

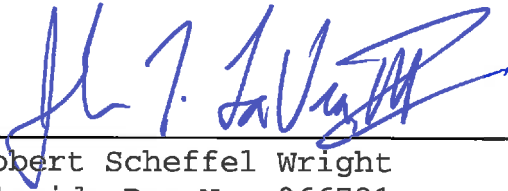
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request to opt-out of cost)
recovery for investor-owned electric) Docket No. 140226-EI
utility energy efficiency programs)
by Wal-Mart Stores East, LP and) Filed: May 20, 2015
Sam's East, Inc. and Florida)
Industrial Power Users Group.)
_____)

WAL-MART STORES EAST, L.P.'S AND SAM'S EAST, INC.'S
NOTICE OF FILING

Wal-Mart Stores East, L.P. and Sam's East, Inc. (collectively referred to as "Wal-Mart"), hereby gives notice of filing the Surrebuttal Testimony of Kenneth E. Baker in support of Wal-Mart's positions in this docket.

Respectfully submitted this 20th day of May, 2015.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail this 20th day of May 2015, to the following:

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In re: Request to Opt Out of Cost Recovery for)
Investor-Owned Electric Utility Energy Programs) Docket No. 140226-EG
By Wal-Mart Stores East, LP, and Sam's East, Inc.,)
And Florida Industrial Power Users Group) Filed: May 20, 2015
_____)**

SURREBUTTAL TESTIMONY OF KENNETH E. BAKER

ON BEHALF OF

WAL-MART STORES EAST, LP AND SAM'S EAST, INC.

Dated: May 20, 2015

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1 **Introduction**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Kenneth E. Baker. My business address is 2001 SE 10th Street,
4 Bentonville, AR 72716-0550.

5 **Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?**

6 A. I am employed by Wal-Mart Stores, Inc. as Senior Manager of Sustainable Regulation
7 and Legislation.

8 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY BEFORE THE FLORIDA PUBLIC**
9 **SERVICE COMMISSION?**

10 A. Yes. I submitted testimony in the predecessor to this proceeding, Commission
11 Docket No. 140002-EG, which was the 2014 Energy Conservation Cost Recovery
12 Clause Docket, on September 5, 2014. I understand that my testimony from that
13 docket has been transferred into this docket, along with the testimony of other
14 witnesses addressing the same subject matter.

15 **Q. IS WALMART SPONSORING THE TESTIMONY OF ANY OTHER WITNESSES IN THIS**
16 **PROCEEDING?**

17 A. Yes. Walmart is also sponsoring the direct testimony and exhibits of Mr. Steve W.
18 Chriss, which was submitted in PSC Docket No. 140002-EG on September 5, 2014
19 and has been transferred into this docket.

20 **Q. PLEASE DESCRIBE YOUR EDUCATION AND PROFESSIONAL EXPERIENCE.**

21 A. My education and professional experience are as presented in Exhibit KEB-1,
22 submitted with my Direct Testimony and Exhibits.

1 **Q. WHAT IS WALMART'S ELECTRICAL USAGE IN THE STATE OF FLORIDA?**

2 A. As pointed out in my testimony submitted in Docket No. 140002-EG, Walmart is a
3 significant customer of each of Florida's four largest investor owned utilities as well
4 as a customer of many municipal and cooperative utilities. In the aggregate,
5 Walmart annually consumes approximately 1.5 billion kilowatt-hours ("kWh") of
6 electricity in Florida.

7

8 **Purpose of Testimony and Summary of Recommendations**

9 **Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY IN THIS PROCEEDING?**

10 A. I continue to support policy proposals to redesign the Florida investor-owned
11 utilities' energy efficiency programs and Energy Conservation Cost Recovery
12 ("ECCR") Charges in such a way that proactive large customers that have
13 implemented energy efficiency ("EE") measures at their own cost may opt out of the
14 utilities' programs.

15 In this Surrebuttal Testimony, I also address a number of arguments
16 advanced by the witnesses for the four large investor-owned utilities, Florida Power
17 & Light Company ("FPL"), Duke Energy Florida ("DEF" or "Duke"), Tampa Electric
18 Company ("Tampa Electric" or "TECO"), and Gulf Power Company ("Gulf")
19 (collectively "the IOUs").

20 **Q. PLEASE SUMMARIZE THE RECOMMENDATIONS PRESENTED IN YOUR DIRECT**
21 **TESTIMONY.**

1 A. In my Direct Testimony, Walmart recommended the following criteria in order to be
2 eligible to opt out of EE programs and charges:

3 1. Aggregated consumption by a single customer of more than 15 million
4 kWh of electricity per year across all eligible accounts, meters, or service
5 locations within each Company's service area.

