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

February 4, 2014

Re: Docket No. 130223-EI, Petition for a Formal Evidentiary Proceeding

Dear Ms. Stauffer,

Attached for filing is a Petition for Formal Evidentiary Proceedings Based on Disputed issues of Fact for Docket # 130223-EI, FP&L's Petition for Approval of Non-Standard Meter Rider, in response to Order No. PSC-14-0036-TRF-EI that is being electronically filed today.

Affidavits for request to represent the other Petitioners as their Qualified Representative, as well as, their letters to request I represent them will be filed separately.

If you should have any questions, please do not hesitate to contact me at (914) 244-0783.

Sincerely,

/s/ Marilynne Martin

Attachments

BEFORE THE STATE OF FLORIDA  
FLORIDA PUBLIC SERVICE COMMISSION (FPSC)

MARILYNNE MARTIN, SHARI R. ANKER,  
ALEXANDRA ANSELL, STEPHANIE &  
PETER J. AUSTIN, MARTHA BABSON,  
WILLIAM G. & MARGO A. BIGELOW,  
KATHLEEN BOLAM, PATRICIA DENUNZIO,  
JERI E. FRIEDMAN, GEORGE FULLER,  
CATHY & MARIO GRIPPI,  
SHIRLEY D. JACKSON, JAMIE & DOUGLAS  
LEHMAN, VICTOR J. ROHE, SANDRA L.  
SMART, DAVID E. WATKINS

DOCKET NO.130223-EI,  
ORDER NO. PSC-14-0036-  
TRF-EI, ISSUED 1/14/14  
ON FP&L's Petition for  
Approval of Optional non-  
standard meter rider

Petitioners

Vs.

FLORIDA PUBLIC SERVICE COMMISSION ("FPSC")  
and FLORIDA POWER & LIGHT COMPANY ("FP&L")

Respondents

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**PETITION FOR A FORMAL EVIDENTIARY PROCEEDING BASED ON  
DISPUTED ISSUES OF FACT**

The Undersigned parties, who have substantial interests that will be affected by the FPSC's determination, hereby petition this agency and formally request an evidentiary hearing or proceeding pursuant to Florida Administrative Code 28-106.201 and Florida Statutes 120.569(1) and 120.57, and state as follows:

**I. Petitioners' Representation:** The Petitioners are seeking to be represented by Marilynne Martin (also a petitioner) in this proceeding and have submitted the required written request to the FPSC under separate cover. Petitioner Marilynne Martin is seeking to become the Qualified Representative for the other Petitioners named on this petition and has submitted a sworn affidavit to the FPSC stating her qualifications under separate cover.

**II. Parties: Agency:** The FPSC, or FLORIDA PUBLIC SERVICE COMMISSION, is located at Office of the Commission, Clerk, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850; Office of Public Counsel, J.R. Kelly/P. Christensen, c/o The Florida Legislature, 111 W. Madison Street, Rm. 812, Tallahassee, FL 32393-1400.

**Parties of Record:** Florida Power & Light Company, Mr. Ken Hoffman, 215 South Monroe Street, Suite 810, Tallahassee, FL 32301-1858; Florida Power & Light Company, Kenneth M. Rubin, 700 University Boulevard, Juno Beach, FL 33408-0420;

**Petitioners:** There are 15 Petitioners and their names and addresses are provided in Exhibit I.

**III. Notice:** The Petitioners, listed in Exhibit I, each received notice of the FPSC decision of ORDER PSC-14-0036-TRF-EI by the posting of such order on the FPSC Docket Filings website.

**IV. Petitioners' Substantial Interests:** The Petitioners have substantial interests in the outcome of this proceeding and of the agency's decision or action. The Petitioners are all Florida Power and Light Company ("FP&L") customers who have refused to consent to the installation of FP&L's new equipment, here and after referred to as a "smart meter". Exhibit I provides their names and addresses.

Petitioner Marilynne Martin resides in a condominium and owns an end unit, which has 10 meters, banked directly behind her bedroom wall. Up until January 12, 2014 she was able to retain all analog meters through much duress and inconvenience as she is the only full-time resident in her building and the installation process occurred when neighbors were up north and difficult to contact. Since January 12, 2014 two neighbor's meters were replaced with smart meters and she now has lost the use of her master bedroom for sleeping purposes. Ms. Martin refuses to consent to the installation of smart meters primarily due to her belief that there are negative long-term health effects to sleeping behind an active communication network and she does not consent to her detailed usage data being unnecessarily collected.

Petitioner Shari Anker resides with her mother and co-owner of the residence Petitioner Patricia Denunzio. Ms. Anker is disabled living on Social Security Disability Insurance. Her disability began in 1998 and is for multiple chemical sensitivity that is affected by the pulsed Radio Frequency Radiation ("RFR") emitted by smart meters. She became very ill when a smart meter was installed on a

neighbor's home and did not improve until it was removed. She is under treatment by an immunologist, who is documenting (with blood profiles) her decline in health since the smart meters were installed in her neighborhood. Since she is on a fixed income, she is unable to afford the fees for her meter and her neighbor's meter and is unable to move. She refuses to consent to the installation of a smart meter for health reasons and requests a zone of safety from the neighbor's meter.

Petitioner Alexandra Ansell suffers from injuries caused by an occupational exposure to very strong electromagnetic fields. She worked at a MRI center and she was relocated to a new working space that was situated directly behind a room that housed the circuit breakers for the entire center. She then developed acute and chronic cluster headaches requiring doctor prescribed oxygen. Upon discovery of the source of injury, her employer relocated her to another space and the symptoms subsided. Since that injury she has been sensitive to electromagnetic fields. She now works from home where she was better able to limit her exposure to radio frequency and electromagnetic radiation until the smart meters were installed in the neighborhood. She refuses to consent to the installation of a smart meter for primarily health reasons but also for privacy and security.

Petitioners Stephanie and Peter J. Austin refused the smart meter primarily for privacy, 4th Amendment/Constitutional protections and long-term health reasons. Mr. Austin has a metal mesh heart stent. They refuse to consent to the installation of the smart meter.

Petitioner Martha Babson has refused a smart meter primarily for long-term health and privacy reasons. She is on a fixed income, and she will suffer a financial burden if fees are imposed. She refuses to consent to the installation of a smart meter.

Petitioners William G. and Margo A. Bigelow are senior citizens living off of fixed income sources. They refuse a smart meter primarily for long-term health, privacy and fire risk. They believe because there is no federal or state law in existence, which mandates a customer of an utility accept the installation of a smart meter, no financial penalty should be paid to the utility. They refuse to consent to the installation of a smart meter.

Petitioner Kathleen Bolam is a retired widow living on a fixed income. She refused a smart meter for long-term health and privacy reasons. She will suffer a financial burden if these fees are imposed. She refuses to consent to the installation of a smart meter.

Petitioner Jeri E. Friedman, an ex-medical professional, is disabled and has been diagnosed with CFIDS, MCS, and BET which are severely exacerbated by pulsed RF radiation, which she avoids as much as possible since becoming ill from the pulsed RF radiation emitted by an MRI machine during a scan in 1992. She suffers with insomnia, heart arrhythmias, digestive problems with a 17 pound weight loss, exhaustion, severe tremor, neurological dysfunction, and more. Her disabilities have

gotten worse, and she has lost over 19 years of progress since the installation of smart meters in her neighborhood. She lives on Social Security Disability Insurance, and she will suffer a financial burden if they are imposed. She refuses to consent to the installation of a smart meter for health, privacy and fire safety reasons and her doctor requires her to have a zone of safety from the neighbors' smart meters.

Petitioner George Fuller is retired and refused the smart meter for reasons of safety. He has had colon and open-heart surgery and does not wish to be exposed to constant wireless communications. He refuses to consent to the installation of a smart meter.

Petitioners Cathy & Mario Grippi originally refused the smart meter for health reasons. They recently moved and now have a digital meter and would like it replaced with an analog meter as it affects Mrs. Grippi's health. The exposure to the meter aggravates her sinuses. They also reject on privacy grounds. She has lost the companionship of a dear friend who needed to move out of state to West Virginia because she was so negatively impacted by the smart meters. The Petitioners do not consent to the installation of a smart meter.

Petitioner Shirley D. Jackson has a personal residence for which she was able to stop the installation of a smart meter and she retained her analog meter. However, she also has a four-unit apartment for which there are 5 digital non-communicating meters. Fourteen (14) smart meters are mounted on the two adjacent buildings, just

10 feet from her back property line. Mrs. Jackson is electromagnetically sensitive and experiences burning, itching, equilibrium problems, bleeding gums and nose, cognitive difficulties and irritabilities when exposed to these meters. Therefore, her ability to be on her property and carry out her responsibilities as a landlord (Florida Statute 83.201 and 83.51) is severely impaired. She does not consent to the installation of a smart meter on her personal residence or her rental properties.

Petitioners Jamie & Douglas Lehman refused a smart meter on their personal residence, but they have rental properties where smart meters were installed. Mrs. Lehman was so sickened after smart meters were installed at her home that she needed to be hospitalized. Her illness from the meters has cost her thousands of dollars in medical treatment. She later had it removed and needed to ask two neighbors to remove theirs also. She has medical and dental implants, which exacerbated her problems with pulsed RF radiation from wireless devices. She is unable to properly access and maintain all parts of her rental properties due to smart meters installed there against her consent. She also objects on other grounds such as privacy. Mr. & Mrs. Lehman does not consent to the installation of smart meters on their personal residence and rental properties.

Petitioner Victor Rohe refused the smart meter because his wife is a cancer survivor, and he does not want her exposed to radiation. He also objects for privacy reasons. He does not consent to the installation of a smart meter on his home.

Petitioner Sandra L. Smart refused the smart meter for health and privacy reasons. Her sister, who resides at her residence, has medical implants and does not want to be exposed to pulsed RF radiation. She does not consent to a smart meter being installed on her home.

Petitioner David E. Watkins refused the smart meter for medical and privacy reasons. Mr. Watkins has been totally disabled since 2003 and was on SS Disability Insurance until he reached retirement age. He is an RF engineer and his disability stems from his prior work experience. He has been treated and advised by doctors for electrical sensitivity since 2003. He does not consent to a smart meter being installed on his home.

#### **V. CASE BACKGROUND:**

The FPSC improperly authorized the mandatory requirement of a “smart meter” for FP&L customers via the cost recovery approval process (rate case), which included FP&L’s smart meter deployment project, in Order PSC-10-0153-FOF-EI (“March 2010 Order”) issued on March 17, 2010. The FPSC commissioners conducted public hearings for a subsequent FP&L rate case in 2012 at which time they heard complaints from many members of the public about “smart meters”. The FPSC commissioners then directed staff at the May 9, 2012 Internal Affairs Meeting to investigate jurisdiction as well as consumer issues.

The FPSC Staff conducted the Undocketed Smart Meter Workshop on September 20, 2012 (the “Workshop”) to “gather information on smart meters in order to address concerns raised by customers”.<sup>1</sup> The FPSC staff conducted the Workshop with only utility representatives and smart meter industry representatives included on the agenda to make presentations and answer questions. No other relevant state agency (e.g. Health, Attorney General) representatives attended the Workshop, or asked questions or made a presentation, and no independent subject matter experts with opposing viewpoints attended. Mr. Clemence of the FPSC staff originally informed Petitioner Martin that an independent health expert would be in attendance. Petitioner Martin was not informed until September 14, 2012 that there would be no independent health subject matter expert in attendance. Petitioner Martin’s request to make a presentation was refused; however, she was informed that the public attending the meeting would be allowed 3 minutes each to speak, as well as they could submit written comments as well.

