

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

IN RE: Adoption of Numeric Conservation Goals by Florida
Power & Light Company.

DOCKET NO. 971004-EG

IN RE: Adoption of Numeric Conservation Goals by Florida
Power Corporation.

DOCKET NO. 971005-EG

IN RE: Adoption of Numeric Conservation Goals by Gulf Power
Corporation.

DOCKET NO. 971006-EG

IN RE: Adoption of Numeric Conservation Goals by Tampa
Electric Company.

DOCKET NO. 971007-EG

COPY

BEFORE:

CHAIRMAN JULIA A. JOHNSON
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER JOE GARCIA
COMMISSIONER E. LEON JACOBS

PROCEEDING:

AGENDA CONFERENCE

ITEM NUMBER:

13**

DATE:

October 6, 1998

PLACE:

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BUREAU OF REPORTING

RECEIVED 10-26-98

DOCUMENT NUMBER-DATE

11888 OCT 26 98

FLORIDA PUBLIC SERVICE COMMISSION

APPEARANCES:

DEBRA SWIM, Esquire, representing LEAF
LYNN TERRELL, representing Florida Public Interest
Research Group
MARSHA ELDER, representing American Planning
Association, Florida Chapter and Project for an Energy
Efficient Florida
CHARLES GUYTON, Esquire, representing FPL
JEFFREY STONE, Esquire, representing Gulf

STAFF RECOMMENDATION

Issue 1: Should the Commission grant Florida Power & Light's Motion To Strike LEAF's Reply To Utility Responses To LEAF's Motion For Procedural Order?

Recommendation: Yes. Uniform Rule of Procedure 28-106.204, Florida Administrative Code, like its predecessor Commission Rule 25-22.037, Florida Administrative Code, does not provide for the filing of replies to responses to filed motions. Therefore, the Commission should grant FPL's Motion to Strike LEAF's Reply. If the Commission grants FPL's Motion to Strike, LEAF's Response In Opposition to FPL's Motion To Strike LEAF's Reply is rendered moot.

Issue 2: Should the Commission grant Legal Environmental Assistance Foundation's Motion For Procedural Order?

Recommendation: No. The Motion For Procedural Order is an untimely motion for reconsideration, the Motion does not comport with Rule 25-17.0021, Florida Administrative Code, and the Motion misapprehends the substantive law of the case.

Issue 3: Should these dockets be closed?

Recommendation: No. These dockets are scheduled for hearings in May of 1999.

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CHAIRMAN JOHNSON: Item 13. Do you want to present the item?

COMMISSION STAFF: Commissioners, Item 13 is a series of pleadings that have been filed in the conservation goals docket. The primary pleading was one from LEAF. It was a motion for procedural order. The recommendation is to deny that motion. The utilities filed responses to LEAF's motion for procedural order. In addition, Florida Power & Light filed a motion to strike LEAF's reply to utility responses, and the recommendation is to grant Florida Power & Light's motion to strike. And I believe the parties are here to address the Commission.

COMMISSIONER CLARK: Okay.

CHAIRMAN JOHNSON: LEAF.

MS. SWIM: As you know, I'm Deb Swim here on behalf of LEAF, and before I start, I wanted to make sure that you knew that there were some other members of the public here that wanted to address the Commission on this topic and reserve, if I could, an opportunity for rebuttal after I make my presentation initially. Is that something --

CHAIRMAN JOHNSON: That's fine.

MS. SWIM: I'm not sure in what order you want me

1 to present things. I would be happy to jump right
2 into the substance of the motion, if that's your
3 pleasure.

4 CHAIRMAN JOHNSON: Uh-huh.

5 MS. SWIM: For the benefit of the newer
6 Commissioners, I want to start by defining a key term;
7 savings measures. A savings measure is anything that
8 is technically able to save energy. An efficient
9 light bulb is a savings measure for a residential
10 customer or an industrial customer. A more efficient
11 motor is a savings measure for an industrial customer.
12 For a low income customer, fixing a hole in the roof
13 might be a savings measure.

14 To set conservation goals, the Commission has a
15 legal obligation to become informed about the
16 cost-effectiveness of savings measures. If utilities
17 do not test a savings measure, then the Commission
18 will not know whether or not that measure is
19 cost-effective. To have the information it needs to
20 set goals. The Commission must make sure that
21 utilities test savings measures that it believes merit
22 cost-effectiveness testing.

23 LEAF's motion asks the Commission to provides its
24 input on which savings measures merit
25 cost-effectiveness testing before that testing is

1 done. The Commission did this in the last goals case,
2 and it is authorized by the Commission's rules. LEAF
3 suggests two alternative ways for the Commission to
4 provide this input on which measures merit
5 cost-effectiveness testing in this case. Both
6 alternatives give many lengthy steps that were taken
7 in the last goals case and build to a great extent on
8 those findings and work that the Commission did in the
9 last goals case. Either of these alternatives would
10 save a lot of both time and money. The Commission
11 should adopt one of these procedures in this case.

12 That is a broad overview and I will go into a
13 little bit of detail. But, in summary, if the
14 Commission does not provide this input on what
15 measures to test, then the utilities may fail to test
16 measures that merit testing and the Commission will
17 lack the information it needs legally to set goals.

18 I want to talk a little bit about why providing
19 the Commission's input now will save time and money.
20 If the Commission were to delay its input as to which
21 measures merit testing, many irrational, inefficient,
22 and unfair outcomes are very likely.

23 Most significantly, utilities may not test
24 measures which the Commission believes are reasonable
25 candidates for testing. That would mean the

1 Commission would lack the information it legally needs
2 to set goals. Without the Commission's early input,
3 each utility may test widely varying measures and no
4 common rationale for minimum screening would be used.
5 Extensive and very expensive discovery would be
6 required merely to discern which measures each utility
7 tested and each utilities' rationale for selecting
8 what measures to test. The discovery would very
9 litigious and would clearly require much more time
10 than the two months than it is now scheduled.

11 If it turned out that utilities had not tested
12 the measures that the Commission wanted tested,
13 additional tests would have to be done and additional
14 discovery time would have to be required. All of
15 these costs mean time consuming outcomes would not
16 occur if the Commission did as it did in the last
17 goals case and advised utilities up front about which
18 measures merit testing.

19 Now, LEAF's motion suggests two ways for the
20 Commission to provide its input on which measures to
21 test. They are called Alternatives A and B. Because
22 each of these alternatives build to a great degree on
23 the work that the Commission did in the last goals
24 case, I will explain what the Commission did in that
25 case. As Commissioner Deason, who was the prehearing

1 officer then, might recall, after many steps which I
2 will not describe here, the Commission issued its
3 fourth procedural order. That order contained a list
4 of measures that the Commission ruled had potential as
5 utility programs and, therefore, were to be tested for
6 cost-effectiveness.

7 The fourth procedural order also identified
8 measures which the Commission ruled may be evaluated
9 for potential as utility programs in future goals
10 proceedings like this one. Each alternative that LEAF
11 is proposing is built on this work and does not
12 attempt to relitigate it in any fashion. Alternative
13 A is a much shorter version of the process which the
14 Commission followed last time. It has three steps.
15 First, utilities would file a report describing which
16 of a list of measures that the Commission proposes
17 they believe has potential as a potential utilities
18 program, and thus merit cost-effectiveness evaluation.

19 Second, other parties may file comments on the
20 utility report. And, third, the Commission would
21 review the filing and rule on which measures merit
22 cost-effectiveness testing. As I said, Alternative A
23 requires the Commission to provide for comment a list
24 of measures which they believe has potential as a
25 utility program. LEAF is suggesting that that list

1 include the measures which the Commission has
2 previously ruled has potential as a utility program.
3 That list would also include the other measures now
4 offered by utilities with the Commission's approval
5 and any other measures which the utility wanted to
6 include. That explains Alternative A, which is as I
7 said, a much shorter version of the process last time.

8 CHAIRMAN JOHNSON: Ms. Swim, let me make sure I
9 understand all the steps. So the first step for A,
10 the Commission would come up with the --

11 MS. SWIM: The Commission would create a list
12 which they believe has measures which have a potential
13 as a utility program.

14 CHAIRMAN JOHNSON: And the utility would then
15 comment on that?

16 MS. SWIM: The utility would report on whether
17 they believe those measures had potential as utility
18 programs. And then non-utility parties would have an
19 opportunity to comment on that utility report. This
20 is basically the procedure that went on last time,
21 although there were a lot more measures on the table
22 at that point that included all the measures that were
23 in the SRC study, and that's not what we are proposing
24 here.

25 CHAIRMAN JOHNSON: And the reason why you believe

1 that -- and I know this is a shorter procedure, but
2 the reason why you believe that this methodology is
3 necessary is because you don't believe that the
4 utilities will come up with sufficient measures, or
5 that they will leave some off the table, or -- I'm
6 just trying to better understand.

7 MS. SWIM: I think that the utilities have
8 indicated that they want to apply a RIM only measures
9 screen in this case, and I have a lot of argument on
10 that point which I would be happy to go into at this
11 point if you like, explaining why I think that would
12 be very undesirable. And, in fact, beyond the
13 Commission's legal authority.

14 CHAIRMAN JOHNSON: So that to add that additional
15 step, one of the things that you are trying to
16 accomplish or perhaps the most important is that we
17 have some measures that aren't RIM only. So you are
18 suggesting if the Commission were to come forward,
19 that's the reason for the extra step?

20 MS. SWIM: Well, I mean, we think the Commission
21 has to rule on what measures merit cost-effectiveness
22 testing. And if they do it now rather than later, it
23 would make a lot of sense. We are very concerned that
24 it seems that what the utilities are planning to do is
25 eliminate all measures which pass TRC last time for

1 being tested for cost-effectiveness under current
2 conditions. And, we think the Commission adopted a
3 policy in the last goals case that was a pro-TRC
4 policy and, in fact, found that TRC cost-effective DSM
5 was something the Commission encouraged. And we think
6 for that reason the Commission was obligated to find
7 out whether these measures which have potential as
8 utility programs would pass TRC under current
9 conditions. So that is Alternative A, and let me just
10 talk about Alternative B.

11 Alternative B is like Alternative A, only it's
12 much shorter. Rather than first securing input from
13 utilities or other parties about the list of measures,
14 the Commission would just go right ahead and direct
15 the utilities to evaluate the cost-effectiveness of
16 the same list of measures that I just described, plus
17 any other measures that the Commission wanted to add
18 in.

19 We also suggest were you to go the Alternative B
20 route that you ask the utilities to address its
21 approach to comply with other parts of the
22 Commission's goals order which addressed DSM for low
23 income customers and green pricing or other methods to
24 provide solar energy.

25 So those are the alternatives. And, again, we

1 think this would save a lot of time and money to
2 decide early on. I'm going to get a little bit into a
3 few more complicated topics, including the
4 Commission's authority to ask utilities to test
5 measures, and FPL's RIM only measure screen proposal.

6 Now, these topics certainly need to be
7 addressed before the Commission sets goals, but I want
8 to make sure that you understand that they need not be
9 addressed today. If the Commission were to adopt
10 Alternative A, these issues could be addressed through
11 written comments, and in that way the Commission could
12 become more fully advised on these complex matters
13 than time may permit at today's agenda conference.

14 Now I'm going to go into the issue of the
15 Commission's authority to secure cost-effectiveness
16 information. The Commission's rule states that each
17 utility, quote, shall provide ten-year projections
18 based upon the utility's most recent planning process
19 of the total cost-effective savings reasonably
20 achievable through DSM in the service area. FPL
21 argues that this rule makes it illegal for the
22 Commission to tell utilities to test any measure that
23 is not already part of its planning process.

24 Now, were the Commission to adopt this
25 interpretation now it would render illegal the orders

1 that the Commission issued in the last goals case.
2 Despite this fact, staff has adopted FPL's argument
3 and suggests that FPL's interpretation of the rule
4 justifies denying LEAF's motion.

5 Now, before explaining why I disagree strongly
6 with FPL's interpretation, it's important that you
7 understand that even if FPL's interpretation were
8 ultimately decided to be followed, it would not
9 justify rejecting Alternative A. That's because FPL's
10 interpretation assumes that the Commission has
11 specified measures to be tested, and Alternative A,
12 unlike Alternative B, does not specify which measures
13 are to be tested.

