

P R O C E E D I N G S

CHAIRMAN BRISÉ: Moving on to Item Number 3.

MS. COWDERY: Good morning. Kathryn Cowdery with the Office of General Counsel.

Item 3 addresses FPL's petition for declaratory statement regarding the inspection of approximately 400 meters and meter enclosures and the possible repair and replacement of those meter enclosures by FPL. OPC intervened in the docket and filed a motion for an evidentiary hearing.

In Issue 1, staff recommends that the Commission should deny the Office of Public Counsel's motion for an evidentiary hearing. However, staff recommends that the Commission exercise its discretion to allow each party ten minutes in present oral argument. In Issue 2, staff recommends that the Commission should issue a declaratory statement as set forth in the staff recommendation.

Staff is available to answer any questions.

CHAIRMAN BRISÉ: Thank you very much.

Commissioners, I think it probably is appropriate to hear from the parties. So we will allow ten minutes to each party to do so, unless you all have a separate arrangement that I think that may be possible at this time. So I will allow FPL to address us, and then the

1 Office of Public Counsel.

2 **MR. RUBIN:** Thank you, Mr. Chairman. Ken
3 Rubin for FPL. And I have conferred with Mr. Rehwinkel.
4 I think we have come to an agreement here, but because
5 there was a request for an oral argument, and I believe
6 Public Counsel is going to make a statement, I'd like to
7 make a brief statement on behalf of FPL.

8 **CHAIRMAN BRISÉ:** Sure.

9 **MR. RUBIN:** First of all, FPL strongly
10 supports staff's recommendation. With data received
11 from the four and a half million smart meters that FPL
12 has installed, the company has identified a pattern that
13 may allow us to potentially identify certain issues
14 within customer-owned meter enclosures and to do so
15 before the condition leads to service issues for our
16 customers.

17 We need to study a very small number of meter
18 enclosures to validate and refine information that we
19 have developed to date. This matter is actually before
20 the Commission on a very limited issue. In order to
21 proceed with this project, FPL must examine and analyze
22 approximately 400 customer-owned meter enclosures. This
23 will only be done once we receive permission and consent
24 from the affected 400 customers.

25 As part of this analysis, FPL expects that

1 repair or replacement will be necessary for a number of
2 these customer-owned meter enclosures. Because the
3 Commission has a longstanding policy acknowledging that
4 meter enclosures are owned by the customer and not by
5 the utility, and that it is generally the customer's
6 obligation to repair or replace their meter enclosure,
7 FPL has asked for this declaratory statement
8 acknowledging that the company's repair or replacement
9 of meter enclosures in conjunction with this project is
10 not inconsistent with prior Commission orders.

11 We feel that repair or replacement by FPL, if
12 necessary, is the right approach for purposes of this
13 study and for our customers, but we do not wish to
14 disturb the Commission's general policy on this matter.
15 The petition for declaratory statement does not ask the
16 Commission for any change or deviation from these
17 orders.

18 The petition does not ask the Commission to
19 adjudicate any fact questions or to afford any relief.
20 The affected customers will not be financially
21 responsible for the work FPL will have to do on these
22 enclosures, and FPL will not claim or assert any
23 ownership interest in the meter enclosures it repairs or
24 replaces, and does not wish to seek and does not seek in
25 any way to alter the legal obligations of the parties

1 when it comes to repair or replacement of meter
2 enclosures.

3 The equipment belongs to the customer and that
4 will not change by virtue of the issuance of a
5 declaratory statement in response to this petition and
6 consistent with your staff's recommendation. Thank you.

7 **CHAIRMAN BRISÉ:** Thank you.

8 Mr. Rehwinkel.

9 **MR. REHWINKEL:** Thank you, Commissioners, and
10 I appreciate the opportunity for argument.

11 The Public Counsel sent an e-mail last week to
12 staff and the company indicating that we did not need a
13 hearing on this matter. We intervened and filed our
14 petition, our motion in an abundance of caution. Having
15 now seen the response of the company to our motion, and
16 the discovery that the staff sent out, and the company's
17 response to the staff's discovery, and read the staff's
18 recommendation, the Public Counsel's Office is satisfied
19 that this entire process has worked as it should and
20 provided clarity and context to the motion or the
21 petition for declaratory statement. So we are very
22 satisfied that what the staff is recommending that the
23 order say is what it should say.

24 Our concern, and the only reason I wanted an
25 opportunity to make a statement today was to express the

1 concern that drove us. Our concern was that in the
2 smart meter transition process, that if a customer owned
3 a completely serviceable meter enclosure that housed a
4 meter that was fully functional and but for the fact of
5 the smart meter change-out that enclosure would have a
6 serviceable life and not need to be changed out, we
7 thought that it would be appropriate that that
8 customer's meter enclosure, if it needed to be repaired
9 as a part of the smart meter change out process, that it
10 should be a part of the cost of the smart meter program.

