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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20200181-EU

Proposed amendment of
Rule 25-17.0021, F.A.C.,
Goals for Electric Utilities.
_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 2

COMMISSIONERS
PARTICIPATING: CHAIRMAN ANDREW GILES FAY
COMMISSIONER ART GRAHAM
COMMISSIONER GARY F. CLARK
COMMISSIONER MIKE LA ROSA
COMMISSIONER GABRIELLA PASSIDOMO

DATE: Tuesday, March 7, 2023

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: DEBRA R. KRICK
Court Reporter and
Notary Public in and for
the State of Florida at Large

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1 P R O C E E D I N G S

2 CHAIRMAN FAY: Commissioners, next we will be
3 moving into Item No. 2, Docket 20200181. Mr.
4 Rubottom is going to present this item this
5 morning, and then we will go into the participation
6 process for the various folks and entities that are
7 here to speak on that item. See I will give
8 everybody a minute to get set up on their end
9 before we recognize Mr. Rubottom.

10 Okay. Mr. Rubottom, when you are ready, you
11 can present a summary on Item 2.

12 MR. RUBOTTOM: Good morning, Commissioners.
13 Jon Rubottom with legal -- Commission legal staff.

14 In Item 2, staff is recommending the amendment
15 of the Commission rule that implements the
16 statutory mandates of the Florida Energy Efficiency
17 and Conservation Act, or FEECA, requiring the
18 Commission to establish efficiency and conservation
19 goals for electric utilities, approve utility plans
20 to meet those goals, and collect periodic reports
21 on utility performance.

22 Over the course of this rule-making, staff
23 held three public rule development workshops and
24 received thousands of comments from stakeholders.
25 After considering the statutory mandates and all

1 the comments obtained through the rule-making
2 process, staff is recommending that the Commission
3 propose the amendment of the rule as set forth in
4 Attachment A of the recommendation.

5 Staff believes that the recommended amendments
6 to the rule will improve the transparency and
7 efficiency of the goal setting and plan approval
8 processes, as well as ensure that the Commission
9 gathers and analyzes a robust record of evidence
10 necessary and relevant to implementing FEECA.

11 There are a number of interested persons here
12 today that would like to address the Commission on
13 this item, and staff is available for questions.

14 CHAIRMAN FAY: Okay. Great. Thank you, Mr.
15 Rubottom.

16 Commissioners, we will go into the
17 participation part of this docket, and then I will
18 be happy to take up any questions or comments
19 following that portion.

20 So with that, for the folks that are here to
21 speak on this item, what I will do is I will call
22 your name and then let you know who the next person
23 following that speaker will be. And I think, Ms.
24 Christensen, I don't know if, when you are done, if
25 you plan on sitting there, but maybe we will just

1 have the next party come up and sit there, unless
2 are you planning on, after you present your
3 comments, staying there, or are you going to move?

4 MS. CHRISTENSEN: No, I can move if that's
5 necessary.

6 CHAIRMAN FAY: Okay. And I am not kicking you
7 out or anything. I just want to make sure we've
8 got room for our speakers.

9 So with that, we are going to start with OPC
10 and Ms. Christensen, and then next will be SACE,
11 Mr. Cavros will be addressing the Commission on
12 this item.

13 So, Ms. Christensen, when you are ready, go
14 ahead.

15 MS. CHRISTENSEN: Certainly. Good morning,
16 Commissioners. Patty Chris with the Office of
17 Public Counsel. I just wanted to make a few brief
18 remarks.

19 As we stated in our post-hearing comments, the
20 proposed rule does eliminate some of the reliance
21 on the RIM test, but still does not provide the
22 flexibility to allow the Commission to consider all
23 of the potential DSM programs that pass two of the
24 four available tests. Moreover, the proposed rule
25 does not address the overapplication of the free

1 rider screen or the required -- requirement for the
2 utilities to provide potential DSM programs for
3 low-income customers.

4 To continue to obtain the benefits from the
5 DSM and conservation programs and achieve the FEECA
6 statutory goals, the Commission should consider
7 implementing DSM programs that pass two out of the
8 four DSM screening tests, either the rate impact
9 measure test, the total resource cost test, the
10 utility cost test, which eliminates the lost
11 revenue aspect of the RIM test, or the participant
12 cost test. And also consider eliminating the
13 two-year payback screen, or reducing it to a
14 one-year payback, and specifically targeting
15 low-income DSM programs. The Commission should
16 implement these changes in a manner that achieves
17 the maximum DSM goals while minimizing undue rate
18 impacts.

19 Thank you.

20 CHAIRMAN FAY: Great. Thank you, Ms.
21 Christensen.

22 Next we will have Mr. Cavros, and then we will
23 have Bradley Marshall with LULAC and ECOSWF.

24 Mr. Cavros, I know you know this, but
25 typically, we range anywhere between three and five

1 minutes for comments in the Commission, so this
2 morning be shooting for that. I can let you know
3 if you exceed time.

4 MR. CAVROS: That's -- thank you, Chairman.
5 All right. This will be been within short of that
6 three-minute timeframe.

7 I want to thank you, Commissioners, and I also
8 want to thank your staff for a transparent
9 rule-making process thus far. There have been
10 numerous nonutility stakeholders that have brought
11 industry best practices and information to this
12 rulemaking over the last two, two-and-a-half years,
13 in order to revise the rule in a way that provides
14 more information to the Commission in setting the
15 goals, and also more flexibility to the utilities
16 in proposing the goals.

