

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 140226-EI

REQUEST TO OPT-OUT OF COST  
RECOVERY FOR INVESTOR-OWNED  
ELECTRIC UTILITY ENERGY  
EFFICIENCY PROGRAMS BY WAL-MART  
STORES EAST, LP AND SAM'S EAST,  
INC. AND FLORIDA INDUSTRIAL  
POWER USERS GROUP.

\_\_\_\_\_/

VOLUME 2  
(Pages 167 through 330)

PROCEEDINGS: HEARING

COMMISSIONERS  
PARTICIPATING: CHAIRMAN ART GRAHAM  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER JULIE I. BROWN

DATE: Wednesday, July 22, 2015

TIME: Commenced at 1:30 p.m.  
Concluded at 4:35 p.m.

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: ANDREA KOMARIDIS  
Court Reporter

APPEARANCES: (As heretofore noted.)

PREMIER REPORTING  
114 W. 5TH AVENUE  
TALLAHASSEE, FLORIDA  
(850) 894-0828

1 I N D E X

2 WITNESSES

3 NAME: PAGE NO.

4 THOMAS KOCH  
 Examination by Mr. Wright 169  
 5 Examination by Mr. Brew 184

6 RENAE DEATON  
 Examination by Ms. Cano 196  
 7 Prefiled rebuttal testimony inserted 198  
 Examination by Mr. Moyle 207  
 8 Examination by Mr. Wright 213  
 Examination by Ms. Tan 217

9  
 10 TIMOTHY J. DUFF  
 Examination by Ms. Triplett 227  
 Prefiled rebuttal testimony inserted 229  
 11 Prefiled surrebuttal testimony inserted 241  
 Examination by Mr. Moyle 246  
 12 Examination by Mr. Wright 289  
 Examination by Mr. Brew 304  
 13 Examination by Ms. Tan 312

14

15 EXHIBITS

16 NUMBER: ID ADMITTED

17 40 Duke North Carolina opt-out 260 324  
 18 41 Duke South Carolina opt-out 265 324  
 19 42 Duke Indiana opt-out 270 324  
 20 43 Duke Ohio opt-out 273 324  
 21 44 Duke South Carolina testimony 279 324  
 22 45 Duke South Carolina opt-out testimony 302 324  
 23 46 Duke South Carolina DSM/EE application 302 324  
 24 47 Duke Energy Florida ten-year site plan 306 324  
 25 48 Duff testimony from August 27, 2014 329 329

1 P R O C E E D I N G

2 (Transcript follows in sequence from  
3 Volume 1.)

4 COMMISSIONER BROWN: We will reconvene this  
5 hearing at this time. And it is Wal-Mart's time  
6 for cross examination.

7 Mr. Wright?

8 MR. WRIGHT: Thank you, Commissioner.

9 EXAMINATION

10 BY MR. WRIGHT:

11 Q Good afternoon, Mr. Koch.

12 A Good afternoon, Mr. Wright.

13 Q As you know, I'm Schef Wright. I represent  
14 Wal-Mart and Sam's in this proceedings. It's nice to  
15 see you again.

16 A Likewise.

17 Q Thanks. I have a few questions for you.  
18 Hopefully not too many.

19 You are the senior manager of demand-side  
20 management strategy cost and performance; correct?

21 A That's right.

22 Q As such, you are familiar with the statute we  
23 call FEECA?

24 A Yes.

25 Q Would you agree that the overriding mandate of

1 FEECA is to promote cost-effective energy conservation?

2 A Yes.

3 Q You also agree that, specifically, among other  
4 things, FEECA directs the PSC to take into consideration  
5 the need for implementing or creating incentives for  
6 customer-owned energy-efficiency systems?

7 A Yes, I believe that's in there.

8 Q I could direct you.

9 A Okay.

10 Q It's Section 366.823(c) if you want to cross  
11 check.

12 Okay. Will you agree that if a program passes  
13 the RIM test, then it passes the RIM test regardless of  
14 who pays?

15 A I think, yes. I'm not certain what you mean  
16 by who pays, though.

17 Q Well, to give you a simple hypothetical,  
18 suppose a program costs \$10 million to implement for a  
19 year and it provides \$12 million of total RIM benefits,  
20 that's going to have a RIM benefit cost ratio of 1.2 in  
21 a simplified example, correct?

22 A Yes.

23 Q That benefit cost ratio does not change  
24 whether those costs are recovered from any particular  
25 class of customers, correct?

1           A       The cost for the RIM test versus the  
2       recovery -- they are two separate items. The recovery,  
3       of course, is done through rates --

4           **Q       Yes.**

5           A       -- after the fact. And the RIM test is based  
6       on prospective cost assessments, present valued. And  
7       that's how the ratio is computed.

8           **Q       What is a typical RIM benefit-to-cost ratio**  
9       **for your utility's, FPL's, DSM programs?**

10          A       It varies by program, obviously. There are  
11       some that are close to a one-to-one, and there are some  
12       that are, you know, much higher than that.

13          **Q       When you say much higher, are you talking**  
14       **about two? 1.5?**

15          A       Two -- yeah, in neighborhood of two plus.

16          **Q       I seem to recall seeing tables that indicate**  
17       **that a lot of them are in the 1.1, 1.2, 1.3 range. Is**  
18       **that a fair characterization?**

19          A       I believe it would be. This last go-around,  
20       as you remember, when we went through the DSM goals  
21       docket, a lot of these avoided system benefits have  
22       declined substantially. So, it's brought the -- it's  
23       brought the scores a lot closer to one-to-one.

24          **Q       Thank you. If you have fewer participants in**  
25       **your programs, generally speaking, you will incur lower**

1 **program costs; is that correct?**

2 A I do not think that you can make that  
3 statement because, No. 1, there's obviously fixed costs  
4 that need to be collected. Potentially, there's  
5 variable costs that would go down as a result of that.  
6 But I don't think you can generically just say that.

7 Q I did try to qualify that using the adverb  
8 "generally." Let me ask you this: Are there any  
9 programs that -- for which the costs are exclusively  
10 fixed?

11 A No.

12 Q So, that means there is a variable cost  
13 component to every program, correct?

14 A That's correct.

15 Q So, if there are fewer participants, you would  
16 presume fewer instances of implementation of the  
17 program, correct?

18 A That's correct. That would affect the rebate  
19 component, but it's not necessarily going to affect the  
20 administrative component. And also, there could be  
21 incremental costs associated with that depending upon  
22 the nature of what drove them to be fewer participants.

23 Q Would you repeat your last sentence, please?

24 I missed it.

25 A So --

1           **Q     It could affect something -- I lost it.**

2           A     I think -- I think what I said was that  
3 depending upon what it was that created fewer than  
4 projected participants, you would -- you could have  
5 incremental costs associated with the administration of  
6 that. And that would be -- this is, in fact, such as  
7 the proposal that's before us here.

8           **Q     Well, when you say incremental costs**  
9 **associated with the administration, I thought you**  
10 **indicated that the administrative costs are fixed,**  
11 **correct?**

12          A     The administrative costs for a program as  
13 designed are going to -- many of them are going to be  
14 fixed. There could be -- there is also going to be some  
15 costs that may be dependent upon how many participants  
16 there are, which are non-rebate related. Those can  
17 vary.

18                   But what I was getting at is if you have to  
19 implement incremental systems or there are some other  
20 procedures you have to put in place, then that would be  
21 incremental costs over and above the way the programs  
22 were designed and the cost-effectiveness was, in fact,  
23 run initially.

24           **Q     Are you talking about the opt-out option now?**  
25 **Are you talking about an actual DSM program like**

1 lighting or attic insulation or something that you're  
2 suggesting that the costs -- the fixed costs might  
3 actually increase with fewer participants?

4 A I'm talking about more specifically the opt-  
5 out proposal in that particular case as opposed to a  
6 program in isolation.

7 Q So, again, do you have any DSM programs for  
8 which the fixed costs would increase if you had fewer  
9 participants? In total dollars.

10 A Probably not just as a program in isolation.

11 Q Do you recognize that Wal-Mart's proposal, the  
12 opt-out proposal offered by our witnesses, would still  
13 leave the opting-out customers paying for and eligible  
14 to participate in demand reduction or demand-response-  
15 type programs?

16 A Yes.

17 Q And do you further understand that Wal-Mart's  
18 proposal would require that, to be eligible, an opt-out  
19 customer would have to provide energy savings at least  
20 as great, by some objective metric, as the percentage  
21 savings achieved by your utility's other energy-  
22 efficiency programs?

23 A I don't think so, if I understood your  
24 question correctly.

25 Q I'm sure you reviewed Mr. Baker's testimony?



1           A     Yes.

2           Q     I think his testimony says that -- well, why  
3     don't we just look at it. I'm looking at Page 10 of his  
4     direct testimony. One of the criteria to participating  
5     in opting out of the energy-efficiency programs only is  
6     the customer must certify to the company that the  
7     customer either has implemented energy-efficiency  
8     measures that may reduce the customer's usage -- he uses  
9     measured in kWh per square foot of space -- or other  
10    similar measure as applicable by a percentage at least  
11    as great as the company's energy-efficiency reductions  
12    through its approved energy-efficiency programs  
13    expressed as a percentage of the company's total retail  
14    kWh sales as measured over the same time period.

15                 In light of that testimony, do you still  
16    disagree with the suggestion that our proposal would not  
17    save on a percentage basis using some objective rate  
18    metric at least as much as the company's other programs?

19           A     I disagree with that statement. And I don't  
20    have his testimony in front of me, but there is a part  
21    that continues that says not only has -- have -- I'm  
22    paraphrasing here -- not only has something been  
23    implemented, but a promise to do so at some time in the  
24    future -- I think, within the next two years or so, I  
25    think, was part of the proposal.

1           Also, his testimony thoroughly ignores the  
2 fact that if there is a customer who has been  
3 implementing DSM on their own, we've not been paying a  
4 rebate to those guys in the first place. You can't  
5 avoid a rebate you didn't pay. Initially, there is  
6 going to be an administrative cost, which, as we put in  
7 our discovery, is a fairly significant amount, by our  
8 estimate.

9           So, none of that is in his testimony. So,  
10 that's why I say the cost effect would be expected not  
11 to go down, but to increase. It's not a participation  
12 question particularly for somebody who wasn't a  
13 participant in the first place.

14           **Q     My question addressed the proposition that, to**  
15 **be eligible, the customer would have to provide energy**  
16 **savings at least as great as the percentage savings**  
17 **achieved by your utility's other programs. It did not**  
18 **address cost at all.**

19           So, is your reservation, then, the idea that  
20 the second part of the eligibility criteria and criteria  
21 that -- that the customer could satisfy it by committing  
22 to implement the results of the energy audit? Is that  
23 your reservation there?

24           **A     That's part of my reservation as well as the**  
25 **fact that the cost that's going to be incurred is not**

1 inconsequential -- or substantial, I should say. Let me  
2 correct that.

3 Q Would you agree that the ability to opt out of  
4 the energy-efficiency programs of the utility and then  
5 commit to do energy-efficiency measures on a customer's  
6 own would be an incentive to that customer to undertake  
7 its own energy-efficiency programs?

8 A Could you repeat the question?

9 Q Yeah. Will you agree that the availability of  
10 the opt-out opportunity as proposed by Wal-Mart and  
11 FIPUG would provide an incentive to a customer to  
12 actually opt out and implement energy-savings measures,  
13 energy-efficiency measures on the customer's own as  
14 contemplated by our proposals?

15 A No, I wouldn't. And you had brought up the  
16 FIPUG proposal also, which obviously differs from  
17 Wal-Mart's. But in FIPUG's case, they said that --  
18 again, I'll be paraphrasing -- that if they had someone  
19 go out and said there was no energy-efficiency measures  
20 to be implemented, they would still be allowed to opt  
21 out, but obviously, would be contributing zero as far  
22 as -- as far as any sort of contribution, if  
23 hypothetically, those were, in fact, netted against the  
24 goals that were -- that were put in place.

25 Q My question goes to the proposition that the

1 ability to opt out and self-direct, self-fund, implement  
2 energy efficiency on the customer's own does provide an  
3 incentive to the customer to do so. Do you disagree  
4 with that?

5 A I think that what -- it's one possible way to  
6 have an incentive. In fact, though, you already have  
7 that incentive today through the BCI program. And you  
8 could, in fact, get additional contributions towards  
9 your -- towards whatever measure you were intending to  
10 implement through the BCI program as long as it's cost-  
11 effective.

12 Q My question --

13 A So --

14 Q I'm sorry. I didn't mean to --

15 A No, sorry.

16 Q I did not mean to interrupt you. I did think  
17 you were done.

18 My question really was the simple  
19 question: Does the availability of the opt-out option  
20 give the customer incentive to do energy conservation on  
21 the customer's own? That's the question.

22 MS. CANO: Objection. I believe this has been  
23 asked and answered.

24 COMMISSIONER BROWN: I --

25 MR. WRIGHT: I haven't heard a yes-or-no,

1 Commissioner.

2 COMMISSIONER BROWN: I have not either. I'll  
3 allow the question.

4 THE WITNESS: Okay. I'll try again.

5 It could provide incentive to do so, but  
6 because the way the opt-outs are written, it  
7 doesn't mean they have to actually implement  
8 anything. You could get the reduction through  
9 use of ECCR -- ECCR charges and shifting the cost  
10 on to the other customers. But it does not mean  
11 you have to follow through and actually implement  
12 any energy efficiency as the proposals are written.

13 BY MR. WRIGHT:

14 **Q Do you have anything to do with administering**  
15 **the terms and conditions of your company's DSM programs?**

16 A Yes.

17 **Q I would suggest to you that the concern you**  
18 **just raised is legitimate, but that it's really an**  
19 **implementation matter to make sure the customer is doing**  
20 **what the customer is supposed to be doing. Would you**  
21 **agree with that?**

22 A I would agree with that in the case of your  
23 proposal. In the case of FIPUG's proposal, it's not  
24 that -- drawn that way.

25 **Q Thank you.**

1           Have you done any analysis of what we've been  
2 talking about as cost-shifting that might result from  
3 approval of an opt-out proposal?

4           A     By analysis, do you mean quantitative  
5 analysis?

6           **Q     Yes.**

7           A     No.

8           **Q     Have you tried to make any estimate of what**  
9 **savings might be contributed by a set of FPL customers**  
10 **who might choose to opt out?**

11          A     Yes. I believe there is no savings coming  
12 from the opt-out for the reasons I stated before. The  
13 customers who you're describing who would be  
14 implementing DSM -- or energy-efficiency, excuse me,  
15 measures on their own volition for other corporate  
16 purposes would not be receiving a rebate. So, there is  
17 not going to be any reduction of cost from rebates.

18                       Secondly, there is the administrative cost,  
19 which is substantial for investments and systems, et  
20 cetera, and then also, the compliance verification of  
21 any of those.

22                       And so, those both lead to the conclusion  
23 that, "A," costs will be higher, and clearly, costs will  
24 be shifted because of the fact that the total pool of  
25 costs is just the pie that is being redrawn as to who

1 pays for it.

2 So, there is the cost component, how much cost  
3 is there, which will be higher. And then who pays for  
4 that -- that pie will be redrawn by -- under an opt-out  
5 proposal, as described.

6 **Q Are you familiar with the part of Mr. Baker's**  
7 **testimony where he indicates that Wal-Mart would be**  
8 **agreeable to opt-out customers paying the reasonable**  
9 **administrative costs of an opt-out program?**

10 A I know that that statement is in there. But  
11 the amount for FPL alone that we were looking at is in  
12 the millions. So, I don't know if Wal-Mart feels as  
13 comfortable paying millions of dollars or having to  
14 potentially fund the costs that are created by their  
15 special treatment, you know, in that order of magnitude.

16 **Q In the millions of dollars for administrative**  
17 **costs?**

18 A The -- there are two main cost components.  
19 And it's -- and they are described in -- there is  
20 discovery. One is for systems, and we have to alter the  
21 billing system. We have to alter the accounting  
22 systems. We have a brand-new rate structure that has to  
23 be implemented. And you have to alter the demand-side  
24 management systems, all of which have substantial costs  
25 associated with them.

1           Then you're going to have to also -- and you  
2 also have to alter the filings we would make with the  
3 Commission. Those are actually generated through  
4 computer systems as well because we handle almost  
5 4.8 million customers. We can't do these as little side  
6 type of calculations efficiently.

7           So, all of those investments, you're kind of  
8 in for a penny, in for a pound with that stuff. And  
9 then you have the cost of compliance, which obviously is  
10 based on how many accounts there could be. And our  
11 estimates, there could be tens of thousands of accounts  
12 that would be eligible in FPL's territory based on the  
13 way the proposals are drawn.

14           So, you could have from very few accounts to  
15 many, many, many accounts, but you have a substantial  
16 multi-million-dollar investment you would have to make  
17 in computer systems just to handle even a few number of  
18 accounts. It's just one of those --

19           **Q     Are you familiar with --**

20           A     -- things.

21           **Q     -- with your company's economic development**  
22 **rider?**

23           A     I'm familiar with it generally.

24           **Q     How much did you all spend to implement that?**

25           **How much did the computer system, capital cost, did that**



1 **cost?**

2 MS. CANO: Objection. This is outside the  
3 scope of this witness's testimony --

4 COMMISSIONER BROWN: I completely agree.

5 MR. WRIGHT: Just for the record, I think it's  
6 goes to the credibility of his testimony about  
7 administrative costs. It's a separate rate  
8 structure. I'm asking him does he know about the  
9 cost of administering -- implementing and  
10 administering another tariff change that they  
11 cheerfully admitted -- implemented about four years  
12 ago.

13 COMMISSIONER BROWN: Thank you for that  
14 explanation.

15 MR. WRIGHT: But I'll go on.

16 COMMISSIONER BROWN: Thank you.

17 MR. WRIGHT: Thank you.

18 BY MR. WRIGHT:

19 **Q In your testimony and preparing for this**  
20 **hearing, did you attempt to look at how much energy**  
21 **Wal-Mart purchases a year from FPL? I'm not asking you**  
22 **to reveal the number. I'm just asking the question, did**  
23 **you look at that?**

24 **A No, I didn't.**

25 **Q So, you didn't look at possible savings that**

1 Wal-Mart's opt-out activities might -- self-directed  
2 activities pursuant to an opt-out program would provide,  
3 did you?

4 A No, I didn't.

5 MR. WRIGHT: Thanks. That's all I have.

6 COMMISSIONER BROWN: Thank you, Mr. Wright.

7 Moving to PCS Phosphate. Mr. Brew.

8 MR. BREW: Thank you.

9 EXAMINATION

10 BY MR. BREW:

11 Q Good afternoon, Mr. Koch.

12 A Good afternoon.

13 Q We've talked about a couple of things related  
14 to the RIM test and customer installations. Can we talk  
15 a minute about your rebuttal testimony on Page 3.

16 A Okay. I'm there.

17 Q And on Lines 19 and 20, you specifically  
18 reference the design of plans based on the RIM test,  
19 right?

20 A Yes, that's correct.

21 Q Okay. So, all of the energy-efficiency  
22 measures and FPL's plan pass the RIM test, right?

23 A Almost all of them. There is one exception.  
24 That's the low-income program.

25 Q Okay. With that exception. So, with that one

1     **exception, that means that participants that actually**  
2     **install the devices should benefit from that**  
3     **installation?**

4           A     Could you repeat the question?

5           Q     **It means that participants that install those**  
6     **devices should benefit from that installation.**

7           A     No. The participant test determines if the  
8     participants will benefit from the installation. The  
9     RIM test determines if the general body of customers'  
10    rates will be positively or adversely affected by  
11    implementation of the plan.

12          Q     **Both the participants and non-participants**  
13    **should benefit.**

14          A     Yes, because they are all part of the general  
15    body of ratepayers.

16          Q     **Okay.**

17          A     Customers, excuse me.

18          Q     **You mention on Page 4, and you mentioned it in**  
19    **your opening, that customers and all classes of all**  
20    **sizes implement DSM without incentives. That's on**  
21    **Page 4, Line 13. Do you see it?**

22          A     Yes, I do.

23          Q     **Okay. So, from the construct of FEECA, that's**  
24    **generally a good thing if customers take it upon**  
25    **themselves, right?**

1           A     Yes, it's generally a good thing.

2           Q     Okay.  And they could do that whether the  
3 individual installation was actually economic or not,  
4 right?

5           A     Yes.

6           Q     And you also mention further down in the page  
7 that customers that would install a measure anyway --  
8 which you refer to as free riders, right; customers that  
9 would install the measure without any additional  
10 incentive?

11          A     That is if a customer who would have installed  
12 without an additional incentive was given incentive,  
13 then they would be a free rider.

14          Q     Okay.  And in the context of FPL, your program  
15 actually screens out measures that are deemed to be so  
16 attractive or have such short payback periods that they  
17 assume the customers will do them anyway without  
18 additional incentives, right?

19          A     Yes.

20          Q     So, the programs that are included are deemed  
21 to be economic, but require utility support for there to  
22 be effective market penetration?

23          A     That's correct.

24          Q     And the reasons why that additional utility  
25 support is required are, what, lack of education?

1           A     No, I think "required" may not be exactly the  
2 right term. The point of paying an incentive is to  
3 encourage people who would not have done it otherwise.  
4 I don't know if --

5           Q     Well, the programs do various things. They  
6 provide money in terms of rebates.

7           A     That's correct.

8           Q     They provide information in terms of options,  
9 right?

10          A     Yes, that's correct.

11          Q     Is the assumption that, absent the utility  
12 intervention in that fashion, the installations wouldn't  
13 occur?

14          A     Yes.

15          Q     For a very large energy-intensive user, do  
16 they generally lack education about what's required for  
17 their system to operate efficiently?

18          A     I don't think they lack education as far as  
19 operating efficiently. I would say that there is  
20 education that can help as far as utilizing energy  
21 efficiently, which is one aspect of operating  
22 efficiently.

