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August 20, 2015

**VIA: ELECTRONIC FILING**

Ms. Carlotta S. Stauffer  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

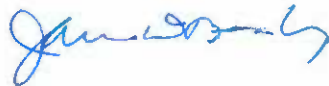
Re: Request to opt-out of cost recovery for investor-owned electric utility energy efficiency programs by Wal-Mart Stores East, LP and Sam's East, Inc. and Florida Industrial Power Users Group; FPSC Docket No. 140226-EI

Dear Ms. Stauffer:

Attached for filing in the above docket is Tampa Electric Company's Brief and Post-Hearing Statement of Issues and Positions.

Thank you for your assistance in connection with this matter.

Sincerely,



James D. Beasley

JDB/pp  
Attachment

cc: All Parties of Record (w/attachment)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request to opt-out of cost recovery for )  
investor-owned electric utility energy ) DOCKET NO. 140226-EI  
efficiency programs by Wal-Mart Stores East, LP )  
and Sam's East, Inc. and Florida Industrial )  
Power Users Group. ) FILED: August 20, 2015  
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**TAMPA ELECTRIC COMPANY'S BRIEF  
AND POST-HEARING STATEMENT OF ISSUES AND POSITIONS**

Tampa Electric Company ("Tampa Electric" or "the company"), pursuant to the Prehearing Order in this proceeding<sup>1</sup> submits this its Brief and Post-Hearing Statement of Issues and Positions.

**BRIEF**

**Background**

On November 25, 2014 pursuant to Order No. PSC-14-0583-PHO-EG, issued October 15, 2014, in Docket No. 140002-EG, the Commission opened this docket to address issues raised by Wal-Mart Stores East, LP and Sam's East, Inc. ("Wal-Mart") and the Florida Industrial Power Users Group ("FIPUG"). A Prehearing Conference was conducted July 7, 2015. A hearing was conducted July 22, 2015 in this proceeding during which the Commission considered direct and rebuttal testimony of eight witnesses and surrebuttal testimony of three witnesses addressing the opt-out proposals of FIPUG and Wal-Mart.

**Summary of Tampa Electric's Position**

FIPUG and Wal-Mart are recommending a stark change in the way the Commission has historically and consistently authorized the recovery of energy efficiency related costs through

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<sup>1</sup> Order No. PSC-15-0290-PHO-EI, issued July 15, 2015.

the energy conservation cost recovery clause ("ECCR"). They have asked the Commission to allow certain large customers to "opt out" of paying their fair share of the cost of certain ECCR programs. Their proposals are fundamentally flawed, rely on unsupported assumptions and would unfairly burden other customers who are not provided a similar opt-out opportunity with higher rates. In essence, FIPUG and Wal-Mart are looking for preferential treatment at the expense and discrimination of all other customers.

The Commission should reject the proposal to permit certain customers to opt out of cost recovery for investor owned utility energy efficiency programs proposed by FIPUG and Wal-Mart. Since the enactment of the Florida Energy Efficiency and Conservation Act ("FEECA") and the inception of demand side management ("DSM") in Florida, this Commission has a long-standing practice of being fair, equitable and reasonable for all ratepayers while minimizing the overall rate impacts of DSM expenditures. The Commission has consistently strived to establish DSM goals that create the least amount of upward pressure on customer rates and avoid establishing subsidies or cross-subsidies between customers or customer classes. The opt-out proposals advanced by FIPUG and Wal-Mart would cast all of these principles aside.

The opt-out proponents essentially urge the Commission to ignore the value to all customers that flow from the approved DSM programs that the utilities currently offer by erroneously categorizing the programs as having either energy only or demand only impacts. The opt-out proponents' attempts to label certain program measures as either energy or demand, when each measure has some level of demand side savings and some level of energy savings, exposes why what they are proposing is unreasonable and self-serving. The issues an opt-out provision would bring with unfairness, inequitable and unreasonable treatment of all other customers provide still further reasons to reject this proposal. FIPUG and Wal-Mart also have

simply failed to demonstrate any sound reason for changing the current ECCR mechanism and allocation for all conservation programs.

Allowing certain large customers to opt out of paying their fair share of ECCR costs would be contrary to Commission practice and would be inconsistent with the manner in which conservation costs are incurred pursuant to the Commission's implementation of FEECA. The proposals would also unfairly burden non-opt-out customers with higher rates, perhaps to the point of being unduly discriminatory, and could jeopardize the continued sustainability of cost-effective conservation pursuant to FEECA.

The opt-out proponents have failed to avail themselves of Tampa Electric's "Conservation Value" program. That program has been in existence since 1991 and all commercial and industrial customers are eligible to participate regardless of demand or kWh monthly or annual usage amounts or thresholds. If a FIPUG member or Wal-Mart has an energy efficiency program it desires to implement and that program is cost effective under the Commission's cost-effectiveness tests, the customer can qualify for a rebate for implementing the program. Thus, the customer can implement its program and receive a rebate.

