

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

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.

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PROCEEDINGS:                      COMMISSION CONFERENCE AGENDA  
ITEM NO. 20

COMMISSIONERS  
PARTICIPATING:                      CHAIRMAN ART GRAHAM  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER JULIE I. BROWN

DATE:                                      Thursday, December 3, 2015

PLACE:                                      Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY:                              LINDA BOLES, CRR, RPR  
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## P R O C E E D I N G S

1  
2           **CHAIRMAN GRAHAM:** Okay. We are going to jump  
3 over 19 because we have a time certain for that one, so  
4 let's go to Item 20, which is a panel.

5           Okay. Staff.

6           **MS. HARLOW:** Commissioners, Item 20 is staff's  
7 post-hearing recommendation on Wal-Mart's and the  
8 Florida Industrial Power Users Group's proposal to allow  
9 certain large customers to opt out of participating in  
10 and paying the costs associated with investor-owned  
11 utility energy efficiency programs.

12           Staff has reviewed the hearing record and  
13 developed a primary and an alternative recommendation,  
14 but first I have two modifications to the  
15 recommendation, and I believe your offices were notified  
16 of these. I'd like to briefly go over the  
17 modifications.

18           First, on page 2 in staff's analysis in  
19 Issue 2 of the recommendation the subheading "Customer  
20 Incentive Programs" should be stricken. On that same  
21 page, page 22, there's an incomplete sentence at the end  
22 of the second paragraph. Text should be added to that  
23 to complete the sentence that states, "Energy efficiency  
24 investments are beneficial to the general body of  
25 ratepayers."

1           The second modification involves Issue 4 on  
2 page 41, and that is the close the docket issue. In the  
3 recommendation paragraph all the text should be stricken  
4 except the following: "The docket should be closed  
5 after the time for filing an appeal has run."

6           In the staff analysis paragraph, the second --  
7 pardon me -- sentence should be stricken, and the text  
8 should now read, "The docket should be closed" --

9           **CHAIRMAN GRAHAM:** Hold on a second. Hold on.  
10 Excuse me. Excuse me. If I could please ask you guys  
11 to be quiet when you come in so we can continue our  
12 hearing. Thank you.

13           Staff.

14           **MS. HARLOW:** Thank you, Chairman. "The docket  
15 should be closed 32 days after issuance of the order to  
16 allow the time for filing an appeal to run." That is  
17 the remaining text.

18           Staff recommends that the Commission take up  
19 Issue 2 first as the threshold issue, should we have --  
20 should the Commission allow an opt-out provision;  
21 followed by Issue 3, which is the implementation issue;  
22 Issue 1, another implementation issue; and finally the  
23 close the docket issue, Issue 4. With the Chairman's  
24 permission, staff will briefly summarize the two  
25 recommendations.

1           **CHAIRMAN GRAHAM:** Let's do that.

2           **MS. HARLOW:** Yes, sir. Primary staff  
3 recommends that in Issue 2 the Commission should deny  
4 the petitioner's request for an opt-out provision. The  
5 Commission sets conservation goals and approves utility  
6 programs based on the Rate Impact Measure test. All  
7 customers, both program participants and nonparticipants  
8 alike, benefit from these programs due to downward  
9 pressure on rates. Primary staff therefore believes  
10 there is insufficient evidence in the record for the  
11 Commission to change its existing policy that all  
12 ratepayers benefit from cost-effective utility programs,  
13 therefore, all customers should contribute to the cost.

14           Further, there is insufficient evidence that  
15 an opt-out provision would result in increased  
16 cost-effective demand and energy savings while holding  
17 residential and small commercial industrial customers  
18 harmless.

19           Finally, primary staff believes the IOUs'  
20 existing custom incentive programs are a viable  
21 alternative to an opt-out provision. The Commission  
22 should direct the IOUs to work with the petitioners and  
23 staff to ensure these existing custom incentive programs  
24 are responsive to customer needs.

25           If the Commission approves primary staff's

1 recommendation in Issue 2 to deny the petitioner's  
2 request, then Issues 1 and 3 are moot.

3 **MR. SHAFER:** Commissioners, alternative  
4 staff -- I'm sorry. Alternative staff believes that the  
5 record in this case is inconclusive in two key areas,  
6 that of cost shifting and whether or not an opt-out  
7 program would result in ratepayers that choose not to  
8 opt out in shouldering additional costs. And the other  
9 issue is whether or not opt-out customers can achieve  
10 greater energy efficiency through conservation efforts  
11 independent of utility-sponsored energy efficiency  
12 programs.

