(1), F.A.C. To identify these savings, the Commission must determine both:

1. Which energy and demand savings measures (including combinations of measures) warrant cost-effectiveness evaluation (measure screening); and
2. How to evaluate cost-effectiveness, including:
 - a. how to use the three cost-effectiveness tests in the Commission's Demand Side Management Cost-Effectiveness manual¹;

¹The Commission's DSM Cost-Effectiveness Manual is adopted by reference in Rule 25-17.008.

- b. which assumptions to use in these cost-effectiveness tests; and
- c. what other DSM cost-effectiveness factors warrant review.

In sum, to identify reasonably available cost effective savings, the Commission must determine both what to test for cost effectiveness and how to test. This motion and brief addresses procedures to establish what measures² merit cost-effectiveness testing. A subsequent motion will address how to test.

II. PROCEDURES TO DETERMINE WHICH DSM MEASURES MERIT COST-EFFECTIVENESS TESTING IN THIS PROCEEDING

To meet its obligation to base conservation goals on the "total cost effective (energy and demand) savings reasonably achievable..." Rule 25-17.021(1), F.A.C., the Commission must make a determination in this proceeding as to which savings measures warrant cost-effectiveness testing. Measures that are technically able to offer reasonably achievable energy and demand savings should be tested for cost-effectiveness.

A. THE COMMISSION SHOULD DETERMINE WHICH SAVINGS MEASURES MERIT COST EFFECTIVENESS TESTING BEFORE UTILITY GOALS PROPOSALS ARE FILED.

The Commission's initial order establishing procedure in this case directs each utility to file a goals proposal in February 1999 but does not specify the **savings measures that merit cost-effectiveness testing ("candidate measures")** and provides only very general guidance for utilities to use in identifying candidate measures.

In the last goal setting proceeding the Commission specified "candidate measures" by order before utility goals proposals were

²Hereinafter, please interpret the word "measures" to include both individual measures or combinations of measures.

filed³. By identifying candidate measures before utility goals proposals were filed the Commission made sure measures which merited a cost-effectiveness evaluation would not be excluded from utility processes -- thereby making sure the cost-effectiveness test results it needed to set goals would be available. When ruling that utilities must test cost-effectiveness of certain "CUE" measures (which utilities had argued should be adopted in the Building Code rather than considered for utility programs) Commissioner Deason (acting as Prehearing Officer) explained:

...these measures...should not be dropped from consideration as potential utility programs...I would like to see an evaluation of these measures before they are screened from the measures that will be considered in setting goals. At present, we are in an information-gathering stage of the goals setting process. The Commission will not approve individual measures or programs at this stage. The Commission will set numeric goals ...after it has reviewed all pertinent and necessary information.⁴ (emphasis added)

Were the Commission not to specify which measures are to be tested for cost-effectiveness, utilities alone would decide what measures merit cost-effectiveness evaluation. Each utility may test broadly varying measures, no uniform list of measures would be used and no common rationale for minimum screening would be used. More importantly, measures which merit testing may not be tested by utilities before filing their goals proposals. Extensive discovery would be required merely to discern which measures each utility tested for cost-effectiveness and the utility's rationale for not testing measures. Such discovery would be litigious, arduous and would require more time than is now scheduled -- especially to allow Intervenor testimony to be grounded on a reasonable understanding of the basis for utility goals proposals⁵.

³Order No. PSC-93-1679-PCO-EG, issued 11/19/93.

⁴Order No. PSC-93-1679-PCO-EG, issued 11/19/93, at p. 6.

⁵The current schedule allows utilities about 11 months to develop their goals proposals. However, less than 2 months after utility proposals are filed are available to conduct discovery before Intervenor testimony is due.

Were discovery to reveal that the cost-effectiveness of potential candidate measures that offer reasonably achievable savings had not been tested before utility goals proposals were filed, the Commission would need to either order the cost-effectiveness evaluation to be re-done (which would likely entail undue expense and delay) or set goals without reviewing cost-effectiveness test results for measures which offer reasonably achievable savings (which, LEAF would argue, is an arbitrary approach exceeding the Commission's legal discretion).

