

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Commission review of numeric conservation goals (Florida Power & Light Company).

DOCKET NO. 130199-EI

In re: Commission review of numeric conservation goals (Duke Energy Florida, Inc.).

DOCKET NO. 130200-EI

In re: Commission review of numeric conservation goals (Tampa Electric Company).

DOCKET NO. 130201-EI

In re: Commission review of numeric conservation goals (Gulf Power Company).

DOCKET NO. 130202-EI

In re: Commission review of numeric conservation goals (JEA).

DOCKET NO. 130203-EM

In re: Commission review of numeric conservation goals (Orlando Utilities Commission).

DOCKET NO. 130204-EM

In re: Commission review of numeric conservation goals (Florida Public Utilities Company).

DOCKET NO. 130205-EI

POST HEARING BRIEF OF THE FLORIDA STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

SUMMARY OF ARGUMENT

Based on the record established in this proceeding, it is in the economic interest of ratepayers in general and non-participating ratepayers in particular that the Commission should not approve conservation goals resulting in cross-subsidization. Cross subsidization can result in rates that are higher than otherwise fair and equitable. Conservation goals established by the

Commission should ensure that rates are kept as low and affordable as possible and that cross-subsidization is avoided. We believe the determination of conservation goals pursuant to Section 366.82(3), Florida Statutes, requires the Commission to consider the impact of cross-subsidization on non-participating ratepayers. Such consideration is particularly appropriate in light of Florida's status as having the highest level of income inequality in the nation. See Jo-Lynn Brown, Wealth gap grows in Florida, while income barely budges in the Bay, *Tampa Bay Business Journal*, Sept. 19, 2014, available at <http://www.bizjournals.com/tampabay/news/2014/09/19/wealth-gap-grows-in-florida-while-income-barely.html> (last accessed Sept. 27, 2014).

ISSUE 1: Are the Company's proposed goals based on an adequate assessment of the full technical potential of all available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy systems, pursuant to Section 366.82(3), F.S.?

NAACP: The record before the Commission persuasively shows that Florida's current demand-side management program and the conservation, and energy efficiency goals associated with the program, were the result of an assessment of all available demand-side and supply-side conservation and efficiency measures.

DISCUSSION

Section 366.82(3)(b), Florida Statutes, requires that in the development of conservation 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. The Commission is required to consider the costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions.

The Utilities have facilitated the Commission's ability to assess the technical potential of demand side management programs by conducting their individual technical potential studies based on their own internal resource plans. The technical potential analysis of all available demand-side and supply-side conservation and efficiency measures determines the "breadth of measures to be considered and their maximum hypothetical demand and energy savings." Tr. 193.

The technical potential analysis conducted by the Utilities identifies the theoretical limits for reducing summer and winter electric peak demand in their respective service territories. Tr. 200. Practical considerations of costs, market forces, the utility's resource needs, etc., are ignored, leaving a laundry list of all potential conservation and energy efficiency measures applicable to a utility's service area. Tr. 315. The Utilities also sought input from interested parties on any new demand-side management programs that might be appropriate for inclusion in the technical potential study. Tr. 689.

The record also shows that the Utilities considered demand-side renewable energy systems during their technical potential analysis. FPL's Technical Potential analysis included solar water heaters, radiant barriers, and reflective roofs. Ex. 19 (TRK-2). Tampa Electric's Technical Potential analysis also included photovoltaic-powered pool pumps, radiant barriers, solar water heaters, and reflective roofs. Ex. 45 (HTB-1).

Testimony offered by Environmental group witnesses takes issue with the design of the technical potential studies used by the Utilities. The primary argument against the design of the

Utilities' technical potential studies is that they do not follow models used in other southeastern states. Tr. 1005. SACE also argues that utilities in Georgia and Tennessee do not "pre-screen benefit-cost tests or exclude measures from economic potential because of administrative costs or free-ridership ..." Tr. 1005.

