FILED NOV 18, 2015
DOCUMENT NO. 07292-15
FPSC - COMMISSION CLERK

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

15 NOV 18 PM 4:43
COMMISSION CLERK
RECEIVED-FPSC

DATE: November 18, 2015

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Economics (Harlow, Lingo, Margolis, Shafer)
Office of the General Counsel (Tan)

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.

AGENDA: 12/3/15 – Regular Agenda – Post-Hearing Decision – Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: Graham, Edgar, Brown

PREHEARING OFFICER: Graham

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: Staff recommends that the Commission take up Issue 2 first as the threshold issue, followed by Issue 3, then Issue 1, and finally, Issue 4.

Case Background

The Commission opened this docket to address issues raised by Wal-Mart Stores East, LP and Sam's East, Inc. (Wal-Mart) and Florida Industrial Power Users Group (FIPUG).[1] During the October 8, 2014 Prehearing Conference in Docket No. 140002-EG, the Energy Conservation Cost Recovery (ECCR) clause docket, Wal-Mart and FIPUG (hereafter referred to as the petitioners) proposed issues that addressed allowing certain large commercial and industrial customers the option of opting out of participating in investor-owned utility-sponsored energy efficiency programs. In return, customers that choose to opt out would not be charged the costs

[1] Order No. PSC-14-0583-PHO-EG, issued October 15, 2014, in Docket No. 140002-EG, In Re: Energy Conservation Cost Recovery Clause.

State of Florida

Public Service Commission

Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: November 18, 2015

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Economics (Harlow, Lingo, Margolis, Shafer)
Office of the General Counsel (Tan)

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.

AGENDA: 12/3/15 – Regular Agenda – Post-Hearing Decision – Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: Graham, Edgar, Brown

PREHEARING OFFICER: Graham

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: Staff recommends that the Commission take up Issue 2 first as the threshold issue, followed by Issue 3, then Issue 1, and finally, Issue 4.

Table of Contents

Case Background 1
Discussion of Issues 3
Issue 1: 3
    Primary Recommendation: 3
    Alternative Recommendation: 3
    Staff Analysis: 4
    Background and Positions of the Parties 4
    Primary Staff Analysis 6
    Primary Staff Conclusion 8
    Alternative Staff Analysis and Conclusion 8
Issue 2: 10
    Primary Recommendation: 10
    Alternative Recommendation: 10
    Staff Analysis: 14
    Primary Staff Analysis 21
    Alternative Staff Analysis 23
Issue 3: 26
    Primary Recommendation: 26
    Alternative Recommendation: 26
    Staff Analysis: 27
    Positions of the Parties 27
    Primary Staff Analysis and Conclusion 37
    Alternative Staff Analysis and Conclusion 37
Issue 4: 41
    Recommendation: 41
    Staff Analysis: 41

Case Background

The Commission opened this docket to address issues raised by Wal-Mart Stores East, LP and Sam's East, Inc. (Wal-Mart) and Florida Industrial Power Users Group (FIPUG).[1] During the October 8, 2014 Prehearing Conference in Docket No. 140002-EG, the Energy Conservation Cost Recovery (ECCR) clause docket, Wal-Mart and FIPUG (hereafter referred to as the petitioners) proposed issues that addressed allowing certain large commercial and industrial customers the option of opting out of participating in investor-owned utility-sponsored energy efficiency programs. In return, customers that choose to opt out would not be charged the costs associated with these programs through the ECCR clause. FIPUG and Wal-Mart each proposed different threshold criteria for the large commercial and industrial customers that would be eligible to opt out. Those customers that would be eligible to opt out of energy efficiency programs would still be able to participate in, and would pay the costs associated with, demand response programs. A summary of FIPUG's and Wal-Mart's proposals can be found in Attachment A.

The Prehearing Officer, however, ruled that the proposed issues should be considered in a separate docket. Consequently, the current docket was opened to address the three issues proposed by Wal-Mart and FIPUG. The petitioners represent large commercial or industrial customers.

The five investor-owned utilities (IOUs) subject to the Florida Energy Efficiency and Conservation Act (FEECA) may seek to recover costs associated with Commission-approved demand-side management (DSM) programs through the ECCR clause. These utilities are: Duke Energy Florida, LLC (DEF), Florida Power & Light Company (FPL), Florida Public Utilities Company (FPUC), Gulf Power Company (Gulf), and Tampa Electric Company (TECO).

The Commission granted intervention to the Southern Alliance for Clean Energy (SACE) and White Springs Agricultural Chemicals, Inc. (PCS Phosphate or PCS).[2] [3] The Commission also acknowledged intervention by the Office of the Public Counsel (OPC).[4]

The Commission has jurisdiction over this matter pursuant to Sections 366.80 through 366.83 and 403.519, Florida Statutes (F.S.), collectively known as FEECA.

---

[1] Order No. PSC-14-0583-PHO-EG, issued October 15, 2014, in Docket No. 140002-EG, In Re: Energy Conservation Cost Recovery Clause.

[2] Order No. PSC-15-0201-PCO-EI, issued May 19, 2015, in Docket No. 140226-EI, 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.

[3] Order No. PSC-15-0247-PCO-EI, issued June 12, 2015, in Docket No. 140226-EI, 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.

[4] Order No. PSC-15-0213-PCO-EI, issued May 29, 2015, in Docket No. 140226-EI, 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.

Staff suggests that the Commission first proceed to Issue 2 which is the threshold issue of whether and opt-provision should be approved. Staff then suggests addressing Issue 3 which addresses implementation details necessary for an opt-out program, followed by Issues 1 and 4.

Discussion of 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?

Primary Recommendation: The petitioners have suggested separating the costs in the Energy Conservation Cost Recovery (ECCR) clause as a means of implementing the proposed opt-out provision. If the Commission approves staff's primary recommendation in Issue 2 to deny the petitioners' request, then no changes to current ECCR clause practices are necessary. (Lingo, Margolis, Harlow)

Alternative Recommendation: If the Commission approves alternative staff's recommendation in Issue 2, the four largest IOUs will be required to develop a pilot opt-out program. Implementing the pilot program would require the IOUs to determine the proportion of total ECCR costs related to energy efficiency programs paid by each customer that chooses to participate in the pilot. Alternative staff recommends that the appropriate methodology for determining the category and level of costs from which opt-out customers are seeking relief should be subject to discussion among the parties at a workshop as recommended in Issues 2 and 3. (Shafer)

Position of the Parties:

FIPUG: Yes, the Commission should take appropriate administrative steps, as Commissions across the country have, to implement an opt-out program in Florida.

Wal-Mart: Yes.

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

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.

DEF: No, separating expenditures in this way is not necessary. However, if the Commission intends to implement an opt-out policy that only applies to Energy Efficiency programs, DEF would be able to separate the charges with little difficulty.

TECO: No. The Commission should not require such a separation of expenditures into two categories. All of Tampa Electric's approved DSM measures provide demand and energy savings. Energy efficiency programs clearly provide both energy savings and demand reductions.

Gulf: 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.

FPUC: No.

SACE: No, not at this time.

OPC: Since the Proponents' opt-out proposals do not appear to clearly and convincingly establish that they meet, at a minimum, the Commission's approved cost-effectiveness test, RIM, there appears to be an insufficient basis for the Commission to consider separating the ECCR expenditures into separate categories for Energy Efficiency and Demand Side Management programs.

Staff Analysis:

Background and Positions of the Parties

Costs for all types of investor-owned utility-sponsored conservation programs are currently recovered from all ratepayers through the Energy Conservation Cost Recovery clause (ECCR). In order to facilitate an opt-out provision, FIPUG, Wal-Mart, and PCS Phosphate advocate separating the costs recovered through the ECCR clause into costs associated with energy efficiency programs and costs associated with demand response programs. (TR 50-52, 118, 506-507)

Wal-Mart witnesses Baker and Chriss, along with FIPUG witness Pollock and PCS, all agree that the utilities should be required to separate their ECCR expenditures into two categories, one for energy efficiency programs and the other for demand-side management (also referred to as demand response) programs. Under witness Baker's proposal, the 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 should not be required to pay the cost recovery charges for the utility's energy efficiency programs. (TR 50-52) In general, witness Chriss proposes that, for the customer classes that would be eligible to opt out, the ECCR rates be split into two components: (1) ECCR "Part E," for energy efficiency program-related costs and (2) ECCR "Part D," for demand response program-related costs. Witness Chriss notes that under witness Baker's proposal, eligible customers who opt out would be exempted from paying Part E, but would continue to pay Part D. (TR 118)

Witness Baker testified that the Florida investor-owned utilities' ECCR charges should be redesigned such that the energy efficiency charges are segregated from the demand-side management portion of the ECCR charge. (TR 46) The utilities should be required to separate their ECCR expenditures into two categories: (1) efficiency programs; and (2) demand-side management programs. (TR 50) Witness Baker also testified that by virtue of their self-implemented measures, such customers would be exempt from paying the ECCR charges for the

energy efficiency portion of the charge, and that they would correspondingly be excluded from participation in the utilities' energy efficiency programs and measures. Through testimony by witness Baker, Wal-Mart stated that these recommendations would apply to the four largest investor-owned utilities, Florida Power & Light, Duke Energy Florida, Tampa Electric Company, and Gulf Power Company. (TR 46) In response to staff interrogatories, however, Wal-Mart indicated that the proposal could apply to Florida Public Utilities as well. (EXH 22, Bates 35) FIPUG states that to the extent Florida Public Utilities has customers who would be eligible; they should be able to participate. (EXH 22, Bates 19)

Witness Chriss testified regarding the ratemaking treatment for witness Baker's proposal for a large customer electing to opt out of the energy efficiency portion of each utility's ECCR rates. In summary, witness Chriss' recommendations are:

1. For those customer classes that would be eligible to opt out under witness Baker's proposal, Wal-Mart proposes that the ECCR rates be split into two components: (1) ECCR "Part E," for energy program-related costs and (2) ECCR "Part D," for demand response program-related costs.

2. For a given customer class or group of classes, the Part E rate would be calculated as the energy-related revenue requirement, allocated to the class or group of classes, divided by the applicable kWh or kW billing determinants for that class or group of classes. The Part D rate would then be calculated as the demand revenue requirement divided by the applicable kWh or kW billing determinants for that class or group of classes.

3. For the purposes of calculating the ECCR Part E and Part D rates, Wal-Mart does not oppose the use of each respective utility's approved classification of its energy conservation program costs into energy-related and demand-related components. (TR 115-116)

The IOUs unanimously disagree with the petitioners' request, providing testimony that allowing customers to opt out of the energy efficiency portion of each utility's ECCR rates is not necessary because the utility-sponsored programs that pass the RIM test, including both demand response and energy efficiency programs, benefit all ratepayers, both participants and non-participants alike. Therefore, the IOUs contend that the Commission's existing policy of allowing utilities to recover the costs of utility-sponsored programs from all customers is appropriate. The IOUs also agreed that all their programs save both demand and energy. (TR 143-145, 151, 193, 337, 338; DEF BR 2, 3, 7; FPL BR 15; FPUC BR 1; TECO BR 23) Therefore, according to FPL, separating the ECCR costs for programs that pass the RIM test based on whether the program is characterized as an energy efficiency program or a demand response program "would not provide a meaningful basis for determining costs that opt-out customers would be allowed to avoid." (FPL BR 15)

DEF opposes an opt-out provision and therefore contends that separating costs in the ECCR clause in order to facilitate an opt-out provision is unnecessary. (DEF BR 12) DEF, however, stated that if the Commission desired to implement an opt-out provision, it would not be difficult to separate ECCR costs into those related to energy efficiency programs and those related to demand response programs. (BR 12)

In its brief, OPC noted separating the ECCR into two separate categories may be inconsistent with the fundamental basis of ECCR charges. (BR 3-5) In addition, OPC stated that there may be some merit to FPL witness Koch's testimony that, ". . . because all customers share in the benefits of approved DSM programs, there is no justification for allowing certain customer groups to opt out of paying for those programs." Furthermore, it would seem inconsistent with the Commission's application of FEECA to separate expenditures into two categories so that only certain customers could opt out of the energy efficiency programs while still receiving the benefit of these programs. Finally, OPC contends that the petitioners have not clearly established that their opt-out proposals meet, at a minimum, the Commission's approved RIM cost-effectiveness test. The petitioners do not appear to have fully met their burden of demonstrating that their opt-out proposals safeguard the general body of ratepayers and rate classes against undue rate impacts. (BR 4, TR 143)

In its brief, SACE stated that Wal-Mart's and FIPUG's proposals to opt out of energy efficiency programs are not yet fully developed to warrant Commission approval at this time. Therefore, SACE takes the position that the ECCR costs should not be separated at this time. (BR 1)

Primary Staff Analysis

Staff utilized an exhibit of witness Baker (EXH 3) to demonstrate, for each utility, the proportion of ECCR costs attributed to programs characterized in the exhibit as energy efficiency versus demand response programs. Witness Baker derived EXH 3 from the utilities' 2014 ECCR filings. As shown below in Table 1-1, the percentage of energy efficiency program-related costs relative to total ECCR costs for the four largest IOUs ranges from 25 percent for DEF to 86 percent for Gulf. Under the petitioners' proposals, this range approximates the percentage of ECCR charges from which opt-out customers would be exempted. As shown in the table, over half of ECCR program expenses are related to demand response programs for three of the four largest IOUs. Gulf is the exception, with 14 percent of ECCR expenses related to demand response programs.

