

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendment of Rule 25-) DOCKET NO. 202000181-EU
17.0021, F.A.C., Goals for Electric)
Utilities)
_____)

**FLORIDA LEAGUE OF UNITED LATIN AMERICAN CITIZENS' &
ENVIRONMENTAL CONFEDERATION OF SOUTHWEST FLORIDA'S
SECOND POST-WORKSHOP COMMENTS**

The Florida League of United Latin American Citizens (“LULAC”) and the Environmental Confederation of Southwest Florida (“ECOSWF”) file these comments regarding the proposed amendment of Rule 25-17.0021, F.A.C. LULAC and ECOSWF believe that the second workshop was very productive, presenting a menu of options and approaches from various commentators, including LULAC and ECOSWF, on how to improve the current rule. We encourage the Commission and staff to continue exploring these options and approaches to see which approach would best work for Floridians and our utilities. The option presented by LULAC and ECOSWF benefits from being a simple approach that largely follows the current process, but would result in higher energy-efficiency savings with benefits for all Floridians, especially low-income communities and communities of color. Other approaches offered by entities such as the Southern Alliance for Clean Energy, would also greatly improve the current process.

We are pleased to see that Duke Energy Florida has filed comments with others that recognize the importance of energy efficiency and that Duke agrees regarding the fundamental flaws in Florida’s current approach to setting energy efficiency and conservation goals in the

goal-setting process.¹ Duke has agreed that the goal-setting process must be fixed and that goals should no longer be based on the Rate Impact Measure Test and has agreed that Florida should utilize the Utility Cost Test in the goal-setting process (bullet 2 in Duke comments on page 2 of 8). Duke has also agreed that the goal-setting process must meet the needs of low-income customers in a meaningful way, and that the goal-setting process must employ different ways of addressing free-ridership in setting goals (bullet 3 in Duke comments on page 2 of 8), rather than blindly relying on a 2-year screen. We absolutely agree and are gratified that Duke has recognized the three fundamental flaws with the current goal-setting process (reliance on RIM, 2-year free ridership screen, and lack of meaningful focus on low-income customers). The only way to address these fundamental issues with the goal-setting regulatory process raised by Duke and the numerous other commentators is to address them in this rulemaking. Now that Duke has agreed with us on what needs to be fixed, as have many, many other energy efficiency experts and communities throughout the State, there is absolutely no excuse for not addressing these issues in this rulemaking, and adopting a rule along the lines of what several of the commentators have suggested. Unfortunately, staff's proposed rule does not address any of the fundamental flaws in the goal-setting process identified by Duke and the other commentators, and must be abandoned or, at a minimum, heavily modified to address these flaws. As such, we suggest that the Commission convene a Commissioner-led workshop to remedy the problems in the goal-setting process identified by Duke and many, many others.

¹ Post-Workshop Comments from Joint Stakeholders, *available at* <http://www.psc.state.fl.us/library/filings/2021/07066-2021/07066-2021.pdf> (hereinafter "Duke comments").

BACKGROUND

Rather than repeat all the benefits of energy efficiency and demand-side management (“DSM”), LULAC and ECOSWF incorporate their first post-workshop comments filed in this docket by reference.² Needless to say, the Energy Efficiency Act specifically calls for increasing the “efficiency of energy consumption,” § 366.82(2), Fla. Stat., which plainly means helping customers reduce energy waste and save money on bills. The very idea of energy efficiency is to help customers cut energy waste. Robust programs will grant all customers the opportunity to voluntarily participate in efficiency programs and to decide whether to reduce their own electricity consumption and corresponding utility bills. All the while, savings from these programs will defer additional fossil fuel powered generation, reduce energy waste, and help to mitigate Florida utilities’ misguided and dangerous overdependence on gas, which are the aims and objectives of the Energy Efficiency Act.

That is why the Commission must address three fundamental issues with how the energy efficiency goal-setting process is currently conducted: 1) Use of the Rate Impact test; 2) Use of the 2-year payback screen; and 3) Ensuring meaningful access to energy efficiency and demand-side renewable generation programs for low-income communities. Unless the Commission is willing to reform these three elements, no reform of Rule 25-17.0021 will successfully lead to robust energy efficiency programs as envisioned by the Energy Efficiency Act. Worse, if the Commission were to adopt other changes while leaving these root causes unaddressed, the “reforms” could actually further weaken energy efficiency goals, as is the case with Staff’s proposed amendments.