The opt-out proponents totally ignore the financial impacts of their opt-out proposals to other non-opt-out customers. Their vaguely described implementation methodology would introduce elements of uncertainty and result in increased implementation and regulatory costs. The opt-out proposals would be unfair and a monumental departure from the Commission's consistent view for over three decades that all customers benefit from Commission approved conservation programs that have been found to be cost effective and, therefore, all customers should help fund these programs.

Finally, FIPUG and Wal-Mart have failed to provide essential details regarding their proposals. Although they could have filed a detailed petition, outlining the operational details of how their opt-out programs would impact the investor owned utilities and their customers, they chose not to. When witness Pollock was questioned regarding how FIPUG's opt-out proposal would work and how ratepayers would be protected, he could only offer vague generalities, conceding "there are obviously some things that we need to know a little bit more about." (Tr. 549, lines 9-10). He further conceded that a lot of things need to be figured out, and a "series of discussions" would be needed. (Id. lines 17-22). Again, FIPUG and Wal-Mart are recommending a stark change in the way the Commission has implemented FEECA. They have the burden of proof and they have failed to meet that burden.

For all of these reasons, the opt-out proposals of FIPUG and Wal-Mart should be rejected. Doing so will not impose incremental costs on FIPUG members or Wal-Mart but, instead, will enable them to continue fairly paying for and receiving the benefits of the cost-effective utility sponsored DSM programs that are so carefully administered by this Commission.

## ARGUMENT

### I. THE OPT-OUT PROPOSALS OF FIPUG AND WAL-MART ARE BASED ON FALSE AND SELF-SERVING ASSUMPTIONS.

#### The Opt-Out Proposals at Issue Rely on the Mistaken Premise that Utility Sponsored DSM Measures Benefit Only the Participants, or the Rate Class in Which the Participants Take Service

A common thread throughout the opt-out proponents' case is the unfounded assumption that utility sponsored DSM measures benefit only the participants or the rate class in which the participants take service. This premise of these proposals is erroneous. As FPL witness Koch testified, the proponents ignore the fact that all customers (whether participating in a DSM program or not) benefit from the shared system cost savings stemming from peak demand and energy reductions created by the participating customers. Relying on the rate impact measure ("RIM") cost-effectiveness test to set goals and approve programs, the Commission ensures that all of Florida's DSM measures benefit the general body of customers because these programs result in lower electric rates for all customers. Further, it is appropriate for all customers to share in paying for the costs of these programs because they all share in the benefits. Because all customers share in the benefits of approved DSM programs, there is no justification for allowing certain groups of customers to opt out of paying for those programs. (Tr. 143, line 15 – Tr. 144, line 8)

DEF's witness Duff concurred and observed that programs that pass the RIM test ensure that both participants and non-participants benefit from utility sponsored conservation programs. Even if a customer does not participate, there is no reason to allow that customer to opt out since the goals and programs are set assuming no harm to non-participants. (Tr. 230, lines 3-11)

Establishing appropriate DSM goals, upon which ECCR charges are based, is a more appropriate means of ensuring fairness, as opposed to any opt-out program, because this approach addresses the fairness issue for all customers. (Gulf witness Floyd, Tr. 339, lines 3-12)

Tampa Electric witness Roche concurred and pointed out that the purpose of the ECCR clause is to recover the costs the utility incurs for actions that it takes to deliver cost-effective DSM programs that provide benefits to all customers. (Tr. 394, lines 14-19). The unfairness of allowing a select group of large opt-out customers to receive the benefits of conservation programs without paying for them speaks for itself.

In addition, Tampa Electric has offered a program since 1991 that all commercial and industrial customers can participate in called "Conservation Value". All commercial and industrial customers are eligible to participate in this program regardless of demand or kWh monthly or annual usage amounts or thresholds. Tampa Electric utilizes Commission's cost-effectiveness tests described in Rule 25-17.008, Florida Administrative Code, to determine the rebate qualification, thereby assuring that any project submitted for rebate is cost-effective. There are no restrictions to how potential projects can be identified under this program and as stated earlier, the program only pays a rebate if the project is cost effective. Essentially, this program will pay rebates for any cost-effective project whether it saves mostly demand or mostly energy, including the energy efficiency projects described by the opt-out proponents. (Tr. 431, lines 3-22). FIPUG's members and Wal-Mart could have taken advantage of Tampa Electric's Conservation Value program, and others like it administered by the other utilities, and mooted any consideration of an opt-out measure.

