EXHIBIT 33

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Commission review of numeric conservation goals (Florida Power & Light Company).	DOCKET NO. 080407-EG
In re: Commission review of numeric conservation goals (Progress Energy Florida, Inc.).	DOCKET NO. 080408-EG
In re: Commission review of numeric conservation goals (Tampa Electric Company).	DOCKET NO. 080409-EG
In re: Commission review of numeric conservation goals (Gulf Power Company).	DOCKET NO. 080410-EG
In re: Commission review of numeric conservation goals (Florida Public Utilities Company).	DOCKET NO. 080411-EG
In re: Commission review of numeric conservation goals (Orlando Utilities Commission).	DOCKET NO. 080412-EG
In re: Commission review of numeric conservation goals (JEA).	DOCKET NO. 080413-EG ORDER NO. PSC-09-0855-FOF-EG ISSUED: December 30, 2009

The following Commissioners participated in the disposition of this matter:

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LISA POLAK EDGAR
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FPSC-COMMISSION CLERK

EXHIBIT 33

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FINAL ORDER APPROVING NUMERIC CONSERVATION GOALS

BY THE COMMISSION:

BACKGROUND

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

In preparation for the new goals proceeding, we conducted a series of workshops exploring energy conservation initiatives and the requirements of the FEECA statutes. The first workshop, held on November 29, 2007, explored how we could encourage additional energy conservation. A second workshop held on April 25, 2008, examined how the costs and benefits of utility-sponsored energy conservation or demand-side management (DSM) programs, that target end-use customers, should be evaluated.

In 2008, the Legislature amended Section 366.82, F.S., such that when goals are established, we are required to: (1) evaluate the full technical potential of all available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy systems, (2) establish goals to encourage the development of demand-side renewable energy systems, and (3) allow efficiency investments across generation, transmission, and distribution as well as efficiencies within the user base. The Legislature also authorized us to allow an investor-owned electric utility (IOU) an additional return on equity of up to 50 basis points for exceeding 20 percent of their annual load-growth through energy efficiency and conservation measures and may authorize financial penalties for those utilities that fail to meet their goals. The additional return on equity shall be established by this Commission through a limited proceeding. Finally, the amendments to Section 366.82, F.S., provided funds for this Commission to obtain professional consulting services if needed. These statutes are implemented by Rules 25-17.001 through 25-17.0015, Florida Administrative Code (F.A.C.).

We held a third workshop on June 4, 2008, focused on appropriate methodologies for collecting information for a technical potential study. On June 26, 2008, seven dockets (080407-EG through 080413-EG) were established and represent the fourth time that we will set numeric conservation goals for each of the FEECA utilities. On November 3, 2008, we held a fourth workshop on the development of demand-side and supply-side conservation goals, including demand-side renewable energy systems. The results of the Technical Potential Study, conducted by the consulting firm ITRON on behalf of the seven FEECA utilities were presented at a fifth Commission workshop held on December 15, 2008.

On November 13, 2008, our staff contracted with GDS Associates, Inc. (GDS) to provide independent technical consulting and expert witness services during the conservation goal-setting proceeding. GDS is a multi-service engineering and management consulting firm, headquartered in Marietta, Georgia, with offices in Alabama, Texas, Maine, New Hampshire, Wisconsin, and Virginia. The firm has a broad array of management, strategic, and programmatic consulting expertise and specializes in energy, energy efficiency, water and utility planning issues. GDS was retained to review and critique the overall goals proposed by each utility, provide expert testimony and recommendations on alternative goals, where warranted. As an independent consultant, GDS was neither a separate party nor a representative of the staff. As such, GDS did not file post-hearing position statements or briefs.

By Order No. PSC-08-0816-PCO-EG, issued December 18, 2008, these dockets were consolidated for purposes of hearing and controlling dates were established. By Order No. PSC-09-0152-PCO, issued March 12, 2009, the controlling dates were revised, requiring the utilities

to file direct testimony and exhibits on June 1, 2009. FPUC requested, and was granted, an extension of time to file its direct testimony on June 4, 2009.

The Natural Resources Defense Council and the Southern Alliance for Clean Energy (NRDC/SACE) were granted leave to intervene by the Commission on January 9, 2009.[1] The Florida Solar Coalition (FSC) was granted leave to intervene on January 27, 2009.[2] We acknowledged the intervention of the Florida Energy and Climate Commission (FECC) on March 11, 2009.[3] The Florida Industrial Power Users Group (FIPUG) was granted leave to intervene on July 15, 2009.[4]

An evidentiary hearing was held on August 10 - 13, 2009. We have jurisdiction over this matter pursuant to Sections 366.80 through 366.82, F.S.

On August 28, 2009, the FECC filed post-hearing comments in the proceeding. While the FECC took no position on any issues, the FECC concluded in its post-hearing comments that:

> The PSC should approve a level of goals for each utility that satisfies the utility's resource needs and results in reasonably achievable lower rates for all electric customers. As called for in the recent legislation, the PSC should also take into account environmental compliance costs that are almost a certainty over this goals-planning horizon. In this regard, the FECC supports a reasonably achievable level of DSM Goals based on measures that pass the E-RIM and Participants Tests to achieve the least-cost strategy for the general body of ratepayers. Additionally, the FECC believes that coupling cost-effective measures that satisfy E-RIM with solar measures that do not satisfy E-RIM will increase the customer take rate of solar applications at the lowest possible cost.

TECHNICAL POTENTIAL STUDY

For the current goal setting proceeding, the seven FEECA utilities invited NRDC/SACE to form a Collaborative to conduct an assessment of the technical potential for energy and peak demand savings from energy efficiency, demand response, and customer-scale renewable energy in their service territories.[5] The Collaborative then developed a request for proposal to conduct the study. The proposals were evaluated and the ITRON team was selected by the Collaborative to conduct the Technical Potential Study.[6]

FPL contended that the Technical Potential Study employed an iterative process that began with a list of measures that were provided within its original request for proposal (RFP).

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[1] Order No. PSC-09-0027-PCO-EG, issued January 9, 2009 (NRDC/SACE).
[2] Order No. PSC-09-0062-PCO-EG, issued January 27, 2009 (FSC).
[3] Order No. PSC-09-0150-PCO-EG, issued March 11, 2009 (FECC).
[4] Order No. PSC-09-0500-PCO-EG, issued July 15, 2009 (FIPUG).
[5] Technical Potential for Electric Energy and Peak Demand Savings in Florida, Final Report, pp. 1-1.
[6] Technical Potential for Electric Energy and Peak Demand Savings in Florida, Final Report, pp. 1-1 – 1-2.

PEF stated that the study focuses on measures that will work in Florida, have the greatest potential impact, and have a realistic possibility for adoption. TECO argued that using the collaborative process allowed each member to draw upon the collective judgment of the group, which would insure the ultimate proposals were the product of a rigorous and orderly process. Gulf asserted that NRDC/SACE were able to submit additional measures to be considered for analysis in the technical potential. FPUC argued that the study provides an adequate assessment of the technical potential. JEA/OUC argued that the study used measures and assessment techniques that were fully vetted through the collaborative process. The FEECA utilities contended that the study commissioned by the Collaborative satisfies Section 366.82(3), F.S.

NRDC/SACE argued that the study did not provide an adequate assessment of the technical potential. NRDC/SACE stated that the technical potential does not consider the full technical potential of all available demand- and supply-side efficiency measures. FSC argued that ranking measure savings by the use of "stacking" by the Collaborative is incorrect. FSC also criticized the study for omitting solar hybrid systems. FIPUG's brief and the comments filed by the FECC did not specifically address the Technical Potential Study.

Analysis

Witness Rufo, Director in the Consulting and Analysis Group at ITRON, stated that the technical potential is a theoretical construct that represents an upper limit of energy efficiency. Technical potential is what is technically feasible, regardless of cost, customer acceptance, or normal replacement schedules. The Technical Potential Study was conducted for each FEECA utility and then combined to create a statewide technical potential.

According to the testimony of witness Rufo, the Collaborative's first step was to identify and select the energy efficiency, demand response, and solar photovoltaic (PV) measures to be analyzed. The energy efficiency measures were developed with the FEECA utilities, ITRON, and NRDC/SACE, all proposing measures. Once a master list was developed, ITRON conducted assessments of data availability and measure specific modeling issues. Demand response measures were identified using a combination of literature reviews of current programs and discussions within the Collaborative. The PV measures were identified by explicitly considering six characteristics specific to PV electrical systems. The six characteristics are: (1) PV material type, (2) energy storage, (3) tracking versus fixed, (4) array mounting design, (5) host sites, and (6) on- versus off-grid systems.

The ITRON assessment of the full technical potential included 257 unique energy efficiency measures, seven demand response programs, and three unique PV measures. Included in the energy efficiency list were 61 residential measures, 78 commercial measures, and 118 industrial measures. The demand response list included five residential, and two commercial/industrial measures. The PV list included one residential (roof top application) and two commercial measures (one rooftop application and one parking lot application).

Some of the 257 measures, such as Seasonal Energy Efficiency Ratio (SEER) 19 central air conditioners, hybrid desiccant-direct expansion cooling systems, and heat pump water heaters are likely to face supply constraints in the near future. The energy efficiency list also includes some end-use specific renewable measures, e.g., solar water heating and PV-powered pool pumps. While some measures may have obstacles to overcome regarding customer acceptance, it is appropriate to include them in the technical potential.