Table 1-1
Proportion of ECCR Costs – EE Programs versus Demand Response Programs

Utility	Total ECCR Costs	Energy Efficiency Program Costs		Demand Response Program Costs	
		Amount	% of Total ECCR Costs	Amount	% of Total ECCR Costs
FPL	$196,450,059	$62,626,077	32%	$133,823,982	68%
DEF	$107,340,447	$26,391,913	25%	$80,948,534	75%
TECO	$46,224,522	$16,840,707	36%	$29,383,815	64%
Gulf	$23,592,756	$20,335,079	86%	$3,257,677	14%

Source: EXH 3
[1]Common costs excluded. EXH 3 did not include FPUC.

Wal-Mart witness Chriss contends that separating costs in the ECCR clause is facilitated by the Commission's allocation methodology within the recovery clause. Witness Chriss explains "[e]ach of the four major utilities already separates out their ECCR revenue requirements by energy and demand and specifies the kWh and kW billing determinates for each class, or groups of classes, as applicable, in the exhibits with their ECCR filings." (TR 118; EXH 3) Staff concurs with witness Chriss's interpretation of the Commission's allocation process established by Order No. PSC-93-1845-FOF-EG.[5] In the order, the Commission recognized that there are significant differences among companies that necessitate some deviation from a single methodology. However, as a base line, the Commission adopted the 12 Coincident Peak and 1/13 Average Demand (12 CP and 1/13 AD) allocation methodology for allocating costs associated with dispatchable programs, and it continues to require investor-owned utilities to allocate the costs of all other programs on an energy basis. Under the 12 CP and 1/13 AD method, approximately 92 percent, or 12/13, of the production costs are allocated on a 12 CP basis, and approximately eight percent, or 1/13, are allocated on an average demand, or energy basis.[6] Average demand or energy is simply the relative kWh usage by class. Energy conservation costs continue to be recovered on an energy basis.[7]

The Commission approved 12 CP and 1/13 AD as a uniform methodology for allocating and recovering conservation costs for all investor-owned electric utilities. However, exceptions are allowed when demonstrated to be reasonable, appropriate and necessary.[8]

[5] Order No. PSC-93-1845-FOF-EG, issued December 29, 1993, in Docket No. 930759-EG, In re: Investigation into appropriate method for allocation and recovery of costs associated with conservation programs.
[6] Coincident Peak (CP) is the maximum peak demand of the class which occurs at the time of the system peak. The term "12 CP" refers to the average of each rate class's 12 monthly CP demands in the projected test year.
[7] Order No. PSC-93-1845-FOF-EG
[8] Ibid.

Staff agrees with witness Chriss that because of the Commission's allocation methodology, the four largest IOUs identify costs within their ECCR filings based on demand and energy. (EXH 3) Staff further agrees that this may facilitate the separation of the costs needed to implement the petitioners' opt-out proposals. Staff notes, however, that the Commission's allocation methodology was not designed with the intent of separating ECCR costs for the purpose of implementing an opt-out program. Further, staff notes that the specific costs that are allocated toward demand and energy are not identified in the record for all four of the largest IOUs. For example, whether research and development costs should be allocated between energy efficiency programs and demand response programs was not addressed by any party. Therefore, staff does not believe there is sufficient detail in the record to determine if the specific costs identified under the Commission's current allocation methodology as demand-related versus energy-related are appropriate to be used to implement the proposed opt-out program.

Primary Staff Conclusion

As discussed in Issue 2, staff agrees with the Commission's long-held determination that the costs associated with conservation benefits should be spread to all customers, and sees no compelling evidence in the record that supports a change in this policy. As reiterated by the Commission in its recent DSM goals orders, programs that pass the RIM test benefit all customers, both participants and non-participants alike.[9]

The petitioners have suggested separating the costs in the ECCR clause as a means of implementing the proposed opt-out provision. (TR 118; EXH 3) If the Commission approves staff's recommendation in Issue 2 to deny the petitioners' request for an opt-out provision, this issue is moot, and no changes to current ECCR clause practices are necessary. Therefore, staff recommends that the utilities should not be required to separate their ECCR expenditures into two categories, to facilitate an opt-out provision.

Alternative Staff Analysis and Conclusion

If the Commission approves alternative staff's recommendation in Issue 2, the four largest IOUs will be required to work with parties and staff to develop a limited pilot opt-out program. Implementing a pilot program would require the IOUs to determine the proportion of total ECCR costs that are related to energy efficiency programs paid by each customer that chooses to participate in an opt-out program. Under the Commission's allocation methodology, the four largest IOUs identify costs within their ECCR filings based on demand and energy. (EXH 3) This may facilitate the separation of the costs needed to implement the petitioners' opt-out proposals. However, alternative staff does not believe there is sufficient detail in the record to determine if the specific costs identified under the Commission's current allocation methodology as demand-related versus energy-related are appropriate to be used to implement the proposed opt-out program. Therefore, alternative staff recommends that the appropriate methodology for determining the proportion of total ECCR costs paid by participating customers related to energy efficiency programs be included among the list of topics identified in Issue 3 to be addressed through a workshop.

[9] Order No. PSC-14-0696-FOF-EU, issued December 16, 2014, in Dockets Nos. 130199-EI, 130200-EI, 130201-EI, 130202-EI, 130203-EM, and 130204-EM, In re: Commission review of numeric conservation goals (Florida Power & Light Company, Duke Energy Florida, Inc., Tampa Electric Company, Gulf Power Company; JEA, Orlando Utilities Commission, Florida Public Utilities Company).

A topic of the workshop would be the appropriate methodology to identify and separate energy efficiency ECCR costs for opt-out customers. Additional topics to be discussed in the workshop related to separating the ECCR costs should include: (1) the appropriate allocation of common costs, and (2) the identification and treatment of any administrative costs related to an opt-out provision. The appropriate treatment of these costs within the utilities' ECCR filings was not fully addressed in the petitioners' proposals.

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, F.S.?

Primary Recommendation: Primary staff recommends that the Commission not pursue an opt-out policy at this time. There is insufficient evidence in the record for the Commission to change its existing policy that all ratepayers benefit from cost-effective DSM programs, therefore all ratepayers should share in the costs. Further, an opt-out policy could result in cost shifting to residential and commercial/industrial customers that are not eligible to opt out under the petitioners' proposals. Additionally, it is probable that an opt-out provision would introduce equity concerns into Florida's DSM programs. Finally, primary staff recommends that the Commission direct the utilities to work with the petitioners to make their existing energy conservation Custom Incentive programs less burdensome and more responsive to customer needs in order to increase customer participation. (Harlow, Lingo, Margolis)

Alternative Recommendation: Alternative staff recommends that the Commission direct staff to conduct a workshop for discussion among the parties and the four largest IOUs on a pilot program that meets the parameters discussed in Issue 3. The Commission should direct the four largest IOUs to develop a pilot opt-out program, and the associated tariffs, within 90 days of the workshop, for Commission review and approval. To the extent possible, the utility proposals shall reflect common program specifics to enable reasonably comparable for evaluation at the conclusion of the pilot. The purpose of the pilot program is to collect data regarding the impact of an opt-out policy on: (1) customer energy and demand savings relative to expected savings under utility-sponsored programs; (2) whether these demand and energy savings are cost-effective under the Commission's approved cost-effectiveness methodology; and (3) whether cost shifting occurs and, if so, at what level. (Shafer)

Positions of the Parties:

FIPUG: Yes. Eligible customers should be allowed to pursue energy efficiency measures at their own expense and not be forced to also pay for utility-specific energy efficiency programs. A properly structured opt-out program is a win-win proposition. The state benefits and its energy efficiency policy is advanced when eligible opt-out customers invest in additional energy efficiency measures with their own resources. The eligible customers benefit by investing in energy efficiency measures best-suited to serve the particular needs of their respective businesses, and not being forced into utility programs that may not fit or be attractive. The utilities benefit when opt-out eligible customers invest in energy efficiency measures that are counted to help meet utility goals, again at no additional costs to the utility or its ratepayers. (The additional energy efficiency resulting from customers opting out should reduce the utilities' programs so that the net effect of the opt-out program is revenue neutral; no costs are shifted to non-participating ratepayers). The ratepayers benefit by additional energy efficiency measures being in place at no costs to them.

Wal-Mart: Yes. Providing this opportunity will enable eligible customers to proactively implement, ***solely at their own expense,*** energy efficiency measures that are best tailored to customers' facilities and operations, thereby maximizing energy efficiency benefits for opt-out customers, for the utilities, for the utilities' other customers, and for Florida as a whole.

PCS: Yes. PCS agrees with FIPUG and Wal-Mart.

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.

DEF: No. Because DEF's goals are set based on programs that are cost-effective under the RIM test, all customers, both participants and non-participants, will benefit from all Energy Efficiency programs. It is therefore not necessary to permit certain customers to opt out of paying for the Energy Efficiency program costs.

TECO: No. All customers benefit from the utilities' DSM programs and the opt-out proponents fail to recognize (or deny) that the impact of such proposals would be to shift the recovery of prudently incurred costs for approved DSM programs from large business customers to smaller business or residential customers.

Gulf: 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.

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

SACE: No, not at this time. While SACE believes that Wal-Mart captures more annual energy savings from its stores than the anemic C/I annual energy savings goals set by this Commission, such an "opt-out" policy should be based on best practices in self-directed programs in other states.

OPC: The Proponents do not appear to have fully met their burden of demonstrating that their opt-out proposals adequately safeguard the interests of the general body of ratepayers and various rate classes against undue rate impacts while achieving the intent of FEECA and Section 366.82(2), F. S., utilizing the Commission's approved RIM cost-effectiveness test or other Commission approved tests.

Background and Position of Parties

In 1980, the Florida Legislature enacted the Florida Efficiency and Conservation Act (FEECA), now codified in Sections 366.80–366.85 and 403.519, F.S. For the purpose of implementing FEECA, the Commission adopted Rule 25-17.015, Florida Administrative Code (F.A.C.), which establishes a mechanism whereby unreimbursed costs of conservation programs may be recovered through a "conservation cost recovery clause," also known as the Energy Conservation Cost Recovery (ECCR) clause.[10] When the ECCR clause was established, an important decision was made by the Commission regarding the allocation of conservation costs. The Commission determined that the costs associated with conservation benefits should be spread to all customers, rejecting the notion that only the participants in conservation programs benefit from those programs.[11]

An opt-out provision would allow certain qualifying customers a choice between paying for and participating in utility-funded energy efficiency programs. (TR 506) Although FIPUG and Wal-Mart put forward different proposals (Attachment A), both proposals advocate allowing eligible large customers to opt out of participating in, and paying for, costs associated with utility-sponsored energy efficiency programs. Costs for all types of investor-owned utility-sponsored conservation programs are currently recovered from all ratepayers through the ECCR clause.

