

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  
ORDER NO. PSC-15-0290-PHO-EI  
ISSUED: July 15, 2015

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on July 7, 2015, in Tallahassee, Florida, before Chairman Art Graham, as Prehearing Officer.

APPEARANCES:

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On behalf of Florida Industrial Power Users Group (FIPUG).

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On behalf of Wal-Mart Stores East, LP's and Sam's East Inc. (Walmart)

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On behalf of White Springs Agricultural Chemicals, Inc. (PCS Phosphate).

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On behalf of Florida Power & Light Company (FPL).

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On behalf of Duke Energy Florida, Inc. (Duke).

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On behalf of Tampa Electric Company (TECO).

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On behalf of the Florida Public Service Commission (Staff).

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## **PREHEARING ORDER**

### **I. CASE BACKGROUND**

On November 25, 2014, pursuant to Order No. PSC-14-0583-PHO-EG, issued on October 15, 2014, in Docket No. 140002-EG, the Commission opened this docket to address issues raised by Wal-Mart Stores East, LP and Sam's East, Inc. (Wal-Mart) and Florida Industrial Power Users Group (FIPUG). The Order Establishing Procedure, Order No. PSC-15-0149-PCO-EI issued on April 1, 2015, established the prehearing conference for July 7, 2015, and an administrative hearing has been set for July 22-23, 2015.

### **II. CONDUCT OF PROCEEDINGS**

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

### **III. JURISDICTION**

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 366, Florida Statutes (F.S.). This hearing will be governed by said Chapter and Chapters 25-6, 25-22, and 28-106, F.A.C., as well as any other applicable provisions of law.

#### IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 366.183 F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.183, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.183, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.183 F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

#### V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled and will be inserted into the record as though read after the witness has taken the stand and

affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

## VI. ORDER OF WITNESSES

Each witness marked by a \* will be presenting their testimonies together.

<u>Witness</u>	<u>Testimony</u>	<u>Proffered By</u>	<u>Issues #</u>
*Kenneth E. Baker	Direct and Surrebuttal	Walmart	1, 2, 3
Steve W. Chriss	Direct	Walmart	1, 2, 3
Thomas Koch	Rebuttal	FPL	1, 2, 3
Rena Deaton	Rebuttal	FPL	1, 2, 3
*Timothy J. Duff	Rebuttal and Surrebuttal	DUKE	1, 2, 3
John N. Floyd	Rebuttal	GULF	1-2
Mark R. Roche	Rebuttal	TECO	1, 2, 3

<u>Witness</u>	<u>Testimony</u>	<u>Proffered By</u>	<u>Issues #</u>
J. Terry Deason	Rebuttal	TECO	1, 2, 3
*Jeffrey Pollock	Direct and Surrebuttal	FIPUG	1, 2, 3

## VII. BASIC POSITIONS

**FIPUG:** This Commission should approve a program in which eligible customers can opt out of utility energy efficiency programs when spending their own resources on energy efficiency measures, as requested by FIPUG and Wal-Mart in this docket. The majority of state Commissions have pursued some type of energy efficiency opt out program, and this Commission should do likewise.

FIPUG members value energy efficiency measures and know best the operations of their respective business processes. As proposed by FIPUG, the opt-out program would be revenue neutral and not result in cost shifting among rate classes. The additional energy efficiency gains resulting from the opt out program would be counted toward satisfying Commission-approved goals for the utilities. These gains would enable utilities to adjust utility programs downward so that the costs of the utility energy efficiency programs are not increased.

A properly implemented opt out program is a win-win proposition. Eligible customers pursue energy efficiency measures at their own expense, benefit by investing in energy efficiency measures best-suited to serve the particular needs of their respective businesses, and are not forced to also pay for utility-specific energy efficiency programs that may not fit or be attractive. The state benefits since its energy efficiency policy is advanced when eligible opt-out customers install cost-effective energy efficiency equipment and invest in additional energy efficiency measures using their own fiscal resources. The utilities benefit when opt out eligible customers invest in energy efficiency measures that are counted to help meet utility goals at no additional costs to the utility or its ratepayers. (The additional energy efficiency resulting from customers opting out should reduce the utilities' programs so that the net effect of the opt out program is revenue neutral; no costs are shifted to non-participating ratepayers). The ratepayers benefit by additional energy efficiency measures being in place at no significant costs to them.

