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Subject: Petition for Rulemaking
Attachments: SACE-NRDC Petition for rulemaking 25-17.008 final 2-26-08.pdf; White_Paper_on_Cost_Effectiveness_Issues-final 2-28-08.doc; Petition to Amend Rule 25-17.008 Appendices D-G.pdf

Electronic Filing

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B. Request to initiate rulemaking docket

C. Documents being filed on behalf of Mary Wilkerson, Mary Green, Mark Oncavage, the Southern Alliance for Clean Energy and the Natural Resources Defense Council

See Attachments: Petition for Rulemaking
Appendix C
Appendices D-G

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February 27, 2008

Ann Cole
Director, Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd
Tallahassee, Florida 32399-0850

RE: Petition for

Dear Ms. Cole:

On behalf of Mary Wilkerson, Mary Green, and Mark Oncavage, the Southern Alliance for Clean Energy, and the Natural Resources Defense Council, I have enclosed for filing a Petition to Initiative Rulemaking to Amend Rule 25-17.008, Conservation and Self-Service Wheeling Cost Effectiveness Data Reporting Format. I thank you for your attention to this matter.

Sincerely,

/s/ *E. Leon Jacobs, Jr.*

E. Leon Jacobs, Jr.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Southern Alliance for Clean Energy and Natural Resources Defense Council to Initiate Rulemaking to Amend Rule 25-17.008, Conservation and Self-Service Wheeling Cost Effectiveness Data Reporting Format	)	Docket No. _____
	)	Filed: February 28, 2008

PETITION OF MARY WILKERSON, MARY GREEN, MARK ONCAVAGE, THE SOUTHERN ALLICANCE FOR CLEAN ENERGY AND THE NATURAL RESOURCES DEFENSE COUNCIL TO INITIATE RULEMAKING TO AMEND RULE 25-17.008, CONSERVATION AND SELF-SERVICE WHEELING COST EFFECTIVENESS DATA REPORTING FORMAT

Mary Wilkerson, Mary Green, and Mark Oncavage, join with the Southern Alliance for Clean Energy ("SACE"), and the Natural Resources Defense Council ("NRDC"), (collectively referred to herein as "Petitioners") by and through their undersigned counsel and pursuant to Section 120.54(7)(a), Florida Statutes, in conjunction with Rule 28-103.006 F.A.C., to file this Petition to Initiate Rulemaking. Petitioners seek to amend Rule 25-17.008, relating to the minimum filing requirements for reporting cost-effectiveness data for any demand-side conservation program proposed by an electric utility. The provisions in Rule 25-17.008 represent the threshold standards by which the Florida Public Service Commission ("Commission") gauges the cost-effectiveness of demand-side resources adopted by electric utilities.

All pleadings, notices and other documents filed or served in this Docket should be provided to the following:

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1. This Petition is filed pursuant to Section 120.54(7)(a), Florida Statutes, which provides that any person regulated by an agency or having substantial interest in an agency rule may petition an agency to adopt, amend, or repeal a rule. This Petition requests that the Commission initiate rulemaking to amend Rule 25-17.008, Florida Administrative Code, appended hereto as Exhibit A, relating to minimum filing requirements and elements of proof of cost-effectiveness for demand-side resources by specified electric utilities. The amendments to the rule sought by Petitioners are attached to this Petition as Exhibit B. The Commission has authority to amend this rule pursuant to Florida Statutes Sections 350.127(2), 366.81, (6), and 366.82.

2. The Florida Legislature has established energy efficiency and conservation as chief among the state's energy initiatives. Section 366.81, F.S. provides:

> The Legislature finds...it is critical to use the most -efficient and cost-effective energy conservation systems to protect the health, prosperity, and general welfare of the state and its citizens.
>
> Reduction in, and control of, the growth rates of electric consumption and of weather-sensitive peak demand are of particular importance.

Florida's approach to energy efficiency and conservation relies on electric utilities offering consumers programs and mechanisms which reduce their energy consumption. These programs and mechanism are collectively known to the Commission as demand-side management programs ("DSM"). The Legislature delegated authority for oversight of this policy to the Commission in the Florida Energy Efficiency and Conservation Act ("FEECA") in Sections 366.80-366.85, Florida Statute, which includes provisions in section 403.519, Florida Statutes, enacted as a part of the Power Plant Siting Act. In addition to the declaration above in s. 366.81, FEECA further declares

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

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

> (2) The Commission shall adopt appropriate goals for increasing the efficiency of energy consumption..specifically including goals designed to increase the conservation of expensive resources, such as petroleum fuels, to reduce and control the growth rates of electric consumption, and to reduce the growth rates of weather-sensitive peak demand. (emphasis added) [1]

The Legislature's concern with energy independence is evident, as is its intent to address broad energy policy along with public health and safety issues in the enactment of FEECA.

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[1] FEECA applies to electric utilities with electricity sales above a given threshold, presently extending to seven (7) electric utilities that generate 84% of the electricity sales in the state. Pursuant to Rule 25-17.0021, F.A.C., the Commission reviews FEECA goals once every five years, and establishes goals for demand-side obligations by the designated electric utilities, in terms of kilowatts and kilowatt hours. As an element of this process, Rule 25-17.0021(4) requires each utility to submit their DSM programs intended to fulfill their FEECA goals to the Commission for approval within ninety (90) days of the establishment of these goals.

