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FPL Reply to OPC Motion for hearing.docx

Electronic Filing

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b. Docket No. 130160 - EI
In RE: FPL's Petition for Declaratory Statement Regarding the Inspection, Repair and Replacement of Meter Enclosures for Smart Meter Analytical Tool

c. The Document is being filed on behalf of Florida Power & Light Company.

d. There are a total of 7 pages

e. The document attached for electronic filing is Florida Power & Light Company's Response to Office of Public Counsel's Motion for Administrative Hearing

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: FPL’s Petition for Declaratory)
Statement Regarding the Inspection,)
Repair and Replacement of Meter)
Enclosures for Smart Meter Analytical Tool)

Docket No. 130160-EI
Filed: July 8, 2013

**FLORIDA POWER & LIGHT COMPANY’S RESPONSE TO OFFICE OF PUBLIC
COUNSEL’S MOTION FOR ADMINISTRATIVE HEARING**

Florida Power & Light Company (“FPL” or the “Company”), by and through undersigned counsel, files this Response to the Office of Public Counsel’s (“OPC”) Motion for an Administrative Hearing and in response thereto states as follows:

1. OPC’s Motion filed July 1, 2013 includes a number of mischaracterizations of both the Commission’s prior orders and FPL’s pending Petition. Those errors must be corrected in order to consider OPC’s motion in the proper context.

2. At paragraph 5 of its motion, OPC identifies the 3 Commission Orders that are the subject of FPL’s Petition for Declaratory Statement and concludes as follows: “These orders appear to provide that the individual customers are not responsible for replacing meters caused by FPL’s own actions.”

3. On the contrary, though meters are mentioned in passing, the purpose and intent of the orders is to very clearly state that individual customers bear the costs associated with the initial installation of meter enclosures, along with the costs associated with the repair and replacement of the meter enclosure when repair or replacement is required due to obsolescence or wear. The orders further state that utilities should not be in the business of owning or maintaining meter enclosures which is customer-owned equipment. The orders do not address the replacement of meters which is and always has been a utility function.

4. In Order No. PSC-11-0194-DS-EI entered April 13, 2011 the Commission reaffirmed the principles addressed in the preceding paragraph. The Commission also concluded that individual customers whose meter enclosures needed to be repaired or replaced in two specific situations “in conjunction with the installation of smart meters” (not including obsolescence or wear) would not bear the costs associated with that work. The Commission determined that it was appropriate for FPL to perform that work in the limited situations addressed in Docket No. 110033-EI and charge the costs to the program as a whole. The Commission concluded by finding this action consistent with the longstanding principles associated with the repair and replacement of meter enclosures.¹ OPC chose not to intervene in that proceeding or to otherwise take issue with the Commission’s findings.

5. OPC mischaracterizes FPL’s pending request and the Commission’s 2011 order when stating (at paragraph 6) the following: “[I]t appears that the declaratory statement is less of an effort to seek clarification or resolution of a doubt (as to its circumstances) and more of an effort to reconsider a prior order that recognized customers should be held harmless in implementation of the FPL Smart Meter Program.”

6. Order No. PSC-11-0194-DS-EI did not determine that FPL customers “should be held harmless in implementation of the FPL Smart Meter Program.” Instead, the Commission agreed that in two very limited circumstances, FPL’s repair and/or replacement of the customer owned meter enclosure was not in conflict with the longstanding principle that like all other customer owned equipment, the customer has the obligation to install, repair, maintain and where necessary replace the meter enclosure when the work is necessitated by obsolescence or wear. FPL’s pending Petition in no way seeks to alter, amend or modify either the 2011 order or these

¹ The Commission also noted that it was appropriate to address the issue through a declaratory statement as “FPL’s Petition (in Docket No. 110033-EI) states with particularity FPL’s set of circumstances and specifies the Commission orders that it believes may apply to that set of circumstances, thus meeting the requirements for a declaratory statement.” (See Order No. PSC-11-0914-DS-EI, page 6).

principles. On the contrary, the Petition simply asks the Commission to issue a declaratory statement affirming that FPL's work with approximately 400 customer owned meter enclosures in order to further validate a proactive predictive tool for the benefit of customers is not inconsistent with the general principles embodied in Orders 18893, PSC-95-0131-FOF-EI or PSC-11-0194-DS-EI.

7. Paragraph 8 of OPC's Motion begins with the following incorrect assertion: "In the instant petition, FPL is asking the Commission to allow it to impose on individual customers the costs of repairing/replacing meter housings necessitated by smart meter installation and/or incompatibility." FPL is doing nothing of the sort. Since the entry of Order No. 18893 in 1988, individual customers have had the legal obligation to install, repair, maintain and where necessary replace their meter enclosures when necessitated due to obsolescence or wear. FPL did not seek to alter or amend that rule in the 2011 proceeding and does not seek to do so in this docket. FPL simply seeks a declaratory statement that individual customers who agree to allow FPL to inspect and where necessary repair and/or replace customer owned meter enclosures in the approximately 400 cases to be studied should not be charged for those repair and /or replacement costs. Thereafter, if the meter enclosures owned by this small group of customers need to be repaired or replaced due to obsolescence or wear, the individual customers will be responsible for that work.

