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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.	Docket No. 140226-EI Filed: August 20, 2015

FLORIDA POWER & LIGHT COMPANY'S POST-HEARING BRIEF

Florida Power & Light Company ("FPL" or the "Company") hereby files with the Florida Public Service Commission (the "FPSC" or "Commission") its Post-Hearing Brief in the above-referenced docket, pursuant to Order Nos. PSC-15-0149-PCO-EI and PSC-15-0290-PHO-EI, and states:

I. INTRODUCTION AND SUMMARY

The Florida Industrial Power Users Group ("FIPUG") and Wal-Mart Stores East, LP and Sam's East, Inc. ("Wal-Mart") (collectively, the "opt-out proponents") have presented proposals to allow certain large customers to "opt out" of paying a portion of their electric bills – specifically, the Energy Conservation Cost Recovery ("ECCR") charges associated with Commission-approved energy efficiency programs designed to meet a utility's Commission-approved Demand Side Management ("DSM")[1] goals.

The opt-out proponents have presented little more than a concept with conflicting customer eligibility criteria. In contrast, the four investor owned utilities ("IOUs") – FPL, Duke Energy Florida ("DEF"), Gulf Power Company ("Gulf"), and Tampa Electric Company ("Tampa Electric") presented detailed testimony identifying serious concerns with the proposals and explaining the harm to the general body of customers that would result.

[1] As used herein, "DSM" and "DSM programs" refer to the entire group of energy efficiency and demand reduction or load control programs approved to meet the utility's DSM goals.

The opt-out proposals ignore the fact that regardless of whether a customer participates in a DSM program, that customer benefits from Florida's Rate Impact Measure ("RIM")-based portfolio of programs approved by the Commission, the costs of which are recovered through ECCR charges. *See, e.g.,* Tr. 143 (Koch). The opt-out proponents' arguments that they do not extensively participate in the IOUs' energy efficiency programs or that available programs are limited (*see, e.g.,* Tr. 507 (Pollock)) misses this fundamental point. Additionally, the Commission has already determined that DSM program participation bears no relationship to a customer's responsibility to help pay the costs associated with the DSM portion of a utility's resource portfolio, because all customers benefit from those programs. *See* Docket No. 930759-EG, Order No. PSC-93-1845-FOF-EG, p. 1 (issued Dec. 29, 1993) (citing Docket No. 810050-EU, Order No. 9974 (issued April 24, 1981)).

The proposals would allow opt-out customers to enjoy the benefits of energy efficiency programs (i.e., lower electric rates) while avoiding associated costs. Tr. 346 (Floyd). As described below, the result of this cost-avoidance would undoubtedly be a shift of prudently-incurred ECCR clause costs to other customers. The opt-out proposals are inconsistent with long-standing FPSC rate making and cost causation policies, not aligned with the objectives of the Florida Energy Efficiency and Conservation Act ("FEECA"), and unfair to other customers who, like the opt-out proponents, also may implement energy efficiency measures on their own. As explained more fully below, the record supports denying FIPUG's and Wal-Mart's opt-out proposals.

II. ISSUES AND POSITIONS[2]

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?**

FPL: *No. All customers benefit from the utility's DSM programs, yet the proposals would shift recovery of prudently incurred costs for approved programs to smaller business and residential customers. The proposals are inconsistent with sound regulatory policy and not aligned with FEECA. Furthermore, the circumstances in other states were proven irrelevant.*

The record evidence overwhelmingly supports rejection of the ECCR opt-out proposals. As discussed below, the evidence demonstrates the following:

- ECCR charges reflect Commission-approved programs that benefit all customers, including those who do not participate in energy efficiency programs (*see, e.g.,* Tr. 143-44 (Koch));
- prudently incurred ECCR costs will be shifted to customers who do not meet the opt-out proponents' eligibility thresholds (*see, e.g.,* Tr. 473 (Deason));
- significant administrative costs will be incurred (*see, e.g.,* Tr. 181-182 (Koch));
- the intent of FEECA will not be advanced (*see, e.g.,* Tr. 175 (Koch)); Tr. 492 (Deason));
- opt-out programs in other states operate within remarkably different legal and regulatory frameworks (*see, e.g.,* Tr. 263, 275, 277 (Duff)); and
- questions of fairness and discrimination are likely to arise (*see, e.g.,* Tr. 401 (Roche)).

