



Dianne M. Triplett
ASSOCIATE GENERAL COUNSEL
Duke Energy Florida, Inc.

September 12, 2014

Via ELECTRONIC DELIVERY

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

RE: Energy Conservation Cost Recovery; Docket No. 140002-EG

Dear Ms. Stauffer:

On behalf of Duke Energy Florida ("DEF"), please find attached for electronic filing in the above referenced docket:

- DEF's Rebuttal Testimony of Tim Duff

Thank you for your assistance in this matter. If you have any questions, please feel free to contact me at (727) 820-4692.

Sincerely,

/s/ Dianne M. Triplett

Dianne M. Triplett

DMT:at
Attachment
cc: parties of record

IN RE: ENERGY CONSERVATION COST RECOVERY CLAUSE

FPSC DOCKET NO. 140002-EG

**REBUTTAL TESTIMONY OF
TIM DUFF**

1 **I. INTRODUCTION AND QUALIFICATIONS**

2 **Q. Please state your name and business address.**

3 **A.** My name is Timothy J. Duff. My business address is 550 South Tryon Street,
4 Charlotte, North Carolina 28202.

5
6 **Q. Have you previously filed Direct Testimony in this proceeding?**

7 **A.** Yes, on August 27, 2014, I filed actual/estimated and projection testimony on behalf
8 of Duke Energy Florida, Inc. (“DEF” or “Duke Energy”). I also adopted the direct
9 testimony of Helena Guthrie, which was filed with the Florida Public Service
10 Commission (“FPSC” or the “Commission”) on May 2, 2014.

11

12 **Q. Have your job duties changed since you filed the August 27, 2014 testimony?**

13 **A.** No, they have not.

14

15 **II. SUMMARY OF REBUTTAL TESTIMONY**

16 **Q. Please summarize your rebuttal testimony.**

17 **A.** The purpose of my rebuttal testimony is to address the Direct Testimony of Witness
18 Jeffrey Pollock on behalf of the Florida Industrial Power Users Group (“FIPUG”) and

1 Witnesses Kenneth E. Baker and Steve W. Chriss on behalf of Walmart Stores East,
2 LP and Sam’s East, Inc. (collectively “Walmart”).

3 My testimony covers three main points. First, this Commission must
4 determine that it, and not the Florida legislature, is the appropriate body to implement
5 an opt out like the one proposed by the intervener witnesses. Second, the relevant
6 statute requires DEF to consider the impacts of the DSM programs to non-
7 participants. Indeed, programs that pass the Rate Impact Measure (“RIM”) test
8 ensure that both participating and non-participating customers benefit from utility-
9 sponsored conservation programs. Even if a customer does not participate in the
10 utility-sponsored energy efficiency programs, there is no need to allow that customer
11 to opt out if goals have been set assuming no harm to non-participants. Lastly, if the
12 Commission finds that it can and should implement an opt out program, there are
13 several issues with the policies as proposed by the intervener witnesses. As a basic
14 premise, any opt out policy must be designed so that no one, including the utility
15 and/or any customer who does not or cannot opt out, is harmed by any customer
16 opting out of paying for their share of the particular charges.

17
18 **Q. Are you sponsoring any exhibits with your testimony?**

19 **A. No.**

20

21 **III. REBUTTAL TESTIMONY**

22 **Legal and Policy Considerations**

23

1 **Q. Can you summarize the main points raised by the FIPUG and Walmart**
2 **witnesses?**

3 A. Yes. Mr. Pollock and Mr. Baker argue that the FPSC should implement an “opt out”
4 by which certain customers would be exempt from paying Energy Conservation Cost
5 Recovery (“ECCR”) charges if they have implemented or plan to implement energy
6 efficiency measures. Both Mr. Pollock and Mr. Baker argue that certain customers
7 should be allowed to opt out of the charges for the energy efficiency (“EE”) measures
8 and programs. Mr. Chriss, on behalf of Walmart, sets forth a proposed ratemaking
9 treatment to implement Mr. Baker’s proposal that the ECCR charges rates be split
10 into two components, one for energy program-related costs, and the other for demand
11 program-related costs. The FIPUG and Walmart witnesses then explain the details of
12 which customers would be eligible for the opt out and the general criteria for opting
13 out.