Sierra Club found flaws in the Utilities' technical potential analysis including understating full DSM technical potential in Florida; excluding many important efficiency measures; and the misguided use of a two-year payback screen. Tr. 1150.

The Sierra Club also argues that because FPL and Duke Energy use two separate economic screening analyses in their resource planning phase, the result is "double-screening" resulting in an elimination of a large number of DSM measures. Tr. 1151.

While the Environmental groups may be displeased with each utility's technical potential study design, preferring that the Commission not rely on the results of the Utilities' technical potential analyses, neither Section 366.82, Florida Statutes, or Rule 25-17.0021, F.A.C., require a specific methodology for conducting the technical potential study. FPL, Duke Energy, and other Florida Utilities appear to take different approaches to conducting their analyses and the language in Section 366.82, F.S., and Rule 25-17.0021, F.A.C., appears to give the Utilities some latitude in conducting their technical potential analyses.

If SACE or the Sierra Club desire Florida Utilities to follow the lead of utilities in other southeastern states when preparing their technical potential studies, then the appropriate avenue would be a rulemaking proceeding before the Commission. In the meantime, unless the Commission identifies non-Florida related factors upon which the Utilities conducted their study which would invalidate the results of the technical potential analysis, the Commission should

accept the Utilities' technical potential studies and make its determination that, based on the Utilities' technical potential studies, the Commission has evaluated the full technical potential of all available demand-side and supply-side conservation and efficiency measures.

CONCLUSION

The Commission should find that the companies' proposed goals are based on an adequate assessment of the full technical potential of all available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy systems.

ISSUE 2: What cost-effectiveness test or tests should the Commission use to set goals, pursuant to Section 366.82, F.S.?

NAACP: The Commission should use the Rate Impact Measurement ("RIM") test. RIM accounts for the costs and benefits incurred and consistently results in the lowest rates and costs for participants and non-participants.

DISCUSSION

The Florida Energy Efficiency and Conservation Act does not specify or mandate a cost-effectiveness test for ascertaining conservation goals. Section 366.82(3), Florida Statutes, does require that the Commission consider the following factors when establishing conservation goals:

1. The costs and benefits to customers participating in the measure;
2. The costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions;

3. The need for incentives to promote both customer-owned and utility-owned energy efficiency and demand-side renewable energy systems; and
4. The costs imposed by federal and state regulations on the emission of greenhouse gases.

In its Prehearing Statement, the NAACP took the position that the Commission should ensure that, as a result of this proceeding, low income consumers will receive the lowest rates possible. This goal can be achieved by implementing a demand side management program where the effectiveness and efficiency of the program is properly evaluated by considering the costs and the benefits incurred by participants and non-participants in a demand side management program. We further noted that by applying these factors, the Commission can go a long way in ensuring that low income consumers do not bear a disproportionate share of the costs associated with maintaining fixed infrastructure.

The NAACP went on to say that demand side management measures should account for revenues not recovered as a result of incentive payments made to program participants. If not, utilities would be left with no choice but to make up this lost revenue by raising rates, thus increasing financial burdens on non-participants, particularly low income and minority ratepayers.

There are two divergent views on the appropriate cost-effectiveness tests for evaluating conservation goals. On the one hand is the view held by the environmental groups. SACE argues that RIM is not the appropriate cost-effectiveness test; that FEECA mandated that the Total Resource Cost test (“TRC”) be used; and that the Commission has mandated that TRC is the primary cost-benefit test to be used. Tr. 968. In addition, SACE, in countering Utilities’

position on RIM and cross-subsidization, argues that Utilities' concern with cross-subsidization, where, according to SACE, "one customer pays for more or gets less benefit than another customer on the electric system," is unfounded because ratepayers have "the option to participate in energy efficiency programs, and can lower their consumption and bills through their program participation." Tr. 980. "A system-wide, universal benefit accrues to all ratepayers where energy efficiency reduces demand, average fuel costs are reduced, and system costs fall, putting downward pressure on rates." Tr. 980.