14 Now to the merits. And in the view of FPL and
15 staff, if a savings measure is not already part of the
16 utilities planning process, the Commission has
17 absolutely no power to ask utilities to test its
18 cost-effectiveness. Even if this is a measure which
19 the Commission strongly believes merits testing. I
20 hope it's obvious that this interpretation would
21 create a very significant hurdle to the Commission's
22 ability to become informed about the
23 cost-effectiveness of a savings measure, giving
24 utilities near total control over what
25 cost-effectiveness information is made available to

1 the Commission as goals are set. The mere claim that
2 a measure was excluded from a utility's planning
3 process would effectively keep the Commission from
4 knowing whether that measure is cost-effective.

5 The Commission would still have a legal duty to
6 become informed about the cost-effectiveness of
7 measures which it believes merit testing, it would
8 just lack any authority to have the utilities test the
9 savings measures that the Commission believed had
10 potential. Since the Commission relies on utilities
11 to test the cost-effectiveness of measures, FPL's
12 interpretation could cause the Commission to lack the
13 information it legally needs to set goals.

14 I don't believe the Commission would have
15 intended to abdicate its authority so totally to the
16 utilities. The rule adoption record contains no
17 evidence of any such intention. The Commission issued
18 orders in the last goals case that would be rendered
19 illegal were the Commission to now adopt this
20 interpretation. The Commission should look for an
21 alternative interpretation, and there is a very
22 reasonable alternative.

23 As staff's recommendation notes, it would be
24 reversible error for the Commission to ignore rule
25 text while interpreting its rule. The rule text

1 clearly requires that utilities both provide
2 projections of the total cost-effective savings
3 reasonably achievable in their service area and also
4 to base those projections on utility planning
5 processes. FPL's interpretation would have the
6 projections be exactly and solely based on utility
7 planning processes. The Commission should instead
8 interpret its rule in a way that gives meaning to both
9 of the requirements.

10 The Commission should interpret its rule to
11 require a utility's projections to both project the
12 total cost-effective savings potential and base that
13 projection on utility planning processes. Rather than
14 making the utilities the sole judge of which measures
15 merit cost-effectiveness testing, this interpretation
16 reasonably assumes that the Commission sought to
17 connect utility projections of savings potential to
18 the utility's planning process.

19 That connection is important because it assures
20 the projections will be based on current utility
21 system-specific information. Connecting projections
22 to current utility system-specific information makes a
23 lot of sense. Current information is important when
24 evaluating energy resource options because costs and
25 benefits change over time. Utility-specific

1 information is important because as the rule says, the
2 goals must be based on the total potential in each
3 utility's service area over the decade of interests.

4 This interpretation is consistent with what the
5 Commission has done in the past. Those Commissioners
6 involved in the last goals setting proceeding might
7 recall the lengthy discussion over how to use the DSM
8 potential study that was prepared by the Florida
9 Energy Officer by SRC. Though all the parties agreed
10 that the FEO study was a good baseline, the Commission
11 did not rely totally on the FEO study when setting
12 goals. Because the Commission saw the need to use
13 current utility system-specific information, it
14 directed the utilities to provide more current utility
15 system-specific analyses.

16 In sum, the rule requires just what it says.
17 Utilities must provide the Commission with projections
18 based on their planning processes of the total
19 cost-effective savings reasonably achievable in their
20 service area. The Commission may find that this
21 includes testing the cost-effectiveness of any measure
22 that offers reasonably achievable savings potential,
23 whether or not that measure is now part of the
24 utility's plan. However, in testing the
25 cost-effectiveness of measures that have potential,

1 current utility-specific assumptions must be used.
2 That's how we interpret the Commission's authority to
3 require the utilities to test measures.

4 Now, I will address the RIM only measure screen
5 which FPL proposed, and TECO and Gulf have endorsed.
6 Again, I want to point out that if the Commission were
7 to adopt Alternative A today, it need not rule on this
8 issue today. Alternative A does not specify measures
9 to be tested. FPL's RIM only measure screen would
10 only need to be addressed today if the Commission
11 decided to adopt Alternative B.

12 LEAF strongly objects to a RIM only measure
13 screen. We believe the Commission has a legal
14 obligation in this case to, at minimum, test the
15 cost-effectiveness of any measure that passed RIM or
16 TRC in the last goals case. We believe both RIM and
17 TRC passing measures should be tested under current
18 conditions, because in the last goals case, the
19 Commission adopted a policy in favor of both RIM
20 testing DSM and TRC testing DSM.

21 The order in the last goals case makes clear that
22 the Commission favors both RIM and TRC passing DSM.
23 It says, quote, although we are setting goals based
24 solely on RIM measures, we encourage utilities to
25 evaluate implementation of TRC measures when it is

1 found that the savings are large and the rate impacts
2 are small, end quote.

3 The order also states that the Commission's RIM
4 based goals are the, quote, minimum goals that the
5 utilities must meet or be penalized. It specifically
6 authorizes and encourages TRC based DSM, and specifies
7 that utilities can use TRC based DSM to meet the RIM
8 based goals. The ordering paragraph directs utilities
9 to, quote, achieve or surpass the goals that were set.

10 These actions show that the Commission clearly
11 found that both RIM and TRC passing DSM are
12 cost-effective. With a RIM only measure screen,
13 utilities would test only measures which passed RIM
14 last time. The Commission would not know if measures
15 that passed TRC before would pass TRC under current
16 planning conditions. Knowing whether a measure passes
17 TRC is important because measures that pass TRC cost
18 less than their generation alternative. Knowing
19 whether a measure passes TRC is important because the
20 Commission, after a tremendous amount of work in the
21 last goals case, found that TRC passing DSM is
22 cost-effective.

23 A RIM screen would keep the Commission from
24 knowing which measures pass TRC now. To decide at
25 this early stage not to even find out if a measure

1 that passed TRC last time would pass TRC now would
2 mean that the implementation of the Commission's TRC
3 policy is impossible. After adopting a policy
4 favoring TRC, it would be arbitrary for the Commission
5 to set goals without even considering the savings
6 measures that meet this policy.

7 As you recall, the Commission went through a very
8 tremendous amount of time and effort to reach the
9 conclusion to support TRC passing DSM. We urge you to
10 build on this effort and not toss it aside by adopting
11 a RIM only measure screen as FPL is suggesting.

12 Commissioners, I think that concludes what I was
13 going to say on the merits. There are, of course,
14 some issues that are procedural about LEAF's reply and
15 whether or not FPL's motion to strike it should be
16 granted. I'm not sure whether you want me to address
17 that at this time or if you want to just hear the
18 other side of the position on the substance.

19 CHAIRMAN JOHNSON: Go ahead and complete your
20 presentation. And, Ms. Swim, you said there were some
21 interested customers or citizens that wanted to speak?

22 MS. SWIM: Yes, there are. Representatives from
23 The Project for an Energy Efficient Florida, and The
24 Florida Public Interest Research Group are here.

25 CHAIRMAN JOHNSON: And they are going to want to

1 make comments, you stated?

2 MS. SWIM: Yes. So you want me to just go on to
3 the procedural matters? Okay. Let's see. All right.
4 I guess this isn't quite procedural, it's more
5 substance. Staff has recommended that LEAF's motion
6 be denied because it is an untimely request that the
7 Commission reconsider its first procedural order. The
8 Commission clearly has authority to issue multiple
9 procedural orders. It has done so many times before.
10 In the last goals case, the Commission issued six
11 prehearing procedural orders. I'm not suggesting that
12 you issue six orders here, but I am pointing out that
13 the Commission has the authority to issue procedural
14 orders.

15 In deciding whether to issue more than one
16 procedural order in this case, I want to explain an
17 informal understanding that is not stated in staff's
18 recommendation. After this docket was opened, staff
19 proposed a list of measures for utilities to test for
20 cost-effectiveness. Staff held a workshop to discuss
21 the measures it proposed. At the workshop it became
22 clear that the parties did not agree on which measures
23 should be tested, and staff said, and the workshop
24 tape reflects this, that it would ask the Commission
25 to develop a list of measures to test if the parties

1 were not able to reach agreement on a list.

2 With staff's encouragement, LEAF and utilities
3 agreed to try to develop a list of measures through
4 negotiation. We were engaged in those negotiations
5 when the first procedural order was issued, and
6 understood through informal discussions with technical
7 staff that the first procedural order was just to keep
8 the process rolling. There was no indication
9 whatsoever that staff no longer wanted the Commission
10 to decide which measures merited cost-effectiveness
11 testing, which they had proposed in the workshop
12 notice and stated at the workshop. Nor did staff
13 offer the slightest clue that the first procedural
14 order was intended to close the door to the Commission
15 identifying which measures should be tested for
16 cost-effectiveness should negotiations fail.

17 Because we were engaged in good faith
18 negotiations and believed with good reason that the
19 first procedural order was just a placeholder, we did
20 not appeal it. When it became clear that negotiations
21 would not become successful, LEAF promptly advised
22 staff and filed a motion to bring these issues before
23 the Commission. Now staff is arguing that the
24 Commission lacks legal authority to identify which
25 measures to test, and says LEAF's motion is untimely.

1 Commissioners, I know it is your policy to
2 encourage parties to negotiate and resolve issues that
3 way. We have invested our time and limited resources
4 and made a good faith attempt to do so in this case.
5 Because we were engaged in negotiations with staff's
6 encouragement, we did not appeal the Commission's
7 first procedural order, which as I explained, we
8 believed was merely a placeholder. If the Commission
9 truly wants to encourage negotiations, it should
10 not characterize LEAF's motion as an untimely request
11 for reconsideration.

12 Now, on to the reply --

13 CHAIRMAN JOHNSON: I'm sorry.

14 MS. SWIM: The argument about LEAF's reply, we
15 filed a motion to establish procedure, the utilities
16 filed responses. I should say three of the
17 investor-owned utilities filed responses in
18 opposition, one did not. And we filed a reply to
19 those responses. Staff is recommending that the reply
20 be stricken. I want to point out that the
21 Commission's orders and rules provide that replies are
22 appropriate when, quote, necessary or, quote,
23 necessary to make an informed decision. Because the
24 issues before you are extremely complex and very
25 pivotal to this case, LEAF's reply is necessary to

1 make an informed decision.

2 The Commission clearly has authority to allow
3 replies. It used this authority to allow reply briefs
4 just recently in the TECO scrubber case. Neither
5 reply briefs nor replies to responses to motions are
6 authorized specifically in the Commission's rule.
7 Nonetheless, they are permissible when the Commission
8 finds them necessary. The Commission should allow
9 LEAF's reply in this case.

10 CHAIRMAN JOHNSON: Thank you, Ms. Swim. Florida
11 Power & Light.

12 MR. GUYTON: Commissioner, you may want to hear
13 from the public first, but I think they are in support
14 of LEAF's position.

15 CHAIRMAN JOHNSON: There are members of the
16 public that would like to speak?

17 MS. TERRELL: Madam Chair, so that we can fully
18 air the issues, we would welcome the opportunity to
19 hear FPL's remarks and others remarks. We can proceed
20 either way, but so that we could comment --

21 CHAIRMAN JOHNSON: You can go ahead, and I'm
22 going to allow Ms. Swim, and to the extent that you
23 all have additional comments, I will allow those,
24 also.

25 MS. TERRELL: Good afternoon, Chairman and

1 Commissioners. For the record, my name is Lynn
2 Terrell (phonetic), and I am with the Florida Public
3 Interest Research Group, representing 10,000 customers
4 and ratepayers statewide.

5 Florida's customers want clean inexpensive energy
6 resources, like efficiency and solar that eliminate
7 the waste of natural resources, reduce pollution, cost
8 less than building new power plants, benefit the
9 economy, and, furthermore, achieve sustainability
10 throughout the entire state.

11 The legislature adopted the 1980 Florida Energy
12 Efficiency and Conservation Act, so utilities would
13 implement conservation programs in the best interests
14 of the public. The Public Service Commission should
15 set goals which include least cost conservation
16 measures, especially those that offer high energy and
17 bill savings at a low rate impact.

