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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 4
(Pages 479 through 555)

PROCEEDINGS: HEARING

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

DATE: Wednesday, July 22, 2015

TIME: Commenced at 7:15 p.m.
Concluded at 8:15 p.m.

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

REPORTED BY: DANA REEVES
Court Reporter

APPEARANCES: (As heretofore noted.)

PREMIER REPORTING
114 W. 5TH AVENUE
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I N D E X

WITNESSES

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1 P R O C E E D I N G

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

4 BY MR. MOYLE:

5 Q So, if somebody in GULF's territory, if they
6 take GULF up on that residential apartment custom
7 optimization program -- you were in the room when we
8 were talking about that with GULF, right?

9 A Yes.

10 Q Would that benefit the whole body of
11 ratepayers or no?

12 A According to my understanding of the criteria
13 and the evaluation tools used by GULF to make that
14 determination, yes, I think it would be beneficial for
15 all customers.

16 Q Even with a one-year payback being used?

17 A Given that that was a special consideration in
18 trying to attempt to have further outreach to low-income
19 customers, given that being a policy directive from the
20 Commission, my answer is yes.

21 Q And my question just relates to the economics
22 as -- the answer remains the same?

23 A Yes. There are economics and there are also
24 policy considerations, and obviously if there's a policy
25 consideration from the Commission, utilities take that

1 seriously, and that's part of the overall evaluation. I
2 would think it's also true that the overall programs
3 taken as a whole would -- would meet the
4 cost-effectiveness test, but, you know, that's really
5 something you should pursue more closely with GULF.

6 **Q What prompted the 1993 generic investigation**
7 **that you referenced in your testimony?**

8 A As I recall, and I do have the order, as I
9 recall there was certain issues presented to the
10 Commission for consideration. Do you want me to review
11 the order to see what the reason given by --

12 **Q No, I just -- you know, you reference it in**
13 **your testimony about the Commission, you have some**
14 **information about it, I just was wondering if, you**
15 **know -- where were you in 1993? You were at the**
16 **Commission?**

17 A I was at the Commission, but we weren't in
18 this building at the time.

19 **Q That explains it.**

20 A I don't know. 1993. No, I don't think we
21 were.

22 **Q No, I'm just trying to look as to whether you**
23 **have information or recollection as to what prompted**
24 **this investigation. Did the Commission say, you know,**
25 **we're hearing a lot about these cross subsidies, we**

1 ought to look at it and the Commission on their own did
2 it, or was another party out there saying, oh, you guys
3 should really look at this, who filed the petition?
4 Just -- you know, you did the research and put it in
5 your testimony, I'm just trying to delve into your level
6 of understanding and knowledge of it.

7 A Well, you know, the order is styled Order
8 Approving Conservation Cost Allocation and Recovery
9 Methodologies for Investor-owned Electric Utilities.
10 And I do note that there were certain proposals made
11 that were considered by the Commission and that were
12 rejected and that the Commission's policy that was first
13 established in 1981 was reaffirmed by this order because
14 that particular order is specifically referenced.

15 Q How did generic investigations typically begin
16 based on your understanding and work at the Commission?

17 A Generic investigations usually are started by
18 the Commission, but sometimes there could be a petition
19 filed with the Commission and the Commission would look
20 at that and determine that generic investigation would
21 be the proper avenue to address concerns.

22 Q Was there a petition filed in this docket?

23 A Mr. Moyle, I don't recall right off. I have
24 the order. I can review it if that's --

25 Q That's okay. Because part of my job is just

1 to explore and ask these kind of questions. So, you
2 told me that most of the time it's done by the
3 Commission, sometimes by petition. We don't know if
4 petition was done. I assume you didn't go back and dig
5 and look at the actual file, correct?

6 A Yes.

7 Q Okay. And there were two proposals that were
8 considered by the Commission then, is that right, that
9 were designed to try to eliminate potential cross
10 subsidies?

11 A Yes, as I recall there were at least two that
12 were considered and the two that I have in mind were
13 rejected by the Commission.

14 Q And has cross subsidies been an issue that has
15 reared its head on occasion with respect to Energy
16 Efficiency and goals and Demand Side Management?

17 A Yes, it is -- is a consideration in setting
18 goals and designing programs to try to minimize cross
19 subsidies.

20 Q Do you have a view as to whether there is some
21 level of subsidization that, you know, that occurs as
22 best as everybody tries to not have subsidies take
23 place, that you can't design a perfect mousetrap and
24 that there is some subsidies that take place?

25 A Well, perfection is an elusive goal, so I

1 wouldn't say that there's never ever any subsidization,
2 but it is a goal to pursue the minimization of
3 subsidization.

4 **Q And you reference in your testimony**
5 **uncertainties in load force and load forecast and**
6 **customer behavioral patterns. I guess those are two**
7 **facts, if you will, that could affect goals and**
8 **programs?**

9 A Yes. I think that language is contained
10 within the order. And that just merely recognizes that
11 we do not live in a static world and when goals are set
12 and programs are established, there are going to be
13 changes. You know, penetration rates may not be what
14 was first anticipated and things of that nature, so
15 that's the reason that utilities review the programs and
16 if there are -- there is the necessity to propose a
17 change within, it's incumbent upon them to present it to
18 the Commission to modify a program.

19 **Q Mr. Pollock, you reviewed his testimony, he**
20 **suggests that the existing program in effect has some**
21 **socialization of costs. Do you disagree with that?**

22 A I'm sorry. Could you repeat that question,
23 please?

24 **Q Yes. Mr. Pollock, in his testimony, has**
25 **suggested that there's some socialization of costs that**

1 occur with respect to the existing DSM programs. Do you
2 disagree with that?

3 A I don't recall that in his testimony.

4 Q If I showed it to you, would you --

5 A If you show it to me, I'd be glad to take a
6 look at it. I just don't recall at this point.

7 Q The nice thing about having Mr. Pollock here
8 is he can help me while I'm asking you questions, so.

9 COMMISSIONER BROWN: Mr. Moyle, you referred
10 to --

11 MR. MOYLE: I said socialization not
12 subsidization, right?

13 COMMISSIONER BROWN: I don't know.

14 BY MR. MOYLE:

15 Q Assuming my question was socialization --

16 A I heard you say socialization.

17 Q Okay.

18 COMMISSIONER BROWN: Can you refer us all to
19 the page that you are looking at?

20 THE WITNESS: I was hoping there would be some
21 notes scribbled on the side on this version, but I
22 don't --

23 MR. MOYLE: It's my copy. Page six of his --

24 COMMISSIONER BROWN: Page -- direct?

25 MR. MOYLE: Right.

1 COMMISSIONER BROWN: Okay. It's page six to
2 those interested.

3 THE WITNESS: Okay. I'm reading the question
4 and answer that appears on page six, starting at
5 line 16 and ending on line 23.

6 BY MR. MOYLE:

7 Q Right.

8 A Okay. I've read that.

9 Q And would you also read the question on 11
10 that goes through 15?

11 A I'm sorry. On the next page, page seven
12 starting at line --

13 Q No. Page six: "Is requiring all customers to
14 pay utility-funded Energy Efficiency costs an
15 appropriate public policy?" Answer: "No, socializing
16 utility-funded Energy Efficiency programs and electric
17 rates is unfair, counter-productive and out of step with
18 policies adopted in the majority of states."

19 COMMISSIONER BROWN: Is there a question?

20 THE WITNESS: I see that question and answer.

21 BY MR. MOYLE:

22 Q Yeah. Do you agree with his suggestion that
23 there's socialization that occurs with respect to the
24 existing Florida programs, socialization of cost?

25 A You know, sometimes the term socialization

1 means different things to different people. I do agree
2 that there are costs, which are determined to be
3 appropriate, that are allocated to all customers, and if
4 that is a definition of a socialization, I agree that
5 that takes place. I disagree with the testimony that
6 that is inappropriate.

7 **Q On page 13, line 19.**

8 A I'm sorry. Mr. Pollock's or my testimony?

9 **Q This is your testimony.**

10 A Okay. And you said page 13, line 19?

11 **Q Right. You have the phrase to make up the**
12 **difference in quotes there. Mr. Pollock didn't suggest**
13 **that the remaining customers make up the difference, did**
14 **he, in his testimony anywhere?**

15 A I think it was implied in his first testimony,
16 and then his second testimony I think he addressed it
17 more directly and it was, as you characterized, it was
18 his envisioning that it would not be a cross subsidy or
19 a switching of cost from one customer to another
20 customer.

21 **Q Right. And then specifically to phrase, you**
22 **put it in quotes here, right? Why did you put it in**
23 **quotes?**

24 A Because that was just kind of a slang way of
25 saying that there was going to be a subsidy.

1 **Q Okay. And that's your slang, right? You're**
2 **not suggesting Mr. Pollock said that?**

3 A Oh, no, no. That's mine. My terminology, not
4 his.

5 **Q Okay. And you don't take issue with the**
6 **testimony of Mr. Pollock about the states -- the**
7 **majority of the states that have issued an opt-out,**
8 **right, before there was opt-out provisions?**

9 A I don't take issue with his observation. I do
10 address it in my testimony that just because another
11 state has adopted a certain opt-out provision does not
12 necessarily make it appropriate to use in Florida,
13 because there is a lot of factual and policy differences
14 that exist from state to state.

15 **Q Since 1981, have a number of states moved**
16 **forward with opt-out provisions?**

17 A I don't know. Only what I've read in Mr.
18 Pollock's testimony.

19 MR. MOYLE: All right. That's all I have.

20 COMMISSIONER BROWN: Thank you, Mr. Moyle.

21 Walmart.

22 MR. WRIGHT: Thank you, Commissioner Brown.

23 EXAMINATION

24 BY MR. WRIGHT:

25 **Q Good afternoon -- good evening, I should say,**

1 Mr. Deason. It's always nice to see you.

2 A Good evening.

3 Q I don't think I have very many questions for
4 you and you'll have heard several of them before, so you
5 probably have answers ready.

6 Will you agree that the overriding mandate of
7 the Florida Energy Efficiency and Conservation Act is to
8 promote maximum cost-effective energy conservation to
9 save energy for the benefit of the state as a whole?

10 A Yes.

11 Q You also agree that FEECA directs the
12 Commission to take into consideration the need to
13 implement and create incentives for customer-owned
14 Energy Efficiency systems?

15 A Yes, and other provisions as well have to be
16 balanced.

17 Q This really is a simple question. I'm going
18 to try it on you. Will you agree that if a customer has
19 the opportunity to opt out of paying the Energy
20 Efficiency portion of the ECCR charge and thereby to
21 save money on the customer's electric bill, that that
22 opportunity creates an incentive for that customer to
23 undertake whatever measures, in this case self-directed
24 Energy Efficiency spending, to qualify for that benefit?

25 A Yes, I agree that's an incentive for that

1 customer, but it may not be an appropriate incentive to
2 have cost shifted to other customers.

3 Q Thank you. Will you agree that energy
4 savings, whether achieved as the result of a utility
5 conservation program or through a customer effort to
6 reduce energy consumption, have benefits to all
7 customers?

