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August 20, 2015

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

Re: Docket No. 140226-EI

Dear Ms. Stauffer:

Attached is Gulf Power Company's Post-Hearing Brief and Statement of Issues and Positions to be filed in the above-referenced docket. Pursuant to the Order Establishing Procedure, a copy of this Post-Hearing Brief prepared using Microsoft Word is being provided to Commission staff and parties.

Sincerely,

A handwritten signature in blue ink that reads "Robert L. McGee, Jr." in a cursive style.

Robert L. McGee, Jr.
Regulatory and Pricing Manager

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Attachments

cc: Beggs & Lane
Jeffrey A. Stone, Esq.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

**POST-HEARING BRIEF AND STATEMENT
OF ISSUES AND POSITIONS OF GULF POWER COMPANY**

Gulf Power Company, (“Gulf Power,” “Gulf,” or “the Company”), by and through its undersigned attorneys, files the following as its post-hearing brief and post-hearing Statement of Issues and Positions in this proceeding pursuant to Order No. PSC-15-0290-PHO-EI and Rule 28-106.215, Florida Administrative Code (“F.A.C.”).

GENERAL DISCUSSION

The Florida Public Service Commission (“Commission”) has a long and successful history of implementing the Florida Energy Efficiency and Conservation Act (“FEECA”). Since the inception of FEECA, the Commission has provided for the recovery of energy efficiency and demand-response costs from all customers across all customer classes. Wal-Mart Stores East, LP/Sam’s East, Inc. (“Wal-Mart”) and the Florida Industrial Power Users Group’s (“FIPUG”) (collectively, “Petitioners”) proposals in this docket are a sharp and unwarranted departure from years of well-reasoned Commission policy and practice. As a general proposition, Gulf is not opposed to revisiting and modifying Commission policy if doing so is justified under the circumstances. Petitioners have provided no such justification in this proceeding. Rather, Petitioners have offered a solution in search of a problem. As explained by Gulf Witness Floyd and the other utility witnesses, the Commission’s use of the Rate Impact Measure Test (“RIM”) to establish utility demand-side management (“DSM”) goals and programs ensures that all customers benefit from utility-sponsored DSM through downward rate pressure over time. [Tr.

338-40] Because all customers --participants and non-participants alike-- benefit from utility-sponsored DSM, it is unnecessary, and unfair, to allow a subset of customers to avoid paying for their fair share of the costs. In addition to ensuring that their customers will receive benefits for which they have not paid, Petitioners' "opt-out" proposals would result in shifting of DSM-related costs to residential and small commercial customers who do not qualify to opt-out. [Tr. 382-83] Petitioners contend that such cost-shifting will not occur if utilities are permitted to "count" energy and demand savings achieved by opt-out customers toward reaching the utilities' DSM goals. As explained by Wal-Mart witness Chriss, "[o]nce an opt-out program is implemented, the utility should look at the opted out load and say, well, we don't have to program for them anymore. That should reduce the expected program costs and the expected efforts that the utility makes for those customers." (emphasis added) [Tr. 122] Aside from bare assertions such as the foregoing, Petitioners have provided no evidence that program costs would actually be reduced.¹ [Tr. 78, 543] The flaw in Petitioners' argument is that they presume that all commercial/industrial DSM program activity would cease if an opt-out program is implemented. That is not the case. As Gulf witness Floyd explained, Gulf's suite of commercial/industrial DSM programs is available to all commercial and industrial customers, including commercial and industrial customers who would not qualify to opt-out under Petitioners' proposals. [Tr. 349-50, 354-55] Consequently, these programs would continue to operate in order to provide offerings to commercial and industrial customers who could not, or choose not, to opt-out. [Id.] While it is possible that Gulf would experience some reduction in variable program costs as a

