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September 24, 2014

VIA: ELECTRONIC FILING

Ms. Carlotta S. Stauffer
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Conservation Cost Recovery Clause
FPSC Docket No. 140002-EG

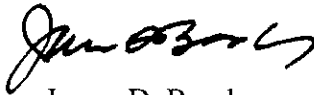
Dear Ms. Stauffer:

Attached for filing in the above docket on behalf of Tampa Electric Company is the original of each of the following:

1. Rebuttal Testimony and Exhibit (MRR-2) of Mark R. Roche.
2. Rebuttal Testimony and Exhibit (JTD-1) of J. Terry Deason.

Thank you for your assistance in connection with this matter.

Sincerely,



James D. Beasley

JDB/pp
Attachment

cc: All Parties of Record (w/attachment)



BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 140002-EG

IN RE: CONSERVATION COST RECOVERY CLAUSE

REBUTTAL TESTIMONY AND EXHIBIT

OF

MARK R. ROCHE

FILED: SEPTEMBER 24, 2014

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **PREPARED REBUTTAL TESTIMONY**

3 **OF**

4 **MARK R. ROCHE**

5
6 **Q.** Please state your name, address, occupation and employer.

7
8 **A.** My name is Mark R. Roche. My business address is 702
9 North Franklin Street, Tampa, Florida 33602. I am
10 employed by Tampa Electric Company ("Tampa Electric" or
11 "the company") as Administrator, Regulatory Rates in the
12 Regulatory Affairs Department.

13
14 **Q.** Are you the same Mark R. Roche who submitted prepared
15 direct testimony in this proceeding?

16
17 **A.** Yes.

18
19 **Q.** What is the purpose of your rebuttal testimony?

20
21 **A.** The purpose of my rebuttal testimony is to address the
22 recommendations made by Mr. Jeffrey Pollock, testifying on
23 behalf of the Florida Industrial Power Users Group
24 ("FIPUG") and Mr. Kenneth E. Baker and Mr. Steve W.
25 Chriss, testifying on behalf of Wal-Mart Stores East, LP

1 and Sam's East, which I refer to collectively as the
2 "intervenor witnesses".

3

4 **Q.** What is the subject of your rebuttal testimony?

5

6 **A.** I will discuss the rate impact and technical implications
7 of the intervenor witnesses' proposals on Tampa Electric
8 and its customers.

9

10 **Q.** Do you believe the approach currently used by Tampa
11 Electric and approved by the Florida Public Service
12 Commission ("Commission") to allocate conservation costs
13 is fair to all customers?

14

15 **A.** Yes. The current allocation method is fair to all Tampa
16 Electric customers and benefits all customers equally
17 without imposing a subsidy from one class of customers to
18 another. Additionally, the current method is transparent
19 and has accountability to not only the Commission but
20 also to all customers.

21

22 **Q.** Does the intervenor witnesses' testimony provide
23 accountability to the Commission and to all Tampa
24 Electric's customers in what they are proposing?

25

1 **A.** No. Tampa Electric's DSM programs are measurable and
2 verifiable. The company only offers programs that meet
3 the Commission's cost effectiveness test. Once approved,
4 the way the company implements the programs is subject to
5 significant reporting requirements and periodic audits by
6 the staff. The company cannot change a program approved
7 by the Commission without the Commission's approval. All
8 of these measures provide a level of accountability that
9 enhances the value and legitimacy of the programs.

10
11 **Q.** Have the intervenors proposed opt-out plans with the kind
12 of protections and accountability measure described
13 above?

14
15 **A.** No. In fact, in some respects, the intervenor witnesses
16 have proposed that the Commission adopt an opt-out
17 concept, but have not proposed any opt-out program with
18 enough detail or specificity to justify Commission
19 approval. The ideas for opting out advanced by the
20 intervenors do not include a clear description of the
21 opt-out program or necessary details showing how the
22 proposal would be implemented, operated, measured,
23 verified, governed, or how they would actually work.

24
25 **Q.** If an opt-out provision were approved by the Commission,

1 would the opt-out by some select customers adversely
2 affect the rate recovery from all other customers?

3
4 **A.** Yes. An opt-out provision would adversely affect
5 customers who cannot opt-out by shifting costs to them
6 that would not be recovered from the customers who are
7 opting out. An opt-out provision as proposed by the
8 intervenor witnesses would exempt certain customers from
9 sharing in the costs of investments in energy efficiency
10 which benefit all customers. Since the current DSM goals
11 are proposed to be based upon the Rate Impact Measure
12 ("RIM") cost effectiveness test, this ensures that the
13 programs implemented by Tampa Electric increase the
14 overall energy efficiency in its service area and lowers
15 electric rates for all customers. Allowing an opt-out
16 provision would unfairly shift the costs for energy
17 efficiency investments that currently benefit all
18 customers to just those customers not participating in
19 the opt-out provision, while allowing the benefits to
20 apply to all customers including those that opt-out.

21
22 **Q.** Can you quantify the expected financial burden Tampa
23 Electric's customers would incur if larger non-
24 residential customers are permitted to opt-out of energy
25 conservation measures through the ECCR clause?

1 **A.** Yes. Tampa Electric was asked to provide similar
2 information in response to discovery it received from the
3 Office of Public Counsel ("OPC") in this docket.
4 Specifically, Tampa Electric was asked to project the
5 impact on residential customers on both a total revenue
6 requirement basis (i.e., costs that will be shifted to
7 the remaining customers who would be left to pay the ECCR
8 charge), and on a per 1,000 kWh/month basis, under three
9 separate hypothetical scenarios whereby the largest (by
10 revenue in each tier) non-residential customers
11 comprising 10 percent, 20 percent, and 30 percent of non-
12 residential revenues would be eligible for and take
13 advantage of such an option.

