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December 16, 2022

Via Electronic Mail

Mr. Adam J. Teitzman
Commission Clerk
Mr. Jon Rubottom
Attorney, Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 20200181-EI – Third Rule Development Workshop Post-Workshop Comments

Dear Mr. Teitzman and Mr. Rubottom:

Attached for filing, and for distribution to the relevant staff, in the above-referenced docket are The CLEO Institute, Inc.'s, post-workshop comments following the matter's third rule development workshop.

Sincerely,

/s/ William C. Garner

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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-EI Filed: December 16, 2022

THE CLEO INSTITUTE INC.'S SECOND POST-WORKSHOP COMMENTS FOLLOWING THIRD RULE DEVELOPMENT WORKSHOP

The CLEO Institute, Inc. ("CLEO"), appreciates the opportunity to participate in this rule making proceeding, to have had the opportunity to provide comment in-person at the Commission staff's third rule development workshop held on November 30, 2022, and to provide post-workshop written comments. Following the first rule development workshop, held on January 14, 2021, CLEO filed its initial post-workshop comments jointly with Vote Solar. Those comments presented a menu of reforms that CLEO and Vote Solar determined to be necessary for the regulations to better conform to the Florida Energy Efficiency and Conservation Act ("FEECA"), and to address the ongoing, systemic under-investment in cost-effective energy efficiency and distributed generation from Florida's utilities. Those comments suggested that the Commission staff's proposed rule language be revised to:

- Modernize cost-effectiveness tests to only allow utilities to disqualify investments that fail more than one of the traditional cost effectiveness tests;
- Clarify that utilities cannot use free-ridership to screen out cost-effective investments at the goal setting stage;
- Provide structure on performance incentives to better align utilities' financial interests with those of their customers;
- Require minimum spending for low-income and multifamily customers to ensure fair access to programming for hard-to-reach customer segments.

In addition to identifying these four areas where reforms to the Rules are needed, CLEO and Vote Solar provided with the comments type-and-strike rule revisions to implement them. CLEO stands by the comments already submitted and the proposed rule revisions it has already filed in this docket with Vote Solar, and urges Commission staff to incorporate them into the staff's revisions recommended to the Commission.

Following the second rule development workshop held on May 18, 2021, Vote Solar joined a coalition of "Joint Stakeholders" that includes among them Duke Energy Florida, LLC ("Duke"). The Joint Stakeholders agreed among themselves that, in lieu of further seeking rule revisions in this docket, they would collaborate to help ensure that the Order Establishing Procedure in the upcoming DSM Goal Setting proceeding, or any future rulemaking pertaining to FEECA rules, contain the following enhancements to the process:

- The ability for interested stakeholders to provide input in the DSM Goal Setting Process and the development of associated DSM Program Plans;

- DSM Goals and proposed DSM Program Plans are meaningful, reasonable and do not over or under emphasize cost-effectiveness from any single perspective, as well as broadening the consideration of cost-effectiveness and underlying assumptions to include the perspective of DSM as a utility system investment through the lens of the Utility Cost Test;

- The process used to determine DSM Goals appropriately reflects the economic circumstances of different customers in the determination of free ridership and cost-effectiveness allowing utilities to offer meaningful and adequately funded energy-efficiency and demand-response offerings to assist low-income customers;

- The DSM Goals and DSM Program Plans appropriately reflect the energy and capacity savings that can be achieved through utility educating, enabling and empowering energy-saving customer behavior;

- The Commission considers potential modifications to the regulatory constructs permitted under FEECA, as well as the necessary associated reporting, to better align utility and customers' interests around the provision of meaningful, energy-efficiency programs.

CLEO is supportive of the Joint Stakeholders' aims, and is in particular pleased with Duke's commitment to the aforementioned process improvements. Notably absent from the Joint Stakeholder group, however, are Florida Power & Light Company ("FPL") and Tampa Electric Company ("TECO"), Florida's other investor-owned power generating electric utilities, or any other FEECA utility. While Duke's openness to collaborate on potential reforms is refreshing, the absence of FPL and TECO from the Joint Stakeholders commitments underscores the need to address changes within the rule itself so that reforms are certain and are applied consistently with respect to all FEECA utilities, not merely to those that are momentarily forward looking and thinking collaboratively.

CLEO is understandably disappointed that the Commission and its staff may let pass an opportunity to achieve important substantive reforms like those proposed by CLEO and Vote Solar. However, we are encouraged by staff's statements made in the November 30, 2022, rule development workshop that its own proposed revisions to Rule 25-17.0021, F.A.C., are intended to grant the Commissioners sufficient information and flexibility to meet their obligations under FEECA. With that fact in mind, and with a desire that "perfect" should not be the enemy of "good," CLEO is supportive of important partial steps toward reform that other stakeholders are proposing following the third rule development workshop. While these proposals fall short of the substantive reforms sought by CLEO and Vote Solar, they nevertheless would better help supply the Commission with the information it needs evaluate potential future reforms similar to those proposed.