The FPSC staff at the workshop on September 20, 2012 was served a Notice of No Consent, Notice of Default, and Notices of Demands (“Demand Notice”), signed by 75 Florida residents representing 18 counties (collectively, the “Resident Notices”).<sup>2</sup> The Demand Notice specifically objected to the Workshop not being conducted in a manner that protected public interests. (The request for formal hearings was subsequently denied in a letter from Jennifer Crawford to Roger Gangitano on

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<sup>1</sup> Per Memo dated February 11, 2013 by Walter Clemence, “Briefing on Smart Meters: Technical Information and Regulatory Issues”, for February 19, 2013 Internal Affairs Meeting.

<sup>2</sup> Docket 120000, DN 06655-12, filed Oct 2, 2012

October 2, 2012.)<sup>3</sup> FPSC staff presented the FPSC commissioners with a “Briefing on Smart Meters Report” (the “Briefing Report”) at the Internal Affairs Meeting on February 19, 2013. The Briefing Report recommended that investor owned utilities (“IOU’s”), such as FP&L, had the choice to provide an alternative to smart meters and could submit a cost-based tariff request to the commission for approval. Significant issues brought up at that Workshop by the public were not addressed in the Briefing Report. It also appears that no follow-up investigation was made by FPSC staff to address the public’s information provided at the Workshop which disputed facts presented by the utilities. The FPSC commissioners accepted the staff recommendations in the Briefing Report.

On August 21, 2013 FP&L filed a tariff for rates for Non Standard Meter Service for approval, Docket # 130223. FPSC staff recommended three changes to their cost calculations. On January 14, 2014 the Commission issued Order # PSC-14-0036-TRF-EI denying FP&L’s proposed tariff and recommending approval if FP&L changed their tariff to reflect the FPSC staff recommendations. The Order stated FP&L had the option to file a revised Tariff within 10 days for administrative approval by Commission staff. On January 17, 2014 FP&L filed a revised tariff reflecting the FPSC staff recommended changes (the “Tariff”).

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<sup>3</sup> Letter from Jennifer Crawford, Attorney Supervisor, Florida Public Service Commission, October 2, 2012, <http://microwavechasm.org/wp-content/uploads/2012/10/PSCHearingDenialLetter.pdf>

## VI. SUMMARY OF DISPUTED ISSUES OF MATERIAL FACT

The Petitioners are filing to dispute that:

- 1) The Workshop conducted on September 20, 2012 was an appropriate forum for rule making or, alternatively, that the proper procedure was followed,
- 2) The jurisdictional authority of the FPSC allows the FPSC to authorize FP&L to site a smart meter, containing a wireless communication network, and surveillance equipment on consumer homes without each such consumer's consent and that FP&L's equipment referred to as a "smart meter" meets the definition of a meter per FPSC Rule # 25-6.003,
- 3) The designation of "non-standard" service available only upon payment of additional fees that was approved by the FPSC is not arbitrary, capricious, misleading, discriminatory in application as well as retaliatory against FP&L customers who do not consent to installation of a smart meter,
- 4) The Petitioners who are refusing installation of smart meters are the true "cost causers" and thereby subject to additional fees,
- 5) The FPSC reliance on the Federal Communication Commission ("FCC") as the sole authority for determining pulsed RF radiation safety issues for Florida consumers satisfies the FPSC's statutory responsibilities to protect the public without seeking an independent determination by the Florida State Health Department,

- 6) FP&L's assertion that "only the customer of record for a premise will have the option to elect the non-standard service for that premise" is legal and does not violate property rights,
- 7) The FPSC has not failed to properly protect consumer privacy rights by not establishing rules that define and limit the data to be collected through the smart meter by the IOU and by not defining the terms "regulated business use",
- 8) The FPSC has not failed to protect the consumer by not defining the term "non-communicating meter" in the Tariff,
- 9) The Tariff approved by the FPSC appropriately considers the complex issues of multi-family dwellings and will not cause property rights disputes and health safety issues,
- 10)The Tariff as approved by the FPSC does not violate the Americans with Disabilities Act of 1990, as amended (the "ADA") and other laws which strictly prohibit charging fees for accommodating disabilities and also prohibit retaliation and coercion,
- 11)FP&L's communication plan is adequate,
- 12)The FPSC has considered evidence that disputes FP&L's assertions regarding its justification of non-standard meter fees (including the methodology for calculating such fees) and costs,
- 13)The Petitioner is forfeiting cost savings or benefits,
- 14)FP&L customers are being treated equally in FP&L's smart meter mesh network and proper disclosure is being made to the public,

15)FP&L's Tariff as approved does not result in duplicative charges,

16)The Tariff as written achieves its purpose of providing an adequate solution for health and privacy consumer issues.

## **VII. SPECIFIC POINTS OF DISPUTED MATERIAL FACTS**

(Number corresponds to above)

### **1. Workshop and Briefing Report**

Both the FPSC and FP&L point to the Staff recommendation made in the Briefing Report as the basis for filing this tariff. The Petitioners contend that the Workshop, whose purpose was to address consumer issues, and the associated Briefing Report, was not a valid forum for rule making and did not serve the public's interests. Several of the Petitioners on this petition signed the Resident Notices' which was served upon FPSC staff at the Workshop indicating such and demanding full evidentiary hearings be established on this issue.

The Workshop's invited guests consisted only of utility industry representatives and industry manufacturers. The public was denied permission to make a presentation and was limited to three minutes each to state their issues. Neither independent subject matter experts nor representatives from the appropriate Florida state agencies (e.g. – Florida Department of Health) were in attendance. The Briefing Report does not reference any consultation of any independent experts or Florida state agency to indicate any further investigation outside of the

Workshop. The Briefing Report opined on subject matters outside the expertise and jurisdiction of the FPSC staff, namely health. The Briefing Report contains many factual misstatements<sup>45</sup> and cannot reasonably be relied upon for decision-making by the FPSC, nor considered fair, as it only presents industry views, and does not constitute an independent investigation. Because this is true, no credible investigation into consumer issues ever took place.

In addition, credible information regarding health issues (i.e. 5 binders of peer reviewed studies) refuting FP&L's medical expert was submitted by one resident, Deborah Rubin of Tampa, at the Workshop with a request that they be considered and reviewed by the State Health Dept. These reports were totally ignored and not reviewed by the appropriate State agency before the Briefing Report was issued.<sup>6</sup> The Briefing Report failed to explain a rationale for why they should be dismissed and not considered. The Briefing Report also failed to address the complex problems that arise with consumers residing in, or owning, a multi-family dwelling, which was one of the key issues raised at the Workshop. "How does someone living behind a bank of meters opt-out?" was never addressed.

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<sup>4</sup> Under Health, Mr. Clemence states, "At very low levels, RF can pass directly through the body and has no effect on a person". The EPA stated in 2002 in a letter to Jane Newton from Norbet Hankin, dated July 16,2002 "Since EPA's comments were submitted to the FCC in 1993, the number of studies reporting effects associated with both acute and chronic low-level exposure to RF radiation has increased."

<sup>5</sup> Under Health, Mr. Clemence states, "consumers presented information that the meters are unsafe and contended that the meters may operate outside the bounds of established standards". This is not true and misleading. Consumers overwhelming said that the FCC guidelines, not standards, do not protect us and that there are thousands of studies showing negative health effects occurring at levels way below the current standards.

<sup>6</sup> See Exhibit II

The ultimate decision by the FPSC, made at the Internal Affairs meeting where the Briefing Report was presented, to leave it up to the utilities to decide whether an alternate meter should be offered was a poor one and not in the public interest. The FPSC's Mission Statement states "To facilitate the efficient provision of **safe** and reliable utility services at fair prices. (Emphasis Added) The Petitioners assert that the FPSC has failed to comply with its mission statement in approving this Tariff.

The deployment of "smart meters" and other such upgrades associated with the Smart Grid represents a major transformational change to the traditional provision of electric service. As such the consumer issues are valid ones and deserve proper treatment and attention. Deploying digital technology presents many challenges and imposes new risks that must be properly vetted in a proper formal proceeding to determine what safeguards need to be in place to protect the public. A "Workshop" is neither sufficient nor appropriate for rulemaking.

## **2. JURISDICTION/METER DEFINITION**

A) The Petitioners agree that the FPSC has jurisdiction under Florida Statutes to approve utility meters. Rule 25-6.003 defines a meter as a device "used for the **purpose of measuring the service rendered**". (Emphasis Added) The Petitioners dispute that the equipment currently being placed by FP&L in customer-owned meter enclosures, referred to as a "smart meter", meets such definition. The "smart meter" that FP&L is deploying contains a mechanism to measure usage but also

contains **additional components** (e.g. two transceivers, a service switch, computing and memory, digital signal processing chip and a switching mode power supply (SMPS)), some of which are **optional**, which are not used for the purpose of measuring the service rendered. This equipment is more than just a meter.

Manufacturers have the prerogative to name their equipment any name they choose; however, the FPSC has the fiduciary obligation to review the equipment in its true form, not by its name. Smart meters can be purchased and deployed without the additional components. The FPSC's decision to allow FP&L to deploy this specific "meter", as equipped, effectually gave approval for FP&L to site their private wireless communication network on customers' homes, which the FPSC had no jurisdiction to do. Neither the FPSC nor FP&L has cited any Florida statute or rule that gives either of them such authority. The federal energy laws do not mandate smart meters but state they should be "encouraged" and "to be offered". No Florida State Statute exists that mandates "smart meters" as standard service. There is also no federal law that prevents an individual from refusing a transceiver to be placed on his home, in their private property (i.e. the meter enclosures).

FP&L only has authority to place meters (as defined by Rule 25-6.003) in the customer-owned meter enclosures and, likewise, customers have responsibility to maintain meter enclosures in working order for meters only, not wireless communication networks. Order No. 18893<sup>7</sup> confirms such facts and states:

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<sup>7</sup> Issued February 22, 1988, Docket No. 870225EI, Petition of Florida Power & Light Company for authority to require customers to obtain their own self-contained meter enclosures.

“Since self-contained meter enclosures **are not a part of the utility function**, but **simply house the meter itself**, their costs should be borne by the customer when the Structure is initially wired for electric service or when it must be replaced due to obsolescence or wear. **The burden of maintaining and repairing the enclosures must likewise rest with the customer.**” (Emphasis added)

The meter enclosure is the private property of the property owner and its purpose is to house the meter itself, not a utility’s wireless communication network. The FPSC cannot mandate, through the imposition of fees, which are excessively high in amount and punitive in nature, that FP&L’s customers accept installation of a smart meter with a wireless communication network. Instead, in light of the lack of Florida statute mandating the use of smart meters for all customers, the FPSC must require utilities to allow (i) current customers to retain installed analog meters without incurring a monetary penalty and (ii) new customers to request an analog meter upon initiation of service at no extra charge. Thus, Petitioners assert that the Tariff approved by the FPSC and imposed/collected by FP&L is in violation of Florida law.