14
15 **Q.** Did you perform such an analysis for the OPC?

16
17 **A.** Yes.

18
19 **Q.** What were the results of your analysis?

20
21 **A.** The results showed that costs would be shifted to all
22 other non-eligible and eligible non-participating
23 customers. In each hypothetical scenario presented,
24 dollars shifted from the qualifying opt-out customers to
25 all other non-eligible and eligible non-participating

1 customers regardless of rate class. The shift in dollars
2 was between \$1.6 and \$5.1 million depending on the
3 scenario. The residential customers would see the brunt
4 of this cost shift which shifted between \$0.7 and \$2.4
5 million to them.

6
7 **Q.** What did the analysis show as the ECCR charge impact on a
8 1,000 kWh usage residential customer?

9
10 **A.** On a 1,000 kWh usage basis, the residential ECCR charge
11 would increase from a current projected amount for 2015
12 of \$2.47, to between \$2.56 and \$2.74 which equates to a
13 3.6 percent and 10.9 percent increase depending on the
14 scenario.

15
16 **Q.** Did the analysis show an impact to all other rate
17 classes?

18
19 **A.** Yes. The opt-out provision analysis does show that it
20 will shift costs to all other non-eligible rate classes.
21 It also showed that costs would shift onto customers who
22 do not participate or qualify for an opt-out provision
23 but are within an eligible rate class.

24
25 **Q.** Do you have your analysis that was provided to OPC?

1 **A.** Yes. I have attached Exhibit MRR-2 in tabular form which
2 shows the impact of each scenario on the cost recovery
3 factors for the 2015 January through December cost
4 recovery period. I have also included adjusting for
5 1,000 kWh usage to show the financial impact to
6 residential customers, and I compare these new values to
7 the current projected values for 2015 shown in Exhibit
8 MRR-1, schedule C-1, Page 1 of 1 which was filed on
9 August 27, 2014.

10

11 **Q.** Do you believe the results of your analysis provide a
12 fair and accurate projection of the potential economic
13 impact of the intervenor witnesses' opt-out proposal on
14 Tampa Electric's residential customers?

15

16 **A.** Yes. The analysis accurately shows that an opt-out
17 provision would create subsidies by shifting costs from
18 those that qualify to those that do not or cannot. If an
19 opt-out provision is allowed, it will cause undue
20 discrimination by shifting costs between customers.

21

22 **Q.** If the Commission chooses to set DSM goals using a cost
23 effectiveness test other than RIM, would this make an
24 opt-out provision more reasonable?

25

1 **A.** No. An opt-out provision will simply favor one group of
2 customers over another by instituting subsidies
3 regardless of what cost effective test is chosen. In
4 fact, any cost-effectiveness test other than the RIM test
5 will further exacerbate the subsidies already created by
6 an opt-out provision. In that situation, a
7 nonparticipating non-opt-out customer would incur two
8 levels of subsidies, the first due to the opt-out
9 provision, and the second from the use of a cost
10 effectiveness test other than the RIM test. This
11 potential problem can be avoided by rejecting the
12 intervenor witnesses' opt-out proposal and maintaining
13 the status quo. In doing so, the Commission will
14 continue to discharge its statutory duty to minimize
15 undue discrimination between rate classes.

16
17 **Q.** Do you agree with Mr. Pollock's statement that utility
18 funded energy efficiency programs are fundamentally
19 unfair?

20
21 **A.** No. Tampa Electric only uses energy efficiency programs
22 that are cost effective and approved by the Commission.
23 The benefits of these programs accrue to all customers,
24 including those that have chosen to participate and to
25 those that have not. Mr. Pollock's testimony is

1 internally inconsistent because first he states that
2 shifting the costs of these cost effective programs to a
3 group that is not participating is unfair, yet at the
4 same time he fully supports allowing large energy and
5 demand customers to be able to opt-out of paying for
6 these cost effective programs, thus shifting the
7 financial burden onto all other ineligible customers
8 while the benefits produced by the programs are received
9 by all customers.

10
11 **Q.** Do you agree with Mr. Pollock's statement that customers
12 should only pay for the services they receive?

13
14 **A.** No. Mr. Pollock's statement misses the point that the
15 Commission's approved conservation programs benefits all
16 customers. The purpose of the ECCR clause is to recover
17 the costs the utility incurs for actions that it takes to
18 deliver cost-effective DSM programs which provide
19 benefits to all customers. Mr. Pollock simply wants the
20 opt-out customers to receive the benefits of conservation
21 programs without paying for them. Applying Mr. Pollock's
22 logic to his clients would suggest that Tampa Electric
23 should only pay a load management, standby generator
24 credit, demand response, or GSLM incentive when the
25 participating customer is called upon to shed load.

1 That, of course, is not how it works. Tampa Electric
2 compensates these customers with incentives to be willing
3 to shed load because their willingness to do so yields
4 benefits to the company and its customers, including the
5 benefit of delaying or not having to build a power plant.
6

7 **Q.** Do the intervenor witnesses properly recognize in their
8 request how energy is factored into Tampa Electric's
9 integrated resource planning ("IRP") process?
10

11 **A.** I did not see any recognition of that in their testimony.
12 Their testimony is that large demand customers or demand
13 response, GSLM, or load management customers do not
14 benefit from energy efficiency programs and thus they
15 should be permitted to opt-out from paying for them. This
16 is not true. Energy efficiency programs clearly provide
17 both energy savings and demand reduction. Energy savings
18 and demand reduction are included in the IRP process. In
19 the IRP process, the demand reduction component is used
20 to determine whether to eliminate or defer the need for a
21 new power plant. The energy savings component is used to
22 influence the specific type of power plant to be built
23 such as a peaking unit versus a base load unit. This
24 fact seems to be lost in the intervenor witnesses'
25 testimony. Regardless of their categorization of DSM

1 programs, both types produce both energy and demand
2 savings which clearly have a beneficial and financial
3 impact on the future rates for all customers, including
4 those for whom the intervenor witnesses are proposing to
5 provide an opt-out provision.

