

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendment of Rule 25-17.0021 F.A.C., Goals for Electric Utilities.

DOCKET NO. 20200181

Filed: JULY 22, 2020

**SOUTHERN ALLIANCE FOR CLEAN ENERGY'S
REQUEST FOR SCOPING WORKSHOP(S)**

The Commission, at its July 7, 2020 Agenda Conference, approved its Staff recommendation to initiate rulemaking to explore improvements regarding future conservation goal setting and program approval proceedings. In support of its recommendation, Staff indicated that “[t]he bifurcated nature of the Goal Setting, and DSM Plan and program approval process has created tension for many years.”¹ No specifics were offered as to what that tension entailed. The following day, the above docket was established for the proposed amendment of Rule 25-17.0021.

While the Southern Alliance for Clean Energy (“SACE”) agrees that the Florida Energy Efficiency and Conservation Act (“FEECA”)² goal setting process has created tension over the years, this tension is most evident with regard to measure screening practices in the establishment of the goals themselves, which has resulted in some of the lowest performing utility efficiency programs in the country. This has emerged as a frequent and central point of contention across several cycles of FEECA proceedings going back more than a decade. That is not the case regarding the bifurcated nature of the goal setting and DSM plan approval proceedings indicated by Staff, though it is also a worthy subject of discussion. However, if the goal of the rulemaking is to ultimately reduce tensions, and lead to better outcomes for energy efficiency, it must resolve a range of issues (discussed in further detail below) that have consistently and predictably driven efficiency savings levels downward, which is plainly contrary to the stated intent of the statute that underpins FEECA work at the Commission.

¹ Florida Public Service Commission Staff, Memorandum, Docket Nos. 20200053-EG, 20200054-EG, 20200055-EG, 20200060-EG, June 25 2020, p. 10.

² Sections 366.8-83, 403.591, Fla. Stat.

Therefore, pursuant to Section 120.54(2)(c)³, SACE respectfully requests the Commission hold at least one scoping workshop prior to the filing of the preliminary proposed rule revisions. The Commission has the discretion to hold such a workshop, or set of workshops, as “the APA establishes no particular procedure to be followed by an agency during the original drafting of the proposed rule.”⁴ The requested scoping workshop(s) should aim to provide clarity to issues that have plagued past conservation goals setting proceedings and should, at a minimum, include the following issues: 1) the use of an appropriate, or preferred, cost benefit test in setting goals; 2) the use of empirically supportable methodologies for addressing free-ridership; 3) potential utility incentive mechanisms tied to reaching higher than historical levels of energy savings; and 4) an increased focus on addressing the high energy burdens of low-income families. The agency should seek broad input from diverse stakeholders as it shapes the proposed rule amendments.

SACE is a substantially affected person

SACE is a non-profit clean energy corporation organized under the laws of the state of Tennessee and authorized to conduct operations in the State of Florida. The mission of SACE, as reflected in its bylaws, is to advocate for energy plans, policies, and systems that best serve the environmental, public health, and economic interests of communities in the Southeast, including Florida. SACE has staff in Florida and a substantial number of its Florida members in the service territories of FEECA-regulated utilities.⁵ As part of its mission, SACE places a priority on evaluating all opportunities for displacing non-renewable electricity generation with lower cost end-use energy efficiency measures. These measures directly and cost-effectively reduce the amount of fossil fuels consumed by existing non-renewable energy generation facilities and displace the need for new power plants, thereby reducing the overall electric system costs for customers, including customers who are SACE members, who ultimately bear the costs of fuel, new power plants and added infrastructure. Decreased fuel consumption also reduces the overall negative impacts to public health and the environment, as well as the economic costs associated with greenhouse gases emissions from non-renewable energy generation for all customers, including customers who are SACE members.

This docket will consider rule changes affecting the process by which conservation goals are set and / or the basis for approval of programs intended to meet the conservation

³ “An agency must hold public workshops, including workshops in various regions of the state or the agency’s service area, for purposes of rule development if requested in writing by any affected person, unless the agency head explains in writing why a workshop is unnecessary.”

⁴ *Whiley v. Scott*, 79 So.3d 702, 721 (Fla. 2011)

⁵ Florida Power and Light, Co., Duke Energy Florida, Tampa Electric Co., Gulf Power Co., OUC and JEA.

goals. The outcome of this docket will necessarily affect the substantive outcome of future conservation goals setting and program approval proceedings – and the pecuniary interests and clean energy interests of SACE members. As such, Commission actions and orders in this docket are inexorably intertwined with the substantial interest of SACE and its members.