17 And while the proposed amendments to the rule
18 before you today provide increased administrative
19 efficiency between the goal setting and the plan
20 approval process, we are still struggling to see
21 how they meaningfully provide more transparency and
22 clarity in the goal setting process itself, which
23 is within the subject matter to be addressed in
24 this rulemaking, and surely in need of
25 modernization.

1 So SACE, consistent with what we've, comments
2 that we provided to the Commission in the past,
3 wants to provide these three suggestions that are
4 not intended to hardwire the rule for a specific
5 outcome, but rather to bring more information to
6 you, Commissioners, so that we can have a more
7 transparent and informed debate about what the
8 goals should be in the next goal setting
9 proceeding.

10 So number one, add the utility cost test to
11 the list of cost-effectiveness tests, or results,
12 rather, provided to the Commission. This will
13 provide more information to the Commission on the
14 economic benefits of energy efficiency to the
15 general body of ratepayers because it's the only
16 test that places energy efficiency investment and
17 supply-side investments on a level playing field.
18 It is essentially the RIM test without the lost
19 revenue piece.

20 The proposed amendments to the rule require
21 that the RIM and TRC test results be provided, but
22 this is already current practice. So, you know,
23 essentially adding the UCT test is a simple matter
24 of updating the DSM manual referenced in the
25 companion rule. That rule could be noticed in the

1 DSM manual, amended in short order, adding just a
2 few months to the rulemaking process.

3 Number two, prohibit the use of a time-based
4 free-ridership screen, like the two-year payback
5 screen. Require the utilities to use some other
6 non-time-based method to address free-ridership,
7 and justify it in the next goals proceeding. The
8 utilities could rely on the consultant that they've
9 engaged for their energy efficiency potential
10 analysis to assist them in this regard.

11 The two-year payback screen reduced energy
12 efficiency potential by 50 percent or more during
13 the 2019 goal setting proceeding. And that
14 eliminated low cost high impact measures that are
15 critical to helping struggling families reduce
16 energy use and save money on bills.

17 And lastly, we encourage you to consider
18 establishing a low-income customer goal
19 commensurate with the percentage of low-income
20 population in the utility service territory, and
21 exempt those low-income programs from standard
22 cost-effectiveness tests, or, at a minimum, the
23 rate impact measure test and time-based screens.
24 This would provide consistency, clarity and also
25 flexibility to the utilities in designing

1 low-income programs.

2 Commissioners, we are at a time of
3 ever-increasing power bills. Families are
4 struggling. We need a rule in place that provides
5 information to you about the value of energy
6 efficiency so we can, you know, put ourselves on a
7 path to lower power bills because energy efficiency
8 is the lowest cost resource available to the
9 utility. The amendments to this rule simply don't
10 do that.

11 If you are not inclined to accept the suite of
12 recommendations that we are proposing today,
13 adopting even one would be a step in the right
14 direction for Florida's families, businesses and
15 the state.

16 Thank you for your time.

17 CHAIRMAN FAY: Great. Thank you, Mr. Cavros.

18 Next we will have Mr. Marshall with LULAC and
19 ECOSWF, and then from the Cleo Institute, Bill
20 Garner.

21 MR. MARSHALL: Good morning, Commissioners.
22 Bradley Marshall with Earthjustice on behalf of the
23 League of United Latin American Citizens of
24 Florida, better known as LULAC, and the
25 Environmental Confederation of Southwest Florida,

1 better known as ECOSWF.

2 As this Commission acknowledged during the
3 last goal setting process, the FEECA process is
4 broken, producing results based on RIM that lead to
5 zero goals. Staff's proposal, which mostly
6 codifies some existing practices, fails to address
7 some of these shortcomings.

8 So while we certainly agree with other
9 stakeholders on the need for targeted low-income
10 goals and programs, and adding the utility cost
11 test as an additional perspective on
12 cost-effectiveness, I would like to focus my
13 remarks on two areas today, one broad and one very
14 specific.

15 The first is the specific failure of staff's
16 rule to address the two-year payback screen, which
17 screens out all the most cost-effective measures
18 for being too cost-effective, on the assumption
19 that everyone, including those that can't afford
20 it, will adopt them on their own.

21 As the staff recommendation here makes clear,
22 the use of the two-year screen has been a practice
23 and procedure employed by this commission since
24 1994, almost 30 years now, requiring parties to
25 indicate which measures failed the two-year payback

1 screen test, and then screening them out from
2 further consideration.

3 Rulemaking is not a matter of agency
4 discretion. Each agency statement defined as a
5 rule shall be adopted by rulemaking. Rule is
6 defined as each agency statement of general
7 applicability that implements, interprets or
8 prescribes law or policy, or describes the
9 procedure or practice requirements of an agency,
10 and includes any form which imposes any requirement
11 or solicits any information not specifically
12 required by statute or by an existing rule.

13 Even in the 2009 proceeding, the two-year
14 screen was used, and a variance for certain
15 specific measures was allowed, bringing a few into
16 consideration despite failing the screen.

17 Staff makes clear that even though this
18 rulemaking in no way addresses the two-year screen,
19 it isn't going anywhere. Stating that the
20 methodology continues to offer the Commission a
21 valuable tool for considering free-ridership.

22 When a tool has been rigidly used as a
23 specific screening test by an agency for almost 30
24 years, with one noted exception where a specific
25 variance was granted, although, the screen itself

1 was still used and applied, that is a rule and
2 should be codified. Staff's rulemaking in failing
3 to address the two-year screen, but making clear
4 that it isn't going anywhere, is flawed for this
5 reason alone.

