STATE OF FLORIDA
OFFICE OF PUBLIC COUNSEL

C/O THE FLORIDA LEGISLATURE
111 WEST MADISON ST.
ROOM 812
TALLAHASSEE, FLORIDA 32399-1400
850-488-9330

EMAIL: OPC_WEBSITE@LEG.STATE.FL.US
WWW.FLORIDAOPC.GOV

WILTON SIMPSON
President of the Senate

CHRIS SPROWLS
Speaker of the House of Representatives

June 28, 2021

VIA: ELECTRONIC FILING

Margo DuVal
Office of General Counsel
Florida Public Service Commission
Room 390R – Gerald L. Gunter Bldg.
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
mduval@psc.state.fl.us

In re: Docket No. 20200181**- Proposed amendment of Rule 25-17.0021, F.A.C., Goals for Electric Utilities.**

Dear Ms. DuVal:

On December 15, 2020, the Florida Public Service Commission (Commission) issued a Notice of Development of Rulemaking and Workshop regarding the proposed amendments to Rule 25-17.0021, Florida Administrative Code (F.A.C.) – Demand-Side Management (DSM), Goals, Plans, and Programs for Electric Utilities. The purpose of the Commission workshop held on January 14, 2021, was to discuss the changes to Rule 25-17.0021, F.A.C. (Rule) to combine the proceedings for establishing DSM goals and approval of the plans implementing the DSM goals. Commission staff proposed receiving post workshop comments a month later on February 15, 2021. On February 15, 2021, OPC filed comments consistent with staff's request.

Subsequently, the Commission staff held another workshop on May 18, 2021. At this workshop, Commission staff asked for comments on proposed DSM rule changes and how they would impact low-income programs, free-ridership considerations, and additional cost-effectiveness tests. At the conclusion of this workshop - at which OPC made comments - the Commission staff solicited post-workshop comments to be submitted by June 28, 2021. These comments are being filed consistent with this request and incorporate by reference, OPC's February 15, 2021 comments.

Florida Statutes clearly provide that the Commission shall adopt demand-side renewable goals and supply-side conservation goals. In development of these goals, the Legislature tasks the Commission with consideration of the costs and benefits to participating customers and to the general body of ratepayers, the need for incentives, and regulatory costs. Subsections 366.82(2) and (3) F.S., provides that:

> 2) The commission shall adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of demand-side renewable energy systems, 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, 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.
>
> (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.
>
> (c) The need for incentives to promote both customer-owned and utility-owned energy efficiency and demand-side renewable energy systems.

(d) The costs imposed by state and federal regulations on the emission of greenhouse gases.

The statutes do not require nor imply that the Commission solely consider goals that provide no rate impact.

Cost-effectiveness Test

As this Commission has previously acknowledged in both the 2009 and 2014 proceedings, "consideration of both the [Rate Impact Measure (RIM)] and [Total Resource Cost (TRC)] tests is necessary to fulfill the requirements of Section 366.82(3)(b)." Order No. PSC-14-0696-FOF-EU at 12 (quoting Order No. PSC-09-0855-FOF-EG at 15). In the last Florida Energy Efficiency and Conservation Act (FEECA) goals setting proceeding,[1] the Commission acknowledged that the evidence and arguments presented in the 2019 FEECA goals proceeding indicated that it was necessary to revisit the FEECA process. Order No. PSC-2019-0509-FOF-EG at p. 5. The Commission in footnote 6 said that the Rate Impact (RIM) or Total Resource Cost (TRC) tests defined by Rule 25-17.008, F.A.C., determine if a demand-side management measure is economic for the general body of ratepayers. Id. at p. 6. Based on the use of RIM and TRC test, the Commission found that none of the demand-side renewable energy measures identified by the parties in the 2019 FEECA proceeding were cost-effective. Id. at p. 10. Because of this result, it is evident that the Commission needs to revisit how it determines the economic effectiveness of DSM and conservation programs.

[1] Order No. PSC-2019-0509-FOF-EG, issued November 26, 2019, in Dockets Nos. 20190015, 20190016, 20190017, 20190018, 20190019, 20190020 and 20190021, In re: Commission Review of Numeric Conservation goals (Florida Power & Light), In re: Commission Review of Numeric Conservation goals (Gulf Power Company), In re: Commission Review of Numeric Conservation goals (Florida Public Utilities), In re: Commission Review of Numeric Conservation goals (Duke Energy Florida, LLC), In re: Commission Review of Numeric Conservation goals (Orlando Utilities), In re: Commission Review of Numeric Conservation goals (JEA), and In re: Commission Review of Numeric Conservation goals (Tampa Electric Company).