3. Rule 25-17.0021(4)(j), Florida Administrative Code (FAC) requires that each utility determine the cost-effectiveness of their DSM programs using the method and process set out in Rule 25-17.008, FAC, which simply adopts the review standards set out in an FPSC policy manual known as the *Cost-Effectiveness Manual for Demand-Side Management Programs and Self-Service Wheeling Proposals*. Regulated utilities must submit data on the individual programs in order to demonstrate that they are cost-effective to implement.

4. Rule 25-17.008 also plays a major role in the state's generation planning. Under the Power Plant Siting Act ("PPSA"), sections 403.501 – 403.539, F.S., where electric utilities are required to certify that conservation and energy efficiency measures are not available to alleviate the projected demand for newly proposed electric generation plants. Utilities use the standards of Rule 25-17.008 to qualify every measure they evaluate to alleviate the demand for the proposed plant.

LEGISLATIVE GOALS OF FEECA- DSM HAVE NOT BEEN ATTAINED

5. The U.S. Department of Energy ("DOE") develops statistics which track energy consumption and expenditures across the nation, and specifically in the most populous states. This industry data suggests that Florida has failed to meet the objectives of FEECA, as indicated by a substantial increase in the state's per capita energy consumption, and in the energy bills for Florida's residential, commercial and industrial customers. Floridians consume more energy, per capita, and pay much higher energy bills than citizens of states that promote energy efficiency more effectively.

According to official DOE data, the 1993 average household consumption of electricity for California, New York, Texas and Florida were as follows:

	1993 Avg Household Consumption (million BTUs)[2]
California	65.2
Florida	52.1
New York	121.2
Texas	94.7

By 2001, Florida residents used an average of *155.6 million* BTUs per household.[3] By way of contrast, New York residents in 2001 used an average of 60.9 million BTUs per household (reduced in half since 1993), California residents used an average of 60.7 million BTUs, and Texas residents used 152.4 million BTUs. In terms of kilowatt hours (kWh), in 2001, Florida residents used an average of 15,250 kWh per household, while New York residents used 5,974, California residents used 5,948 kWh per household and Texans used 14,937. [4]

6. While Florida has traditionally been viewed as a low-cost of energy state, Florida's consumers are incurring average household expenditures for electricity which substantially exceed the averages around the nation. DOE reports that Floridians spent approximately $8.63 billion for electricity in 2001, for an average of approximately $1,360 per household. By way of contrast, Californians spent approximately $8.86 billion, or $719 per household, New Yorkers spent $6.16 billion, or $870 per household, and Texans spent

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[2] Source: Energy Information Administration, Forms EIA–457A through H, 1993 Residential Energy Consumption Survey

[3] Source: U.S. Department of Energy, Energy Information Administration; see full table in Appendix D.

[4] By Contrast see: Florida Public Service Commission, *Annual Report on Activities Pursuant to the Florida Energy Efficiency and Conservation Act*, February, 2007; See also FPSC, *A Review of Florida Electric Utility 2005 Ten-Year Site Plans*, Division of Economic Regulation, December, 2005, at pp. 20-23. The official measurement of FEECA compliance is based on the shifting of summer and winter peak demand.

$1,300 per household.[5] The 1993 state averages of household expenditures for electricity in the most populous states were:

California	$944
Florida	$1,180
New York	$1,577
Texas	$1,349

There is little analysis to precisely document the factors driving this rise in expenditures for Florida's consumers. One patently obvious factor is the recent volatility in global market for fossil fuels, where oil and natural gas prices have reached historic levels. Florida utilities are severely impacted by these trends because they must import all fuels used to generate electricity. California and New York have also been affected by these same market forces, but each of these states has instituted very aggressive energy efficiency protocols that have to some degree insulated their consumers from the full impact of these market conditions. Clearly as consumers in some states have reduced their average consumption they have lowered their exposure to the rise in market prices. This is reflected in the dramatically lower average of expenditures for electricity in California and New York from 1993 to 2001.

7. Florida's disproportionate reliance on supply-side energy strategies (namely the building, expansion and renovation of fossil fuel, electric generating plants) to keep up with economic growth and population increases, has adversely affected the state's ratepayers and the state's economy. [6]

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[5] Source: U.S. Department of Energy, Energy Information Administration, Office of Energy Markets and End Use, Forms EIA-457 A-G of the 2001 Residential Energy Consumption Survey.

[6] See *A Review of 10 year Site Plans*, supra note 4 , at pp. 10-17.

