

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request to opt-out of cost recovery for investor-owned electric utility energy efficiency programs by Wal-Mart Stores East, LP and Sam's East, Inc. and Florida Industrial Power Users Group.

DOCKET NO. 140226-EI  
ORDER NO. PSC-16-0011-FOF-EI  
ISSUED: January 5, 2016

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman  
LISA POLAK EDGAR  
JULIE I. BROWN

FINAL ORDER

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BY THE COMMISSION:

We 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), who represent large commercial or industrial customers. During the October 8, 2014, Prehearing Conference in Docket No. 140002-EG, the Energy Conservation Cost Recovery (ECCR) clause, Wal-Mart and FIPUG (hereafter referred to as the petitioners) proposed issues to allow 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.

In Docket No. 140002-EG, the Prehearing Officer, however, ruled that the proposed issues should be considered in a separate docket.<sup>1</sup> Consequently, this docket was opened to address the three issues proposed by Wal-Mart and FIPUG.

In the instant docket, the five investor-owned electric utilities (IOUs), participated in the hearing, are subject to the Florida Energy Efficiency and Conservation Act (FEECA), Sections 366.80 through 366.83 and 403.519, Florida Statutes (F.S.). These IOUs may seek to recover costs associated with our 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). In addition, we granted intervention to the Southern Alliance for Clean Energy (SACE) and White Springs Agricultural Chemicals, Inc. (PCS Phosphate or PCS) and acknowledged intervention by the Office of the Public Counsel (OPC).

By this Order, as discussed in greater detail below, we deny the petitioners' request to opt out of participating in, and contributing to the costs of, investor-owned utility-sponsored energy efficiency programs. As a result, we do not find it necessary that the utilities be required to separate their ECCR expenditures into two categories, in order to facilitate an opt-out policy, nor select criteria for an opt-out policy.

We have jurisdiction over this matter pursuant to the provisions of FEECA.

#### I. Background

To implement FEECA, we 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 the ECCR clause.<sup>2</sup> When the ECCR clause was established, we determined that the costs associated with conservation benefits shall be spread to all customers, rejecting the notion that only the participants in conservation programs should benefit from those programs.<sup>3</sup>

An opt-out policy would allow certain qualifying customers to decide whether to pay for and participate in utility-funded energy efficiency programs. Although FIPUG and Wal-Mart put forward different proposals (Attachment A), both proposals advocated allowing eligible large customers to opt out of participating in and paying the costs associated with utility-sponsored energy efficiency programs. The costs for all types of investor-owned utility-sponsored conservation programs are currently recovered from all ratepayers through the ECCR clause.

FIPUG and Wal-Mart are seeking relief from paying for energy efficiency program-related ECCR charges, which they believe do not benefit them. The petitioners and PCS Phosphate assert that an opt-out policy is justified because custom incentive programs are

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<sup>1</sup> Order No. PSC-14-0583-PHO-EG, issued October 15, 2014, in Docket No. 140002-EG, *In Re: Energy Conservation Cost Recovery Clause*.

<sup>2</sup> Order No. 9974, issued April 24, 1981, in Docket No. 810050-PU, *In re: Conservation cost recovery clause*.

<sup>3</sup> *Ibid*.

unsatisfactory. Customer incentive programs are programs available through the four largest Florida IOUs, which allow eligible customers to design a custom program to increase conservation efforts and allow for rebates within each IOU's programs. The petitioners and PCS Phosphate argue that the petitioners can implement energy efficiency more effectively on their own. The petitioners and PCS Phosphate further contend that opt-out policies are offered to large customers in other states. The petitioners and PCS Phosphate 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 policy.

Wal-Mart's opt-out proposal is based on its assertion that a customer that implements energy efficiency measures on its own benefits other customers. Therefore, Wal-Mart argues that we 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.

Wal-Mart also states that an opt-out policy would increase cost-effective energy conservation and energy savings.

FIPUG's opt-out proposal is based on its belief that the customer knows its energy efficiency needs better than the utility. FIPUG explains an opt-out policy would give

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.

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

The IOUs argue that all ratepayers benefit from cost-effective DSM programs. Therefore, the IOUs contend there is no reason for us to change our long standing policy that all ratepayers should share in the costs. The IOUs further argue that their existing custom incentive programs allow the petitioners flexibility to design their own energy efficiency projects. Additionally, the IOUs insist that an opt-out policy would shift costs and harm non-opt-out customers.