B) The Petitioners dispute that Section 366.03 of the Florida Statutes gives the FPSC the jurisdiction to allow FP&L to install a smart meter without customer consent or allow a fee to opt out. Petitioners argue the contrary. Section 366.03 states that “No public utility shall make or give any undue or unreasonable preference or advantage to any person or locality, or **subject the same to any undue or unreasonable prejudice or disadvantage in any respect.**” (Emphasis added) FP&L customers who refuse the smart meter will suffer unreasonable prejudice or disadvantage based on the imposition of the Tariff because such

customers will (i) continue to pay the higher base rates approved by the FPSC in the March 2010 Order and (ii) be obligated to pay the Tariff for opting out of smart meter installation.

C) Petitioners agree that the FCC has jurisdiction to establish standards and guidelines for radio frequency radiation emissions of products, such as “smart meters”, to be licensed and that meeting FCC safety standards and guidelines means that products are approved for the sale in the US. However, the Petitioners assert that the FCC has been negligent in its duties and responsibilities in regards to the RF emissions safety guidelines (there are no FCC “standards” for RF emissions only guidelines) and such evidence has been provided to the FPSC on many an occasion by Petitioners<sup>8</sup>. One such example, the FCC RF exposure guidelines are “considered protective from a thermal mechanism ***but not from all possible mechanisms***”.<sup>9</sup> (Emphasis added) Another new reference of negligence by the FCC can be noted in both the City of Boston and Philadelphia’s November 18, 2013 comments to the FCC regarding the docket to review such guidelines.<sup>10</sup>

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<sup>8</sup> See Smart Meter Workshop Comments, Marilynne Martin and Hope Howland  
[http://www.floridapsc.com/utilities/electricgas/smartmeter/09\\_20\\_2012/index.aspx](http://www.floridapsc.com/utilities/electricgas/smartmeter/09_20_2012/index.aspx)

<sup>9</sup> July 16, 2002 letter from Norbert Hankin, Center for Science and Risk Assessment, Radiation Protection Division, United States Environmental and Protection Agency, to Jane Newton, President, EMR Network.  
[http://www.emrpolity.org/litigation/case\\_law/docs/noi\\_epa\\_response.pdf](http://www.emrpolity.org/litigation/case_law/docs/noi_epa_response.pdf)

<sup>10</sup> “The FCC admits its own lack of expertise in the field. But the overlap of federal agency responsibilities for RF radiation protection and the merely advisory status of the Radiofrequency Interagency Work Group often leaves leadership unclear and encourages a pass-the-buck attitude ...  
The 1999-2000 judicial challenge to the FCC’s 1996 rules never reached the issue of “electrosensitivity” as a cognizable disability under the Americans with Disabilities Act. (“ADA”) Here again, an agency responsible for ADA implementation acknowledges that the impairment may be disabling but has promised merely further inquiry. After more than a decade, that investigation remains unopened. The dockets here have been updated with massive additional evidence of the crippling effects of RF radiation on an admitted minority – but a suffering minority – of U.S. citizens. The FCC and its sister regulatory agencies share responsibility for adherence to the ADA and should replace promises with serious attention to a serious medical problem. This is one area where the FCC could lead in advice to electrosensitive persons about prudent avoidance.” <http://bit.ly/1kAYSu7>

Petitioners dispute that determining whether a product a utility is going to deploy is “FCC approved” is the only factor the FPSC needs to consider in meeting its fiduciary obligations under Section 366.04(6). Section 366.04(6) states “The commission shall further have exclusive jurisdiction to prescribe and enforce **safety** standards for transmission and distribution facilities of all public electric utilities”. While many federal agencies have jurisdictional authority to licensing products for sale and use; just because a product is deemed safe by such standards does not mean that the product is safe for everyone. For example, penicillin is a drug approved by the FDA but it cannot be safely administered to all residents of Florida. Doctors must consider the individual and their personal health status before prescribing a drug.

FCC OET Bulletin 56 “Questions and Answers about Biological Effects and Potential Hazards of Radiofrequency Electromagnetic Fields”, August 1999, states on page 6, “A biological effect only becomes a safety hazard when it “**causes detectable impairment of the health of an individual** or of his or her offspring.”<sup>11</sup> (Emphasis added) Several of the petitioners (Anker, Ansell, Friedman, Grippi, Jackson, Lehman ,and Watkins) and many other ratepayers have written the FPSC since the start of the smart meter deployment to report that this safety hazard, called a “smart meter”, was impairing their health.

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<sup>11</sup> (Reference 25 - International Commission on Non-Ionizing Radiation Protection “Guidelines for Limiting Exposure to Time-varying Electric, Magnetic, and Electromagnetic Fields (Up to 300 GHz(, Health Physics 74 (1998))

D) The FPSC had prior knowledge of consumer health complaints from other smart meter deployments around the country, specifically the PG&E deployment in California. The FPSC should have involved the Florida State Health Department, which has specific authority under State Statutes 501.122 of the 2012 Florida Statutes over nonionizing radiation, prior to issuing the March 2010 Order in order to ensure the smart meters were safe and all Floridians were protected from harm, as well as, to determine if accommodations were needed to be made for certain types of customers, specifically those with disabilities or certain health issues. The FPSC had a statutory obligation to (i) advise the Florida State Health Department that a device, which emitted non-ionizing radiation, was under review, and (ii) coordinate its investigation efforts under the 2012 Florida Statutes Section 366.015 “Interagency liaison”.

Section 501.122 (2) gives the State Health Department authority to issue regulations regarding nonionizing radiation, “except for electrical transmission and distribution lines and substation facilities subject to regulation by the Department of Environmental Protection pursuant to Chapter 403”. Smart meters are not transmission and distribution lines falling under Chapter 403, thus authority rests with the Florida State Health Department.

**4) Non-Standard Service** – The Petitioners dispute FPSC and FP&L’s assertion that a customer who refuses the smart meter and chooses to retain the electromechanical analog meter is entering into a “non-standard” service subject to a

fee. The FP&L tariff filing states in paragraph 18 “As with any other available non-standard service the customers requesting non-standard meters should be required to pay additional costs required to establish and maintain the meter reading network and associated personnel required to provide this service.” The Petitioners do not consent to a device that establishes an unauthorized wireless communication network on their home or a device that measures and collects more information than is authorized by existing FPSC rules. Rule 25-6.099 Meter Readings states, “Each service meter shall be clearly marked to indicate the units measured. Unless special circumstances warrant, **meters shall be read at monthly intervals** on the approximate corresponding day of each meter-reading period.” (Emphasis added) Petitioner’s currently installed analog meter satisfies Rule 25-6.099.

The State enabling Statute for making smart meters “standard service” is non-existent or deficient. There is no mandate by the FPSC or 2012 Florida State Statutes requiring a utility to collect and maintain real-time usage data. FP&L has no authority to collect and record such detailed data from any customer not participating in approved programs that require them. The only data the customer has an obligation to allow FP&L to collect is the total number of kilowatts used for a month.

The Petitioners contend that the designation of analog meters as a “non-standard” service is arbitrary and is being applied as a punitive measure intended to coerce customers who have refused smart meters to accept smart meters rather than pay the excessively high Tariff. This Tariff is being invoked as a measure intended to be

punitive. It is a fact that FP&L offers many “non-standard” services to its customers without a charge. For example, the standard billing for its customers is monthly based on kilowatts consumed in the preceding month. FP&L offers Budget Billing as a choice from standard billing at no charge. Another fact is that FP&L also offers special “non-standard” customer service departments and materials in Spanish at no charge. This is despite the Florida Constitution, Article II Section 9 (a), declaring English as the official language of the State of Florida.

At the January 7, 2014 Tariff hearing, Commissioner Brise stated “It helps the system as a whole by making sure there is a sufficient incentive that everyone can move in the direction of smart meters.” (Hearing Transcript page 30) Ken Rubin of FP&L stated at that same meeting that “While we disagree with staff’s recommendation for a \$95 upfront enrollment fee, we are willing to accept that figure because we believe that an upfront fee of approximately \$100 will still provide a sufficient disincentive to opt out unless the customer is, in fact, committed and willing to pay the real cost of providing that service.” (Hearing Transcript Page 13) The Petitioners assert that both statements provide evidence of a desire to punish rather than permit a customer to decide for himself that a smart meter would not be beneficial to that customer. Even the State of Florida Office of Public Counsel has stated, “the jury is still out on what tangible benefits, if any, will result from smart meters.”<sup>12</sup>

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<sup>12</sup> Letter to the FPSC from Erik L. Saylor, Associate Public Counsel, State of Florida Office of Public Counsel (October 12, 2012).

Standard versus Non-Standard service appears to be arbitrary and based not on facts.

### 5) True Cost Causers

FP&L's petition for the Tariff in paragraph 20, states, "FP&L's proposal is consistent with the longstanding Commission principle and practice that requires the cost causer to pay associated costs." The Petitioners dispute the fact that customers who refuse a smart meter are "cost causers" and again state that such longstanding principles are being arbitrarily applied in a discriminatory and punitive manner.

There is a litany of multiple improprieties as follows.

A) Both the FPSC and FP&L had or should have had, knowledge of basic consumer objections, particularly relating to important issues such as health and privacy, prior to the March 2010 Order. The problems experienced by PG&E in California with its deployment were widely known at that time.<sup>13</sup> The responsibility to properly address those issues before issuing the March 2010 Order rested with both the FPSC and FP&L, not the Petitioners. And as such, the Petitioners should not be penalized for the faulty decision-making process of the FPSC. Costs can typically be minimized or avoided when they are properly planned for up front.

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<sup>13</sup> Smart Grid News, September 29, 2009, "California Senator Questions Value of PG&E Smart Meters, [http://www.smartgridnews.com/artman/publish/News\\_News/California-Senator-Questions-Value-of-PG-E-Smart-Meters-1231.html](http://www.smartgridnews.com/artman/publish/News_News/California-Senator-Questions-Value-of-PG-E-Smart-Meters-1231.html); New York's Utility Project", October 28, 2009, "Consumer Uprising Against Smart Meter Program", <http://pulpnetwork.blogspot.com/2009/10/consumer-uprising-against-california.html>; Consumer Affairs, November 8, 2009, Class Action Accuses PG&E of Overcharges, [http://www.consumeraffairs.com/news04/2009/11/pge\\_suit.html](http://www.consumeraffairs.com/news04/2009/11/pge_suit.html)

FP&L in response to this Docket's first set of data requests, Request # 31, Attachment 1, provided a chart depicting the number of customers on their secret "postpone" list. It shows a significant increase starting in October 2011. FP&L had 3,169 customers on this list as of the end of February 2012 but made no mention of the rising customer refusals in their March 21, 2012 Smart Meter Progress Report submitted to the FPSC for Docket No. 120002-EG, a material fact left out. Keep in mind; customers refusing access or barricading their meters are not included in that number.

B) FPSC's staff had prior knowledge of FP&L's customers' objections to the placement of the unsafe wireless smart meter on their properties and specifically the objection of the location of the meters to close living quarters (e.g. behind beds). The FPSC staff appears to be coordinating with FP&L on customer objection issues. FPSC staff put out a Notice of Rule Development for Rule 25-6.050 Location of Meters in March 9, 2012 as "staff thought it was important to clarify existing practices" to the rule. The Rule sat unchanged on the books since 1969 and suddenly it needed "clarifying". Order No. PSC-12-0654-NOR-EI, "Revision to Rule 25-6.050, Location of Meters, and 25-6.100, Customer Billings, FAC" was issued December 12, 2012 and established the Notice of Proposed Rulemaking and the rule was revised and made effective February 4, 2013. The additional language inserted into the rule made sure that customer requests for meter location changes, in response to smart meter installations, became the customer's cost.