² <http://www.psc.state.fl.us/library/filings/2021/02191-2021/02191-2021.pdf>

I. STAFF’S PROPOSED RULE MAKES THINGS WORSE AND WILL LIKELY LEAD TO EVEN LOWER ENERGY EFFICIENCY GOALS

One thing is clear, though. Staff’s originally proposed rule does not address any of the issues with the current goal-setting process, and, if anything, would set Florida back even further by reigning in programs so that they do not exceed the paltry goals that have been set for the utilities. This approach should be abandoned. Staff and the Commission’s task is guided by the Florida Energy Efficiency and Conservation Act, sections 366.80-366.83, Florida Statutes (“Energy Efficiency Act” or “EEA”). The EEA statute explicitly lays out a process where the Public Service Commission (“Commission” or “PSC”) sets goals for the EEA-utilities.³ The EEA-utilities then must propose programs to meet the goals set by the Commission. Staff’s proposed rule flips this process around and would direct utilities to set goals based on proposed programs. The criteria that those proposed programs would be based on are unclear in staff’s proposed rule, allowing the utilities—which have natural incentives to seek low- or zero-goals, to avoid losing electricity sales and ensure easy compliance with efficiency mandates—to establish those very goals however they wish.

While staff’s proposed rule does seem to contemplate a cap on the programs, there seems to be no floor. When proposing goals, the utilities must do so based on the “cost-effective . . . savings reasonably achievable in the residential and commercial/industrial classes through the utility’s proposed demand-side management *programs*.” Staff’s Proposed 25-17.0021(3), F.A.C. (emphasis added). The cost-effectiveness of such measures must be based on the tests required pursuant to Rule 25-17.008, F.A.C., i.e., the Rate Impact Test, the Total Resource Cost Test, and

³ The electric utilities subject to EEA include Florida Power & Light Co. (now including Gulf Power Co.), Duke Energy Florida, LLC, Tampa Electric Company, Florida Public Utilities Co., JEA, and Orlando Utilities Commission.

the Participant Test. Staff's Proposed 25-17.0021(3)(b)9., F.A.C. In other words, while the programs proposed, which are being used to set the goals, must be cost-effective, there is no requirement that the programs must include all cost-effective measures, nor that all cost-effective programs be included. The requirement that the goals include consideration of the technical potential study, Staff's Proposed 25-17.0021(3)(a), F.A.C., does not save this shortcoming.

Even worse, staff's proposed rule does not contemplate that the programs (and thus goals) proposed by the utilities (with no floor for savings to be achieved), could actually be rejected by the Commission and that the Commission could adopt goals and programs submitted by other parties or its own goals and programs. The proposal requires that "each utility must file its finalized demand-side management plan that includes the proposed programs used to develop the goals" Staff's Proposed 25-17.0021(4), F.A.C. The proposed programs, of course, were the ones proposed by the utilities to establish the utility proposed-goals. The proposed rule does not contemplate that the actual demand-side management plan and programs could differ from the original utility-proposed programs (which were used to set the goals). In other words, the proposed rule leaves the Commission and other parties out of the process that will actually determine the efficiency levels to be achieved and leaves it entirely in the hands of the utilities by restricting the programs to be implemented to those originally proposed by the utilities. This is a fatal flaw that requires revision.

Staff's proposal takes what is currently a bad process and makes it worse. As staff's proposed rule does not address any of the issues with the current process, it should be abandoned. LULAC and ECOSWF proposed revisions in their first post-workshop comments. As addressed at the second workshop, these proposed changes: 1) eliminate use of the Rate Impact test from the goal-setting process; 2) remove the reference to "free-riders," a concept

which in addition to having no basis in the EEA statute, is already addressed in the technical potential studies of the utilities; and 3) require establishing specific goals to address the needs of low-income communities. The Commission should hold a Commissioner-led workshop to address the rulemaking process and give guidance as to the direction this rulemaking should take given the numerous options that have been presented in this docket.