18 I urge the Public Service Commission to meet
19 Florida's state policy objectives by establishing
20 strong conservation goals that will set a high
21 standard for the next decade. The Public Service
22 Commission must take a stand and ensure that these
23 goals include at minimum all the cost measures which
24 can save energy at a cost less than new power plants.

25 By establishing these strong measures, the Public

1 Service Commission will not only display their strong
2 support for the 1980 Florida Energy Efficiency and
3 Conservation Act, but will ensure that we leave our
4 future generations with the vision of clean
5 resource-wise energy options. Thank you.

6 CHAIRMAN JOHNSON: Thank you.

7 MS. ELDER: Thank you, Madam Chair and members of
8 the Commission. For the record, my name is Marsha
9 Elder, and I'm representing the American Planning
10 Association, Florida Chapter, and the Project for an
11 Energy Efficient Florida.

12 As you know, through the Coalition for an Energy
13 Efficient Florida, we represent a very diverse range
14 of environmental consumer and other public interest
15 groups whose members care very much about energy
16 issues, and the need to transition to sustainable
17 energy options. Groups such as the League of Women
18 Voters of Florida, Common Cause, the League of
19 Conservation Voters, the Florida Consumer Action
20 Network, the Sierra Club, the Florida Public Interest
21 Research Group, and others.

22 And these and still other organizations, the
23 Earth Justice Legal Defense Fund, the Florida Wildlife
24 Federation, and others have joined together in
25 endorsing the following statement which they have

1 asked that we present to you today.

2 The statement reads, "The Florida Legislature
3 exercised vision in developing and enacting the 1980
4 Florida Energy Efficiency and Conservation Act with
5 the expressed intent of establishing a strong utility
6 conservation goals program. State energy policy as
7 set forth elsewhere in the Florida Statutes, likewise
8 emphasizes the importance of conservation, energy
9 efficiency, and renewable energy sources.

10 The need for such emphasis has grown, not
11 lessened since the adoption of these policies. The
12 Public Service Commission has the opportunity to
13 assure that state energy policy objectives are
14 achieved for the benefit of the Florida public by
15 establishing strong measurable conservation goals. Of
16 utmost importance on an immediate basis is the
17 Commission's pending decision on what conservation
18 measures will be considered in the current
19 conservation goals docket.

20 The undersigned organizations urge that the
21 decision of Commissioners on the menu of conservation
22 options to test and consider for purposes of the
23 forthcoming goals be inclusive in nature. In
24 particular, we regard it as essential to the public
25 interest for least-cost conservation measures that

1 offer high energy savings and low rate impact to be
2 included.

3 Consumers want clean resource-wise energy
4 options, including conservation measures to at a cost
5 less than new power plants, eliminate the waste of
6 natural resources, to curb pollution, benefit the
7 economy, and achieve sustainability for our state.
8 Such measures should serve as the foundation of
9 utility conservation programs in keeping with the
10 spirit of the law and the needs of Florida
11 ratepayers."

12 This past week, Commissioners, the Florida
13 Counsel of Churches, whose members include the
14 Catholic Church, the Methodist Church, the Episcopal
15 Church, the Lutheran Church, the Baptist Church, the
16 Presbyterian Church, the United Church of Christ, and
17 a list of others, convened in Orlando to address the
18 range of issues. As part thereof, they, too, endorse
19 this statement by unanimous vote, and they have asked
20 that we relay this position to you.

21 The reason that these organizations and
22 institutions have arrived at this position vary from
23 the churches' perspective that it is an ethical
24 responsibility as part of Earth stewardship, to
25 Efcac's view that it is a consumer issue of utmost

1 importance.

2 But while the specific reasons do vary, all of
3 the organizations agree on a bottom line, which is
4 that we want energy efficiency and renewable energy
5 resources for our state, and the many benefits that
6 accrue from their availability and use. And we all
7 agree that all viable conservation options must be
8 considered in the goals proceeding in order for the
9 goals of efficiency, renewables, and sustainability to
10 be achieved.

11 So it is towards this end that we ask and, indeed
12 we urge that you support the LEAF motion for a
13 procedural order which we regard as the pivotal
14 decision on the potential that exists for meaningful
15 conservation goals and goals set in accordance with
16 your own earlier decision to encourage TRC passing
17 measures. With that, as always, we very much
18 appreciate the opportunity to appear before the
19 Commission and particularly today on this most
20 important issue.

21 CHAIRMAN JOHNSON: Thank you, Ms. Elder.

22 MR. GUYTON: Commissioners, my name is Charlie
23 Guyton, I'm with the law firm of Steel, Hector, and
24 Davis, and I represent Florida Power & Light Company
25 today.

1 You are confronted, I think, with two relatively
2 simple issues today. They are essentially legal
3 issues. One, you can choose to follow your
4 conservation goals rule, which says that it is to rely
5 on the utilities' planning process, or you can go the
6 other route and that is to issue a very prescriptive
7 and intrusive order that would be intrusive into the
8 utilities' planning process as LEAF has prescribed.
9 Indeed, given you two options and encouraged you to
10 do.

11 Now, they ask you to do that without regard for
12 the fact that there is already a procedural order in
13 this case. And that procedural order says -- it was
14 issued by Commissioner Garcia -- follow the rule.
15 That was issued I want to say in March of this year.
16 And, indeed, that is exactly what the utilities have
17 been doing now for the better part of the remainder of
18 the year. We have been following the rule and
19 pursuing our planning process.

20 We have been doing that pursuant to Commission
21 directive, and now you are being asked to have us
22 restart that planning process all over again with a
23 selection of measures which may or may not have
24 already been identified and analyzed by utilities in
25 their respective processes. We are well along the

1 path of trying to implement that procedural order.
2 And LEAF talked today about avoiding delay. I can
3 assure you if you were to enter the order that you are
4 being asked to do, the delay would be significant. We
5 would have to start over the process and probably
6 double the scope of the analysis that is being
7 undertaken pursuant to your own procedural order.

8 I think that choice is clear. I think you ought
9 to stand by your original procedural order because it
10 is consistent with your rule. Simply, it says follow
11 the rule, and that's what the utilities have been
12 doing.

13 The second choice that you have before you today
14 is whether or not you are going to follow your
15 procedural rules that call for the filing of a motion
16 and a response and don't make any mention of a reply.
17 Now, if you do that, and you allow the pleadings that
18 are contemplated, then you are going to be in a
19 position of having a manageable scope of pleadings to
20 rule on before the Commission. However, if you
21 indulge the reply here, you are going to invite the
22 avalanche of paper that we experienced in the last
23 goals docket where there seemed to be no end to the
24 filings that were submitted to the Commission.

25 Once again, we think that the choice is fairly

1 clear. Thank you, Commissioners.

2 CHAIRMAN JOHNSON: Thank you, Mr. Guyton.
3 Questions, Commissioners?

4 COMMISSIONER DEASON: I have a question for Mr.
5 Guyton. You indicated that the procedural order has
6 been issued since March. Ms. Swim indicated that it
7 was LEAF's understanding that there were to be
8 negotiations concerning measures that should be
9 evaluated, and that they were under no notice that the
10 first procedural order would be final if the
11 negotiations failed. What is your view of that?

12 MR. GUYTON: I can't speak to LEAF's
13 understanding, Commissioner Deason, so I won't. I can
14 only speak to FPL's. We took that order at its face,
15 and that order said each utility subject to this order
16 shall comply with the requirements of Rule 17 -- 0021.
17 Specifically, each utility shall propose numerical
18 goals for the ten-year period such and such based on
19 the utility's planning process. And then it set forth
20 a procedural schedule to be followed -- I'm sorry, it
21 didn't set forth a procedural schedule.

22 But we understood that was the mandate to go
23 ahead and begin the planning process. There were
24 ongoing discussions. I think we need to put this in
25 context. This prehearing order, the order on

1 procedure, was issued after two workshops where there
2 was an attempt on the part of all the parties to come
3 together and agree on a list of issues. That broke
4 down. And at the end of that, staff took an order to
5 establish procedure to the prehearing officer, and the
6 prehearing officer issued an order that said go forth
7 and comply with the rule.

8 Were there ongoing discussions among the parties
9 after this order was issued? Absolutely. There was
10 still an attempt among the parties to try to come up
11 with an agreeable set of measures. With FPL those
12 conversations continued with LEAF until I think as
13 late as May, at which point LEAF said they just didn't
14 think they were going to be able to reach consensus.

15 A couple of months after that they petitioned
16 essentially for another procedural order. I guess
17 FPL's perception was we had an order on procedure, we
18 were told to go forward, and we told LEAF in the
19 discussions that if we are going to come to consensus
20 on the measures we need to do it now, we can't hold up
21 the planning process much longer. And we had those
22 discussions between January and May of this year. Now
23 we find ourselves in October, and that process is well
24 underway.

25 CHAIRMAN JOHNSON: Further questions? Staff,

1 following up on that point, in Ms. Swim's presentation
2 she stated that -- and perhaps there was some
3 confusion on this particular issue, but she stated
4 that during the process of the parties negotiating
5 measures, it was their understanding and there was
6 some quote from, I guess, maybe one of the workshops,
7 that staff's position was that if the companies
8 couldn't reach consensus then staff would develop a
9 set of measures. And that that was --

10 MS. SWIM: What was presented, and what was
11 stated on the tape at that workshop is staff saying
12 basically, gee, it looks like you all are not -- we're
13 not reaching agreement here. If the parties cannot
14 reach agreement on the list of measures, then we will
15 have to bring this issue before the Commission.

16 CHAIRMAN JOHNSON: So the issue of who should --
17 what was the issue that --

18 MS. SWIM: The issue of which measures to test,
19 what should be on that measure list.

20 CHAIRMAN JOHNSON: And are you stating by your
21 presentation that you all relied upon that and that is
22 why you didn't come forward earlier with a procedural
23 order?

24 MS. SWIM: Yes, that's right. Staff had proposed
25 a list of measures just like last time. There was one

1 workshop on those measures, and it became clear that
2 there was some possibilities for agreement, but there
3 wasn't agreement then. And we all agreed to negotiate
4 in good faith and see if we could come up with a list
5 of measures.

6 MR. BALLINGER: Commissioner, I'll address that.
7 I was involved in both of those workshops. Initially,
8 at the first workshop staff took a list of measures
9 that basically came from the last goals proceeding.
10 We thought that might be a good starting point.

11 MS. SWIM: Tom, that was the second workshop,
12 wasn't it? Just to make sure we are accurate here.

13 MR. BALLINGER: I think it was the first one.

14 MS. SWIM: The first workshop had the list of
15 issues like should we have numeric goals and, you
16 know, kind of stuff like that. Do you remember? And
17 then the second workshop is when the list of measures
18 was proposed.

19 CHAIRMAN JOHNSON: Ms. Swim, I'm going to allow
20 staff to respond, and --

21 MS. SWIM: Excuse me.

22 CHAIRMAN JOHNSON: -- then if you have additional
23 comments you can provide them later.

24 MR. BALLINGER: That's okay. We realized that
25 the parties couldn't agree for various reasons. We

1 threw out various alternatives to help shorten the
2 proceeding to basically springboard from what we
3 learned from the last goals proceeding, and what has
4 changed over the last five years. We didn't see any
5 movement. We came back at a second workshop to try it
6 again.

7 At that time I think the statement from staff
8 was, you know, you all go and negotiate. If you can't
9 agree we will bring the issue to the Commissioners to
10 decide. Negotiations went on for several months,
11 there was no movement. Staff had to get a procedural
12 order out to get the process going. We went -- we
13 thought the best course of action, rather than
14 imposing a list of measures on utilities, was say
15 follow the rules. And negotiations continued on after
16 that.

17 I don't think we ever said that we would go and
18 bring a list of measures to the Commission to decide.
19 I think we would address the issue of what they want
20 to do with measures, and I think the consensus with
21 staff and why we went to the prehearing officer was
22 issue an order that says follow the rules because
23 negotiations were still continuing.

24 CHAIRMAN JOHNSON: Because negotiations were --
25 I'm sorry.

1 MR. BALLINGER: Were still continuing. My
2 understanding was the parties were still working with
3 each other trying to get a list of measures and ideas
4 to go. We were under a time crunch to get a
5 procedural order out to get the process moving, so we
6 issued the order that said follow the rules.