Compare the Location of Meter rule change above to the FPSC ruling in Order No. PSC-11-0194-DS-EI on April 13, 2011, regarding the repairing/replacing of customer meter enclosures. In that Order, the FPSC found "that individual customers whose meter enclosures were being repaired or replaced in conjunction with the installation of the smart meters should not individually bear the expenses associated with that repair or replacement". The Order also states "In, the second scenario, the Company cannot say with certainty that the existing functional meter enclosure is clearly damaged by the removal of the existing meter or installation of the new smart meter. However, as a result of the meter change-out, there is enough doubt about the continued viability of the existing meter enclosure that the Company exercises its judgment and errs on the side of repairing or replacing the meter enclosure." Clearly there is bias and inconsistencies when applying long standing cost causation practices and existing rules.

C) FP&L did not properly communicate the option to be on the postpone list to its customers. Had customers been offered such an option up front, many costs incurred to switch out meters could have been avoided and re-routing costs would not need to be incurred. In switching to a smart meter technology, FP&L is the main "cost causer" due to the costs of purchasing and installing the smart meters and associated administrative and communication costs (for which the FPSC approved a rate increase – to be paid by FP&L customers – including those who have refused smart meters) in the March 2010 Order.

D) FP&L asserted in its Tariff petition filing at paragraph 10, that the smart meter project was initiated to “align itself with federal legislation”. However, federal law cited clearly states that smart meters are to be offered, not mandated.

E) FP&L also admits that not all smart meters are communicating properly (Docket 130160 and annual progress reports) and therefore they are not able to send meter readings through their “standard” process. FP&L has provided no evidence that customers rejecting the smart meter in favor of their currently installed analog meter require special billing system adjustments. A method to bill customers through a manual read is also an essential for disaster recovery planning and those refusing the smart meter should not bear the cost of the system development. Such costs should be borne by all ratepayers.

F) Petitioners assert that FP&L’s decision to create a secret postpone list, and not offer the opt-out upfront, was a main contributor to the costs for which it seeks recovery in the Tariff. FP&L is the “cost causer”. The Petitioners contend that FP&L chose this process in order to (i) avoid negative public relations in the press that would alert other customers to the true nature of the smart meter (i.e. establishment of a communication network emitting pulsed RF radiation and collection of detailed usage data) and (ii) limit the formal complaints on record in an attempt to avoid the reporting requirements of Rule 25-22.032 “Customer Complaints” and keep such complaints off their required Activity Report.

6) FPSC Use of “FCC Approved” to determine “safe”

As stated *supra*, under **Jurisdiction**, FP&L and FPSC claim the smart meter is safe because it meets FCC Emissions “Standards”. The Petitioners disagree and believe both parties have **above fiduciary** obligations to perform safety reviews beyond the FCC “Standard” alone. The consumer does not have a choice of electric service providers, and thereby does not choose their electric provider.

The Florida legislature, by enacting Statute 501.122, clearly intended for the Florida State Health Department to protect the consumer from the dangers of products that emit non-ionizing radiation - which FP&L’s smart meter emits. Statute 501.122 (2) states “the Department of Health shall adopt rules as necessary to **protect health and safety** of persons exposed to laser devices **and other nonionizing radiation**, including the user or **any others who might come in contact with such radiation**”. (Emphasis added) The claim being made by FP&L and FPSC staff that the FCC has sole jurisdiction over the health of Floridians as it relates to non-ionizing radiation emitted from smart meters is clearly not true and equates to an unauthorized delegation of duty.

Smart meters are being deployed in areas (our neighborhoods) where they are easily accessible to all citizens. It is highly possible that a customer, or its child, could lean up against a bank of meters for hours at a time and not know they are being subjected to pulsed RF microwave radiation. At a minimum, a review of whether warning labels or barriers should be affixed should have been made prior to

deployment in order to properly inform the public. Statute 501.122 (2) (d) goes on to further state “Establish and prescribe performance standards for lasers and **other radiation control** including ... **the posting of warning signs and labels for facilities and devices**”. The old analog meters posed no such health risk. The Petitioners assert that customers have not been properly informed and these and other such safety issues should have been evaluated up front for safety by the Florida State Department of Health before being authorized for deployment.

Neither FP&L nor the FPSC has provided any evidence that the State of Florida has relegated full control and responsibility of Floridians’ safety as it pertains to pulsed radio frequency microwave radiation to the Federal Communications Commission. The Petitioners demand such evidence. Petitioners Anker, Ansell, Friedman, Jackson, Lehman, and Watkins who are disabled from this radiation can provide evidence that this product is not safe for them.

#### 7) **FP&L’s Property Rights Violations**

The Tariff proposes that only the FP&L customer is able to initiate the enrollment into the Non-Standard Meter program. This violates the property rights of the property owner who may not be FP&L’s customer and may lead to tenant/landlord disputes. Tenants do not have the legal authority to override a property owner as to what type of equipment is placed in the meter enclosure, as the property owner has the ownership and thus bears the liability for such enclosure. As an example, tenants do not have the right to request FP&L bury overhead wires without the

property owner's permission. FP&L has not provided any evidence or legal reference as to how its customer, who may not be the residence property owner, can override the rights of the property owner. This assumption will create disputes between tenants and landlords and may violate terms of existing contractual leases.

FP&L, by establishing this mesh communication network in the customer-owned meter enclosure, will be using the transmitters to not only send the individual customer's data but will also relay the data from other neighborhood homes in the area. By deeming this equipment as "standard" they have completed a "partial taking" of the customer's property. Both FPSC and FP&L have not followed the proper protocol to invoke this "partial taking" and as such they can't claim refusal of the smart meter represents non-standard service.

#### **8) Privacy rights – "regulated business use"**

FPSC Order PSC-14-0036-TRF-EI states that FP&L will hold customer data confidential, except for release for "regulated business purposes" and to comply with court orders. FPSC has not defined "regulated business use" and such term is too vague to provide proper consumer protection. The Petitioners agree that FP&L has authority to collect the data from the meter that is needed for billing purposes. But we assert that based on our current service with FP&L the only data FP&L has authority to collect is the final number of kilowatts used per month. Any data other than that, such as interval data and more, is not authorized nor has been justified as necessary.

The FPSC has not provided evidence that it has statutory authority to compel the Petitioners to release personal detailed usage data to FP&L beyond what is needed for billing. The “smart meter” and other digital meters record data beyond what is needed for billing. “Smart meters” collect and store detailed usage data<sup>14</sup> and violate the rights of the Petitioners under the Fourth Amendment to the U.S. Constitution (as an unlawful search and seizure). Petitioners also have privacy rights under the Florida Constitution to refuse the collection of such data without punitive charges.<sup>15</sup> Once that data is given to FP&L, many constitutional rights afforded the petitioners may be forfeited. FPSC does not have authority to forfeit our constitutional right to privacy in our homes.

Digital technology poses many new challenges for consumers today. Unlike an electromechanical meter whose functionality stays the same from since the day it is installed until the day it is removed, digital relies on software and therefore such functionality can change at any moment. With the recent NSA scandals and their revelations, it is not unreasonable for consumers to demand that strong privacy protections be put in place upfront. The FPSC has failed to do that prior to the approval of the smart meter project.

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<sup>14</sup> Smart Metering and Privacy: Existing Law and Competing Policies, A Report for the Colorado Public Utilities Commission, Elias Leake Quinn, Spring 2009

<sup>15</sup> Florida Constitution Article 1 SECTION 23. Right of privacy. —Every natural person has the right to be let alone and free from governmental intrusion into the person’s private life except as otherwise provided herein.

The Petitioners note that the National Association for Regulatory Utility Commissions (“NARUC”), of which the FPSC is a member, issued a resolution urging its member to adopt policies on privacy as far back as 2000. NARUC resolved that “privacy interests should be **given substantial weight** when commissions consider claims for access to and use of customer information” and goes on to resolve that “**customers should be permitted to choose the degree of privacy protection, both with respect to information outflows and inflows**” and further resolves “**unless a customer grants explicit, affirmative informed consent, customer specific information about his or her utility service should only be used in rendering or billing for that service or other services requested by the customer**”.<sup>16</sup> (Emphasis added)

#### **9) Non-Communicating Meter not defined**

The sole purpose of the Tariff is to provide a punitive “incentive” for customers refusing the smart meter to relent and accept a smart meter rather than be forced to pay excessive fees to maintain their currently installed analog meters. FP&L is proposing to supply customers with a “non-communicating” meter as a substitute; however, the Tariff does not define specifically what this meter will be. By FP&L stating that there will be no cost avoidance, the Petitioners believe that it is FP&L’s intent to use a smart meter with the transmitters turned off. The Petitioners dispute that this is an appropriate remedy and that it will not achieve the objectives of the Tariff, to resolve customer concerns. In addition, consumers enrolling will be

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<sup>16</sup> National Association of Regulatory Utility Commissioners, Resolution Urging the Adoption of General Privacy Principles For State Commission Use in Considering the Privacy Implications of the Use of Utility Customer Information, Adopted by the NARUC Board of Directors, July 26, 2000.

defrauded as their personal detailed usage data will still be collected and the device may still impair their health due to other components in the meter.

Smart meters and digital meters contain a switching mode power supply that places additional “dirty electricity”<sup>17</sup> on customers’ home wiring. The function of the SMPS is to ‘step down’ the 240v alternating current (AC) coming in from the utility pole power lines to the 2 to 10 volts of direct current (DC) required to run the meter’s digital electronics which record the electricity usage data. This switching mechanism is adding radio frequency (“RF”) harmonics, aka “dirty electricity”, to the wiring of buildings and homes. Such harmonics might be responsible for interference with electronic equipment, including ground fault interrupters (GFI’s) and arc fault circuit interrupters (AFCI’s), which can lead to electrical shocks and fires. Thus, this dirty electricity is a potential public health threat.<sup>18</sup> The electrical noise spikes and harmonic-laden emissions from these power supplies running into the house wiring can also cause EMF-sensitive people pain and other medical problems.

The “Non-Communicating Meter” option was previously tried in both California and Nevada. Customers in those areas continued to experience negative health effects from these meter alternatives and objected to their personal usage data being collected. Both the California and Nevada public service commissions directed their

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<sup>17</sup> Dirty electricity or electrical pollution, as defined by electrical utility industry, is high frequency voltage transients that contaminate the standard 60 Hertz electrical current and wiring. This contamination can create unhealthy levels of electromagnetic field (EMF), a non-ionizing type of radiation that encroaches into our living and working spaces.

<sup>18</sup> “The Panel recommends all countries should adopt electrical code requirements to disallow conduction of high-frequency voltage transients back into electrical wiring systems”; *REVIEWS ON ENVIRONMENTAL HEALTH, VOLUME 25, No. 4, 20*, Scientific Panel on Electromagnetic Field Health Risks: Consensus Points, Recommendations, and Rationales, Scientific Meeting: Seletun, Norway, November 17-21, 2009

utilities to use analog meters as the alternative (opt-out) meter.<sup>19</sup> The only alternative that truly protects the Petitioners' health and privacy of their personal data is a traditional electromechanical analog meter with no digital electronic components.