8. According to a recent analysis by the American Council for an Energy-Efficient Economy ("ACEEE"), if Florida adopted policies and programs to effectively increase investment in the most cost-effective energy conservation systems, it would reduce the state's energy bill by $28 billion, and generate in excess of 14,000 new jobs.[7]

SUBSTANTIAL INTERESTS SUPPORTING THE PROPOSED RULE

9. Petitioners **Mary Wilkerson, Mary Green, and Mark Oncavage,** along with **SACE** and **NRDC**, each have substantial interests in the adoption of the proposed rule. Ms. Wilkerson resides at 810 Gulf Boulevard in Indian Rocks Beach, Florida, and is a retail customer of Progress Energy of Florida ("PEF"). Ms. Green resides in Madison, Florida, and also is a customer of PEF. Mr. Oncavage resides at 12200 SW 110th Avenue in Miami, Florida, and is a retail customer of Florida Power & Light ("FPL") SACE is a nonprofit, nonpartisan organization that promotes responsible, economic energy choices that in turn provide solutions to global warming problems and ensure clean, safe and healthy communities throughout the Southeast. In furtherance of its mission, SACE is deeply involved in advocacy on adoption, implementation, and enforcement of strategies which are the most effective and efficient means of meeting Florida's energy needs. SACE has a Florida constituency of 1,781 members. NRDC is a nonprofit organization whose purpose is to safeguard the Earth: its people, its plants and animals and the natural systems on which all life depends. NRDC has over twenty-five years of policy and advocacy experience in the

[7] Elliott, R. Neal, et. al., *Potential for Energy Efficiency and Renewable Energy to Meet Florida's Growing Energy Demands*, American Council for an Energy-Efficient Economy, Washington, D.C., Rpt. No. E072, June, 2007. (the implementation of a strategic set of energy efficiency policies would allow Florida to meet 30% of its projected energy consumption in 15 years through energy efficiency and renewable energy resources)

areas of utility regulation and energy efficiency policy. NRDC has a total constituency of 421,550 members and activists, including 29,422 members in Florida.

10. As discussed more fully above, Florida is experiencing a dramatic rise in the level of energy consumed per household, and, consumers are expending considerably more per household for the electricity they consume than in other states. Simultaneously, conservation and energy efficiency are playing a diminishing role in the state's energy portfolio.[8] At a time when regulation of pollution from greenhouse gases is imminent, and where viable data suggests that expansion of energy efficiency programs is the cheapest, fastest way to reduce global warming pollution, the trend among Florida's utilities to reduce the relative impact of energy efficiency makes their consumers vulnerable to actual, and imminent costs to comply with GHG regulations. Increased energy efficiency also helps manage risks to consumers resulting from volatile fossil fuel prices, from increased capital costs to build new supplies of electricity, from increased costs to staff and operate new electric plants, and from strains on infrastructure needed for power generation, with transmission becoming a growing concern in the state.

11. Petitioners assert that energy efficiency is a vital in-state resource which is often the least-cost means or alternative in addressing the risks and costs in meeting new demand.[9] In the end, electric system planning, investment, and operations must be dedicated to the principle of achieving least total cost over the long-term (which in today's

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[8] Florida Public Service Commission, Docket Nos. 040029-EG (FPL); 040030-EG (JEA); 040031-EG (PEF); 040032-EG (GPC); 040033-EG (TECO); 040034-EG (FPUC); and 040035-EG (OUC). (2004 FEECA Goals); See also FPSC, *Annual Report on Activities Pursuant to the Florida Energy Efficiency and Conservation Act*, February, 2007, at pp. 8-9.

[9] The Commission has recognized that energy efficiency/DSM resources are available which cost less than supply side alternatives, See Docket Nos. 930548-EG; 930549-EG; and 930550-EG, Order No. PSC-94-1313-FOF-EG (10/25/94). Also see Arkansas Public Service Commission, *In The Matter of a Notice of Inquiry Regarding a Rulemaking for Developing and Implementing Energy Efficiency Programs*, Docket No. 06-004-R, Order No. 12, January 11, 2007.

markets should consider environmental costs, including expanded regulation of mercury and greenhouse gas restrictions). As the ACEEE analysis shows, there are substantial energy efficiency resources available in Florida which, if integrated into the planning process to meet Florida's electricity demand, represent real and less costly alternatives to building new electric plants. Adopting a regulatory framework and a cost-effectiveness test that drive investment in energy efficiency resources will empower the marketplace, leading ultimately to lower consumer bills, and lower overall costs in meeting the state's electricity needs. This will have the further effect of placing downward pressure on peak energy prices, on natural gas fuel prices,[10] and on carbon allowance prices. Rule 25-17.008, as presently applied, does not assess these added benefits, or the reduced costs associated with energy efficiency, but rather exposes Florida ratepayers to the broadest scope of risks present in today's global electricity markets. This result poses serious harm to the substantial interests of electric consumers in the state.

12. There are distinct market forces which depress the use of energy efficiency in Florida, leaving an enormous, untapped accumulation of energy efficiency resources. These barriers include:

· Lack of consumer information about energy efficiency benefits;
· Lack of financing for energy efficiency improvements;
· Split incentives (between owners/landlords and tenants);
· Lack of a viable and competitive set of providers of energy efficiency services in the market;
· Rate structures that do not reflect the true costs of electricity consumption;
· Barriers to the entry of new energy efficiency service providers;
· Lack of availability of high-efficiency products ; and
· Higher start-up expense for high-efficiency measures relative to standard-efficiency measures.

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[10] Elliott, Neal, Anna Monis Shipley, Steven Nadel and Elizabeth Brown, *2003 – Natural Gas Price Effects of Energy Efficiency and Renewable Energy Practices and Policies*, Washington, D.C., American Council for an Energy-Efficient Economy, 2003.