As acknowledged by the Commission, the FEECA process needs to be re-evaluated including the manner in which the Commission uses the RIM test result as the primary screen as well as the two-year pay back screen to address free ridership and low-income programs. While the Utilities in 2019 evaluated the potential DSM programs using both the RIM and TRC tests, nevertheless the utilities asked to set goals solely based on RIM which they admitted at the hearing. However, the Order stated that none of the DSM programs were cost effective under either the RIM or TRC tests. Id. at 8. Clearly, using the RIM test as the agency's primary test is resulting in zero numeric goals, which is contrary to the intent of the legislative language.

The Commission should evaluate the DSM programs under all the available tests, the RIM, the TRC, the Utility Cost Test (UCT), and Participant Cost Test (PCT). Each of these tests takes a different prospective on looking at customer and general body of ratepayers costs and benefits. The main difference between the RIM and UCT is the inclusion of the utilities lost revenues in the RIM test which is attributable to the reduction of revenues due to the DSM programs or conservation programs. However, there is a question of whether or not it is necessary to include these revenues between rate cases as an expense to customers or the general body of ratepayers. Base rates do not change without a general or limited base rate case in which other cost reductions or increases in usage may offset the effects of DSM and conservation programs. The TRC test takes a broader look at benefits to participants in the programs as well as general body of customers. The Participant Cost Test focuses on the cost and benefits of the participants in the DSM and conservation programs.

No other state relies mainly on the RIM test results as a primary screen for the economics of DSM or conservation programs. These tests (RIM, TRC, UCT, and PCT) should be used together to set DSM goals in a manner that achieves the maximum DSM goals while minimizing undue rate impact. The companies' proposed goals in 2019 only considered the rate impact to the general body of ratepayers (RIM) but did not utilize other benefits (TRC and PCT) that affect the general body of ratepayers, thus they did not achieve the full intent of FEECA. The FEECA utilities' sole reliance in 2019 on RIM to determine the DSM goals have significantly reduced, if not eliminated, establishing any numeric DSM goals when compared to prior years. Therefore, the Commission should consider using the results of the TRC test, Participant Test, Utility Cost Test, and RIM test. The Commission should take into consideration all of these tests prospective and if the DSM programs pass at least 3 out of the 4 tests, then the Commission should consider implementing the goals and programs.

Free Ridership

In the 2019 FEECA proceeding, the seven utilities subject to FEECA hired Nexant to produce the required Market Potential Studies. Nexant was hired to produce an independent analysis of the Technical Potential for energy efficiency, demand response, and demand-side renewable energy for the residential, commercial and industrial retail customer classes. The technical potential identifies the theoretical limit to reducing summer and winter peak electric demand and energy. This technical potential assumes every potential end-use measure is installed everywhere it is "technically" feasible to do so from an engineering standpoint regardless of cost, customer acceptance, or any other real-world constraints.

However, as the SACE witness pointed out Nexant already accounted for naturally occurring efficiency in its technical potential study. This naturally occurring efficiency was accounted for in two ways in the Nexant studies: savings due to government codes and standards, and savings due to customer implementation without utility-funded efficiency programs (i.e.

baseline measure adoption). Even though Nexant excluded this naturally occurring efficiency screen from the technical potential, they also applied a two-year payback screen at the economic potential stage. This double application at two different stages of the goals development process over-adjusts for potential free riders. Nexant acknowledged that the other studies done by Nexant did not use a two-year payback to account for free-ridership at all. So, the Commission should eliminate this double counting for "free riders" in the technical potential studies which unnecessarily eliminated DSM programs. If the naturally occurring efficiencies are already considered in the technical potential study, the Commission should eliminate a two-year pay back screen altogether, or at least reduce the screen to a single-year pay back. As shown in the 2019 FEECA proceeding, this change alone would increase efficiency potential (GWh) for each of the utilities under the TRC test.

