

**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  
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. The approach that staff has taken does not address any of the fundamental issues with the current goal-setting process (discussed below) under the Florida Energy Efficiency and Conservation Act, sections 366.80-366.83, Florida Statutes (“EEA”). The EEA statute explicitly lays out a process where the Public Service Commission (“Commission” or “PSC”) sets goals for the EEA-utilities.<sup>1</sup> 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. 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

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<sup>1</sup> 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.

abandoned. LULAC and ECOSWF attach proposed revisions here to address the greatest failings in the current EEA implementing rules, Rule 25-17.008, F.A.C., and Rule 25-17.0021, F.A.C. In essence, 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 second, Commissioner-led workshop to address the rulemaking process and give guidance as to the direction this rulemaking should take.

### **INTRODUCTION**

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 not only accrue system-wide through savings, such as reduced fuel, but also to individual families through cutting energy waste and driving down power bills. There are many hard-working Florida families that pay a disproportionately higher share of their income on power bills; referred to as energy burden. No family should have to make the choice between paying a power bill or paying for essential items like food or medicine. The economic fallout from the COVID-19 pandemic has only exacerbated the energy burden on low-income customers. Energy efficiency programs, particularly low-income programs, are an important tool in reducing energy burden.

The very idea of energy efficiency is to help customers cut energy waste. The Florida League of United Latin American Citizens (“LULAC”) has a heightened interest in evaluating energy efficiency and conservation measures that will affect the economic interests of its members. These sorts of measures can greatly reduce costs related to fuel consumption and energy generation—costs that increase the energy burden of the utilities’ customers and are

found to be disproportionately high in Hispanic communities. Reducing these costs reduces the high energy burdens on the Hispanic community, implicating LULAC's interest in the economic condition of its members the Hispanic population of Florida. LULAC's members submitted sworn testimony as comments as part of the energy efficiency goal-setting process.<sup>2</sup> These comments made clear that the energy burden facing LULAC's members is real, and energy efficiency can be one of the most-effective ways to reduce that burden.

The Environmental Confederation of Southwest Florida ("ECOSWF") has over 100 members consisting of business entities, other organizations, and individuals living in southwest Florida. ECOSWF was organized for the purpose of conserving the natural resources of southwest Florida, implementing energy efficiency improvements and alternatives, and engaging in actions to further energy conservation and alternative energy source development.

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.

However, the current rules and proceedings implementing the Energy Efficiency Act betray a reluctance in actually helping decrease energy usage. Failing to uphold the spirit and

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<sup>2</sup> <http://www.psc.state.fl.us/library/filings/2019/08186-2019/08186-2019.pdf>

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. 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.

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

Robust energy efficiency programs are important to LULAC's and ECOSWF's members, yet Florida continues to lag the nation in energy efficiency achievements. This can be traced to a few specific outdated practices currently employed or allowed by EEA's implementing rules. The first is the use of the Rate Impact test ("Profits Test")<sup>3</sup> which has long outlived its usefulness. Paradoxically, the Profits 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 Profits Test. Zero goals derived by the Profits Test do not lessen Florida's dependence on natural gas and do not fulfill the purposes of the Energy Efficiency Act. Blind adherence to the Profits Test ignores millions of dollars of benefits to all Floridians due to alleged "rate impacts" which are as hypothetical as they are de minimis.<sup>4</sup> All

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<sup>3</sup> The Rate Impact test is referred to as the Profits Test, as the Rate Impact test is really a measure of impact on utilities' profits. The Rate Impact test does not actually determine whether rates will increase or decrease based on implementation of a given measure or program, but merely determines whether there will be upwards or downwards "pressure" on rates for utilities to maintain the same profit levels – i.e., the impact on utility profits.

<sup>4</sup> As expert testimony filed by LULAC and Southern Alliance for Clean Energy ("SACE") during the goal-setting docket made clear, the Profits Test assumes "perfect ratemaking," under

of the energy efficiency measures that could benefit Florida’s hard-working families and businesses are eliminated by use of the Profits Test. Even though no other state primarily relies on the Profits 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 Profits Test—not ensure that the utilities do not lose revenue from customers saving money on bills to maximize their own profits as the Profits Test ensures. A proposed rule to enact these changes is attached to these comments as Attachment A.