SACE also distinguishes between the RIM test and the TRC test by focusing on "lost revenues." SACE defines lost revenues as revenues a utility does not earn when it saves energy as opposed to selling energy. Tr. 982. Lost revenues are not new costs, but are sunk costs already incurred through prior capital expansion and represent mostly fixed costs. Tr. 982.

On the other hand, utilities view the RIM test as the appropriate determinant of a measure's cost-effectiveness. Duke Energy offered testimony stating that RIM and the Participant test should be the cost-effective determinants for demand side management measures because both tests capture all the costs and benefits that should be evaluated when considering an efficiency or load reduction program. Tr. 493. The TRC test, according to Duke Energy, ignores incentive costs and the impact of reduced utility revenues resulting from increased demand-side management programs. Tr. 493.

According to FPL, incentives paid to program participants are an administrative cost for providing demand side management programs. Tr. 100. Lost revenues reduce contribution to fixed costs which in turn puts upward pressure on rates for the general body of ratepayers. Tr. 101.

The NAACP believes that the Commission, in determining the appropriate cost-effectiveness measures, should take its guidance from the precedent established in PSC Order No. 94-1313-FOF-EG (1994), *Legal Environmental Assistance Foundation, Inc. v. Clark*, 668 So.2d 982 (Fla. Dist. Ct. App. 2001), and PSC Order No. 11-0346-PAA-EG (2011).

In PSC Order No. 94-1313-FOF-EG, the Commission, in addressing cost effectiveness criteria, determined that overall conservation goals should be based on the Participant test and the RIM test. The PSC said the following:

We will set overall conservation goals for each utility based on measures that pass both the Participant and RIM tests. The record in this docket reflects that the difference in demand and energy saving between RIM and TRC portfolios are negligible. We find that goals based on measures that pass TRC but not RIM would result in increased rates and would cause customers who do not participate in a utility DSM measure to subsidize customers who do participate. Since the record reflects that the benefits of adopting a TRC goal are minimal, we do not believe that increasing rates, even slightly, is justified.

In *Legal Environmental Assistance Foundation, Inc. v. Clark*, 668 So.2d 982, the Court set the precedent that the Commission cannot approve any rate or rate structure which discriminates against any class of customers. The Court held:

In instructing the Commission to set conservation goals for increasing energy efficiency and conservation, the Legislature directed the Commission to not approve any rate or rate structure which discriminates against any class of customers. The Commission was therefore compelled to determine the overall effect on rates, generation, and revenue requirements. Based on our review of the record, we find ample support for the Commission's determination to set conservation goals using RIM measures.

Finally, and more recently, in PSC Order No. 11-0346-PAA-EG, the Commission attempted to mitigate negative rate impacts of FPL's DSM programs whose cost-effectiveness was assessed on an enhanced version of the TRC test. The E-TRC took into account costs imposed by potential regulation of greenhouse gas emissions. The Commission determined that

increases in ratepayers' average residential monthly bills would have occurred as a result of E-TRC based DSM programs, and ordered FPL to maintain its existing DSM-based program plan.

The Commission, based on the precedent set in PSC Order No. 94-1313-FOF, *Legal Environmental Assistance Foundation, Inc. v. Clark*, and PSC Order No. 11-0346-PAA-EG, should reject as invalid arguments describing concerns over cross-subsidization as being moot. Plans with higher system average electric rates, such as those passing the TRC test, indicate greater cross subsidization. One way of avoiding cross-subsidization is to employ a cost-effectiveness measure that offers the lowest system average electric rate. That cost-effectiveness measure is the RIM test.

CONCLUSION

The Commission should use the RIM test. RIM accounts for the costs and benefits incurred and that consistently results in the lowest rates and costs for participants and non-participants.

ISSUE 3: Should the Company's existing Solar Pilot Programs be extended and, if so, should any modifications be made to them?

