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September 24, 2014

-VIA ELECTRONIC FILING -

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

Re: Docket No. 140002-EG
Energy Conservation Cost Recovery Clause

Dear Ms. Stauffer:

I enclose for electronic filing in the above docket the prepared rebuttal testimony of Florida Power & Light Company witnesses Renae B. Deaton and Thomas R. Koch.

If there are any questions regarding this transmittal, please contact me at 561-691-2512.

Sincerely,

/s/Kenneth M. Rubin
Kenneth M. Rubin

Enclosures

cc: Counsel of record for parties (w/encl.)

**CERTIFICATE OF SERVICE
DOCKET NO. 140002-EG**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic mail this 24th day of September, 2014 to the following:

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**BEFORE THE FLORIDA
PUBLIC SERVICE COMMISSION**

**DOCKET NO. 140002-EG
FLORIDA POWER & LIGHT COMPANY**

SEPTEMBER 24, 2014

ENERGY CONSERVATION COST RECOVERY

REBUTTAL TESTIMONY OF:

**RENAE B. DEATON
THOMAS R. KOCH**

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **FLORIDA POWER & LIGHT COMPANY**

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

4 **DOCKET NO. 140002-EG**

5 **SEPTEMBER 24, 2014**

6
7 **Q. Please state your name and business address.**

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

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

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

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

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

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

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

11

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

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

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

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

21 A. No.

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

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

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

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

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

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

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

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

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

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

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

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

10

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

24

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

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

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

24

1 Q. Does this conclude your testimony?

2 A. Yes.

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **FLORIDA POWER & LIGHT COMPANY**

3 **REBUTTAL TESTIMONY OF THOMAS R. KOCH**

4 **DOCKET NO. 140002-EG**

5 **SEPTEMBER 24, 2014**

6
7 **Q. Please state your name and business address.**

8 A. My name is Thomas R. Koch. My business address is 9250 W. Flagler Street,
9 Miami, Florida 33174.

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

11 A. I am employed by Florida Power & Light Company (“FPL”) as Senior Manager,
12 Demand-Side Management Strategy, Cost & Performance.

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

14 A. I am responsible for regulatory filings, reporting and cost management for FPL’s
15 Demand-Side Management (“DSM”) related activities.

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

17 A. I have a Master of Business Administration and a Master of Science in Computer
18 Information Systems, both from University of Miami, and a Bachelor of Music
19 from West Chester University.

20
21 I joined FPL’s Finance Department in 1985 working on forecasting and
22 regulatory projects. In 1989 I became Treasury Manager responsible for FPL’s
23 short-term cash management, investing and borrowing. In 1991, I joined

1 Customer Service where I was responsible for program management of various
2 tariffed offerings, product development and commercial/industrial retail market
3 strategy. Beginning in 1998, I served in a number of positions in Distribution:
4 Manager, Development & Planning; Manager, Environmental Department;
5 Manager, Underground Department; and Manager, Financial Forecasting. In
6 these positions I was responsible for: day-to-day field operations; regulatory
7 proceedings; growth activities; policy and procedure development; and regulation
8 compliance. In 2009, I rejoined Customer Service, initially working on securing
9 FPL's \$200 million award from the Department of Energy's Smart Grid
10 Investment Grant program and then on DSM. I assumed my current position in
11 2011.

12 **Q. Have you previously submitted testimony in the Commission's DSM goal-**
13 **setting proceeding?**

14 A. Yes, I was a witness for FPL in Docket No. 130199-EI.

15 **Q. Are you sponsoring an exhibit in this proceeding?**

16 A. No.

17 **Q. What is the purpose of your rebuttal testimony?**

18 A. The purpose of my rebuttal testimony is to address the "Opt-Out" proposals made
19 by Florida Industrial Power Users Group ("FIPUG") witness Jeffry Pollock and
20 Wal-Mart Stores East, LP and Sam's East, Inc. (collectively, "Wal-Mart")
21 witnesses Kenneth E. Baker and Steve W. Chriss (I will refer to FIPUG and Wal-
22 Mart collectively as the "Intervenors"). I will address both proposals together
23 because the thrust of each is the same – to shift the recovery of certain prudently-

1 incurred Energy Conservation Cost Recovery (“ECCR”) clause costs from “large”
2 business customers, such as the companies they represent, to residential and small
3 business customers. The proposals differ in some of their implementation details,
4 such as the minimum eligibility criterion (an aggregate of 1 MW proposed by
5 FIPUG vs. an aggregate of 15 million annual kWh proposed by Wal-Mart). But
6 these differences are ultimately unimportant because, as I demonstrate, there are
7 several common fundamental fatal flaws underlying the Opt-Out proposals
8 compelling the conclusion that they should be rejected.

9 **Q. Please explain the fundamental fatal flaws with the Intervenor’s Opt-Out**
10 **proposals from a DSM perspective.**

11 A. First, both proposals rely on the flawed premise that utility-sponsored DSM
12 measures benefit only the participants, or the rate class in which the participants
13 take service. FIPUG witness Pollock goes so far as to repeatedly scorn the
14 current recovery of costs related to energy efficiency (“EE”) programs as
15 “socialized.” However, the premise of these proposals is incorrect. In their
16 attempt to justify an Opt-Out provision, the Intervenor’s ignore the fact that all
17 customers (whether participating in a DSM program or not) benefit from shared
18 system cost savings stemming from peak demand and energy reductions created
19 by the participating customers. When the Commission relies primarily on the
20 Rate Impact Measure (“RIM”) cost-effectiveness test to set goals and approve
21 programs (as the Commission has traditionally done and FPL recommends in
22 Docket No. 130199-EI), it ensures that all of Florida’s DSM measures benefit the
23 general body of customers because these programs result in lower electric rates

1 for all customers. Interestingly, FIPUG shares a similar view as one of its basic
2 positions in the DSM Goals proceeding, per their prehearing statement, is that
3 “[t]he Commission should set goals that balance the importance of pursuing
4 conservation programs against their cost and the impact of that cost on rates.” It
5 is appropriate for all customers to share in paying for the costs of those programs
6 because they all share in the benefits. In other words, because all customers share
7 in the benefits of approved DSM programs, there is no justification for allowing
8 certain groups of customers to opt-out of paying for those programs.

