

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Request to opt-out of cost recovery for investor-owned electric utility energy efficiency programs by Wal-Mart Stores East, LP and Sam’s East, Inc. and Florida Industrial Power Users Group.

Docket No. 140226-EI

Filed: June 22, 2015

**FLORIDA POWER & LIGHT COMPANY’S  
PREHEARING STATEMENT**

Florida Power & Light Company (“FPL” or the “Company”), pursuant to Order No. PSC-15-0149-PCO-EI, issued April 1, 2015, hereby files with the Florida Public Service Commission (“FPSC” or “Commission”) its Prehearing Statement in connection with the Energy Conservation Cost Recovery (“ECCR”) opt-out proposals submitted in this docket, and states:

**I. FPL WITNESSES**

<b>Witness</b>	<b>Subject Matter</b>	<b>Issues</b>
Thomas Koch FPL	Rebuts the cost recovery opt-out proposals presented by witnesses for the Florida Industrial Power Users Group (“FIPUG”) and Wal-Mart Stores East, LP and Sam’s East, Inc. (“Wal-Mart”), identifying, among other flaws, that (i) the proposals would shift prudently incurred ECCR costs from large business customers to smaller business and residential customers; (ii) Florida’s Rate Impact Measure (“RIM”)-based Demand Side Management (“DSM”) goals benefit all customers, regardless of participation in the specific DSM programs offered; and (iii) customers in all classes and of all sizes implement their own conservation measures without utility incentives.	1, 2, 3
Rena Deaton FPL	Rebuts the cost recovery opt-out proposals presented by witnesses for FIPUG and Wal-Mart, explaining that the proposals are inconsistent with established rate making and cost causation principles and discriminatory; also explains that there would be an increased administrative burden and resulting increase in costs associated with any such program.	1, 2, 3

## **II. EXHIBITS**

FPL has not pre-filed any exhibits. FPL reserves the right to utilize any exhibit introduced by any other party. FPL additionally reserves the right to introduce any additional exhibit necessary for rebuttal, cross-examination, or impeachment at the hearing.

## **III. STATEMENT OF BASIC POSITION**

FIPUG and Wal-Mart have presented proposals to allow certain large customers to “opt out” of paying a portion of their electric bills – specifically, the ECCR charges associated with certain Commission-approved programs designed to meet a utility’s Commission-approved DSM goals. These proposals are fundamentally flawed; rely on unsupported, overly simplistic, inaccurate assumptions; and are discriminatory. As a result, they should be rejected by the Commission.

First, the opt-out proposals ignore the fact that regardless of participation, all customers benefit from the RIM-based portfolio of programs approved by the Commission, the costs of which are recovered through the ECCR charges. The Commission has already determined that DSM program participation bears no relationship to a customer’s responsibility to help pay the costs associated with the DSM portion of a utility’s resource portfolio, because all customers benefit from those programs. *See* Docket No. 930759-EG, Order No. PSC-93-1845-FOF-EG, p. 1 (issued Dec. 29, 1993) (citing Docket No. 810050-EU, Order No. 9974 (issued April 24, 1981)). The opt-out proponents also imply that only large business customers implement DSM measures on their own, outside of Commission-approved programs. This is incorrect and fails to support special opt-out treatment for these customers.

Second, the opt-out proponents make various unsupported claims, including that utilities will be able to reduce DSM program costs if the opt-out customers’ energy efficiency

achievements are counted toward DSM goals to avoid shifting costs to other customers. However, it is not clear that FPL would be able to reduce any of its DSM program costs if the opt-out proposals are approved, while it is certain that administrative costs would increase.

Finally, the opt-out proposals are irreparably one-sided. For example, FIPUG and Wal-Mart propose to allow certain customers to opt-out of paying for energy efficiency-related DSM programs on the theory that those customers do not or cannot participate in those programs, while requiring all customers to continue paying for business customer load management programs, in which, by design, many customers (such as residential customers) cannot participate. For the foregoing reasons, as supported by the testimony of Thomas Koch and Renae Deaton, the opt-out proposals should be rejected.

#### **IV. ISSUES AND POSITIONS**

**ISSUE 1: Should the Commission require the utilities to separate their Energy Conservation Cost Recovery expenditures into two categories, one for Energy Efficiency programs and the other for Demand Side Management programs?**

**FPL:** No. The Commission should not require the utilities to separate their Energy Conservation Cost Recovery expenditures into two categories, one for “Energy Efficiency” programs and the other for “Demand Side Management” (e.g., load management) programs. Programs that pass the RIM cost-effectiveness test benefit the general body of customers, both participating and non-participating customers, regardless of their potential characterization as energy efficiency or demand side/load management. Accordingly, distinguishing between the two would serve no relevant purpose nor would it provide a meaningful basis for determining costs that “eligible” opt out customers would be allowed to avoid and pass on to other customers. At best, the only purpose such separation would serve would be to enable the administration of the opt-out proposals. As discussed in the rebuttal testimony of FPL witnesses Thomas Koch and Renae Deaton, the opt-out proposals should be rejected. (Koch, Deaton)

**ISSUE 2: Should the Commission allow pro-active non-residential customers who implement their own energy efficiency programs and meet certain other criteria to opt out of the utility’s Energy Efficiency programs and not be required to pay the cost recovery charges for the utility’s Energy Efficiency**