7 CHAIRMAN JOHNSON: Ms. Elder.

8 MS. ELDER: Thank you. My recollection also is
9 as Ms. Swim that the first workshop was to discuss a
10 letter that the Commission had presented to interested
11 parties that posed such questions as should there be
12 numeric goals. Which we were rather flabbergasted by,
13 since that is such a fundamental aspect of the meaning
14 of these goals, and there was discussion surrounding
15 these eight or ten questions, and it was a rather
16 short workshop. And in the second workshop it got
17 into the discussion of the measures.

18 But, in any event, in both of the workshops we
19 presented on behalf of the various organizations, the
20 public, basically, and the various organizations that
21 we represent, that we were extremely concerned about
22 these issues and that we wanted to see the full range
23 of viable conservation measures considered. And we
24 had understood that the negotiations were proceeding
25 in good faith on the list of measures, and so quite

1 frankly, we were very surprised to find this movement
2 towards really -- the proceedings as they are going,
3 as far as the limitation on those measures.

4 We would respond to FPL's comment about the
5 expense and the time and so forth that we certainly --
6 we very much appreciate what you went through last
7 time and the difficulty of that, and we do not want to
8 see any unnecessary paperwork or expense. At the same
9 time, these issues before you and the scope of
10 conservation measures that are considered, it is
11 necessary that you examine viable conservation
12 measures. It is required by law, and it is what is
13 needed by the public. It is what is needed for our
14 future. And so we don't regard that -- and when it
15 was referred to as being really unnecessary, we don't
16 regard that as unnecessary at all. It is important
17 that you approach it in a way that doesn't result in,
18 you know, a lot of excess, and you can do that. I
19 mean, you can do that. And we would urge that you do.

20 CHAIRMAN JOHNSON: Thank you. And I guess it's
21 your belief that the process that we are following
22 that is pursuant to the rule as it is currently
23 drafted will not allow for us to have the opportunity
24 to look at viable conservation options, or is it just
25 that it would take -- it's a longer process?

1 MS. SWIM: But the concern I have, Commission, is
2 with the order as it is issued now, which just
3 basically says go forth and proceed with the rule, the
4 utilities are obligated by the rule, and when Charlie
5 cited the rule he referred to the section of the rule
6 as such and such, but the rule says, as I read before,
7 that the utilities have to provide the Commission with
8 projections of the total cost-effective savings that
9 are reasonably achievable in their service area.

10 It also provides that these projections need to
11 be based on utility planning processes. We have a
12 disagreement here about what that means. If it means
13 the utilities rule the roost and whatever is in their
14 planning process, well, that's all the Commission can
15 learn about cost-effectiveness, then there is not a
16 concern. But if the Commission believes, and I
17 believe it does, that it has the authority to tell the
18 utilities what measures to test, then it needs to say
19 so now, because the utilities are not going to test
20 all of the measures that passed TRC in the last case.

21 COMMISSIONER JACOBS: It sounds like -- and let
22 me it ask it this way. Without divulging any
23 particular program or measure, it sounds like you
24 propose some particular programs to be tested which
25 you don't believe the utilities will bring forth.

1 Wouldn't that then amount to a violation of that
2 order? Because if there are measures that fall within
3 those criteria, i.e., they are TRC compatible and they
4 present those benefits that the order prescribes, if
5 they don't bring those measures forward, aren't they
6 in violation of the maximum benefits in that order?

7 MS. SWIM: I think -- I'm trying to follow you.
8 I think the answer is yes. What I'm saying is, to set
9 conservation goals in this case, the Commission has a
10 legal obligation to become informed about the
11 cost-effectiveness of savings measures. And because
12 in the last case the Commission decided that TRC
13 measures are -- that TRC cost-effective DSM is
14 cost-effective, and RIM cost-effective DSM is
15 cost-effective, it must become informed in this case
16 on whether or not measures are cost-effective under
17 those tests given current conditions.

18 I'm saying that you have to become informed. And
19 if you let the utilities go forth as they are now
20 proposing, you are not going to become informed on
21 everything that you said was cost-effective in the
22 last goals case. And, therefore, even though the rule
23 says you must base your goals on an estimation of the
24 total cost-effective savings reasonably achievable,
25 you will not be able to do that because you won't have

1 before you the cost-effectiveness information that you
2 need.

3 COMMISSIONER DEASON: Ms. Swim, the goals that
4 were set in the last docket, those goals were based
5 upon measures which passed RIM, is that correct?

6 MS. SWIM: Yes. The difference between the
7 megawatt and megawatt hours savings between TRC and
8 RIM passing DSM is significant. The facts in the last
9 goals case established conclusively that measures
10 which pass RIM save about twice the energy as measures
11 which pass TRC. It was that finding that caused the
12 Commission to adopt its policy to encourage TRC
13 passing DSM when it is found that the energy savings
14 are high and the rate impacts are low.

15 COMMISSIONER DEASON: But the goals were set
16 based upon a RIM test.

17 MS. SWIM: The goals were set based upon a RIM
18 test because staff authored a post-hearing analysis
19 which concluded that the difference between RIM and
20 TRC was not very significant when applied to the then
21 current generation expansion plans of the utilities.
22 Those generation plans have changed. There is a lot
23 nearer term need now.

24 CHAIRMAN JOHNSON: Mr. Stone, did you want to --

25 MR. STONE: I just want to say, Commissioners,

1 that the experience gained by the utilities and the
2 Commission in the last proceeding is considerable and
3 it should be carried over to this proceeding. And my
4 concern is and the concern of Gulf Power Company in
5 respect to what LEAF is proposing is, we don't build
6 on the experience that we gained last time, but rather
7 we start all over again. And that proceeding was very
8 arduous for all involved, and if we don't take heed of
9 the lessons learned in that last proceeding, then we
10 are doomed to repeat it. And we urge you to deny
11 LEAF's request.

12 COMMISSIONER DEASON: Mr. Guyton, let me ask you
13 a question. Is Florida Power & Light in the process
14 now of developing the list of measures or has that
15 list already being developed?

16 MR. GUYTON: That list, as I understand it, has
17 been developed and the analysis of those measures is
18 underway, Commissioner Deason.

19 COMMISSIONER DEASON: Does that list consist of
20 just those measures which passed RIM last time or was
21 there an analysis done of measures that didn't pass
22 RIM to reevaluate the possibility that under current
23 financial and economic conditions that a program may
24 now pass RIM that did not pass before?

25 MR. GUYTON: At the risk of perhaps misinforming

1 you, I will tell you what I understand that that list
2 is comprised of. The companies started with the
3 measures which last time were found to be
4 cost-effective and were used -- let me back up, that's
5 not quite right. The Commission or the companies
6 started with the measures last time that were
7 identified as UP measures in the procedural order from
8 last case, the utility program measures. It dropped
9 from those measures, measures which were not found to
10 be cost-effective in the last case.

11 And the reason it did is that it has had about a
12 25 percent drop in its avoided cost since the last
13 case, and if it wasn't cost-effective last time, it's
14 not going to be cost-effective this time, unless the
15 company had new monitor data which suggested that
16 there may be more savings than it was assumed last
17 time. If it had new monitored data for those
18 measures, it added those back to the mix to be
19 reanalyzed to make sure that we didn't drop out
20 anything that could, in turn, become cost-effective
21 again.

22 COMMISSIONER DEASON: So you added back those
23 that what?

24 MR. GUYTON: Even for measures that failed last
25 time, if we had new monitored data that suggested that

1 those measures actually achieved greater savings than
2 we assumed in the analysis last time, so it increased
3 its chance of being cost-effective, we added those
4 back in to be analyzed this time.

5 In addition to those, we added all measures which
6 were not analyzed last time, but which have come out
7 of R&D programs which have shown promise or any new
8 measures which are in approved programs that have been
9 approved subsequent to the last goals docket.

10 Now, what that does is it builds upon the
11 considerable body of analysis that the company did in
12 the last case, and it makes an assumption that if it
13 didn't pass last time, and the assumptions haven't
14 changed with the decline in avoided cost, it's not
15 going to pass this time. We think that is a
16 reasonable assumption.

17 COMMISSIONER DEASON: Well, did you take into
18 consideration the timing of the need for additional
19 capacity? In fact, I understand that capacity costs
20 have declined, or at least that's the representation.
21 I think that's generally accepted. But what about the
22 timing of when that need would have to be filled?

23 MR. GUYTON: The timing is roughly comparable
24 between the two planning processes. If you recall
25 last time in both these processes we take out the

1 incremental DSM that we currently plan to do and treat
2 it as if it were not a resource and then assess what
3 our need for capacity is in the timing. And in both
4 instances it was roughly the same period of time
5 between when we were doing the analysis and when we
6 would bring the first unit on-line. In both instances
7 it was a combustion turbine. So the timing is
8 essentially the same, and the cost associated with the
9 technology have declined.

10 What we are trying to do is build upon the
11 considerable body of analysis that was done in the
12 last case, yet if there are any changed circumstances
13 capture the benefit of those without going back and
14 repeating the just incredibly voluminous analysis.

15 Now, there is one issue that -- I don't want to
16 mislead you in that regard. We haven't had a
17 discussion of RIM versus TRC. The company in its
18 planning process does analyze measures which are
19 cost-effective under the RIM test. Just as the
20 Commission approved goals that were cost-effective
21 under the RIM test last time.

22 It does not as part of its practice analyze a TRC
23 portfolio, as was required not by your rule, but by a
24 procedural order last time. And that is not within
25 the scope of what the company is planning on doing

1 this time.

2 COMMISSIONER JACOBS: How would you know, then,
3 if there is something that you should be proposing to
4 meet that standard that is in the present order? To
5 maximize -- in essence, to maximize your savings
6 benefits?

7 MR. GUYTON: Commissioner, we read that rule
8 differently than LEAF, and do not read that as
9 requiring an analysis of measures that may be
10 cost-effective under a total resource cost test. I
11 think in large part we are building upon another
12 aspect of the last case, which LEAF quoted part of the
13 order from the last case, but not the entire order
14 from the last case.

15 They want to direct your attention to part of the
16 order that says we encourage utilities to consider
17 measures that may not pass RIM, but past TRC. But the
18 order preceding -- or the paragraph preceding that
19 order was we thought fairly clear about the way the
20 Commission was resolving the RIM versus TRC
21 controversy in the last case.

22 I would like to share that, because Ms. Swim
23 suggested to you earlier that there were significant
24 differences in savings between a RIM portfolio and a
25 TRC portfolio. That was a significant point of

1 contention in the last case, and that is just the
2 opposite of what the Commission found and the Supreme
3 Court of Florida affirmed.

4 Here is what you said, "We will set overall
5 conservation goals for each utility based on measures
6 that pass both the participant and RIM tests. The
7 record in this docket reflects the difference in
8 demand and energy savings between RIM and TRC
9 portfolios are negligible.

10 We find that goals based on measures that passed
11 TRC but not RIM would result in increased rates, and
12 would cost customers who do not participate in a
13 utility DSM measure to subsidize customers who do not
14 participate. Since the record reflects that the
15 benefits of adopting a TRC goal are minimal, we do not
16 believe that increasing rates even slightly is
17 justified." We rest on that paragraph, Commissioner
18 Jacobs. We think RIM-based goals are entirely
19 consistent with your last goals order, and your
20 implementation of the goals rule in your last goals
21 order.

22 COMMISSIONER JACOBS: If you read that in para
23 materia with the other paragraph, though, you would
24 not agree then that there is some need to explore
25 those measures which have the high cost -- I'm sorry,

1 the high savings potential which may not pass RIM, but
2 may pass TRC?

3 MR. GUYTON: We don't see that your rule requires
4 that or necessitates that. We have a real concern
5 about doing it, because it more than doubles the
6 analysis that has to be performed. If you develop the
7 RIM portfolio and a TRC portfolio, the measures are
8 different. Some are the same, some are different.
9 But they all have to be analyzed twice from a
10 different perspective. It more than doubles the
11 analysis that the utilities face in that the TRC
12 portfolio is just essentially a second requirement of
13 analysis. And you have already found that the
14 difference between the two portfolios is negligible.