FIPUG, Wal-Mart, and PCS Phosphate are seeking relief from paying for energy efficiency program-related ECCR charges, which they believe do not benefit them. The petitioners assert that an opt-out policy is justified because custom incentive programs are unsatisfactory and because the petitioners can implement energy efficiency more effectively on their own. The petitioners further contend that opt-out provisions are offered to large customers in other states. (FIPUG BR 4, Wal-Mart BR 7) Therefore, the petitioners claim that paying the full ECCR costs in Florida places them at a competitive disadvantage and that the Florida economy would become more competitive by allowing an opt-out provision. (Wal-Mart BR 17-18)

Wal-Mart's opt-out proposal is based on its belief that a customer that implements energy efficiency measures on its own benefits other customers. (TR 47) Therefore, Wal-Mart recommends that the Commission should

> redesign the Florida investor-owned utilities' Energy Conservation Cost Recovery ("ECCR") Charges in such a way that the charges for energy efficiency ("EE") are segregated from the demand side management portion of the ECCR charge... allowing customers who meet defined criteria to satisfy their EE responsibilities by implementing their own EE measures. By virtue of their self-implemented measures, such customers would be exempt from paying ECCR charges for the EE portion. (TR 46)

Wal-Mart also states that an opt-out provision will increase cost-effective energy conservation and energy savings. (Wal-Mart BR 6)

[10] Order No. 9974, issued April 24, 1981, in Docket No. 810050-PU, In re: Conservation cost recovery clause.
[11] Ibid.

FIPUG's opt-out proposal is based on its belief that the customer knows its energy efficiency needs better than the utility. (TR 510) FIPUG explains an opt out as giving

> ...certain qualifying customers a choice between paying for and participating in utility-funded energy efficiency measures or self-funding their own cost-effective energy efficiency improvements. A customer that opts out has either implemented (or committed to fund and implement) its own energy efficiency measures or has determined as a result of an energy audit or analysis that there are no cost-effective measures for the customer. (TR 506)

FIPUG argues for an opt-out policy by pointing out that other states have approved an energy efficiency opt-out policy for large customers. (FIPUG BR 2) FIPUG insists that its proposed opt-out provision would not shift costs or harm other customers. (FIPUG BR 3) PCS Phosphate asserts that an opt-out is a good policy that should not be rejected simply because of worries about administrative considerations and costs. (PCS BR 4)

The IOUs argue that all ratepayers benefit from cost-effective demand-side management (DSM) programs. Therefore, the IOUs believe there is no reason for the Commission to change its long standing policy that all ratepayers should share in the costs. The IOUs further state that custom incentive programs allow the petitioners flexibility to design their own energy efficiency projects. (TR 191) Additionally, the IOUs insist that an opt-out policy would shift costs and would unfairly harm non-opt-out customers. (TR 180, 205)

FPL believes that an opt-out provision would harm the general body of ratepayers. (FPL BR 1) FPL also states that an opt-out policy would shift costs to other ratepayers, add administrative costs, and fail to advance the mission of FEECA. (FPL BR 3) DEF states that an opt-out policy is unnecessary because DSM programs that pass the Rate Impact Measure (RIM) test benefit all ratepayers. (DEF BR 2) DEF is also concerned that it will be difficult to hold harmless customers who do not opt out. (DEF BR 1)

TECO insists that "Allowing certain large customers to opt out of paying their fair share of ECCR costs would be contrary to Commission practice and would be inconsistent with the manner in which conservation costs are incurred pursuant to the Commission's implementation of FEECA." (TECO BR 3) Gulf states that an opt-out provision would be "a sharp and unwarranted departure from years of well-reasoned Commission policy and practice." (Gulf BR 1) FPUC states that implementing an opt-out policy would be difficult and that overseeing an opt-out would be outside the Commission's purview, because the Commission does not have authority over the conservation actions of large customers. (FPUC BR 2-3)

SACE states that the opt-out proposals from the petitioners are not sufficiently developed for the Commission to approve. (SACE BR 1)

OPC is concerned that an opt-out policy could harm the general body of ratepayers. (OPC BR 7) OPC states that the petitioners "have not convincingly demonstrated that cost shifting will not occur." (OPC BR 5) OPC also states that petitioners ignore that they benefit from energy efficiency programs that pass RIM even when the petitioners do not participate. (OPC BR 6)

Opt-Out Policies in Other States

Wal-Mart claims that Oklahoma has an opt-out policy, with an eligibility threshold of 15 million kWh of electricity consumption per year aggregated across all customer sites. (TR 54) Wal-Mart witness Baker also asserts that opt-outs exist in South Carolina for Duke Energy, as well as for other utilities in Missouri and West Virginia. (TR 54)

FIPUG details that opt-out states include Texas, Virginia, Arkansas, Indiana, Louisiana, Missouri, North Carolina, Oklahoma, South Carolina, and West Virginia. (TR 512) Self-direct states include several Midwestern states from Ohio to Minnesota, most of the Mountain West and the Northwest United States.[12] (EXH 15) Lastly, FIPUG believes that its petition is similar to processes that other states have already done. (TR 527)

TECO witness Deason opines that just because other states have an opt-out provision does not mean that an opt-out is an ideal path for Florida. (TR 459-460) TECO also comments that if the Commission were to pursue an opt-out policy, the Commission should explore opt-out states' policies, legislative mandates, and cost tests. (TR 496) FPL witness Koch states that special accommodations may exist in other states due to specific legislative and regulatory circumstances. (TR 145) FPL witness Koch declares that the petitioners have not proved that circumstances that led to opt-outs in other states would be germane to Florida. (TR 145)

Like TECO and FPL, DEF witness Duff comments that other states allow opt-outs, but Florida has specific regulatory characteristics such as the FEECA statute. (TR 234) DEF witness Duff also contends "when looking at other states that have opt-out criteria, those criteria are often part of the overall landscape that was created and envisioned for energy efficiency." (TR 269) DEF witness Duff expands on this point by saying "if you've got a piece of legislation around energy efficiency and demand response and an opt-out wasn't contemplated in it, trying to put it in later may not align appropriately." (TR 294-295) DEF also mentions that opt-out energy savings must be verified in Ohio, but not in North Carolina. (TR 274-275)

Staff Analysis:

This issue represents the threshold question of the case. Primary staff's analysis has been separated into four subparts: (1) impact on cost-effective conservation, (2) the potential for cost shifting, (3) equity and fairness concerns, (4) availability of custom incentive programs, and (5) implementation issues. Primary and alternative recommendations appear in each subsection and are summarized at the end of the analysis.

Impact Cost-Effective Conservation

A key question to consider when evaluating an opt-out policy is whether the proposals will result in more cost-effective conservation than when all ratepayers participate in, and pay for, utility-sponsored energy efficiency programs. The Commission currently sets demand-side management (DSM) goals and approves programs based on whether the associated demand and energy savings are cost-effective under the RIM test.

---

[12] Self-direct programs allow participating customers to direct the dollars they would have otherwise contributed to utility-sponsored programs to their own energy efficiency investments.

The petitioners—FIPUG and Wal-Mart—argue that they know their businesses best. (TR 52; TR 510) PCS Phosphate agrees. FIPUG witness Pollock states "sophisticated energy consumers are better able (than the utility) to invest in cost-effective energy efficiency measures that meet their specific needs." (TR 510) The petitioners also insist that when they invest in energy efficiency on their own, all ratepayers benefit. Wal-Mart witness Baker comments, "[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. These network benefits include reduced overall energy cost that result from the reduced load and demand of the customers system." (TR 47)

Witness Baker states that Wal-Mart has made a commitment to improve energy efficiency by decreasing the energy intensity of its buildings by 20 percent by 2020. (TR 49) Wal-Mart uses various energy savings technologies including "daylight harvesting and optimization systems that monitor and adjust lighting intensity," "white membrane roofs…in certain parts of the country in order to lower cooling load," "heat recovery from (Wal-Mart's) refrigeration systems," efficient heating, ventilation, and air conditioning systems, LED lighting, and active dehumidification that decreases electricity consumption. (TR 49-50) FIPUG did not provide specific information on its members' energy efficiency projects, but did state that its members have employees "whose responsibilities include energy efficiency matters." (EXH 19, Bates 6)

The petitioners further argue that paying the ECCR charges takes away from their ability to install cost-effective DSM measures. PCS Phosphate claims "customer charges imposed by the ECCR clause actually deplete the dollars available to those large customers for making the desired energy efficiency improvements." (PCS BR 3)

The utilities counter the petitioners' testimony by stating that because the Commission sets goals and approves programs based on the RIM test, all ratepayers benefit from cost-effective DSM programs. Gulf witness Floyd, adopting the testimony of witness Todd, insists "The Intervenor witnesses correctly recognize the benefits of implementing demand response programs but fail to recognize that cost-effective (i.e. RIM-passing) energy efficiency programs also provide benefits that exceed costs to participating and non-participating customers alike." (TR 338) TECO witness Roche states, "An opt-out provision as proposed by the intervenor witnesses would exempt certain customers from sharing in the cost of investments in energy efficiency which benefit all customers." (TR 389) OPC notes that "witness Chriss acknowledged on cross examination that Walmart's opt-out proposal does not use a RIM test. (TR 128)" (OPC BR 7) OPC argues that, "The lack of application of a RIM test to the proposals tends to demonstrate that the general body of ratepayers will not benefit from these proposals." (OPC BR 7)

The Commission has been presented an opt-out proposal previously when, according to TECO witness Deason, in Docket No. 930759-EG, "Two proposals were considered which would have markedly altered the manner in which costs were allocated and recovered. Both of these proposals contained aspects similar to the proposal of the intervenor witnesses in this proceeding." (TR 444) The Commission's order in Docket No. 930759-EG "found that cost-effective conservation programs benefit all customer classes. Thus, there was no need to give preferential treatment to certain customer classes or even certain customers within those classes." (TR 446-447) Similarly, the "Commission recognized this shared cost/benefit relationship in

Order No. 9974 dated April 24, 1981, wherein the Commission considered a similar opt-out 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 avoidance we direct that the authorized costs be recovered from all customers.' " (TR 442)

In addition, it is important that the Commission's goals are based on energy and demand savings from incremental energy efficiency and demand-side management activities. FIPUG's proposal allows eligible customers to opt out without investing in incremental energy efficiency measures. witness Pollock explains that FIPUG's customer eligibility criteria would allow a customer to opt out by providing a letter stating that the customer "has invested or (intends to invest) in energy efficiency <u>or has conducted an energy audit or analysis determining that there are no cost-effective energy efficiency measures</u>." [Emphasis added.] (TR 515)

Potential for Cost Shifting

Wal-Mart presented Exhibits 38 and 39 to support its position that extensive levels of cost shifting are unlikely to occur. However, the utilities believe that an opt-out provision will cause cost shifting to other ratepayers. Gulf witness Floyd says he believes that cost shifting will occur. (TR 368) TECO witness Roche states that an opt-out policy would shift \$0.7 to \$2.4 million of costs to residential customers. (TR 391) Additionally, FPUC comments that cost shifting would occur. (FPUC BR 4)

The utilities also express concerns that allowing some customers to opt out will result in DSM program costs being spread over fewer ratepayers, while the utilities' Commission-approved goals may be unchanged. DEF notes that if some opt-out customers insisted there were no cost-effective energy efficiency measures, part of DEF's DSM goals would be unchanged. (TR 177) TECO witness Deason states, "[A]llowing certain customers to opt out would result in the total amount of cost-effective conservation costs being spread over fewer customers. This, in turn, would raise rates for those remaining customers and would be inequitable." (TR 447)

As for the change, or lack thereof, in the goals, witness Duff states "it is not clear that he [FIPUG witness Pollock] is proposing that DEF be allowed to count the EE savings from opt-out customers towards its goal...I would note that Mr. Baker [Wal-Mart witness] includes no consideration for adjusting DEF's goals or allowing DEF to count EE savings achieved by opt-out customers." (TR 239) Gulf witness Floyd states, "whether certain customers opt out of those or not doesn't necessarily change the need to have those programs available to other customers." (TR 354) Witness Floyd continues, "We're still obligated to meet the goals and provide programs that will be available to all of our other customers." (TR 354)

Utilities are also concerned about increased administrative costs to implement and maintain an opt-out provision. Witness Deaton states that the opt-out proposal would cause FPL to incur additional administrative costs. (TR 206) DEF witness Duff claims that there will be an administrative cost to verify the eligibility of customers who wish to opt out. (TR 235) Gulf insists "the issue of the administrative cost is obvious." (TR 349)

The IOUs assert that residential customers would experience a negative rate impact from certain large commercial and industrial customers opting out of paying for energy efficiency because of: (1) spreading costs over fewer ratepayers, (2) potentially no or few changes to the DSM goals,

and (3) administrative costs from an opt-out provision. FPL estimates an opt-out policy would cause a $1.4 million to $4.6 million rate impact to residential customers, ranging from a two cents to eight cents monthly bill increase. (TR 225) DEF estimates that an opt-out provision would shift $599,000 to $1,979,000 in revenue requirements to residential ratepayers. (EXH 27, Bates 112- 114, 123) TECO estimates that an opt-out provision would increase the residential ECCR charge from 3.6 to 10.9 percent. (TR 391) Gulf estimates that an opt-out provision would increase the residential ECCR charge from 6.8 to 21.2 percent. (EXH 37, Bates 235-236)

In response to a discovery request by OPC, the four largest IOUs estimated the rate impact on a typical residential monthly bill due to an opt-out provision. OPC requested the impact on residential rates under three hypothetical scenarios "whereby the largest (by revenue in each tier) non-residential customers comprising 10%, 20% and 30% of non-residential revenues would be eligible for and take advantage of such an option." (EXHs 11, 27, 34, 37; Bates 123, 210, 235-236) The IOUs' responses to OPC's scenarios are presented in Table 2-1. Staff presents these estimates with the caveat that the full details of an opt-out provision are not yet known.