Because Florida utilities are doing so little to overcome these barriers, the state ranked 29th in energy efficiency expenditures among the 50 states, as reported in ACEEE's 2006 Energy Efficiency Scorecard.[11] Even for those efficiency expenditures made in Florida, data indicates that the relative savings are declining, while in more progressive states such as New York, Connecticut and Vermont, energy savings from efficiency expenditures are growing.[12] A key challenge to energy efficiency and to overall energy planning in Florida is the financial reliance of Florida utilities' on the gross sales of kilowatt hours and therms, rather than the least-cost delivery of energy. This focus on supply side resources, which is supported by restrictive screening of energy efficiency cost effectiveness, makes the possibility of a fair comparison between supply-side and demand-side resources in Florida's markets quite remote. This clearly deprives consumers in Florida of the opportunity to invest in the most productive, state-of-the-art tools available to lower their energy expenditures, which again seriously harms their substantial interests.

Leading states beyond Florida, are setting a new, consumer-friendly standard, and reaping real results. California has adopted procurement rules that require the state's utilities to make a substantial investment in the best available energy efficiency technology, at a level reaching 1% of total load. New York has committed to reduce consumption by 15% by 2015, and New Jersey has committed to reduce consumption by 20% by 2020. In 2005, Vermont achieved 4% of its energy needs through energy efficiency.

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[11] Eldridge, Maggie, Bill Prindle, Dan York, and Steven Nadel, *The State Energy Efficiency Scorecard for 2006*, American Council for an Energy-Efficient Economy, Washington, D.C. Report No. E075, June, 2007.
[12] In 2005, $80 million was spent on energy efficiency in Connecticut's energy efficiency programs, and this investment is projected to yield $550 million in savings to Connecticut consumers' electricity bills.

Electricity Savings Achieved Per Year in Leading States[13]

	Year	Annual Incremental GWh Savings	kWh Sales	Savings/Year (%)
California	2001	4760	239,654	2.0%
	2002	Pending	235,249	pending
Connecticut	2001	314	30,000	1.0%
	2002	246	31,000	0.8%
Massachusetts	2000	273	51,773	0.5%
	2001	309	52,092	0.6%
Rhode Island	2001	61	7,341	0.8%
	2002	51	7,516	0.7%
Vermont (Efficiency VT only)	2001	37	5,051	0.7%
	2002	41	5,077	0.8%
	2003	54	5,127	1.1%

The National Action Plan for Energy Efficiency reports that energy efficiency resources are being acquired, on average, at approximately one-half the cost of typical new plant additions, and about one-third the cost of natural gas supply, leading directly to lowered system costs.[14] This is an opportunity missed by the present policy in Florida.

COST EFFECTIVENESS METHODOLOGY

13. Policy makers, and particularly regulators are rightfully concerned about the cost effectiveness of DSM programs because they are administered by regulated electric utilities, which transfer the costs of such programs on to customers and ratepayers. One challenge in Florida's planning has been a process which evaluates energy efficiency cost effectiveness too narrowly. Under the present cost effectiveness analysis, a utility's investment in energy efficiency must impose no additional costs because those costs are

[13] Source: Nadell Steven, Anna Shipley, R. Neal Elliott, *The Technical, Economic and Achievable Potential of Energy Efficiency in the US – A Meta Analysis*, American Council for an Energy-Efficient Economy (2004).
[14] U.S. Department of Environmental Protection and U.S. Department of Energy, *National Action Plan for Energy Efficiency* (2006), Chapter 3.

deemed to imply immediate rate impacts for ratepayers from the moment of inception.[15] This is not a principle of traditional utility ratemaking, and is certainly not the standard applied in other resource decisions of utilities. An investment in transmission lines, in distribution plant, and in tree trimming would all fail such a strict cost effectiveness test, because there would always be some sub-section of the utility's customers who would not benefit directly from that investment when it is made. Petitioners assert that the Commission has the jurisdiction and authority, as well as compelling evidence to support placing the measurement of cost effectiveness for energy efficiency on a level in parity with other resource decisions. This equates to least cost resource planning for all energy resources, including energy efficiency, for the long-term.

The great challenge in applying cost effectiveness methodology is the difference in perspectives on which costs constitute "system costs." The analysis done under present policy imputes as an expense the reduction in sales resulting from successful energy efficiency programs. This is not conducive to true least-cost planning. Under this analysis, it might be concluded that every consumer who might reduce their electric consumption because they simply can't afford to pay their bill would impose an undue expense, making it an uneconomic, and disfavored activity.

A broad, national consensus now exists which favors using a cost effectiveness methodology which ensures that the benefits and costs of efficiency investments are measured over the long-term, and compares those benefits and costs against the same time

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[15] See Docket Nos. 930548-EG; 930549-EG; 930550-EG, and 930551-EG; Order No. PSC-94-1313-FOF-EG (10/25/94), 94 FPSC 10:392, at pg. 10-409 (" The record in this docket reflects that the difference in demand and energy saving [sic] between RIM and TRC portfolios are negligible. We find that [energy efficiency] goals based on measures that pass TRC but not RIM would result in increased rates and would cause customers who do not participate in a utility DSM measure to subsidize customers who do participate. ")

window for supply options.[16] Petitioners assert that Florida policy requires a broader perspective on cost effectiveness methodology that, when properly applied, includes as an essential element the comparison of life-cycle costs of energy efficiency resources to the life-cycle costs of similarly reliable and available energy supply alternatives.