To minimize undue expense or delay, the Commission should specify candidate measures before utilities commence the cost-effectiveness testing which forms the basis of the utility goals proposal filings. If the Commission waits until after utility goals proposals are filed to provide its input on which measures merit cost-effectiveness evaluation, significant impediments to both judicial efficiency and fundamental fairness to litigants in these dockets will likely occur.

B. THE COMMISSION SHOULD SECURE INPUT ON PROPOSED CANDIDATE MEASURES BEFORE IT SPECIFIES WHICH MEASURES ARE TO BE TESTED FOR COST-EFFECTIVENESS.

Before utility goals proposals were filed in the last goals case, the Commission required each utility to file a report identifying which of a Commission-proposed list of savings measures the utility proposed to evaluate for cost-effectiveness. After reports were filed, the Commission sent all parties a list which characterized measures and indicated whether or not a measure was proposed for cost-effectiveness testing ("UP" measures). All parties were permitted the opportunity both to comment on that list and to respond to comments filed by other parties. After reviewing the report and comments the Commission ruled which measures were to be tested for cost-effectiveness. Order Nos.: PSC-93-0953-PCO-EG; PSC-93-1584-PCO-EG; PSC-93-1626-PCO-EG and PSC-93-1679-PCO-EG.

The Commission should secure similar input in this case. To build on⁶ prior analyses and rulings, the Commission should direct

⁶In the last goal setting-proceeding, significant time was spent analyzing which of the 110 FEO/SRC measures (and others) merited cost-effectiveness testing as potential utility programs

utilities to file a report as described on Attachment A to LEAF's Motion For Procedural Order. Once utility reports are filed, the Commission should, after providing a reasonable opportunity for staff and other parties to provide input, determine which measures the utilities are to test for cost-effectiveness.

C. IN THE ALTERNATIVE, WERE THE COMMISSION NOT TO SECURE PRIOR INPUT AS IN I.B., ABOVE, IT SHOULD PROHIBIT A RIM-ONLY MEASURE SCREEN AND DIRECT UTILITIES TO TEST THE COST-EFFECTIVENESS OF SPECIFIED MEASURES AS PROVIDED IN ATTACHMENT B TO LEAF'S MOTION FOR PROCEDURAL ORDER.

As the argument in Section I.B., above explains, LEAF urges the Commission to establish a procedure to secure input from all parties regarding Commission-proposed candidate measures before determining which measures merit cost-effectiveness evaluation in this proceeding. If the Commission decides not to establish such a procedure, it should, for both the following reasons, and the reasons stated in the footnotes to Attachment A to LEAF's Motion For Procedural Order, build on its prior analyses and rulings and direct utilities to test the cost-effectiveness of specific measures as provided in Attachment B to LEAF's Motion for Procedural Order⁷.

In its last goal-setting proceeding, the Commission set RIM-based goals aimed to secure only a small percentage (about a third) of the TRC-based energy savings that cost less than generating

("UPs"). Though it may make sense to take a deeper look at savings potential, since the FEO/SRC Report based its technical potential estimate on 1990-91 information, LEAF suggests that the FEO/SRC potential study be built on, rather than redone. The approach suggested also builds on many issues addressed through the TMPRR process. For example, much of the work involved in characterizing measures as UP or otherwise are built on by working from the decisions reflected in the Commission's Fourth Procedural Order, Order No. PSC 93-1679 PCO-EG, 11/19/93.

⁷Attachment B directs use of each of the Commission's three DSM cost-effectiveness tests (TRC, RIM, and Participants) that are set forth in the Commission's DSM Cost Effectiveness Manual, adopted by reference in Rule 25-17.008, F.A.C.

alternatives. In recognition that RIM-based goals left a large percentage (about two thirds) of Florida's savings potential untapped, the Commission made clear its goals were "minimum pass-fail" and encouraged utilities to pursue TRC-based energy savings, indeed even offered financial incentives and goals credit to do so:

Although we are setting goals based solely on RIM measures, we encourage utilities to evaluate implementation of TRC measures when it is found that the savings are large and the rate impacts are small.

Utilities are free to file whatever portfolio of programs they wish, including TRC programs, in order to meet their goals. Demand and energy savings achieved through Commission approved TRC programs (including programs approved for incentives and lost revenue recovery) shall be counted toward each utility's RIM based goal⁸.