FPL argues that an opt-out policy would harm the general body of ratepayers by shifting costs to other ratepayers. FPL also allows that an opt-out policy would add administrative costs, and fail to advance the mission of FEECA. DEF contends that an opt-out policy is unnecessary because DSM programs that pass the Rate Impact Measure (RIM) test benefit all ratepayers. DEF asserts that it is concerned that it would be difficult to hold harmless customers who do not opt out. TECO and Gulf contend that an opt-out policy for certain large customers would be a departure with Commission policy and practice. TECO further contends the opt-out policy would be inconsistent with the current handling of conservation costs under FEECA. FPUC argues that implementing an opt-out policy would be difficult and that overseeing an opt-out would be outside our purview, because we do not have authority over the conservation actions of large customers.

SACE argues that the opt-out proposals from the petitioners are not sufficiently developed for us to approve. OPC is concerned that an opt-out policy could harm the general body of ratepayers. OPC contends that the petitioners have not convincingly demonstrated that cost shifting as a result of an opt-out policy will not occur. OPC also contends that the petitioners ignore that they benefit from energy efficiency programs that pass RIM even when the petitioners do not participate.

*a. Opt-Out Policies in Other States*

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

FIPUG argues that opt-out states include Texas, Virginia, Arkansas, Indiana, Louisiana, Missouri, North Carolina, Oklahoma, South Carolina, and West Virginia. 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. Self-direct states include several Midwestern states from Ohio to Minnesota, most of the Mountain West and the Northwest United States. Lastly, FIPUG argues that its petition is similar to processes that other states have already done.

TECO contends that just because other states have an opt-out policy does not mean that the policy is an ideal path for Florida. TECO also comments that if we were to pursue an opt-out policy, we should explore opt-out states' policies, legislative mandates, and cost tests. FPL maintains that special accommodations may exist in other states due to specific legislative and regulatory circumstances. FPL argues that the petitioners have not proved that the circumstances that led to opt-outs in other states would be germane to Florida. Like TECO and FPL, DEF argues that other states allow opt-outs, but Florida has specific regulatory characteristics such as the FEECA statute. DEF also contends 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. DEF argues that if we had 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.

## II. Decision

Our decision is based upon five factors: (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.

### *a. Impact on 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. We currently set demand-side management (DSM) goals and approve programs based on whether the associated demand and energy savings are cost-effective under the RIM test.

The petitioners—FIPUG and Wal-Mart—argue that they know their businesses best. PCS Phosphate agrees. FIPUG asserts that sophisticated energy consumers are better able than the utility to invest in cost-effective energy efficiency measures that meet their specific needs. The petitioners also insist that when they invest in energy efficiency on their own, all ratepayers benefit. Wal-Mart contends that a customer, whether commercial or industrial, that implements DSM and EE measures on its own yields network benefits for all of the Company's other customers. These network benefits include reduced overall energy cost that result from the reduced load and demand of the customers' system.

Wal-Mart asserts that it has made a commitment to improve energy efficiency by decreasing the energy intensity of its buildings by 20 percent by 2020. Wal-Mart uses various energy savings technologies including (1) daylight harvesting and optimization systems that monitor and adjust lighting intensity, (2) white membrane roofs, (3) heat recovery from its refrigeration systems, (4) efficient heating, ventilation, and air conditioning systems, (5) LED lighting, and (6) active dehumidification that decreases electricity consumption. FIPUG did not provide specific information on its members' energy efficiency projects, but did assert that its members have employees who handle energy efficiency concerns.

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

The utilities counter the petitioners' testimony by arguing that because we set goals and approve programs based on the RIM test, all ratepayers benefit from cost-effective DSM programs. Gulf argues that although both Wal-Mart and FIPUG recognize the benefits of DSM programs, there is a failure to acknowledge that RIM-passing energy efficiency programs provide benefits that exceed cost, to all customers, regardless of participation. TECO asserts that

the proposed opt-out policies would preclude certain customers from sharing in the costs of investments in energy efficiency even though the investments are beneficial to all customers. Similarly, OPC contends that Wal-Mart's opt-out proposal does not utilize a RIM test and therefore indicates that all ratepayers will not benefit from the opt-out proposals.

