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June 28, 2021

-VIA ELECTRONIC FILING-

Adam Teitzman
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

**RE: Docket No. 20200181-EU - Florida Power & Light Company's DSM Rulemaking
Post-Workshop Comments for May 18, 2021 Rule Development Workshop**

Dear Mr. Teitzman:

Please find attached Florida Power & Light Company's DSM Rulemaking Post-Workshop Comments for the Florida Public Service Commission Staff's May 18, 2021 Rule Development Workshop.

If there are any questions regarding this filing, please contact me at (561) 304-5662.

Sincerely,

/s/ William P. Cox
William P. Cox
Fla. Bar No. 0093531

cc: Margo DuVal, Esq.
Ken Hoffman

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-EU FILED: June 28, 2021
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FLORIDA POWER & LIGHT COMPANY’S POST-WORKSHOP COMMENTS

Florida Power & Light Company (“FPL”), representing the merged and consolidated operations of FPL and the former Gulf Power Company (“Gulf”),¹ hereby files comments on the proposed amendment to one of the Commission’s Demand-Side Management (“DSM”) rules, Rule 25-17.0021, F.A.C., Goals for Electric Utilities (“DSM Rule”), and on the specific proposals from other interested persons regarding the appropriate cost-effectiveness tests, free ridership considerations, and low-income issues. FPL thanks the Staff of the Florida Public Service Commission (“Commission”) for conducting a workshop on May 18, 2021 to discuss these proposals that would further modify the DSM Rule beyond the Commission Staff’s proposed amendment. For the reasons FPL discussed at Staff’s rule development workshops and in prior comments filed in this docket, and as more fully discussed below, FPL recommends that the Commission reject these additional proposed rule amendments, all of which, both individually and collectively, would result in a less efficient Goal-setting process and higher electric rates for FPL customers. Instead, we recommend that the Commission move forward on the Commission Staff’s proposed rule amendment, which would consolidate and make more efficient the process for establishing DSM Goals, Plans, Programs, and Program Standards.

¹ Effective January 1, 2021, Gulf and FPL were legally merged with FPL being the surviving entity. On January 11, 2021, pursuant to Rule 25-9.044, F.A.C., FPL submitted a notice of the change in ownership of Gulf effective January 1, 2021, and FPL’s adoption and ratification of Gulf’s existing rates and tariff on file with the Commission. FPL is representing the merged and consolidated operations of FPL and the former Gulf. “Gulf,” as used in these comments, has reference to the former Gulf Power Company and/or Gulf as the separate ratemaking entity for purposes of these comments, as context would dictate.

These comments address the three primary areas of proposals from various interested persons: (1) elimination of use of the rate impact measure (“RIM”) test as a primary test for assessing cost-effectiveness of DSM measures; (2) elimination of the screen for measures with payback in two years or less in favor of an evaluation, measurement, and verification (“EM&V”) approach to address free ridership considerations; and, (3) proposals to increase the low-income program’s size and participation through specific targets and other means. These comments also address several other proposed rule amendments raised in the workshops and comments filed in this proceeding.

I. Cost-Effectiveness Tests

A. Proposal to Reduce RIM to Non-Primary Test and Add Utility Cost Test

The Southern Alliance for Clean Energy (“SACE”), Vote Solar, and CLEO Institute (“CLEO”) have proposed to eliminate or diminish Commission consideration of the RIM test by requiring that a DSM measure only satisfy three out of four specific cost-effectiveness tests: RIM, Total Resource Cost (“TRC”), Participants, and Utility Cost Test (“UCT”). In other words, a DSM measure could fail the RIM test and result in higher costs for customers, but still be found cost-effective if it meets the other three tests.

The Commission should reject this proposal. The Commission currently has the requisite tools to assess cost-effectiveness consistent with its statutory authority under its current DSM-related rules and DSM Manual referenced by the rules. The rules and DSM Manual require the Commission to consider the cost-effectiveness results from analyses under the RIM test, TRC test, and Participants test. These three tests, especially the RIM test, enable the Commission to adequately determine whether a DSM measure results in upward or downward pressure on electric rates for all customers regardless of whether the customers participate in the program for implementation of such measure. If the Commission does not have to consider the results of the RIM test (which is the net

effect of the “3 out of 4” proposal made by SACE, Vote Solar, and CLEO), it would result in a failure to consider the true impact a DSM measure (as implemented through a program) would have on customer electric rates because it would fail to consider the impact on the utility’s recovery of its revenue requirements.

The addition of the UCT test would have no practical value. The Commission already utilizes three tests that more than adequately protect customers, ensuring that only DSM measures that will not increase electric rates for all customers, especially non-participants, are ultimately approved and implemented by utilities. The UCT test, also referred to as the Program Administrator Cost Test, only includes costs incurred by the DSM program administrator (or utility), the incentives paid to the customers, and the increased supply costs for the periods in which the load is increased. See *California Standard Practice Manual: Economic Analysis of Demand-Side Programs and Projects* (October 2001), pp. 23. It does not address unrecovered revenue requirements as the RIM test does and, therefore, does not address ultimate customer rate impacts for a given DSM measure. In effect, the UCT test is the RIM test without consideration of the impact on unrecovered revenue requirements, and the RIM test and TRC test combined address the same analysis of costs as the UCT test. Accordingly, there is no need to add the UCT test to the cost-effectiveness tests used by the Commission to assess DSM measures.