One of the primary problems with use of the Profits Test for setting energy-savings goals is that it counts energy savings – the principal goal of the Energy Efficiency Act – as a cost, when energy savings should be considered a benefit. Lost revenue is simply an accounting of lost sales by a utility. When discussing demand side measures, like energy efficiency, lost sales correspond to bill savings due to energy conservation (which the Commission has referred to as “bill reductions”). See Notice of Adoption of Rule Amendment, Docket No. 891324-EU, Order No. 24745 at 1 (Fla. P.S.C. July 2, 1991), <http://www.psc.state.fl.us/library/filings/1991/06643-1991/06643-1991.pdf> (“PSC Efficiency Order”). In the energy efficiency context, if a utility has lost \$1 in sales, it means that a customer is not paying that \$1 because she has lowered her energy usage in an amount equal to \$1 of energy usage. Perversely, the Profits Test counts that \$1 in savings as a cost. The Energy Efficiency Act’s purpose is to lower energy use (kWh), and

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which, no matter how tiny the purported rate impact of a measure would be, a utility would open a rate case, seeking and ultimately receiving rate increases of hundredths or thousandths of a percent due to the impact of the measure.

specifically directs the Commission to “adopt appropriate goals for increasing the efficiency of energy consumption . . . 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.” § 366.82(2), Fla. Stat. The Profits Test, which focuses only on MW capacity reductions and considers efforts to curb kWh electric consumption a cost, cannot be the test used to determine which energy efficiency measures are deemed cost-effective pursuant to the Energy Efficiency Act when the end-result is a *zero* goal for the control of the “growth rates of electric consumption,” a *zero* goal for “increasing the efficiency of energy consumption,” and a *zero* goal for “increasing the development of demand-side renewable energy systems.” *Id.*

Crucially, the goals of zero supported by the current Profits Test are a far cry from those that the Florida Supreme Court evaluated in *Legal Environmental Assistance Foundation v. Clark*. 668 So. 2d 982 (Fla. 1996). The court noted—at that time—that the “differences in . . . energy savings between RIM and TRC portfolios are negligible.” *Id.* at 987. Moreover, the decision also upheld the Commission’s encouragement that the utilities implement “TRC measures when it is found that the savings are large and the rate impacts are small.” *Id.* at 988.

In stark contrast, in recent years, utilities have relied on the Profits Test to propose energy savings goals of zero, while the TRC Test (“Bills test”) provides significantly greater energy savings for every utility. In place of *LEAF*’s “negligible” difference, each utility in recent years has submitted proposed goals showing a wide gulf between their RIM and TRC portfolios.

Although the Profits Test can be taken into account in other states, no other state primarily uses the Profits Test (even in conjunction with the Participants test) to set goals. Other states weigh the hundreds of millions of dollars in system savings against reduced revenue to the utility and theoretical rate implications, rather than simply saying “No” based on cross-subsidy

concerns. Accordingly, a few comparisons are useful to lend context to the absurdity of the goals based on reliance on the Profits Test. Florida is already in the bottom tier among states in energy savings as a percent of retail sales, ahead of just Tennessee, North Dakota, Alabama, Alaska, and Kansas.<sup>5</sup> If the utilities-proposed goals based on the Profits Test had been adopted by the Commission, Florida would have fallen even further. Instead, the Commission rejected the proposed goals based on the Profits Test, and continued the goals set in 2015.