Low-Income Program

All of the FEECA utilities except FPUC in the 2019 FEECA proceedings agreed that they would include low-income programs as part of their conservation programs. The majority acknowledged that these low-income programs do not pass RIM. Some of these low-income programs were not eliminated by a two-year payback. SACE witness in the last proceeding testified that while low-income programs may not passed RIM or TRC tests, they still are approved by other state regulators because of societal benefits that are not easily quantifiable. Essentially, the SACE witness testified that some benefits like those from low-income programs are worth the costs and in making that judgement regulators still adhere to the principle that benefits must exceed costs.

Summary

As stated above, the utilities' over-reliance on the RIM test improperly weights the utilities' lost revenues as a cost to the general body of ratepayers as a whole, overestimates the effect of free riders, and eliminates low-income programs. The Commission should re-evaluate its reliance on using RIM as the primary screen for DSM programs since all of the low hanging fruit (i.e. least cost DSM programs) have been used. To continue to obtain benefits from DSM and conservation programs and achieve the FEECA statutory goals, the Commission should consider implementing DSM programs that pass 3 out of the 4 DSM screening programs (RIM, TRC, UCT, and PCT), eliminating the two-year pay back screen or reducing it to a one-year pay back and specifically targeting low- income DSM programs. The Commission should implement these changes in a manner that achieves the maximum DSM goals while minimizing undue rate impact.

If you have any questions, please call me at (850) 717-0333.

Respectfully Submitted,

Richard Gentry
Public Counsel

s/Patricia A. Christensen
Patricia A. Christensen
Associate Public Counsel
Florida Bar No. 989789

Tallahassee, Florida 32399-1400
(850) 488-9330
Fax: (850) 488-4491

Attorneys for the Citizens
Of the State of Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Post-Workshop Comments, filed on behalf of the Office of Public Counsel, has been furnished by electronic mail on this 28th day of June, 2021 to the following:

JEA
Mr. Berdell Knowles
21 West Church Street
Jacksonville, FL 32202
knowb@jea.com

Joint Administrative Procedures Committee
Ken Plante, Coordinator
680 Pepper Bldg.
111 W. Madison Street
Tallahassee, FL 32399
Joint.admin.procedure@leg.state.fl.us

Peoples Gas Systems
Paula K. Brown
P.O. Box 111
Tampa, FL 33601
regdept.tecoenergy.com

Orlando Utilities Commission
Mr. W. Christopher Browder
P.O. Box 3193
Orlando, FL 32802
cbrowder@ouc.com

Environmental Confederation of Southwest Florida; and
League of United Latin American Citizens of Florida
Bradley Marshall
111 S. Martin Luther King Jr. Blvd.
Tallahassee, FL 32301
bmarshall@earthjustice.org

Ausley McMullen
James Beasley
Jeffry Wahlen
Malcolm Means
Post Office Box 391
Tallahassee, Florida 32302
jbeasley@ausley.com
jwahlen@ausley.com
mmeans@ausley.com

Southern Alliance for Clean Energy
George Cavros
120 E. Oakland Park Blvd. Ft.
Lauderdale, FL 33334
George@cavros-law.com

Vote Solar
Katie Chiles Ottenweller
151 Estoria Street SE
Atlanta GA 30316
katie@votesolar.org

Cindy Miller LLC
Cindy Miller
1544 Cristobal Drive
Tallahassee, FL 32301
milcindy@gmail.com

Rhonda Roff
marshmaid@gmail.com

Advanced Energy Economy
Ebo Entsuah/Leah Rubin Shen
1000 Vermont Ave. NW
3rd Floor
Washington DC 20005
eentsuah@aee.net
lrubinshen@aee.net

Florida Power & Light Company's and Gulf Power Company
William P. Cox
Senior Attorney
700 Universe Boulevard
Juno Beach, FL 33408-0420
Will.cox@fpl.com

Florida Public Utilities Company
Beth Keating
Gunster Law Firm
215 S. Monroe Street, Suite 601
Tallahassee, FL 32301
bkeating@gunster.com

Margo DuVal
Florida Public Service Commission
Office of General Counsel
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
mduval@psc.state.fl.us

Duke Energy Florida, LLC
Matthew R. Bernier
Associate General Counsel
106 E. College Avenue, Suite 800
Tallahassee, FL 32301
Matthew.Bernier@Duke-Energy.com

Net-Plus Solar Power Group
Achim Ginsberg-Klemmt
achim@srqus.com

/s/Patricia A. Christensen
Patricia A. Christensen
Associate Public Counsel