BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request to opt-out of cost recovery for investor-owned electric utility energy efficiency programs by Wal-Mart Stores East, LP and Sam's East, Inc. and Florida Industrial Power Users Group.	Docket No. 140226-EI Filed: August 20, 2015

WAL-MART STORES EAST, LP'S AND SAM'S EAST, INC.'S
POST-HEARING STATEMENT AND BRIEF

Wal-Mart Stores East, LP and Sam's East, Inc., pursuant to Commission Order No. PSC-15-0149-PCO-EI, issued on April 1, 2015, and the Prehearing Order No. PSC-15-0290-PCO-EI, issued on July 15, 2015, hereby file their Post-hearing Statement and Brief in this case.

PRELIMINARY STATEMENT

References to the Florida Public Service Commission are to the "Commission" or the "PSC." Wal-Mart Stores East, LP and Sam's East, Inc. are collectively referred to as "Walmart." The Florida Industrial Power Users Group is referred to as "FIPUG." References to Florida's investor-owned utilities are collectively to the "IOUs," and individually as follows: Florida Power & Light Company as "FPL," Duke Energy Florida as "Duke" or "DEF," Tampa Electric Company as "Tampa Electric" or "TECO," Gulf Power Company as "Gulf," and Florida Public Utilities Company as "FPUC." The Southern Alliance for Clean Energy is referred to as "SACE." References to the official hearing transcript are in the format TR abc, where abc indicates the page numbers cited, and references to exhibits from the hearing are in the format EXH def at jkl, where def is the exhibit number and jkl indicates the page numbers of the exhibit cited.

BACKGROUND AND STATEMENT OF THE CASE

This proceeding addresses the requests of Walmart and FIPUG that the Commission require the IOUs to allow larger, non-residential customers who, at their own expense, achieve defined energy efficiency (or energy conservation) goals, and who satisfy additional specified eligibility criteria, to "opt out" of participating in, and paying for, the IOUs' energy efficiency programs to be implemented pursuant to their Demand-Side Management Plans. This proposal is referred to as the "Opt-Out" proposal. The basis of Walmart's and FIPUG's request is that, given the opportunity afforded by the Opt-Out proposal, eligible commercial and industrial customers can and will implement meaningful energy efficiency gains, at no cost to other utility customers, that are more cost-effective than those that would otherwise be achieved through the IOUs' generic energy conservation programs.

The Commission identified three issues to be decided in this docket:

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?

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?

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?

Walmart strongly believes that the Commission should require the IOUs to allow large commercial and industrial customers to opt out of the IOUs' Energy Efficiency ("EE") programs, but not their Demand Reduction or Demand Response-type programs (collectively abbreviated as "DSM" programs), because Florida does not have an opportunity for a Regional Transmission Organization ("RTO") or an Independent System Operator ("ISO") to compete with these services, and Florida is not currently a competitive market in which Demand Response providers can offer these services to customers at this point in time. Customers who thus opt out must achieve a predetermined amount of energy efficiency savings, at the customers' own expense. This proposal is consistent with the

Legislature's directives in the Florida Energy Efficiency and Conservation Act ("FEECA"), as well as with sound public policy to ensure the implementation of the most efficient and cost-effective energy conservation measures, to provide appropriate opportunities and incentives [SW NOTE: The statute specifically directs the PSC to consider the need for incentives to promote customer-owned energy efficiency systems.] to customers to achieve such maximally cost-effective conservation, and to treat customers fairly.

