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23 Service Commission Staff.

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P R O C E E D I N G S

1
2 **COMMISSIONER BROWN:** I'd like to call this
3 hearing to order in Docket 140226. Today is July 22nd,
4 and the time is 9:30, according to our clock over here.

5 Staff, can you please read the notice?

6 **MS. TAN:** Yes. By notice issued June 4th,
7 2015, this time and place is set for a hearing
8 conference in the Docket 140226-EI. The purpose of the
9 hearing conference is set out in the notice.

10 **COMMISSIONER BROWN:** Thank you so much. And
11 before we get into taking appearances, I just wanted to
12 thank our Chairman, Art Graham, for giving me the
13 privilege to serve and preside over this proceeding. I
14 greatly appreciate it. Thank you for your trust.

15 And to our most senior Commissioner as well
16 for her deference -- and she did just have a birthday,
17 so she is technically the most senior Commissioner
18 here -- so wish her a happy birthday with us, please.
19 Thank you.

20 And we will take appearances starting with my
21 right.

22 **MR. MOYLE:** Thank you, Madam Chairman. I'm
23 Jon Moyle with the Moyle Law Firm, and I am representing
24 the Florida Industrial Power Users Group. They go by
25 FIPUG. You'll hear that a lot today. So I look forward

1 to spending the day with you. Thank you.

2 **COMMISSIONER BROWN:** Thank you.

3 **MR. BREW:** Good morning. I'm James Brew of
4 the firm of Stone, Mattheis, Xenopoulos & Brew. I'm
5 here for White Springs Agricultural Chemical/PCS
6 Phosphate.

7 **MS. CHRISTENSEN:** Patty Christensen with the
8 Office of Public Counsel. And I'd also like to put an
9 appearance on behalf of Charles Rehwinkel. Thank you.

10 **COMMISSIONER BROWN:** Thank you.

11 **MR. WRIGHT:** Thank you, Commissioner. Robert
12 Scheffel Wright of the Gardner, Bist law firm appearing
13 on behalf of Wal-Mart Stores East, LP, and Sam's East
14 Incorporated. We'll refer to the two entities
15 collectively as Wal-Mart throughout the hearing. I'd
16 also like to enter an appearance for my law partner
17 John T. Lavia, III. Thank you.

18 **COMMISSIONER BROWN:** Thank you.

19 **MR. CAVROS:** Good morning, Commissioner.
20 George Cavros on behalf of the Southern Alliance for
21 Clean Energy.

22 **COMMISSIONER BROWN:** Thank you.

23 **MS. KEATING:** Good morning, Commissioners.
24 I'm Beth Keating with the Gunster law firm here today
25 for Florida Public Utilities.

1 **MR. GRIFFIN:** Good morning, Commissioners.
2 Steven Griffin with the law firm of Beggs & Lane on
3 behalf of Gulf Power Company. I'd also like to enter an
4 appearance for my partner Russell Badders.

5 **MR. BEASLEY:** Good morning, Commissioners.
6 James D. Beasley and J. Jeffry Wahlen of the law firm of
7 Ausley, McMullen in Tallahassee representing Tampa
8 Electric Company.

9 **MS. TRIPLETT:** Good morning. Dianne Triplett
10 on behalf of Duke Energy Florida.

11 **COMMISSIONER BROWN:** Thank you.

12 **MS. CANO:** Good morning, Commissioners.
13 Jessica Cano appearing on behalf of Florida Power &
14 Light Company.

15 **COMMISSIONER BROWN:** Thank you.

16 **MS. TAN:** Lee Eng Tan on behalf of Commission
17 staff.

18 **MS. HELTON:** Mary Anne Helton, advisor to the
19 Commission.

20 **MR. BECK:** Charlie Beck, General Counsel to
21 the Commission.

22 **COMMISSIONER BROWN:** Thank you very much.
23 Staff, at this time are there any preliminary
24 matters to go over?

25 **MS. TAN:** Yes. Staff has compiled a

1 stipulated Comprehensive Exhibit List which includes the
2 prefiled exhibits attached to the witnesses' testimony
3 in this case. The list has been provided to the
4 parties, the Commissioners, and the court reporter.
5 This list is marked as the first hearing exhibit, and
6 the other exhibits should be marked as set forth in the
7 chart.

8 **COMMISSIONER BROWN:** Okay. Thank you. And --

9 **MS. TAN:** In addition, staff would like to
10 move Exhibit 1 into the record, and staff would also
11 like to move Exhibits 19 through 37 into the record as
12 set forth in the Comprehensive Exhibit List.

13 **COMMISSIONER BROWN:** And I will go ahead and
14 move those at this time, especially since Exhibits 19
15 through 37 are already stipulated.

16 (Exhibits 1 through 37 marked for
17 identification.)

18 (Exhibits 1 and 19 through 37 admitted into
19 evidence.)

20 All right. Are there any other preliminary
21 matters?

22 **MS. TAN:** There are none at this time.

23 **COMMISSIONER BROWN:** Thank you so much.

24 A few comments before we get into the opening
25 statements. I would just like to lay out the plan for

1 today. First, we will be breaking for lunch at a
2 natural time -- somewhere around 12:30ish where it
3 naturally falls -- for about an hour. Thereafter, we
4 will make every effort to move as expeditiously as
5 possible. The goal, and I'm pretty confident that we
6 could -- based on we have ten parties, nine witnesses,
7 and three specific issues, I do believe we can move
8 expeditiously today and get it done.

9 With that in mind, please be advised that we
10 will probably be taking a dinner break as well somewhere
11 around 6:00, and we will go pretty late tonight. Again,
12 I'm optimistic, but, of course, we do have tomorrow
13 reserved as well.

14 A few reminders. As noted in the Prehearing
15 Order, friendly cross will not be allowed. Also, please
16 refrain from making any frivolous objections. And I
17 know that in the prehearing meeting the Prehearing
18 Officer, the Chairman, noted a certain allotted time for
19 opening statements as well as witness statements, and he
20 made the suggestion that you are allotted this time but
21 you don't necessarily have to use it. That's just a
22 nice little reminder for all parties here, and
23 witnesses.

24 Okay. Getting into opening statements, each
25 party -- I believe you all have a list of the time that

1 has been allotted and the order of opening statements.
2 FIPUG, Wal-Mart, PCS Phosphate, SACE, and Office of
3 Public Counsel each have ten minutes; and Florida Power
4 & Light, Duke, TECO, Gulf, FPUC have a collective 30
5 minutes. You do have the order of opening statements.
6 I assume that is acceptable to all the parties.

7 Okay. Now, Mr. Moyle, getting into the
8 witnesses, I'd like to confirm whether Witness Pollock
9 is present today.

10 **MR. MOYLE:** He will be. I think this was
11 discussed with the Prehearing Officer, which Ms. Kaufman
12 represented FIPUG, and I think it was agreed that he
13 would be taken out of order at the end of the
14 proceeding. But he will be here.

15 **COMMISSIONER BROWN:** Okay. Thank you very
16 much.

17 All right. Okay. At this time, Ms. Eng [sic]
18 -- Lee Eng, where shall we proceed?

19 **MS. TAN:** Yes. We may start with opening
20 statements.

21 **COMMISSIONER BROWN:** Okay. Thank you.

22 Mr. Moyle, we'll begin with you, and I have a
23 timer here.

24 **MR. MOYLE:** Okay. Thank you. And on the
25 matter with respect to Mr. Pollock, I was not at the

1 prehearing, but I just wanted to thank the Prehearing
2 Officer and the parties for working with FIPUG, as
3 usually is the case, on witnesses. Some of these
4 witnesses have to appear in other jurisdictions. So
5 thank -- thank you for that.

6 Let me move into my opening statement, and I
7 will also use a timer and endeavor to stick to the ten
8 minutes allotted.

9 But thank you for hearing our case today. As
10 I mentioned yesterday when you all were at Agenda
11 Conference, FIPUG is in a -- in a bit of a different
12 position. We're speaking first today, which we're
13 pleased to do, and we are petitioning and asking for
14 affirmative relief. Usually we intervene and are
15 reacting to utility proposals, but today we are, in
16 conjunction with Wal-Mart and PCS Phosphate, putting
17 forward and advocating that you all consider allowing
18 certain customers to opt out.

19 And I want to spend a minute and explain what
20 we mean by opt out, but, again, just to remind folks
21 that my client, FIPUG, is a group of large users of
22 electricity characterized by going 24/7. And they're in
23 a variety of businesses. They're good Florida corporate
24 citizens and businesses such as the pulp and paper
25 business, the phosphate business, the chemical business,

1 the cement business, the grocery business, and we've
2 appeared before you for -- for many years. So that --
3 that is who my -- my client is. I just wanted to
4 start -- start with that reminder.

5 What is an opt-out provision? You're going to
6 hear a lot of testimony about an opt-out provision. But
7 I think -- I think Mr. Pollock does a very good job and
8 is clear and concise when he says an opt-out provision
9 is simply a provision that allows qualifying customers a
10 choice between paying for and possibly participating in
11 utility energy efficiency programs or identifying and
12 self-funding their own energy improvements. So at its
13 very simple core, that is what we are referencing when
14 we talk about an opt out.

15 And you're going to hear some, some
16 discussion -- I may have a little fun and ask a couple
17 of witnesses what they were doing in 1981, because I
18 know I was not representing FIPUG in 1981, which is a
19 case that the utilities say, well, you know, this
20 happened in 1981 and you should stick to it. We're
21 going to say a lot has changed since 1981, and you ought
22 to look at possibly changing the way in which energy
23 efficiency is delivered and adhere or consider following
24 what a number of other states have done and have
25 permitted large users to opt out of energy efficiency

1 programs.

2 I know Commissioner Edgar, with her position
3 at NARUC, has conversations with a lot of states, a lot
4 of Commissioners, and, you know, I think there's best
5 practices or alternative practices that are talked and
6 debated. And, you know, respectfully, we're here to
7 have that conversation today and to put forward a
8 proposal to allow FIPUG members, Wal-Mart, others who
9 qualify, it's not limited to the people who are here,
10 but people who qualify to make their own decisions about
11 spending their own money and investing in energy
12 efficiency. And if they do that and they spend their
13 money and they invest in energy efficiency, we're
14 saying, well, that's good, it ought to be recognized.
15 We think businesses know businesses best, and that --
16 that that is an alternative approach that ought to be
17 considered.

18 A couple of things we're not saying. We're
19 not saying that -- that those who qualify and opt out
20 should get a free ride. We're not saying that -- that
21 costs should be shifted onto other customers.
22 Mr. Pollock will be prepared to answer questions about
23 what he says is a revenue-neutral approach to this.

24 So -- so I think -- I think you'll hear some
25 policy reasons about why we believe the opt out should

1 be pursued, and let me just kind of touch on them
2 briefly.

3 Again, businesses know their businesses best.
4 Commissioner Graham, I think, spent -- spent time as an
5 engineer in particular businesses. And, you know, if
6 you understand and know the operations of your business,
7 we would argue that you're better able to say, you know,
8 I think I can invest in this or that as an efficiency
9 measure, as compared to having in effect to pay money
10 under the existing construct and then see if you can fit
11 within a program that the utility has proposed and the
12 PSC reviews. That's a way of doing it, it's been done
13 that way for a long time, but I think we would argue it
14 may not necessarily be the only way to do it and there
15 may be alternative ways to do it.

16 And, you know, we would argue economic
17 efficiency -- I'll ask some questions about economic
18 efficiency of a couple of these witnesses -- but
19 economic efficiency, we would suggest, is better when a
20 business is able to retain its money and then make
21 investment decisions about energy efficiency, invest in
22 energy efficiency, and then realize those benefits.

23 So the FIPUG proposal is, is that not that
24 costs be shifted, but if a customer invests in energy
25 efficiency, that he get a professional engineer or an

1 energy manager to certify and say, hey, we've done this
2 investment in energy efficiency, and it ought to be
3 counted and considered as part of meeting the energy
4 efficiency goals.

5 A number of states that have moved forward
6 with -- with the opt-out proposal, I think they have
7 responded to large users who have said this gives us a
8 little more say over our capital, it gives us
9 competitive advantages to states that don't have this
10 type of proposal. So that's something that we would ask
11 you to consider.

12 I'm also going to ask a few questions of some
13 of the witnesses because the witnesses for the utilities
14 are saying, oh, this is, this is not -- not really going
15 to work, it's going to result in cost shifting.

16 Nowhere in Mr. Pollock's testimony does he say
17 this is going to result in cost shifting. I mean, to
18 the contrary, he says, if properly executed and
19 implemented, it'll be revenue neutral.

20 And to further that conversation, I'm going to
21 use what I hope is a simple hypothetical, and it's along
22 these lines. There's a hypothetical utility that has a
23 10,000 megawatt load. The energy efficiency goal -- and
24 I think SACE actually proposed a 1 percent energy
25 efficiency goal in a proceeding. But if you have a

1 1 percent energy efficiency goal on a 10,000 megawatt
2 load, my math is -- is that that's 100 megawatts that
3 you need to deliver of energy efficiency.

4 So if that's the -- that's the goal and then
5 you assume that the regular programs deliver
6 85 megawatts and opt-out customers deliver 15 megawatts,
7 you're still at your 100 percent goal. You've achieved
8 your goal through two different mechanisms. And in this
9 approach, both the people who opt out, they're providing
10 energy efficiency and that will flow to the benefit of
11 the people who are in the regular program, but you still
12 get to the 100 percent. And the witnesses for the
13 utilities seem to have missed that part with respect to
14 FIPUG's proposal, that -- that we want and would
15 encourage the contributions made by those opting out to
16 contribute and to be counted. We think that's fair, we
17 think that won't result in cost shifts, and we think it
18 ought to be pursued.

19 I will also ask some of the witnesses for the
20 IOUs, because Mr. Pollock has a -- has a chart that
21 shows over -- over the majority of the states in this
22 country have moved forward toward some type of an
23 opt-out proposal, and I want to ask them and will ask
24 them did all these states get it wrong? I mean, do all
25 these states have this -- you know, is there shifting

1 involved? I mean, we contend that there is a right way
2 to do it. And we think the testimony of Mr. Pollock and
3 the Wal-Mart witnesses lay out a way to do it that does
4 not shift costs, and we would encourage you to look
5 closely at that and move forward with it.

6 **COMMISSIONER BROWN:** One minute.

7 **MR. MOYLE:** Okay. So just to -- just to
8 conclude, things evolve, things change. A lot has
9 evolved and changed in a lot of industries. The telecom
10 industry, just about every industry has seen a lot of
11 change. 1981, respectfully, was many, many years ago.
12 And while precedent should be reviewed, this Commission
13 is not obligated to stick with an approach when other
14 approaches are suggested, innovation is suggested,
15 change is suggested. And we think, respectfully, that
16 allowing customers, FIPUG customers, others who qualify,
17 the opportunity to look and make their own decisions
18 using their own capital, to make their own energy
19 efficiency decisions and investments and to certify to
20 the Commission, hey, we've done this, it's not a free
21 pass, it'll be checked on, that that's a good way to
22 proceed and it ought to be pursued. The government
23 programs, yes, they work, but they're not the only way
24 to skin the energy efficiency cat. So thank you.

25 **COMMISSIONER BROWN:** Thank you very much.

1 Mr. Wright with Wal-mart, your ten minutes.

2 **MR. WRIGHT:** Thank you, Commissioner. My
3 lights were acting up. They were both on at the same
4 time.

5 Good morning. Again, I'm Schef Wright, and
6 today I have the privilege of appearing before you on
7 behalf of Wal-Mart Stores East and Sam's East, whom we
8 refer to as Wal-Mart. We, like FIPUG and the other
9 parties, thank you very much for hearing our proposals
10 today.

11 This proceeding is of great importance not
12 only to Wal-Mart and FIPUG's members and PCS Phosphate
13 and other similarly situated large commercial and
14 industrial customers who are major players in Florida's
15 economy, it's also important to the state as a whole in
16 terms of promoting maximum cost-effective energy
17 efficiency and conservation pursuant to the Florida
18 Energy Efficiency and Conservation Act, which we all
19 know as FEECA. Other states have recognized and
20 implemented opt-out proposals, and we believe that the
21 proposals we offer to you today are fully consistent
22 with the Legislature's intent in FEECA.

23 In FEECA, the Legislature declared that it is
24 critical to utilize the most efficient and
25 cost-effective demand-side conservation systems in order

1 to protect the health, prosperity, and general welfare
2 of the state and its citizens. They went on to mandate
3 that the Commission take into consideration the need for
4 incentives to promote customer-owned and utility-owned
5 energy efficiency systems. This is what this proceeding
6 is about.

7 Wal-Mart and FIPUG have offered to you opt-out
8 proposals by which we ask that you require the
9 investor-owned utilities to allow non-residential
10 customers who meet defined specified criteria to opt out
11 of participating in the energy efficiency components of
12 their demand-side management or energy conservation
13 programs, provided that such customers must implement
14 their own energy efficiency measures at their own
15 expense that will provide energy efficiency or savings
16 that are at least as great as the utility's overall
17 energy efficiency savings percentage pursuant to goals
18 approved by you.

19 This option will provide appropriate
20 incentives to eligible commercial and industrial
21 customers to implement the most efficient and
22 cost-effective energy efficiency measures that they can.
23 They are far better able to identify and implement
24 programs and measures at their facilities than their
25 utilities and trying to shoehorn what they might want to

1 do into utility programs.

2 Our customers, Wal-Mart, FIPUG's members, PCS,
3 we know our processes the same way that the utilities
4 know their business of providing safe, reliable
5 electricity. Again, we will make our energy efficiency
6 investments and achieve savings, which we will certify
7 at our expense.

8 Now, what are the criteria? As supported by
9 Mr. Kenneth Baker, Wal-Mart's Senior Manager of
10 Sustainable Regulation and Legislation, Wal-Mart
11 proposes the following criteria to be applied for
12 customers to be eligible to opt out. Aggregated
13 consumption of at least 15 million kilowatt hours of
14 electricity across the customers' properties. That's
15 not an ironclad number. That's a number that we use
16 because we think it's a good workable number. It's also
17 been specifically approved by the Oklahoma Corporation
18 Commission.

19 Duke Energy/Progress's proposal is actually a
20 program in place in South Carolina, allows any
21 commercial customer with usage of 1 million kilowatt
22 hours a year and any industrial customer at all to opt
23 out of either or both Duke's DSM and energy efficiency
24 categories of programs in South Carolina and opt back in
25 under specified conditions.

1 Two, the customer must certify to the utility
2 that the customer has either implemented energy
3 efficiency members' -- measures that reduce the
4 customer's usage by a percentage at least as great as
5 the utility's goal percent, or that they've done an
6 energy office and have a definitive plan in place to
7 move forward with implementing the recommendations. The
8 customer may not have taken benefits under the utility's
9 energy efficiency programs within two years preceding
10 the opt-out date. They may not opt back in to take
11 benefits under the energy efficiency programs within two
12 years after opting out.

13 We further would support an opt-out
14 notification requirement that would require customers to
15 give adequate notice to the utility of their intent to
16 opt out, obviously completely consistent with and
17 facilitative of the utility's planning processes.

18 Additionally, Wal-Mart fully supports allowing
19 the utility to count either the estimated or reported
20 energy savings from opt-out customers' efforts towards
21 the utility's approved energy efficiency and DSM goals.
22 We believe these are fully workable criteria, but
23 Wal-Mart is also willing to work with the Commission,
24 the utilities, Public Counsel, SACE, and any other
25 interested parties to refine them.

1 You should again note that Wal-Mart is not
2 recommending, not proposing that customers be allowed to
3 opt out of all of the utilities' ECCR programs and cost
4 responsibility, only for energy efficiency measures, not
5 for the demand reduction and demand response load
6 management type programs.

7 Mr. Steve Chriss, Wal-Mart's Senior Manager of
8 Energy Regulatory Analysis who has testified before you
9 in other cases, using the utilities' data, explains in
10 his testimony and exhibits how to accomplish the
11 demand/energy split, how to separate out the
12 demand-related bucket of costs from the energy-related
13 bucket of costs. It's really easy. You take the
14 demand-related classified programs, classify those costs
15 as demand related and put them in the demand bucket. We
16 pay that. There's one rate for Part D, as he calls it
17 in his testimony. The energy efficiency programs go
18 into Part E, and we would not pay that, or an opting
19 out -- any opting out customer would not pay that. He
20 did this -- it's in his testimony -- using the IOUs'
21 information.

22 With the exception of Gulf Power, most of the
23 costs are demand related and, accordingly, would
24 continue to be paid by opt-out customers. Gulf has a
25 higher proportion of energy-related costs in theirs.

1 This is an appropriate policy for a number of
2 reasons. It provides better incentives to customers on
3 the ground to implement the best, most efficient, and
4 most cost-effective package of energy efficiency members
5 for their operations. As Mr. Moyle said, businesses
6 know their businesses best.

7 There's no direct cost to other customers.
8 And if you assume that there are any administrative
9 costs and further assume that opt-out customers do have
10 to pay the administrative costs, that means that you
11 would get the energy savings provided by opt-out
12 customers with no direct cost to customers. A RIM
13 benefit cost ratio would potentially be infinite.

14 Customers have to meet -- to be eligible to
15 opt out, they have to meet at least the utilities'
16 energy savings percentage goal as established by your
17 decisions. So opt out cannot result in any less energy
18 conservation than the utilities' programs and can
19 reasonably be expected to produce more savings because
20 we'll probably be doing a cushion and be doing more
21 than the minimum percentage specified by your goals,
22 almost certainly with a higher overall benefit-to-cost
23 ratio because you're getting more benefit for less
24 cost, and almost certainly with lower overall cost to
25 provide the total energy savings realized through the

1 combination of the utilities' programs and the opt-out
2 customers' efforts.