15 MS. SWIM: Commission, could I have an
16 opportunity to rebut that statement that Mr. Guyton
17 just made?

18 CHAIRMAN JOHNSON: Are you finished with your
19 question? Sure.

20 MS. SWIM: Commissioner, the difference between
21 the megawatt and the megawatt hours savings between
22 TRC passing DSM and RIM passing DSM is not negligible,
23 it is substantial. The facts that were found in the
24 last goals case establish conclusively that measures
25 which pass RIM save about twice the energy as measures

1 that pass TRC. It was this fact that caused staff to
2 recommend, and I quote, "That the Commission," quote,
3 "establish that TRC will be the policy when it is
4 found that energy savings are high and rate impacts
5 are low." The Commission adopted that recommendation
6 and LEAF is asking that it be implemented now.

7 It's true that the Commission's order did
8 originally state that the difference in savings
9 between RIM and TRC portfolios are negligible. In
10 reconsidering that order, this finding was clarified.

11 At the agenda conference addressing
12 reconsideration, staff explained that this finding did
13 not mean there is only a negligible difference in the
14 megawatt and megawatt hour savings. To the contrary,
15 staff's written recommendation on reconsideration
16 states that the difference in megawatt and megawatt
17 hour savings are substantial.

18 They are, as I said before, you can save two
19 times the energy with TRC as you can with RIM. Both
20 RIM and TRC are less expensive than a power plant.

21 COMMISSIONER JACOBS: You said it the other way
22 before, so I thought that's the way you meant it. You
23 stated the reverse before, so I thought that's the way
24 you meant it.

25 MS. SWIM: Sorry, I sometimes do that. Now, this

1 substantial difference in megawatt and megawatt hours
2 savings is the reason that staff recommended that the
3 Commission establish that TRC will be the policy when
4 there are high energy savings and low rate impacts.

5 Now the reconsideration order went on to explain
6 that, quote, "The substantial versus negligible
7 savings question cannot be answered solely through
8 comparison of TRC to RIM megawatt and megawatt hour
9 savings," which again are substantial. On
10 reconsideration, staff presented a post-hearing
11 analysis which concluded that although the difference
12 in megawatt and megawatt hour savings are substantial
13 in isolation, they are negligible when they are viewed
14 from a generation expansion perspective.

15 That's what happened, Commission. One cannot say
16 at this point that the Commission ruled there is not a
17 substantial difference between megawatt hour --
18 megawatt and megawatt hour savings. The Commission
19 found that TRC offers twice the megawatt and megawatt
20 hours savings as RIM. That's what the record says.
21 It is true they set goals that were RIM based because
22 they were told by staff that the savings difference
23 would make only a negligible difference in the
24 generation expansion plans that then existed.

25 You have had, you know, Mr. Guyton say that with

1 the current expansion plan it won't make a difference
2 to FP&L, but, you know, I don't think --

3 CHAIRMAN JOHNSON: Would you just -- I didn't
4 hear what you said.

5 MS. SWIM: -- we really haven't litigated that
6 issue.

7 CHAIRMAN JOHNSON: Say the last sentence again, I
8 didn't hear you. You said you have FPL --

9 MS. SWIM: In response to a question from
10 Commissioner Deason, Mr. Guyton suggested that the
11 current generation plan is really no different than
12 the generation plan last time. You know, I'm not
13 prepared at this moment to offer you any quantitative
14 analysis of that, but I do know that the utility
15 ten-year plans now propose a much nearer term need
16 than they did when the goals were set last time.

17 I mean, before you decide that you are going to
18 take the same route as last time, at the very least
19 you need to analyze the current plans.

20 CHAIRMAN JOHNSON: Thank you, Ms. Swim. Ms.
21 Elder, let me ask a question of staff. And Mr. Guyton
22 if I am mischaracterizing what you said, you can help
23 me out, too. Now, understanding from Mr. Guyton's
24 testimony that their plan and most of their filings
25 will be under a RIM type cost-effectiveness test, thus

1 I can assume that we won't have any -- or maybe this
2 isn't a good assumption. Will we have any testing
3 under TRC? I mean, is there a process by which to the
4 extent staff wanted these things analyzed differently,
5 is there an opportunity, even if the company were to
6 file under the cost-effectiveness RIM test?

7 MR. BALLINGER: When they file, they will file
8 all three tests; the RIM, participant, and the TRC
9 test for each measure. What Mr. Guyton was talking
10 about is when they are screening a measure, if it only
11 passes TRC and does not pass RIM, it will get no
12 further consideration, so we won't see it.

13 MS. ELDER: Commissioners, if I may.

14 CHAIRMAN JOHNSON: Well, is there a way for us to
15 -- so we won't have a way to look at measures that
16 passed -- we won't know whether or not measures passed
17 TRC at all, because in the initial screening that
18 won't be done?

19 MR. BALLINGER: Typically, if they pass RIM they
20 will pass TRC; it's not the other way around.

21 CHAIRMAN JOHNSON: So there may be some measures
22 that pass TRC that didn't pass RIM, but we won't see
23 those.

24 MR. BALLINGER: Correct.

25 CHAIRMAN JOHNSON: And there is no vehicle or

1 opportunity for us to see those?

2 MR. BALLINGER: No, I think there is, and this is
3 where we get to the contention. We tried to build on
4 what we learned the last time, that the difference
5 that we saw between RIM and TRC programs or measures
6 was negligible from a total system and rates
7 perspective. That's what the staff found, that's what
8 the Commission found, and it was upheld at the Supreme
9 Court. That the difference between the two was not
10 worth going to a TRC type of goals setting process
11 because of the impact on rates.

12 The Commission encouraged utilities to continue
13 to look at TRC passing DSM programs that had minimal
14 rate impacts, and even offered the possibility of
15 stockholder incentives and lost revenue recoveries to
16 encourage them to go do these things. We have seen no
17 such programs come in.

18 Based on that, and based on the reduction in
19 avoided costs, utilities are screening on RIM, which I
20 think is consistent with the Commission order in the
21 last goals setting. That you set goals based on RIM,
22 you found the difference at that time between RIM and
23 TRC to be negligible from an overall basis, and I
24 think it's rational to conclude that we should
25 continue to go with RIM.

1 That does not preclude LEAF from proposing
2 measures to be analyzed that are TRC passing only.
3 Part of the workshop was to try to get out what new
4 measures would be out there that may be TRC that we
5 can look at, and that's what we tried to get the
6 parties together to work at. They couldn't come to
7 agreement.

8 CHAIRMAN JOHNSON: So under the process that we
9 have established, it would be incumbent upon LEAF to
10 come forward with measures that perhaps pass TRC but
11 did not pass RIM, and present those to the Commission.
12 So there is still an opportunity, the onus would just
13 be on LEAF.

14 MR. BALLINGER: Yes. And I think throughout in
15 the early part of this process it was proposed that,
16 as Mr. Guyton said, if they had measures that now they
17 had new monitoring data, that they would include them,
18 but even if LEAF had some measures that had data, new
19 kilowatt and kilowatt hour data that was different
20 from the last goals-setting process, the utility would
21 welcome that and would see whether or not they should
22 analyze it or not.

23 CHAIRMAN JOHNSON: You said something a little
24 earlier that I want to follow up on and make sure I
25 understand. You stated that to provide the companies

1 with additional incentives to do TRC testing that we
2 put in some, I guess, some sharing measures or -- and
3 I'm vaguely recalling that.

4 MR. BALLINGER: Okay.

5 CHAIRMAN JOHNSON: But more importantly than what
6 we did, you stated that the utilities have not engaged
7 in or have not brought forward any programs that
8 passed TRC. Is that they aren't doing the testing
9 despite the fact that we have the incentive mechanisms
10 in place, or what is the issue?

11 MR. BALLINGER: I think the issue is you gave
12 them an incentive and they didn't take it. So even a
13 financial incentive to pursue programs that passed TRC
14 but barely failed RIM; in other words, large savings
15 but small rate impacts. And we listed some measures
16 that we found might fit in that category, like natural
17 gas substitution, things of this nature.

18 We offered the utilities the possibility for
19 stockholder incentives and recovery of lost revenues,
20 which should make them whole. We got no takers. So I
21 think that was the Commission's policy to encourage
22 those ones that just barely failed RIM but may have
23 some large savings, and we got no takers on those
24 types of programs. At least over the last five years.

25 CHAIRMAN JOHNSON: Ms. Elder, I know you had a

1 question, or a comment.

2 COMMISSIONER CLARK: Well, Ms. Swim, would you
3 respond to what the staff has suggested, that you
4 aren't precluded and you haven't been precluded from
5 coming in and saying we would like for you to look at
6 these. We think these measures, TRC measures, may be
7 worth looking at?

8 MS. SWIM: Sure, I would be glad to.
9 Commissioner Clark, we have suggested those measures.
10 What we suggest is that everything that the Commission
11 found in the last goals case in their fourth
12 procedural order do have potential as a utility
13 program, which includes both the measures that are
14 called in that order, UP measures and the measures
15 that are called in that order CUE measures, merit
16 testing in this case. The Commission found in the
17 last goals case that all of those measures have
18 potential to offer reasonably achievable savings in
19 the utility's service area. We think all of those
20 measures should be tested using both the RIM test and
21 the TRC test in this case.

22 We also are proposing some other measures that
23 are referred to in the fourth procedural order as LEAF
24 supplemental measures. These are measures that LEAF
25 proposed last time, but for the benefit of not

1 delaying the proceeding, withdrew them. And the
2 fourth procedural order recognizes that those measures
3 -- I can't remember exactly, but it says something
4 like can be considered in future goals setting
5 proceedings. We are now at a future goals setting
6 proceeding, we want to have those measures back at the
7 table.

8 We had suggested what measures merit testing and
9 we are building exactly on what the Commission ruled
10 on after the fourth procedural order. I mean, maybe I
11 should describe to you what the Commission went
12 through to get to the fourth procedural order. I
13 mean, we really are skipping a lot of steps here. We
14 are building on what was done last time. What I am
15 saying is if you don't ask the utilities to give you
16 TRC results of measures that have potential as a
17 utility program, you are not going to know if the
18 measure passes TRC.

19 We have suggested these measures, they are in the
20 pleadings before you. We suggested them at the
21 workshop. They are basically what the Commission
22 ruled last time have potential as utility programs.

23 CHAIRMAN JOHNSON: Any other questions,
24 Commissioners? Were you getting ready to make a
25 comment, Mr. Guyton?

1 MR. GUYTON: I don't want to drag this out any
2 farther.

3 CHAIRMAN JOHNSON: Any additional questions,
4 Commissioners?

5 COMMISSIONER DEASON: I have a question for
6 staff. The cost to the utilities of doing the
7 analysis and participating in the conservation goals
8 setting hearing, are those conservation costs which
9 are passed through the clause, are they absorbed in
10 the base rates, how are they --

11 MR. BALLINGER: That exact issue came up after
12 the last goals proceeding, and I believe it was ruled
13 that they are through base rates and not recovered
14 through the clause.

15 CHAIRMAN JOHNSON: Staff, could you respond to
16 Ms. Swim stating that they did come forward with, I
17 guess, measures that they thought should be tested or
18 included and that what they had suggested was that we
19 start with the measures that were stated in the fourth
20 procedural order. What was the reaction or what was
21 the problem with that proposal?

22 MR. BALLINGER: It basically ignored the findings
23 that the Commission had at the end of the goals
24 proceeding that said we are going to base it on RIM.
25 That the difference between RIM and TRC is negligible.

1 That, coupled with the fact that avoided costs have
2 declined doesn't make sense to go back and evaluate
3 programs that failed RIM before. You're recreating
4 the wheel again. So, yes, they did build on the
5 procedural order that finally had a list of measures,
6 but it ignores the fact of what we learned throughout
7 the hearing process of what really is meant by
8 cost-effective.

9 And I think that's what the utilities have done.
10 They have taken that same list of measures and pared
11 them down to ones that passed RIM before, and going on
12 and analyzing them again.