6
7 **Q.** What are some of the concerns in Mr. Pollock's testimony?

8
9 **A.** Mr. Pollock states that that not all Tampa Electric
10 customers are eligible for the company's conservation
11 programs, when in fact, all customers are eligible to
12 participate in one or more of the company's Commission
13 approved DSM programs. Mr. Pollock also states that the
14 conservation clause only benefits some rate payers, when
15 in fact, Mr. Brubaker, a prior expert witness representing
16 FIPUG, testified and acknowledged that to the extent
17 conservation efforts succeed in obviating the need for
18 expensive new plants, all customers will benefit¹.

19
20 **Q.** What are some of the concerns in Mr. Baker's and Mr.
21 Chriss's testimony?

22
23 **A.** Mr. Baker's and Mr. Chriss's testimony fails to state the
24 added transaction costs that this proposed opt-out
25 provision would cause. Their collective testimony

¹ Order 9974, Docket No. 810050-PU, Issued April 24, 1981.

1 contradicts the Commission rules requiring any program
2 savings to be measurable, monitorable, and verifiable.
3 Mr. Baker states that the programs Wal-Mart implements are
4 cost effective, yet his testimony does not explain the
5 cost effective measurement test used by his company.
6 Thus, if large customers were given an opt-out provision
7 as he proposes, the manner of measuring cost effectiveness
8 for any measures or programs that customers might
9 implement would be at the sole discretion of that
10 individual customer. This sole discretion does not
11 provide assurance or accountability that such a measure or
12 program will benefit all customers and not simply that
13 customer. This further underscores that the proposed opt-
14 out provision should be rejected.

15
16 **Q.** Please summarize your overall assessment of Mr.
17 Pollock's, Mr. Baker's, and Mr. Chriss's testimony and
18 the proposed opt-out provision.

19
20 **A.** Mr. Pollock's, Mr. Baker's and Mr. Chriss's testimony
21 does not recognize the value to all customers of all the
22 approved DSM programs that Tampa Electric currently
23 offers by categorizing the programs as having either
24 energy only or demand only impacts. By attempting to
25 label certain program measures as energy or demand only

1 when each measure has some level of demand savings and
2 some level of energy savings indicates that what they are
3 proposing is unreasonable and self-serving. Their
4 collective testimony fails to specifically demonstrate
5 any sound reason for changing the current cost recovery
6 mechanism and allocation for all conservation programs,
7 does not provide any details as to how their proposal
8 would be implemented, and totally ignores the financial
9 impacts to other non-participants. The Commission is
10 statutorily required to determine whether such plans, the
11 costs necessarily incurred in implementing such plans,
12 and any effect on rates resulting from such
13 implementation are in the public interest. For these many
14 reasons, this proposed opt-out provision should be
15 rejected.

16
17 **Q.** Does this conclude your rebuttal testimony?

18
19 **A.** Yes, it does.
20
21
22
23
24
25

EXHIBIT

OF

MARK R. ROCHE

Impact to Cost Recovery Factors

Rate Schedule	Current 2015 Projection Cost Recovery Factors (cents/kWh)	2015 Cost Recovery Factors with 10% opt-out (cents/kWh)	Percent change Increase current (10% opt-out)	2015 Cost Recovery Factors with 20% opt-out (cents/kWh)	Percent change Increase current (20% opt-out)	2015 Cost Recovery Factors with 30% opt-out (cents/kWh)	Percent change Increase current (30% opt-out)
RS	0.247	0.256	3.64%	0.265	7.29%	0.274	10.93%
GS and TS	0.230	0.239	3.91%	0.248	7.83%	0.257	11.74%
GSD Optional - Secondary	0.200	0.209	4.50%	0.218	9.00%	0.227	13.50%
GSD Optional - Primary	0.198	0.207	4.55%	0.216	9.09%	0.225	13.64%
GSD Optional - Subtransmission	0.196	0.205	4.59%	0.214	9.18%	0.222	13.27%
LS1	0.101	0.110	8.91%	0.119	17.82%	0.128	26.73%
	(Dollars/kW)	(Dollars/kW)		(Dollars/kW)		(Dollars/kW)	
GSD - Secondary	0.85	0.90	5.88%	0.95	11.76%	1.01	18.82%
GSD - Primary	0.85	0.89	4.71%	0.94	10.59%	1.00	17.65%
GSD - Subtransmission	0.84	0.88	4.76%	0.93	10.71%	0.99	17.86%
SBF - Secondary	0.85	0.90	5.88%	0.95	11.76%	1.01	18.82%
SBF - Primary	0.85	0.89	4.71%	0.94	10.59%	1.00	17.65%
SBF - Subtransmission	0.84	0.88	4.76%	0.93	10.71%	0.99	17.86%
IS - Secondary	0.66	0.68	3.03%	0.71	7.58%	0.75	13.64%
IS - Primary	0.66	0.68	3.03%	0.70	6.06%	0.74	12.12%
IS - Subtransmission	0.65	0.67	3.08%	0.70	7.69%	0.73	12.31%

