

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: March 4, 2010

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Fleming, Saylor) *KEF*
Division of Regulatory Analysis (Garl, Graves, Lewis) *REG*

RE: Docket No. 080407-EG – Commission review of numeric conservation goals (Florida Power & Light Company).
 Docket No. 080408-EG – Commission review of numeric conservation goals (Progress Energy Florida, Inc.).
 Docket No. 080409-EG – Commission review of numeric conservation goals (Tampa Electric Company).
 Docket No. 080410-EG – Commission review of numeric conservation goals (Gulf Power Company).
 Docket No. 080411-EG – Commission review of numeric conservation goals (Florida Public Utilities Company).
 Docket No. 080412-EG – Commission review of numeric conservation goals (Orlando Utilities Commission).
 Docket No. 080413-EG – Commission review of numeric conservation goals (JEA).

RECEIVED-FPSC
 10 MAR -4 PM 12: 08
 COMMISSION
 CLERK

AGENDA: 03/16/10 – Regular Agenda – Posthearing Motion for Limited Reopening of the Record – Decision on Motions for Reconsideration – Oral Argument Not Requested; Participation is at the Commission’s Discretion

COMMISSIONERS ASSIGNED: Argenziano, Edgar, Skop, Klement

PREHEARING OFFICER: Skop

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\080407.RCM.DOC

DOCUMENT NUMBER-DATE
 01498 MAR -4 09
 FPSC-COMMISSION CLERK

Date: March 4, 2010

Case Background

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

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

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

On December 11, 2009, JEA filed a motion for limited reopening of the record and for reconsideration. With its motion, JEA filed a corrected response to Staff's Seventh Set of Interrogatories, No. 50 (Staff Interrogatory No. 50). On December 21, 2009, NRDC/SACE filed a response in opposition to JEA's motion. On January 12, 2010, PEF filed its Motion for Reconsideration. On January 14, 2010, FPL and Gulf filed their Motions for Reconsideration. On January 14, 2010, NRDC/SACE filed their joint motion for reconsideration and response in opposition to PEF's motion. On January 18, 2010, PEF filed its response in opposition to NRDC/SACE's motion. On January 21, 2010, FPL and Gulf filed their responses in opposition

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

Docket Nos. 080407-EG, 080408-EG, 080409-EG, 080410-EG, 080411-EG, 080412-EG, 080413-EG

Date: March 4, 2010

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

This recommendation addresses JEA's motion to reopen the record and for reconsideration as well as the Motions for Reconsideration filed by FPL, PEF, Gulf, and NRDC/SACE. While none of the parties requested oral argument pursuant to Rule 25-22.022(1), Florida Administrative Code (F.A.C.), staff notes that oral argument may be heard at the Commission's discretion pursuant to Rule 25-22.022(7)(b), F.A.C. The Commission has jurisdiction pursuant to Section 366.80-366.82, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should JEA's motion for limited reopening of the record be granted?

Recommendation: Yes. The record should be reopened for the limited purpose of admitting JEA's corrected response to Staff Interrogatory No. 50, thus correcting a material fact upon which the Commission based its decision in setting JEA's goals. (Fleming, Saylor)

Staff Analysis:

JEA's Motion

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

NRDC/SACE's Response

In its response, NRDC/SACE state that they do not object to the opening of the record to correct the error in the information previously filed by JEA. However, NRDC and SACE object to any reduction in the proposed energy efficiency goals for JEA.

No other parties filed a response to JEA's motion.

Staff Analysis

Although the Commission is generally hesitant to reopen the record of any proceeding, it may do so under limited circumstances. The Commission may reopen the record when new evidentiary proceedings are warranted based on a change of circumstances not present at the time of the proceeding, or a demonstration that a great public interest will be served.²

The discrepancy in JEA's response to Staff Interrogatory No. 50 was discovered after the record had closed and the Commission had rendered its final decision. In this instance, the revised information provides new evidence that may be material to the Commission's decision in this matter, thus warranting reopening the record. In addition, correcting JEA's incorrect

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

Docket Nos. 080407-EG, 080408-EG, 080409-EG, 080410-EG, 080411-EG, 080412-EG, 080413-EG

