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August 20, 2015

**E-PORTAL**

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

Re: Docket No. 140226-EI - 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.

Dear Ms. Stauffer:

Attached for filing in the referenced docket, please find Florida Public Utilities Company's Post Hearing Statement of Issues and Positions and Post Hearing Brief.

As always, please don't hesitate to let me know if you have any questions whatsoever.

Sincerely,



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Cc:// Service List

**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  
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)Filed: August 20, 2015  
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**FLORIDA PUBLIC UTILITIES COMPANY'S  
POST-HEARING STATEMENT OF ISSUES AND POSITIONS AND  
POST HEARING BRIEF**

Consistent with Order No. PSC-15-0149-PCO-EI, issued April 1, 2015, and further direction of the Florida Public Service Commission ("Commission") at the July 22, 2015 hearing in this proceeding, Florida Public Utilities Company ("FPUC" or "Company") files this Post-Hearing Statement of Issues and Positions and Post-Hearing Brief.

**I. FPUC's Position on the Issues –**

**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?

**FPUC:**            **\*No.\***

**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?

**FPUC:**            **\*No, not without the implementation of carefully constructed criteria that will hold all customers and the utility harmless.\***

**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.

**FPUC:**        **\*Criteria should be established that hold all customers, as well as the utility, harmless. The record does not, however, provide support for the establishment of such criteria; thus, a subsequent proceeding would be necessary to better define such criteria, appropriate allocation of costs, and impact on utility conservation goals.\***

#### **IV. BRIEF ON DISPUTED ISSUES**

The proposals of Wal-Mart Stores East, LP and Sam's East, Inc. ("Walmart") and Florida Industrial Power Users Group ("FIPUG") (jointly "Petitioners") are based upon the Petitioners' respective assessments that their energy efficiency program "opt out" proposals will provide benefits to the Petitioners without impairment of Florida's conservation policy or detriment to the utilities' general body of ratepayers and the utilities themselves. Tr. 52, 60-61 (Baker); Tr. 521 (Pollock) These conclusions find insufficient support in the record.

At first blush, the "opt out" proposals do not appear entirely unreasonable, but as always, the devil is in the details. The criteria for determining eligibility would, regardless of how defined, establish an arbitrary basis for "opt out" eligibility creating the potential for ineligible customers to raise concerns with regard to undue discrimination. Tr. 201 (Deaton); Tr. 451 (Deason). Likewise, the means for ensuring that programs implemented by "opt out" customers would be consistent with FEECA and contribute to meeting a utility's conservation goals is an inchoate suggestion in the record, which further indicates that the administration of such a process would be difficult - at best. Tr. 237-238, 259, 284-285, 299 (Duff); Tr. 343 (Floyd); Tr.

472, 476 (Deason). Furthermore, as discussed by Witness Pollock, the review and monitoring of such programs could be left in the hands of third-party contract engineers of these “opt out” customers, as opposed to the utility, thus placing the means to confirm the contributions of such programs outside the Commission’s purview. Tr. 539 (Pollock); Tr. 475 (Deason). All told, the evidence in the record simply does not support that there is any rational basis for establishing an “opt out” program that could reasonably be implemented, while ensuring that the utility and the otherwise ineligible body of customers remain unharmed.

The record does, however, reflect that there would be costs associated with separating the accounting and record-keeping functions for efficiency and demand-side management programs, and, perhaps not surprisingly, lost administrative efficiencies if utilities are required to do so. Tr. 173 (Koch); Tr. 223 (Deaton); Tr. 276, 299-300 (Duff). As for Wal-Mart’s proposal, it presents additional administrative hurdles, as well as a potential rule violation as it relates to aggregation. Tr. 202 (Deaton); Tr. 237, 271 (Duff). Notably, FIPUG’s Witness Pollock acknowledged that he had not conducted an analysis using Florida-specific data to support his assessment that there would be no increase in costs for those customers ineligible for an “opt out” program. Tr. 543 (Pollock). Furthermore, while there was some suggestion by the Petitioners that they would be willing to absorb the incremental administrative costs in order to facilitate an “opt out” option, the full scope of costs associated with actually developing and implementing separate accounting mechanisms and an “opt out” program would not be known until such task was actually completed. Tr. 76 (Baker); Tr. 300 (Duff); Tr. 472, 500 (Deason). Thus, the full scope, impact, and proper allocation of costs remains unclear. Consequently, as the record stands, the Petitioners have not adequately demonstrated that any benefits associated with an “opt out”

program offset or outweigh any potential harm or undue cost impact to the general body of ratepayers of the utilities.