11 There was a concern on our part that the
12 request by the company would undermine that. The
13 staff's recommendation, we believe, has clarified that,
14 and said that this is very much limited in scope as
15 stated in the staff recommendation and as the company's
16 petition asked. I would concede that the company's
17 petition was made for a proper purpose and it was not
18 intended to undermine or change or reconsider an
19 existing Commission order, to the contrary of what we
20 suggested in our pleading.

21 So with that said, I would ask -- the thing
22 that makes the Public Counsel's Office the most
23 comfortable with your staff's recommendation is on Page
24 14 of the staff recommendation, and this is the language
25 that gives us comfort, and to the extent that this

1 language is to be included in the order, and I don't
2 know that it will be, but if it is, we would -- we had a
3 slight tweak that we would propose to it.

4 And the language I'm referring to is in the
5 last two sentences of the paragraph that ends on Page 14
6 that starts with this declaratory statement. It reads,
7 "Now this declaratory statement should not be construed
8 as addressing or approving the project or future use of
9 any predictive tool developed by FPL. Moreover, this
10 declaratory statement does not address what may be the
11 cause of any meter communication problems that may be
12 identified by FPL, or prejudge any cost-recovery the
13 utility might seek in relation to the project's costs."

14 We think that's good clarifying language. We
15 only -- we had five words to suggest to be added to
16 that. And after the word "recovery," we would ask that
17 the phrase "or cost attribution" be added. And that
18 after the phrase "the utility might seek" the phrase "or
19 propose" be added. So that that sentence, that that
20 last phrase would say, "Or prejudge any cost-recovery or
21 cost attribution the utility might seek or propose in
22 relation to the project's cost."

23 What we're going for there is that -- and we
24 think that this probably may even not occur, but if a
25 customer has a meter that needs to be changed out, and

1 it was a perfectly good meter under the old meter, that
2 the cost of changing that meter enclosure out should be
3 part of the change-out and not be the responsibility of
4 the customer, or at least the customer should have an
5 opportunity to come to the Commission and make their
6 case.

7 If it has been tampered with, if it was on its
8 last leg, if it was otherwise not serviceable under
9 whatever meter it was housing, no problem. But the
10 customer should have an opportunity to come to the
11 Commission and say it was working, the enclosure was
12 fine, it should have been changed out as a part of the
13 process. I believe that the company has done that by
14 and large as a part of the change-out process when they
15 identified a meter or they pulled a meter out.

16 My understanding is if the enclosure was bad
17 at the time of the smart meter change-out, they went
18 ahead and took care of that. And I think they will do
19 that as a part of the 400 meters that they deal with.
20 So that's our only suggestion, otherwise we are very
21 satisfied with the staff's recommendation and the
22 company's request.

23 Thank you.

24 **CHAIRMAN BRISÉ:** Thank you very much.

25 **MR. RUBIN:** Just very briefly, Mr. Chairman.

1 Two points. First of all, what Mr. Rehwinkel
2 suggested is precisely what we are going to do. That's
3 why we came to the Commission with this declaratory
4 statement. It's our intention to repair or replace
5 these meter enclosures, if we need to, during the course
6 of the study and for a period of time thereafter if
7 customers call us with problems.

8 And the second point is that the prior
9 declaratory statement that we brought to the Commission
10 two years ago did address this on a larger scale for the
11 entire smart meter rollout. This petition only relates
12 to the 400 that we are proposing to study during this
13 project.

14 Thank you, sir.

15 **CHAIRMAN BRISÉ:** Thank you.

16 Commissioner Balbis and then Commissioner
17 Graham.

18 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.

19 I don't have an issue with adding that
20 additional language to the declaratory statement. But,
21 one concern that I did have that I discussed with staff
22 is that there is two parts to the declaratory statement,
23 and I think that the beginning portion of the second
24 part is very clear that this statement applies to the
25 400 meter enclosures that are part of the project. And

1 then it kind of fades a little bit and there may be an
2 implication that it applies to the larger part of the
3 entire smart meter program, which from listening to the
4 parties, looking at staff's recommendation, that is not
5 the case.

6 So I would like some additional language added
7 and I wanted to propose this for my fellow
8 Commissioners, and that is on that same last sentence
9 that Mr. Rehwinkel proposed additional language, simply
10 to add, you know, where it states, "Moreover, this
11 declaratory statement does not address," but after that
12 statement, just add "applies to the 400 customers
13 participating in the project and," and then it continues
14 with the remaining portion of the sentence. So that
15 it's clear the declaratory statement only applies to the
16 400 customers and does not apply to the overall smart
17 meter program.