Table 2-1
Impact on Residential Monthly Bills at Varying Percentages of Non-Residential Customers Opting Out

	Impact on Typical 1,000 kWh Residential Bill		
Utility	**10% opt out**	**20% opt out**	**30% opt out**
DEF	$0.03	$0.06	$0.10
FPL	$0.02	$0.05	$0.08
Gulf	$0.17	$0.34	$0.53
TECO	$0.09	$0.18	$0.27

Sources: EXH 11; EXH 27, Bates 123; EXH 34, Bates 210; EXH 37, Bates 235-236

Wal-Mart argues that opt-out customers would contribute energy savings in excess of the shifted costs. (Wal-Mart BR 14) Wal-Mart also contends that an opt-out "will reduce the utilities' program costs and the utilities' incremental fuel costs, with likely associated reductions in the need for future generation facilities, again without any direct costs being imposed on non-participating customers." (Wal-Mart BR 22)

FIPUG witness Pollock advocates that the Commission "try to develop a program that meets...guidelines so that nobody is harmed." (TR 549) Addressing the cost shifting concern, witness Pollock recommends a pilot program to start slow and see the consequences of implementation of an opt-out program. (TR 550) Lastly, witness Pollock believes a cost shift can be avoided "if done in a prudent and rational way." (TR 545) FIPUG comments that a well-designed opt-out program would avoid cost shifts through "making adjustments to existing

energy efficiency programs and counting the energy efficiency measures contributed by opt-out customers." (FIPUG BR 5)

PCS argues that failing to enact an opt-out policy because of a concern over cost shifting would be an "administrative and implementation question" that should not be "sufficient reason for rejecting an otherwise sound policy." (PCS BR 5)

Wal-Mart states that the reduction in ECCR revenues for the four largest Florida IOUs would be a total of $344,040 if Wal-Mart opted out. (EXH 38) Wal-Mart expresses that the impact on the ECCR revenue requirements of the four largest Florida IOUs from Wal-Mart alone opting out would be no more than 0.65 percent. (EXH 38) Nevertheless, this analysis only takes Wal-Mart into account and does not consider the potential for other large commercial or industrial customers, such as FIPUG's members, to opt out. Furthermore, Wal-Mart does not calculate, in Exhibit 38, the cost impact to the utilities from the added administrative expense of an opt-out or the impact on the ability of the utilities to meet the FEECA goals.

Equity Concerns

The petitioners believe there would be no equity issues from an opt-out provision because there would be "no undue burden placed on the utility's remaining customers as a result of the current opt-out proposal." (TR 521) In contrast, the petitioners insist that there is currently an equity concern with paying the full ECCR charges because for the petitioners, electricity is a large operating cost and the markets in which the petitioners operate are competitive. (TR 509-510) Meanwhile, many other states exempt industrial customers from paying for energy efficiency programs. (TR 512) Consequently, the petitioners insist that they are at a competitive disadvantage compared to companies in other states.

In contrast to the petitioners, the utilities insist that an opt-out policy would be unfair to residential customers and other commercial/industrial customers that cannot or do not choose to opt out. FPL witness Deaton states that other customers will have to pay for the costs of an opt-out policy. (TR 223) DEF witness Duff declares that an opt-out provision could require DEF to change its goals. (TR 255) Witness Duff also comments that because in other states, Duke Energy "do[es] not have a separate charge for customers that opt-out, the administrative costs are just lumped in with the overall EE overhead costs." (TR 299)

Additionally, FPL witness Koch notes that large commercial and industrial customers who wish to opt out benefit from load management programs that are paid for by residential customers. (TR 147) Utilities also express that an opt-out policy would be unfair for customers who do not meet the threshold. TECO witness Roche states that an opt-out policy "would be unfair to all customers who do not qualify to opt out or who elect not to do so." (TR 399)

OPC is also concerned that "FIPUG and Wal-Mart's proposals as presented appear to fall short in meeting the Proponents' burden of demonstrating that the proposals would be fair to the general body of ratepayers." (OPC BR 5) OPC believes it is possible that an opt-out provision may shift costs, commenting that the petitioners have neither conclusively shown that utilities' DSM energy efficiency costs will fall or that the petitioners' failure to use a RIM test will leave harmless other customers. (OPC BR 6-7)

In addition to an energy efficiency specific opt-out provision, large commercial and industrial customers would still benefit from load management credits that are paid for by all customers, including residential customers. (TR 214; TR 218) Witness Deaton also expressed that FPL's ECCR credits to large commercial and industrial customers exceed $50 million per year. (TR 219) TECO pays load management customers "incentives to be willing to shed load because their willingness to do so yields benefits to the company and its customers..." (TR 395) TECO witness Roche states that in 2015, TECO has "$47 million budgeted for our ECCR expenditures." (TR 421) Witness Roche continues that FIPUG's interruptible customers in the GSLM-2 and GSLM-3 rates receive $17 million per year in credits while contributing $1.7 million to total ECCR costs. According to witness Roche, "So, they get 35 percent of the money we basically collect to facilitate conservation programs." Witness Roche contends that an opt-out provision would reduce the annual ECCR costs paid for by FIPUG members from $1.7 million to $900,000, resulting in an $800,000 bill reduction for FIPUG's members. (TR 421-422)

Customer Incentive Programs

The four largest Florida IOUs currently offer large commercial and industrial customers custom incentive programs. (TR 191, 362) These programs allow eligible customers to design a custom program which would increase their conservation efforts and allow for rebates within the IOU's programs. The 2014 expenditures by the four largest IOUs are shown in Table 2-2. (EXH 3) All energy efficiency investments approved for a rebate under the custom incentive programs must pass the RIM test. The four largest IOUs stated that customers may suggest projects to be evaluated for a rebate under the custom incentive programs (TR 193-194; EXH 24 Bates 96; EXH 27 Bates 121; EXH 29 Bates 156; EXH 32 Bates 196) Witness Baker states that although he is aware of the custom incentive programs offered by the utilities, to the best of his knowledge, Wal-Mart has not participated. Witness Baker continues, "the process for doing that was so burdened that our energy managers...made a business decision that it wasn't the right thing to do for that particular measure." (TR 74) Witness Baker states that the Florida IOUs' custom incentive programs are burdensome because "there's many forms you have to fill out" and the programs have "a number of different types of audit activity you have to do." (TR 82) Staff notes, however, that implementing the opt-out proposals could also result in audits and other requirements for the opt-out customers, especially if energy efficiency savings from these customers are counted towards utility goals. Witness Baker did not offer suggestions to make the utilities' custom incentive programs less burdensome. (TR 81-84) Primary staff believes that rather than implementing a complex and potentially costly opt-out policy, the Commission should direct the utilities to work with the petitioners to make the custom incentive programs less burdensome and more responsive to customer needs in order to increase customer participation.

Table 2-2
Custom Incentive Programs – 2014 IOU Expenditures

Utility	Total Expenditures	Incentives
DEF	$46,117	$20,944
FPL	$289,113	$245,132
Gulf	$1,665	$1,000
TECO	$129,582	$101,415

Source: EXH 3

Implementation Issues

An opt-out policy would lead to numerous implementation issues that could add complexities to Commission processes and increase administrative costs. The petitioners argue that an opt-out can be implemented in such a way as to prevent cost shifting because an opt-out provision would reduce expected program costs. (TR 122, 511) Issue 3 addresses implementation issues in greater detail.

Having stated that an opt-out provision will not shift costs, Wal-Mart then recommends that the Commission allow utilities to count estimated or reported energy efficiency from opt-out customers towards DSM goals. (TR 59) Wal-Mart also suggests that the IOUs split the ECCR charge into an energy efficiency portion and a DSM portion. (TR 70) Separating costs in the ECCR clause is discussed in Issue 1.

While the petitioners advocate splitting the ECCR charge and counting opt-out energy efficiency investments toward goals, the utilities note that both Commission and utility internal processes would have to change and that such a change would add costs. FPL witness Deaton identifies "numerous process and system modifications that would be required in order to ensure proper tracking and handling of many of the accounts." Witness Deaton go on to say that, "Billing system changes include identification of the ECCR opt-out customers and creation of the additional charges in the rates and billing tables. New charges have to be added to...data warehouse, rate reports and other financial reports." (TR 221-222) TECO asserts that an opt-out policy would cause the company to make programming changes to the customer information and billing system, changes to forecasting processes, and additional work for the customer service department. (EXH 29, Bates 138-139)

Gulf states that not only would an opt-out policy "create additional costs and complexities" but also "will impact Gulf's ability to achieve DSM goals established by this Commission." (TR 338) DEF comments that it would need to adjust the Commission's annual DSM goals. (EXH 27, Bates 112-113)

Primary Staff Analysis

Impact Cost-Effective Conservation

The record is inconclusive over whether the ability to opt out of paying the ECCR charge will spur greater cost-effective conservation by large customers. Reducing ECCR charges for these large customers will reduce their bills. While these customers may increase their spending due to lower bills, there is no guarantee that these dollars will be invested in energy efficiency measures. Wal-Mart witness Baker states "the customer implementing the EE measure has every incentive to ensure that the implemented measures are cost effective." (TR 47) However, witness Baker stated that Wal-Mart does not use the Commission-approved cost-effectiveness tests such as the RIM test, the Participants' test, or the Total Resource Cost test. (TR 80) Because of this answer and a lack of further specifics on how the company and others would evaluate an energy efficiency investment, staff cannot definitely agree with Wal-Mart that an opt-out provision would lead to more cost-effective energy efficiency.

Potential for Cost Shifting

Primary staff believes that it will be difficult to design an opt-out policy in such a way as to prevent cost shifting to other ratepayers. At a minimum, preventing cost shifting would require that all additional administrative costs be paid by opt-out customers. Additionally, staff notes that preventing cost shifting would also require the Commission to either: (1) revisit the IOUs' DSM goals or (2) count cost-effective verified opt-out savings towards the IOUs' DSM goals. However, the record is inconclusive regarding whether revisiting the IOUs' DSM goals or counting verified opt-out customer savings towards the IOUs' DSM goals would prevent cost shifting.

Equity Concerns

Primary staff notes that a key contention of the petitioners is that they know their businesses best and are already making energy efficiency investments; therefore they should be able to opt out of paying for utility-sponsored energy efficiency programs. (TR 46; TR 118; TR 510) Primary staff counters that residential and small commercial/industrial customers also invest in energy efficiency. Under the petitioners' proposal, however, these customers would continue to pay the full ECCR charge. In addition, primary staff agrees with DEF witness Duff's statement that the administrative costs of an opt-out provision could be combined with overall energy efficiency overhead costs. This practice would mean that ratepayers who do not opt out are unfairly burdened with the administrative costs of accounting for opt-out customers. On the other hand, forecasting and separating the administrative costs of an opt-out provision may also be burdensome and costly for the utility and its ratepayers.