Across the state, the utilities are growing highly dependent on combined cycle natural gas units as their primary and almost sole source of generation. The state's largest utility, FPL, already derives about three-quarters of its electricity from burning gas. As a result, the historic spread between peak pricing and baseload has largely disappeared, especially for FPL. Because the Profits Test accepts only measures whose benefits to the utility are worth more to the utility than the lost energy sales, it selects measures that reduce costly peak demand.<sup>6</sup> This test is thus unfit for a system that increasingly derives baseload and peak electricity from the same generating units. While at least some efficiency measures have historically survived the Profits Test, Florida's increasing dependence on combined cycle natural gas units is now driving goals to zero.<sup>7</sup> When a utility has become so dependent on natural gas that no energy conservation measures can pass the Profits Test, the test cannot be the cost-effectiveness test to use for the

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<sup>5</sup> American Council for an Energy-Efficient Economy, The 2020 State Energy Efficiency Scorecard, at 32 (December 2020), <https://www.aceee.org/sites/default/files/pdfs/u2011.pdf>.

<sup>6</sup> The energy efficiency measures that passed the Profits Test were those that avoided peak energy that was expensive to the utility to generate, but did not conserve much energy at other times.

<sup>7</sup> Now that peak energy is not currently expensive, the Profits Test unsurprisingly finds that no energy-saving measures will benefit the utilities whose peak pricing has come down, leading them to zero goals.

“conservation of electric energy and natural gas usage” required by the Energy Efficiency Act, and has thus outlived any usefulness. § 366.81, Fla. Stat.

One reason to be especially concerned about extensive reliance on natural gas is the continued volatility in natural gas prices. Every utility has struggled to predict natural gas prices with much accuracy even five years out, producing error rates from 48% to 100%. Utilities can and will pass 100% of their fuel costs through to ratepayers with no risk whatsoever to the company—in addition to imposing costly recovery for capital investment in new power plants. Thus, setting energy efficiency goals as low as they are in Florida increases the vulnerability of Floridians to volatile gas prices, as no natural gas dependence will be deferred for the EEA utilities. It is precisely because of this customer bill volatility that the State should be endeavoring to lower dependence on natural gas before prices rise unpredictably at the expense of hard-working families across Florida. The alternative, allowing the utilities to maximize their own profits by subjecting hardworking ratepayers to heightened vulnerability to fuel shocks, is neither good public policy, nor is it consistent with the EEA.

The EEA—which was enacted for the benefit and protection of ratepayers, not utilities—sets a clear mandate to help customers save money and electricity. There may have been a time when using the Profits Test *alongside* the Bills test to set energy savings goals did not fundamentally undermine the EEA. Times have changed. Now that the Profits Test no longer works to fulfill the basic purposes of the Energy Efficiency Act, it is time for the Commission to jettison its use in setting energy savings goals. The Profits Test may still be of use in determining which programs should be selected to meet established goals, but must not be used to set goals when to do so would run contrary to the mandates of the Efficiency Act, as it would have done so had the Commission adopted the goals suggested by the Profits Test in the last



goal-setting proceeding.

## **II. 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.

Although the Energy Efficiency Act itself is silent as to any need to account for people that would implement a demand-side measure in the absence of a utility-sponsored program (i.e., free-riders), the implementing regulation does ask the utilities, as part of each goals proceeding, to include consideration of free riders in their ten year projections. Fla. Admin. R. 25-17.0021(3). When conducting technical potential studies, the utilities account for free-ridership at the moment they incorporate their load forecasts into their technical potential work. All of the assumptions that went into those load forecasts are implicitly embedded in the technical potential. The technical potential assumes that energy can only be saved from that baseline, and not beyond it. Every single EEA utility’s load forecasting assumes that people would continue to

adopt and implement demand-side measures in the absence of utility-sponsored programs in the future. Therefore, the load being removed by the people implementing efficiency measures above baseline codes and standards in the absence of a utility-sponsored program is already accounted for—and already eliminated—in the load forecasts. By virtue of basing the technical potential study on the utilities' load forecasts, each subsequent level of potential analysis necessarily has already had the energy savings associated with free-riders factored out of the universe of potential energy savings. Consequently, neither the technical potential, nor economic potential, nor subsequent achievable potential, include any energy savings from those who would have implemented a measure even in the absence of a utility-sponsored program.