Clearly the Commission clearly did not intend, by setting RIM-based goals, to reject TRC-based energy savings or establish RIM as an exclusive standard of cost-effectiveness.

At staff workshops in the current goal-setting dockets, utilities argued that no measure which failed RIM in the last goal-setting proceeding, even if that measure passed TRC, is an appropriate candidate for evaluation in this proceeding (a "RIM-only Measure Screen"). Applying this RIM-Only Measure Screen would equate to ruling that the energy savings which the Commission encouraged in the last goal-setting proceeding -- TRC-passing with high energy savings and low rate impacts -- should be summarily dropped at the earliest information-gathering stage in this case, with virtually no evaluation.

To avoid such a result the Commission should reject a RIM-Only Measure Screen in this case, as it did when it adopted the Conservation Goals Rule in March 1993 and in the last goal-setting proceeding.

⁸Order No. PSC-94-1313-FOF-EG (10/25/94) at p. 22.

1. In adopting the Conservation Goals rule, the Commission made clear it rejected using a RIM-Only Measure Screen when setting goals.

A RIM-Only Measure Screen conflicts with the Commission's DSM Cost-Effectiveness Manual (which is adopted by reference in the Conservation Goals Rule, Section 25-17.008, F.A.C.). That Manual describes three DSM cost-effectiveness tests -- the Total Resource Cost Test ("TRC"), the Rate Impact Measure ("RIM"), and the Participants tests -- and directs that "...the Commission will review the results of all three tests to determine cost-effectiveness" (emphasis added). The Commission's statements during the 1993 Conservation Goals Rule adoption hearing make clear the Commission rejected an RIM-only Measure Screen and intended that this Cost-Effectiveness Manual directive govern its goal-setting processes⁹.

When adopting the Conservation Goals Rule, the Commissioners found that a RIM-Only Measure Screen created unacceptable obstacles to their review of DSM goals and plans -- as the following statements from the Conservation Goals Rule Adoption Hearing show¹⁰:

(Chairman Deason:) "My concern is...that the utilities are using strict RIM tests as a screen, and if a measure does not pass that, well, then it's given no further consideration. And the Commission is not even aware that there are potentially effective programs out there which would have a beneficial effect when it comes to conservation but may have

⁹Though Rule 25-17.008, F.A.C., was already adopted and thus not the main subject of the 1993 rule revisions, the herein quoted remarks of the Commissioners during the rule adoption proceeding, and the Order text cited by footnotes 12 and 13, *infra*, seem to assume that the Manual adopted in 25-17.008 will apply to goal-setting.

¹⁰Quoting Transcript of the Conservation Goals Rule Adoption Hearing, 3/30/93 Agenda, Docket 920606.

some detrimental effect when it comes to rate impacts. But that's something I think the Commission is ready, willing, and able to address. And I think it's something that we have an obligation to address. ...I think that we have an obligation to look at programs that perhaps do not pass the RIM test, and do pass the total resource test...We also have an obligation under the Power Plant Siting Act to make sure that the most cost-effective means of either providing capacity or avoiding capacity are instituted by the utilities... And it seems to me that what that act is concerned about is cost-effectiveness to the utility; not whether there is going to be some rate impacts,... I think that someone in a need determination could make a case that there are programs which did not pass the RIM, which are more cost-effective than some type of added capacity, and the Commission is going to be in a situation of trying to evaluate that, and the problem I have is that so often if you're at the point where you need capacity and you are getting a need determination, it's a situation where you almost have to go forward with building the capacity, because there is too much of a time lag involved in implementing conservation measures, and seeing what the effectiveness of that measure is going to be--to see if, in reality, it's going to defer the need for that capacity. And that's a difficulty I have..."

(Commissioner Clark:) "I agree with you." (TR, pp. 10-13)

(Commissioner Beard:) "The comment I remember back a couple of years at least was these tests (RIM, TRC, etc.) should not be driving the train, but guiding it. And so if these guiding utilities don't even bring something forward for us to see, then I think it's driving the train, in essence." (TR, p. 16).