As Tampa Electric witness Deason explained, utilizing the RIM test assures that the expected benefits exceed the expected costs, such that costs and rates on an overall basis are

lower with the conservation programs than they would be without them. Thus, all customers benefit from cost-effective conservation and all customers should pay their fair share of the conservation program costs. (Tr. 443, line 21 – Tr. 444, line 2)

FIPUG and Wal-Mart are simply wrong in their assumption that utility sponsored DSM measures benefit only the participants or the rate class of participants and this false premise undermines their opt-out proposals.

**The Opt-Out Proponents Assume Inaccurate Distinctions Between Demand Response Measures and Energy Efficiency Measures**

A second major flaw in the assumptions upon which FIPUG and Wal-Mart based their opt-out proposals is that any particular conservation measure produces either demand savings or energy savings, but not both. This is simply not the case. Gulf's witness Floyd testified that virtually all of Gulf's DSM programs provide both energy and demand savings. In particular, cost-effective RIM based energy efficiency programs benefit all customers. (Tr. 337, line 21- Tr. 338, line 5)

As Tampa Electric's witness Roche testified, energy efficiency programs clearly provide both energy savings and demand reduction. Energy savings and demand reduction are both included in the Integrated Resource Planning ("IRP") process utilized by Tampa Electric. In that process the demand reduction component is used to determine whether to eliminate or defer the need for a new power plant. The energy savings component is used to influence the specific type of power plant to be built, such as a peaking unit versus a base load unit. This fact seems to be lost in the testimony of FIPUG and Wal-Mart witnesses.

As witness Roche concluded, regardless of whether a DSM measure is categorized as energy efficiency or demand reduction, both types of measures produce both energy and demand



savings which clearly have a beneficial financial impact on the future rates for all customers, including would-be opt-out customers. (Tr. 395, line 11 – Tr. 396, line 5)

**The Opt-Out Proponents are Wrong in Their Assumption that Load Management Programs are Better Implemented by Utilities While Energy Efficiency Programs are More Effectively Implemented by "Large" Customers**

The opt-out proponents third major flawed assumption is that would-be opt-out customers are more adept at implementing energy efficiency programs than those who would not qualify to opt out. From this, their argument suggests that the Commission should focus on load management programs and let the "large" customers handle energy efficiency programs. There is no merit to this contention and it fails to justify their opt-out proposals.

First of all, as discussed by FPL's witness Koch, Florida's approach to DSM ensures that approved programs provide a net benefit to all customers regardless of which customers are implementing the DSM measures. Therefore, it is irrelevant, in deciding who should pay for DSM measures, to attempt to differentiate between customer classes based on which ones implement more of those measures. (Tr. 146, line 15 – Tr. 147, line 2)

Second, the opt-out proponents' assertion that only large customers implement energy efficiency measures on their own is wrong. All of the utilities have numerous energy efficiency measures for residential and small business customers that were eliminated from the utility sponsored DSM plan by the free rider screen because they can be implemented by those customers without incentives. (*Id.*, lines 4-9)

Finally, as witness Koch observed, the opt-out proponents' proposal to shift all of the energy efficiency program costs to smaller customers while continuing to have all customers share in paying for load management programs represents a one-sided effort by the opt-out proponents to avoid paying for energy efficiency measures open to all customers, while having

smaller customers contribute to load management programs available only to large business customers. Such an approach is certainly one-sided, unfair and very inappropriate. (Tr. 147, lines 11-21)

**The Opt-Out Proposals are Based on the Erroneous and Unsupported Assumption that Only Larger Commercial and Industrial Utility Customers Implement Conservation and Energy Efficient Measures Without Utility Incentives**

According to Wal-Mart's witness Baker, large customers who have undertaken their own conservation and energy efficiency programs provide these benefits to all customers at no cost to those customers. He further states that the individual customer assumes all of the risk of the investment as opposed to having the risk passed on to other customers. (Tr. 47, lines 11-15). Mr. Baker conveniently ignores that the same can be said of all electric customers, large and small, who implement conservation measures on their own, outside of utility sponsored conservation programs.

While it is convenient for the opt-out proponents to ignore voluntary energy efficiency contributions of smaller customers, that doesn't make them go away. Witness Koch for FPL testified that customers in all classes and of all sizes implement DSM without incentives. He stated that examples of such measures are compact fluorescent light bulbs for residential customers and air conditioning duct sealing for business customers. (Tr. 149, lines 5-11)

Tampa Electric's witness Deason testified that residential customers voluntarily implement conservation measures that are in their best economic interests, such as installing compact fluorescent bulbs or programmable thermostats. These and other such measures which are routinely pursued by residential customers are also beneficial. Witness Deason went on to state that residential customers should not be allowed to opt out either. Given that all customers benefit from cost-effective conservation, it would be equally inappropriate to allow any of the

customer groups to opt out. Allowing all customers (including residential customers) to opt out could place the sustainability of Florida's conservation efforts under FEECA in jeopardy. (Tr. 452, line 12 – Tr. 453, line 20)

The record is devoid of any evidence that would-be opt-out large customers have any greater economic incentive to install conservation measures on their own than do all other customers who would be excluded from participating in the opt-out proposals. In fact, there is nothing in the record to refute the possibility that voluntary conservation measures undertaken by non-opt-out qualified customers in the aggregate may even exceed the savings from conservation measures voluntarily undertaken by the would-be opt-out large commercial and industrial customers. The premise that only large customers voluntarily implement DSM measures is simply false and should be rejected.