Date: March 4, 2010

discovery response, upon which the Commission relied in rendering its decision, serves a great public interest because it ensures accuracy in the regulatory process. Although the Commission has issued its final order in this proceeding, the doctrine of administrative finality has not attached because JEA timely filed motions to reopen the record and reconsideration to correct its discovery.³

In the interest of allowing the Commission to make a fully informed decision, staff recommends that the record should be reopened for the limited purpose of admitting JEA's corrected response to Staff Interrogatory No. 50, thus correcting a material fact upon which the Commission based its final decision in setting JEA's goals. JEA's corrected response to Staff Interrogatory No. 50 is shown in Attachment A. Staff's recommendation regarding the effect of this corrected information on JEA's goals is discussed in Issue 2.

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

Date: March 4, 2010

Issue 2: Should JEA's Motion for Reconsideration be granted?

Recommendation: Yes. If the Commission approves staff's recommendation on Issue 1 to reopen the record for the limited purpose of admitting JEA's corrected response to Staff Interrogatory No. 50, staff recommends that JEA's Motion for Reconsideration be granted because it identifies a point of fact that the Commission overlooked or failed to consider in rendering its order. (Fleming, Saylor)

Staff Analysis:

Standard of Review

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

JEA's Motion

JEA asserts that the conservation goals established by the Commission for JEA were based upon an incorrect discovery response in the record, and that JEA has served its corrected discovery response to Staff Interrogatory No. 50. Thus, JEA respectfully moves for reconsideration of the Commission's decision on Issues 9 and 10 regarding JEA's residential and commercial/industrial conservation goals, and requests that the Commission establish conservation goals based on the average of incremental annual savings over the past four years, as reflected in the corrected response to Staff Interrogatory No. 50. Granting JEA's motion will satisfy the intent of the FEECA statute while precluding an impact on rates. JEA asserts that granting this motion is consistent with prior Commission orders.⁴ Furthermore, revising JEA's goals will not affect JEA's commitment to continue offering conservation programs to its customers.

NRDC/SACE's Response

NRDC/SACE assert that the Commission-approved goals for JEA were based on 290 gigawatt-hours (GWhs) of cumulative savings. NRDC/SACE assert that the goals were devised by taking the sum total of efficiency in the years 2005 through 2008 and dividing the total by

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

Date: March 4, 2010

four to get an average of the actual energy savings by JEA for those years. NRDC/SACE assert that JEA now proposes corrections to its approved goals to reduce the cumulative goal to 155 GWhs. NRDC/SACE object to any reduction in the energy efficiency goals for JEA.

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

Analysis and Conclusion

As previously stated, the standard of review for reconsideration is whether the motion identifies a point of fact or law that the Commission overlooked or failed to consider in rendering its order. JEA contends that the conservation goals established by the Commission were based on an incorrect discovery response provided by JEA. In setting JEA's goals, the staff relied upon an incorrect discovery response in its recommendation, upon which the Commission used as the basis for its decision in setting JEA's conservation goals.

Staff is not persuaded by NRDC/SACE's arguments. There was an error in fact (erroneous data provided by JEA) that should be corrected. In the order setting JEA's goals, the Commission approved goals based on an incorrect discovery response. Correcting erroneous data used in arriving at a conclusion does not warrant changing the previously approved means of arriving at the conclusion. In addition, staff is not persuaded by NRDC/SACE's assertion that the Commission should change its methodology and establish goals based only on savings achieved in one year. Basing JEA's goals on average incremental savings over the past four years is consistent with the Commission's methodology for OUC and FPUC. Furthermore, NRDC/SACE is simply rearguing points previously considered by the Commission in arriving at its decision which NRDC/SACE is not permitted to do. See Sherwood, 111 So. 2d at 97-98.

If the Commission approves staff's recommendation on Issue 1 to reopen the record for the limited purpose of admitting JEA's corrected response to Staff Interrogatory No. 50, then staff recommends that JEA's Motion for Reconsideration be granted because it identifies a point of fact that the Commission overlooked or failed to consider in rendering its decision. Therefore, JEA's goals should be established as shown below.