Primary staff does not find sufficient evidence in the record to guarantee that opt-out customers would pay for all increased administrative costs, including the costs of internal changes such as billing system changes and Commission-specific changes such as changes to annual reporting and DSM goals. The petitioners have also not provided convincing evidence that other customers will not be harmed due to the interaction of an opt-out provision with the Commission's obligation to set goals under FEECA. Moreover, staff notes that aggregation of accounts (as proposed by Wal-Mart and FIPUG) may cause equity issues for single stores or smaller chains. If large chains such as Wal-Mart can aggregate stores to decrease their ECCR charges and smaller

stores cannot meet the threshold, then the operating cost of Wal-Mart stores will have unfairly decreased relative to the operating cost of Wal-Mart's competitors. (TR 202)

Customer Incentive Programs

The Commission's most recent DSM goals order requires that approved energy efficiency savings pass the RIM test and have a payback period greater than two years to minimize the number of free riders. Primary staff is concerned that Wal-Mart, FIPUG, and others would be able to opt out of paying for energy efficiency programs without guarantees that opt-out customers would achieve energy efficiency savings that would pass the RIM test and would have a payback period greater than two years.[13] In response to questioning by OPC, witness Baker acknowledged that Wal-Mart's proposal does not rely on a RIM test. (TR 80) Witness Chriss, however, states that if the Commission wants to run a RIM test on an opt-out customer's programs, "I don't think we'd necessarily be opposed to that." (TR 128) FIPUG was silent on using the RIM test on opt-out customers' energy efficiency investments.

Utility-sponsored programs that pass the RIM test put downward pressure on rates and are therefore beneficial to the general body of ratepayers. The utilities' Commission-approved goals are based on the RIM cost-effectiveness test. (TR 339) Opt-out customers have proposed avoiding ECCR payments by making (or promising to make) energy efficiency decisions that are beneficial to these customers. It is reasonable to expect that some of these investment decisions will not pass the RIM test. Historically, the Commission has encouraged customers to use energy efficiently. Any customer has an incentive to make energy efficiency decisions that are in his or her own best economic interests. However, it is the role of the Commission to ensure that utility-sponsored programs and related policies are in the best interest of the general body of ratepayers. Primary staff does not believe Wal-Mart and FIPUG have provided sufficient evidence that their

Implementation Issues

Primary staff believes that an opt-out provision would be complex to implement in an appropriate manner that protects ratepayers who do not opt out. Counting savings from opt-out customers toward utility goals would entail additional utility actions and administrative costs, such as verification of opt-out customer savings and more complex annual FEECA reports. Additionally, staff observes that the record is incomplete on the full implementation details of an opt-out policy. An opt-out policy would require changes to the annual ECCR filings, DSM reporting, and the Commission's DSM goals. Such required changes are discussed in greater detail in Issue 3. As discussed above, it is reasonable to expect that at a minimum, an opt-out provision would require: (1) changes in billing, (2) more complex ECCR filings, and (3) verification that opt-out customers meet required thresholds. It is reasonable to expect that these efforts would have corresponding administrative costs.

Conclusion

Primary staff recommends that the Commission deny the petitioners' request for an opt-out provision for eligible large commercial and industrial customers. The Commission sets goals based on the RIM test. Cost-effective energy efficiency programs that pass the RIM test benefit

[13] Order No. PSC-14-0696-FOF-EU, issued December 16, 2014, Dockets Nos. 130199-EI, 130200-EI, 130201-EI, 130202-EI, 130203-EM, and 130204-EM, In re: Commission review of numeric conservation goals of FPL, DEF, TECO, Gulf, FPUC, JEA, and OUC, pg. 43.

all ratepayers due to downward pressure on rates. The petitioners have not provided convincing evidence for the Commission to alter its long-held policy that since all ratepayers benefit from cost-effective DSM measures, all ratepayers should share in the costs. Additionally, staff observes that an opt-out policy will be difficult to implement without some degree of cost shifting to other ratepayers. As a result, equity concerns, whether from residential customers or from smaller commercial and industrial customers who cannot meet the opt-out criteria, seem likely to arise from an opt-out policy.

The four largest IOUs currently offer custom incentive programs. (TR 191, 362) Primary staff believes that these programs are a viable alternative to an opt-out program. Under the custom incentive programs, large customers can suggest energy efficiency investments and receive a rebate if the projects pass the RIM test. (TR 193-194) During the hearing, however, Wal-Mart witness Baker noted that Wal-Mart does not take advantage of these custom incentive programs because "the process was so burdened." (TR 74) FIPUG witness Pollack asserts that participation in these custom incentive programs is relatively small. (TR 537) Primary staff recommends that the Commission direct the utilities to work with the petitioners to make the custom incentive programs less burdensome and more responsive to customer needs in order to increase customer participation.

Alternative Staff Analysis

The petitioners have stated that businesses are in the best position to know their own opportunities for energy conservation. (TR 27, 510) Therefore, the petitioners contend that they can increase energy savings relative to utility-sponsored programs, if they are exempt from paying the energy efficiency (EE) program-related costs through the Energy Conservation Cost Recovery (ECCR) clause. (TR 516) While the petitioners have not provided persuasive evidence that demand and energy savings will increase if the Commission offers an opt-out program, staff notes that no parties have provided contrary evidence.

Alternative staff believes that an opt-out provision would be consistent with the intent of FEECA if indeed these large business customers could produce demand and energy savings, independent of utility programs, that were determined to be cost effective under the current Commission approved standard, the RIM test. The Legislature's intent of FEECA is addressed in Section 366.81, F.S., which states:

> The Legislature finds and declares that *it is critical to utilize the most efficient and cost-effective* demand-side renewable energy systems and *conservation systems* in order to protect the health, prosperity, and general welfare of the state and its citizens...The Legislature further finds and declares that ss. 366.80-366.83 and 403.519 *are to be liberally construed* in order to meet the complex problems of reducing and controlling the growth rates of electric consumption and reducing the growth rates of weather-sensitive peak demand; increasing the overall efficiency and cost-effectiveness of electricity and natural gas production and use; encouraging further development of demand-side renewable energy systems; and conserving expensive resources, particularly petroleum fuels. [Emphasis added.]

Alternative staff notes that if the savings from these customers' efforts are cost-effective under the Commission's cost-effectiveness methodology, an opt-out provision could also be beneficial

to the general body of ratepayers. That is, if the energy efficiency investments made by the petitioners as the result of an opt-out program pass the RIM test, these investments will tend to put downward pressure on rates. (TR 339) Staff notes that Wal-Mart witness Baker acknowledged that Wal-Mart does not use the RIM test in reviewing potential energy efficiency investments. (TR 80) Witness Chriss, however, stated that if the Commission wishes to run a RIM test on an opt-out customer's programs, "I don't think we'd necessarily be opposed to that." (TR 128)

As discussed previously, the petitioners have not provided compelling evidence that demand and energy savings will increase if the Commission offers an opt-out program. In addition, the petitioners have not provided evidence that any demand and energy savings that do occur would meet the Commission's current approved cost-effectiveness methodology, i.e., pass the RIM test and have a payback greater than two years. Alternative staff believes, however, that the only way to fully vet this supposition is through a limited scope pilot program to collect the necessary data on the impact of an opt-out policy on: (1) customer energy and demand savings relative to expected savings under utility-sponsored programs; (2) whether these demand and energy savings are cost-effective under the Commission's approved cost-effectiveness methodology; and (3) whether cost shifting occurs and, if so, by how much.

Alternative staff believes that an opt-out policy could result in cost shifting to customers ineligible to opt out as well as eligible customers electing not to opt out. The IOUs and OPC expressed concern that an opt-out provision will result in cost shifting to customers that are either ineligible to opt out or choose not to. (TR 368, 391, 447; FPUC BR 4) Wal-Mart presented Exhibits 38 and 39 to support its position that extensive levels of cost shifting are unlikely to occur. Addressing the cost shifting concern, FIPUG witness Pollack advocates a pilot program to start slow and see the consequences of an opt-out provision. (TR 550) Alternative staff agrees that a limited scope pilot program can be used to determine the level, if any, of cost shifting or cost savings, for the general body of ratepayers.

There is conflicting evidence in the record regarding whether the petitioners desire an opt-out provision which includes FPUC. Through testimony by witness Baker, Wal-Mart stated that these recommendations would apply to the four largest investor-owned utilities, Florida Power & Light, Duke Energy Florida, Tampa Electric Company, and Gulf Power Company. (TR 46) In response to staff interrogatories, however, Wal-Mart indicated that the proposal could apply to Florida Public Utilities as well. (EXH 22, Bates 35) FIPUG states that to the extent Florida Public Utilities has customers who would be eligible, they should be able to participate. (EXH 20, Bates 19) Given the relatively small customer base of FPUC, alternative staff is concerned that a pilot program may unnecessarily burden FPUC's ratepayers. Therefore, alternative staff believes it is appropriate to limit the pilot program to the four largest IOUs: DEF, FPL, Gulf, and TECO. These four IOUs should be sufficient to collect the needed data to evaluate an opt-out policy.

Alternative staff believes there is a potential that allowing large customers to opt out of a portion of ECCR charges and self direct these dollars toward conservation efforts could result in higher demand and energy savings. If these customers can achieve higher cost-effective savings, this could forward the goals of FEECA and reduce costs for the general body of ratepayers, assuming

these costs and savings are documented. Although the petitioners did not provide fully detailed opt-out proposals, alternative staff believes additional details can be discussed at a staff workshop. FIPUG witness Pollack did suggest to "start slow, but get it started and get the discussion on the table about what it would take to make this work and take it from there and put all the right minds in the right room and we'll come up with a solution." (TR 550) Therefore, staff recommends that the Commission direct the IOUs to work with the petitioners to develop a draft limited scope pilot opt-out program for Commission review, with a desire that the utilities work together to develop commonality in program specifics. In order to reduce the potential risk of cost shifting to other ratepayers, the draft pilot program must meet the parameters discussed in alternative staff's analysis in Issue 3. The purpose of the pilot program is to collect data regarding the impact of an opt-out policy on: (1) customer energy and demand savings relative to expected savings under utility-sponsored programs; (2) whether these demand and energy savings can be achieved under the Commission's approved cost-effectiveness methodology; and (3) evaluate whether cost shifting occurs and, if so, by how much.

Conclusion

Alternative staff recommends that the Commission should direct staff to conduct a workshop or workshops for discussion among the parties to develop program standards for a limited scope pilot program that meets the parameters discussed in alternative staff's analysis in Issue 3. The Commission should direct that within 90 days of the workshop, the four largest IOUs should submit pilot opt-out program standards for Commission review and approval for implementation January 1, 2017, consistent with the parameters established in the alternative staff recommendation for Issue 3. The program standards shall also reflect any additional implementation details that are developed at the workshop. Alternative staff also recommends that to the extent possible, the four largest IOUs work together to develop commonality in program specifics.

The IOUs should keep staff and the petitioners engaged in fulfilling the Commission's intent as questions arise. The purpose of the pilot program is to evaluate customer demand and energy savings, whether these savings are cost-effective, and the net impact on costs recovered from other ratepayers through the ECCR.

Alternative staff recommends that the parties discuss at workshop an opt-out pilot program design in which customers participating in the pilot program will continue to pay the entire ECCR charge throughout the pilot program. At the end of each year, opt-out customers could receive a refund/credit for a portion of ECCR charges, capped at the energy efficiency program-related ECCR costs minus any administrative costs. To receive a refund/credit, each participating customer would be required to provide documentation to its IOU of the qualified energy efficiency investments made during the year.

Issue 3: If the Commission allows proactive 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?

Primary Recommendation: If the Commission approves the primary recommendation in Issue 2, then Issue 3 is moot. (Harlow, Lingo, Margolis)

Alternative Recommendation: If the Commission approves the alternative staff recommendation in Issue 2, the Commission should direct staff to conduct a workshop with the parties to develop implementation of an opt-out pilot program for the four largest IOUs. Following the workshop, these four IOUs should be required to file an opt-out pilot proposal, and the associated tariffs, within 90 days based on the framework provided in alternative staff's discussion of this issue, including: (1) eligible customers should be determined based on an annual energy usage threshold of 15 million kWh, with no account aggregation allowed; (2) any administrative costs associated with an opt-out policy must be paid by the customers that elect to opt out and (3) any energy efficiency savings from an opt-out customer counted toward utility DSM goals must be incremental savings that meet the same cost-effectiveness criteria that utility-sponsored energy efficiency savings already must meet, and must be measureable and verified. The resulting proposed opt-out program standards and other necessary implementation details would be subject to Commission approval through the PAA process. Alternative staff also recommends that, to the extent possible, the four largest IOUs strive for commonality in their opt-out programs. The Commission should also direct the IOUs to engage with staff and the parties in fulfilling the intent of these guidelines as questions arise. (Shafer)

Position of the Parties:

FIPUG: The eligibility criteria should be as set forth by FIPUG expert witness Jeff Pollock in his pre-filed testimony.