**II. ALLOWING LARGE COMMERCIAL AND INDUSTRIAL CUSTOMERS TO OPT OUT OF ECCR CONTRIBUTIONS WOULD BE INEQUITABLE AND DISCRIMINATORY TO THOSE CUSTOMERS WHO CANNOT OR ELECT NOT TO OPT OUT.**

Witnesses Pollock and Baker propose thresholds of one Megawatt or 15 million annual kWh, respectively, in order to qualify for their opt-out proposals. Both propose to allow customers with multiple accounts in the utilities' service territory to aggregate their loads to meet the thresholds. Such a proposal is self-serving and discriminatory. The proposed thresholds appear to be designed simply to allow FIPUG members and Wal-Mart stores to qualify to opt out.

Allowing a select group of larger customers to opt out would result in the total amount of cost-effective conservation costs being spread over fewer customers. This, in turn, would raise

rates for those remaining customers and would be inequitable. It also has a high potential of being discriminatory. Section 366.03, Florida Statutes, states:

No public utility shall make or give any undue or unreasonable preference or advantage to any person or locality, or subject the same to any undue or unreasonable prejudice or disadvantage in any respect.

Additionally, FEECA States:

Accordingly, in exercising its jurisdiction, the Commission shall not approve any rate or rate structure which discriminates against any class of customers on account of the use of such facilities, systems, or devices.

As witness Deason testified, if the opt-out proposals of the proponents were implemented, it could potentially result in undue discrimination and would certainly result in opt-out customers receiving the benefits of cost-effective conservation measures without having to pay their fair share of the cost of those programs. (Tr. 448, lines 10-15)

If large commercial and industrial customers are permitted to opt out, their decision to do so will not result in lower conservation program costs which would justify their exemption from paying ECCR costs. To the contrary, the conservation costs are incurred as the best means to provide service to all customers in the most efficient and cost-effective manner possible. As such, the conservation costs are appropriately allocated to all customers. Exempting the opt-out customers and requiring the remaining customers to "make up the difference" could constitute a discriminatory rate structure, prohibited by Chapter 366, Florida Statutes.

Although the intervenors have suggested that the savings achieved by opt-out customers would reduce the overall costs needed to be collected through the ECCR, this would not happen under FEECA and the Commission's Rule 25-17.0021, Florida Administrative Code, implementing FEECA, as explained by Tampa Electric witness Deason. As a general

proposition, the amount of conservation costs to be recovered through the ECCR is independent of the opt-out customers' conservation efforts. The amount of costs to be recovered through the ECCR is a function of the level of reasonably achievable goals and the costs of the specific conservation programs approved to achieve those goals. This is done pursuant to FEECA and Rule 25-17.0021, F.A.C. Consistent with the statute and rule, the Commission, when setting conservation goals, considers the amount of conservation that is reasonably expected to naturally occur due to such things as appliance efficiency standards, building codes, and cost-effective conservation undertaken by customers on their own initiative. This latter category of naturally-occurring conservation is a function of the economic attractiveness of various conservation measures and is usually evaluated in terms of economic paybacks.

The Commission has historically used a two-year economic payback as a conservative tool to avoid double counting conservation that would reasonably be expected to occur without concomitant costs. Rule 25-17.0021, F.A.C. refers to this phenomenon as "free riders" and requires that free ridership be considered in setting appropriate conservation goals. Thus, contrary to the intimations of the intervenor witnesses, the amount of conservation that has been or may be undertaken by the opt-out customers in their own economic interests, will not lessen the amount of costs that will be recovered through the ECCR. Allowing large commercial and industrial customers to opt out will simply increase ECCR costs to all remaining customers. (Tr. 449, line 23 – Tr. 451, line 20)

In addition, as noted by FPL witness Deaton, the aggregation component of both proposals would place individually owned retail stores at a distinct disadvantage, compared to retail chains such as Wal-Mart. Again, Section 366.03, Florida Statutes, prohibits this type of discrimination. Additionally, Rule 25-6.102, Florida Administrative Code, prohibits billing

practices which seek to combine, for billing purposes, the separate consumption and registered demands of two or more points of delivery serving a single customer.