13 Alternative staff believes a pilot program  
14 designed to gather the data necessary to evaluate those  
15 two elements is appropriate. Furthermore, alternative  
16 staff believes that it would be consistent with FEECA if  
17 reducing the ECCR charges for large customers results in  
18 more cost-effective demand and energy savings than under  
19 utility-sponsored energy efficiency programs.

20 Therefore, alternative staff recommends that the  
21 Commission should direct staff to conduct a workshop for  
22 discussion among the parties and the four largest IOUs  
23 on the additional details needed to develop a pilot  
24 opt-out program. Some of those details and topics for a  
25 workshop are contained in alternative staff's

1 recommendation to Issue 3.

2 **CHAIRMAN GRAHAM:** Okay. Commissioners, let's  
3 start with Issue 2. And I guess I have a question to  
4 get us started. If we were to choose the alternative  
5 recommendation, does that -- if we choose to go into a  
6 workshop and develop a more succinct plan on how we're  
7 going to do a pilot, does that require us to do a pilot  
8 or can we make the determination in the workshop if we  
9 want to go a different direction? I guess the  
10 question -- I'm looking more for a legal direction. Do  
11 we tie ourself to a certain path if we go with the  
12 alternative issue, or do we still have full options at  
13 the workshop point?

14 **MS. TAN:** I believe you have the options at  
15 the workshop point. What would happen is that if there  
16 were to be the -- it would have to discuss to do the  
17 plan and then you would take it to a PAA process in  
18 which people would have an opportunity to comment upon.

19 But within the workshop itself, it's designed  
20 to see whether or not a pilot program is feasible and  
21 what interactions would need to go into that to make a  
22 pilot program happen. So we have flexibility within the  
23 workshop itself.

24 **CHAIRMAN GRAHAM:** Okay. So if the fallout of  
25 the workshop is to do something different with -- I

1 can't remember what it was called where you can  
2 self-design your own plan.

3 **MS. TAN:** The customer incentive programs?

4 **CHAIRMAN GRAHAM:** Customer incentive program.  
5 If the fallout of the workshop is to somehow enhance  
6 that, you know, we are not stopped from doing that  
7 correctly; is that correct?

8 **MR. SHAFER:** I would agree with that, yes.

9 **CHAIRMAN GRAHAM:** Okay.

10 **MS. TAN:** I do not believe that we are  
11 precluded from that.

12 **CHAIRMAN GRAHAM:** Okay. Commissioners,  
13 thoughts, questions, direction.  
14 Commissioner Edgar.

15 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.  
16 And this is one that I have struggled with particularly  
17 and, candidly, I still am. FEECA is in statute and  
18 FEECA basically directs that the Commission and -- the  
19 Commission and the service providers utilize the most  
20 efficient and cost-effective demand-side processes  
21 available. Conservation goals, which is an integral  
22 part of that process, is something that I have also  
23 struggled with over the years. Florida has a very  
24 strong record in demand-side management and in energy  
25 efficiency, but we also as a panel but also as a full

1 Commission over the years have emphasized, I believe,  
2 our interest in increasing conservation, increasing  
3 utilization of energy efficiency as part of our fuel  
4 portfolio. We have also, I believe this is accurate,  
5 emphasized and chosen to continue the policy to -- if we  
6 can't eliminate it but certainly minimize to every  
7 degree possible any potential subsidization between rate  
8 classes.

9 And we've also said that -- and supported ways  
10 to be nimble and flexible and innovative for, again, the  
11 service providers but also for customers of all types.  
12 So with that as a background -- well, a little more  
13 background, I guess. It is not always clear what the  
14 cost benefits, what the benefits and the costs are with  
15 energy efficiency programs. We try, I think we do a  
16 good job, but it's not always clear and the metrics are  
17 not always clear, yet it is a direction by the statute,  
18 by the legislature to us, and it is a direction that I  
19 believe we want to continue to go.

20 So with that, let me ask this, I'm not -- I  
21 don't necessarily see primary and alternative as being  
22 exclusive. In other words, for Issue 2, should the  
23 Commission allow basically certain customers under  
24 certain criteria to opt out of the energy efficiency  
25 programs that are approved per the direction of FEECA,



1 to say, no, they should not opt out at this time, they  
2 should continue to contribute to those programs, as do  
3 all other ratepayers and as would residential customers,  
4 to me does not seem to eliminate the possibility of a  
5 workshop or some other data gathering process to  
6 supplement the record as to some of the details that I  
7 believe are described in the recommendation that are not  
8 fully fleshed out. So I think that is a question, and  
9 could I ask either Ms. Harlow or Mr. Shafer, could you  
10 respond to that and how these two might or might not  
11 work together?

