BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Approval of Analog, i.e., ("Non-Standard") Meter Rider ("ANSMR")	))	Docket No. 130223 Filed February 4, 2014

Lucy Ahn, Julia Aires, Lissette Alvarez, Doug Ball, Rosalie & Jim Bari, Donnie & Peggie Bass, Justin & Connie Bieber, Eric Billitier, Janice Blasi, Jason Boehk, Mary & Virginia Burton, Anthony & Joan Capozzoli, Joe Carr, Sr., Phillip Carter, Roger Christian, Medora Clai & Todd Reading, Ken Crooks, William Cummins, Scott Cuthbert, Kathleen D'Ambria, Benjamin D'Avanzo, Colin Felton, Terri Fulton, Rachel Garibay-Wynnberry, Andy Gonzalez & Wilmaliz Font, John W. Germany, Robin Griffith, William & Katherine Groepler, Mary Ann & Bill Hampton, Maredy Hanford, Greg & Linda Hansen, Vikki Hardley, Jim Heitz, Maureen Hinton, George Hoffman, Marcia Hoodwin, Jamar & Kenissa Howell, William & Mary Jane Ingul, Daphnie James, Bob Johnson, Faith Kimble, Dale Ann Kos, Anthony & Lisa Lacoparra, Suzanne Lang, Ashley & Ryan LeGrange, Sandra Liscio, D'Arlene Llewellyn, Valentina & Chris Malin, Patricia Maloney, Donald & Paula Marcinak, Janet McDonald, Frances Moore, Mary Morris, Bill Murphy, Ed Ogden, Alice Omohundro, Sandy Pennypacker, Mary A. Perkins, Rick Pollard, Jean Renoux, Glenwood Roberts & Dorothy Bath, Bob Roman, Bob Root, Gary & Karen Runge, Jeffrey & Karen Sanger, Marc Sokolay, Peggy & Francis Steffel, Linda & Michael Stelzen, David & Gloria Talbert, Valerie Tannebaum, Victoria Thiel, Stephen Trombeta, Rick Vaughn, Margaret Yacovone, George R. Yetter

Petitioners,

v.

FLORIDA POWER & LIGHT COMPANY,
Respondent
_____/

PETITION FOR RELIEF FROM AUTOMATED METERING INFRASTRUCTURE ("AMI") SYSTEM AND COERCION THERETO, AND FOR A FORMAL EVIDENTIARY PROCEEDING

The above named individual, who have substantial interests that will be affected by the Florida Public Service Commission ("FPSC") determination in Docket #130223, hereby petition FPSC for various remedies 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:

1. Petitioners' Substantial Interests: The Petitioners are interested parties and have substantial interests in the outcome of this proceeding and of FPSC's decision or action. The Petitioners are Florida Power & Light ("FPL") customers who have refused the installation of the advanced metering infrastructure ("AMI"), or so-called "smart meter," and who oppose the FPSC's January 7, 2014 decision allowing fees to be imposed upon those who decline meters other than analog meters. Their opposition is based on the grounds that (a) the surcharges (or "fees") for customers who retain their traditional, analog meter are nebulous, arbitrary, punitive and coercive in nature, and they discriminate against various classes of customers, including some of the most vulnerable; (b) constitutional rights to freedom from warrantless search and seizure, privacy and freedom from bodily intrusion are being infringed; (c) there has been no proper procedure, including without limitation the hearing of material facts on the hazards posed by the radiofrequency (RF) radiation emissions of AMI meters, over which, given the absence of federal regulation, FPSC should assume jurisdiction.

2. The parties:

- Florida Power & Light Company, 700 Universe Boulevard, West Palm Beach, Florida 33408, is a corporation organized under the laws of the State of Florida and is an electric utility as defined in §366.02(2), Fla. Stat. (2013). It is also an

Investor-Owned Utility (“IOU”). FPL is a subsidiary of NextEra Energy (“NEE”), headquartered in Juno Beach, Florida. NEE owns three subsidiaries: NextEra Energy Resources, FPL FiberNet, and Florida Power & Light (FPL).

- The Florida Public Services Commission, 2540 Shurmard Oak Boulevard, Tallahassee, Florida 32399-0850, which is given jurisdiction to regulate various industries by the Florida Legislature, including utilities.