Wal-Mart: The eligibility criteria should be as set forth in the surrebuttal testimony of Mr. Kenneth E. Baker, filed in this docket on May 20, 2015.

PCS: PCS agrees with the eligibility criteria described by FIPUG.

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.

DEF: Any opt-out policy should be designed to not result in any cost-shifting to customers who do not or cannot opt out. There is insufficient evidence in this record for the Commission to meet this objective and specifically determine the criteria for determining eligibility for opt-out customers.

TECO: The Commission should reject the very generally described opt-out proposals of FIPUG and Wal-Mart and thereby render this issue moot. If the Commission did

have to decide this issue, it is clear that the criteria would be difficult and costly to devise and administer.

Gulf: 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.

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.

SACE: SACE reiterates that criteria should be based on best practices from self-direct programs in other states. The criteria proposed by Wal-Mart do not rise to the level of best practices. It is not clear that the Commission can establish generally applicable criteria through the commission order.

OPC: While OPC has reservations about whether the opt-out programs as presented should be approved, at a minimum, the interests of the general body of ratepayers and various rate classes should be adequately safeguarded against undue rate impacts while achieving the intent of FEECA and Section 366.82(2), Florida Statutes, and the Commission should require that any qualifying proposals meet its approved cost-effectiveness test (RIM), or other Commission approved tests.

Staff Analysis:

Positions of the Parties

The petitioners, Wal-Mart and FIPUG, propose criteria to determine whether customers will be allowed to opt out of utility-sponsored energy efficiency programs. Florida's investor-owned utilities argue that there is insufficient evidence in the record to support the intervenors' opt-out criteria. The IOUs also claim that the evidence in the record is too general to implement an opt-out policy and that Wal-Mart and FIPUG have conflicting recommended criteria. Wal-Mart argues that to be allowed to opt out, customers should "implement their own energy efficiency programs and meet certain other criteria." (TR 50) The criteria that Wal-Mart recommends for customers to opt out include:

- "Aggregated consumption by a single customer of more than 15 million kWh of electricity per year across all eligible accounts, meters, or service locations within each Company's service area." (TR 53)

- "To be designated an eligible account that account may not have taken benefits under designated EE programs within 2 years before the period for which the customer is opting out." (TR 53)

- "An eligible account may not opt in to participate in the designated EE programs for 2 years after the first day of the year of the period in which the customer first opts out." (TR 53)

- "The customer must certify to the Company that the customer either (a) has implemented, within the prior 5 years, EE measures that have reduced the customer's usage, measured in kWh per square foot of space, or other similar measure as applicable, by a percentage at least as great as the Company's energy efficiency reductions through its approved EE programs...or (b) has performed an energy audit or energy use analysis...and confirms to the utility, that the customer has either implemented the recommended measures or that the customer has a definite plan to implement qualifying EE programs." (TR 53-54)

FIPUG suggests that "eligibility be limited 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 are under common ownership and operation." (TR 514) FIPUG also recommends that customers that opt out of the ECCR charge provide a signed letter to the utility declaring that the customer "has invested (or intends to invest) in energy efficiency or has conducted an energy audit or analysis determining that there are no cost-effective energy efficiency measures." (TR 515) Moreover, FIPUG proposes that the letter of attestation contain the monitorable energy savings and be signed by a certified energy manager or licensed professional engineer. (TR 516)

PCS supports the 1 MW eligibility criterion described by FIPUG witness Pollock. (PCS BR 6) However, Wal-Mart's and FIPUG's criteria also share commonalities, specifically aggregation across multiple delivery points and certifications from the customer to the utility. (TR 53, 514)

FPL states that the proposed eligibility criteria between Wal-Mart and FIPUG conflicts. (FPL BR 1) FPL also argues "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." (FPL BR 17) Although DEF opposes an opt-out provision, DEF states that Wal-Mart's suggestion to opt-out of energy efficiency charges based on kilowatt-hours of consumption rather than megawatts of demand would be more appropriate. (DEF BR 9) Like FPL, DEF opposes customer aggregation of separate locations. (DEF BR 9)

TECO expressed concern that the opt-out criteria are too general, insufficient, and would lead to ongoing controversy. (TECO BR 24) Gulf states that Wal-Mart's and FIPUG's proposed criteria do not ensure that the utility and the remaining customers are not harmed. (Gulf BR 11) FPUC comments that creating any opt-out criteria that are consistent with FEECA and contribute to meeting a utility's conservation goals would be difficult. (FPUC BR 3, 4)

OPC requests that eligibility criteria "safeguard the interests of the remaining general body of ratepayers and various rate classes against undue rate impacts." (OPC BR 2) OPC also states that FEECA should guide opt-out eligibility criteria, which should include the costs and benefits to customers and the general body of ratepayers. (OPC BR 8)

SACE states opt-out criteria should be based on the evaluation, measurement, and verification (EM&V) methodologies from other states' self-directed programs. (SACE BR 1) SACE believes Wal-Mart and FIPUG's proposals are "not yet fully developed to warrant approval." (SACE BR 1)

A significant difference in eligible participants results from the differences in the eligibility criteria proposed by Wal-Mart versus the FIPUG proposal. Those differences are addressed in the following subsections.

Energy versus Demand Threshold

Wal-Mart witness Baker suggested customers must meet a 15 million kWh annual aggregated sales threshold to opt out. (TR 53) For 2014, Wal-Mart stated it had 131 stores in FPL's, 66 in DEF's, 36 in TECO's, and 25 in Gulf's respective service territories. (EXH 21, Bates 31) Wal-Mart's proposal would allow for aggregation of accounts for the stores in each IOU's territory in order to meet the sales threshold. In contrast, FIPUG witness Pollock proposed a 1 MW demand threshold criterion.

The four largest IOUs provided data on the number of accounts that could meet Wal-Mart's and FIPUG's threshold eligibility criteria, assuming no accounts are aggregated. The data are presented in Table 3-1 below.

Table 3-1
Number of Eligible Accounts under Proposed Thresholds

Utility	Customer Accounts that Meet Wal-Mart's 15 million kWh Threshold (Unaggregated)	Customer Accounts that Meet FIPUG's 1 MW Threshold (Unaggregated)
FPL	131	945
DEF	79	521
TECO	47	212
Gulf	30	88
Total	287	1,766

Sources: EXH 24, Bates 92-93; EXH 27, Bates 116-117; EXH 29, Bates 143-144; EXH 32, Bates 194-195

As Table 3-1 shows, the four largest IOUs estimate that the annual sales criterion proposed by Wal-Mart would result in up to 287 potential opt-out customers. In comparison, the demand

criterion advanced by FIPUG would result in up to 1,766 potential opt-out customers. In contrast, FIPUG witness Pollock stated that if you adjust Wal-Mart's 15 million kWh annual sales criterion to demand, the criterion would correspond to approximately 3.0 to 3.5 MW of demand. (TR 534)

Wal-Mart indicated a willingness to change the specific number of annual kWh sales necessary to qualify for an opt-out policy and further refine its proposed criterion. (TR 22-23) Wal-Mart also stated that it would be open to using FIPUG's 1 MW of demand criterion provided it has a contiguous type of property. (TR 67)

Table 3-2 indicates the number of accounts that could meet Wal-Mart's and FIPUG's differing aggregated criteria. DEF and Gulf did not provide data as part of the record.

Table 3-2
Impact of Account Aggregation on Eligible Accounts

Utility	Customer Accounts that meet Wal-Mart's 15 million kWh Threshold (Aggregated)	Customer Accounts that meet FIPUG's 1 MW Threshold (Aggregated)
FPL	71,000	84,000
DEF	Not Specified	Not Specified
TECO	9,957	Not Specified
Gulf	Not Specified	Not Specified

Sources: EXHs 24, 27, 29, 32; Bates 92, 93, 116, 117, 143, 144, 194, 195

Table 3-2 shows that aggregation of accounts significantly increases the number of customers that could potentially opt out under the proposed thresholds. For example, FPL estimates that FIPUG's unaggregated criterion could result in 945 eligible accounts. (Table 3-1) In comparison, FPL estimates that FIPUG's aggregated criterion could result in 84,000 eligible accounts. (Table 3-2) TECO estimates that Wal-Mart's unaggregated criterion could result in 47 eligible accounts (Table 3-1). In comparison, TECO estimates that Wal-Mart's aggregated criterion could result in 9,957 eligible accounts. (Table 3-2)

Account Aggregation

The parties disagreed about whether the aggregation of customer accounts should be allowed in meeting the suggested thresholds. FIPUG's witness argues for account aggregation. (TR 514) Wal-Mart similarly advocates that in order to meet the proposed opt-out thresholds, customers should be allowed to aggregate all customer accounts within a utility's service territory. (TR 51) For example, with aggregation, all Wal-Mart accounts within a utility's service territory could count toward Wal-Mart's suggested 15 million kWh sales threshold.

FPL witness Deaton testifies that aggregation would be discriminatory and contrary to Section 366.03, F.S. (TR 202) According to witness Deaton, "Individually-owned retail stores would be at a competitive disadvantage if a chain store such as Wal-Mart were allowed to opt out of certain electric charges based on the aggregate load over multiple customer accounts, while customers with similar loads could not because they do not happen to be part of a chain." (TR 202) DEF witness Duff states that aggregation would be costly, hard to verify, and illogical. (TR 238) TECO witness Deason expresses some skepticism, saying "there are questions about whether it should or should not be aggregated." (TR 471)

Potential Changes to Commission Proceedings and Rules

Current Commission and utility processes would require change in order to implement an opt-out provision. FPL states that it "would need to create a separate set of ECCR clause factors for opt-out customers. This will basically require duplicating the current ECCR processes including projection and true-up filings and the resulting FPSC audit." (EXH 24, Bates 89) DEF remarks that it would need to modify the Commission's annual goals. (EXH 27, Bates 113)

TECO states that its forecasting practices would need to be modified. (EXH 29, Bates 138) Gulf comments that it would have to identify opt-out customers in its DSM annual reports and the whole FEECA process could be affected. (EXH 32, Bates 191) Gulf declares "Removing large sets of customers from the potential list of participants upsets the design of both the (FEECA) goals and the plan and impacts utilities' ability to meet the established goals." (EXH 32, Bates 191)

Staff notes that in order to implement an opt-out policy, the following Commission activities would be affected and potentially require change: (1) DSM goals, (2) the annual ECCR filings and proceedings, and (3) each utility's annual DSM report. All of these processes are governed by Commission rules. Staff observes that changing these processes in order to implement an opt-out provision would potentially require rulemaking.

The first rule that may require modification is Rule 25-17.0021, F.A.C., Goals for Electric Utilities. This rule states that the Commission must set conservation goals for each utility every five years and that the utility must propose goals for ten years. Additionally, Rule 25-17.0021(4)(d), F.A.C., requires that the utility submit for approval a DSM plan with "the total number of customers or appropriate unit of measure in each class of customer (i.e. residential, commercial, industrial, etc.) for each year in the planning horizon." Therefore, Rule 25-17.0021, F.A.C., may need to be modified to account for opt-out customers in the goals proceeding. Third, Rule 25-17.0021, F.A.C., also contains the requirements for each utility's annual FEECA reports. These reports are required to be filed with the Commission each year by March 1 to provide information on each utility's efforts to meet its DSM goals. In order to implement an opt-out provision, the reporting requirements specified in the rule may have to change if savings from opt-out customers are counted toward the utilities' goals.

Another rule that would likely be impacted is Rule 25-17.015, F.A.C., Energy Conservation Cost Recovery. This rule states that each utility shall file an annual final true-up filing showing ECCR costs and revenues for the most recent twelve month historical period, an annual estimated/actual true-up showing eight months actual and four months projected ECCR costs and revenues, an

annual projection showing twelve months projected costs, and ECCR factors for the twelve month period beginning January 1 following the hearing. As discussed in Issue 1, staff believes a permanent opt-out provision, as proposed by the petitioners, may require rulemaking to modify Rule 25-17.015, F.A.C., because utilities will have to create a different set of ECCR factors for opt-out customers.

Potential for Cost Shifting

The parties disagree about whether an opt-out provision can be designed that avoids cost-shifting to customers, such as residential customers or smaller commercial and industrial customers, who do not meet the opt-out thresholds or elect not to participate in an opt-out program.