**III. FIPUG'S AND WAL-MART'S OPT-OUT PROPOSALS ARE INCONSISTENT WITH RATEMAKING AND COST CAUSATION PRINCIPLES AND WOULD ALLOW UNFAIR ONE-SIDED CHERRY PICKING.**

FIPUG and Wal-Mart propose to be allowed to opt out of paying for energy efficiency programs, but they don't suggest that residential and smaller commercial customers should be relieved of having to pay for load management programs available only to large business customers. FPL witness Deaton pointed out that if those other customer classes were permitted to opt out of FPL's large commercial and industrial programs, in which they are ineligible to participate, then the larger commercial and industrial customers would see a substantial net *increase* in their bills. (Tr. 201, lines 1-7). Witness Deaton further notes that to avoid this inconvenient result, FIPUG and Wal-Mart are proposing a "heads I win, tails you lose" proposition, where other customer classes would have to pay the full cost of energy efficiency programs in which they may participate, while at the same time paying a larger share of the cost for FPL's commercial and industrial programs for which they are ineligible. As witness Deaton observed, it is hard to imagine anything more discriminatory and less fair from a ratemaking and cost causation standpoint. (Tr. 201, lines 7-12)

Another example of this extraordinary unfairness was described by Tampa Electric's witness Roche who testified that Tampa Electric has \$47 million budgeted for its 2015 ECCR expenditures. Tampa Electric has large commercial and industrial customers who take interruptible service under the company's rate schedules GSLM-2 and 3. As Mr. Roche testified, those customers will contribute only \$1.7 million toward Tampa Electric's \$47 million

conservation costs for 2015. However, those same customers will receive nearly \$17 million in interruptible credits, which represents 35% of all of the ECCR dollars Tampa Electric will collect in 2015 to operate its conservation programs. (Tr. 421, line 21 – Tr. 422, line 5). According to witness Roche, what is at stake here is the opt-out proponents' desire to cease contributing to the energy efficiency components of the company's DSM programs and thereby reduce their overall contribution from \$1.7 million down to \$900,000. (Tr. 422, lines 6-8). Tampa Electric believes this would clearly be unfair, especially given the overwhelming evidence in this proceeding that all customers, including would-be opt-out customers, benefit from cost-effective DSM measures, including those measures that focus on energy efficiency.

**IV. THE VOLUNTARY NATURE AND SELF-REPORTING ASPECTS OF THE OPT-OUT PROPOSALS WOULD GENERATE HUGE UNCERTAINTIES AND MAKE THE PROPOSALS UNRELIABLE FOR UTILITY SYSTEM PLANNING PURPOSES.**

The opt-out proposals of FIPUG and Wal-Mart limit eligibility to their specified large non-residential customers. They then suggest that those eligible customers would only be required to submit an attestation letter stating that the customer ". . .has either implemented (or committed to fund and implement) its own energy efficiency measures or has determined as a result of an energy audit or analysis that there are no cost-effective measures for the customer." (Tr. 506, lines 15-18). These vaguely stated requirements are inconsistent with FEECA and would introduce significant elements of uncertainty. They would increase implementation and regulatory costs and render utilities unable to rely on any opt-out customer's alleged contribution to conservation.

As Tampa Electric's witness Deason testified, pursuant to FEECA, the Commission engages in a rigorous and comprehensive conservation goal-setting process once every five years. In fact, the Commission has just recently concluded this process. Goal setting requires the determination of the full amount of technical potential and then the full amount of economic potential for all reasonably available conservation for all customers. This includes the amount of conservation reasonably available from the opt-out customers. The Commission applies cost-effectiveness tests and screens for free riders to set final goals. The goals are then used as a basis to approve specific conservation programs to achieve those goals in a manner that benefits all customers. Allowing a sub-group of all customers to opt out, after they were initially included in the goal-setting process, would at best be disruptive and at worse could call into question the appropriateness of the goals that result from that process. (Tr. 456, line 25 – Tr. 457, line 18)

#### **Uncertainties Would Abound with an Opt-Out Program**

The opt-out proponents' proposals would produce great uncertainty as to the true nature of their "commitments", and the value of those "commitments" as conservation measures for system planning purposes. First, the decision to opt out is voluntary, making it difficult to anticipate the number of customers opting out and their aggregate impacts on cost recovery and system generation needs. In addition, the amount of energy savings would be done on a self-reporting and self-certification basis, making it difficult to verify actual conservation results. Again, these uncertainties adversely impact cost allocation, cost recovery and system planning needs. (Tr. 457, line 20 – Tr. 458, line 4)