23          Q     Are you suggesting that the utility knows  
24 better than a mining operation how to best utilize  
25 energy at its facility?

1           A     I would say that -- you're asking me a very  
2 specific question --

3           **Q     You bet.**

4           A     -- about a specific company, which -- I can't  
5 answer that question. I can say that with our --  
6 particularly for our large customers with our account  
7 managers, we work with them on technologies they may or  
8 may not be aware of and work with them to see if there  
9 is something that can be -- that can help them  
10 operate -- help them utilize energy more efficiently.  
11 That doesn't say that they weren't aware, necessarily,  
12 of it initially.

13           **Q     For a large energy-intensive customer that**  
14 **faces global competition, do they have adequate**  
15 **incentives to explore those options on their own?**

16           A     I would think so if one of those options that  
17 they would explore is talking to their utility company  
18 to see if there are things that could assist them in  
19 that.

20           **Q     Why would they need to talk to a utility**  
21 **company when they have their own engineering expertise**  
22 **on how to run their facility?**

23           A     Because utility companies are able to provide  
24 additional funding for things such as, in our case,  
25 either through the standard programs or through the BCI

1 program. Why wouldn't you take advantage of such a  
2 thing?

3 **Q All right. Let's take that one. In order to**  
4 **participate in your custom program, you have to identify**  
5 **a project.**

6 A Yes.

7 **Q Who identifies the project when you're dealing**  
8 **with a large, intensive load?**

9 A It depends. It can come from one of two  
10 sources; either it's with the account manager working  
11 directly with the customer; or sometimes customers and  
12 their engineering firms will provide a proposal directly  
13 to the company to be evaluated.

14 **Q The utility is going to hire a consulting firm**  
15 **to analyze the industrial customer's operations?**

16 A No. If that's what I sounded like I said,  
17 that's not what I meant.

18 **Q Okay. Then what did you mean?**

19 A What I meant is that the -- you asked me where  
20 does the idea come from.

21 **Q You bet.**

22 A So, I said it comes from one of two sources;  
23 either it comes from a proposal that is provided to our  
24 company from typically an engineering firm that's  
25 working with a customer; or with the account manager who

1 routinely visits the customer. It comes up through --  
2 the idea comes up through their discussions. And then,  
3 again, there is engineering and the work --

4 **Q I've been doing this a long time. Do you know**  
5 **of any account manager that is an engineering expert on**  
6 **how, say, a mining operation runs?**

7 A I -- well, I would say this: We don't have  
8 very many mining operations in our territory. So, if  
9 you're asking for the name of the particular account  
10 manager that does that, I would say that our -- you  
11 know, I can't give that to you.

12 **Q Do you hire account reps based on --**

13 COMMISSIONER BROWN: Mr. Brew -- Mr. Brew, I  
14 would like to interrupt you for a second.

15 MR. BREW: Sure.

16 COMMISSIONER BROWN: These issues and his  
17 testimony is very, very specific. If you could,  
18 please curtail --

19 MR. BREW: Sure.

20 COMMISSIONER BROWN: -- the discussion and the  
21 path that you're on --

22 MR. BREW: Okay.

23 COMMISSIONER BROWN: -- and focus more on his  
24 prefiled testimony.

25 MR. BREW: Okay.



1 COMMISSIONER BROWN: Thank you.

2 BY MR. BREW:

3 Q If I could refer you to Page 4, Lines 19  
4 through 20. The sentence says, "One of the primary  
5 missions of utility-sponsored DSM plans is to identify  
6 measures that would not be implemented without  
7 incentives and induce participation of those measures."  
8 Do you see that?

9 A Yes, I do.

10 Q For a large energy-intensive load for which  
11 there is not a specific program in place, that would be  
12 accomplished through what would be called a custom plan.

13 A That's correct.

14 Q Okay. And my question is basically to  
15 identify projects that would be appropriate for a custom  
16 plan. Isn't the utility, in fact, going to rely upon  
17 the entity that operates the facility?

18 A Clearly, it's not done in a vacuum. It's done  
19 in consultation. What I'm saying is that -- and you may  
20 be using the specific mining example, which I can't get  
21 into in detail. But what I'm saying is the way these  
22 are identified in the custom incentive program, either  
23 it comes through the information the utility is informed  
24 about, there may be cutting-edge things, or it comes  
25 directly from the customer, and then it becomes a

1 collaborative activity.

2           **Q     Does FPL include in its DSM budgets the cost**  
3 **associated with engineering studies to identify such**  
4 **programs for its large customers?**

5           A     We don't have any -- if there was something  
6 that was necessary that it wasn't -- let me retract.  
7 The engineering studies that would be in detail are  
8 generally performed by a consultant that is, you know,  
9 hired by the particular customer --

10           **Q     Thank you. That's all I have.**

11           A     -- if that was the question you were asking.

12           MR. BREW: Thank you. That's all I have.

13           COMMISSIONER BROWN: Thank you, Mr. Brew.

14           Office of Public Counsel. Ms. Christensen?

15           MS. CHRISTENSEN: No questions.

16           COMMISSIONER BROWN: Thank you.

17           Staff.

18           MS. TAN: Staff has no questions for this

19 witness.

20           COMMISSIONER BROWN: Good job.

21           (Laughter.)

22           Commissioners? Mr. Chairman.

23           CHAIRMAN GRAHAM: I have a question.

24           Mr. Koch, can you walk me through what's

25 involved in the custom program? How does it -- how

1 does one create and move forward with the custom  
2 program?

3 THE WITNESS: Okay. I'll try to --

4 CHAIRMAN GRAHAM: Just hit the peaks.

5 THE WITNESS: Right. Okay. So, we become --  
6 we would become aware of one of these programs  
7 either -- as I had mentioned a moment ago, either  
8 because on routine meeting between account managers  
9 where they may have read something in a trade  
10 publication or what have you, or through  
11 collaboration with a customer.

12 They meet. That a particular technology comes  
13 up, or there is a proposal that comes sometimes  
14 directly from a customer, or sometimes just  
15 independently from an engineering firm that brings  
16 up a particular technology to be evaluated.

17 If it's decided that that looks promising,  
18 then there is a process for determining -- there  
19 would be engineering work that will determine the  
20 energy and demand savings. There will be cost  
21 calculations that are performed.

22 And then what we'll do is we'll take that  
23 back. We'll run it through the standard cost-  
24 effectiveness screening test. And it will  
25 determine the amount of the rebate, if any, if it

1 passes cost-effectiveness, the amount of the rebate  
2 that can be paid.

3 And then FPL will contribute that rebate to  
4 the customer. And then we also provide those cost  
5 analyses for those true-up filings every year  
6 for -- to the Commission.

7 CHAIRMAN GRAHAM: So, when that rebate is paid  
8 to the customer and then they come up with, say,  
9 another custom program, is it possible that they  
10 are actually getting more money back in rebates  
11 than they actually paid in to the program?

12 THE WITNESS: Are you saying in terms of how  
13 much they contributed through the ECCR charge every  
14 year versus how much rebate happened to go for that  
15 particular one?

16 CHAIRMAN GRAHAM: Yes.

17 THE WITNESS: That could be possible because  
18 the costs that are collected through the ECCR  
19 charge, of course, are the shared costs, the costs  
20 of all customers for the shared benefits that are  
21 generated by the whole population. And that's --  
22 you know, the allocation is based upon that -- how  
23 much is the contribution for the various rate  
24 classes.

25 So, at any given point in time, you could have

1 a customer who, in one year, received a very  
2 healthy rebate, which, then, went into the pot and  
3 everybody paid for it. And it might happen that,  
4 in fact, that could exceed their -- what they had  
5 paid for ECCR.

6 But again, the ECCR charge is collected for  
7 the entire pool of benefits, not just for that  
8 particular customer. It could work either  
9 direction depending upon, you know, the given year.

10 CHAIRMAN GRAHAM: So, there is no cap saying  
11 that you've already received enough rebates this  
12 year; we can't give you anymore.

13 THE WITNESS: No, there is no cap. If you  
14 have a cost-effective, you know, customized  
15 solution, you will receive what it is that can be  
16 paid for that particular -- for that particular  
17 solution.

18 CHAIRMAN GRAHAM: Okay. Thank you.

19 COMMISSIONER BROWN: Any further questions  
20 from the Bench?

21 Ms. Cano?

22 MS. CANO: No redirect. Thank you.

23 COMMISSIONER BROWN: And there are no  
24 exhibits.

25 MS. CANO: That's correct.

1 COMMISSIONER BROWN: Would you like this  
2 witness excused?

3 MS. CANO: Yes, please.

4 COMMISSIONER BROWN: Mr. Koch, you may be  
5 excused.

6 THE WITNESS: Thank you.

7 COMMISSIONER BROWN: Thank you.

8 Next witness is Ms. Deaton.

9 Ms. Deaton, have you been sworn in?

10 THE WITNESS: (Inaudible.)

11 COMMISSIONER BROWN: Welcome.

12 EXAMINATION

13 BY MS. CANO:

14 Q Hello, Ms. Deaton. You were just asked this,  
15 but I want to make sure the court reporter heard it.  
16 You have already been sworn, correct?

17 A Yes, that's correct.

18 Q Thank you. Would you please state your name  
19 and business address.

20 A Renae Deaton, 700 Universe Boulevard, Juno  
21 Beach, Florida.

22 Q By whom are you employed and in what capacity?

23 A Florida Power & Light, senior manager in the  
24 rates and tariffs department.

25 Q Did you prepare and cause to be filed seven

1 pages of prefiled rebuttal testimony on September 24th,  
2 2014, in Docket No. 140002EG --

3 A Yes.

4 Q -- which was subsequently copied into this  
5 proceeding?

6 A Yes.

7 Q And there were no exhibits to that testimony,  
8 correct?

9 A Yes.

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

12 A No.

13 Q If I asked you the same questions contained in  
14 your prefiled testimony, would your answers be the same?

15 A Yes.

16 MS. CANO: Commissioner Brown, I ask that the  
17 prefiled testimony for Renae Deaton be inserted  
18 into the record as though read.

19 COMMISSIONER BROWN: Ms. Deaton's prefiled  
20 testimony shall be entered into the testimony as  
21 though read.

22

23

24

25

1                   **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2                   **FLORIDA POWER & LIGHT COMPANY**

3                   **REBUTTAL TESTIMONY OF RENAE B. DEATON**

4                   **DOCKET NO. 140002-EG**

5                   **SEPTEMBER 24, 2014**

6

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

8    A.    My name is Renae B. Deaton. My business address is Florida Power & Light  
9           Company, 700 Universe Boulevard, Juno Beach, Florida 33408.

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

11   A.    I am employed by Florida Power & Light Company (“FPL” or the “Company”) as  
12           the Senior Manager of Cost of Service & Load Research in the Rates & Tariffs  
13           Department.

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

15   A.    I am responsible for managing FPL’s load research and cost of service activities.  
16           In this capacity, my responsibilities include the preparation and filing before the  
17           Florida Public Service Commission (“FPSC” or the “Commission”) of load  
18           research sampling plans and study results, the development of annual energy and  
19           demand line loss factors by rate class, and the preparation of jurisdictional  
20           separation and retail cost of service studies. Additionally, I am responsible for  
21           developing and administering FPL’s wholesale formula rates and the Open  
22           Access Transmission Tariff rates.



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

2 A. I hold a Bachelor of Science in Business Administration and a Master's of  
3 Business Administration from Charleston Southern University. Since joining FPL  
4 in 1998, I have held various positions in the rates and regulatory areas. Most  
5 recently I held the position of Senior Manager of Rate Design in which I was  
6 responsible for developing the appropriate rate design for all electric rates and  
7 charges. I assumed my current position in July 2013. Prior to FPL, I was  
8 employed at South Carolina Public Service Authority (d/b/a Santee Cooper) for  
9 fourteen years, where I held a variety of positions in the Corporate Forecasting,  
10 Rates, and Marketing Department, and in generation plant operations.

11

12 I am a member of the Edison Electric Institute (EEI) Rate and Regulatory Affairs  
13 committee and I have completed the EEI Advanced Rate Design Course. I have  
14 been a guest speaker at the 35<sup>th</sup> and 36<sup>th</sup> PURC/World Bank International  
15 Training Program, on Utility Regulation and Strategy in January and June 2014.

16 **Q. Have you previously testified before this Commission regarding rate design  
17 issues?**

18 A. Yes. I testified before this Commission supporting FPL's rate design in Docket  
19 Nos. 080677-EI and 120015-EI.

20 **Q. Are you sponsoring any exhibits in this case?**

21 A. No.

22 **Q. What is the purpose of your testimony?**

23 A. My testimony rebuts the proposals of intervenor witnesses Jeffry Pollock of The  
24 Florida Industrial Power Users Group ("FIPUG") and Kenneth E. Baker and

1 Steve W. Chriss of Wal-Mart Stores East, LP and Sam's East, Inc. ("Wal-Mart")  
2 to allow certain customers to opt-out of paying for certain charges recovered  
3 through the Energy Conservation Cost Recovery ("ECCR") clause ("opt-out  
4 proposals" or "proposals").

5 **Q. Are the opt-out proposals consistent with established rate making and cost**  
6 **causation principles?**

7 A. No. FPL's practice of allocating ECCR costs to all customers is consistent with  
8 long-standing FPSC rate making and cost causation policies. In Docket No.  
9 810050-EU, the FPSC considered whether the costs of conservation programs  
10 should be allocated only to those classes participating in the programs, which was  
11 advocated by FIPUG. The Commission rejected that proposal on the basis that all  
12 customers will benefit from the programs and ordered that the costs of the  
13 conservation programs be paid by all customers (Order No. 9974). The intervenor  
14 witnesses have pointed to nothing that would distinguish their current opt-out  
15 proposals from the FIPUG proposal that was properly rejected by the Commission  
16 back in 1981.

17  
18 In fact, the intervenors' current proposals are even less consistent with rate  
19 making and cost causation principles because they are one-sided. As explained  
20 by FPL witness Koch, the intervenors propose to opt out of paying for energy  
21 efficiency ("EE") programs on the theory that large Commercial/Industrial ("C/I")  
22 customers do not extensively participate in those programs. By that same logic,  
23 residential and small customers who are not eligible to participate in C/I load  
24 management ("LM") programs should not have to help pay for them.

1 For example, the C/I Load Control and Demand Reduction (“CILC” and “CDR”)  
2 programs provide large bill credits to the type of large C/I customers who are  
3 members of FIPUG, yet most of the costs of those credits are currently borne by  
4 other customer classes. If those other customer classes were permitted to opt-out  
5 of paying for the CILC and CDR programs for which they are ineligible,  
6 however, then large C/I customers would see a substantial net *increase* in their  
7 bills. To avoid this inconvenient result, the intervenors are proposing a “heads I  
8 win, tails you lose” proposition, where other customer classes would have to pay  
9 the full cost of EE programs in which they may participate while at the same time  
10 paying a large share of the cost for CILC and CDR programs for which they are  
11 ineligible. It is hard to imagine anything more discriminatory and less fair from a  
12 rate making and cost causation perspective.

13 **Q. Witness Chriss proposes that the ECCR costs classified as energy-related be**  
14 **recovered through a separate rate that is not charged to large customers who**  
15 **elect to opt-out of those programs. Would this proposal be unfair and**  
16 **discriminatory for the reasons you just discussed?**

17 A. Yes, it would. Witness Chriss’ new rate would allow customers to avoid paying  
18 the costs of existing EE programs, but the benefits of these programs may have  
19 already been realized and reflected in current rates. Witness Chriss’ proposal  
20 would allow opt-out customers to enjoy the benefits of EE programs while  
21 avoiding any associated costs.

22 **Q. Witnesses Pollock and Baker propose limiting the customers who are able to**  
23 **opt-out of certain ECCR programs to those with loads of at least 1 MW or 15**  
24 **million annual kWh, respectively. Additionally, both propose to allow**

1           **customers with multiple accounts in a utility service territory to aggregate**  
2           **load to meet their proposed opt-out threshold. Are these proposals fair and**  
3           **reasonable?**

4       A.    No. The proposals are self-serving and discriminatory because the thresholds  
5           would benefit only select customers. The proposed thresholds appear to have  
6           been chosen simply to allow companies represented by the respective witnesses to  
7           qualify for the opt-out. While the witnesses claim the thresholds were chosen for  
8           administrative efficiency, the reality is that their opt-out proposals would not be  
9           administratively efficient, as discussed further below.

10

11           The aggregation component of both proposals would compound this problem by  
12           discriminating against similarly situated customers that do not have a common  
13           owner. This type of discrimination is prohibited under Florida Statutes and FPSC  
14           rules. Section 366.03, Florida Statutes, “forbids any utility from giving an undue  
15           or unreasonable preference or advantage to any person, or to subject any person to  
16           an undue or unreasonable prejudice or disadvantage.” Individually-owned retail  
17           stores would be at a competitive disadvantage if a chain store such as Wal-Mart  
18           were allowed to opt-out of certain electric charges based on the aggregate load  
19           over multiple customer accounts, while customers with similar loads could not  
20           because they do not happen to be part of a chain. Additionally, Rule 25-6.102,  
21           Florida Administrative Code, prohibits billing practices which seek to combine,  
22           for billing purposes, the separate consumption and registered demands of two or  
23           more points of delivery serving a single customer.

24

1 The requirement to set non-discriminatory rates is further discussed in the Florida  
2 Energy Efficiency and Conservation Act (“FEECA”), section 366.81, Florida  
3 Statutes. While recognizing that there are various means and technologies that  
4 can be used to increase energy efficiency and conservation, the Legislature  
5 requires that the rates designed to recover FEECA costs be non-discriminatory.  
6 The Act states that: “Accordingly, in exercising its jurisdiction, the commission  
7 shall not approve any rate or rate structure which discriminates against any class  
8 of customers on account of the use of such facilities, systems, or devices.”

9 **Q. If the Commission were to approve an opt-out proposal, would it be**  
10 **appropriate to develop an administrative adder to recover the associated**  
11 **additional billing and customer service expenses?**

12 A. Yes. As previously mentioned, the proposals are not administratively efficient.  
13 There would be several changes that would have to be implemented for either  
14 proposal to be realized. For example, changes to the billing system would be  
15 required to add a new ECCR rate component and identify which customer  
16 accounts would be exempt from the new rate. As an added expense, customer  
17 service would now need to manage the opt-out contracts and verify the customers’  
18 eligibility and EE programs. The aggregation component would further increase  
19 the administrative burden by requiring the utility to identify and track customers  
20 owned under a common corporate parent to verify eligibility. Cost causation  
21 principles would require that the incremental costs associated with such a  
22 program be borne by the beneficiaries through an administrative adder similar to  
23 that charged to CDR customers.

24

1 Q. Does this conclude your testimony?

2 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, Chairman and  
5 Commissioners. My name is Renae Deaton. And my  
6 testimony rebuts the self-serving proposals of the FIPUG  
7 and Wal-Mart witnesses.

8 The proposals would allow them to avoid paying  
9 for the cost of energy-efficiency programs recovered  
10 through the Energy Conservation Cost Recovery clause,  
11 also known as the ECCR clause. The proposal is based on  
12 irrelevant theory that large customers do not  
13 extensively participate in these programs.

14 The proposal would shift cost responsibility  
15 from large customers to other commercial and residential  
16 customers who do not or cannot opt out of paying for  
17 these energy-efficiency programs. FPL's practice of  
18 allocating all ECCR customers to all -- ECCR costs to  
19 all customers is consistent with longstanding FPUC  
20 ratemaking policies.

21 Commissioners, the PSC previously considered  
22 this same proposal by FIPUG in 1981. The Commission  
23 rejected that proposal based on the basis that all  
24 customers will benefit from the programs whether they  
25 participate or not.

1           The witnesses have pointed to nothing in their  
2     current testimony that would distinguish the current  
3     opt-out proposals from the FIPUG proposal that was  
4     properly rejected back in 1981.

5           There is a new twist to this proposal,  
6     however, that would make it even more unfair and  
7     discriminatory. This time, they propose to allow  
8     customers under a common ownership such as a retail  
9     chain to aggregate energy or billing demands in order to  
10    qualify for the opt-out program. This aggregation  
11    proposal discriminates against similarly-situated non-  
12    chain stores -- customers.

13           Individually-owned retail stores would be at a  
14    competitive disadvantage if a chain store such as  
15    Wal-Mart were allowed to opt out of certain electric  
16    charges based on the aggregate load over multiple  
17    customer accounts, while customers with similar loads  
18    would incur higher bills just because they do not happen  
19    to be part of the chain. This type of discrimination is  
20    prohibited under Florida statutes and Commission rules.

21           Not only would this proposal shift costs to  
22    other customers, it would cause FPL to incur additional  
23    administrative costs. FPL would need to verify, track,  
24    bill, and manage the opt-out customers.

25           The aggregation component would further





1 A Good afternoon.

2 Q In your testimony on Page 3, Line 9, you  
3 reference the '81 docket. Did you read the order that  
4 was entered in that case?

5 A Yes, I did.

6 Q So, if I ask you some questions about it,  
7 would that be okay with you?

8 A Sure.

9 Q Okay. On Line 14, you state, "The intervenor  
10 witnesses have pointed to nothing that would distinguish  
11 their current opt-out proposals from the FIPUG proposal  
12 that was properly rejected by the Commission back in  
13 1981." That's the same point you made in your summary,  
14 right?

15 A That's correct.

16 Q Okay. Did you review the direct and rebuttal  
17 testimony of Mr. Pollock?

18 A Yes, I did.

19 Q So, you're aware that Mr. Pollock -- I can  
20 show you the testimony if you want me to -- has said  
21 that there are two criteria that must be satisfied for  
22 someone to be eligible to opt out; first is that the  
23 employer must -- I'm sorry -- the customer must deploy  
24 energy efficiency, right?