II. USE OF THE RATES TEST LEADS TO GOALS OF ZERO, AND THUS NO LONGER COMPLIES WITH THE MANDATES OF THE ENERGY EFFICIENCY ACT

The current rules and proceedings implementing the Energy Efficiency Act betray a reluctance in actually helping decrease energy usage. One of the primary impediments to real energy efficiency achievements in Florida is reliance on the Rate Impact test (“Rates Test”) which has long outlived its usefulness. Failing to uphold the spirit and purpose of the Energy Efficiency Act and empower customers to save energy and money will put ratepayers on the hook for expensive new generation that could have been avoided, and will further exacerbate the costs to ratepayers of unpredicted fuel price shocks, as has been seen with FPL in the most recent mid-course correction in their fuel clause rate.⁴ FPL, even before this mid-course correction, had some of the higher residential electricity bills in the nation (7th highest for residential customers out of 20 largest investor-owned utilities).⁵ Coupled with the approximate 20% base rate hike FPL is currently proposing in Docket No. 20210015-EI, and FPL would have the second highest residential electricity bills in the nation (assuming the other utilities revenue per customer stays the same as in 2019). Unless the goal of this work and these proceedings is to drive bills ever

⁴ Order No. PSC-2021-0142-PCO-EI (Apr. 22, 2021), <http://www.psc.state.fl.us/library/filings/2021/03605-2021/03605-2021.pdf>.

⁵ <https://www.eia.gov/electricity/data/eia861/> (taking 2019 data, “Sales_Ult_Cust_2019” spreadsheet, and divide residential revenue by number of customers).

higher and continue to increase the profits of utilities with no relief for hardworking families and small businesses, it cannot be denied that the current process has failed the people of Florida.

To be clear, the Rates Test does not treat energy efficiency as a resource. If it did, and all resources were treated this way (such as generation additions), energy efficiency would have the least-failing scores in the Rates Test and would be the obvious choice for meeting our resource needs. Every generation addition adds significant amounts to our rates, and then to our bills. One need look no further than the current FPL rate case to see that capital investments that could have been avoided through real energy efficiency lead to large increases in rates—which therefore, by definition, must fail the Rates Test if properly applied. If the Commission wishes to evaluate energy efficiency as a resource, the Utility Cost Test, or even the Total Resource Cost test, do a much better job. Even comparing various plans using a Cumulative Present Value Revenue Requirement approach would give much better data regarding the true benefits and costs of energy efficiency versus other resource options.

To examine the failure of goals set by the Rates Test, it is worth examining what has happened since goals were drastically cut in the 2014 goal-setting process by the Rates Test. FPL projected that by 2022, revenue requirements would be \$14,445,541,000.⁶ Now, in the FPL rate case, FPL is asking for almost exactly that—\$14,512,365,000.⁷ At the same time, FPL projected, using robust 1% energy efficiency goals proposed by the Southern Alliance for Clean

⁶ Exhibit 13 in Docket No. 130199-EI, <http://www.psc.state.fl.us/library/filings/2014/04307-2014/04307-2014.pdf>.

⁷ \$13,201,366,000 of total revenue, MFR-C-1 <http://www.psc.state.fl.us/library/filings/2021/02784-2021/02784-2021.pdf>, plus an additional revenue requirement of \$1,310,999,000, MFR-A-1 (without RSAM) <http://www.psc.state.fl.us/library/filings/2021/02781-2021/02781-2021.pdf>. Docket No. 20210015-EI.

Energy, that its revenue requirements in 2022 would be \$14,252,777,000,⁸ a savings of over \$250 million. Robust energy efficiency—on its own—would have avoided much of the proposed rate increase to increase revenue that FPL is currently seeking according to FPL’s own projections and documents.

All of this is because the Rates Test counts energy savings as a cost, but energy savings are a primary goal of the Energy Efficiency Act. In the last goal-setting proceeding, many of the utilities proposed zero “goals” based on the Rates Test. Zero goals derived by the Rates Test do not lessen Florida’s dependence on natural gas and do not fulfill the purposes of the Energy Efficiency Act. All of the energy efficiency measures that could benefit Florida’s hard-working families and businesses are eliminated by use of the Rates Test. Even though no other state primarily relies on the Rates Test in setting goals, some argue Florida should continue to do so to keep *rates* low, even though Florida already has some of the highest electricity *bills* in the nation due to high energy usage. Low rates do not help customers with high bills due to high electricity usage—reducing their bills through reducing their energy usage does. The Commission must choose to protect the public interest and help Floridians lower their electricity bills by getting rid of the Rates Test—not ensure that the utilities do not lose revenue from customers saving money on bills to maximize their own profits as the Rates Test ensures. A proposed rule to enact these changes was submitted as Attachment A to LULAC’s and ECOSWF’s First Post-Workshop Comments. Utilities could still submit Rates Test information during the goal-setting process, but the Rates Test could not be used in determining the cost-effective reasonably achievable goal for the utilities under LULAC’s and ECOSWF’s proposed rule.

