

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION
CLERK

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DATE: March 24, 2011**TO:** Office of Commission Clerk (Cole)
FROM: Office of the General Counsel (Gervasi)
Division of Economic Regulation (Kummer)

RB/SMC
CS
CRB

RE: Docket No. 110033-EI – Petition for declaratory statement regarding the repair and replacement of meter enclosures for smart meters by Florida Power & Light Company.

AGENDA: 04/05/11 – Regular Agenda – Decision on Declaratory Statement – Participation is at the Discretion of the Commission
COMMISSIONERS ASSIGNED: All Commissioners**PREHEARING OFFICER:** Administrative
CRITICAL DATES: 04/19/11 (Final order must be issued by this date pursuant to Section 120.565(3), Florida Statutes)
SPECIAL INSTRUCTIONS: None**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\110033.RCM.DOC

Case Background

On January 19, 2011, 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 or Company) filed a Petition for Declaratory Statement (Petition) regarding the appropriate application of Order Nos. 18893¹ and PSC-95-0131-FOF-EI² to its ongoing installation of smart

¹ Issued February 22, 1988, in 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, in Docket No. 941205-EI, In Re: Petition for authority to require customers to obtain, maintain, repair their own instrument transformer-rated meter enclosures, by Florida Power and Light Company.

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meters. Those orders essentially state that the costs of meter enclosures, consisting of meter sockets and bases, should be borne by the customer when the structure is initially wired for service or when it must be repaired or replaced due to obsolescence or wear.

FPL states that the affected meter enclosures at issue here are not being repaired or replaced due to obsolescence or wear, but as a result of FPL's implementation of its system-wide smart meter program. FPL therefore seeks a declaratory statement 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 is not inconsistent with Order Nos. 18893 and PSC-95-0131-FOF-EI.

Notice of the Petition was published in the February 4, 2011, edition of the Florida Administrative Weekly. No comments to the Petition were received. The Commission has jurisdiction pursuant to Section 120.565, F.S.

Discussion of Issues

Issue 1: Should the Commission issue a declaratory statement to the effect that FPL's 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 is not inconsistent with Order Nos. 18893 and PSC-95-0131-FOF-EI?

Recommendation: Yes, the Commission should issue the declaratory statement requested by FPL. (Gervasi, Kummer)

Staff Analysis: 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.

As stated in the case background, the Petition concerns the appropriate application of Order Nos. 18893 and PSC-95-0131-FOF-EI to FPL's ongoing installation of smart meters. By Order No. 18893, the Commission found that

[s]ince self-contained meter enclosures [consisting of meter sockets and bases] 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.

By Order No. PSC-95-0131-FOF-EI, the Commission similarly found that

[i]nstrument transformer meter enclosures [commonly used in large industrial applications] 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.

In the Petition, FPL states that Order Nos. 18893 and PSC-95-0131-FOF-EI make clear that: 1) individual customers bear the costs associated with initial installation of the meter enclosure; 2) individual customers bear the costs associated with repair or replacement of the meter enclosure when repair or replacement is required due to obsolescence or wear; and 3) the utility should no longer be in the business of owning or maintaining meter enclosures. FPL further states that subsequent to the entry of those orders, FPL implemented and followed a policy whereby it no longer repaired, maintained, or replaced meter enclosures. Instead, the meter enclosures were now treated as customer-owned facilities, consistent with the referenced orders, and each individually affected customer was financially responsible for the installation, repair and/or replacement of his or her meter enclosure when that repair or replacement was required due to obsolescence or wear. FPL supports the principles established in Order Nos. 18893 and PSC-95-0131-FOF-EI, and believes that they continue to be relevant and appropriate. FPL states that its request for a declaratory statement simply seeks the Commission's acknowledgement that repair or replacement of the otherwise functional meter enclosures in connection with the installation of the new smart meters at no cost to the individually affected customers is consistent with the principles established in those orders.