Impact to 1,000 kWh Usage Residential Customer

	Using current 2015 Projection Cost Recovery Factors	Using 2015 Cost Recovery Factors with 10% opt- out	Dollar increase over current on 1,000 kWh usage (10% opt-out)	Using 2015 Cost Recovery Factors with 20% opt- out	Dollar increase over current on 1,000 kWh usage (20% opt-out)	Using 2015 Cost Recovery Factors with 30% opt- out	Dollar increase over current on 1,000 kWh usage (30% opt-out)
Residential Bill Impacts - based upon 1,000 kWh usage	\$2.47	\$2.56	\$0.09	\$2.65	\$0.18	\$2.74	\$0.27

Dollars Shifted to Remaining Participants

Rate Schedule	Current 2015 Projection Cost assigned to Rate Class including current period true up	2015 Projection Cost assigned to Rate Class including current period true up with 10% opt-out	Dollars burdened on Rate Class from opt-out or additional burden on Non-Opt-Out Customers in eligible opt-out rate class	2015 Projection Cost assigned to Rate Class including current period true up with 20% opt-out	Dollars burdened on Rate Class from opt-out or additional burden on Non-Opt-Out Customers in eligible opt-out rate class	2015 Projection Cost assigned to Rate Class including current period true up with 30% opt-out	Dollars burdened on Rate Class from opt-out or additional burden on Non-Opt-Out Customers in eligible opt-out rate class
RS	\$21,510,169	\$22,300,335	\$790,166	\$23,090,501	\$1,580,332	\$23,880,667	\$2,370,498
GS and TS	\$2,406,077	\$2,501,058	\$94,981	\$2,596,040	\$189,963	\$2,691,021	\$284,944
GSD, SBF Standard	\$14,637,966	\$13,805,171	\$663,692	\$12,972,375	\$1,327,384	\$12,139,580	\$1,991,076
GSD Optional	\$714,065	\$746,400	\$32,335	\$778,734	\$64,669	\$811,068	\$97,003
IS	\$1,508,610	\$1,404,220	\$83,193	\$1,299,830	\$166,386	\$1,195,440	\$249,579
LS1	\$218,753	\$238,456	\$19,703	\$258,160	\$39,407	\$277,864	\$59,111
Total Dollars Shifted			\$1,684,070		\$3,368,141		\$5,052,211

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 140002-EG
IN RE: CONSERVATION COST RECOVERY CLAUSE

REBUTTAL TESTIMONY AND EXHIBIT
OF
TERRY DEASON
ON BEHALF OF TAMPA ELECTRIC COMPANY

FILED: SEPTEMBER 24, 2014

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **PREPARED REBUTTAL TESTIMONY**

3 **OF**

4 **TERRY DEASON**

5 **ON BEHALF OF TAMPA ELECTRIC COMPANY**

6
7 **Q.** Please state your name and business address.

8
9 **A.** My name is Terry Deason. My business address is 301 S.
10 Bronough Street, Suite 200, Tallahassee, FL 32301.

11
12 **Q.** By whom are you employed and what position do you hold?

13
14 **A.** I am a Special Consultant for the Radey Law Firm,
15 specializing in the fields of energy, telecommunications,
16 water and wastewater, and public utilities generally.

17
18 **Q.** Have you previously submitted direct testimony in this
19 proceeding?

20
21 **A.** No.

22
23 **Q.** Please describe your educational background and
24 professional experience.

25

1 **A.** I have thirty-seven years of experience in the field of
2 public utility regulation spanning a wide range of
3 responsibilities and roles. I served a total of seven
4 years as a consumer advocate in the Florida Office of
5 Public Counsel (OPC) on two separate occasions. In that
6 role, I testified as an expert witness in numerous rate
7 proceedings before the Florida Public Service Commission
8 (Commission). My tenure of service at OPC was
9 interrupted by six years as Chief Advisor to Florida
10 Public Service Commissioner Gerald L. Gunter. I left OPC
11 as its Chief Regulatory Analyst when I was first
12 appointed to the Commission in 1991. I served as
13 Commissioner on the Commission for sixteen years, serving
14 as its chairman on two separate occasions. Since
15 retiring from the Commission at the end of 2006, I have
16 been providing consulting services and expert testimony
17 on behalf of various clients. These clients have
18 included public service commission advocacy staff and
19 regulated utility companies, before commissions in
20 Arkansas, Florida, Montana, New York and North Dakota.
21 My testimony has addressed various regulatory policy
22 matters, including: regulated income tax policy; storm
23 cost recovery procedures; austerity adjustments;
24 depreciation policy; subsequent year rate adjustments;
25 appropriate capital structure ratios; and prudence

1 determinations for proposed new generating plants and
2 associated transmission facilities. I have also
3 testified before various legislative committees on
4 regulatory policy matters. I hold a Bachelor of Science
5 Degree in Accounting, summa cum laude, and a Master of
6 Accounting, both from Florida State University.

7
8 **Q.** For whom are you appearing as a witness?

9
10 **A.** I am appearing as a witness for Tampa Electric Company.

11
12 **Q.** What is the purpose of your testimony?

13
14 **A.** The purpose of my rebuttal testimony is to respond to the
15 positions and recommendations contained in the testimony
16 of witness Jeffrey Pollock on behalf of the Florida
17 Industrial Power Users Group and witnesses Kenneth E.
18 Baker and Steve W. Chriss on behalf of Wal-Mart Stores
19 East, LP and Sam's East, Inc., which I refer to
20 collectively as the "intervenor witnesses."