Walmart presented the direct and surrebuttal testimony of Kenneth E. Baker, Walmart's Senior Manager of Sustainable Regulation and Legislation, and the direct testimony of Steve W. Chriss, Walmart's Senior Manager of Energy Regulatory Analysis, as well as nine exhibits to Mr. Baker's and Mr. Chriss's testimonies, plus two exhibits (Exhibits 38 and 39, discussed at TR 90-94) addressing the cost-effectiveness of allowing customers to opt out, which exhibits were introduced in response to cross-examination at the hearing. Mr. Baker's testimony and exhibits support the appropriateness of the Opt-Out proposal and explain the eligibility criteria advocated by Walmart; Mr. Chriss's testimony and exhibits show a reasonable methodology for deriving the separate Energy Efficiency and Demand Side Management (Demand Response) rate components that would be used in implementing the Opt-Out proposal. FIPUG presented the direct and surrebuttal testimony of Jeffry Pollock, including six exhibits; although there are some minor differences in the details, Mr. Pollock similarly supports the Opt-Out proposal with eligibility criteria. The IOUs collectively presented the testimonies and exhibits of six witnesses. The Commission Staff proffered nineteen exhibits that were stipulated into the record, and Walmart and FIPUG introduced a number of exhibits that were received into the record on cross-examination of the IOUs' witnesses.

Walmart believes that the Opt-Out proposal will benefit Florida's energy efficiency and conservation efforts and provide additional benefits to the state as a whole, and accordingly, Walmart respectfully asks that the Commission require the IOUs to offer this opportunity as part of their Commission-approved DSM Plans.[1]

SUMMARY OF ARGUMENT

In FEECA, the Florida Legislature declared "that it is critical to utilize the most efficient and cost-effective demand-side . . . conservation systems in order to protect the health,

[1] On July 21, 2015, the Commission voted on a Proposed Agency Action basis to approve the IOUs' DSM Plans in Docket Nos. 150081-EG, 150083-EG, 150085-EG, 150086-EG, and 150089-EG. Walmart and FIPUG appeared at the agenda conference to identify the relationship between this Opt-Out Docket and the DSM Plan Dockets. The PAA orders have been issued in the DSM Plan Dockets, which will become final on September 1, 2015, unless protested.

prosperity, and general welfare of the state and its citizens." Fla. Stat. § 366.81 (2014).[2]

The Legislature went on to mandate that the Commission take into consideration "the need for incentives to promote both customer-owned and utility-owned energy efficiency . . . systems." Fla. Stat. § 366.82(3)(c). The Opt-Out proposals supported by Walmart and FIPUG in this proceeding fit squarely within the Legislature's directives in FEECA. The Opt-Out proposals will promote more energy conservation by large commercial and industrial customers and will further promote both maximally cost-effective energy conservation efforts and provide for the "incentives to promote . . . customer-owned . . . energy efficiency . . . systems" as directed by FEECA.

Additionally, Walmart's Opt-Out proposal represents sound public policy because it will provide meaningful and appropriate motivation to large customers to implement the best, most efficient, and most cost-effective energy conservation measures. This is because such customers know their operations, and thus their opportunities for energy savings, much better than utilities, and such customers' self-directed and self-funded EE measures will produce greater energy savings more cost-effectively than would more generic utility-sponsored programs. Further,

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[2] All references herein are to the 2014 edition of the Florida Statutes.

large commercial and industrial customers who self-finance significant energy savings will be providing substantial benefits to all customers, such that it is just and equitable for such customers, having already paid to achieve at least their fair portion of energy savings, to be excused from paying again for other EE programs funded by the utilities. TR 507, 523.

Many other states have recognized that opt-out or similar customer-self-directed energy conservation measures are sound public policy. Pollock, TR 511-13, EXH 15, EXH 44. It is significant to note that Exhibit 44 is the testimony of Raiford L. Smith, a former employee of Duke Energy Carolinas, LLC (Duke Energy Florida's sister company in South Carolina), submitted in support of an opt-out proposal in South Carolina). Mr. Smith's Rebuttal Exhibit 1 shows that 17 out of 28 states included in a 2009 study of industrial energy efficiency provided an opt-out program or opportunity for their large customers. EXH 44, Smith Rebuttal Exhibit 1 (no page number)

Walmart's proposed criteria are just and reasonable. Basically, they include provisions to ensure that opt-out customers truly deliver the savings they claim in order to be eligible to opt out of paying the utility's otherwise applicable EE charges, and to protect other customers against opt-out customers opting out and then opting back in in order to be excused from participating in the utility's EE programs and also getting the benefits of the utility's EE programs.