Regardless, there has been a practice that free-ridership be addressed using an unsupported and arbitrary two-year payback screen in later stages of the potential study. In the purported name of eliminating the free-riders that were already stripped out by their own baseload forecasting methods, the utilities insist on removing all of the most cost-effective measures—any measure that would pay for itself within two years. The EEA utilities have contended that this arbitrary two-year payback horizon marks the precise decision point at which consumers will adopt a measure out of their own rational self-interest. The utilities have no empirical evidence for this assertion, customers do not act accordingly in practice, and low income customers in particular generally cannot make such investments. There is no evidence showing that customers actually know that information, or even that they have ready *access* to that information. Even in a fictional world where all utility customers have a ready supply of cash earmarked for energy efficiency improvements on a two-year payback horizon, it is hard to imagine that most Floridians know that the payback period for LED lightbulbs, faucet aerators,

two-speed pool pumps, or any of the other measures included in technical potential studies. No other jurisdictions use such a screen to eliminate measures as part of a market-potential study.

By applying the two-year screen, the utilities are arbitrarily removing from consideration the most cost-effective measures—those with the lowest cost and highest energy savings. It is these very measures that would make the biggest difference to low-income households and Florida’s hard-working families and businesses, as the EEA statute intends. No additional “free-riders” are being taken into account by the two-year screen. The only thing the screen achieves is the deliberate deletion of the most cost-effective measures, allowing the utilities to artificially lower their potential energy savings. The utilities should not get to remove potential energy savings twice in order to account for “free-riders.” Therefore, the reference to “free riders” should be deleted from the rule.

### **III. THE NEED FOR SPECIFIC GOALS FOR LOW-INCOME COMMUNITIES**

This 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.

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.

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.

Other utilities are also woefully behind in serving low-income customers. Orlando served 6 customers in 2018. That is not a percent—that was the number of low income customers served in their low-income program. In 2019, Orlando increased that to 76 customers. They have a long way to go. These wide disparities underscore the need to address low-income access to energy efficiency programs through this rulemaking to ensure a uniform approach throughout the State.

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 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,<sup>8</sup> or the “number” between the set of all negative numbers and the set of all positive numbers.<sup>9</sup> 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.”<sup>10</sup> 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.

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

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<sup>8</sup> 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.

<sup>9</sup> Definition of “zero,” at <http://www.merriam-webster.com/dictionary/zero>

<sup>10</sup> Definition of “goal,” at <https://www.merriam-webster.com/dictionary/goal>

experiencing kWh reductions and meaningful bill savings, so that there cannot be another year where a major utility such as OUC serves 6 low-income customers.

### **CONCLUSION**

The need for rule-reform is evident. 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 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 have attached a couple of easy solutions to the current issues in the process. These identify one way to resolve the fundamental problems of current EEA proceedings, but other approaches may be able to work as well. What will *not* work is continued reliance on the Profits 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 second workshop include Commissioners to help provide direction to Staff.

Respectfully submitted this 15th day of February, 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 15th day of February, 2021, via electronic mail on:

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DATED this 15th day of February, 2021.

/s/ Bradley Marshall, Attorney



# **Attachment A**

LULAC's and ECOSWF's proposed changes in redline to  
Rule 25-17.008, F.A.C. and Rule 25-17.0021, F.A.C.

**25-17.008 Conservation and Self-Service Wheeling Cost Effectiveness Data Reporting Format.**

(1) This rule applies to all electric utilities, as addressed by Section 366.82, F.S., whenever an evaluation of the cost effectiveness of an existing, new or modified demand side conservation program is required by the Commission and to all public utilities, as addressed by Section 366.051, F.S., whenever an evaluation of the cost effectiveness of a self-service wheeling proposal is required by the Commission. For the purpose of this rule, self-service wheeling means transmission or distribution service provided by a public utility to enable a retail customer to transmit electrical power generated by the customer at one location to the customer's facilities at another location.