8 A Not necessarily. It can, but not necessarily.

9 Q Generally speaking, will you agree that energy
10 productions have at least some benefits, say a reduction
11 in the utilities incremental fuel cost?

12 A That would be one of the components that could
13 be considered.

14 Q Is perhaps one aspect of your previous
15 response the notion that the benefits may not be
16 identical as between a utility program and a
17 customer-implemented measure?

18 A The program -- they certainly most likely
19 would not be identical, but it is conceivable that a
20 program implemented or an initiative taken by a large
21 industrial customer under an opt-out provision actually
22 could be detrimental to remaining customers, depending
23 upon the facts.

24 Q Can you give an example of that?

25 A Yes. A program that would not qualify in the

1 GULF setting docket because it was either not
2 cost-effective or would have been screened out by
3 two-year payback and one that resulted in no beneficial
4 reduction in on-peak demand, but resulted in a great
5 deal of kilowatt hour savings, such that the lost
6 revenues would put upper pressure on rates for all other
7 customers.

8 Q In a response to a question by Mr. Moyle, I
9 think you and he were discussing your understanding of
10 the opt-out proposals, particularly in this case I think
11 by Mr. Pollock, although it may apply equally to those
12 proposed by Mr. Baker, I think you said that the concept
13 is that it would allow customers to opt out of paying
14 their allocated portion of ECCR costs. Do you recall
15 making that statement?

16 A It seems like I do recall that, yes.

17 Q And my question, I just want to clarify, is it
18 your understanding that the only proposal offered by
19 either Walmart or FIPUG here is to opt out of paying
20 only the Energy Efficiency portion, not the total ECCR
21 cost?

22 A Yes, I understand that and I feel -- you know,
23 but I stand by the fair share portion that even that
24 would not be fair.

25 Q I understand. I just wanted to clarify that

1 you do understand that no proposal offered by either
2 Walmart or FIPUG here would have customers be allowed to
3 opt out of paying the demand component, correct?

4 A Right. They would not opt out of that and
5 they would continue to receive the benefits that they
6 currently receive by those programs.

7 Q And do you understand Walmart's proposal is
8 that customers would have to either certify, one way or
9 the other, either certify that they have implemented
10 energy savings measures or commit to a definitive plan
11 to implement energy savings measures by which they would
12 provide whatever benefits those measure would provide
13 without any direct program cost from the utility?

14 A That is my understanding, yes.

15 Q So, am I also correct that you didn't perform
16 any analysis of opt-out cost-shifting versus benefits
17 that might be provided by extra energy savings
18 activities undertaken by opting-out customers?

19 A I did not.

20 MR. WRIGHT: Thank you. That's all I have.
21 Thank you.

22 COMMISSIONER BROWN: Thank you, Mr. Wright.
23 Ms. Christensen.

24 MS. CHRISTENSEN: No questions.

25 COMMISSIONER BROWN: Staff.

1 MS. TAN: Staff has a few questions for Mr.
2 Deason.

3 EXAMINATION

4 BY MS. TAN:

5 Q Does the RIM test take a utility's lost
6 revenues into account?

7 A Yes.

8 Q And do you believe a large customer takes the
9 impact and other ratepayers into account when evaluating
10 a potential conservation investment?

11 MR. MOYLE: Calls for speculation.

12 THE WITNESS: I'm sorry. Could you repeat the
13 question?

14 BY MS. TAN:

15 Q Do you believe a large customer takes the
16 impact on other ratepayers into account when evaluating
17 a potential conservation investment?

18 MR. MOYLE: Objection; speculation.

19 COMMISSIONER BROWN: Objection overruled. You
20 may answer.

21 THE WITNESS: I may answer?

22 I was going to say that, you know, I don't
23 really know what goes in their mind, but I would
24 anticipate being rational investors and managers of
25 a company in its operation is that they would

1 consider what's in their own best economic interest
2 and not necessarily what's in the best economic
3 interest of all the other ratepayers.

4 COMMISSIONER BROWN: Ms. Tan, can you please
5 speak up a little bit louder?

6 MS. TAN: Yes. I don't know where my voice
7 went, but it ran away.

8 COMMISSIONER BROWN: Thank you.

9 BY MS. TAN:

10 Q On page 12, lines 10 through 15 of your
11 rebuttal testimony, you explain that you believe -- why
12 you believe the proposed opt-out provision provided by
13 the petitioners may discriminate against the remaining
14 ratepayers, is that correct?

15 A Yes.

16 Q Could you please explain why you believe the
17 proposed opt-out provision could discriminate against
18 those customers who do not participate in the opt-out
19 program?

20 A Simply stated, they would be required to pay
21 additional costs and not receive the benefits from the
22 incurrence of those costs.

23 Q And is there any system that could be put into
24 place where an opt-out program does not discriminate
25 against those customers who are unable to participate?

1 A I'm not saying it's not possible, perhaps it
2 is, but I don't think we have adequate detail in the
3 current proposals to make that conclusion.

4 Q And if you could look at page 23 of your
5 rebuttal testimony, on lines 24 through 25, and actually
6 all the way through page 24 through lines nine. And
7 when you refresh your memory, please let me know.

8 A I'm ready.

9 Q Here you explain why it's not necessary that
10 the Commission look at what other states have done
11 regarding an opt-out provision. Do you think that the
12 Commission should explore opt-out policies in other
13 states as it considers an opt-out policy in Florida?

14 A I think it's not necessary, because in my
15 opinion, the opt-out proposal does not meet a threshold
16 level for further consideration. However, if the
17 Commission were so inclined to consider that, I think it
18 would be advantageous to at least further explore what
19 other jurisdictions have done and particularly in
20 reference to those jurisdictions and what their policies
21 are, what their legislative mandates may be, what
22 cost-affecting of a test they use, all the different
23 various things that could -- that may affect what would
24 be appropriate for one state, but may not appropriate
25 another state.

1 **Q Thank you. And in your opinion, do you**
2 **believe that an opt-out of the Energy Efficiency**
3 **programs would benefit all ratepayers?**

4 A I do not believe it would benefit all
5 ratepayers.

6 MS. TAN: Thank you. Staff has no further
7 questions.

8 COMMISSIONER BROWN: Thank you.
9 Commissioners. Commissioner Edgar.

10 COMMISSIONER EDGAR: Thank you. Good evening.

11 THE WITNESS: Good evening.

12 COMMISSIONER EDGAR: Just a couple questions.
13 Would you agree that if opt-out is allowed, it
14 should be designed so that no other customer group
15 is harmed by that opt-out?

16 THE WITNESS: Yes.

17 COMMISSIONER EDGAR: So, if the Commission
18 ultimately approves the request for an opt-out
19 policy, what requirements should be built in to
20 prevent such harm?

21 THE WITNESS: I think there would be a number
22 of considerations, and just sitting here I
23 wouldn't -- it certainly would be an exhaustive
24 list, but things that just come to the top of my
25 head, you know, just sitting here at this time,

1 what -- there would have to be a determination that
2 what was being engaged in by the opt-out customer's
3 first was cost-effective, and I would submit that
4 the appropriate test would be a RIM test.

5 I think it also would be subject to a two-year
6 payback screen such that there would be assurance
7 that this is certain, something that's incremental
8 and not something that a rational investor or
9 accompanying manager would do and pursue on their
10 own. So, it should be an assurance that it's
11 incremental savings.

12 There should be a determination as to whether
13 the savings are beneficial, and I think it probably
14 would may be captured in the RIM test, would be
15 beneficial in terms of giving some assurances to
16 the utility that they could depend upon that and
17 plan their system accordingly. And if there's
18 going to be the deferral of new capacity, that is
19 something that could be relied upon and it would
20 not impact the reliability of the system.

21 Those are just a few of the things that I
22 think would be necessary to assure that benefits
23 would be flowing to all customers and not just the
24 opt-out customers.

25 COMMISSIONER EDGAR: Thank you. I appreciate

1 that. I did not expect exhaustive, but I think
2 those are all helpful points. Thank you. Which
3 brings me -- and I wasn't sure I was going to ask
4 this, but you kind of led into it. My
5 understanding, if you agree, is that by law it is
6 not discriminatory to have different rates among
7 cost classes if there is a cost basis for those
8 different rates. Do you agree?

9 THE WITNESS: Yes.

10 COMMISSIONER EDGAR: Okay. So -- and you kind
11 of answered this in my last question, but I want to
12 try to see if we can bring it back and tie it
13 together. So, if the RIM test -- if opt-out were
14 to be approved under certain circumstances and
15 qualifications, if the RIM test continued to be
16 applied, would that reduce concern about undue
17 financial burden on other customer cost classes?

18 THE WITNESS: I think it would go a great
19 length in giving that comfort. I'm not sure that,
20 in and of itself, would guarantee that.

21 COMMISSIONER EDGAR: Okay. Thank you. Just
22 one or two more.

23 Switching gears slightly, during testimony at
24 different points today, we've heard about potential
25 administrative burdens if opt-out were to be

1 allowed. How much weight should -- in light of
2 your experience and expertise, how much weight
3 should be given to administrative burden potential
4 when considering policy changes?

5 THE WITNESS: I think it should be given equal
6 weight with all the other considerations because it
7 is a cost associated with implementing an opt-out
8 proposal. And since it is an incremental cost that
9 is being caused by the opt-out participants, it
10 should be paid by the opt-out participants and it
11 should not be spread to the other customers.

12 COMMISSIONER EDGAR: Which brings me exactly
13 to my next question which was, and is, if any
14 additional administrative costs to the attempt they
15 can be captured were borne by those who qualify and
16 elect to opt out, would that reduce that potential
17 concern?

18 THE WITNESS: Yes, if that -- if those
19 incremental costs were correctly identified and
20 they were allocated to the cost causer, I think
21 that would alleviate that concern.

22 COMMISSIONER EDGAR: Thank you.

23 COMMISSIONER BROWN: Thank you. Redirect.

24 MR. BEASLEY: Commissioner, we have no
25 redirect. I'd like to move the admission of

1 Hearing Exhibit 12.

2 COMMISSIONER BROWN: Seeing no objections,
3 moved into the record Exhibit 12.

4 (Exhibit No. 12 admitted into evidence.)

5 Would you like Mr. Deason to stay until the
6 end of the night?

7 MR. BEASLEY: That would be fun. Ask that he
8 be excused.

9 COMMISSIONER BROWN: Mr. Deason, you're
10 excused. Thanks. Nice seeing you.

11 THE WITNESS: I've already spent enough late
12 nights in a previous life here.

13 COMMISSIONER BROWN: Thank you. At this time
14 we have Mr. Pollock who has not been sworn in here
15 for FIPUG.

16 MR. MOYLE: That's right. We call Jeff
17 Pollock to the stand, please, and he does need to
18 have the oath administered to him.