NAACP: No. Based on the record in this proceeding, and unless new evidence suggests otherwise, the Company's existing Solar Pilot Programs should not be extended. The Commission should consider discontinuing incentives and setting conservation goals for these programs to zero.

DISCUSSION

Section 366.82(3), Florida Statutes, reads as follows:

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.

For the past five years, the Commission has been aware that demand side renewable resources in Florida have not been cost-effective. In PSC Order No. 09-08-0855-FOF-EG (2009), the Commission noted that the achievable potential of solar photovoltaic panels was not determined because PV did not pass any cost-effectiveness tests. Based on the testimony of Utility witnesses, nothing in regards to cost-effectiveness has changed since this 2009 Order was released.

FPL, having spent \$30 million dollars on its solar panel projects, has determined that since 2011 its solar panel pilot is not cost effective. Tr. 194.

Duke Energy, whose solar pilot programs include solar water heating for residential customers and photovoltaic systems for residential and commercial segments, spends approximately \$6.5 million per year on the solar initiative. Tr. 595. None of Duke Energy's solar pilot programs was cost effective at their inception and they remain that way today. Tr. 527. None of Duke Energy's solar programs passes either the RIM test or the TRC test.

Changes in the solar market further compound the continued lack of cost-effectiveness for solar programs. Solar installations have become "more viable and less expensive over time." Tr. 530. Setting aside dollars to pay incentives to a fraction of ratepayers who can afford solar panel installations appears unfair when the majority of non-participating ratepayers are subsidizing the incentives. Tr. 530.

The Environmental groups do not share the Utilities' view that changes in the market and lack of cost effectiveness should mean an end to the utility solar pilot programs. Reasons they give in opposition to ending solar pilot programs in Florida include the Utilities' failure to provide compelling evidence supporting termination of the programs; the Utilities' failure to account for solar's role in reducing greenhouse gas emissions; and solar energy's role in carrying out FEECA's objective of protecting the health, prosperity, and general welfare of Florida's citizens. Tr. 1205.

The Environmental groups acknowledge one important change in the solar market: the decrease in cost for acquiring and installing solar. Solar photovoltaic installed prices have fallen by half since 2003. Tr. 1205. In addition, solar photovoltaic prices are expected to fall from approximately \$4.00 per watt today to \$1.50 to \$2.00 per watt by 2020. Tr. 1203. Within Florida Utilities' ten-year planning horizon, solar photovoltaic is likely to be less expensive and more cost-effective than the traditional supply-side options. Tr. 1204.

In the meantime, Florida's more affluent ratepayers - those who can afford to purchase photovoltaic solar panels - comprise the overwhelming majority of solar pilot participants and enjoy nearly all of the programs benefits. The average home value for a participant in the PV solar panel program in Florida was \$366,633 compared to Florida's median home value of \$188,600. Tr. 529. The average household income for a solar customer was \$101,000 compared to \$48,000 for non-participants. Tr. 529.

The question the Commission should ask is given the declining costs of installing solar, the incentives paid to program participants, the affluence of these participants, and the financial burden imposed on non-participants, including low income customers, to support these pilot

programs, why should the general body of ratepayers continue funding these programs? The answer, clearly, is that unless new evidence suggests otherwise, based on the record in this proceeding the Commission should terminate the programs.

CONCLUSION

Based on the record of this proceeding and unless other evidence is presented, the Commission should not extend the utilities' solar pilot program, and should set conservation goals to zero. There is precedent for not setting goals for solar programs. In PSC Order No. 09-0855-FOF-EG, the Commission observed that it has set zero goals in cases where no DSM programs were found to be cost-effective.

By removing incentives and setting goals to zero, the Commission can ensure that solar is not being subsidized on the backs of non-affluent, financially struggling, non-participating ratepayers. In the future, should there be sufficient reason for the Commission to break with the precedent established in PSC Order No. 09-0855-FOF-EG, the NAACP would re-evaluate its position.

RESPECTFULLY SUBMITTED, this 30th day of September 2014

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on

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