The table below shows the results of the Statewide Technical Potential Study. Baseline energy is the total electricity sales for the FEECA utilities in 2007.[7]

Sector	Annual Energy			Summer System Peak			Winter System Peak		
	Base line (2007)	Technical Potential		Base line (2007)	Technical Potential		Base line (2007)	Technical Potential	
	(GWh)	(GWh)	(%)	(MW)	(MW)	(%)	(MW)	(MW)	(%)
Residential	94,745	36,584	38.6%	22,263	10,032	45.1%	22,728	6,461	28.4%
Commercial	65,051	19,924	30.6%	9,840	4,079	41.5%	7,490	2,206	29.5%
Industrial	11,877	2,108	17.7%	1,721	265	12.8%	1,289	217	17.5%
Total	171,672	58,616	34.1%	33,825	14,375	42.5%	31,508	8,883	28.2%

None of the parties offered any alternatives that were Florida-specific. They only showed that other states showed greater potential. They were unable to show how savings in other states could be achieved in Florida. Witness Rufo testified that criticisms of the ITRON data and modeling methods by NRDC/SACE and the staff witness are either without merit, inaccurate, or insignificant. Witness Rufo further testified that the baseline and measure data used in the Technical Potential Study reflect the best available data given the time and resources available.

The FEECA utilities did not develop supply-side conservation or efficiency measures to the same degree that they did demand-side measures. Generating utilities made note of their ongoing or planned efficiency and savings projects, but did not subject supply-side measures to the same analysis, nor did they develop the extensive lists of measures, that were examined by ITRON for demand-side savings. Supply-side measures require substantially different analytical methods than do demand-side systems and provide results that are difficult to combine with conservation goals. Supply-side efficiencies and conservation, rendered properly, would result either in less fuel being required or less loss along the transmission and distribution network. The Commission routinely addresses opportunities for supply-side efficiency improvements in our review of Ten-Year Site Plans. Therefore, such measures are better addressed separately from demand-side measures where their options can be better explored.

[7] Technical Potential for Electric Energy and Peak Demand Savings in Florida, Final Report, pp. 3-14.

Conclusion

Based on the record, we find that the Collaborative provided an adequate assessment of the technical potential of all available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy systems, pursuant to Section 366.82(3), F.S.

ACHIEVABLE POTENTIAL

Each of the FEECA utilities agreed that an adequate assessment of achievable potential was provided. The FEECA utilities that addressed the supply-side options, likewise, agreed that it was better addressed through a separate proceeding.

FSC, in its post-hearing brief, found the assessment insufficient for the five IOUs. FSC took no position on the municipal utilities. FSC's objection in the case of the IOUs mainly related to problems it had with the cost-effectiveness testing used in the process, which is further addressed below. NRDC/SACE, in its post-hearing brief, argued that the achievable potential was insufficient across the board and cited opposition to the cost-effectiveness testing.

Following the development of the DSM technical potential, previously discussed, three steps were used to develop the achievable potential: initial cost-effectiveness screening, determination of incentive levels, and development of achievable potential for six separate scenarios. Discussion of each step follows. FPUC, JEA, and OUC did not use this process and are discussed separately.

Initial Cost-Effectiveness Screening

During this phase of the process, the four generating IOUs (FPL, PEF, TECO, and Gulf) applied three cost-effectiveness tests to each measure: Enhanced Rate Impact Measure Test (E-RIM), Enhanced Total Resource Cost Test (E-TRC), and the Participants Test. None of the three tests included incentives that could be provided to participating customers. During this phase of the testing, the utilities also identified measures that had a payback period of less than two years in order to identify the free riders. Rule 25-17.0021(3), F.A.C., reads, in part:

> Each utility's projection shall reflect consideration of overlapping measures, rebound effects, free riders, interactions with building codes and appliance efficiency standards, and the utility's latest monitoring and evaluation of conservation programs and measures.

In order to meet the requirements of this Rule, the four generating IOUs removed certain measures because of participant "payback" periods of less than two years. Savings realized from such measures exceeded their costs within two years, according to utility analysis. These savings result from reduced kWh usage and, resultantly, a lower bill. The costs of such measures are up-front capital costs, where they exist, of installing or beginning the measure. Measures must both pass the Participants Test and have a payback of two years or less without any incentives to

be removed during this step. We initially recognized a two-year payback period to address the free-ridership issue following the 1994 conservation goals hearing. By Order No. PSC-94-1313-FOF-EG,[8] we initially recognized FPL's use of the two-year payback period, and it has been used consistently ever since.

The two-year payback period was agreed to by the Collaborative as a means of addressing the free-ridership issue. In his testimony, FPL witness Dean described the rationale for the two-year period. He noted that estimates of the annual return on investment required to spur purchase of energy efficiency measures range from approximately 26 percent, which represents a payback period of just under four years, to over 100 percent, which represents a payback period less than a year. He further noted that most studies place the annual return on investment necessary to incent purchase in the 40 to 60 percent range. A 50 percent figure, which represents a payback of exactly two years, is squarely in the middle of that range.

The two-year payback criterion identified a substantial amount of energy savings from demand-side measures. For an illustrative example, the following chart demonstrates the amount of energy savings that could potentially be achieved from such measures:

Utility	(A) Maximum Achievable E-TRC (GWh)*	(B) E-TRC + 2-year payback measures (GWh)*	(C) Amount excluded due to 2-year screen (GWh) (B-A)	(D) Percent excluded due to 2-year screen (C/B)
FPL	2177.0	12066.9	9889.9	82.0%
PEF	1584.5	4689.8	3105.3	66.2%
TECO	310.3	1939.9	1629.6	84.0%
Gulf	251.4	1279.9	1028.5	80.4%
JEA	138.5	1070.7	932.2	87.1%
OUC	78.8	511.2	432.4	84.6%
FPUC	12.9	59.2	46.3	78.2%
Total	4553.4	21617.6	17064.2	78.9%

Even though the utilities did not include such measures in their proposed goals, customers are still free to adopt such measures and realize the resultant financial savings the measures represent. 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

[8] Order No. PSC-94-1313-FOF-EG, issued October 25, 1994, Docket No. 93-0548-EG, In re: Adoption of Numeric Conservation Goals and Consideration of National Energy Policy Act Standards (Section 111) by Florida Power and Light Company; Docket No. 93-0549-EG, In re: Adoption of Numeric Conservation Goals and Consideration of National Energy Policy Act Standards (Section 111) by Florida Power Corporation; Docket No. 93-0550-EG, In re: Adoption of Numeric Conservation Goals and Consideration of National Energy Policy Act Standards (Section 111) by Gulf Power Company; Docket No. 93-0551-EG, In re: Adoption of Numeric Conservation Goals and Consideration of National Energy Policy Act Standards (Section 111) by Tampa Electric Company.

the residential measures included in the top-ten energy savings measures that were screened-out by the two-year payback criterion.

Incentive Levels

The second step in the process for the four generating IOUs was to establish proper incentive levels. As a result, incentive levels for measures that did not pass the Participants Test during the initial cost-effectiveness screening (without incentives) were adjusted until the measures passed. Following this action, the E-RIM and E-TRC tests were re-run using costs that included the resulting incentive. Some measures that could not pass the Participants Test cost-effectiveness screening without incentives were removed from the achievable potential at this stage. Because measures were required to pass the Participants Test as well as E-RIM or E-TRC, incentives added to measures to allow them to be cost-effective for customers rendered some measures no longer cost-effective under either the E-RIM or E-TRC tests.

Scenario Analysis

In the third step of the process, the four generating IOUs analyzed measures that passed cost-effectiveness screening with incentives, in order to develop six scenarios for achievable potential. These utilities developed low, mid, and high incentive scenarios for both E-RIM and E-TRC. From these six scenarios, the achievable potential was developed. This achievable potential formed the basis of the goals proposed by the utilities in the next step of the overall process.

Other FEECA Utilities

FPUC, OUC, and JEA allowed ITRON to develop the achievable potential for them. ITRON followed a similar process in developing the achievable potential for the three small utilities that was followed for the generating IOUs in making their calculations. In each of these three cases, ITRON found no DSM measures that passed the E-RIM Test. As a result, the achievable potential for each of these three utilities was zero in all categories. These utilities are all smaller than the generating IOUs. Because of fewer customers, administrative costs and program development tend to render measures less cost-effective than they are for the generating IOUs.

Demand-Side Renewable Energy Systems

The Collaborative analyzed a small range of renewable energy systems in their analysis of achievable potential.[9] These measures were confined to geothermal heat pumps, solar water heaters, and small photovoltaic (PV) systems. These renewable energy systems were subjected to the same range of cost-effectiveness testing as the DSM measures discussed above. The generating IOUs found that some geothermal heat pumps did pass the cost-effectiveness tests

[9] Technical Potential for Electric Energy and Peak Demand Savings in Florida, Final Report, pp. A1 – A27.

and were included in the achievable potential. PEF also included some solar thermal measures in its achievable potential. No FEECA utility found that Solar PV measures passed the economic screening and thus should not be included in the achievable potential. Renewable energy systems were subject to the same analysis as conventional energy efficiency measures and either were incorporated into or excluded from achievable potential by the same standards.[10]

Conclusion

Each of the FEECA utilities, with the aid of ITRON, performed an adequate analysis of the demand-side conservation and efficiency measures, including demand-side renewable energy systems. The FEECA utilities did not provide an analysis of supply-side measures. We agree, however, that the methods appropriate to analyze demand-side measures are not well-suited to weighing supply-side measures. As a result, supply-side measures are best addressed in a separate proceeding.

REQUIRED COST-EFFECTIVENESS TESTS

Recent amendments to Section 366.82, F.S., provide greater specificity as to what we must consider when establishing conservation goals. The recent amendments, in relevant part, are as follows:

> (3) In developing the goals, the commission shall evaluate the full technical potential of all available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy systems. In establishing the goals, the commission shall take into consideration:
>
> (a) The costs and benefits to customers participating in the measure.
>
> (b) The costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions.