The Commission should pursue an opt out program as suggested by FIPUG and Wal-Mart.

**WALMART:** Walmart has established itself as an industry leader in energy conservation, renewable energy, and sustainability by making operational and financial commitments to environmental stewardship in many aspects of Walmart's business. In 2005, Walmart made commitments to be supplied 100% renewable energy, to create zero waste; and to sell products that sustain people and the environment in the United States and throughout the world. Additionally, in 2013, Walmart made two additional commitments:

1. To scale renewable energy through driving the annual production or procurement of seven billion kWh of renewable energy across Walmart's global footprint by December 31, 2020 – an increase of over 600 percent compared to 2010; and
2. To accelerate energy efficiency by reducing the energy intensity – measured in kilowatt-hours per square foot of commercial space - required to power our buildings around the world by 20 percent by December 31, 2020 as compared to 2010 levels.

In this docket, Walmart respectfully asks the Commission to require Florida's investor-owned utilities to separate their Energy Conservation Cost Recovery expenditures into two categories, one for Energy Efficiency (EE) programs and the other for Demand Side Management (DSM) programs, and that the Commission then allow pro-active non-residential customers who implement their own Energy Efficiency programs, at their own expense, and meet certain other criteria to opt out of participating in a utility's EE programs and not be required to pay the cost recovery charges for the utility's EE programs approved by the Commission pursuant to Section 366.82, Florida Statutes. These steps will enable Walmart and other eligible commercial and industrial customers to implement energy efficiency measures that will be best tailored to those customers' facilities, thereby maximizing the energy conservation benefits provided. Energy efficiency measures implemented at the expense of such self-directing customers will provide significant system benefits at zero cost to the utility or its other customers. Walmart proposes that the utilities should be allowed to count the estimated or reported energy savings achieved by customers who opt out toward meeting the respective utilities' energy efficiency and demand side management goals. In order to provide the utilities with adequate advance information regarding the plans of customers who will implement energy efficiency measures on their own initiative, and at their own expense, Walmart further does not oppose an "opt-out notification window," i.e., a defined time period within which any customer planning to opt out must give the utility formal notice of its plans to do so.

Walmart recommends the following criteria for a customer to be eligible to opt out of EE program participation and charges:

1. Aggregated consumption by a single customer of more than 15 million kWh of electricity per year across all eligible accounts, meters, or service locations within each Company's service area.
2. To be designated an eligible account, a specific account at a specific service location may not have taken benefits under designated EE programs within 2 years before the period for which the customer is opting out.
3. An eligible account may not opt in to participate in the designated EE programs for 2 years after the first day of the year of the period in which the customer first opts out.
4. The customer must certify to the Company that the customer either (a) has implemented, within the prior 5 years, EE measures that have reduced the customer's usage, measured in kWh per square foot of space, or other similar measure as applicable, by a percentage at least as great as the Company's energy efficiency reductions through its approved EE programs, expressed as a percentage of the Company's total retail kWh sales as measured over the same time period; or (b) has performed an energy audit or energy use analysis within the three-year period preceding the customer's opt out request and confirms to the utility, that the customer has either implemented the recommended measures or that the customer has a definite plan to implement qualifying EE programs within 24 months following the date of the opt out request.

Regarding the calculation and structure of the proposed separate charges for EE and DSM programs, the Commission should require that the ECCR rates be split into two components: (1) ECCR "Part E", for energy program-related costs and (2) ECCR "Part D", for demand program-related costs. For a given customer class or group of classes, the Part E rate would be calculated as the energy-related revenue requirement allocated to the class or group of classes divided by the applicable kWh or kW billing determinants for that class or group of classes. The Part D rate would then be calculated as the demand revenue requirement divided by the applicable kWh or kW billing determinants for that class or group of classes.

For purposes of calculating the ECCR Part E and Part D rates, Walmart does not oppose the use of each respective utility's approved classification of its energy conservation program costs into energy-related and demand-related components.

