BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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

POST-HEARING BRIEF AND STATEMENT OF ISSUES AND POSITIONS OF WHITE SPRINGS AGRICULTURAL CHEMICALS, INC. d/b/a PCS PHOSPHATE – WHITE SPRINGS

Pursuant to the Commission's Order Establishing Procedure in this docket, Order No. PSC-15-0149-PCO-EI, issued April 1, 2015, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs ("PCS Phosphate" or "PCS"), files its Post-Hearing Brief and Statement of Issues and Positions in the above matter. Except as described below, the PCS Phosphate positions on issues remain as stated in the Prehearing Order No. PSC-15-0290-PHO-EI, issued July 15, 2015.

I. BACKGROUND

This matter originated in Docket No. 140002-EG, where Wal-Mart Stores East, LP and Sam's East, Inc. ("Wal-Mart"), and Florida Industrial Power Users Group ("FIPUG") raised the issue of separating the energy efficiency and load management segments of Florida utilities' DSM plans and allowing qualifying large non-residential customers to opt-out of the energy efficiency portion of the ECCR charge. The Commission ordered this separate docket be established to resolve the opt-out issues raised by Wal-Mart and FIPUG (together "Petitioners").[1]

[1] Docket No. 14-0002-EG, Order No. 14-0583-PHO-EG at 15 (October 15, 2014).

II. OVERVIEW

PCS supports the proposal by the Petitioners to allow large qualifying customers to opt-out of the energy efficiency portion of the ECCR charge, and specifically supports the framework proposed by FIPUG. Conceptually, the reasons for adopting an energy efficiency opt-out policy are unassailable. Energy-intensive industrial and manufacturing customers, such as PCS, are highly motivated to identify, evaluate and implement cost-effective energy efficiency measures on their own due to the intense competitive pressures that those customers face. Utility administered energy efficiency DSM programs are not designed to address the specialized equipment and processes of these energy intensive facilities. Instead, the only real entry point in a utility energy efficiency DSM plan for those customers is a catch-all "custom" program, such as the Duke Energy Innovation Incentive program, in which the customer identifies potential efficiency improvements in its facilities, evaluates their expected costs and cost-effectiveness, and then must align its internal screening criteria with the utility's evaluation procedures in order to qualify for a limited incentive payment. The energy efficiency opt-out approaches offered by FIPUG and Wal-Mart are far superior alternatives to the existing process.

III. ARGUMENT

A. Permitting Large, Energy Intensive Industrial Customers the Flexibility to Opt-Out of a Utility Energy Efficiency Program is Sound Policy that Would Significantly Improve Existing Processes.

In the DEF service territory, three major mining customers accounted for nearly a third of all industrial class MWh sales in 2014. Exhibit 47 at P 3. As DEF acknowledges in its annual Ten Year Site Plans, the price of electricity is a major cost of production for those phosphate mining and phosphoric fertilizer producing operations. Hearing Transcript Vol. 2 at 308, 309. Even fractionally small energy efficiency savings by such large, energy intensive consumers would be considered "big wins" for the utility in meeting its energy savings targets, and are equally important for the customer in remaining economically competitive. Consequently, to both assist those customers and to best serve the clearly articulated energy efficiency goals of the Florida Energy Efficiency and Conservation Act, the Commission should adopt the most effective platform for encouraging energy efficiency improvements by those customers. Unlike utility DSM programs for residential and commercial customers, which aim to provide information and expertise that such customers lack in addition to incentive payments, utility managed energy efficiency programs for large industrial customers at best seek to facilitate efficiency improvements that only the customer has the knowledge and resources to develop. As DEF witness Duff acknowledged, Duke does not have any specific non-residential DSM programs that are designed for its industrial base. Hearing Transcript Vol. 2 at 305, 306. Rather, an industrial customer may be eligible for an incentive payment under a custom DSM program, but would itself be responsible for identifying potential projects that might qualify for an incentive payment. Hearing Transcript Vol. 2 at 310, 311. The utility does not identify energy efficiency projects, technologies or practices for these customers, or determine whether the customer considers it to be cost-effective (or a higher priority than other projects competing for capital dollars). It simply adds another layer of administrative requirements, including additional and potentially inconsistent cost-effectiveness criteria, in exchange for a potential incentive payment contribution towards a project's costs.