8. Paragraph 9 of OPC's motion "requests a hearing on FPL's request to overturn the obligation of FPL to replace the smart meter housings pursuant to Order No. PSC-11-0194-DS-EI..." First, the referenced order did not create any obligation on the part of FPL, but instead found that FPL's affirmative act of repairing or replacing customer owned meter enclosures in two specific situations was not inconsistent with prior Commission orders. Second, FPL has now completed the work addressed in Order No. PSC-11-0194-DS-EI. Third,

and most importantly, FPL is not asking the Commission to overturn any order. On the contrary, FPL is asking the Commission to issue a declaratory statement affirming that its work with a limited number of customer owned meter enclosures in conjunction with this project is not inconsistent with the Commission's prior orders on this subject.

9. Finally, OPC includes a request in paragraph 9 to determine "if FPL's request and the facts and circumstances in it constitute changed circumstances, such that the basis for authorizing the smart meter implementation costs to be borne by FPL's customers in the manner approved in the 2010 rate case orders may no longer be valid." FPL is perplexed by this request, as the record is quite clear that the repair and replacement costs associated with the two specific circumstances addressed in Docket No. 110033-EI were identified in FPL's MFRs filed in conjunction with FPL's 2010 rate case.² OPC's comments suggesting some purported "changed circumstances" sufficient to allow for reconsideration of recovery for smart meter implementation costs is so completely without factual or legal support and is so far afield from the pending request that it should not even be considered by the Commission.

10. OPC has requested an evidentiary hearing and suggests that a declaratory statement in this situation may not be appropriate. In light of the limited scope of FPL's request, together with the applicable statutes and rules governing declaratory statements, it is not clear how this matter could be subject to an evidentiary hearing. Further, as in Docket No 110033-EI, FPL's Petition states with particularity FPL's set of circumstances and specifies the Commission orders that it believes may apply to that set of circumstances, thus meeting the requirements of a declaratory statement. See Section 120.565, Florida Statutes and Rule 28-105.001, F.A.C.

² See Order No. PSC-11-0914-DS-EI, page 5, and FPL's February 10, 2011 Responses to Staff's Data Request No. 1 in Docket No. 110033-EI.

11. Petitions for Declaratory Statements do not contemplate evidentiary hearings. Section 120.565(3), Florida Statutes, describes the specific process to be followed by an agency asked to consider a petition for a declaratory statement. After giving the required public notice, “The agency shall issue a declaratory statement or deny the petition within 90 days after the filing of the petition.” There is no provision in the statute for the evidentiary hearing sought by OPC.

12. Similarly, although Rule 28-105.003, F.A.C., indicates that an agency may hold a hearing to consider a petition for declaratory statement, it does not describe the nature of that hearing and further states that “[I]f the agency is headed by a collegial body, it shall take action on a petition for declaratory statement only at a duly noticed public meeting” rather than at a duly noticed hearing. At that public meeting held within 90 days of the filing of the petition – presumably an Agenda Conference – “the agency shall render a final order denying the petition or issuing a declaratory statement.”

13. Both the statute and the rule describing petitions for declaratory statements make it clear that the Commission may either issue a declaratory statement or deny the petition at a duly noticed public meeting, in either case within 90 days of the filing of the petition. Neither the statute nor the rule contemplate an evidentiary hearing.

14. Additionally, OPC’s motion fails to allege any disputed issues of material fact, nor could it within the framework of FPL’s petition. The motion instead suggests that OPC questions the intent and precedential value of the Commission’s prior orders cited in FPL’s petition for declaratory statement. As such, even if an evidentiary hearing was contemplated for purposes of rendering a decision on a petition for declaratory statement, OPC’s motion fails in its entirety to satisfy even the most basic pleading requirements for a formal evidentiary hearing required by Section 120.569, Florida Statutes and Rule 28-106.201, F.A.C.

15. If the Commission finds it appropriate, OPC's concerns may be addressed through oral argument at the August 13, 2013 Agenda Conference.

16. Wherefore, based upon the foregoing, FPL respectfully requests the entry of an order denying OPC's Motion for an Administrative Hearing.

Respectfully submitted this 8th day of July, 2013.

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CERTIFICATE OF SERVICE
DOCKET NO. 130160-EI

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic mail and/or U.S. Mail to the following parties on this 8th day of July, 2013 to the following:

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