TECO asserts that in Docket No. 930759-EG, we previously reviewed opt-out proposals which would have significantly altered the allocation and recovery of costs, with similarities to the instant proceeding.<sup>4</sup> TECO characterized our Order No. PSC-93-1845-FOF-EG as finding that (1) cost-effective conservation programs benefit all customer classes, and (2) there was no need to give preferential treatment to (a) certain customer classes or (b) certain customers within those classes. TECO asserts that, in deciding a previous request by FIPUG, we recognized the shared cost/benefit relationship.<sup>5</sup> TECO further contends that we rejected FIPUG's proposal because we determined that all customers share benefits, therefore authorized costs should be recovered from all customers.

In addition, it is important that our 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. FIPUG argues that its 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 or has conducted an energy audit or analysis determining that there are no cost-effective energy efficiency measures.

***b. Potential for Cost Shifting***

While Wal-Mart argues that extensive levels of cost shifting are unlikely to occur, the utilities assert that an opt-out policy will cause cost shifting to other ratepayers. The utilities also express concern 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 asserts that if some opt-out customers insisted there were no cost-effective energy efficiency measures, part of DEF's DSM goals would be unchanged. TECO asserts that the remaining customers would have to absorb the total amount of cost-effective conservation costs which would inequitably raise rates if some customers did not participate in the cost-effective conservation costs.

As for the change, or lack thereof, in the goals, DEF argues that FIPUG is unclear whether consideration for DEF's goals would include energy efficiency savings from participants who opt out of the cost-effective energy efficiency measures. DEF further contends that Wal-Mart does not include such consideration. In addition, Gulf argues that it must meet the goals and provide programs available to all customers regardless of opt out by certain customers. The utilities assert that there would be increased administrative costs to implement and maintain an opt-out policy.

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<sup>4</sup>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

<sup>5</sup> Order No. 9974, issued April 24, 1981

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 policy. 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. DEF estimates that an opt-out policy would shift \$599,000 to \$1,979,000 in revenue requirements to residential ratepayers. TECO estimates that an opt-out policy would increase the residential ECCR charge from 3.6 to 10.9 percent. Gulf estimates that an opt-out policy would increase the residential ECCR charge from 6.8 to 21.2 percent.

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.” The IOUs’ responses to OPC’s requested scenarios are presented in Table 1 below, which are estimates that are caveated because the full details of an opt-out policy are not yet known.

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

Utility	Impact on Typical 1,000 kWh Residential Bill		
	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

Wal-Mart argues that opt-out customers would contribute energy savings in excess of the shifted costs. Wal-Mart also contends that an opt-out reduces the utilities’ program costs and incremental fuel costs, thereby reducing the need for future generation facilities, and with no costs shifting to non-participating customers.

FIPUG recommends that we create a program that will meet applicable guidelines and harms no customer. Addressing the cost shifting concern, FIPUG recommends a pilot program to start slow and see the consequences of implementation of an opt-out program. FIPUG asserts that a cost shift can be avoided if done in a prudent and rational way and that a well-designed opt-out program would avoid cost shifts through (1) adjustments to existing energy efficiency programs and (2) counting the energy efficiency measures contributed by opt-out customers. PCS Phosphate argues that administrative and implementation concerns should not be a sufficient reason for rejecting an otherwise sound policy.



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 and 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. Nevertheless, this analysis does not consider the potential for other large commercial or industrial customers, such as FIPUG's members, to opt out. Wal-Mart does not calculate 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.

*c. Equity and Fairness Concerns*

The petitioners assert there would be no equity issues from an opt-out policy because there would be no undue burden placed on the utility's remaining customers as a result of the current opt-out proposal. 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. Meanwhile, many other states exempt industrial customers from paying for energy efficiency programs. Consequently, the petitioners insist that they are at a competitive disadvantage compared to companies in other states.

Conversely, 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 argues that other customers will have to pay for the costs of an opt-out policy. DEF argues that an opt-out policy could require DEF to change its goals. DEF also argues that in other states, Duke Energy combines administrative costs with the overall energy efficiency overhead costs and does not provide a separate cost for opt-out customers. Additionally, FPL contends that large commercial and industrial customers who wish to opt out benefit from load management programs that are paid for by residential customers.

The utilities also argue that an opt-out policy would be unfair for customers who do not meet the threshold. TECO contends that an opt-out policy would be unfair to all non-qualified or non-electing customers.