14. Under the existing rule, Florida electric utilities determine the cost-effectiveness of conservation and energy efficiency programs using a methodology known as the Rate Impact Measure ("RIM") test, which indirectly analyzes the cost impact that energy efficiency programs will have on utilities and their electric rates, while focusing on equitably distributing program costs across rate classes. As presently applied, this methodology shifts the focus of cost effectiveness away from the standard in section 366.81, F.S., requiring the most "efficient and cost-effective energy conservation systems to protect the health, prosperity, and general welfare of the state and its citizens." Rather, the RIM test places an undue focus on the potential for short-term rate impacts to customers who do not take advantage of energy efficiency programs.

As explained more fully in the attached analysis, the RIM test is a vastly inferior methodology to assess true cost effectiveness of DSM in Florida. The proposed rule replaces the RIM methodology with a methodology known as the Total Resource Cost test ("TRC"), which encompasses a broader cost-vs-benefits analysis, with a focus on the overall system costs and benefits presented by energy efficiency over a longer horizon.

15. Although the Cost-Effectiveness Manual for Demand-Side Management Programs and Self-Service Wheeling Proposals requires utilities to file data meeting both the RIM test and the TRC test to comply with Rule 25-17.008, the Commission in practice

[16] See U.S. EPA, *National Action Plan for Energy Efficiency*, supra, Note 14, at pp. 3-17, 6-3, 6-21-22, and Appendix A-1. (the national consensus is strongly aligned with a broader view of cost effectiveness under which most of the progressive organizations use a cost effectiveness test other than RIM)

applies the rule by using the RIM test as a cost effectiveness filter.[17] Petitioners assert that the current administration of the RIM test prevents the adoption of measures that would result in significant energy and cost savings to utilities and to consumers in Florida. The test works by excluding every efficiency program which imposes a perceived rate increase on a non-participating customer, even if total system costs are reduced over the long-term. While it may seem that the RIM test is simply erring on the side of protecting non-participating customers, the test results in higher overall energy costs for the state and, ultimately, higher bills and rates for all consumers. Rates are set by dividing the total approved costs and profit by the projected number of kilowatt-hours to be sold. Anything that reduces that denominator – even free energy efficiency – has an immediate rate impact that is not balanced against economic benefits soon to come. Under the RIM test, Florida would reject a program pursuant to which homebuilders agree to construct only homes that meet the energy star standard in Florida, even if the homebuilders agreed to do this with no financial incentive. A program that offered an incentive equal to $20 per avoided MWh (on a levelized cost basis) would also fail the test, while a new power plant that cost $75 per MWh (on a levelized cost basis) would not fail the test because supply-side investments are not subject to the test.

In contrast, the Total Resource Cost test ("TRC") which petitioners propose, compares supply and demand side alternatives on a level playing field. Under this test, if a new power plant costs $75 per MWh, this would more accurately reflect avoided costs, and energy efficiency is now viewed in the same planning horizon. If such an energy efficiency

[17] Rate impact projections lack uniformity because of differences in how utilities compute the RIM test. The adoption of the C/E Manual has not resulted in a uniform methodology for cost-effectiveness filings (or achievable potential analysis). Differences include the treatment of the fuel component of lost revenues under the RIM and use of methodologies.

resource costs $74 it passes the test, and energy efficiency that costs $76 does not. Promoting investment in energy efficiency resources that meet this test will immediately lower the overall energy bill for the state and for consumers who weatherize their homes or upgrade their air conditioners or appliances. It also lowers rates and bills for all consumers to the extent such investments reduce peak demand and reduce fuel and allowance prices that are a component of rates. Over time, a robust package of programs will offer all residential, commercial and industrial consumers an opportunity to dramatically lower their own consumption and energy bills.

Florida's energy planning today accepts an idea which is detrimental to the expansion of energy efficiency: that as measures become *more* effective and efficient in reducing overall demand (i.e. the more they meet FEECA legislative intent), the *less* attractive they become to the RIM test, which virtually eliminates the ability of Florida consumers to access them.

16. As noted above, the RIM test embraces a dual standard for DSM measures versus supply-side options which is harmful to consumers. When the RIM test is invoked under the PPSA to determine if cost effective DSM measures may offset a proposed plant addition, the new plant addition is never screened on the same criteria as energy efficiency programs. The RIM analysis in the PPSA anticipates and accepts the paradox that extensive rate impacts resulting from plant additions should be justified at all cost, while energy efficiency should be rejected even though there are significant potential benefits.[18]

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[18] See Docket No. 06-0635-EU, *In Re: Petition to Determine Need For an Electrical Power Plant in Taylor County by Florida Municipal Power Agency*, et. al., and Docket No. 07-0098-EI, *In Re: Florida Power & Light Company's Petition for Determination of Need for FPL Glades Power Park Units 1 and 2 Electrical Power Plant.* In these power plant siting cases, the growth in operating and maintenance costs for new plants such as labor, fuel costs, environmental costs and transmission costs, were marginalized in the analysis of avoided costs for measuring cost effectiveness of energy efficiency. It comes as no surprise that in each application, the

17. This perspective on energy efficiency is especially onerous because there is growing, persuasive evidence which clearly shows that modern-day DSM technology imposes no real rate impact to non-participating customers. [19] This means that usually the rate impacts associated with plant additions will greatly exceed any impacts associated with DSM programs. The view of energy efficiency as a "rate inflator" is even more onerous because it overshadows the potential for consumers to directly reduce their expenditures through access to DSM programs. The complexities of modern rate calculations have alienated most consumers, and lowered their elasticity to rates. Reduction of their household expenditures in ways they can control and understand is preferred.