**PCS**

**Phosphate:**

PCS Phosphate supports the proposals by FIPUG and Wal-Mart to separate the energy efficiency and load management segments of Florida utilities' DSM plans, and to allow qualifying large non-residential customers to opt out of the energy efficiency portion of the ECCR charge. FIPUG witness Pollock and Wal-Mart witness Baker are correct that the performance terms and requirements of load

management programs permit utilities to rely on load reductions from those programs for both resource planning and operations purposes, resulting in reliable system-wide benefits. Energy efficiency programs are intended to promote cost-effective measures that would not otherwise be implemented due to market imperfections, such as inadequate customer information and education concerning the availability of such measures. These issues do not apply to energy intensive manufacturing customers that are highly motivated by intense competitive pressures to identify and pursue cost-effective energy efficiency investments and practices on their own. Moreover, utility energy efficiency measures typically are not designed to address process efficiency improvements in the operations of energy intensive manufacturers because the customer possesses superior information concerning its processes, potential areas of improvements, and the costs to achieve them. Allowing those customers to self-direct their efficiency efforts will increase the reported energy savings in Florida by better capturing large customers' own efficiency actions. Self-direct energy efficiency efforts will also contribute to the economic competitiveness of those customers by eliminating the double payment in efficiency costs that now occurs through the payment for energy efficiency through the ECCR charge and through the customer's own self-funded efforts. PCS generally supports the opt-out eligibility criteria described by FIPUG witness Pollock as reasonable and appropriate.

**FPL:**

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.

**DUKE:** Because DEF's goals have been set using the Rate Impact Measure ("RIM") test, there is no need for the Commission to allow any customers to opt out of paying for DEF's Energy Efficiency program costs. However, if the Commission determines that it should implement an opt out policy, that policy should have clear guidelines to ensure that all parties, including the utility and those remaining customers, are not harmed by the policy. Those guidelines are explained in DEF's positions below, as well as in Mr. Duff's testimony filed in this proceeding.

**TECO:** The Commission should reject the request to opt-out of cost recovery for investor-owned utility energy efficiency programs filed by Wal-mart Stores East LP and Sam's East, Inc. and Florida Industrial Power Users Group ("FIPUG"). Since the inception of DSM in Florida, this Commission has a longstanding practice of being fair, equitable and reasonable in regards to all ratepayers while minimizing the overall rate impacts of DSM expenditures. Specifically, this Commission has rendered numerous prior decisions that are based upon two foundational principles: Establish DSM goals that create the least amount of upward pressure on customer rates and avoid establishing subsidies across or amongst customers. What Wal-mart and FIPUG are asking for goes against this longstanding practice and foundational principles by purposely putting in cost subsidies between customer classes and allowing some large customers to exempt themselves from helping fund Commission approved DSM programs solely because they are large energy or large demand users, while requiring all other non-eligible or eligible non-participating customers to take on the responsibility for their portion of the utility's cost-effective DSM programs that benefit all customers.

The opt-out proposals advanced by FIPUG and Wal-Mart/Sam's, if approved, would cede to industrial and other large customers the Commission's authority to decide which DSM programs are cost beneficial to all customers, and convert that process into the opt-out customers' individual determinations as to which programs best serve their economic interests.

**GULF:** It is the Company's basic position that the Commission should reject Wal-Mart Stores East, LP/Sam's East, Inc.'s ("Walmart") and the Florida Industrial Power Users Group's ("FIPUG") proposals in this docket. Allowing a select group of commercial and industrial customers to "opt-out" of participating in utility-sponsored energy efficiency programs and avoid paying Energy Conservation Cost Recovery (ECCR) charges for such programs is unnecessary and inappropriate because all customers benefit from cost-effective utility-sponsored demand-side management ("DSM"). The opt-out proposals would result in a subset of commercial and industrial customers enjoying benefits of DSM for which they are not paying and shift program costs to the remaining body of customers. Additionally, administration of an opt-out program would introduce additional complex processes resulting in additional costs thereby further increasing costs borne by non-opt-out customers.

**FPUC:** FPU believes that allowing non-residential customers to "opt out" of energy efficiency programs is not appropriate, nor necessary, at this time. If the Commission determines that certain customers should be allowed to opt out, well-defined criteria should be established to protect other participating ratepayers, as well as the utility, from incurring additional costs as a result of a non-residential customer's decision not to participate in the programs.

**SACE:** The Commission should not allow customers who implement their own energy efficiency or demand side management programs to not be required to pay the Energy Conservation Cost Recovery ("ECCR") charges for the Demand Side Management ("DSM") programs approved by the Commission. The Florida Investor Owned Utilities ("IOUs") and Commission's reliance on the Ratepayer Impact Measure ("RIM") test resulted in anemic DSM goals in the FEECA DSM goal-setting docket. It is SACE's position that the Florida IOUs and Commission's reliance on the RIM test to identify which DSM measures and programs are cost-effective for Floridians results in artificially low DSM goals. By using this overly conservative lens to establish DSM goals, the Commission approved a portfolio that even the IOUs agree will benefit their customers.