OPC asserts that FIPUG and Wal-Mart's proposals as presented appear to fall short in meeting the burden of demonstrating that the proposals would be fair to the general body of ratepayers. OPC contends that it is possible that an opt-out policy may shift costs and that the petitioners have not conclusively shown that utilities' DSM energy efficiency costs will fall or that the petitioners' failure to use a RIM test will leave other customers unharmed.

In addition to an energy efficiency specific opt-out policy, large commercial and industrial customers would still benefit from load management credits that are paid for by all customers, including residential customers. FPL asserts that its ECCR credits to large commercial and industrial customers exceed \$50 million per year. 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. TECO argues that in 2015, it has \$47 million budgeted for total ECCR expenditures. TECO further asserts 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 TECO, they get 35 percent of the money we basically collect to facilitate conservation programs. TECO contends that an opt-out policy 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.

***d. Custom Incentive Programs***

The four largest Florida IOUs currently offer large commercial and industrial customers custom incentive programs. The 2014 expenditures by the four largest IOUs are shown in Table 2. All energy efficiency investments approved for a rebate under the custom incentive programs must pass the RIM test. The four largest IOUs argued that customers may suggest projects to be evaluated for a rebate under the custom incentive programs. As a business decision, Wal-Mart has not participated in custom incentive programs offered by the utilities due to the burdensome process. Wal-Mart asserts that the Florida IOUs' custom incentive programs are burdensome because of the many forms and audit activities required for participation.

We note, 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. Wal-Mart did not offer suggestions to make the utilities' custom incentive programs less burdensome. Rather than implementing a complex and potentially costly opt-out policy, we hereby 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  
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

***e. Implementation Issues***

An opt-out policy would lead to numerous implementation issues that could add complexities to our 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 policy would reduce expected program costs.

Having stated that an opt-out policy will not shift costs, Wal-Mart then recommends we allow utilities to count estimated or reported energy efficiency from opt-out customers towards

DSM goals. Wal-Mart and FIPUG also suggest that the IOUs split the ECCR charge into an energy efficiency portion and a DSM portion.

While the petitioners advocate splitting the ECCR charge and counting opt-out energy efficiency investments toward goals, the utilities note that both this Commission's and the utilities' internal processes would have to change. The utilities contend that changing these processes would add costs. FPL asserts that there would be required modifications to handle tracking and handling of many accounts. Such process and system modifications include (1) billing system changes, (2) identification of the ECCR opt-out customers, (3) creation of the additional charges in the rates and billing tables, and (4) changes to the information submitted to the data warehouse, rate reports and other financial reports. TECO asserts that an opt-out policy would cause it to make programming changes to the customer information and billing system, changes to forecasting processes, and additional work for the customer service department.

Gulf asserts that an opt-out policy would also impact its ability to achieve of our DSM goals. Similarly, DEF comments that we would need to adjust our annual DSM goals.

The record is inconclusive regarding 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 argues the customer implementing the EE measure has every incentive to ensure that the implemented measures are cost-effective. However, Wal-Mart asserts that it does not use our approved cost-effectiveness tests such as the RIM test, the Participants' test, or the Total Resource Cost test. Because of this answer and a lack of further specifics on how the company and others would evaluate an energy efficiency investment, we cannot definitely agree with Wal-Mart that an opt-out policy would lead to more cost-effective energy efficiency.

We find that designing an opt-out policy to prevent cost shifting to other ratepayers presents difficulties. At a minimum, preventing cost shifting would require that all additional administrative costs be paid by opt-out customers. Additionally, we note that preventing cost shifting would also require us 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.

We note 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. However, we note that residential and small commercial/industrial customers also invest in energy efficiency. Under the petitioners' proposal, these customers would continue to pay the full ECCR charge. In addition, we agree with DEF that the administrative costs of an opt-out program could be combined with overall energy efficiency overhead costs. This practice would mean that ratepayers who do not opt out of utility-sponsored energy efficiency programs 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 policy may also be burdensome and costly for the utility and its ratepayers.

We do 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 our specific changes such as changes to annual reporting and DSM goals. Moreover, the petitioners have not provided convincing evidence that other customers will not be harmed due to the interaction of an opt-out policy with our obligation to set goals under FEECA. Additionally, 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.