(2) The purpose of this rule is to establish minimum filing requirements for reporting cost effectiveness data for any demand side conservation program proposed by an electric utility pursuant to Rule 25-17.001, F.A.C., and for any self-service wheeling proposal made by a qualifying facility or public utility pursuant to Rule 25-17.0883, F.A.C.

(3) For the purpose of this rule, the Commission adopts and incorporates by reference the publication "Florida Public Service Commission Cost Effectiveness Manual For Demand Side Management Programs and Self-Service Wheeling Proposals" (7-7-91). Notwithstanding this adoption, the Rate Impact Test shall not be used as the basis for numerical goals for the affected electric utilities pursuant to Rule 25-17.0021(1), F.A.C., but may be considered by the Commission when approving demand side management plans pursuant to Rule 26-17.0021 (4), F.A.C.

(4) Nothing in this rule shall be construed as prohibiting any party from providing additional data proposing additional formats for reporting cost effectiveness data.

*Rulemaking Authority 366.05(1) FS. Law Implemented 366.81, 366.82(1)-(5), 366.051 FS. History--New 11-28-82, Formerly 25-17.08, Amended 7-17-91.*

## 25-17.0021 Goals for Electric Utilities.

(1) The Commission shall establish numerical goals for each affected electric utility, as defined by Section 366.82(1), F.S., to reduce the growth rates of weather-sensitive peak demand, to reduce and control the growth rates of electric consumption, and to increase the conservation of expensive resources, such as petroleum fuels. Overall Residential KW and KWH goals and overall Commercial/Industrial KW and KWH goals shall be set by the Commission for each year over a ten-year period. Unless otherwise specified, the goals shall be based on an estimate of the total cost effective kilowatt and kilowatt-hour savings reasonably achievable through demand-side management in each utility's service area over a ten-year period. 30% of the overall Residential KWH goals shall be specifically aimed at addressing the needs of low-income communities. The Commission shall also establish numerical KW goals for each affected electric utility, as defined by Section 366.82(1), F.S., to increase the development of demand-side renewable energy systems in low-income communities. These KW demand-side renewable energy systems goals for low-income communities shall not be zero. Goals for low-income communities need not be cost-effective. Reduced electricity usage as the result of efficiency measures or demand-side renewable energy systems shall not be considered a cost when evaluating cost-effectiveness for the purposes of establishing numerical goals.

(2) The Commission shall set goals for each utility at least once every five years. The Commission on its own motion or petition by a substantially affected person or a utility may initiate a proceeding to review and, if appropriate, modify the goals. All modifications of the approved goals, plans and programs shall only be on a prospective basis.

(3) In a proceeding to establish or modify goals, each utility shall propose numerical goals for the ten year period and provide ten year projections, based upon the utility's most recent planning process, of the total, cost-effective, winter and summer peak demand (KW) and annual energy (KWH) savings reasonably achievable in the residential and commercial/industrial classes through demand-side management. Each utility's projection shall reflect consideration of overlapping measures, rebound effects, free riders, interactions with building codes and appliance efficiency standards, and the utility's latest monitoring and evaluation of conservation programs and measures. Each utility's projections shall be based upon an assessment of, at a minimum, the following market segments and major end-use categories.

### Residential Market Segment:

(Existing Homes and New Construction should be separately evaluated) Major End-Use Category

- (a) Building-Envelope Efficiencies.
- (b) Cooling and Heating Efficiencies.
- (c) Water Heating Systems.
- (d) Appliance Efficiencies.
- (e) Peakload Shaving.
- (f) Solar Energy and Renewable Energy Sources.
- (g) Renewable/Natural gas substitutes for electricity.
- (h) Other.

### Commercial/Industrial Market Segment:

(Existing Facilities and New Construction should be separately evaluated) Major End-Use Category

- (i) Building Envelope Efficiencies.
- (j) HVAC Systems.
- (k) Lighting Efficiencies.
- (l) Appliance Efficiencies.
- (m) Power Equipment/Motor Efficiency.
- (n) Peak Load Shaving.
- (o) Water Heating.
- (p) Refrigeration Equipment.
- (q) Freezing Equipment.
- (r) Solar Energy and Renewable Energy Sources.
- (s) Renewable/Natural Gas substitutes for electricity.
- (t) High Thermal Efficient Self Service Cogeneration.
- (u) Other.