(Commissioner Lauredo:) "I have two concerns. One is not to be foreclosed,... And, two, how to keep the pressure on the utilities. I happen to believe that the corporate culture is not there yet entirely. It is moving in the right direction, about conservation. It's still a fringe, you know, kind of concept, and I want to move it to the corporate table..." (TR, p.17)

(Chairman Deason:) "...I'm not opposed to having a rule which says that the RIM test will not be used as a screen to

eliminate further consideration of conservation measures. And if that needs to be in the rule, I'm certainly willing to do that. Now, that's not to say that programs that fail the RIM and pass the TRC are automatically going to be approved by this Commission, because that's probably not the case. But I think those programs which fall in that category need to be given more-- at least it's my perception they need to be given more consideration than they are given now. And certainly at some point if they appear viable they need to be presented to the Commission, and let us know what the potential is out there. Because I don't think as of right now, just speaking as one Commissioner, I don't think we are getting all of that information..." (TR, pp. 23-4)

By these statements, the Commission made clear it intended to review TRC-based measures and programs -- and to reject a RIM-Only Measure Screen which would prevent the Commission from even examining TRC-based DSM. Thus, the rule's adopters clearly intended, quoting from the Commission's Cost-Effectiveness Manual to make "...review of the results of all three tests to determine cost-effectiveness" part of their review of utility goal proposals.

2. The Commission's intent to reject a RIM-Only Measure Screen when setting goals was made even clearer in the 1993-94 goal-setting proceeding.

The last goal-setting proceeding was the first time the Commission set goals after the 1993 Conservation Goals Rule was adopted. In that proceeding the Commission considered it unambiguous that the rule it had just adopted required the Commission's Cost-Effectiveness Manual to be followed when setting goals. The first procedural order¹¹ in that proceeding directed utilities to file a report "addressing" specified measures in two portfolios, a RIM-based portfolio and a TRC-based portfolio (regardless if RIM is passed). Responding to a LEAF question about

¹¹Order No.: PSC-93-0953-PCO-EG "Order Establishing Procedure" issued 6/28/93 (at p. 5).

the meaning of "addressing" the Commission's Fourth Procedural Order ruled¹²:

Although I do not believe the term "address" is ambiguous here, I find that it means each utility shall evaluate those SRC measures classified as UP...in accordance with Rule 25-17.008, Florida Administrative Code (noting by footnote that the Commission's Cost-Effectiveness Manual adopted by reference in that rule section is available for review by the public by contacting the Commission)¹³.

Thus the Commission's Orders in the last goal-setting proceeding clearly reject a RIM-Only Measure Screen: utilities are to test cost-effectiveness as the Commission's DSM Cost-Effectiveness Manual directs, TRC tests are to be conducted and TRC test results reported regardless of RIM test results and (quoting the Commission's Manual) "...the Commission will review the results of all three tests to determine cost-effectiveness."

3. Preventing the Commission from considering information necessary to set goals through a RIM-Only Measure Screen would be an arbitrary action prohibited by law.

The Commission's goals are to be based on the "total cost-effective...savings reasonably achievable." This gives the Commission broad, though not unlimited, discretion. Goals may not be set in an arbitrary or capricious manner. Brogan v. Courtney Carter and Florida Education Practices Commission, 694 So.2d 168 (Fla. S. Ct. 1997); Graham v. Estuary Properties, 399 So. 2d 1374 (Fla. S. Ct. 1981).

The Commission's past rejection of a RIM-Only Measure Screen reflects its understanding that setting goals without first reviewing reasonably available options would be arbitrary. As Chairman Deason noted: "My concern is...that the utilities are using strict RIM tests as a screen, and if a measure does not pass

¹²The Commission's specifically ordered that "the rulings made in...this order on LEAF's seven issues...shall control..." Order No. PSC-93-1679-PCO-EG, issued 11/19/93.

¹³Order No. PSC-93-1679-PCO-EG, issued 11/19/93, at pp. 8-9.

that...the Commission is not even aware that there are potentially effective programs out there...¹⁴" As this comment recognizes, a RIM-Only Measure Screen would eliminate measures that offer reasonably achievable savings without first evaluating their impact -- an action that would be arbitrary.

Setting goals without considering TRC-based measures would fly in the face of legislative intent. While RIM-based measures offer mostly peak-load reductions ("load management"), TRC-based measures offer much more reduction in overall energy consumption ("energy efficiency" or "conservation"). Florida's legislature clearly found both these types of DSM are important.