Wal-Mart argues that opt-out customers' energy savings would exceed the cost shift. (Wal-Mart BR 13). Wal-Mart argues that a single large commercial or industrial customer that opted out would shift only 0.03 percent of ECCR costs for FPL, 0.04 percent for DEF, 0.17 percent for TECO, and 0.65 percent for Gulf while contributing energy savings in excess of the cost shift. (EXH 38) Counting the benefits from energy savings as exceeding the lost revenues from opt-out customers, Wal-Mart witness Chriss does not expect an opt-out to cause any cost shifting. (TR 122)

FIPUG believes an opt-out customer will not create a cost shift because energy efficiency investment by an opt-out customer "is no different in concept from the utility directing its own cost-effective EE program for the benefit of its customers." (TR 520) FIPUG witness Pollock states "if the power and energy savings of an opt-out customer can also be counted by the utility toward meeting its conservation goals, the utility can reduce its expenditures. In other words, appropriately, there would be no costs to shift." (TR 511) Finally, FIPUG states that the only circumstance in which non-opt-out customers could be impacted is if the utility ignores the documented savings from the opt-out customers while still incurring the same level of energy efficiency program costs. (TR 521)

FPL, however, believes that an opt-out would result in cost shifting. (FPL BR 3) FPL witness Koch testifies that the result of the petitioners' proposals is the same, "to shift prudently incurred energy conservation costs from "large" business customers, such as the companies they represent, to residential and small business customers." (TR 142-143)

DEF comments that it is presently unclear whether cost shifting would occur; DEF believes implementation and opt-out customer behavior will determine whether cost shifting occurs. (TR 258) DEF asserts "any opt-out policy must be designed so that no one, including the utility and/or any customer who does not or cannot opt out, is harmed by any customer opting out of paying for their share of particular charges." (TR 230)

TECO asserts that an opt-out program would result in shift costs. (TECO BR 24) Witness Deason states, "if you take a segment of the customers which are currently being allocated costs, and they are taken out of that allocation, and the amount of cost stays the same, well, then it's going to increase costs for the remaining customers. That's just a mathematical certainty." (TR 474) TECO witness Roche states that the value of energy savings from opt-out customers as well as the equity impacts to customers who do not opt out would be difficult to determine. (TR 419)

Gulf insists that the opt-out "proposals would result in shifting of DSM-related costs to residential and small commercial customers who do not qualify to opt-out." (Gulf BR 2) Gulf

disputes Wal-Mart's and FIPUG's claim that program costs would fall enough to equal the decrease in program revenues. (Gulf BR 2) Gulf comments that commercial and industrial programs would continue to operate, and although variable program costs for commercial and industrial customers may decline, "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." (Gulf BR 3)

FPUC believes "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." (FPUC BR 4)

OPC is concerned about cost shifting, stating "the information provided by the utilities in response to OPC discovery tends to indicate that cost shifting may well take place...Further, Hearing Exhibit 38 introduced by Walmart during redirect appears to indicate that cost shifting could take place without a change in the programs." (OPC BR 4) SACE does not express a belief on the likelihood of an opt-out resulting in cost shifting.

Recovery of Administrative Costs

Table 3-3 shows Gulf's projected expenses from implementing an opt-out provision. Gulf notes the reasons for the increased administrative costs include its estimate of the need to acquire a customer tracking system, generate enrollment forms, create processes and documentation regarding an opt-out program, and verify energy and demand savings from customers. (EXH 32, Bates 190-191)

Table 3-3
Projected Administrative Expenses - Gulf

One Time Expenses		Annual Ongoing Expenses	
Low Range	High Range	Low Range	High Range
$250,000	$400,000	$100,000	$180,000

Source: EXH 32, Bates 192

Wal-Mart witness Baker questions whether administrative costs will increase due to an opt-out provision. Witness Baker states, "Wal-Mart does have serious questions about whether the administrative costs would increase or decrease because there would be less...data to have to deal with given that there will be opt-out customers." (TR 76) Witness Baker also stated that Wal-Mart would be willing to pay administrative costs "within reasonable bounds." (TR 76) FIPUG witness Pollack notes there is a significant variance in the administrative cost estimates provided by the four largest IOUs. (TR 549; EXH 24, Bates 90; EXH 27, Bates 122; EXH 29, Bates 140; EXH 32, Bates 192)

FPL expects billing system changes through "identification of ECCR opt-out customers and the creation of additional charge(s) in the rates and billing tables; new charge(s) to be added to all billing screens, data warehouse, rate and revenue report, and other financial reports...." (EXH 24, Bates 89)

DEF expects an opt-out option to create new administrative costs. These costs include determining eligibility by listing accounts, analyzing energy audit results, and reviewing the certifications of a license engineer or certified energy manager. (EXH 27, Bates 112) DEF also expects to inspect a sample of the facilities and track costs attributable to the opt-out program as a result of implementation. (EXH 27, Bates 112-113)

Gulf anticipates that implementing an opt-out policy would lead to ECCR true-up, audit, and projection filing changes. This would include FEECA filing changes through modified ECCR schedules and identification of impacts of opt-out customers on Gulf's DSM program accomplishments. (EXH 32, Bates 190-191)

It is evident that there will be administrative costs to implement an opt-out provision. These costs will include both up-front costs, such as billing changes, and recurring costs, such as verification that opt-out customers meet the eligibility thresholds. (EXH 27, Bates 112-113) The utilities contend that opt-out customers should pay these administrative costs. (TR 427)

Implementation and DSM Goals

The utilities and the parties are divided as to whether to count energy efficiency savings by opt-out participants toward DSM goals. The utilities contend that such savings should only count if opt-out customer savings pass the RIM and free rider criterion established by the Commission in the most DSM Goals docket. The petitioners believe all savings should be counted. OPC recommends that any savings by opt-out customers be counted only if subject to the same criteria established in the most recent DSM Goals docket.

Wal-Mart suggests that the Commission allow the utilities to count projected or actual energy savings from opt-out customers towards the utilities' DSM goals. (TR 59) Wal-Mart does not list in its testimony or briefs any conditions that should apply to counting the energy savings towards DSM goals. Without running cost-effectiveness tests, Wal-Mart does say that "large customers who have undertaken their own conservation and energy efficiency programs provide these benefits to all customers at no cost to those customers." (TR 47)

FIPUG recommends that the Commission allow the utilities to count energy and demand savings from opt-out customers towards the utilities' DSM goals under the condition that the energy and demand savings are measured and verified. (TR 506, 521, 523, 529) FIPUG states that individual companies, when evaluating an energy efficiency investment, use differing criteria to analyze whether the benefits to the company of investing in energy efficiency exceed the costs. (EXH 19, Bates 5) FIPUG also comments that "eligible opt-out customers...invest based on projected energy efficiency measures and corresponding energy savings." (EXH 20, Bates 17-18)

FPL does not elaborate on conditions that should apply to counting savings towards goals. FPL witness Koch does state "[t]he discussion in the testimony of the Wal-Mart witnesses about its independent implementation of DSM is nothing more than a good illustration of free ridership. Their corporate objectives, as provided in the testimony, appear to require implementation of DSM." (TR 145)

DEF believes a RIM test is a key condition for counting opt-out customers' energy savings towards DSM goals because "when you're talking about an individual customer, they might include costs that wouldn't be included in the RIM test in their evaluation. And they might

include benefits that wouldn't be included in the RIM test evaluation." (TR 293) In addition to a RIM test, DEF recommends energy savings have less than a two-year payback. (TR 284-285) DEF also suggests a condition that opt-out customers not count "savings that had been achieved up to five years previously." (TR 297) DEF's witness thinks this condition is reasonable because "the (DSM) goals are prospective. Utilities don't take—don't get to take credit for things that have been done in the past." (TR 297)

TECO is in favor of a two-year payback as a minimum condition to count opt-out customer energy savings towards DSM goals. (TECO BR 12) TECO notes that its DSM programs "are measurable and verifiable...(and) meet the Commission's cost-effectiveness test." (TR 388) In contrast, TECO believes that the energy savings from opt-out proposals are not measurable and verifiable. (TR 388)

TECO also states that customer actions that reduce energy, with little reduction in demand, may not pass a RIM test. (TR 491-492) TECO comments, "Wal-Mart's No. 1 project for energy-efficiency...is they installed 1,657 meters in U.S. stores. Those sub-meters will not pass cost-effectiveness. In fact, it will not pass RIM." (TR 412) TECO believes that cost-effectiveness tests are key because "if the opt-out customers have taken such measures to remain competitive and improve their bottom-lines...such action does not necessarily result in lower costs through the ECCR." (TR 452)

Gulf states that if an opt-out were to occur, the Commission should set conditions for counting goals to "ensure that customer implemented energy efficiency measures produce savings which are cost-effective and reliable (i.e. RIM-passing or some other objective metric)." (Gulf BR 12) In addition to being cost-effective through the RIM test, Gulf also believes opt-out customers' energy savings must be obtainable and able to be verified. (TR 343)

OPC recommends a cost-effectiveness test such as the RIM test to ensure that opt-out customers' energy savings meet the same requirements that the Commission uses to set DSM goals. (OPC BR 8)

TECO witness Deason states that "it is important for all customers, not just opt-out customers, to look for ways to conserve and to take beneficial action where appropriate. If the opt-out customers have taken such measures to remain competitive and improve their bottom-lines, they have certainly acted rationally and appropriately. However, such action does not necessarily result in lower costs through the ECCR." (TR 452)

Rule 25-17.0021(3), F.A.C., Goals for Electric Utilities states "each utility's projection shall reflect consideration of...free riders." The Commission approved the two-year payback methodology in its most recent goals orders as an appropriate mechanism for addressing potential free riders.[14] Conversely, if opt-out energy efficiency savings are not counted towards goals, staff notes that cost shifting may occur between opt-out participants and opt-out non-participants. In this case, utilities would not be expected to experience reduced program costs.

[14] Order No. PSC-14-0696-FOF-EU, issued December 16, 2014, in Dkt. Nos. 130199-EI, 130200-EI, 130201-EI, 130202-EI, 130203-EM, and 130204-EM; In re: Commission review of numeric conservation goals of FPL, Duke, TECO, Gulf, FPUC, JEA, and OUC, pg. 43.

Opt-Out Timing

Wal-Mart recommends that there should be a sufficient time period during which an opt-out account may not have taken benefits under designated energy efficiency programs before opting out. (TR 53) Wal-Mart also recommends that there should be a sufficient amount of time after opting out before a customer can opt into an energy efficiency program. (TR 53)

Wal-Mart's recommendations are a way to address the potential for some customers to game the system by opting out or into energy efficiency programs at will in order to reduce ECCR charges one year while receiving rebates by the utility the next year. FIPUG witness Pollock did not seem to disagree with Wal-Mart's opt-out window proposal, calling it "a little more detailed" and expressing no significant objections to an opt-out window. (TR 534)

Verification of Energy Savings

Wal-Mart's proposed method for verification of energy savings is that "the customer certify to the company (utility) that the customer has either (a) has implemented, within the prior 5 years, EE measures that have reduced the customer's usage, measured in kWh per square foot of space...by a percentage at least as great as the company's (utility's) energy efficiency reductions through its approved EE programs... or (b) has performed an energy audit or analysis within the three year period preceding the customer's opt out request and confirms to the utility, that the customer has either implemented the recommended measures or that the customer has a definite plan to implement qualifying EE programs within 24 months." (TR 53-54)

FIPUG's suggests that savings verification be done by a letter from the opt-out customer to the utility. "In addition to attesting that the customer has determined (as a result of an audit or analysis) that there are no cost-effective energy efficiency measures or has invested in energy efficiency measures, the letter should include a certification of the verifiable power and energy savings. The certification should be signed by a licensed professional engineer or certified energy manager." (TR 516)

FPL states that verification for its Business Custom Incentive program is handled by each customer providing engineering information on kW and kWh savings and the costs to the utility. (TR 152) Then, FPL runs cost-effectiveness tests before handing out rebates. (TR 152)

Duke prefers FIPUG's suggested certification signed by a licensed professional engineer to Wal-Mart's proposal. (TR 239) Duke states that in Duke Energy Ohio, customers can self-certify, but the process is "very rigorous." (TR 273) In Duke Energy South Carolina and North Carolina, Duke must rely upon the customer's attestation of energy savings. (TR 275) However, unlike Florida, South Carolina and North Carolina lack DSM goals. (TR 275) Duke believes a state like Florida with DSM goals should "have a more rigorous requirement for measurement verification from a customer who would elect to opt out." (TR 276)

TECO states that measurement and verification is very important because TECO is accountable to the Commission for annual DSM goals. (TR 402-403) Much like FPL, for TECO's current commercial and industrial DSM rebate program, TECO determines if it needs to "do measurement verification beforehand or...take the word of...customers." (TR 431) Then TECO runs cost-effectiveness tests before approving the project to qualify for the commercial and

industrial DSM program. (TR 431) Finally, "after the customer actually does the project, depending on the kW savings, the threshold of it, then (TECO will) issue the check either in one part after 90 days of successful operation, and then the second portion of that check after a year." (TR 431)

Primary Staff Analysis and Conclusion

If the Commission approves primary staff's recommendation in Issue 2, then Issue 3 is moot.