[2] Because Issue 1 addresses a mechanism for calculating and administering the charges that would be paid by opt-out customers in the event that an opt-out proposal is adopted, that issue is treated as a "fall out issue" (along with Issue 3) following the discussion on Issue 2.

In light of these serious concerns, the generally-described ECCR opt-out proposals should be rejected.

a. All Customers Benefit from All Cost-Effective Programs, Regardless of Participation

There can be no doubt that all customers benefit from the Commission-approved DSM programs designed to meet the Commission-approved DSM goals of electric utilities in Florida. As explained by Mr. Koch on behalf of FPL, "all customers (whether participating in a DSM program or not) benefit from shared system cost savings stemming from peak demand and energy reductions created by the participating customers." Tr. 143 (Koch). He continued by explaining:

> [w]hen the Commission relies primarily on the Rate Impact Measure ("RIM") cost-effectiveness test to set goals and approve programs…all of Florida's DSM measures benefit the general body of customers because these programs result in lower electric rates for all customers.

Tr. 144 (Koch). *See also,* Tr. 233 (Duff) (stating "to the extent goals are set based on programs that are cost-effective under the Rate Impact Measure ("RIM") test, non-participants will benefit from all [energy efficiency] programs"); Tr. 340 (Floyd) (stating "the customers represented by [FIPUG and Wal-Mart], as well as all other customers, enjoy the benefits of downward rate pressure"); Tr. 454 (Deason) (stating "[a]ll customers enjoy the benefits of lower costs and lower rates under RIM passing conservation programs").

Despite the clarity with which this concept was explained in the IOUs' rebuttal testimony, witnesses appearing on behalf of the opt-out proponents continued to focus on program participation during the hearing, as if it were a relevant consideration. For example, Wal-Mart's Witness Baker testified that "we tend to pay into the rebate program, the ECCR charge, much higher numbers than we get back in rebates". Tr. 84 (Baker). Mr. Baker's

testimony fails to recognize that a customer could get zero "back in rebates" and it still would be appropriate for that customer to pay his or her ECCR charges, because of the shared cost savings and rate benefits realized by that customer and all customers.

Because all customers benefit from cost-effective DSM programs, it is appropriate that all customers pay the ECCR charges designed to recover those program costs. This is the holding of prior Commission orders considering similar attempts to limit the pool of customers from whom ECCR charges are collected. *See* Docket No. 810050-PU, Order No. 9974 (issued April 24, 1981), 1981 WL 634128 (Fla. P.S.C.) at p. 9 (holding that "[b]ecause all customers will enjoy the benefits of such cost avoidancy we direct that the authorized costs be recovered from all customers"); *see also,* Docket No. 930759-EG, Order No. PSC-93-1845-FOF-EG (rejecting different ECCR cost recovery approaches and reiterating that all customers benefit from DSM programs). Mr. Deason testified that in his opinion, implementation of an opt-out proposal would be "unfair and a monumental departure from the Commission's consistent view for over three decades that all customers benefit" from Commission-approved, cost-effective conservation programs and that "therefore, all customers should help fund these programs." Tr. 463 (Deason). Despite FIPUG's protestations that the holdings of these orders should no longer apply, or that the current proposals are somehow different (*see* Tr. 519 (Pollock)), the basic policy issue is the same and the same result is warranted. Tr. 470 (Deason).

b. The Opt-Out Proposals Will Result in Cost Shifting

While the eligibility and implementation criteria differ between FIPUG's proposal and Wal-Mart's proposal, the impact of each would be to shift the recovery of certain prudently incurred ECCR clause costs from large business customers to residential and small business customers. Tr. 142-43 (Koch). Witness Deason, on behalf of TECO, summed it up best when he

testified that "mathematically, [it] would be a certainty there would be costs shifted to other non-[opt-out] participating customers." Tr. 473 (Deason).[3]

It was made clear during the course of the hearing that the opt-out proponents hoped or "envisioned" that cost-shifting could be avoided, and yet, no evidence was presented demonstrating that upon implementation, such a result actually could be achieved. *See* Tr. 473 (Deason). To the contrary, the evidence overwhelmingly demonstrated that cost-shifting would result. *See, e.g.,* Tr. 143 (Koch); Tr. 225 (Deaton); Tr. 242-44 (Duff); Tr. 389 (Roche); 447 (Deason). This would occur even if opt-out customers' energy efficiency achievements were counted toward utility DSM goals (*see, e.g.,* Tr. 242-44 (Duff)), and even if opt-out customers bore the burden of all the administrative costs associated with an opt-out concept.