Date: March 4, 2010

Revised Commission-Approved Conservation Goals for JEA

(Type and Strike Version)

Year	Residential				Commercial/Industrial		
	Summer (MW)	Winter (MW)	Annual (GWh)		Summer (MW)	Winter (MW)	Annual (GWh)
2010	2 <u>1.2</u>	1.6 <u>1.0</u>	6.9 <u>5.4</u>		2.4 <u>0.6</u>	1.4 <u>0.4</u>	22.4 <u>10.1</u>
2011	2 <u>1.2</u>	1.6 <u>1.0</u>	6.9 <u>5.4</u>		2.4 <u>0.6</u>	1.4 <u>0.4</u>	22.4 <u>10.1</u>
2012	2 <u>1.2</u>	1.6 <u>1.0</u>	6.9 <u>5.4</u>		2.4 <u>0.6</u>	1.4 <u>0.4</u>	22.4 <u>10.1</u>
2013	2 <u>1.2</u>	1.6 <u>1.0</u>	6.9 <u>5.4</u>		2.4 <u>0.6</u>	1.4 <u>0.4</u>	22.4 <u>10.1</u>
2014	2 <u>1.2</u>	1.6 <u>1.0</u>	6.9 <u>5.4</u>		2.4 <u>0.6</u>	1.4 <u>0.4</u>	22.4 <u>10.1</u>
2015	2 <u>1.2</u>	1.6 <u>1.0</u>	6.9 <u>5.4</u>		2.4 <u>0.6</u>	1.4 <u>0.4</u>	22.4 <u>10.1</u>
2016	2 <u>1.2</u>	1.6 <u>1.0</u>	6.9 <u>5.4</u>		2.4 <u>0.6</u>	1.4 <u>0.4</u>	22.4 <u>10.1</u>
2017	2 <u>1.2</u>	1.6 <u>1.0</u>	6.9 <u>5.4</u>		2.4 <u>0.6</u>	1.4 <u>0.4</u>	22.4 <u>10.1</u>
2018	2 <u>1.2</u>	1.6 <u>1.0</u>	6.9 <u>5.4</u>		2.4 <u>0.6</u>	1.4 <u>0.4</u>	22.4 <u>10.1</u>
2019	2 <u>1.2</u>	1.6 <u>1.0</u>	6.9 <u>5.4</u>		2.4 <u>0.6</u>	1.4 <u>0.4</u>	22.4 <u>10.1</u>
Total	20.3 <u>12.0</u>	15.5 <u>10.0</u>	69 <u>54.0</u>		24 <u>6.0</u>	14.3 <u>4.0</u>	224 <u>101.0</u>

Date: March 4, 2010

Issue 3: Should Florida Power & Light Company's Motion for Reconsideration be granted?

Recommendation: No. FPL's Motion for Reconsideration fails to identify any point of fact or law that the Commission overlooked or failed to consider in rendering its Order. (Fleming, Saylor)

Staff Analysis:

FPL's Motion

FPL contends that there is a distinction between "technical potential" and "achievable potential" savings as it relates to measures screened out using the two-year payback criterion. FPL asserts that once the two-year payback measures were screened out at the technical potential, the achievable potential of those measures were not determined. FPL asserts that the Commission's order did not consider this when goals were based upon the technical potential savings associated with the screened-out two-year payback measures. FPL further asserts that, pursuant to Rule 25-17.0021(1), F.A.C., goals set by the Commission must be "reasonably achievable" and that undisputed record evidence shows that technical potential savings are not reasonably achievable. FPL asserts that witness Rufo stated that technical potential "is what is technically feasible, regardless of cost, customer acceptance, or normal replacement schedules." Based on the foregoing, FPL contends that the Commission mistakenly increased FPL's goals based upon theoretical technical potential savings instead of achievable potential savings. Furthermore, FPL asserts that the goals set for FPL are in error and should be reduced and based upon achievable potential instead. Thus, FPL respectfully submits that the standard for reconsideration has been satisfied and the Commission's order should be revised.

NRDC/SACE's Response

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

FIPUG's Response

FIPUG filed one consolidated response in support of FPL, PEF, and Gulf and in opposition to NRDC/SACE's motions for reconsideration. FIPUG's arguments in support of FPL, PEF, and Gulf are summarized below.

Date: March 4, 2010

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

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

Analysis and Conclusion

The standard of review for reconsideration is whether the motion identifies a point of fact or law that the Commission overlooked or failed to consider in rendering its order. FPL contends that the portion of the energy conservation goals associated with the less than two-year payback criteria that were approved by the Commission in Order No. PSC-09-0855-FOF-EG are overstated, and thus the Commission mistakenly increased FPL's goals based upon theoretical technical potential savings instead of achievable potential savings.