Alternative Staff Analysis and Conclusion

If the Commission determines in Issue 2 to direct the parties to develop and implement an opt-out pilot program, specific implementation items addressed at hearing should be approved as recommended below. Where record support in this case does not provide a sufficient basis for an affirmative decision, a workshop or workshops should be conducted to address remaining implementation details. The following analysis addresses those implementation details and processes. As discussed in the alternative staff analysis to Issue 2, the purpose of the pilot program is to collect data regarding the impact of an opt-out policy on: (1) customer energy and demand savings relative to expected savings under utility-sponsored programs; (2) whether these demand and energy savings can be achieved under the Commission's approved cost-effectiveness methodology; and (3) whether cost shifting occurs and, if so, by how much.

Participation Threshold and Account Aggregation

As shown in Table 3-1, the Wal-Mart proposed opt-out participation threshold of 15 million kWh yields the lowest eligible number of participants for the four largest IOUs. For the purposes of a pilot program, minimizing the number of eligible participants will also minimize total implementation and program administrative costs. Thus, alternative staff recommends that for the purposes of a pilot program, the Wal-Mart recommended 15 million kWh threshold is appropriate.

Table 3-2 shows customer eligibility based on Wal-Mart's proposed account aggregation methodology for both the 15 million kWh energy threshold and FIPUG's proposed 1 MW demand threshold. Account aggregation significantly increases the number of eligible customers. For the purposes of a pilot program, minimizing the number of eligible participants will also minimize total implementation and program administrative costs. Thus, alternative staff recommends that for the purposes of a pilot program, the Wal-Mart 15 million kWh threshold unaggregated is appropriate.

Cost Shifting

Alternative staff believes that customers who are not eligible or elect not to participate in an opt-out program should be held harmless from an opt-out provision. The record reveals that two elements in the design of an opt-out provision are necessary to prevent cost shifting. First, any administrative costs associated with an opt-out provision must be paid by the customers that elect to opt out. Second, savings from opt-out customers must either be counted towards utility DSM goals, or utility DSM goals must be adjusted for the impact of lost conservation from opt-out customers. In its most recent goals Order, the Commission approved goals based on the RIM test coupled with the Participants' Test to ensure that utility-sponsored energy efficiency programs will benefit the general body of ratepayers. Therefore, alternative staff recommends that only

those energy efficiency measures that pass RIM and have a minimum two-year pack period be eligible for ECCR opt-out credits.[15]

Recovery of Administrative Costs

In order to protect customers that do not meet the opt-out threshold or elect not to participate, alternative staff recommends that opt-out customers should pay any utility administrative costs associated with implementing and maintaining an opt-out provision. The Commission has a long history of requiring the cost-causer to pay for the increased costs. In this case, the opt-out customers would cause utilities to incur additional costs, which FPL estimates to be between $3.3 million and $7.8 million for one-time costs and $150,000 to $950,000 for annual recurring costs. (EXH 24, Bates 90) TECO estimates one time costs of $140,000 and annual recurring costs of $141,000. (EXH 29, Bates 140) Staff notes that customers who do not opt out receive no benefit from the additional administrative costs that utilities expect to incur to implement an opt-out provision. Alternative staff recommends that to the extent possible, administrative costs associated with implementation of an opt-out program be borne by the opt-out participants.

DSM Goals

Alternative Staff agrees with OPC that any opt-out customer savings that are counted toward goals should be required to meet the same tests required by the Commission in setting goals. (OPC BR 8-9) That is, in order for an opt-out customer to qualify for an offset to its ECCR energy efficiency related costs, the individual customers' investment must meet both the RIM test and the two-year payback criterion. In that way, the savings will count toward the utilities DSM goals as determined by the Commission. Alternative staff also agrees with TECO witness Deason's contention that cost-effective conservation decisions by individual customers may not always result in lower costs through the ECCR. (TR 452) Pursuant to the Commission's recent decision in the approvals of utility demand side management plans, utility sponsored programs that count to DSM goals must be monitorable and verifiable. Thus, alternative staff recommends that energy efficiency investments by opt-out customers must meet the Commission approved RIM test and two-year payback criterion. In addition, in order for opt-out customer savings to count to utility DSM goals the savings must be monitorable and verifiable.[16]

Opt-out Timing and Verification of Savings

Alternative staff believes that record is incomplete regarding an opt-out/opt-in window and any other timing issues. The record is likewise inconclusive relating to the appropriate method for verification of energy savings under an opt-out program. Such details shall be addressed in workshop.

Workshop Framework

As discussed in the alternative staff's recommendation to Issue 2, alternative staff believes a pilot program is appropriate to collect data regarding the impact of an opt-out provision on demand and energy savings and ECCR costs. FIPUG and Wal-Mart have provided suggested criteria and the IOUs have raised the need for additional information to present criteria for the

[15] Order No. PSC-14-0696-FOF-EU, issued December 16, 2014, in Dkt. Nos. 130199-EI, 130200-EI, 130201-EI, 130202-EI, 130203-EM, and 130204-EM; In re: Commission review of numeric conservation goals of FPL, DEF, TECO, Gulf, FPUC, JEA, and OUC, pg. 13, 24.

[16] Order No. PSC 15-0323-FOF-EG, isssud August 11, 2015, in Dkt. No. 150081-EG, In Re: Petition for approval of demand-side management plan of Tampa Electric Company, p. 4.

Commission's review. Further details can be developed through a staff workshop and through the four largest IOUs' working with the parties. The Commission should direct staff, the IOUs, petitioners, and the other parties to address the implementation details enumerated below, plus any additional details needed to implement an opt-out pilot program. In addition, the Commission should direct the four largest IOUs, within 90 days of the workshop, to file pilot opt-out program standards for Commission review and approval. The resulting proposed opt-out program standards and other necessary implementation details would be subject to Commission approval through the PAA process.

1. As recommended in the alternative recommendation to Issue 1, a topic of the workshop should be the appropriate methodology to identify and separate energy efficiency ECCR costs for opt-out customers. The workshop should also address: (1) the appropriate allocation of common costs, and (2) the identification and treatment of any administrative costs related to an opt-out provision. *The appropriate treatment of these costs within the utilities' ECCR filings was not fully addressed in the petitioners' proposals.*

2. Alternative staff suggests an opt-out pilot program of at least three-years long to capture the timing of the ECCR process, plus time to evaluate the results. *The appropriate length of an opt-out pilot program was not addressed during the hearing.*

3. Eligibility threshold:

    a. Alternative staff recommends that the eligibility threshold should be set at 15 million kWh annual energy usage, as suggested by Wal-Mart. (TR 53) The IOUs provided an estimate that this will result in 287 total eligible customers in the four largest IOUs' territories. (EXH 24, Bates 92-93; EXH 27, Bates 116-117; EXH 29, Bates 143-144; EXH 32, Bates 194-195)

    b. Alternative staff recommends that account aggregation should not be allowed for a pilot program in order to meet the sales threshold. Further, account aggregation for purposes of an opt-out policy appears to violate the Commission's conjunctive billing rule, Rule 25-6102, F.A.C.

4. Counting energy efficiency savings from opt-out customers:

    a. Alternative staff recommends that such savings meet the Commission's required cost-effectiveness criteria from its most recent goal setting order. Approved energy efficiency savings must pass the RIM test and have a payback greater than two years to minimize the number of free riders, as the Commission ordered in its review of the IOUs' most recent conservation goals.[17]

    b. Alternative staff recommends that savings be measurable and be verified by the utility, which can include information provided by an independent engineer

[17] Order No. PSC-14-0696-FOF-EU, issued December 16, 2014, in Dkt. Nos. 130199-EI, 130200-EI, 130201-EI, 130202-EI, 130203-EM, and 130204-EM; In re: Commission review of numeric conservation goals of FPL, DEF, TECO, Gulf, FPUC, JEA, and OUC, pg. 43.

contracted by the customer. *The details of appropriate evaluation, measurement, and verification were not addressed in the hearing.*

5. Alternative staff recommends that any reasonable and prudent administrative costs associated with implementing an opt-out provision should be recovered from opt-out customers. Evidence was presented to support opt-out customers paying reasonable administrative costs relating to an opt-out provision.

6. As discussed previously, alternative staff believes the participating opt-out customers should continue to pay the entire ECCR charge throughout each year of the pilot program. *This item was not addressed during the hearing.*

7. Alternative staff suggests as a framework that at the end of each year, opt-out customers could receive a refund/credit for a portion of ECCR charges, capped at the energy efficiency program-related ECCR charges minus any administrative costs. To receive a refund/credit, each participating customer would be required to provide documentation to its IOU of the qualified energy efficiency investments made during the year. *This process was not addressed during the hearing.*

8. Alternative staff believes it is appropriate for utilities to consider an opt-in window, i.e., a specified time period in which interested customers must indicate they wish to participate in the pilot program. Wal-Mart addressed an opt-in window as well as the ways to prevent gaming of an opt-out provision during the hearing. (TR 53) *Alternative staff does not believe the record is sufficient to make a recommendation on an opt-in/opt-out window and suggests further discussion of this concept at workshop.*

In conlusion, the Commission should direct Commission staff to conduct a workshop(s) to determine any other details necessary to implement an opt-out pilot program. The details include, but are not limited to:

- Methodology to avoid and/or minimize cost shifting
- Methodology to identify and recover administrative costs
- Methodology for evaluation, measurement, and verification of opt-out savings
- Appropriate time duration of pilot program
- Appropriate methodology to identify energy efficiency program-related costs in the ECCR clause for the purpose of calculating the opt-out customer's refund cap.
- Necessary data and reporting to facilitate evaluation of the pilot program.

Issue 4: Should this docket be closed?

Recommendation: If staff's primary recommendation in Issue 2 is approved, the docket should be closed after the time for filing an appeal has run. If the Commission denies staff's primary recommendation in Issue 2, this docket should remain open pending further Commission action.

Staff Analysis: The docket should be closed 32 days after issuance of the order, to allow the time for filing an appeal to run. If the Commission denies staff's primary recommendation in Issue 2, this docket should remain open pending further Commission action.

Comparison of Petitioners' Proposals

	Wal-Mart	FIPUG
Basic Proposal – Energy Efficiency Programs	Would allow customers that meet defined criteria and satisfy their EE responsibilities to opt out of participating in utility-sponsored EE programs. These customers would be exempt from paying costs associated with EE programs through the ECCR charge.	Would allow certain customers that have implemented (or plan to implement) EE measures to be exempt from paying ECCR charges for the costs associated with the EE services the utilities provide.
Basic Proposal – Demand Response Programs	Customers that elect to opt out of utility-sponsored EE programs could still participate in utility-sponsored demand response programs and would pay the associated demand response ECCR charges.	Customers that elect to opt out of utility-sponsored EE programs could still participate in utility-sponsored demand response programs and would pay the ECCR charges associated with demand response programs.
EE Commitments	Customer must certify that it: (1) has implemented within the prior 5 years, EE measures that have reduced the customer's usage by percentage at least as great as utility's EE programs, or (2) has performed an energy audit within the previous 3 years and has implemented the recommended measures or has a plan to do so within 2 years.	Customer must provide a letter to utility stating that the customer has invested (or intends to invest) in EE or has conducted an energy audit or analysis determining that there are no cost-effective EE measures.
Eligibility Threshold	Customer energy usage of 15 million kWhs per year	Non-residential customers with demand of at least 1 MW
Account Aggregation	Yes. Across all eligible accounts, meters, or service locations within each utility's service territory	Yes. Provided that each of the aggregated facilities is located in the utility's service area and under common ownership and operation.
Other Criteria	Eligible account may not have taken benefits under EE programs within 2 years before (or 2 years after) the opt-out period	Opt-out letter has a term of not less than 3 years.

Sources: TR 46, 51, 53, 54, 505, 506, 514-516