Appropriate Test for Section 366.82(3)(a), F.S.

All parties, except FSC, agreed that the Participants Test captures all of the relevant costs and benefits for customers who elect to participate in a DSM measure. The parties further agreed that the requirements of Section 366.82(3)(a), F.S., are reflected in the proposed goals because all included measures pass the Participants Test.

FSC argued that the goals proposed by FPL, PEF, TECO, Gulf, and FPUC do not adequately reflect the costs and benefits to customers participating in the measures pursuant to Section 366.82(3)(a), F.S. FSC appears to take issue with the techniques employed by the IOUs in calculating the energy savings and incentives for solar measures and argued that these flawed calculations cause solar measures to fail the Participants Test. In its analysis, FSC explained

[10] Technical Potential for Electric Energy and Peak Demand Savings in Florida, Final Report, pp. ES5 – ES 6.

how the impact of "stacking" increases the necessary incentive and lowers the energy savings attributed to solar technologies, thereby increasing the likelihood that these measures will fail the Participants Test. FSC took no position regarding OUC and JEA.

Section 366.82(3)(a), F.S., requires that we take into consideration the costs and benefits to customers participating in any measure to be included in a utility's DSM program. In addition, Rule 25-17.008, F.A.C., incorporates our Cost Effectiveness Manual.[11] The Cost Effectiveness Manual requires the application of the Participants Test in order to determine the cost-effectiveness of conservation programs by measuring the impact of the program on the participating customers. The customers' benefits of participation in programs may include bill reductions, incentives, and tax credits. Customer's costs may include bill increases, equipment and materials, and operations and maintenance.

Although FSC expressed its opinion that the inputs to the Participants Test are flawed, it agreed with the application of this test in general, along with the E-TRC Test. However, FSC offered no alternative inputs for the investor-owned utilities, nor did it provide any alternative to the results obtained from the application of the Participants Test. The FSC questioned ITRON on its use of "stacking" in the Technical Potential Study. Stacking is a means to understand the interaction between available measures to make sure that savings are not double counted. Witness Rufo testified that the use of "stacking" is an accepted practice to eliminate double counting that could occur if the measures were not stacked. We believe that "stacking" is useful and justified as it is a means to ensure that the savings from a program are not counted if those savings would be offset by the savings in a different measure.

We find that the Participants Test, as used by the utilities in this proceeding, satisfies the requirements of Section 366.82(3)(a), F.S. As described in Rule 25-17.008, F.A.C., the Participants Test measures the impact of the program on the participating customers. Based on the evidence in the record, as well as existing Commission Rules, we find that the Participants Test must be considered when establishing conservation goals in order to satisfy Section 366.82(3)(a), F.S.

Appropriate Test for Section 366.82(3)(b), F.S.

The FEECA utilities agreed that Section 366.82, F.S., does not specify or require a single cost-effectiveness test, but that a combination of two tests is sufficient to meet the requirements, specifically the RIM and Participants Tests. The TRC Test is considered by the utilities to be insufficient to meet the statute, and goals based upon it would have an upward pressure on rates. They also agreed that their analysis was comprehensive, including effects from a variety of sources, such as building codes, overlapping measures, appliance standards, and other sources. Four of the seven FEECA utilities filed "enhanced" versions of the RIM and TRC tests, referenced as E-RIM and E-TRC. These tests included benefits from avoided carbon compliance costs.

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[11] Florida Public Service Commission Cost Effectiveness Manual for Demand Side Management Programs and Self-Service Wheeling Proposals, effective July 17, 1991.

NRDC/SACE asserted that the language found in Section 366.82(3)(b), F.S., clearly describes the TRC Test. NRDC/SACE argued that the TRC Test is the cost-effectiveness test that focuses on the "general body of ratepayers as a whole." NRDC/SACE further elaborated that the TRC Test, unlike the RIM Test, includes both "utility incentives and participant contributions." In addition, a flaw in the calculation of benefits is the denial of value for reduced demand until the in-service date of the avoided unit. Also, the possibility of avoiding units that are already approved but have not yet finished construction should be considered. Finally, NRDC/SACE contended that administrative costs allocated to measures were unreasonable and caused an inappropriate reduction of the goals.

FIPUG suggested that we primarily consider the final impact on customers, and that any goals should not present an undue rate impact upon customers. FIPUG contended that we should continue to give significant weight to the RIM Test. FIPUG asserted, however, that the test should be performed consistently and uniformly between utilities.

FSC asserted that the analysis by the investor-owned utilities was insufficient, and that the reduction of savings associated with solar measures was reduced by inappropriately stacking measures. FSC supported the E-TRC and Participants Tests, and further suggested that measures should be considered in combination or on a portfolio basis.

Section 366.82(3)(b), F.S., requires this Commission to consider "[t]he costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions." Both the RIM and TRC Tests address costs and benefits beyond those associated solely with the program participant. Four of the seven FEECA utilities filed "enhanced" versions of the RIM and TRC tests, referenced as E-RIM and E-TRC. These tests are identical to the RIM and TRC tests but include an estimate of avoided carbon compliance costs. As such, E-RIM and E-TRC portfolios will have greater savings than RIM or TRC portfolios respectively.

Rule 25-17.008, F.A.C., and the Cost Effectiveness Manual were adopted as part of the implementation of Section 366.82, F.S., prior to the recent amendments. Rule 25-17.008(3), F.A.C., directs us to evaluate the cost-effectivness of conservation measures and programs utilizing the following three tests: (1) the Participants Test, (2) the Total Resource Cost Test (TRC), and (3) the Rate Impact Measure Test (RIM). Rule 25-17.008(4), F.A.C., allows a party to provide additional data for cost-effectiveness reporting, such as the E-RIM and E-TRC tests. The figure below provides an illustration of the costs and benefits evaluated under each test.

Summary of Cost Effectiveness Test Components

	Participant	Total Resource Cost	Rate Impact Measure
Benefits	Bill Savings	Avoided Generation	Avoided Generation
	Incentives	Avoided Distribution	Avoided Distribution
	Tax Credits	Net System Fuel	Net System Fuel
Costs	Measure Cost	Equipment	Equipment
		Administrative	Administrative
		Measure Cost	Incentives
			Lost Revenues

It should first be noted that the RIM and TRC tests both consider benefits associated with avoiding supply side generation, i.e., construction of power plants, transmission, and distribution. The RIM and TRC tests also consider costs associated with additional supplies and costs associated with the utilities cost to offer the program. While some similarities exist between the two tests, it is the differences that are significant in determining which one, if not both, complies with Section 366.82(3)(b), F.S., and should be used to establish goals. The table below focuses on the differences in costs between the two tests.

Difference Between RIM and TRC Tests

	Total Resource Cost	Rate Impact Measure
Costs	Measure Cost	Incentives
		Lost Revenues

As illustrated above, the RIM Test considers utility offered incentives which are specifically required in Section 366.82(3)(b), F.S. Utility offered incentives are recovered through the Energy Conservation Cost Recovery clause and are a cost borne by all ratepayers. Therefore, a customer participating in a program, which is incentivized by the utility, receives a benefit; however, the incentive paid by the utility results in a cost to the general body of ratepayers. The TRC Test does not consider costs associated with utility incentives.

The TRC Test, as described in Rule 25-17.008, F.A.C., measures the net costs of a conservation program as a resource option based on the total costs of the program, including both the participants' and the utility's costs. The consideration of costs incurred by the participant is specifically required by Section 366.82(3)(b), F.S. Because the TRC Test excludes lost revenues, a measure that is cost-effective under the TRC Test would be less revenue intensive than a utility's next planned supply-side resource addition. However, the rate impact may be greater due to the reduced sales.

When establishing conservation goals, Section 366.82(3)(d), F.S., requires us to consider the costs imposed by state and federal regulations on the emission of greenhouse gases. The statute does not define "greenhouse gases," nor requires us to consider projected costs that may be imposed. However, in considering this requirement, the utilities viewed CO_2 as one of the generally accepted greenhouse gases close to being regulated. Other regulated gases, such as sulfur dioxide (SOx) and nitrous oxides (NOx), are already regulated by federal statute and the costs are included in the standard RIM and TRC tests. Each utility's calculation of a measures' cost-effectiveness employed modified versions of the RIM and the TRC tests that added a cost impact of CO_2 to the calculations. The revised tests are referred to as the E-RIM and E-TRC Tests. The utilities used different sources to establish the cost of CO_2 emissions, thereby employing different values in their cost-effectiveness testing. Therefore, FPL's goals could not be determined using TECO's estimated CO_2 costs.

Conclusion

While all parties agreed that the Participants Test is required by Section 366.82(3)(a), F.S., the same consensus does not exist when determining the appropriate test or tests for Section 366.82(3)(b) and (d), F.S. The seven FEECA utilities believe that the E-RIM Test satisfies the requirements of the statute while NRDC/SACE and FSC believe the E-TRC Test satisfies the requirements. We would note that the language added in 2008did not explicitly identify a particular test that must be used to set goals. Based on the analysis above, we find that consideration of both the RIM and TRC tests is necessary to fulfill the requirements of Section 366.82(3)(b), F.S. Both the RIM and the TRC Tests address costs and benefits beyond those associated solely with the program participant. By having RIM and TRC results, we can evaluate the most cost-effective way to balance the goals of deferring capacity and capturing energy savings while minimizing rate impacts to all customers. The "enhanced" versions of the RIM and TRC tests, referenced as E-RIM and E-TRC, are identical to the RIM and TRC tests, but include an estimate of avoided carbon compliance costs. As such, E-RIM and E-TRC portfolios will have greater savings than RIM or TRC portfolios respectively.