Mr. Steve Chriss, Walmart's Senior Manager of Energy Regulatory Analysis, using the utilities' data, explains how to accomplish the demand-energy split, by simply using the IOUs' cost of service classifications of programs as energy-related and demand-related. His exhibits show representative calculations using information taken from the four IOUs' filings to this Commission. The costs of the EE programs would be segregated into one bucket of costs for Energy Efficiency and an EE rate calculated (Part E in Mr. Chriss's testimony) and Demand-related programs (Part D) would be put into a separate bucket with a separate rate calculated. Using the utilities' information, Mr. Chriss prepared illustrative Part D and Part E rates for the four large IOUs. With the exception of Gulf Power, most of the costs are demand-related and accordingly would continue to be paid by opt-out customers.

Finally, the Opt-Out proposal should be made available upon the Commission's approval as part of the IOUs' Commission-approved DSM plans.

DISCUSSION

I. The Commission Should Approve Walmart's Request to Allow Large Commercial and Industrial Customers to "Opt Out" of Paying for and Receiving Benefits From the IOUs' Energy Efficiency Programs.

The Commission should approve Walmart's Opt-Out proposal, because it will promote more energy savings, more efficient realization of those savings, and more cost-effective energy conservation as directed by the Florida Legislature in FEECA. Moreover, the Opt-Out proposal represents sound and appropriate public policy, as recognized by at least 17 states, including several where sister companies of Duke Energy Florida serves. Before proceeding, Walmart provides the following brief discussion of its Opt-Out proposal.

A. Description of Walmart's Opt-Out Proposal.

Walmart's Opt-Out proposal requests that the Commission require the IOUs to allow non-residential customers who meet defined, specified criteria to "opt out" of participating in – which includes opting out of receiving benefits under, and paying for – a utility's Energy Efficiency programs, ***provided that*** such customers will implement their own energy efficiency measures, ***at their own expense***, that will provide energy efficiency or savings that are at least as great as the utility's overall energy efficiency savings percentage or otherwise provide for such customers to make meaningful contributions toward Florida's energy conservation efforts and goals.

The exact eligibility requirements for a customer to opt out would, of course, be determined by the Commission, but Walmart advocates that eligibility be conditioned on the customer:

a) satisfying a minimum size criterion of at least 15 million kWh per year consumed across all accounts on the utility's system, TR 53, 58;

b) not having taken any benefits under a utility's EE programs for the preceding two years, TR 58;

c) being prohibited from "opting back in" to the utility's EE programs for a minimum of 2 years from when the customer first opts out, TR 58;

d) certifying to the Commission that the customer has either implemented EE measures, at its own expense, that have reduced the customer's usage, measured in kWh per square foot of space or another similar measure as applicable to the customer's operations, by a percentage at least as great as the utility's energy efficiency reductions achieved or projected to be achieved through its EE programs, or certifying that the customer has performed an energy audit or energy use analysis and either has implemented or will implement qualifying EE programs within 24 months of the opt-out request, TR 58-59; and

e) complying with any appropriate opt-out notification window and process required by the utility to facilitate its planning and coordination functions. TR 59.

The customer's ability to opt out only extends to the utility's EE programs; customers would continue to pay the utility's charges for its DSM programs, and be eligible to participate in such programs.

Walmart further supports the utility being allowed to count the EE savings provided by opt-out customers toward meeting its energy conservation goals under its Commission-approved DSM plan.