The RIM test is designed to evaluate the rate impact of utility DSM programs on all customers. The Florida IOUs point out in their testimony that a DSM measure or program passes RIM, the rate uplift associated with the cost of the measure or program is mitigated by lowering other costs. Thus, it is irrational to allow any customer to opt out of paying the ECCR charge. If the customer chooses to additional energy efficiency that will reduce their respective bill, they are not prohibited from doing so.

**OPC:** Intervenors' proposal should, at a minimum, be evaluated utilizing the Commission's approved cost-effectiveness test or tests to determine if the proposal(s) adequately safeguard the interests of the general body of ratepayers and various rate classes against undue rate impacts while achieving the intent of

Florida Energy Efficiency and Conservation Act (FEECA) and Section 366.82(2), F.S.

**STAFF:** Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions stated herein.

## VIII. 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?**

### POSITIONS

**FIPUG:** Yes, the Commission should take appropriate administrative steps, as Commissions across the country have, to implement an opt-out program in Florida.

**WALMART:** Yes.

### PCS

**Phosphate:** Yes. PCS agrees with FIPUG and Wal-Mart that this separation should be implemented.

**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.

**DUKE:** No, separating the expenditures in this way is not necessary. However, if the Commission intends to implement an opt-out policy that only applies to Energy Efficiency programs, DEF would be able to separate the charges with little difficulty.

**TECO:** No. Separating their expenditures in the manner described would represent an erroneous and unwarranted departure from the manner in which ECCR has been administered for the last 30 plus years. All of Tampa Electric's approved DSM measures provide demand and energy savings. Energy efficiency programs clearly provide both energy savings and demand reductions.

**GULF:** No. Virtually all of Gulf Power's programs provide both energy and demand savings. The opt-out proponents correctly recognize the benefits of implementing demand response programs but fail to recognize that cost-effective energy efficiency programs also provide benefits to participating and non-participating customers alike.

**FPUC:** No.

**SACE:** No. SACE agrees with Duke Energy Florida, Florida Power & Light, Gulf Power and TECO that it is not appropriate to require a utility to separate their Energy Conservation Cost Recovery expenditures into two categories. In Florida, splitting the charge is particularly inappropriate because of the Commission and IOUs reliance on the RIM test to determine energy efficiency savings. As RIM is the most narrowly defined of the EE cost-benefit tests, all customers benefit from the programs, both participants and non-participants. Participants benefit from bill savings and electric rate reductions, and non-participants also benefit from the electric rate reduction. SACE notes that there are many other DSM benefits that the RIM test does not measure. Further, many energy efficiency measures accrue demand savings, and vice versa, making the calculation of the ECCR difficult if the charge is split into two categories.

**OPC:** Intervenors' proposal should, at a minimum, be evaluated utilizing the Commission's approved cost-effectiveness test or tests to determine if the proposal(s) adequately safeguard the interests of the general body of ratepayers and various rate classes against undue rate impacts while achieving the intent of Florida Energy Efficiency and Conservation Act (FEECA) and Section 366.82(2), F.S.

**STAFF:** No position.

**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?**

## **POSITIONS**

**FIPUG:** Yes. Eligible customers should be allowed to pursue energy efficiency measures at their own expense and not be forced to also pay for utility-specific energy efficiency programs. A properly structured opt-out program is a win-win proposition. The state benefits and its energy efficiency policy is advanced when eligible opt-out customers invest in additional energy efficiency measures with their own resources. The eligible customers benefit by investing in energy efficiency measures best-suited to serve the particular needs of their respective businesses, and not being forced into utility programs that may not fit or be attractive. The utilities benefit when opt out eligible customers invest in energy efficiency measures that are counted to help meet utility goals, again at no additional costs to the utility or its ratepayers. (The additional energy efficiency resulting from customers opting out should reduce the utilities' programs so that the net effect of the opt out program is revenue neutral; no costs are shifted to non- participating ratepayers). The ratepayers benefit by additional energy efficiency measures being in place at no costs to them.