The record further reflects that implementation of an “opt out” program would likely require revision of the utilities’ Demand-Side Management (“DSM”) goals and may also produce a regulatory dynamic that is counter to the Legislature’s intent behind the Florida Energy Efficiency and Conservation Act (“FEECA”) and Section 366.82, Florida Statutes. Tr. 223 (Deaton); Tr. 342 (Floyd); Tr. 459 (Deason). In particular, Witness Pollock acknowledged that all customers benefit from utility-directed energy efficiency programs, although he suggested that all do not benefit equally. Tr. 522 (Pollock). However, as proposed by the Petitioners, “opt out” customers would still enjoy the benefits of utility-directed energy efficiency programs produced by other participants without contributing to the costs associated with those programs. Tr. 52 (Baker); Tr. 507 (Pollock); Tr. 457, 474 (Deason). The record further reflects that, due to program fixed costs, there will likely be little or no savings produced through the implementation of an “opt out” program; thus, cost shifting to the remaining body of ratepayers would occur, contrary to the Petitioners’ assertions. Tr. 521 (Pollock); Tr. 122 (Baker); Tr. 125 (Chriss); Tr. 172, 179-180 (Koch); 378 (Floyd). As such, the greater weight of the evidence suggests that the “opt out” option would result in undue cost impacts to customers, through the shifting of costs associated with the utilities’ conservation plans and programs, counter to Section 366.82(7), Florida Statutes.

Ultimately, implementation of either of the Petitioners’ proposals would come at a cost – a cost borne by each of the utilities and the remaining “opt-out” ineligible ratepayers. The potential for discriminatory rate application should also be given great weight, particularly in view of the fact that the Petitioners would no longer be participants in the utilities’ energy

efficiency programs, but would continue to enjoy the direct benefits of the utilities' DSM programs, as well as the overall benefits of FEECA-directed conservation efforts. Tr. 172 (Koch); Tr. 201 (Deaton); Tr. 223 (Deaton).

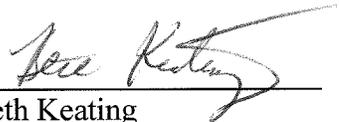
In addition, as recognized at the hearing, the larger utilities have programs that would allow large customers to work with the utility to establish customer-specific programs, which would give the Petitioners the flexibility to design their own program without unnecessarily resulting in new administrative process and the associated additional costs for an "opt out" program. Tr. 193 (Koch); Tr. 74, 82-84 (Baker). Thus, the Petitioners already have the opportunity to take charge of their energy efficiency programs, which is one of the stated reasons behind the Petitioners' "opt out" requests. Tr. 52 (Baker); Tr. 509 (Pollock).

Finally, if the Petitioners' are allowed to "opt-out" of utility programs, any efficiency projects or measures undertaken directly by the Petitioners, as well as how the benefits of such projects would be accounted for, would likely fall outside the Commission's direct oversight. As noted by Witness Deason, "I think that the Commission loses some of the control over that when that discretion is given to particular customers who are acting in their own best interest while it's the Commission's responsibility to make sure that programs are implemented in all customer's best interests." To the extent that the Commission would no longer have control to fully determine and allocate the benefits of customer-directed projects, the "opt out" proposals run counter to Section 366.81, F.S., which provides that: "... the Florida Public Service Commission is the appropriate agency to adopt goals and approve plans related to the promotion of demand-side renewable energy systems and the conservation of electric energy and natural gas usage."

Conclusion

The record in this case does not support the Petitioners' requests to upend decades of Commission conservation policy and utility conservation programming in order to establish an "opt out" option for select large customers. As such, Florida Public Utilities Company respectfully asks that the Petitioners' requests in this proceeding be rejected.

RESPECTFULLY SUBMITTED this 20th day of August, 2015.



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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by Electronic Mail or U.S. Mail to the following parties of record this 20th day of August, 2015.

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