18. In recognition of the inferiority of the RIM test, a number of utilities in Florida are turning away from its use. In April, 2006, the Gainesville City Commission directed Gainesville Regional Utilities ("GRU") to adopt the TRC test in place of the RIM test.[20] In July, 2006, GRU implemented DSM programs reflecting the new cost effectiveness methodology. In less than 12 months, GRU reports in excess of 1,000 kW of demand savings, and 8,109 of MWh energy savings, exceeding its goals by 34 percent. [21]

19. The utilities in the City of Lakeland, the City of Kissimmee, and the City of Orlando have followed suit by rejecting the RIM test as the standard for assessing their DSM programs. Furthermore, the City of Tallahassee recently adopted an enhanced DSM portfolio which included programs which would not have been adopted under a RIM screen.

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utilities concluded that no energy efficiency measures were available to defer or replace the demand to be met by the new plant addition.

[19] New Jersey and California have completed studies which show that the rate impact to utilities of expanded DSM programs varies but is generally less than 2%.

[20] See Gainesville Regional Utilities, *Foundation for Achieving Maximum Energy Efficiency*, July, 2006, http://www.gru.com/Pdf/demandSide.pdf

[21] City of Gainesville, City Commission, Minutes of Special Meeting, May 10, 2007, http://legistar.cityofgainesville.org/meetings/2007/5/8292_M_City_Commission_07-05-10_Meeting_Minutes_(Long).pdf ; See also press release at: http://www.gru.com/AboutGRU/NewsReleases/Archives/Articles/news-2007-05-23.jsp

Tallahassee's analysis of the impact of this DSM portfolio shows an overall reduction in system-wide costs, leading to increased revenues to the utility.[22]

20. Petitioners urge the Commission to give weight to the concerns voiced by you and your staff when the original rules were adopted to implement FEECA. In those rule proceedings, Commissioners found that a RIM-Only Measure Screen created unacceptable obstacles to their objective review of DSM goals and plans.[23] Those concerns have been validated and now support adoption of the amendments proposed by Petitioners.

KEY OVERSIGHT ISSUES

21. The Commission is required to establish threshold requirements for utility energy efficiency programs once every five (5) years. These goals were last established in 2004,[24] and are due to be established again in 2009. Because the planning and deliberations in these dockets extend for several months, and include an evidentiary hearing, it can be expected that industry filings will be made sometime in the second quarter, or early in the third quarter of 2008. The data filed in these proceedings will be directly tied to the requirements of Rule 27-17.008. If no change is made to this rule in advance of the filings for the 2009 FEECA goals, DSM planning and implementation in Florida will continue to fall well short of the full potential for energy efficiency for another 5 years. In the FEECA goal-setting proceedings of 1999-2000, the utilities' numeric goals decreased substantially. According to the Commission's Annual Report there were several reasons for this. The primary reason was that the cost of new generating units had dropped substantially in the

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[22] See Docket No. 060635-EI, Petition for Determination of Need for Taylor Energy Center, *Taylor Energy Center Application, at Appendix E.7.0.* (DSM Analysis of the City of Tallahassee).
[23] See Docket No. 920606, *Transcript of the Conservation Goals Rule Adoption Hearing, 3/30/93 Agenda*,.
[24] see Docket Nos. 040029-EG (FPL); 040030-EG (JEA); 040031-EG (PEF); 040032-EG (GPC); 040033-EG (TECO); 040034-EG (FPUC); and 040035-EG (OUC).

previous five years. Of particular note, the 2000 DSM goals for the two municipal utilities were set at zero because these utilities could not identify any additional cost-effective DSM programs to offer. Given the dramatic rise in fuel costs from 2001-2005, and in the costs of building new capacity, an increase in DSM targets for utilities in the 2004 FEECA proceedings would seem logical. The actual results of these proceedings show a decline in DSM goals for several utilities, coupled with actual increases in their overall costs, along with plans for extensive construction of new plants in Florida. Of particular note is the fact that per capita energy consumption in Florida continues to grow, making it clear that energy efficiency policies in Florida, including the implementation of the RIM test, are not advancing the Legislative intent in FEECA.

22. It is troubling that under the existing application of Rule 25-17.008, the Commission may not receive the data it needs to meaningfully assess the full range of DSM options when it in sets energy efficiency goals. While the Commission is to be complemented for its recent surveys of residential customer end use data,[25] there is additional, important detail data which must be assessed in order to determine the true potential of present and future demand-side resources in Florida. This data fundamentally resides with the utilities, or it is data more readily obtained by the companies than by the Commission. Such data includes: (i) the existing inventory, categories and vintage of major energy consuming facilities, along with operating costs; (ii) comparison of cutting-edge technology, and operating costs; and (iii) tracking of this data over some reasonable period of time. This data is especially lacking for the commercial and industrial sectors, where substantial untapped potential exists for energy efficiency savings.

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[25] Florida Public Service Commission, Division of Electric Reliability and Cost Recovery, *Summary Report on the 2006 Residential Customer End-use Survey Data*, April, 2007.