Section 366.81, F.S. provides:

The Legislature finds...it is critical to use the most efficient and cost-effective energy conservation systems to protect the health, prosperity, and general welfare of the state and its citizens.

Reduction in, and control of, the growth rates of electric consumption and of weather-sensitive peak demand are of particular importance.

The Legislature further finds and declares that ss. 366.80 - 366.85 and 403.519 are to be liberally construed in order to meet the complex problems of reducing and controlling the growth rates of electric consumption and reducing the growth rates of weather-sensitive peak demand; increasing the overall efficiency and cost-effectiveness of electricity and natural gas production and use...and conserving expensive resources, particularly petroleum fuels. (emphasis added)

Section 366.82(2), F.S. provides:

(2) The Commission shall adopt appropriate goals for increasing the efficiency of energy consumption...specifically including goals designed to

¹⁴Transcript of Conservation Goals Rule Adoption Hearing, Agenda Conference 3/30/93, Docket 920606.

increase the conservation of expensive resources, such as petroleum fuels, to reduce and control the growth rates of electric consumption, and to reduce the growth rates of weather-sensitive peak demand. (emphasis added)

The Commission's Conservation Goals Rule reflects these statutory aims: "The Commission shall establish goals...to reduce the growth rates of...peak demand, to reduce and control the growth rates of electric consumption, and to increase the conservation of expensive resources, such as petroleum fuels...". Rule 25-17.0021, F.A.C.

With these legislative and regulatory findings it would be arbitrary for the Commission to adopt an RIM-Only Measure Screen which, in effect, eliminates most measures which reduce energy consumption in favor of measures which focus primarily on peak demand reduction.

Rejecting a RIM-Only Measure Screen does not equate to ruling that there is no use for the RIM test. But, using RIM to screen out measures which could greatly reduce consumption at a cost less than power plants is not reasonable at this stage of the process. As Commissioner Deason (acting as Prehearing Officer) noted during the last goal-setting proceeding, the stage in which the list of measures that merit cost-effectiveness testing are identified is:

...an information-gathering stage of the goals setting process. The Commission will not approve individual measures or programs at this stage. The Commission will set numeric goals...after it has reviewed all pertinent and necessary information¹⁵.

The Commission's stated intent and policy is to encourage TRC-based DSM that offers large savings with minimal rate impacts. By definition, TRC-based measures offer energy savings at a cost less than generating alternatives. Eliminating such measures at this early stage, without even considering the amount of rate impact

¹⁵Order No.: PSC-93-1679-PCO-EG issued 11/19/93, at p. 6 (Fourth Procedural Order).

involved, however slight¹⁶, would totally thwart the Commission's intent. The Commission should reject a RIM-Only Measure Screen.

IV. SUMMARY

The Commission should, before utility goals proposals are filed, establish procedures to guide which energy efficiency and load management measures merit cost-effectiveness evaluation in this case. Those procedures should either provide a reasonable opportunity for all parties to provide input on candidate measures as described in Attachment A or establish that the measures in Attachment B merit evaluation as therein described.

A RIM-Only Measure Screen should be summarily rejected. The Commission's past encouragement for TRC-based DSM reflects it understood that for a minimal rate increase TRC-based DSM can significantly reduce customers' costs by avoiding or deferring the need for generating alternatives. By eliminating measures that offer large amounts of reasonably achievable savings at a cost less than generation alternatives a RIM-Only Measure Screen would have the Commission set goals without even examining DSM that saves energy at a costs less than power plants. Excluding such DSM from Commission review would conflict with the Commission's legal obligation to set goals that reduce the growth rate of electrical energy consumption¹⁷ after considering the total cost-effective savings reasonably achievable¹⁸--and could exacerbate the reliability problems recently identified in the Commission's Ten Year Site Plan process.

¹⁶The size or scope of the rate impact, even if de minimis, is irrelevant to the RIM screening analysis. A RIM-Only Measure Screen would eliminate all measures (including least-cost TRC-based measures) with ANY rate impact, however slight -- even when average bills would decrease.

¹⁷Section 366.81, F.S. (The Florida Energy Efficiency and Conservation Act).

¹⁸Florida Administrative Code Rule 25-17.0021(1).