Our 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.<sup>6</sup> We are concerned that Wal-Mart, FIPUG, and others would be able to opt out of paying for energy efficiency programs without a guarantee 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. In response to questioning by OPC during the hearing, Wal-Mart acknowledged that its proposal does not rely on a RIM test. Wal-Mart asserts that it would not oppose our application of a RIM test on an opt-out customer's programs. 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' approved goals are based on the RIM cost-effectiveness test. Opt-out customers have proposed avoiding ECCR payments by making (or promising to make) energy efficiency decisions that are beneficial to these customers. Some of these investment decisions may not pass the RIM test. Historically, we have encouraged customers to use energy efficiently and any customer has an incentive to make energy efficiency decisions that are in his or her own best economic interest. However, it is our role to ensure that utility-sponsored programs and related policies are in the best interest of the general body of ratepayers. We do not find that Wal-Mart and FIPUG have provided sufficient evidence that their energy efficiency investments are beneficial to the general body of ratepayers.

We find that an opt-out policy 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, 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 our DSM goals. As discussed above, at a minimum, an opt-out policy would require: (1) changes in billing, (2) more complex

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<sup>6</sup> 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.

ECCR filings, and (3) verification that opt-out customers meet required thresholds. These efforts would have corresponding administrative costs.

We deny the petitioners' request for an opt-out policy for eligible large commercial and industrial customers. We set goals based on the RIM test. Cost-effective energy efficiency programs that pass the RIM test benefit all ratepayers due to downward pressure on rates. The petitioners have not provided convincing evidence for us to alter our long-held policy that since all ratepayers benefit from cost-effective DSM measures, all ratepayers shall share in the costs. Additionally, an opt-out policy will be difficult to implement without some degree of cost shifting to other ratepayers. As a result, whether from residential customers or from smaller commercial and industrial customers who cannot meet the opt-out criteria, equity concerns are likely to arise from an opt-out policy.

The four largest IOUs currently offer custom incentive programs. We find 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. Wal-Mart does not take advantage of these custom incentive programs due to their alleged burdensome nature. FIPUG contends that customer participation in these custom incentive programs is relatively limited. We hereby 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.

Therefore, for the reasons stated above, the petitioners' request for an opt-out program is denied. The petitioners have suggested separating the costs in the ECCR clause as a means of implementing the proposed opt-out policy. As we have denied the petitioners' request for an opt-out policy, this issue is moot, and no change to the current ECCR clause is necessary. In addition, the need to establish criteria for an opt-out policy is also moot due to the denial of Wal-Mart and FIPUG's requests. Therefore, the utilities shall not be required to separate their ECCR expenditures into two categories, nor shall we select criteria for an opt-out policy. We do find that additional information regarding (1) the creation of a potential pilot program, (2) the associated impacts on all ratepayers, and (3) on the questions and concerns discussed in the body of this Order may be necessary. Additionally, we find it appropriate that, if interested, the parties shall submit options for a pilot program to our staff, for consideration by us at a later time.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Wal-Mart Stores East, LP and Sam's East, Inc. and the Florida Industrial Power Users Group request for an opt-out policy for eligible large commercial and industrial customers is hereby denied, as set forth in the body of this Order. It is further

ORDERED that the utilities shall not be required to separate their ECCR expenditures into two categories, nor shall we select criteria for an opt-out policy. It is further

ORDERED that additional information regarding the creation of a potential pilot program and the associated impacts on all ratepayers and on the questions and concerns discussed in the body of this Order may be necessary. Therefore, we find it appropriate that, if interested, the parties shall submit options for a pilot program to our staff, for consideration by us at a later time. It is further

ORDERED that the docket shall be closed 32 days after issuance of the Order, to allow the time for filing an appeal to run.

By ORDER of the Florida Public Service Commission this 5th day of January, 2016.



CARLOTTA S. STAUFFER  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
[www.floridapsc.com](http://www.floridapsc.com)

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

TLT

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

**Comparison of Petitioners' Proposals**

	<b>Wal-Mart</b>	<b>FIPUG</b>
<b>Basic Proposal – Energy Efficiency Programs</b>	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.
<b>Basic Proposal – Demand Response Programs</b>	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.
<b>EE Commitments</b>	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.
<b>Eligibility Threshold</b>	Customer energy usage of 15 million kWhs per year	Non-residential customers with demand of at least 1 MW
<b>Account Aggregation</b>	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.
<b>Other Criteria</b>	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.