19 COMMISSIONER BROWN: Would you raise your
20 right hand?

21 Whereupon,

22 JEFFRY POLLOCK

23 was called as a witness, having been first duly sworn to
24 speak the truth, the whole truth, and nothing but the
25 truth, was examined and testified as follows:

1 EXAMINATION

2 BY MR. MOYLE:

3 Q Good evening, Mr. Pollock. Would you please
4 state your full name and business address for the
5 record?

6 A Jeffry Pollock. I'm at 12647 Olive Boulevard,
7 St. Louis, Missouri.

8 Okay. Sorry. I'm out of practice.

9 MR. MOYLE: Did you get that okay, his name
10 and address.

11 COURT REPORTER: Yes.

12 BY MR. MOYLE:

13 Q Did you cause to be filed in this case both
14 direct and surrebuttal testimony?

15 A Yes.

16 Q And did you also cause to be filed in this
17 case certain exhibits which have been listed on Exhibit
18 No. 1 in this case as hearing identification Exhibits 13
19 through 18?

20 A I'll take your word those are the right
21 exhibit numbers.

22 Q Okay. If I asked you the questions and --
23 just for the record, we're doing both direct and
24 surrebuttal at the same time?

25 COMMISSIONER BROWN: That is correct.

1 BY MR. MOYLE:

2 Q Okay. So, if I ask you the questions that
3 is -- are set forth in both your direct and surrebuttal
4 testimonies that have been previously filed, would your
5 answers that you gave be the same?

6 A Yes, with one minor change.

7 Q What is that minor change?

8 A Turning to Exhibit JP-1, which is the map.

9 Q Yes.

10 A For the state of Mississippi, the color coding
11 shows that the Energy Efficiency is not an issue.
12 Actually, it's an issue for one utility. It's not for
13 another utility. So, that -- that blue should have
14 probably been blue and white, since one utility has
15 Energy Efficiency program and spreads costs, the other
16 one has a program, but has zero costs, so it's not an
17 issue.

18 Q Other than that correction, are there any
19 other changes that need to be made to either sets of
20 testimony?

21 A No.

22 Q I would ask that both sets of testimony be
23 inserted into the record as though read.

24 COMMISSIONER BROWN: Mr. Pollock's pre-filed
25 direct and surrebuttal testimony shall be entered

1 into the record as though read.

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DIRECT TESTIMONY OF JEFFRY POLLOCK

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

2 A Jeffry Pollock; 12647 Olive Blvd., Suite 585, St. Louis, MO 63141.

3 **Q WHAT IS YOUR OCCUPATION AND BY WHOM ARE YOU EMPLOYED?**

4 A I am an energy advisor and President of J. Pollock, Incorporated.

5 **Q PLEASE STATE YOUR EDUCATIONAL BACKGROUND AND EXPERIENCE.**

6 A I have a Bachelor of Science Degree in Electrical Engineering and a Masters in
7 Business Administration from Washington University. Since graduation in 1975, I
8 have been engaged in a variety of consulting assignments, including energy
9 procurement and regulatory matters in both the United States and several
10 Canadian provinces. My qualifications are documented in **Appendix A**. A partial
11 list of my appearances is provided in **Appendix B** to this testimony.

12 **Q ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

13 A I am testifying on behalf of the Florida Industrial Power Users Group (FIPUG).
14 FIPUG members take power from various utilities throughout the state, including
15 Florida Power & Light Company (FPL), Duke Energy Florida (DEF), Gulf Power
16 Company (Gulf) and Tampa Electric Company (TECO). They require a reliable
17 affordably-priced supply of electricity to power their operations. Therefore,
18 FIPUG members have a direct and significant interest in the outcome of this
19 proceeding.

20 **Q WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

21 A I will discuss the policy reasons and logistics for implementing a provision in the
22 Energy Conservation Cost Recovery (ECCR) clauses that would allow certain

1 customers that have implemented (or plan to implement) energy efficiency
2 measures to be exempt from paying for energy efficiency services the utilities
3 provide. This practice is often referred to as an “opt-out” provision. As discussed
4 later, an opt-out provision is not only more equitable, it is also more consistent
5 with similar practices implemented in the majority of states around the country. I
6 will also describe some of the terms, conditions and procedures for implementing
7 an opt-out provision in Florida.

8 **Q ARE YOU SPONSORING ANY EXHIBITS WITH YOUR TESTIMONY?**

9 A Yes. I am sponsoring **Exhibits JP-1** and **JP-2**. These exhibits were prepared by
10 me or under my supervision and direction.

11 **Policy Reasons for an Opt-Out Provision**

12 **Q WHAT IS AN OPT-OUT PROVISION?**

13 A An opt-out provision allows certain qualifying customers a choice between paying
14 for and participating in utility-funded energy efficiency measures or self-funding
15 their own cost-effective energy efficiency improvements. A customer that opts
16 out has either implemented (or committed to fund and implement) its own energy
17 efficiency measures or has determined as a result of an energy audit or analysis
18 that there are no cost-effective measures for the customer. Further, a self-
19 funding customer will not be eligible to participate in any utility-sponsored energy
20 efficiency programs. For this reason, an opt-out customer should not be charged
21 for any utility-sponsored energy efficiency programs. In addition, to the extent
22 that an opt-out customer’s power and energy savings are measured and verified,
23 these self-funded measures should be counted toward achieving the utility’s
24 conservation goals.

1 **Q HOW IS AN OPT-OUT PROVISION DIFFERENT THAN THE WAY THAT**
2 **ENERGY EFFICIENCY IS CURRENTLY FUNDED IN FLORIDA?**

3 A The ECCR applies to all customers regardless of whether or not they are eligible
4 to participate in utility-sponsored energy efficiency programs. In other words, the
5 current ECCR effectively “socializes” energy efficiency costs. A customer that
6 has used its own funds to invest in energy efficiency is still obligated to pay the
7 ECCR for energy efficiency measures that are provided for other customers. The
8 available energy efficiency programs for large industrial customers are meager,
9 and some utilities offer no energy efficiency programs for large energy-intensive
10 customers, but charge them by applying the ECCR factor to their bills regardless.

11 **Q IS REQUIRING ALL CUSTOMERS TO PAY UTILITY-FUNDED ENERGY**
12 **EFFICIENCY COSTS AN APPROPRIATE PUBLIC POLICY?**

13 A No. Socializing utility-funded energy efficiency programs in electricity rates is
14 unfair, counter-productive and out of step with the policies adopted in the majority
15 of states.

16 **Q WHY IS SOCIALIZING UTILITY-FUNDED ENERGY EFFICIENCY PROGRAMS**
17 **FUNDAMENTALLY UNFAIR?**

18 A The current policy charges all customers for utility-sponsored energy efficiency
19 programs. However, as discussed later, large energy-intensive customers
20 already have strong incentives to invest in their own energy efficiency measures.
21 Requiring energy-efficient customers to also pay for utility-sponsored energy
22 efficiency programs forces them to subsidize their competitors who have not had
23 the foresight to invest in energy efficiency.

1 Further, socialization is not consistent with the character of energy
2 efficiency programs. A utility that provides an energy efficiency program is
3 providing a service to its customers. Fairness demands that a customer should
4 pay for the services that it receives. Thus, if a customer receives energy
5 efficiency services from a utility, it is appropriate that the customer be required to
6 pay for the service. However, if a customer does not receive energy efficiency
7 services from the utility because that customer has already self-funded energy
8 efficiency improvements, it should not have to pay for services that the utility
9 provides to other customers.

10 **Q IS THE CURRENT POLICY COUNTER-PRODUCTIVE?**

11 A Yes, in certain respects. Socializing utility-funded energy efficiency costs is
12 counter-productive because it imposes unnecessary costs on large energy-
13 intensive customers, including multi-state and multi-national businesses and
14 manufacturers in commodity-based industries. Further, as previously stated, it
15 requires more energy efficient customers to subsidize their competitors who have
16 not made such investments. Imposing unnecessary costs and subsidizing
17 competitors is not conducive to the long-term economic survival of energy-
18 intensive customers nor job creation and economic development in Florida.

19 **Q IS IT APPROPRIATE TO SOCIALIZE ALL OF THE COSTS COLLECTED IN**
20 **THE ECCR BECAUSE ALL CUSTOMERS BENEFIT FROM THESE**
21 **INVESTMENTS?**

22 A No. The ECCR recovers the costs of various load management programs as
23 well as energy efficiency programs. In Florida, load management programs
24 include non-firm (*i.e.*, curtailable and interruptible) service options, standby

1 generation and various load control measures. These options provide a planning
2 and operational tool that allows utilities to reduce the generation and
3 transmission investments that a utility must otherwise make to serve its
4 customers. Thus, load management programs benefit all customers.

5 Energy efficiency can also provide benefits, but it is fundamentally
6 different because, unlike generation, delivery and load management, energy
7 efficiency is not a natural monopoly. There are numerous vendors in the
8 marketplace providing such services. Thus, large energy users are just as (or
9 more) capable of providing their own energy efficiency measures as the utilities.
10 Further, self-funded energy efficiency measures provide benefits to the utility's
11 customers. Yet, unlike the utility, the customers who fund their own energy
12 efficiency are penalized because they cannot recover their costs from the utility's
13 other customers and the savings are not counted toward achieving the utility's
14 conservation goals. This is precisely why the current policy is both unfair and
15 counter-productive.

16 **Q WHAT TYPES OF CUSTOMERS ARE MOST LIKELY TO SELF-FUND**
17 **ENERGY EFFICIENCY MEASURES?**

18 A Large energy-intensive customers operating in commodity-based industries (e.g.
19 metals, fertilizer, pulp and paper, air separators) and/or customers with multiple
20 facilities in a utility's service territory are more likely to self-direct their energy
21 efficiency measures than other types of customers.

22 **Q WHY IS THAT THE CASE?**

23 A Electricity is a significant operating cost. These customers face strong domestic
24 and global competition, and they must do everything possible to minimize costs

1 in order to remain competitive. Thus, in order to remain competitive, an energy-
2 intensive customer must examine every aspect of its manufacturing process and
3 the supporting infrastructure to identify and implement cost-effective measures
4 that will increase operating efficiency and lower production costs. Lowering
5 energy costs by installing more energy-efficient equipment will help to
6 accomplish this objective and allow the customer to remain competitive.

7 **Q ARE UTILITIES IN THE BEST POSITION TO OFFER ENERGY EFFICIENCY**
8 **FOR LARGE ENERGY-INTENSIVE CUSTOMERS?**

9 A No. Energy efficiency programs for large energy-intensive customers necessarily
10 require an in-depth understanding of the manufacturing process. In general,
11 utilities do not have the knowledge or the experience to understand the complex
12 interactions that occur behind the meter of a large energy-intensive customer. In
13 these instances, the customer itself is better aware of its needs than the utility.
14 Thus, sophisticated energy consumers are better able to invest in cost-effective
15 energy efficiency measures that meet their specific needs.

16 For example, Georgia Power serves a significant amount of industrial
17 load including many large energy intensive processes. Yet, it has not invested in
18 industrial energy efficiency programs despite investing in similar programs for
19 residential and commercial customers. The reason is that Industrial energy
20 efficiency programs are neither cost-effective nor needed.