21
22 **Q.** Are you sponsoring any rebuttal exhibits?

23
24 **A.** Yes. I am sponsoring Exhibit JTD-1, which is my
25 curriculum vitae.

1 Q. How is your rebuttal testimony organized?

2

3 A. I will first discuss the implications of the intervenor
4 witnesses' proposal from a regulatory policy basis,
5 focusing on the Florida Energy Efficiency and
6 Conservation Act (FEECA) and the Commission's policies
7 implementing FEECA. Second, I will discuss some
8 implementation considerations of their proposal.

9

10 I. Regulatory Policy Implications

11

12 Q. What do the intervenor witnesses recommend?

13

14 A. They recommend a marked change in the way the Commission
15 has historically and consistently recovered energy
16 efficiency related costs through the Energy Conservation
17 Cost Recovery Clause (ECCR). They would have the
18 Commission allow certain large customers to "opt out" of
19 paying their fair share of these costs. Doing so would
20 be contrary to Commission practice, inconsistent with the
21 manner in which conservation costs are incurred pursuant
22 to the Commission's implementation of FECCA, would
23 unfairly burden non-opt out customers with higher rates,
24 perhaps to the point of being unduly discriminatory, and
25 could jeopardize the continued sustainability of cost-

1 effective conservation pursuant to FEECA. In essence,
2 they are looking for preferential treatment at the
3 expense of all other customers.

4

5 **Q.** How has the Commission historically provided for the
6 recovery of energy efficiency related costs through the
7 ECCR?

8

9 **A.** The Commission has provided for recovery by allocating
10 costs on both an energy and a demand basis, as
11 appropriate depending on the type costs being recovered,
12 across all classes of customers and all customers within
13 each class. The Commission has not exempted any
14 customers or allowed customers to "opt out" from paying
15 their allocated portion of conservation costs. The
16 Commission's practice was established early on in its
17 implementation of FEECA and the establishment of the
18 ECCR.

19

20 **Q.** Has the Commission previously considered a similar opt-
21 out proposal?

22

23 **A.** Yes. The intervenor witnesses' proposal is not a new
24 one. As early as 1981, the Commission dealt with this
25 issue when it was first establishing the ECCR. In its

1 Order No. 9974, in Docket No. 810050-PU, the Commission
2 stated:

3 One of the issues addressed during this
4 proceeding was whether the unreimbursed costs
5 should be recovered on a per kilowatt hour (or
6 therm) basis from all customers, or whether an
7 attempt to be made to impose the costs upon
8 certain classes of customers. Mr. Brubaker,
9 who testified on behalf of the Florida
10 Industrial Power Users Group, advocated the
11 latter proposition, on the theory that those
12 individual customers who availed themselves of
13 conservation measures would receive the
14 benefits of lower bills resulting from reduced
15 consumption. However, Mr. Brubaker
16 acknowledged that, to the extent conservation
17 efforts succeed in obviating the need for
18 expensive new plant, all customers will
19 benefit. Because all customers will enjoy the
20 benefits of such cost avoidance we direct that
21 the authorized costs be recovered from all
22 customers on a per kilowatt hour or per them
23 basis. (emphasis added.)

24
25 **Q.** Has the Commission adhered to this reasoning over time?

1 **A.** Yes it has. Although some changes have been made, the
2 Commission has continually recognized that all customers
3 benefit from conservation programs and, therefore, all
4 customers should pay the ECCR costs allocated to them.

5
6 **Q.** Do all customers still enjoy the benefits of cost
7 avoidance from Commission approved conservation programs?

8
9 **A.** Yes. FEECA requires the Commission "to utilize the most
10 efficient and cost-effective demand-side renewable energy
11 systems and conservation systems in order to protect the
12 health, prosperity, and general welfare of the state and
13 its citizens." The Commission has consistently acted
14 according to FEECA to approve programs (and incur costs)
15 which are cost effective and which benefit all customers.
16 The Commission has done this by setting goals and
17 approving conservation programs which pass one or more
18 cost-effectiveness tests. The Commission has
19 historically used the Rate Impact Measure Test (RIM)
20 coupled with the Participant Test to make this
21 determination. Utilizing the RIM test ensures that the
22 expected benefits exceed the expected costs, such that
23 costs and rates on an overall basis are lower with the
24 conservation programs than they would be without the
25 conservation programs. Thus, all customers benefit from

1 cost-effective conservation and all customers should pay
2 their fair share of the conservation program costs.

3
4 **Q.** Has the Commission addressed the assignment of
5 conservation costs subsequent to the 1981 order?

6
7 **A.** Yes. In 1993, in Docket No. 930759-EG, the Commission
8 conducted a generic investigation into the appropriate
9 method for allocation and recovery of costs associated
10 with conservation programs. Two proposals were
11 considered which would have markedly altered the manner
12 in which costs were allocated and recovered. Both of
13 these proposals contained aspects similar to the proposal
14 of the intervenor witnesses in this proceeding.

15
16 **Q.** What were these proposals?

17
18 **A.** The first proposal was referred to as the Participant
19 Assignment Method. Under this approach, costs would be
20 directly allocated to the specific program participant
21 and recovered through a line item charge on each
22 participant's bill and non-participants would be relieved
23 from paying ECCR costs. The second approach was referred
24 to as the Rate Class Assignment Method. Under this
25 approach, each customer class's allocation of ECCR costs

1 would include only the costs of conservation programs in
2 which that customer class is eligible to participate.
3 The stated purposes of these proposals were to eliminate
4 potential cross subsidies between participants and non-
5 participants (intra-class subsidies) and to eliminate
6 potential cross subsidies among customer classes (inter-
7 class subsidies).