Witnesses for FIPUG and Wal-Mart indicated a belief that reduced variable costs would necessarily result if the opt-out customers' energy efficiency efforts are counted toward a utility's DSM goals. For example, one of Wal-Mart's witnesses testified that opt-out customers "would no longer be programmed for." Tr. 132 (Chriss). Mr. Pollock on behalf of FIPUG testified that "the only circumstance in which customers could be impacted is if the utility ignores the documented savings from the opt-out customers and continues to incur the same level of EE program costs." Tr. 521 (Pollock). However, the presumption that utilities would cancel programs or pay fewer rebates, thereby reducing their energy efficiency program costs, was unsupported by the opt-out proponents and refuted by IOU witnesses.

[3] At hearing, certain questioning implied that other states had "figured out" how to implement an opt-out provision without cost-shifting. However, Mr. Duff, testifying on behalf of Duke Energy Florida, pointed out that cost shifting does in fact occur in at least one other state with an opt-out provision. Mr. Duff explained that in North Carolina, "there is definitely shifting of costs because, as I said, as the number of opt-out customers has increased, the rider amount has gotten drastically higher, not because of the drastically higher program costs, but because of the lower base you're spreading it on." Tr. 277-78 (Duff).

With respect to the potential cancellation of programs, and the fact that such cancellation likely would *not* occur, Gulf's witness Mr. Floyd best explained it as follows:

> The programs that Gulf offers are not just programs for large industrial or large commercial customers. Instead, these are programs that are offered to all of Gulf's commercial, industrial customers. So, it's clear if a portion of those customers opt out, we can't just stop offering those programs and continueing to make those available to other customers. So those are costs that are going to continue that will not go away under either of these [opt-out] scenarios that are being proposed.

Tr. 349-50 (Floyd). FPL's programs are similarly offered to its broad Residential and Business customer bases. *See* Ex. 3, p. 1 (listing FPL's DSM programs as of 2014); *see also,* Docket No. 150085-EG, Order No. PSC-15-0331-PAA-EG, Attachment A (listing FPL's recently approved DSM programs). The idea that programs could be cancelled simply because some customers opt-out does not reflect reality.

With respect to the potential to pay fewer rebates, Wal-Mart's own testimony undermines the position that a reduction in rebates would naturally occur. Mr. Baker thoroughly explains the energy efficiency improvements and goals that Wal-Mart has self-implemented. Tr. 49-50 (Baker). He also explains that these efforts are to meet Wal-Mart's own corporate commitments or objectives (Tr. 49 (Baker)), indicating that those efforts have not depended upon utility program rebates. If that same customer were to now "opt-out" of the utility DSM programs that it already was not participating in, no rebate costs have been saved or avoided. Simply stated, "[y]ou can't avoid a rebate you didn't pay." Tr. 176 (Koch).

At hearing, Witnesses Baker and Chriss presented an exhibit that Mr. Baker claimed demonstrated that no cost-shifting would occur.[4] Tr. 78 (Baker). However, cross examination

[4] This exhibit was presented in two forms: (i) as a hypothetical customer in Exhibit 38, and (ii) reflecting confidential Wal-Mart information in Exhibit 39. These exhibits present similar information and suffer from the same flaws. The discussion herein focuses on the public Exhibit 38 but the same arguments apply with equal force to Exhibit 39.