14
15 **Q. As a threshold matter, does the Florida Energy Efficiency and Conservation Act**
16 **(“FEECA”) reference an opt out?**

17 A. No. While I am not a lawyer, I do have responsibility for implementing the FEECA
18 statute for DEF, so I am familiar with its provisions. It is a detailed statute that sets
19 forth a process for reviewing technical potential, setting demand side management
20 goals, and implementing programs that are then subject to cost recovery in this on-
21 going clause docket. The FEECA statute does not appear to speak to the FPSC’s
22 ability to develop and implement an opt out process for any customers. Therefore, an
23 apparent first step is for the Commission to determine whether it, or the Florida
24 legislature, is the appropriate body to consider an opt out provision.

1 **Q. Is there any Commission precedent that addresses potential opt outs for certain**
2 **customers?**

3 A. Actually, the Commission has addressed similar issues in at least two prior
4 proceedings. In Docket 810050-PU, one of the issues that was addressed was
5 whether costs should be recovered from all customers or whether an attempt should
6 be made to impose the costs on certain classes of customers. In that docket, Mr.
7 Brubaker, a witness for the Florida Industrial Power Users Group, proposed that costs
8 should be imposed on certain classes of customers. He advocated that those
9 customers who availed themselves of energy conservation measures would receive
10 the benefit of lower bills.. However, he also acknowledged that, to the extent energy
11 conservation measures obviate the need for new plants, all customers would benefit.
12 The Commission ruled that because all customers benefit from such cost avoidancy,
13 the costs should be recovered from all customers. See Order 9974 in Docket No.
14 810050-EU.

15 Then the Commission reaffirmed its position on this issue in Docket 930759,
16 Order No. PSC-93-1845-FOF-EG. There the Commission stated the following:
17 “In 1981, when the Conservation Cost Recovery (ECCR) clause was established, the
18 Commission made two decisions regarding the allocation of conservation costs. The
19 first was the determination that the costs associated with conservation benefits should
20 be spread among all customers. The Commission rejected the notion that only the
21 participants in conservation programs benefit from those programs. The second
22 decision was to allocate costs to the rate classes on a per kilowatt hour, or energy,
23 basis. See Order No.9974, issued in Docket 810050-EU.” In Docket 930759, the
24 Commission did modify its position on the allocation of costs on an energy basis, and

1 provided for the allocation of costs associated with dispatchable programs on a
2 demand basis, but upheld its previous position that costs should be spread to all
3 classes of customers based on the capacity avoidance and fuel savings benefits that
4 the conservation programs afford to all customers.

5
6 **Q. Assuming that the FPSC is able to implement an opt out, is an opt out necessary**
7 **under the current regulatory framework in Florida?**

8 A. Not necessarily. Contrary to Mr. Pollock’s and Mr. Baker’s testimony that making
9 customers pay for EE programs is “fundamentally unfair,” because some customers
10 already implement EE measures without utility incentives, the FPSC considers the
11 impacts to non-participants in the analysis that it uses. Indeed, section 366.82(3)(b)
12 provides that the Commission, when establishing DSM goals, “shall take into
13 consideration . . . [t]he costs and benefits to the general body of ratepayers as a whole
14 . . .” Thus, FEECA requires that the Commission consider impacts to non-
15 participants when the Commission sets the goals and determines which programs to
16 approve and include in the ECCR charges that all customers (participants and non-
17 participants) must pay.

18 In fact, to the extent goals are set based on programs that are cost-effective
19 under the Rate Impact Measure (“RIM”) test, non-participants will benefit from all
20 EE programs. In Order No. PSC-94-1313-FOF-EG, the Commission stated:

21 “All customers, including low-income customers, should benefit from RIM-based
22 DSM programs. This is because RIM-based programs ensure that both participating
23 and non-participating customers benefit from utility-sponsored conservation

1 programs. Additional generating capacity is deferred and the rates paid by low-
2 income customers are less than they otherwise would be.”