25 A Yes.

1           Q     And then secondly, the customer must certify  
2     that its self-directed energy efficiency is producing  
3     energy and/or peak-demand savings in such a manner that  
4     the savings can be counted by the utility to meet its  
5     conservation goals. And I'll represent to you I'm  
6     looking at Mr. Pollock's testimony on Page 6, his  
7     surrebuttal testimony.

8                     So, you would agree that Mr. Pollock has said  
9     here are two conditions that must be met for somebody to  
10    participate in the opt-out program, correct?

11           A     I agree that --

12           Q     If I -- may I just have a yes or no and then  
13    any explanation?

14                     COMMISSIONER BROWN: That is the standard  
15    procedure, but you may have an opportunity to  
16    explain after you say yes or no.

17                     THE WITNESS: Okay. I said I agree. So, yes,  
18    that I understand that that's Witness Pollock's  
19    proposal, but I don't see anything that -- in that  
20    that would distinguish it from the proposal that  
21    they wanted to not pay for energy-efficiency  
22    programs in 1981 on the basis that they were  
23    already doing energy-efficiency programs  
24    themselves.

25                     And the fact is that the approved energy-

1 efficiency programs are producing savings for all  
2 customers whether they participate or not.

3 BY MR. MOYLE:

4 Q The 1981 case -- it didn't have the facts that  
5 we just talked about with respect to an employer -- I'm  
6 sorry. I keep saying employer -- a customer employing  
7 energy efficiency and then certifying that the energy  
8 efficiency is saving, and the savings should be counted  
9 by the utility, correct? That was not part of the case.  
10 The 1981 case was an allocation question.

11 A No, I don't agree that it was only an  
12 allocation question. It was a question of not wanting  
13 to pay for energy-efficiency programs when they are  
14 already doing their own energy-efficiency programs.  
15 Whether or not they are going to be able to count them  
16 against utility programs, I don't know that that's true.  
17 And I believe that would be with Witness Koch.

18 But the fact is the energy-efficiency programs  
19 are approved because they are the ones that provide  
20 savings to all customers whether they participate or  
21 not.

22 Q So, what did you -- what did you review to  
23 familiarize yourself with what was going on in 1981?  
24 Did you read the order?

25 A I read the order.

1 Q Did you go back and look at the testimony or  
2 the exhibits? Did you delve into the record --

3 A No.

4 Q -- in that level of detail?

5 A No.

6 Q So, we could agree that whatever is in the  
7 order speaks for itself, best represents what occurred  
8 at that proceeding?

9 A I only read the order.

10 Q Okay. And based on what you're testifying to  
11 or the order, you would agree that the order is kind of  
12 the best representation of what was before the  
13 Commission at that point in time, correct, compared to  
14 your testimony? Compared to you reading the order and  
15 saying, here is what was before the Commission, the  
16 order is, what the lawyers like to say, the best  
17 evidence, correct?

18 A The order is what it is.

19 Q Did you look at any other states that have  
20 implemented an opt-out provision?

21 A No.

22 Q So, you don't have the view -- well, you say  
23 this could be bad for Florida -- I'm paraphrasing a  
24 little bit, but there are some problems with it. You're  
25 not suggesting that Florida is incapable of implementing

1 an opt-out provision like some other states have done  
2 that could be workable and deployed in a way that's fair  
3 and equitable, are you?

4 MS. CANO: I'm going to object. She's  
5 testified that she didn't look at what other states  
6 have done and she's being asked to form an opinion  
7 about that here.

8 COMMISSIONER BROWN: I will go ahead and allow  
9 her to answer that, though.

10 THE WITNESS: Can you restate the question?

11 BY MR. MOYLE:

12 Q Sure. You're not telling this Commission that  
13 they -- that an opt-out program can't be fashioned and  
14 designed in Florida in a way that would work, are you?

15 A I don't know, given the fact that the energy-  
16 efficiency programs that are approved are RIM-passing  
17 programs. So, therefore, all customers benefit. I  
18 don't know how opting out of that could benefit  
19 customers more.

20 Q Okay. So, I guess, the answer to your --  
21 you're saying -- well, are you saying there is only one  
22 way to do this and that's through what we're currently  
23 doing?

24 A I'm just saying for Florida, because we have  
25 RIM -- I don't know of any other states that still only

1 use RIM -- that that works.

2 Q All right. And you heard the Wal-Mart witness  
3 today say, you know, if an opt-out were put in place, we  
4 would be willing to comply with RIM, correct?

5 A I think I heard someone say that. And since  
6 Wal-Mart is the only witnesses that have been up, I  
7 would say okay.

8 (Laughter.)

9 Q It wasn't Mr. Koch, I can tell you that.  
10 In 1981, I'm assuming that you were still in  
11 elementary school; is that correct?

12 A While you're very flattering, I don't think  
13 it's polite to ask a lady her age. But in 1981, I was  
14 actually studying chemistry in College at Charleston.

15 COMMISSIONER BROWN: You go get him.

16 (Laughter.)

17 MR. MOYLE: Thank you. That's all I have.

18 COMMISSIONER BROWN: Thank you, Mr. Moyle.

19 Moving on to Wal-Mart.

20 MR. WRIGHT: Thank you, Commissioner Brown.

21 EXAMINATION

22 BY MR. WRIGHT:

23 Q Good afternoon, Ms. Deaton.

24 A Good afternoon.

25 Q Nice to see you again. I only have a few

1 **questions for you.**

2           If I could ask you to take a look at Page 4 of  
3 your testimony, please, Lines 7 through 12 -- really 7  
4 to 11. You seem to be criticizing the Wal-Mart and  
5 FIPUG proposals because other classes would have to pay  
6 for the full cost of energy-efficiency programs while  
7 paying for a large share of costs for industrial and  
8 commercial demand-response programs for which they are  
9 not eligible, correct?

10           A     That is correct.

11           **Q     And you understand, I trust, that our**  
12 **proposals would also take us out of being eligible to**  
13 **obtain any benefits under the energy-efficiency programs**  
14 **of your company or the other IOUs, correct?**

15           A     I understand that they would not -- correct, I  
16 understand they would not get any rebates under the  
17 energy-efficiency programs, but they would continue to  
18 get the benefits of load-management programs.

19           **Q     And would you also agree that -- well, is it**  
20 **your understanding that we would continue to pay for the**  
21 **demand-response programs regardless of whether they are**  
22 **applicable to commercial, industrial, or residential**  
23 **customers?**

24           A     I'm sorry. Who is the "we"?

25           **Q     Opt-out customers.**



1           A     Opt-out customers would continue to pay --

2           **Q     For the demand-related energy-conservation**  
3 **programs of the utilities?**

4           A     Right. And evidently, they get more benefit  
5 out of demand-side management programs than the energy-  
6 efficiency programs.

7           **Q     And you would agree that in that scenario that**  
8 **we, the opt-out customers, would also be paying for**  
9 **whatever residential load management or other**  
10 **residential demand-response programs are available to**  
11 **residential customers for which we don't get any -- for**  
12 **which we are not eligible?**

13          A     All customers are getting benefit from all  
14 demand-side programs whether they are load management or  
15 energy efficiency because they do all pass RIM. So, all  
16 customers are getting the benefit. That's why all  
17 customers should continue to pay.

18          **Q     But your testimony is criticizing Wal-Mart and**  
19 **FIPUG for the residential customers remaining, paying**  
20 **for the industrial load control and commercial demand-**  
21 **response programs. And I'm just trying to confirm that**  
22 **we would also be paying for residential demand-response**  
23 **programs for which we are not eligible. Do you agree**  
24 **with that?**

25          A     Yes.

1           **Q**     **At the top of Page 5, you make the statement,**  
2     **"The proposals are self-serving and discriminatory**  
3     **because the thresholds would benefit only select**  
4     **customers." Are size-based eligibility thresholds**  
5     **inherently discriminatory?**

6           **A**     I think it depends on what the threshold is  
7     for.

8           **Q**     **You have an economic development rider that's**  
9     **available to customers with 350kW of billing demand,**  
10    **correct?**

11          **A**     That's correct.

12          **Q**     **Is that a discriminatory threshold?**

13          **A**     That was a threshold that was set actually  
14    lower than we had proposed at the request of Wal-Mart.  
15    Originally, we proposed 500 kilowatts because that is  
16    the level that would be administratively efficient to  
17    manage. But at Wal-Mart's request, we lowered it. So,  
18    it's a lower threshold than it should have been.

19          **Q**     **I appreciate the history. And I -- I was**  
20    **there, as you may recall. But my question is: Is that**  
21    **a discriminatory threshold. Does it discriminate**  
22    **against customers who have 330kW of billing demand**  
23    **because they are not eligible for it?**

24          **A**     It does draw distinction based on  
25    administrative efficiency.



1 and the demand-reduction programs. Could you please  
2 describe how those programs work?

3 A The CLC and CDR programs provide credits or  
4 bill reductions to customers for interrupt- --  
5 interruptible load -- for the ability to interrupt them.

6 Q And how are those costs for these commercial  
7 industrial load-control programs recovered?

8 A Through the ECCR clause.

9 Q Okay. Does that mean that's through the  
10 general ratepayers?

11 A That's from all customers. That's correct.

12 Q And so, these costs are recovered from all  
13 classes of ratepayers, including those such as  
14 residential customers that would not be allowed to opt  
15 out under the proposal; is that correct?

16 A That's correct.

17 Q And how would you characterize the portion of  
18 FPL's total ECCR costs that are represented by the total  
19 credits that are received by larger commercial and  
20 industrial customers?

21 A I'm sorry. I'm not following. What's --  
22 you're asking me what the percentage of the costs are?

23 Q The amount. Would it be a small amount?  
24 Would it be a large amount, a large portion of the ECCR  
25 costs related to commercial and industrial load-control

1 **programs?**

2 MR. BREW: Excuse me.

3 A I --

4 MR. BREW: I'm sorry.

5 COMMISSIONER BROWN: -- objection?

6 MR. BREW: Can you tell me where on the  
7 witness's testimony this appears?

8 MS. TAN: On Page 4, on Lines 1 through 4.  
9 She discusses the programs -- sorry -- the credits.

10 MR. BREW: And the question was what?

11 COMMISSIONER BROWN: Can you please rephrase  
12 the question, Ms. Tan?

13 MS. TAN: Yes.

14 BY MS. TAN:

15 **Q How would you characterize the portion of your**  
16 **total ECCR costs that are represented by the total**  
17 **credits that would be received by larger commercial and**  
18 **industrial customers?**

19 COMMISSIONER BROWN: You may --

20 THE WITNESS: Okay. So, I don't recall the  
21 exact number, but I know it's upwards of  
22 \$50 million a year.

23 BY MS. TAN:

24 **Q And would these credits that the larger**  
25 **commercial industrial customers receive -- would that**

1 **reduce their bill?**

2 A Yes, it does.

3 **Q And who pays for these credits that the larger**  
4 **commercial and industrial customers receive?**

5 MR. BREW: Objection. Asked and answered.

6 MS. TAN: That's fine.

7 MR. BREW: This is real --

8 COMMISSIONER BROWN: Go ahead --

9 MR. BREW: -- close to friendly cross.

10 COMMISSIONER BROWN: Go ahead, Ms. Tan.

11 BY MS. TAN:

12 **Q In your opinion, do you believe that an opt-**  
13 **out of the energy-efficiency programs would benefit all**  
14 **ratepayers?**

15 A No.

16 **Q Thank you. Staff -- excuse me.**

17 All right. If you could, please look at your  
18 rebuttal testimony on Page 6, on Lines 13 through 14.  
19 And here, you state that several changes would need to  
20 be implemented by FPL if the Commission chooses to  
21 approve any of the opt-out proposals; is that correct?

22 A Yes.

23 **Q Can you describe to the Commission what those**  
24 **changes would be and the effect that it would have on**  
25 **FPL and its customers?**

1           A     Yes. We provided that in a discovery  
2 response, if I could refer to that.

3           MS. TAN: Okay. And I believe that would be  
4 Exhibit 24, Bates No. 0089 and Exhibit No. 25,  
5 Bates No. 00103. And I have that for ease of use.

6           THE WITNESS: Thank you.

7           MR. MOYLE: Those are already in the record;  
8 is that right?

9           MS. TAN: They are. They are Exhibit 24 and  
10 Exhibit 25. 00089 is Exhibit 24, and 00103 is  
11 Exhibit 25.

12           COMMISSIONER BROWN: Ms. Tan, you can proceed.

13 BY MS. TAN:

14           **Q     Okay. Could you answer -- I'll go ahead and**  
15 **repeat the question. Could you describe to the**  
16 **Commission what those changes would be and what effect**  
17 **they would have on FPL and its customers?**

18           A     Yes. There are numerous process and system  
19 modifications that would be required in order to ensure  
20 proper tracking and handling of many of the accounts.  
21 These changes would be required whether the number of  
22 customers opting out would turn out to be large or very  
23 few.

24                   Billing-system changes include identification  
25 of the ECCR opt-out customers and creation of the

1 additional charges in the rates and billing tables. New  
2 charges have to be added to all of the billing screens,  
3 data warehouse, rate reports and other financial  
4 reports.

5 A new GL account and SAP interface changes to  
6 the cancel-and-replace program would need to be made.  
7 The call center customer account, local liaison system  
8 program would have to be changed to handle these  
9 customers. FPL.com -- changes to the paper and  
10 paperless billing statements and bill register.

11 For the customer service field operation  
12 changes, they would have to modify our utility's  
13 international planner to produce customer bill impacts  
14 for the ECCR opt-out option, notifying and communicating  
15 with the customers, tracking the customer participation,  
16 and validating the customer eligibility and energy-  
17 efficiency performance. We would need to replicate the  
18 process used for the current Business Customer Incentive  
19 program, BCI, for a potentially extensive number of  
20 accounts.

21 Our DSM operations -- FPL would need to modify  
22 the DSM system, which is used to track and report all of  
23 the DSM-related transactions, identify the opt- out  
24 participants to ensure none are accidentally issued a  
25 rebate during the period of DSM ineligibility. In



1 addition to the DSM's modifications, the interface to  
2 FPL's billing system would also need to be modified to  
3 reflect opt-out status.

4 For the clauses, FPL would need to create a  
5 separate set of ECCR clause factors for opt-out  
6 customers. This is basically requiring duplicating the  
7 current ECCR process, including projections and true-up  
8 filings and resulting FPSC audit. In addition to the  
9 increased administration work, FPL would need to modify  
10 its current cost-tracking system and the system used to  
11 produce its filing schedules.

12 **Q Thank you. The petitioners have stated in**  
13 **their proposal that their proposal would not shift cost**  
14 **to the customers who cannot or choose not to opt out.**  
15 **Do you agree with this statement?**

16 A No. If they opt out, then other customers --  
17 people will have to pay the costs. The costs are not  
18 going to go down.

19 **Q Did you provide an estimate of one-time and**  
20 **recurring costs of implementing these opt-out processes**  
21 **mentioned?**

22 A Yes, I did. It was also in response to  
23 discovery.

24 **Q Okay. And do you believe these administrative**  
25 **costs would increase if the number of eligible opt-out**

1 customers increased?

2 A Yes.

3 Q And who do you believe should be responsible  
4 for paying any administrative costs associated with  
5 implementing an opt-out provision?

6 A The customers who participate in the opt-out  
7 program should bear the incremental cost of the  
8 administration.

9 Q Thank you. And did you also prepare in  
10 response to an interrogatory from OPC, which is  
11 Exhibit No. 34, Bates No. 00209-00210, an estimate of  
12 the rate impact on residential customers under various  
13 opt-out scenarios?

14 And I do have that available for ease of use.

15 A Yes, I did.

16 COMMISSIONER BROWN: Thank you.

17 And that is Exhibit 34?

18 MS. TAN: Yes, that is part of Exhibit 34.

19 And again, that's Bates No. 00209-00210.

20 COMMISSIONER BROWN: This document has already  
21 been entered into the record.

22 MS. TAN: That's correct.

23 COMMISSIONER BROWN: Ms. Tan?

24 MS. TAN: Okay.

25

1 BY MS. TAN:

2 Q Would you please explain the results of the  
3 exercise?

4 A Yes. As FPL stated, we couldn't provide an  
5 exact number because we didn't know exactly, you know,  
6 which customers would opt out and how many customers  
7 would qualify.

8 So, we performed a hypothetical analysis based  
9 on 10 to 30 percent of the total load from the classes  
10 of customers in the GSD and up rate classes. Those are  
11 demand-metered rates, at least 500 kilowatts and up.  
12 And those estimates range from 1.4 million to  
13 4.6 million. And the impact on the residential bill  
14 ranges from two cents to eight cents increase.

15 Q So, do you believe that this impact on  
16 customers such as residential customers that cannot opt  
17 out under the petitioner's proposal would be higher as  
18 the number of opt-out customers increased?

19 A Yes.

20 Q And is it your testimony that the greater the  
21 number of customers that choose to opt out, the higher  
22 the potential for ECCR costs to be shifted to those  
23 customers that cannot or choose not to opt out?

24 A Yes.

25 Q Could an opt-out provision add uncertainty to

1 **the ECCR clause recovery process?**

2 A Uncertainty as to -- what, who is qualifying?

3 **Q (Nodding head affirmatively.)**

4 A I mean, I'm sure it could add lots of  
5 uncertainty.

6 MS. TAN: Okay. Thank you. All right. Thank  
7 you very much.

8 And in your opinion, do you believe that the  
9 opt-out of energy-efficiency programs would  
10 benefit -- no, I already asked you that. My  
11 apologies.

12 Staff has no further questions for this  
13 witness.

14 COMMISSIONER BROWN: Thank you very much.

15 MS. TAN: Thank you very much.

16 COMMISSIONER BROWN: Commissioners, any  
17 questions?

18 Redirect?

19 MS. CANO: No redirect.

20 COMMISSIONER BROWN: And this witness does not  
21 have any exhibits. So, would you like her excused?

22 MS. CANO: Yes, please.

23 COMMISSIONER BROWN: You may be excused,

24 Ms. Deaton. Thank you for your testimony.

25 Moving along to Mr. Duff, who we're taking up



1 Q Long title.

2 A Yeah.

3 Q Have you filed rebuttal and surrebuttal  
4 testimony in this proceeding?

5 A Yes, I have.

6 Q Do you have those prefiled rebuttal and  
7 surrebuttal testimonies with you today?

8 A I do.

9 Q Do you have any changes to make to those  
10 testimonies?

11 A Not to my knowledge.

12 Q If I asked you the same questions in your  
13 prefiled rebuttal and surrebuttal testimonies today,  
14 would you give the same answers that are in those  
15 prefiled testimonies?

16 A Yes.

17 MS. TRIPLETT: Madam Chair, we request that  
18 the prefiled rebuttal and surrebuttal testimonies  
19 be entered into the record as though read today.

20 COMMISSIONER BROWN: I will enter Mr. Duff's  
21 rebuttal and surrebuttal testimonies into the  
22 record as though read.

23

24

25

**IN RE: ENERGY CONSERVATION COST RECOVERY CLAUSE**

**FPSC DOCKET NO. 140002-EG**

**REBUTTAL TESTIMONY OF  
TIM DUFF**

1 **I. INTRODUCTION AND QUALIFICATIONS**

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

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

5

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

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

11

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

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

14

15 **II. SUMMARY OF REBUTTAL TESTIMONY**

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

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

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

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

17

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

19 A. No.

20

21 **III. REBUTTAL TESTIMONY**

22

**Legal and Policy Considerations**

23



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

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

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

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

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

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

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

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

5

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

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

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

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

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

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

14  
15 **Q. How do you respond to Mr. Pollock’s and Mr. Baker’s assertion that several**  
16 **other states have opt out policies?**

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

23  
24 **Specific Opt Out Recommendations**

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

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

21

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

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

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

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

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

9

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

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

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

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



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

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

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

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

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

5

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

7 A. Yes.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

**IN RE: REQUEST TO OPT-OUT OF COST RECOVERY FOR INVESTOR-OWNED  
ELECTRIC UTILITY ENERGY EFFICIENCY PROGRAMS  
BY WAL-MART STORES EAST, LP AND SAM'S EAST, INC.  
AND FLORIDA INDUSTRIAL POWER USERS GROUP**

**FPSC DOCKET NO. 140226-EI**

**SURREBUTTAL TESTIMONY OF  
TIM DUFF ON BEHALF OF DUKE ENERGY FLORIDA, INC.**

1 **I. INTRODUCTION AND QUALIFICATIONS**

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

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

5

6 **Q. Are you the same Timothy J. Duff who previously filed Testimony in Docket**  
7 **140002-EG in which the issues of this proceeding originated?**

8 **A.** Yes, on August 27, 2014, I filed actual/estimated and projection testimony on behalf  
9 of Duke Energy Florida, Inc. ("DEF" or "Duke Energy") in Docket 140002-EG. I  
10 also submitted rebuttal testimony on September 12, 2014 and adopted the direct  
11 testimony of Helena Guthrie, which was filed with the Florida Public Service  
12 Commission ("FPSC" or the "Commission") on May 2, 2014.

13

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

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

16

17 **II. SUMMARY OF SURREBUTTAL TESTIMONY**

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

2 A. The purpose of my surrebuttal testimony is to address the hypothetical example  
3 proposed by the Florida Industrial Power Users Group (“FIPUG”) in its prehearing  
4 statement filed October 1, 2014 in Docket 140002-EG, and the flaws that FIPUG’s  
5 hypothetical example demonstrates in its proposal as a whole. I note that the rebuttal  
6 testimony I filed in Docket 140002-EG has been transferred to this proceeding, and  
7 the positions stated in that testimony are still correct. I am providing this testimony to  
8 respond to the hypothetical example, because that example was filed after I filed my  
9 rebuttal testimony.