21 **Q WOULD AN OPT-OUT PROVISION MEAN THAT ELIGIBLE CUSTOMERS NO**
22 **LONGER PAY THEIR FAIR SHARE OF ENERGY EFFICIENCY COSTS?**

23 A No. The proposal that I suggest the Commission consider adopting
24 contemplates that a customer could not opt out of utility-sponsored energy

1 efficiency programs unless the customer has evaluated and/or invested in cost-
2 effective energy-efficiency measures. Such measures benefit all customers,
3 including customers who have not elected to invest in energy efficiency or are
4 participating in utility-sponsored energy efficiency programs. It also means that
5 an opt-out customer is not causing a utility to incur energy efficiency costs.
6 Further, if the power and energy savings of an opt-out customer can also be
7 counted by the utility toward meeting its conservation goals, the utility can reduce
8 its expenditures. In other words, appropriately, there would be no costs to shift.

9 An opt-out provision is analogous to the way in which transmission
10 service is treated in class cost-of-service studies and rate design. A customer
11 that takes transmission service has invested in the required distribution facilities.
12 The utility does not incur distribution costs and further does not allocate or
13 charge a transmission customer for the facilities that the customer has provided.
14 In other words, the customer has already paid its fair share of distribution costs.

15 Likewise, an opt-out customer that invests in its own energy efficiency
16 measures is paying its fair share of energy efficiency costs.

17 **Q WOULD FLORIDA BE UNIQUE IN IMPLEMENTING AN OPT-OUT PROVISION**
18 **IN THE ENERGY CONSERVATION COST RECOVERY CLAUSE?**

19 **A** No. We have conducted a survey of practices across the country. Specifically,
20 we examined the policies applicable to funding utility-sponsored energy efficiency
21 programs by large industrial customers to determine what policies are in place
22 today. The results of our survey are presented in **Exhibit JP-1**.

23 Each state is color coded to reflect the specific policy that applies to cost-
24 recovery from industrial customers. These specific policies include:

- 1 • **Self-Direction (orange):** a policy that requires customers to
2 demonstrate to a third party that their self-funded energy
3 efficiency investments are appropriate and provide
4 measurable savings in return for offsetting all or a portion of
5 the applicable conservation cost recovery charge;
- 6 • **Opt-Out (yellow):** a policy that allows customers meeting
7 certain criteria to opt-out of participating in and paying for
8 utility-funded energy efficiency programs;
- 9 • **Exemption (green):** a statute or policy that exempts industrial
10 customers from participating in utility-funded energy efficiency
11 programs and/or relieves the utility of the obligation to provide
12 energy efficiency to industrial customers;
- 13 • **Direct-Assignment (gray):** a policy that assigns energy
14 efficiency costs to the customer classes eligible to participate
15 in the specific energy efficiency programs;
- 16 • **Various Policies (multiple colors):** States employing multiple
17 policies applicable under different circumstances (*e.g.*, Texas
18 has an exemption for customers taking transmission service
19 and an opt-out for manufacturers taking distribution service).
- 20 • **Not At Issue (blue):** the utility does not fund energy efficiency
21 measures.

22 The remaining states that are not color-coded require all customers to fund utility
23 sponsored energy efficiency programs (*e.g.*, Florida).

24 **Q WHAT DO THE RESULTS OF YOUR SURVEY DEMONSTRATE?**

25 **A** The survey reveals that the majority of the states have an active policy that
26 exempts in whole, or in part, industrial customers from paying utility-funded
27 energy efficiency programs.

28 How the states implement this policy differs. Certain industrial customers
29 are exempt in five states (Maine, Minnesota, Oregon, Texas and Virginia). Two
30 of these states (Texas and Virginia) also allow non-exempt industrial customers
31 to opt-out, while two other states (Minnesota and Oregon) also allow self-
32 direction. Other opt-out states include Arkansas, Indiana, Louisiana, Missouri,
33 North Carolina, Oklahoma, South Carolina, and West Virginia. Self-direction is

1 allowed in 13 states, and in return industrial customers pay little or nothing for the
2 utility-sponsored energy efficiency programs. Finally, four states (Georgia,
3 Kentucky, Pennsylvania, and Texas) directly assign energy efficiency costs only
4 for energy efficiency programs applicable to specific customer classes.

5 Florida's approach that socializes utility sponsored energy efficiency
6 programs through the ECCR is out of step with the majority of the states.

7 **Opt-Out Terms and Conditions**

8 **Q SHOULD THE COMMISSION IMPLEMENT AN OPT-OUT PROVISION IN THE**
9 **UTILITY'S ENERGY CONSERVATION COST RECOVERY CLAUSE?**

10 A Yes. As previously explained, an opt-out provision makes economic and policy
11 sense. Further, implementation of an opt-out provision is timely as large energy-
12 intensive customers continue to face strong domestic and global competition.
13 Thus, they are highly motivated to minimize electricity costs, including making
14 investments in energy efficiency equipment when it is cost-effective to do so. By
15 eliminating the current subsidy, these customers can remain competitive and
16 preserve the jobs and other economic contributions they provide for the benefit of
17 state and local economies. Finally, a customer who has opted out of utility-
18 sponsored energy efficiency (by investing in its own efficiency measures) has
19 paid its fair share of energy efficiency costs.

20 **Q WOULD AN OPT-OUT PROVISION APPLY TO ALL ENERGY EFFICIENCY**
21 **PROGRAMS THAT ARE CURRENTLY FUNDED THROUGH THE ENERGY**
22 **CONSERVATION COST RECOVERY CLAUSE?**

23 A No. As previously mentioned, the ECCR includes funding for both load
24 management and energy efficiency programs. Load management programs

1 include various types of non-firm electricity service (e.g., interruptible and
2 curtailable rates), standby generation, and various load control programs (e.g.,
3 water heating controls). These programs are designed primarily for peak savings
4 and provide reserve capacity during outages of utility-owned power plants and
5 transmission lines. Thus, they provide the reserve capacity that the utility
6 occasionally needs to maintain nearly continuous service to its firm customers.

7 **Q ARE YOU RECOMMENDING ANY CHANGE IN HOW LOAD MANAGEMENT**
8 **PROGRAMS ARE CURRENTLY STRUCTURED OR PAID FOR BY**
9 **CUSTOMERS?**

10 A. No. As explained above, load management programs are entirely different from
11 energy efficiency programs as they provide reserve capacity for ratepayers.

12 **Q WHICH CUSTOMERS SHOULD BE ELIGIBLE FOR THE OPT-OUT**
13 **PROVISION?**

14 A An opt-out provision should be limited to non-residential customers. Because the
15 utility will be required to administer this provision in accordance with its
16 Commission-approved ECCR, the specific eligibility criteria should strike an
17 appropriate balance between fairness and the administrative effort. For this
18 reason, I recommend that eligibility be limited to loads of *at least* 1 megawatt
19 (MW) either at a single delivery point or through aggregation, provided that each
20 of the aggregated facilities are located in the utility's service area and are under
21 common ownership and operation.

22 **Q SHOULD ELIGIBLE CUSTOMERS AUTOMATICALLY BE ALLOWED TO OPT-**
23 **OUT OF UTILITY-FUNDED ENERGY EFFICIENCY PROGRAMS?**

24 A No. In addition to meeting the load criterion, each customer that elects to opt-out

1 of the ECCR should also be required to provide a letter to the utility. This letter
2 would be signed by an officer of the customer, and it must state that the
3 customer has invested (or intends to invest) in energy efficiency or has
4 conducted an energy audit or analysis determining that there are no cost-
5 effective energy efficiency measures. An example of such an opt-out letter is
6 provided in **Exhibit JP-2**.

7 **Q PLEASE EXPLAIN EXHIBIT JP-2.**

8 **A Exhibit JP-2** is the form letter used by Duke Energy in South Carolina and is
9 provided for illustrative purposes only.

10 Duke Energy allows customers a choice of either opting-in or opting-out
11 of energy efficiency and/or demand side management programs for each listed
12 account. As previously stated, I am not recommending any change in how load
13 management programs are funded. Thus, the form to be adopted in this
14 proceeding would not provide for an opt-in or opt-out of load management
15 programs as indicated in **Exhibit JP-2**.

16 Particularly noteworthy, however, is that customers must agree to the
17 following attestation:

18 By making this election, we are notifying the Company that we
19 have implemented an energy management system or have per-
20 formed or had performed an energy audit or analysis within the
21 three year period preceding the opt out request, and have
22 implemented or have plans for implementing the cost-effective
23 energy efficiency measures recommended in that audit or
24 analysis.

25 This attestation should be incorporated in the opt-out form approved by this
26 Commission.

1 **Q HOW CAN THE UTILITY ENSURE THAT A CUSTOMER REQUESTING AN**
2 **OPT-OUT HAS INVESTED IN ENERGY EFFICIENCY MEASURES?**

3 A In addition to attesting that the customer has determined (as a result of an audit
4 or analysis) that there are no cost-effective energy efficiency measures or has
5 invested in energy efficiency measures, the letter should include a certification of
6 the verifiable power and energy savings. The certification should be signed by a
7 licensed professional engineer or certified energy manager.

8 **Q WILL THIS APPROACH RESULT IN FLORIDA RECOGNIZING LESS**
9 **ENERGY EFFICIENCY SAVINGS?**

10 A No. To the contrary, this approach should increase recognized energy efficiency
11 savings because it establishes the means to measure and capture energy
12 efficiency savings that are occurring, but are not being considered or counted.

13 **Q FOR WHAT PERIOD SHOULD AN OPT-OUT REQUEST APPLY?**

14 A To minimize administrative costs, I recommend that an opt-out letter have a term
15 of not less than three years. At the end of the three-year term, a customer must
16 submit another letter signed by an officer of the company attesting that the
17 customer has determined that:

- 18 • there are no new cost-effective energy efficiency measures; or
19 • the customer has invested in new energy efficiency measures;
20 and/or
21 • prior energy efficiency investments continue to be used and
22 useful.

23 If any new investments were made subsequent to a prior opt-out letter, the
24 customer should attach a certification (by a licensed professional engineer or
25 certified energy manager) of the verifiable power and energy savings resulting
26 from the new measures.

1 Q DOES THIS CONCLUDE YOUR TESTIMONY?

2 A Yes.

SURREBUTTAL TESTIMONY OF JEFFRY POLLOCK

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

2 A Jeffry Pollock; 12647 Olive Blvd., Suite 585, St. Louis, MO 63141.

3 **Q ARE YOU THE SAME JEFFRY POLLOCK WHO HAS PREVIOUSLY FILED**
4 **DIRECT TESTIMONY IN DOCKET NO. 140002-EI ADDRESSING THE**
5 **PROPOSED OPT-OUT PROVISION ON BEHALF OF THE FLORIDA**
6 **INDUSTRIAL POWER USERS GROUP (FIPUG)?**

7 A Yes.

8 **Q WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?**

9 A I will clarify the proposed opt-out provision to address the objections raised in the
10 Rebuttal Testimony filed by Duke Energy Florida (DEF), Florida Power and Light
11 Company (FPL), Gulf Power Company (Gulf) and Tampa Electric Company
12 (TECO). Specifically, I will explain how the current proposal is different from
13 proposals that the Commission has previously considered, and why an opt-out
14 provision can better position the utilities and the State of Florida to address
15 changing environmental regulations.

