

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for declaratory statement regarding the inspection, repair and replacement of meter enclosures for smart meter analytical tool, by Florida Power & Light Company.

DOCKET NO. 130160-EI
ORDER NO. PSC-13-0387-DS-EI
ISSUED: August 20, 2013

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman
LISA POLAK EDGAR
ART GRAHAM
EDUARDO E. BALBIS
JULIE I. BROWN

ORDER GRANTING PETITION FOR DECLARATORY STATEMENT

BY THE COMMISSION:

BACKGROUND

On June 6, 2013, pursuant to Section 120.565, Florida Statutes (F.S.), and Rule 28-105.002, Florida Administrative Code (F.A.C.), Florida Power & Light Company (FPL) filed a Petition for Declaratory Statement (Petition) regarding the application of Order Nos. 18893,¹ PSC-95-0131-FOF-EI,² and PSC-11-0194-DS-EI³ (collectively referred to as the “Orders”) to FPL’s planned repair and/or replacement of customer-owned meter sockets and bases (“meter enclosures” or “enclosures”) in conjunction with a one-time FPL inspection project of approximately 400 deployed smart meters and enclosures “to further validate and refine a predictive tool the Company is developing to identify probable future smart meter communications failures likely to be caused by conditions within the customer-owned enclosure,” including, but “not limited to corrosion, broken meter blocks and loose connections”⁴ (the “Project”).

FPL poses two questions. First, FPL requests a declaratory statement that it is consistent with the Orders that the approximately 400 individual customers whose meter enclosures will be inspected, repaired or replaced in conjunction with the Project should not individually bear the

¹ Issued February 22, 1988, Docket No. 870225-EI, In re: Petition of Florida Power & Light Company for authority to require customers to obtain their own self-contained meter enclosures.

² Issued January 26, 1995, Docket No. 941205-EI, In re: Petition for authority to require customers to obtain, maintain, repair, and replace their own instrument transformer-rated meter enclosures, by Florida Power and Light Company.

³ Issued April 13, 2011, Docket No. 110033-EI, In re: Petition for declaratory statement regarding the repair and replacement of meter enclosures for smart meters by Florida Power & Light Company

⁴ Petition, p. 5.

cost of such inspection, repair or replacement. Second, FPL requests a declaratory statement that it is consistent with the Orders that the individual customers participating in the Project maintain ownership of the meter enclosures and will retain the sole obligation to inspect, repair or replace their meter enclosures, if necessary, once the Project has been completed.

Pursuant to Rule 28-105.0024, F.A.C., a Notice of Declaratory Statement was published in the June 10, 2013, edition of the Florida Administrative Register, informing interested persons of the Petition. On June 27, 2013, our staff requested additional information from FPL in order to clarify statements made in the Petition. FPL provided its response to Staff's First Data Request on July 10, 2013.

On June 27, 2013, the Office of Public Counsel (OPC) filed a Notice of Intervention pursuant to Section 350.0611, F.S. An Order Acknowledging Intervention was issued June 28, 2013.⁵ On July 1, 2013, OPC filed a motion pursuant to Sections 120.569 and 120.57, F.S., for an evidentiary hearing. FPL filed a response in opposition to OPC's motion for evidentiary hearing on July 8, 2013 ("Response"). The parties were allowed to participate at the August 13, 2013 Agenda Conference, at which time OPC withdrew its request for an evidentiary hearing.

We have jurisdiction pursuant to Section 120.565, and Chapter 366, F.S.

STATUTES AND RULES GOVERNING DECLARATORY STATEMENTS

Section 120.565, F.S., governs the issuance of a declaratory statement by an agency. In pertinent part it provides that:

- (1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.
- (2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule or order that the petitioner believes may apply to the set of circumstances.

Rule 28-105.001, F.A.C., Purpose and Use of Declaratory Statement, provides that:

[a] declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

⁵ Order No. PSC-13-0299-PCO-EI.

Rule 28-105.002, F.A.C., requires a petition for declaratory statement to include a description of how the orders on which a declaratory statement is sought may substantially affect the petitioner in the petitioner's particular set of circumstances. The petition must demonstrate a present, ascertained state of facts and may not be merely a hypothetical situation.⁶ The Courts and the Commission have recognized that a purpose of the declaratory statement procedure is to resolve an ambiguity in the law and to enable the petitioner to select a proper course of action in advance, thus avoiding costly administrative litigation.⁷ Pursuant to Rule 28-105.003, F.A.C., an agency may rely on the statements of fact contained in the petition for declaratory statement without taking a position on the validity of the facts.