FPL explains that as it installs the smart meters, in a very small percentage of cases (less than 0.4 percent), the Company encounters situations where meter enclosures are functional prior to the removal of the existing electromechanical meter and may have continued to function without a problem for many years to come, but during the course of the change-out the existing meter enclosure needs to be repaired or replaced in order to safely and efficiently install the new smart meter in a manner that will help to assure safe and reliable service to the customer. The need to repair or replace the affected meter enclosures occurs in two distinct situations. First, during the course of the meter change-out, the existing functional meter enclosure is damaged and must be repaired or replaced in order to safely and efficiently install the new smart meter in a manner that will help to assure safe and reliable service to the customer into the future. 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 the 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. This action is taken as part of the system-wide installation of smart meters and represents an effort to avoid a situation where the individual customer experiences problems with the meter and/or meter enclosure within a relatively short time following the change-out. Accordingly, FPL does not believe that the individual customer should be responsible for the costs associated with this work.

FPL reasons that this situation stands in contrast to the general situation contemplated by Order Nos. 18893 and PSC-95-131-FOF-EI, the principles of which will remain relevant for individual instances in which meter enclosures must be repaired or replaced due to obsolescence or wear or when new customers initially install meter enclosures, similar to any other component on the customer's side of the meter. FPL is installing smart meters across its entire residential and small/medium commercial customer base, and the individual meter enclosures in question are being repaired or replaced to facilitate this process and not because of obsolescence or wear of the previously functional meter enclosures. As a result, FPL requests a declaratory statement affirming that the individually affected customers whose meter enclosures must be repaired or replaced in conjunction with this program should not bear the costs associated with the repair or replacement.

FPL states that in order to support the development of Smart Grid technologies and align itself with recent federal legislation, the Company has focused on smart meter solutions for several years. In so doing, FPL actively supports the deployment of smart grid technologies consistent with the Energy Independence and Security Act of 2007 (EISA 2007) and the American Recovery and Revitalization Act of 2009 (ARRA). Smart meters serve as the initial step in the development of the Company's smart grid initiative and support the established federal policy to modernize the electric infrastructure. FPL's smart meter project includes the deployment of smart meters to the approximately 4,400,000 residential and small/medium business customers it serves.

FPL further states that it began the process of replacing approximately 4,400,000 electromechanical meters with the new smart meters through two separate pilot programs initiated in 2007 and 2008. Each of the pilot programs involved the installation of approximately 50,000 smart meters. Thereafter, the smart meter rollout commenced in earnest in September of 2009. The smart meter project provided the foundation for FPL to apply for a Department of Energy (DOE) Smart Grid Grant which ultimately resulted in FPL obtaining \$200 million in grant funds from the DOE to be used in the implementation of FPL's smart grid initiative.

The Commission reviewed and approved the smart meter project in FPL's most recent rate case, as reflected in Order No. PSC-10-0153-FOF-EI.³ In that order, the Commission found FPL's Automated Metering Infrastructure (AMI) project prudent and specifically indicated that the project should not be delayed. FPL states that it has continued the rollout of the program through the systematic installation of smart meters, and that the implementation of the smart grid has been undertaken for the benefit of all FPL customers and for the system as a whole.

In Schedule C-8 of its rate case minimum filing requirements (MFRs), FPL identified a variance from the Commission benchmark attributed to the first year of the full scale deployment of the AMI program to take place in 2010. Included was \$1.5 million for the repair and replacement of unsafe meter conditions encountered during deployment and installation. FPL continues to believe that this is the appropriate treatment of the enumerated expenses associated with meter enclosure repair and replacements necessitated by the installation of the smart meters.

³ Issued March 17, 2010, in Docket Nos. 080677-EI, In Re: Petition for increase in rates by Florida Power & Light Company, and 090130-EI, In Re: 2009 depreciation and dismantlement study by Florida Power & Light Company.

After installation of the smart meter, customer responsibility for the meter enclosure immediately resumes, and FPL will not assume or assert ownership of the new meter enclosures.