The implementation of the Opt-Out proposal requires that the utility separate its programs into EE and DSM programs, and to develop separate rates for each category of programs. Mr. Chriss's testimony and exhibits support and explain the separation of Energy Conservation Cost Recovery ("ECCR") program costs into the EE and DSM components, a proposed ECCR "Part E" for energy program-related costs and an ECCR "Part D" rate component for demand program-related costs. TR 118-19, EXH 8, EXH 9. The separations would, logically and reasonably, follow the IOUs' existing classifications of their ECCR program costs as energy-related and demand-related. TR 118-19, EXH 8, EXH 9.

The Commission should note that Walmart's opt-proposal (and FIPUG's opt-out proposal) does not represent a free ride for opt-out customers. To be able to opt out, a customer must provide the energy savings benefits claimed.

B. Walmart's Opt-Out Proposal Will Promote More Cost-Effective Energy Efficiency and Conservation than Current Programs.

Walmart's Opt-Out proposal will promote more cost-effective energy efficiency and energy conservation than current utility programs. This is because it provides appropriate incentives to large commercial and industrial customers, who have both (a) the technical and financial ability to undertake significant energy conservation programs and measures on their own and (b) the necessary knowledge of their operations and processes that enables them to know not only that it may be possible to conserve energy, but exactly where in their operations and processes the greatest opportunities for such savings exist. TR 52. Large customers not only have the knowledge and technical expertise, they also have the ability to participate in competitive markets for energy efficiency goods and services, as energy service companies compete to provide innovative and cost-effective products to customers like Walmart. TR 52, TR 509-10.

C. Walmart's Opt-Out Proposal Will Promote More Energy Savings at Lower Costs to Other Utility Customers.

The foregoing discussions demonstrate that opt-out customers are virtually certain to provide more energy savings if given the opportunity to opt out and self-finance the programs that they know to be the most efficient and cost-effective at achieving maximum energy savings, all at no direct cost to the utilities' other customers. That is, unlike the utilities' proposed programs, where all customers pay regardless of savings achieved, no other utility customers will pay one penny toward the opt-out customers' EE measures, yet they will receive the full system benefits, in the form of reduced energy and demand loads, reduced marginal fuel costs, and increased reliability, without paying for these benefits and without bearing the risk that the opt-out customers' EE measures will perform as projected.

Even so, the IOUs continue to argue that Walmart's and FIPUG's Opt-Out proposals will unfairly shift costs to other customers. These arguments are not well-founded. In fact, under reasonable assumptions, Exhibit 38 shows that a hypothetical customer using 100,000 MWH per year at a 65 percent load factor, which are reasonable assumptions for a large commercial or industrial customer who might be considering opting out, and who only met, but did not exceed, the utility's energy efficiency savings goal, would contribute multiple times the amount of energy savings as compared to the impact on the ECCR revenue shift. TR 91, EXH 38.

For example, for FPL, the customer would contribute 0.1% of FPL's total energy savings goal but would only shift 0.03% of the

ECCR revenues. That is, the customer would contribute more than 3 times the energy savings than the ECCR revenues shifted. For Duke, the customer would contribute 0.27% of Duke's energy goal but only shift 0.04% of Duke's ECCR revenues, i.e., more than 6 times as much energy savings as revenues shifted. For Gulf, whose programs are more predominantly energy-related, the hypothetical customer would contribute 0.90% of Gulf's energy savings goal with an ECCR revenue shift of 0.65%, still well greater than the revenue shift. And, for Tampa Electric, the customer would contribute 0.54% of the utility's goal while shifting only 0.17% of its ECCR revenues, again, as for FPL, a multiple of more than 3 times the energy savings compared to the revenue shift. TR 91, EXH 38 at 2.

If the customer were to save more than the utility's energy savings goal, at a total energy reduction of 1.0%, the energy savings would represent even greater multiples of the shifted ECCR revenues: 6 times more for FPL, 12 times more for Duke, almost double for Gulf, and 4 times more for Tampa Electric. EXH 38.