FPL'S PETITION FOR DECLARATORY STATEMENT

In accordance with Rule 28-105.003, F.A.C., we rely on the specific statements of fact set forth in FPL's Petition and FPL's response to Staff's First Data Request without taking a position on the validity of the facts. This declaratory statement is controlling as to those alleged facts, and not as to other, different or additional facts.

FPL's Statements of Fact

The Petition and FPL's response to Staff's First Data Request set forth the following statements of fact. As part of FPL's most recent rate case, we reviewed and approved a smart meter deployment project,⁸ which involved installation of approximately 4.5 million smart meters from September 2009 to February 2013. During this process, FPL established procedures to monitor and maintain consistent communications with all activated smart meters. Through these processes, FPL saw that some smart meters stopped communicating after activation. The communications failures were intermittent, geographically diverse, and without an obvious explanatory pattern. According to FPL, on average on any given day, 0.14 percent, or approximately 6,300 smart meters, lose communications with the network at any given time for a variety of reasons including obstructions around the meter, power outages, customer tampering, network coverage issues, and communications module failure. The ability of the meter to accurately record customer energy use is not affected by these communications failures, but only the ability to remotely communicate.

FPL reports that in 2011, 9,286 non-communicating smart meters were removed from various service locations and evaluated at FPL's Meter Technology Center in Miami. FPL

⁶ Santa Rosa County, v. Dep't of Admin. Hearings, 661 So. 2d 1190, 1193 (Fla. 1995); Order No. PSC-01-1611-FOF-SU, issued August 3, 2001, Docket No. 010704-SU, In re: Petition for declaratory statement by St. Johns County (petition for declaratory statement denied as constituting a mere hypothetical situation).

⁷ See e.g., Fla. Dep't of Bus. & Prof'l Regulation, Div. of Pari-Mutual Wagering v. Investment Corp., 747 So. 2d 374, 381, 384 (Fla. 1999); Adventist Health Sys./Sunbelt, Inc. v. Agency for Health Care Admin., 955 So. 2d 1173, 1176 (Fla. 1st DCA 2007); Order No. 03-1063-DS-TP, issued September 23, 2003, Docket No. 030346-TP, In re: Petition for declaratory statement by NPCR, Inc. d/b/a Nextel Partners and Docket No. 030413-TP, In re: Petition for declaratory statement by ALLTEL Communications, Inc.; Order No. PSC-02-1459-DS-EC, issued October 23, 2002, Docket No. 020829-EC, In re: Petition for declaratory statement by Fla. Keys Elec. Coop. Ass'n.

⁸ Order No. PSC-10-0153-FOF-EI, issued March 17, 2010, Docket No. 080677-EI, In re: Petition for increase in rates by Fla. Power & Light Co., and Docket No. 090130-EI, In re: 2009 depreciation and dismantlement study by Fla. Power & Light Co.

determined that of these, 693 displayed visual evidence of some type of external heat damage to the base of the meter and/or the blades on the back of the meter. This visual evidence, coupled with the fact that this is the area of a meter most exposed to customer-owned meter enclosures when installed, led to the initial hypothesis by FPL that the damage to the meters was potentially being caused by conditions within customer-owned meter enclosures.

FPL states in its response to Staff's First Data Request that problems with meter enclosures, including thermal build up, generally stem from the poor condition of the meter enclosure components and connections, which can occur as a result of age, wear and tear, and tampering. FPL further explains that these problems can arise because of "environmental conditions such as heat and rain which may cause rapid aging . . . the condition of connections (corroded, contaminated, loose or damaged), fatigue or degradation of components, and stresses on components and connections that occur over time." The most common cause of thermal build up is degraded or poor electrical connections and components in the meter enclosure, causing electrical resistance to increase and generate heat with electrical load. FPL states that these conditions are normally addressed by maintenance, repair and/or replacement of meter enclosures by licensed electricians hired by individual customers.

Further, FPL states that meters do not cause damage to the meter enclosures in which they are installed. If poor conditions within the meter enclosure are left unaddressed, thermal build-up may occur that may, in turn, cause increasing damage to other components within the enclosure. Exposure of meters to elevated temperatures for extended periods of time may cause the smart meter communications module to stop working.

FPL's Meter Technology Center determined that of the 693 non-communicating meters showing evidence of heat damage to the base or blades, 46 percent, or about 319, exhibited a data pattern that was generally occurring in the pre-failure communications from the meter. After reaching this conclusion, FPL randomly identified 46 communicating meters that were displaying the pre-failure communications data pattern in Broward and Miami-Dade Counties. These meters and the associated enclosures were analyzed in the field by FPL. FPL determined that in 70 percent of the cases, or about 32 of the 46 cases analyzed, the damage within the meter enclosures was caused by overheating that in turn caused communications failure and the probable ultimate failure of the meter. However, the small size of the original sample of 46 meters and enclosures resulted in a 15 percent margin of error in the findings.