In particular, CLEO is supportive of the rule revisions proposed by SACE with their third post-workshop comments, which have been reached by consensus through a collaborative process among several stakeholders ("Consensus Revisions"). The Consensus Revisions are consistent with the intentions for the rule changes indicated by Commission staff – to provide information and flexibility to the Commission that it can use in meeting its FEECA obligations – and can be initial steps toward more substantive reforms already proposed by CLEO and Vote Solar.

Modernize Cost Effectiveness Tests

CLEO and Vote Solar initially proposed that the revised rule modernize the use of cost-effectiveness tests in the goal-setting process to only allow utilities to disqualify investments that fail more than one of the traditional cost effectiveness tests. The effect of such an approach would be to neutralize the effect of the traditional reliance on the Rate Impact Measure Test ("RIM Test" or "RIM"), which has been an impediment to more robust and effective DSM programs in this state.

The Consensus Revisions to subsection (3) of the Rule would similarly reduce the impact of the RIM Test by removing its use in the two mandatory scenarios under which a utility must file its DSM goals, as proposed by Commission staff. Instead, the Consensus Revisions would require the utilities to file one scenario that includes potential demand-side management programs that pass the Participant and Total Resource Cost Tests ("TRC Test"), and one scenario that includes potential demand-side management programs that pass the Participant and the Utility Cost Tests ("UC Test"). These revisions would also permit the utility to provide, and allow the Commission to consider, the rate and bill impacts of programs developed using the TRC Test and UC Test scenarios. Thus, the Consensus Revision does not prohibit the use of rate impacts analysis in goal setting or programming, rather, it merely shifts the RIM Test from its current use as a primary screen to a more secondary role, and allows the Commission to have information regarding the cost effectiveness under a broader array of scenarios – without precluding a rate impacts analysis performed by the utilities. Another feature of the Consensus Revisions in this regard, unlike the current staff proposal, is that the Commission would be provided more information without shifting the burden of providing additional scenarios to non-utility stakeholders who lack access to the necessary data, who have limited resources for the undertaking, and who do not, like the utilities themselves, have the day-to-day operational experience to undertake such analysis and the regulatory obligation.

The Consensus Revisions approach is consistent with the staff's stated desire to provide as much flexibility as possible to the Commission in its duty to evaluate the goals and programs developed by the utilities, while also de-emphasizing, the role of RIM analysis without eliminating it, better enabling the Commission to meet its obligation to strike a balance between advancing FEECA's purposes set forth in Section 366.081, F.S., while minimizing undue cost impacts to customers pursuant to Section 366.082, F.S.

While CLEO supports the Consensus Revisions' subsection (3) changes to the extent that they require the inclusion of a scenarios utilizing the UC Test, we also recognize that the UC Test is currently undefined in Commission rules. Because of that, CLEO supports the subsection (3) revisions proposed by LULAC/ECOSWF that provide a workable definition of the Utility Cost Test rather than merely a reference to the Cost Effectiveness Manual for Demand Side Management Programs and Self Service Wheeling Proposals, which is incorporated into Rule 25-17.008, F.A.C. Inclusion of this definition would avoid the need to undertake additional rulemaking activities, and it is consistent with at least one investor-owned utility's current understanding of the test's meaning. *See* Florida Power & Light Company's Post-Workshop Comments, filed June 28, 2021, at p. 3.

An example of appropriate revisions to this part of the staff-amended rule might look like this:

> (3) … Each utility must also file demand-side management goals developed under two scenarios: ~~one scenario that includes potential demand-side management programs that pass the Participant and Rate Impact Measure Tests, and~~ one scenario that includes potential demand-side management programs that pass the Participant and Total Resource Cost Tests, and one scenario that includes potential demand-side management programs that pass the Participant and the Utility Cost Tests, as these terms are used in Rule 25-17.008, F.A.C., with the Utility Cost Test determined using the Rate Impact Measure test, but not including lost revenues from reduced sales as a cost. …

Remove Free Ridership Screening from Goal Setting Stage

CLEO and Vote Solar have proposed that this rule revision clarify that utilities cannot use free-ridership to screen out cost-effective investments at the goal setting stage. Language proposed to accomplish this would require utilities to "rely solely on independent evaluation, measurement and verification to adjust for freeridership," and that they "shall not screen out cost-effective measures during the goal setting phase." *See* CLEO Institute and Vote Solar's Post Workshop Comments, Attachment A, filed February 15, 2021, at p. 4, lines 14-16. Utilities object to this approach on the questionable basis that it is "an imprecise, time-consuming, and costly process," *See* Florida Power & Light Company's Post-Workshop Comments, filed June 28, 2021, at p. 7, that "does nothing to minimize or prevent free-ridership." *See* Tampa Electric Company's Second Post-Workshop Comments, filed June 28, 2021, at p. 3. Further, at least one investor-owned utility states that it is "open to exploring different methods or timing related to free-ridership consideration, however, the company would recommend further dialogue and analysis to fully understand the intent and impacts of any alternative method before adopting a different method." *See* Id. at p. 4.