18 I believe I discussed that with staff. I
19 don't know if you had time to think about that, if there
20 would be any issues with it, or is that consistent with
21 staff's recommendation.

22 **MS. COWDERY:** Commissioner, that is consistent
23 with staff's recommendation, your proposed language.

24 **MR. RUBIN:** We have no problem with that
25 language, sir.

1 **COMMISSIONER BALBIS:** And just to repeat, so
2 the sentence would read, "Moreover, this declaratory
3 statement applies to the 400 customers participating in
4 the project and does not address what may be the cause
5 of any meter communication problems," and the sentence
6 continues.

7 **CHAIRMAN BRISÉ:** Did everyone get that? Okay.
8 Commissioner Graham.

9 **COMMISSIONER GRAHAM:** Thank you, Mr. Chairman.
10 This is more of a curiosity question. How
11 were the 400 customers selected?

12 **MR. RUBIN:** It's a random selection based upon
13 meters that are displaying the data pattern. We have or
14 we will conduct a random selection of the 400
15 geographically dispersed customers.

16 **COMMISSIONER GRAHAM:** And so they'll be
17 contacted and they have to volunteer to be part of this?

18 **MR. RUBIN:** Yes. They will be contacted.
19 They will be advised what the project is. If they
20 choose not to participate, they don't have to
21 participate. Then we will go back in and randomly
22 select additional until we get up to the 400.

23 **COMMISSIONER GRAHAM:** Thank you.

24 **CHAIRMAN BRISÉ:** All right.
25 Commissioner Edgar.

1 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

2 A question for OPC. And I appreciate the, you
3 know, continuing to look at the issues and come forward
4 with an alternative suggestion. With that said, will
5 you be withdrawing the motion requesting an evidentiary
6 proceeding?

7 **MR. REHWINKEL:** We can do that. I sent an
8 e-mail to staff on Thursday or Friday saying that we did
9 not want one. I felt like we receded from that request.
10 I could do that formally, if that would be necessary or
11 helpful.

12 **COMMISSIONER EDGAR:** To me that seems neater,
13 if, indeed, that is the intention. I guess, to our
14 legal staff.

15 **MS. COWDERY:** I would say if that is your
16 intent, it would be good to withdraw it formally and
17 then the Commission can act accordingly.

18 **MR. REHWINKEL:** Okay. I mean, I can state to
19 you today that we formally withdraw our request for a
20 hearing before the Commission. So if that would put you
21 in a position of not having to deny our request for a
22 hearing, I would offer that to you.

23 **COMMISSIONER EDGAR:** Okay. Thank you.

24 **MR. REHWINKEL:** Because that certainly is my
25 intention.

1 **COMMISSIONER EDGAR:** Thank you. That is
2 clearer to me, and I appreciate that. It's those loose
3 ends hanging out there sometimes that trouble me.

4 Mr. Chairman, if I may, then from my review of
5 this information and from my discussion with staff, it
6 is my understanding that the intent for a declaratory
7 statement is for it to be very narrowly focused. And my
8 understanding from the suggested language additions is
9 in keeping with that intent. So for discussion
10 purposes, I will go ahead and move staff recommendation
11 on both items with the understanding that OPC has
12 verbally withdrawn their request, and that the language
13 that has been discussed on Page 14 would be included in
14 the final order or final statement that issues with the
15 additional changes suggested by Mr. Rehwinkel and
16 Commissioner Balbis.

17 **COMMISSIONER GRAHAM:** Second.

18 **CHAIRMAN BRISÉ:** It has been moved and
19 seconded.

20 **MR. REHWINKEL:** Mr. Chairman, I have a
21 handout, if it would be helpful to just give the exact
22 language. I read it, but just so there is no --

23 **CHAIRMAN BRISÉ:** Sure. It doesn't hurt.

24 Okay. Any further discussion as we wait for
25 the language? Recognizing that this language only

1 applies to the language that was suggested by OPC, the
2 motion still has language that was suggested by
3 Commission Balbis.

4 Okay. I think we have had good discussion.
5 Any further comments or questions?

6 I think we are ready for the vote. All in
7 favor?

8 (Vote taken.)

9 **CHAIRMAN BRISÉ:** Any opposed?

10 Seeing none. Well, thank you very much. I
11 think we have come to the conclusion of our meeting
12 today.

13 For planning purposes, tomorrow morning we
14 will have Internal Affairs at 9:30 at the Betty Easley
15 building right there where we typically have the IA. I
16 think our new facility will be ready for the September
17 meeting. Okay. Well, with that, we are officially
18 adjourned. Thank you for your participation today.

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 : CERTIFICATE OF REPORTER
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I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 23rd day of August, 2013.



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