quickly revealed that the exhibit failed to support his claim. In explaining the hypothetical information presented in Exhibit 38, Mr. Chriss testified that "if you take the opt-out customer revenues out, there are – those revenues would then be collected by others." Tr. 122 (Chriss).[5] In other words, the exhibit demonstrates that cost-shifting *would* occur. Mr. Chriss then explained as a result of the energy efficiency benefits provided by the hypothetical customer, "the expectation is that the utility's programming will change and that costs should not be shifted because those costs will cease to exist." *Id.* Once again, the opt-out proponent's hope is that certain costs could be avoided, but no record evidence demonstrates that such an outcome would occur. The exhibit does not present what programs could be cancelled or how many rebates would need to be avoided to make up the hypothetical customer's failure to pay his ECCR charge. *See* Tr. 102 (Baker) (confirming that there is no column in the exhibit that presents an actual reduction to the ECCR revenue requirements that would be collected from customers). Accordingly, Exhibit 38 (and by extension, Exhibit 39) fails to demonstrate any avoidance of cost-shifting.

Even if the utilities were able to scale back their DSM efforts to some extent (and assuming such efforts to reduce utility DSM efforts were deemed to be consistent with FEECA), that process would take time and there would be a period during which ineligible customers would bear the burden of the shifted costs. Mr. Chriss acknowledged this. In response to questioning from the Office of Public Counsel that potential DSM program changes "would not be implemented or implementable or show up as a reduction in the programs right away," Mr. Chriss testified, "if the opt out were implemented today with nothing else changing…the

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[5] He repeated this conclusion in response to questioning from OPC: "[T]hose revenue requirements under column 9, would those have to be collected from the remaining customers in the customer pool for the ECRC [sic] as it stands now? A: All things being equal, yes." Tr. 130 (Chriss).

revenues would stay the same and…it would factor into the over- or under-recovery numbers." Tr. 132 (Chriss). Once again, Mr. Chriss confirmed the cost-shifting impact.

In addition to shifting preexisting costs, significant administrative costs would be added to current ECCR charges in order to implement either of the opt-out proposals. In FPL's case, those administrative costs would be in the millions. Tr. 181 (Koch); Ex. 24 (Bates No. 00089-90). Such an amount should not be surprising, in light of the size of FPL's customer base and the number of systems and processes that would need to be modified in order to implement either of the proposed opt-out approaches. FPL estimates that tens of thousands of customers could potentially opt-out under the suggested proposals. Tr. 182 (Koch); Ex. 24 (Bates No. 00092-93). FPL would have to validate eligibility, track participation, monitor continued eligibility, inspect installations, and report energy efficiency savings.[6] Tr. 222 (Deaton), 157 (Koch). Additionally, regardless of the number of customers that ultimately may participate, certain basic system changes would need to be made, including changes to the billing system, accounting system, and clause filing system. Tr. 221-23 (Deaton), Tr. 181-82 (Koch).

Finally, even if one were to assume that some variable DSM program costs would go down and all administrative costs would be covered by opt-out customers, those assumptions do not solve the cost shifting problem – the prudently-incurred, fixed costs associated with running FPL's Commission-approved portfolio of DSM programs would be covered by a smaller subset of customers. *See* Tr. 447 (Deason); *see also,* Tr. 181 (Koch); Ex. 34. Witness Chriss, on behalf of Wal-Mart, acknowledged the existence of fixed costs. Tr. 125 (Chriss). Moreover, the opt-out customers would continue to benefit economically from the utility's programs offered to other customers. The cost-shifting result of the opt-out proposals simply cannot be avoided.

[6] FPL currently inspects 100% of customer measure installations in its Business Customer Incentive program. FPL expects that it would similarly need to inspect 100% of installations reported by opt-out customers, due to the unique and customer-specific nature of those installations. *See* Tr. 157 (Koch).

c. FEECA Objectives Would be Hindered by the Opt-Out Proposals

It is questionable at best whether any of the stated objectives of FEECA would be advanced by the opt-out proposals, and more likely that FEECA objectives would be hindered. The most glaring example is the initial proposal made by FIPUG that customers could opt-out even without making any energy efficiency improvements. Tr. 515 (Pollock). This approach certainly would not increase the cost-effective energy efficiency achievements of the state, and later was withdrawn. *See* Tr. 520 (Pollock).