3 So bringing it back around, following the
4 policies and directives set forth by the Legislature in
5 FEECA, our opt-out proposal will provide -- promote
6 greater energy conservation more cost-effectively for
7 the benefit of all Floridians, and will also provide
8 better incentives for the implementation of
9 customer-owned energy efficiency systems as directed by
10 the statute.

11 Accordingly, Wal-Mart respectfully asks that
12 you approve our opt-out proposal, and we thank you very
13 much for the opportunity to present our case to you
14 today.

15 **COMMISSIONER BROWN:** Thank you. With time
16 left. I appreciate that.

17 Mr. Brew, PCS Phosphate, ten minutes.

18 **MR. BREW:** Yes. Thank you, and good morning.
19 I'm J. Brew appearing for PCS Phosphate, and I very
20 appreciate being placed third. We're not a Petitioner,
21 but we certainly are a proponent.

22 I wanted to take a second to put things in --
23 in scope. The -- the threshold that Wal-Mart has talked
24 about of 15 million kilowatt hours represents a very
25 large load. PCS will use 15 million kilowatt hours in a

1 couple of weeks. And so the -- what's at stake in terms
2 of the -- the ability to look at our process, which is
3 unique, which is a very part of Duke's industrial load,
4 is -- is very important.

5 There are basically three elements to what
6 we're going to discuss today. The first is -- concerns
7 whether or not the opt out itself is a good idea, and
8 that brings into play the fact that so many other states
9 have considered and adopted some version of opt out.
10 There are fundamentally sound reasons for that, and they
11 foremost concern, as both Mr. Moyle and Mr. Wright have
12 mentioned, the fact that very large energy-intensive
13 loads are the ones that know their system, know their
14 process, and would not look to a utility to figure out
15 how to make it more efficient. And the second is a
16 fundamental economic competitiveness concern.

17 We'll talk today about, particularly in Duke
18 Energy's case, the fact that a third of its industrial
19 load is tied up in three customers, phosphate and two
20 others, that face severe global economic competition and
21 for which energy price is a very big component of their
22 overall cost and budgets, which is right in Duke's
23 Ten-Year Site Plan.

24 So fundamentally on whether or not the policy
25 makes sense, you have very compelling reasons to

1 allow -- to create that flexibility for large
2 energy-intensive users. They more -- they already have
3 more than enough incentive to identify and pursue
4 efficiency improvements on their electricity usage that
5 is cost justified.

6 A part of that, too, is that you have to
7 recognize that assigning additional costs to these
8 customers through a charge like the ECCR really serves
9 as a barrier rather than -- rather than facilitating
10 energy efficiency investments. If you take a 100
11 megawatt load and apply Duke's factor, current ECCR
12 factor, you're talking about a million dollars. Well,
13 for these large companies there's also competition for
14 capital, and the pot is not unlimited, which means that
15 a dollar spent through a surcharge or a charge to the
16 utility is a dollar that cannot be invested in your own
17 operations. And that's fundamentally what we're talking
18 about is -- is large industrial customers paying twice:
19 Once through the ECCR, and then what they can -- what
20 their own process identifies to do.

21 So fundamentally you're talking about rather
22 than having that -- with a 100 megawatt load -- a
23 million dollars wasted, you have to either use it or
24 lose it under the proposal that Wal-Mart has outlined,
25 because it is going back into the efficiency of your own

1 operation. So logically it makes all the sense in the
2 world both in terms of generating additional energy
3 savings and enhancing the economic competitiveness of
4 these very important loads.

5 Next what we'll talk about is -- is whether or
6 not the opt out is permissible under FEECA. And you
7 have -- you have expert witnesses that very cautiously
8 tiptoe on that line because they're not lawyers. I'm
9 not so constrained. I'm very comfortable telling you
10 that FEECA, by its express terms, directed that the
11 Commission take a liberal interpretation of what it can
12 do to meet the fundamental objectives of FEECA, which
13 Mr. Wright mentioned a minute ago.

14 FEECA specifically further encouraged the
15 Commission to consider experimental and pilot projects
16 in order to carry out things. So whether the Commission
17 wanted to consider opt out on a permanent or temporary
18 basis, FEECA clearly encourages the Commission to
19 consider alternative options.

20 Finally, most of the other objections that
21 we've heard in my mind fall to administrative niceties,
22 which should never trump an overlying sound policy.
23 And -- and so to the extent that there are -- I mean, in
24 Duke's case, administrative costs associated with
25 contacting three customers about whether they would be

1 eligible or not does not strike me as a material cost
2 that would impede this -- moving forward with the
3 policy.

4 And so to wrap up hopefully very quickly, it
5 just seems to me that you have the legal authority; you
6 have compelling economic justifications; it's consistent
7 with FEECA's objectives; and, frankly, the
8 administrative objections to moving forward with the
9 proposed policy are quite weak. Thank you.

10 **COMMISSIONER BROWN:** Thank you, with four
11 minutes to spare.

12 We will be moving to the IOUS. Florida Power
13 & Light, Duke, TECO, Gulf, FPUC all have 30, and I have
14 Florida Power & Light going first. So, Ms. Cano -- let
15 me just adjust the time -- you may begin.

16 **MS. CANO:** Thank you. Good morning again,
17 Commissioners.

18 FIPUG and Wal-Mart have presented proposals to
19 opt out of paying for a portion of their electric bills,
20 specifically the ECCR charges associated with certain
21 Commission-approved programs designed to meet the
22 Commission-approved DSM goals.

23 As stated by the Commission in its 2014 DSM
24 goals order, demand-side management is an alternate
25 resource to generation driven by economic and

1 reliability considerations for Florida's electric
2 utilities. It's a resource that's used to serve all
3 customers.

4 More importantly, when goals are set and
5 programs are approved based on the Rate Impact Measure
6 test, as is done in Florida, all customers, those who
7 participate and those who do not participate alike,
8 benefit through lower electric rates. This bears
9 repeating. Regardless of the variety of approaches used
10 in other states referenced by Mr. Moyle and Mr. Wright,
11 in Florida, non-participating customers benefit from a
12 utility's energy efficiency programs.

13 Pursuant to the opt-out proposals, the total
14 cost of FPL's energy efficiency programs would be
15 shifted to a subset of customers who do not meet their
16 proposed criteria. This includes smaller businesses and
17 residential customers who are also important to
18 Florida's economy. This is inconsistent with
19 established ratemaking principles, and this alone is
20 sufficient to properly deny the opt-out proposals.

21 Nonetheless, I will briefly address a couple
22 of the particular arguments raised by FIPUG and
23 Wal-Mart. FIPUG and Wal-Mart argue that ECCR costs will
24 go down as a result of their proposals and that this
25 somehow resolves the cost shifting problem. However,

1 there's no evidence in the record to support the idea
2 that the utilities' DSM costs would actually be reduced.
3 To the contrary, the evidence is clear that
4 administrative costs recovered through the ECCR clause
5 would increase.

6 FIPUG and Wal-Mart also argue that they pursue
7 their own energy efficiency improvements outside of a
8 utility's programs. Many customers do and many
9 different types of customers do, and FPL commends those
10 efforts, but that doesn't obviate the need for these
11 customers to pay their fair share of the cost for
12 utility programs that benefit all customers. And, of
13 course, Wal-Mart and FIPUG are not requesting to opt out
14 of the demand response type programs from which they
15 receive bill credits paid for by the general body of
16 customers.

17 At the end of the day, the evidence fails to
18 demonstrate why large commercial and industrial
19 customers should receive special treatment and the
20 ability to opt out of paying for a portion of their
21 electric bills. Accordingly, the opt-out proposals
22 should be rejected. Thank you.

23 **COMMISSIONER BROWN:** Ms. Triplett.

24 **MS. TRIPLETT:** Good morning, Commissioners. I
25 agree with the comments that Ms. Cano made, and I would

1 also just point out the importance of the fact that
2 goals are set based on the RIM test. And I think, as
3 Mr. Wright quoted the FEECA statute and indicated that
4 the goal is to promote cost-effective energy measures,
5 that's exactly what the Commission has done by setting
6 goals based on RIM. So logically you don't have to even
7 go beyond that argument.

8 But if this Commission wants to implement an
9 opt-out policy, we think it's important that there be
10 clear guidelines and requirements to ensure that the
11 opt-out process is fair to all customers, especially the
12 ones that are left paying the energy -- for the energy
13 efficiency measures.

14 Our witness, Tim Duff, has set forth some of
15 those guidelines in his testimony, and I won't repeat
16 them here. But boiled down to its essence, those who
17 can't or haven't opted out must not be harmed by the
18 opt-out policy. This "no harm" principle is easy to
19 say, but it's more complex to implement.

20 Mr. Moyle quoted his witness, Mr. Pollock's
21 concept that if the opt out is properly executed and
22 implemented, it should be revenue neutral. The key
23 there is it has to be properly executed and implemented.

24 So we would just ask that we keep this
25 guiding principle in mind as we consider the proposals

1 that have been set forth by Wal-Mart and FIPUG in this
2 proceeding. Thank you.

3 **COMMISSIONER BROWN:** Thank you.

4 Mr. Beasley with TECO.

5 **MR. BEASLEY:** Thank you, ma'am.

6 Good morning again, Commissioners. Tampa
7 Electric shares the concerns expressed by Florida
8 Power & Light and Duke regarding the opt-out proposals
9 that are before you. The proponents say that they spend
10 considerable resources to develop their own energy
11 conservation measures, and our witnesses say, good for
12 them, it's in their own economic interest to do so,
13 which is obviously why they do it. But the proponents'
14 witnesses conveniently ignore the millions of
15 homeowners, commercial businesses, and other smaller
16 industrial concerns across the state that do the exact
17 same thing with their own hard-earned money for the same
18 reason. Whether it's investing in a more efficient and
19 more expensive heat pump or adding attic insulation or
20 installing more expensive LED lighting, these voluntary
21 conservation expenditures are no less important than
22 those of a FIPUG member or a Wal-Mart store.

23 Now, this Commission strives to render
24 decisions that are fair for all persons affected. Tampa
25 Electric believes the opt-out proposals before you would

1 not be fair for all concerned. Instead, we believe they
2 would bring about serious claims by those who don't
3 qualify to opt out that they have been treated unfairly
4 and made to subsidize those who do qualify.

5 And that wouldn't come just from residential
6 and small commercial customers, Commissioners. Can you
7 imagine trying to explain to a large commercial or a
8 smaller industrial customer who didn't make the cut to
9 opt out why it can't do so, while that customer's very
10 own competitor just down the road did qualify because it
11 had a slightly larger electrical load and met the
12 threshold?

13 This Commission's implementation of the
14 Florida Energy Efficiency and Conservation Act has a
15 long and impressive record of success. Since the
16 inception of FEECA, the Commission has adhered to a very
17 important principle, and that principle is that all
18 customers enjoy the economic benefits of
19 Commission-approved RIM-based conservation programs,
20 and, therefore, all customers should help pay for those
21 programs.

22 As our witnesses will explain, the vaguely
23 described opt-out proposals of our Intervenor friends
24 provide no basis whatsoever for departing from that
25 important principle. And for these reasons, as detailed

1 in our witnesses' testimony, we urge you to reject the
2 opt-out proposals of FIPUG and Wal-Mart, and thereby
3 preserve the integrity and extend the duration of this
4 Commission's successful implementation of FEECA. Thank
5 you.

6 **COMMISSIONER BROWN:** Thank you.

7 Gulf Power.

8 **MR. GRIFFIN:** Thank you, Commissioners. And
9 one of the beauties of coming in this order is brevity.
10 We're in alignment with all of the positions that
11 they've articulated.

12 Boiled down to its essence, we view this
13 proposal that you have before you as a costly and
14 complex solution to a non-existent problem. And the
15 reason for that is, as my colleagues have articulated,
16 is that you based goals on the RIM cost-effectiveness
17 test which benefit all customers, those who participate
18 in utility-sponsored DSM and those who do not.

19 And they've mentioned equity and fairness, and
20 we have, respectfully, a different view of that. We
21 believe that there will be cost shifting to other
22 customer classes, and we believe that's not fair. And
23 we do not believe that this proposal is in the best
24 interest of our general body of ratepayers. It may be
25 in the interest of FIPUG's clients and Wal-Mart and

1 Sam's, but not the general body of ratepayers, and,
2 therefore, we'd ask that you reject the proposals.
3 Thank you.

4 **COMMISSIONER BROWN:** Thank you.

5 Ms. Keating with FPUC.

6 **MS. KEATING:** Well, fortunately, I suppose, as
7 the utility going last, I can perhaps even be more
8 brief. Everything that FPUC would have said has been
9 thoroughly and artfully addressed by my colleagues to my
10 right. We would simply say that we echo and support the
11 opening statements of FPL, Duke, TECO, and Gulf.

12 **COMMISSIONER BROWN:** Thank you.

13 Okay. Moving to SACE. Hold on just a moment,
14 please. All right. Mr. Cavros, are you ready?

15 **MR. CAVROS:** I am.

16 **COMMISSIONER BROWN:** You have ten minutes.

17 **MR. CAVROS:** Madam Chair, thank you. You
18 don't have to set your timer. I will be very brief.

19 It's well established that energy efficiency
20 is a resource that benefits all customers. It benefits
21 participating customers and the general body of
22 ratepayers. It helps participating customers by helping
23 them reduce their energy use and saving money on their
24 bills, and it helps non-participating customers by
25 reducing overall utility system costs.

1 The Commission decided during the last goal
2 setting proceeding to implement the Rate Impact Measure
3 test for cost-effectiveness for -- in setting goals, and
4 yesterday approved plans to implement those goals. We
5 were not supportive of the use of the RIM test, but
6 nevertheless that -- that will be the policy going
7 forward for at least the next five years. And because
8 of a bunch of factors, including the use of the RIM
9 test, energy efficiency in the State of Florida,
10 especially utility-sponsored program energy efficiency,
11 will be at a much lower level than it has historically
12 been.

13 Just to give you an example, it will now take
14 a company like -- like FP&L four to five years to
15 capture the energy savings that it once captured in one
16 year. So we have significantly taken a step back in
17 terms of demand reductions and energy savings in
18 Florida. So given that there's a reduced level of
19 energy efficiency efforts in the State of Florida going
20 forward, the associated charges for that is also greatly
21 reduced. And, as such, there's no compelling policy
22 reason to offer a certain class of customers the
23 opportunity to opt out of -- of -- of demand-side
24 management. And we believe that a Commission decision
25 granting the Petitioners relief would further erode

1 energy efficiency as a resource in Florida.

2 And it's important to note that an opt-out
3 program would be a radical policy change in the State of
4 Florida. It's a complex policy, and such a change must
5 be done in a deliberate and thoughtful fashion in a
6 forum where you have a lot of stakeholder input where
7 you can pull from the experiences of experts in other
8 states to ensure that the Commission will implement a
9 policy that ensures measurement and verification of any
10 opt-out program. So I think we have a long way to go
11 there.

12 The proposal that was presented by the
13 Petitioners is, is a concept, and it falls short in
14 terms of specifying how the measurement and verification
15 would actually take place.

16 Lastly, I would add that I'm not at all
17 convinced by the legal arguments of Petitioners, and I'm
18 not sure that the Commission does have the statutory
19 authority to -- to grant the Petitioners relief in this
20 docket. So for all those reasons, we oppose the
21 Petitioners' request. Thank you.

22 **COMMISSIONER BROWN:** Thank you.

23 Ms. Christensen with the Office of Public
24 Counsel.

25 **MS. CHRISTENSEN:** Good morning, Commissioners.

1 I have just a brief opening statement.

2 As you know, OPC represents all the ratepayers
3 in the State of Florida. And with that said, we believe
4 that the Intervenors' proposal should at a minimum be
5 evaluated due to utilizing the Commission's approved
6 cost-effective test or tests to determine if the
7 proposals adequately safeguard the interest of the
8 general body of ratepayers and the various rate classes
9 against undo rate impacts, while achieving the intent of
10 the Florida Energy Efficiency and Conservation Act,
11 FEECA, and Section 366.82(2), *Florida Statutes*. Thank
12 you.

13 **COMMISSIONER BROWN:** Thank you so much. And
14 thank you all for your eloquent yet brief opening
15 statements. Greatly appreciated.

16 At this time I'm going to swear in the
17 witnesses that are present here today. All witnesses
18 who are present, please stand and raise your right hand.

19 Do you affirm that the testimony you will
20 provide in this hearing is correct?

21 (Affirmative responses.)

22 Thank you. Please sit.

23 As you know, witnesses are permitted five
24 minutes to summarize their testimony. Also, please
25 remember, witnesses, when answering a question that

1 elicits a yes or no, please do so followed by a succinct
2 explanation, if necessary.

3 The order of witnesses has been provided to
4 all of the parties. We will begin with Mr. Baker with
5 Wal-Mart. Mr. Baker.

6 Those lights in front of you will -- when you
7 begin to summarize after you discuss with your
8 attorney -- will come up green and yellow at once. When
9 it flashes red, it means your time is up. Okay.

10 **MR. WRIGHT:** Thank you, Commissioner.

11 Whereupon,

12 **KENNETH E. BAKER**

13 was called as a witness on behalf of Wal-Mart Stores
14 East, LP, and Sam's East, Inc., and, having first been
15 duly sworn, testified as follows:

16 **EXAMINATION**

17 **BY MR. WRIGHT:**

18 **Q** Good morning, Mr. Baker. You just took the
19 witness's oath; correct?

20 **A** Pardon me?

21 **Q** You just took the oath to tell the truth;
22 correct?

23 **A** Yes.

24 **Q** Are you the same Kenneth E. Baker -- let's
25 start, please state your name and business address for

1 the record.

2 **A** My name is Kenneth E. Baker. I'm employed at
3 2001 S.E. 10th Street, Bentonville, Arkansas 72716.

4 **Q** Thank you. Are you the same Kenneth E. Baker
5 who prepared and caused to be filed in this proceeding
6 direct testimony consisting of 12 pages, and that was
7 filed last September?

8 **A** Yes, I am.

9 **Q** Do you have any changes or corrections to that
10 testimony today?

11 **A** No, I don't.

12 **Q** With respect to that September testimony that
13 has been transferred into this docket, do you adopt that
14 as your sworn testimony to the Florida Public Service
15 Commission today?

16 **A** Yes, I do.

17 **MR. WRIGHT:** Madam Commissioner, with that I
18 request that Mr. Baker's September testimony be entered
19 into the record as though read.

20 **COMMISSIONER BROWN:** Thank you, Mr. Wright.
21 Mr. Baker -- Mr. Baker's prefiled testimony shall be
22 entered into the record as though read.

23 **MR. WRIGHT:** Thank you.

24 **BY MR. WRIGHT:**

25 **Q** And, Mr. Baker, did you also cause to be

1 prepared and attached to your prefiled direct testimony
2 five exhibits enumerated KEB-1 through KEB-5?

3 **A** I did.

4 **Q** Thank you.

5 **MR. WRIGHT:** And, Commissioners and parties,
6 those have been identified on what is now Exhibit 1, the
7 Comprehensive Exhibit List, as Exhibits 2 through 6, so
8 they're marked for identification accordingly.

9 **BY MR. WRIGHT:**

10 **Q** Mr. Baker, did you also prepare and cause to
11 be filed in this proceeding surrebuttal testimony this
12 past May consisting of ten pages?

13 **A** Yes, I did.

14 **Q** Do you have any changes or corrections to make
15 to your surrebuttal testimony?

16 **A** I do not.

17 **Q** And am I correct that there were no exhibits
18 to your surrebuttal testimony?

19 **A** Correct.

20 **MR. WRIGHT:** Madam Commissioner, I would
21 respectfully ask that Mr. Baker's surrebuttal testimony
22 be entered into the record as though read.

23 **COMMISSIONER BROWN:** Mr. Baker's surrebuttal
24 testimony shall be entered into the record as though
25 read.

Wal-Mart Stores East, LP and Sam's East, Inc.
Direct Testimony of Kenneth E. Baker
Docket No. 140002-EG

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

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

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

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

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

9 A. Yes. Walmart is also sponsoring the testimony of Mr. Steve W. Chriss to address
10 issues concerning cost allocation and rate design.

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

12 A. In 1985, I received my B.S. degree in Health Science from the College of St. Frances
13 and later attended law school at the University of Arkansas at Little Rock School of
14 Law, graduating in 1992 with a J.D. degree. I then practiced law at the Center for
15 Arkansas Legal Services from 1992 to 1999 prior to joining Walmart. Early in my
16 career at Walmart, I held the position of Manager of Real Estate where I helped
17 locate sites for distribution centers. My duties in that position included locating
18 sites and negotiating with communities to build distribution centers. In 2006, I
19 transferred to the Energy Department and am currently the Senior Manager for
20 Sustainable Regulation and Legislation. My current duties include monitoring,
21 participating, and testifying in cases before state utility commissions and monitoring
22 legislation that could potentially impact Walmart's business, with particular

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1 attention to Walmart's sustainability and renewable energy commitments and
2 initiatives. I have also been involved in the negotiation, drafting, and execution of
3 renewable energy and energy efficiency contracts.

