

State of Florida



## Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

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**DATE:** June 19, 2008

**TO:** Office of Commission Clerk (Cole)

**FROM:** Office of the General Counsel (Gervasi, Cibula)  
Division of Economic Regulation (Ballinger, Futrell)

**RE:** Docket No. 080117-EU – Petition to initiate rulemaking to amend Rule 25-17.008, F.A.C., Conservation and Self-Service Wheeling Cost Effectiveness Data Reporting Format, by Mary Wilkerson, Mary Green, Mark Oncavage, Southern Alliance for Clean Energy, and Natural Resources Defense Council.

**AGENDA:** 07/01/08 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** 07/01/08 (30-day statutory deadline to grant or deny petition was waived until this date)

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\080117.RCM.DOC

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### Case Background

On February 28, 2008, Mary Wilkerson, Mary Green, Mark Oncavage, the Southern Alliance for Clean Energy, and the Natural Resources Defense Council (jointly referred to herein as “Petitioners”) filed a Petition to Initiate Rulemaking to amend Rule 25-17.008, Florida Administrative Code (F.A.C.), Conservation and Self-Service Wheeling Cost Effectiveness Data Reporting Format. The Petition to Initiate Rulemaking includes draft rule language and a white paper entitled “Key Ingredients for Assessing the Value and Cost-Effectiveness of Energy Efficiency Initiatives.”

Section 120.54(7)(a), Florida Statutes (F.S.), states that “[a]ny person regulated by an agency or having a substantial interest in an agency rule may petition an agency to adopt, amend, or repeal a rule. . . .” Petitioners Wilkerson and Green state that they have a substantial interest in the proposed rule as retail customers of Progress Energy Florida. Petitioner Oncavage states that he has a substantial interest in the proposed rule as a retail customer of Florida Power & Light. The Southern Alliance for Clean Energy states that it has a substantial interest in the proposed rule because it is a nonprofit, nonpartisan organization that is involved in “advocating the adoption, implementation, and enforcement of strategies which are the most effective and efficient means of meeting Florida’s energy needs.” The Natural Resources Defense Council states that it has a substantial interest as a nonprofit organization with policy and advocacy experience in the areas of utility regulation and energy efficiency policy.

Section 120.54(7)(a), F.S., requires that, in response to a petition to initiate rulemaking, “the agency shall initiate rulemaking proceedings under [Chapter 120], otherwise comply with the requested action, or deny the petition with a written statement of its reasons for the denial.” This recommendation addresses the Petition to Initiate Rulemaking. The Commission has jurisdiction pursuant to Sections 120.54, 366.80-366.85, and 403.519, F.S.

### **Discussion of Issues**

**Issue 1:** Should the Commission grant the Petition to Initiate Rulemaking filed by Mary Wilkerson, Mary Green, Mark Oncavage, the Southern Alliance for Clean Energy, and the Natural Resources Defense Council?

**Recommendation:** No, the Petition to Initiate Rulemaking should be denied because moving forward to amend Rule 25-17.008, F.A.C., is premature. (Gervasi, Ballinger, Futrell)

**Staff Analysis:** The Petitioners request that the Commission initiate rulemaking to amend Rule 25-17.008, F.A.C. Rule 25-17.008, F.A.C., establishes the minimum filing requirements for reporting cost-effectiveness data for any demand-side conservation program proposed by any investor-owned 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. The current version of Rule 25-17.008, F.A.C., is appended to this recommendation as Attachment A.

Rule 25-17.008(3), F.A.C., adopts the “Florida Public Service Commission Cost Effectiveness Manual for Demand Side Management Programs and Self-Service Wheeling Proposals” as the minimum filing requirements for reporting cost-effectiveness data. The manual requires utilities to file data for three cost-effectiveness tests: the Participant test, the Rate Impact Measure (RIM) test, and the Total Resource Cost (TRC) test. In addition, Rule 25-17.008(4), F.A.C., specifically states that the rule does not prohibit any party from providing additional data proposing additional formats for reporting cost-effectiveness data.