CLEO believes that language proposed in the Consensus Revisions to subsection (3) reasonably addresses such concerns. That language provides that:

… Consideration of overlapping measures, rebound effects, free riders, interactions with building codes and appliance efficiency standards must be based on a transparent, evidence-based methodology that is consistent with industry standard practices, and must be accounted for within the utility's assumptions for naturally occurring energy efficiency adoption outside of utility-administered programs. Freeridership screening shall not be based on simple payback duration. Any program, or its measures, that are designed to meet goals established for Low Income Customers shall be excepted from standard cost-effectiveness requirements and free ridership consideration.

This approach steps away from an explicit "EM&V" approach and provides a framework within which each utility may craft a methodology for free-ridership consideration that is not based on a simple payback duration. The primary requirements of the proposed language are that the methodology be evidence-based and that it be consistent with industry standard practices. So, if a utility is truly and honestly open to finding an alternative method, it will have the ability to propose one. Further, by requiring that utilities, in their consideration, address the extent to which free-ridership may be accounted for within their assumptions for "naturally occurring energy efficiency adoption outside of utility-administered programs," the proposed revision would address the probability that utilities are effectively addressing free-ridership twice when they utilize the simple 2-year payback screen. *See* Florida League of United Latin American Citizens' & Environmental Confederation of Southwest Florida's Second Post-Workshop Comments, filed June 28, 2021, at p. 9.

Low Income Customers

CLEO and Vote Solar have proposed that this rule revision require minimum spending for low-income and multifamily customers to ensure fair access to programming for hard-to-reach customer segments. The specific proposal would require utilities to provide an estimate of how many low-income customers will benefit from the program, and to base allocations of programs benefitting low-income customers and multi-family housing customers on the percentage of revenues collected from such customer populations. *See* CLEO Institute and Vote Solar's Post Workshop Comments, Attachment A, filed February 15, 2021, at p. 4, lines 6-10.

The alternative proposal offered in the Consensus Revisions similarly connects KW and KWH savings goals for low income customers to the relative population of low-income customers within the utility's service area. CLEO supports this alternative to the original CLEO and Vote Solar concept. The Consensus Revisions, for example, add a new paragraph to subsection (1) that reads:

> (c) a discrete KW and KWH savings for low income customers provided through income qualified demand side management programs in each utility's service areas over a ten year period. These savings goals shall be proportionate to the population of Low Income customers in the utility's service area. For the purposes of this rule, the term "Low Income Customer" means households earning at or below two hundred percent (200%) of the Federal Poverty Level, as determined by the United States Department of Health and Human Services. "Income qualified" demand-side management programs are those programs which are designed to serve Low Income Customers.

The Consensus Revisions proposal codifies current practice ensuring that low-income customer programs continue to be excluded from two-year payback screens and traditional cost-effectiveness testing (See the last two sentences in the above-excerpted revisions to subsection (3)), elevates the importance of reducing of energy burdens to low-income customers by including KW and KWH savings among such groups as an explicit program goal, and ensures that savings goals established for low-income customers are based on a proportion of such customers with a utility's service area. Additionally, the approach defines the Low Income Customer population utilizing a familiar qualification well-known to the utilities.

This rule revision process presents the Commission with an opportunity to modernize its approach to energy efficiency and conservation, and to maximize the potential locked within the Florida Energy Efficiency and Conservation Act to better address customer needs and to maximize system value through robust demand response, electric vehicles, battery storage, rooftop solar, and smart appliances, among other tools. While CLEO believes the suite of reforms it has offered previously accomplishes this aim best, the Consensus Revisions offer excellent steps in the right direction, and CLEO supports them. We request that the Commission staff incorporate the approach within their draft rule revisions and present them to the Commission for consideration.

WHEREFORE, CLEO submits the foregoing Post-Workshop Comments on the commission staff's proposed amendments to Rule 25-17.0021, F.A.C.

DATED this 16th day of December 2022.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Post-Workshop Comments, filed on behalf of CLEO Institute, has been furnished by electronic mail on this 16th day of December, 2022 to the following:

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