4 **Q. WAS THIS TESTIMONY PREPARED BY YOU OR UNDER YOUR DIRECTION?**

5 A. Yes.

6 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE FLORIDA PUBLIC SERVICE**
7 **COMMISSION (THE "COMMISSION")?**

8 A. No.

9 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY BEFORE OTHER STATE UTILITY**
10 **REGULATORY COMMISSIONS?**

11 A. Yes. I have submitted testimony before the Commissions in Missouri, North
12 Carolina, New Mexico, Massachusetts, Arizona, Georgia, Indiana, Kentucky, and
13 South Carolina. Additionally, I have submitted testimony before legislative
14 committees in Texas and Pennsylvania. My testimony has included topics
15 concerning demand response, demand side management measures, and renewable
16 energy issues. See Exhibit KEB-1.

17 **Q. ARE YOU SPONSORING ANY EXHIBITS WITH YOUR TESTIMONY?**

18 A. Yes. I am sponsoring the following exhibits:

19 Exhibit KEB-1: Qualifications of Kenneth E. Baker

20 Exhibit KEB-2: Energy Efficiency and Demand Side Management Programs of the
21 Companies

22 Exhibit KEB-3: Oklahoma Administrative Code Section OAC 165:35-41-3

1 Exhibit KEB-4 Public Service Company of Oklahoma and Duke Energy Carolinas'
2 South Carolina DSM-EE tariffs

3 Exhibit KEB-5 PSC of South Carolina, Order No. 2008-251-E

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

5 A. I am testifying on behalf of Wal-Mart Stores East, LP and Sam's East, Inc. (collectively
6 "Walmart") in support of policy proposals to redesign the Florida investor-owned
7 utilities' Energy Conservation Cost Recovery ("ECCR") Charges in such a way that the
8 charges for energy efficiency ("EE") are segregated from the demand side
9 management portion of the ECCR charge. In my testimony, I also advocate allowing
10 customers who meet defined criteria to satisfy their EE responsibilities by
11 implementing their own EE measures. By virtue of their self-implemented
12 measures, such customers would be exempt from paying the ECCR charges for the
13 EE portion of the charge, and they would correspondingly be excluded from
14 participation in the utilities' EE programs and measures.

15 **Q. TO WHICH FLORIDA UTILITIES WOULD YOUR PROPOSALS APPLY?**

16 A. My proposals would apply to Florida's four large investor-owned utilities, i.e., Florida
17 Power & Light Company ("FPL"), Duke Energy Florida ("DEF" or "Duke"), Tampa
18 Electric Company ("TECO"), and Gulf Power Company ("Gulf"). I refer to these
19 utilities collectively as the "Companies." Walmart is a significant customer of each
20 of these utilities, as well as a customer of many municipal and cooperative utilities in
21 Florida. In the aggregate, Walmart used approximately 1.5 billion kilowatt-hours
22 ("kWh") of electricity in Florida in 2013.

1 **Q. HOW DO DEMAND-SIDE MANAGEMENT AND ENERGY EFFICIENCY MEASURES**
2 **IMPLEMENTED BY A PROACTIVE CUSTOMER YIELD BENEFITS FOR THE COMPANIES'**
3 **OTHER CUSTOMERS?**

4 A. A customer, whether commercial or industrial, that implements DSM and EE
5 measures on its own yields network benefits for all of the Company's other
6 customers. These network benefits include reduced overall energy cost that result
7 from the reduced load and demand of the customers system. An additional network
8 benefit is the increased system reliability that results in reducing system loss from
9 the commercial customers' reduced energy demand. Other utility customers enjoy
10 all of the system network benefits without having to fund such measures through
11 their rates or additional recovery riders. Large customers who have undertaken
12 their own conservation and energy efficiency programs provide these benefits to all
13 customers at no cost to those customers. Also, the individual customer assumes all
14 of the risk of the investment, as opposed to having that risk passed on to other
15 ratepayers. Therefore, the customer implementing the EE measures has every
16 incentive to ensure that the implemented measures are cost effective, and as a
17 result, both the individual large customer as well as the Companies' other customers
18 benefit.

19 **Q. IN THIS TESTIMONY YOU REFER TO ENERGY EFFICIENCY ("EE") AND DEMAND SIDE**
20 **MANAGEMENT ("DSM"). PLEASE DEFINE THOSE TERMS AS YOU WILL USE THEM IN**
21 **THIS TESTIMONY.**

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1 A. When using the term DSM, I am referring to programs, measures, and activities that
2 primarily reduce a customer's demand imposed on the utility system. DSM
3 measures include direct load control (e.g., energy curtailment or utility-controlled
4 cycling of residential customers' electric heating or air conditioning), customer-
5 owned standby generation, interruptible and curtailable service, and similar
6 measures. I also refer to "Demand Response" ("DR") measures as a generic
7 reference to customer-controlled demand reductions that a customer implements
8 upon request of the serving utility.

9 When using the term EE, I am referring to programs, measures, and actions by
10 the customer that primarily lowers the energy usage of a particular facility.
11 Examples of EE measures include HVAC efficiency upgrades, window replacement,
12 ceiling insulation, high-efficiency appliances, high-efficiency motors, and high-
13 efficiency lighting systems.

14 **Q. PLEASE DESCRIBE WALMART'S OPERATIONS IN FLORIDA.**

15 A. Walmart operates 317 retail units and 8 distribution centers in Florida and employs
16 over 97,000 associates in the state. In fiscal year ending 2014, Walmart purchased
17 \$4.8 billion worth of goods and services from Florida-based suppliers, supporting
18 65,791 supplier jobs. See [http://corporate.walmart.com/our-story/locations/united-](http://corporate.walmart.com/our-story/locations/united-states#/united-states/florida)
19 [states#/united-states/florida](http://corporate.walmart.com/our-story/locations/united-states#/united-states/florida).

20 **Q. PLEASE DESCRIBE WALMART'S DSM AND EE COMMITMENTS AND INITIATIVES.**

21 A. Walmart has established itself as an industry leader in energy conservation,
22 renewable energy, and sustainability by making operational and financial

1 commitments to environmental stewardship in many aspects of our business. We
2 made the following commitments in 2005:

- 3 1. To be supplied 100% renewable energy;
- 4 2. To create zero waste; and
- 5 3. To sell products that sustain people and the environment in the United
6 States and throughout the world.

7 Additionally, in 2013, Walmart made two additional commitments:

- 8 1. Scale renewable energy through driving the annual production or
9 procurement of seven billion kWh of renewable energy across Walmart's
10 global footprint by December 31, 2020 – an increase of over 600 percent
11 compared to 2010; and
- 12 2. Accelerate energy efficiency by reducing the kWh/sqft energy intensity
13 required to power our buildings around the world by 20 percent by
14 December 31, 2020 as compared to 2010 levels.

15 **Q. CAN YOU PROVIDE SPECIFIC EXAMPLES OF WALMART'S DEPLOYMENT OF**
16 **DEMAND-SIDE MANAGEMENT AND ENERGY EFFICIENCY TECHNOLOGY?**

17 **A.** Walmart has implemented many energy saving technologies, including:

- 18 1. Sub-metering systems in approximately 1,650 facilities in the United
19 States and 375 in the United Kingdom;
- 20 2. Daylight harvesting and optimization systems that monitor and adjust
21 lighting intensity while automatically adjusting given the amount of light
22 coming in from skylights;

- 1 3. White membrane roofs are placed on the roofs of facilities in certain
- 2 parts of the country in order to lower cooling load;
- 3 4. Heat recovery from our refrigeration systems that is capable of meeting
- 4 up to 70 percent of that stores hot water needs;
- 5 5. Highly efficient HVAC systems;
- 6 6. LED lighting; and
- 7 7. Active dehumidification that enables stores to operate at higher ambient
- 8 temperatures, thereby reducing electricity usage for air conditioning.

9 Walmart has implemented many of these measures at our facilities in Florida.
10 Additionally, all of Walmart's United States stores, including those in Florida, are
11 centrally monitored to control the stores' temperature, lighting, and refrigeration
12 units. This energy management system, in combination with select advanced
13 metering systems, allows Walmart to efficiently implement demand response
14 commands. As a result, Walmart currently participates in approximately twelve
15 utility or ISO/RTO demand response programs nationwide.

16 **Q. WHAT ARE YOUR RECOMMENDATIONS TO THE COMMISSION?**

17 **A. My recommendations are as follows:**

- 18 a. Require the utilities to separate their Energy Conservation Cost Recovery
- 19 expenditures into two categories, one for energy efficiency programs and the
- 20 other for demand side management programs.
- 21 b. Allow pro-active non-residential customers who implement their own energy
- 22 efficiency programs and meet certain other criteria to opt out of the utility's

1 EE programs and not be required to pay the cost recovery charges for the
2 utility's EE programs approved by the Commission pursuant to Section
3 366.82, Florida Statutes.

4 **Q. ARE YOU FAMILIAR WITH THE VARIOUS DSM AND EE PROGRAMS OFFERED BY THE**
5 **COMPANIES?**

6 A. Yes. Please see Exhibit KEB-2. This exhibit lists the Companies' programs divided
7 into DSM and EE categories.

8 **Q. ARE YOU FAMILIAR WITH THE METHODOLOGY OF HOW COSTS ARE ALLOCATED TO**
9 **THE RATE CLASSES FOR THE COMPANIES' PROGRAMS?**

10 A. No, however, my colleague, Steve W. Chriss will address rate or cost allocation
11 issues in his testimony.

12 **Q. DO ANY OF THE COMPANIES CURRENTLY OFFER CUSTOMERS THE OPPORTUNITY**
13 **TO ELECT TO NOT PARTICIPATE IN THE COMPANY'S EE PROGRAMS AND TO BE**
14 **EXEMPTED FROM THE EE PORTION OF THE ECCR CHARGE?**

15 A. No, however, it is Walmart's position that the Commission should allow any non-
16 residential customer with multiple locations who has electric usage above a
17 predetermined threshold level, operating within a particular Company's service
18 territory, to opt out of participating in a Company's Energy Efficiency programs. In
19 determining whether a customer satisfies the threshold requirement, I recommend
20 that the customer be allowed to aggregate all of its delivery points and accounts
21 within each Company's service area. Additionally, those customers who qualify for,

1 and make the decision to opt out and not participate in that Company's programs
2 should not be assessed the EE portion of the ECCR charge.

3 **Q. DO YOUR RECOMMENDATIONS HAVE ANY EFFECT OR IMPACT ON A COMPANY'S**
4 **DSM PROGRAMS?**

5 A. No. My recommendations only address opting out of participating in, and paying
6 for, a Company's EE programs.

7 **Q. WHY DOES YOUR PROPOSAL EXCLUDE RESIDENTIAL CUSTOMERS?**

8 A. Walmart has no fundamental objection to residential customers having the option
9 to opt out and would not oppose the Commission investigating and approving such
10 an option. However, at this time I believe the scale upon which eligible customers
11 operate allows for more minimal administrative burden for the Commission and the
12 Companies.

13 **Q. WHY WOULD WALMART ELECT NOT TO PARTICIPATE IN THE COMPANIES' ENERGY**
14 **EFFICIENCY PROGRAMS?**

15 A. Walmart is in the best position to understand its unique business operations, and we
16 are able to create programs tailored to maximize the impact of energy efficiency
17 measures installed at our facilities. Additionally, due to the size and scope of
18 measures we can implement, we can potentially benefit by participating in the
19 competitive market place for energy efficiency goods and services, as energy service
20 companies compete to provide the most innovative and cost effective products to
21 their customers on a regional and national basis.

22

1 **Q. WHAT CRITERIA DOES WALMART RECOMMEND TO QUALIFY TO ELECT TO OPT**
2 **OUT OF PARTICIPATING IN THE COMPANIES' EE PROGRAMS?**

3 **A. Walmart recommends the following criteria in order to be eligible to opt out of EE**
4 **programs and charges:**

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

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

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

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

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

4 **Q. IS THE BENCHMARK LEVEL OF 15 MILLION KWH PER YEAR USED IN ANY OTHER**
5 **JURISDICTION?**

6 A. Yes. Oklahoma Gas & Electric and Public Service Company of Oklahoma use 15
7 million kWh per year aggregated across all sites as their benchmark or threshold
8 level for a customer to elect to not participate in their demand-side management
9 programs. See OAC 165:35-41-3. A copy of this provision of the Oklahoma
10 Administrative Code is included here as my Exhibit KEB-3.

11 **Q. HAVE OTHER STATE UTILITY REGULATORY AUTHORITIES APPROVED SUCH OPT-**
12 **OUT PROVISIONS?**

13 A. Yes. For example, the Oklahoma Corporation Commission has approved opt-out
14 provisions, as has the Public Service Commission of South Carolina. As examples, I
15 have attached copies of the relevant tariffs for Public Service Company of Oklahoma
16 and for Duke Energy Carolinas' South Carolina DSM-EE tariffs in Exhibit KEB-4.
17 Additionally, Missouri and West Virginia have approved opt-out tariffs, and a
18 number of other states have approved similar rate treatment utilizing customer-self-
19 directed energy efficiency activities.

20

1 **Q. OTHER THAN THE BASIC FAIRNESS OF ALLOWING CUSTOMERS WHO EXCEED A**
2 **DEFINED THRESHOLD OF EE ACHIEVEMENT AT THEIR OWN EXPENSE TO OPT OUT**
3 **OF PARTICIPATING IN THE COMPANIES' EE PROGRAMS (BUT NOT THEIR DSM**
4 **PROGRAMS), HAVE OTHER STATE UTILITY COMMISSIONS RECOGNIZED**
5 **ADDITIONAL BENEFITS OR JUSTIFICATIONS FOR APPROVING OPT-OUT PROVISIONS**
6 **LIKE YOUR PROPOSALS IN THIS CASE?**

7 A. Yes. For example, the Public Service Commission of South Carolina recognized that
8 "the opt-out procedure will support business retention and economic development,
9 and will be easy for PEC to administer." In Re: Application of Carolina Power & Light
10 Company d/b/a Progress Energy Carolinas, Inc. for the Establishment of Procedures
11 for DSM/EE Programs, Docket No.2008-251-E, Public Service Commission of South
12 Carolina, Order No. 2008-251-E at 11. The reference to PEC is to Progress Energy
13 Carolinas, a sister company of Duke Energy Florida. A copy of this order is included
14 as Exhibit KEB-5 to my testimony.

15 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

16 A. Yes.

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.

1 **BY MR. WRIGHT:**

2 **Q** Mr. Baker, as Commissioner Brown advised you a
3 couple of minutes ago, you now have five minutes to
4 summarize your testimony. So would you please summarize
5 your testimony for the Commission and the parties in the
6 gallery. Thank you.

7 **A** Certainly. Thank you for allowing me to
8 testify here this morning. Good morning, Mr. Chairman
9 and Commission.

10 My name is Kenneth Baker. I'm employed, as I
11 said, by Wal-Mart Stores, Inc., as a Senior Manager of
12 Sustainable Regulation and Legislation. This morning
13 I'll be testifying in support of policy proposals to
14 redesign the Florida investor-owned utilities' Energy
15 Conservation Cost Recovery charge in a way that the
16 charges for energy efficiency are segregated from the
17 demand-side portion of the ECCR charge.

18 I've asked the Commission to allow customers
19 who meet certain defined criteria to satisfy their
20 energy efficiency responsibilities by implementing and
21 self-funding their own energy efficiency measures. By
22 virtue of their self-implemented measures at their own
23 expense, such customers would be exempt from paying the
24 ECCR charges for the energy efficiency portion of the
25 charge, and would correspondingly be excluded from

1 participation in the utilities' energy efficiency
2 programs and measures.

3 A number of states have approved opt-out or
4 self-direct provisions. Among the ones Wal-Mart
5 currently participate in include Oklahoma, the
6 Carolinas, Missouri, and Arkansas.

7 My specific recommendations to the Commission
8 for approval of an opt-out consist of the following
9 criteria. Aggregated conception by a single customer
10 more than 15 million kilowatt hours of electricity per
11 year across all eligible accounts, meters, or service
12 locations within each company's service area. To be
13 designated an eligible account, that account may not
14 have taken benefits under the designated energy
15 efficiency programs within two years before the period
16 in which the customer is opting out. An eligible
17 account may not opt in to participate in the designated
18 energy efficiency program for two years after -- excuse
19 me. The customer must certify to the company that the
20 customer has either, within the prior five years,
21 energy efficiency measures that have reduced the
22 company's use -- the customers' usage measured in
23 kilowatt hour per square foot of space, or other
24 similar measures as applicable. This percentage should
25 be at least as great as the company's energy efficiency

1 reductions expressed as a percentage of the company's
2 total retail kilowatt hour sales as measured over the
3 same period of time.

4 In the alternative, the customer has
5 performed an energy audit or energy use analysis within
6 the three-year period preceding the customer's opt-out
7 request. Thereafter, the company must confirm to the
8 utility that the customer has either implemented the
9 recommended measures or that the following -- or that
10 the customer has a definite plan to implement
11 qualifying energy efficiency measures within 24 months
12 following the date of the opt-out request.

13 Thank you very much for your time.

14 **COMMISSIONER BROWN:** Thank you.

15 **MR. WRIGHT:** Madam Chairman, Mr. Baker is
16 tendered for cross-examination.

17 **COMMISSIONER BROWN:** Okay. We will start with
18 Mr. Moyle with FIPUG.

19 **MR. MOYLE:** I took to heart your warning about
20 friendly cross, and I only have a couple of questions
21 related to an area where FIPUG and Wal-Mart have
22 differing positions with respect to qualifying for the
23 opt out. So it'll be very limited.

24 **COMMISSIONER BROWN:** Thank you.

EXAMINATION

BY MR. MOYLE:

Q What is the threshold criteria that you have suggested for customers to be able to qualify in terms of usage?

A 15 million kilowatt hours of electricity per year within a utility's service area.

Q Okay. And are you aware that Mr. Pollock has suggested a 1 megawatt annual usage criteria?

A I -- we would not have an objection to that, provided it included a contiguous property type of provision.

Q Okay. So, just could you share, you know, your views with respect to what's proposed for the eligibility threshold criteria by Wal-Mart as compared to FIPUG? I appreciate you not having a problem with it, but if, you know, this Commission says we want to move forward, I want them to make sure that they have the information about one approach versus another.

A I think, from reading Mr. Pollock's testimony, I think a lot of the information that would come together would perhaps come from a working group or -- or perhaps some type of committee that the Commission put together; whereas, from the Wal-Mart perspective we have laid out, I think, in very specific terms, very

1 specific criteria how long it will take you to
2 participate in the program if you've accepted an energy
3 efficiency rebate, how long you have to wait to get back
4 in, et cetera. So I think --

5 **Q** Have some states adopted the threshold that
6 you're suggesting, that Wal-Mart is suggesting?

7 **A** Yes.

8 **Q** Which ones?

9 **A** Oklahoma.

10 **Q** Okay. And then some other states have adopted
11 the threshold that Mr. Pollock has suggested?

12 **A** That's my understanding.

13 **MR. MOYLE:** Okay. That's all I have. Thank
14 you.

15 **COMMISSIONER BROWN:** Thank you.

16 Mr. Brew, PCS Phosphate.

17 **MR. BREW:** Thank you. No questions for this
18 witness.

19 **COMMISSIONER BROWN:** Thank you.

20 SACE, Mr. Cavros.

21 **MR. CAVROS:** No questions for this witness.
22 Thank you.

23 **COMMISSIONER BROWN:** Thank you.

24 Moving to the IOUs, Florida Power & Light.

25 **MS. CANO:** FPL has no questions.

1 **COMMISSIONER BROWN:** Followed by Duke.

2 **MS. TRIPLETT:** No questions.

3 **COMMISSIONER BROWN:** Followed by TECO.

4 **MR. BEASLEY:** We have no questions.

5 **COMMISSIONER BROWN:** Followed by Gulf.

6 **MR. GRIFFIN:** No questions, Commissioner.

7 **COMMISSIONER BROWN:** Followed by FPUC.

8 **MS. KEATING:** No questions.

9 **COMMISSIONER BROWN:** Followed by Office of
10 Public Counsel.

11 **MS. CHRISTENSEN:** No questions.

12 **COMMISSIONER BROWN:** Followed by staff.

13 **MS. TAN:** Staff has some questions for the
14 witness.

15 **EXAMINATION**

16 **BY MS. TAN:**

17 **Q** If you could please look at your direct
18 testimony, specifically your testimony at the bottom of
19 page 8 and 9. Please let me know when you've had a
20 chance to refresh yourself.

21 **A** Any particular lines that you'd like me to go
22 through?

23 **Q** Yes. If you could look at line 15, please.

24 **A** Okay. Okay. I've read 15 through 21.

25 **Q** Okay. And then it did follow -- it did follow

1 over onto page 5, if you --

2 **A** I'm sorry, ma'am.

3 **Q** It did follow over to page 9 as well. I know
4 you said you looked at 15 through 21. If you could also
5 look at -- just finish it off in lines 1 and 2 as well.

6 **A** Okay. I'm sorry. I apologize. That was on
7 page 8 -- 8 and 9 instead of 9 and 10; right?

8 **Q** Correct.

9 **A** Okay. One moment, please.

10 Okay. Thank you.

11 **Q** Wal-Mart is proposing to opt out of
12 participating in utility-sponsored energy efficiency
13 programs but continue to participate in
14 utility-sponsored demand response programs; is that
15 correct?

16 **A** That's correct.

17 **Q** Okay. And, in essence, are you asking the
18 Commission to quantify the existing DSM programs into
19 two types of energy efficiency demand response programs?