3 The purpose of the RIM test is to eliminate measures that would raise electric
4 rates for all customers. While program participants benefit from the bill savings and
5 any electric rate reductions, as well as any incentives paid to them associated with the
6 DSM program, non-participants are only impacted by the programs’ effect on electric
7 rates. Hence the RIM test is often called the “non-participants test.” It is also known
8 as the “no-losers test” because all customers are better off when a DSM program
9 passes the RIM test, both participants and non-participants. The RIM test can be
10 thought of as similar to the Pareto efficiency test in economics: a policy or project
11 that makes everyone better off without making anyone worse off. It is for these
12 reasons, among others, that DEF has proposed goals based on those measures that
13 pass RIM, in Docket 130200-EI

14

15 **Q. How do you respond to Mr. Pollock’s and Mr. Baker’s assertion that several**
16 **other states have opt out policies?**

17 A. While I acknowledge that other states have varying policies which allow for certain
18 customers to opt out of charges for EE programs, I do not think that any particular
19 policy is a “one-size-fits-all.” Anyone evaluating an opt out in Florida should
20 consider the FEECA statute and the other unique characteristics of the Florida
21 regulatory framework when considering whether it should permit certain customers to
22 opt out of paying for some of the ECCR charges.

23

24

Specific Opt Out Recommendations

1 **Q. If the Commission decides that it can and that it should implement an opt out for**
2 **certain customers, what are some general principles that must be adhered to**
3 **when developing such a policy?**

4 A. In essence, the Commission should ensure that no one, including the utility and/or
5 any customer who does not or cannot opt out, is harmed by any customer opting out
6 of paying for their share of the particular charges. Said differently, all parties should
7 be held neutral, despite the fact that certain customers are allowed to opt out. To
8 accomplish this overall objective, the opt out policy must be carefully designed to
9 consider all potential ramifications. For example, if a customer opts out, the costs
10 that are not collected from that customer cannot be socialized to the remaining
11 customers. Nor is it fair to the utility, if the utility must expend that cost to offer a
12 particular program, to not be able to recover the cost. So there must be a mechanism
13 in the opt out process to hold everyone harmless for those costs. Likewise, the utility
14 must be able to account for the lost energy savings from an opt out customer (either
15 by adjusting the goal, as appropriate, to account for the lost potential participation by
16 that opting-out customer or by counting the energy savings that the opting-out
17 customer accomplishes). There will be an administrative cost to ensure that
18 customers who opt out meet the eligibility standards to do so and, assuming the
19 standards are met, that their bill is adjusted accordingly. This administrative cost
20 should be borne by the customer opting out.

21
22 **Q. Please summarize the recommendations from Mr. Pollock and the Walmart**
23 **witnesses as to how an opt out should work in Florida.**

1 A. Mr. Pollock recommends that the opt out is limited to non-residential customers with
2 loads of at least 1 MW either at a single delivery point or through aggregation, if the
3 customer can prove that the aggregated facilities are located in the utility's service
4 area and are under common ownership and operation. Any customer meeting these
5 requirements would then have to send the utility a letter in which the customer attests
6 to having performed an energy audit and implemented, or have plans to implement,
7 the cost-effective EE measures recommended in that audit. The letter must be
8 accompanied by a certification of verifiable power and energy savings from a
9 licensed engineer or certified energy manager. The term for opt out must be at least 3
10 years.

11 Mr. Baker recommends that the opt out is only available to non-residential
12 customers with more than 15 million kWh of electric consumption per year,
13 aggregated across all eligible accounts, meters, or service locations in each
14 Company's service area. The account must not have taken advantage of a utility-
15 sponsored EE program within the last 2 years, and the customer cannot enroll in any
16 EE program for 2 years after the opt out period begins. The customer must certify
17 that it either: (1) has implemented EE measures that have reduced usage by a
18 percentage at least as great as the Company's EE reductions through its approved EE
19 programs, expressed as a percentage of the Company's total retail kWh sales over the
20 same time period; or (2) has performed an energy audit within the 3 year period
21 before the opt out request and confirms that the customer has implemented or plans to
22 implement it within 2 years. Mr. Chriss provides details on how the rate allocation
23 (between EE and load management charges) would be carried out once a customer is
24 permitted to opt out.

1 **Q. Is the development of an opt out policy a simple task?**

2 A. No, to the contrary, it is rather complex. To ensure that the overall opt out process is
3 fair to all parties, there must be very clear and well-vetted guidelines and
4 requirements before an opt-out policy can be implemented. It seems that a workshop
5 or rulemaking proceeding may be a more fair and efficient way in which to explore
6 the ways in which the opt-out proposal should be structured. However, I understand
7 that this issue may be considered in the context of the ECCR, so I will set forth my
8 initial concerns in this rebuttal testimony.