10

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

12 A. No.

13

14 **III. SURREBUTTAL TESTIMONY**

15

16 **Q. Can you restate the hypothetical example posed by FIPUG in its prehearing  
17 statement?**

18 A. Yes. FIPUG provided this example: “Utility Company A has a 10,000 MW system  
19 that is used to calculate energy efficiency goals. Assume an energy efficiency goal of  
20 1% is established, so that Utility Company A has an energy efficiency goal of 100  
21 MWs. Under the present construct, the utility puts in place measures that it believes  
22 will achieve its 100 MW goal and charges all customers accordingly. Under FIPUG’s  
23 suggested approach, assume that eligible opt-out customers invest their capital in  
24 energy efficiency measures that cumulatively result in 15 MW of energy efficiency

1 savings. Utility Company A would recognize that 15%, or 15 MW of its energy  
2 efficiency goal was realized by these customers, and its 100 MW goal would be  
3 reduced to 85 MWs. A corresponding reduction in costs would occur so that revenue  
4 neutrality is achieved and no cost shifting results.” See FIPUG’s Prehearing  
5 Statement filed October 1, 2014 in Docket 140002-EG; Document No. 05553-14.

6

7 **Q. Given FIPUG’s hypothetical example above, do you see any fundamental flaws**  
8 **or problems with FIPUG’s analysis?**

9 A. Yes. This hypothetical example is fundamentally flawed because it fails to recognize  
10 the inherent difference between a customer specific energy efficiency project and a  
11 DSM program utilized by a utility to meet its annual DSM goals. Under the scenario  
12 above, a rational opt-out customer is going to evaluate a potential energy efficiency  
13 project based on the bill savings associated with energy and capacity savings from a  
14 project compared to the cost of its investment. Essentially, the customer is evaluating  
15 the project utilizing the participant test, and absent a utility incentive, the customer  
16 will equate the savings from not having to pay the ECCR charge as its incentive to  
17 undertake the project. The disconnect lies in the fact that the opt-out customer has  
18 not considered whether the project would pass the RIM test. Under the FIPUG  
19 example, they state that there is no cross subsidization because the utility will have to  
20 do less of its RIM passing programs, which will lower costs for all customers.  
21 However, this theory is incorrect. Reducing the amount of RIM passing DSM that is  
22 achieved by the utility programs does not mean that the effect of the opt-out will be  
23 neutral. RIM passing programs will in the long run have the effect of lowering rates  
24 for all customers, so doing less RIM passing DSM could actually cause all customers

1 rates to be higher than they otherwise would be under the approved RIM based DSM  
2 goals.

3

4 **Q. In this hypothetical example, has FIPUG considered free ridership with projects  
5 that have less than a two-year payback period?**

6 A. No. The logic behind allowing the impacts associated with opt-out projects to reduce  
7 the DSM goals and the associated DSM Plans is inappropriate unless the projects  
8 have greater than a two-year payback. The Company's approved DSM Goals have  
9 already been reduced to not include any measures that have less than a two-year  
10 payback in order to account for free ridership. If the opt-out customer's project has  
11 less than a two-year payback, the goals already factored in those projects and the  
12 associated efficiency resulting in "double-dipping" under FIPUG's proposal.

13

14 **Q. Are there any other flaws with FIPUG's hypothetical example?**

15 Yes. FIPUG's hypothetical example ignores the fact that because all of the utility's  
16 DSM programs pass RIM (and therefore benefit all customers regardless of  
17 participation), the opt-out customer still reaps the benefit from the utility's DSM  
18 programs that it does not participate in. Hence, the opt-out customer should still pay  
19 the ECCR charge regardless of whether it undertook a project on its own that lowered  
20 the amount of efficiency gains required to meet the utility's DSM goal. Otherwise,  
21 the opt-out customer receives the benefit of its own project and the benefit from the  
22 other DSM programs without paying for the latter; again, this would result in the opt-  
23 out customer "double-dipping" at the expense of the customers that cannot opt-out of  
24 paying the ECCR charge.

1

2 **Q. Does this conclude your surrebuttal testimony?**

3 A. Yes.

4

5

6

7

8

9

10

11

12

13

14

15

1 MS. TRIPLETT: And in the interest of time,  
2 we're going to waive witness summary. So, Mr. Duff  
3 is available for cross.

4 COMMISSIONER BROWN: Excellent. Thank you,  
5 Duke.

6 TECO.

7 MR. BEASLEY: No questions.

8 COMMISSIONER BROWN: Gulf?

9 MR. GRIFFIN: No questions.

10 COMMISSIONER BROWN: FPUC.

11 MS. KEATING: No questions.

12 COMMISSIONER BROWN: SACE -- oh, my -- you  
13 know what, I'm sorry. I'm off on my order.

14 Florida Power & Light. My apologies.

15 MS. CANO: No questions. No problem.

16 COMMISSIONER BROWN: Thank you.

17 FPUC?

18 MS. KEATING: I'm sorry. I had already  
19 responded. No questions.

20 COMMISSIONER BROWN: And SACE.

21 MR. CAVROS: No questions. Thank you.

22 COMMISSIONER BROWN: FIPUG?

23 MR. MOYLE: We have questions.

24 EXAMINATION

25



1 BY MR. MOYLE:

2 Q Good afternoon, Mr. Duff. I'm going to cover  
3 a number of areas with you. I want to start by seeing  
4 if I can identify some areas where there may be  
5 agreement based on what FIPUG and/or Wal-Mart has said.  
6 We may disagree, but let's see if we can agree on a few  
7 things first. Does that sound fair?

8 A Ready for your questions.

9 Q Okay. Good. And in the Commission -- have  
10 you had a chance to read the pre-hearing order in this  
11 case?

12 A I think I perused it really quickly, not in  
13 depth though.

14 Q Okay. It has language in there -- and I think  
15 the Chair of this proceeding has reminded witnesses that  
16 if you can answer a question yes or no, that you should  
17 make your best effort to say yes or no. And then if an  
18 explanation -- if you've got to have the explanation,  
19 then you can give the explanation. But do you  
20 understand that?

21 A Yes, I understood those instructions.

22 Q Okay. And you'll use your best efforts to  
23 comply with that?

24 A Yes.

25 Q So, the first statement, I'm going to ask you

1 to agree or disagree or say yes or no, but we would  
2 agree -- you would agree, as Mr. Pollock said in his  
3 testimony, that many states have implemented an opt-out  
4 program for large energy users, correct?

5 A Yes.

6 Q And you're responsible for energy efficiency  
7 and opt-out for not just Duke Energy Florida, but for  
8 all of the Duke operating utilities, correct?

9 A Yes.

10 Q And you would also agree that some of the  
11 states that have embraced an opt-out program in recent  
12 years have done so in response to concerns or arguments  
13 made by large users like FIPUG members and Wal-Mart,  
14 correct?

15 A I don't know what the rationale was for those.  
16 I do know they have been put in statutory language, but  
17 I can't tell you why the legislation was put directly  
18 into place.

19 Q But -- and my question was, some states have  
20 done it at the request of large users. You don't have  
21 any information, like, say in South Carolina or --

22 A So --

23 Q Whether that was done or not?

24 A South Carolina, I was familiar with. It was  
25 actually done to alignment with North Carolina.

1           **Q**     Okay.  And in both those states, were large  
2     **users like FIPUG members and Wal-Mart involved and**  
3     **instrumental in suggesting that this opt-out program be**  
4     **considered?**

5           **A**     Well, FIPUG --

6           **Q**     You can --

7           **A**     Well, FIPUG was not; Wal-Mart was.  But it was  
8     obviously customers like FIPUG -- groups representing  
9     customers like FIPUG that would have an interest in not  
10    paying the rider.

11          **Q**     Okay.  So, it would be the equivalent of large  
12    **industrial users groups in those states.**

13          **A**     The definition is a non-residential  
14    commercial -- or non-residential customer that uses over  
15    a million kWh a year.

16          **Q**     And that's the number that's been proposed by  
17    **FIPUG, correct?**

18          **A**     I think it's a little bit different.  I think  
19    you said one megawatt, which that is a peak-demand  
20    versus an energy number, but -- so, there is a  
21    difference.

22          **Q**     Okay.  Would you agree that people who run,  
23    **say, a retail grocery store business like Wal-Mart**  
24    **typically have a better understanding of ways in which**  
25    **they can deploy energy-efficiency measures than a**

1 utility?

2 A I would -- I have no reason to agree or  
3 disagree with that. We have some pretty intelligent  
4 people who understand how to help customers.

5 Q So, I had made a comment in my opening about  
6 if you own and operate a business, you know that  
7 business best. You don't have reason to disagree with  
8 that statement, do you?

9 A I would disagree with that. I don't think you  
10 can make that generalization, no.

11 Q Okay. So, you would think that utilities are  
12 better able to understand energy efficiency for things  
13 like grocery store operations.

14 A I would say that utilities can bring a  
15 different perspective and a broad base of understanding  
16 that a particular customer may not have.

17 Q Do you interact with Wal-Mart?

18 A I do not.

19 Q Is that somebody above you? Beneath you? I  
20 mean, I assume you serve -- Duke Energy -- you guys are  
21 the largest electric provider in the country, right?

22 A I believe we are the second now. But yes,  
23 close to the largest.

24 Q Who are you behind?

25 A I think Exelon with their last merger.

1 Q You serve some Wal-Mart stores, don't you?

2 A That's correct.

3 Q So, who -- who would interface with Wal-Mart?

4 Somebody above you or --

5 A Somebody in a different role. I don't have  
6 that direct customer contact.

7 Q So, if I asked you the same questions about  
8 businesses like phosphate operations -- you have  
9 phosphate operations in North Carolina, don't you?

10 A I'm not aware.

11 Q You don't know?

12 A No.

13 Q Your answer would be the same with respect to  
14 who might have a better understanding of efficiency  
15 measures? You wouldn't agree that a phosphate business  
16 would have a better understanding of their business  
17 operations as compared to maybe a Duke energy-efficiency  
18 person?

19 A As I said, they may have some detailed  
20 understanding that the utility does not have. But there  
21 is always a value to having diverse perspectives.

22 Q What did you do to prepare your testimony in  
23 this case?

24 A I looked at a few old orders from -- just to  
25 kind of get a lay of the land to understand what had

1 gone on historically. I'm not an attorney, but did my  
2 best to read those orders and see kind of where Florida  
3 had been with opt-out. And that was really the essence  
4 of my preparation.

5 **Q You're not questioning whether the Commission**  
6 **has jurisdiction to consider this opt-out request, are**  
7 **you?**

8 A No, I'm not.

9 **Q Did you read the FEECA statute?**

10 A Not particularly for this case, but I've read  
11 it before.

12 **Q You're familiar with the RIM test?**

13 A Yes.

14 **Q What is it?**

15 A It's the Ratepayer Impact Measure test. It's  
16 a cost-effectiveness test used to screen programs. In  
17 particular, it's the screen used for Florida programs.

18 **Q Is it used in other jurisdictions?**

19 A It is used in other jurisdictions.

20 **Q It's not a perfect test, is it, in terms of**  
21 **making sure that there is not subsidization taking**  
22 **place?**

23 A I don't know if I would say anything is a  
24 perfect test. I think it's the accepted test.

25 **Q Inputs into the RIM test can vary, correct?**

1           A     As with any test or formula that -- what goes  
2     in is going to have an impact on what comes out.

3           Q     So, just to drive home, I guess, the question,  
4     you're not suggesting that the RIM test works in a way  
5     that completely ensures that there is no cross subsidies  
6     taking place between ratepayers?

7           A     In looking in totality, it is designed to look  
8     at making sure that both participants and non-  
9     participants from the overall portfolio will not be  
10    harmed, will benefit long term from the rates.

11          Q     Okay. But with respect to the inputs that you  
12    decide to use, you can have different results. For  
13    example, whether you look at a payback period of one  
14    year, two year, or three years, that would result in  
15    different programs being approved or not approved, would  
16    it not?

17          A     The payback isn't an input into the RIM test,  
18    Mr. Moyle.

19          Q     What are the inputs?

20          A     It's costs and benefits. Payback -- the  
21    payback was actually a screen used to determine which  
22    measures would be considered under the RIM test.

23          Q     Okay. Are you aware that this Commission  
24    yesterday approved a tentative order, a preliminary  
25    order related to the programs that would be put forward

1 for the next five years?

2 A Yes, I am aware of the Commission's order  
3 yesterday.

4 Q And then tell me your understanding, if you  
5 have one, with respect to can that -- can your programs  
6 change? How do you -- how do you deal with changes that  
7 may take place when implementing and executing your  
8 programs?

9 A You would have to ask the Commission for  
10 approval of those changes.

11 Q Have you guys done that over the years?

12 A In the past -- not during my tenure, but in  
13 the past we have, yes.

14 Q Okay. Could you describe for me, is that a  
15 big deal or not such a big deal or it depends on what  
16 you're asking them to do?

17 A I think it's going to depend.

18 Q Yeah. You're familiar with the PSC and  
19 regulatory commissions that they have the ability to  
20 make adjustments to programs, to rates as time goes on.  
21 There is flexibility that is sought with respect to  
22 making -- making judgments about -- about things,  
23 correct?

24 A That's -- I believe that the Commissions have  
25 the ability to create rules and policies, yes.



1           Q     Okay.  And do you have any familiarity with,  
2     like, the Fuel -- Fuel Clause, how that works?

3           A     I do not.

4           Q     Okay.  Yesterday, I'll just tell you, FIPUG  
5     and Wal-Mart appeared in front of the Commission and  
6     said, essentially, this opt-out proceeding is moving on.  
7     And we think it has some merit and value.  And we want  
8     to make sure that the Commission decision that they  
9     voted on yesterday is not looked at in a way that  
10    wouldn't allow adjustments to be made should the opt-out  
11    be endorsed.

12                    Do you have any concerns that if the  
13    Commission order that was voted on and comes out as  
14    written is final, that Duke would not be able to make or  
15    request adjustments to energy-efficiency measures if an  
16    opt-out program were approved?

17           A     It's very difficult for me to say because  
18    depending on how the opt-out was ultimately structured  
19    and intended to be implemented, when, how, those things  
20    all could vary the level of complexity and change  
21    necessary to the approved plans because it could go back  
22    to the goals and require changes in the goals as well.

23           Q     It could -- could it also -- could it just  
24    stop at the programs?

25           A     Again, all of those -- all of those things

1 would depend on what was actually implemented.

2 **Q So, you would agree there is some**  
3 **interrelationship between the two.**

4 A Between the goals and plan?

5 **Q Well, no, between the opt-out issue and the**  
6 **programs.**

7 A I think that the programs would -- would  
8 definitely be impacted by an opt-out.

9 **Q What's the Pareto efficiency test in**  
10 **economics?**

11 A I'm not super familiar with the Pareto  
12 efficiency test.

13 **Q Do you have a copy of your rebuttal testimony**  
14 **in front of you?**

15 A Yeah, I do.

16 **Q I have it --**

17 A Do you have a particular page?

18 **Q I have it on Page 6 of your testimony. Unless**  
19 **I put someone else's testimony in with yours, I have it**  
20 **showing up on Line 10.**

21 A Okay.

22 (Laughter.)

23 **Q The RIM test --**

24 A Oh, I'm sorry. The Pareto -- so, essentially  
25 what you're looking at is outcomes, a Pareto chart.

1           **Q     What is that?**

2           A     So, you're looking -- so, when you look at the  
3 RIM test, a Pareto chart is going to predict the  
4 outcomes of an economic event. So, a RIM test is  
5 basically saying that you're making sure that all -- the  
6 purpose of what I'm saying here is that the RIM test is  
7 making sure that the participants and the non-  
8 participants are all going to benefit on an equal level  
9 of outcome.

10           **Q     I assume by your reference to this Pareto**  
11 **efficiency test in economics that you're comfortable**  
12 **talking about efficiency in economics; is that right?**

13           A     To the extent that I've directly discussed  
14 something, yeah. I mean, it was trying to make a high-  
15 level energy-efficiency analyses.

16                     So, again what it says is -- if you read, it  
17 further clarifies. It says: The RIM test can be  
18 thought of a Pareto efficiency test in economics,  
19 meaning the policy or project makes everyone better off  
20 without making anyone worse off. So, it's just a way to  
21 try to explaining what the RIM test is doing.

22                     Did I perform a Pareto economic efficiency  
23 test? No. I was trying to explain what the RIM test  
24 does.

25           **Q     Do you have an understanding that FIPUG's**

1 **proposal is not seeking to shift cost or do harm to any**  
2 **other ratepayers?**

3 A Well, I believe that's what Mr. Pollock has  
4 stated.

5 Q **So, that would be a yes, that that's your**  
6 **understanding?**

7 A Can I finish my answer, please?

8 COMMISSIONER BROWN: Absolutely.

9 THE WITNESS: So, Mr. Pollock stated that it  
10 would not be -- it would not be harmed.

11 How it would be ultimately be implemented and  
12 what customers would ultimately do with respect to  
13 the opt-out -- that would be necessary for me to  
14 make a clear answer on whether or not there would  
15 not be shifting.

16 BY MR. MOYLE:

17 Q **You don't question Mr. Pollock's expertise, do**  
18 **you?**

19 A I -- I think he had fine testimony. I don't  
20 agree with all of it.

21 Q **Right. Have you met him before?**

22 A No, I have not.

23 Q **So, you're just saying, in effect, that, well,**  
24 **yeah, Mr. Pollock says that, but I want to see the proof**  
25 **in the pudding. I don't know if that -- if that's what**

1     **would happen at the end of the day or not.**

2           A     Well, I think the fact that he was talking  
3     about customers not potentially actually doing any  
4     energy efficiency, but having somebody say they didn't  
5     have any cost-effective energy efficiency, allow them to  
6     opt out -- I think that, in and of itself, could be a  
7     concern.

8           Q     **Yeah. And you read his surrebuttal testimony**  
9     **where he clarified that point?**

10          A     I did.

11          Q     **So, we're not -- we're not suggesting that.**

12          A     Well, you said -- you didn't direct me to  
13     which one. That was his original proposal, yes, that  
14     they -- not that -- be able to opt out if somebody said  
15     they hadn't. He did change that in the letter, yes.

16          Q     **How did he change it?**

17          A     He said that a customer, in order to opt out,  
18     would have to commit their resources, the efficiency  
19     that they've achieved.

20          Q     **And must demonstrate that the efficiency was**  
21     **achieved, correct?**

22          A     Correct. He didn't give any detail on how  
23     that would be accomplished, which is an important  
24     matter. But yes, he did say that.

25          Q     **Do you have familiarity with -- we talked**

1     **about South Carolina -- but energy-efficiency programs**  
2     **in other states in which Duke operates?**

3           A     Yes.

4           MR. MOYLE:   Okay.

5           Could I get some help with an exhibit --

6           COMMISSIONER BROWN:   Absolutely.

7           MR. MOYLE:   -- please?

8           COMMISSIONER BROWN:   She's coming.

9           That would be Exhibit No. 40, Mr. Moyle?

10          MR. MOYLE:   4-0?

11          COMMISSIONER BROWN:   Yes.

12          The description on there --

13          MR. MOYLE:   It's described as Duke North  
14          Carolina opt-out eligibility program.

15          COMMISSIONER BROWN:   Duke NC opt-out.

16          (Exhibit No. 40 marked for identification.)

17   BY MR. MOYLE:

18           **Q     So, I've handed you an exhibit that's been**  
19     **marked as Exhibit 40. I'll represent to you that I**  
20     **obtained this document off the internet -- off of Duke's**  
21     **site. Are you familiar with this?**

22           A     Yes, I'm familiar with it.

23           **Q     Okay. Just identify it for the record,**  
24     **please.**

25           A     It's the definition of the requirements to opt

1 out for a North Carolina customer in the Duke Energy  
2 Carolina service territory.

3 **Q So, if I'm a qualifying customer in North**  
4 **Carolina, this is the web page that I go to kind of**  
5 **learn more about am I eligible, what do I need to do?**

6 A Yes. It's the instructions regarding how a  
7 customer would go through an opt-out if, in fact, they  
8 were eligible. And it talks about the -- there is a  
9 tab, I believe, you can click on that will tell you what  
10 you need to do in order to actually meet the  
11 requirement. There is a form for the customer to fill  
12 out.

13 I think it's important to note, though, that  
14 North Carolina is different from Florida in that this  
15 requirement was created by statute at the same time that  
16 the mechanism for utilities to recover energy  
17 efficiency -- so, it would be equivalent to putting this  
18 into place at the same time that the FEECA statute was  
19 passed. They kind of sync up well.

20 **Q But the particular program requirements -- I**  
21 **guess it says at the top they've been approved by the**  
22 **North Carolina Commission; is that right?**

23 A That's correct.

24 **Q And the forms that people have to fill out --**  
25 **those are two or three pages; is that right?**

1           A     I believe they are two pages, yes.

2           Q     Yeah, okay. Well, in looking at this and  
3 looking at the forms, I didn't come to the conclusion  
4 that this looked like a real overly complex process. Do  
5 you -- do you -- do you view this process as complex and  
6 very involved?

7           A     It is a fairly time-consuming process.  
8 Customers can do it on an annual basis in North  
9 Carolina. So, there is quite a bit of time with respect  
10 to opting in. There are also some other complexities  
11 that the Commission has also done to try to lower the  
12 number of customers opting out, creating additional opt-  
13 in windows; again, more complexity.

14                   I think -- I think the important thing to  
15 really recognize, Mr. Moyle, is each state, you have to  
16 look at the policies regarding EE and DSM in totality  
17 and understand how everything fits together. It's a  
18 complexity that it's really hard to look at one thing  
19 and say, well, this will work. And you can take this  
20 and move it over because you have to look at the overall  
21 landscape.

22           Q     Sure. I don't think we're going to have --  
23 you know, we're going to agree or disagree. States do  
24 things slightly differently. I'm going to show you some  
25 others. And some others have different criteria so a



1 state can look at it and they can make a judgment.