In rendering its decision, the Commission considered staff's illustration of savings lost in applying the two-year payback criteria that eliminated many residential measures with considerable potential for energy savings. FPL's argument overlooks the Commission's discussion of the issue and subsequent decision that omitted reference to any particular measures or limitation on the number of those measures used.

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

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

In that same order, on page 15, the Commission further found:

Our intention is to approve conservation goals for each utility that are more robust than what each utility proposed. Therefore, we approve goals based on the unconstrained E-TRC Test for FPL, PEF, TECO, Gulf, and FPUC. The unconstrained E-TRC test is cost effective, from a system basis, and does not limit the amount of energy efficiency based on resource reliability needs. The E-TRC test includes cost estimates for future greenhouse gas emissions, but does

Date: March 4, 2010

not include utility lost revenues or customer incentive payments. As such, the E-TRC values are higher than the utility proposed E-RIM values. In addition, we have included the saving estimates for the residential portion of the top ten measures that were shown to have a payback period of two years or less in the numeric goals for FPL, PEF, TECO, and Gulf. *When submitting their programs for our approval, the utilities can consider the residential portion of the top ten measures, but they shall not be limited to those specific measures.*

(Emphasis added.)

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

Staff believes FPL has not identified a point of fact or law that the Commission overlooked or failed to consider in rendering its order. The matters raised in FPL's motion were considered by the Commission and it is not proper for FPL to reargue these matters again upon reconsideration. See Sherwood, 111 So. 2d at 97-98. Accordingly, staff recommends that the motion for reconsideration be denied because the motion fails to identify any point of fact or law that the Commission overlooked or failed to consider in rendering its order.

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

Date: March 4, 2010

Issue 4: Should Progress Energy Florida, Inc.'s Motion for Reconsideration be granted?

Recommendation: No. PEF's Motion for Reconsideration fails to identify any point of fact or law that the Commission overlooked or failed to consider in rendering its Order. (Fleming, Saylor)

Staff Analysis:

PEF's Motion

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

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

Because of these two mistakes, PEF respectfully requests that the Commission reconsider its decision and issue corrected conservation goals for PEF.

NRDC/SACE's Response to PEF's Motion

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

Date: March 4, 2010

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

FIPUG's Response

FIPUG filed one response in support of FPL, PEF, and Gulf, and in opposition to NRDC/SACE. FIPUG's arguments are summarized above in Issue 3.

Analysis and Conclusion

The standard of review for reconsideration is whether the motion identifies a point of fact or law that the Commission overlooked or failed to consider in rendering its order. First, PEF contends that the approved conservation goals are based on programs that are technically possible rather than achievable for PEF. Thus, PEF asserts that the Commission mistakenly included technical savings figure in its final Order rather than achievable goals that it intended. In addition, PEF asserts that the Commission double counted some measures. PEF's assertions are addressed in turn.

Two-year payback criteria

In rendering its decision, the Commission considered staff's illustration of savings lost in applying the two-year payback criteria that eliminated many residential measures with considerable potential for energy savings. PEF's argument overlooks the Commission's discussion of the issue and subsequent decision that omitted reference to any particular measures or limitation on the number of those measures used.

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

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

In that same order, on page 15, the Commission further found:

Our intention is to approve conservation goals for each utility that are more robust than what each utility proposed. Therefore, we approve goals based on the

Date: March 4, 2010

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

(Emphasis added.)

As explicitly stated in the Commission's order, the Commission intended the two-year payback element of the Commission's goals to be nothing more than a numerical representation of the savings the Commission expects the utilities to be able to realize by including one or more of those identified measures in their energy conservation programs. The Commission's inclusion of the residential portion of the two-year payback was not intended to limit or bind the utilities to specific measures; rather, the Commission's use of the numeric values of the residential portion of the two-year payback measures was merely intended for purposes of establishing the numeric goals that the utilities are required to achieve. Moreover, it is clear from the two Agenda Conference transcripts that the Commission considered and understood the differences between technical and achievable potential savings when it decided to establish the conservation goals.⁶

Double counted measures

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

After reviewing PEF's motion, staff was unable to reconcile the numbers in the motion with the numbers in the record. Therefore, on January 20, 2010, in an email to PEF and the parties of record, staff counsel asked PEF to verify the numbers of the three measures that PEF alleged were double counted.