16 **Q WHAT OBJECTIONS WERE RAISED IN THE REBUTTAL TESTIMONY?**

17 A The utilities objected to the opt-out proposal for various reasons. The primary
18 reasons include:

- 19 • An opt-out is contrary to past Commission findings that cost-
20 effective energy efficiency (EE) programs benefit all customers¹;

¹ FPL – Rebuttal Testimony of Thomas R. Koch at 3-4; TECO – Rebuttal Testimonies of Mark R. Roche at 2-4, 8-10 and Terry Deason at 4-5; DEF – Rebuttal Testimony of Tim Duff at 5-6 ; Gulf – Rebuttal Testimony of Jennifer L. Todd at 3-5.

- 1 • Allowing some customers to opt-out of paying for utility-funded EE
 2 programs will impose an undue burden (to the point of possibly
 3 discriminating against) customers that do not, or cannot opt-out,
 4 thereby jeopardizing the sustainability of programs implemented
 5 through the Florida Energy Efficiency & Conservation Act
 6 (FEECA)²;
- 7 • The utilities will incur additional administrative costs to implement
 8 an opt-out provision, which they propose to recover from customers
 9 that choose to opt-out³;
- 10 • Allowing customers to aggregate all of their accounts in the utility's
 11 service area would violate the Commission conjunctive billing rule
 12 and would be both costly and administratively burdensome⁴;
- 13 • An opt-out would potentially disrupt the utility's ability to achieve the
 14 goals established by the Commission and add another layer of
 15 complexity⁵; and
- 16 • The Commission may not have jurisdiction to authorize an opt-out
 17 without further legislative guidance.⁶

18 The last objection is a legal issue and will be addressed by Counsel.

19 **Consistency with Past Commission Findings**

20 **Q IS THIS THE SAME OPT-OUT PROPOSAL THAT THE COMMISSION HAS**
 21 **REVIEWED IN PAST CASES?**

22 A No. The premise for the current opt-out proposal is to empower customers who
 23 can document that their self-funded energy efficiency (EE) programs have resulted
 24 in peak demand and/or energy savings that can be counted toward meeting the
 25 Commission-approved conservation goals for each utility. It is not to provide a free

² FPL – Rebuttal Testimony of Renae B. Deaton at 6; TECO – Rebuttal Testimonies of Mark R. Roche at 5-9 and Terry Deason at 8-12.

³ TECO – Rebuttal Testimony of Terry Deason at 22; DEF – Rebuttal Testimony of Tim Duff at 10; Gulf – Rebuttal Testimony of Jennifer L. Todd at 5-6.

⁴ FPL – Rebuttal Testimony of Renae B. Deaton at 5; DEF – Rebuttal Testimony of Tim Duff at 9-10.

⁵ TECO – Rebuttal Testimony of Terry Deason at 20-22; DEF – Rebuttal Testimony of Tim Duff at 11; Gulf – Rebuttal Testimony of Jennifer L. Todd at 6-8.

⁶ DEF – Rebuttal Testimony of Tim Duff at 3.

1 ride or to allow customers to avoid paying their fair share of EE costs, which the
2 utilities assert would shift these costs to the utility's remaining customers. Thus
3 two criteria must be satisfied to be eligible to opt-out of paying for utility-directed
4 EE. First, a customer must deploy EE. Second, the customer must certify that its
5 self-directed EE is producing energy and/or peak demand savings in such a
6 manner that the savings can be counted by the utility to meet its conservation
7 goals. However, this is no different in concept from the utility directing its own cost-
8 effective EE program for the benefit of its customers and providing documentation
9 that the programs are producing the intended savings as a pre-requisite for cost
10 recovery.

11 **Q DOES THE CURRENT OPT-OUT PROPOSAL CONTRADICT PAST**
12 **COMMISSION PRONOUNCEMENTS THAT COST-EFFECTIVE ENERGY**
13 **EFFICIENCY BENEFITS ALL CUSTOMERS?**

14 **A** No. FIPUG acknowledges that cost-effective EE programs can benefit all
15 customers, though not equally. However, the benefits inure regardless of who self-
16 directs and funds the EE program: the utility or individual customers.

17 **Q WHAT PROBLEMS IS AN OPT-OUT PROVISION DESIGNED TO CORRECT?**

18 **A** An opt-out provision would place all EE, regardless of who provides it, on a level
19 playing field. For example, only utility-directed EE is counted toward meeting the
20 approved conservation goals. However, an opt-out provision would allow self-
21 directed EE savings to also be counted toward meeting the Commission-approved
22 conservation goals. Thus, the utility could spend less money while still achieving
23 its goals.

1 Similarly, all customers pay for utility-directed EE because they benefit from
2 utility-directed EE. However, customers that self-direct their EE are required to
3 pay for it even though all customers benefit from self-directed EE. The proposed
4 opt-out provision (that requires self-directed customers to document the savings
5 before they can be counted toward meeting the utility's goals) would provide better
6 matching between cost-causation and benefits. All customers that benefit from
7 (*i.e.*, utility-directed and self-directed) EE would pay for the costs. The utility's
8 customers would pay for the utility's EE programs while self-directed customers
9 would pay for their EE programs.

10 **No Adverse Impact on Other Customers**

11 **Q WILL AN OPT-OUT PROVISION SHIFT COSTS AND PLACE AN UNDUE** 12 **BURDEN ON THE REMAINING CUSTOMERS?**

13 **A** No. The proposed opt-out provision will not adversely impact the utility's remaining
14 customers. The only circumstance in which customers could be impacted is if the
15 utility ignores the documented savings from the opt-out customers and continues
16 to incur the same level of EE program costs. However, ignoring documented EE
17 program savings from opt-out customers would not be prudent.

18 The proposed opt-out requires a customer to document the peak demand
19 and energy savings under its EE programs. By including the energy and peak
20 demand savings from self-directed customers, the utility should be able to achieve
21 its Commission-approved goals even though it may spend much less on its existing
22 conservation program. Thus, if the utility incurs less costs to achieve the same
23 objectives, the remaining customers should not pay higher rates. There would be
24 no cost shifting and therefore no undue burden placed on the utility's remaining
25 customers as a result of the current opt-out proposal.

1 To summarize, an opt-out would not cause a death-spiral, or threaten the
2 integrity of EE programs implemented through Florida Energy Efficiency &
3 Conservation Act (FEECA).

4 **Q VARIOUS UTILITY WITNESSES ASSERT THAT ALL CUSTOMERS BENEFIT**
5 **FROM COST-EFFECTIVE ENERGY EFFICIENCY PROGRAMS. DO ALL**
6 **CUSTOMERS BENEFIT EQUALLY?**

7 **A** No. First, the statement that all customers benefit from cost-effective EE programs
8 would only be true if the ratepayer impact measure (RIM) test is used to measure
9 cost-effectiveness. However, the Commission has not always relied on RIM for
10 establishing each utility's conservation goals.

11 Second, the RIM test does not mean that the benefits of cost-effective EE
12 programs flow equally to all customers on a per-kilowatt hour (kWh) basis. This is
13 because EE programs also provide some capacity savings. Capacity-related costs
14 are not caused by kWh usage. Thus, a proper allocation of capacity cost savings
15 to customer classes would not result in an equal per kWh benefit. Additionally, the
16 energy cost savings from EE programs are more significant during on-peak hours
17 because this is when the utility typically incurs higher fuel costs than during the off-
18 peak hours. Customers that operate at high load factors use much less of their
19 energy during on-peak hours. Thus, they would receive less of the benefits of EE
20 programs than customers that use more electricity during on-peak hours.

21 Accordingly, although it may generally be the case that all customers
22 benefit from cost-effective utility-funded EE programs (as defined in the RIM), it is
23 not the case that the benefits flow equally on a per-kWh basis.

1 **Q IF COST-EFFECTIVE ENERGY EFFICIENCY PROGRAMS BENEFIT ALL**
2 **CUSTOMERS, DOES IT MATTER WHO SELF-DIRECTS AND FUNDS THE**
3 **ENERGY EFFICIENCY PROGRAM?**

4 A No. The benefits of EE flow irrespective of who implements and funds the
5 programs. Thus, a self-directed EE program by an individual customer can provide
6 the same benefits to the utility's other customers as a corresponding EE program
7 funded by the utility. This is why an opt-out provision that requires customers to
8 document their EE program savings and allow the utility to count the savings
9 toward meeting its Commission approved goals should be a sufficient reason to
10 forgive an opt-out customer from paying the EE program costs funded by the utility.

11 **Administrative and Regulatory Costs**

12 **Q WERE ANY ESTIMATES OF THE ADDITIONAL ADMINISTRATIVE AND**
13 **REGULATORY COSTS TO ADMINISTER AN OPT-OUT PROVISION**
14 **PROVIDED IN THE UTILITIES' REBUTTAL TESTIMONY?**

15 A No estimates were provided by any of the utility witnesses. This is ironic because
16 DEF's affiliates in North and South Carolina have had experience with opt-out
17 provisions. Thus, DEF should be able to estimate the administrative costs of an
18 opt-out provision in Florida and describe its overall experience.

19 **Q WOULD AN OPT-OUT PROVISION NECESSARILY RESULT IN HIGHER**
20 **COSTS?**

21 A No. This argument ignores the potential benefit that a successful opt-out provision
22 should allow the utility to reduce its EE budget because it can count the savings
23 from opt-out customers toward meeting its goals. This could more than offset any
24 additional administrative costs that an opt-out provision may require. However,

1 the administrative costs associated with an opt-out will ultimately depend on how
2 the provision is implemented.

3 **Implementation and Other Issues**

4 **Q WHY SHOULD CUSTOMERS BE ALLOWED TO AGGREGATE ALL OF THEIR**
5 **ACCOUNTS LOCATED WITHIN THE UTILITY'S SERVICE AREA UNDER AN**
6 **OPT-OUT PROVISION?**

7 A First, it would reduce administrative costs, because the customer would not have
8 to submit multiple opt-out letters for each account. Thus, the utility would not have
9 to review multiple opt-out proposals thereby avoiding additional costs.

10 Second, firms that would likely opt-out have robust company-wide EE
11 programs that have been deployed throughout the firm's energy consuming
12 facilities. This is certainly true of customers like Walmart and Publix that employ
13 corporate energy managers who oversee the energy costs and usage in all of the
14 facilities that these firms own and control. Therefore, it is unlikely that aggregating
15 customers' accounts for purposes of opting-out would result in any significant free-
16 riders.

17 **Q WOULD CONSOLIDATING ALL OF A CUSTOMER'S ACCOUNTS WITHIN A**
18 **UTILITY'S SERVICE AREA VIOLATE THE COMMISSIONS CONJUNCTIVE**
19 **BILLING RULE?**

20 A No. Allowing customers to manage their accounts on a utility-wide basis would not
21 change how customers are currently billed, other than applying a different ECCR
22 charge for a customer's accounts that have opted out. This is not conjunctive
23 billing. Further, consolidation would place self-directed EE programs on a more
24 level playing field with utility-directed programs and allow customers to achieve

1 scale economies within the region, thereby encouraging the deployment of more
2 cost-effective conservation.