COMMISSION APPROVED GOALS

The goals proposed by each utility rely upon the E-RIM Test. 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.

OUC and JEA proposed goals of zero, yet committed to continue their current DSM program offerings. We are setting goals for OUC and JEA based on their current programs so as not to unduly increase rates. The annual numeric goals for each utility are shown below:

Commission-Approved Conservation Goals for FPL

	Residential								
	Summer (MW)			Winter (MW)			Annual (GWh)		
Year	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal
2010	25.2	42.5	67.7	20.9	12.3	33.2	29.1	90.5	119.6
2011	37.2	42.5	79.7	30.1	12.3	42.4	55.3	90.5	145.8
2012	47.7	42.5	90.2	38.0	12.3	50.3	78.3	90.5	168.8
2013	56.0	42.5	98.5	44.0	12.3	56.3	96.2	90.5	186.7
2014	61.8	42.5	104.3	47.9	12.3	60.2	109.5	90.5	200.0
2015	58.2	42.5	100.7	43.6	12.3	55.9	102.5	90.5	193.0
2016	53.4	42.5	95.9	39.0	12.3	51.3	92.9	90.5	183.4
2017	48.9	42.5	91.4	34.7	12.3	47.0	83.7	90.5	174.2
2018	44.9	42.5	87.4	30.9	12.3	43.2	75.9	90.5	166.4
2019	40.8	42.5	83.3	27.1	12.3	39.4	67.0	90.5	157.5
Total	474.0	425.0	899.0	356.0	123.0	479.0	790.3	905.0	1,695.3

	Commercial/Industrial								
	Summer (MW)			Winter (MW)			Annual (GWh)		
Year	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal
2010	42.7	0.0	42.7	8.1	0.0	8.1	84.7	0.0	84.7
2011	62.5	0.0	62.5	9.9	0.0	9.9	149.4	0.0	149.4
2012	76.3	0.0	76.3	11.6	0.0	11.6	191.5	0.0	191.5
2013	81.3	0.0	81.3	13.1	0.0	13.1	202.7	0.0	202.7
2014	79.3	0.0	79.3	14.4	0.0	14.4	194.1	0.0	194.1
2015	71.5	0.0	71.5	15.1	0.0	15.1	167.5	0.0	167.5
2016	60.0	0.0	60.0	15.0	0.0	15.0	134.2	0.0	134.2
2017	48.7	0.0	48.7	14.1	0.0	14.1	104.8	0.0	104.8
2018	41.3	0.0	41.3	13.2	0.0	13.2	86.9	0.0	86.9
2019	35.0	0.0	35.0	12.0	0.0	12.0	71.0	0.0	71.0
Total	598.7	0.0	598.7	126.3	0.0	126.3	1,386.7	0.0	1,386.7

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Commission-Approved Conservation Goals for PEF

	Residential								
	Summer (MW)			Winter (MW)			Annual (GWh)		
Year	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal
2010	40.6	43.9	84.5	63.7	19.0	82.7	99.6	190.3	289.9
2011	42.5	43.9	86.4	69.2	19.0	88.2	105.6	190.3	295.9
2012	45.5	43.9	89.4	73.2	19.0	92.2	114.7	190.3	305.0
2013	47.5	43.9	91.4	75.9	19.0	94.9	120.7	190.3	311.0
2014	49.4	43.9	93.3	78.6	19.0	97.6	126.8	190.3	317.1
2015	54.8	43.9	98.7	83.3	19.0	102.3	147.9	190.3	338.2
2016	63.3	43.9	107.2	94.1	19.0	113.1	135.8	190.3	326.1
2017	62.9	43.9	106.8	93.5	19.0	112.5	129.8	190.3	320.1
2018	57.4	43.9	101.3	86.0	19.0	105.0	117.7	190.3	308.0
2019	42.9	43.9	86.8	61.5	19.0	80.5	108.6	190.3	298.9
Total	506.6	439.0	945.6	779.1	190.0	969.1	1,207.1	1,903.0	3,110.1

	Commercial/Industrial								
	Summer (MW)			Winter (MW)			Annual (GWh)		
Year	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal
2010	13.7	0.0	13.7	5.3	0.0	5.3	31.1	0.0	31.1
2011	16.2	0.0	16.2	5.3	0.0	5.3	33.0	0.0	33.0
2012	25.5	0.0	25.5	11.4	0.0	11.4	35.9	0.0	35.9
2013	25.9	0.0	25.9	11.5	0.0	11.5	37.7	0.0	37.7
2014	26.4	0.0	26.4	11.5	0.0	11.5	39.6	0.0	39.6
2015	27.6	0.0	27.6	11.7	0.0	11.7	46.2	0.0	46.2
2016	27.1	0.0	27.1	11.6	0.0	11.6	42.5	0.0	42.5
2017	27.0	0.0	27.0	11.6	0.0	11.6	40.6	0.0	40.6
2018	25.7	0.0	25.7	11.4	0.0	11.4	36.8	0.0	36.8
2019	22.3	0.0	22.3	11.3	0.0	11.3	34.0	0.0	34.0
Total	237.3	0.0	237.3	102.6	0.0	102.6	377.4	0.0	377.4

Commission-Approved Conservation Goals for TECO

	Residential								
	Summer (MW)			Winter (MW)			Annual (GWh)		
Year	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal
2010	2.7	1.9	4.6	2.8	3.6	6.4	4.8	5.0	9.8
2011	4.7	1.9	6.6	4.9	3.6	8.5	9.0	5.0	14.0
2012	6.5	1.9	8.4	6.6	3.6	10.2	12.7	5.0	17.7
2013	8.0	1.9	9.9	7.9	3.6	11.5	15.6	5.0	20.6
2014	8.9	1.9	10.8	8.6	3.6	12.2	17.6	5.0	22.6
2015	9.0	1.9	10.9	8.0	3.6	11.6	18.0	5.0	23.0
2016	7.9	1.9	9.8	6.5	3.6	10.1	16.3	5.0	21.3
2017	7.1	1.9	9.0	5.2	3.6	8.8	14.4	5.0	19.4
2018	6.4	1.9	8.3	4.4	3.6	8.0	13.3	5.0	18.3
2019	5.9	1.9	7.8	3.8	3.6	7.4	12.3	5.0	17.3
Total	67.1	19.0	86.1	58.7	36.0	94.7	134.0	50.0	184.0

	Commercial/Industrial								
	Summer (MW)			Winter (MW)			Annual (GWh)		
Year	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal
2010	2.5	0.0	2.5	0.9	0.0	0.9	6.5	0.0	6.5
2011	3.6	0.0	3.6	1.1	0.0	1.1	10.6	0.0	10.6
2012	4.3	0.0	4.3	1.4	0.0	1.4	15.4	0.0	15.4
2013	5.1	0.0	5.1	1.3	0.0	1.3	16.2	0.0	16.2
2014	5.4	0.0	5.4	1.5	0.0	1.5	19.5	0.0	19.5
2015	6.0	0.0	6.0	1.7	0.0	1.7	20.9	0.0	20.9
2016	6.2	0.0	6.2	1.6	0.0	1.6	21.6	0.0	21.6
2017	6.3	0.0	6.3	1.6	0.0	1.6	21.8	0.0	21.8
2018	6.4	0.0	6.4	1.7	0.0	1.7	22.1	0.0	22.1
2019	6.3	0.0	6.3	1.7	0.0	1.7	21.7	0.0	21.7
Total	52.1	0.0	52.1	14.5	0.0	14.5	176.3	0.0	176.3

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Commission-Approved Conservation Goals for Gulf

	Residential								
	Summer (MW)			Winter (MW)			Annual (GWh)		
Year	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal
2010	1.90	5.60	7.50	1.90	4.00	5.90	2.8	32.20	35.00
2011	2.70	5.60	8.30	2.50	4.00	6.50	5.4	32.20	37.60
2012	3.80	5.60	9.40	3.40	4.00	7.40	8.4	32.20	40.60
2013	4.90	5.60	10.50	4.50	4.00	8.50	11.6	32.20	43.80
2014	6.10	5.60	11.70	5.50	4.00	9.50	14.6	32.20	46.80
2015	7.20	5.60	12.80	6.90	4.00	10.90	18.0	32.20	50.20
2016	8.40	5.60	14.00	8.10	4.00	12.10	21.4	32.20	53.60
2017	9.10	5.60	14.70	8.70	4.00	12.70	23.2	32.20	55.40
2018	9.30	5.60	14.90	9.30	4.00	13.30	24.0	32.20	56.20
2019	9.50	5.60	15.10	9.70	4.00	13.70	24.5	32.20	56.70
Total	62.90	56.00	118.90	60.50	40.00	100.50	153.9	322.00	475.90

	Commercial/Industrial								
	Summer (MW)			Winter (MW)			Annual (GWh)		
Year	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal
2010	1.20	0.00	1.20	0.50	0.00	0.50	3.20	0.00	3.20
2011	1.60	0.00	1.60	0.60	0.00	0.60	5.60	0.00	5.60
2012	2.10	0.00	2.10	0.80	0.00	0.80	7.70	0.00	7.70
2013	2.40	0.00	2.40	0.90	0.00	0.90	9.50	0.00	9.50
2014	2.70	0.00	2.70	1.00	0.00	1.00	10.80	0.00	10.80
2015	2.90	0.00	2.90	1.00	0.00	1.00	11.70	0.00	11.70
2016	3.00	0.00	3.00	1.20	0.00	1.20	12.30	0.00	12.30
2017	3.20	0.00	3.20	1.10	0.00	1.10	12.70	0.00	12.70
2018	3.10	0.00	3.10	1.10	0.00	1.10	12.50	0.00	12.50
2019	3.10	0.00	3.10	1.10	0.00	1.10	11.90	0.00	11.90
Total	25.30	0.00	25.30	9.30	0.00	9.30	97.90	0.00	97.90