13 MS. SWIM: Commissioners, there is kind of two
14 points of disagreement here. One is, you know, should
15 the Commission -- how should the Commission interpret
16 its order last time. You know, did you say RIM only
17 or did you say RIM and TRC? I have quoted sections
18 that I believe make very clear that you said RIM and
19 TRC. It's true you set RIM-based goals, but that was
20 based on the generation plans that existed then. You
21 also set a policy in favor of TRC, because -- and it
22 is a finding of fact that is uncontroverted -- TRC
23 offers two times the energy savings as RIM. That's
24 why you voted in favor of it. It's true you didn't
25 include it in the goals. You had utilities screaming

1 that competition was around the corner and if they
2 spent any more on DSM they would not be competitive.
3 Well, utilities are not saying that right now. You've
4 got a different ballgame. And for you to take off the
5 table without even knowing if it is cost-effective
6 under current conditions measures which you last time
7 found had potential as utility programs without even
8 seeing if they meet cost-effectiveness criteria this
9 time, it is LEAF's position that that would be very
10 arbitrary.

11 COMMISSIONER CLARK: Let me ask a question. It
12 seems to me that -- what about the effect, Ms. Swim,
13 that you would have the opportunity to show, and this
14 would be building on what we found in the last time in
15 our final order, that you could come back and -- I
16 think that going back to what you requested in the
17 fourth procedural order is not building on what we
18 learned, because we made some decisions last time with
19 respect to measures that pass TRC and measures that
20 pass RIM and we elected to go to RIM. I think you
21 still have the opportunity to come forward and say
22 here are the issues, despite your -- given your
23 finding in that order, we believe still bear looking
24 at because of these changed circumstances. And be
25 very specific rather than reinventing the wheel.

1 That's still open to you, and I think that's the
2 appropriate way to go.

3 MS. SWIM: Well, Commissioner, we think
4 everything that passed RIM passed TRC in the last case
5 should be looked at to see if it passes TRC under
6 current conditions. And what you are suggesting would
7 mean that that would not occur.

8 So, you know, I'm not sure, you know, how else to
9 respond to you. But we feel very strongly that the
10 Commission should not drop at this time any measure
11 which passed TRC in the last goals case.

12 I mean, in my experience when utilities run these
13 cost-effectiveness tests, you know, RIM and TRC
14 results are an automatic printout. What we are
15 talking about is in the pile of measures that go into
16 the test, are you going to get the information about
17 whether a measure that passed TRC last time would pass
18 TRC under current conditions or not.

19 MR. BALLINGER: I'm not sure if you want me to
20 respond to that or not.

21 COMMISSIONER CLARK: I do.

22 MR. BALLINGER: Okay. I'm not sure I understood.
23 I heard on one hand to only take the programs that
24 passed RIM the last time, test them again this time
25 for RIM and TRC, and then in the next sentence I heard

1 take all the programs that passed TRC last time and
2 test them again. So I'm not real clear on what the
3 request is again. I think it's the latter. That LEAF
4 would want the utilities to take all the programs that
5 passed either RIM or TRC and do cost-effectiveness
6 analysis using all three tests; the participant, RIM
7 and TRC tests.

8 MS. SWIM: Yes. We want every measure, and we're
9 talking measures rather than programs here, every
10 measure that passed RIM or TRC in the last case should
11 be tested to see if it would pass TRC or RIM under
12 current conditions, yes.

13 COMMISSIONER DEASON: Well, let me -- you do
14 realize there are costs involved in doing the testing.
15 None of this is free. And that while these costs
16 aren't passed through the clause, they are costs which
17 the utility has to incur, which in theory become part
18 of base rates and the customers still have to pay. So
19 there is a trade-off there. Do you agree with that?

20 MS. SWIM: Well, yes. And, you know, there is
21 also a cost in not implementing TRC measures. I mean,
22 it costs millions more to provide energy services if
23 TRC passing DSM is skipped.

24 COMMISSIONER DEASON: Under the TRC
25 cost-effectiveness test, but there is another

1 cost-effectiveness test called RIM, which this
2 Commission endorsed and that was the basis upon which
3 the goals were set, correct?

4 MS. SWIM: Yes, assuming the then current
5 generation expansion.

6 COMMISSIONER DEASON: Well, I think the bottom
7 line is you want this Commission to relitigate TRC
8 versus RIM. Is that really what you want?

9 MS. SWIM: I don't think so, Commission. I think
10 the bottom line is that we see the Commission as
11 having voted last time in favor of both RIM and TRC.
12 You know, the order states that the goals are
13 RIM-based, but the utilities are encouraged to
14 evaluate and implement TRC testing measures.

15 The Commission made crystal clear that the RIM
16 goals were minimum goals, and they said in their
17 ordering paragraphs that the goals -- the utilities
18 were to either achieve or surpass the goals. We think
19 that this means that the Commission acted in favor of
20 TRC passing DSM. And, in fact, recognizing the fact
21 that what passes TRC is cheaper than a power plant,
22 thought that it was a good idea to encourage utilities
23 to do this. In fact, that's why they offered -- you
24 offered incentives to get utilities to do this. Well,
25 I mean, they haven't.

1 And this is your chance to look and see what
2 makes sense for them to do. You heard lots of
3 testimony about the rate impacts. You adopted a
4 policy that said when the energy savings are high and
5 the rate impacts are low we want to go with TRC.
6 Well, how are you going to know what that is if you
7 don't ask the utilities to provide --

8 COMMISSIONER DEASON: What you are saying,
9 though, is that you want this Commission to take the
10 step that it did not take last time, and that is base
11 the goals not only on just RIM, but to include
12 programs -- measures which pass TRC, but not RIM, but
13 which have small rate impacts but large savings. You
14 want us to make that change in the setting of the
15 goals.

16 MS. SWIM: Ultimately, yes, but at this point I
17 am just asking you to get the information that you
18 need to decide what portion of the TRC potential, and
19 by that I mean measures which pass TRC, you want to
20 deal with. And particularly, you know, what portion
21 of that potential offers high energy savings and low
22 rate impacts, and how do you want it address that in
23 this case. Yes, I want to have that addressed, and I
24 think you need to have the information about TRC
25 cost-effectiveness to do it.

1 I mean, yes, my wish list would be that you
2 include the total thing in the goals. Maybe you will
3 and maybe you won't, but you need to look at it. You
4 encouraged it. You said it was good. And in order to
5 figure out what it is, you've got to get some
6 cost-effectiveness information and make a decision
7 down the road once you get a chance to look at that
8 information.

9 I mean, this policy is not going to be
10 implemented if you don't act to implement it. That is
11 perfectly clear.

12 COMMISSIONER JACOBS: Let me ask this of staff.
13 I heard you say earlier that the incentives we gave
14 were for programs that just failed RIM and had high
15 savings benefits, is that correct?

16 MR. BALLINGER: Yes. We didn't really get
17 specific on programs. We said programs of this type
18 that had low rate impacts or minimal rate impacts but
19 large savings would probably be eligible for
20 stockholder incentives and lost revenue recovery.

21 COMMISSIONER JACOBS: Why is it that the failure
22 to at least investigate those programs does not rise
23 to the level -- well, let me ask the reverse question.
24 Could a company maximize the benefits and savings that
25 they could achieve in a program without exploring

1 those kinds of measures, those kinds of programs?

2 MR. BALLINGER: I think so, and I think what it
3 tells you is that the desire to keep rates as low as
4 possible overwhelms any stockholder incentive or
5 making whole --

6 COMMISSIONER JACOBS: I understand that that is
7 what company -- that's what the company is balancing.
8 That's not our policy goal.

9 MR. BALLINGER: And I think also with the prior
10 finding that the difference between a total TRC
11 portfolio and a total RIM portfolio was negligible.
12 Yes, the kilowatt and kilowatt hour savings may be
13 significant between the two, but in the overall system
14 they are a small little part of the overall thing.

15 COMMISSIONER JACOBS: But let me go back. Maybe
16 you did answer, but let me just say it more time.
17 Because what I have heard is that the companies are
18 saying we can maximize, we can follow the confines of
19 the existing standard by simply implementing RIM, and
20 if you buy off on the opposing parties' argument that
21 means only doing a threshold -- undertaking a
22 threshold strategy. You only do the minimum
23 threshold, and that's it, and you have maximized. And
24 my question is is that true? Is that possible? Can
25 you maximize your savings by only undertaking a

1 threshold program? Or I did misinterpret what was
2 being argued?

3 MR. BALLINGER: I don't know. I think the --
4 remember, we set goals. This is all about setting a
5 goal number. Whether you will hit it exactly, below
6 it, above it, we don't know. We based it on a
7 cost-effective measure. But we said we realize there
8 might be some measures out there that maybe cause a
9 slight upward pressure on rates, but have significant
10 savings, may have these other benefits we may not have
11 captured, so we will encourage you to do those. It's
12 kind of icing on the cake, if you will. But I think
13 the Commission's decision was clear that when goals
14 that we think is the most cost-effective for the
15 overall body of ratepayers is RIM only.

16 COMMISSIONER JACOBS: I think you've answered my
17 question. You didn't want to, but you did. And that
18 doesn't mean any negative to you, but what I'm hearing
19 you say is that, yes, they can maximize it for
20 purposes of the goal in cost recovery, in
21 conservation, they can maximize their performance by
22 only undertaking a RIM program.

23 MR. BALLINGER: Yes.

24 COMMISSIONER JACOBS: Now, is that what we want
25 to undertake as a policy matter? Do we want to only

1 look at threshold RIM programs in order to maximize
2 efforts of conservation?

3 MR. BALLINGER: And I think my answer was that at
4 the last goals proceeding, which was the first time we
5 implemented these new rules on numeric goals, the
6 Commission was concerned about that very issue, are we
7 overlooking something? So they had the utilities
8 evaluation TRC portfolios and RIM portfolios to see
9 the whole world, what is out there.

10 COMMISSIONER JACOBS: And that was the SRC study?

11 MR. BALLINGER: Right, in part and in part
12 utility-specific data and all this stuff. And the
13 bottom line they came down that the decision was as a
14 policy that we think RIM is the way to go. That is my
15 reading of what happened through the last goals
16 proceeding and where we are at now.

17 COMMISSION STAFF: Commissioner, may I interject,
18 please. I think that this entire issue is stare
19 decisis. I think that it has been decided by the
20 Commission and I think that it has been affirmed by
21 the Supreme Court.

22 COMMISSIONER JACOBS: As to the setting of goals.

23 COMMISSION STAFF: That is correct. And this is
24 the goals setting proceeding. What LEAF consistently
25 does is try to take the requirements of the programs

1 which are separate dockets that arise after the goals
2 are set, take those program requirements and apply
3 them to goals. And that is inappropriate.

4 COMMISSIONER JACOBS: I may be persuaded -- I
5 have a concern, however, and it arises out of what I'm
6 hearing today. If we proceed only and uniquely by
7 pursuing a conservation policy by the setting of
8 goals, what I'm hearing is that we will only ever get
9 to a threshold. We will never ever get beyond that
10 unless it turns around, the cost curve goes the other
11 way, we may begin to see something.

12 And I guess within the context of the matter that
13 we are looking at now, I guess that's what we will
14 have to accept. I'm concerned that we are there and
15 I'll leave it at that.

16 COMMISSIONER CLARK: You know, it's starting to
17 all come back to me, and I think what is coming back
18 to me is a Saturday hearing, as I recall. And I think
19 I was general counsel when it first initiated with the
20 SRC, because I can remember going to the Governor's
21 Office to go through this study. And I will just say,
22 you know, how I view it for the benefit of the other
23 Commissioners. If you choose to go through that
24 process again, we could go through it again, but it
25 seems to me that what we were concerned with when we

1 did the --

2 COMMISSIONER DEASON: Maybe it should be a
3 three-member, the most senior Commissioners.

4 COMMISSIONER CLARK: Yes. I think I finally gave
5 that away.

6 COMMISSIONER GARCIA: I would recommend those who
7 had experience, since I didn't have to vote on that.

8 COMMISSIONER CLARK: I think what happened was we
9 did the SRC study, we had that done by -- I can't
10 remember the gentleman who did it. But we wanted to
11 see what was out there. You know, can we have
12 confidence in the fact that our utilities are bringing
13 us good programs. And so we did a study of what might
14 be feasible, and it was a very extensive study. We
15 had lots of meetings about what programs we wanted to
16 -- measures we wanted to look at and what had
17 potential. And it was from that that we then, in
18 effect, in the last goals dictated to the companies
19 that it wasn't going to be this planning process, in
20 fact, you were going to evaluate these other things.