FPL states that standard meter enclosures housing the traditional electromechanical meters found throughout the FPL system are clearly not obsolete, as evidenced by the fact that in more than 99.6 percent of the cases, those meter enclosures have been perfectly safe and appropriate receptacles for the new smart meters. Additionally, the very small percentage of meter enclosures that must be repaired or replaced are 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 submits that the costs associated with this work fall outside the criteria established in Order Nos. 18893 and PSC-95-0131-FOF-EI, and should not be borne by the individual customers whose meter enclosures have been repaired or replaced in connection with the installation of the smart meters.

FPL asserts that the efficiencies to be gained through the use of smart meters can best be achieved through a systematic and methodical process by which all electromechanical meters in a given geographic area are replaced with the new smart meters. Otherwise, the system will be left with both geographic and data gaps, thereby compromising the benefits otherwise available through the use of this new technology. Leaving holes in the system of smart meters will result in incomplete data being provided to the utility, create economic and other inefficiencies, and will increase the costs of installing the smart meters and implementing the program as a whole. Such a "hit or miss" approach to installing the smart meters (based upon the condition of individual meter enclosures) would also result in individual electromechanical meters being left in place, thereby preventing the utility from maximizing the reduction in O&M expenditures associated with the program. These holes in the system would be created where individual customers whose meter enclosures must be repaired or replaced to implement the smart meter program, but not due to obsolescence or wear, failed or refused to repair or replace meter enclosures necessitated by the meter change-out. This would, in turn, prevent FPL from safely replacing the existing electromechanical meter with the new smart meter. In short, individual customers' failure or refusal to repair or replace meter enclosures in a very tiny percentage of cases, where the need to replace the meter enclosure is not due to obsolescence or wear of the equipment, would have a serious and disproportionate impact on the program as a whole with a corresponding negative impact on FPL's general body of customers. Therefore, as FPL encounters meter enclosures that must be repaired or replaced in order to allow FPL to safely install the smart meter in a manner that will provide for the greatest degree of safety and reliability into the future, FPL has, to date, undertaken the needed work in order to effectively and efficiently implement the program. This process has allowed FPL to implement its smart meter program in an orderly, methodical, economical and efficient fashion without leaving the geographic and data gaps discussed above.

FPL submits that because the costs related to the necessary repair and/or replacement of meter enclosures associated with smart meter installations is part of the overall smart meter implementation plan that benefits the general body of customers, and the repairs and replacements have not been necessitated by obsolescence or wear, those costs should remain in

base rates, and individual customers should not be required to pay the costs associated with this work. Therefore, FPL seeks a declaratory statement 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 is not inconsistent with Order Nos. 18893 and PSC 95-0131-FOF-EI.

FPL's Petition states with particularity FPL's set of circumstances and specifies the Commission orders that it believes may apply to that set of circumstances, thus meeting the requirements for a declaratory statement. For the reasons expressed by FPL, staff agrees 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 is not inconsistent with Order Nos. 18893 and PSC- 95-0131-FOF-EI. Therefore, staff recommends that FPL's Petition should be granted.

Staff notes that based on FPL's response to a staff data request propounded in this docket, approximately 37 percent of residential meters and 17 percent of commercial meters have been replaced with smart meters since the program began in 2007. The repair and replacement rate for meter enclosures of .39 percent through year end 2010 represents 5,191 meter enclosures, most of which were residential. Deployment of smart meters was initiated in the South Florida area and progressed from district to adjacent district to ensure the efficient utilization of worksites and support of pending Smart Grid initiatives. As a result, staff would not expect the repair/replacement rate (and costs) for future repair or replacement of meter enclosures to differ materially from FPL's experience in 2010. As FPL noted in its Petition, \$1.5 million was included in its most recent rate case for repair and replacement of unsafe meter conditions for the test year 2010. FPL stated that it expects that annual amount will be sufficient to cover all replacement/repair expenses for the duration of the project, which is scheduled to be completed in 2013.

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Issue 2: Should this docket be closed?

Recommendation: Yes, the docket should be closed. (Gervasi)

Staff Analysis: Whether the Commission acts to either grant or deny the Petition, no further action will be necessary and the docket should be closed.