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

April 11, 2014

Re: Docket No. 130223-EI, Motion for Reconsideration of Order No. PSC-14-0146-
FOF-EI, Request for Clarification and Request for Oral Arguments

Dear Ms. Stauffer,

Attached is the MARTIN, Et Al. Motion for Reconsideration, Request for Clarification
and Requests for Oral Arguments.

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

Sincerely,

/s/ Marilynne Martin

Attachments

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION (FPSC)

In Re: Petition for approval of optional |
Non-standard meter rider, by Florida |
Power & Light Company |

DOCKET NO.130223-EI

FILED: April 11, 2014

PETITIONER'S MARTIN, Et. Al.'s
MOTION FOR RECONSIDERATION OF ORDER NO. PSC-14-0146-FOF-EI,
REQUEST FOR CLARIFICATION ON THE ORDER, AND REQUEST FOR ORAL
ARGUMENTS

Petitioners MARTIN Et. Al. ("Petitioners") by and through undersigned Qualified Representative, pursuant to Rule 25-22.036 of the Florida Administrative Code hereby moves for reconsideration of the denial to hear issues other than costs or cost allocation set forth in Order No. PSC-14-0146-FOF-EI ("Order"), requests clarification of whether the dispute over the use of the "cost causer" principle is included in the scope and respectfully requests the Commission to hear oral arguments. The Petitioners state as follows:

In its decision to dismiss all disputed issues other than costs or cost allocations, the Commission failed to consider or overlooked facts presented regarding 1) additional componentry in the smart meter and how it conflicts with evidence provided on existing rules and previously issued commission orders, as well as, evidence supporting the lack of appropriate notice provided to those with substantial interests, 2) that tariff filings consider both cost issues **and** terms and conditions to be applied

to such tariffed services, and 3) the Commission's jurisdiction over health, safety and privacy.

I. Standard for Reconsideration

1. The standard for review for a motion for reconsideration is whether the motion identifies a point of fact or law that the Commission overlooked or failed to consider in rendering its order. See *Diamond Cab Co. of Miami v King* 146 So. 2d 889, 891 (Fla. 1962) (purpose of petition for reconsideration is to bring to an agency's attention to a point of law or fact which it overlooked or failed to consider when it rendered its order); *Steward Bonded Warehouse, Inc. v Bevis*, 294 So. 2d 315, 317 (Fla. 1974) (granting petition for reconsideration should be based upon specific factual matters set forth in the record and susceptible to review). *In re: Petition for rate increase by Tampa Electric Company, Docket No. 080317, Order No. PSC-09-0571-FOF-E1, August 21, 2009, at 8.*

2. As will be shown below, Petitioners respectfully submits that the Commission overlooked or failed to consider important facts that led it to conclude incorrectly that a) A plain language read of the existing rules qualifies FP&L's smart meter as standard meter service and the Petitioners had no right of refusal, b) that tariff filings only consider cost issues, and c) that the Commission has no statutory authority for health, safety and privacy beyond ensuring the utility deploys a "commercially acceptable measuring device".

II. The Commission did not consider the additional components contained within the smart meter and their functionality, as well as, the definitive evidence of the purpose of the meter enclosure as reflected in Order No. 18893, and overlooked the lack of proper legal notice required for Order No. 10-0153-FOF-EI¹ to sanction the smart meter as standard service.

3. Petitioners most **significant** dispute of material fact is the assertion that the equipment (smart meter) being designated as standard service contains 1) additional components that perform functions other than measuring data, 2) such additional components materially altered the stated historical functions of the type of equipment a meter enclosure should house as stated in Order No. 18893² and 3) proper legal notice of such a fundamental material change was not afforded to the Petitioners until this current tariff filing. The Petitioners noted that this tariff filing did three things – 1) established the smart meter as a standard service (gave notice to FP&L’s customers), 2) determined charges for refusal of such standard meter and 3) set the terms and conditions for the new tariff service.

4. The Order, on page 10, states that a “plain language reading” finds the smart meter meets Rule 25-6.003 but overlooks and does not address the fact of the additional components included within the equipment which does not meet the

¹ Docket No. 080677-EI, Petition for increase in rates by Florida Power and Light Company, Issued March 17, 2010.