6 Next, I would like to address the reason the
7 Commission asked for rulemaking in the first place.
8 It wasn't to codify existing practice and possibly
9 marginally increase administrative efficiency, it
10 was to fix FEECA, and FEECA is broken.

11 The data from the FEECA IOUs shows that the
12 FEECA IOUs have done significantly less DSM than
13 many non-FEECA municipal utilities in Florida,
14 resulting in significantly higher bills for IOU
15 residential customers.

16 Take FPL, for example. Since 2001, their
17 average residential DSM energy efficiency savings
18 has been 0.16 percent, with recent years hovering
19 at 0.03 percent, and only that high because the
20 Commission denied FPL's proposed zero goals in
21 2019.

22 As a result, FPL, which historically had lower
23 kilowatt hour average usage per residential
24 customer than Tallahassee, now averages 200
25 kilowatt hours per month higher. This is no

1 coincidence, over that same period of time,
2 Tallahassee has averaged 0.81 percent in
3 residential energy efficiency savings, five times
4 more savings. As a result, for next month, based
5 on 2021 usage, Tallahassee's average residential
6 bill is projected to be \$117.26, while FPL's goes
7 over \$160. And if you think projections could be
8 manipulated, past data cannot.

9 In 2021, the last full year for which data is
10 available, Tallahassee's average residential bill
11 was \$103.67, while FPL stood at \$125.35, which
12 increased to \$153.33 last year.

13 FEECA rule reform is needed, and staff's
14 proposal codifying existing practices with a
15 notable failure to codify the two-year payback
16 screen fails to do so. We ask that you direct
17 staff to go back and try to address these issues.

18 Thank you.

19 CHAIRMAN FAY: Great. Thank you, Mr.
20 Marshall.

21 Next, we will have Mr. Garner with the Cleo
22 Institute, and then Christian Wagley from Healthy
23 Gulf.

24 Mr. Garner, you are recognized.

25 MR. GARNER: Thank you.

1 Commissioners, Mr. Chairman, I appreciate the
2 opportunity to address you on this item today. And
3 I -- I don't envy the choices you have to make
4 sometimes.

5 Most of you don't know me, or anything about
6 me. I worked at the Commission between 2005 and
7 2010, and I worked in the commission suite advising
8 Commissioners like yourselves and the chairman, and
9 I understand -- I have a sense for the kinds of
10 pressures and the kinds of balancing that you have
11 to undertake. It's -- its -- it's sort of -- in
12 some of these issues, it's sort of a damned if you
13 do and damned if you don't, if you don't mind my
14 using that kind of language. And you are going to
15 catch it from one side if you go one way, you are
16 going to catch it from another side if you go
17 another way. And there is always a lot of comfort
18 in looking at the statute and acknowledging the
19 protections that it has, and falling into the
20 inertia of doing things pursuant to the statute,
21 the way they've always been done, and forming a
22 belief that you -- your hands are tied. I don't
23 believe that they are.

24 I know that in 2019, those of you who were
25 here, were uncomfortable with the idea of approving

1 IOU zero value goals, and you wanted to look to the
2 Legislature to address the statute to help you out.
3 And, you know, sometimes I think that a way to deal
4 with obstacles is to bring to yourself as much
5 information as you can. And the staff,
6 commendably, has said that one of the goals, what
7 they are trying to present to you, is a way for you
8 to have the broadest flexibility that you can have
9 in meeting your FEECA obligations.

10 One of the ways that I think that you can do
11 that is simply adding a new cost-effectiveness test
12 to the portfolio of information that you have when
13 you -- when you evaluate what are acceptable goals.

14 So adding the utility cost test would give you
15 that third silo of information. Offer you, if you
16 will, a middle road analysis. So you have got --
17 you have got your RIM analysis, you have got your
18 TRC analysis and you have got your utility cost
19 test analysis. Sometimes more information is
20 better.

21 Adding the additional cost test would not
22 require you to approve goals that are evaluated
23 using that test. You would still have the same
24 abilities and authority that you have now. You
25 would just have more information in which to make

1 your decisions. You have a broader context for
2 making your decisions.

3 And I understand the staff's point, that maybe
4 that's outside of the scope of this rulemaking
5 proceeding, but I think the staff missed an
6 opportunity in the interest of providing you
7 additional information to suggest that if that's
8 not something you can do in this proceeding, to
9 have a future rulemaking, where you can address the
10 other rule where the cost-effectiveness tests are
11 located, so that -- so that you can update that and
12 get as much information as you -- as you possibly
13 can.

14 And the other -- the other piece of what I
15 think is low hanging fruit that I think was missed
16 was, even though we disagree and the staff rejected
17 the stakeholders' suggestions for having a
18 carve-out for low-income households, there is a
19 current practice. Staff noted it on pages six and
20 seven of their -- of their staff recommendation.
21 And at a minimum, we would hope that you would
22 consider codifying that current practice so that we
23 -- it just takes one more opaque piece away from
24 the process you have, which is essentially an
25 unpromulgated rule, that's in the -- in the orders

1 and have it brought into the rule itself, creating
2 more transparency.

3 So with that, I thank you for your time, and I
4 hope you will consider those two options.

5 CHAIRMAN FAY: Thank you, Mr. Garner.

6 Next we will have Healthy -- Christian Wagley
7 with Healthy Gulf, and then Sarah Setta, who is a
8 customer of one of the utilities.