On January 22, 2010, PEF provided a response to staff's email. Staff has reviewed the response. Based upon our review, staff agrees that the following three (3) measures may have been double counted:

- 1). Measure 231 (CFL) -- Mobile Homes
- 2). Measure 801 (2-Speed Pool Pump) -- Single Family

⁶ November 10, 2009, Agenda Conference Transcript, Item No. 9, at 17-31, 51-60, 98-101; December 1, 2009, Agenda Conference Transcript, Item No. 12, at 19-23, 43-49, 58-61, 78-80.

Date: March 4, 2010

3). Measure 802 (High Efficiency 1-Speed Pool Pump) – Mobile Homes

Each of the above measures is listed in the following exhibits, some more than once in the same exhibit:

- 1). Residential Measure List: TRC Achievable Results NOT in the RIM portfolio. (Staff's Composite Exhibit 2, Bates Nos. 00000057-00000151)
- 2). ITRON's Technical Potential for Electric Energy and Peak Demand Savings in Progress Energy Florida (Staff's Composite Exhibit 2, Document No. 03183-09)
- 3). Top Ten Technical, (Staff's Composite Exhibit 4, Late-Filed Deposition Exhibit No. 2 to the Deposition of John A. Masiello)

Even though PEF has provided supplemental information that appears to show that three measures may have been double counted, staff is unable to verify that double counting occurred. Staff has been unable to locate competent, substantial evidence within the hearing record that would verify the accuracy of PEF's alleged the number of double-counted MW and GWhs as asserted its motion. For example, on page four of its motion, PEF shows a total of 282.73 GWh of Net Energy Savings for the three double-counted measures. However, the measures contained in PEF's Late-Filed Deposition Exhibit No. 2, show a net energy savings of 1,103 GWh. Staff is unable to confirm PEF's figures contained in its motion, or in its supplemental filing, based upon any competent, substantial evidence contained in the hearing record.

It is well established that the utility "bears the burden of showing that the [Commission's] order with which it takes issue fails to comply with the essential requirements of law." United Telephone Co. of Fla. v. Mayo, 345 So. 2d 648, 651 (Fla. 1977). There must be competent, substantial evidence in the record to support a motion for reconsideration, and it is the utility's burden to show the Commission how it overlooked or failed to consider a point of fact or law in rendering its order. See e.g., Stewart Bonded Warehouse, Inc., 294 So. 2d at 315. While PEF's argument regarding the double-counting of three measure may have some merit, from the information provided by PEF, staff is unable to verify whether the three measures were, in fact, double counted or that a double counting occurred. Moreover, staff does not believe there is competent, substantial evidence in the record to show how the Commission allegedly double counted some measures. Accordingly, staff believes that PEF failed to carry its burden in proving that the Commission double counted some measures when establishing PEF's goals.

Based on the foregoing, staff believes PEF has not identified a point of fact or law that the Commission overlooked or failed to consider in rendering its order. The matters related to the two-year payback criteria in PEF's motion were considered by the Commission and it is not proper for PEF to reargue these matters again upon reconsideration. See Sherwood, 111 So. 2d at 97-98. For its arguments regarding measures that were allegedly double-counted, PEF failed to adequately point to competent, substantial evidence in the record showing that double-counting had occurred. Therefore, staff recommends that PEF's motion for reconsideration be denied in all respects because the motion fails to identify any point of fact or law that the Commission overlooked or failed to consider in rendering its order.

Date: March 4, 2010

Issue 5: Should Gulf Power Company's Motion for Reconsideration be granted?

Recommendation: No. Gulf's Motion for Reconsideration fails to identify any point of fact or law that the Commission overlooked or failed to consider in rendering its Order. (Fleming, Saylor)

Staff Analysis:

Gulf's Motion

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

NRDC/SACE's Response

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

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

Date: March 4, 2010

FIPUG's Response

FIPUG filed one response in support of FPL, PEF, and Gulf, and in opposition to NRDC/SACE. FIPUG's arguments are summarized above in Issue 3.