In light of its findings, FPL developed the Project to study a random sample of approximately 400 deployed smart meters displaying the pre-failure communications data pattern and their associated meter enclosures. FPL plans to inspect and, where necessary, repair or replace the meter enclosures on a one-time basis at no cost to the individual customers. Project field testing is expected to be complete in the first quarter of 2014. Thereafter, FPL will finalize its analyses of all of the Project data.

The purpose of FPL's Project is to "further validate and refine a predictive tool that FPL is developing to identify probable future smart meter communications failures likely to be caused by conditions within the customer-owned enclosures." FPL states that this predictive tool is for the benefit of the system as a whole and all present and future customers. Once the Project is

complete, FPL plans to continue to analyze smart meter transmissions on a regular basis and notify customers whose meter transmissions are indicative of conditions caused by meter enclosure failure, thus allowing customers to make repairs to the meter enclosure “before there is an actual failure of the meter enclosure.”

Order Nos. 18893, PSC-95-0131-FOF-EI and PSC-11-0194-DS-EI

As previously described, FPL seeks a declaratory statement about three Orders that address customer-owned meter enclosures. Order No. 18893 allowed FPL to stop providing residential and small commercial self-contained meter enclosures. In that Order, we found that:

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). By Order No. PSC-95-0131-FOF-EI, we similarly found, for instrument transformer meter enclosures commonly used in large industrial applications, that:

Instrument transformer meter enclosures should be provided by the customer for the same reasons stated in Docket No. 870225-EI for self-contained meter enclosures. Instrument transformer meter enclosures are not part of the utility function, but simply house the meter itself. As such, it is appropriate for customers to provide these enclosures and meter sockets since it is more closely related with construction of the customer’s building. We therefore find that such costs shall 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, and not by the general body of ratepayers.

(emphasis added).

The third order on which FPL seeks a declaratory statement is Order No. PSC-11-1094-DS-EI. That order was issued in Docket No. 110033-EI, which addressed FPL’s petition for declaratory statement concerning the appropriate application of Order Nos. 18893 and PSC-95-0131-FOF-EI to FPL’s ongoing installation of smart meters. Specifically, FPL sought our acknowledgement that repair or replacement of otherwise functional meter enclosures in connection with the installation of new smart meters, at no cost to the individually affected customers, was consistent with the principles established in Order Nos. 18893 and PSC-95-0131-FOF-EI.

In Docket No. 110033-EI, FPL stated that as a result of the system-wide installation of smart meters, FPL repaired or replaced the meter enclosures where there was doubt about the continued viability of the existing meter enclosure. This was done in order to avoid a situation where an individual customer could experience problems with the meter and/or meter enclosure within a relatively short time following the change-out. FPL stated that standard meter

enclosures housing the traditional electromechanical meters found throughout the FPL system were clearly not obsolete, as evidenced by the fact that in more than 99.6 percent of the cases, those meter enclosures had been perfectly safe and appropriate receptacles for the new smart meters. Additionally, FPL stated that the very small percentage of meter enclosures that had to be repaired or replaced were not being repaired or replaced due to wear, as evidenced by the fact that prior to the change-out those meter enclosures were functional and would likely have remained so for any number of years into the future, but for the act of FPL pulling out the old electromechanical meter to install the new smart meter. FPL further stated that the costs related to the necessary repair and/or replacement of meter enclosures associated with smart meter installations were part of the overall smart meter implementation plan benefitting the general body of customers.

Based on the facts presented in Docket No. 110033-EI, we concluded in Order No. PSC-11-0194-DS-EI that individual customers whose meter enclosures must be repaired or replaced in conjunction with the installation of the smart meters should not individually bear the expenses associated with that repair or replacement, and that charging the costs to the program as a whole was not inconsistent with Order Nos. 18893 and PSC-95-0131-FOF-EI.⁹

Declaratory Statement Requested

FPL's Petition for Declaratory Statement asks for the following:

In light of the foregoing, FPL seeks a declaratory statement that individual customers whose meter enclosures will be inspected, repaired or replaced for a limited period of time in conjunction with the further validation of the predictive tool, as more fully described above, should not individually bear the expenses associated with inspection or necessary repair or replacement, and that such action is consistent with Order No. 18893, Order No. PSC 95-0131-FOF-EI, and Order No. PSC-11-0194-DS-EI. FPL further requests a declaratory statement that notwithstanding FPL's inspection of a small number of meter enclosures and, where appropriate, repair and/or replacement of those customer-owned meter enclosures in connection with this project, the goal of which is to provide customers with the information necessary to potentially prevent or at least mitigate the impacts associated with a meter enclosure failure, individual customers participating in this project maintain ownership of the meter enclosures and related equipment and retain the sole obligation to inspect, repair and where necessary to replace their meter enclosures once this project has been completed, consistent with Order No. 18893, Order No. PSC 95-0131-FOF-EI, and Order No. PSC-11-0194-DS-EI.