Clearly, the utilities' concerns regarding cost-shifting – especially in light of the substantial energy savings that would be achieved by a large customer who only just met the utility's energy savings goal – are at best overstated.

D. The Opt-Out Proposal Represents Fair and Appropriate Public Policy.

The Opt-Out proposal represents fair, sound public policy. It is directly consistent with FEECA's directives to provide appropriate incentives for customer-owned demand-side energy conservation programs, which, as the Legislature's declaration of policy, must be regarded as sound. Because the Opt-Out proposal will enable and promote customers, who know their processes and energy savings opportunities better than the utilities, to implement more efficient and more cost-effective energy savings measures, it is also directly consistent with FEECA's directive, in Section 366.81, Florida Statutes, to promote the most cost-effective demand-side conservation measures.

Moreover, the Opt-Out proposal is fair in that it requires customers to pay for their EE measures, creating benefits for all customers at no cost to those customers, Baker, TR 47, without having to also pay for the EE savings of others. The benefits provided include reduced energy loads and some associated demand loads, as well as increased system reliability. TR 47. Moreover, opt-out customers assume the risks of their measures, as opposed to shifting the risk that the measure will perform as projected onto other customers. TR 47. To the same effect, FIPUG's witness Pollock testified, "an opt-out customer that invests in its own energy efficiency measures is paying its fair share of energy efficiency costs." TR 511. Opt-out customers provide the benefits but, under current practice, do not get the credit, resulting in unfair treatment of those customers who create benefits at no cost to other customers. See TR 509.

Other States' Experience. Further supporting Walmart's position that opt-out and similar provisions represent sound public policy is the fact that many other states have recognized that opt-out or similar customer-self-directed energy conservation measures are sound public policy. Pollock, TR 511-13, EXH 15, EXH 44.

Exhibit 15 is a map showing that many states provide the opportunity for customers to meet their energy conservation obligations by either self-directed conservation spending, opt-out measures, exemptions from mandatory participation in energy conservation programs, and direct assignment of program costs. Additionally, Duke has extensive experience with opt-out and similar programs in the several states where it serves. EXH 40 - EXH 46; Duff, TR 290. In fact, Duke's witness Duff testified in support of the opt-out measure approved by the South Carolina Public Service Commission for Duke Energy Carolinas, LLC, a sister operating company of Duke Energy Florida in South Carolina. EXH 45 at 5-6. Exhibit 46 is Duke Energy Carolinas' application for a new cost recovery and incentive mechanism for demand-side management and energy efficiency programs, submitted by Duke Carolinas to the South Carolina PSC on April 29, 2015.

Hearing Exhibit 44 is the testimony of Raiford L. Smith, a former employee of Duke Energy Carolinas, LLC (Duke Energy Florida's sister company in South Carolina), submitted in support of an opt-out proposal in South Carolina. Mr. Smith's testimony includes an exhibit showing that 17 states have implemented opt-out provisions. EXH 44 at Exh. 1. Among other things, in defending Duke Energy Carolinas' proposed opt-out eligibility threshold, Mr. Smith touted the flexibility of his Company's proposal, stating as follows:

> In addition, under the Company's proposal, eligible customers will now be able to opt in and out of the Company's portfolio of energy efficiency programs on a vintage year basis. As a result customers will have the ability to opt out one year and then participate the next year if there are programs that could benefit its operations. This flexibility creates substantial advantages for industrial customers in South Carolina over North Carolina manufacturers, which are required under the North Carolina rules to pay the rider charge for participating in energy efficiency and demand-side management programs for five years or the life of the applicable measure, whichever is longer. Because many businesses have shorter financial planning horizons than those required by the North Carolina rules, the opt-out flexibility proposed by the Company in this proceeding is an advantage for eligible South Carolina customers.

EXH 44 at 5. This concern, i.e., to create advantages for customers in South Carolina as compared to those in other states, is good public policy for any state that wants to ensure that its businesses are in the strongest competitive position for the health of that state's economy.