⁸ Exhibit 148 in Docket No. 130199-EI, <http://www.psc.state.fl.us/library/filings/2014/04307-2014/04307-2014.pdf>.

Staff's proposed rule does nothing to address the current issues with the Rates Test or to maximize savings for Floridians. In fact, by putting a cap on goals by setting goals based on cost-effective programs that utilities choose to present, likely based on the Rates Test, staff is ensuring that goals will be set even lower in the future.

III. USE OF TWO-YEAR PAYBACK SCREEN VIOLATES ENERGY EFFICIENCY ACT

Another feature of current EEA proceedings that needs to go is the reliance on a two-year payback screen. The utilities introduced the screen claiming it was necessary to address so-called "free riders"—people who would have employed efficiency measures even without an incentive from a utility-sponsored program. However, in practice, the screen functions to eliminate the most cost-effective energy efficiency measures, artificially shrinking the total energy savings potential for each utility. Although the two-year payback screen itself is not found in the rules, a reference for accounting for free-ridership is found in the rules. This reference is not needed and is not helpful. Naturally occurring free-ridership is already accounted for when looking at technical potential. Nothing further needs to be done to account for free-ridership, as doing so would overcount free-ridership and erroneously limit efficiency goals, counter to the EEA. Therefore, the reference to free-ridership should be deleted from the rules. Staff's proposed rule does not address this issue at all, but would continue to allow the utilities to propose programs and goals based on an arbitrary screen such as the 2-year payback screen.

IV. THE NEED FOR SPECIFIC GOALS FOR LOW-INCOME COMMUNITIES

The Commission, in the past, has rightly emphasized the need to protect low-income communities. These communities face enormous energy burdens. Florida has some of the highest electricity bills in the nation due to our extraordinary energy usage. It is no coincidence

that Florida has some of the highest energy usage, and thus, some of the highest electricity bills in the nation when our energy efficiency programs and achievements are so small compared to the rest of the country. We have the highest bills, and least savings, due to the focus on rates. Telling a low-income customer who cannot afford their electricity bill because it is so high that they should not worry because they pay a lower rate than most of the nation is not a solution. Staff’s proposed rule—the most likely outcome of which is to drive savings down even further by putting in caps but not floors and by leaving so much up to utility discretion regarding their program proposes—stands to make the situation even worse. There is a specific need to ensure that low-income households are protected from disproportionately high energy burdens. All of the EEA utilities profess to care about low-income customers. And, while there is room for improvement with all of the utilities, some of the utilities are doing significantly better than the others, showing the need for a uniform approach through rulemaking so that the street addresses of low-income Floridians don’t determine whether and what opportunities are available to participate in energy efficiency programs.⁹

LULAC and ECOSWF also believe that this rulemaking process should also clarify that the Energy Efficiency Act’s mandates to promote demand-side renewable energy, like its mandates to promote energy savings, are not illusory, and should at least be enforced as to low-income communities. Zero is not a goal, for either energy savings or demand-side renewable energy (photovoltaic solar). The Energy Efficiency Act requires that the Commission “*shall* adopt appropriate goals for . . . *increasing* the development of demand-side renewable energy

⁹ TECO, for example, has historically done much more for low-income customers than the other utilities, such as FPL. If FPL were to scale its 2020 program to be of similar size to TECO’s (which ECOSWF and LULAC believe should be expanded) in proportion to their number of low income customers, their goal would be 60.7 GWh per year, (9.792 GWh achieved by TECO per year multiplied by 6.2), which is almost twice what FPL aims to save over the next *ten* years.