20 **A** No. We're requesting the Commission split the
21 way the ECCR charge is done at this time and have an
22 energy efficiency portion and a DSM portion, because
23 Wal-Mart is not in any way advocating opting out of the
24 DSM portion or advocating opting out of the energy
25 efficiency portion.

1 **Q** Okay. And, in general, do you agree that a
2 demand response program reduces demand on a utility's
3 electrical generating system?

4 **A** I am.

5 **Q** And, in general, would you also agree that
6 there can be energy savings associated with demand
7 response programs?

8 **A** Without a doubt.

9 **Q** Okay. And if you could please review your
10 responses to staff's first set of interrogatories. And
11 I actually have that available here so that it'll be
12 easier. That's going to be Exhibit No. 21, and it's
13 already -- it's Bates No. 00026. It is already in the
14 record as Exhibit No. 21.

15 All right. When you have an opportunity to
16 refresh yourself, let me know.

17 **A** Please proceed. Thank you.

18 **Q** Okay. Do you believe that energy savings that
19 result from utility-sponsored demand-side management
20 programs also benefit all of the utility's customers?

21 **A** I believe that they can. I don't believe --
22 in Wal-Mart's case or in the case of FIPUG, I believe
23 there are perhaps better ways of doing it. And
24 historically I know that that hasn't been done, but I
25 think that those methods with the Commission's blessing

1 could be changed.

2 Q And you believe that that can be implemented
3 in Florida?

4 A I'm sorry?

5 Q And you believe that that can be implemented
6 in Florida?

7 A Yes, I do.

8 Q Okay. And if you could look at your answer,
9 could you please define what the system as used in your
10 response would be?

11 A The same benefits to the system would be lower
12 the need for future generation, savings in generation,
13 reduce greenhouse gases. We could name a number of
14 things of that nature, but that's the point I was trying
15 to make.

16 Q And the system itself is the entire energy
17 efficiency programs?

18 A Ma'am, I'm sorry.

19 Q And the system itself is the entire energy
20 efficiency programs?

21 A Yes, ma'am.

22 Q Okay. And now I'd like you to look at
23 Exhibit 21 as well, but it's going to be your response
24 to staff's interrogatory No. 3C, which is Bates No.
25 00027 and 00028. And this is also contained in the

1 record.

2 **COMMISSIONER BROWN:** She will be providing you
3 a copy. Thanks.

4 **THE WITNESS:** Thank you. Okay.

5 **BY MS. TAN:**

6 **Q** All right. And here you've stated that
7 Wal-Mart is in the best position to determine its energy
8 efficiency investments; is that correct?

9 **A** Yes.

10 **Q** Okay. Can you please explain why this is?

11 **A** Because we know our business operations better
12 than anyone. We know the individuals that contact us on
13 a very frequent basis trying to have meetings to show
14 what types of new energy efficiency methods that we
15 might investigate, and knowing our needs, knowing what
16 we need to implement, knowing what would give us the
17 best reductions puts us in the best position to know
18 what's best for our business.

19 **Q** Okay. And does Wal-Mart receive credits or
20 incentives for participating in utility-sponsored demand
21 response programs?

22 **A** To my knowledge, we have not at this point.

23 **Q** Are you aware that the largest four utilities
24 have custom incentive programs for large customers that
25 allow the program to suggest a project?

1 **A** For DSM or EE? I'm sorry.

2 **Q** I guess for --

3 **A** I'm sorry. Could you repeat the question?

4 I'm not sure.

5 **Q** Yes. Are you aware that the largest four
6 utilities have custom incentive programs for large
7 customers that allow the customer to suggest a project?

8 **A** Yes, I am.

9 **Q** Okay. And does Wal-Mart at this time
10 participate in any of the IOUs' custom incentive
11 programs for large commercial or industrial customers?

12 **A** No. To the best of my knowledge, we have not.
13 We have discussed that in the past with account managers
14 and even looked into it, and the process for doing that
15 was so burdened that our energy managers and some other
16 people within Wal-Mart made a business decision that it
17 wasn't the right thing to do for that particular
18 measure.

19 **Q** Okay. Thank you. If you could look at your
20 surrebuttal testimony, and if you could look at page 6,
21 specifically lines 6 through 8.

22 **A** Okay.

23 **Q** And here you state that Wal-Mart's opt-out
24 proposal includes a recommendation that the Commission
25 should allow the utilities to count the opt-out

1 customers' estimated or reported energy savings toward
2 their estimated energy efficiency and demand-side
3 management goals; is that correct?

4 **A** Correct.

5 **Q** And could you please explain why you believe
6 this is important that the opt-out customers' estimated
7 or reported energy savings be counted toward energy
8 efficiency and demand-side management goals?

9 **A** We fully understand and cognizant of the fact
10 that the utilities have goals that they have to meet,
11 and we feel like the most efficient way to do this is to
12 get the information from the customer either through
13 engineering studies' deemed savings -- you know, we
14 would be open to some other forms of how that data is
15 collated and put together and reported.

16 I would like to recommend to the Commission,
17 should it decide an opt out, that any type of EM&V or
18 degree of energy efficiency reductions are reported,
19 that they not be made so onerous as to make an opt out
20 essentially useless to various customers because it is
21 so onerous. And I would -- I would caution against
22 that.

23 **Q** Okay. Thank you. And what effect would not
24 allowing opt-out customers' estimated or reported energy
25 savings to be counted toward energy efficiency and

1 demand-side management goals have on non-opt-out
2 participants?

3 **A** I do not understand your question. If you
4 could rephrase, please.

5 **Q** Okay. Do you believe that administrative
6 costs could increase if -- could increase for
7 non-opt-out participants if you do not allow opt-out
8 customers' estimated or reported energy savings to be
9 counted toward energy efficiency and demand-side
10 management goals?

11 **A** I believe in the testimony that Wal-Mart has
12 stated that within reasonable bounds we would be willing
13 to deal with the administrative costs. However,
14 Wal-Mart does have serious questions about whether the
15 administrative costs would increase or decrease because
16 there would be less, I guess, data to have to deal with
17 given that there will be opt-out customers.

18 **Q** So do you think that there would be an effect
19 on the utilities?

20 **A** Either positive or most likely, in our mind
21 right now, negative. I think the -- the utilities would
22 probably wind up having less administrative cost and
23 burden.

24 **Q** Thank you. If you could look at your direct
25 testimony, and look on page 9 on lines 8 through 10.

1 And let me know when you've looked at it.

2 **A** Page 9. What lines, please?

3 **Q** 8 through 10.

4 **A** Thank you. Okay. Thank you.

5 **Q** Here you state that the -- that you believe
6 that the proposed opt-out provision should only be
7 available to large energy consuming entities such as
8 Wal-Mart; is that correct?

9 **A** I have repeated that in my testimony. But as
10 you can see in 8 through 10, we have no fundamental
11 objection to the opt out being extended, provided the
12 Commission can find a way to do that with least-cost
13 methods.

14 **Q** Okay. So your -- your exclusion is simply
15 that you're just focusing on Wal-Mart and Wal-Mart --

16 **A** Exactly.

17 **Q** All right. And do you believe that
18 residential customers invest in energy efficiency
19 measures outside of utility-sponsored energy efficiency
20 on their own?

21 **A** I can't speak for other large energy users,
22 commercial users, but I can speak for Wal-Mart, and the
23 answer to that is definitely yes.

24 **Q** Thank you. If you could go back and look at
25 what we already passed out as Exhibit No. 21, Bates No.

1 00027. And if the Commission were to approve an opt-out
2 provision as proposed by Wal-Mart, would there be a
3 shift in cost from those customers who opt out of
4 utility-sponsored energy efficiency programs to those
5 who are unable to meet the opt-out threshold and
6 continue to participate in energy-sponsored energy
7 efficiency programs?

8 **A** No, we do not believe there would. Mr. Chriss
9 and I, who will testify later, got together and
10 discussed and put together a scenario with a
11 hypothetical customer that went through and analyzed the
12 various components dealing with the impact. And the
13 impact on the utility revenue requirement is somewhat
14 less in these calculations than the contributed energy
15 towards the utility goals. And we've also done one
16 specific for Wal-Mart, but this is just a hypothetical
17 customer.

18 **Q** Thank you. And did you provide any exhibits
19 using Florida-specific data from the IOUs in this docket
20 that supports your conclusion that there would be no
21 cost shift to the remainder of the customers if an
22 opt-out provision was implemented?

23 **A** We did. I believe Mr. -- excuse me -- Mr.
24 Chriss can go into that in more detail later on when he
25 does the number crunching, so to speak.

1 **Q** Okay. And did Wal-Mart consider the FEECA
2 statute or any other unique characteristics of Florida's
3 regulatory framework when considering whether or not it
4 should seek to allow certain customers to opt out of
5 paying for the energy efficiency component of the Energy
6 Conservation Cost Recovery clause?

7 **A** We did. And if you'll give me a moment, I'll
8 find where I'm referring to in May testimony.

9 **Q** Take your time.

10 **A** And I apologize. It's actually in my
11 surrebuttal testimony on page 7. We're -- we state that
12 the Section 366.81 of the *Florida Statutes*, which is
13 part of FEECA, provides in Sections 366.80 through
14 366.83 and 403.519 are to be liberally construed in
15 order to meet the complex problems of reducing and
16 controlling the growth rates of electric consumption.

17 In my opinion, this statutory provision
18 provides the Commission with flexibility needed to
19 implement an opt-out program.

20 **Q** Thank you. I'd like to talk a little bit
21 about the criteria of Wal-Mart's opt-out proposal. And
22 did you provide a list of criteria that a proposed
23 opt-out customer must meet in order to opt out of the
24 utility-sponsored energy efficiency programs?

25 **A** Yes.

1 **Q** Okay. And can you please explain how Wal-Mart
2 developed that list of criteria that potential opt-out
3 customers must meet in order to meet qualifications
4 regarding opting out of the utility-sponsored energy
5 efficiency programs?

6 **A** Yes. The 15 million kilowatt hours came from
7 the Oklahoma along with -- these are -- along with the
8 other majority of the parts of this, and we took parts
9 out of different commissions' opt-out programs. But the
10 15 million kilowatt hours of electricity per year came
11 across from the Oklahoma Commission.

12 **Q** Okay. Thank you. And does Wal-Mart use any
13 of the Commission -- did Wal-Mart use any of the
14 Commission-approved cost-effectiveness tests such as the
15 Ratepayer Impact Test, the Total Resource Cost test, or
16 the Participants Test to measure cost-effectiveness of a
17 measure or program it plans to implement?

18 **A** No. I would go back to the document I
19 mentioned a moment ago that Mr. Chriss can elaborate on
20 a little bit later that showed that the --

21 **Q** Okay.

22 **A** -- the Wal-Mart -- go ahead.

23 **Q** No. Go ahead. That's fine.

24 **A** That showed that the impact on the revenue
25 requirement is less than the contribution towards the

1 energy efficiency goals, so.

2 **Q** Thank you. And, in your opinion, do you
3 believe that an opt out of the energy efficiency
4 programs would benefit all ratepayers?

5 **A** I believe it will definitely benefit all
6 ratepayers.

7 **MS. TAN:** Staff has no further questions.
8 Thank you very much.

9 **COMMISSIONER BROWN:** Thank you.

10 Commissioners, any questions?

11 Chairman Graham.

12 **CHAIRMAN GRAHAM:** Thank you.

13 Mr. Baker, you mentioned that the IOUs have --
14 it's a program where they can -- you can self-design
15 your energy efficiency programs, and you said it was too
16 onerous, too burdensome.

17 **THE WITNESS:** No, sir. I believe what I said
18 is that if the Commission did approve an opt-out
19 program, that we would ask that the Commission not make
20 the -- because -- let me start over.

21 We -- we put in our testimony in response to
22 some issues raised by the utilities that this would
23 help -- or possibly prevent them from meeting their
24 goals and requirements, and, therefore, we decided that
25 it would be a good idea to allow the IOUs to use opt-out

1 reductions to add to their goals to work towards making
2 those goals.

3 Another way to do that, we feel like, is to
4 actually reduce the IOUs' goals by the amount of
5 individual facilities that do opt out, and that was the
6 point I was trying to make.

7 **CHAIRMAN GRAHAM:** Well, no, the question that
8 staff asked that if you were aware that the IOUs had a
9 program where you can design your own energy efficiency.

10 **THE WITNESS:** Oh, yes, sir. Yes, sir.

11 **CHAIRMAN GRAHAM:** And you said that Wal-Mart
12 internally made the decision that it was too burdensome
13 to -- to -- to do that.

14 **THE WITNESS:** Yes.

15 **CHAIRMAN GRAHAM:** What made -- what makes it
16 too burdensome? I mean, what is the --

17 **THE WITNESS:** In speaking with the people in
18 our department that do that that I talked to and
19 information was passed along to me, there's many forms
20 you have to fill out. There's a number of different
21 types of audit activity you have to do. There's,
22 described by them, a plethora of ropes you have to jump
23 through that make it virtually non-economical to opt
24 out.

25 **CHAIRMAN GRAHAM:** Is there, I guess, changes

1 that you guys could propose that would make it not so
2 burdensome? I mean, I guess once one -- once one
3 Wal-Mart does it, then every single other Wal-Mart in
4 the state could follow suit because -- once it's been
5 done the first time.

6 **THE WITNESS:** I think there probably is. But
7 I would fall back on the -- what I consider an adage
8 that a kilowatt saved is a kilowatt earned.

9 And -- and to answer your question, I don't
10 think that it makes any difference whether it's the
11 utility saving the kilowatt or whether it's Wal-Mart,
12 Target, whatever, FIPUG, it doesn't matter. A kilowatt
13 saved is a kilowatt earned.

14 And I think if you have a utility program that
15 individual companies are essentially forced to
16 participate in, that that takes away a little bit of the
17 innovation. I think it takes away a little bit of the
18 extent to which different companies may look at doing
19 energy efficiency measures.

20 **CHAIRMAN GRAHAM:** All right. You've lost me a
21 little here. I -- if, if you can design your own
22 program, then nothing is taking away your innovation.
23 It's just a matter of trying to come up, though, a way
24 so it's not so onerous or so burdensome. And so if, if
25 Wal-Mart were to, I guess, work with the utilities or

1 even work with here and our staff and talk about how to
2 make that -- how to make that process not so burdensome,
3 then I think -- because what you're stating here and
4 what the opening statement is stating here, that
5 Wal-Mart already does a lot of the energy efficiency
6 things on their own. So of all those things that you
7 already do on your own, if you want to make that your
8 own self-design program, then it seems like this entire
9 thing is moot.

10 **THE WITNESS:** The -- one of the issues that we
11 have and -- is that we tend to pay into the rebate
12 program, the ECCR charge, much higher numbers than we
13 get back in rebates, and that's certainly an issue for
14 Wal-Mart. And I think that some of the money that we're
15 now spending on rebates could go towards even more
16 energy efficiency measures.

17 **CHAIRMAN GRAHAM:** Okay. Thank you.

18 **THE WITNESS:** Thank you.

19 **COMMISSIONER BROWN:** Any other questions?

20 I have one brief question for you, Mr. Baker.
21 Regarding your opt-out criteria, you set a threshold of
22 aggregated consumption by a single customer of more than
23 15 million kilowatts an hour per year. How did you
24 derive that particular figure other than the State of
25 Oklahoma has something, but that's codified by statute?

1 **THE WITNESS:** Yeah. The reason -- the reason
2 that I put that in there is that the states that we do
3 opt out in at this particular time seems to lead to a
4 lot -- a lot less administrative issues. It has been
5 very simple to work with the Oklahoma Utilities
6 Commission to make that happen. There's very -- been
7 very little, like I said, administrative burden, and it
8 seems to be one of the easiest programs to operate that
9 we've been involved in.

10 **COMMISSIONER BROWN:** So you also cite in your
11 direct prefiled testimony the State of South Carolina by
12 order, and then you go on to state a few additional
13 states, Missouri and West Virginia. Those are four
14 states total. Do they all have that similar threshold?

15 **THE WITNESS:** No, they don't. As a matter of
16 fact, Missouri has a 2,500 kWh demand peak in the
17 aggregate; Arkansas, 1 megawatt peak; the Carolinas have
18 a million kilowatt hours with the contiguous property.

19 **COMMISSIONER BROWN:** Okay. Thank you.

20 Redirect.

21 **MR. WRIGHT:** Thank you, Commissioner. I do
22 have a few questions on redirect.

23 **EXAMINATION**

24 **BY MR. WRIGHT:**

25 **Q** Mr. Baker, Mr. Moyle asked you a few questions

1 about the differences between your -- Wal-Mart's
2 proposed threshold of 15 million kilowatt hours and
3 Mr. Pollock's proposed threshold, I believe, of 1
4 megawatt peak demand per load side. Do you recall that
5 line of questioning?

6 **A** Yes.

7 **Q** Now, Wal-Mart's proposal, the 15 million
8 kilowatt hours, that's a threshold that would have to be
9 met on a fleet basis; is that correct?

10 **A** Correct.

11 **Q** Okay. And do you understand Mr. Pollock's
12 proposal to be site-specific usage, peak demand usage of
13 1 megawatt?

14 **A** No, I wasn't aware of that.

15 **Q** Okay. How did you understand Mr. Pollock's --

16 **A** I understand it to be aggregated.

17 **Q** Okay. Well, I may get to discuss that with
18 Mr. Pollock. I'm going to have to ask my witness a
19 hypothetical.

20 If you assume that Mr. Pollock meant it on a
21 per location basis, would that -- what, if any,
22 possible adverse consequence might -- might that have
23 to a customer with multiple sites being able to
24 maximize their energy conservation activities?

25 **A** If one person -- if one facility did not meet

1 the 1 megawatt threshold, then I would assume that they
2 would all be excluded to not meet the 1 megawatt
3 threshold.

4 Q And if they -- if -- if the opt-out program
5 had a fleet criterion such as Wal-Mart proposes, what
6 would the result be?

7 A That everyone within that utility's service
8 area should be able to opt out.

9 Q Thank you. I have a couple of questions just
10 to clear up some things, and then I have a follow-up on
11 a specific line of questioning asked by Ms. Tan.

12 Ms. Tan, the attorney for the Public Service
13 Commission staff, asked you a question about your use
14 of the word "system." I think it was in response to
15 one of the interrogatories that the staff passed out,
16 interrogatory responses that staff passed out.

17 I believe she asked you to define the term
18 "system" as you used it, and she asked you a completely
19 fairly leading question. I think she asked, "Did you
20 mean by the word "system" the set of utility DSM
21 programs?" Do you recall that question?

22 A I do.

23 Q Is that what you meant by the word "system" in
24 the interrogatory answer, or did you mean something
25 different?

1 **A** Could we go back to that? Do you know the
2 page? Let me look at it again.

3 **COMMISSIONER BROWN:** Mr. Wright, did you get
4 the handout?

5 **MR. WRIGHT:** Oh, I got the handout,
6 Commissioner, but it was --

7 **MS. TAN:** Yeah. That's 00026.

8 **COMMISSIONER BROWN:** Thank you.

9 **MR. WRIGHT:** I know. And I've just -- I have
10 found it. Thank you.

11 **BY MR. WRIGHT:**

12 **Q** It's the first single page handout that --
13 that the staff administrative assistant passed out. At
14 the bottom it says page 4, and then below that in
15 smaller print it says 00026. Are you with me?

16 **A** I'm with you, yes.

17 **Q** I think if you'll look at the fourth line from
18 the bottom of Wal-Mart's response -- now, you provided
19 this response; correct?

20 **A** Yes.

21 **Q** Okay. The fourth line from the bottom, your
22 statement says that -- basically it says that energy
23 savings, whether provided through self-funded or utility
24 programs, provide the same benefits to the system. And
25 the question I'm trying to clarify for the record is

1 what you meant by the word "system" in your response.

2 **A** Okay. I think by "system" in this particular
3 interrogatory I mean the ECCR system as a whole.

4 **Q** Okay. Thank you.

5 **A** Thank you.

6 **Q** I'm not done, but I meant thank you for that
7 answer.

8 You used a term that I know you're very
9 familiar with, but I'm not sure that it's a term that's
10 commonly used here. It was sort of an acronym, EM&V.
11 Could you please define that for the Commissioners.

12 **A** Evaluation, measurement, and verification.

13 **Q** Thank you.

14 Now, Ms. Eng asked you some questions about
15 cost shifting, and you referred to a table that I think
16 you and Mr. Chriss prepared.

17 **A** Correct.

18 **MR. WRIGHT:** I have -- I have that exhibit.
19 I'd like to ask staff to pass it out, please.

20 **COMMISSIONER BROWN:** Staff.

21 **MR. WRIGHT:** That is how we do it, isn't it?

22 **COMMISSIONER BROWN:** Uh-huh.

23 **MR. WRIGHT:** Okay. Thank you.

24 And, Madam Commissioner, while we're doing
25 that, can we mark this as Exhibit 38, please.

1 **COMMISSIONER BROWN:** We -- let me just check.
2 We are at 38. And the title?

3 **MR. WRIGHT:** Comparison of -- I apologize that
4 it's somewhat long -- but Comparison of Goal
5 Contribution to ECCR Revenue Impact is about as short as
6 I can make it.

7 **COMMISSIONER BROWN:** Okay. All right. It is
8 marked as Exhibit 38.

9 (Exhibit 38 marked for identification.)

10 **MR. WRIGHT:** Thank you.

11 **BY MR. WRIGHT:**

12 **Q** Mr. Baker, I'm sure you recall Ms. Tan asking
13 you questions about cost shifting, and in your response
14 you referred to a numeric analysis that you and
15 Mr. Chriss had prepared. Is this that analysis?