2 But you would agree that, I guess, the  
3 majority of the states in which Duke operates do have  
4 opt-out provisions, correct?

5 A And the majority of them have been created by  
6 statute.

7 Q The --

8 A The opt-outs.

9 Q Right. The Legislatures in those states,  
10 similar to, you said, FEECA -- you said the Florida law  
11 is FEECA, right? They have other energy-efficiency laws  
12 in those states; is that right?

13 A No. What I was trying to say is that at the  
14 time that North Carolina came up with its statute to  
15 deal with energy efficiency being offered from a utility  
16 perspective, that is the time that it defined how the  
17 opt-out would worked with that.

18 There isn't a goal-setting process in North  
19 Carolina the way there is in Florida. So, there are  
20 differences in the state. North Carolina doesn't use  
21 the RIM test as the primary screen. It doesn't have a  
22 two-year free rider payback screen in the goal-setting  
23 process. There are a number of differences.

24 Again, I'm just trying to point out, it's very  
25 hard to look and say, well, North Carolina has it, so we

1 could do it in Florida. You have to -- I'm not saying  
2 you can't do it, but what I'm saying is there are a lot  
3 of complexities that would have to be considered.

4 **Q Does Duke support the opt-out in North**  
5 **Carolina?**

6 A I don't think it's a matter of we support or  
7 not. We're statutorily required to offer the opt-out.

8 **Q Well, were you involved in helping craft it**  
9 **and giving input to the Commission in North Carolina?**

10 A The Legislature put forward the language.

11 **Q Were you involved in helping the Legislature?**

12 A No, I was not in this role at this time.

13 **Q I say "you" being Duke, not you.**

14 A I can't speak to what our level of involvement  
15 was with respect to the creation of the statute.

16 **Q You just don't know?**

17 A I wasn't part of that process.

18 **Q Do you know if Duke has registered lobbyists**  
19 **in North --**

20 MS. TRIPLETT: Madam Chair, I'm going to  
21 object to this line of questioning. It seems we're  
22 getting far afield of the scope of his testimony.

23 COMMISSIONER BROWN: I'm happy that you did  
24 that. Sustained.

25 Please continue, Mr. Moyle, on with your

1 questions.

2 BY MR. MOYLE:

3 Q We had already talked about the one million  
4 kilowatt hours, is that right, down at the bottom?

5 A Yes.

6 MR. MOYLE: I have another exhibit I would  
7 like to use with the witness, please.

8 COMMISSIONER BROWN: This will be an exhibit  
9 marked as Exhibit No. 41.

10 Title?

11 MR. MOYLE: South Carolina opt-out eligibility  
12 program.

13 COMMISSIONER BROWN: How about we be  
14 consistent with what we did with Duke -- with  
15 No. 40, Duke SC opt-out.

16 MR. MOYLE: Perfect.

17 COMMISSIONER BROWN: Thank you.

18 (Exhibit No. 41 marked for identification.)

19 BY MR. MOYLE:

20 Q I've given you an exhibit that's been marked  
21 as 41. Could you please identify this document?

22 A It looks like the equivalent energy-efficiency  
23 opt-out provision information that's provided in Duke  
24 Energy Carolina's South Carolina jurisdiction.

25 Q So, you're familiar with this?

1           A     Yes.

2           Q     Again, same questions:  It's available on your  
3 website.  Somebody looking to do this would --

4           A     Yes.

5           Q     -- go to your website?

6           A     Yes.

7           Q     It looks like the criteria might be a little  
8 different in South Carolina.  Is that your  
9 understanding?

10          A     No, the criteria are identical.  It's just  
11 different wording that -- obviously, each Commission  
12 requires slightly different wording, but it's still the  
13 million kWh contiguous-property accounts.

14          Q     Okay.  What I was looking at was on  
15 Paragraph A.  It says, "To qualify to opt out in South  
16 Carolina, the non-residential customer must, 'A,' be  
17 served under electric service agreement where the  
18 establishment is classified as a manufacturing industry  
19 by the standard industrial classification manual  
20 published by the U.S. Government with more than  
21 50 percent of the electric consumption of such  
22 establishment being used towards the manufacturing  
23 process."

24                    Did I miss that in North Carolina?  Or is that  
25 in North Carolina, too, and it's just not on --

1           A     No.  So, let me explain.  Any customer that  
2     meets that definition would also hit the million kWh in  
3     South Carolina, but this was the prior -- so, there was  
4     an old mechanism that created a disconnect between North  
5     Carolina and South Carolina for Duke Energy Carolinas,  
6     which caused a lot of customer confusion.  So, we went  
7     with a standardized definition.

8                     So, we kept the old one so as not to confuse  
9     customers, but also make sure that the overall  
10    population was the same out of fairness because Duke  
11    Energy Carolinas, operates its utility system across two  
12    states, but it's one utility company.

13           **Q     So, notwithstanding the different web pages,**  
14    **your testimony and information is the criteria is the**  
15    **same for North Carolina and South Carolina.**

16           A     The criteria is effectively the exact same.  
17    It's different wording, but yes, the million kWh would  
18    get the customers to qualify.

19           **Q     Would you, based on your experience, commend**  
20    **the North Carolina-South Carolina model as being**  
21    **something that should be considered by this Commission**  
22    **if they were interested in moving forward with an**  
23    **opt-out?**

24           A     I think there are elements that could be  
25    considered, but I think that there is a lot of

1 fundamental differences in the Carolinas from Florida  
2 that would make me question whether an opt-out is  
3 appropriate, which I think I drew light on in my  
4 testimony.

5 **Q So, what would you commend to them? You**  
6 **answered my question by saying, yeah, I think there are**  
7 **characteristics that should be considered. What are**  
8 **those?**

9 A So, I think that the fact that you have an  
10 annual enrollment period where you're looking for  
11 customers to make some attestation or certification of  
12 the requirement and an annual check on their eligibility  
13 would be the two things that jump to my mind right away.

14 I do think it's important to note that under  
15 neither of these states do we allow aggregation.

16 **Q Other --**

17 A Those are the ones that pop to the top of my  
18 head.

19 **Q The Commission of South Carolina says in here**  
20 **that the Public Service Commission of South Carolina has**  
21 **approved the following eligibility requirements. Does**  
22 **the Commission have to do this?**

23 A The Commission, in order for us to have the  
24 opt-out be in effect, yeah, they had to approve it.

25 **Q Okay. And do you know whether there was an**

1 **express statutory mandate that said South Carolina, do**  
2 **an opt-out?**

3 A No, there was not. There is no -- just as --  
4 there is really no statutory language around efficiency  
5 goals or efficiency. It's probably one of the more  
6 blank-slate states.

7 Again, the opt-out was brought in out of  
8 consideration of fairness and equity because the cost of  
9 the energy-efficiency programs are borne across the  
10 entire Carolina's footprint, not just North or South  
11 Carolina.

12 Q **And you're not saying that Florida -- that**  
13 **this Commission has to have a statute to consider an**  
14 **opt-out program, are you?**

15 A No. My contention is that in -- when looking  
16 at other states that have opt-out criteria, those  
17 criteria are often part of the overall landscape that  
18 was created and envisioned for energy efficiency. And  
19 so, that was -- that was my point regarding statutory  
20 approvals is that it's considered in the overall  
21 structure of energy efficiency whether a state has goals  
22 or not.

23 Q **Okay. And in the same process, there is a**  
24 **form that you hit on, you fill out, just like --**

25 A Yes.

1 MR. MOYLE: -- South Carolina.

2 I have another exhibit, if I could --

3 COMMISSIONER BROWN: Sure.

4 MR. MOYLE: -- Madam Chair.

5 COMMISSIONER BROWN: This will be 42, marked  
6 as 42. How about Duke Indiana opt-out?

7 MR. MOYLE: Thank you.

8 COMMISSIONER BROWN: You're welcome.

9 (Exhibit No. 42 marked for identification.)

10 BY MR. MOYLE:

11 **Q Could you identify this document, please?**

12 A Sure. It's --

13 MS. TRIPLETT: I'm sorry. Can we wait until I  
14 get a copy? Thank you.

15 COMMISSIONER BROWN: Certainly.

16 You may proceed, Mr. Moyle. It's okay. Go  
17 ahead.

18 BY MR. MOYLE:

19 **Q So, I've given you what's been marked as 42.**

20 **Would you please identify it?**

21 A Sure. It's the opt-out eligibility regarding  
22 Duke Energy Indiana's DSM's programs.

23 **Q So, Duke has an opt-out eligibility program in**  
24 **Indiana; is that right?**

25 A Yeah, it was actually just created last year



1 by Senate Bill 340. I think, to your point, it's a  
2 fairly important one to note, in that, the same bill  
3 that created this actually removed energy-efficiency  
4 goals for the utilities on an annual basis. So, when we  
5 had goals previously through the enactment of this  
6 legislation, there was no opt-out.

7 **Q Yeah, but there is now?**

8 A There is, yes, and these are the eligibility  
9 associated with them.

10 **Q And the document can speak for itself, but I**  
11 **guess there are a couple of the things. I guess, the**  
12 **single site containing one megawatt -- that was your**  
13 **point on aggregation that you made previously or is**  
14 **that --**

15 A Yeah, in none of our jurisdictions do we have  
16 the aggregation unless it's on -- it's on the same piece  
17 of contiguous property.

18 **Q There is nothing technically that would**  
19 **prevent you from doing aggregation if that was a policy**  
20 **decision that was made by the Commission, is there?**

21 A I think it adds a huge level of complexity,  
22 cost, and potential gamesmanship that, if you're not  
23 careful, it can create issues.

24 **Q Is there anything materially different about**  
25 **Indiana's program than the South Carolina program or the**

1 **North Carolina program?**

2 A Slightly -- slightly different requirements.  
3 Obviously, you see it's the one megawatt. But overall,  
4 it's approximately the same.

5 **Q And the one megawatt is consistent with what**  
6 **FIPUG is proposing?**

7 A I believe so, yeah.

8 **Q And the notice time periods -- are those**  
9 **accurate and in place?**

10 A Yes, they are.

11 MR. MOYLE: I have another document, if I  
12 could.

13 COMMISSIONER BROWN: Sure. How many more  
14 exhibits do you have on this witness?

15 MR. MOYLE: I have one more. I have an Ohio  
16 exhibit.

17 COMMISSIONER BROWN: Why don't we pass those  
18 both out together?

19 MR. MOYLE: Okay. Well, this is Ohio. This  
20 is my last one --

21 COMMISSIONER BROWN: This is the last one.

22 MR. MOYLE: -- of the states. Then I have one  
23 that's not related to this.

24 COMMISSIONER BROWN: Okay. This will be  
25 Exhibit No. 43 titled Duke Ohio opt-out. And we'll

1           wait until Counsel has it.

2                   (Exhibit No. 43 marked for identification.)

3           COMMISSIONER BROWN:   Okay.   Mr. Moyle, you may  
4           proceed.

5   BY COMMISSIONER BROWN:

6           **Q     Okay.   Can you identify what's been marked as**  
7           **Exhibit 43, please?**

8           A     These are Duke Energy Ohio's opt-out  
9           efficiency provisions.

10          **Q     Is this presently in place and in effect in**  
11          **Ohio?**

12          A     It is.

13          **Q     And are the requirements that are set forth on**  
14          **this document what's required for somebody to opt out in**  
15          **Ohio?**

16          A     For the remainder of 2015 and '16, but in  
17          2017, that will change.

18          **Q     How so?**

19          A     At that point, extremely large customers -- I  
20          don't know the threshold off the top of my head.   But  
21          the highest energy users won't have to do any sort of  
22          verification.   They can self-certify.   You don't see it  
23          in here, but there is a very rigorous MMV requirement  
24          associated with Ohio for customers to show and prove  
25          what they've done.

1           And in the last legislative go-round in Ohio,  
2           there was a provision that said beginning in 2017, the  
3           largest of industrial customers would be able to opt out  
4           simply by testifying to their size and showing that they  
5           met the criteria.

6           **Q     You said MMB or something --**

7           A     Measurement verification. I'm sorry.

8           **Q     And what was the size limitation that was**  
9           **discussed with respect to Ohio, the very large**  
10          **customers?**

11          A     As I said, I don't know the number off the top  
12          of my head. I just wanted to make sure -- you said this  
13          is in place. And it is in place as written until 2017,  
14          but that statute is set to go in effect. I want to make  
15          sure we're clear on the record.

16          **Q     Okay.**

17          A     Because Mr. Pollock's exhibit actually showed  
18          the 2017 rule, not what's in existence here.

19          **Q     Okay. With respect to what Pollock proposes**  
20          **about having a professional engineer certify that**  
21          **someone has done an audit and they are moving forward**  
22          **with energy efficiency, is that what is done in some**  
23          **other states or no?**

24          A     That's not done in Ohio. Ohio, you actually  
25          have to verify the savings are being achieved.

1           **Q     What do you have to do in South Carolina and**  
2 **North Carolina?**

3           A     In North Carolina, you do not.

4           **Q     You do nothing?**

5           A     No. There is no -- there is no verification  
6 other than the customer's attestation.

7           **Q     So, Mr. Pollock's proposal, with respect to a**  
8 **PE, professional engineer, would be more than what you**  
9 **have in North Carolina or South Carolina?**

10          A     Well, I think it's important -- it would be  
11 more, but I think it's important to note, Mr. Moyle,  
12 that as I said, Florida -- or Ohio is more rigorous than  
13 what Mr. Pollock has proposed. And it's because there  
14 are goals, energy-efficiency goals in place for the  
15 utilities. So, in order for those goals to be truly  
16 achieved, there is a very rigorous and costly MMV  
17 association with it.

18                   In North Carolina and South Carolina, you  
19 don't have goals. So, you don't need that. There isn't  
20 that level of verification. There is really a pendulum;  
21 how much you want to verify versus how much you want to  
22 put into cost because the more verification, the more  
23 cost. So, that pendulum is what needs to be considered  
24 in it.

25                   But it's important to note that in a state

1 like Florida where you have goals and how it will impact  
2 those goals, you may have a more rigorous requirement  
3 for measurement verification from a customer who would  
4 elect to opt out if the Commission should put those  
5 rules in place.

6 **Q Has North Carolina and South Carolina -- have**  
7 **they figured out how to implement an opt-out without**  
8 **having cost-shifts take place where residential**  
9 **consumers are footing the bill for the industrials?**

10 A North Carolina -- the cost of energy  
11 efficiency are done -- handled differently than they are  
12 here in Florida.

13 **Q Okay.**

14 A So, it is -- there is -- there is shifting  
15 within non-residential customers. And we've actually  
16 had to address that issue because of the fact that so  
17 many customers have opted out, it's created large spikes  
18 in the non-residential rider amount, not because of  
19 higher program costs, but because of a lower base upon  
20 which you're spreading those costs.

21 **Q But to kind of get to the point about cost-**  
22 **shifting -- I assume North Carolina and South Carolina**  
23 **-- they don't have a program in place that says, yeah,**  
24 **it's okay to shift costs to other customer classes, do**  
25 **they? Or if they do --**

1           A       They don't use the RIM test as the primary  
2 screen. I think that's the key difference I would point  
3 out. But I don't -- to answer your question, I don't  
4 believe that -- if you asked a Commissioner, they would  
5 not say that they like subsidization of the customers.

6           **Q       And I haven't had an opportunity to ask the**  
7 **Commissioner that. But I'm going to ask you that as to**  
8 **your understanding as to whether cost-shifts take place**  
9 **in North Carolina and South Carolina.**

10           MS. TRIPLETT: I'm going to object to asked  
11 and answered.

12           COMMISSIONER BROWN: I'm not sure it was  
13 actually answered for the way that it was phrased,  
14 but --

15           MR. MOYLE: I would agree. I don't think it  
16 was. You can --

17           THE WITNESS: So --

18           MR. MOYLE: I would hope he would agree with  
19 the North Carolina Commissioner.

20           THE WITNESS: So, the North Carolina  
21 Commission enforces the statute which allows an  
22 opt-out. However, there is definitely shifting of  
23 costs because, as I said, as the number of opt-out  
24 customers has increased, the rider amount has  
25 gotten drastically higher, not because of the

1           drastically higher program costs, but because of  
2           the lower base you're spreading it on.

3           Again, that's one of the things that has to be  
4           factored in when you're looking at this, what  
5           eligibility -- obviously, Mr. Powell put out a  
6           framework. Mr. Baker put out a framework. There  
7           are a number of different frameworks you could use.  
8           The number of customers you allow to opt out, the  
9           smaller base you're going to be spreading the cost  
10          on.

11 BY MR. MOYLE:

12           **Q     And do North Carolina and South Carolina allow**  
13           **the savings that are realized by opting-out customers to**  
14           **be counted for achieving the goals?**

15           A     It's not necessary. There are no goals. I  
16           told you that earlier.

17           **Q     Okay. Can North Carolina and South Carolina**  
18           **make adjustments to situations that occur, more people**  
19           **are opting out, and adjust the programs as needed?**

20           A     Well, so, North Carolina, it's a statutory  
21           provision. South Carolina, I suppose the Commission  
22           could, if they wanted to put some sort of an  
23           investigation forward into the effectiveness of the opt-  
24           out program, could. But I think North Carolina -- they  
25           are pretty much stuck with the statute.



1 MR. MOYLE: Yeah. All right. I have another  
2 exhibit.

3 COMMISSIONER BROWN: Is this your last one?

4 MR. MOYLE: It is.

5 COMMISSIONER BROWN: Okay. You're making our  
6 lady walk.

7 MR. MOYLE: I should be doing that.

8 Thank you for the help.

9 It is 44.

10 COMMISSIONER BROWN: I'll mark this exhibit as  
11 44, and wait for the title.

12 MR. MOYLE: Direct testimony filed with South  
13 Carolina Commission of Duke Energy.

14 COMMISSIONER BROWN: Let's do Duke  
15 testimony -- Duke South Carolina testimony, for  
16 brevity purposes.

17 (Exhibit No. 44 marked for identification.)

18 BY MR. MOYLE:

19 Q Do you know who Raiford Smith is?

20 A He's a former employee of Duke Energy.

21 Q Did he work in a position similar to the one  
22 you have?

23 A I -- I don't think it was -- it was quite as  
24 broad as my position, but he was related to demand-side  
25 management, yes.

1           Q     Okay.  So, I'm showing you a document that I  
2     think was filed in South Carolina by Mr. Smith on behalf  
3     of Duke Energy Carolina.  And what I really wanted to do  
4     was draw your attention to Mr. Smith's rebuttal  
5     Exhibit 1, which is the last page on this document.

6           A     I see it.

7           Q     Okay.  And the docket was a 2009 docket, but  
8     does that list comport with your understanding, at least  
9     as it related to 2009, of states that have moved forward  
10    with an opt-out?

11          A     It -- it looks -- it looks as though this  
12    was -- Mr. Smith was referencing another document that  
13    was performed by ACEEE or the American Council for  
14    Energy Efficiency Economy.

15                   With respect to the accuracy, I can't speak to  
16    it.  I will assume he did his -- that he was -- that he  
17    believed that to be an accurate source.

18          Q     Okay.  And you don't have any reason to  
19    question that?

20          A     Other than the fact that it was 2009, no.

21          Q     Right.  And as part of what you do, do you try  
22    to keep up with what states are doing with respect to  
23    opt-out?

24          A     I have -- I have more than enough on my plate  
25    with Duke states.  I don't keep track of other states.

1 (Laughter.)

2 MR. MOYLE: Okay. That's all I have with  
3 respect to 44.

4 If I could just have a minute to check my  
5 notes.

6 COMMISSIONER BROWN: Huh-uh. No problem.

7 BY MR. MOYLE:

8 Q Just a couple of final questions. Your  
9 rebuttal testimony takes exception with some of the  
10 pieces of the hypothetical that FIPUG used in a written  
11 statement also, I think, as I tried to summarize in my  
12 opening statement; is that right?

13 A I believe it was my surrebuttal testimony  
14 you're referring to, but yes.

15 Q Okay. And just so we're talking about the  
16 same thing, the hypotheticals -- I'm going to ask you a  
17 couple of questions about it. The hypotheticals -- you  
18 have a 10,000-megawatt system, 1 percent energy  
19 efficiency. My math is a hundred megawatts. Is that  
20 good so far?

21 A I believe that is the hypothetical, yes.

22 Q Okay. And then also that 85 percent of the  
23 goal would be met through existing programs, and then  
24 15 percent would be met through customers opting out.

25 A Yeah, I believe that was your hypothetical.

1           Q     Okay.  And with respect to the conversation  
2     about the 15 percent that is opting out -- they are  
3     spending their own capital to do that.  Okay?  They are  
4     not going through any program.  They're not going  
5     through the utility.

6           A     Which -- which opt-out proposal are we  
7     assuming is in place?

8           Q     The one from Mr. Pollock.

9           A     Okay.

10          Q     Are we good?

11          A     (Nodding head affirmatively.)

12          Q     Okay.  And you're aware that Mr. Pollock  
13     suggests that the utilities be able to count that  
14     15 percent for meeting their goals, correct?

15          A     Yes.

16          Q     Don't the other 85 percent of the customers  
17     who are going through the traditional programs benefit  
18     from the 15 percent that's being achieved through the  
19     opt-out?

20          A     I think "A," I would say that your answer  
21     is -- your question is incomplete because we have goals  
22     related to both energy and capacity.  So, when we look  
23     at a measure, we look at it from both an energy and  
24     capacity savings standpoint.  You were looking at just  
25     goals from an energy standpoint.

1           So, it was hard to kind of put it in the  
2 true -- in the true light at which we evaluate programs  
3 because we have to look at meeting all of those -- both  
4 the winter kW goal, the summer kW goal, and then the  
5 energy goals at a kWh level.