¹ During the hearing, Wal-Mart introduced Exhibits 38-39 as support for the proposition that cost-shifting would not occur. [Tr. 90] These exhibits demonstrate no such thing. Even if one assumes that Wal-Mart's analysis is correct, it merely compares the impact of opt-out customers on ECCR revenue requirements to the contribution of opt-out customers toward utility DSM goals. Nowhere does the analysis demonstrate that utilities' program costs would be reduced as a result of opt-out customers' contributions to DSM goals. [Tr. 102]

result of not paying incentives to opt-out customers, Gulf would continue to incur fixed program costs in the form of labor, overhead, vendor contracts, etc. and variable costs in the form of incentive payments to non-opt-out customers. [Tr. 124-27] These costs would be recovered from a smaller pool of customers, resulting in upward rate pressure for those customers. [Tr. 378]

In addition to shifting costs to customers who cannot or do not opt-out of utility-sponsored DSM programs, the Petitioners' proposals would unquestionably result in utilities incurring incremental costs associated with administering an opt-out program. [Tr. 379-80] Among other things, Gulf would incur incremental costs associated with modifying the Company's customer service and billing system, acquiring software to track customer enrollment and qualifications for opting out, website modifications to enable on-line enrollment, creation of processes to verify energy savings and employee education and training. [Tr. 340; Staff Exhibit 32, bates page 00190-91]

Petitioners contend that the legislature has tasked the Commission with considering the need for incentives in making decisions pursuant to FEECA and that an opt-out mechanism creates an incentive for customers to undertake energy efficiency on their own. [Tr. 369] Gulf Power does not disagree that the Commission should consider the need for incentives in implementing FEECA. However, Gulf also notes that this Commission has held repeatedly that customers should not be provided with incentives to deploy energy efficiency measures which the customer would have deployed in the absence of an incentive. It is apparent from Petitioners' own testimony that they are sophisticated energy users who routinely deploy energy efficiency measures on their own when it is in their financial interest to do so. For example, Wal-Mart witness Baker testifies that Wal-Mart is "an industry leader in energy conservation" and has

already made commitments to “accelerate energy efficiency by reducing kWh/sqft energy intensity required to power [its] buildings around the world by 20 percent by December 31, 2020 as compared to 2010 levels.” [Tr. 48-49] FIPUG witness Pollock notes that large energy-intensive customers such as FIPUG’s members are most likely to self-fund energy efficiency measures because “[e]lectricity is a significant operating cost” and, due to strong domestic and global competition, such customers “must do everything possible to minimize costs in order to remain competitive.” (emphasis added) [Tr. 809-10] As stated by Gulf Witness Floyd, an opt-out mechanism would clearly provide qualifying customers with an incentive to opt-out of paying for utility energy efficiency programs. [Tr. 369] However, it is far less clear that an opt-out would incentivize any incremental self-funded energy or demand savings.

Petitioners note that other states have implemented various forms of opt-out programs and suggest that Florida is therefore “out of step.” [Tr. 511-13] While it is certainly within the Commission’s purview to consider practices within other jurisdictions, the Commission should also consider the context of those other regulatory decisions. Regulatory and statutory constructs differ among jurisdictions, and it is important to consider these differences when making policy determinations. This fact was highlighted by the testimony of Duke witness Duff. On cross-examination, Mr. Duff explained that it is important to “look at [each state’s] policies regarding EE and DSM in totality and understand how everything works together.” For example, North Carolina and South Carolina do not use the RIM test as the primary cost-effectiveness screen. [Tr. 277] Moreover, neither jurisdiction has mandatory DSM goals. [Tr. 275] The same is true of Indiana. [Tr. 270-71] Ohio has mandatory DSM goals, but opt-out participation is very low partly because of rigorous measurement and verification requirements. [Tr. 291] Opt-out provisions in North Carolina, Indiana and Ohio are all statutory in nature. [Tr. 261, 270-71, 274]

None of the aforementioned jurisdictions allow for aggregation of customer accounts in the manner proposed by Petitioners. [Tr. 271] All of the foregoing distinctions support the conclusion that there is no “one-size fits all” solution and that policies among states can, and should, differ based upon each state’s approach to DSM. Gulf submits that Florida’s current approach, which recognizes that all customers gain more benefit from RIM-based DSM than the cost to implement such DSM, is the appropriate policy for Florida.