16 **A** Yes, it is.

17 **Q** Can you just summarize for the Commissioners
18 and the parties what this is and what you believe it
19 shows?

20 **A** This is a hypothetical customer put together,
21 and just we used a 100 gigawatt kilowatt hour annual
22 use, a 65 percent load factor, and customer reduces
23 equal to utility goal.

24 Okay. And the -- after all the calculations
25 and number plugging, it shows that under FP&L, the

1 customer opt-out impact on the ECCR revenue is
2 .03 percent, while the contribution of the opt-out
3 customer towards that is .1 percent.

4 For Duke Energy Florida, we show that the
5 impact being .04 percent, with the contributions of the
6 opt-out customer being 0.27 percent.

7 With Gulf Power, we show the impact being
8 0.65 percent, with the contribution towards utility
9 goals at .9 percent.

10 And with Tampa Electric, we show the impact
11 at 0.17 percent, with a contribution towards utility
12 goals at 0.54 percent.

13 **Q** Thank you. And I note that there is a second
14 table in the exhibit. Could you just -- without going
15 through the detailed numbers again, can you tell us what
16 the difference between the first table and the second
17 table is?

18 **A** I believe the second table is more specific to
19 Wal-Mart, if I'm not correct -- if I'm not mistaken.

20 **Q** If I could --

21 **A** I'm sorry. I apologize. It's a -- instead
22 of -- I apologize. Instead of equal -- customer reduces
23 equal to utility, this is a 1 percent customer usage
24 reduction goal, which shows even slightly higher
25 contributions towards utility goals.

1 **Q** Thank you.

2 **COMMISSIONER BROWN:** Ms. Triplett.

3 **MS. TRIPLETT:** Madam Chair, I think I've been
4 in hearings before where the failure to make a
5 preliminary potential objection has been ruled that I
6 waived it. So I just want to say that --

7 **COMMISSIONER BROWN:** That is correct. And I
8 was going to say that in my opening comments, so thank
9 you for bringing that up.

10 **MS. TRIPLETT:** Sure. So I'm still listening
11 to the answers and looking at it, so -- but I may have
12 an objection because -- under the assumption that
13 Mr. Wright intends to ask for this to be entered into
14 evidence.

15 **COMMISSIONER BROWN:** Thank you.

16 **MR. BEASLEY:** Tampa Electric would join in
17 that objection.

18 **COMMISSIONER BROWN:** Thank you. We will deal
19 with that when we go to the exhibits and moving them
20 into the record. Proceed.

21 **MR. WRIGHT:** Thank you.

22 **BY MR. WRIGHT:**

23 **Q** And, Mr. Baker, you also mentioned that you'd
24 done a corresponding analysis for Wal-Mart?

25 **A** Steve and I have worked on that, yes.

1 Q When I said you, I meant you and Mr. Chriss.

2 MR. WRIGHT: Madam Commissioner, we have that
3 exhibit. Wal-Mart does consider its energy usage to be
4 confidential. They don't want their competitors being
5 able to calculate how much they use on a per store
6 basis. So that exhibit is confidential. I would like
7 that also distributed, please.

8 COMMISSIONER BROWN: Okay.

9 MR. WRIGHT: And marked as 39.

10 COMMISSIONER BROWN: Okay. Thank you.

11 And the description is.

12 MR. WRIGHT: Wal-Mart Specific Comparison of
13 Goals Contribution versus ECCR Revenue Impacts.

14 COMMISSIONER BROWN: How about just Wal-Mart
15 Specific Comparison?

16 MR. WRIGHT: That's fine with me, Madam
17 Commissioner.

18 COMMISSIONER BROWN: Thank you.

19 MR. WRIGHT: Thank you.

20 COMMISSIONER BROWN: You may proceed.

21 (Confidential Exhibit 39 marked for
22 identification.)

23 BY MR. WRIGHT:

24 Q Just to accommodate brevity, and because I
25 don't think -- I don't think we need to talk about the

1 numbers, Mr. Baker, this shows essentially the same
2 information as, as Exhibit 38, except that it's for
3 Wal-Mart specifically based on Wal-Mart's usage in each
4 of the four major IOU service areas in Florida; correct?

5 **A** Correct.

6 **Q** Thank you. And so if the Commissioners or any
7 party were to look at the -- at the numeric information
8 that's summarized in the table, it would be
9 corresponding to the illustrative example that was
10 presented in Exhibit 38; correct?

11 **A** Correct.

12 **Q** And you did mention that you and Mr. Chriss
13 prepared this?

14 **A** Yes. We worked together on it and then
15 reviewed it.

16 **Q** Thank you. And so if somebody had further
17 questions, if a party or a Commissioner had further
18 questions about the details, they could ask Mr. Chriss?

19 **A** Yes.

20 **MR. WRIGHT:** Thank you.

21 Thank you, Madam Commissioner. That's all the
22 redirect that I have.

23 **COMMISSIONER BROWN:** Okay. We're going to get
24 to the exhibits now.

25 **MR. WRIGHT:** I would move 38, 38 and 39.

1 **COMMISSIONER BROWN:** You have 2 through 6.

2 This witness has --

3 **MR. WRIGHT:** Oh, and 2 through 6. Thank you.

4 **COMMISSIONER BROWN:** -- 2 through 6. You also
5 have -- no, staff already had a 21 that's been entered
6 in. So 2 through 6 and 38. Any objections?

7 **MS. TRIPLETT:** I'm sorry. Are you just moving
8 in the direct -- the prefiled exhibits, or are you
9 asking for objections for all of them?

10 **COMMISSIONER BROWN:** You know what, I'll do
11 that. I'll just move in Exhibits 2 through 6 into the
12 record, and now go to Exhibit 38.

13 (Exhibits 2 through 6 admitted into evidence.)

14 And just for clarification, you're not asking
15 to move the confidential exhibit into the record,
16 Exhibit 39 marked -- that has been marked.

17 **MR. WRIGHT:** I was asking that.

18 **COMMISSIONER BROWN:** Because you have two
19 exhibits -- you have -- that you've entered for this
20 witness or asked to be marked, 38 and 39.

21 **MR. WRIGHT:** Yes. And I would like to move
22 both 38 and 39.

23 **COMMISSIONER BROWN:** So getting to Exhibit 38
24 and 39 that are marked, are there any objections from
25 the parties?

1 **MS. TRIPLETT:** Yes, Madam Chair. I'll go
2 first. So I have several objections. First, this seems
3 to be an attempt to supplement prefiled rebuttal,
4 surrebuttal testimony. I don't think that it was
5 requested in discovery, and this seems to, to just be a
6 surprise. I mean, I'm sitting here looking at it, and I
7 haven't had a chance to ask the witness any questions
8 about it. I have several. So, you know, just one that
9 jumps out is the non-confidential exhibit, it's -- it
10 seems to refer to 100 million kilowatt hour annual
11 usage, and I think the proposal is at 15 million. So
12 I'm not sure how those numbers interact.

13 And, likewise, I don't know the basis of the
14 confidential Wal-Mart usage numbers. Is that just all
15 the Wal-Mart stores in each of our respective
16 territories? So the point is that without the ability
17 to ask these questions, it seems unfair and
18 inappropriate.

19 And I would also object because I think this
20 witness has not provided the full foundation for the
21 exhibits, as indicated in responses he worked on it
22 with -- with Mr. Chriss, and so I would object on -- on
23 that ground as well.

24 **COMMISSIONER BROWN:** Thank you.

25 **MR. BEASLEY:** We would -- we would join in

1 that objection. This is clearly supplement to the
2 testimony that we've not had a chance to test or take
3 depositions and talk to the witness about. This is the
4 first time we've seen it, so there's no way to verify
5 the numbers.

6 **MR. GRIFFIN:** As would Gulf Power. I mean, it
7 appears that this was a pretext to enter this into the
8 record. And I don't know that it's even responsive to
9 Ms. Tan's question about cost shifting. I mean, it
10 doesn't address the costs associated with reduced
11 program implementation, which seems to be their theme in
12 terms of the cost reduction. So I'm -- I'm still
13 struggling to understand what these numbers actually do
14 reflect.

15 **COMMISSIONER BROWN:** Any other objections
16 before I turn to Mr. Wright?

17 **MS. CANO:** FPL joins in the objections for the
18 reasons stated by my colleagues here.

19 **COMMISSIONER BROWN:** Thank you.

20 And Mr. Wright.

21 **MR. WRIGHT:** Thank you, Madam Chairman. Very
22 directly, Ms. Tan opened the door. She asked questions
23 about cost shifting. We anticipated questions about
24 cost shifting, and in the meantime we prepared -- Mr.
25 Chriss and Mr. Baker, primarily Mr. Chriss but with

1 Mr. Baker's consultation, prepared this exhibit to
2 address exactly the question of cost shifting.

3 What this shows, if you'll look at the table
4 on the right-hand side, it prepares the customer's -- a
5 hypothetical, on 38, a hypothetical opt-out customer's
6 impact on the ECCR revenue requirement expressed as a
7 percentage. And it shows that that impact, you know,
8 you can see the numbers are pretty low; whereas, the
9 contribution to the utility goals provided by this
10 hypothetical opt-out customer are multiples. In Gulf's
11 case, the multiple is only about 1.3 or 1.4. In the
12 others it's three, six, three times the -- times the
13 shift in the ECCR revenue requirements. We believe this
14 is directly probative of the point that the cost
15 shifting impacts are exaggerated, if they exist at all.
16 They directly address Ms. Tan's questions.

17 And since it is new, and it is, but she opened
18 the door and I think it's completely fair. It's
19 probative evidence. The sources are cited in the
20 footnotes to the table. And in terms of fairness or
21 unfairness, I think the parties can ask Mr. Baker or
22 Mr. Chriss about the exhibit now or when Mr. takes --
23 Mr. Chriss takes the stand in a few minutes.

24 **COMMISSIONER BROWN:** Mr. Moyle.

25 **MR. MOYLE:** Thank you for having the chance

1 just to weigh in. As I said in the opening, you know,
2 we find ourselves in a little bit of a different
3 position in that we are petitioning for, for relief.
4 And this discussion is bringing back a lot of
5 discussions I recall over the years when we have not
6 been in this position but some of our utility friends
7 have an exhibit that is trying to come in. And I think
8 the practice, maybe with some exception, has been let
9 people get a chance to look at it, take a break, you
10 know, and then, and then allow questions to be asked of
11 it. So I just wanted to comment and suggest that
12 general course, I think, should be -- would respectfully
13 suggest it should be followed, and note the irony that
14 we're in a little bit of a different position.

15 **COMMISSIONER BROWN:** Thank you for that
16 suggestion, but I am going to turn to our legal counsel,
17 Ms. Helton. Although, although I do find it to be
18 supplemental, I do think it is somewhat relevant, and I
19 would defer to your opinion on it.

20 **MS. HELTON:** I do think it is supplemental,
21 but I also do think that Ms. Tan did open the door. And
22 in the interest that this is a, really a legislative
23 process -- and I think actually Mr. Moyle's suggestion
24 to give the parties maybe a five- or ten-minute break,
25 give them an opportunity to look at it, and then to come

1 back and ask Mr. Baker questions about the exhibit and
2 then ask Mr. Chriss questions about the exhibit, and
3 then only after Mr. Chriss has had an opportunity to
4 look at it, then decide whether it should be introduced
5 or not.

6 **COMMISSIONER BROWN:** All right. Good
7 suggestion, Mr. Moyle. We'll take a ten-minute break.
8 We'll be back here at five to 30.

9 **MR. WRIGHT:** Just before we break, and so I'm
10 clear as --

11 **COMMISSIONER BROWN:** I can't see from here.
12 I'm sorry. I can't see the time. Is it 11:15? We'll
13 be back here at 11:15 -- 11:25.

14 **MR. WRIGHT:** Just so I'm clear about where we
15 are procedurally, we're going to take a break.
16 Mr. Baker is still on the stand. The parties may ask
17 him questions when we return or -- is that right?

18 **COMMISSIONER BROWN:** That is correct. He has
19 not been excused.

20 **MR. WRIGHT:** Okay. Thank you.

21 **COMMISSIONER BROWN:** All right.

22 **THE WITNESS:** May I be excused for just five
23 or ten minutes?

24 **COMMISSIONER BROWN:** No, you may -- you're
25 stuck. Yes, you can -- you can leave, too.

1 (Recess taken.)

2 **COMMISSIONER BROWN:** Okay. It looks like
3 everybody is sitting down. So, Mr. Wright?

4 **MR. WRIGHT:** Madam Commissioner, yes, ma'am.

5 **COMMISSIONER BROWN:** We -- I guess the
6 objection was raised by the parties, and you've had an
7 -- the parties have had an opportunity to review it.
8 I'm going to allow them the opportunity to not only ask
9 questions of this witness but also of Mr. Chriss when he
10 comes on the stand on these two items.

11 **MR. WRIGHT:** Great.

12 **COMMISSIONER BROWN:** Okay. Before I move
13 these exhibits into the record, I will give you the
14 opportunity to ask questions now.

15 **MR. WRIGHT:** Yeah. And just so procedurally
16 we're clear, I understand that you're following
17 Ms. Helton's recommendation, and you're not even going
18 to take up moving them in until Mr. Chriss is done
19 testifying?

20 **COMMISSIONER BROWN:** That's correct.

21 **MR. WRIGHT:** Okay. Great. Thank you, ma'am.

22 **MS. CANO:** Thank you.

23 **EXAMINATION**

24 **BY MS. CANO:**

25 **Q** Mr. Baker, I'm looking at column 10 of Exhibit

1 38.

2 A Column 10 of which document, please?

3 Q It's the hypothetical customer, the one that's
4 not confidential.

5 A Okay.

6 Q And Exhibit (sic.) 10 is titled -- I'm
7 sorry -- column 10 on this exhibit is titled Approved
8 ECCR Revenue Requirement; correct?

9 A Correct.

10 Q Okay. And there is no column on this document
11 that presents a reduction to that ECCR revenue
12 requirement as a result of this hypothetical customer's
13 contribution to the DSM goals; correct?

14 A Correct.

15 **MS. CANO:** Thank you. No further questions.

16 **COMMISSIONER BROWN:** Okay. Ms. Triplett.

17 **MS. TRIPLETT:** Thank you.

18 **EXAMINATION**

19 **BY MS. TRIPLETT:**

20 Q Good morning, Mr. Baker.

21 A Good morning.

22 Q I'm going to ask you to refer to the
23 confidential exhibit, No. 39, with the highlighting.

24 **MR. WRIGHT:** And, if I may, just procedurally.

25 **COMMISSIONER BROWN:** Yes.

1 **MR. WRIGHT:** Mr. Baker, we all know this is
2 confidential information, and I'm sure this is your
3 first time dealing with a confidential exhibit before
4 the Florida Public Service Commission. It's -- it's
5 your job here to avoid disclosing any numbers that
6 Wal-Mart would consider to be confidential, so we have
7 to talk in code. Like, if you see the number in the
8 Duke Energy Florida row under column 7 or something like
9 that, that's how you have to talk about this. Okay?

10 **THE WITNESS:** Okay. And I don't believe I
11 have a copy of --

12 **MR. WRIGHT:** It's in the red folder.

13 **THE WITNESS:** It was empty.

14 **COMMISSIONER BROWN:** The one that was just
15 handed out before the break.

16 **THE WITNESS:** That was empty.

17 **MR. WRIGHT:** Okay. Thank you.

18 Thank you, Commissioner.

19 **COMMISSIONER BROWN:** Uh-huh.

20 **THE WITNESS:** Thank you.

21 **BY MS. TRIPLETT:**

22 **Q** Mr. Baker, when did you and Mr. Chriss develop
23 this document?

24 **A** Please repeat the last part of your question.

25 **Q** When did you develop this document that is

1 Exhibit 39?

2 A Late last week.

3 Q Why did you develop the document late last
4 week?

5 A Mr. Chriss and I were discussing it and
6 discussed that we thought it was a good idea to have
7 that information available to us just for our knowledge.

8 Q This analysis that you've provided in
9 Exhibit 39, this is only reflective of one year. That
10 would be 2014; correct?

11 A Correct.

12 Q And you would agree with me that every year
13 would be -- would reflect different percentages and
14 different energy sales depending on the particular year.

15 A Depending on changes made, yes.

16 Q And this chart only reflects the energy
17 component of Duke Energy Florida's goals; right?

18 A Correct.

19 Q So it doesn't reflect any capacity goals
20 related to summer or winter capacity achievements that
21 we're expected to make by -- as ordered by this
22 Commission; right?

23 A Correct.

24 Q And I'm not asking you to reveal the numbers,
25 but I'm just -- the Wal-Mart annual usage column for

1 Duke Energy Florida, what is the basis for that number,
2 meaning how many stores were included? How did you --
3 how did you calculate that figure?

4 **A** At the time we last did -- or I did my last
5 study on the number of facilities in Florida was just
6 prior to my surrebuttal testimony. There were 317
7 retail facilities and major distribution centers.

8 **Q** And that's 317 in Duke Energy Florida's
9 service territory?

10 **A** Oh, no. That's all over Florida. I'm sorry.
11 The individual utilities I didn't break out.

12 **Q** So you don't know how many retail centers are
13 in Duke Energy Florida's service territory that makes up
14 this number that we see here on the Wal-Mart annual
15 usage column.

16 **A** I do not.

17 **MS. TRIPLETT:** Nothing further for this
18 witness. Thank you.

19 **COMMISSIONER BROWN:** Okay. Mr. Beasley.

20 **EXAMINATION**

21 **BY MR. BEASLEY:**

22 **Q** Mr. Baker, you obviously read the testimony,
23 the rebuttal testimony of the utility companies, did you
24 not?

25 **A** Yes.

1 **Q** And you recognize from that that the issue of
2 cost shifting was raised back last year and then
3 deferred into this docket; is that correct?

4 **A** Correct.

5 **Q** And you could have prepared this exhibit and
6 included it in your, in your testimony, could you not?

7 **A** It could have been.

8 **Q** But the issue of cost shifting and
9 cross-subsidization was clearly on the table when you
10 prepared your testimony; correct?

11 **A** Correct.

12 **MR. BEASLEY:** We would renew our objection.
13 We would not want to take up your time to try to conduct
14 a deposition here today.

15 **COMMISSIONER BROWN:** Thank you.

16 **MR. BEASLEY:** Thank you.

17 **COMMISSIONER BROWN:** Any other objections or
18 questions? Pardon me.

19 **MR. GRIFFIN:** We would just echo Mr. Beasley's
20 objection.

21 **MS. KEATING:** FPUC would as well, and just
22 note that the exhibit doesn't refer to FPUC.

23 **COMMISSIONER BROWN:** Thank you.

24 We are not moving these into the record at
25 this time. So if there are no other questions with this

1 witness, Mr. Wright --

2 **MR. WRIGHT:** If I could, just for clarity, a
3 redirect question based on Ms. Triplett's examination?

4 **COMMISSIONER BROWN:** I'll allow it. I'll
5 allow it.

6 **MR. WRIGHT:** Thank you.

7 **EXAMINATION**

8 **BY MR. WRIGHT:**

9 **Q** Mr. Baker, Ms. Triplett asked you a question
10 about the number of stores that Wal-Mart has in Duke's
11 service territory.

12 **A** Right.

13 **Q** Without looking through the stacks of paper
14 that I have, do you recall furnishing that information
15 along with the usage for each of the four IOUs in
16 response to an interrogatory in this case?

17 **A** I do.

18 **Q** Okay. And regardless whether you did or not,
19 if -- if the Commissioners wanted to know the total
20 energy usage by Wal-Mart stores in Duke Energy Florida's
21 and the other IOUs' service territories as well as the
22 number of stores, that's information that could readily
23 be furnished, and you believe it has already; correct?

24 **A** Correct.

25 **MR. WRIGHT:** Thank you.

1 **COMMISSIONER BROWN:** Thank you. I'm assuming
2 you don't want this witness excused, or would you like
3 this witness excused at this time?

4 **MR. WRIGHT:** I would like Mr. Baker excused.
5 I think that, to be very candid, Mr. Chriss is the real
6 number cruncher, and any detailed questions about --
7 about the number crunching and the algorithms in the
8 spreadsheet would be better directed to Mr. Chriss in
9 any event.

10 **COMMISSIONER BROWN:** Okay.

11 **MR. WRIGHT:** And since we've agreed, based on
12 Ms. Helton's advice, to take up moving the exhibits in
13 after the parties have had an opportunity to interrogate
14 Mr. Chriss about the exhibits, I'd like Mr. Baker to be
15 excused.

16 **COMMISSIONER BROWN:** I don't have a problem
17 with that. The parties don't have a problem with that.
18 Mr. Baker, you're excused. Thank you very much for your
19 testimony today.

20 **THE WITNESS:** Thank you.

21 **COMMISSIONER BROWN:** Okay. We have about an
22 hour until the designated lunch break, so let's go with
23 Mr. Chriss to the stand.

24 Whereupon,

25 **STEVE W. CHRISS**

1 was called as a witness on behalf of Wal-Mart Stores
2 East, LP, and Sam's East, Inc., and, having first been
3 duly sworn, testified as follows:

4 **COMMISSIONER BROWN:** Mr. Wright.

5 **MR. WRIGHT:** Thank you, Madam Commissioner.

6 **EXAMINATION**

7 **BY MR. WRIGHT:**

8 **Q** Good morning, Mr. Chriss. You also took the
9 oath to tell the truth at the outset of this hearing,
10 did you not?

11 **A** Yes.

12 **Q** Please state your name and business address
13 for the record.