6           So, it's hard for me to say that all of the  
7 benefits that would be achieved would be equivalent  
8 because that wasn't provided in your hypothetical.

9           **Q     Okay. Well, you understand that Mr. Pollock**  
10 **and FIPUG has represented numerous times here today**  
11 **that -- we're not saying let us opt out and utilities**  
12 **still have to hit their 100 goal.**

13           In the hypothetical, we're saying let us opt  
14 out, and then you can make the adjustment to the goal;  
15 either count -- either count our 15 percent or refigure  
16 the goal with us removed. Is that your understanding?

17           A     I believe that was what he was proposing, yes.

18           **Q     And do you have problems with that?**

19           A     Well, I do. I think there are some things  
20 that -- so, when you look at -- when you look at how the  
21 goals were set, as I pointed out in my surrebuttal  
22 testimony, we assumed that all measures that were  
23 going -- that would have less than a two-year payback --  
24 I remember your actually questioning me on it.

25           So, anything that had less than a two-year

1    payback was screened out.  So, our goals already reflect  
2    those things that are being done that have less than a  
3    two-year payback, both from a residential and the non-  
4    residential side.

5                    So, to the extent that your customers and  
6    FIPUG would be doing things that have less than a  
7    two-year payback, that's already been reflected in the  
8    goals that were set.

9                    **Q     Okay.  And you heard the Wal-Mart witness**  
10    **earlier say, look, we'll do a RIM test.  If FIPUG said**  
11    **we'll do a RIM test, would that satisfy your concern in**  
12    **that regard?**

13                   A     No, the RIM test -- again, as I said before,  
14    the RIM test is not the two-year -- the two-year free  
15    rider --

16                   **Q     It's a screen.**

17                   A     It's a screen.

18                   **Q     Right.  So, that doesn't help you with your --**

19                   A     That doesn't help me because the goals were  
20    set, assuming that those two-year -- those two-year  
21    measure -- those measures that have less than a two-year  
22    payback, as you said at the time you questioned me  
23    during the ECCR, our customers are extremely  
24    economically rational.  So, they are going to be doing  
25    those things on their own.

1           So, if those measures were already removed,  
2           the goals have already taken that into account.

3           **Q     Remember, FIPUG wanted a longer screen, right?**  
4           **We were advocating for three years.**

5           A     Again, that would just mean more measures  
6           would have been -- we would have said it would need to  
7           have not been included in the opt-out. If you screen  
8           out the measures, then you're essentially creating a  
9           situation where that's already been factored into the  
10          goals and the plan -- the plans aren't trying to get  
11          savings from those.

12          **Q     So, other people are eager, I'm sure, to ask**  
13          **questions. I just want to ask you a couple more.**

14          Back on the energy-efficiency point, you're  
15          not suggesting from an economic-efficiency standpoint  
16          that it's more economically efficient to have utilities  
17          charge customers, collect the money, go through all that  
18          transactional stuff, set up programs, have the  
19          Commission review programs and approve programs, and  
20          then have somebody who wants to spend money on energy  
21          efficiency go through a utility to get approval to do  
22          energy efficiency as compared to that customer just  
23          saying, I'm going to do an energy-efficiency measure,  
24          directing that someone procure the energy-efficiency  
25          measure and installing it. From an economic-efficiency

1 standpoint, which of those models is more economically  
2 efficient?

3 A Well, I think to the extent that the customers  
4 are doing things on their own because they don't need an  
5 incentive, that's fine. And as I said, that's  
6 already -- that's already picked up. That's picked up  
7 in the bases of the utility.

8 What we're talking about is the DSM programs  
9 that are being measured that are putting incentives out  
10 there to get customers -- motivate customers to do  
11 things they otherwise wouldn't have. And that's the  
12 economic efficiency that's been gauged.

13 Q So, I'm just talking about, you know,  
14 somebody -- if you had a professor at Duke or Harvard  
15 who is an economic professor saying economic efficiency,  
16 you think they would say it's more economically  
17 efficient from a process standpoint to have the utility  
18 approach as compared to an individual business just  
19 taking their money and buying energy-efficiency measure.

20 A Well, I think, again, if the -- I don't see  
21 them as being mutually exclusive. If it's an  
22 economically-viable decision, as you said, that has a  
23 payback period that makes sense for the customer and  
24 they invest in it on their own, absent the utility  
25 incentive -- we don't want those free riders taking



1 advantage because they are doing it on their own.

2 That's not the wise use of the customer's money.

3 The utility incentives are designed to get  
4 customers what wouldn't participate, absent the  
5 incentive, to participate.

6 Q All right. So, let me -- let me just move on.  
7 You and Mr. Pollock, I think, agree that a three-year  
8 period for an opt-out period should be put in place, is  
9 reasonable; is that right -- a three-year period on  
10 Page 11, Line 16 of your testimony, if you want to  
11 reference that.

12 COMMISSIONER BROWN: The surrebuttal or  
13 rebuttal testimony, Mr. Moyle?

14 MS. TRIPLETT: It's the rebuttal.

15 COMMISSIONER BROWN: Thank you.

16 MR. MOYLE: It's the rebuttal. I'm sorry. I  
17 had to check.

18 THE WITNESS: What line? I'm sorry.

19 BY MR. MOYLE:

20 Q So, Line 18, you said Mr. Pollock's suggested  
21 three-year term is reasonable?

22 A Yeah.

23 Q You agree that three years is reasonable as  
24 suggested by Mr. Pollock with respect to a minimum opt-  
25 out period in which customers could opt out, but then

1     **couldn't opt in again?**

2           A     Yeah, I think I completely agree with that. I  
3     think the thing that you have to remember, though, is  
4     again, all of this needs to be looked at in the holistic  
5     policy.

6                     That component might make sense under a  
7     certain opt-out structure. Depending on the  
8     verification required, depending on what's required  
9     every year from an opt-out sign-up standpoint -- those  
10    things all will factor into the reasonableness of this.

11                    But I think on a stand-alone basis, that's  
12    seems like a reasonable time period.

13           **Q     And would you agree that the trim line is**  
14    **moving, at least as far as you know, towards more states**  
15    **adopting an opt-out provision, at least if you measure**  
16    **from 1981?**

17           A     I can't -- I can't speak to other states other  
18    than the Duke states, but I can say that we've had more  
19    opt-out -- more states put opt-out provisions in place.

20           **Q     Were you born in 1981?**

21                    COMMISSIONER BROWN: Oh, no. Not this again.

22                    THE WITNESS: I'm proud to say yes.

23                    (Laughter.)

24                    MR. MOYLE: Thank you. That's all I have.

25                    COMMISSIONER BROWN: Thank you so much.

1                   We're moving along. And Wal-Mart, it is your  
2                   turn.

3                   MR. WRIGHT: Thank you, Commissioner Brown.

4   EXAMINATION

5                   BY MR. WRIGHT:

6                   **Q        Good afternoon, Mr. Duff. How are you doing?**

7                   A        I'm well. How are you doing, Mr. Wright?

8                   **Q        Good. It's nice to see you again.**

9                                        I have a few -- I have some questions. I'll  
10                   be as efficient as I can.

11                                       Do you agree that the overriding mandate of  
12                   FEECA is to promote maximum cost-effective energy  
13                   conservation for the benefit of the state as a whole?

14                   A        I think that was the overarching purpose, yes.

15                   **Q        Do you also agree that FEECA directs the**  
16                   **Public Service Commission to take into consideration the**  
17                   **need for implementing or creating incentives for**  
18                   **customer-owned energy-efficiency systems in its energy-**  
19                   **conservation decisions?**

20                   A        I believe that's the language, yes.

21                   **Q        Do you agree that the opt-out opportunities**  
22                   **do, in fact, create incentives for customers to do more**  
23                   **energy efficiency on their own?**

24                   A        I don't necessarily agree with that.

25                   **Q        Have you evaluated that in any of the states**

1     **in which Duke offers opt-out?**

2           A     I've not done any formal studies, no.

3           Q     **So, if I -- well, I'll ask you: You -- let's**  
4     **just take it -- as I understand from the exhibits and**  
5     **questioning by Mr. Moyle, you have opt-out in four of**  
6     **the jurisdictions in which you serve; South Carolina,**  
7     **North Carolina, Indiana, and Ohio. Is that right?**

8           A     Actually, five.

9           Q     **What's the other one?**

10          A     Kentucky also has an opt-out. It's just a  
11     statutory -- a rate class of customers that are  
12     statutory -- transmission customers are statutorily  
13     opted out. So, they just don't pay the EE rider.

14          Q     **Thank you.**

15                     Let's take it state by state. Can you say in  
16     North Carolina whether the availability of opt-out  
17     results in greater energy efficiency -- energy savings?

18          A     I have no information to lead me to believe  
19     that it does.

20          Q     **Do you have any information to lead you to**  
21     **believe that it doesn't?**

22          A     No. As I said before, there is no -- other  
23     than the customers' attestation, there is no -- there is  
24     no requirement or verification of what's actually been  
25     achieved.

1 Q Same question for South Carolina?

2 A Same answer.

3 Q Now, you mentioned Ohio has goals. Do you  
4 have any information -- same question with respect to  
5 Ohio. Does the availability -- and you mentioned also,  
6 I think -- I apologize. Lots of thoughts and it was  
7 becoming a compound question. I'll start over.

8 COMMISSIONER BROWN: Happens to me, too, all  
9 the time. Go ahead.

10 Q Ohio has goals, correct?

11 A They do have energy-efficiency and demand-  
12 response goals, yes.

13 Q And they also -- I think I understood your  
14 answer to Mr. Moyle to indicate they had significant  
15 measurement and verification requirements?

16 A That's correct, on both utility and opt-out  
17 customers.

18 Q Do you have any information as to whether opt-  
19 out in Ohio results in a greater energy savings than  
20 without?

21 A Opt-out has been very low for Duke Energy  
22 Ohio. In, you know -- Duke Energy Ohio. I meant to say  
23 Ohio -- partly because, I think, of the measurement  
24 verification; partly because historically, they have  
25 also allowed -- those same what they call mercantile

1 customers or opt-out eligible customers do self-direct,  
2 meaning they do projects on their own and they can get  
3 paid an incentive based off of the achievement and still  
4 pay the rider, but it's a per-kWh savings requirement.

5 And we've had more customers do it that way  
6 than to actually opt out. We've only had a few  
7 customers to opt out. I really don't have a significant  
8 sample to answer your question.

9 **Q Thank you.**

10 Same question for Indiana.

11 A Indiana, it just started. We're still not  
12 even a year into it.

13 **Q Did I understand your answer a minute ago to**  
14 **indicate that Kentucky is actually a mandatory**  
15 **exclusion?**

16 A It's a --

17 **Q For its large customers?**

18 A Yeah, it's an exclusion in the statute. They  
19 just don't --

20 **Q Exemption maybe is a better word.**

21 A Exemption is probably a better word, yes.

22 **Q Do you agree that if a program passes the RIM**  
23 **test, then it passes the RIM test regardless of who is**  
24 **paying the program costs?**

25 A Well, it's -- the RIM test is designed to look

1 at the utility's -- the utility's costs. So, it's hard  
2 to say what it's -- what it's looking at from costs if  
3 it's not looking at the utilities cost. When we look at  
4 a program, we evaluate it based off the utility's cost  
5 and the benefits that are being achieved.

6 As I pointed out in my surrebuttal testimony,  
7 when you're talking about an individual customer, they  
8 might include costs that wouldn't be included in the RIM  
9 test in their evaluation. And they might include  
10 benefits that wouldn't be included in the RIM test  
11 evaluation that the utility program goes under.

12 Q Just to try to be clear, if a program, let's  
13 just say, has costs -- utility-incurred costs of  
14 \$10 million and utility-realized benefits of  
15 \$12 million, that's, now, a positive RIM benefit cost  
16 ratio, correct?

17 A Yeah, I believe you said with Mr. Koch 1.2.

18 Q Okay. And that's going to be true whether the  
19 \$10 million in costs is paid by 90 percent of the  
20 customers or 95 percent of the customers, or 100 percent  
21 of the customers. The RIM benefit cost ratio is going  
22 to be the same, correct?

23 A It does include lost revenues in the  
24 calculation. So, that's included in the cost side,  
25 which isn't a true apples to apples because if the

1 customer -- do I need to explain it more or do you get  
2 what I'm saying?

3 Q I understood it.

4 A Okay.

5 Q If you wish to give further explanation, it is  
6 your prerogative to do so.

7 A You shook your head, so...

8 (Laughter.)

9 Q Okay. You mentioned in response to some  
10 questions by Mr. Moyle regarding Duke's opt-out programs  
11 in other states that the majority were created by  
12 statute. Do you recall --

13 A That's correct.

14 Q My question is: What significance is there to  
15 whether an opt-out opportunity is created by statute or  
16 by a public utility commission's decision within an  
17 existing or general statutory framework?

18 A I guess the -- my point in making that  
19 distinction is that when a state is coming up with this  
20 overall policy, it's looking at the appropriateness of  
21 the opt-out in the context -- in the context of its  
22 overall goals with respect to DSM.

23 So, if you've got a piece of legislation  
24 around energy efficiency and demand response and an opt-  
25 out wasn't contemplated in it, trying to put it in later



1 may not align appropriately.

2           That is the only point is that sometimes if  
3 it's done upfront with a statute, it's taking a more  
4 holistic view, which is what I was trying to say to  
5 Mr. Moyle earlier. You really need the holistic view of  
6 the state to determine whether or not an opt-out is  
7 appropriate or not.

8           **Q     If it's a sound policy judgment implemented by**  
9 **a Legislature as compared to a policy judgment**  
10 **implemented by a PUC or PSC within the context of the**  
11 **more general statute, it's still a sound policy**  
12 **decision, isn't it?**

13           A     I think if a commission believes it's the  
14 appropriate -- it's the appropriate policy, then --  
15 then, the utilities should follow that policy.

16                   It's not for me to say whether or not what  
17 their interpretation is is correct or not.

18           **Q     You made a statement in response to a question**  
19 **by Mr. Moyle that there were some fundamental**  
20 **differences with the phrase you've used between the**  
21 **Carolinas and Florida.**

22                   You went on to talk about annual enrollment,  
23 annual eligibility check, and no aggregation. But I'm  
24 not sure that was the fund- -- those were the  
25 fundamental differences you were speaking of. And I'm

1 trying to understand what you were speaking of. Can you  
2 help me out?

3 A Fundamentally, there aren't goals --

4 **Q There aren't --**

5 A There aren't goals. You don't have the  
6 interaction with the goals in the plan. Utilities put  
7 forward portfolio programs that are approved, but there  
8 is no goal that you're trying to work toward. There is  
9 no planning process that looks at the technical economic  
10 and achievable potential, backs out free riders. It's a  
11 different -- it's a different structure.

12 And that was my main point is to look at it,  
13 yes, there are very little requirements associated with  
14 the opt-out, but there are very little requirements  
15 regarding the specific obligation of the utility and  
16 energy efficiency.

17 **Q As I understand your testimony, Duke does not**  
18 **necessarily oppose opt-out; rather, your testimony, as I**  
19 **read it, says there is no need for it in your opinion;**  
20 **is that accurate?**

21 A That's -- that's my opinion, yes.

22 **Q In your opinion, is there an insurmountable**  
23 **problem with integrating an opt-out program into**  
24 **Florida?**

25 A Should the Commission determine it to be

1 appropriate, I think if everyone -- a larger discussion  
2 would be necessary to work through the details.

3 I think to determine whether any opt-out  
4 program would be effective and aligned with FEECA and  
5 the goals that are in place, you need to have a much  
6 larger discussion to get into those details.

7 I have some significant concerns specifically  
8 around Mr. Baker saying you could account savings that  
9 had been achieved up to five years previously. Well,  
10 the goals are prospective. Utilities don't take --  
11 don't get to take credit for things that have been done  
12 in the past.

13 So, allowing an opt-out for something that's  
14 done in the past -- that doesn't seem to really align  
15 with goals that are prospective in nature. Those are  
16 the kinds of things that I think you would really need  
17 to work through.

18 **Q Take that specific instance. In that case,**  
19 **the customer would already -- the customer would have**  
20 **implemented -- by hypothesis, the customer would have**  
21 **implemented energy-efficiency measures within a recent**  
22 **timeframe, correct?**

23 **A** Yeah, I believe, five years.

24 **Q** **And there would be some, either -- whether --**  
25 **some attestation or verification or estimation of what**

1     **the effects would be, correct?**

2           A     That's correct.

3           **Q     That could be rolled into goal consideration,**  
4     **could it not?**

5           A     So -- so, I guess when I look at it, the goals  
6     are based off of what is technically feasible.  If  
7     something has already been achieved in the market, it's  
8     no longer technically feasible.  So, the goals have  
9     already taken into account what's been achieved.

10          **Q     But the savings are nonetheless real, correct?**

11          A     They were real.  They were achieved  
12     historically and are already in the utility's base sales  
13     now.

14          **Q     Let me ask you ask you a more general**  
15     **question.  How is it working out for y'all with the opt-**  
16     **out programs in the five other jurisdictions -- let's**  
17     **leave Kentucky out -- the other four jurisdictions where**  
18     **you've got some customer choice involved?**

19          A     Can you be a little more specific with "how's  
20     it working out"?

21                     (Laughter.)

22          **Q     Yeah, we touched on -- that's a great**  
23     **responsive question.  And I think we touched on part of**  
24     **it.  And part of it is the energy savings.  And you said**  
25     **you don't really have a basis to say.**

1           A     Right.

2           **Q     How about the administrative costs of doing**  
3 **the -- of administering the opt-out in North Carolina,**  
4 **South Carolina, Indiana, and Ohio? Is that a problem**  
5 **for you?**

6           A     So, because -- because we do not have a  
7 separate charge for customers that opt-out, the  
8 administrative costs are just lumped in the overall EE  
9 overhead costs. So, I -- we didn't have an accurate  
10 breakout of what the costs are associated with it.

11                   I know that one of the witnesses took  
12 exception with the fact that we didn't have an accurate  
13 breakout. But again, I think any sort of aggregate cost  
14 estimate associated with the administrative costs are  
15 going to, again, very much rely on the details as  
16 well as -- including the threshold which creates the  
17 number of customers, how often the customer has to --  
18 has to do their attestation or verification, the level  
19 of measurement and verification associated with it, and  
20 the frequency of that verification.

21                   All of those will play a great deal -- will  
22 play a great deal into what the ultimate cost would be.  
23 So, it's very difficult to speculate until you get those  
24 details.

25                   We've provided a very high-level estimate,

1 but -- it was in one of our discovery responses to the  
2 Commission staff. But it was -- we caveated it very  
3 heavily because without the details, it's very  
4 challenging to put that together.

5 Q Do I recall that that number was in the five-  
6 figures, low six-figures range?

7 A I believe that's correct.

8 Q Around a hundred thousand dollars, plus or  
9 minus?

10 A I believe that's correct, yes.

11 Q Thank you.

12 A I think that was based off of a -- the non-  
13 aggregated approach. An aggregated approach, I think,  
14 would have been a little more expensive.

15 Q I have a question about eligibility. The way  
16 I read the eligibility criteria in the Carolinas, it's  
17 any industrial customer or commercial customer that uses  
18 a million kWh a year or more; is that correct?

19 A That's correct.

20 Q So, it's not a big deal, but you could have an  
21 industrial customer who uses 875,000 per year and they  
22 would be eligible?

23 A If they're an industrial-class customer.

24 Q Yeah --

25 A We currently don't have any of those, though.

1 Q Yeah. They are all bigger, right?

2 A Yeah.

3 COMMISSIONER BROWN: Do you need help?

4 MR. WRIGHT: I do need help. Thank you,  
5 Commissioner. I have two exhibits I'm going to  
6 pass out. I'm not going to ask a lot of questions.  
7 I'm going to ask the witness to verify if they are  
8 what they are and aren't and admit them.

9 COMMISSIONER BROWN: Thank you for handing  
10 them out simultaneously.

11 MR. WRIGHT: My pleasure. Thank you.

12 COMMISSIONER BROWN: We will be marking them  
13 as -- as we get there, I'll tell you which one.  
14 But they'll be -- I think we're on No. 45; is that  
15 correct?

16 MR. WRIGHT: Yeah, I think 45 and 46. Let's  
17 take the smaller one as 45.

18 COMMISSIONER BROWN: Thank you.

19 MR. WRIGHT: It's going to be Mr. Duff's  
20 settlement support testimony. You can just call it  
21 Duff opt-out -- Duff SC opt-out testimony.

22 COMMISSIONER BROWN: Thank you. SC opt-out  
23 testimony for Exhibit No. 45.

24 MR. WRIGHT: Thank you.

25 COMMISSIONER BROWN: And then for 46 --

1 MR. WRIGHT: 46 is going to be Duke -- Duke  
2 DSM application.

3 COMMISSIONER BROWN: How about Duke DSM and  
4 EE.

5 MR. WRIGHT: Okay. Duke DSM/EE application?

6 COMMISSIONER BROWN: Yes. That's fine. Fair  
7 enough.

8 MR. WRIGHT: And maybe you want to put SC in  
9 front of DSM. We'll have a lot of letters in  
10 there.

11 COMMISSIONER BROWN: Okay. So, 46 is Duke  
12 DSM/EE application.

13 MR. WRIGHT: Thank you.

14 (Exhibit Nos. 45 and 46 marked for  
15 identification.)

16 BY MR. WRIGHT:

17 Q Mr. Duff, as I promised, I'll be very brief.  
18 Exhibit 45 is testimony that you submitted in 2013 in  
19 support of a settlement that included an opt-out option  
20 for South Carolina, correct?

21 A That's correct.

22 Q And Exhibit 46 is the company's currently  
23 pending -- well, when I say the company here, I mean  
24 Duke Energy Progress, Inc. And that's the -- that's the  
25 Duke utility company that serves in South Carolina?