⁹ In Docket No. 110033-EI, FPL's petition for declaratory statement alleged that the repair and replacement rate for meter enclosures of .39 percent through year end 2010 represented 5,191 meter enclosures, most of which were residential. The Petition further stated that \$1.5 million was included in FPL's most recent rate case for repair and replacement of unsafe meter conditions for the test year 2010, and that FPL expected that annual amount would be sufficient to cover all replacement/repair expenses for the duration of the project, which was scheduled to be completed in 2013.

Petition, pp. 9 – 10, para. 24. FPL has not asked for a declaratory statement concerning the Project, and therefore the Project is not being addressed in this Declaratory Statement.

FINDINGS AND CONCLUSIONS

The petitioner is required by Section 120.565(2), F.S., to “state with particularity the petitioner’s set of circumstances” and “specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.” We believes that the Petition meets the requirements of Section 120.565, F.S., and Rule 25-105.002, F.A.C., because FPL requests a declaratory statement regarding our opinion as to the applicability of Order Nos. 18893, PSC-95-0131-FOF-EI, and PSC-11-0194-DS-EI to FPL’s particular set of facts and circumstances.

FPL states that it:

seeks a declaratory statement that the individual customers who agree to allow FPL to inspect and where necessary repair and/or replace customer-owned meter enclosures in the approximately 400 cases to be studied should not be charged for those repair and/or replacement costs. Thereafter, if the meter enclosures owned by this small group of customers need to be repaired or replaced due to obsolescence or wear, the individual customers will be responsible for that work.¹⁰

FPL is specifically asking for a declaratory statement that it would be consistent with the Orders if, during the course of the Project, approximately 400 individual customers not be charged for any repair or replacement of meter enclosures which may occur. Consistent with the Orders, once the Project is complete, those individual customers would once again be responsible for maintenance and replacement of meter enclosures due to obsolescence or wear.

The Project is related to the smart meter installation program in that it involves development of a new predictive tool for analyzing smart meter transmissions for the purpose of helping customers identify and prevent problems within customers’ meter enclosures before they occur. Therefore, it would be consistent with the Orders for the approximately 400 individual customers participating in the Project not to be charged by FPL for Project expenses related to inspection, repair, or replacement of their individual meter enclosures.

Moreover, the Orders clearly state that individual utility customers own the meter enclosures associated with their electric meters. None of the Orders gives any indication that ownership of meter enclosures is transferred to FPL if a meter is replaced or repaired by FPL for any reason. For these reasons, FPL’s inspection, repair, or replacement of the approximately 400 meter enclosures as part of the Project would not result in FPL obtaining any ownership interest in those meter enclosures.

¹⁰ FPL’s Response, pg. 3.

Therefore, for the reasons set forth above, we hereby declare¹¹ that, applying Order Nos. 18893, PSC-95-0131-FOF-EI, and PSC-11-0194-DS-EI to FPL's set of circumstances, for the limited purpose of FPL developing a predictive tool for the benefit of all customers, it would be consistent with the Orders that: 1) the approximately 400 individual customers participating in the Project not be charged by FPL for Project expenses related to inspection, repair, or replacement of their individual meter enclosures; and 2) FPL's inspection, repair, or replacement of the approximately 400 meter enclosures as part of the Project would not result in FPL obtaining any ownership interest in those meter enclosures or an obligation to repair or replace any of those meter enclosures due to wear or obsolescence after the Project has been completed. This declaratory statement should not be construed as addressing or approving the Project or future use of any predictive tool developed by FPL. Moreover, this declaratory statement applies to the 400 customers participating in the project and does not address what may be the cause of any meter communication problems that may be identified by FPL or prejudice any cost recovery or cost attribution the utility might seek or propose in relation to the Project's costs.

We note that FPL states that when the Project has been completed, FPL will provide to us a written report of the results along with the plan for future use of the predictive tool model it is developing.


Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that FPL's Petition for Declaratory Statement is granted as forth in the body of this order. It is further

ORDERED that this docket shall be closed.

¹¹ The appropriate action for an agency to take on a petition for declaratory statement is to either issue a declaratory statement and answer the question or deny the petition and decline to answer the question. Section 120.565(3), F.S., and Rule 28-105.003, F.A.C.

By ORDER of the Florida Public Service Commission this 20th day of August, 2013.



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

KGWC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

Any party adversely affected by the Commission's final action in this matter may request:

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