9
10 Second, the Opt-Out proposals are also based on the flawed and unsupported
11 premise that only (or primarily) large business customers implement DSM
12 measures without utility incentives. This is incorrect; customers in all classes and
13 of all sizes implement DSM without incentives. In fact, one of the key principles
14 in designing cost-effective DSM plans is to identify those measures that could be
15 expected to be installed by customers without incentives and exclude those
16 measures from the utility-sponsored DSM programs. Customers who would
17 install a measure without requiring any additional incentive are referred to as
18 “free riders.” In setting DSM goals, the Commission requires utilities to reflect
19 free riders in their projection (Rule 25-17.0021, F.A.C.). One of the primary
20 missions of utility-sponsored DSM plans is to identify measures that would not be
21 implemented without incentives and induce participation in those measures if it
22 can be done in a way that benefits all customers (i.e., passes the RIM test). To
23 minimize the likelihood of free riders, FPL screens out measures which have short

1 paybacks. Some examples of such measures for residential customers include
2 compact fluorescent lights, air-conditioning maintenance (refrigerant recharging
3 and coil cleaning) and refrigerator/freezer recycling. Examples for business
4 customers include air-conditioning duct sealing and certain lighting change-outs.

5
6 The discussion in the testimony of the Wal-Mart witnesses about its independent
7 implementation of DSM is nothing more than a good illustration of free ridership.
8 Their corporate objectives, as provided in the testimony, appear to require
9 implementation of DSM, thus making utility incentives inappropriate for their
10 activities according to the exact same “free rider” test that is applied to DSM
11 measures for all customer classes. At the same time, Wal-Mart will receive the
12 incremental benefits of other customers’ implementation of DSM installations,
13 both those that require utility incentives and those that do not.

14 **Q. Should the Commission give any weight to the fact that various forms of Opt-
15 Out programs have been implemented in certain other jurisdictions?**

16 A. No. The Intervenors did not provide any evidence showing that the particular
17 circumstances or rationales leading to programs in other states would be
18 applicable to Florida. Unique legislative, regulatory, utility, and/or customer
19 considerations can lead to special accommodations such as the opportunity to opt
20 out of paying costs that otherwise would be a customer’s responsibility. The
21 Intervenor witnesses provide no insight into those considerations. As such, it
22 would be inappropriate to assume that just because various forms of Opt-Outs

1 have been tried elsewhere, the FIPUG and Wal-Mart approaches could be applied
2 effectively or fairly for Florida customers.

3
4 Examination of FIPUG witness Pollock's Exhibit JP-1, page 1, provides clear
5 evidence of the wide range of approaches taken by various jurisdictions. For
6 example, his exhibit identifies five different approaches to the recovery of DSM
7 costs, including the approach of spreading the costs to all customer classes, the
8 approach utilized in Florida. The exhibit certainly shows no dominant trend
9 toward the Opt-Out approach proposed by FIPUG and Wal-Mart. To the
10 contrary, the exhibit shows that several of the most populous states (e.g.,
11 California, Illinois, Massachusetts and New York) apparently follow the same
12 approach as Florida. The "jumping on the bandwagon" argument is never a good
13 basis for policy decisions, and Mr. Pollock's testimony fails to present a
14 compelling justification for Florida to change course and adopt a DSM Opt-Out.

15 **Q. Do the intervenors' assertion that load management ("LM") programs are**
16 **inherently more effectively implemented by utilities while EE programs are**
17 **more effectively executed by "large" customers justify their Opt-Out**
18 **proposals?**

19 **A.** No, for at least three reasons. First of all, as discussed above, Florida's approach
20 to DSM ensures that approved programs provide a net benefit to all customers
21 regardless of which customers are actually implementing the DSM measures.
22 Therefore, it is irrelevant to the question of who should pay for the DSM

1 measures to differentiate between customer classes based on which ones
2 implement more of the DSM.

3
4 Second, the Intervenor's assertion that only large customers implement EE
5 measures on their own is factually inaccurate. As I discussed previously, there
6 are numerous EE measures for residential and smaller business customers that are
7 eliminated from the utility-sponsored DSM plan by the free-rider screen because
8 they can be implemented by those customers without incentives. So it is not only
9 "large" customers who can and will implement EE measures on their own.

10
11 Finally, the Intervenor's proposal that they be allowed to opt-out of paying for EE
12 programs (so that all the costs of those programs are borne by smaller customers)
13 while continuing to have all customers share in paying for LM programs amounts
14 to little more than a smoke screen for one-sided "cherry picking." This is
15 discussed in the testimony of FPL witness Deaton. As she explains, if the
16 Intervenor's proposals were applied even-handedly (so that smaller customers
17 could opt out of paying for the LM programs that are available only to large
18 business customers), the Intervenor's bills would actually increase compared to
19 the current practice of recovering all ECCR costs from all customer classes. This
20 illustrates vividly how one-sided and inappropriate the Intervenor's approach
21 would be.

22 **Q. Does this conclude your rebuttal testimony?**

23 **A.** Yes.