systems” § 366.82(2), Fla. Stat. (emphasis added). When a statute is clear and unambiguous, it is not necessary to look behind the statute’s plain language for legislative intent or resort to rules of statutory construction to ascertain intent. *See Lee County Elec. Coop., Inc. v. Jacobs*, 820 So. 2d 297, 303 (Fla. 2002). No further statutory construction is necessary to establish that there is a clear requirement for the Commission to adopt goals to increase the development of solar energy. A goal of zero is *not* an increase. The definition of “zero” denotes the absence of all magnitude or quantity,¹⁰ or the “number” between the set of all negative numbers and the set of all positive numbers.¹¹ An increase of zero therefore lacks any magnitude or quantity and cannot *increase* anything. Similarly, a number that is not a positive number cannot *increase* a value. Furthermore, the plain meaning of a “goal” is an “end towards which effort is directed.”¹² Effort cannot be directed towards nothing, zero. The current demand-side renewable energy goals of zero, arrived at through the current rules, contravene the plain meaning of the statute. Therefore, the EEA implementing rules need to be amended to require the Commission to set a numeric goal above zero for demand-side renewables like rooftop solar. Energy savings achieved under such a program, would count towards a utility’s Commission-set goals.

¹⁰ Zero is a relatively new “number” that was introduced via the Hindu/Arabic numeral system, *see* Rowlett, Russ, *Roman and “Arabic” Numerals*, University of North Carolina at Chapel Hill (July 4, 2004), *available at* <http://www.ibiblio.org/units/roman.html>, which number was notably questioned by the Greeks and the Romans. *See* Shivprasad, *Zero: A philosophical history of an Indian Idea*, *Critical Twenties* (Aug. 20, 2010), *available at* <http://www.criticaltwenties.in/philosophyreligionculture/zero-a-philosophical-history-of-an-indian-idea-%E2%80%93-i> (“The Greeks clung firmly to the dictum *Ex nihilo nihil fit*: out of nothing comes nothing.”). The basis for the latter skepticism about the validity of the number was the paradox that “nothing” could simultaneously be “something.” *Id.* In the context of the Energy Efficiency Act, the Greek and Roman view is plainly more consistent with the statute and legislative intent.

¹¹ Definition of “zero,” at <http://www.merriam-webster.com/dictionary/zero>.

¹² Definition of “goal,” at <https://www.merriam-webster.com/dictionary/goal>.

The only way to ensure that the needs of low-income communities are met is for the Commission to ensure that those needs are met with the legal tools it has—specific, mandatory goals. The Commission should adopt specific rules to ensure that low-income customers are experiencing kWh reductions and meaningful bill savings.

CONCLUSION

The need for rule-reform is evident, as has been acknowledged by Duke Energy Florida. Even Tampa Electric Company has said in their second post-workshop comments that they are “willing to explore and consider the use of a different primary test or different cost-effectiveness test for DSM evaluations in the future once the full impacts are understood and agreed upon.”¹³ The time to understand these impacts is now. The current process leads to proposed goals of zero—for both energy savings and demand-side renewable energy generation. No more proof than that is needed to show that the current process now violates the mandates of the Energy Efficiency Act, which requires progress towards energy savings and fossil-fuel avoidance. LULAC and ECOSWF genuinely appreciate staff’s recognition that EEA proceedings are not working and desire to make improvements. However, staff’s current proposed changes to the rule fail to address any of the root causes for the breakdown of the energy efficiency goal-setting proceedings. Instead, staff treats a symptom—higher savings from proposed programs than is mandated by low-goals—as the cause, and proposes to make things worse by allowing the utilities to propose goals based on whichever programs the utilities feel like proposing (in the absence of any criteria under staff’s proposed changes for evaluating whether the goals that

¹³ See Tampa Electric Company’s Second Post-Workshop Comments, at 5, *available at* <http://www.psc.state.fl.us/library/filings/2021/07031-2021/07031-2021.pdf>.

would be determined based on those programs comply with the mandates of the EEA, it appears this is left completely to the discretion of the utilities).

LULAC and ECOSWF proposed easy solutions to the current issues in the process, although other approaches as proposed by other commentators could work as well. What will *not* work is continued reliance on the Rates Test, use of a two-year payback screen to strike the most cost-effective energy efficiency measures, and a wide, disparate approach to meeting the needs of low-income communities. Now is the time to address these issues. We ask that another workshop on these rules be convened, and that this third workshop include Commissioners to help provide direction to Staff.

Respectfully submitted this 28th day of June, 2021.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy and correct copy of the foregoing was served on this 28th day of June, 2021, via electronic mail on:

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DATED this 28th day of June, 2021.

/s/ Bradley Marshall, Attorney