12 **MR. SHAFER:** Right. Let me take the first  
13 crack at it. First of all, I would say that embedded in  
14 the alternative recommendation as -- I'm not sure what  
15 the right word is, but effectively the alternative  
16 recommendation is to deny the proposals that are filed  
17 by the petitioners and to move forward to develop an  
18 alternative possibility for opt out, and that it  
19 contains, the alternative contains characteristics, I  
20 guess, that alternative staff believes would be  
21 desirable in an opt-out plan, and I don't necessarily  
22 believe that that precludes the cost recovery process  
23 that is currently in place from continuing on. And, in  
24 fact, the alternative recommendation envisions that that  
25 would be a process whereby the opt-out customers would

1 go out, spend the money, come back, demonstrate that  
2 that money was spent in a cost-effective manner within  
3 the confines of existing Commission policy in terms of  
4 how it qualifies to be counted towards utility goals and  
5 so forth. And if it met those criteria, then the  
6 utility would then issue a rebate or a credit to the  
7 participants.

8 That's a little different, quite a bit  
9 different actually than what the proposals that came  
10 from FIPUG and Wal-Mart where they're asking on the  
11 front end to be relieved from paying those energy  
12 efficiency related -- program-related costs.

13 So I don't necessarily believe that the two  
14 processes are -- it's not an all-or-nothing approach.

15 **COMMISSIONER EDGAR:** Thank you, Mr. Shafer.  
16 That's very helpful for me as I looked through this.

17 I think it's very important that if we as a  
18 Commission ever choose to approve something  
19 that includes identifiable and recognizable  
20 subsidization between rate classes, that that is very  
21 clear and that that is a decision that we make rather  
22 than something that occurs from another policy decision.  
23 And that is one of the points in here that I'm not sure  
24 is clear in the record as to whether what the proposal  
25 or the request that we had, whether that would

1 potentially have subsidization from residential  
2 customers of larger industrial commercial customers.  
3 That is a concern.

4 I also have some concerns that the methodology  
5 to evaluate savings and how to measure them is not a  
6 part of the record, and I think measuring is an  
7 important part of utilization of ratepayer dollars for  
8 energy efficiency programs and ideally energy efficiency  
9 accomplishments. I'm also unclear as to what types of  
10 administrative costs would be a result of implementing  
11 an opt-out proposal -- billing changes, computer  
12 systems. I'm just not sure, I'm just not clear on what  
13 all of those would be, and then, again, who would carry  
14 the burden of those additional costs if, indeed, they  
15 were to flow from it.

16 So I guess to my panel members, I want us to  
17 be innovative, nimble, to take fresh eyes to how we  
18 implement FEECA, to continue to take advantage of  
19 technologies and changes in the whole energy efficiency  
20 and demand-side management arena, but to approve an  
21 opt-out without additional information makes me somewhat  
22 uncomfortable.

23 **CHAIRMAN GRAHAM:** Thank you, Commissioner. I  
24 agree with you and I agree with staff. I think the two  
25 recommendations, both the primary and the alternative,

1 both for the most part say decline the request, except  
2 for the alternative one says, well, we decline it, but  
3 there may be some merit there. Let's flesh it out a  
4 little bit more. And I agree that there's a lot of  
5 things -- and once again with the workshop, there's a  
6 lot of things that can be fleshed out in a workshop and  
7 a lot of things that can be discussed. And my concern,  
8 and you heard me ask the question earlier, is I don't  
9 want to say let's go down that path and find out I'm  
10 stuck and I should have done something different earlier  
11 on. And it's clear, I've heard from staff, and I asked  
12 this in a briefing and it's on the record, if we get  
13 into workshop and it's just one of those things that we  
14 can't come up with an answer -- once again, if we get  
15 that far and we can't come up with an answer that  
16 doesn't have cost shifting and doesn't do some of the  
17 other things that we're talking about, that we can still  
18 at any time scratch it.

19 Commissioner Brown.

20 **COMMISSIONER BROWN:** Who said engineers and  
21 lawyers don't think alike? You know, I walked away from  
22 this hearing with some interest in the petitioners'  
23 arguments. I did. I thought the record, though, is not  
24 developed enough to support the proposals outright, but  
25 there's definitely interest in the idea from here. The

1 work -- the three biggest areas of concern that I have  
2 is the cost shifting to other customers, as was  
3 mentioned by Commissioner Edgar; the equity issue needs  
4 to be fleshed out; and the RIM test must be utilized for  
5 consistency with what this Commission has done and  
6 continues to do and for the protection of all customers.  
7 So those three issues I'd like to see addressed in the  
8 workshop specifically. But -- so I do have interest in  
9 pursuing -- looking at these options further with the  
10 additional customer protections. I just -- I think the  
11 primary recommendation is the most prudent and sound  
12 based on the record.