9 So Christian Wagley, or Wagley, am I
10 pronouncing that right? He doesn't seem to be
11 here.

12 With that, Sarah Setta? No.

13 Okay. With that, we will move to Allison
14 Kvien with Vote Solar. If you would just make sure
15 your mic, you have a green light there with your
16 button, the mic so we can hear you.

17 MS. KVIEN: Thank you.

18 CHAIRMAN FAY: Got you. And I probably
19 butchered that. Pronounce your last name for me.

20 MS. KVIEN: Last name is pronounced queen.

21 CHAIRMAN FAY: Queen, okay. Great. Thank
22 you. You are recognized.

23 MS. KVIEN: Thank you.

24 I am a Southeast Regulatory Director with Vote
25 Solar. Thank you for the opportunity to provide

1 comments here today on the Commission's
2 consideration of revisions to its FEECA rule.

3 Utilities often come to this commission to ask
4 it to raise rates, but today the Commission has a
5 really rare opportunity to implement revisions to
6 the FEECA rule that would actually result in
7 lowering electric bills, and helping struggling
8 Florida families.

9 Florida has the most cost-effective energy
10 efficiency potential of any state in the country,
11 with EPRI calculating that only eight percent of
12 its potential is currently being captured by
13 existing programs. It would be a shame not to tap
14 into that potential. But without further reform to
15 FEECA, this FEECA rule, energy bill savings from
16 energy efficiency measures won't be realized, and
17 will leave struggling families' hard earned dollars
18 on the table.

19 Vote Solar continues to support the proposed
20 rule language that SACE and Earthjustice filed, but
21 if this commission would like to take action that
22 can help families across the state, we believe that
23 there are three critical measures the Commission
24 should consider taking now.

25 First, like other stakeholders, we believe

1 that adding the utility cost test to the -- to the
2 rule, or the DSM manual, would improve benefits to
3 customers for each utility. The UCT can provide
4 additional cost-effectiveness information to the
5 Commission, which will assist the Commission in
6 determining which goals to adopt and which goals to
7 provide the greatest benefits to customers.

8 Second, we believe that the Commission should
9 end the two-year payback screen. This screen is
10 arbitrary and not justified for determining
11 free-ridership. Florida eliminates many of the
12 most common and cost-effective measures that are
13 included in other utility efficiency programs
14 around the country through the use of this screen.
15 And these -- these measures that are being
16 eliminated could provide substantial benefits to
17 low-income customers in particular. And as SACE
18 filed, eliminating this screen could double
19 cost-effective savings.

20 Third, Vote Solar believes that we should
21 establish minimum low-income goals that are
22 commensurate with the population of low-income
23 customers within a utility's service area. A
24 minimum goal for low-income customers is necessary
25 to ensure fairness to those customers. And this

1 commission has previously expressed that low-income
2 customers should not be forgotten in regards to DSM
3 programs.

4 And just thank you again for the opportunity
5 to provide comments here today.

6 CHAIRMAN FAY: Great. Thank you for being
7 here.

8 Next we have Florida Clinicians for Climate
9 Action, Dr. Ankush Bansal. Good morning,
10 Mr. Bansal. Just make sure you have the button
11 pushed there with the green light so we can hear
12 you.

13 You are recognized.

14 DR. BANSAL: Thank you, Commissioners, for the
15 opportunity to address you today. My name is
16 Dr. Ankush Bansal, Cofounder and Cochair of Florida
17 Clinicians for Climate Action.

18 Energy efficiency programs are a key to make
19 homes more efficient, comfortable and safe for many
20 Florida families. The state's major utilities are
21 a key player in delivering energy efficient
22 programs to customers. Your rule should be framed
23 to encourage the state's largest power companies to
24 propose meaningful goals and provide robust energy
25 efficiency programs to customers.

1 I understand that Florida's utilities have
2 underperformed historically relative to other
3 states on capturing energy savings from utility
4 efficiency programs, and that your rule for setting
5 energy efficiency goals has not been updated in 30
6 years. That must change. The Commission must
7 bring its rule up to standard industry practice in
8 order to produce better economic, environmental and
9 health outcomes for the state and its citizens.
10 There are a number of reasons to do so.

11 First, it makes good economic sense. It's
12 been established that energy efficiency is cheap --
13 is the cheapest resource to a utility to meet
14 future demand. The cheapest kilowatt hour is, of
15 course, the one that's never used. Energy
16 efficiency is a low cost resource. Your rule
17 should promote it, not penalize it. Energy
18 efficiency not only helps reduce bills for
19 customers that participate in energy efficiency
20 programs, but for all customers, it reduces the
21 amount of fossil fuels that have to be burned by a
22 utility to generate electricity. Reducing the
23 state's reliance on priced volatile fossil fuels is
24 key to moderating customers bill. Moreover,
25 reducing reliance on fossil fuels is key to

1 addressing the climate crisis.

2 Using energy smarter is the cheapest, quickest
3 and cleanest resource to reduce dangerous emissions
4 from the electricity. The air pollution caused by
5 burning fossil fuels is not only warming the
6 planet, but it's also contributing to incidences of
7 cancer, chronic lung disease, heart disease and
8 stroke.

9 Additionally, energy efficiency measures such
10 as AC upgrades, attic insulation, fixing leaking
11 windows and doors, et cetera, support good physical
12 and mental health by creating healthy indoor living
13 environments with healthy air temperatures,
14 humidity levels, noise levels and improved air
15 quality. Yet many hard-working families in older
16 housing stock simply don't have the information or
17 the resources to implement these measures on their
18 own. Without adequate access to efficiency
19 programs to implement even basic measures, these
20 families may be forced to endure indoor
21 temperatures that are unhealthy both physically and
22 mentally.