6 2. To be designated an eligible account that account may not have taken
7 benefits under designated EE programs within 2 years before the period
8 for which the customer is opting out.

9 3. An eligible account may not opt in to participate in the designated EE
10 programs for 2 years after the first day of the year of the period in which
11 the customer first opts out.

12 4. The customer must certify to the Company that the customer either (a)
13 has implemented, within the prior 5 years, EE measures that have
14 reduced the customer's usage, measured in kWh per square foot of
15 space, or other similar measure as applicable, by a percentage at least as
16 great as the Company's energy efficiency reductions through its approved
17 EE programs, expressed as a percentage of the Company's total retail
18 kWh sales as measured over the same time period; or (b) has performed
19 an energy audit or energy use analysis within the three-year period
20 preceding the customer's opt out request and confirms to the utility, that
21 the customer has either implemented the recommended measures or

1 that the customer has a definite plan to implement qualifying EE
2 programs within 24 months following the date of the opt out request.

3 **Q. DO YOU HAVE ANY ADDITIONAL RECOMMENDATIONS TO THE COMMISSION?**

4 A. Yes. After consideration of the direct and rebuttal testimonies submitted in this
5 docket, I have the following additional recommendations:

6 5. The Commission should allow the utilities to count the estimated or reported
7 energy savings from opt out customer facilities towards their approved energy
8 efficiency and demand side management goals.

9 6. For the purposes of this docket, Walmart does not oppose an opt out window in
10 which a customer notifies the utility of its intent to opt out.

11

12 **Response to IOU Testimonies**

13 **Q. FPL WITNESS DEATON STATES A CONCERN THAT THE OPT OUT PROPOSAL COULD**
14 **BE DISCRIMINATORY PER THE FLORIDA ENERGY EFFICIENCY AND CONSERVATION**
15 **ACT (FEECA). DO YOU AGREE?**

16 A. No. Walmart's proposal does not discriminate in any way against customers who
17 use energy efficiency, conservation, or similar measures. The proposal simply
18 provides an additional mechanism to recognize the benefits provided by opt out
19 customers to the utility and all of its customers through the self-funded and self-
20 implemented energy efficiency measures of those opt out customers. An opt out
21 customer is incented to engage in energy efficiency through the proposed opt out
22 program as opposed to being incented by a rebate.

1 **Q. IS IT YOUR OPINION AS SOMEONE FAMILIAR WITH INTERPRETING REGULATORY**
2 **PROVISIONS THAT FEECA ALLOWS THE COMMISSION TO IMPLEMENT AN OPT OUT**
3 **PROGRAM SUCH AS THE ONE WALMART IS PROPOSING?**

4 A. Yes. Section 366.81, Florida Statutes, which is part of FEECA, provides that Sections
5 "366.80-366.83 and 403.519 are to be liberally construed in order to meet the
6 complex problems of reducing and controlling the growth rates of electric
7 consumption ..." In my opinion this statutory provision provides the Commission the
8 flexibility needed to implement an opt out program.

9 **Q. WHAT ARE YOUR REACTIONS TO THE IOUS' TESTIMONIES CONCERNING THE LACK**
10 **OF ANY DEFINED CRITERIA FOR IMPLEMENTATION OF AN OPT OUT PROGRAM?**

11 A. Their testimonies fail to accurately state Walmart's proposal as it relates to defined
12 criteria. As stated above, Walmart's proposal contains very explicit criteria
13 concerning qualifications for opting out of utility sponsored programs. To be clear,
14 any customers opting out would have to satisfy the Commission that they are
15 making, or will make, contributions to the efficient use of energy on the utilities'
16 systems by virtue of their own expenditures.

17 **Q. DO ANY OF THE IOUS' WITNESSES RECOGNIZE THAT CUSTOMERS THAT OPT OUT**
18 **WOULD ACHIEVE ENERGY SAVINGS?**

19 A. Ms. Todd, testifying for Gulf, does recognize that opting out customers would
20 achieve some energy savings. However, Ms. Todd fails to recognize in her testimony
21 that these savings would be funded entirely by the opt out customer. Additionally,

1 she does not recognize that those savings would be provided at zero cost to Gulf or
2 its customers.