14 **A** My name is Steve W. Chriss, C-H-R-I-S-S.
15 Business address is 2001 S.E. 10th Street, Bentonville,
16 Arkansas 72716-0550.

17 **Q** And are you the same Steve W. Chriss who
18 prepared and caused to be filed in this proceeding
19 direct testimony consisting of seven pages?

20 **A** I am.

21 **Q** And did you -- do you have any changes or
22 corrections to that testimony?

23 **A** I believe perhaps. The copy that I printed
24 off the Commission's website, on my Exhibit SWC-3 -- oh,
25 sorry.

1 Q I think you're talking about an exhibit.

2 A Oh, okay. We're still on testimony?

3 Q We're talking about testimony.

4 A Yeah. No changes to my testimony.

5 Q Okay. And with that, do you adopt this as

6 your sworn testimony to the Florida Public Service

7 Commission this morning?

8 A I do.

9 MR. WRIGHT: Madam Commissioner, I request
10 that Mr. Chriss's prefiled direct testimony be entered
11 into the record as though read.

12 COMMISSIONER BROWN: So moved. It will be --
13 Mr. Chriss's prefiled direct testimony shall be entered
14 into the record as though read.

15 MR. WRIGHT: Thank you.

16 BY MR. WRIGHT:

17 Q And, Mr. Chriss, you also prepared and caused
18 to be filed along with your prefiled direct testimony
19 four exhibits enumerated SWC-1 through SWC-4; correct?

20 A That's correct.

21 MR. WRIGHT: And those -- those have been
22 marked for identification, Commissioners, as
23 Exhibits 7 through 10 on the Comprehensive Exhibit List,
24 so we'll proceed accordingly. I'm just going to try to
25 --

1 **COMMISSIONER BROWN:** 7 through 14.

2 **MR. WRIGHT:** Pardon?

3 **COMMISSIONER BROWN:** 7 through 14.

4 **MR. WRIGHT:** Pardon?

5 **COMMISSIONER BROWN:** Is it 7 through 10?

6 **MR. WRIGHT:** 7 through 10.

7 **COMMISSIONER BROWN:** Okay. Yes.

8 **MR. WRIGHT:** I'm just going to try -- try to
9 expedite, Commissioner. When Mr. Chriss printed his
10 testimony and exhibits from the website, apparently one
11 row of his Exhibit SWC-3 did not print. I will tell you
12 the copy that I have in my witness binder has all the
13 numbers there, and it appears that Ms. Christensen's
14 does too. So I was -- I was about to ask him did he
15 have any changes or corrections to make to his exhibits.
16 I think that he -- there's this missing row of numbers
17 in the copy he printed from the website. But if
18 everybody's got it, then we don't need to go through
19 that. That's what I'm trying to say here.

20 **COMMISSIONER BROWN:** Are all of the parties
21 following this exhibit? Mr. Wright.

22 **MR. WRIGHT:** If, yeah, if you'll look at his
23 Exhibit SWC-3, page 1 of 1, on his copy the row for Gulf
24 Power for LP and LPT, the numbers are all missing. I
25 don't know why this is. They are present on mine.

1 **COMMISSIONER BROWN:** They're present on mine
2 as well.

3 **MR. GRIFFIN:** They're present on ours.

4 **COMMISSIONER BROWN:** Does anybody have them
5 missing on their copy? Okay.

6 **MR. WRIGHT:** Okay. I think -- I think we're
7 good to go with that.

8 **COMMISSIONER BROWN:** So I would note that
9 these exhibits have been premarked for identification
10 though as Nos. -- I don't know if you noted that --
11 7 through 10.

12 **MR. WRIGHT:** Correct. Thank you very much.

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**Wal-Mart Stores East, LP and Sam's East, Inc.
Direct Testimony of Steve W. Chriss
Florida Docket No. 140002-EG**

1 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND OCCUPATION.**

2 A. My name is Steve W. Chriss. My business address is 2001 SE 10th St.,
3 Bentonville, AR 72716-0550. I am employed by Wal-Mart Stores, Inc. as Senior
4 Manager, Energy Regulatory Analysis.

5 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS DOCKET?**

6 A. I am testifying on behalf of Wal-Mart Stores East, LP and Sam's East, Inc. (collectively
7 referred to as "Walmart").

8 **Q. IS WALMART SPONSORING THE TESTIMONY OF ANOTHER WITNESS IN THIS**
9 **DOCKET?**

10 A. Yes. Walmart is also sponsoring the testimony of Kenneth E. Baker.

11 **Q. PLEASE DESCRIBE YOUR EDUCATION AND EXPERIENCE.**

12 A. In 2001, I completed a Master of Science in Agricultural Economics at Louisiana State
13 University. From 2001 to 2003, I was an Analyst and later a Senior Analyst at the
14 Houston office of Econ One Research, Inc., a Los Angeles-based consulting firm. My
15 duties included research and analysis on domestic and international energy and
16 regulatory issues. From 2003 to 2007, I was an Economist and later a Senior Utility
17 Analyst at the Public Utility Commission of Oregon in Salem, Oregon. My duties
18 included appearing as a witness for PUC Staff in electric, natural gas, and
19 telecommunications dockets. I joined the energy department at Walmart in July
20 2007 as Manager, State Rate Proceedings, and was promoted to my current position
21 in June 2011. My Witness Qualifications Statement is included herein as Exhibit
22 SWC-1.

Wal-Mart Stores East, LP and Sam's East, Inc.
Direct Testimony of Steve W. Chriss
Florida Docket No. 140002-EG

1 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY BEFORE THE FLORIDA PUBLIC**
2 **SERVICE COMMISSION ("THE COMMISSION")?**

3 A. Yes. I submitted testimony in Docket No. 110138-EI, the 2011 Gulf Power Company
4 ("Gulf Power") general rate case, Docket No. 120015-EI, the 2012 Florida Power &
5 Light ("FP&L") general rate case, Docket No. 130040-EI, the 2013 Tampa Electric
6 Company ("TECO") general rate case, and Docket No. 130140-EI, the 2013 Gulf
7 Power general rate case.

8 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY BEFORE OTHER STATE**
9 **REGULATORY COMMISSIONS?**

10 A. Yes. I have submitted testimony in over 95 proceedings before 33 other utility
11 regulatory commissions and before the Missouri House Committee on Utilities, the
12 Missouri Senate Veterans' Affairs, Emerging Issues, Pensions, and Urban Affairs
13 Committee, and the Kansas House Standing Committee on Utilities and
14 Telecommunications. My testimony has addressed topics including, but not limited
15 to, cost of service and rate design, ratemaking policy, qualifying facility rates,
16 telecommunications deregulation, resource certification, energy efficiency/demand
17 side management, fuel cost adjustment mechanisms, decoupling, and the collection
18 of cash earnings on construction work in progress.

19 **Q. ARE YOU SPONSORING ANY EXHIBITS WITH YOUR TESTIMONY?**

20 A. Yes. I am sponsoring the following exhibits to my testimony:

21 Exhibit SWC-1: Witness Qualifications Statement of Steve W. Chriss

1 3) For the purposes of calculating the ECCR Part E and Part D rates, Walmart
2 does not oppose the use of each respective utility's approved classification of
3 its energy conservation program costs into energy-related and demand-
4 related components. See Exhibit SWC-2.

5 The fact that an issue is not addressed herein or in related filings should not be
6 construed as an endorsement of any filed position. Additionally, for issues not
7 addressed in this testimony, Walmart specifically reserves the right to address such
8 issues in cross-examination and briefs if they are brought up by other parties.

9 **Q. WHAT IS YOUR UNDERSTANDING OF THE CURRENT COST ALLOCATION**
10 **METHODOLOGY FOR ECCR COSTS?**

11 A. My understanding is that the broad basis for the current allocation for ECCR costs is
12 outlined in Order No. PSC-93-1845-FOF-EG (In Re: Investigation into Appropriate
13 Method for Allocation and Recovery of Costs Associated with Conservation
14 Programs, Docket No. 930759-EG, December 29, 1993), though it appears that in the
15 years since that order was issued some changes have been made, such as the
16 introduction of ECCR rates expressed in dollars per kilowatt-month (\$/kW-month or
17 \$/kW) for some demand-metered customer classes.

18 Generally, ECCR costs are separated into two buckets: (1) costs related to
19 programs that reduce a customer's energy usage, i.e. Energy Efficiency programs,
20 and (2) costs related to programs in which the utility can dispatch reductions in
21 customer demand, or which otherwise principally operate to reduce peak demands,
22 i.e., Demand-Side Management programs. The costs related to programs that

Wal-Mart Stores East, LP and Sam's East, Inc.
Direct Testimony of Steve W. Chriss
Florida Docket No. 140002-EG

1 reduce a customer's energy usage are classified as energy-related and allocated
2 across each utility's customer classes on an energy basis. Costs related to utility
3 dispatch of customer demand reductions are classified as demand-related and
4 allocated on a demand basis using the 12 coincident peak and 1/13th annual demand
5 allocator. Prior period year true-ups are also allocated on the basis of energy and
6 demand. Costs thus allocated are translated into rates by dividing the revenue
7 requirements by the class's (or group's) relevant billing determinants, i.e., kWh or
8 billing kW.

9 **Q. DOES WALMART PROPOSE ANY CHANGES TO THE ALLOCATION OF ECCR COSTS AT**
10 **THIS TIME?**

11 **A. No.**

12 **Q. WHAT IS YOUR UNDERSTANDING OF HOW THE FOUR LARGEST UTILITIES' ECCR**
13 **RATES ARE DESIGNED ONCE THE PROGRAM COSTS ARE ALLOCATED?**

14 **A. Three of the four utilities – Duke Energy Florida ("DEF"), FP&L, and TECO – calculate**
15 **a class-specific \$/kWh ECCR charge for their non-demand metered classes (or**
16 **groupings of classes) and a class-specific \$/kW-month ECCR charge for their demand**
17 **metered classes (or grouping of classes). Gulf calculates class-specific \$/kWh ECCR**
18 **charges for all of their customer classes. See Exhibit SWC-2.**

19

1 **Q. DOES WALMART PROPOSE A MODIFICATION TO THE RATE DESIGN PROCESS FOR**
2 **CUSTOMER CLASSES FROM WHICH CUSTOMERS ELIGIBLE FOR THE PROPOSED OPT**
3 **OUT TAKE SERVICE?**

4 A. Yes. For the customer classes that would be eligible to opt out, Walmart proposes
5 that the ECCR rates be split into two components: (1) ECCR "Part E", for energy
6 program-related costs and (2) ECCR "Part D", for demand program-related costs.
7 Under Mr. Baker's proposal, eligible customers who opt out would be exempted
8 from paying Part E, but would continue to pay Part D.

9 **Q. HOW WOULD PART E AND PART D BE CALCULATED FOR A GIVEN CUSTOMER CLASS**
10 **OR GROUP OF CLASSES?**

11 A. Each of the four major utilities already separates out their ECCR revenue
12 requirements by energy and demand and specifies the kWh and kW billing
13 determinants for each class, or groups of classes, as applicable, in the exhibits
14 submitted with their ECCR filings. See Exhibit SWC-2. For a given customer class or
15 group of classes, the Part E rate would be calculated as the energy revenue
16 requirement divided by the applicable kWh or kW billing determinants for that class
17 or group of classes. The Part D rate would then be calculated as the demand
18 revenue requirement divided by the applicable kWh or kW billing determinants for
19 that class or group of classes.

20 For the purposes of calculating the ECCR Part E and Part D rates, Walmart
21 does not oppose the use of each respective utility's approved classification of its

Wal-Mart Stores East, LP and Sam's East, Inc.
Direct Testimony of Steve W. Chriss
Florida Docket No. 140002-EG

1 energy conservation program costs into energy-related and demand-related
2 components.

3 **Q. TO DEMONSTRATE WALMART'S PROPOSAL, HAVE YOU CALCULATED ILLUSTRATIVE**
4 **PART E AND PART D RATES FOR GROUPS OF CLASSES FOR THE FOUR MAJOR**
5 **UTILITIES?**

6 A. Yes. Exhibit SWC-3 shows illustrative Part E and Part D rates at the utility proposed
7 energy and demand revenue requirements for groups of customer classes of each
8 utility from which opt out-eligible customers may take electrical service.

9 **Q. HAVE ANY OTHER JURISDICTIONS APPROVED TWO-PART CONSERVATION**
10 **PROGRAM RATES SIMILAR TO THOSE PROPOSED BY WALMART?**

11 A. Yes. The Oklahoma Corporation Commission has approved two-part conservation
12 program rates for the Public Service Company of Oklahoma. See Exhibit SWC-4. The
13 utility's Demand Side Management Cost Recovery Rider factors are split into a factor
14 for energy programs and a factor for demand programs.

15 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

16 A. Yes.

1 **BY MR. WRIGHT:**

2 **Q** Okay. Mr. Chriss, will you please summarize
3 your testimony in no more than five minutes.

4 **A** Absolutely. Good morning, Chairman Graham,
5 Commissioners. My name is Steve W. Chriss. I'm Senior
6 Manager, Energy Regulatory Analysis, for Wal-Mart
7 Stores, Incorporated.

8 The purpose of my testimony today is to
9 present the ratemaking treatment for Mr. Baker's
10 proposal for a large customer opt out of the energy
11 efficiency portion of each utility's Energy
12 Conservation Cost Recovery rates.

13 I summarize my recommendations on page 3.
14 They're as follows. For the customer classes that
15 would be eligible to opt out under Mr. Baker's
16 proposal, Wal-Mart proposes that the ECCR rates be
17 split into two components: First, Part E for energy
18 program-related costs and, two, Part D for
19 demand-related program costs.

20 My second recommendation is that for a given
21 customer class or group of classes, the party rate
22 would be calculated as the energy-related revenue
23 requirement allocated to the class or group of classes
24 divided by the applicable kilowatt hour or kilowatt
25 billing determinants for that class or group of

1 classes.

2 The Part D rate would then be calculated as
3 the demand revenue requirement divided by the
4 applicable kilowatt hour or kilowatt billing
5 determinants for that class or group of classes.

6 Finally, for the purposes -- for the purposes
7 of calculating the ECCR Part E and Part D rates,
8 Wal-Mart does not oppose the use of each respective
9 utility's approved classification of its energy
10 conservation program costs into energy-related and
11 demand-related components. And I've also calculated an
12 illustrative version of this on Exhibit SWC-3. That
13 concludes my summary. Thank you.

14 **COMMISSIONER BROWN:** Thank you so much.

15 **MR. WRIGHT:** Mr. Chriss is available for
16 cross-examination. Thank you.

17 **COMMISSIONER BROWN:** Thank you. Starting with
18 FIPUG.

19 **EXAMINATION**

20 **BY MR. MOYLE:**

21 Q Just one question. FIPUG has not seen these
22 exhibits that I think you're going to be asked questions
23 about, but is the point of the -- of the confidential
24 exhibit to show that cost shifting does not occur with
25 respect to Wal-Mart?

1 **A** Well, ultimately, and I think Mr. Pollock
2 makes this point in his testimonies, that the cost
3 shifting shouldn't occur because once an opt-out program
4 is implemented, the utility should look at the opted out
5 load and say, well, we don't have to program for them
6 anymore. That should reduce the expected program costs
7 and the expected efforts that the utility makes for
8 those customers.

9 What this exhibit shows specifically is a
10 ceteris paribus, to use economics Latin, example of if
11 the opt out happened now and nothing else changed, this
12 is what it would look like. And it's -- and it's done
13 with the purpose of saying even as things stand now, if
14 you take those revenue -- the revenues out, so you take
15 the -- and we can walk through this, if you like. If
16 you take the opt-out customer revenues out, there
17 are -- those revenues would then be collected by
18 others. However, the benefits exceed the revenues that
19 have been shifted because nothing else has changed.
20 But the expectation is that the utility's programming
21 will change and that costs should not be shifted
22 because those costs will cease to exist.

23 **Q** Okay. And though there's a room full of
24 lawyers here, you're going to have to help us with
25 the -- with the -- with the Latin phrase.

1 **A** Oh, all other things the same.

2 **COMMISSIONER BROWN:** Thank you.

3 Ms. Triplett.

4 **MS. TRIPLETT:** I was just waiting to object to
5 something, but I don't think I needed to.

6 **COMMISSIONER BROWN:** Okay. Thank you.

7 PCS Phosphate.

8 **MR. BREW:** Thank you. Good morning,

9 Mr. Chriss. No questions.

10 **COMMISSIONER BROWN:** Thank you.

11 SACE.

12 **MR. CAVROS:** No questions for this witness.

13 **COMMISSIONER BROWN:** Thank you.

14 Going to the IOUs, FPL.

15 **MS. CANO:** No questions. Thank you.

16 **COMMISSIONER BROWN:** Thank you.

17 Duke.

18 **MS. TRIPLETT:** No questions. Thank you.

19 **COMMISSIONER BROWN:** Thank you.

20 TECO.

21 **MR. BEASLEY:** We have no questions.

22 **COMMISSIONER BROWN:** Thank you.

23 Gulf.

24 **EXAMINATION**

25

1 **BY MR. GRIFFIN:**

2 Q Just -- just one question or perhaps line of
3 questions, Mr. Chriss, just based on what you said about
4 the -- kind of the premise behind the cost-shifting
5 argument that your client is making.

6 What are the costs that you contemplate the
7 utility saving as a result of your client contributing
8 to our goals?

9 A Well, the largest bucket of costs should be
10 direct program costs, so the costs that go into the
11 rebates, into the monies that are given to the customer
12 for doing energy efficiency.

13 You know, for large customers like us, and
14 this isn't something we've necessarily explored, I
15 don't think, and we haven't addressed it necessarily in
16 this docket, I don't think any of the IOUs have, we
17 have key customer account managers. So from an
18 administrative perspective, so if we're talking to FPL
19 or Gulf or one of those utilities saying your client is
20 Gulf, our account manager for Gulf manages Gulf,
21 Alabama Power, Georgia Power, and Mississippi Power.
22 So -- and when we communicate with her, we can
23 communicate with her about any issue for any of the
24 utilities.

25 So in our experience with utilities that

1 we've opted out with in other states, we talk to our
2 key account manager. So that key account manager, if
3 their costs are built into base rates, the extra
4 administrative costs will most likely not happen
5 because that's a sunk cost that's built into base rates
6 and done through the key account manager. So --

7 **Q** Let me stop you there.

8 **A** Okay.

9 **Q** I'm not talking about the base rate related
10 costs.

11 **A** Sure.

12 **Q** Are you aware that there are also embedded
13 fixed, non-variable, however you want to characterize
14 them, program costs associated with each DSM program
15 that Gulf Power offers? You mentioned incentives.
16 Those would be variable. But there are other costs that
17 are not variable with customer participation. Would you
18 agree with that?

19 **A** There will be some such as personnel, the
20 labor costs for the energy efficiency programs.

21 **Q** And to the extent that a utility had a vendor
22 contract in place with an HVAC company, if we had an
23 HVAC program, that could be a fixed cost, couldn't it,
24 that wouldn't vary based on participation?

25 **A** I mean, that would depend on how the utility

1 negotiated that contract with the vendor.

2 Q But it could be.

3 A Well, I mean, there are two ways we can look
4 at this. We can look at this in the all -- excuse me --
5 all other things being equal, you know, boom, we do
6 this, nothing changes, or we can say this changes. And
7 because Florida examines all of these factors every
8 year, there should be fairly rapid transformation in
9 terms of what the utility will look at in its planning.

10 So if you thought you were going to do 50
11 HVAC jobs with this vendor this year but 20 of the
12 applicable accounts are opting out, well, next year
13 you'll know, well, we're just going to contract them
14 for 30.

15 Again, it's going to depend on the utility's
16 contracting with the vendor. I don't know if the
17 utility signs multi-year contracts. If they do, that
18 would probably be a practice that would have to be
19 looked at. But that's probably a practice that should
20 be looked at regardless to ensure that each year you
21 have the best and optimal mix of programs in place.

22 Q All right. Are you aware that the Commission
23 actually voted yesterday to approve utility demand-side
24 management plans?

25 A I'm not aware.

1 type methodology or another Commission-approved
2 methodology for testing DSM -- DSM programs?

3 **A** No. This is a higher level look at that. So
4 ultimately what this gives you is more of a prima facie,
5 you know, just let's look at it, see if, when we work
6 through the top level stuff, does it work. I don't have
7 a RIM model on my computer, so I don't -- and I don't
8 have the -- the data to -- to perform that.

9 However, if it -- speaking on Wal-Mart's
10 behalf, we think this looks pretty good going in. So
11 with that in mind -- I mean, if the Commission wants to
12 go with the OPC requirement to run the RIM on these --
13 on an opt-out customer's programs, I don't think we'd
14 necessarily be opposed to that. I mean, any sort of
15 analytical rigor is a good thing. I mean, customers
16 expect that of the utilities. I don't necessarily
17 think it's a bad thing for the Commission to expect
18 that of us, given what we're requesting.

19 But I think ultimately for the purposes of
20 this docket and what we're trying to do is say, look,
21 this looks good going in. If we need the refinement of
22 the RIM, let's look at that. But ultimately I think
23 that the Commissioners should feel confident that the
24 basis is sound.

25 **Q** And just to clarify, the same would hold true

1 for Exhibit 39, that was not created using the RIM or
2 other Commission-approved type tests?

3 **A** Correct. Same answer.

4 **Q** Okay. And just to understand the exhibit a
5 little bit better, looking at column 11, you have a
6 .03 percent using FPL as an example number.