23 Therefore, we urge the Commission to revise
24 its rule that removes roadblocks to setting energy
25 efficiency goals that are consistent with leading

1 states, and that scales up programs directed to
2 energy burdened families. Doing so will lead to
3 lower bills, cleaner air and healthier homes for
4 Florida's families and lay the groundwork for a
5 cleaner energy future.

6 Thank you.

7 CHAIRMAN FAY: Great. Thank you.

8 Next we have Michael Weiss with Advanced
9 Energy United. Is Mr. Weiss here?

10 MS. HELTON: Mr. Chairman, I think he was just
11 available to answer questions.

12 CHAIRMAN FAY: Oh, okay. Great.

13 All right. With that, then let's see who we
14 have left on our list. Mr. Cox from Florida Power
15 & Light.

16 Mr. Cox, you are recognized.

17 MR. COX: Good morning, Chairman Fay and
18 Commissioners. Good to see up. Thank you for the
19 opportunity to address you today.

20 And I want to start off by -- on behalf of FPL
21 thanking, applauding the staff for their thorough
22 and their diligent work in bringing this proposed
23 rule for your consideration today. They have
24 crafted what we think is, and refined, what is a
25 beneficial program before you -- proposed rule

1 before you today. And that's after three rounds of
2 workshops and numerous, numerous comments received
3 since the rulemaking began.

4 The proposed rule would provide improvements
5 to the process for establishing goals, programs and
6 plans, and thereby allowing utilities, like FPL, to
7 bring innovative programs to our customers while
8 continuing to keep rates low, and that includes a
9 consolidation of the processes establishing the
10 same goals, programs and plans, which will make the
11 overall goal setting more efficient by utilizing
12 DSM programs, and not just measures, as you
13 establish DSM goals for utilities.

14 And through staff's refinement of the proposed
15 rule over the time this rulemaking proceeding has
16 gone on, staff has made a number of additions,
17 again, that we think will provide you with a better
18 and more full picture of the program costs involved
19 as you determine the appropriate goals for
20 utilities. That includes requiring utilities to
21 provide additional information in terms of
22 projected costs for the programs that would be used
23 to meet the proposed DSM goals, as well as the
24 estimated annual demand and energy savings for
25 these potential DSM programs.

1 Staff has also wisely sought to ensure that
2 you have flexibility in making your DSM goal
3 determinations by rejecting a number of rule
4 amendment proposals, all of which, both
5 individually and collectively, would result in a
6 less efficient goal setting process and ultimately
7 higher rates for all utilities customers.

8 You have heard discussion today of adding the
9 UTC test, and it's been admitted that is
10 essentially the RIM test without consideration of
11 revenue requirements. Again, we believe
12 consideration of revenue requirements is important,
13 and that the addition of this test really would add
14 nothing, or no or new you information to the
15 process.

16 You also heard about eliminating time-based
17 screens, the two-year payback. Again, the current
18 rule and the proposed rule both require the
19 Commission to address free riders. The Commission
20 is required under FEECA to address the impact on
21 the entire general body of customers, as well as to
22 ensure that there are no undue impacts on costs
23 passed on to customers.

24 So allowing you flexibility to address
25 free-ridership without eliminating a time-based

1 restriction seems unwise, and something that you
2 would not want to take that flexibility away from
3 you to consider.

4 You have also heard about addressing
5 specifically low-income customers. And FPL has
6 long supported programs that are available to
7 low-income customers. We plan to continue that
8 consistent with the Commission's direction, but we
9 don't believe that adding anything to requirements
10 for low-income that would have the impact of
11 putting additional cost burdens on nonparticipating
12 low-income customers should be used.

13 And last, I will just mention that I think I
14 heard earlier that the Commission's charge was to
15 fix FEECA. I don't believe that's the case. I
16 believe FEECA is the law, and as you know, you
17 implement it, so there is nothing to be fixed in
18 FEECA. It's more about seeing what you can do to
19 help utilities hopefully bring more innovative DSM
20 programs to our customers, giving yourselves
21 flexibility to do that, and ensuring at the same
22 time there are no undue impacts on the costs passed
23 on to customers.

24 And thank you for the opportunity to provide
25 these comments to you today. Thank you.

1 CHAIRMAN FAY: Great. Thank you, Mr. Cox.

2 And I know that we have representatives from
3 Duke, TECO and FPUC here if questions are needed.
4 I just want to make sure you don't have any
5 comments otherwise? Okay.

6 All right. Commissioners, with that, that
7 will conclude our participant section of Item No.
8 2. I will open the item up for discussion,
9 questions of our staff, or debate at this time.

10 So seeing no questions or debate, I have a few
11 comments, and then maybe just a validation from
12 staff as to some of what's been asked here -- to
13 what some of the participants have asked here
14 today.

15 So the first is I agree with most of the
16 presenters' comments related to our staff working
17 on this. I think everybody recognized there needed
18 to be some progress with these rules and how we
19 implement that statute. And three workshops over
20 two years is something that is a heavy lift, and so
21 I appreciate those folks doing that.

22 I do also agree with Mr. Cox's comments, that
23 it's our job to implement that statute, and we have
24 those confines, those guardrails that we need to
25 implement these things into. But with that said, I

1 don't want the Commission to be in the posture
2 again where we have consideration of only zeros,
3 and that's the only option for us going forward.