**programs approved by the Commission pursuant to Section 366.82 Florida Statutes?**

**FPL:** No. The Commission should not allow non-residential customers who implement their own energy efficiency programs and meet certain other criteria to opt out of paying for a subset of the utility's DSM programs approved by the Commission pursuant to Section 366.82, Florida Statutes. As outlined in the rebuttal testimony of FPL witnesses Thomas Koch and Renae Deaton, the opt-out proposals generally described in the testimony of Wal-Mart's witnesses and FIPUG's witness ignore the fact that all customers benefit from the utility's DSM programs and fail to recognize (or deny) that the impact of such proposals would be to shift the recovery of prudently incurred costs for approved DSM programs from large business customers to smaller business and residential customers. The opt-out proposals are one-sided, inconsistent with sound regulatory policy, and should be rejected. (Koch, Deaton)

**ISSUE 3:** **If the Commission allows pro-active customers to opt out of participating in, and paying for, a utility's Energy Efficiency's programs, what criteria should the Commission apply in determining whether customers who wish to opt out are eligible to do so?**

**FPL:** There is insufficient evidence in the record to identify any appropriate criteria which the Commission could apply to determine whether customers who wish to opt out would be eligible to do so. At this point, only self-serving criteria have been proposed by the proponents. More to the point, as outlined in the rebuttal testimony of FPL witnesses Thomas Koch and Renae Deaton, the opt-out proposals generally described in the testimony of Wal-Mart's witnesses and FIPUG's witness ignore the fact that all customers benefit from the utility's DSM programs and fail to recognize (or deny) that the impact of such proposals would be to shift the recovery of prudently incurred costs for approved DSM programs from large business customers to smaller business and residential customers. The opt-out proposals are one-sided, inconsistent with sound regulatory policy, and should be rejected. (Koch, Deaton)

**V. STIPULATED ISSUES**

There are no stipulated issues at this time.

**VI. PENDING MOTIONS**

FPL has no pending motions at this time.

**VII. PENDING REQUESTS FOR CONFIDENTIALITY**

FPL has no pending Requests for Confidential Classification at this time.

**VIII. OBJECTIONS TO A WITNESS'S QUALIFICATION AS AN EXPERT**

FPL has no objections to any witness's qualifications at this time.

**IX. REQUIREMENTS OF THE PREHEARING ORDER THAT CANNOT BE MET**

At this time, FPL is not aware of any requirements in the Order Establishing Procedure with which it cannot comply.

Respectfully submitted this 22<sup>nd</sup> day of June, 2015.

Jessica A. Cano  
Senior Attorney  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, FL 33408  
Telephone: (561) 304-5226  
Facsimile: (561) 691-7135

By: s/ Jessica A. Cano  
Jessica A. Cano  
Fla. Bar No. 0037372

**CERTIFICATE OF SERVICE**  
**Docket No. 140226-EG**

I HEREBY CERTIFY that a true and correct copy of the foregoing Prehearing Statement has been served by electronic mail this 22<sup>nd</sup> day of June 2015, to the following:

Lee Eng Tan, Esq.  
Office of General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
ltan@psc.state.fl.us

Beggs & Lane Law Firm  
Jeffrey Stone, Esq./Russell Badders, Esq./  
Steven Griffin, Esq.  
501 Commendancia Street  
Pensacola, FL 32502  
jas@beggslane.com  
rab@beggslane.com  
srg@beggslane.com  
Attorneys for Gulf Power Company

James D. Beasley, Esq.  
J. Jeffrey Wahlen, Esq.  
Ashley M. Daniels  
Ausley & McMullen  
P.O. Box 391  
Tallahassee, FL 32302  
jbeasley@ausley.com  
jwahlen@ausley.com  
adaniels@ausley.com  
Attorneys for Tampa Electric

Robert L. McGee, Jr.  
Gulf Power Company  
One Energy Place  
Pensacola, FL 32520  
rlmcgee@southernco.com

John T. Burnett, Esq.  
Dianne M. Triplett, Esq.  
Duke Energy Services Company, LLC  
299 First Avenue North  
St. Petersburg, FL 33701  
john.burnett@duke-energy.com  
dianne.triplett@duke-energy.com

Matthew R. Bernier/Cameron L. Cooper  
Duke Energy Services Company, LLC  
106 East College Avenue, Suite 800  
Tallahassee, FL 32301  
matthew.bernier@duke-energy.com  
cameron.cooper@duke-energy.com

Beth Keating  
Gunster Law Firm  
215 South Monroe Street, Suite 601  
Tallahassee, FL 32301  
bkeating@gunster.com

Paula K. Brown  
Tampa Electric Company  
Regulatory Coordination  
P.O. Box 111  
Tampa, FL 33601  
regdept@tecoenergy.com

Cheryl Martin, Director – Regulatory Affairs  
Aleida Socarras  
Florida Public Utilities Company  
1641 Worthington Road, Suite 220  
West Palm Beach, Florida 33409  
cheryl\_martin@chpk.com  
asocarras@fpuc.com

J.R. Kelly, Esq.  
Charles J. Rehwinkel, Esq.  
Patricia A. Christensen, Esq.  
Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, Room 812  
Tallahassee, FL 32399-1400  
Kelly.jr@leg.state.fl.us  
Rehwinkel.Charles@leg.state.fl.us  
christensen.patty@leg.state.fl.us  
Attorneys for the Citizens of the State of Fla

George Cavros, Esq.  
120 E. Oakland Park Blvd., Suite 105  
Fort Lauderdale, FL 33334  
george@cavros-law.com  
Attorney for SACE

James W. Brew, Esq.  
Owen J. Kopon, Esq.  
Stone, Mattheis, et al.  
1025 Thomas Jefferson St., N.W. 8<sup>th</sup> Floor  
West Tower  
Washington, DC 20007-5201  
jbrew@smxblaw.com  
ojk@smxblaw.com  
Attorneys for White Springs Agriculture  
Chemicals, Inc. d/ba/ PCS Phosphate

By: s/ Jessica A. Cano  
Jessica A. Cano  
Fla. Bar No. 0037372