² Docket No. 870225-EI, Issued February 22, 1988, In re: Petition of Florida power & Light Company for authority to require customers to obtain their own self-enclosed meter enclosures.

definition of measuring energy (communication equipment and service switches). Nor did the Order address inconsistencies with previously issued Order No. 18893 ruling, which found that meter enclosures were not part of the utility function, but “**simply house a meter itself**”. Order No. 18893 does not say simply house **any utility equipment**, it says a “**meter itself**”, which is currently defined per Commission rules as a measuring device. The Commission does not have authority to change a rule or previously issued order without a proper rulemaking procedure as this violates the due process rights of the Petitioners. This Order, by applying this “plain language reading” significantly expands the definition of a meter and thus disadvantages the Petitioners ownership rights granted under Order No. 18893.

5. A “plain language reading” is not appropriate. If the meter manufacturers want to offer cameras next year to monitor vegetation around the meter would that also be okay? Will consumers be subject to accepting any component that fits within the meter cover? The Petitioners did not dispute that the smart meter had a measuring component. The Petitioners did present evidence that smart meters clearly establishes a communication network on customers homes making it part of the distribution facilities³ (utility function) as oppose to a stand-alone measuring device used for billing, and as such, fundamentally changed the function of the meter and the historical use of the customer owned meter enclosure. The Petitioners claim that such change was inconsistent with the ruling in Order 18893 and Rule 25-6.003. The Commission did not consider that distribution facilities historically have been placed

³ Progress Energy Florida’s Post-Workshop Comments, page 1 “Smart meters are considered to be part of the distribution facilities.”

on easements adjacent to public roads, normally in front of the customer's premises⁴, not in the meter enclosures directly on customer homes. Meter enclosures have been historically reserved for measuring devices only.

6. By denying the Petitioners the right to dispute this equipment as standard service in this proceeding, the Petitioners lawful rights to due process are being denied as the Order also failed to consider the dispute over proper notice under Florida's Administrative laws. The Order states, on page 11, that "concerns regarding the deployment should have been raised in that proceeding", meaning the rate case where cost recovery was approved.⁵ However the Order overlooks the Petitioners evidence of lack of proper notice. We request the Commission to reconsider the facts provided in the petition regarding the notice given at the service hearings for Docket No. 080677 as well as also review both the Commission and FP&L comments made during the Sarasota service hearings⁶ in Docket No. 120015-EI.⁷ The Petitioners believe this does not constitute proper legal notice to establish a wireless communication network in the customers' meter enclosure and perform functions other than measure energy. If proper legal notice was not given to the Petitioners, then the Petitioners had no knowledge to raise a dispute in the Docket No. 080677 proceedings.

⁴ Rule 25-6.0341 Location of the Utility's Electric Distribution Facilities

⁵ Docket Nos. 080677-EI and 090130-EI.

⁶ Sarasota Service Hearings, May 31, 2012, Examination of Ms. Hoodwin, Transcript pages 93-95.

⁷ Docket 120015 -- Petition for increase in rates by Florida Power & Light Company.

III. Limiting of scope of tariff to only cost issues fails to consider necessary additional terms and conditions, eg. Exemptions for medical conditions.

7. The Order, by limiting the issues to just cost issues, fails to recognize the fact that a tariff filing establishes both rates **AND** terms and conditions. For instance, the Exhibit A of FP&L's petition – Non-Standard Meter Rider – NSMR page 2 of 4 includes the following sections – Available, Application, Service, Limitation of Service, Charges, Terms of Service, Special Provisions, Rules and Regulations. The Order (agency action) approved not only the costs but also other factors (terms and conditions) such as eligibility. The Petitioners believe the Commission failed to consider that health issues should be heard as it is within the scope of the terms and conditions to consider whether any tariff before the Commission includes all the appropriate terms and conditions (e.g. should medical exemptions be included?).

8. Petitioners also believe the Commission overlooked the evidence provided through public comments received in this case, as well as some of the Martin Petitioners claims, which cite doctors advice to avoid RF radiation. The Petitioners believe adequate evidence exists in this case, which was overlooked by the Commission, to require a determination as to whether medical exemptions due to existing medical conditions or medical implants, should be required. Considering special provisions for medical reasons is not outside the scope of this proceeding. The Petitioners note that such considerations have been addressed in the past with

matters such as collection tariffs where customers utilizing certain medical equipment are afforded special provisions.