3 **The Need for Implementing an Opt-Out Provision**

4 **Q THE UTILITY WITNESSES QUESTION THE BENEFIT OF THE PROPOSED**
5 **OPT-OUT PROVISION. ARE THERE ANY OTHER BENEFITS TO**
6 **IMPLEMENTING AN OPT-OUT PROVISION AT THIS TIME?**

7 A Yes. The primary benefits of the proposed opt-out provision are to place EE on a
8 level playing field and allow utilities to count the savings from customers' self-
9 directed and funded EE programs toward meeting their Commission-approved
10 conservation goals. The latter benefit (*i.e.*, counting the energy/peak demand
11 savings from self-directed EE) is potentially valuable if future regulations require
12 either the utilities or the state to ramp-up the amount of EE to achieve certain goals.

13 **Q PLEASE EXPLAIN.**

14 A For example, under the proposed Clean Power Plan (CPP), the EPA has
15 determined that Florida must reduce its carbon dioxide (CO₂) emissions by 498
16 lbs. per megawatt hour (MWh). The EPA's specific 2030 goal calculation for
17 Florida is shown in **Exhibit JP-3**. As can be seen, a portion of the emission
18 reduction goal (*i.e.*, 72 lbs. /MWh) would come from EE (*i.e.*, Step 5).

19 However, the amount of EE necessary to reduce Florida's CO₂ emissions
20 by 72 lbs. /MWh is huge. This is shown in **Exhibit JP-4**. As can be seen, to
21 accomplish a 72 lbs. /MWh reduction would require Florida's EE programs to ramp-
22 up from 587 gigawatt hours (GWh) to over 28,000 GWh, or about 34 times the
23 current level of EE, as determined by EPA. Further, EPA has estimated a price
24 tag of \$2.6 billion to accomplish this ramp-up.

1 Accordingly, if CPP is ultimately implemented, the state (and consequently,
2 the electric utilities) will be required to ramp-up its EE programs. Having an ability
3 to count the EE programs of self-directed customers would facilitate compliance.

4 **Next Steps**

5 **Q THE UTILITY WITNESSES HAVE CRITICIZED THE OPT-OUT PROPOSALS AS**
6 **LACKING IN SUFFICIENT DETAIL TO BE IMPLEMENTED. HOW CAN THIS**
7 **BE RESOLVED?**

8 A First, the Commission should approve an opt-out provision for the reasons
9 discussed above and in my Direct Testimony. Second, following the Commission's
10 initial decision approving an opt-out provision in concept, FIPUG would support
11 DEF witness Duff's proposal that the Commission convene a workshop to discuss
12 how the opt-out should be implemented. This workshop can also address:

- 13 • Protocols for documenting customer savings;
- 14 • Setting the appropriate qualifying threshold (*i.e.*, on a peak demand
15 or energy basis);
- 16 • Whether customer accounts should be aggregated within each
17 utility's service area; and
- 18 • The impact on the utility's existing EE programs.

19 **Q DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

20 A Yes.

1 BY MR. MOYLE:

2 Q And, Mr. Pollock, have you prepared a summary
3 of these -- both testimonies that you're able to give to
4 the Commission?

5 A I have.

6 Q Will you please give the summary?

7 A Gladly, and good evening.

8 Like a number of other states have already
9 done, FIPUG and Walmart are asking the Commission to
10 approve an opt-out provision that would empower certain
11 customers to self-direct their Energy Efficiency
12 programs provided that they can document peak demand
13 and/or energy savings from their self-directed programs.

14 An opt-out requires customers to spend real
15 money. It's not a free ride. It's not an attempt by
16 customers to avoid paying their fair share of Energy
17 Efficiency costs. A properly constituted opt-out
18 provision will give customers a choice between
19 participating and paying for utility-funded Energy
20 Efficiency measures or self-funding their own
21 cost-effective Energy Efficiency improvements.

22 To be clear, customers would only be able to
23 opt-out of the Energy Efficiency portion of the ECCR.
24 Currently, these programs constitute about 35 percent of
25 the costs that are being recovered in the 2015 ECCR.

1 The customer would not be able to opt out of the load
2 management programs.

3 Opting out of utility-sponsored Energy
4 Efficiency programs would provide a stronger incentive
5 for customers to self-direct their energy efficiency.
6 The stronger incentive is the lower ECCR charge as a
7 reward for a customer to implement a successful program
8 that produces measurable and verifiable savings, the
9 savings that can be used and counted by the utilities to
10 meet their goals. By helping a utility meet its
11 Commission-approved goals, a utility can scale down both
12 incentives and administrative costs of its existing
13 programs. This has two potential benefits.

14 The first, if the utility spends less money to
15 achieve the same goals, it should not result in higher
16 ECCR charges because you're starting with a lower cost.
17 Secondly -- so there'd be no cost-shifting. Less money.
18 No cost-shifting and, therefore, no undue burden placed
19 on other customers that are having to pay the charge.

20 Secondly, if future regulations, such as the
21 Clean Power Plan, require a state to ramp up the amount
22 of Energy Efficiency to achieve certain larger goals,
23 the opt-out charge would assist in that effort with the
24 opt-out change. This, too, would benefit all customers.

25 Contrary to the suggestion of some, this is

1 not a free ride. The customer must do something to be
2 exempt from the EE charges, namely they must deploy
3 Energy Efficiency, they must certify that the
4 self-directed programs are producing energy and peak
5 demand savings. This is no different than what a
6 utility does in directing its own cost-effective
7 programs for the benefit of its customers. And the
8 customer must provide documentation that the programs
9 are producing the intended savings. Again, this is
10 nothing different from what the utilities are obligated
11 to do for Cost Recovery.

12 So, the proposed opt-out would place all
13 Energy Efficiency regardless of who provides it on a
14 level playing field. The benefits of Energy Efficiency
15 flow irrespective of who implements and funds the
16 programs. A self-directed Energy Efficiency program by
17 an individual customer can provide greater certainty
18 that the benefits will actually be realized for the
19 other customers to their benefit. This is why an
20 opt-out provision that requires customers to provide the
21 documentation of their program savings and allow the
22 utility to count those savings for meeting the goal
23 should be a sufficient reason to forgive the opt-out
24 customer from paying the EE portion of the Energy Cost
25 Recovery.

1 Although the benefits of an opt-out apply to
2 all self-directed Energy Efficiency measures, we
3 recommend limiting the provision to customers with an
4 aggregated demand of at least 1,000 kW for the
5 facilities that they own and control in each utility
6 service area.

7 Further, the opt-out should be initiated by
8 the customer through a process using a
9 commission-approved form letter. The suggested letter I
10 provided is one of my exhibits, which is a letter used
11 by Duke Energy, Carolina and South Carolina for managing
12 its approved opt-out programs. The letter would be
13 accompanied by the requested documentation, the required
14 documentation and certifications that I've spoken of.

15 The reason for limiting the initial
16 eligibility is to minimize the up-front cost associated
17 with implementing the program. The eligibility criteria
18 can and should be reviewed periodically as both utility
19 and customers become better acclimated with the
20 procedures and process.

21 That concludes my summary.

22 COMMISSIONER BROWN: Thank you.

23 MR. MOYLE: Thank you. Mr. Pollock's
24 available for cross.

25 COMMISSIONER BROWN: Thank you. We will start

1 with Walmart.

2 MR. WRIGHT: Thank you, Commissioner. We have
3 no questions.

4 COMMISSIONER BROWN: Okay. Followed by SACE.

5 MR. CAVROS: I have no questions,
6 Commissioner.

7 COMMISSIONER BROWN: Going to the utilities
8 of -- starting with Florida Power and Light.

9 MS. CANO: No questions.

10 COMMISSIONER BROWN: Duke.

11 MS. TRIPLETT: No questions.

12 COMMISSIONER BROWN: TECO.

13 MR. BEASLEY: No questions.

14 COMMISSIONER BROWN: GULF.

15 MR. GRIFFIN: No questions.

16 COMMISSIONER BROWN: FPUC.

17 MS. KEATING: No questions.

18 COMMISSIONER BROWN: Office of Public Counsel.

19 MS. CHRISTENSEN: No questions.

20 COMMISSIONER BROWN: And staff.

21 MS. TAN: Staff has questions for the witness.

22 THE WITNESS: Yay.

23 *****

24 *****

25 EXAMINATION

1 BY MS. TAN:

2 Q Mr. Pollock, is it your understanding that if
3 FIPUG is proposing to opt out of participating in
4 utility-sponsored Energy Efficiency programs, but
5 continue to participate in utility-sponsored demand
6 response programs?

7 A Correct.

8 Q And in general, do you agree that a demand
9 response program reduces demand on a utility's
10 electrical generating system?

11 A You're talking about the DR programs, the
12 interruptible rate programs, and those things?

13 Q Correct.

14 A Yes, they do.

15 Q And in general, would you also agree that
16 there could be energy savings associated with demand
17 response programs?

18 A I think very minimal. It really depends upon
19 the amount of times the customers are curtailed, but
20 generally speaking, the interruptible rates, the load
21 management programs are more demand-oriented rather than
22 demand- and kilowatt-hour-oriented.

23 Q And do you know if FIPUG's members receive
24 credits or incentives for participating in
25 utility-sponsored demand response programs?

1 A Yes, they do, for which they invest to be able
2 to interrupt and curtail load as necessary to comply
3 with the provisions of the tariffs, which is a very
4 serious allegation and a significant investment.

5 **Q And who pays for those credits that FIPUG's or**
6 **any of the large energy-using commercial or industrial**
7 **customers receive?**

8 A The credits are spread to all customers,
9 including the customers receiving the credits.

10 **Q So, the amount would be recovered from all**
11 **customer classes?**

12 A All customer classes and even from the
13 customers that are providing the demand response.

14 **Q Okay. And if you could please refer to page**
15 **13 of your direct testimony and specifically lines 18**
16 **through 21. Once you get an opportunity to look at**
17 **that, please let me know.**

18 A I have it. Go ahead.

19 **Q Okay. And here you recommend that in order**
20 **for a customer to be eligible to opt out of**
21 **utility-sponsored Energy Efficiency programs, the**
22 **customer must have loads of at least one megawatt at a**
23 **single delivery point or through aggregation. In**
24 **addition, the customer must have self-funded or**
25 **committed to self-fund Energy Efficiency programs that**

1 **have demonstrated the ability to produce peak demand and**
2 **energy savings, is that correct?**

3 A Yes.

4 Q **Okay. And are you familiar with Walmart's**
5 **opt-out proposal?**

6 A Yes.

7 Q **Okay. How does FIPUG's opt-out proposal**
8 **differ from the Walmart opt-out proposal?**

9 A Well, I think the biggest difference is the
10 threshold. So, Walmart is suggesting 15 million
11 kilowatt hours a year, which, I do the math right, I
12 think that would almost, depending on what load factor,
13 you'd assume the 15 million would come out to a peak
14 demand somewhere around three to three-and-a-half
15 megawatts. So 3,000 to 3,500 kW. So, it'd be a little
16 bit bigger than obviously the one megawatt or 1,000 kW
17 that I suggested.

18 That's probably the principal difference. I
19 think they're a little more detailed in terms of, you
20 know, how -- what the opt-out window would be and, you
21 know, specifying a time when you would not be able to
22 opt back into utility programs or you wouldn't be able
23 to opt out of them for a certain period of time and so
24 that's -- I think those are the major differences.