SACE is authorized by its bylaws to represent its interests and the interests of its members in legal actions, including formal administrative actions such as these. The subject matter of this docket is well within the scope of interest and activities of SACE, and the relief requested is the type of relief appropriate for SACE to receive on behalf of its members. SACE meets the associational standing criteria of *Florida Home Builders Association v. Department of Labor and Employment Security*, 412 So. 2d 351, 353-54 (Fla. 1982), and *Farmworker Rights Organization, Inc. v. Department of Health and Rehabilitative Services*, 417 So. 2d 753, 754 (Fla. 1st DCA 1982), which is based on the basic standing principles established in *Agrico Chemical Company v. Department of Environmental Regulation*, 406 So. 2d 478, 481-82 (Fla. 2d DCA 1981), and has been granted party status in the 2009, 2014, and 2019 conservation goal setting dockets⁶ and has provided expert testimony in those dockets, and has likewise engaged in the associated Demand Side Management program approval dockets. Therefore, SACE's interests fall well within the meaning of an "affected person," pursuant to Section 120.54(2)(c) – a requirement for requesting a workshop.

Energy efficiency as a low-cost resource

It is well established that energy efficiency is the cheapest, quickest and cleanest way to meet electricity demand. The economic benefits of energy efficiency programs are vast. They not only accrue system-wide through cost savings from reduced fuel use and the deferral of new power plants, but also to individual families by cutting energy waste and driving down power bills.

The Legislature in 1980 recognized in statute the importance of both controlling the growth rates of electricity consumption and peak demand while specifying that "it is critical to utilize the most efficient and cost-effective demand-side renewable energy systems and conservation systems in order to protect the health, prosperity, and general welfare of the state and its citizens."⁷ Unfortunately, the focus in Florida has been heavily skewed on reducing peak demand while creating barriers through its practices to

⁶ Florida Public Service Commission, Order No. PSC-09-0027-EG (January 9, 2009); Order No. PSC-14-0135-PCO-EI (March 18, 2014); Order No. PSC 2019-0137-PCO-EG (April 17, 2019)

⁷ Section 366.81, Fla. Stat.

cutting energy waste. As a matter of prudent energy resource investment, both demand and energy reductions should be pursued.

The FEECA statute was amended in several important respects in 2008. The Legislature at that time, recognizing the need to ramp up efficiency as a resource, provided the Commission a path forward to increased energy savings by applying additional criteria to address cost-effectiveness. Primarily, it provided that the Commission must consider “the costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions.”⁸ The Commission never initiated rulemaking to implement this provision. The Commission likewise never initiated rulemaking to implement the amendment to the FEECA statute that provided authority to the Commission to allow an investor-owned utility an additional return on equity for meeting an annual percentage of load growth through energy efficiency conservation measures.⁹

The Commission’s reliance on certain cost-effectiveness measure screening tests – which are singularly unique to Florida – such as the continued reliance on the Rate Impact Measure (RIM) test and the 2-year payback screening methodology do not allow for meaningful efficiency savings. The RIM test is not a measure of utility system benefit, but rather a test focused on lost revenue, therefore it creates a significant blind spot for decision making. The RIM test counts energy savings by customers as a cost, on account of reduced utility revenues, rather than a benefit - despite customer energy savings being *the fundamental benefit* of energy efficiency and the primary reason for investing in it in the first place.

Additionally, for more than two decades, measures with paybacks of 2 years or less have been eliminated from utility efficiency goals. This practice has been presented as a proxy for so-called freeridership, but is now outdated, both because it lacks a documented, empirical basis, and because it diverges from well-established industry practices for evaluation, measurement, and verification that are commonly employed across the country. The use of the RIM test and 2-year payback screen eliminate the lowest cost - highest impact measures from consideration and had the effect of driving many of the utilities’ proposed goals to zero or near zero during the last goal setting proceeding.