13 **CHAIRMAN GRAHAM:** Okay. We are on Issue  
14 No. 2, and I will entertain a motion because I cannot  
15 give one.

16 Commissioner Edgar.

17 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.  
18 And I'm going to kind of feel my way through this, if  
19 that's all right.

20 **CHAIRMAN GRAHAM:** Okay. Sure.

21 **COMMISSIONER EDGAR:** So if I may, to staff, if  
22 the Commission were to approve the primary  
23 recommendation, recognizing -- for Issue 2, recognizing  
24 that then Issues 3 and 1 would be moot, but yet give  
25 direction for staff to hold, I'm going to say the "W"

1 word, a workshop, but if there is another better way to  
2 do it but once again to kind of, you know, look at the  
3 record and the information that we have but use the  
4 tools that are available to you to supplement it, chew  
5 on it, pull it, pull it -- pull it, push is what I meant  
6 to say, and look at whether there is an opt-out pilot  
7 option that might address the concerns that have been  
8 raised and bring it back to the Commission, is there a  
9 way to do that? I think there is, but I want to make  
10 sure before we move forward.

11 **CHAIRMAN GRAHAM:** Mr. Baez.

12 **MR. SHAFER:** I think there is, but that's just  
13 me. To the -- I think certainly the conversation that  
14 we've had this morning has identified some areas that  
15 were of equal concern to staff in terms of moving  
16 forward. And one of the things that we struggled with  
17 was can this work if it is consistent with existing  
18 Commission policies such as the cost-effectiveness and  
19 avoiding cost shifting and just general equity issues  
20 between who can participate and who cannot? And perhaps  
21 the petitioners have enough from this discussion to put  
22 together a strawman, if you will, to make that available  
23 to staff and to the parties for further discussion or  
24 perhaps we should just go straight to a workshop. I  
25 think either way can work.

1           From staff's perspective, it would probably be  
2 a little bit less burdensome to have the petitioners  
3 take another crack at it and then allow us to workshop  
4 that proposal and get input from the utilities and from  
5 Public Counsel and other parties.

6           **COMMISSIONER EDGAR:** Thank you, Mr. Shafer.

7           Further discussion, if that's okay, Mr. --

8           **CHAIRMAN GRAHAM:** Actually I had a question.  
9 I guess I'm trying to understand the difference between  
10 what you just suggested and the alternative  
11 recommendation.

12           **COMMISSIONER EDGAR:** Well, I may have misread  
13 and misunderstood, but when I was reading through and in  
14 our briefing I did read the primary and the alternative  
15 as mutually exclusive. In other words, that the  
16 alternative would be basically to say, yes, we are going  
17 to create an opt-out program and there's a 90-day  
18 deadline or time clock. That may have been a misreading  
19 on my part, which is why I was trying to understand how  
20 the two would work together.

21           Where I am leaning right now, although I  
22 certainly would like to have the benefit of the thoughts  
23 of both of my colleagues, is to go with the primary  
24 recommendation because I do have concerns about  
25 maintaining RIM, about potential administrative costs,

1 about subsidization, and also about that there should be  
2 some assurance built in that there will be actual  
3 incremental savings and energy efficiency results. So  
4 with those concerns, where I'm leaning is to go with the  
5 primary for all of the issues, recognizing that this is  
6 post-hearing and we have a time clock to take action,  
7 but then to kind of pull from that alternative and  
8 direct our staff to take this discussion into account  
9 and look at the issue more and come back to us.

10 **CHAIRMAN GRAHAM:** I am -- maybe we're just --  
11 you're saying tomato and I'm saying tomato here. I  
12 think that's the question I asked staff initially is if  
13 we went with the alternative, does that force us to the  
14 90-day timeline and force us to all those other things?  
15 And according to that, the 90-day timeline doesn't start  
16 until after whatever comes out of the workshop comes out  
17 of the workshop. And if nothing comes out of the  
18 workshop, you know, if you decide not to go forward from  
19 there, it's not that prescriptive that it gives you --  
20 you have to be at that position by this time. And  
21 please let me know, either Executive Director or staff,  
22 if I understood that incorrectly.