NARUC's "Resolution on Smart Grid Principles" issued July 20, 2011 stated that State commissions are in the best position to consider consumer concerns and resolved under Consumer Protections, "When reviewing a smart grid deployment, State Commissions should consider **any potential impacts to vulnerable populations and ensure that sufficient protections are in place.**" (Emphasis added) The Petitioners assert that those customers being harmed by these smart meters are vulnerable and need protection from these devices.

#### 10) **Multi-family dwellings**

FP&L's Tariff creates a nightmare for those living in multi-family dwellings and does not provide an adequate solution. Customers in these dwellings cannot effectively opt out. FP&L's Tariff as constructed will cause landlord/tenant issues, Planned Unit Development ("PUD") and condominium association issues, and will pit neighbor against neighbor.

A) FP&L's tariff will impose an unfair burden on apartment, PUD and condominium dwellers and makes it impossible for anyone living next to a bank of meters to obtain

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<sup>19</sup> Press Release , California Public Utilities Commission, February 1, 2012 "CPUC Approves Analog Meters For PG&E Customers Electing To Opt-Out of Smart Meter service", Docket # A.11-03-014

relief. It is unreasonable to expect customers to ask neighbors to pay hundreds of dollars a year to opt out. And even if the customer was willing to pay the neighbors, the neighbors have no obligation to do so. Customers will be forced to move, and those that cannot will be harmed.

B) The proposed charges also place a burden on property owners who will be unable to rent property or will lose property value. It imposes an unfair burden on those with several meters on one property. A single customer may have six or more meters in one location and it would cost them several thousand dollars to opt out in the first year. The charges as constructed by FP&L are not fair nor cost based, as customers with multiple meters will be assessed for multiple site visits that will not occur, as only one trip is required to the building. Multi-family dwelling property owners who are sickened by these meters may no longer be able to attend to their properties if smart meters are installed against their will. Petitioners Jackson and Lehman are experiencing those problems today.

C) Some multi-family dwellings may have utility rooms where meters are banked. Often maintenance personnel or other employees have desks in such rooms or spend many continuous hours working in these areas. Many utility rooms because of their nature contain many metal objects and may be more dangerous due to RF reflection and concentration resulting in radiation hotspots. FP&L has provided no evidence that this will be a safe work environment and the employee may not know

that the new meters are emitting pulsed RF microwave radiation and take precautions.

D) It will make it impossible for landlords to provide reasonable accommodations for those tenants who are disabled and unable to tolerate the pulsed RF radiation and electromagnetic fields.

E) Additional costs may be incurred by landlords, rental agencies, condominium and PUD associations and other multi-family dwelling facilities as they may be forced to review and revise legal documents (e.g. leases, declarations, etc.) in response to disputes/complaints from residents being harmed.

#### **11) American with Disabilities Act (ADA) & Other Laws**

A) For some FP&L customers, the effects of smart meters and of radio-off smart meters are actual, frequently immediate, not insignificant, and limit major life activities as defined under the Americans with Disabilities Act as amended, 42 USC 12101 et seq. (ADA).

An individual with a disability is a person who has “a physical or mental impairment that substantially limits one or more major life activities ”; “has a record of such an impairment”; or is “regarded as having such an impairment.”<sup>20</sup> Major life activities

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<sup>20</sup> 42 USC 12102(1); 28 CFR 35.104

include, but are not limited to, “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.”<sup>21</sup> Major life activities also include “the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.”<sup>22</sup>

Any FP&L customer for whom a major life activity is affected by the transmitting smart meter or non-transmitting meter being installed is a customer who falls within the purview of the ADA. As such, these customers must be accommodated with the installation of a traditional analog meter because these sensitive customers do not tolerate the voltage transients and harmonics generated by digital meters.

B) FPSC is expressly bound by Title II of the ADA to avoid discrimination against people with disabilities by ensuring that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity.”<sup>23</sup> Electricity is an essential service and a service for which consumers do not negotiate contract terms on their own. The FPSC must ensure that customers who cannot tolerate a transmitting smart meter or non-transmitting meter on their home have access to

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<sup>21</sup> 42 USC 12102(2)

<sup>22</sup> 42 USC 12102(2)

<sup>23</sup> 42 U.S.C. 12132

electric service by means of some other kind of meter that they can tolerate i.e., their existing analog meter.

C) Title II of the ADA forbids the use of surcharges on people with disabilities to cover the cost of providing accommodation.<sup>24</sup> Statements made by FP&L's Ken Rubin at the January 7, 2014 hearing regarding the fee needing to be high enough, around \$100, to provide a disincentive to those to not opt out are coercive and violate Section 35.134 of the ADA.

D) Section 504 of the Rehabilitation Act of 1973 provides protection from discrimination based on disability to individuals receiving program benefits and services from all organizations that received financial assistance from federal sources, in addition to educational and workplace applications. The nondiscrimination requirements of the law apply to employers and organizations that receive financial assistance from any federal department or agency.<sup>25</sup> FP&L received federal stimulus money under TARP for its smart meter program and is subject to such rules.

E) The FPSC and FP&L have created an untenable situation with this tariff Order No. PSC-14-0036-TRF-EI. Many disabled customers that are living in single-family housing, although retaining their electromechanical meters, are still being sickened by the pulsed RF radiation emitted by their neighbors' smart meters. They require a

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<sup>24</sup> 28 C.F.R. 35.130 (c), (f).

<sup>25</sup> Factsheet on Section 504 of the Rehabilitation Act of 1973,  
<http://www.hhs.gov/ocr/civilrights/resources/factsheets/504.pdf>

“zone of safety” to mitigate the effects of the pulsed RF radiation. If those customers in the “zone of safety” refuse to opt out due to the associated fees, the disabled customer would then be left to pay a number of sets of fees for those neighbors in violation of Title II of the A.D.A. Furthermore, those customers could simply refuse to opt out, thereby negating the disabled customer’s own opt-out, since surrounding smart meters are still sickening them. This situation is clearly punitive, since many disabled are on fixed income and poor. It also does not solve the problem of providing an accommodation to the disabled customer.

The Florida Constitution, Article I, Section 2, Basic Rights states “No person shall be deprived of any right because of race, religion, national origin, **or physical disability**” (Emphasis added) Accommodations for disabilities are available for the deaf at no charge with FP&L’s TDDY; they should make similar such accommodations with their meter service.

## 12) **FP&L’s Communication Plan**

FP&L’s communication plan per its Tariff filing states that only those who are on their “postpone” list will be notified of this new service offering. This is discriminatory against the entire customer base. All FP&L customers should be notified of their rights.

FP&L’s initial communication of deployment and installation of smart meters was flawed and customers were not fully and properly informed. In some areas only a

postcard to “current residents” was sent. FP&L did not tell its customer base that there was a postpone list. When calling their customer service line to tell them they did not consent to this new meter, customers were lied to, misled, bullied, etc. Only the strong were able to finally get on the postpone list as well as those who were told by others in the neighborhood. Many that put themselves on the postpone list, later found that a smart meter was installed anyway. Some were able to get them removed; others were bullied or misled into accepting them.

It is discriminatory to not inform all customers of this service option. If a customer was never given upfront knowledge of a postpone list and now they will not even be told there is a non-standard service option, they are not being afforded equal treatment.

### **13) Non Standard Meter Fee – specific disputes to methodology and costs**

The Petitioners do not support charging a fee for refusing an unauthorized piece of equipment and believe both FP&L and FPSC are attempting to use “customary practice” to penalize those refusing, making this fee more punitive than cost-based. Having said that, Petitioners wish to point out problems with the calculations and particular costs presented by FP&L and the adjustments made by the FPSC Staff.

- a. **Methodology of Estimated Number of Enrollees** – FP&L is estimating approximately 12,000 enrollees based on using a selected group of other utilities’ participation rates. FP&L is in the enviable position of knowing up

front how many people don't want its smart meter. FP&L has provided evidence that 36,000 refused installation. By using a lower participation rate, FP&L is inflating the costs to reach a desired goal of \$100 in order to coerce a portion of the population into accepting the smart meter. This discriminates against low-income customers, as well as the elderly and disabled on fixed income and is considered coercive under ADA.

- b. **Monthly Meter Reads** - No consideration was given to mitigate costs by evaluating other alternatives to a monthly manual meter read. Rule 25-6.099 Meter Readings state "Unless special circumstances warrant, meters shall be read at monthly intervals on the approximate corresponding day of each meter-reading period." Rule 25-6.100 (3) indicates "An actual meter reading must be taken at least once every six months". FP&L has not shown why costs could not be mitigated by putting analog customers on estimated billing with a twice-a-year manual read. Or whether the customer could send in self-reads. This would significantly lower monthly costs.
- c. **Initial Enrollment Period** – FP&L has planned certain costs, such as customer service and meter routing, for an assumed 2 year initial enrollment period. In FP&L's filing it states that the Tariff would become effective once enrollment is complete and the billing system has been implemented, currently projected to be April 2014. FP&L has indicated in answers to Second data request # 4 & 5 that they are doing enrollment in January 2014 for billing in April 2014. This would indicate that the enrollment work is to be done between January-March 2014 which is 3 months. FP&L or FPSC staff

has failed to support the 2-year period. If the intention is to enroll over two years, charging some earlier than others, then that is discriminatory. Using a 2-year period inflates the costs but appears to help keep with FP&L's goal of keeping the fee high enough to "disincent" those refusing the smart meters.

- d. **Initial field visits** – Since FP&L has stated enrollees will keep their existing meters, they have not justified why this cost is necessary for the initial enrollee. FP&L and FPSC have stated that they have a customary practice to charge "cost causers" for services they request. The Tariff as structured is assessing the cost of every possible field visit amongst the entire non-standard meter customer population whether a field visit is incurred or not, which is unfair. If needed, after the initial enrollment, field visits could be charged separately for those in non-payment situations or those requesting a new meter. In addition, the fact that after the initial enrollment period, when a residence property is either receiving standard or non-standard service, for a new customer to request a change to that meter (from analog to smart meter) and not be charged for the field visit fee is also pointing to this portion of the fee being more retaliatory than cost based.
- e. **Collection costs** – Cost for collection systems should not be charged to everyone but be formulated into a collection fee and recouped from the non-payment customers.
- f. **Communication Costs** – All costs relating to communications of the Tariff should be removed from the fee. All FP&L customers should receive this

communication and be offered an opportunity to make an informed choice on whether they want to enroll. The cost should be born by all ratepaters.