21 And by the time we got to the end of that we
22 discovered that, yes, RIM was the way to go. And we
23 had allowed the fact that there may be some TRC out
24 there where you have these huge savings in energy or
25 demand, and it's not that much in terms of

1 expenditures, that we might want to do that. We left
2 that open, but basically concluded that the RIM was
3 the way go to.

4 And I think I am comfortable with doing that
5 having been through that process. The question is do
6 you want to go back and do that whole thing again? Do
7 you want to -- and let's say, all right, let's look at
8 the whole basket of measures.

9 MS. SWIM: That's not what is before you. Not
10 all of the SRC measures, just the ones in the fourth
11 proceeding.

12 COMMISSIONER CLARK: I know not all of the SRC
13 measures. But what I understand is before us are
14 things that we have rejected in the full-blown hearing
15 we had that lasted months.

16 COMMISSIONER DEASON: Let me ask this question,
17 and I'll address it to Mr. Guyton. When you described
18 to me earlier the process that Florida Power & Light
19 used to come up with your list of measures, you
20 indicated that you started with the UP measures from
21 the last docket, and that you dropped from that those
22 measures which did not pass RIM. What would happen if
23 we instructed you to, well, include those that
24 marginally did not pass RIM. For example, an index, a
25 cost-effectiveness index of .95, just to toss

1 something out, and see what the -- if it passed TRC,
2 and what the energy savings were associated with that
3 program. How would that -- what would be involved to
4 do something of that order?

5 MR. GUYTON: It would be -- well, first off, I
6 don't think there are that many measures that have
7 significant energy savings that just failed RIM, so
8 I'm not sure what the universe of those measures is.

9 COMMISSIONER DEASON: But that's the universe of
10 measures which we described in our order which have
11 large energy savings and small rate impacts. Because
12 for it to have a small rate impact, I'm making the
13 assumption that it would just have to -- it would have
14 to almost pass RIM, but not quite pass RIM.

15 MR. GUYTON: I think what you would find,
16 Commissioner -- I can't speak to the number there. My
17 recollection, and it is a bit fuzzy after four years,
18 is that there was not a large universe of such
19 measures in the first place. The so-called soft RIM
20 measures from the last case. But I think what you
21 would find is that given the drop in avoided cost on
22 the order of magnitude of 25 to 30 percent, if they
23 just barely passed last time, they don't stand a
24 chance this time.

25 MS. SWIM: Commissioner Deason, could I respond

1 to that?

2 COMMISSIONER DEASON: Surely.

3 MS. SWIM: You know, because power plants cost
4 less today, that doesn't necessarily mean that
5 measures which failed last time would have no chance
6 of being cost-effective today. The cost of power
7 plants are only part of the equation. If capital
8 costs -- even if capital costs for a new plant have
9 gone down since last time, which, you know, they
10 probably have, that in and of itself does not
11 automatically mean that less DSM is cost-effective
12 now. And that's because capital costs are but one
13 part of the equation. Other parts of the equation
14 might have changed, too, and that had could mean that
15 more DSM is cost-effective, not less. For example,
16 because new power plants -- because new power plants,
17 at least to me, based on the current ten-year plans,
18 seem to be needed sooner than they were last time
19 goals were set, it's also true that more DSM would be
20 now cost-effective. It's also likely that the costs
21 of DSM technology have come down since the last goals
22 case. For all of these reasons, until you get the
23 numbers before you, I don't think it's fair to assume
24 that, you know, the equation has changed so less DSM
25 is cost-effective. You need to look at the whole

1 picture. You need to figure out what avoided costs
2 are, what the --

3 COMMISSIONER DEASON: Well, are you indicating
4 that there may be measures that exist which are not on
5 the companies' RIM passing list which do, in fact,
6 past RIM?

7 MS. SWIM: Ask that again. I'm not sure I
8 understood.

9 COMMISSIONER DEASON: Well, what I just
10 understood you to say is that conditions have changed
11 since the last time goals were set. Capital costs
12 have changed, capacity, perhaps timing of capacity, a
13 number of factor perhaps have changed. Perhaps
14 changes in technology and cost of certain
15 technologies. And I understand that, but the
16 companies' measures should incorporate all of those
17 changes, and they are just going to include in their
18 list measures which pass RIM under current costs,
19 whatever those costs are.

20 And I guess I was -- I wanted to know your
21 comments where you are saying but you think there are
22 measures out there which perhaps do pass RIM which
23 will not be on the companies' list, or you just want
24 the list expanded to include measures which pass TRC
25 regardless of their RIM passing capability?

1 MS. SWIM: Well, I mean, I certainly do want
2 measures which passed TRC last time to be tested. But
3 what I'm saying is you should not assume now that just
4 because it failed last time that it will necessarily
5 fail today because the cost of new plants has gone
6 down. That's all I'm trying to say. I mean, there
7 are other things that have changed also that could
8 mean more DSM was cost-effective than last time. And
9 until you actually, you know, figure out the net
10 effect, it wouldn't be reasonable to assume that
11 something should be taken off the table because it
12 wasn't cost-effective then.

13 MR. GUYTON: Mr. Guyton, did Florida Power &
14 Light assume that a measure that did not pass RIM last
15 time would not pass RIM this time, and did not make
16 any -- even a cursory review of the economics
17 associated with that measure?

18 MR. GUYTON: No, Commissioner. We adjusted for
19 measures that failed last time. If we had additional
20 data about the savings potential such that it would
21 actually save more than was assumed in the last
22 analysis, even if on a first cut we didn't think it
23 would be enough to offset the decline in avoided cost,
24 we added it back because we thought it needed to be
25 analyzed this time. So, no, it's not a hard and fast

1 if it didn't pass last time it won't this time.

2 But that was the first cut that we took at it and
3 then we added back the ones that we thought had
4 potential for any change in circumstance, whether it
5 be additional savings or a decline in the cost of
6 delivery. But the fact of the matter is that the cost
7 of delivery of DSM is about as thin as it can be right
8 now given the program modifications we made last year.

9 MR. BALLINGER: Commissioner Deason, just a
10 little bit of information. At one of workshops, I
11 know it was proposed by one of the utilities as a
12 negotiation thing to look at programs that had a .8
13 RIM last time, and they would evaluate those, and that
14 was rejected by the other parties. By LEAF, I should
15 say. So there was an attempt by the utilities to kind
16 of lower that threshold down and just we will look at
17 them again.

18 MS. SWIM: I don't know that that was rejected.
19 I mean, I think it was laid out on the table and, you
20 know, really never fully ruled on one way or another.

21 COMMISSIONER CLARK: Let me ask a question. Once
22 the goals -- we would set goals based on what we think
23 are achievable programs, but then the utility has to
24 come back in with specific measures. And that is
25 another opportunity to request that a measure be

1 included, is that right?

2 COMMISSION STAFF: That's correct, Commissioner.

3 MR. BALLINGER: Well, I think we had a syntax
4 error here. It's measures first and then programs.

5 COMMISSIONER CLARK: Right. I just --

6 MR. BALLINGER: I understand.

7 MS. SWIM: But the likelihood of us coming in
8 when someone -- when a utility is saying here is my
9 program, it passes RIM, it has all the measures that
10 you approved that passed RIM, coming in and suggesting
11 at that point that the utilities should also do a TRC
12 passing measure, that's not going to be a very
13 feasible opportunity. I appreciate it, but I just
14 don't think --

15 CHAIRMAN JOHNSON: Ms. Elder, I know you wanted
16 to make a final point, and your mike is off.

17 MS. ELDER: Thank you. Commissioners Jacobs and
18 Garcia, to touch on a related issue from the prior
19 goals proceedings, and I'll do so only very briefly,
20 but consumers care about the utility bills that they
21 pay, not about what the rates are. And many of the
22 TRC measures allow us to have lower bills even though
23 there may be a rate increase. So that's one of the
24 core issues here.

25 Consumers also care about protecting our economy,

1 and unless we make the shift to an energy
2 infrastructure that is sustainable, we set the stage
3 for huge adverse impacts to our economy as well as the
4 environment, as was the conclusion of the Governor's
5 Counsel for a Sustainable South Florida, which did a
6 study for over a year and a half and came forth
7 several months back with its very strong
8 recommendations on the energy issues. And we would
9 submit that there have been new developments, and one
10 of those that has not been mentioned is the bottom
11 line of that commission, of the Governor's Commission
12 which is that the urgency of implementing these kinds
13 of measures has intensified and that we have got to
14 take these steps in order to be sustainable. And
15 that's why we care so very much about these issues,
16 our organization. We believe that you should consider
17 a broader range of options.

18 And to kind of hold back from the details of RIM
19 passing and those that barely failed RIM and TRC and
20 all of that as though we were all sitting here as the
21 general public, and what is the bottom line of what is
22 important here. What is the outcome of all of these
23 things. It is to implement a state law that by its
24 very name, the Energy Efficiency and Conservation Act,
25 stresses the need and the legislature's directive to

1 achieve energy efficiency and conservation for our
2 state.

3 Right now most of what is being achieved under
4 the banner of conservation through the utility
5 programs is load management that is not true
6 conservation. That concerns us very much, and we want
7 to see an effort here that really goes after the
8 energy efficiency potential that is available and that
9 brings on new technologies that will be alternative
10 energy sources for our future, because we think that
11 there is serious consequences to consumers throughout
12 this state if that does not happen. So we would urge
13 and we really believe that you have a tremendous
14 opportunity here through offering a broader, or
15 providing for a broader range of options to be
16 considered in the public interest.

17 COMMISSIONER JACOBS: Madam Chairman?

18 CHAIRMAN JOHNSON: Uh-huh.

19 COMMISSIONER JACOBS: I don't know how this --
20 let me just say what I'm thinking. I am personally
21 interested, because I wasn't here in the original
22 docket, in understanding -- and it sounds like that
23 the avoided cost dichotomy has changed significantly
24 enough that there are some different views of the
25 world now anyway, but I would be interested in -- I

1 don't know whether it would be a workshop or an
2 Internal Affairs, understanding from a public policy
3 standpoint more so than from the goals setting
4 standpoint, what are some of the critical programs and
5 issues that might be considered in terms of proposed
6 conservation. And I'll tell you why. It didn't just
7 come about because of this. When I came onto the
8 Commission, I did a tour of a lot of the utilities,
9 and several of them explained their conservation
10 program, and I was struck then while they were genuine
11 and I don't dispute that the companies are genuine in
12 what they are doing, I came away seeing a fairly
13 narrow set of conservation programs, okay.

14 And I thought then, well, you know, that's fine.
15 And then we come to this summer and you see the onset
16 of extraordinary weather measures and you see people
17 getting off DSM in substantial numbers. And I thought
18 to myself, huh, all of those programs that I saw back
19 when I went on tour, a lot of those are
20 interruptibles, and all of those people are getting
21 off, then it sounds like we may have some problems
22 with conservation. And what I'm hearing is that, yes,
23 because of the downturn in the cost of new plants,
24 conservation is becoming passe. And I'm wondering,
25 and I don't know, maybe that is -- maybe that is where

1 we want to go as public policy, but I'm very seriously
2 wondering do we want to continue to look at that
3 question in the context of setting these goals, or do
4 we want to look at it from maybe some broader context
5 and broader criteria.

6 CHAIRMAN JOHNSON: So are you suggesting that
7 before we rule upon setting another -- or rule upon
8 the procedural mechanisms that are presented before us
9 by LEAF that we take a step back and have a forum for
10 the Commissioners?

11 COMMISSIONER JACOBS: It would be helpful for me.
12 And if you guys feel -- with all due discretion to
13 Commissioner Clark, I'm not asking that we go back to
14 the whole deal before. I don't think it would be
15 necessary to do that anyway. I think we will probably
16 just -- I think the boundaries are pretty clear.
17 Without predisposing anything, it sounds like there
18 are some things that are already out the door
19 originally, and there were others that it would be
20 borderline at best now. I don't think we need to look
21 at things that are clearly not going to fall within
22 the scope of something that is reasonable.