The Commission and the affected utilities could expect to encounter significant difficulties in attempting to monitor and verify the true conservation savings, if any, of opt-out customers. Again, as FIPUG's witness Pollock testified, large energy intensive customers of the



type proposed for the opt-out program face strong competition in the marketplace. (Tr. 509, lines 18-23). These are just the types of customers one would expect to be highly protective of their books and records, operational data, generation output and usage and similar operating details. The utilities would have to verify the alleged energy efficiency savings of opt-out customers in their system planning process. However, none of the opt-out proponents' witnesses have offered to allow the utilities access to operational data of would-be opt-out customers. For example, Wal-Mart has already requested confidential classification of various information contained in hearing exhibits, because the subject data shows Wal-Mart's energy usage for its stores served by each of Florida's four large investor owned utilities, which Wal-Mart claims could be used to compute Wal-Mart's energy usage on a per store basis and used by Wal-Mart's competitors to Wal-Mart's competitive disadvantage. In its Request for Confidential Treatment Wal-Mart states it has treated and continues to treat this data as confidential and has not voluntarily disclosed the data to the public. (Wal-Mart's Request for Confidential Classification filed in this proceeding on August 4, 2015)

Rather than offering up hard data on energy conservation achieved by the would-be opt-out participants, including energy savings on a time sensitive basis, the only assurances offered are that the opt-out customer "has either implemented (or committed to fund and implement) its own energy efficiency measures or has determined as a result of an energy audit or analysis that there are no cost-effective measures for the customer." (Tr. 506, lines 15-18). This type of "trust me" approach, without access to actual operational data, would leave the utilities and the Commission without any means of verifying any value to the utility and its many other customers, for operational or planning purposes.

**V. AS A POLICY MATTER, THE COMMISSION SHOULD REFRAIN FROM CONFERRING ON WOULD-BE OPT-OUT CUSTOMERS THE COMMISSION'S POWER TO DETERMINE WHICH CONSERVATION MEASURES BENEFIT ALL ELECTRIC UTILITY CUSTOMERS.**

The opt-out proposals advanced by FIPUG and Wal-Mart, if approved, could undermine a significant portion of the Commission's ability to ensure that all energy conservation programs are cost effective and beneficial to all public utility customers, and which are not. In its place would be determinations made by opt-out customers as to which measures best suit their particular needs as opposed to the needs of the general body of utility customers. In a word, this would be wrong, and would undermine the spirit and intent of FEECA.

As Tampa Electric witness Roche testified, the collective testimonies of Wal-Mart witnesses Baker and Chriss contradict the Commission rules requiring all program savings to be measurable, monitorable and verifiable. Witness Baker testified that the programs Wal-Mart implements are cost effective, yet the number one energy efficiency project listed within Witness Baker's testimony is Wal-Mart's installation of 1,650 sub-meters within their North American Stores. As Tampa Electric witness Roche testified, this project will not pass any of the cost-effectiveness tests here in Florida or any other jurisdiction that uses different cost-effectiveness tests. Whatever cost-effective test Wal-Mart may use for energy efficiency projects it is undisclosed in this proceeding and is neither identified nor explained in any of the testimony of Wal-Mart's witnesses. Thus, if large customers were given an opt-out provision as witness Baker proposes, the manner of measuring cost effectiveness for any measures or programs that customers might implement would be at the sole discretion of that individual customer. This sole discretion does not provide any assurance or accountability that such a measure or program will benefit all customers and not simply the customer who implements the measure. At its

fundamental level if the opt-out provision is approved, the current cost-effective programs the Commission currently oversees will be traded for non-cost-effective projects. This further underscores why the proposed opt-out provision should be rejected. (Tr. 397, lines 1-14)

Witness Deason agreed that an entity making a voluntary conservation investment might benefit the entity making the investment. However, he was quick to point out that such an investment does not necessarily benefit the other utility customers nor does it necessarily legitimately contribute to the serving utility's ability to meet its DSM goals. (Tr. 476, line 24 – Tr. 477, line 3)

The policies and procedures utilized by this Commission since the early days of FEECA ensure that all customers benefit from Commission approved conservation programs. Thus, from a policy standpoint, the Commission would do well to strongly adhere to its control over the administration of conservation programs for the benefit of all customer classes, consistent with the intent of FEECA. The Commission should refrain from delegating a significant segment of that control to a small group of large utility customers who have their own individual interests in the forefront.

## **VI. THE COMMISSION HAS CONSIDERED AND PROPERLY REJECTED SIMILAR PROPOSALS IN THE PAST.**

The opt-out proponents' proposals are not new. As early as 1981 the Commission dealt with this issue when it first established the ECCR. One of the issues addressed was whether unreimbursed conservation program costs should be recovered from all customers or whether an attempt should be made to impose the cost on certain classes of customers. A witness testifying on behalf of FIPUG in that proceeding urged that the costs be assessed to customers who avail

themselves of the conservation measures on the basis that they would receive the benefits of lower bills due to reduced consumption. However, the FIPUG witness acknowledged that, to the extent conservation efforts succeed in avoiding the need for expensive new plant, all customers will benefit. The Commission concluded:

. . . Because all customers will enjoy the benefits of such cost avoidance we direct that the authorized costs be recovered from all customers on a per kilowatt hour or per therm basis.