7 **COMMISSIONER BROWN:** And you're talking about
8 Exhibit 38.

9 **MS. CHRISTENSEN:** I'm sorry. You're right.
10 Correct. I'm going back to Exhibit 38 because I don't
11 want to deal with the confidential numbers.

12 **COMMISSIONER BROWN:** Thank you very much.

13 **BY MS. CHRISTENSEN:**

14 **Q** I'm just trying to understand a little bit
15 better, is that the -- the customer opt-out impact on
16 ECCR requirements, that's the representative percentage
17 of what, let's say, if the -- if the opt out was
18 approved, what you would estimate the percentage of
19 revenue that would no longer be collected from the
20 opt-out customer or this hypothetical opt-out customer?

21 **A** That's correct. So column -- let me make sure
22 I've got my column numbers right. Column 9 is the
23 customer Part E portion, and so that is the revenue that
24 the utility would no longer collect. And the zero --
25 the .03 percent represents that revenue as a portion of

1 the overall revenue requirement for the program.

2 Q Okay. And would that -- those revenue
3 requirements under column 9, would those have to be then
4 collected from the remaining customers in the customer
5 pool for the ECRC as it stands now?

6 A All things being equal, yes.

7 Q Okay. And I just want to understand the
8 contribution towards goals, you have numbers in
9 column 12 as a representative percentage. Is there any
10 revenue requirement or revenue associated with that?

11 A Well, so essentially what column 12 shows you
12 is -- going back to Mr. Baker's proposal, the
13 qualifications for the opt out -- there are things a
14 customer has to do to opt out. We have to make these
15 showings, there are energy efficiency savings there.
16 And so as a customer, we're handing the utility this
17 bucket of energy savings, and that -- and we actually
18 are asking that that be applied towards their goals. So
19 we want to give those savings to the utility to count
20 towards their goals.

21 So if you think of it this way, this -- I
22 guess the simplest way to think of it, if you look at
23 the relationship to column 11 to column 12 is under FPL
24 it costs 0.3 percent of the revenue to buy .1 percent
25 of the goals. So you're getting more back than what

1 you're paying for on a percentage basis.

2 **Q** Well, I think I understand your theory. I'm
3 just trying to understand where the revenue is or how
4 that -- how that would show up in a revenue number. How
5 that -- if you understand what I'm saying, how it would
6 eventually be shown in an ECCR revenue number or a
7 reduction to that revenue requirement.

8 **A** So the -- No. 12 would show up indirectly
9 because ultimately it's a percentage of the -- of the
10 goals. If, you know, FPL needs to get 526 gigawatts,
11 this customer would be providing half a gigawatt. So
12 that's not necessarily a revenue number.

13 Where it would show up, especially if the
14 customer is providing positive benefits, benefits in
15 excess of the, for lack of a better term, all other
16 things being equal, shifted cost, it would show up in
17 that the utility would then pay less for other programs
18 because they're getting more benefits out of the
19 opt-out customers.

20 **Q** Okay. And would that be -- if they're -- if
21 your argument is that they would eventually pay less,
22 would that be something that would have to be done in
23 the future?

24 **A** My understanding of how Florida sets -- how
25 the energy efficiency process is done here, and with the

1 annual reconciliations and that sort of thing, is that
2 as the years progress, those loads will be factored in.
3 So whatever -- whoever the opt-out customers are would
4 no longer be programmed for. And to the extent the
5 Commission or whoever approves changes in goals would --
6 would consider that factor in the goals as well.

7 **Q** So it would be -- I just want to make sure I'm
8 understanding your testimony correctly, that these would
9 not be implemented or implementable or show up as a
10 reduction in the programs right away. It would be
11 something that would be incorporated in the future as
12 the opt out got rolled out.

13 **A** If the opt out -- if the opt out were
14 implemented today with nothing else changing, yeah, I
15 mean, the revenues would stay the same and there would
16 be -- it would factor into the over- or under-recovery
17 numbers that the utility files next year.

18 **MS. CHRISTENSEN:** Okay. I think I have my
19 answer. I have no further questions. Thank you.

20 **COMMISSIONER BROWN:** Thank you.

21 Mr. Wright.

22 **MR. WRIGHT:** Two questions on redirect,
23 please.

24 **COMMISSIONER BROWN:** No, you're not ready yet.
25 We're going to staff now.

1 consideration.

2 Q Thank you. Ms. Christensen asked you a
3 question, and I'm just -- I'm not sure whether y'all
4 were communicating effectively, so I'm going to try to
5 clear it up.

6 She asked you to look at the percentage
7 contribution toward utility goals in column 12, and
8 then she asked you the question "Is there any revenue
9 requirement associated with that?" Does the
10 contribution percent shown in column 12 relate to the
11 customer projected energy efficiency savings in
12 column 5?

13 A Yes. And actually the phrasing of your
14 question -- I apologize for any miscommunication. Yes,
15 the contribution towards utility goals in 12 is directly
16 related to the revenue requirement portion in
17 column 9 and its relationship to the overall program
18 cost and content. I apologize for misunderstanding.

19 Q And but the question then is, is there a
20 utility revenue requirement associated with getting that
21 half a gigawatt hour shown in column 5?

22 A The revenue requirement would essentially be
23 the lost revenue in column 9.

24 **MR. WRIGHT:** Thank you.

25 **COMMISSIONER BROWN:** Okay. Thank you.

1 **MR. WRIGHT:** That's all I had. Thank you for
2 indulging me.

3 **COMMISSIONER BROWN:** Thank you. No problem.
4 Let's get to the exhibits. Mr. Chriss's
5 Exhibits 7 through 10.

6 **MR. WRIGHT:** Yes. If we could move 7 through
7 10.

8 **COMMISSIONER BROWN:** Seeing no objections, I
9 will move Exhibits 7 through 10.

10 (Exhibits 7 through 10 admitted into
11 evidence.)

12 Getting to Exhibits 38 and 39, I understand
13 that the -- some of the parties still have a continued
14 objection; is that correct?

15 **MR. BEASLEY:** Yes.

16 **MS. CANO:** Yes. FPL continues to object to
17 Exhibits 38 and 39. Unlike circumstances that have
18 occurred from time to time where a Commissioner or staff
19 asks for an exhibit from a Petitioner, there's no reason
20 why this couldn't have been developed and included with
21 the prefiled surrebuttal testimony. So FPL renews its
22 objection. Thank you.

23 **MS. TRIPLETT:** DEF joins that objection.
24 Thank you.

25 **MR. BEASLEY:** As does Tampa Electric.

1 **MR. GRIFFIN:** As does Gulf Power.

2 **MS. KEATING:** And FPUC.

3 **COMMISSIONER BROWN:** Thank you. Well, I've
4 considered it, and I think that the information is
5 relevant. It is supplemental, it is relevant. The
6 parties have had an opportunity to question the
7 witnesses. I will allow it, and the Commission can give
8 it the weight that it's due. So I will move -- I will
9 enter Exhibits 38 and 39 into the record.

10 (Exhibits 38 and 39 admitted in evidence.)

11 Mr. Wright, would you like this witness
12 excused?

13 **MR. WRIGHT:** Yes, ma'am. Thank you for
14 entering the exhibits, and we appreciate your excusing
15 Mr. Chriss.

16 **COMMISSIONER BROWN:** You're excused.

17 Let's -- we will begin with rebuttal now.
18 Mr. -- I don't know how to pronounce his name. Could
19 you please --

20 **MS. CANO:** Yes. FPL calls Mr. Thomas Koch.

21 **COMMISSIONER BROWN:** Thank you very much.

22 **MS. TAN:** Commissioner, at this time we'd like
23 to collect the confidential information folders.

24 **COMMISSIONER BROWN:** Thank you for that
25 reminder. Please put out the red folders, if you may.

1 **MR. WRIGHT:** And this is a little bit of an
2 inside joke, but we will be filing a request for
3 confidential classification appropriately in the near
4 future. Thank you.

5 **COMMISSIONER BROWN:** Thank you.

6 **MR. MOYLE:** So I just -- I don't want to take
7 us down a rabbit trail.

8 **COMMISSIONER BROWN:** Please don't.

9 **MR. MOYLE:** But if we want to reference this
10 exhibit in our briefs, we want to be able to do that.
11 And the copy that you just admitted has been taken from
12 me, so I assume at some point I'll be able to get
13 another copy to -- you know, we won't be in-between,
14 in-between on something like that.

15 **COMMISSIONER BROWN:** Absolutely. Absolutely.

16 **MR. MOYLE:** Okay.

17 **COMMISSIONER BROWN:** Okay. Mr. Wright.

18 **MR. WRIGHT:** I was just going to say we'll
19 get, we'll get the RFCC in promptly, and you can issue a
20 protective order. And we'll be good to go, I think.

21 **COMMISSIONER BROWN:** Or the Prehearing Officer
22 can, either one. Thank you.

23 **MR. WRIGHT:** Thank you, yes.

24 **COMMISSIONER BROWN:** All right. You're up,
25 Mr. Wright.

1 Pardon me. Florida Power & Light, Ms. Cano.

2 **MS. CANO:** Thank you.

3 Whereupon,

4 **THOMAS KOCH**

5 was called as a witness on behalf of Florida Power &

6 Light Company and, having first been duly sworn,

7 testified as follows:

8 **BY MS. CANO:**

9 **Q** Good afternoon, Mr. Koch.

10 **A** Good afternoon -- or good morning.

11 **Q** Is it morning?

12 **A** Oh, barely afternoon. Okay.

13 **Q** Were you previously sworn?

14 **A** Yes, I was.

15 **Q** Would you please state your name and business
16 address for the record.

17 **A** It's Thomas Koch, 9250 West Flagler Street,
18 Miami, Florida.

19 **Q** By whom are you employed and what is your
20 position?

21 **A** I'm employed by Florida Power & Light, and I'm
22 a Senior Manager of Demand-Side Management Strategy,
23 Cost and Performance.

24 **Q** Did you prepare and cause to be filed
25 seven pages of prefiled rebuttal testimony on

1 September 24th, 2014, in Docket 140002-EG, which was
2 subsequently copied into this proceeding?

3 **A** Yes.

4 **Q** And there were no exhibits to that testimony;
5 correct?

6 **A** Excuse me?

7 **Q** There were no exhibits to that testimony?

8 **A** That's correct.

9 **Q** Do you have any changes or revisions to your
10 prefiled testimony?

11 **A** Yes, I do. I have one correction. On page 4,
12 line 19, the word "fee" should be "free." It's missing
13 the R. And additionally I have one update that on page
14 3, lines 21 and 22, I noted that FPL recommended to the
15 Commission to set goals based upon the RIM
16 cost-effectiveness in Docket 130199-EI, and subsequently
17 that has occurred in the Commission's order in that
18 docket.

19 **Q** Thank you. If I were to ask you the same
20 questions contained in your prefiled rebuttal testimony,
21 would your answers be the same?

22 **A** Yes.

23 **MS. CANO:** Commissioner Brown, FPL asks that
24 the prefiled rebuttal testimony of Thomas Koch be
25 inserted into the record as though read.

1 **COMMISSIONER BROWN:** I will insert Mr. Koch's
2 prefiled rebuttal testimony into the record as though
3 read.

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1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **FLORIDA POWER & LIGHT COMPANY**

3 **REBUTTAL TESTIMONY OF THOMAS R. KOCH**

4 **DOCKET NO. 140002-EG**

5 **SEPTEMBER 24, 2014**

6

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

8 A. My name is Thomas R. Koch. My business address is 9250 W. Flagler Street,
9 Miami, Florida 33174.

10 **Q. By whom are you employed and what is your position?**

11 A. I am employed by Florida Power & Light Company (“FPL”) as Senior Manager,
12 Demand-Side Management Strategy, Cost & Performance.

13 **Q. Please describe your duties and responsibilities in that position.**

14 A. I am responsible for regulatory filings, reporting and cost management for FPL’s
15 Demand-Side Management (“DSM”) related activities.

16 **Q. Please describe your educational background and professional experience.**

17 A. I have a Master of Business Administration and a Master of Science in Computer
18 Information Systems, both from University of Miami, and a Bachelor of Music
19 from West Chester University.

20

21 I joined FPL’s Finance Department in 1985 working on forecasting and
22 regulatory projects. In 1989 I became Treasury Manager responsible for FPL’s
23 short-term cash management, investing and borrowing. In 1991, I joined

1 Customer Service where I was responsible for program management of various
2 tariffed offerings, product development and commercial/industrial retail market
3 strategy. Beginning in 1998, I served in a number of positions in Distribution:
4 Manager, Development & Planning; Manager, Environmental Department;
5 Manager, Underground Department; and Manager, Financial Forecasting. In
6 these positions I was responsible for: day-to-day field operations; regulatory
7 proceedings; growth activities; policy and procedure development; and regulation
8 compliance. In 2009, I rejoined Customer Service, initially working on securing
9 FPL's \$200 million award from the Department of Energy's Smart Grid
10 Investment Grant program and then on DSM. I assumed my current position in
11 2011.

12 **Q. Have you previously submitted testimony in the Commission's DSM goal-**
13 **setting proceeding?**

14 A. Yes, I was a witness for FPL in Docket No. 130199-EI.

15 **Q. Are you sponsoring an exhibit in this proceeding?**

16 A. No.

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

18 A. The purpose of my rebuttal testimony is to address the "Opt-Out" proposals made
19 by Florida Industrial Power Users Group ("FIPUG") witness Jeffry Pollock and
20 Wal-Mart Stores East, LP and Sam's East, Inc. (collectively, "Wal-Mart")
21 witnesses Kenneth E. Baker and Steve W. Chriss (I will refer to FIPUG and Wal-
22 Mart collectively as the "Intervenors"). I will address both proposals together
23 because the thrust of each is the same – to shift the recovery of certain prudently-

1 incurred Energy Conservation Cost Recovery (“ECCR”) clause costs from “large”
2 business customers, such as the companies they represent, to residential and small
3 business customers. The proposals differ in some of their implementation details,
4 such as the minimum eligibility criterion (an aggregate of 1 MW proposed by
5 FIPUG vs. an aggregate of 15 million annual kWh proposed by Wal-Mart). But
6 these differences are ultimately unimportant because, as I demonstrate, there are
7 several common fundamental fatal flaws underlying the Opt-Out proposals
8 compelling the conclusion that they should be rejected.

9 **Q. Please explain the fundamental fatal flaws with the Intervenor’s Opt-Out**
10 **proposals from a DSM perspective.**

11 A. First, both proposals rely on the flawed premise that utility-sponsored DSM
12 measures benefit only the participants, or the rate class in which the participants
13 take service. FIPUG witness Pollock goes so far as to repeatedly scorn the
14 current recovery of costs related to energy efficiency (“EE”) programs as
15 “socialized.” However, the premise of these proposals is incorrect. In their
16 attempt to justify an Opt-Out provision, the Intervenor’s ignore the fact that all
17 customers (whether participating in a DSM program or not) benefit from shared
18 system cost savings stemming from peak demand and energy reductions created
19 by the participating customers. When the Commission relies primarily on the
20 Rate Impact Measure (“RIM”) cost-effectiveness test to set goals and approve
21 programs (as the Commission has traditionally done and FPL recommends in
22 Docket No. 130199-EI), it ensures that all of Florida’s DSM measures benefit the
23 general body of customers because these programs result in lower electric rates

1 for all customers. Interestingly, FIPUG shares a similar view as one of its basic
2 positions in the DSM Goals proceeding, per their prehearing statement, is that
3 “[t]he Commission should set goals that balance the importance of pursuing
4 conservation programs against their cost and the impact of that cost on rates.” It
5 is appropriate for all customers to share in paying for the costs of those programs
6 because they all share in the benefits. In other words, because all customers share
7 in the benefits of approved DSM programs, there is no justification for allowing
8 certain groups of customers to opt-out of paying for those programs.

9
10 Second, the Opt-Out proposals are also based on the flawed and unsupported
11 premise that only (or primarily) large business customers implement DSM
12 measures without utility incentives. This is incorrect; customers in all classes and
13 of all sizes implement DSM without incentives. In fact, one of the key principles
14 in designing cost-effective DSM plans is to identify those measures that could be
15 expected to be installed by customers without incentives and exclude those
16 measures from the utility-sponsored DSM programs. Customers who would
17 install a measure without requiring any additional incentive are referred to as
18 “free riders.” In setting DSM goals, the Commission requires utilities to reflect
19 ~~free~~ ^{free (NB)} riders in their projection (Rule 25-17.0021, F.A.C.). One of the primary
20 missions of utility-sponsored DSM plans is to identify measures that would not be
21 implemented without incentives and induce participation in those measures if it
22 can be done in a way that benefits all customers (i.e., passes the RIM test). To
23 minimize the likelihood of free riders, FPL screens out measures which have short

1 paybacks. Some examples of such measures for residential customers include
2 compact fluorescent lights, air-conditioning maintenance (refrigerant recharging
3 and coil cleaning) and refrigerator/freezer recycling. Examples for business
4 customers include air-conditioning duct sealing and certain lighting change-outs.

5
6 The discussion in the testimony of the Wal-Mart witnesses about its independent
7 implementation of DSM is nothing more than a good illustration of free ridership.
8 Their corporate objectives, as provided in the testimony, appear to require
9 implementation of DSM, thus making utility incentives inappropriate for their
10 activities according to the exact same “free rider” test that is applied to DSM
11 measures for all customer classes. At the same time, Wal-Mart will receive the
12 incremental benefits of other customers’ implementation of DSM installations,
13 both those that require utility incentives and those that do not.

14 **Q. Should the Commission give any weight to the fact that various forms of Opt-**
15 **Out programs have been implemented in certain other jurisdictions?**

16 A. No. The Intervenors did not provide any evidence showing that the particular
17 circumstances or rationales leading to programs in other states would be
18 applicable to Florida. Unique legislative, regulatory, utility, and/or customer
19 considerations can lead to special accommodations such as the opportunity to opt
20 out of paying costs that otherwise would be a customer’s responsibility. The
21 Intervenor witnesses provide no insight into those considerations. As such, it
22 would be inappropriate to assume that just because various forms of Opt-Outs

1 have been tried elsewhere, the FIPUG and Wal-Mart approaches could be applied
2 effectively or fairly for Florida customers.

3
4 Examination of FIPUG witness Pollock's Exhibit JP-1, page 1, provides clear
5 evidence of the wide range of approaches taken by various jurisdictions. For
6 example, his exhibit identifies five different approaches to the recovery of DSM
7 costs, including the approach of spreading the costs to all customer classes, the
8 approach utilized in Florida. The exhibit certainly shows no dominant trend
9 toward the Opt-Out approach proposed by FIPUG and Wal-Mart. To the
10 contrary, the exhibit shows that several of the most populous states (e.g.,
11 California, Illinois, Massachusetts and New York) apparently follow the same
12 approach as Florida. The "jumping on the bandwagon" argument is never a good
13 basis for policy decisions, and Mr. Pollock's testimony fails to present a
14 compelling justification for Florida to change course and adopt a DSM Opt-Out.

15 **Q. Do the intervenors' assertion that load management ("LM") programs are**
16 **inherently more effectively implemented by utilities while EE programs are**
17 **more effectively executed by "large" customers justify their Opt-Out**
18 **proposals?**

19 **A.** No, for at least three reasons. First of all, as discussed above, Florida's approach
20 to DSM ensures that approved programs provide a net benefit to all customers
21 regardless of which customers are actually implementing the DSM measures.
22 Therefore, it is irrelevant to the question of who should pay for the DSM

1 measures to differentiate between customer classes based on which ones
2 implement more of the DSM.

3

4 Second, the Intervenor's assertion that only large customers implement EE
5 measures on their own is factually inaccurate. As I discussed previously, there
6 are numerous EE measures for residential and smaller business customers that are
7 eliminated from the utility-sponsored DSM plan by the free-rider screen because
8 they can be implemented by those customers without incentives. So it is not only
9 "large" customers who can and will implement EE measures on their own.

10

11 Finally, the Intervenor's proposal that they be allowed to opt-out of paying for EE
12 programs (so that all the costs of those programs are borne by smaller customers)
13 while continuing to have all customers share in paying for LM programs amounts
14 to little more than a smoke screen for one-sided "cherry picking." This is
15 discussed in the testimony of FPL witness Deaton. As she explains, if the
16 Intervenor's proposals were applied even-handedly (so that smaller customers
17 could opt out of paying for the LM programs that are available only to large
18 business customers), the Intervenor's bills would actually increase compared to
19 the current practice of recovering all ECCR costs from all customer classes. This
20 illustrates vividly how one-sided and inappropriate the Intervenor's approach
21 would be.

22 **Q. Does this conclude your rebuttal testimony?**

23 **A. Yes.**

1 **BY MS. CANO:**

2 **Q** Would you please provide a summary of your
3 testimony to the Commission.

4 **A** Yes. Good afternoon, Commissioners. My
5 rebuttal testimony addresses certain fundamental flaws
6 and incorrect assertions common to both FIPUG and
7 Wal-Mart's opt-out proposals. Through their -- though
8 their proposals differ in the implementation details,
9 the thrust of both is the same, to shift recovery of
10 certain prudently incurred ECCR costs from large
11 customers like their companies onto residential and
12 small business customers. Due to the flaws and
13 unfounded premises underlying both opt-out proposals,
14 they should be rejected.

15 First, both proposals rely on the mistaken
16 premise that utility-sponsored DSM measures benefit
17 only the participants or the rate class in which the
18 participants take service; ignore the fact that all
19 customers, whether participating in a DSM program or
20 not, benefit from the shared system cost savings
21 stemming from reduced peak demand and energy created by
22 the participating customers.