25 Q **Okay. And if you could look at page 13 and**

1 **line 14 of your direct testimony.**

2 A Yes.

3 **Q Did you state that an opt-out provision should**
4 **be limited to non-residential customers?**

5 A Initially. Just -- again, just to get started
6 to be able to provide some initial emphasis to their
7 program to see how well it works, and because they think
8 the large customers tend to have more opportunities to
9 self-invest in Energy Efficiency.

10 **Q And is that -- do you believe that the**
11 **proposed opt-out provision should only be available to**
12 **large-energy-consuming entities such as the customers**
13 **represented by FIPUG?**

14 A No. I think ultimately, you know, it could be
15 broad -- applied a lot more broadly, but you don't want
16 to start all in until you've had a chance to get the
17 program up and running, determine how it works, make
18 sure that there are no unintended adverse affects that
19 you hadn't -- weren't aware of at the beginning of the
20 program.

21 So, I think it's -- you can almost
22 characterize it as kind of an initial pilot program that
23 you're trying to see how well it works before you try
24 to, you know, deploy it to a broader mix of customers,
25 but, I mean, the principle, all Energy Efficiency

1 regardless of where it comes from, provides the same
2 benefits.

3 **Q So, you believe that expansion could come**
4 **later?**

5 A Yes. Potentially, yes.

6 **Q And is it your belief that residential**
7 **customers invest Energy Efficiency measures outside of**
8 **utility-sponsored Energy Efficiency -- Energy Efficiency**
9 **on their own?**

10 A Sure. I do.

11 **Q And are you aware that the largest four**
12 **utilities have custom incentive programs for large**
13 **customers that allow the customer to suggest a project?**

14 A I'm aware of that. I've also looked at the
15 expenditures in those programs and the expenditures are
16 nowhere near what the budget levels are and I can only
17 interpret that to mean that those programs have not
18 really won a lot of followers.

19 **Q Okay. And I'd like to just pass out the --**
20 **it's Exhibit No. 19, Bates number 00003300004, and this**
21 **is your response to staff's first set of interrogatories**
22 **number three.**

23 COMMISSIONER BROWN: We'll take a moment
24 there.

25 MS. TAN: That is Exhibit No. 19.

1 THE WITNESS: Thank you.

2 BY MS. TAN:

3 Q And when you're ready, please let me know.

4 A Yes.

5 Q All right. And FIPUG has customers who
6 participate in some of those custom incentive programs,
7 is that correct?

8 A That's my understanding, that three have in
9 the last five years.

10 Q Okay. And if you could look at page five of
11 your surrebuttal testimony, lines 22 through 25.

12 A Page five, lines --

13 Q Twenty-two through 25.

14 A Got it.

15 Q And here you state that peak demand and/or
16 energy savings from an opt-out customer should count
17 toward commission-approved conservation goals for each
18 utility, is that correct?

19 A Yes.

20 Q Could you please explain why you believe it's
21 important that opt-out customers estimated or reported
22 peak energy savings be counted toward Energy Efficiency
23 and Demand Side Management goals?

24 A Well, I think that's really the key to the
25 program. The key is, is to make sure that -- that in

1 consistent with -- my understanding of FEECA is to
2 maximize a -- or try to minimize the use of fossil
3 resources and encourage growth -- less growth and
4 resources necessary and to benefit the, you know, the
5 state and overall welfare and improve the end-use
6 efficiency.

7 So, if customers can contribute to that
8 process by investing in their own Energy Efficiency and,
9 again, as a reward for doing that to be relieved of
10 paying certain Energy Efficiency costs, to the extent
11 that results in customers doing those programs they
12 might not have otherwise done, I think that fulfills
13 the, my understanding, is the whole purpose of the FEECA
14 act.

15 **Q So, do you believe that this would help ensure**
16 **that the utilities would meet their goals?**

17 A Meet or even exceed them. I mean, there have
18 been times in the past utilities have not met their
19 goals for various reasons and, you know, it's -- you
20 know, when you install a lot of Energy Efficiency and
21 it's on a voluntary basis, you never quite know what
22 you're going to get, you know, until you've had a lot of
23 experience with it, but in this instance, people that
24 would opt out have already done the programs or doing
25 the programs, they've hired someone that says this is

1 what the programs are saving, the utility doesn't have
2 to -- you know, doesn't have to do any kind of second,
3 you know, third contracting of people to do measurement
4 and evaluation. So, the customer is provided all of
5 that function, or either the utility, and say here's
6 what the savings are as attested by our professionally
7 licensed engineers.

8 **Q What effect would not allowing opt-out**
9 **customers estimated or reported energy savings to be**
10 **counted toward Energy Efficiency and Demand Side**
11 **Management goals have on non-opt-out participants?**

12 A Well, it would depend on, A, if you assume
13 that there is an opt-out and you excuse customers from
14 paying the charge, but then don't count the savings and
15 as a result there's no change in the level of programs,
16 some costs are going to be moved over to other
17 customers.

18 Again, talking about just that 35 percent of
19 the Energy Efficiency costs that are recovered in the
20 ECCR, there would be some reallocation of those costs if
21 you didn't scale -- weren't able to scale down the
22 programs because you're not counting those savings and
23 meeting the goals.

24 **Q And would that be the same for the utilities?**

25 A Same as what?

1 **Q Like, the same result. Would that have the**
2 **same effect for the utilities?**

3 A I'm sorry. What's the utility doing that
4 would have the same result?

5 **Q One moment. We'll remove that question.**

6 All right. If you could please turn to page
7 eight of your surrebuttal testimony, lines seven through
8 ten. And let me know when you're ready.

9 A I have it.

10 **Q Here you state that all customers benefit from**
11 **cost-effective Energy Efficiency programs only if the**
12 **RIM test is used, is that correct?**

13 A Yes, that's right. All the RIM test tells you
14 is whether the general body of ratepayers benefit or
15 not. It can't tell you whether certain customers
16 benefit more or less or not at all, but that's what the
17 RIM test tells you is that overall everybody, everybody,
18 the collective, you know, benefits, they're better off
19 with than without.

20 **Q And do you believe that the IOU's DSM goals**
21 **are based on RIM because it benefits both participants**
22 **and non-participants alike?**

23 A They have that potential, but as I indicated
24 later in the pages of testimony, the benefits are not
25 equal, they're not kilowatt-hour-based benefits. The

1 benefits will vary based on demand, based on the amount
2 of savings, and that's not an equal
3 cents-per-kilowatt-hour benefit the way that the rate is
4 actually charged. So, all I'm saying is if the ECCR
5 charge is a kilowatt hour basis is not necessarily how
6 each customer would benefit from an Energy Efficiency
7 program.

8 **Q Thank you. And do residential customers**
9 **benefit when commercial and industrial customers**
10 **participate in Energy Efficiency and Demand Side**
11 **management programs?**

12 A And I'm presuming you're meaning
13 cost-effective Energy Efficiency and Demand Side
14 programs?

15 **Q Yes.**

16 A Potentially, yes.

17 **Q And do commercial and industrial customers**
18 **benefit when residential customers participate in Energy**
19 **Efficiency and Demand Side Management programs?**

20 A Right. Both utility and self-directed
21 programs, yes.

22 **Q And in here in your response that you -- I had**
23 **passed out a little earlier, and its response to staff's**
24 **first set of interrogatories number 4B, you state that**
25 **FIPUG's members use different return on investment**

1 **cost-effectiveness and payback methodologies when**
2 **determining what Energy Efficiency programs are**
3 **implemented at their facilities, is that correct?**

4 A That's my understanding. Of course, they are
5 the ones that are making the investment so they have to
6 determine if that investment is cost-effective for them.
7 We're not asking the utility to make the investment.
8 The customer is making the investment.

9 Q **And how does each FIPUG member measure the**
10 **cost-effectiveness of any measures or programs it plans**
11 **to implement as part of its Energy Efficiency portfolio?**

12 A I couldn't tell you specifically for any
13 member, but generally they have capital requirement
14 processes, I think -- or it was said maybe earlier that
15 customers have to have -- to compete with capital within
16 their own company and they have certain criteria that
17 they have to meet in order to get capital released to
18 fund various programs. So, the sooner you can make that
19 capital available by lowering electric bills or other
20 such means, the quicker that capital might be deployed,
21 you know, toward a particular efficiency project.

22 Q **Okay. And if you could please look at page**
23 **of -- page nine, line 21, of your surrebuttal testimony.**

24 A Okay.

25 Q **Here you stated that an opt-out provision**

1 would not necessarily result in higher costs for those
2 customers who do not opt out of utility-sponsored Energy
3 Efficiency programs, is that correct?

4 A Yes.

5 Q All right. And did you provide any exhibits
6 using Florida-specific data from the IOU's in this
7 docket that supports your conclusion that there would be
8 no increase in costs the remainder of customers if an
9 opt-out provision was implemented?

10 A I haven't done the analysis that I've seen the
11 investor-owned utilities did, which essentially assumes
12 that the pot, the dollar stay the same, and that assumes
13 that opt-out applies to both Energy Efficiency and
14 Demand Side Management. So, I haven't done that
15 analysis.

16 You know, I'm saying that to the extent that
17 you're only opt-outing out of the Energy Efficiency,
18 which is 35 percent, and to the extent that the pot of
19 dollars that go in the Energy Efficiency programs are
20 scaled back because you don't -- no longer have to spend
21 as much money to achieve the same goals or result in a
22 lower pot of dollars to be allocated over a smaller
23 base, and that that should, over time, compensate for
24 the smaller base.

25 Q Thank you. And did FIPUG consider the FEECA

1 **statute and other unique characteristics of Florida's**
2 **regulatory framework when considering whether or not it**
3 **should seek permission to opt out of paying for the**
4 **Energy Efficiency component of the Energy Conservation**
5 **Cost Recovery Clause?**

6 A I would say definitely. I think FEECA just
7 says, look, we're trying to increase the efficiency of
8 the electric systems, we're trying to conserve expensive
9 resources, we're trying to reduce growth, we're trying
10 to increase end-use efficiency. To the extent you put
11 Energy Efficiency on a level playing field and empower
12 the customers to do it, I think it's all totally
13 consistent with FEECA's objectives, but the utilities
14 don't have to be the only ones doing it, though. That's
15 the part of it. It's a state program and to the extent
16 everybody, all the stakeholders in the state contribute
17 toward, I think the state is better off.

18 Q Okay. And if you could please look at page
19 six, line five of your direct testimony.

20 A Page six, line five.

21 Q Correct.

22 A Got it.

23 Q In here you state that the current ECCR
24 socializes Energy Efficiency costs, is that correct?

25 A That's what I said, yes.

1 **Q Okay. Could you please explain why you**
2 **believe this to be true?**

3 A So, costs are, as it's been said before, costs
4 get allocated to the cost causers based on, you know,
5 principles of cost causation. If a customer does an
6 Energy Efficiency program and participates in a utility
7 Energy Efficiency program, that customer is buying a
8 service from the utility. Think of it as buying
9 megawatts or negative kilowatt hours or energy savings.
10 Under pure cost causation argument, the customer that
11 buys this service would pay for that service. You know,
12 the fact that the customers that aren't buying the
13 services still have to pay it, that's what we're talking
14 about in terms of you're spreading the costs over people
15 not only that use the service, but people that don't.
16 That's how I define socializes.