Lastly, the Commission should not lose sight of the fact that the utilities’ DSM Plans provide meaningful opportunities for commercial and industrial customers to participate in utility-sponsored DSM. For example, Gulf Power offers a Commercial/Industrial Custom Incentive Program recognizing that large commercial and industrial customers often have unique operations that require unique DSM solutions. [Tr. 362-63] This program allows for collaboration between customers and Gulf in order to develop solutions which are tailored to the customer’s unique needs. Recently, Gulf has provided incentives for the following projects under its Custom Incentive program: two school chiller replacements, one hotel chiller replacement, one medical facility heat pipe installation, one industrial plant chiller replacement and one military installation chiller optimization. [Staff Exhibit 32, bates page 00198] In light of the foregoing, any suggestion that Petitioners cannot participate in utility-sponsored DSM is misplaced.

DISCUSSION OF SPECIFIC ISSUES²

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?

SUMMARY: No. Virtually all of Gulf Power's programs provide both energy and demand savings. The opt-out proponents correctly recognize the benefits of implementing demand response programs but fail to recognize that cost-effective energy efficiency programs also provide benefits to participating and non-participating customers alike.

DISCUSSION:

While they label them differently, Petitioners propose separating Energy Conservation Cost Recovery ("ECCR") expenses associated with DSM programs into two categories: demand response related program expenses and energy efficiency related program expenses. [Tr. 337] They contend that demand response programs are designed to reduce peak demand and, as such, are beneficial for all customers. [Id.] For this reason, Petitioners propose that expenses associated with demand response programs (which consist primarily of credits paid to larger customers who agree to take interruptible service) should continue to be funded by all customers through the ECCR clause. [Id.] In contrast, Petitioners contend that energy efficiency programs do not have the same benefit for all customers because the primary objective of these programs is to reduce overall energy consumption. [Id.] For this reason, they propose that qualifying commercial and industrial customers should be permitted to opt out of participating in, and thus paying for, energy efficiency programs. [Id.] This is a classic "heads I win, tails you lose" proposition. Petitioners want to continue to take advantage of the bill credits they receive under interruptible service programs and avoid paying for the remainder of the programs. The proposal is not only

² The listing of issues and position summaries that follow in this section is also intended to serve as Gulf Power's post-hearing Statement of Issues and Positions required by Order No. PSC-15-0290-PHO-EI.

one-sided, it also ignores the fact that virtually all of Gulf's DSM programs have both energy and demand savings benefits. [Tr. 337-38] Indeed, in Gulf's case, most of the Company's peak-demand savings come from its energy-efficiency programs. As Gulf witness Floyd explained, "[o]nly a very small portion of our summer- and winter- peak demand savings come simply from our demand-response programs. Most of that actually comes from the balance of our energy-efficiency programs." [Tr. 371-72] Petitioners correctly recognize the benefits of implementing demand response programs but fail to recognize that RIM-passing energy efficiency also provides benefits that exceed costs to participating and non-participating customers alike. [Tr. 337-38] Quite simply, no reason exists to require the utilities to separate their Energy Conservation Cost Recovery expenditures into multiple categories.

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?

SUMMARY: No. Cost-effective demand-side management benefits all customers; therefore all customers should share in the costs of such programs. Allowing select customers to opt-out of utility energy efficiency programs is unnecessary and would unfairly shift program administration costs to non-opt out customers, result in complex and costly new procedures and impact the entire Florida Energy Efficiency Conservation Act process.