23 When the Commission approves DSM goals and
24 programs based on the RIM cost-effectiveness test, it
25 ensures that the entire general body of customers

1 benefits because the programs result in lower electric
2 rates for all. Therefore, there's no justification for
3 allowing certain groups of customers to opt out of
4 paying for these programs.

5 Second, the proposals are based on the
6 unsupported assertion that only large business
7 customers implement DSM measures without utility
8 incentives. Customers in all classes and of all sizes
9 implement DSM without incentives. Examples of such
10 measures are CFLs for residential customers and air
11 conditioning duct sealing for business customers.

12 Finally, the Petitioners attempt to justify
13 their opt-out proposals with a jumping on the bandwagon
14 argument; in other words, that because opt outs have
15 been implemented elsewhere, it makes sense to do so in
16 Florida. However, unique legislative regulatory
17 company and/or customer considerations can lead to
18 special accommodations in different jurisdictions.
19 It's clear from FIPUG's testimony that there's a wide
20 range of approaches that have been tried elsewhere with
21 no dominant form apparent.

22 The Petitioners provide no evidence showing
23 what specific circumstances led to these opt outs, nor,
24 more importantly, why one should assume that their
25 proposed approaches could be applied effectively and

1 fairly for Florida customers.

2 In sum, these opt-out proposals should be
3 rejected due to their fundamental flaws and unfounded
4 premises. This concludes my summary. Thank you.

5 **MS. CANO:** Mr. Koch is available for
6 cross-examination.

7 **COMMISSIONER BROWN:** Thank you.

8 Duke.

9 **MS. TRIPLETT:** No questions.

10 **COMMISSIONER BROWN:** Okay. Moving down the
11 line, TECO.

12 **MR. BEASLEY:** No questions.

13 **COMMISSIONER BROWN:** Gulf.

14 **MR. GRIFFIN:** No questions.

15 **COMMISSIONER BROWN:** FPUC.

16 **MS. KEATING:** No questions.

17 **COMMISSIONER BROWN:** SACE.

18 **MR. CAVROS:** I just have a couple of questions
19 for Mr. Koch.

20 **EXAMINATION**

21 **BY MR. CAVROS:**

22 **Q** Good afternoon, Mr. Koch. How are you?

23 **A** Good afternoon, Mr. Cavros.

24 **Q** Your position with Florida Power & Light is
25 the Senior Manager, Demand-Side Management Strategy,

1 Cost and Performance; is that correct?

2 **A** Yes.

3 **Q** Okay. How much of FPL's demand -- how much of
4 FPL's capacity savings are -- are achieved through
5 energy efficiency measures?

6 **A** Are you asking kW?

7 **Q** I'm asking as a percentage. I'm trying to get
8 a sense of what contribution energy efficiency makes to
9 demand reductions.

10 **A** I don't have that information with me.

11 **Q** Okay. Would you like to venture an opinion
12 or -- would it be significant?

13 **A** I don't really think it's appropriate to
14 guess.

15 **Q** Yeah. Okay. My apologies.

16 There were -- there was some discussion
17 earlier regarding an FPL program that -- that is
18 tailored to commercial industrial customers that allows
19 them to in effect work with a power company to design a
20 program for them. Are you familiar with that program?

21 **A** Yes, I am. It's called the Business Custom
22 Incentive program for FPL, or BCI for short. Its
23 purpose is to address any sort of specialized or
24 particular end uses which aren't covered in the other,
25 you know, specifically identified DSM programs for

1 business customers.

2 Q Okay. And what are the requirements that are
3 expected of customers that want to engage in that
4 program in terms of measurement and verification?

5 A Without going past my particular area of
6 expertise, since I don't implement that particular
7 program myself, each one of the customers is required to
8 provide engineering information based on the savings on
9 megawatts -- or, excuse me -- probably kW and kWh, as
10 well as to provide information as far as what the costs
11 would be. And we run the standard cost-effectiveness
12 tests on those programs on a project-specific basis just
13 like we would run typically on a program level basis for
14 the, you know, the standard programs.

15 Q Great. Thank you. And getting back to my
16 first question, you would agree that energy efficiency
17 measures do -- do contribute to demand-side reductions;
18 correct?

19 A Yes, I do.

20 MR. CAVROS: Okay. Thank you.

21 COMMISSIONER BROWN: FIPUG.

22 **EXAMINATION**

23 **BY MR. MOYLE:**

24 Q Good afternoon. I didn't hear you, I don't
25 think, clearly with respect to your answer to Mr. Cavros

1 about your involvement in the custom program. You said
2 you are responsible for overseeing it or you're not
3 responsible for overseeing it?

4 **A** I'm not personally responsible for overseeing
5 that. We have a program manager in our department who
6 does it.

7 **Q** So your information on it obviously would be
8 limited based on -- and, kind of, you gave Mr. Cavros
9 the information you have on it?

10 **A** I would say my information -- well, I would
11 say that my information is basically the nature of what
12 I described in my prior answer to Mr. Cavros, yes.

13 **Q** To Mr. Cavros.

14 Okay. So if I asked you a question how much
15 money did FPL put out through that program last year,
16 you wouldn't know the answer to that?

17 **A** I don't personally have that information with
18 me here.

19 **Q** Okay.

20 **A** It's largely dependent upon what customers ask
21 us for and which pass cost-effectiveness.

22 **Q** So you don't even know whether any customers
23 applied and sought use of that program last year.

24 **A** Oh, yes, a number of customers applied, and we
25 did provide rebates to them.

1 Q What percent of the cost do you give them of
2 a -- of a pump?

3 A I don't think you can answer that question in
4 a generic basis because every single one of these is a
5 tailored project.

6 Q The -- are you the best FPL witness to talk
7 about the energy efficiency programs that FPL has?
8 Ms. Deaton is coming behind you, I think. If I have
9 some questions about, say, pool pumps, are you the
10 better witness to answer that question, or should I save
11 that for Ms. Deaton?

12 A I would probably be the better witness for
13 that.

14 Q Okay. Do you have a pool pump program?

15 A No.

16 Q Have you previously?

17 A Excuse me. No.

18 Q You don't?

19 A I don't know if we've had one previously
20 either, but there isn't one presently.

21 Q Do you have a residential attic insulation
22 program?

23 A Yes, we do.

24 Q Okay. And how do you -- with respect to that
25 program, can you give me an idea how many people raise

1 their hand and say we want to participate in this
2 program and want, want your help with respect to getting
3 attic insulation?

4 **A** I don't have that information with me.

5 **Q** Do you know how that -- that's checked on if
6 somebody says, hey, I want some incentive money?
7 Does -- does somebody go out and crawl up in their attic
8 and say, hey, you took this money. Did you actually put
9 the insulation in? FPL doesn't send people out into
10 every attic for somebody who raised their hand and
11 sought incentive money, does it?

12 **A** The way --

13 **Q** If you can go yes or no, and then explain, if
14 you need to.

15 **A** Okay. The answer is --

16 **Q** So the question was does FPL send somebody out
17 to every attic for which somebody requests FPL incentive
18 money for the attic insulation program?

19 **A** I'll say a yes and no, because we don't send
20 to every attic, every customer who's participated.
21 However, we do send to a minimum of 10 percent, which is
22 the -- laid out in the program standards, and we do
23 inspect those. And there is certain forms and paperwork
24 that have to be submitted in order for FPL to pay the
25 rebate, which is paid after the work is, is completed

1 and has been verified.

2 Q So the converse of that, 90 percent of the
3 homes don't get inspected; right?

4 A 90 percent of the homes are based upon the
5 requirements that are in the program standards, and --
6 but there isn't somebody who actually goes to the house
7 in those cases.

8 Q Okay.

9 A It's a random sampling process.

10 Q Okay. And are you familiar -- your filing --
11 your testimony sort of responds to testimony Mr. Pollock
12 and the Wal-Mart witnesses prepared and filed; right?

13 A That's correct.

14 Q Okay. So you -- Mr. Pollock says, hey, if we
15 get this opt-out program in place, we'll get a
16 professional engineer or an energy manager to certify
17 that we've -- we've done this. You don't -- you
18 wouldn't question that with respect to a licensed
19 professional engineer providing a certification or an
20 energy manager that something has been done, would you?

21 A Could you rephrase the question?

22 Q Sure.

23 A I wasn't certain if it was prospective or
24 after the fact?

25 Q No, prospective. I mean, if a professional

1 engineer licensed in Florida who's regulated by DBPR
2 certifies that something has been done or that certain
3 energy efficiency matters are appropriate and will be
4 undertaken, you -- that would be pretty good evidence,
5 wouldn't it, that the energy efficiency would take
6 place? I mean, would you feel you had to go out to
7 check every -- every -- every opt-out person, or would
8 you feel you'd go check 10 percent, or would you feel,
9 hey, a professional engineer's certification is good
10 enough for me?

11 **A** In the case of specialized types of
12 insulations, we go and check 100 percent of them.

13 **Q** Yeah. And I'm just asking you prospective.
14 I'm not --

15 **A** And so in this case, okay, and I think we
16 actually responded to this, in this case, we would be --
17 we would -- we would go along with the 100 percent as
18 well verification of this because, again, these are
19 unique circumstances that we're -- that we're talking
20 about. And particularly if there were something like
21 this, it's brand new. So -- and we do inspect, in the
22 case of the BCIs, 100 percent of them.

23 **Q** The -- so have you all started looking at how
24 you would put in place an opt-out program?

25 **MS. CANO:** I'm going to object to continued

1 questioning along these lines. This is outside the
2 scope of Mr. Koch's testimony. He does not speculate on
3 how implementation would actually occur if the opt-out
4 proposals were to be adopted. So it's outside the scope
5 of his testimony.

6 **COMMISSIONER BROWN:** I would tend to agree,
7 Mr. Moyle.

8 **BY MR. MOYLE:**

9 **Q** You acknowledge, do you not, that a number of
10 states across the country have moved forward with a
11 policy of permitting large users of energy to opt out of
12 utility-sponsored energy efficiency programs?

13 **A** I'd say that I saw the exhibit in
14 Mr. Pollock's testimony that says that they have, but I
15 haven't done an independent verification that -- to the
16 accuracy of any of that information.

17 **Q** So -- and I'll reference a portion of your
18 testimony on page 5, line 14. You're asked, "Should the
19 Commission give any weight to the fact that various
20 forms of opt-out programs have been implemented in other
21 jurisdictions?" And you just dismiss it and say, no,
22 they shouldn't; right? This -- this is your bandwagon
23 argument; is that right?

24 **A** Excuse me?

25 **Q** I'm sorry. I'm asking too many questions.

1 I'll let him -- let him answer the --

2 **COMMISSIONER BROWN:** Getting a little excited
3 there.

4 **MR. MOYLE:** Let him answer the first one.

5 **THE WITNESS:** Could you rephrase, please, or
6 just restate it?

7 **BY MR. MOYLE:**

8 **Q** Are you just -- are you suggesting to the
9 Commission that they just dismiss and not consider how
10 some other states have approached an opt-out program?

11 **A** I'm not saying that it should be totally
12 dismissed. What my argument here is or my point is
13 that just because somebody else did it doesn't mean that
14 it makes sense for Florida.

15 **Q** Right. But just because somebody else did it
16 doesn't mean that Florida shouldn't consider it either,
17 does it?

18 **A** No. I did not say that Florida shouldn't
19 consider it.

20 **Q** Okay.

21 **A** I think what I was responding to was
22 Mr. Pollock's testimony that because a number of people
23 have done it, it's automatically a good thing for
24 Florida. I disagree with that statement.

25 **Q** Yeah. So you would agree with me that -- or

1 Mr. Pollock, he states that a majority of states have
2 moved forward with an opt out. You don't have any
3 reason to disagree with that, do you?

4 **A** I agree that's what's in his testimony, that
5 he has colored, you know, two-thirds or so of the states
6 and said that they have various versions of opt-out
7 proposals.

8 **Q** Okay. And do you have any, any basis to
9 disagree with what he said or his -- his map?

10 **A** No, I don't have any independent information
11 for that.

12 **Q** Okay. And you didn't go and try to educate
13 yourself about what other states have done or look at
14 anything that has taken place in other states; correct?

15 **A** No.

16 **Q** No, you didn't go look; right?

17 **A** No. Correct. No, I did not go look.

18 **Q** Okay. You make a statement on line 18 and I
19 --

20 **COMMISSIONER BROWN:** What page?

21 **MR. MOYLE:** Page 5.

22 **COMMISSIONER BROWN:** Thank you.

23 **BY MR. MOYLE:**

24 **Q** And you say, quote, unique legislative,
25 regulatory, utility, and/or customer considerations can

1 lead to special accommodations such as the opportunity
2 to opt out of paying costs that otherwise would be a
3 customer's responsibility.

4 I'm trying to understand what you're
5 communicating here because you put it in the context of
6 other states and Mr. Pollock's testimony -- testimony
7 about other states. What's the point that you're
8 trying to make with this sentence?

9 **A** The point that I'm trying to make is that an
10 opt out is a, in essence, a special accommodation, and
11 in many cases there's reasons why special accommodations
12 are made. And I don't have independent knowledge of
13 exactly why every one of these things that are shown in
14 this map has an opt out in place, but nor does he
15 present any information to say that there's a reason why
16 that is. So it's -- and I think that we can all agree
17 that in general there is many times legislative
18 mandates, there's regulatory concerns, there may be
19 something specific with a settlement or a negotiation,
20 and this is the types of things that can give rise to
21 things that are special accommodations.

22 **Q** So you're sort of speculating about why some
23 states may have moved forward with the opt out; correct?
24 You don't know specifically, do you?

25 **A** That's correct, I don't know specifically.

1 And by the same token, it isn't a matter of me -- well,
2 I don't know specifically. Just leave it at that.

3 Q Okay. And, again, because I'm going to -- if
4 you do know, I'm going to say, well, what happened in
5 South Carolina? What was -- was there a deal cut? You
6 know, were they doing it for BMW?

7 **COMMISSIONER BROWN:** Mr. Moyle, he already
8 said that he didn't know.

9 **BY MR. MOYLE:**

10 Q Okay. So -- so then I also would -- would ask
11 that it could be good public policy has led these other
12 states to put in place an opt out; correct?

13 A Public -- good public policy could be one of
14 the reasons for that to happen as well. Again, there
15 was no evidence provided for me to rely upon to know
16 that one way or the other.

17 Q Okay. And you also, in reviewing
18 Mr. Pollock's testimony, he put forward some public
19 policy reasons why the opt out should be pursued, did he
20 not? Yes or no.

21 A He referred to -- I don't recollect off the
22 top of my head.

23 Q Okay.

24 A So if there's something specific you'd like to
25 refer me to, I could look at it.

1 Q Well, I want -- I want to try to finish today,
2 so I'm going to just --

3 A Okay.

4 Q You know, you're responding to his testimony.
5 If you don't think he had any public policy arguments in
6 there, you can just say I don't remember or I don't
7 know. You don't remember?

8 A I don't remember.

9 Q Okay. Okay. I'm going to take you to -- this
10 is again on page 5 of your testimony. You state, quote,
11 the Intervenor witnesses provided no insight into those
12 considerations. As such, it would be inappropriate to
13 assume that just because various forms of opt outs have
14 been tried elsewhere, the FIPUG and Wal-Mart approaches
15 could be applied effectively or fairly for Florida
16 consumers. Right?

17 A Yes, that's correct.

18 Q Okay. The converse of that is also true, is
19 it not? I mean, you're not saying that Florida cannot
20 effectively and fairly put in place an opt-out program
21 if it so desired.

22 A What I would --

23 Q If you could answer yes, no, and then explain.

24 A Maybe. Let me try --

25 **MR. MOYLE:** Madam Chair, it's not --

1 **THE WITNESS:** Okay. So let me -- let me try a
2 little better than that.

3 **COMMISSIONER BROWN:** Mr. Moyle, the witness is
4 allowed to answer to the best of his ability. If he
5 can't answer yes or no, he can explain. Please proceed.

6 **BY MR. MOYLE:**

7 **Q** So -- so the pending question is you're not
8 saying that Florida is unable to enact an opt-out
9 provision that is fair and effective for Florida
10 customers, are you?

11 **A** I'm not saying that. I'm saying that there
12 hasn't been something presented that rises to that
13 level.

14 **Q** To your satisfaction.

15 **A** Correct.

16 **MR. MOYLE:** Okay. That's all I have. Thank
17 you.

18 **COMMISSIONER BROWN:** Thank you.

19 Moving to Wal-Mart.

20 **MR. WRIGHT:** Thank you, Commissioner. I note
21 that you said you planned to take a lunch break at
22 12:30.

23 **COMMISSIONER BROWN:** I did.

24 **MR. WRIGHT:** I'm not going to finish in
25 six minutes.

1 **COMMISSIONER BROWN:** I didn't think you would.
2 So at this juncture it's about 12 -- I cannot see. I
3 don't have my glasses.

4 **MR. WRIGHT:** 12:24 by that clock.

5 **COMMISSIONER BROWN:** Okay. So let's just make
6 it 1:30 we'll reconvene.

7 **MR. WRIGHT:** Thank you.

8 **COMMISSIONER BROWN:** So we'll be adjourned for
9 lunch and reconvene at that time. Thank you.

10 (Recess taken.)

11 (Transcript continues in sequence with Volume
12 2.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON) : CERTIFICATE OF REPORTER

3
4 I, LINDA BOLES, CRR, RPR, Official Commission
5 Reporter, do hereby certify that the foregoing
6 proceeding was heard at the time and place herein
7 stated.

8 IT IS FURTHER CERTIFIED that I
9 stenographically reported the said proceedings; that the
10 same has been transcribed under my direct supervision;
11 and that this transcript constitutes a true
12 transcription of my notes of said proceedings.

13 I FURTHER CERTIFY that I am not a relative,
14 employee, attorney or counsel of any of the parties, nor
15 am I a relative or employee of any of the parties'
16 attorney or counsel connected with the action, nor am I
17 financially interested in the action.

18 DATED THIS 27th day of July, 2015.

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25


LINDA BOLES, CRR, RPR
FPSC Official Hearings Reporter
(850) 413-6734

- c. Would it also be true that the energy savings resulting from utility-sponsored demand-side management programs also benefits all of the Company's customers? Please explain.

Objection: This question is not relevant, as Walmart is not proposing to allow customers to opt out of paying for utilities' demand side management programs.

Walmart's Response: Notwithstanding the above objection, energy savings through utility programs, whether EE programs or DSM (or "demand response" or "DR" programs), and energy savings provided to the utility and all customers through opt-out customers' self-funded and self-implemented EE measures provide the same benefits to the system. The critical differences are that opt-out customers **must** contribute savings to be eligible to opt out, and that the savings and benefits thus provided by the opt-out customers are provided to all other customers at zero cost to either the utility or those other (non-opt-out) customers.

3. Current demand-side management goals are based on the Rate Impact Measure (RIM) cost-effectiveness test. On page 8 of her testimony, Gulf witness Todd refers to the RIM test as the "no losers" test because it accounts for impacts on both participating and non-participating customers. Each of the utilities have provided testimony that further states that an opt-out provision would shift costs from customers who choose to opt-out of energy efficiency programs, to customers who continue to participate in energy efficiency programs.

a. Does Walmart agree with the utilities' statement that an opt-out provision would shift costs from customers who choose to opt-out of utility sponsored energy efficiency programs, to customers who continue to participate in energy efficiency programs? Please explain.

Walmart's Response: No. An opt out provision can guarantee that there is no such cost transfers or subsidies. Customers who elect to opt out of the IOU programs would not shift costs to other customers from the cost of their programs.

b. Does Walmart believe that it is prudent for a utility's remaining customers who do not participate in the opt-out program, to receive increases in energy efficiency costs as a result of customers opting out of energy efficiency program participation? If yes, please explain in detail.

Walmart's Response: No, Walmart does not believe that it is prudent for customers to receive increases in energy efficiency costs.

c. Since programs that pass the RIM test are beneficial to all customers who participate in a utility's energy efficiency programs as well as non-participants, why does Walmart believe it is being harmed by participating in utility-sponsored energy efficiency programs?

Walmart's Response: Because Walmart is more familiar with its stores' and facilities' systems and operations, Walmart can more effectively identify and implement optimal energy savings measures for its operations. Walmart's opt-out proposal would allow such companies and customers to self-fund and self-implement energy efficiency measures, at no cost to utilities or the utilities' other customers, and therefore opt-out

customers would be treated fairly while other customers would get the benefits of the EE measures implemented by opt-out customers at no cost.

4. Please explain how witness Baker arrived at the proposed 15 million annual kWh threshold for qualifying participants in the proposed opt-out program. In your response, please provide any related documents that were used in the analyses to develop the proposed thresholds.

Walmart's Response: Please see page 11, lines 6-10 of the Direct Testimony of Kenneth E. Baker in Docket No. 140002-EG, which has been incorporated into the official documents of this docket.

5. Please refer to page 3, lines 5-14 of witness Baker's testimony. Why does the witness believe it is appropriate to separate energy and demand for those programs that impact both energy and demand? Please explain.

Walmart's Response: The interrogatory misstates Mr. Baker's testimony. Mr. Baker believes it is appropriate to separate charges for energy efficiency programs, which fund measures, such as changes to lighting and refrigeration, that provide for sustained long-term reductions in a customer's energy and demand, from demand side management programs, which are short term changes in a customer's operations, such as load interruption, that are done in response to a temporal and locational need on the utility's system.