Order No. 9974, issued April 4, 1981 in Docket No. 810050-PU.

The Commission has consistently adhered to this reasoning and has continued to recognize that all customers benefit from Commission approved cost-effective conservation programs and, therefore, all customers should pay the ECCR costs allocated to them. (Tr. 442, line 25 – Tr. 443, line 4)

Tampa Electric witness Deason explained that all customers continue to enjoy the benefits of cost avoidance from Commission approved conservation programs. FEECA requires the Commission "to utilize the most efficient and cost-effective demand side renewable energy systems and conservation systems in order to protect the health, prosperity, and general welfare of the state and its citizens." The Commission historically has used the RIM test, coupled with the Participant test, in order to select conservation measures that benefit all customers. Utilizing the RIM test ensures that the expected benefits exceed the expected costs, such that costs and rates on an overall basis are lower with the conservation programs than they would be without the conservation programs. Thus, all customers benefit from cost-effective conservation and all customers should pay their fair share of a conservation program costs. (Tr. 443, line 6 – Tr. 444, line 2)

The Commission revisited the allocation and recovery of costs associated with conservation programs again in 1993 in Docket No. 930759-EG. In that proceeding the Commission rejected various proposed alternatives for cost recovery, citing its earlier decision in Order No. 9974.

The reasoning applied by the Commission in the past is just as valid today as it was in previous decisions and provides a solid basis for rejecting the proponents' vaguely described, one-sided and self-serving opt-out proposals.

## **VII. OTHER DEFICIENCIES CALL FOR THE REJECTION OF THE OPT-OUT PROPOSALS OF FIPUG AND WAL-MART.**

### **The Opt-Out Proposals are Vague and Lacking in Detail**

The opt-out proposals at issue are totally lacking in detail and specificity and should be rejected on that basis alone. As Tampa Electric witness Roche observed, these proposals do not include a clear description of the opt-out proposals or necessary details showing how the proposals would be implemented, operated, measured, verified, governed, or how they would actually work. (Tr. 388, lines 11-23)

While FIPUG and Wal-Mart could have filed a detailed petition outlining the details of their proposed opt-out programs and how they would impact investor owned utilities and their customers, they failed to do so. When questioned, FIPUG's witness Pollock could come up with no specific details concluding that "there are obviously some things that we need to know a little bit more about." (Tr. 549, lines 9-10). As the proponents of a dramatic change in the Commission's implementation of FEECA, FIPUG and Wal-Mart have the burden of proof. They have failed to meet that burden and their opt-out proposals should be rejected.

**Administering an Opt-out Program Would be Complex and Costly and Would Adversely Affect the Entire FEECA Process, from Goal Setting to Annual Reporting**

As Gulf witness Floyd explained, any program offering an opt-out choice on a customer-by-customer basis would add a significant number of required activities to the ECCR true-up, audit and projection filing processes and would introduce a new set of enrollment and billing processes. Additionally, capturing energy and demand savings associated with customer specific projects would impact the entire FEECA process, from goal setting to annual reporting. All of this would add huge burdens and additional costs, which is really unnecessary given the fairness of DSM goals and programs that pass the RIM test. (Tr. 340, line 14 – Tr. 341, line 5)

Witnesses for the utilities attempted to estimate the costs of implementing an opt-out program and the estimates varied over a broad range of expensive incremental costs. Probably the main reason for the broad range in estimates is that the vagueness and lack of specificity of the proposals put forth by FIPUG and Wal-Mart gave the utility witnesses virtually no details regarding how the proposals would operate and, consequently, little or no hard information on which to base their estimates. The Commission probably does not need to reach any conclusions regarding the cost of implementation, given that the concept of an opt-out program is deficient on its face and, consequently, the costs of implementation should be a moot issue.