4 So I do have a few comments on what has been
5 presented on the Commission's plan, and so I will
6 make those comments, and then, Mr. Rubottom, I just
7 have a question for you on kind of the posture we
8 would be in to potentially make a change to the
9 rule.

10 So the first is the low-income component that
11 was discussed by some of the participants here
12 today. I do agree with the recommendations
13 section, which I believe Mr. Garner had mentioned,
14 it's on page six and seven. I actually believe
15 it's on the end of page seven and the beginning of
16 page eight, but the idea is the same, in that we
17 allow the utilities to provide some of those
18 low-income components within the bigger residential
19 programs and plans that are put before us, and so I
20 don't believe a prohibition on that component is
21 necessary, and I agree with the recommendation that
22 we could allow that.

23 The other is the free rider component. I
24 think there is a lot of discussion about that
25 threshold and where those years should sit. I

1 think one of the key components is that in 366.82
2 there is that specific language that relates to us
3 implementing that section of the free rider in our
4 interpretation and implementation of the rules, and
5 so I think that's critical that it needs to be in
6 there.

7 I don't know what the perfect timeline is, and
8 I think that's been debated by the various
9 participants as to where that threshold is. But I
10 do think that we need to continue to have some
11 cutoff in there to validate the free rider program.

12 And the last part is probably what I read the
13 most out of the comments submitted to the
14 Commission, and heard the most here from the
15 comments today, and it's the inclusion of some form
16 of another test in evaluating the numbers that we
17 get. And so I recognized, as presented by some of
18 the parties, that there is this utility cost test
19 referred to as the UCT test that potentially would
20 provide some additional information, but my concern
21 is -- and this is the question I have for you, Mr.
22 Rubottom -- is if we go into sort of a definition
23 component of that rule. The current test that we
24 utilize, the TRC, the Participant and the RIM test,
25 are all included in the manual, the '91 manual

1 that's referenced in 25-17.008. If we were to move
2 forward with something like that, would we -- we
3 would at least need to define that test in the rule
4 at a minimum, I would presume, if not include it in
5 the manual; is that correct?

6 MR. RUBOTTOM: We believe that the Commission
7 would need to provide sufficient guidelines to
8 implement and enforce what -- what you would be
9 requiring the utilities to submit. And so there
10 may be -- the Commission has flexibility in how it
11 does that, and -- but I think where that definition
12 falls, it depends.

13 Certainly, all of our other definitions are in
14 the companion rule, in the cost-effectiveness
15 manual, and so the Commission could open that rule
16 and define it there to make things consistent. The
17 Commission could provide some -- some guidelines in
18 this rule that's under consideration. But in terms
19 of what that would need to look like to give
20 sufficient guidelines to utilities, I would defer
21 to technical staff on what, you know, what -- how
22 robust that definition would need to be. And I
23 hope that answers your question.

24 CHAIRMAN FAY: It does, and then maybe if --
25 maybe the right person would be Mark for this

1 question.

2 Just -- so then, from a timeline perspective,
3 if the Commission decided that we wanted to define
4 that and include it in 008 or in the manual, we
5 would be re-- we would be initiating another
6 process essentially under that rule. I know we've
7 got these goals coming to us at some point, and we
8 at least need to provide some direction to the
9 utilities as to what they need to or don't need to
10 submit. What's our time -- what would be our
11 timeline for potentially having some of that
12 information coming into the Commission?

13 MR. FUTRELL: Mr. Chairman, the statute
14 requires the Commission to review the goals at
15 least every five years. So they were last
16 established in late 2019, so we are looking at late
17 '24 for the Commission to again review goals and
18 reestablish them.

19 So backing up from there, we usually have a
20 full hearing process that would typically require a
21 hearing in approximately August of 2024, and to
22 allow sufficient time for the parties to review the
23 information, provide testimony, discovery, prepare
24 for the hearing, the utilities would typically file
25 their proposed goals and information, to the extent

1 required by this actual rule, approximately in
2 March or April of 2024.

3 Backing up from that date, this is typically a
4 work -- very work-intensive process for the
5 utilities to do the technical potential, looking at
6 all the potential feasible measures, running their
7 analyses that they do to analyze each measure, and
8 then if this particular concept of a rule were to
9 be adopted, and do some additional analyses to put
10 into the file, and it comes in in approximately the
11 April 2024 timeline.

12 So that is kind of a sense of a preview of the
13 process and the timeline that's required.

14 CHAIRMAN FAY: Okay.

15 MR. FUTRELL: And so -- so that's why I think
16 there is, at least on staff's desires, is to give
17 some guidance on the rules of the road as soon as
18 reasonably possible.

19 CHAIRMAN FAY: Okay. Great.

20 And then -- yeah, to your point on that
21 timeline, Mr. Rubottom, if we initiated some other
22 rulemaking, we would have a minimum, of course, of
23 a few months. But, I mean, I think we could -- we
24 would interpret that that would be longer, and my
25 concern would be that we don't have that completed

1 by the time that the utilities would submit that
2 goal information to us for that.

3 Ms. Cibula, do you have something to add?

4 MS. CIBULA: I would estimate it would take at
5 least six months to a year to open another rule and
6 go through the rulemaking process on another rule.

7 CHAIRMAN FAY: Okay. Great. Thank you for
8 that.

9 So, Commissioners, with that, I just -- I
10 maybe have one comment and then I am open to a
11 discussion or debate on how we proceed.