Similarly, Duke Energy Progress, Inc., another of Duke's sister companies operating in South Carolina, has submitted an application to the South Carolina Public Service Commission for approval of an opt-out option for commercial customers with annual consumption of 1,000,000 kWh or greater and all industrial customers. Pursuant to Duke Energy Progress's opt-out program as described in its application, eligible customers could opt out of either or both EE and DSM programs, and may even opt back in, provided that if they do opt back in, they are subject to applicable billings for the DSM or EE (or both) measure for not less than 36 months. EXH 46 at 15-16.

The exact tailoring of a program for Florida is surely within the Commission's discretion, but the widespread recognition that opt-out programs are an appropriate element of sound energy conservation policy and programs is not subject to debate.

E. The Opt-Out Proposal Is Not a Free Ride – Opt-Out Customers Must Provide Savings to Be Eligible.

The Opt-Out proposal advocated by Walmart, and that advocated by FIPUG as well, are not attempts for large commercial and industrial customers to get a "free ride" at the expense of other customers. These Opt-Out proposals are expressly predicated on every opt-out customer actually achieving meaningful energy conservation and savings, ***at the opt-out customer's expense***, whether by certifying that the customer has implemented measures that are actually saving energy at a percentage rate at least as great as the utility's projected energy savings rate for its general group of EE programs, or by committing to implement defined EE measures so as to achieve meaningful savings.

On this point, Walmart "walks the walk." Walmart is a national and international leader in energy conservation, renewable energy, and sustainability. Walmart is also an important employer and participant in Florida's economy, operating 317 retail stores and 8 distribution centers in Florida, employing 97,000 associates in the state, and purchasing approximately $5 billion worth of goods and services from Florida suppliers, as well as supporting approximately 65,000 supplier jobs in the state. TR 48. Walmart's commitments to conservation and sustainability include the following:

1. To be supplied 100% renewable energy;
2. To create zero waste;
3. To sell products that sustain people and the environment in the United States and throughout the world;
4. To promote renewable energy by driving the production or procurement of 7 billion kWh of renewable energy globally by December 31, 2020, an increase of more than 600 percent since 2010; and

5. Further accelerate energy efficiency by reducing the energy intensity of energy usage at Walmart's facilities, measured in kWh per square foot of space, by 20 percent by 2020, as compared to the already-reduced levels that Walmart had achieved in 2010.

TR 48-49.

Examples of Walmart's deployment of energy conservation and energy efficiency technologies include advanced metering systems to facilitate improved energy management in Walmart's facilities; daylight harvesting and optimization systems that maintain appropriate lighting levels with reduced-optimized usage of purchased electricity; white roofing to reduce cooling load; heat recovery from refrigeration systems to displace energy purchases for water heating; highly efficient HVAC systems; LED lighting; and active dehumidification to reduce cooling energy consumption. TR 50. Walmart has implemented many of these measures at many of its Florida facilities.

F. The IOUs' Criticisms of the Opt-Out Proposal Are Misplaced.

The IOUs' witnesses, particularly Ms. Deaton and Mr. Koch from FPL, Mr. Floyd from Gulf, and Mr. Roche and Mr. Deason from Tampa Electric, advanced several criticisms of the Opt-Out proposals. Duke offered a more balanced approach, perhaps in light of the extensive experience of its sister companies with opt-out programs and opportunities in other states, taking the position that if the Commission determines that an opt-out policy is appropriate, it should be implemented with clear guidelines to ensure that all parties are not harmed by the policy. See Duke's statement of basic position, Order No. PSC-15-0290-PHO-EI, at 9.