- Petitioners are the various customers of FPL who are directly and indirectly affected by AMI and analog meter fees, namely:

Lucy Ahn, Julia Aires, Lissette Alvarez, Doug Ball, Rosalie & Jim Bari, Donnie & Peggie Bass, Justin & Connie Bieber, Eric Billitier, Janice Blasi, Jason Boehk, Mary & Virginia Burton, Anthony & Joan Capozzoli, Joe Carr, Sr., Phillip Carter, Roger Christian, Medora Clai & Todd Reading, Ken Crooks, William Cummins, Scott Cuthbert, Kathleen D’Ambria, Benjamin D’Avanzo, Colin Felton, Terri Fulton, Rachel Garibay-Wynnberry, Andy Gonzalez & Wilmaliz Font, John W. Germany, Robin Griffith, William & Katherine Groepler, Mary Ann & Bill Hampton, Maredy Hanford, Greg & Linda Hansen, Vikki Hardley, Jim Heitz, Maureen Hinton, George Hoffman, Marcia Hoodwin, Jamar & Kenissa Howell, William & Mary Jane Ingul, Daphnie James, Bob Johnson, Faith Kimble, Dale Ann Kos, Anthony & Lisa Lacoparra, Suzanne Lang, Ashley & Ryan LeGrange, Sandra Liscio, D’Arlene Llewellyn, Valentina & Chris Malin, Patricia Maloney, Donald & Paula Marcinak, Janet McDonald, Frances Moore, Mary Morris, Bill Murphy, Ed Ogden, Alice Omohundro, Sandy Pennypacker, Mary A. Perkins, Rick Pollard, Jean Renoux, Glenwood Roberts & Dorothy Bath, Bob Roman, Bob Root, Gary & Karen Runge, Jeffrey & Karen Sanger, Marc Sokolay, Peggy & Francis Steffel, Linda & Michael Stelzen, David & Gloria Talbert, Valerie Tannebaum, Victoria Thiel, Stephen Trombeta, Rick Vaughn, Margaret Yacovone, George R. Letter.

CASE BACKGROUND

1. The US Energy Policy Act of 2005, Section 1252, says that utilities “shall offer” [AMI time-based metering and communications] to their customers, considering customer requests. [FN] TIME-BASED METERING AND COMMUNICATIONS.— (A) Not later than 18 months after the date of enactment of this paragraph, each electric utility shall offer each of its customer classes, and provide individual customers upon customer request, a time-based rate schedule under which the rate charged by the electric utility varies during different time periods and reflects the variance, if any, in the utility’s costs of generating and purchasing electricity at the wholesale level. The time-based rate schedule shall enable the electric consumer to manage energy use and cost through advanced metering and communications technology." [1]

2. Both the 2005 law and the Energy Independence and Security Act of 2007 were written to promote the so-called "smart grid and smart grid technologies," but they did not include any federal mandate for AMI adoption. Neither did these Acts include any requirement that so-called “smart” meters should be forced on customers.[2]

3. The American Recovery and Investment Act of 2009 allocated a Smart Grid Investment Grant of nearly $3.5 billion to 99 recipients nationwide, one of which was FPL.[3]

[1] http://www.drsgcoalition.org/policy/epact-sec_1252-smart_metering.pdf
[2] http://www.gpo.gov/fdsys/pkg/PLAW-110publ140/pdf/PLAW-110publ140.pdf, Page 293.
[3] Recovery Act, Smart Grid Investment Grants, Office of Electricity Delivery and Energy Reliability, http://energy.gov/oe/technology-development/smart-grid/recovery-act-smart-grid-investment-grants

4. On March 17, 2010 the Florida Public Service Commission approved what it called "cost recovery" for FPL's AMI roll-out in Order PSC-10-0153-FOF-EI, allowing fees to be imposed upon FPL electric utility customers for FPL's wireless RF radiation Mesh network, also known as the "smart grid".

5. FPL had no need for and no right to "cost recovery", since it had received for this project funding of the federal government in the amount of $200,000,000. [4]

6. No public hearing preceded this significant decision, which affects all Floridians.

7. In 2011, former CIA Director James Woolsey went public with the fact that the so-called 'smart' grid was mischaracterized, in that it is insecure and vulnerable to hacking. He stated, "There is no one in charge of security for the grid… A so-called 'smart grid' that is as vulnerable as what we've got is not smart at all. It's a really, really stupid grid."[5]

8. More recently, former CIA Director David Petraeus revealed that the "smart" technologies being deployed in the US are purposed for espionage:

> "Transformational" is an overused word, but I do believe it properly applies to these technologies, particularly to their effect on clandestine tradecraft. Items of interest will be located, identified, monitored, and