12 I thought the recommendation touched on a
13 number of issues, and I agreed with pretty much all
14 of them. I do have concerns about us being back in
15 the goal setting process with zeros in front of us.
16 And as much as we hear lots of criticisms about
17 FEECA and its current structure, it is the law, and
18 there is clearly an intent for us to review and
19 acknowledge and approve some goal setting measures
20 for the utilities as it relates to conservation.

21 And so I would be open to adding additional
22 language in the rule that essentially clarifies --
23 and once again, the UCT test seems to have
24 different definitions depending on the comments
25 from different parties, but I would be open to

1 allowing the utilities to submit the information
2 that they submit under the RIM and Participant
3 test, and the TRC and the Participant test, and
4 just submit basically that same information under
5 the RIM and the Participant with the lost revenue
6 component not included in that calculation. And so
7 we would essentially have three versions of various
8 tests to review and determine if some benefit
9 outweigh the costs or vice-versa.

10 I know that that wouldn't mandate anything
11 from our decision-making process. We would still
12 review all of those before we set those goals, but
13 I think the point of this, from a transparency and
14 information perspective, was to get information
15 that would allow us to make that decision down the
16 road. So I think we could probably do that without
17 initiating the other rules, because as Mr. Rubottom
18 and Ms. Cibula pointed out, the timeline, I just
19 don't see how we could initiate that and still get
20 these done in the time that the Legislature is
21 requiring us to do them, and so I would be open for
22 any comments or debate on that. And I do have
23 some -- some language, but I essentially can
24 clarify what that would include if the Commission
25 had an appetite to do so.

1 So with that, are there any questions,
2 comments or discussion on that?

3 Commissioner Clark.

4 COMMISSIONER CLARK: Yeah, Mr. Chairman. I
5 would just pose a question to staff, just in
6 general terms.

7 Adding these additional tests to the
8 requirement of the utilities, what does that do to
9 the Commission in terms of binding us when it comes
10 to a decision on the viability of a program?

11 MR. FUTRELL: Commissioner Clark, I don't
12 believe it binds the Commission. I think it gives
13 them an additional perspective. Each of these
14 tests is designed to give the Commission a sense of
15 the quantitative costs and benefits of conservation
16 from different perspectives. This test that we are
17 discussing would give it from the perspective of
18 the utility. And so it would be an additional
19 piece of information for the Commission to consider
20 as it analyzes these items.

21 One thing that I -- just a quick response
22 about the concern about zero goals from the last
23 proceeding. We -- staff feels relatively confident
24 that the change here of basing goals on program
25 savings is the key to minimizing the potential for

1 zero goals to be proposed in the future, regardless
2 of the tests that are relied upon. So that's the
3 key part of this that we think will align -- better
4 align programs and goals, and then achievements
5 from programs in the future.

6 COMMISSIONER CLARK: So I just want to clarify
7 that the Commission still has the right, the
8 authority to adopt a program based on if it
9 decides, for example, that the RIM test is the most
10 logical test to a lie to a particular program, that
11 we can accept or deny that program or goal based on
12 did it pass the RIM test --

13 MR. FUTRELL: Yes, sir.

14 COMMISSIONER CLARK: -- as opposed -- no
15 matter how the other programs -- I know we are kind
16 of combining and saying, submit the RIM, you submit
17 the UTC or the TRC test, but we don't have to give
18 that any additional weight or consideration, is
19 that correct?

20 MR. FUTRELL: That's correct, sir. This rule
21 does not in any way bind your authority to use your
22 description. It's intended to give you more
23 information in the goal setting process than past
24 commissions have had before it.

25 COMMISSIONER CLARK: Thank you.

1 Mr. Chairman, one question, I think I would
2 apply this to the utility company. It was asked of
3 me and I couldn't give the answer other than
4 theoretically.

5 What additional cost would the utilities incur
6 by running the additional models beyond the RIM
7 test? Is there a significant cost? I didn't think
8 there would be, but I would love to know that
9 answer.

10 CHAIRMAN FAY: You want to start with -- Mr.
11 Cox, do you want to --

12 COMMISSIONER CLARK: I think a significant or
13 insignificant kind of response would be sufficient
14 for me, Mr. Chairman.

15 MR. COX: Commissioner Clark, we can give you
16 a general answer to that. We don't have specific
17 numbers, but I think our manager of DSM regulatory,
18 Mr. John Floyd is with me, and he can give you a
19 feel for that, but I do know that it would add
20 additional costs for sure, and time to the process,
21 but I will let Mr. Floyd add anything that he has
22 to that.

23 CHAIRMAN FAY: Yeah. You don't have to -- we
24 can have Mr. Floyd go to this mic if you prefer so
25 you don't have to move your seat. That's fine.

1 MR. FLOYD: Thank you, Commissioners.

2 CHAIRMAN FAY: You are recognized.

3 MR. FLETCHER: John Floyd with the Gulf -- I'm
4 sorry, FPL.

5 So adding additional -- an additional
6 cost-effectiveness test into the process
7 essentially becomes another scenario that we have
8 to evaluate. So while I can't give you a
9 quantitative figure on what that would cost, it
10 certainly adds a great deal of work to the process.
11 And then it just becomes another scenario that has
12 to be evaluated for the cost-effectiveness of
13 measures, and then again, the cost-effectiveness of
14 programs and combinations of those measures. So it
15 is certainly a significant effort to add that
16 additional scenario.