9

10 **Q. What are your concerns regarding the proposals set forth by Mr. Pollock and**
11 **the Walmart witnesses?**

12 A. I would first note that this list is not exhaustive. Often when a jurisdiction embarks
13 on a new policy such as the opt out policy at issue here, it finds that there are issues
14 that arise once utilities begin implementing it. New circumstances may arise that
15 bring into question how a particular situation should be handled so as to be fair to all
16 parties. However, based on the information contained in the Intervener testimony, I
17 have identified certain issues. First, I take issue with Mr. Pollock's and Mr. Baker's
18 proposals concerning opt out eligibility. I take issue with Mr. Pollock's suggested
19 eligibility threshold of 1 MW of load either at a single delivery point or through
20 aggregation of facilities. As he is proposing an opt-out of only energy efficiency
21 programs, an energy threshold measured in kWh's would be a more appropriate
22 measure to determine eligibility. Additionally, I take issue with Mr. Pollock's and Mr.
23 Baker's proposal that customers should be permitted to aggregate usage across
24 multiple locations in a utility's service territory. Determining which accounts are

1 eligible to be aggregated, and performing that manual calculation to determine
2 whether the aggregated usage amounts meet the opt out usage criterion, is
3 administratively burdensome and costly. Such a process could also raise questions as
4 to how the utility can confirm whether separate accounts are actually owned or
5 controlled by the same customer, so as to allow the separate accounts to be
6 aggregated. Finally, there is inherent lack of logic in allowing accounts not
7 undertaking energy efficiency to be eligible simply because an account or accounts in
8 other locations but owned by the same parent Company have undertaken energy
9 efficiency. A commercial or industrial customer's eligibility based on usage should
10 be limited to individual accounts, which is how DEF's customer service system
11 already tracks usage and sends bills. This is the simplest and fairest way to
12 administratively process opt out requests.

13 My next concern is that there are administrative costs associated with
14 determining and verifying eligibility for customers who seek an opt out and then on
15 an ongoing basis auditing these accounts to ensure that they continue to qualify for
16 the opt out. Neither Mr. Pollock nor Mr. Baker propose any recommendations to
17 address how DEF or the other customers who must continue to pay the ECCR charges
18 would be neutral if DEF had to operate an opt out program for certain customers.
19 Obviously costs incurred to administer the opt-out program would need to either be
20 tracked and charged directly to the customer, or more likely the utility would need to
21 develop an opt-out rate to socialize the administrative cost across all opt-out
22 customers. This represents another example of the complexities that have not been
23 fully considered by Mr. Pollack and Mr. Baker that will have to be worked through in
24 the implementation of an opt out program.

1 Third, I am concerned that Mr. Baker’s recommendation does not include
2 verification of the installed energy efficiency programs. Mr. Pollock includes such a
3 certification in his proposal, and I agree that any opt out policy should have a
4 certification process, as simply having a plan to become more efficient is not
5 consistent with the requirement of the utilities under FEECA.

6 I am also concerned that there is no goal adjustment to account for the opting
7 out customers and their potential contribution to the overall goal DEF is expected to
8 achieve in the next 5 year period. While Mr. Pollock implies that the certification of
9 installed energy efficiency (“EE”) measures, and verification of achieved savings,
10 would increase overall EE savings in Florida, it is not clear that he is proposing that
11 DEF be allowed to count the EE savings from opt out customers toward its goal. If
12 DEF is allowed to count the EE savings towards meeting its goals, then DEF’s
13 concerns would be addressed. I would note that Mr. Baker includes no consideration
14 for adjusting DEF’s goals or allowing DEF to count EE savings achieved by opt out
15 customers.

16 There should be a minimum opt out period in which customers who opt out
17 cannot then opt in again. This is to limit the administrative burden, and it also helps
18 prevent customers from “gaming” the system. Mr. Pollock’s suggested three year
19 term is reasonable, but it should also be paired with Mr. Baker’s recommendation that
20 the opting out customer must not have received a utility rebate for an EE measure for
21 the 2 year period before the opt out.

22 Finally, there should be further consideration (perhaps in a future workshop or
23 similar setting) as to how much energy efficiency an opting out customer will be
24 expected to implement or achieve. Obviously there is a spectrum of potential energy

1 efficiency measures that can be implemented by a customer (everything from
2 changing out a single light bulb to implementing every one of the measures
3 technically possible for a particular customer). The standard by which the opt out
4 customer will be evaluated should be further developed.

5

6 **Q. Does this conclude your testimony?**

7 A. Yes.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24