23 COMMISSIONER DEASON: Let me suggest that I'm not
24 necessarily opposed to that, but I think it's critical
25 that we make a decision of how this docket is going to

1 proceed. It's set for hearing I think the second week
2 in May, and it has been represented that there has
3 already been a lot of work done on certain assumptions
4 -- or not assumptions, but things that are prescribed
5 within the procedural order, and that we are going
6 down that path, and we need to address how this docket
7 is going to proceed, or else we need to change this
8 hearing date and decide when we are going to have this
9 hearing. It seems to me that we do have a schedule
10 and we need to abide by it, and to abide by that
11 schedule we have got to resolve these matters.

12 COMMISSIONER CLARK: Let me ask a question. I
13 notice that in this case -- I agree with what you are
14 saying is that we need to move forward. What the law
15 requires is us to set it at least every five years, is
16 that what it requires?

17 MR. BALLINGER: That's our rule.

18 COMMISSIONER CLARK: What does the statute
19 require?

20 COMMISSION STAFF: And the statute.

21 COMMISSIONER CLARK: It's by statute, too?

22 COMMISSION STAFF: Both.

23 COMMISSIONER CLARK: Okay. And we have -- at one
24 time we didn't do numeric goals, right? We originally
25 did numeric and then we went back and didn't do

1 numeric, and then we are back to numeric, right?

2 COMMISSION STAFF: That's correct.

3 COMMISSIONER CLARK: It seems to me that we could
4 have such a workshop, but that I agree with Commission
5 Deason, we probably need to move forward with where we
6 are given the fact that four months has passed since
7 the procedural order was out, and we need to move
8 forward. But that doesn't preclude us learning more,
9 to accomplish what Ms. Swim is concerned about, and
10 that is us informing ourselves --

11 COMMISSIONER JACOBS: I would be willing to do
12 that.

13 COMMISSIONER CLARK: -- of what may be out there.

14 COMMISSION STAFF: Well, in addition,
15 Commissioner, this is a full evidentiary hearing, and
16 LEAF has as much right and opportunity to get involved
17 in discovery and present that evidence during the
18 hearing as any other party. They are a full party to
19 the proceeding. So that education process can easily
20 take place during the hearing itself. And as far as
21 we are concerned, LEAF can initiate discovery now if
22 that is their desire. We haven't seen any, but we
23 would be happy to comply with whatever they have as
24 their desires.

25 CHAIRMAN JOHNSON: I understand your comments,

1 and those are well taken, but to the extent that we
2 are going to do more of a policy-oriented educational
3 exercise, I think it would be helpful to do it outside
4 of the context of the actual proceeding.

5 Now, and the question for you staff, as we move
6 forward -- well, has anything stopped thus far? I
7 mean, I know we have this motion to rule upon, but the
8 companies and everybody are still moving forward under
9 the procedural order and everything is still on
10 schedule?

11 COMMISSION STAFF: That's correct.

12 CHAIRMAN JOHNSON: So we could continue to do
13 that. But I guess what I hear Commissioner Jacobs
14 saying is that perhaps -- and let's do continue to do
15 that, but that the companies should be on notice that
16 maybe in the next month or two, we may have a forum to
17 further ensure ourselves that we are proceeding down
18 the right road. And at that point we will have to
19 make a decision. Well, should we continue -- should
20 we delay this process and add a new procedural
21 mechanism in place, or do we just go forward.

22 COMMISSIONER JACOBS: Let me be real clear. I
23 agree that we should -- yes, I agree we should move on
24 with this docket. Because what I'm suggesting, if it
25 -- it would require us really questioning ultimately

1 how we want to proceed in the future. And we are
2 probably way too far down the road in this docket to
3 change at midstream. I would wish that we could have
4 come into this docket with a discussion that could
5 have accommodated it, but that doesn't appear to be
6 happening. And to interject it at this moment would
7 cause more headache than it probably is -- maybe in
8 some minds is worth, but I think at this point it
9 would be difficult to do.

10 COMMISSIONER DEASON: Well, I don't see how it
11 can't be accommodated. I mean, the parties, as staff
12 counsel has indicated, they can participate and they
13 can present their own witnesses and come up with their
14 own measures, and they can file discovery on the
15 utilities and present that evidence at the hearing.
16 So I don't think at this time -- the thing that is
17 before us is what do we require the utilities to file
18 up front as part of the procedural --

19 COMMISSIONER JACOBS: Right. Right. And I
20 agree.

21 COMMISSIONER DEASON: And that's really the
22 narrow issue in front of us today.

23 COMMISSIONER JACOBS: And I agree. Again, I'm
24 saying let's move forward with the docket because the
25 question I'm asking is in the event we continue -- if

1 present conditions continue, i.e., the avoided costs
2 continue to drop, are we basically saying we don't --
3 in the future that conservation efforts are not going
4 to -- are going to go with that, they are going to
5 follow that trend in an inverse manner. Because
6 essentially, if I'm not mistaken, that is what is
7 happening now. The conservation effort in an inverse
8 manner is following the downward spiral of avoided
9 cost.

10 Do we want to continue to do that as a matter of
11 public follow for this state? And if we don't want to
12 do that, let's figure out how to make it happen.
13 Because the incentives that were put forth before
14 didn't do it.

15 COMMISSIONER CLARK: Well, I think one of the
16 things that needs to be kept in mind is that it is
17 being driven by cost-effectiveness. And for RIM,
18 meaning that it wouldn't drive up rates. And to
19 suggest something else, I guess, for me has the
20 implication that we might want to pursue conservation
21 even if it increases rates.

22 COMMISSIONER JACOBS: But not total cost to the
23 consumer.

24 COMMISSIONER CLARK: Well, I appreciate what Ms.
25 Elder said with respect to customers are concerned

1 with bills and not rates. I have some doubts about
2 that given what has been happening. I mean,
3 California told us that for years. What matters is
4 bills not rates. Well, it appears now what did matter
5 was rates, and that's why they are pursuing
6 deregulation a little faster than we are.

7 But that's sort of beside the point. What I want
8 to suggest is I think we should go on with the docket
9 the way it is. I think Commissioner Deason is right,
10 there is still opportunity through discovery and other
11 procedural matters. You can put on a witness and make
12 suggestions that certain measures should be pursued,
13 and it may be as a result of that we agree with you.
14 That they should be pursued, and we may say, you know,
15 as part of your goals we are going to include those
16 measures in the goals you have to achieve, and then
17 you have got to come up with the programs that do
18 that. But, I agree with Commissioner Deason, it's a
19 matter that we would require them to comply with the
20 rules on the front end.

21 And I guess to that extent my motion would not be
22 that we approve staff. You know, I think we could
23 argue that it was out of time, and it wasn't timely
24 filed, but I guess I'm willing to -- I'm not -- given
25 the fact that we had four procedural orders in the

1 last case, I am not as comfortable with denying it
2 just on the untimeliness, which is really what your
3 recommendation is, right?

4 COMMISSION STAFF: In addition to the
5 untimeliness, the recommendation states the motion
6 does not comport with the rule that governs the goals
7 setting proceedings. That it requires, the motion
8 requires the Commission to do more than the rule
9 requires. And I think that would be subject to
10 challenge.

11 In addition, the recommendation is for denial
12 because LEAF has misapprehended the law of the case.
13 LEAF has said many times today, and they said in many,
14 many places in their pleadings that it is the policy
15 of this Commission to require TRC portfolios. That is
16 not correct. That is not the policy of this
17 Commission. And that policy of the Commission has
18 been upheld by the Supreme Court. How LEAF can ignore
19 that is a mystery to me. So my recommendation has
20 three strong arguments.

21 COMMISSIONER CLARK: Yes, but if you look at your
22 recommendation of what we were supposed to vote on,
23 the first is that we should grant the motion to strike
24 the reply.

25 COMMISSION STAFF: That's correct.

1 COMMISSIONER CLARK: I'm comfortable with that.
2 But the second one is that we grant the motion --

3 COMMISSION STAFF: It's to deny the motion for
4 procedural order.

5 COMMISSIONER CLARK: -- because it is untimely.

6 COMMISSION STAFF: And for the other two reasons
7 that I just stated.

8 COMMISSIONER CLARK: Oh. The motion does not
9 comport. Okay. I misread it. I would move staff on
10 Issue 1.

11 COMMISSIONER DEASON: Second.

12 CHAIRMAN JOHNSON: There is a motion and a
13 second. Any further discussion? All those in favor
14 signify by saying aye.

15 (Unanimous affirmative vote).

16 CHAIRMAN JOHNSON: Opposed. Show it then
17 approved unanimously.

18 COMMISSIONER CLARK: That was just Issue 1. On
19 Issue 2, I would make -- I would move to deny staff, I
20 guess, but that we do deny the motion for the
21 procedural order requested by LEAF on the basis that
22 we do not wish at this time to dictate what measures
23 have to be evaluated. That the utilities should
24 comply with the rule that requires them to provide
25 these goals based upon the utilities' most recent

1 planning process, but this does not preclude LEAF
2 through discovery or sponsoring their own witnesses to
3 suggest other measures. And that would be my motion.

4 COMMISSIONER DEASON: Well, I guess I need some
5 clarification on the motion. It seems to me that you
6 just recommended that we deny staff, but that we
7 approve what they recommend, except for perhaps it
8 being untimely.

9 COMMISSIONER CLARK: The untimeliness.

10 COMMISSIONER CLARK: Yes, that would be fine.

11 COMMISSION STAFF: For clarification, the order
12 should have as it is bases for denying LEAF's motion
13 the second two arguments in the recommendation?

14 COMMISSIONER CLARK: Yes, that would be fine.

15 MS. SWIM: Which arguments are you talking about
16 there?

17 COMMISSIONER CLARK: That the motion does not
18 comport with the Rule 17.0021, which directs what the
19 utilities study, and it misapprehends the substantive
20 law of the case, which is our order in the last
21 proceeding.

22 COMMISSIONER DEASON: Second.

23 CHAIRMAN JOHNSON: There is a motion and a
24 second. Any further discussion? Seeing none, all
25 those in favor signify by saying aye.

1 (Unanimous affirmative vote.)

2 CHAIRMAN JOHNSON: Show it approved unanimously.

3 MR. GUYTON: Commissioners, thank you.

4 MS. SWIM: Commissioners, just one question. I
5 appreciate the opportunity you have provided to pursue
6 this through discovery and testimony. Perhaps it's
7 your pleasure that I file another motion, but I wanted
8 to let you know that with the current schedule
9 utilities file their goals proposals and their
10 projections of savings in February. Until those
11 projections of savings and goals proposals are filed,
12 it is really premature for LEAF to conduct discovery
13 because we don't know for sure what the final
14 projections and proposals are going to be. And so we
15 get to a point where in February we have got the
16 proposals and we can start doing our discovery, we
17 then would have two months before we are supposed to
18 develop our testimony. That's not going to be enough
19 time to figure out what each utility tested and why
20 they didn't test what we thought maybe they should,
21 what their avoided costs are, you know, what they
22 assumed and all the various cost/benefit evaluation
23 criteria.

24 (Simultaneous conversation.)

25 MS. SWIM: I don't know whether you want to

1 decide this now, but we are really not going to have
2 enough time to be prepared to file testimony with the
3 current schedule.

4 COMMISSIONER DEASON: That sounds like a good
5 thing to take up with the prehearing officer.

6 CHAIRMAN JOHNSON: Thank you for your
7 participation. We are going to take a 15-minute
8 break.

9 COMMISSIONER DEASON: I assume we approve Issue
10 3, as well?

11 CHAIRMAN JOHNSON: Oh.

12 COMMISSIONER CLARK: Oh, yes.

13 CHAIRMAN JOHNSON: Show it approved without
14 objection.

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CERTIFICATE OF REPORTER


STATE OF FLORIDA)

COUNTY OF LEON)

I, JANE FAUROT, RPR, do hereby certify that the foregoing proceeding was transcribed from cassette tape, and the foregoing pages number 1 through 89 are a true and correct record of the proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED THIS 26th day of October, 1998.



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