17 CHAIRMAN FAY: Great. And, Commissioner
18 Clark, do you have follow-up?

19 And if I could just ask for clarification on
20 that. So if, essentially, you had the proposed two
21 tests that are run with the RIM/Participant and the
22 TRC/Participant, if the utility were to run that
23 same comparison where essentially you look at one
24 number on the left side and one on the right and
25 determine if it's cost-effective, if the utility

1 were to essentially zero out one component in that
2 -- in that RIM test, would that -- I would presume
3 you would just run those calculations with the zero
4 in that -- in that component and be able to say if
5 it meets or exceeds the cost-effectiveness on that,
6 but correct me if I am wrong on that.

7 MR. FLOYD: I would -- I would say that is
8 generally the case. But, again, the process of
9 developing potential programs involves, you know, a
10 lot of screening of cost-effectiveness along the
11 way. And so every additional criteria that we put
12 on that process just creates, you know, more
13 scenarios to evaluate, more complexity in the
14 process. But at the end, once we have programs
15 that, you know, would be packaged under each of the
16 different scenarios, then those could be
17 reevaluated perhaps, you know, with some different
18 assumptions with them. But it certainly would --
19 would add some effort to the process.

20 CHAIRMAN FAY: Yeah. Under the proposed idea
21 of the RIM, excluding the lost revenue, would you
22 need additional information to provide that result?
23 Is there something else you would need?

24 MR. FLOYD: I'm -- need in the --

25 CHAIRMAN FAY: In other words, if that one

1 part is zeroed out, would you still be able to run
2 the calculation without any additional information?
3 Do you already have what you would need to return
4 that?

5 MR. FLOYD: It might require some changing of
6 the models that we use, because a lot of that is
7 built into the models, but -- and I can't speak
8 specifically to that, but that would be the only
9 additional information I think we would need.

10 CHAIRMAN FAY: Okay. Great.

11 Did Duke or TECO have anything to add to
12 Commissioner Clark's question? Okay.

13 MS. CIBULA: Just to dovetail into that, the
14 SERC that we did reflects the rule that we are
15 recommending to propose, and if we change the rule,
16 it might necessitate changing the SERC. So we
17 might need to, like, get more information to change
18 the SERC if we change the proposed rule.

19 CHAIRMAN FAY: Okay. And just for
20 clarification on that, to your point, if we decided
21 we wanted to apply different -- a third rule, or
22 some version of that rule, if there was additional
23 information that the utilities had to produce, or
24 maybe even just additional models, it has the
25 potential of triggering that SERC exceeding the \$1

1 million --

2 MS. CIBULA: Correct.

3 CHAIRMAN FAY: -- ratification requirement, is
4 that your point?

5 MS. CIBULA: Correct.

6 CHAIRMAN FAY: Okay. Great.

7 Commissioners, any other questions or comments
8 on this item?

9 I will take any debate.

10 Okay. Commissioners, I will take up a motion
11 on Item No. 2.

12 COMMISSIONER PASSIDOMO: I am sorry, Mr.
13 Chairman, could I get some clarification?

14 CHAIRMAN FAY: Commissioner Passidomo, go
15 ahead.

16 COMMISSIONER PASSIDOMO: Did you propose a
17 motion there to include any additional test, or
18 this was just a discussion?

19 CHAIRMAN FAY: Just discussion, stating my
20 position to see if there was either agreement or
21 disagreement by the Commission, yeah. Which I
22 don't still don't know if there is agreement or
23 disagreement by the Commission, but I am happy to
24 take up a motion.

25 COMMISSIONER LA ROSA: Chairman, I will take a

1 stab at it. And it is a good discussion, and I am
2 listening closely and intently, but I will motion
3 to approve staff's recommendation on this item.

4 CHAIRMAN FAY: Okay. We have a motion. Do we
5 have a second?

6 COMMISSIONER CLARK: I will second if you will
7 give me -- let me have a comment.

8 CHAIRMAN FAY: Yeah, go ahead.

9 COMMISSIONER CLARK: I will second the motion.
10 I think everybody sees the hesitation and
11 reservation that I think we all feel in even
12 tackling this rule. I think we all have concerns,
13 probably from very different perspectives about our
14 position on the rule. I think that the proposal
15 that staff has made is fair.

16 And my -- again, my compliments as well. I
17 think you did a fantastic job. It actually -- the
18 rule goes further than I would have gone if I were
19 writing it myself, but I certainly can appreciate
20 the work staff did, and I appreciate the
21 perspectives that are being brought in here, and I
22 am okay with supporting the additional test and the
23 changes to the rule. I don't love it, but like it
24 enough to second it.

25 Thank you, Mr. Chairman.

1 CHAIRMAN FAY: Okay. With that, we have a
2 motion and a second.

3 All that approve say aye.

4 (Chorus of ayes.)

5 CHAIRMAN FAY: I will be opposing that. With
6 that -- you will be opposing?

7 COMMISSIONER GRAHAM: Opposing.

8 CHAIRMAN FAY: Okay. That's a three to two
9 vote, show Item No. 2 passing. Thank you.

10 (Agenda item concluded.)

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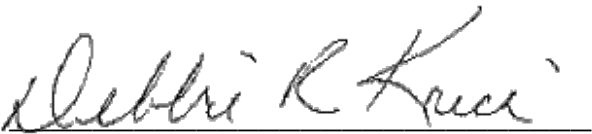
STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, Court Reporter, do hereby
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DATED this 20th day of March, 2023.



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