At the same time, customer charges imposed by the ECCR clause actually deplete the dollars available to those large customers for making the desired efficiency improvements. In short, the current DSM program regime does not provide meaningful energy efficiency program and project design assistance to large industrial customers, while the associated ECCR charges drain limited resources that could be more effectively deployed by these customers.

Significantly, the essential feature of the opt-out proposals of FIPUG and Wal-Mart is that large industrial customers redirect ECCR charge dollars into bona fide internal energy efficiency investments over time. This is inherently a better and more effective vehicle for encouraging energy efficiency improvements by those customers. In the specific case of Duke Energy, which receives a very significant portion of its industrial sales from three large, very electricity intensive phosphate mining customers, all of which are subject to intense global competition, the logic for establishing a self-directed, energy efficiency opt-out program is compelling and could be readily implemented with neglible additional administrative costs.

B. FEECA Allows the Commission to Implement an Opt-Out Program as Described in this Proceeding.

The foundational questions raised by some parties concerning the consistency of the proposed efficiency opt-out with the parameters of the Florida Energy Efficiency and Conservation Act ("FEECA") (F.S. Section 366.80 *et seq*.) are easily settled. FEECA aims to foster energy savings benefits in all end use sectors and broadly empowers the Commission to pursue innovative methods and approaches to accomplish that objective. Specifically, the statute expressly encourages the development of experimental rates, rate structures and programs, and further instructs that the Commission should liberally construe its grant of authority under FEECA to achieve those ends. Section 366.81, F.S., *Legislative Findings and Intent*. Clearly, the opt-out proposals offered by FIPUG and Wal-Mart, whether implemented on an experimental or permanent basis, fall well within the scope of that delegation of authority.

C. Administrative Considerations and Costs Should Not Trump Good Policy.

The remaining objections raised against the FIPUG and Wal-Mart opt-out proposals generally amount to carping over administrative and implementation questions that may or may not actually arise in implementing an opt-out option. An immediate observation is that none of those complaints constitutes sufficient reason for rejecting an otherwise sound policy that would substantially improve upon the current system. The scope of the opt-out proposals is limited to large, non-residential customers and the administrative cost of dealing with such a limited number of customers should not be substantial. As noted above, potential incremental costs associated with three very large mining loads would be negligible. Indeed, elevating administrative form over substance in such a fashion is exactly what the Legislature aimed to avoid in its broad delegation of authority to the Commission in FEECA as described above. PCS offers no specific comment on potential aggregation questions for multiple sites that are implicit in the Wal-Mart proposal, but sees no material administrative objections in developing an opt-out vehicle for large customer accounts on physically contiguous properties that would enhance efficiency investment opportunities.

IV. RESTATEMENT OF POSITIONS ON SPECIFIC ISSUES

PCS PHOSPHATE 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?**

PCS Phosphate: [Yes. PCS agrees with FIPUG and Wal-Mart that this separation should be implemented.]

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?

<u>PCS Phosphate:</u> [Yes. PCS agrees with Wal-Mart and FIPUG.]

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

<u>PCS Phosphate:</u> [PCS agrees with the eligibility criteria described by FIPUG.]

V. <u>CONCLUSION</u>

For the reasons stated herein, PCS Phosphate urges the Commission to grant Petitioners' proposal to allow large customers to opt-out of the energy efficiency portion of the utilities' ECCR charge.

Respectfully submitted

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by electronic mail and/or U.S. Mail this 20th day of August 2015 to the following:

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