23 **MR. SHAFER:** No. And I think the distinction  
24 that I would make between what Commissioner Edgar has  
25 said and what the alternative recommendation says is



1 that -- a slight shift in terms of the responsibility  
2 and in terms of the alternative recommendation. That  
3 was let's go to workshop, let's iron out the details,  
4 and then the utilities, you file the program standards  
5 much like you would if this was an outcome from the DSM  
6 dockets, and that's what the Commission would approve.

7 And from, and Commissioner Edgar can correct  
8 me if I'm wrong, but I think -- what I think I'm hearing  
9 is that it's her preference to put the burden back on  
10 the petitioners to develop something based on the  
11 comments and concerns that have been aired here today,  
12 and then we can go to workshop on that or not and bring  
13 it directly back, whichever way seems to work the best.

14 I think that something Commissioner Edgar said  
15 in regard to the hedging item rings true for this item  
16 as well, and that is in hindsight we may have structured  
17 the issues a little different and a little more  
18 comprehensively to address some of those questions and  
19 concerns on the front end. It just didn't play out that  
20 way for any number of reasons, but that's kind of where  
21 we find ourself now, looking back and saying, well, it  
22 sure would have been nice to know this piece of  
23 information and to have a discussion about these issues.

24 So going forward again, you know, put the  
25 responsibility back on the petitioners to develop

1 something that conforms with the discussion that you all  
2 have had today makes a lot of sense to me, and that is  
3 slightly different than what the alternative  
4 recommendation contained.

5 **CHAIRMAN GRAHAM:** Mr. Baez. What he said?

6 **MR. BAEZ:** What he said.

7 (Laughter.)

8 **CHAIRMAN GRAHAM:** Commissioner Edgar, your  
9 motion, please. I was just trying to understand it.

10 **COMMISSIONER EDGAR:** Okay. Thank you. Then,  
11 Mr. Chairman, I would move that we approve the primary  
12 recommendation of staff on all issues, 1 through 4;  
13 however, recognize that as a Commission we would like  
14 additional information on how to put together a  
15 potential pilot program and impacts on all rate classes  
16 and the other concerns and questions that have been  
17 discussed here, and that the -- if, indeed, parties are  
18 interested in pursuing this, that they submit something  
19 to staff, our staff work with them, and then bring  
20 something back for us to consider.

21 **COMMISSIONER BROWN:** Second.

22 **CHAIRMAN GRAHAM:** It's been moved and  
23 seconded. Any further discussion? I guess my question  
24 is so we are -- legal question. What does that do to  
25 the evidentiary record that we have here? Everything --

1           **MS. TAN:** The record would be closed.

2           **CHAIRMAN GRAHAM:** Okay. And that is just  
3 basically putting it -- I guess putting the word back to  
4 the petitioners that there's merit, come back with  
5 something different, and that's basically what we've  
6 done. That's what we're doing according to the motion;  
7 correct?

8           **MS. TAN:** That is correct.

9           **CHAIRMAN GRAHAM:** Okay.

10          **COMMISSIONER EDGAR:** That is my intention,  
11 Mr. Chair.

12          **CHAIRMAN GRAHAM:** I just wanted to make sure I  
13 understood.

14                 All right. Any other further discussion?  
15 Seeing none, all in favor of the Edgar motion, say aye.

16                 (Vote taken.)

17                 Any opposed? By your action, you've approved  
18 the motion.

19                 Okay. So that is Item No. 20. We have one  
20 item left, which is Item No. 19. Let's take a  
21 five-minute break. It's, like, 19 till. Let's go 25 --  
22 I'm sorry, 19 after. At 25 after we'll start.

23                 (Agenda item concluded.)

24

25

1 STATE OF FLORIDA )  
 : CERTIFICATE OF REPORTER  
2 COUNTY OF LEON )

3  
4 I, LINDA BOLES, CRR, RPR, Official Commission  
Reporter, do hereby certify that the foregoing  
5 proceeding was heard at the time and place herein  
stated.

6  
7 IT IS FURTHER CERTIFIED that I  
stenographically reported the said proceedings; that the  
8 same has been transcribed under my direct supervision;  
and that this transcript constitutes a true  
transcription of my notes of said proceedings.

9  
10 I FURTHER CERTIFY that I am not a relative,  
employee, attorney or counsel of any of the parties, nor  
11 am I a relative or employee of any of the parties'  
attorney or counsel connected with the action, nor am I  
12 financially interested in the action.

13 DATED THIS 10th day of December, 2015.

14  
15 

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