Commission-Approved Conservation Goals for FPUC

	Residential								
	Summer (MW)			Winter (MW)			Annual (GWh)		
Year	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal
2010	0.2	N/A	0.2	0.1	N/A	0.1	0.5	N/A	0.5
2011	0.2	N/A	0.2	0.1	N/A	0.1	0.5	N/A	0.5
2012	0.2	N/A	0.2	0.1	N/A	0.1	0.5	N/A	0.5
2013	0.2	N/A	0.2	0.1	N/A	0.1	0.5	N/A	0.5
2014	0.2	N/A	0.2	0.1	N/A	0.1	0.5	N/A	0.5
2015	0.2	N/A	0.2	0.1	N/A	0.1	0.5	N/A	0.5
2016	0.2	N/A	0.2	0.1	N/A	0.1	0.5	N/A	0.5
2017	0.2	N/A	0.2	0.1	N/A	0.1	0.5	N/A	0.5
2018	0.2	N/A	0.2	0.1	N/A	0.1	0.5	N/A	0.5
2019	0.2	N/A	0.2	0.1	N/A	0.1	0.5	N/A	0.5
Total	2.0	N/A	2.0	1.3	N/A	1.3	5.1	N/A	5.1

	Commercial/Industrial								
	Summer (MW)			Winter (MW)			Annual (GWh)		
Year	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal	E-TRC	Residential <2-Yr. Payback	Commission Approved Goal
2010	0.2	N/A	0.2	0.1	N/A	0.1	0.8	N/A	0.8
2011	0.2	N/A	0.2	0.1	N/A	0.1	0.8	N/A	0.8
2012	0.2	N/A	0.2	0.1	N/A	0.1	0.8	N/A	0.8
2013	0.2	N/A	0.2	0.1	N/A	0.1	0.8	N/A	0.8
2014	0.2	N/A	0.2	0.1	N/A	0.1	0.8	N/A	0.8
2015	0.2	N/A	0.2	0.1	N/A	0.1	0.8	N/A	0.8
2016	0.2	N/A	0.2	0.1	N/A	0.1	0.8	N/A	0.8
2017	0.2	N/A	0.2	0.1	N/A	0.1	0.8	N/A	0.8
2018	0.2	N/A	0.2	0.1	N/A	0.1	0.8	N/A	0.8
2019	0.2	N/A	0.2	0.1	N/A	0.1	0.8	N/A	0.8
Total	2.3	N/A	2.3	0.6	N/A	0.6	7.8	N/A	7.8

Commission-Approved Conservation Goals for OUC

	Residential			Commercial/Industrial		
Year	Summer (MW)	Winter (MW)	Annual (GWh)	Summer (MW)	Winter (MW)	Annual (GWh)
2010	0.50	0.20	1.80	0.70	0.70	1.80
2011	0.50	0.20	1.80	0.70	0.70	1.80
2012	0.50	0.20	1.80	0.70	0.70	1.80
2013	0.50	0.20	1.80	0.70	0.70	1.80
2014	0.50	0.20	1.80	0.70	0.70	1.80
2015	0.50	0.20	1.80	0.70	0.70	1.80
2016	0.50	0.20	1.80	0.70	0.70	1.80
2017	0.50	0.20	1.80	0.70	0.70	1.80
2018	0.50	0.20	1.80	0.70	0.70	1.80
2019	0.50	0.20	1.80	0.70	0.70	1.80
Total	5.00	2.00	18.00	7.00	7.00	18.00

Commission-Approved Conservation Goals for JEA

	Residential			Commercial/Industrial		
Year	Summer (MW)	Winter (MW)	Annual (GWh)	Summer (MW)	Winter (MW)	Annual (GWh)
2010	2.0	1.6	6.9	2.4	1.4	22.1
2011	2.0	1.6	6.9	2.4	1.4	22.1
2012	2.0	1.6	6.9	2.4	1.4	22.1
2013	2.0	1.6	6.9	2.4	1.4	22.1
2014	2.0	1.6	6.9	2.4	1.4	22.1
2015	2.0	1.6	6.9	2.4	1.4	22.1
2016	2.0	1.6	6.9	2.4	1.4	22.1
2017	2.0	1.6	6.9	2.4	1.4	22.1
2018	2.0	1.6	6.9	2.4	1.4	22.1
2019	2.0	1.6	6.9	2.4	1.4	22.1
Total	20.3	15.5	69.0	24.0	14.3	221.0

INCENTIVES

FPL, PEF, TECO, and Gulf took the position that incentives do not need to be established at this time, but rather should be evaluated and established, if necessary, through a separate proceeding. FPUC argued that utility-owned energy efficiency and renewable energy systems are supply-side issues that are not applicable to it as a non-generating utility. Both OUC and JEA argued that, because municipal utilities are not subject to rate-of-return regulation, the issue

of incentives is not relevant to them. According to FIPUG, the type and amount of incentives and their impact on rates should determine whether incentives are established. FIPUG provided no additional comments on the issue of incentives for utilities in its brief or direct testimony. FSC argued that incentives should be established but offered no supporting comments in its brief and did not file testimony. While NRDC/SACE argued that we should establish an incentive that will allow utilities an opportunity to share in the net benefits that cost-effective efficiency programs provide customers, it agreed with the FEECA utilities that the issue of financial incentives should be deferred to a subsequent proceeding, with the caveat that incentives are only appropriate if linked to the achievement of strong goals.

Section 366.82(3)(c), F.S., requires this Commission to consider whether incentives are needed to promote both customer-owned and utility-owned energy efficiency and demand-side renewable energy systems. In addition, Section 366.82(9), F.S., authorizes this Commission to allow an investor-owned electric utility an additional return on equity of up to 50 basis points for exceeding 20 percent of its annual load-growth through energy efficiency and conservation measures. The statute further states that this Commission shall establish such additional return on equity through a limited proceeding. This provision clearly allows us to award an incentive based upon a utility's performance and specifies the procedural mechanism for doing so.

None of the parties favored establishing incentives as part of this proceeding, with the exception of FSC, who filed no supporting comments and did not file testimony. In addition, staff witness Spellman recommended that if we believe that at some point incentives are necessary and appropriate, then the specific mechanism can be developed, in accordance with the FEECA statutes, in a separate proceeding, but not at this time. There is limited discussion in the record regarding the need for performance incentives or penalties, or analysis of how they should be structured. We agree with witness Spellman that a more appropriate course of action is to address the issue of incentives in a future proceeding when the necessary analysis has been done and all interested stakeholders can participate.

Section 366.82(8), F.S., states:

> The commission may authorize financial rewards for those utilities over which it has rate setting authority that exceed their goals and may authorize financial penalties for those utilities that fail to meet their goals, including, but not limited to, the sharing of generation, transmission, and distribution cost savings associated with conservation, energy efficiency, and demand-side renewable energy systems additions.

An IOU may choose to petition this Commission for an additional return on equity based upon its performance at any time the company believes such an incentive to be warranted. This Commission, on its own motion, may initiate a proceeding to penalize a utility for failing to meet its goals.

We believe establishing incentives during this proceeding would unnecessarily increase costs to ratepayers at a time when consumers are already facing financial challenges. Increasing rates in order to provide incentives to utilities is more appropriately addressed in a future proceeding after utilities have demonstrated and we have evaluated their performance.

With regard to customer-owned energy-efficiency and demand-side renewable energy systems, incentives are typically provided through each DSM program. Our staff evaluates each program proposed by a utility prior to making a recommendation as to whether it should be approved. Part of our staff's evaluation process includes an analysis of the cost-effectiveness tests performed by the utility, including the appropriateness of any incentives the utility proposes to offer to customers taking advantage of a particular program as well as the cost and benefits to all customers. Therefore, in our view, a mechanism for providing customers with incentives is already in place and we should continue to make decisions about customer incentives on an individual program basis. We find that it is not necessary to establish additional incentives for customers at this time as doing so would result in higher rates for all customers.

Conclusion

We find that incentives to promote energy efficiency and demand-side renewable energy systems should not be established at this time. We have met the requirements of Section 366.82(3)(c), F.S., by considering, during this proceeding, whether incentives are needed to promote energy efficiency and demand-side renewable energy systems. We will be in a better position to determine whether incentives are needed after we review the utilities' progress in reaching the goals established in these dockets. We may establish, through a limited proceeding, a financial reward or penalty for a rate-regulated utility based upon the utility's performance in accordance with Section 366.82(8) and (9), F.S. Utility customers are already eligible to receive incentives through existing DSM programs, and should not be harmed by considering additional incentives in a separate proceeding.

CONSIDERATION TO IMPACT ON RATES

The four generating IOUs agreed that the impact on rates should be considered in the goal setting process. FPUC, JEA, and OUC believed that we must continue to consider the impact on rates as a primary determinant in setting goals under FEECA.

FIPUG claimed that it is important that rate impact not be overlooked when conservation goals are set and programs are evaluated. FSC believed there are also other factors to be considered by us when setting conservation goals for the public utilities.

NRDC/SACE contended that consideration of the impact on rates does not belong in the goal setting process because of the 2008 FEECA amendments. Further, NRDC/SACE contended that customers are more interested in their monthly utility bills than in rates and would benefit most if energy efficiency programs are widely available.

As specified in Section 366.01, F.S., the regulation of public utilities is declared to be in the public interest. Chapter 366 is to be liberally construed for the protection of the public welfare. Several sections within the Chapter, specifically Sections 366.03, 366.041, and 366.05, F.S., refer to the powers of the Commission and setting rates that are fair, just, and reasonable. The 2008 legislative changes to FEECA did not change our responsibility to set such rates.