1           A     Both Duke Energy Carolinas and Duke Energy  
2 Progress serve South Carolina.

3           **Q     What, if any, difference is there between Duke**  
4 **Energy Carolinas and Duke Energy Progress?**

5           A     They are two different utility companies with  
6 two different cost structures.

7           **Q     And they both serve in both -- oh, that's**  
8 **right.**

9           A     They both cross --

10          **Q     Duke Energy Progress is old Progress --**

11          A     That's correct.

12                   (Simultaneous speakers.)

13          **Q     Thank you, sir. Lot of moving parts. Thank**  
14 **you very much.**

15                   In any event, this is the currently-pending  
16 application of the company, of Duke Energy Progress,  
17 Inc., for its DSM programs in South Carolina that also  
18 includes opt-out, correct?

19          A     Yes. It includes a modification to the  
20 existing opt-out that was put into place. And a lot of  
21 the modifications were done to decrease the number of  
22 customers that were electing to opt out.

23          **Q     Does Duke Energy Carolinas also offer opt-out**  
24 **in both states?**

25          A     Yes. I believe the testimony was for Duke

1 Energy Carolinas; the mechanism was for Duke Energy  
2 Progress.

3 MR. WRIGHT: Thank you.

4 If I could just have a minute, I'm close, if  
5 not completely done (examining document).

6 And I am done. Thank you.

7 Thank you, Mr. Duff.

8 Thank you, Commissioners.

9 COMMISSIONER BROWN: Thank you.

10 PCS.

11 MR. BREW: Thank you.

12 EXAMINATION

13 BY MR. BREW:

14 Q Good afternoon, Mr. Duff.

15 A Good afternoon.

16 Q Mr. Moyle, Mr. Wright talked to you a fair  
17 amount about Duke's opt-out activities elsewhere. I  
18 kind of want to talk about Florida.

19 Just to back up a little bit, your position is  
20 with Duke Energy Solutions?

21 A Duke Energy Business Services.

22 Q Business Services. And your responsibilities  
23 spread across all of the regulated jurisdictions?

24 A Across the six states, yes.

25 Q You're responsible for strategies and policies

1 for energy efficiency and other retail products?

2 A Correct.

3 Q And you came in to this proceeding adopting  
4 Ms. Guthrie's testimony back in the ECCR docket, right?

5 A That's correct.

6 Q And then you filed your own rebuttal a month  
7 later in the ECCR docket.

8 A That's correct.

9 Q Okay. And then all of that spilled over into  
10 here.

11 A Yep.

12 Q Okay. So, initially, my question is: You are  
13 familiar with the DSM plans that Duke is proposing in  
14 Florida, right?

15 A Yes.

16 Q And are you generally familiar with Duke's  
17 customer base in Florida?

18 A Generally.

19 Q Are you familiar with Duke's industrial base  
20 in Florida?

21 A Very generally.

22 Q Very generally. Are you familiar with the  
23 Duke DSM programs in Florida designed for its industrial  
24 base in Florida?

25 A I don't think we have any specific industrial

1 programs, if they are non-residential in nature.

2 MR. BREW: Let's stop right there for a  
3 moment. I do have a document I want to circulate  
4 as an exhibit. I think the company should have it  
5 and, I believe, staff has it already.

6 COMMISSIONER BROWN: Okay.

7 MR. BREW: And this, I believe, would be --

8 MS. TRIPLETT: Mr. Brew, are you talking about  
9 the exhibits you gave to me earlier? Because I  
10 think I gave that to the witness.

11 MR. BREW: Yes.

12 Madam Commissioner, I believe this is  
13 Exhibit No. 47.

14 COMMISSIONER BROWN: That is correct. And it  
15 would be what, Duke --

16 MR. BREW: This would be excerpt, Duke 20-  
17 year --

18 COMMISSIONER BROWN: How about DEF because  
19 Duke -- it looks like it's Florida, Duke Energy  
20 Florida --

21 MR. BREW: Right.

22 COMMISSIONER BROWN: DEF 2015.

23 MR. BREW: And TYSP, ten-year site plan?

24 COMMISSIONER BROWN: Yes, that sounds good.

25 (Exhibit No. 47 marked for identification.)

1 MR. BREW: When you're ready, Mr. Duff --

2 THE WITNESS: I'm ready.

3 MR. BREW: Just for background, Commissioners,  
4 these are selected pages from the company's 2015  
5 ten-year site plan under the heading labeled  
6 "general assumptions."

7 BY MR. BREW:

8 Q And I want to point to you, Mr. Duff, to the  
9 page that's labeled at the bottom of Page 2-16, Item  
10 No. 3, which begins with the sentence, "Within the DEF  
11 service territory, the phosphate mining industry is the  
12 dominant sector in the industrial sales class." Do you  
13 see that?

14 A Yes, I do.

15 Q The next sentence says that, "The three major  
16 customers accounted for nearly 32 percent of the  
17 industrial class megawatt hour sales in 2014." Do you  
18 see that?

19 A Yes.

20 Q Is that consistent with your knowledge of the  
21 base?

22 A Yes.

23 Q And would you agree with the statement that --  
24 at the bottom of the page, "Load and energy consumption  
25 as the DEF served mining for chemical processes site

1 depend heavily on plan operations, which are heavily  
2 influenced by these global as well as local conditions  
3 including environmental regulations."

4 A I see that, yeah.

5 Q Okay. And specifically on the next page, the  
6 second sentence -- the first full sentence reads, "DEF  
7 forecast calls for the continuation of the depressed  
8 level of the annual electric energy consumption  
9 experienced in 2014 due to a mine shutdown brought about  
10 the merger of two mining companies." Do you see that?

11 A Yes.

12 Q So, would you agree with me that Duke's  
13 forecast for this sector calls for a challenging  
14 environment characterized by a high amount of  
15 competition in the sector?

16 A I guess I don't want to construe that  
17 mergers -- shutdowns brought on by mergers is  
18 necessarily competition, but I mean --

19 Q But you are -- the company is forecasting a  
20 depressed level of energy consumption from this sector.

21 A Yes.

22 Q Okay. And would you agree that -- well,  
23 excuse me. Strike that.

24 If I can point you to the last sentence of  
25 that paragraph which reads, "A risk to this projection,

1 which is the sales forecast from the sector, lies in the  
2 price of energy, which is a major cost of mining and  
3 producing phosphoric fertilizers." Do you see that?

4 A Yes.

5 Q Do you agree with that?

6 A I would think so, yes.

7 Q Okay. So, under these circumstances, would  
8 you agree that customers in this sector should be  
9 strongly motivated to find ways to reduce their overall  
10 usage and cost of energy?

11 A I think that assuming that a mining --  
12 phosphate mining company is economically rational seems  
13 like a reasonable -- a reasonable expectation, yes.

14 Q Okay. Thanks.

15 I was looking back at your earlier testimony  
16 which provided information on the expected -- well, I  
17 guess, at the time, it was the actual and estimated 2015  
18 costs for the ECCR.

19 A Uh-huh.

20 Q For the various DSM programs that Duke is  
21 implementing now; is that right?

22 A Uh-huh.

23 Q Okay. I couldn't find one that directly  
24 applies to phosphate mining in Florida. Is there?

25 A I don't think we have a program that

1 specifically is designed for phosphate mining, no.

2 Q Okay. So, since this is a major part of your  
3 industrial sector and just, for an example, a hundred-  
4 megawatt load operating at about a 50-percent load  
5 factor would be consuming about 450 million kilowatt  
6 hours a year.

7 A It seems about right, yeah.

8 Q Okay. So, achieving even a 1-percent savings  
9 through energy efficiency would save  
10 four million-kilowatt hours a year.

11 A Yeah. That's the math, yeah.

12 Q That would seem to provide a very big bang for  
13 the buck in terms of providing energy savings towards  
14 the goal, but there is no Duke program for draglines or  
15 thousand-horsepower motors for mining operations, is  
16 there?

17 A I think they would be eligible under a custom  
18 program, yes.

19 Q And your custom program is called Innovation  
20 Incentive, right?

21 A I believe so, yes.

22 Q Okay. So, Innovation Incentive, there is no  
23 specific program, per se. It would be up to the  
24 customer to identify, say, a high-horsepower or  
25 replacement program to --



1           A       Yeah, it's designed to allow for the  
2 uniqueness of those non-residential customers that  
3 you're not going to have the standard proscriptive-type  
4 measures that you otherwise would have, yes.

5           Q       Okay. And then it would be up to the customer  
6 to come to you with a proposal. And then you would,  
7 then, sit down with them and figure out what might be an  
8 appropriate incentive based upon your cost-efficiency  
9 test. In other words, if I have a \$2 million  
10 replacement program, you're not going to give me a  
11 million dollars if the benefit costs would be negligent?

12          A       Yeah, we look at things like the payback of  
13 the project, the RIM test, yes.

14          Q       So, that customer would, then, have to  
15 identify the project in the first place, determine  
16 whether they think it's cost justified, and then sit  
17 down with you and figure out what, if any, incentive  
18 might be available.

19          A       Yeah. I think that the purpose of the program  
20 is to -- obviously, as you mentioned, the customer is  
21 very intent on finding opportunities to save money. And  
22 the purpose of the incentive is to motivate them to do  
23 those things that might not quite pass what their  
24 financial economic screening and get it over the hump so  
25 they make that investment and get that incremental

1 efficiency.

2 **Q If I understood what you just said, then, the**  
3 **effective purpose there would be to improve the payback**  
4 **for a project which the customer has already identified.**

5 A No. What I'm saying is the purpose of the  
6 incentive is not to pay a customer for something that  
7 they were already going to do; it's to pay them to do  
8 something they may not have done absent the incentive.

9 **Q So, it might make a questionable investment**  
10 **positive if it had --**

11 A That's correct.

12 **Q -- payback.**

13 If there were no measures at all for which  
14 that sector was eligible, would it still be fair to  
15 charge them the ECCR?

16 A I believe they get benefits from -- that are  
17 delivered through the RIM-passing test, yes.

18 **Q Even if up under my example, there was no**  
19 **measure for which they were actually eligible to**  
20 **participate.**

21 A Yes, they are still -- they are still  
22 recognizing benefits. As we've talked about, many  
23 witnesses have discussed both the participant and  
24 non-participant's benefit from each additional measure  
25 that's put in that passes RIM.

1           **Q     Are you familiar with cost allocation and the**  
2           **allocation of cost based on cost causation?**

3           A     The general topic -- that's pretty broad,  
4           though.

5           **Q     Generally speaking, in assigning costs and**  
6           **rates, do you assign costs to a customer that doesn't**  
7           **incur them -- cause you to incur them?**

8           A     I think you assign costs where those benefits  
9           are achieved. So, if you make the case that every  
10          customer is benefiting under the RIM test, then part of  
11          the costs is delivering benefits to those customers.

12          **Q     Would you assign distribution costs to a**  
13          **transmission customer if they don't use the distribution**  
14          **system?**

15          A     No, I don't believe so.

16                 MR. BREW: Okay. Thank you. That's all I  
17          have.

18                 COMMISSIONER BROWN: Public Counsel?

19          Ms. Christensen?

20                 MS. CHRISTENSEN: No questions.

21                 COMMISSIONER BROWN: Staff, before we get to  
22          you, how many questions do you have for this  
23          witness?

24                 MS. TAN: About ten or 15.

25                 COMMISSIONER BROWN: Why don't we go ahead and

1 take a ten-minute break at this point. So, we will  
2 reconvene at 4:15.

3 (Brief recess.)

4 COMMISSIONER BROWN: Welcome back.

5 Ms. Tan.

6 MS. TAN: Thank you.

7 EXAMINATION

8 BY MS. TAN:

9 Q Good afternoon. Could you please refer to  
10 your rebuttal testimony, specifically Page 7, Lines 4  
11 through 20.

12 A I'm there.

13 Q Okay. And you know, here, you stated that if  
14 the Commission decides it can and should implement an  
15 opt-out policy, that there are several principles that  
16 should be explored when developing that policy; is that  
17 correct?

18 A Yep.

19 Q Okay. Can you describe what those changes  
20 would be and the effect they would have on Duke and its  
21 customers?

22 A So, I guess what I was saying is I wasn't  
23 recommending any changes. I was saying things that  
24 needed to be considered in any opt-out policy from --  
25 Duke thinks are important considerations. It wasn't --

1 it wasn't Duke putting forth any changes. I just want  
2 to make -- and then I can read it, if you would like.

3 mr. tan: No, that's fine.

4 I would like you to take a look at your  
5 responses to staff's first set of interrogatories.  
6 This is going to be Exhibit 27, Bates No. 00112-13.

7 I've also added another item that we'll be  
8 passing around later just for convenience. And  
9 we'll take that up as we get to it in our  
10 questions.

11 COMMISSIONER BROWN: Okay.

12 MS. TAN: And it's coming to you.

13 THE WITNESS: I've got it.

14 MS. TAN: Oh, you've got it? I can go ahead  
15 and get started, if that's okay with you.

16 MS. TRIPLETT: Can you tell me the number  
17 again? I can probably find it.

18 MS. TAN: Bates Nos. 112-113. This is, again,  
19 already an exhibit. It's Exhibit 27.

20 COMMISSIONER BROWN: Thank you.

21 BY MS. TAN:

22 **Q And you described changes that would be**  
23 **incurred to the company and in some of the Commission's**  
24 **proceedings, if either of the opt-out proposals were**  
25 **approved; is that correct?**

1           A       That's correct. Based off of the high-level  
2       descriptions, these are things that we think we would  
3       have to do.

4           **Q       Okay. And could you please explain for the**  
5       **Commission what those changes would be?**

6           A       So, first is with respect to application and  
7       eligibility. That's basically just the process whereby  
8       the company would need to review an application to make  
9       sure a customer was, in fact, eligible for the opt- out.  
10      Again, that's going to depend on what the ultimate  
11      design of the program would be in terms of how much  
12      complexity is there.

13                The inspection process, that would be we would  
14      need to do some sort of sampling consistent with what we  
15      do to our existing programs to make sure there was, in  
16      fact, efficiency going on.

17                An audit process, this would, again, just make  
18      sure that periodically we're verifying that customers  
19      are maintaining eligibility. When you're looking at a  
20      sales threshold, obviously, that can change from time to  
21      time. So, determining what period of time you would do  
22      that would also determine the number of audits.

23                Performance tracking, this is where we would  
24      need to basically go through and figure out, based off  
25      of the opt-out, how we would need to adjust the goals

1 set by the Commission to recognize the impacts of the  
2 savings achieved through an opt-out.

3 Administrative cost tracking is pretty self-  
4 explanatory. All of the costs associated with running  
5 and maintaining the opt-out would need to be tracked so  
6 those costs could be flowed through to the opt-out-  
7 eligible customers.

8 And then the rate-setting and billing  
9 process -- obviously, if we're creating a new set of  
10 charges for a specific set of customers, the opt-out-  
11 eligible customers, we essentially are going to have to  
12 create a class for them, for those customers because it  
13 doesn't tie to existing rate classes for them to pay  
14 that rate.

15 Q Thank you. And I would also like to look at  
16 the second handout which was passed out, which is part  
17 of Exhibit No. 27, which is already in the record. And  
18 it's Bates Nos. 000121-000123. And this is your  
19 response to staff's first set of interrogatories to Duke  
20 No. 2.

21 A Yep.

22 Q Okay. And could you also provide an estimate  
23 of one-time and recurring costs of implementing these  
24 processes mentioned in the previous question?

25 A Yes.

1           **Q     Okay.  Could you describe for the Commission**  
2 **what the estimates of your upfront annual costs would**  
3 **be?**

4           A     So, again, these were kind of -- when I was  
5 answering the question earlier, we really wanted to  
6 caveat this.  We didn't feel there was sufficient detail  
7 to really get a grasp on this.  So, we really put  
8 together what the assumptions were.  But these  
9 assumptions all could change depending on what the  
10 ultimate rollout is.

11                     But as you will see, if you stack up the  
12 application-inspection process, audit process,  
13 performance tracking, administrative cost-tracking  
14 process, and rate-setting and billing process, we  
15 estimated approximately 90 -- a little less than  
16 \$90,000.

17           **Q     Do you believe that these administrative costs**  
18 **would increase if the number of eligible opt-out**  
19 **customers increased?**

20           A     Yes.

21           **Q     And would that be similar to what you had said**  
22 **earlier in terms of what would have to be increased?**

23           A     Yes.  Yeah, obviously, the more complexity,  
24 the more challenge, particularly when you start getting  
25 into aggregation.  If you start having to do --



1 depending on how the rules are written for aggregation,  
2 you could have a customer trying to aggregate based off  
3 of doing things at one facility and you -- the rest of  
4 all those facilities may or may not be included.

5 So, again, it really comes into the Devil --  
6 the Devil is in the details in terms of driving what the  
7 actual costs would be.

8 Q Okay. And who do you believe should be  
9 responsible for paying any administrative costs  
10 associated with implementing an opt-out provision?

11 A The opt-out eligible customers.

12 Q And now, I would like to turn to your rebuttal  
13 testimony on Page 9, specifically Lines 22 through --  
14 actually, through Page 10, Lines 1 through 12. If you  
15 could, just refresh your memory and let me know when  
16 you're ready.

17 A Page 10, Lines 1 through 12, you said?

18 Q Page 9 first, Line 22, all the way through to  
19 Lines 12 on Page 10. This would be on rebuttal.

20 A Yes, I've reviewed it.

21 Q Here, you've expressed your concerns with the  
22 petitioners' proposals that the opt-out customers should  
23 be able to aggregate usage across multiple locations in  
24 utilities' service territory. I know you touched on  
25 that a little bit earlier, but could you elaborate on

1 **your position for the Commission?**

2 A So, with aggregation, there is just a lot more  
3 complexity. As I was touching on earlier, depending on  
4 what your measurement is, if you look at ten stores --  
5 we won't name any customer -- but ten stores, and the  
6 total between those ten stores is the 15-megawatt --  
7 50 million-megawatt hours that was described by  
8 Mr. Baker's proposal, you could have one store that  
9 could do efficiency and none of the others could choose  
10 to do efficiency, and they would still all be eligible  
11 to opt out based off of one store.

12 There is no level of -- there is a lot more  
13 level of complexity regarding following each store to  
14 understand what they're doing. You're going to have to  
15 measure a lot more. Yet, you're looking at your  
16 eligibility in its entirety. So, it's a far more  
17 complex process.

18 **Q Are you aware of a method to calculate the net**  
19 **benefit to customers who do not participate in a**  
20 **utility-sponsored energy-efficiency program that passes**  
21 **RIM?**

22 A I did not know that because it's really going  
23 to get down to a specific calculation for the customer.  
24 They're going to -- when a customer is making a  
25 decision, they look at things such as non-energy

1 benefits. When a utility looks at it, it's looking at  
2 the energy and capacity savings only. It's not looking  
3 at those non- energy benefits.

4 A corporation might have a goal to reduce  
5 carbon. So, they are doing things that they want to  
6 take credit for for a sustainability goal. That's  
7 driving part of their motivation as well. Those things  
8 aren't quantified. So, I can't quantify the net benefit  
9 because I don't know what the economic rationale is for  
10 the customer.

11 Q Thank you. And would you agree that there are  
12 benefits in terms of deferred generating capacity and  
13 reduced operating costs associated with programs that  
14 pass the total resource cost test?

15 A Yes.

16 Q And in your opinion, do you believe that an  
17 opt-out of the energy-efficiency programs would benefit  
18 all ratepayers?

19 A I can't say definitively, but based off of the  
20 proposals, no.

21 MS. TAN: Staff has no further questions.

22 Thank you very much.

23 COMMISSIONER BROWN: Thank you.

24 Seeing no questions from Commissioners,  
25 redirect?

1 MS. TRIPLETT: No redirect.

2 COMMISSIONER BROWN: Okay. So, we have  
3 several exhibits to get to here. First, let's  
4 start with the prefiled -- does this witness have  
5 any prefiled exhibits?

6 MS. TRIPLETT: No, ma'am.

7 COMMISSIONER BROWN: Okay. So, we had -- my  
8 understanding, we have 41 through 47, is that -- is  
9 that your understanding as being proffered?

10 MS. TRIPLETT: I'm not proffering any, but I  
11 have some comments --

12 COMMISSIONER BROWN: Not that --

13 (Simultaneous speakers.)

14 MS. TRIPLETT: I think it starts at 40.

15 COMMISSIONER BROWN: Okay.

16 MR. MOYLE: And FIPUG has 40 to 44. They are  
17 the states and then the testimony that was on North  
18 Carolina.

19 COMMISSIONER BROWN: If you could, hold on one  
20 moment.

21 Okay. Let's go through the exhibits.

22 MR. MOYLE: Okay. So, the first one we had  
23 was 40, which was the North Carolina opt-out. The  
24 second one was the South Carolina opt-out. That  
25 was 41. 42 was the Indiana opt-out. 43 was the

1 Ohio opt-out form. And 44 was the testimony  
2 filed -- I'm sorry, in South Carolina, not North  
3 Carolina -- by Mr. Smith that had the exhibit --  
4 that had the states that have done an opt-out.

5 COMMISSIONER BROWN: Do any of the parties  
6 have any objections to either of those five  
7 exhibits?

8 MS. TRIPLETT: Yes, Madam Chair -- I would  
9 probably characterize this as a light objection.  
10 Let me just say why because I imagine it will be  
11 entered in and the weight given.

12 But I had some concern about Exhibit 44. The  
13 testimony was that Mr. Smith was a previous  
14 employee. Mr. Duff did not have personal knowledge  
15 about his testimony or the exhibit, but -- so, I  
16 would -- I guess I'm just saying let's make sure to  
17 give the weight, and I'm sure that the parties can  
18 brief the relevance of that particular exhibit.