9. In addition Petitioners ask the Commission to reconsider the American with Disabilities Act (“ADA”) dispute raised, which was not addressed. By the nature of utilizing a postpone list FP&L effectually granted an accommodation to those requesting the meter not be installed or be removed under the ADA laws. By the Commission approving this tariff which requires a penalty charge for refusal of the smart meter, without any consideration for medical exemptions, the approved tariff violates the ADA rights of the disabled to that accommodation, without charge and without retaliation or coercion.⁸

IV. The Commission overlooked their statutory powers provided in Section 366.05 in determining no jurisdiction over health, safety and privacy.

10. The Order states, on page 10, that none of the Commission’s authorizing statutes confers its jurisdiction over personal health, safety or privacy issues. The Order refers to information in the Internal Affairs memorandum filed on February 11, 2014. This memorandum, as well as the Order, fails to provide evidence that a Florida law exists relegating health, safety and privacy regulatory authority to federal agencies or cite where a federal law exists that precludes Florida agencies from oversight responsibilities on these issues.

⁸ 42 USC 12101, §35.130 (f) General Prohibitions against discrimination, §36.301 (c) Eligibility criteria, charges, §36.206 (a), (b) Retaliation or coercion.

11. The Commission clearly has jurisdiction for providing safe service as stated in its mission statement as well as in Section 366.04. The Order states, on page 11, that the Commission's jurisdiction regarding safety is limited but the Commission did not address the broad powers it is afforded under Section 366.05 which include "standards of quality", "service rules and regulations to be observed by each public utility" and powers to perform "examination and testing of meters". The Commission also failed to consider the facts presented as to why NARUC would be encouraging its members to adopt privacy policies if the Federal Trade Commission had sole jurisdiction over privacy. The Petitioners note that the Commission overlooked those other state commissions, such as the California Public Utility Commission, that have adopted privacy policies. The reliance on the Staff memorandum, which the Petitioners believe contain inaccuracies for which there was no due process proceedings to correct, disadvantages the Petitioners.

V. PETITIONERS REQUEST CLARIFICATION ON "COSTS OR THE COST ALLOCATION ISSUES THAT ARE WITHIN THE SCOPE"

12. The Order, on page 9, references the Petitioners' dispute of applying the principle of the "cost causer to bear the cost" to this tariff. The Order is not clear as to whether that disputed issue is included in the scope as part of issues involving "the revised tariff and its costs or cost allocation" and the Petitioners respectfully request clarification. The Petitioners dispute the arbitrary and discriminatory nature of

invoking this principle by FP&L for this tariff and believe it should remain within the scope of the proceeding.

VI. REQUEST FOR ORAL ARGUMENT

13. The Petitioners are seeking the opportunity to present evidence in the hearing requested in this petition as to why they assert they have a right of refusal of FP&L's newly designated standard meter service. Because of the importance of non-cost issues to the Petitioners affected by this case, and because oral arguments will aid the Commission by understanding how the Petitioners due process rights have been violated through lack of proper notice and improper rule making, Petitioners ask that oral arguments be permitted and request ten minutes.

WHEREFORE, for the foregoing reasons, Petitioners respectfully request the Commission to reconsider Order No. PSC 14-0146-FOF-EI, to include in the scope the issues for the hearing 1) whether the smart meter should be designated as the only standard meter or whether that designated standard service is inconsistent with existing orders and rules and the Petitioners have a right of refusal, 2) the examination of health issues to determine if medical exemptions should be provided under the tariff if the smart meter qualifies as standard service, and 3) whether privacy issues should be addressed prior to requiring a smart meter as standard service or alternatively whether privacy issues will be alleviated by the customer choosing a non-standard meter being offered if the smart meter qualifies as standard

service. We also ask that you clarify your ruling on the “cost causer” principle and we request oral arguments.

Dated April 11, 2014, at Venice, FL

Respectfully submitted,

/s/ Marilynne Martin

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**CERTIFICATE OF SERVICE
DOCKET NO. 130223-EI**

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by electronic mail on this 11th day of April 2014, to the following:

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