KEY RISK FACTORS

23. Should Florida elect to continue its present course of looking predominantly to new power plants to meets the state's electricity demand, it will increase energy planning risks in several key areas:

- Cost Volatility: risks associated with building new electric power plants have become especially unpredictable, and unusually high (especially for coal-fired and nuclear generation facilities). Global uncertainties have pushed capital costs for new plants to unprecedented levels, while commodity markets for fossil fuels experience wide swings and volatility. Moreover, the industry is experiencing severe shortages in experienced labor to operate existing plants, let alone the demands of new, more sophisticated plants. Each of the electric generation technologies are undergoing dramatic technology shifts to next-generation platforms. These conditions are key factors in the aggressive push by states such as California, New York and Massachusetts into energy efficiency.

- Infrastructure: Florida is among a list of several Southeastern states with critically low moisture levels due to low precipitation in recent years, and cannot afford to dispense with the massive quantities of water needed for new power plants. Additionally, a recent study by the U.S. Department of Energy concluded that should Florida add several large baseload coal and nuclear plants as projected, there will be problematic congestion in the state's transmission grid, bringing with it added costs of service.

- Environmental Regulation: Fossil fuel plants are one of the most egregious sources of greenhouse gases in the nation. Florida's electric utilities emit more than 130 million tons of carbon dioxide alone, placing it among the top five states in the nation. There

is virtual certainty that this heavy concentration of CO2 in Florida will incur additional environmental regulation, and the associated costs. Additionally, a federal court decision in the District of Columbia recently overturned the EPA's Clean Air Mercury Rule, and as a result any new coal plant will need to meet strict, case-by-case "maximum achievable control technology" standards under Clean Air Act section 112(g). Because the state's energy planning severely discounts this risk, the value of energy efficiency in mitigating this risk is likewise severely discounted.

KEY ADVANTAGES IN ADOPTING THE AMENDMENT

24. Conversely, by expanding the availability of energy efficiency in Florida, the state reaps significant economic and societal benefits, including:

- Cost: demand-side resources are less expensive on a dollar-per-kWh basis than supply-side, fossil fuel resources. Thus, long-term, system-wide costs will drop with an expansion of energy efficiency, and with them consumer electric bills.

- In the case of most energy efficiency measures, once installed, there are no recurring fuel-based costs, thereby reducing exposure to volatile global fuel markets. Florida is heavily reliant on natural gas for electricity. The adoption of energy efficiency measures in electricity and natural gas places downward pressure on the commodity prices of natural gas, thereby reducing the impact in Florida of volatility in those markets.[26]

- Reliability/Stability: energy efficiency resources are indigenous, and largely at the control of local providers or consumers. Additionally, energy efficiency can reduce costs associated with maintaining higher reserve margins.

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[26] See ACEEE Natural Gas Report, supra, Note 10 .

■ Infrastructure: Every kWh saved though energy efficiency can help reduce the use of water in power plants. A recent study by the Land and Water Resources Fund indicated that each kWh saved through energy efficiency can save .67 gallons of water in a coal-fired plant and .33 gallons in a gas-fired generation plant. There are similar savings in waste production and mitigation. For example, a single coal plant can generate hundreds of tons of solid waste each year which can be directly reduced or eliminated by more energy efficiency measures. Additionally, energy efficiency places little or no additional demands on the transmission grid.

■ Environmental Regulation: energy efficiency resources have no emissions and thus are virtually immune from changing environmental regulatory policies – no small benefit in a world where greenhouse gases are becoming a major focus of regulatory policy. Further, by reducing the demand for electricity, particularly from fossil fuel plants, puts downward pressure on allowances prices, and ultimately on any inflationary pressures that greenhouse gas regulation might have on rates.

25. Petitioners propose that the Total Resource Cost Test is the appropriate tool for determining program cost-effectiveness for all energy efficiency/demand-side resource programs implemented by electric utilities in Florida. The Total Resource Cost Test assesses program cost-effectiveness by valuing all of the direct economic benefits and costs of a particular program over the long-term.

The TRC test is usually configured to include as components all energy system benefits and costs, as well as all participating customer benefits and costs including: (a) savings in other resources such as oil, water and wastewater (sewerage) as appropriate; (b) such other benefits as increased productivity and reduced late payments; and (c) certain other

"non-resource benefits" that do not arise directly out of electric consumption but, Petitioners assert should be included because (1) reasonably foreseeable changes in regulation will increase industry cost structures and (2) such cost increases are avoidable by prudent actions today. There is a compelling public interest in the adoption of TRC in Florida to address the vital planning risks highlighted above. Petitioners further recommend that the Commission conduct a feasibility review in order to implement a statewide integrated resource planning process which would specifically identify end-use data for the electric markets and thereby enhance the level of savings possible from this amendment.

26. In the end, system planning, investment, and operations must be dedicated to the principle of least total cost resources over the long-term (which in today's markets should consider environmental costs). This is the only approach that best serves the interests of Florida's consumers and the economy as a whole. Petitioners acknowledge and recognize the risks and complexities associated with proposing a shift to TRC for electric utilities. Because utility earnings are linked to sales, this policy change is likely to affect the risks and rewards to utility companies and their shareholders. Therefore, Petitioners recommend the Commission establish and convene a collaborative process where stakeholders, led by the Commission, consider strategies for the utilities to manage the risks imposed by this amendment. Petitioners recommend to the Commission that consideration be given to strategies which: (i) sever the link between utility financial health and sales; (ii) establish specific energy efficiency procurement requirements; (iii) prevent over-earning; and (iv) provide incentives to manage risk (e.g. more efficient efficiency technology, and decoupling mechanisms), which ensure that utilities engage in incremental conservation efforts,

including effective promotion of energy efficiency programs, and including conservation targets and true-up recovery as the utilities meet those targets.