19 COMMISSIONER BROWN: And I noted that also on  
20 my item when you offered it.

21 MR. MOYLE: I appreciate Ms. Triplett's light  
22 objection.

23 MS. TRIPLETT: I'm just trying to move things  
24 along.

25 (Laughter.)

1           COMMISSIONER BROWN: Thank you. So, we will  
2 be entering Exhibit 40 through 44 into the record.

3           (Exhibit Nos. 40 through 44 admitted into  
4 evidence.)

5           COMMISSIONER BROWN: Going to 45 and 46,  
6 Wal-Mart, they were not really -- they were used  
7 more as a reference. Do you want to offer them  
8 into the record?

9           MR. WRIGHT: Yes, we do. Thank you. We would  
10 move both 45 and 46.

11          COMMISSIONER BROWN: Any objection? Okay.

12          MS. TRIPLETT: No.

13          COMMISSIONER BROWN: We will move 45 and 46  
14 into the record.

15          (Exhibit Nos. 45 and 46 admitted into  
16 evidence.)

17          COMMISSIONER BROWN: As for 47, it was an  
18 excerpt from the Public Service Commission's ten-  
19 year site plan, which I do not think we need to  
20 enter.

21          MR. BREW: PCS would move it into the record.

22          COMMISSIONER BROWN: Okay. We'll go ahead and  
23 move that into the record. Okay.

24          (Exhibit No. 47 admitted into evidence.)

25          MR. BREW: And I also have a question, or at

1           least a point of confusion on my part. This  
2           proceeding was a -- followed -- rolled off of the  
3           last year's ECCR docket. And the order  
4           establishing procedure directed that direct  
5           rebuttal and respective exhibits of related issues  
6           be copied into the docket file. And so, what we  
7           have is we pick up with Mr. Duff with his September  
8           rebuttal testimony and then surrebuttal.

9           So, I would like clarification either that the  
10          original direct, which was filed previously in the  
11          ECCR docket, be either copied into the record or if  
12          I could reserve an exhibit for that to move in to  
13          the record.

14          COMMISSIONER BROWN: Did you hear,  
15          Ms. Triplett?

16          MS. TRIPLETT: I did. I'm not sure what the  
17          relevance would be of the direct testimony from the  
18          ECCR, but I mean, it's -- it's out there. It's  
19          publicly available. I don't think I have an issue  
20          with it. But I would like know which specific  
21          testimony he's referring to.

22          MR. BREW: That's the nearest document that I  
23          can see that lists the DSM programs and the costs  
24          associated with it because that was this -- the  
25          actual estimated testimony upon which the current

1 factor was based.

2 COMMISSIONER BROWN: Okay.

3 MS. TRIPLETT: Okay. I have no problem with  
4 that.

5 COMMISSIONER BROWN: Thank you, nor do I.

6 With regard to this witness, Ms. Triplett --

7 MS. TRIPLETT: May he be excused?

8 COMMISSIONER BROWN: Yes, he may -- and I  
9 think -- Mr. Brew?

10 MR. BREW: Yes, I would like to be excused at  
11 this point, if the Commissioners has no objection.

12 COMMISSIONER BROWN: I have no objection.

13 Mr. Chairman?

14 CHAIRMAN GRAHAM: (Shaking head negatively.)

15 COMMISSIONER BROWN: You are now excused.

16 MR. BREW: Thank you very much. I appreciate  
17 it.

18 COMMISSIONER BROWN: Safe travels.

19 MS. HELTON: Madam Chairman, if I could just  
20 interrupt for a minute. I'm not -- I understand  
21 that, I think, Mr. Brew wants part of Mr. Duff's  
22 testimony that was filed in the ECCR proceeding.  
23 But I'm not sure that we actually have put that  
24 into the record. I'm not sure that I'm  
25 understanding --



1           MR. BREW: That was the point of my confusion.  
2           The order establishing the procedure directed that  
3           the direct, rebuttal, and exhibits from that docket  
4           be moved into the record here, but no direct  
5           evidence, no direct testimony was actually moved  
6           in, only -- it started with rebuttal.

7           MS. HELTON: Well, I guess if there is a  
8           difference between moving it to the docket file,  
9           which may have happened, and actually having it  
10          inserted into the record here as though read -- is  
11          that -- or am I just confusing things?

12          MR. BREW: Well, that was the point of my  
13          confusion based on the order establishing my  
14          procedure.

15          COMMISSIONER BROWN: Just a moment.

16          Ms. Helton?

17          MS. HELTON: I'm not sure that we actually did  
18          move Mr. Duff's direct testimony into the record.  
19          So, maybe we could just identify that as an exhibit  
20          number and let everybody know that that will be a  
21          particular exhibit.

22          MR. BREW: That's exactly where I started;  
23          either that it be moved into the record or we  
24          reserve an exhibit number for it, one way or the  
25          other, whichever makes more sense.

1 COMMISSIONER BROWN: Ms. Triplett?

2 MS. TRIPLETT: Doesn't matter to me.

3 COMMISSIONER BROWN: Okay. So, we're going to  
4 move that in as Exhibit No. 48. And what would you  
5 like that titled, Mr. Brew?

6 MR. BREW: That would be titled Duff  
7 testimony, Docket No. 140002-EG, dated August 27,  
8 2014.

9 MS. TAN: It would be Jennifer Todd testimony  
10 adopted by Duff --

11 MR. BREW: No, it's direct testimony of  
12 Timothy J. Duff with respect to 2014 actual  
13 estimated and 2015 projected costs.

14 MS. TRIPLETT: Mr. Duff adopted the testimony  
15 of Lee Guthrie. That was the true-up testimony. I  
16 don't think that's what Mr. Brew wants in. I think  
17 he just wants the subsequent actual estimated  
18 testimony.

19 COMMISSIONER BROWN: Is that correct?

20 MR. BREW: That's correct. The August 27th  
21 testimony in his own name -- that testimony and  
22 exhibits.

23 COMMISSIONER BROWN: We're going with what  
24 Mr. Brew wants.

25 MR. BREW: Thank you.

1 (Laughter.)

2 COMMISSIONER BROWN: And that will be entered  
3 into the record.

4 MR. BREW: And just for the record, that's  
5 referenced in the very first Q and A in his  
6 rebuttal testimony, so --

7 COMMISSIONER BROWN: Okay. Thank you.  
8 And Mr. Brew, you are excused now.

9 MR. BREW: Thank you very much.

10 COMMISSIONER BROWN: You're welcome.

11 (Exhibit No. 48 marked for identification and  
12 admitted into evidence.)

13 (Transcript continues in sequence in  
14 Volume 3.)

15

16

17

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE OF REPORTER

STATE OF FLORIDA     )  
COUNTY OF LEON     )

I, ANDREA KOMARIDIS, Court Reporter, certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages, numbered 167 through 329, are a true and correct record of the aforesaid proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 30th day of July, 2015.




---

ANDREA KOMARIDIS  
NOTARY PUBLIC  
COMMISSION #EE866180  
EXPIRES FEBRUARY 09, 2017

Florida Power & Light Company  
Docket No. 140226-EG  
Staff's First Set of Interrogatories  
Question No. 1  
Page 1 of 1

Q. Please state what internal processes would need to be incorporated by the utility, including billing system changes for FPL to implement either of the opt-out proposals outlined by FIPUG and Walmart?

A. Numerous process and systems modifications would be required in order to ensure proper tracking and handling of any accounts that would be determined to be eligible for Energy Conservation Cost Recovery (ECCR) opt-out. These changes would be required whether the number of accounts ultimately opting-out would turn out to be large or comparatively small. The following represents FPL's initial assessment:

**Billing System Changes** - Identification of ECCR opt-out customers and the creation of additional charge(s) in the rates and billing tables; new charge(s) to be added to all billing screens, data warehouse, rate and revenue report, and other financial reports; new GL account and SAP interface; changes to the cancel and replace program, the call center CALLS (Customer Account Local Liaison System) program, FPL.com; changes to the paper and paperless billing statements and the bill register.

**Customer Service Field Operations changes** - Modifying Utilities International (UI) Planner to produce customer bill impacts for the ECCR opt out option, notifying and communicating with customers, tracking customer participation and validating customer eligibility and energy efficiency performance. FPL would need to replicate the processes used for the current Business Custom Incentive (BCI) program for a potentially extensive number of accounts (please see FPL's response to Interrogatory No. 3 of this set.).

**Demand-Side Management (DSM) Program Operations** - FPL would need to modify its Demand-Side Management System (DSMS), which is used to track and report all DSM-related transactions, to identify the opt-out participants to ensure none were accidentally issued a rebate during the period of DSM ineligibility. In addition to the DSMS modifications, the interface to FPL's billing system would also need to be modified to reflect the opt-out status.

**Clauses** - FPL would need to create a separate set of ECCR clause factors for opt-out customers. This will basically require duplicating the current ECCR processes including projection and true-up filings and the resulting FPSC audit. In addition to the increased administration work, FPL will need to modify its current cost tracking system and the system used to produce its filing schedules.

Florida Power & Light Company  
Docket No. 140226-EG  
Staff's Second Set of Interrogatories  
Question No. 12  
Page 1 of 1

**Q.**

**For each of the following Commission proceedings or company practices, please explain in detail, what specific changes, if any, would be necessary if the Commission approved the opt-out proposals by the petitioners:**

- a. DSM goals setting and annual reporting**
- b. ECCR filings and timing of these filings**
- c. Forecasting practices, including load and revenue forecasts**
- d. Tracking and monitoring DSM program participation and achievements**

**A.**

**a.** An explicit reduction due to the impact of opt-out customers would need to be reflected in the analyses used in the DSM Goal-Setting proceeding. The impact would be a reduction in the amount of available Technical Potential and Achievable Potential for utility-sponsored DSM programs. The kW and kWh achievements in the utilities' annual reports would also need to reflect the impact of opt-out customers. This would require some type of additional supplemental schedules in the reports.

**b.** FPL would need to create a separate set of rates for customers opting out of the energy-related ECCR programs. Two separate sets of schedules would be required for reporting actual and projected expenses to the Commission. This would result in essentially two ECCR filings - one for customers participating in the ECCR Opt-Out option and the standard filing for all other customers. Expenses incurred associated with the ECCR Opt-Out rates would need to be tracked and trued-up separately. The ECCR Opt-Out filings would be made in conjunction with the standard ECCR filings.

**c.** For purposes of the ECCR clause, specific forecasts of the opt-out customers kWh sales and peak demands would need to be developed if the Commission approved the opt-out proposal by the petitioners.

**d.** FPL would need to create incremental tracking and monitoring for opt-out accounts/customers. The administrative burden and complexity entailed would be depend on what rules would be ultimately established on how these account/customers should be reflected in DSM goal-setting, DSM Plan and program performance purposes.

**Florida Power & Light Company  
Docket No. 140002-EG  
OPC's 1st Set of Interrogatories  
Interrogatory No. 1  
Page 1 of 2**

**Q.**

**For the proposals in the pre-filed direct testimony of Jeffrey Pollock and Kenneth Baker, please identify the impact on your residential customers if you allow non-residential customers to "opt-out" of paying the energy efficiency measures support under the energy conservation cost recovery clause on a:**

- a. total revenue requirements basis (i.e. costs that will be shifted to the remaining participants) and,**
- b. on a per 1000 kWh /month basis**

**For purposes of answering this, you should assume and answer separately three hypothetical scenarios whereby the largest (by revenue in each tier) non-residential customers comprising 10%, 20% and 30% of non-residential revenues would be eligible for and take advantage of such an option.**

**A.**

As discussed in FPL's rebuttal testimony, the intervenors' "opt-out" proposals would unfairly shift the recovery of certain prudently-incurred Energy Conservation Cost Recovery ("ECCR") clause costs from "large" business customers, such as the companies they represent, to residential and small business customers and should be rejected. Participating customers' energy and demand benefits accrue to the full general body of customers and it is appropriate that the costs are therefore borne by all customers.

**To perform the calculation for the requested hypothetical scenarios, FPL used the following general assumptions:**

- Data from FPL's 2015 ECCR Projection Filing dated August 27, 2014.
- Opt-Out qualifying rate classes included those that included demand billing determinants (e.g., GSD-1, GSLD-1, GSLD-2, GSLD-3, MET, CILC-1G, CILC-1D, CILC-1T, SST-1D, and SST-1T, etc.) FPL notes that there are also accounts in the GS and GSCU rate classes that may qualify to opt-out through the proposed aggregation. Therefore, the cost estimates are likely somewhat conservative.
- FPL did not use customer-specific data. The intervenors' proposals are partially in conflict regarding the eligibility threshold; with one based on aggregate kWh and the other aggregate kW. This makes it impossible to determine exactly which customers could be eligible or, more importantly, which might desire to opt out and be able to meet criteria for such request to be accepted. Instead, FPL removed 10%, 20% and 30% of projected kWh from rate classes assumed to qualify to opt out.
- Only costs allocated on energy were included. These costs represent approximately one third of the projected 2015 ECCR costs. Allocations for demand-allocated costs were assumed to remain unchanged under the intervenors' proposals.

**Analysis results:**

- a. **Total 2015 revenue requirements shifted to the residential rate classes:**
  - 10% = \$1.4 million
  - 20% = \$2.9 million
  - 30% = \$4.6 million
  - These costs represent a significant portion of FPL's total energy-related ECCR costs (approximately 4.5%, 9.0% and 14.0% respectively).
- b. **Increase in the residential monthly bill (at 1,000 kWh):**
  - 10% = \$0.02
  - 20% = \$0.05
  - 30% = \$0.08
  - This would drive up residential customers' share of FPL's total energy-related ECCR costs from the current 52% to 54%, 57% and 60% respectively.



Duff/staff

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 140226-EI

DATED: June 1, 2015

**DUKE ENERGY FLORIDA'S RESPONSES TO STAFF'S FIRST SET OF INTERROGATORIES (NOS. 1-9)**

Duke Energy Florida, Inc. ("DEF"), responds to Staff's First Set of Interrogatories to DEF (Nos. 1-9), as follows:

**INTERROGATORIES**

1. Please state what internal processes would need to be incorporated by the utility, including billing system changes for DEF to implement either of the opt-out proposals outlined by FIPUG and Walmart?

**Answer:**

The following internal processes would need to be incorporated by the utility to implement either of the opt-out proposals outlined by FIPUG and Walmart:

- **Application/Eligibility-** DEF would need to implement a process whereby the customer would provide the information necessary to determine eligibility. This information would need to include a list of accounts, the results of an energy audit, and certification by a licensed engineer or certified energy manager of the savings impacts.
- **Inspection Process -** DEF would also need to perform an inspection on a sample of the facilities for customers applying for the opt out to verify eligibility.
- **Audit process -** DEF would also need to implement a process to periodically verify that the opt-out accounts continue to meet the eligibility threshold.

- **Performance Tracking Process** - DEF would need to implement a process to track energy and demand savings achieved by the opt out customers and adjust the annual goals set by the Commission to recognize the impacts of these savings.
- **Administrative Cost Tracking Process** - DEF would also need to track costs attributable to the opt-out program and then allocate those costs directly to the opt-out customers in the rate setting process.
- **Rate Setting and Billing Process** - DEF will need to develop separate ECCR charges for opt out customers in each rate class. New rate codes would need to be set up in the customer billing system and customer accounts would need to be transferred to the new rate codes.

9. Please state whether your utility currently offer or plan to offer customized energy efficiency or demand-side management incentives to its larger (commercial and/or industrial) customers that would meet the proposed opt-out threshold proposals of FIPUG and Walmart. If so, please describe the program and provide specific examples of recent customized incentives under the program.

**Answer:**

DEF currently offers and will continue to offer the Florida Custom Incentive Program (formerly Innovation Incentive Program). All commercial and industrial customers, including larger (commercial and/or industrial) customers are eligible to participate in this program. This program provides incentives for customized cost effective energy efficient technologies that reduce peak demand and provide energy savings. Examples of technologies that may qualify for incentives under this program include, but are not limited to, new construction whole building projects, efficient compressed air systems, and thermal energy storage systems. Projects must be cost effective under RIM. Incentives provided through this program will not exceed 50% of the total project cost and the maximum incentive for a single project is limited to \$500,000.

Recent incentives provided through this program have primarily been for chemical cleaning for packaged terminal air conditioning (PTAC) systems. DEF has reviewed a number of other types of projects that have been proposed under this program, but most of these projects were not eligible for incentives because they did not provide enough demand reduction to be cost effective under RIM. DEF plans to continue to work with customers to identify cost effective projects and is currently working to streamline the application and approval process for this program.

DEF  
Docket 140226  
DR 1-2

**Question:**

Please provide a one-time and recurring annual estimate of the costs of implementing the internal processes described in Question 1.

**Response:**

The following estimates for one-time and recurring annual costs for implementing the internal processes described in Question 1 are high-level estimates based on assumptions of the number of eligible customers, the estimated hours required to complete each task, and average labor rates. The actual costs may vary significantly from these estimates depending on how the opt out is structured, the eligibility requirements, the number of eligible accounts, and the requirements for tracking savings and making adjustments to annual goals.

	One-Time					Recurring Annual				
	Accounts	Account	Hours	Rate*	One-Time	Accounts	Account	Hours	Rate*	Annual Recurring
1 Application/Eligibility Process	75	16	1200	\$ 47	\$ 56,054	5	16	80	\$ 47	\$ 3,737
2 Inspection Process	8	24	192	47	8,969	1	24	24	47	1,121
3 Audit Process			80	47	3,737	75	1	75	47	3,503
4 Performance Tracking Process			160	47	7,474			40	47	1,868
5 Administrative Cost Tracking Process			120	47	5,605			40	47	1,868
6 Rate Setting and Billing Process			120	47	5,605			40	47	1,868
					<u>\$ 87,444</u>					<u>\$ 13,967</u>

- The one-time costs represent the upfront costs of reviewing the applications and verifying that each of the accounts meets the eligibility requirements. On a recurring basis there would have to be a process in place to review applications for new opt out customers.
- These costs assume that DEF would perform an inspection of 10% of the accounts that apply for the opt-out. This includes scheduling the inspection, performing the inspections, and validating the expected savings.
- The one-time costs represent the upfront costs of establishing the annual audit process, developing the tools to complete this process, and providing training. The recurring annual costs represent the costs of ensuring that customers continue to meet the eligibility requirements.
- The one-time costs represent the upfront costs of establishing a performance tracking process for opt out accounts, developing the necessary tools, and providing training. The recurring expenses are the costs of tracking and reporting the savings on a monthly basis.
- The one-time costs represent the upfront costs of establishing the accounting structure necessary to capture the administrative costs of the opt out program. The annual recurring costs represent the costs of ensuring these costs are charged and reported appropriately for cost recovery and rate setting purposes.
- The one-time costs represent the upfront costs of setting up new rate codes in the billing system and then transferring all of the opt accounts to the new rate codes and establishing the procedures, processes, and tools to separate the opt out accounts for rate setting and cost recovery purposes. The recurring costs represent the costs of moving any new additional opt out customers to the appropriate opt out rate code and ensuring that these accounts are handled correctly in the rate setting and cost recovery process on an ongoing basis.

\*The average labor rate includes taxes and benefits and is based on the average pay rate for employees supporting DEF's energy efficiency programs.

DEF  
Docket 140226-El  
Response to Data Request 1- 8a & 8b

	Projected 2015		
Energy	\$ 25,486,309		
Demand	<u>\$ 63,922,196</u>		
Total	\$ 89,408,505		
Total MWH	37,738,631		Current 2015 Residential ECCR Rate
Res - MWH	19,390,958		\$2.70 / \$1,000 kWh
			(Incremental) Residential Impact
<b>10% Decrease to Opt-Out Eligible Classes KWH</b>			
(a)	Total 2015 revenue requirements shifted to the residential rate classes:	\$	599,488
(b)	Increase to Residential Monthly Bill \$/1000 KWH	\$	0.03
<b>20% Decrease to Opt-Out Eligible Classes KWH</b>			
(a)	Total 2015 revenue requirements shifted to the residential rate classes:	\$	1,256,288
(b)	Increase to Residential Monthly Bill \$/1000 KWH	\$	0.06
<b>30% Decrease to Opt-Out Eligible Classes KWH</b>			
(a)	Total 2015 revenue requirements shifted to the residential rate classes:	\$	1,979,030
(b)	Increase to Residential Monthly Bill \$/1000 KWH	\$	0.10

**Notes:**

- (a) These costs represent a significant portion of DEF's total energy-related ECCR costs (approximately 4.6%, 9.6% and 15.1% respectively).
- (b) This would increase residential customers' share of DEF's total energy-related ECCR costs from the current 52% to 54%, 57% and 59% respectively.

**Assumptions:**

- (1) These calculations were based on data from DEF's 2015 ECCR Updated Projection Filing dated October 2, 2014 which is the basis for the 2015 ECCR cost recovery factors established in Commission Order No. P5C-14-0682-FOF-EG
- (2) Opt-Out qualifying rate classes included those that included demand billing determinants (e.g., GSD-1, GSdT-1, SS-1, CS-1 CST-1, CS-2, CST-2, CS-3, C5T-3, SS-3 IS-1, IST-1, IS-2, SS-2, etc.) DEF did not use customer-specific data; therefore, the cost estimates are likely somewhat conservative i.e. There are also accounts in the GS-1, GS-2 and GST-1 rate classes that may qualify to opt-out through the proposed aggregation, however, the majority of the eligible customers are captured in the data provided. The interveners' proposals are partially in conflict regarding the eligibility threshold; with one based on aggregate kWh and the other aggregate kW. This makes it impossible to determine exactly which customers could be eligible or, more importantly, which might desire to opt out and be able to meet criteria for such request to be accepted. Instead, DEF removed 10%, 20% and 30% of projected kWh from rate classes assumed to qualify to opt-out. Only costs allocated on energy were included. These costs represent approximately one-third of the projected 2015 ECCR costs. Allocations for demand-allocated costs were assumed to remain unchanged under the interveners' proposals.