8
9 **Q.** What was the Commission's decision on these proposals?

10
11 **A.** The Commission did not adopt them. The Commission
12 rejected the Rate Class Assignment Method because it was
13 inequitable and was attempting to correct a problem that
14 did not exist, similar to the opt-out proposal being made
15 by the intervenor witnesses in this proceeding. In
16 essence, the Commission determined that there were no
17 inter-class subsidies to eliminate. In reaching its
18 decision in the generic investigation (Order No. PSC-93-
19 1845-FOF-EG), the Commission cited its earlier decision
20 in Order No. 9974 that "to the extent conservation
21 efforts succeed in obviating the need for expensive new
22 plant, all customers will benefit." The Commission went
23 on to state:

24 We agree that load forecasts and customer
25 behavior are difficult to predict and can

1 possibly lead to programs being approved which
2 might not be cost-effective for non-
3 participants. But to totally discount any fuel
4 or deferred plant savings are conferred upon
5 non-participating classes by assigning all the
6 costs of conservation to the participating
7 classes is not a more equitable and efficient
8 approach.

9
10 **Q.** In this citation, the Commission acknowledged that there
11 could possibly be subsidies between participants and non-
12 participants in specific conservation programs. Is this
13 a basis to approve the intervenor witnesses' proposal in
14 this proceeding?

15
16 **A.** No, for several reasons. First, while recognizing that
17 there possibly could be subsidies between participants
18 and non-participants in specific conservation programs,
19 because of uncertainties in load forecasts and customer
20 behavioral patterns, the Commission was dismissive of
21 this being a reason to change its policy on conservation
22 cost recovery. The Commission found that cost-effective
23 conservation programs benefit all customer classes.
24 Thus, there was no need to give preferential treatment to
25 certain customer classes or even certain customers within

1 those classes, as is being proposed by the intervenor
2 witnesses in this proceeding. Second, the Commission has
3 historically minimized subsidies between participants and
4 non-participants in specific conservation programs by
5 setting conservation goals and approving conservation
6 programs based on the RIM test. Under the RIM test, both
7 the costs and the rates for all customers are lower than
8 they otherwise would be and no subsidies would be
9 expected to exist between program participants and non-
10 participants. Third, allowing certain specified
11 customers to opt out would be inequitable to the
12 remaining customers and possibly discriminatory. And
13 fourth, allowing certain specified customers to opt-out
14 would potentially undermine the effectiveness and
15 efficiency of achieving cost-effective conservation under
16 FEECA.

17
18 **Q.** How would an opt-out option be inequitable and possibly
19 discriminatory?

20
21 **A.** Simply put, allowing certain customers to opt out would
22 result in the total amount of cost-effective conservation
23 costs being spread over fewer customers. This, in turn,
24 would raise rates for those remaining customers and would
25 be inequitable. It also could potentially be

1 discriminatory. Section 366.03, Florida Statutes,
2 states: "No public utility shall make or give any undue
3 or unreasonable preference or advantage to any person or
4 locality, or subject the same to any undue or
5 unreasonable prejudice or disadvantage in any respect."
6 And FEECA states: "Accordingly, in exercising its
7 jurisdiction, the commission shall not approve any rate
8 or rate structure which discriminates against any class
9 of customers on account of the use of such facilities,
10 systems, or devices." If the intervenor witnesses opt-
11 out proposal were implemented, it could potentially
12 result in undue discrimination and would certainly result
13 in opt-out customers receiving the benefits of cost-
14 effective conservation measures without having to pay
15 their fair share of the costs of those programs.

16
17 **Q.** Can rates be different among customer classes or within
18 customer classes and not be discriminatory?
19

20 **A.** Yes, if there is a cost basis to have different rates.
21 For example, rates are routinely different for different
22 classes of customers depending on the cost to provide
23 service to those respective classes. And rates can be
24 different within customer classes depending on specific
25 cost-based considerations, such as taking service at

1 transmission voltage or agreeing to have service
2 interrupted during peak times. All of these rate
3 differences are based on costs and are not
4 discriminatory.

5
6 **Q.** Is the intervenor witnesses' proposal to allow certain
7 specified customers to opt-out and not pay conservation
8 costs based on the cost to provide service to those
9 customers?

10
11 **A.** No. The opt-out customers' decision to opt-out will not
12 result in lower costs which would justify their exemption
13 from paying ECCR costs. To the contrary, the
14 conservation costs are incurred as the best means to
15 provide service to all customers in the most efficient
16 and cost-effective manner possible. As such, the
17 conservation costs are appropriately allocated to all
18 customers. Exempting the opt-out customers and requiring
19 the remaining customers "to make up the difference" could
20 constitute a discriminatory rate structure, prohibited by
21 Chapter 366, Florida Statute.

22
23 **Q.** Why would costs not be lower?