**WALMART:** Yes. Providing this opportunity for eligible customers will enable those customers to proactively implement energy efficiency measures that meet or exceed the percentage energy savings from the utility's own EE programs, and that are best tailored to the self-directing (or opt-out) customers' facilities and operations, thereby maximizing the energy efficiency benefits provided by the self-directing customers' efforts. Self-directing customers will be implementing energy efficiency measures at their own expense, which will benefit the utility, the utility's other customers, and the State of Florida at no cost to the utilities or their other customers.

## **PCS**

**Phosphate:** Yes. PCS agrees with Wal-Mart and FIPUG.

**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.

**DUKE:** No. Because DEF's goals are set based on programs that are cost-effective under the RIM test, all customers, both participants and non-participants, will benefit from all Energy Efficiency programs. It is therefore not necessary to permit certain customers to opt out of paying for the Energy Efficiency program costs.

**TECO:** No. This proposal is as inappropriate now as it was in 1981 when the Commission first rejected a similar proposal, and should be rejected for the many reasons put forth by Tampa Electric's rebuttal witnesses and those for the other IOUs.

**GULF:** No. Cost-effective demand-side management benefits all customers; therefore all customers should share in the costs of such programs. Allowing select customers to opt-out of utility energy efficiency programs would add administrative costs to implementing the DSM Plan, result in complex new procedures and impact the entire Florida Energy Efficiency Conservation Act process from goal setting to annual reporting.

**FPUC:** No, not without the implementation of carefully constructed criteria that will hold all customers and the utility harmless. Otherwise, allowing non-residential customers to 'opt-out' may result in cross-subsidization and would also ignore the benefits of such programs to the general body of ratepayers as whole, contrary to FEECA.

**SACE:** No. The Commission should not allow customers who implement their own energy efficiency or demand side management programs to not be required to pay the cost recovery charges for the DSM programs approved by the Commission. The IOUs and Florida Commission's reliance on RIM test resulted in anemic DSM goals. It is SACE's position that the Florida IOUs and Commission's reliance on the RIM test to identify which DSM measures and programs are cost-effective for Floridians results in artificially low DSM goals.

The RIM test is designed to evaluate the rate impact of utility DSM programs on all customers. The Florida IOUs point out in their testimony that a DSM measure or program passes RIM, the rate uplift associated with the cost of the measure or program is mitigated by lowering other costs. Thus, it is irrational to allow any customer to opt out of paying the ECCR charge. If a customer chooses to install additional DSM measures that will reduce their respective bill, they are not prohibited from doing so.

**OPC:** Intervenors' proposal should, at a minimum, be evaluated utilizing the Commission's approved cost-effectiveness test or tests to determine if the proposal(s) adequately safeguard the interests of the general body of ratepayers

and various rate classes against undue rate impacts while achieving the intent of Florida Energy Efficiency and Conservation Act (FEECA) and Section 366.82(2), F.S.

**STAFF:** No position.

**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.**

**POSITIONS**

**FIPUG:** The eligibility criteria should be as set forth by FIPUG expert witness Jeff Pollock in his pre-filed testimony.

**WALMART:** The eligibility criteria should be as set forth in the surrebuttal testimony of Mr. Kenneth E. Baker, filed in this docket on May 20, 2015.

**PCS**

**Phosphate:** PCS generally agrees with the eligibility criteria described by FIPUG.

**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.

**DUKE:**

There must be clear and well-vetted guidelines and requirements to ensure the overall opt out process is fair to all parties. Any opt out policy should be designed so that no one is harmed by any customer opting out of paying for their share of the particular charges. The utility must be able to account for the lost energy savings from an opt out customer and use those savings toward meeting its goal. There must also be a process to ensure that opt out customers have installed the measures they claim to have installed. When measuring the usage that a customer must meet to be eligible to opt out, the usage at separate locations (even if owned by the same customer) should not be aggregated for purposes of meeting

the threshold. In addition, the usage eligibility should be measured based on kilowatt hours rather than megawatts. Finally, the administrative costs incurred by the utility to determine customer eligibility and ensure standards are met should be borne by the customer opting out, and not by the remaining customers who have not or cannot opt out.

**TECO:** The Commission should not need to reach this issue, as the Commission should reject the very generally described "opt-out" proposals of the intervenors, FIPUG and Wal-Mart/Sam's. If the Commission did have to decide this issue, it is very clear from the testimony submitted in this proceeding that the tests and criteria would be very difficult and costly to devise and administer and would lead to continuing controversy in areas where none has arisen over the life of the ECCR programs, particularly in the form of claims of favoritism and/or undue disadvantage by those customers who do not qualify to opt-out.

