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**VIA: ELECTRONIC FILING**

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

On November 10, 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, which incorporated the most recent draft of the Rule.[1] Pursuant to Commission staff's invitation to file additional comments on the most recent draft of the Rule, the Office of Public Counsel (OPC) is submitting the following Comments.

[1] On December 15, 2020, and May 18, 2021, Commission held prior workshops on proposed amendments to Rule 25-17.0021, Florida Administrative Code (F.A.C.) – Demand-Side Management (DSM), Goals, Plans, and Programs for Electric Utilities. OPC filed comments on February 15, 2020 and June 28, 2021 to the previous proposed Rule changes and incorporates those comments herein.

As OPC has noted in prior comments, Florida Statutes clearly provides that the Commission shall adopt demand-side renewable goals and supply-side conservation goals. The Legislature has tasked the Commission when developing these goals with considering 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. Moneys received by a utility to implement measures to encourage the development of demand-side renewable energy systems shall be used solely for such purposes and related administrative costs.
>
> (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 Commission is required to consider the costs and benefits of a conservation goal to the general body of ratepayers as a whole, including utility incentives and participate contributions. However, the OPC again observes that the statute and this language does not require nor imply that the Commission solely consider goals that provide no rate impact. Therefore, the Commission should use tests that provide information on the costs to the general body of ratepayers as well as benefits, but is not necessarily limited by a test that only measures rate impacts to the general body of ratepayers.

Tests

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,[2] the Commission found that none of the demand-side renewable energy measures identified by the parties in the 2019 FEECA proceeding were cost-effective under either the RIM or TRC test. Id. at pp. 8, 10. 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. Id. at p. 5.

Under the proposed November 10, 2022 Rule, the Rule would require the utilities to provide two separate scenario evaluations for setting the DSM goals. One scenario would require the potential DSM programs to pass both the Participant and RIM tests. The other scenario would require the potential DSM programs to pass both the Participant and TRC tests. The goals would

[2] 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).

be set on the potential KW and KWH savings, over a ten-year period, based on these potential programs. The goals evaluations are also to include overlapping measures, rebound effects, free riders, interactions with building codes and appliance efficiency standards, and the utility's latest monitoring and evaluations of conservation programs and measures.

While allowing the addition of potential DSM programs that pass the Participant and TRC tests eliminates the Commission's sole reliance on the RIM test results as the primary screen, the Rule still limits how the tests can be used for evaluation of potential DSM programs. Since none of the proposed DSM programs were found to be cost-effective under either the RIM or TRC tests in the last FEECA proceeding, requiring the screens use these two tests will likely yield the same results. Clearly, relying on tests that results in zero numeric goals 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 (i.e. each potential program that passes two of the individual tests should be considered and should be evaluated and prioritized based on the least 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 all the available tests (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 2 out of the 4 tests, then the Commission should consider implementing the goals and programs.

Free Ridership

As stated in the prior OPC comments, the "free ridership" screen was overly applied in the 2019 proceeding. 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.

The Commission should also consider eliminating the two-year pay back screen for low-income programs.  Given rising inflation, low income customers may not have discretionary income to make investments in cost saving measures that would "pay" for themselves in one or two years.  The Commission should consider allowing potential low cost DSM programs that would otherwise fail this screen for low income customers who would benefit from this type of program that would lower their electric usage.

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. In the last FEECA proceeding, the low-income programs did not pass RIM but some did pass the two-year payback screen. 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. As the SACE witness testified in the last proceeding, 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 proposed Rule does eliminate the sole reliance on the RIM test, but still does not provide the flexibility to allow the Commission to consider all the potential DSM programs that pass two of the four available test. Moreover, the proposed Rule does not address the over application of the free rider screen, or require the utilities to provide potential DSM programs for low-income customers. 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 2 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,

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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 16th day of December, 2022 to the following:

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