**Intervenors Provide No Evidence That Programs Adopted in Other States Would be Applicable or Appropriate for Florida**

As this Commission has recognized in many instances, different circumstances apply in different jurisdictions. The witnesses for the opt-out proponents provided no insight into those many variations of circumstances nor did they attempt to demonstrate that opt-out variations applied in other states would have applicability in Florida. As a matter of fact, as noted by FPL witness Koch, Mr. Pollock's Exhibit JP-1, page 1, shows that several of the most populous states

(e.g., California, Illinois, Massachusetts and New York) apparently follow the same approach as Florida. (Tr. 145, line 14 – Tr. 146, line 12). As Mr. Koch stated, a "jumping on the band wagon" argument is never a good basis for policy decisions and Mr. Pollock's testimony fails to present a compelling justification for a major policy change like the adoption of a DSM opt-out provision. (Tr. 146, lines 4-14)

Tampa Electric witness Deason addressed this as well. He testified that in many proceedings before the Commission, various intervenors have pointed to actions taken in other states as a basis for suggesting that this Commission should get on board and adopt the same approach. He reasoned that just because regulatory bodies in California or Oklahoma or Vermont have followed a particular path does not necessarily mean that it is the right path for Florida. He concluded that this Commission has a solid reputation for doing what it believes is right for all customers in Florida, based on the facts and circumstances presented in proceedings over which it presides. (Tr. 459, line 24 – Tr. 460, line 9)

### **An Opt-Out Provision Would Likely Foster Controversy and Litigation**

FIPUG's witness Pollock testified that large customers face strong competition. (Tr. 509, lines 23-24). While Tampa Electric believes that most businesses along the continuum from large to small face significant competition in the marketplace, that very factor suggests that implementation of an opt-out mechanism in Florida would breed controversy. Regardless of what opt-out threshold might be adopted, there would be commercial and industrial utility customers who exceed the threshold and those who fall short. This is compounded by the aggregation of load component of the proposals put forth by FIPUG and Wal-Mart.

Where there are competing commercial and industrial customers, with some exceeding the threshold and some falling short, it is certainly not difficult to envision numerous complaints

being filed with the Commission claiming that discriminatory ECCR rate treatment has competitively disadvantaged those who fall short of the threshold and provided a significant economic advantage to their competitors who manage to exceed the threshold. The time demands and costs associated with administrative and judicial litigation associated with these types of claims could very well be significant.

### CONCLUSION

Based on the foregoing, Tampa Electric urges the Commission to reject the opt-out proposals put forth by FIPUG and Wal-Mart, thereby maintaining the stability, fairness and effectiveness of the Commission's ongoing administration of FEECA.

### STATEMENT OF ISSUES AND POSITIONS

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

**TECO:** \*No. The Commission should not require such a separation of expenditures into two categories. All of Tampa Electric's approved DSM measures provide demand and energy savings. Energy efficiency programs clearly provide both energy savings and demand reductions.\*

Programs that pass the RIM cost-effectiveness test benefit the general body of customers, both participating in non-participating customers, regardless of their potential characterization as energy efficiency or demand side/load management programs. It follows that distinguishing between the two would serve no relevant purpose nor would it provide a meaningful basis for determining costs that "eligible" opt-out customers would be allowed to avoid and pass on to other customers. Separating the expenditures in the manner described in this issue would represent an erroneous and unwarranted departure from the manner in which ECCR has been administered in this state for over 30 years.

**ISSUE 2:** Should the Commission allow pro-active non-residential customers who implement their own energy efficiency programs and meet certain other criteria to opt out of the utility's Energy Efficiency programs and not be required to pay the cost recovery charges for the utility's Energy Efficiency programs approved by the Commission pursuant to Section 366.82, Florida Statutes?



**TECO:** \*No. All customers benefit from the utilities' DSM programs and the opt-out proponents fail to recognize (or deny) that the impact of such proposals would be to shift the recovery of prudently incurred costs for approved DSM programs from large business customers to smaller business and residential customers.\*

This proposal is as inappropriate now as it was in 1981 when the Commission first rejected a similar proposal, and should be rejected for the many reasons put forth by Tampa Electric's rebuttal witnesses and those for the other IOUs. The opt-out proposals put forth by FIPUG and Wal-Mart are one sided, inconsistent with sound regulatory policy, and should be rejected.

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

**TECO:** \*The Commission should reject the very generally described opt-out proposals of FIPUG and Wal-Mart and thereby render this issue moot. If the Commission did have to decide this issue, it is clear that the criteria would be difficult and costly to devise and administer.\*

There is insufficient evidence in the record to identify any appropriate criteria to make this determination. Only vague self-serving criteria had been proposed by the proponents. If the Commission did have to decide this issue, it is very clear from the testimony submitted in this proceeding that the tests and criteria would be very difficult and costly to devise and administer and would lead to continuing controversy in areas where none has arisen over the life of the ECCR programs. The impact of such proposals would be to shift the recovery of prudently incurred costs for approved DSM programs from large business customers to smaller business and residential customers. This would lead to continuing controversy particularly in the form of claims of favoritism and/or undue disadvantage by those customers who do not qualify to opt out.

DATED this 20<sup>th</sup> day of August 2015.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief and Post-Hearing Statement, filed on behalf of Tampa Electric Company, has been served by electronic mail on this 20<sup>th</sup> day of August 2015 to the following:

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