(4) Within 90 days of a final order establishing or modifying goals, or such longer period as approved by the Commission, each

utility shall submit for Commission approval a demand side management plan designed to meet the utility's approved goals. The following information shall be submitted for each program in the plan for a ten-year projected horizon period:

- (a) The program name;
- (b) The program start date;
- (c) A statement of the policies and procedures detailing the operation and administration of the program;
- (d) The total number of customers or appropriate unit of measure in each class of customer (i.e. residential, commercial, industrial, etc.) for each year in the planning horizon;
- (e) The total number of eligible customers or appropriate unit of measure in each class of customers (i.e., residential, commercial, industrial, etc.) for each year in the planning horizon;
- (f) An estimate of the annual number of customers or appropriate unit of measure in each class projected to participate in the program, including a description of how the estimate was derived;
- (g) The cumulative penetration levels of the program by year calculated as the percentage of projected cumulative participating customers or appropriate unit of measure by year to the total customers eligible to participate in the program;
- (h) Estimates on an appropriate unit of measure basis of the per customer and program total annual KWH reduction, winter KW reduction, and summer KW reduction, both at the customer meter and the generation level, attributable to the program. A summary of all assumptions used in the estimates will be included;
- (i) A methodology for measuring actual kilowatt and kilowatt-hour savings achieved from each program, including a description of research design, instrumentation, use of control groups, and other details sufficient to ensure that results are valid;
- (j) An estimate of the cost-effectiveness of the program using the cost-effectiveness tests required pursuant to Rule 25-17.008, F.A.C. If the Commission finds that a utility's conservation plan has not met or will not meet its goals, the Commission may require the utility to modify its proposed programs or adopt additional programs and submit its plans for approval.

(5) Each utility shall submit an annual report no later than March 1 of each year summarizing its demand side management plan and the total actual achieved results for its approved demand side management plan in the preceding calendar year. The report shall contain, at a minimum, a comparison of the achieved KW and KWH reductions with the established Residential and Commercial/Industrial goals, and the following information for each approved program:

- (a) The name of the utility;
- (b) The name of the program and program start date;
- (c) The calendar year the report covers;
- (d) Total number of customers or appropriate unit of measure by customer class for each year of the planning horizon;
- (e) Total number of customers or appropriate unit of measure eligible to participate in the program for each year of the planning horizon;
- (f) Total number of customers or appropriate unit of measure projected to participate in the program for each year of the planning horizon;
- (g) The potential cumulative penetration level of the program to date calculated as the percentage of projected participating customers to date to the total eligible customers in the class;
- (h) The actual number of program participants and current cumulative number of program participants;
- (i) The actual cumulative penetration level of the program calculated as the percentage of actual cumulative participating customers to the number of eligible customers in the class;
- (j) A comparison of the actual cumulative penetration level of the program to the potential cumulative penetration level of the program;
- (k) A justification for variances larger than 15% for the annual goals established by the Commission;
- (l) Using on-going measurement and evaluation results the annual KWH reduction, the winter KW reduction, and the summer KW reduction, both at the meter and the generation level, per installation and program total, based on the utility's approved measurement/evaluation plan;
- (m) The per installation cost and the total program cost of the utility;
- (n) The net benefits for measures installed during the reporting period, annualized over the life of the program, as calculated by the following formula:

$$\text{annual benefits} = B_{\text{npv}} \times d/[1 - (1+d)^{-n}]$$

where

$B_{\text{npv}}$  = cumulative present value of the net benefits over the life of the program for measures installed during the reporting period.

$d$  = discount rate (utility's after tax cost of capital).

$n$  = life of the program.

*Rulemaking Authority 366.05(1), 366.82(1)-(4) FS. Law Implemented 366.82(1)-(4) FS. History—New 4-30-93.*