**GULF:** The Commission should apply criteria to ensure that the utility and the non-opt-out customers are not harmed by the customers that elect to opt out. Considerations could include allowing utilities to adjust their DSM goals based on lost energy savings, requiring that incremental administrative costs associated with the opt-out program to be borne by the cost-causers and ensuring that non-opt-out customers are not required to bear additional expense.

**FPUC:** Criteria should be established that hold all customers, as well as the utility, harmless. Such criteria might include, among other things, consideration of whether the customer electing to 'opt out' has received any rebates through the utility's energy efficiency programs prior to electing to no longer participate in the programs.

**SACE:** SACE reiterates that the Commission should not allow customers to "opt out" of a utility's EE or DSM programs. There are no criteria that are appropriate, based on the use of RIM tests to determine cost-effectiveness, for a customer to "opt-out" of the utility's approved DSM programs.

**OPC:** Intervenors' proposal should, at a minimum, be evaluated utilizing the Commission's approved cost-effectiveness test or tests to determine if the proposal(s) adequately safeguard the interests of the general body of ratepayers and various rate classes against undue rate impacts while achieving the intent of Florida Energy Efficiency and Conservation Act (FEECA) and Section 366.82(2), F.S.

**STAFF:** No position.



IX. EXHIBIT LIST

<u>Witness</u>	<u>Testimony</u>	<u>Proffered By</u>		<u>Description</u>
Kenneth E. Baker	Direct	WALMART	KEB-1	Qualifications of Kenneth E. Baker
Kenneth E. Baker	Direct	WALMART	KEB-2	Energy Efficiency and Demand Side Management Programs of the Companies
Kenneth E. Baker	Direct	WALMART	KEB-3	Oklahoma Administrative Code Section OAC 165:35-41-3
Kenneth E. Baker	Direct	WALMART	KEB-4	Public Service Company of Oklahoma and Duke Energy Carolinas' South Carolina DSM-EE tariffs
Kenneth E. Baker	Direct	WALMART	KEB-5	PSC of South Carolina, Order No. 2008-251-E
Steve W. Chriss	Direct	WALMART	SWC-1	Witness Qualifications Statement of Steve W. Chriss
Steve W. Chriss	Direct	WALMART	SWC-2	Utility Proposed Energy and Demand Allocations and ECCR Rate Calculations
Steve W. Chriss	Direct	WALMART	SWC-3	Illustrative Part E and Part D Rates for Florida Investor-Owned Utilities
Steve W. Chriss	Direct	WALMART	SWC-4	Public Service Company of Oklahoma Demand Side Management Cost Recovery Rider Factor Calculation
Mark R. Roche	Rebuttal	TECO	MRR-2	Impacts of opt out proposals
J. Terry Deason	Rebuttal	TECO	JTD-1	Resumé

<u>Witness</u>	<u>Testimony</u>	<u>Proffered By</u>		<u>Description</u>
Jeffry Pollock	Direct	FIPUG	Appendix A	Qualifications of Jeffry Pollock
Jeffry Pollock	Direct	FIPUG	Appendix B	Testimony Filed in Regulatory Proceedings
Jeffry Pollock	Direct	FIPUG	JP-1	Policy Survey
Jeffry Pollock	Direct	FIPUG	JP-2	Duke Energy Sample Form Letter
Jeffry Pollock	Surrebuttal	FIPUG	JP-3	EPA 2030 Goal Calculation
Jeffry Pollock	Surrebuttal	FIPUG	JP-4	EPA Florida EE Goal

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

There are no stipulations.

XI. PENDING MOTIONS

There are no motions.

XII. PENDING CONFIDENTIALITY MATTERS

There are no confidentiality matters.

XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

XIV. RULINGS

Opening statements will be 10 minutes for all parties except FPL, Gulf, DEF, TECO and FPUC, who will collectively have 30 minutes.

It is therefore,

ORDERED by Chairman Art Graham, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Chairman Art Graham, as Prehearing Officer, this 15th day of July, 2015.



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ART GRAHAM  
Chairman and Prehearing Officer  
Florida Public Service Commission  
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Tallahassee, Florida 32399  
(850) 413-6770  
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

TLT

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.