Under FEECA, we are charged with setting goals and approving plans related to the promotion of cost-effective demand-side renewable energy systems and the conservation of electric energy. The 2008 changes to FEECA specified that this Commission is to take into consideration the costs and benefits of ratepayers as a whole, in addition to the cost and benefits to customers participating in a measure. FEECA makes it clear that we must consider the economic impact to all, both participants and non-participants. This can only be done by ensuring rates to all are fair, just, and reasonable.

When setting conservation goals there are two basic components to a rate impact: Energy Conservation Cost Recovery and base rates. The costs to implement a DSM Program consist of administrative, equipment, and incentive payments to the participants. These costs are recovered by the utility through the Energy Conservation Cost Recovery clause. Cost recovery is reviewed on an annual basis when true-up numbers are confirmed. When approved, the utility allocates that expense to its general body of ratepayers and rates immediately go up for all ratepayers until that cost is recovered. When new DSM programs are implemented or incentive payments to participants are increased, the cost of implementing the program will directly lead to an increase in rates as these costs are recovered.

Base rates are established by this Commission in a rate case. Between rate cases, we monitor the company's Return on Equity (ROE) within a range of reasonable return, usually + or – 1 percent or 100 basis points. If the ROE of a utility exceeds the 100 basis point range, we can initiate a rate case to adjust rates downward. If the ROE falls below the 100 basis point range, the utility may file a petition with this Commission for a rate increase.

Energy saving DSM programs can have an impact on a utility's base rates. Utilities have a fixed cost of providing safe, reliable service. When revenues go down because fewer kWh were consumed, the utility may have to make up the difference by requesting an increase in rates in order to maintain a reasonable ROE.

The downturn of the present economy, coupled with soaring unemployment, make rates and the monthly utility bill ever more important to utility customers. When speaking about customers who participate in a utility program and receive an incentive, FPL witness Dean testified that utility customers generally will use less energy and even though rates are higher for everyone, program participants purchase less energy and thus are net beneficiaries of the program because their lower consumption lowers their total bill. Witness Dean further testified that these costs disproportionately fall upon those who are unable to participate in programs. Similarly, JEA witness Vento testified that customers such as renters who do not or cannot implement a DSM measure, and therefore have no corresponding benefit of reduced consumption to offset the rate increase, will be subject to increased utility bills.

Witness Pollock also recognized the importance of conservation in lowering utility bills as all consumers "face challenging economic times." Witness Pollock testified that the importance of pursuing conservation programs must be balanced against their cost and impact of that cost on ratepayers. Witness Pollock further testified that consideration of rate impacts in the evaluation of conservation programs helps to minimize both rates and costs for ratepayers. Finally, PEF witness Masiello testified that this Commission should also balance the needs of all stakeholders and minimize any adverse impacts to customers.

Conclusion

As provided in Section 366.04, F.S., we are given ". . . jurisdiction to regulate and supervise each public utility with respect to its rates and service." In past FEECA proceedings, the impact on rates has been a primary consideration of this Commission when establishing conservation goals and approving programs of the public utilities. The 2008 legislative changes to FEECA did not diminish the importance of rate impact when establishing goals for the utilities.

Those who do not or cannot participate in an incentive program will not see their monthly utility bill go down unless they directly decrease their consumption of electricity. If that is not possible, non-participants could actually see an increase in the monthly utility bill. Since participation in DSM programs is voluntary and this Commission is unable to control the amount of electricity each household consumes, we should ensure the lowest possible overall rates to meet the needs of all consumers.

Section 366.82(7), F.S., states that this Commission can modify plans and programs if they would have an undue impact on the costs passed on to customers. We believe that the Legislature intended for this Commission to be conscious of the impact on rates of any programs we evaluate to meet goals.

SEPARATE GOALS FOR DEMAND-SIDE RENEWABLE ENERGY SYSTEMS

All seven FEECA utilities took the position that we should not establish separate goals for demand-side renewable energy systems. FPL believed that the FEECA amendments, in particular, Section 366.82(3), F.S., ". . . require this Commission to consider renewable energy systems in the conservation goal setting process." FPL contended that this statutory requirement was met because ITRON and FPL evaluated these resources in this goal setting process. FPL, PEF, TECO, and Gulf contended that demand-side renewable resources were evaluated as a part of the conservation goals analysis and these measures were not found to be cost-effective; therefore, a separate goal is not necessary. Gulf asserted that demand-side renewables should be evaluated with the same methodology that is used to evaluate energy efficiency measures. PEF currently offers demand-side renewable programs and is developing new initiatives. FPL noted that it will consider demand-side renewable measures in the program development stage. Gulf is currently evaluating a pilot solar thermal water heating program.

FPUC, OUC, and JEA contended that, in setting goals, there should not be a bias toward any particular resource. Otherwise, FPUC, OUC, and JEA stated that goals could be set without appropriate consideration of costs and benefits to the participants and customers as a whole as required by Section 366.82(a) and (b), F.S. In addition, JEA and OUC argued that as municipal utilities, they cannot recover costs for demand-side renewable programs through the Energy Conservation Cost Recovery clause. JEA and OUC also noted that both companies offer demand-side renewable programs.

FSC contended that Section 366.82, F.S., requires this Commission to establish separate goals for demand-side renewables. FSC recommended that to meet this statutory obligation, we should require the FEECA IOUs to offer solar PV and solar water heating rebate programs to both residential and commercial customers. Further, FSC stated that we should authorize each IOU to recover up to 1 percent of annual retail sales revenue (based on 2008 revenues) to fund rebates for the next five years. FSC suggested a rebate of $2 per watt for PV systems with a capacity up to 50 kW. FSC contended that we should establish a performance-based incentive program for PV systems with a capacity greater than 50 kW. FSC recommended that incentives be reduced over the five years to account for market development and any resulting reduction in PV prices. FSC did not take a position with respect to OUC and JEA, which each currently have programs to encourage customers to install solar resources.

Section 366.82(2), F.S., was amended in 2008. The entire text of Section 366.82(2), F.S., follows, with the amendments underlined.

> The Commission shall adopt appropriate goals for increasing the efficiency of energy consumption and <u>increasing the development of demand-side renewable energy systems</u>, specifically including goals designed to increase the conservation of expensive resources, such as petroleum fuels, to reduce and control the growth rates of electric consumption, to reduce the growth rates of weather-sensitive peak demand, <u>and to encourage development of demand-side renewable energy resources. The Commission may allow efficiency investments across generation, transmission, and distribution as well as efficiencies within the user base.</u>

Because of the revisions to the statute, we requested that the utilities address demand-side renewables in their cost-effectiveness analyses. As previously discussed, the first step in the utilities' cost-effectiveness analysis for demand-side renewables was the Technical Potential Study performed by ITRON. Witness Rufo testified that ITRON estimated the technical potential for one residential rooftop PV system, one commercial rooftop PV system, one commercial ground-mounted PV system, and solar domestic hot water heaters. Witness Rufo testified that ITRON did not estimate the achievable potential for PV systems "due to the fact that PV measures did not pass the cost-effectiveness criteria established by the FEECA utilities for purposes of this study, i.e., TRC, RIM, and/or the Participants Test." Witness Rufo further testified that incentive levels were not calculated for solar measures (for JEA and OUC) because these measures did not pass RIM or TRC without incentives.

FPL, TECO, Gulf, FPUC, OUC, and JEA did not include savings from solar measures toward their goals because no solar measures were found to be cost-effective. However, PEF, OUC, and JEA have existing solar programs. PEF currently offers two solar programs. PEF's Solar Water Heater with EnergyWise program combines a demand-response program with a rebate for solar water heaters. PEF's SolarWise for Schools program allows interested customers to donate their monthly credits from participating in a load control program to support the installation of PV systems in schools. Witness Masiello testified that PEF has also developed new solar initiatives that will possibly be included in PEF's DSM program filing. Witness Masiello further testified that a separate goal for demand-side renewables is not needed because PEF included these resources in its goals.

We believe that the amendments to Section 366.82(2), F.S., clearly require us to set goals to increase the development of demand-side renewable energy systems. As indicated above, the Section states that the "Commission shall adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of demand-side renewable energy systems. . . ." (Emphasis added) We believe that in making these amendments to Section 366.82(2), F.S., the Legislature has placed additional emphasis on encouraging renewable energy systems. FSC and NRDC/SACE argued that the amendments to 366.82(2), F.S., require goals for these resources. Witness Spellman testified that "the legislation clearly requires the Commission to focus some specific attention on demand-side renewable energy resources as part of its goal setting process."

As discussed above, none of the demand-side renewable resources were found to be cost-effective under any test in the utilities' analyses. In the past, we have set goals equal to zero in cases where no DSM programs were found to be cost-effective, for example, for JEA and OUC. Therefore, based purely on the cost-effectiveness test results, we have the option to set goals equal to zero for demand-side renewable resources. However, we note that by amending FEECA, the Legislature placed added emphasis on demand-side renewable resources. The Legislature has also recently placed emphasis on these resources by funding solar rebates through the Florida Energy and Climate Commission.

In its brief, FSC recommended that we should require the four largest IOUs to spend a specified annual amount on solar PV and solar thermal water heating programs. NRDC/SACE agreed with FSC's position. FSC suggested that solar water heaters and PV systems under 50 kW in capacity should receive an up-front rebate, while financial support to larger PV systems up to 2 MW should be performance-based. FSC recommended a rebate of $2 per watt for residential and commercial PV systems up to 50 kW in capacity. FSC suggested that annual support should continue for five years, and decrease every year to account for market development and reductions in technology costs. FSC took no position on requiring programs for FPUC, JEA, and OUC.