Under Wal-Mart's proposal and FIPUG's revised proposal, in which energy efficiency investments are required to be made by opt-out customers, an electric utility would have to investigate whether the customer's savings are "really incremental savings that would rightfully be applied to the goals." Tr. 475 (Deason). For example, if an opt-out customer's energy efficiency investment resulted in less than a two-year payback, those savings were already assumed to be achieved in the DSM goal-setting process and would not represent incremental savings. *See* Tr. 477 (Deason). Additionally, Wal-Mart's proposal allows for recognition of a customer's historical energy efficiency savings or a promise to implement energy efficiency measures in the future (Tr. 53-54 (Baker)), calling into question whether any incremental energy efficiency savings would be achieved in the year of the customer's decision to opt-out. *See* Tr. 175 (Koch).

Much time was spent at hearing getting utility witnesses to agree that the opportunity to opt-out of paying the ECCR charge could be an economic incentive for a customer to install an energy efficiency measure. *See, e.g.*, Tr. 370 (Floyd); Tr. 490-91 (Deason). But the fact that an economic incentive may exist does not make the overall approach, or even the payment of that

incentive, consistent with FEECA. The pertinent question is whether it is an *appropriate* incentive for all customers to pay. Tr. 491 (Deason).

As discussed above in detail, all customers benefit from cost-effective, Commission-approved DSM programs so it is appropriate for all customers to help pay the costs of rebates paid to participating customers through those programs. However, self-directed projects by opt-out customers may not be cost-effective, and in fact, could be detrimental to the general body of a utility's customers. Wal-Mart's witness Baker stated, quite simplistically, that "a customer, whether commercial or industrial, that implements DSM and EE measures on its own yields network benefits for all of the Company's other customers." Tr. 47 (Baker). FIPUG's witness Mr. Pollock made similar, general statements. *See* Tr. 520 (Pollock) (stating "the benefits inure regardless of who self-directs and funds the EE program: the utility or individual customers"). However, consider an opt-out customer's self-directed energy efficiency measure that results in no reduction in on-peak demand, and results in a great deal of kilowatt hour savings and therefore puts upward pressure on rates. *See* Tr. 492 (Deason). In such a case, the incentive paid to the opt-out customer (in the form of avoided ECCR charges that other customers would cover) would be inappropriate and inconsistent with FEECA's requirement that costs and benefits to the general body of ratepayers as a whole be considered. *See* Section 366.82(3)(b), Florida Statutes.

d. Opt-Out Programs in Other States Fail to Demonstrate Appropriateness for Florida

The opt-out proponents, particularly FIPUG, relied heavily on the notion that other states have implemented some form of energy conservation opt-out program – implying that therefore, it must be appropriate or workable for Florida to follow suit. *See* Tr. 513 (Pollock). However, as testified by Witness Deason, "just because another state has adopted a certain opt-out provision does not necessarily make it appropriate to use in Florida." Tr. 489 (Deason). Mr. Koch,

testifying on behalf of FPL explained that "[u]nique legislative, regulatory, utility, and/or customer considerations can lead to special accommodations such as the opportunity to opt out of paying costs that otherwise would be a customer's responsibility." Tr. 145 (Koch). There was no evidence presented showing that the particular circumstances or rationales leading to opt-out programs in other states would apply in Florida. *Id.*

Closer examination of some of the other states with opt-out provisions demonstrated just how different the legal and regulatory frameworks of those states are. For example, in North Carolina and South Carolina there are no DSM goals, and no reliance upon the RIM cost-effectiveness test to ensure net benefits to all utility customers regardless of participation in DSM programs. *See* Tr. 263, 275, 277 (Duff). Indiana similarly has no legislative mandate for utility energy efficiency goals – energy efficiency goals were repealed when Indiana's opt-out provision was adopted. Tr. 271 (Duff). Absent an understanding of the legal and regulatory framework in existence in each state that purportedly has an opt-out or similar provision, Mr. Pollock's testimony and Exhibit 15 fail to present any useful information to the Commission in consideration of implementing an opt-out provision.

e. Fundamental Questions of Fairness Are Presented by the Opt-Out Proposals

The opt-out proposal presents issues of fairness largely for the reasons discussed above: regardless of whether an opt-out customer implements its own energy efficiency, an opt-out customer would continue to receive the benefits of RIM-passing utility programs without contributing to the costs of those programs. *See* Tr. 346 (Floyd). Any claim that it is "unfair" for large industrial or commercial customers to pay the ECCR charge because the utility's energy

efficiency programs are not well-suited to their operations ignores the rate benefits they are realizing from the utility's programs.[7]