24
25 **A.** As a general proposition, the amount of conservation

1 costs to be recovered through the ECCR is independent of
2 the opt-out customers' conservation efforts. The amount
3 of costs to be recovered through the ECCR is a function
4 of the level of reasonably achievable goals and the costs
5 of the specific conservation programs approved to achieve
6 those goals. This is done pursuant to FEECA and Rule 25-
7 17.0021, F.A.C. Consistent with statute and rule, the
8 Commission, when setting conservation goals, considers
9 the amount of conservation that is reasonably expected to
10 naturally occur due to such things as appliance
11 efficiency standards, building codes, and cost-effective
12 conservation undertaken by customers on their own
13 initiative. This latter category of naturally-occurring
14 conservation is a function of the economic attractiveness
15 of various conservation measures and is usually evaluated
16 in terms of economic paybacks. The Commission has
17 historically used a two-year economic payback as a
18 conservative tool to avoid double counting conservation
19 that would reasonably be expected to occur without
20 Commission-approved conservation programs and their
21 concomitant costs. Rule 25- 17.0021, F.A.C. refers to
22 this phenomenon as "free riders" and requires that free
23 ridership be considered in setting appropriate
24 conservation goals. Thus, contrary to the intimations of
25 the intervenor witnesses, the amount of conservation that

1 has been or may be undertaken by the opt-out customers in
2 their own economic interests, will not lessen the amount
3 of costs that will be recovered through the ECCR.

4
5 **Q.** Are you classifying would be opt-out customers as being
6 free riders?

7
8 **A.** No, not in the classic sense. The classic definition of
9 a free rider, as used in Rule 25-17.002, F.A.C., is
10 someone that gets a rebate or incentive for adopting a
11 measure or practice that they would otherwise adopt
12 without the benefit of the incentive or rebate. In
13 essence, they are getting something for nothing. So to
14 this extent there is a similarity to would be opt-out
15 customers. They would be getting the benefits of the
16 cost-effective conservation goals and programs, but would
17 not be required to contribute their fair share of
18 recovering the associated costs through the ECCR. In
19 essence, the opt-out customers would be subsidized by all
20 other customers.

21
22 **Q.** Are you saying that the efforts of the opt-out customers
23 to be efficient and conserve are not important or do not
24 provide benefits?

1 **A.** No. To the contrary, it is important for all customers,
2 not just opt-out customers, to look for ways to conserve
3 and to take beneficial action where appropriate. If the
4 opt-out customers have taken such measures to remain
5 competitive and to improve their bottom-lines, they have
6 certainly acted rationally and appropriately. However,
7 such action does not necessarily result in lower costs
8 through the ECCR and does not justify rewarding opt-out
9 customers with lower electric rates by shifting costs to
10 the non-opt-out customers.

11
12 **Q.** Do non-opt-out customers also make decisions to conserve
13 regardless of Commission-approved conservation programs?
14

15 **A.** Yes, and this is an important point. If the logic of the
16 intervenor witnesses is extended to the residential
17 class, a residential customer who takes measures to
18 conserve and does not seek any incentives or is
19 ineligible for any incentives, would be eligible to opt
20 out and avoid paying ECCR costs. However, the intervenor
21 witnesses' proposal is exclusively for their specified
22 large customers with consumption in excess of 15 million
23 kWh per year or customers with loads of at least one
24 megawatt (aggregated). They conveniently ignore that
25 residential customers also take conservation measures

1 which are in their best economic interests, such as
2 installing compact fluorescent bulbs or installing
3 programmable thermostats. These and other such measures
4 which are routinely pursued by residential customers are
5 also beneficial, yet they are not allowed to opt-out from
6 paying ECCR costs. While stating that they have no
7 fundamental objection to residential customers having the
8 option to opt out, witness Baker justifies the exclusion
9 of residential customers as allowing for a "more minimal
10 administrative burden for the Commission and the
11 Companies."

12
13 **Q.** Should residential customers be allowed to opt out?

14
15 **A.** No. Given that all customers benefit from cost-effective
16 conservation, it would be equally inappropriate to allow
17 any of the customer groups to opt out. Moreover,
18 allowing all customers (including residential customers)
19 to opt out could place the sustainability of Florida's
20 conservation efforts under FEECA in jeopardy.

21
22 **Q.** Please explain.

23
24 **A.** Allowing all customers the option to opt out could result
25 in an ever increasing per customer cost burden. With the

1 cost burden increasing on the remaining customers there
2 would be an ever increasing incentive for additional
3 customers to then opt out. The cycle could continue to
4 the point that there is an insufficient number of non-
5 opt-out customers remaining to sustain Commission efforts
6 to achieve meaningful conservation pursuant to FEECA.
7 Given that cost-effective conservation pursuant to FEECA
8 benefits all customers, jeopardizing the sustainability
9 of FEECA conservation efforts would not be in the best
10 interest of customers as a whole.

11
12 **Q.** Witness Pollock asserts that opt-out customers are being
13 required to subsidize their competitors. Is he correct?

14
15 **A.** No, he has it backwards. If witness Pollock's clients
16 are allowed to opt-out, it will be his clients that are
17 being subsidized by all other customers, including his
18 clients' competitors who have operations in Florida.

19
20 **Q.** Please explain.

21
22 **A.** Cost-effective conservation benefits all customers and
23 makes all commercial/industrial customers more
24 competitive than they otherwise would be. All customers
25 enjoy the benefits of lower costs and lower rates under

1 RIM passing conservation programs. If witness Pollock's
2 clients are not required to pay their share of the cost
3 of the conservation programs which generate these
4 benefits, they will in fact be subsidized by all other
5 customers, including their competitors.
6

7 **Q.** If witness Pollock's clients are not allowed to opt out,
8 would they be motivated to not pursue additional
9 conservation measures?
10

11 **A.** While I cannot speak for his clients, the answer is an
12 obvious no. All companies, large and small, have an
13 innate motivation to implement cost-effective measures
14 which benefit them financially and give them a cost
15 advantage over their competitors. This includes energy
16 conservation measures, regardless of whether there is or
17 is not an opt-out provision. This is also evident by the
18 fact that witness Pollock's clients have (according to
19 witness Pollock's own testimony) pursued an impressive
20 array of conservation measures over the years, even
21 though they have not been allowed to opt-out.
22

23 II. Implementation Considerations 24

25 **Q.** How do the intervenor witnesses recommend that their opt-

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out proposal be implemented?