The primary criticisms argued by the IOUs' witnesses are as follows:

1. An opt-out policy is contrary to previous Commission decisions that cost-effective EE programs benefit all customers;

2. Allowing some customers to opt out of paying for the IOUs' EE programs (notwithstanding the obligation to provide meaningful EE savings at the opt-out customers' own expense) will discriminate against other customers or result in an undue burden on other customers, or both, characterized in some instances as cost-shifting from the opt-out customers onto non-opt-out customers;

3. Additional administrative costs;

4. An alleged lack of specific eligibility criteria;

5. Allowing customers to aggregate their loads within a utility's service area would violate the Commission's prohibition against conjunctive billing; and

6. Allowing customers to opt out of EE programs would potentially disrupt the utilities' ability to achieve their goals.

Regarding the assertion that the Opt-Out proposal is inconsistent with prior Commission rulings, Mr. Baker testified (TR 62-63) that the Opt-Out proposals advanced by Walmart and FIPUG in this proceeding are clearly different from the "Participant Assignment Method" and the "Rate Class Assignment Method" that the Commission rejected in 1993. Further, Mr. Pollock (TR 519-520) explained that allowing customers who provide EE savings at their own expense to opt out of paying for utility-sponsored programs would put both the opt-out customers' self-financed savings and the utility's programs on a level playing field.

Moreover, the fact that conservation programs pass the RIM test provide benefits to the general body of customers greater than the program costs to achieve them does not negate the fairness of the Opt-Out proposal: opt-out customers provide benefits to all customers without imposing any direct program costs on non-opt-out customers, and the utilities' cost-shifting argument was compellingly addressed by Exhibits 38 and 39, provided by Mr. Baker and Mr. Chriss in response to cross-examination by Commission Staff on the cost-shifting issue (TR 90-94). These exhibits show that, under reasonable assumptions, opt-out customers would provide energy savings several times greater than the shift of ECCR revenue responsibility. Mr. Baker (TR 61) further explained that the Opt-Out proposal will reduce the utilities' program costs and the utilities' incremental fuel costs, with likely associated reductions in the need for future generation facilities, again without any direct costs being imposed on non-participating customers. Moreover, Mr. Baker explained that, because the opt-out customers will have to confirm their savings or savings measures, there will be less risk to other customers that the measures will actually provide the benefits claimed. TR 58, 61. For example, Walmart's basic proposal would require an opt-out customer to confirm to the utility that the customer had implemented EE measures that reduced the customer's usage, measured in kilowatt-hours per square foot of space or in a similar metric, by a percentage at least as great as the utility's energy savings reductions through its EE programs. TR 58. These points are supported by Mr. Pollock's testimony at TR 521-22.

The utilities' estimated administrative costs varied widely, but it is telling that the administrative cost estimates of Duke Energy Florida, whose sister operating companies have the greatest experience with opt-out programs, were by far the lowest of the Florida IOUs.

Walmart offered specific eligibility criteria. TR 53-54, 58-59.

Aggregating loads to qualify for opting out is simply not a conjunctive billing issue. Pollock, TR 524. The Opt-Out proposal would not change how customers are billed, other than applying a different ECCR charge - only Part D, the demand-reduction charge, as proposed by Mr. Chriss - to customers who otherwise provide energy savings, at their own expense, in order to qualify to opt out.

Regarding the criticism that the Opt-Out proposal would disrupt or interfere with the utility's ability to achieve its goals, both Mr. Baker (TR 62) and Mr. Pollock (TR 523) testified in support of the utility being allowed to count the EE savings achievements of opt-out customers toward meeting its goals.