WHEREFORE, Petitioners Mary Wilkerson, Mary Green, and Mark Oncavage, the Southern Alliance for Clean Energy, and the Natural Resources Defense Council respectfully request that the Commission, in accordance with Section 120.54, Florida Statutes, initiate rulemaking to amend Rule 25-17.008, Florida Administrative Code, to establish the Total Resource Test, and all necessary input data as the standard of cost-effectiveness for demand-side resources implemented by electric utilities in Florida.

Dated: February 28, 2008

Respectfully submitted,

By /s/ E. Leon Jacobs, Jr.

E. Leon Jacobs, Jr., Esq.
Fla. Bar No. 0714682

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Petition to Initiate Rulemaking to Amend Rule 25-18.008, Conservation and Self-Service Wheeling Cost Effectiveness Data Reporting Format, has been furnished by U.S. Mail on this 28th day of February, 2008, to the following:

Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400

By:_____
E. Leon Jacobs, Jr.
Fla. Bar No. 0714682

EXHIBIT A – Current Version

25-17.008 Conservation and Self-Service Wheeling Cost Effectiveness Data Reporting Format.

(1) This rule applies to all electric utilities, as addressed by Section 366.82, F.S., whenever an evaluation of the cost effectiveness of an existing, new or modified demand side conservation program is required by the Commission and to all public utilities, as addressed by Section 366.051, F.S., whenever an evaluation of the cost effectiveness of a self-service wheeling proposal is required by the Commission. For the purpose of this rule, self-service wheeling means transmission or distribution service provided by a public utility to enable a retail customer to transmit electrical power generated by the customer at one location to the customer's facilities at another location.

(2) The purpose of this rule is to establish minimum filing requirements for reporting cost effectiveness data for any demand side conservation program proposed by an electric utility pursuant to Rule 25-17.001, F.A.C., and for any self-service wheeling proposal made by a qualifying facility or public utility pursuant to Rule 25-17.0883, F.A.C.

(3) For the purpose of this rule, the Commission adopts and incorporates by reference the publication "Florida Public Service Commission Cost Effectiveness Manual For Demand Side Management Programs and Self-Service Wheeling Proposals" (7-7-91).

(4) Nothing in this rule shall be construed as prohibiting any party from providing additional data proposing additional formats for reporting cost effectiveness data.

Specific Authority 366.05(1) FS. Law Implemented 366.81, 366.82(1)-(5), 366.051 FS. History–New 11-28-82, Formerly 25-17.08, Amended 7-17-91.

EXHIBIT B – Proposed Amendment

25-17.008 Conservation and Self-Service Wheeling Cost Effectiveness Data Reporting Format.

(1) This rule applies to all electric utilities, as addressed by Section 366.82, F.S., whenever an evaluation of the cost effectiveness of an existing, new or modified demand side conservation program is required by the Commission and to all public utilities, as addressed by Section 366.051, F.S., whenever an evaluation of the cost effectiveness of a self-service wheeling proposal is required by the Commission. For the purpose of this rule, self-service wheeling means transmission or distribution service provided by a public utility to enable a retail customer to transmit electrical power generated by the customer at one location to the customer's facilities at another location.

(2) The purpose of this rule is to establish minimum filing requirements for reporting cost effectiveness data for any demand side conservation program proposed by an electric utility pursuant to Rule 25-17.001, F.A.C., and for any self-service wheeling proposal made by a qualifying facility or public utility pursuant to Rule 25-17.0883, F.A.C.

(3) For the purpose of this rule, the Commission adopts and incorporates by reference the publication "Florida Public Service Commission Cost Effectiveness Manual For Demand Side Management Programs and Self-Service Wheeling Proposals" (7-7-91).

(4) Nothing in this rule shall be construed as prohibiting any party from providing additional data proposing additional formats for reporting cost effectiveness data.

(5) Demand-Side Management or Conservation Program Selection.

For purposes of this rule, the cost effectiveness of an existing, new or modified demand side management or conservation program means that the program being evaluated passes the total resource cost test. All such programs are approved for implementation.

(6) "Total Resource Cost Test" or "TRC" test means a standard where the benefit-cost ratio is the ratio of the net present value of the total benefits of the program to the net present value of the total costs as calculated over the lifetime of the facilities or measures proposed. The test is met if, for an investment in energy efficiency or demand-response measures, the benefit-cost ratio is greater than one. A total resource cost test compares the sum of avoided electric utility costs, representing the

benefits that accrue to the system and the participant in the delivery of those energy efficiency measures, to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus costs to administer, deliver, and evaluate each demand-side side management, to quantify the net savings obtained by substituting the demand -side management program for supply resources. In calculating the avoided costs of power and energy that an electric utility would otherwise have to acquire, reasonable estimates shall include financial costs likely to be imposed by future regulation and legislation on emissions of greenhouse gases.