Wal-Mart attempts to turn the fairness issue on its head, by claiming that large customers who self-fund energy efficiency investments provide benefits to other utility customers, and that it is unfair for those customers to also pay the energy efficiency portion of the utility's ECCR charges. Tr. 55, 59 (Baker). FPL did not dispute that Wal-Mart and customers represented by FIPUG may implement their own energy efficiency measures, but it is incorrect to presume those investments benefit the utility's general body of customers in the same manner as Commission-approved, cost-effective DSM programs as discussed above.

Moreover, customers in all classes and of all sizes implement DSM without incentives. Tr. 144 (Koch). Yet, those customers would not be permitted to opt-out of the ECCR charges under FIPUG or Wal-Mart's proposals. Testifying on behalf of TECO, Mr. Roche summarized this fundamental fairness consideration as follows:

> At Tampa Electric, we don't really see how we or the Commission could reasonably explain to a residential customer who decides to replace an inefficient refrigerator with a more efficient one why he or she must continue to pay the FEECA conservation charges approved by the Commission if allowing an industrial customer who makes a similar decision to opt-out.

Tr. 401 (Roche).

Finally, the unfairness of the opt-out proposals is obvious when one considers that the opt-out proponents are not proposing any opt-out for the load management programs. FPL's

[7] The opt-out proponents and PCS Phosphate – White Springs repeatedly asked questions in an attempt to establish that large industrial or commercial customers "know their businesses best" and are better equipped to make their own energy efficiency-related decisions. *See, e.g.,* Tr. 250 (Duff). While electric utilities may be able to offer unique perspectives or guidance on the efficient use of electricity (*see* Tr. 188 (Koch)), FPL has no reason to dispute that large businesses have unique knowledge of their operations. This concept is irrelevant to the determination whether an opt-out provision should be implemented in Florida. Additionally, these arguments disregard the custom incentive programs available to provide rebates for unique energy efficiency solutions that could be proposed by large industrial or commercial customers. FPL's program is called the Business Custom Incentive program. Tr. 151 (Koch).

Commercial/Industrial ("C/I") Load Control and Demand Reduction programs provide large bill credits to the type of customers who are members of FIPUG, yet most of the costs of those credits are currently borne by other customer classes. TR. 201 (Deaton). If the opt-out proponents' theory of program participation and ECCR responsibility were to be consistently applied, residential customers should be permitted to opt-out of paying for the CILC/CDR programs because they do not (in fact, cannot) participate in them. However, under the current opt-out proposals, other customer classes would continue to pay a large share of the cost for CILC and CDR programs for which they are ineligible. *Id.* It is hard to imagine anything more discriminatory and less fair from a rate making and cost causation perspective. *Id.*

f. Conclusion

As the evidence summarized above demonstrates, the opt-out proposals presented in this docket should be denied. The opt-out proponents overlook the fact that in Florida, customers who do not participate in DSM programs nonetheless benefit from the shared system cost savings and downward rate pressure those cost-effective programs provide. Furthermore, individual energy efficiency investments, made in a customer's own economic interest, do not necessarily benefit the general body of customers as the opt-out proponents claim. Pursuant to the opt-out proposals, the total cost of FPL's energy efficiency programs, which benefit all customers, would be shifted to a subset of customers such as smaller businesses and residential customers who do not meet the opt-out criteria. The proposals are inconsistent with established rate making principles, do not align with the objectives of FEECA, and present fundamental questions of fairness.

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?

FPL: *No. Programs that pass the RIM test benefit the general body of customers, including non-participating customers, regardless of their characterization as energy efficiency or demand reduction/load management. Accordingly, distinguishing between the two would not provide a meaningful basis for determining costs that opt-out customers would be allowed to avoid.*

As discussed above in Issue 2, the opt-out proposals of FIPUG and Wal-Mart should be rejected. Accordingly, there is no need to consider whether ECCR costs should be separated in order to calculate the charges that opt-out proponents are seeking to avoid.