- g. **Project Management Costs** – We dispute having to pay \$136,000 for an ongoing new senior level manager and FP&L has not supported this need with specifics in its data request responses. Considering FP&L is only estimating 12,000 customers on the service, and they are charging for systems to be built and personnel to handle the transactions, they have not provided any ongoing specific duties this high level manager would be coordinating to justified this expenditure.
- h. **System development costs** – FP&L is using an expensive consulting firm to write programs as it says this non-standard service was unexpected and not planned for. As argued in True Cost Causers-5A above, this is due to FP&L’s poor choice of project management and the Petitioners should not be overcharged because of its poor planning. Costs appear excessive for billing system changes, since this is not a complicated tariff. For the billing system all FP&L should need to do is establish a flag in the customer master and create two new billing codes (monthly fee and upfront fee) and update a tariff billing code table in the billing system for the fixed charges. At a minimum, the costs should only reflect the number of programming/project management hours times their own internal costs. Petitioners believe FP&L is using the higher consultant costs to get to their \$100 fee to coerce and “disincent “ those refusing a smart meter.
- i. **Incremental vs Net Incremental Costs vs Actual Costs** –

- a. **Incremental Costs** - We dispute the use of “incremental costs”. The Petitioners assert that this new smart meter system is costing additional money in base rates that customers are already burdened with paying. In the 2009 rate case FP&L promised \$20 million in net Operational and Maintenance cost savings. In the subsequent rate filing that number changed to a net Operational and Maintenance cost of \$3 million. Clearly the smart meter program has burdened those refusing the meter with incremental costs.
- b. **Net Incremental Costs** – It is not equitable not to consider the lower costs of routine maintenance that will occur for standard service customers with 12-36 thousand meters not on such service. A certain amount of repair, maintenance and customer service that is associated with smart meter “standard” service will not be incurred because there are fewer meters in that service cost pool (e.g. smart meters not communicating properly, calls to customer service on their dashboard, etc.) Net incremental costs should be the method of calculation. The savings that will be realized by fewer meters in the standard meter pool should be factored in and credited to the non-standard meter cost pool.
- c. **Actual Costs** - If you did a total cost separation of this standard meter vs non-standard meter service, the non-standard service would most likely be lower. FP&L complains about the additional costs to read the meter manually but forgets about the tremendous costs being incurred for the entire ancillary communication network being built as well as

the ongoing network communication fees. Additionally there are data processing and storage fees for all this data being collected by smart meters as well as consultant fees to manage this “Big Data” and also cyber-security costs that will be incurred, as wireless systems are vulnerable systems.

**14) No Savings or benefits from Smart Meter**

The Petitioners dispute any reference to “savings” and “customer benefits” referred to in the Tariff filing or the FPSC Order. There are no net savings in rates, and the information currently provided through the smart meter is useless to form any opinion on energy usage to use in a productive actionable way. The “predictions of savings” being acknowledged in Order No. PSC-10-0153-FOF-EI did not materialize in FP&L’s succeeding rate case and customers are still waiting for savings.

**15) Inequality of Customer’s Meters in Mesh Network**

Customers are not treated equally in this smart meter wireless mesh communication network. Some customers in multifamily homes with banks of meters are subjected to additional pulsed RF radiation exposure from neighbor meters banked on their living quarter walls. Some customers must endure collector meters that are transmitting multiple times more than other customers. No disclosure of the number of transmissions is given to customers that inform them of the number of transmissions being made by their smart meter on a daily basis. FP&L should

disclose the number of daily transmissions to customers before enrollment so that they can make an informed choice of which service meter is best for them.

#### **16) Duplicative Charges**

The Tariff as written will result in duplicate charges. The Tariff has not addressed what happens when an enrollee moves. The Petitioners dispute the full enrollment fee being charged multiple times to the same customer. Portions of the upfront fee represent fixed costs (development of systems) and both FPSC staff and FP&L have stated that their methodology is to collect the fee from the non-standard meter service population over 5 years. Once a customer becomes a member of that population and has paid their contribution for this system and then moves locations it does not increase the fixed portion of the fee and they shouldn't pay twice. Upon moves, if a site visit is not required at new residence, then that portion of fee should be waived, as well as meter routing costs, as they will not be incurred as the previous owner already paid.

#### **17) Inadequate Solution**

To sum up, the Tariff does not provide an adequate solution and will not resolve the consumer issues it is purporting to resolve (mainly health and privacy). The "choice" of an undefined non-communicating meter is not sufficient and may defraud the public (e.g. customers thinking they are signing up to protect their privacy and pay the fees and subsequently have their analog meter replaced with a smart meter with the antenna turned off will be defrauded). The issues that were raised by consumers

need to be properly investigated in a formal proceeding before adequate resolutions can be formulated.

### **VIII. Relief Sought By Petitioners**

1. The Petitioners wish to avoid on-going disputes with FP&L over these meters and wish to see this matter resolved without resorting to a long, protracted legal battle that does not serve the interest of any of the parties involved. However, unless consumer issues are properly addressed, this conflict will persist.

2. The Petitioners respectfully request the FPSC reverse its decision made in Order No. PSC-14-0036-TRF-EI and issue an Order that requires FP&L to halt the enrollment process into its proposed Non-Standard Meter Program and instructs them to stop installing smart meters unless specifically requested by the customer, including charging fees, until these disputed facts outlined in this petition are resolved. If the program is allowed to continue as stated in the Order with fees being charged “subject to refund” proper restitution may not be possible. A refund of fees can not restore impaired health.

3. The Petitioners respectfully request a formal evidentiary hearing be held (throughout the state to allow for consumer participation), handled under a new Docket, so that these disputed facts and other smart meter consumer issues can be appropriately addressed. We also respectfully request that the FPSC include the

Florida Department of Health and Attorney General's Office to take the lead on consumer issues of health and privacy respectively.

4. The Petitioners request that an independent RF emissions study on smart meters be conducted which considers not only the impacts of the current Neighborhood Area Network being established but also the future Home Area Network that is envisioned for the future. It should also include testing and evaluation of transient voltage (dirty electricity) that is occurring with this new smart meter,

Dated February 4, 2014, at Venice, FL

/s/ Marilynne Martin

Marilynne Martin  
Petitioner & Qualified Representative  
420 Cerromar Ct. Unit 162  
Venice, FL 34293  
941-244-0783  
[mmartin59@comcast.net](mailto:mmartin59@comcast.net)

**Petitioners**

- 1. Shari R. Anker**  
**Patricia Denunzio**  
2402 SE Burton St.  
Port St. Lucie, FL 34952
- 2. Alexandra Ansell**  
728 John Adams Lane  
W. Melbourne, Fl. 32904
- 3. Stephanie & Peter Austin**  
6250 Arrowhead Lane  
Vero Beach, FL 32967
- 4. Martha Babson**  
519 Vernon Ave.  
Crescent City, FL 32112
- 5. William G. and Margo A. Bigelow**  
22540 Bolanos Ct.  
Port Charlotte, FL 33952
- 6. Kathleen Bolam**  
131 Flamingo Rd.  
Venice, Fl. 34293
- 7. Jeri E. Friedman**  
1752 SE Ridgewood Street  
Port Saint Lucie, FL 34952
- 8. George Fuller**  
3860 Afton Circle  
Sarasota, FL 34233
- 9. Cathy & Mario Grippi**  
386 Hanchey Drive  
Nokomis, FL 34275
- 10. Shirley Denton Jackson**  
**(AKA Shirley Denton Laurie)**  
12875 Barrow Road  
North Palm Beach, FL 33408
- Multi-unit Residential Property:  
115 Linda Lane  
Palm Beach Shores, FL 33404
- 11. Jamie & Douglas Lehman**  
515 33<sup>rd</sup> Street  
West Palm Beach, FL 33407
- 12. Marilynne Martin\***  
420 Cerromar Ct. # 162  
Venice, FL 34293
- 13. Victor J. Rohe**  
4152 Woodview Dr.  
Sarasota, FL 34232
- 14. Sandra L. Smart**  
2875 Thomas Lane  
North Port, FL 34286
- 15. David E. Watkins**  
2509 Silver Palm Drive  
Edgewater, FL 32141

**\* Acting as Qualified Representative**

**Email Trail Between Ms. Rubin & PSC Re: Binders**

From: Deborah Rubin <mamarubin@msn.com>  
Date: Tuesday, April 30, 2013 4:43 PM  
To: Marilynne Martin <mmartin59@comcast.net>  
Subject: FW: URGENT: Evidence that I repeatedly requested PSC send studies to Health Dept for review and report

The response from PSC, although it appears Futrell wants to recall it, maybe he hit send before it was done. Letting the utilities decide what to do really isn't a protective option. It will not protect us from our neighbors' meters or the infrastructure, and it may involve a fee at the utilities' discretion.

PSC still did not do their job by liaising with other agencies. DEP should be involved as well.

Does anyone have any ideas on how to reply or how we should respond, follow through? I think at the least we should have a designated call in day to PSC, governor, reps and senators, etc. Attorney General and Health Dept, DEP. This will only work if there are enough of us. Ideally we should sue.

Please let me know what you think. Apparently this letter is not his final, formal reply, but lends good insight into what is coming, as if we did not know.

Debbie Rubin

Recall: URGENT: Evidence that I repeatedly requested PSC send studies to Health Dept for review and report

Mark Futrell (MFutrell@PSC.STATE.FL.US)Add to contacts10:51 AM  
To: DEBORAH RUBIN  
Cc: Walter Clemence, Michael Lawson, Jennifer Crawford, kelly.jr@leg.state.fl.us, Steven Stolting

Mark Futrell would like to recall the message, "URGENT: Evidence that I repeatedly requested PSC send studies to Health Dept for review and report".

Subject: RE: URGENT: Evidence that I repeatedly requested PSC send studies to Health Dept for review and report  
Date: Tue, 30 Apr 2013 11:50:33 -0400  
From: MFutrell@PSC.STATE.FL.US  
To: mamarubin@msn.com  
CC: WCLEMENC@PSC.STATE.FL.US; MLawson@PSC.STATE.FL.US; jcrowfor@psc.state.fl.us; kelly.jr@leg.state.fl.us; SStolting@PSC.STATE.FL.US

Ms. Rubin,

The Florida Public Service Commission has concluded its information gathering process regarding smart meters. According to press reports, Florida Power and Light Company appears to be considering a smart meter opt-out program. The City of Lakeland and Sumter Electric Cooperative have established opt-out

programs which allow customers to choose between a smart meter or a meter which must be read by a meter reader.

The Florida Legislature has not directed a multi-agency review of smart meters.

The Federal Communications Commission has established a process to gather information on radio frequency emission levels for transmitting devices. The FCC has also raised the issue of non-thermal effects. Access to information on the FCC's is available here:

It does not appear that the Florida Department of Health has jurisdiction over the health effects of radio frequency.

As I communicated to you below, if you would like the FPSC staff to provide your binders of information on smart meters to the Florida Department of Health, please provide the following information:

Contact person  
Address  
Telephone number  
E mail address

Thank you,  
Mark Futrell  
Director, Office of Industry Development and Market Analysis  
Florida Public Service Commission  
850 413-6692  
mfutrell@psc.state.fl.us

From: DEBORAH RUBIN [mailto:mamarubin@msn.com]  
Sent: Friday, April 26, 2013 1:07 PM  
To: Mark Futrell; Walter Clemence; Michael Lawson; Jennifer Crawford; kelly.jr@leg.state.fl.us; Steven Stolting; attorney\_general@myfloridalegal.com; rick.scott@eog.myflorida.com; mark.danish@myfloridahouse.gov; galvano.bill.web@flsenate.gov; BRILL.VICTORIA@flsenate.gov; surgeon\_general@doh.state.fl.us; radiationcontrol@doh.state.fl.us; officeofcitizensservices@dep.state.fl.us; public.services@dep.state.fl.us; larry.lee@myfloridahouse.gov  
Subject: RE: URGENT: Evidence that I repeatedly requested PSC send studies to Health Dept for review and report

Dear Mr. Clemence and Mr. Futrell and Attorney General Bondi,

My daughter answered the phone this morning and said there was a recorded phone message about the four 4 inch binders of health studies I submitted at the Smart Meter Workshop September 20, 2012. My daughter did not fully understand that message. If the call was not from your office, please let me know. My daughter said the recorded voice said to call 850-913-6692, which I notice is very similar to Mr. Futrell's number. Perhaps my daughter wrote down a wrong digit.