DISCUSSION:

The Commission's use of the RIM test to establish DSM goals and programs ensures that all customers benefit from utility-sponsored DSM through downward pressure on rates over time. [Tr. 338-39] Because all customers --participants and non-participants alike-- benefit from utility-sponsored DSM, it is unnecessary, and unfair, to allow a subset of customers to avoid paying for their fair share of the costs. [Tr. 339] Costs associated with offering DSM programs

have historically been, and should continue to be, borne by all of Gulf's customers. [Id.] Customers participating in cost-effective DSM programs deliver energy and demand savings benefits in the form of avoided cost savings. [Id.] When these energy and demand saving benefits are greater than the program costs, all customers benefit from lower utility costs. [Id.] Lower utility costs, in turn, result in downward rate pressure over time. [Id.] The RIM test is often referred to as the "no losers" test because it accounts for impacts on both participating and non-participating customers. [Id.] RIM-based cost-effective DSM goals and associated programs obviate the need for a complex and administratively burdensome opt-out provision that benefits a sub-set of Gulf's customers. [Id.] The customers represented by Petitioners, as well as all other customers, enjoy the benefits of downward rate pressure and should, therefore, share in the associated costs. The Commission recognized this shared cost/benefit relationship in Order No. 9974 dated April 24, 1981, wherein the Commission considered a similar proposal put forth by the Florida Industrial Power Users Group. The Commission rejected the proposal noting as follows: "Because all customers will enjoy the benefits of such cost avoidancy we direct that the authorized costs be recovered from all customers..." Order at p. 162.

Petitioners' proposals are not only unnecessary, they are also inequitable in the sense that they would result in Gulf's conservation costs being spread over the remaining customers who cannot or choose not to opt-out of utility-sponsored DSM. [Tr. 378-79] This cost-shifting, in turn, would result in upward rate pressure for those customers. [Id.] The problem is not solved by allowing utilities to rely upon opt-out customers' reported energy and demand savings to meet their mandatory DSM goals. [Tr. 382] The Petitioners hypothesize --without the benefit of any evidence-- that allowing reported savings to count toward utility goals would result in lower program administration costs. While appealing in its simplicity, the assumption is flawed. As

Gulf witness Floyd explained, Gulf's suite of commercial/industrial DSM programs is available to all commercial and industrial customers, including commercial and industrial customers who would not qualify to opt-out under Petitioners' proposals. [Tr. 349-50, 354-55] Consequently, these programs would continue to operate in order to provide offerings to commercial and industrial customers who could not, or chose not, to opt-out. [Id.] While it is possible that Gulf would experience some reduction in variable program costs as a result of not paying incentives to opt-out customers, Gulf would continue to incur fixed program costs in the form of labor, overhead, vendor contracts, etc. and variable costs in the form of incentive payments to non-opt-out customers. [Tr. 124-27] These costs would be recovered from a smaller pool of customers, resulting in upward rate pressure for those customers. [Tr. 378]

In addition to being unnecessary and inequitable, Petitioners' proposals would usher in a host of potentially complex process changes which would result in incremental administrative expense. [Tr. 340-41] Petitioners suggest that an opt-out provision be offered to qualifying customers on a customer-by-customer basis. In response to Staff discovery, Gulf identified 88 individual accounts which would qualify under FIPUG's proposal and 30 individual accounts which would qualify under Wal-Mart's proposal. [Staff Exhibit 32, bates pages 00194-95] It is important to note that these are individual accounts that would qualify on a stand-alone basis and not accounts which would qualify on an "aggregated" basis as proposed by Petitioners. [Id.] There are many more accounts which would qualify on an aggregated basis. [Id.] It is equally important to note that the process changes (and attendant costs) necessary to accommodate Petitioners' proposals would remain essentially the same regardless of whether qualified customers total 150 or 15,000. Such process changes would likely include: (i) creation of customer enrollment and qualification processes which would result in the need to acquire a