II. <u>The Commission Should Approve the Eligibility Criteria Proposed by Walmart's Witness Kenneth E. Baker.</u>

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

1. Aggregated consumption by a single customer of more than 15 million kWh of electricity per year across all eligible accounts, meters, or service locations within each Company's service area.
2. To be designated an eligible account, a specific account at a specific service location may not have taken benefits under designated EE programs within 2 years before the period for which the customer is opting out.
3. An eligible account may not opt in to participate in the designated EE programs for 2 years after the first day of the year of the period in which the customer first opts out.
4. The customer must certify to the Company that the customer either (a) has implemented, within the prior 5 years, EE measures that have reduced the customer's usage, measured in kWh per square foot of space, or other similar measure as applicable, by a percentage at least as great as the Company's energy efficiency reductions through its approved

> EE programs, expressed as a percentage of the Company's total retail kWh sales as measured over the same time period; or (b) has performed an energy audit or energy use analysis within the three-year period preceding the customer's opt out request and confirms to the utility, that the customer has either implemented the recommended measures or that the customer has a definite plan to implement qualifying EE programs within 24 months following the date of the opt out request.

TR 53-54, 58-59.

Additionally, Walmart supports allowing the utilities to count the energy savings provided by opt-out customers toward meeting their energy conservation or energy efficiency goals, and Walmart does not oppose provisions for an opt-out notification "window" or time period within which an eligible customer would have to provide notice to the customer's host utility of its intent to opt out. TR 59. This is a reasonable refinement that should allow utilities to plan and coordinate their energy conservation programs and efforts efficiently.

III. The Commission Should Approve the Conceptual Rate Design Methodology Explained by Walmart's Witness Steve W. Chriss.

The implementation of Walmart's Opt-Out proposal represents a direct exercise using the IOUs' classifications of their ECCR costs into Energy-related and Demand-related components.

Logically and reasonably, the Energy-related costs and associated programs should be assigned or classified as Energy Efficiency programs, from which eligible opt-out customers would be excused in return for their self-funded contributions to energy conservation in Florida. Demand-related costs and associated programs should be assigned or classified as DSM programs, for which opt-out customers would continue to pay, and in which they would be eligible to participate.

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

Hearing Exhibit 8 shows the IOUs' classifications of their ECCR costs as Energy-related or Demand-related, and Hearing Exhibit 9 illustrates how these costs can be tracked through to appropriate EE rates – Part E – and DSM rates – Part D. For example, where Duke Energy Florida proposed an ECCR rate for 2014 of $0.73/kW for demand-metered customers, Duke's EE rate would be $0.20/kW and its DSM rate would be $0.53/kW. Opt-out customers would not pay the Part E rate, but would pay the Part D rate.

This is a straightforward rate-setting methodology. As FIPUG's witness Pollock observed, it is not unlike the setting of rates for customers who take service at transmission voltage: those customers do not have any distribution costs assigned to their rates, just as opt-out customers here, who have self-funded qualifying energy savings measures, should not have EE costs assigned to their ECCR charges. TR 511.

IV. The Commission Should Require the IOUs to Implement the Opt-Out Proposal in the IOUs' DSM Plans.

As discussed above, Walmart's Opt-Out proposal represents an appropriate enhancement to Florida's energy conservation efforts. Walmart's Opt-Out proposal is consistent with FEECA and represents sound public policy recognized by many other states that allow either opt-out or self-direction of energy conservation spending by eligible customers. Accordingly, in its order approving Walmart's Opt-Out proposal, the Commission should require the IOUs to promptly prepare and file appropriate tariff provisions or other documentation providing for the prompt implementation of the Opt-Out proposal.

WALMART'S STATEMENT OF ISSUES AND POSITIONS

Walmart provides this statement of positions on the issues set forth in Order No. PSC-15-0149-PCO-EI, issued April 1, 2015, in accordance with Section III of the Order Establishing Procedure.

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?

WALMART'S POSITION:

Yes.

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?

WALMART'S POSITION:

*Yes. Providing this opportunity will enable eligible customers to proactively implement, ***solely at their own expense***, energy efficiency measures that are best tailored to customers' facilities and operations, thereby maximizing energy efficiency benefits for opt-out customers, for the utilities, for the utilities' other customers, and for Florida as a whole.*

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.

WALMART'S POSITION:

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

Respectfully submitted this 20th day of August, 2015.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail this 20th day of August 2015, to the following:

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