17 **Q I'm sure everyone will be happy to hear that**
18 **staff has one final question.**

19 In your opinion, do you believe that an opt
20 out of energy -- Energy Efficiency programs would
21 benefit all ratepayers?

22 A I think if done in a prudent and rational way
23 where we can look at the same set facts and agree that
24 there are ways that people can make this happen that
25 don't have unintended consequences and create

1 opportunities for customers to be part of the process, I
2 think it can be very beneficial.

3 MS. TAN: Staff has no further questions.

4 Thank you very much.

5 THE WITNESS: Thank you.

6 COMMISSIONER BROWN: Thank you, Ms. Tan.

7 Commissioners. Commissioner Edgar.

8 COMMISSIONER BROWN EDGAR: Briefly. Thank
9 you.

10 Welcome. Would you agree that the overall
11 purpose of the FEECA statute and the Commission's
12 implementation over the years is to result in
13 cost-effective and efficient real conservation and
14 savings?

15 THE WITNESS: Yes. And turning out that
16 obligation, you want to make sure that the
17 utilities have spent the money that ratepayers pay,
18 that that money is being used in the most
19 cost-efficient and wise and practical, you know,
20 prudent manner. That's why you have the
21 cost-effectiveness test. That's why you have the
22 payback screens. All the things that -- all the
23 inner-trappings that affect what programs the
24 utility can do and how they can do them, you know,
25 that's very important. That's your role as a

1 regulator of the Commission -- a regulator of
2 utilities.

3 Sorry. Did I say something wrong?

4 COMMISSIONER EDGAR: No, I think it's --

5 THE WITNESS: It's late.

6 COMMISSIONER EDGAR: -- interesting that
7 you're going to tell me my role.

8 THE WITNESS: I can only suggest.

9 COMMISSIONER EDGAR: It's fine. It's fine.
10 Seriously, fine. But it's late for me, too, so
11 I've got to get a grin where I can.

12 THE WITNESS: Good.

13 COMMISSIONER EDGAR: Okay. And then would you
14 also agree that over the years -- my word -- but a
15 lynchpin of the Commission's requirements and
16 implementation of the FEECA statute is that the
17 full body of ratepayers both benefit and
18 contribute?

19 THE WITNESS: I think that the extent that
20 Energy Efficiency can provide tangible benefits,
21 and I don't limit that to Energy Efficiency that
22 the utilities provide, then I think that all
23 customers can participate, all customers can pay
24 for it and I think, you know, everybody is better
25 off. It's not just a question of just looking at

1 the utilities, what programs they do, that you
2 supervise, but also what -- how you can get
3 customers to do the same thing in a way that helps
4 everybody.

5 COMMISSIONER EDGAR: So, recognizing that an
6 opt-out option for certain users may have some
7 appeal in certain circles, and my understanding and
8 from testimony today is part of statutory schemes
9 in some other states that have statutory schemes
10 different from Florida's, how could this Commission
11 be assured that implementation of an opt-out option
12 would continue to benefit all customers?

13 THE WITNESS: Well --

14 COMMISSIONER EDGAR: Will be part of the
15 larger program to benefit all customers.

16 THE WITNESS: Yes. And you're asking the hard
17 questions, as you should.

18 COMMISSIONER EDGAR: That's my role.

19 THE WITNESS: Yes. I get that. I get that.
20 Totally get that.

21 So, I think what -- if I were in your shoes,
22 if I may be so bold, although it wouldn't be the
23 same fit obviously, but if I can just be on your
24 side of the table -- so I would say, okay, here's a
25 possibility. Here's a program that's been tried

1 and it's been approved in other states. It's been
2 consistent, or deemed to be consistent, with public
3 policy. We clearly have customers that are capable
4 of providing their own Energy Efficiency, here's
5 some guidelines that need to be met in order for
6 this to work, and you set out those guidelines and
7 we try to develop a program that meets those
8 guidelines so that nobody is harmed.

9 I mean, there are obviously some things that
10 we need to know a little bit more about in terms of
11 we've seen estimates ranging from, what, 90,000 to
12 three million in terms of administration costs. I
13 think we need to get to the bottom of that. Well,
14 how can it be such a broad range when you've got
15 the one company that estimated the lowest that has
16 all the experience?

17 So, you have to -- you're going to have to
18 figure out, well, what's the real number and what's
19 the real effort and what things are really going to
20 be required to make it work? I think we maybe have
21 another, you know, series of discussions to make it
22 happen, but I think if you say, okay, we think an
23 opt-out is a good thing, we want to try it, but
24 here are the -- here are guidelines for doing it,
25 then I think that's the way -- that's a path

1 forward.

2 COMMISSIONER EDGAR: And here's where I'm
3 struggling -- well, with lots of items, but
4 conceptually I certainly see that logic, but there
5 again, it's in the details and the implementation
6 and we certainly have had other, in the state of
7 Florida and many other states, successful
8 self-certification programs in a variety of arenas
9 and industries.

10 It's the amorphousness of the details of how
11 we would implement and make sure that, again, the
12 results were not being reduced, for lack of a
13 better term, over the next years and that certain
14 customer groups would not be financially more
15 burdened than otherwise. Any response?

16 THE WITNESS: So, I'm kind of a guy that likes
17 to stick my toe in the water before I get in. I
18 mean, you can call it a pilot program. You can
19 call it -- we'll limit it to X amount of load or X
20 amount of customers. Start slow, but get it
21 started and get the discussion on the table about
22 what it would take to make this work and take it
23 from there and put all the right minds in the right
24 room and we'll come up with a solution.

25 I think the general guidelines are in the

1 testimony that you have in terms of overall, you
2 know, qualification criteria, what a customer has
3 to do. You know, obviously we want to know, okay,
4 what proof the utilities have to have in order to
5 call these dependable savings that they can count
6 for planning purposes. You know, I think all of
7 those things are legitimate, you know, next step
8 issues, you know, once we have, you know, something
9 to work with.

10 COMMISSIONER EDGAR: I don't -- I am unclear
11 as to whether with the issues that are
12 specifically, clearly articulated in this docket
13 before us and this record that flows toward those
14 questions, whether we will have the information to
15 take us to that next step, but -- and I'm not even
16 going to ask you to respond to that, but that's
17 something that obviously once the record is
18 complete and then the analysis that goes forward
19 I'm --

20 THE WITNESS: Sure. And I could suggest a few
21 if -- you know, in your worry say, well, we're not
22 sure we can go forward with this then maybe the
23 step would be, here are the questions that we'd
24 like to answer and we'd like to see your testimony
25 answering these specific questions.

1 a custom program.

2 Q Okay. Is that your understanding of the
3 existing program?

4 A I don't -- I haven't gone through the process
5 myself, so I can't say that I've had first-hand
6 experience. I've talked to clients who have dealt with
7 utility self-directed programs and things like that
8 where they have to prove to the utility that their
9 project is worthy in order to get a rebate back on what
10 they've already paid. And from I've been told, it's not
11 an easy thing to do. People don't have the kind of time
12 that you need to spend in order to devote to get the
13 money back. So, there's not a very good, you know,
14 payback on the investment.

15 MR. MOYLE: That's all I have.

16 COMMISSIONER BROWN: Thank you, Mr. Moyle.
17 Exhibits.

18 MR. MOYLE: So, we would move in Mr. Pollock's
19 exhibits both on his direct and surrebuttal and I
20 think, as I indicated earlier, they were marked as
21 13 through 18 in the Exhibit 1.

22 COMMISSIONER BROWN: Seeing no objections,
23 I'll move into the record Exhibits 13 through 18.

24 (Exhibit Nos. 13 through 18 admitted into
25 evidence.)

1 All right. Under 12 hours. Excellent work.
2 Nobody's counting. Would you like your witness
3 excused, Mr. Moyle?

4 MR. MOYLE: I'm sorry?

5 COMMISSIONER BROWN: Would you like your
6 witness excused?

7 MR. MOYLE: Please.

8 COMMISSIONER BROWN: Thank you very much. All
9 right, staff, additional procedures, concluding
10 matters.

11 MS. TAN: I just want to mention two critical
12 dates. The hearing transcript will be due on
13 July 30th of this year and then briefs, which are
14 40 pages, will be due on August 20th.

15 COMMISSIONER BROWN: Do any of the parties
16 have any questions at this time? No.

17 Seeing none, we are going adjourn this hearing
18 at 8:15.

19 (Whereupon, the proceedings were concluded at
20 8:15 p.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DANA REEVES, 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 479 through 554, 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.



DANA REEVES
NOTARY PUBLIC
COMMISSION #EE182380
EXPIRES MARCH 22, 2016

Please explain what the witness believes are the different factors that have occurred subsequent to those orders that would make it appropriate for the Commission to approve an opt-out provision?

Response: The proposed opt-out provision would apply only to energy efficiency (EE) and not load management programs. As explained in Mr. Pollock's Surrebuttal testimony, the proposal would allow utilities to count the peak demand and energy savings from self-directed EE toward meeting their Commission-approved conservation goals as a condition for opting out. Further, to the extent that future environmental regulations require the state or a utility to document EE savings, the proposed opt-out provision would help the state or the utility to comply with the requirements.

2. On page 10 of his direct testimony, Walmart witness Baker proposes that an eligible account may not opt to participate in the designated energy efficiency programs for two years after the first day of the year of the period in which the customer opts out. What are FIPUG's views on this proposed requirement?

Response: FIPUG does not oppose this requirement.

3. In EXH KEB-2 pgs. 1 of 8 and 8 of 8, Walmart witness Baker lists a Business Custom Incentive and Commercial/Industrial Incentive energy efficiency program provided by Florida Power & Light (FP&L) and Gulf Power Company (Gulf), respectfully. Please identify how many FIPUG members are or have participated in either of these programs in the past five years.

*Staff exh 19
(demonstrative)*

Response: FIPUG maintains its objection that this question seeks confidential, sensitive business information that is protected as a trade secret or otherwise. Without waiving this objection, FIPUG states: Three FIPUG members have participated in either of these programs in the past five years.

4. On page 5 of witness Pollack's testimony, the witness states that to the extent an opt-out customer's power and energy savings are measured and verified, the self-funded measures should be counted toward the utility's conservation goals. In detail please explain:

- a) Why does the witness believe it is appropriate to allow the utility to count energy efficiency savings towards goals if the opt-out customer is not participating in a utility-sponsored energy efficiency program?

Response: The resulting peak demand and energy savings from EE programs benefit all customers regardless of who provides EE. Thus, if an opt-out customer can demonstrate using the appropriate measurement and evaluation protocols that the customer's self-directed EE programs are providing tangible peak demand and energy benefits and these savings are counted toward achieving the utility's Commission-approved conservation goals, it will reduce the costs that the utilities must spend, and hence, lower the ECCR charges.

- b) Do FIPUG members use different investment evaluations (return on investment, cost-effectiveness, simple payback) in determining what energy efficiency programs are selected to be implemented at individual facilities? Please identify what investment evaluation criteria is used FIPUG members.