Nonetheless, examination of this issue and the proposed separation of energy efficiency costs from demand reduction/load management costs highlights one of the key flaws in the opt-out proposals. That key flaw is the failure to recognize that *all* customers, including those who do not participate in utility programs and those who install their own energy efficiency measures, benefit from *all* of a utility's cost-effective DSM programs, including energy efficiency programs. *See* Tr. 338 (Floyd) ("cost-effective (i.e., RIM-passing) energy efficiency programs also provide benefits that exceed costs to participating and non-participating customers alike"), Tr. 233 (Duff) ("to the extent goals are set based on programs that are cost-effective under the Rate Impact Measure ("RIM") test, non-participants will benefit from all EE programs"). It would be inappropriate to disregard energy efficiency benefits in an attempt to craft a mechanism for the administration of the opt-out proposals.

Additionally, all programs have some demand reduction impacts, and some energy reduction impacts, regardless of their potential classification. *See, e.g.,* Tr. 337-38 (Floyd). Mr. Baker, on behalf of Wal-Mart agreed. Tr. 71 (Baker) ("Q…would you agree that there can be energy savings associated with demand response programs? A: Without a doubt.").

Accordingly, the proposed split, while perhaps administratively implementable, only partially reflects the substantive distinction the opt-out proponents are attempting to draw.

The record is devoid of any substantive support for the proposed ECCR charge separation, and reflects only how it could be done, if it were to be done. *See* Tr. 118 (Chriss); Ex. 9. Due to the flawed basis and inaccurate distinction this proposed administrative mechanism reflects, it should be rejected.

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

FPL: *There is insufficient evidence in the record to identify any appropriate criteria which the Commission could apply to determine whether customers would be eligible to opt-out of certain ECCR charges. Only arbitrary, self-serving criteria have been proposed, exacerbating the potential for future customer claims of unfair treatment.*

There is insufficient evidence that either of the opt-out proposals would be beneficial for the general body of customers, and similarly, insufficient evidence supporting the adoption of either of the proposed eligibility thresholds.

Wal-Mart's proposal is to allow a customer with aggregated consumption of more than 15 million kWh of electricity per year, across all eligible accounts, meters, or service locations within a Company's service area, to opt-out of the energy efficiency portion of the ECCR charge. Tr. 58 (Baker). The best (and only) support provided for this threshold was that the same threshold is used for opt-out purposes in Oklahoma and that Wal-Mart considers it to be administratively simple to work with. Tr. 54, 80, 85 (Baker). However, Mr. Baker went on to explain there are a variety of different approaches, without demonstrating that one was better or worse for the general body of customers. *See* Tr. 85 (Baker).

FIPUG's proposal is to limit eligibility "to loads of at least 1 megawatt (MW) either at a single delivery point or through aggregation provided that each of the aggregated facilities are located in the utility's service area and under common ownership and operation." Tr. 514 (Pollock). The only evidence supporting this eligibility threshold is Mr. Pollock's opinion that it "should strike an appropriate balance between fairness and the administrative effort." Tr. 514 (Pollock). He also left room for future changes to the eligibility criteria, and for potential expansion to other customer classes. Tr. 530, 536 (Pollock).

Each eligibility criterion would compound their discriminatory impacts by allowing the aggregation of multiple customers' loads or energy usage on the basis that those customers have a common owner. Tr. 202 (Deaton). Moreover, Rule 25-6.102, Florida Administrative Code, prohibits billing practices which seek to combine, for billing purposes, the separate consumption and registered demands of two or more points of delivery. Both of the opt-out proposals would do exactly that. Because the opt-out proponents presented contradictory eligibility thresholds and neither one was demonstrated to be appropriate or minimize harm to the general body of customers, insufficient evidence was presented to adopt either eligibility criteria.

III. CONCLUSION

For all of the foregoing reasons, based upon the evidentiary record in this proceeding, the Commission should deny the proposed ECCR opt-out concept.

Respectfully submitted this 20th day of August, 2015.

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CERTIFICATE OF SERVICE
Docket 140226-EI

I HEREBY CERTIFY that a true and correct copy of FPL's Post-Hearing Brief has been furnished electronically this 20th day of August, 2015, to the following:

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