tracking system (i.e., software); (ii) creation of enrollment forms (i.e., website changes), (iii) creation of communication processes and documentation regarding a customer's opt-out disposition, (iv) customer communication regarding the disposition of their enrollment; (v) creation of a process to collect actual energy and demand savings from customers; (vi) changes to Gulf's customer service and billing system in order to appropriately aggregate and bill opt-out customers; (vii) development of training for Gulf personnel involved in all of the foregoing activities. [Tr. 340; Staff Exhibit 32, bates page 00190-91] In addition to enrollment and billing processes, ECCR true-up, audit and projection filing processes and FEECA filings would require changes. ECCR schedules would require modifications to account for the removal of energy and demand for opt-out customers in factor calculations. [Id.] Both projected (ECCR projection filing) and actual (ECCR true-up filing) energy and demand savings would have to be collected and verified prior to the deadlines for these filings so they could be incorporated. [Id.] Gulf's DSM plan is approved once every five years without knowledge of how many customers might opt out during the plan period. Therefore, impacts of opt-out customers on Gulf program achievements would have to be identified and reported annually in Gulf's FEECA filing. [Id.] New processes that are necessary or increase value are not improper in and of themselves; however, under present circumstances, such added complexities are simply not warranted.

Lastly, Petitioners' proposals could jeopardize the integrity of the FEECA reporting process. The energy and demand savings reported by Gulf are associated with programs and measures approved by the Commission. [Tr. 343] Each measure is assigned a deemed savings value on a per participant basis. [Id.] These savings are determined through a variety of means including program experience, third party subject matter experts and measurement and verification and are calculated based on program participation. [Id.] If Gulf were permitted to

rely on reported savings from opt-out customers in meeting its DSM goals, managing reported savings from a plethora of opt-out customers would introduce another layer of complexity to this process. [Id.] In addition to Gulf first obtaining savings information from each customer, once obtained, the information would then need to be verified to ensure it is measurable, consistent with other opt-out customers, non-duplicative, etc. [Id.] Furthermore, Gulf's ability to meet a portion of its DSM goal would be dependent on opt-out customers from which savings may or may not materialize. [Id.]

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.

SUMMARY: The Commission should apply criteria to ensure that the utility and the non-opt-out customers are not harmed by the customers that elect to opt out. Considerations could include allowing utilities to adjust their DSM goals based on lost energy savings or allowing utilities to count reported savings toward their existing goals, requiring that incremental administrative costs associated with the opt-out program to be borne by the cost-causers and ensuring that non-opt-out customers are not required to bear additional expense.

DISCUSSION:

Gulf does not believe that an opt-out mechanism is necessary or in the best interest of its general body of customers. However, if an opt-out mechanism were pursued, it would need to be structured such that the utility and its remaining customers are not harmed. The Petitioners' proposals do not accomplish that objective, and there is insufficient information in the hearing record to fashion an opt-out mechanism that would do so. At a minimum, however, Gulf submits that the mechanism would need to account for lost energy and demand savings opportunity (either through reduction of utility DSM goals, counting opt-out customers savings toward existing goals, or some other construct), ensure that all incremental administrative costs

are accurately captured and assigned to the opt-out customers as the cost causers, and ensure that customer implemented energy efficiency measures produce savings which are cost-effective and reliable (i.e., RIM-passing or some other objective metric). The mechanism would also need to include criteria to ensure that Gulf's ongoing ECCR costs are not shifted to customers who cannot or choose not to opt-out.

CONCLUSION

Gulf Power respectfully requests that the Commission reject the Petitioners' proposals in this docket. The proposals are unnecessary, inequitable, and ill-defined. They provide Petitioners with all of the benefits of cost-effective energy efficiency, but without the cost. These costs, in turn, will be borne by Gulf's remaining customers who cannot or choose not to participate in an opt-out mechanism. Petitioners have failed to provide a sufficient basis for departing from years of sound Commission policy and practice.

Respectfully submitted this 20th day of August, 2015.



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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.)
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Docket No.: 140226-EI

CERTIFICATE OF SERVICE

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

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