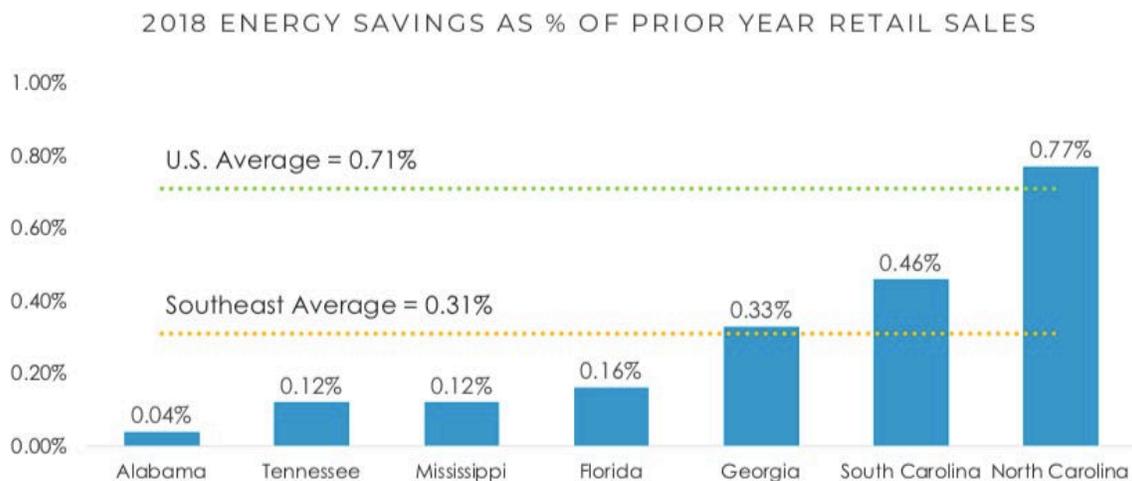
This outcome has understandably frustrated this Commission. During the November 5, 2019 Agenda Conference where the Commission rejected proposed zero or near zero goals, Commissioner Brown, for instance, stated “it just didn’t make sense to me to have zero goals. It’s like running a marathon at zero miles per hour. You’re never going to get

⁸ Ch. 227, 2008 Fla. Laws 46.

⁹ *Id.* at 47.

to the finish line.”¹⁰ Commissioner Clark agreed that the FEECA process “does need some substantive changes to it,” and that “everything we’re going to be doing from this point in is going to take . . . a completely different strategy than we’ve used in the past.”¹¹

Like other clean energy resources, energy efficiency technologies, policies, and practices are highly dynamic. To account for this, regulators across the country periodically modernize their approach to energy efficiency. The Commission’s reliance on cost effectiveness test and screens that are decades old, largely explains why Florida performs poorly compared to the rest of the country on utility energy efficiency savings. The graph below illustrates where Florida stands with energy savings levels as a percentage of annual retail sales relative to the average in the Southeast and the national average.¹²



Meeting the needs of hard working families

There are many hard-working Floridians that pay a disproportionately higher share of their income on their power bill – also known as a high energy burden. No family should have to make a choice between paying a power bill and affording essentials like food or medicine. Plus the economic fallout from the COVID-19 pandemic has greatly exacerbated the energy burden on low-income customers. At the Commission’s July 7, 2020 Agenda Conference, for instance, a Gulf Power representative stated that 15-20% of

¹⁰ Transcript of Agenda Item No. 8, November 5, 2019, p. 15.

¹¹ *Id.* at 17-18.

¹² Southern Alliance for Clean Energy, *Energy Efficiency in the Southeast*, 2019; See also ACEEE, *State Energy Efficiency Scorecard*, October 2019, p. 29. Florida ranks 44th out of 50 states in energy savings as a percentage of retail sales.

its customers are behind on their bills – well above historical levels.¹³ Robust energy savings goals and associated energy efficiency programs – especially those focused on low income customers - are not only a valuable resource to the utility from a resource planning perspective, but are a critical tool in helping to reduce the energy burdens of a growing number of Florida families. The Commission has expressed a desire to assist low-income customers,¹⁴ and while utilities offer low-income programs, those vary widely by utility in terms of scale and depth. This rulemaking, if the scope allows, can provide an opportunity to address the needs of the utilities’ most vulnerable customers in a more comprehensive, robust and consistent fashion.

The need to promote energy efficiency is as relevant today – if not more so - as it was in 1980, when FEECA was enacted. It is well established that cutting energy waste is the most cost-effective way to meet our energy needs and address the climate crisis. While practices used in earlier decades may have served the Commission in the past, it is clear that those practices are in need of reform. The Commission is well within its statutory authority to modify its practices on conservation goals setting, and the establishment of this docket presents an opportunity to finally clarify certain issues.

SACE request for scoping workshop(s)

Therefore, SACE requests the following:

That the Commission hold one or more scoping workshops, prior to Commission Staff promulgating draft rule amendments. The workshop(s) and subsequent scope of rulemaking should address at least the following issues:

- A. the use of an appropriate, or preferred, cost benefit test in setting goals;
- B. the use of empirically supportable methodology for addressing free-ridership;
- C. the potential use of utility incentive mechanisms tied to reaching higher than historical levels of energy savings; and
- D. an increased focus on addressing energy burden for low-income families.

SACE thanks the Commission for the opportunity to file this request for a scoping workshop(s), and we look forward to working with staff, stakeholders, the public, and experts to address issues that will lead to better outcomes for the state and its citizens.

¹³ Transcript, July 7 2020 Agenda Conference, Filed July 17, 2020, p.28.

¹⁴ Florida Public Service Commission, Order No. 14-0696-FOF-EO (December 16, 2014), p. 27.

Respectfully submitted this 22nd day of July, 2020 by:

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