Witness Spellman acknowledged that none of the solar PV and solar thermal technologies included in the ITRON study and utility cost-effectiveness analyses were found to be cost-effective. However, witness Spellman testified that research and development programs on these technologies will provide benefits "because of their potential for more efficient energy

production, the environmental benefits, and the conservation of non-renewable petroleum fuels." Witness Spellman believed that support for these technologies could result in lower costs over time. He also recommended that OUC and JEA be required to offer demand-side renewable programs, but recognized that we do not have ratemaking authority over these utilities. In order to protect the IOUs' ratepayers, utilities would be allowed to recover a specified amount of expenses through the Energy Conservation Cost Recovery clause. Witness Spellman did not advocate specific demand or energy savings goals for demand-side renewables. Witness Spellman suggested that these programs should focus on solar PV and solar water heating technologies, and did not believe that the demand and energy savings resulting from these programs should be counted toward a utility's conservation goals.

Witness Spellman recommended that expenditures on these solar programs should be capped at 10 percent of each IOU's five-year average of Energy Conservation Cost Recovery expenses for 2004 through 2008. These dollar amounts should be constant over the five year period until goals are reset. Witness Spellman recommended that the funds be used for up-front rebates on solar PV and solar water heating technologies for both residential and commercial customers.

Conclusion

We find that the amendments to Section 366.82(2), F.S., require us to establish goals for demand-side renewable energy systems. None of these resources were found to be cost-effective in the utilities' analyses. However, we can meet the intent of the Legislature to place added emphasis on these resources, while protecting ratepayers from undue rate increases by requiring the IOUs to offer renewable programs subject to an expenditure cap. We direct the IOUs to file pilot programs focusing on encouraging solar water heating and solar PV technologies in the DSM program approval proceeding. Expenditures allowed for recovery shall be limited to 10 percent of the average annual recovery through the Energy Conservation Cost Recovery clause in the previous five years as shown in the table below. Utilities are encouraged to design programs that take advantage of unique cost-saving opportunities, such as combining measures in a single program, or providing interested customers with the option to provide voluntary support.

Utility	Commission Approved Annual Expense
FPL	$15,536,870
Gulf	$900,338
PEF	$6,467,592
TECO	$1,531,018
FPUC	$47,233
Total	$24,483,051

ADDITIONAL GOALS FOR EFFICIENCY IMPROVEMENTS IN GENERATION, TRANSMISSION, AND DISTRIBUTION

We agree with FPL, PEF, TECO, and Gulf that goals need not be established for generation, transmission, and distribution in this proceeding. Gulf expanded the discussion arguing that guidelines have not been developed that would provide a methodical approach to identifying, quantifying, and proposing goals for supply-side conservation and energy efficiency measures. OUC and JEA both offered only that efficiency improvements in generation, transmission, and distribution are supply-side issues which are more appropriately addressed in the utilities' resource planning processes, thereby seeming to imply that such goal-setting has no place in a conservation goal-setting proceeding. FPUC, a non-generating IOU, took no position.

FSC's position suggested that the IOUs should conduct technical potential studies of efficiencies in generation, transmission, and distribution. Afterwards, this Commission should establish efficiency improvement goals in a separate proceeding. FSC took no position on the issue as it pertains to the two municipal utilities.

NRDC/SACE went a step further, arguing that increasing generating plant efficiency and reducing transmission and distribution losses benefit customers and the environment. They recommended that we set a date certain by which the companies will perform technical economic and potential studies for efficiency improvements at their existing facilities. However, they did not specifically suggest that we should set goals in these areas.

State legislative direction provides, "[t]he commission may allow efficiency investments across generation, transmission, and distribution . . . ." (Section 366.82(2), F.S.) Section 366.82(3), is more affirmative stating: "[i]n developing the goals, the commission shall evaluate the full technical potential of all available demand-side and supply-side conservation and efficiency measures . . . ." (Emphasis added) The FEECA utilities performed no technical

potential study of supply-side measures for this docket. The potential for supply-side improvements is an inherent element of the annual Ten-Year Site Plan submitted by each FEECA utility. Supply-side efficiency and conservation is also analyzed in every need determination for new sources of generation. In addition, efficiency improvements in generation, transmission, and distribution tend to reduce the potential savings available via demand-side management programs.

We believe that the utilities' motivation to deliver electric service to their customers in the most economically efficient means possible makes efficiency improvements in generation, transmission, and distribution a naturally occurring result of their operations. In the case of the five IOUs, such efficiency is inextricably tied to their efforts to make a profit. The two municipal utilities, while not driven by a profit motive per se, must still provide electrical service as efficiently and inexpensively as possible. Rule 25-17.001, F.A.C., supports this proposition because the rule states: ". . . general goals and methods for increasing the overall efficiency of the bulk electric power system of Florida are broadly stated since these methods are an ongoing part of the practice of every well-managed electric utility's programs and shall be continued."

Despite NRDC/SACE's observation that customers and the environment will benefit from facility efficiencies, they offer no evidence that utilities are not routinely seeking those efficiencies. FSC, in arguing that we should set goals in this area, likewise offers no support to suggest such action is warranted.

Conclusion

Efficiency improvements for generation, transmission, and distribution are continually reviewed through the utilities' planning processes in an attempt to reduce the cost of providing electrical service to their customers. With no evidence to suggest efficiency improvements in generation, transmission, and distribution are not occurring, we find that goals in these areas will not be set as part of this proceeding.

SEPARATE GOALS FOR ENERGY AUDIT PROGRAMS

The FEECA utilities, FIPUG, and FSC all agreed that separate goals for energy audits are not necessary. NRDC/SACE asserted that separate goals for residential and commercial/industrial customer participation in utility energy audit programs should be established by this Commission.

Section 366.82(11), F.S., mandates that we require utilities to offer energy audits and to report the actual results as well as the difference, if any, between the actual and projected results. The statute is implemented by Rule 25-17.003, F.A.C., which specifies the minimum requirements for performing energy audits as well as the types of audits that utilities offer to customers, and also details the requirements for record keeping regarding the customer's energy use prior to and following the audit. The utility can thereby ascertain whether the customer actually reduced his energy usage subsequent to the audit.

Witness Steinhurst testified that utility energy audit programs by themselves do not provide any direct demand reduction and energy savings. In order to conserve energy, the customer must implement some form of an energy saving measure. Witness Masiello testified that most if not all utilities require that an audit be performed before a customer can participate in DSM programs administered by the utility. This requirement means that having separate goals for audits would be duplicative, because the energy savings and demand reduction following the audits would be attributed to the individual measures that were recommended and implemented as a result of the audit, and therefore would already be counted towards savings goals. Witness Spellman testified that savings associated with energy saving measures installed by customers following a utility audit should be counted towards the savings of the particular program through which they obtained the measure and not the energy audit service. Witness Bryant testified that this is the method typically used to account for these savings.

Conclusion

The energy conservation achieved through customer education is included in the overall conservation goals and should be credited to the specific program into which the customer enrolls. In order to avoid duplication of demand reduction and energy savings, we find that no separate goals for participation in utility energy audit programs need be established.

EFFICIENT USE OF COGENERATION

FPL, PEF, Gulf, and TECO argued that no further action is needed concerning cogeneration due to the 2008 Legislative changes that were made to the FEECA statutes. Further, the Commission has addressed cogeneration in Chapter 25-17, F.A.C. FPUC, OUC, and JEA took no position on the issue of cogeneration. NRDC/SACE and FIPUG contended that there are barriers to the cogeneration process due to the unfair compensation rates afforded cogenerators by rule. Other parties were silent on the issue.

The Legislature recognizes the benefits of cogeneration in Section 366.051, F.S., where utility companies are required to purchase all electricity offered for sale by the cogenerator as outlined in Rule 25-17.082, F.A.C. We periodically establish rates for cogeneration equal to the utilities full avoided cost as guidelines for the purchase of energy. Rule 25-17.015, F.A.C., also allows each utility to recover its costs for energy conservation through cost recovery.

The FEECA utilities agree that this Commission need not take action regarding cogeneration in this goal setting proceeding. The 2008 Florida Legislature removed the term "cogeneration" from the FEECA statute, Section 366.82(2), F.S., replacing it with "demand side renewable energy systems." The utilities contend that cogeneration is not to be considered part of the FEECA ten-year goal setting process. The utilities also contend that cogeneration systems must be evaluated on a site-specific, case-by-case basis, which does not lend itself to the FEECA conservation goals-setting process. The FEECA proceedings were commenced to set overall conservation goals for the FEECA utilities, and not designed as proceedings to focus on promoting cogeneration.

FIPUG believes there are barriers to the cogeneration process established by Commission Rule, which prevent industrial customers from full compensation for electricity generated by their cogeneration processes. FIPUG also believes it is a disadvantage if customers operate facilities at two or more different locations and cannot construct their own transmission lines to those locations. FIPUG contended cogenerator repayment at the utility's average fuel cost is much lower than the utility rate and that the reimbursement rate does not encourage cogeneration. The Legislature addressed the transmission and compensation issue of cogenerators in Section 366.051, F.S. This Commission has established "Conservation and Self-service Wheeling Cost" in Rule 25-17.008 F.A.C., "Energy Conservation Cost Recovery" in Rule 25-17.015 F.A.C., and "The Utility's Obligation to Purchase" in Rule 25-17.082 F.A.C.