I ask you to please reply to my requests below in writing on the public record.

Once again, I am asking Attorney General Bondi to intervene on the People's behalf regarding the smart meter deployment across the state of Florida. Approximately 20,000 people are on the opt-out list. Many more still have not been informed that a microwave-emitting device has been placed on their homes and that thousands of peer-reviewed studies, including those from our own government, demonstrate that microwave radiation is a health hazard.

Thank you very much,

Deborah M. Rubin

From: mamarubin@msn.com

To: mfutrell@psc.state.fl.us; wclemenc@psc.state.fl.us; mlawson@psc.state.fl.us; jcrawfor@psc.state.fl.us; kelly.jr@leg.state.fl.us; sstoltin@psc.state.fl.us; attorney\_general@myfloridalegal.com; rick.scott@eog.myflorida.com; mark.danish@myfloridahouse.gov; galvano.bill.web@flsenate.gov; brill.victoria@flsenate.gov; surgeon\_general@doh.state.fl.us; radiationcontrol@doh.state.fl.us; officeofcitizensservices@dep.state.fl.us; public.services@dep.state.fl.us

Subject: RE: URGENT: Evidence that I repeatedly requested PSC send studies to Health Dept for review and report

Date: Thu, 18 Apr 2013 11:08:26 -0500

Dear Mr. Futrell,

It has been 2 weeks since I emailed you in response to your phone call about the binders I submitted at the Workshop and the scientific information that was not included in the Smart Meter Workshop Briefing to the Commissioners. When will you reply to my email below?

To be more precise, I would like to amend my email below to read as it does now, the change is highlighted.

Sincerely,

Deborah M. Rubin

From: mamarubin@msn.com

To: mfutrell@psc.state.fl.us; wclemenc@psc.state.fl.us; mlawson@psc.state.fl.us; jcrawfor@psc.state.fl.us; kelly.jr@leg.state.fl.us; sstoltin@psc.state.fl.us; attorney\_general@myfloridalegal.com; rick.scott@eog.myflorida.com; mark.danish@myfloridahouse.gov; galvano.bill.web@flsenate.gov; brill.victoria@flsenate.gov; surgeon\_general@doh.state.fl.us; radiationcontrol@doh.state.fl.us; officeofcitizensservices@dep.state.fl.us; public.services@dep.state.fl.us

Subject: RE: URGENT: Evidence that I repeatedly requested PSC send studies to Health Dept for review and report

Date: Fri, 5 Apr 2013 11:01:11 -0500

Dear Mr. Futrell,

I hand-delivered 4 binders of studies to you on September 20, 2012 with the request that they be put on the public record and sent to the Health Department for evaluation and recommendation; I followed up with you on that request; I believed you had honored my request in good faith; Mr. Clemence delivered his recommendation on February 19, 2013; and you still have my studies.

How can this oversight be amended fairly?

I do still want my studies sent to the Health Department for study, evaluation, and recommendation back to PSC, but the whole point of my giving them to you and asking for your agency to consult with the Health Department about them in the first place was so that the studies would be considered before Mr. Clemence gave his recommendation on smart meters to the Commissioners. I asked you to do this so that the studies and their evaluation by the Health Department would be considered in Mr. Clemence's recommendation.

Because there was no evaluation of the studies, in Mr. Clemence's report regarding Health, it says, "At very low levels, RF can pass directly through the body and has no effect on a person." This is not true and was not substantiated with any evidence. Mr. Clemence's recommendation never addressed or refuted any of the studies or expert opinions I provided, studies clearly showing that RF does not pass directly through the body without effect. Instead, the report states, "Commission staff does not have the expertise to evaluate and validate these or any health studies, [this is why I asked you to consult with the Health Department] staff would note that expert regulatory bodies have established standards to ensure that the transmissions from smart meters are safe." Which regulatory agency would that be? I have seen no assurance of safety from any regulatory body whatsoever!

The FCC website states: "In general, while the possibility of "non-thermal" biological effects may exist, whether or not such effects might indicate a human health hazard is not presently known. Further research is needed to determine the generality of such effects and their possible relevance, if any, to human health."

The FCC does not ensure health or safety. It is not a health agency. FCC says, "The FDA is, however, the lead federal health agency in monitoring the latest research developments and advising other agencies with respect to the safety of RF-emitting products used by the public, such as cellular and PCS phones."

FDA says: "Under the law, FDA does not review the safety of radiation-emitting consumer products such as cell phones and similar wireless devices before they can be sold, as it does with new drugs or medical devices." and "[T]here is consensus that additional research is warranted to address gaps in knowledge, such as the effects of cell phone use over the long-term and on pediatric populations." Safety is not ensured by FDA.  
<http://www.fda.gov/Radiation-EmittingProducts/RadiationEmittingProductsandProcedures/HomeBusinessandEntertainment/CellPhones/default.htm>

Furthermore, the FCC website states that there are biological effects of low level RF/microwave radiation exposure.

[http://transition.fcc.gov/Bureaus/Engineering\\_Technology/Documents/bulletins/oet56/oet56e4.pdf](http://transition.fcc.gov/Bureaus/Engineering_Technology/Documents/bulletins/oet56/oet56e4.pdf)

"More recently, other scientific laboratories in North America, Europe and elsewhere have reported certain biological effects after exposure of animals ("in vivo") and animal tissue ("in vitro") to relatively low levels of RF radiation. These reported effects have included certain changes in the immune system, neurological effects, behavioral effects, evidence for a link between microwave exposure and the action of certain drugs and compounds, a "calcium efflux" effect in brain tissue (exposed under very specific conditions), and effects on DNA. Some studies have also examined the possibility of a link between RF and microwave exposure and cancer."

The President's Cancer Panel 2009 Report states:

<http://deainfo.nci.nih.gov/advisory/pcp/pcp0109/summary.pdf>

"Many cellular effects of EMFs have been demonstrated, including gene induction, indirect DNA damage through formation of reactive oxygen species, disruption of calcium regulation, and induction of heat shock proteins. Thus, although the exact mechanism of EMF-induced cancer is unknown, there are several potential mechanisms.

"Reduction of exposure to other sources of RF can be accomplished ... There should be resistance to the general trend toward making everything wireless without consideration of negative consequences.

"[G]iven the growing evidence of adverse human health effects from RF exposure, this issue cannot be ignored."

Not to forget that the International Agency for Research on Cancer (IARC) of the World Health Organization classified radiofrequency electromagnetic fields a Class 2B carcinogen on May 31, 2011--never mentioned in Mr. Clemence's recommendation, but found in my studies and stated repeatedly at the Smart Meter Workshop on September 20th, 2012 and in numerous emails you have received.

IARC Press Release [http://www.iarc.fr/en/media-centre/pr/2011/pdfs/pr208\\_E.pdf](http://www.iarc.fr/en/media-centre/pr/2011/pdfs/pr208_E.pdf)

Many other opinions and studies that were not noted in the Smart Meter Briefing on February 19, 2013 are listed in the binders I submitted as well.

\*\*\*\*So, my question to you is this: Will the Florida PSC work with the Health Department to evaluate these studies as is mandated in FL Statute 366.015? Interagency liaison.—The commission is directed to provide for, and assume primary responsibility for, establishing and maintaining continuous liaison with all other appropriate state and federal agencies whose policy decisions and rulemaking authority affect those utilities over which the commission has primary regulatory jurisdiction...

and FL Statute 501.122? the Department of Health shall adopt rules as necessary to protect the health and safety of persons exposed to laser devices and other nonionizing radiation, including the user or any others who might come in contact with such radiation. The Department of Health may:

(a) Develop a program for registration of laser devices and uses and of identifying and controlling sources and uses of other nonionizing radiations.

(b) Maintain liaison with, and receive information from, industry, industry associations, and other organizations or individuals relating to present or future radiation-producing products or devices.

(c) Study and evaluate the degree of hazard associated with the use of laser devices or other sources of radiation.

(d) Establish and prescribe performance standards for lasers and other radiation control, including requirements for radiation surveys and measurements and the methods and instruments used to perform surveys; the qualifications, duties, and training of users; the posting of warning signs and labels for facilities and devices; recordkeeping; and reports to the department, if it determines that such standards are necessary for the protection of the public health.

++++What actions will the PSC take to correct the omitted scientific evidence in the Staff's smart meter recommendations to the Commissioners?

I will await your reply,

Deborah M. Rubin  
CHASM

Subject: RE: URGENT: Evidence that I repeatedly requested PSC send studies to Health Dept for review and report

Date: Fri, 5 Apr 2013 09:23:43 -0400

From: MFutrell@PSC.STATE.FL.US

To: mamarubin@msn.com

CC: WCLEMENC@PSC.STATE.FL.US; MLawson@PSC.STATE.FL.US; jcrowfor@psc.state.fl.us;

kelly.jr@leg.state.fl.us; SStoltin@PSC.STATE.FL.US

Ms. Rubin,

The FPSC staff would be pleased to deliver your binders of information on smart meters to the Department of Health. However, we need specific direction from you as to the appropriate person at the Department of Health to send the binders.

Please provide the following information:

Department of Health contact person

Address

Telephone number

Email address

It would also be helpful if you would confirm with me that you have spoken with the appropriate Department of Health staff member and that person is aware that we will be delivering the binders to them.

Here is the link to the Department of Health's website: <http://www.doh.state.fl.us/>

If you have further questions, please let me know.

Mark Futrell

Director, Office of Industry Development and Market Analysis

Florida Public Service Commission

850 413-6692

mfutrell@psc.state.fl.us

From: DEBORAH RUBIN [mailto:mamarubin@msn.com]

Sent: Wednesday, April 03, 2013 7:48 PM

To: Walter Clemence; Mark Futrell; attorney\_general@myfloridalegal.com; surgeon\_general@doh.state.fl.us;

public.services@dep.state.fl.us; Michael Lawson; Jennifer Crawford; kelly.jr@leg.state.fl.us; Steven Stolting

Subject: RE: URGENT: Evidence that I repeatedly requested PSC send studies to Health Dept for review and report

Mr Clemence, Mr. Futrell, Attorney General Bondi, and Surgeon General Armstrong,

The evidence trail is in red. I repeatedly asked the PSC to send the 4 binders of peer-reviewed scientific studies and expert opinions along with the bound annotated bibliography to the Health Dept for review, report, and consultation. My first request is documented in my comments found in the transcript of the

Sept. 20, 2012 undocketed Workshop, transcript is available at PSC website . Starting with the 10-24-12 email below and working up, you can see that Mr. Futrell said he would send honor my request at my direction.

Have the 5 binders I submitted to you at the September 20th PSC Smart Meter Workshop been delivered to the Department of Health? Whom may I contact there about receipt?