3 **Q. TECO WITNESS DEASON STATED IN HIS TESTIMONY THAT AN OPT OUT AS**
4 **PROPOSED WOULD UNFAIRLY BURDEN NON-OPT OUT CUSTOMERS WITH HIGHER**
5 **RATES..."(pg.4, lines 23-24). DO YOU AGREE WITH THIS ASSESSMENT?**

6 **A. No. I believe that the opt out as I propose should minimize the risk that non-opt out**
7 **customers will be burdened with higher rates.**

8 **Q. PLEASE EXPLAIN.**

9 **A. As it relates to the ECCR, the risk is reduced by two factors. First, the utilities will no**
10 **longer have to include programs or measures for opt out customers in their annual**
11 **ECCR filings, which should reduce program costs and, as a result, reduce overall**
12 **ECCR revenue requirements. Second, if the Commission allows for the energy**
13 **efficiency measures and achievements of opt out customers to count towards the**
14 **utilities' energy efficiency and demand side management goals, the utilities will not**
15 **have to increase their program implementation levels, and associated programming**
16 **costs, for non-opt out customers in order to make up for lost opportunity.**

17 **More broadly, the opt out customers, by being required to engage in energy**
18 **efficiency in order to opt out, will provide reductions in energy consumption and**
19 **demand that will avoid utilities' fuel costs and help reduce the need for future**
20 **generation facilities, again, without cost to the non-participating customer.**

21 **Q. DEF WITNESS DUFF EXPRESSED CONCERN ABOUT THE UTILITY BEING ABLE TO**
22 **ACCOUNT FOR THE "LOST" ENERGY SAVINGS THAT HE ASSERTS WOULD RESULT**

1 **WHEN AN OPT OUT CUSTOMER IMPLEMENTS ITS OWN EE MEASURES, THEREBY**
2 **REDUCING THE SAVINGS DIRECTLY ATTRIBUTABLE TO THE UTILITY'S PROGRAMS.**
3 **DOES WALMART PROPOSE A SOLUTION TO THIS ISSUE?**

4 A. Walmart proposes that the Commission should allow the utilities to count the
5 estimated or reported energy savings from opt out customer facilities towards their
6 approved energy efficiency and demand side management goals.

7 **Q. ON PAGES 8 AND 9 OF MR. DEASON'S TESTIMONY, HE REFERENCES DOCKET NO.**
8 **930759-EG IN WHICH THE COMMISSION, IN 1993, DENIED TWO PROPOSALS THAT**
9 **WOULD HAVE ALTERED THE MANNER IN WHICH ENERGY EFFICIENCY AND DSM**
10 **PROGRAM COSTS WOULD BE ALLOCATED AND RECOVERED. WHAT WERE THE**
11 **PROPOSALS THAT WERE PRESENTED AND REJECTED?**

12 A Based on Mr. Deason's testimony, the first proposal, known as the Participant
13 Assignment Method, would have allowed costs to be directly allocated to the
14 specific program participants and recovered through a line item charge on each
15 participant's bill, and non-participants would be relieved from paying the ECCR
16 charge. The second method would be referred to as the Rate Class Assignment
17 Method. The second approach would have provided that each customer class's
18 allocation of the ECCR would only include the cost of the conservation programs that
19 the customer class was eligible to participate in.

20 **Q. DO YOU AGREE WITH MR. DEASON'S COMPARISON OF THOSE METHODS AS BEING**
21 **ANALAGOUS TO WHAT WALMART IS PROPOSING?**

22 A. No.

1 Q. PLEASE EXPLAIN.

2 A. Walmart is not requesting that the Commission implement any type of methodology
3 that would require costs to be allocated to the participant and be recovered as a line
4 item charge on their bill. Nor is Walmart advocating at this time that customers only
5 be billed for programs for which they are eligible. Mr. Chriss discusses ECCR cost
6 allocation in more detail in his Direct Testimony.

7 Q. FOR THE PURPOSES OF THIS DOCKET, WOULD YOU OPPOSE AN OPT OUT WINDOW
8 IN WHICH THE UTILITIES MUST BE NOTIFIED OF A CUSTOMER'S INTENTION TO OPT
9 OUT OF UTILITY ENERGY EFFICIENCY PROGRAMS?

10 A. For the purposes of this docket, no. The utilities should be given adequate time to
11 plan based upon the number and type of customers that plan to opt out of the
12 energy efficiency program.

13

14 **Refinements to Direct Testimony Recommendations**

15 Q. ARE THERE ANY ITEMS YOU WISH TO CLARIFY THAT WERE STATED EARLIER IN
16 YOUR DIRECT TESTIMONY?

17 A. I would like to make it clear that recommendation number two in my direct
18 testimony is intended to apply to individual accounts and not to the jurisdictional
19 territory of a particular utility.

20

21 Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?

22 A. Yes.