A. They first limit eligibility to their specified large non-residential customers. They then suggest that those eligible customers would only be required to submit an attestation letter stating that "the customer has invested (or intends to invest) in energy efficiency or has conducted an energy audit or analysis determining that there are no cost-effective energy efficiency measures." This letter is to include a certification of the amount of verifiable power and energy savings, if any.

Q. Is this an appropriate and workable approach to implement an opt-out program?

A. No, it presents an approach that is not consistent with FEECA, that would introduce elements of uncertainty, and that would result in increased implementation and regulatory costs.

Q. How is the implementation approach inconsistent with FEECA?

A. Pursuant to FEECA, the Commission engages in a rigorous

1 and comprehensive conservation goal-setting process once
2 every five years. In fact, the Commission has just
3 recently concluded the hearing phase of this process.
4 Goal setting requires the determination of the full
5 amount of technical potential and then the full amount of
6 economic potential for all reasonably available
7 conservation for all customers. This includes the amount
8 of conservation reasonably available from the opt-out
9 customers. The Commission applies cost-effectiveness
10 tests and screens for free riders to set final goals.
11 The goals are then used as a basis to approve specific
12 conservation programs to achieve those goals in a manner
13 that benefits all customers. Allowing a sub-group of all
14 customers to now opt out, after they were initially
15 included in the goal-setting process, would at best be
16 disruptive and at worse could call into question the
17 appropriateness of the goals that result from that
18 process.

19
20 **Q.** How does the intervenor witnesses' proposal add a level
21 of uncertainty?

22
23 **A.** The proposal results in greater uncertainty in two ways.
24 First, the decision to opt out is voluntary, making it
25 difficult to anticipate the number of customers opting

1 out and their aggregate impacts on cost recovery.
2 Second, the amount of energy savings is done on a self-
3 reporting and self-certification basis, making it
4 difficult to verify actual conservation results.

5
6 **Q.** How does the intervenor witnesses' proposal add to
7 implementation and regulatory costs?

8
9 **A.** There would be potentially significant implementation
10 costs to enroll customers in the opt-out program, to
11 monitor their status, to devise and administer separate
12 billing for them, and to monitor the amount of costs
13 recovered on an aggregate basis. There would also be
14 greater regulatory costs to administer the program, both
15 for the companies as well as the Commission. Witness
16 Baker acknowledges this administrative burden on the
17 Commission and the companies when justifying his
18 recommendation to limit his opt-out proposal to only a
19 select few non-residential customers.

20
21 **Q.** Does the intervenor witnesses' proposal address these
22 incremental costs to administer the opt-out program?

23
24 **A.** No, they are ignored.
25

1 **Q.** Would this be fair to the general body of customers?

2

3 **A.** No. These incremental costs of the opt-out program
4 should be determined and charged to the cost causers,
5 which in this case would be the customers choosing the
6 optional opt-out service. This would be the fair thing
7 to do, so as not to burden the general body of customers,
8 whose rates would already be going up by the shifting of
9 conservation costs from opt-out customers to all other
10 customers. They should not bear the additional burden of
11 the incremental implementation and regulatory costs
12 designed to benefit only a select few customers. Of
13 course, the best alternative is not to approve the opt-
14 out proposal, so there is no shifting of conservation
15 costs from opt-out customers to all other customers and
16 no incremental implementation and regulatory costs to
17 recover.

18

19 **Q.** The Intervenor witnesses refer to opt-out programs
20 adopted in other states as support for this Commission
21 adopting an opt-out program for large customers. How do
22 you respond?

23

24 **A.** In many proceedings before the Commission, various
25 intervenors have pointed to actions taken in other states

1 as a basis for suggesting that this Commission should get
2 on board and adopt the same approach. Just because
3 regulatory bodies in California or Oklahoma or Vermont
4 have followed a particular path does not necessarily mean
5 that it is the right path for Florida. This Commission
6 has a solid reputation for doing what it believes is
7 right for all customers in Florida, based on the facts
8 and circumstances presented in proceedings over which it
9 presides.

10
11 **Q.** Please summarize your testimony.

12
13 **A.** The intervenor witnesses' opt-out proposal is contrary to
14 Commission practice, inconsistent with the manner in
15 which conservation costs are incurred pursuant to the
16 Commission's implementation of FECCA, would unfairly
17 burden non-opt out customers with higher rates, perhaps
18 to the point of being unduly discriminatory, and could
19 unnecessarily risk the continued sustainability of cost-
20 effective conservation pursuant to FEECA. In addition,
21 the proposed implementation methodology bypasses goal
22 setting pursuant to FEECA, would introduce elements of
23 uncertainty, and would result in increased
24 implementation and regulatory costs.

25

1 Q. What is your recommendation?

2

3 A. The intervenor witnesses' opt-out proposal should be
4 rejected. Implementation of an opt out proposal would be
5 unfair and a monumental departure from the Commission's
6 consistent view over three decades that all customers
7 benefit from Commission-approved conservation programs
8 that have been found to be cost-effective and, therefore,
9 all customers should help fund those programs.

10

11 Q. Does this conclude your rebuttal testimony?

12

13 A. Yes, it does.

14

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DOCKET NO. 140002-EG
WITNESS: DEASON

EXHIBIT

OF

TERRY DEASON

ON BEHALF OF TAMPA ELECTRIC COMPANY

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