Analysis and Conclusion

The standard of review for reconsideration is whether the motion identifies a point of fact or law that the Commission overlooked or failed to consider in rendering its order. Gulf contends that the approved conservation goals are based on programs that are technically possible rather than achievable for Gulf. Gulf further contends that its goals should be reduced to 12.2 percent of the measures' technical potential value.

In rendering its decision, the Commission considered staff's illustration of savings lost in applying the two-year payback criteria that eliminated many residential measures with considerable potential for energy savings. Gulf's argument about technical versus achievable potential overlooks the Commission's discussion of the issue and subsequent decision that omitted reference to any particular measures or limitation on the number of those measures used.

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

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

In that same order, on page 15, the Commission further found:

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

(Emphasis added.)

Date: March 4, 2010

As explicitly stated in the Commission's order, the Commission intended the two-year payback element of the Commission's goals to be nothing more than a numerical representation of the savings the Commission expects the utilities to be able to realize by including one or more of those identified measures in their energy conservation programs. The Commission's inclusion of the residential portion of the two-year payback was not intended to limit or bind the utilities to specific measures; rather, the Commission's use of the numeric values of the residential portion of the two-year payback measures was merely intended for purposes of establishing the numeric goals that the utilities are required to achieve. Moreover, it is clear from the two Agenda Conference transcripts that the Commission considered and understood the differences between technical and achievable potential savings when it decided to establish the conservation goals.⁷

Staff believes Gulf has not identified a point of fact or law that the Commission overlooked or failed to consider in rendering its order. With regard to Gulf's disclaimer argument, as discussed above, the Commission was aware of the differences between technical and achievable potential. With regard to Gulf's request to bifurcate its goals, the possibility of setting separate sets of goals was considered, but ultimately not implemented.⁸ Thus, the matters raised in Gulf's motion were considered by the Commission and it is not proper for Gulf to reargue these matters again upon reconsideration. See Sherwood, 111 So. 2d at 97-98. Accordingly, staff recommends that the motion for reconsideration be denied because the motion fails to identify any point of fact or law that the Commission overlooked or failed to consider in rendering its order.

⁷ November 10, 2009, Agenda Conference Transcript, Item No. 9, at 17-31, 51-60, 98-101; December 1, 2009, Agenda Conference Transcript, Item No. 12, at 19-23, 43-49, 58-61, 78-80.

⁸ November 10, 2009, Agenda Conference Transcript, Item No. 9, at 96-98.

Date: March 4, 2010

Issue 6: Should NRDC/SACE's Motion for Reconsideration be granted?

Recommendation: No. NRDC/SACE's motion for reconsideration fails to identify any point of fact or law that the Commission overlooked or failed to consider in rendering its Order. (Fleming, Saylor)

Staff Analysis:

NRDC/SACE's Motion

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

FPL's Response to NRDC/SACE

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

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

Date: March 4, 2010

PEF's Response to NRDC/SACE

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

Gulf's Response to NRDC/SACE

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

FIPUG's Response to NRDC/SACE

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

Analysis and Conclusion

As previously stated, the standard of review for reconsideration is whether the motion identifies a point of fact or law that the Commission overlooked or failed to consider in rendering its order. In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959), citing State ex rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for

Docket Nos. 080407-EG, 080408-EG, 080409-EG, 080410-EG, 080411-EG, 080412-EG, 080413-EG

Date: March 4, 2010

reconsideration should not be granted “based on an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review.” Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974). Moreover, reconsideration granted based on reweighing or rearguing evidence is reversible error on appeal. See Stewart Bonded Warehouse, Inc., 294 So. 2d 315 at 317.

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

Accordingly, staff recommends that the motion for reconsideration be denied because the motion is essentially reargument, and fails to identify any point of fact or law that the Commission overlooked or failed to consider in rendering its order.

Docket Nos. 080407-EG, 080408-EG, 080409-EG, 080410-EG, 080411-EG, 080412-EG, 080413-EG

Date: March 4, 2010

Issue 7: Should these dockets be closed?

Recommendation: Yes. These dockets should be closed after the time for filing an appeal has run. (Fleming, Saylor)

Staff Analysis: These dockets should be closed after the time for filing an appeal has run.

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

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

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

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

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