Conclusion

The Florida Legislature recognizes cogeneration in Section 366.051, F.S., and in 2008 removed the term "cogeneration" from the FEECA statutes, Section 366.82, F.S. Cogeneration is encouraged by this Commission as a conservation effort, as evidenced by Rules 25-17.080 – 25-17.310, F.A.C. Therefore, the goals set do not need to address issues relating to cogeneration in this proceeding.

COMMISSION AUTHORITY OVER OUC AND JEA

Under FEECA, we have jurisdiction over OUC and JEA's conservation goals and plans. Section 366.81, F.S. (2008), states in pertinent part:

> The Legislature . . . finds that the Florida Public Service Commission is the appropriate agency to adopt goals and approve plans . . . . The Legislature directs the commission to develop and adopt overall goals and authorizes the commission to require each utility to develop plans and implement programs for increasing energy efficiency and conservation and demand-side renewable energy systems within its service area, subject to the approval of the commission. . . . The Legislature further finds and declares that ss. 366.80-366.85 and 403.519 [FEECA] are to be liberally construed . . . .

(Emphasis added)

For purposes of the FEECA statutes, Section 366.82(1)(a), F.S. (2008), defines a utility as being:

> "Utility" means any person or entity of whatever form which provides electricity or natural gas at retail to the public, specifically including municipalities or instrumentalities thereof . . . specifically excluding any municipality or instrumentality thereof, . . . providing electricity at retail to the public whose annual sales as of July 1, 1993, to end-use customers is less than 2,000 gigawatt hours.

(Emphasis added)[12] Section 366.82(2), F.S., provides "[t]he commission shall adopt appropriate goals for increasing the efficiency of energy consumption . . . ."

Our statutory jurisdiction to set goals under FEECA is clear. The Legislature has required that we develop, establish, and adopt appropriate conservation goals for all utilities under the jurisdiction of FEECA. According to Section 366.82(1)(a), F.S., both OUC and JEA, as municipal utilities with sales exceeding 2,000 gigawatt hours, fall under our FEECA jurisdiction. Therefore, we must adopt appropriate conservation goals for OUC and JEA pursuant to Section 366.82(2) and (3), F.S.

Furthermore, this Commission has previously addressed whether it is prohibited under FEECA from considering conservation programs, and by correlation, goals that would increase rates for municipal and cooperative electric utilities. In Order No. PSC-93-1305-FOF-EG, issued September 8, 1993, this Commission considered that question and determined that FEECA contains no such prohibition, but this Commission would, as a matter of policy, attempt to set conservation goals that would not result in rate increases for municipal utilities.[13]

We disagree with OUC and JEA's assertion that, because we lack ratemaking authority over these utilities, we are prohibited from establishing goals that might put upward pressure on rates. Ratemaking for public utilities is governed under Sections 366.06 and 366.07, F.S. Pursuant to Section 366.02(2), F.S., municipal and cooperative electric utilities are specifically excluded from the definition of public utility, and thus, we do not have ratemaking jurisdiction over these utilities. We believe that adopting conservation goals, or approving conservation programs, pursuant to FEECA is not ratemaking within the meaning of Chapter 366, F.S. We believe that the setting of conservation goals under FEECA for municipal electric utilities, therefore, does not infringe upon the municipal electric utilities' governing boards' authority to set rates.

At this time, it would be difficult to ascertain what affect, if any, the approved conservation goals would actually have upon OUC and JEA's rates. Given the multitude of variables which also place upward and downward pressure on rates, we believe that OUC and JEA's assertions that conservation goals alone would add upward pressure on rates is speculative at best. In the instant case, we believe that the proposed conservation goals for OUC and JEA should not apply upward pressure on the rates of OUC and JEA's customers, especially

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[12] The language of Section 366.82(1)(a), F.S., was amended in 1996 by the Legislature to exclude municipal electrics and Rural Cooperatives with annual sales less than 2,000 gigawatt hours. See s. 81, Ch. 96-321, Laws of Florida.

[13] See Order No. PSC-93-1305-FOF-EG, issued September 8, 1993, in Docket Nos. 930553-EG, 930554-EG, 930555-EG, 930556-EG, 930557-EG, 930558-EG, 930559-EG, 930560-EG, 930561-EG, 930562-EG, 930563-EG, 930564-EG, In re: Adoption of Numeric Conservation Goals and Consideration of National Energy Policy Act Standards (Section 111) by City of Gainesville, City of Jacksonville Electric Authority, Kissimmee Electric Authority, City of Lakeland, Ocala Electric Authority, Orlando Utilities Commission, City of Tallahassee, Clay Electric Cooperative, Lee County Electric Cooperative, Sumter Electric Cooperative, Talquin Electric Cooperative, Withlacoochee River Electric Cooperative (hereinafter, 1993 FEECA Municipal DSM Goals Proceedings), at 5.

considering that the approved goals are based upon the conservation programs that OUC and JEA are currently implementing.

With regard to Order No. PSC-95-0461-FOF-EG, issued April 10, 1995, cited by OUC and JEA, the Commission stated:

> We believe that as a guiding principle, the RIM test is the appropriate test to rely upon at this time. The RIM test ensures that goals set using this criteria would result in rates lower than they otherwise would be. All the municipal and cooperative utilities, with the exception of Tallahassee, stipulated to cost-effective demand and energy savings under the RIM test. However, Tallahassee's stipulated goals are higher than that cost-effective under RIM. . . . The Commission does not have rate setting authority over municipal and cooperative utilities. Therefore, we find it suitable to allow the governing bodies of these utilities the latitude to stipulate to the goals they deem appropriate regardless of cost-effectiveness.

Id. at 4-5 (Emphasis added) In 1995, this Commission recognized the RIM test as a "guiding principle" for setting goals for municipal and cooperative electric utilities, but the 2008 Legislative changes to FEECA have superseded this "guiding principle" consideration. We are now required to establish goals for all FEECA utilities pursuant to the requirements of Section 366.82(3), F.S., as amended and previously discussed.

Moreover, the order cited by OUC and JEA is distinguishable from the instant case because this Commission did not "set goals" for OUC and JEA but merely approved stipulated goals for these two utilities. The stipulated goals resulted from a settlement between OUC and JEA and the Florida Department of Community Affairs (DCA).[14] Here, the goals being proposed for these utilities are not stipulated goals but are proposed goals following a full evidentiary hearing.

Conclusion

We have the authority to adopt conservation goals for all electric utilities under the jurisdiction of FEECA. OUC and JEA come within the meaning of utility as defined by FEECA. Developing, establishing, and adopting conservation goals is a regulatory activity exclusively granted to this Commission by FEECA and is not ratemaking within the meaning of Chapter 366, F.S. Therefore, we find that we have the authority to develop, establish, and adopt conservation goals for OUC and JEA as required by Section 366.82, F.S.

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[14] See Order No. PSC-95-0461-FOF-EG, issued April 10, 1995, In re: 1993 FEECA Municipal DSM Goals Proceedings. The DCA intervened in the 1993 DSM Goals Proceedings on behalf of the Governor of Florida. All the municipal and cooperative electric utilities who were parties to the 1993 DSM Goals Proceedings reached joint stipulations with DCA regarding conservation goals.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's residential winter demand, summer demand, and annual energy conservation goals for the period 2010-2019 are hereby approved as set forth herein. It is further

ORDERED that Florida Power & Light Company's commercial/industrial winter demand, summer demand, and annual energy conservation goals for the period 2010-2019 are hereby approved as set forth herein. It is further

ORDERED that Progress Energy Florida, Inc.'s residential winter demand, summer demand, and annual energy conservation goals for the period 2010-2019 are hereby approved as set forth herein. It is further

ORDERED that Progress Energy Florida, Inc.'s commercial/industrial winter demand, summer demand, and annual energy conservation goals for the period 2010-2019 are hereby approved as set forth herein. It is further

ORDERED that Gulf Power Company's residential winter demand, summer demand, and annual energy conservation goals for the period 2010-2019 are hereby approved as set forth herein. It is further

ORDERED that Gulf Power Company's commercial/industrial winter demand, summer demand, and annual energy conservation goals for the period 2010-2019 are hereby approved as set forth herein. It is further

ORDERED that Tampa Electric Company's residential winter demand, summer demand, and annual energy conservation goals for the period 2010-2019 are hereby approved as set forth herein. It is further

ORDERED that Tampa Electric Company's commercial/industrial winter demand, summer demand, and annual energy conservation goals for the period 2010-2019 are hereby approved as set forth herein. It is further

ORDERED that Florida Public Utilities Company's residential winter demand, summer demand, and annual energy conservation goals for the period 2010-2019 are hereby approved as set forth herein. It is further

ORDERED that Florida Public Utilities Company's commercial/industrial winter demand, summer demand, and annual energy conservation goals for the period 2010-2019 are hereby approved as set forth herein. It is further

ORDERED that OUC's residential winter demand, summer demand, and annual energy conservation goals for the period 2010-2019 are hereby approved as set forth herein. It is further

EXHIBIT 33

ORDERED that OUC's commercial/industrial winter demand, summer demand, and annual energy conservation goals for the period 2010-2019 are hereby approved as set forth herein. It is further

ORDERED that JEA's residential winter demand, summer demand, and annual energy conservation goals for the period 2010-2019 are hereby approved as set forth herein. It is further

ORDERED that JEA's commercial/industrial winter demand, summer demand, and annual energy conservation goals for the period 2010-2019 are hereby approved as set forth herein. It is further

ORDERED that within 90 days of the issuance of this Order, each utility shall file a demand-side management plan designed to meet the utility's approved goals. It is further

ORDERED that these dockets shall be closed if no appeal is filed within the time period permitted for filing an appeal of this Order.

By ORDER of the Florida Public Service Commission this 30th day of December, 2009.

Ann Cole

ANN COLE
Commission Clerk

(SEAL)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.