Finally, RIM is a Commission-endorsed cost-effectiveness test that has been used for many years for the benefit of customers, and it is the only Commission-endorsed test that includes consideration of utility (paid) incentives in setting goals as required in Section 366.82(3)(b), Fla. Stat. As such, it is the only DSM cost-effectiveness test that accounts for all costs and cost impacts of DSM measures, thus allowing DSM options to be evaluated on a level playing field with supply options from an electric rate perspective.

B. Proposal to Redefine Cost-Effectiveness / Allocation of Costs

SACE, Vote Solar, and CLEO have proposed through their recommended revision to the definition of “cost-effective” a new method of allocation of administrative, education, and outreach costs; specifically, that such costs be allocated to a portfolio of programs and not to single programs, and to entire programs and not to individual measures in those same programs. This presumably would support greater levels of DSM programs and measures by making more of them *appear* to be “cost-effective.” The Commission should reject this proposal because each program and measure must be cost-effective on its own. Otherwise, the utility’s general body of customers, including non-participants in the DSM program or measure, would be subsidizing the non-cost-effective program or measure.

C. Proposal to Use RIM for DSM Plan but Not for DSM Goals

The Florida League of United Latin American Citizens (“LULAC”) and the Environmental Confederation of Southwest Florida (“ECOSWF”) propose with their amendment to Rule 25-17.008, F.A.C., to use the RIM test only in establishing programs for the utility’s DSM plan but not in establishing the utility’s DSM Goals. This proposal is inconsistent with the Florida Energy Efficiency and Conservation Act (“FEECA”) statute, which requires that goals be established based on cost-effective potential. Section 366.82(3), Fla. Stat., in FEECA describes criteria for establishing goals that can only be accomplished utilizing the RIM test, specifically the costs and benefits to the general body of ratepayers, including utility incentives. The Commission should not use this rulemaking to abandon the practice of establishing goals that are based on cost-effectiveness tests that adequately address the impact on the recovery of utility revenue requirements and customer rates. Use of the RIM test in setting goals and the plan protects all customers, including low-income customers, from higher rates. RIM should be used for goals and programs, especially under the

Staff's proposed consolidated process. Cost-effectiveness is cost-effectiveness, and RIM should be applied consistently to goals and programs.

II. Free Ridership

A. Proposal to Eliminate Two-Year Payback Screen

LULAC and ECOSWF have asked the Commission to eliminate the two-year payback free rider screen for DSM measures by striking the reference to “free riders” in Rule 25-17.0021(3), F.A.C., which calls for each utility’s goal projections to reflect the savings from proposed demand-side management programs with 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.

The Commission should reject this proposal. Striking the reference to “free riders” in the DSM Rule would eliminate Commission discretion to address free riders in the goal setting process. At a minimum, this proposal makes it less clear that utilities and the Commission should consider free ridership, contrary to long-standing Commission precedent, dating back to 1994, and the common-sense view that all customers should not pay for and the Commission should not incentivize DSM measures that have a reasonable economic payback without an incentive.

The Commission has found that “the two-year payback criterion provides sufficient economic incentive to convince a customer to participate in a given energy efficiency program, while balancing the requirement to account for free riders and minimizing program costs and undue subsidies.” See Order No. PSC-14-0696-FOF-EU, pp. 26-27. The Commission has accepted testimony from former Staff member James W. Dean, substantiating the use of the two-year payback as a reasonable criterion to use in balancing program administrative costs and the level of customer incentives used to encourage participation regardless of whether a TRC or a RIM standard is used. See Direct Testimony of James W. Dean, Docket No. 080407-EG, *Commission review of numeric*

conservation goals (Florida Power & Light Company), June 1, 2009, pp. 29-30. Mr. Dean’s opinion was based on many years of research on individual investment behavior with respect to installing energy efficiency measures showing that individuals have extremely high discount rates. As Mr. Dean noted, discount rate refers to the minimum percentage earnings an individual must make on an investment to be willing to forgo current consumption (*i.e.*, spend the money now) versus spending it on something to generate a future return. While most individuals cannot articulate this exact percentage return, economists have estimated ranges from observed energy efficiency purchasing behavior. Mr. Dean testified that the return estimates range from a low of around 26 percent (essentially a four-year payback) to more than 100 percent (essentially a one-year payback), while most studies tend to be in the 40 to 60 percent range, indicating a payback period of approximately two to three years. As a result, Mr. Dean testified that a two-year payback would fit well within the academic literature and reasonably addresses the issue of free riders. See *Id.* Accordingly, FPL urges the Commission to continue to consider free ridership using a two-year payback and to retain the flexibility to do so.