The Commission, at a minimum, uses the information from the tests in a variety of forums regarding demand-side management (DSM) programs. These include conservation goal setting, conservation plan and program approval, modification to existing programs, and as part of ongoing monitoring of DSM program cost-effectiveness.

Section 120.54(7)(a), F.S., requires a petitioner requesting the initiation of rulemaking to “specify the proposed rule and action requested.” In accordance with Section 120.54(7)(a), F.S., the Petitioners request that the Commission amend Rule 25-17.008, F.A.C., to include the following subsections:

**(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 [sic] 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.

By their proposed rule language, the Petitioners are requesting that the Commission make a policy determination to establish a particular version of the TRC test as the only cost-effectiveness test used to evaluate all DSM and conservation programs. The Petitioners assert that the rule amendments are necessary because the legislative goals of the “Florida Energy Efficiency and Conservation Act (FEECA)”<sup>1</sup> have not been met under the current rule. While acknowledging that Rule 25-17.008, F.A.C., requires utilities to file data on the Participant test, RIM test, and TRC test, the Petitioners state that “the Commission in practice applies the rule by using the RIM test as a cost-effectiveness filter.” The Petitioners assert that the application of the RIM test under the current rule prevents the adoption of energy efficiency measures that would result in significant energy and cost savings to utilities and consumers in Florida. Pointing out that the Commission is scheduled to review and set goals under FEECA for energy efficiency programs in 2009, the Petitioners contend that, if Rule 25-17.008, F.A.C., is not amended before the Commission sets its goals in 2009, DSM planning and implementation in Florida will “continue to fall well short of the full potential for energy efficiency for another 5 years.”

Staff believes that the Petition to Initiate Rulemaking should be denied. As more fully explained below, staff believes that moving forward to amend Rule 25-17.008, F.A.C., is premature.

Pursuant to Section 366.80, F.S., and Rule 25-17.0021(2), F.A.C., the Commission must set DSM goals for utilities at least every five years. The most recent goals were established in 2004. As stated by the Petitioners, the Commission is currently required to set DSM goals by the end of 2009.

The FEECA utilities are currently conducting a study to test the technical potential of conservation measures. On June 4, 2008, staff held a meeting to review a progress report on this technical potential study, in which the Petitioners participated. An inventory of available DSM and conservation measures that are unconstrained by any cost-effectiveness evaluation should be completed by the end of 2008 so that utilities can use the information in the analysis of cost-effectiveness for each measure. In the goal-setting proceeding, the Commission and all parties will be able to assess the cost-effectiveness of DSM from a variety of perspectives and under various sensitivities.

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<sup>1</sup> Sections 366.80-366.85 and 403.519, F.S.

During the 2008 Legislative Session, the Legislature passed HB 7135, which directs the Commission, in developing goals, to evaluate the full technical potential of all available demand-side conservation and efficiency measures, including demand-side renewable energy systems. In establishing the goals, HB 7135 requires the Commission to consider four factors, including, among other things, the costs and benefits to customers participating in the measure, and the costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions.

It is premature for the Commission to initiate rulemaking at this time. The Commission's 2009 DSM goal-setting proceeding, in which the Petitioners may petition to intervene, will be the forum for the Commission to implement HB 7135. To initiate rulemaking on the matter during the pendency of the DSM goal-setting proceeding would create confusion and unnecessary duplication of resources. After the conclusion of the 2009 DSM goal-setting proceeding, the Commission can, on its own, initiate rulemaking if it determines that such action is necessary at that time.

Section 120.54(7)(a), F.S., requires that, in response to a petition to initiate rulemaking, "the agency shall initiate rulemaking proceedings under [Chapter 120], otherwise comply with the requested action, or deny the petition with a written statement of its reasons for the denial." For the reasons set forth above, staff recommends that the Commission deny the Petition to Initiate Rulemaking filed by Mary Wilkerson, Mary Green, Mark Oncavage, the Southern Alliance for Clean Energy, and the Natural Resources Defense Council.

Docket No. 080117-EU

Date: June 19, 2008

**Issue 2**: Should this docket be closed?

**Recommendation**: Yes. (Gervasi)

**Staff Analysis**: If the Commission approves staff's recommendation in Issue 1, no further action is required and the docket should be closed.