Thank you,

Deborah M. Rubin

CHASM

From: mamarubin@msn.com

To: mamarubin@msn.com; bob.buckhorn@tampagov.net; yvonne.capin@tampagov.net; frank.reddick@tampagov.net; harry.cohen@tampagov.net; mary.mulhern@tampagov.net; charlie.miranda@tampagov.net; lisa.montelione@tampagov.net; mike.suarez@tampagov.net; murmans@hillsboroughcounty.org; cristv@hillsboroughcounty.org; hagen@hillsboroughcounty.org; sharpe@hillsboroughcounty.org; crist@hillsboroughcounty.org; millerl@hillsboroughcounty.org; attorney\_general@myfloridalegal.com; kelly.jr@leg.state.fl.us; surgeon\_general@doh.state.fl.us; childrensmedicalservices@doh.state.fl.us; radiationcontrol@doh.state.fl.us; officeofcitizensservices@dep.state.fl.us; public.services@dep.state.fl.us; rick.scott@eog.myflorida.com; chairman.brise@psc.state.fl.us; eduardo.balbis@psc.state.fl.us; commissioner.brown@psc.state.fl.us; lisa.edgar@psc.state.fl.us; ronald.brise@psc.state.fl.us; marshall.willis@psc.state.fl.us; mark.danish@myfloridahouse.gov; mlawson@psc.state.fl.us; jcrawfor@psc.state.fl.us  
Subject: URGENT: Evidence that I repeatedly requested PSC send studies to Health Dept for review and report  
Date: Mon, 18 Feb 2013 22:44:09 -0600

Mr Clemence, Mr. Futrell, Attorney General Bondi, Surgeon General Armstrong, and PSC Commissioners, Please add this email protest to the official public record of the PSC, DOH, FDEP and Tampa City Council. The evidence trail is in red. I repeatedly asked the PSC to send the 4 binders of peer-reviewed scientific studies and expert opinions along with the bound annotated bibliography to the Health Dept for review, report, and consultation. My first request is documented in my comments found in the transcript of the Sept. 20, 2012 undocketed Workshop, transcript is available at PSC website . Starting with the 10-24-12 email below and working up, you can see that Mr. Futrell said he would send honor my request at my direction. On Nov 9, I urged him to send the studies to Health Department. And it appears that still, nothing was done.

For your convenience, I have highlighted my repeated requests in red.

Your report and recommendation to staff is incomplete. After 5 months, you have not honored any of the public's requests or accurately relayed all of the information presented to you. These actions do not serve the public interest or relay the whole truth.

I urge the PSC Commissioners to hold legally binding public hearings regarding smart meters and the smart grid and their implications for Health, Safety, Privacy, Reliability, Energy Conservation, and Environmental Damage.

Sincerely,

Deborah M. Rubin

---

From: DEBORAH RUBIN [mailto:mamarubin@msn.com]

Sent: Thursday, February 14, 2013 12:05 PM

To: DEBORAH RUBIN; bob.buckhorn@tampagov.net; yvonne.capin@tampagov.net; frank.reddick@tampagov.net; harry.cohen@tampagov.net; mary.mulhern@tampagov.net; charlie.miranda@tampagov.net; lisa.montelione@tampagov.net; mike.suarez@tampagov.net; murmans@hillsboroughcounty.org; cristv@hillsboroughcounty.org; hagen@hillsboroughcounty.org; sharpe@hillsboroughcounty.org; crist@hillsboroughcounty.org; millerl@hillsboroughcounty.org; attorney\_general@myfloridalegal.com; kelly.jr@leg.state.fl.us; surgeon\_general@doh.state.fl.us; childrensmedicals@doh.state.fl.us; radiationcontrol@doh.state.fl.us; officeofcitizensservices@dep.state.fl.us; public.services@dep.state.fl.us; rick.scott@eog.myflorida.com; Office of Commissioner Brisé; Eduardo Balbis; Office of Commissioner Brown; Lisa Edgar; Ronald Brisé; Marshall Willis; mark.danish@myfloridahouse.gov; marco.rubio; bill.nelson@senate.gov  
Subject: Smart Meter Letter from Dr. De-Kun Li, MD, PhD, MPH, Kaiser Permanente  
Submitted by Deborah M. Rubin for the Public Record regarding Smart Meters and Smart Meter Workshop--undocketed. Please publish on the official FPSC, DOH, FDEP, and Tampa City Council Public Records.

Please find the letter above which was sent to the California CPUC and publish on the Public Record along with this email.

Have the studies I submitted at the Smart Meter Workshop been entered onto the public record and sent to the Health Department? If so, whom may I contact there? If not, why?

CHASM again herewith petitions for an immediate moratorium on the wireless components of the SmartGrid in Florida, a comprehensive legal investigation and public hearings. We petition the Florida Attorney General, Pam Bondi, to intervene on the People's behalf.

Sincerely,

Deborah M. Rubin  
Microwave CHASM

---

Subject: RE: Smart Meter Letter from Dr. De-Kun Li, MD, PhD, MPH, Kaiser Permanente  
Date: Fri, 15 Feb 2013 15:47:32 -0500  
From: WCLEMENC@PSC.STATE.FL.US  
To: mamarubin@msn.com  
CC: EPlendl@PSC.STATE.FL.US; CCANNON@PSC.STATE.FL.US; MFutrell@PSC.STATE.FL.US; bstallcu@psc.state.fl.us  
Ms. Rubin,

Thank you for contacting the Florida Public Service Commission (FPSC) with your concerns regarding smart meters. The FPSC appreciates the opportunity to assist you.

Staff has drafted an Internal Affairs briefing item on smart meters that will be presented to the Commissioners on February 19, 2013. The agenda for the Internal Affairs meeting has been posted on the FPSC smart meter webpage.

[http://www.floridapsc.com/utilities/electricgas/smartmeter/09\\_20\\_2012/index.aspx](http://www.floridapsc.com/utilities/electricgas/smartmeter/09_20_2012/index.aspx)

The studies you presented the FPSC are all public record. With respect to forwarding information to the Health Department, in an email sent to you on 10/24/12 (attached), staff acknowledged the receipt of the

binders you presented to the FPSC and presented various methods you may use to present your information to the Department of Health.

Sincerely,

Walter Clemence

From: mamarubin@msn.com

To: mfutrell@psc.state.fl.us; attorney\_general@myfloridalegal.com;surgeon\_general@doh.state.fl.us

CC: wclemenc@psc.state.fl.us; mlawson@psc.state.fl.us; jcrawfor@psc.state.fl.us

Subject: Deborah Rubin's Request for Recognition and Hearings Regarding Smart Meters and the Smart Grid

Date: Fri, 9 Nov 2012 15:32:51 -0600

Dear Attorney General Bondi, Mr. Futrell, Mr. Clemence, Mr. Lawson, Ms. Crawford, Surgeon General Armstrong,

I had asked that the contents of my submitted binders be put on the public record for all Floridians to see. This is the People's insurance that the State may not argue it was never made aware of the Health Hazards associated with low-level, long-term radio/microwave exposure. We must have that insurance. I have looked, but do not see the studies I submitted on the public record. Would they be listed somewhere other than here: [http://www.psc.state.fl.us/utilities/electricgas/smartmeter/09\\_20\\_2012/index.aspx](http://www.psc.state.fl.us/utilities/electricgas/smartmeter/09_20_2012/index.aspx)

Between September 20, 2012 and October 12, 2012 (the closing date for comments), my records show that I submitted 8 comments for the public record, including the RF measurements in Holiday, Florida. Only one of these emails from October 3, 2012 is listed at the above site. I also submitted comments from October 13-18 that I asked be put on the public record as well. I count 6 comments; and I still ask that they be placed on the public record as post workshop comments. If you will not place these late comments in reference to the Undocketed Workshop item, I ask they still be placed on the FPSC's official public record.

I can resend any of these documents to you with an original electronic time-stamp.

Further, I do not see the comments I submitted to PSC as requested by PSC before the Workshop. Are these comments on the public record? I specifically requested my comments be added to the public record and have my own records should these numerous comments have been misplaced.

Finally, at the Workshop, I had asked that after the studies, reviews, and expert opinions I submitted were actually transcribed to the public record, that the PSC would then coordinate with the Health Department, as I interpret to be indicated by Florida Statute 501.122, so that the Health Department may "Study and evaluate the degree of hazard associated with the use of laser devices or other sources of radiation" and "Establish and prescribe performance standards for lasers and other radiation control, including requirements for radiation surveys and measurements and the methods and instruments used to perform surveys; the qualifications, duties, and training of users; the posting of warning signs and labels for facilities and devices; recordkeeping; and reports to the department, if it determines that such standards are necessary for the protection of the public health."

Accordingly, I had asked that the Health Department review and evaluate the studies, then recommend a course of action to PSC regarding smart meter and grid radiation exposure to the public. Due to the urgency of this matter as evidenced by the fact that the utilities have largely finished their deployments of smart meters and my inference from your email below that you have thus far taken no action regarding the scientific

literature demonstrating a very real public health threat, I suggest you make a copy of my binders to share with the Health Department as soon as possible.

In fairness, I ask that the FPSC recognize that the main Stakeholders in the SmartGrid deployment are the People of Florida, not Silver Spring Network, as you denote on the above webpage. Who has a greater stake than We? Our very lives are on the line along with our liberties.

In good faith, I propose that the FPSC and Attorney General Bondi immediately set a legally reasonable deadline for a decision as to whether or not you will hear and acknowledge the People's request for a full, legal investigation and Public Hearings regarding Smart Meters, the Smart Grid and the People of Florida. Please publish a date for your decision and publish that decision upon its rendering.

Sincerely,

Deborah M. Rubin

---

Subject: RE: Please confirm receipt of comment  
Date: Wed, 24 Oct 2012 18:34:07 -0400  
From: MFutrell@PSC.STATE.FL.US  
To: mamarubin@msn.com  
CC: WCLEMENC@PSC.STATE.FL.US; MLawson@PSC.STATE.FL.US; jcrowfor@psc.state.fl.us  
Ms. Rubin,

I apologize for not getting back to you sooner.

The FPSC staff is in receipt of the binders of information you provided during the workshop on September 20, 2012.

If you wish for a "health officer" to review the documents, there are several options available to you.

1. You may provide a copy of the materials to one or more of the following:

A. The Florida Department of Health has jurisdiction over various health-related issues. Here is the contact information for the department:

<http://www.doh.state.fl.us/>

Florida Department of Health  
4052 Bald Cypress Way, Bin # A00  
Tallahassee, FL 32399 -1701

B. The Florida Department of Environmental Protection has jurisdiction over electro-magnetic fields associated with electric transmission lines. Here is the contact information for the department:

<http://www.dep.state.fl.us/siting/emf.htm>

Department of Environmental Protection

Office of the Ombudsman & Public Services  
3900 Commonwealth Blvd., MS 49  
Tallahassee, FL 32399

C. Each county government operates a health department staffed by local health officials. Here is the link to a list of those offices:

<http://www.doh.state.fl.us/chdsitelist.htm>

2. If you would like for us to send the notebooks you provided at the workshop to a specific person or agency, we will do that at your written direction.

Finally, the staff is discussing the information on smart meters we have gathered from: (1) consumers; (2) participants at the workshop; and (3) staff's research. A timeline has not been established for action, if any, by the Commission.

Sincerely,  
Mark Futrell  
mfutrell@psc.state.fl.us

From: DEBORAH RUBIN [mailto:mamarubin@msn.com]  
Sent: Wednesday, October 24, 2012 1:05 PM  
To: Walter Clemence; Mark Futrell; attorney\_general@myfloridalegal.com; surgeon\_general@doh.state.fl.us  
Subject: Please confirm receipt of comment  
Mr. Clemence,

Please return this email, confirming your receipt of it. I have emailed and called Mr. Futrell several times since October 12 and have not yet heard from him.

Have the five binders of scientific evidence I gave to Mr. Futrell at the Workshop been assigned to a Health Officer for review and report?

When will the Florida PSC publicly announce whether or not SmartGrid/SmartMeter hearings will be held?

Thank you,

Deborah M. Rubin