B. Proposal to Eliminate Two-Year Payback Screen and Replace with Evaluation, Measurement and Verification (“EM&V”)

SACE, Vote Solar, and CLEO also ask the Commission to eliminate the two-year payback free rider screen for DSM measures for addressing free ridership and replace it with an EM&V process.² EM&V is a post-implementation process that is intended to assess the performance of a program compared to initial projections, *e.g.*, the difference in energy usage between existing equipment or product and the DSM measure installed in its place. The process is program-specific

² SACE also asks the Commission to define “free ridership” in a way that would not allow for use of the two-year free rider screen. For the reasons discussed in these comments, the Commission should reject this proposed definition that unnecessarily limits the Commission’s flexibility to consider a free rider screen based on a two-year payback or otherwise.

and often takes multiple years to complete. As a tool to estimate free-ridership, EM&V typically utilizes customer surveying, which is an imprecise, time-consuming, and costly process.

Any time a program design changes, or a new measure is introduced, EM&V cannot address free ridership in a meaningful or efficient manner. For example, if a Heating, Ventilating, and Air Conditioning (“HVAC”) program design changes from a direct to consumer rebate model to an upstream distributor incentive model, any EM&V results from the former program will not be useful. Or if a new energy efficiency measure is introduced there would be not be any EM&V data available to address free ridership in setting a savings goal. As a result, EM&V would not and could not assess free ridership in the goal setting process and is therefore not a replacement for the two-year payback screen used by the Commission in that process.

EM&V amounts to a very expensive approach for estimating free-ridership and its usefulness in the goal setting process is questionable at best. Undoubtedly, EM&V will decrease cost-effectiveness of any program due to substantial costs of administration, and it has no practical value to the DSM goal-setting process, given that Section (4)(i) of the current DSM Rule already addresses measurements and verification for DSM plans and programs. Accordingly, the Commission should not adopt EM&V as a replacement for the two-year payback screen to address free ridership considerations and instead continue to use the two-year payback as a reasonable tool to assess free ridership considerations.³

III. Low-Income Programs

A. Proposals to Set Specific Low-Income Targets or Goals

LULAC, ECOSWF, SACE, Vote Solar, and CLEO have proposed a goal or target for low-income customer DSM programs offered by utilities, featuring a minimum percentage or allocation

³ Assuming the Commission does not amend its rules to include a definition of EM&V, then there is no need to define EM&V as requested by SACE, Vote Solar, and CLEO.

of programs spending for low-income and multi-family DSM programs, such as 15% of the utility's total energy efficiency budget for its DSM programs or 30% of the overall residential kWh goals. FPL supports low-income programs. However, any proposal to target a percentage of spending or savings to a particular subset of customers is contrary to the objective of setting goals for implementation of cost-effective energy efficiency across the customer base. Further, an arbitrary, quota-based approach as advocated here would impose an unnecessary cost burden on non-participating low-income customers, as the costs would be borne by the utility's entire general body of customers.

B. Proposal to Ignore Cost-Effectiveness of Low-Income Programs

Various commenters have proposed eliminating or lowering the threshold for cost-effectiveness for specific low-income goals and low-income programs. LULAC and ECOWSF have asked that the rules be amended so that low-income goals need not be cost-effective. SACE has argued for low-income programs not having to meet cost-effectiveness tests but still evaluated for cost-effectiveness. Vote Solar and CLEO have argued for low-income programs to be found cost-effective based on an EM&V process as described above.

The Commission should reject these proposals to limit the use of existing cost-effectiveness tests for low-income customer programs. Like the low-income goals or targets proposed, these proposals are arbitrary and will result in undue cost burden on non-participating low-income customers. The Commission should maintain its current tools to address and assess cost-effectiveness of programs for low-income customers, including benefits and rate impacts for low-income customers. Further, the Commission should not require additional measures such as EM&V to assess cost-effectiveness of low-income programs that will result in unneeded additional cost, based on an arbitrary and inconsistent customer survey method. Current cost-effectiveness tests and

free ridership screens employed by the Commission are sufficient and will provide the greatest level of benefits and protections for low-income customers.

IV. Other Rule Amendment Proposals

Other rule amendment proposals offered by commenters are unnecessary considering the existing DSM rules and DSM Manual approved by the Commission, as well as the current Florida Statutes. SACE's request for initiating a goal setting proceeding at least once every five years is already captured in Section 25-17.0021(2), F.A.C. of the current rule. Also, SACE's request for adoption of the DSM Manual is unnecessary and already accomplished through combination of Rules 25-17.0021 and 25-17.008, F.A.C. Finally, Vote Solar and CLEO's request to amend the rules to provide for utility financial rewards or incentives to meet DSM goals is already expressly provided for in Section 366.82, Fla. Stat. The Commission and utilities have this tool in hand, as the Commission has statutory authority to approve utility incentives (penalties/rewards/return on equity ("ROE") adder) under Section 366.82(8) and (9), Fla. Stat. Utilities or intervenors could propose such incentives for Commission approval in a DSM Goals proceeding, and there is no need to amend the rule to do so.

Respectfully submitted,

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