[4] Briefing on Smart Meters: Technical Information and Regulatory Issues, p.2
[5] "Former CIA chief questions the intelligence of the smart grid," Consumer Reports, accesible at http://www.consumerreports.org/cro/news/2011/08/former-cia-chief-questions-the-intelligence-of-the-smart-grid/index.htm

> remotely controlled through technologies such as radio-frequency identification, sensor networks, tiny embedded servers, and energy harvesters — all connected to the next-generation internet using abundant, low-cost, and high-power computing, the latter now going to cloud computing, in many areas greater and greater supercomputing, and, ultimately, heading to quantum computing.[6]

9. On December 6, 2011, US Congressman Bill Posey (8th District) confirmed Floridians' right to refuse AMI ('smart') meters in writing to a Florida constituent, "As you may know, provisions within the 2005 Energy Policy Act allow for consumers to opt out of smart meter programs that are run at the state level. Florida consumers can opt out of these programs by contacting the appropriate authorities." Although he later tried to take back his words, Posey's first statement indicates his understanding of the intention of Congress in that Act, and likely why Congress was able to pass the Bill. Clearly, the US Congress's intention was not to force, coerce or pressure utility customers into accepting AMI meters.

10. Under pressure from tens of thousands of Floridians who were declining AMI meters, many of them requesting support from FPSC, the FPSC Commissioners directed staff to hold a public workshop ("Workshop") on September 20, 2012 to "gather information on smart meters in order to address concerns raised by customers." The limitation of FPSC's reception to mere "concerns", i.e., non-substantive matters, was confirmed when at that Workshop and following it, FPSC repeatedly denied having received onto the public record material evidence related to AMI that Floridians had submitted during the Workshop and also by certified mail, email and even hand-delivery

[6] CIA Chief: We'll Spy on You Through Your Dishwasher, Wired, accessible at http://www.wired.com/dangerroom/2012/03/petraeus-tv-remote/

with proof of service, to FPSC.

11. The FPSC Staff conducted the Workshop without the presence of FPSC Commissioners. Agents of entities with interests vested in the deployment of the AMI system and its meters presented at length. No independent, disinterested subject-matter expert presented; while the expertise of various members of the public who were present went unrecognized. FPSC purported that the Federal Communications Commission ("FCC") to have exclusive jurisdiction over the health effects of the radiofrequency (RF) radiation emissions of the AMI system and meters.[7] Although invited, FCC did not attend. FPSC had announced in advance that an independent health expert would also be in attendance, but no such person appeared.[8] Non-FPL-related Floridians', even experts', requests to make formal presentations were refused; however, non-industry individuals attending each had but three minutes to speak. These individuals' submission of written comments, including material evidence and law, were later confirmed by FPSC to have not been placed on the public record.

12. The FPSC Staff and the AGO were served on September 20, 2012 a Notice of No Consent, Notice of Default, and Notices of Demands, signed by 75 Florida residents representing 18 Florida Counties. The Notice of Demand specifically objected, among other matters, to the Workshop not being conducted in a manner that protected public interests. For Demand Notice reference, see DN 06655-12 in Docket 120000.

[7] Briefing on Smart Meters: Technical Information and Regulatory Issues, p.2
[8] *Id*.

13. During the Workshop, the FPL referenced Order PSC-10-0153-FOF-EI (March 17, 2010), the rate-case document wherein FPSC approved the inclusion of $101 Million in costs for purportedly obsolete analog meters in rate recovery. Notably, FPL cited no complaint about or dysfunction of analog meters. According to FPL, a *rate case* implicitly "approved" behind the public's back became something entirely different: the statewide deployment of AMI. However, there was no forum for vetting such deployment, nor apparently even any discussion of it, in the said rate case. Among the outrages was the approval of the financially-strapped Florida State utility customers paying the cost of removing and destroying perfectly good utility meters. Given such funding parameters, it is not surprising there was no advance public disclosure of AMI deployment in the "Sunshine State."

14. Commission Staff presented the FPSC Commissioners with a "Post-Workshop Briefing Report" (hereafter, "Staff Briefing Report") on February 19, 2013, stating that the Investor-Owned Utilities ("IOU") had the choice to provide an alternative to smart meters and could submit a cost-based request to the Commission for approval. Significant issues broached at that workshop by the public were not addressed in the Staff Briefing Report.

15. Through these years, many Floridians inquired of FPSC whence any authority to impose AMI systems and meters upon residents. When responses manifested, they evaded the question. Therefore, by September 20, 2012, it was clearly established, and documented in the Notice of Demand, that no authority existed to require utility

customers to have AMI meters. Thus, as stated therein, Floridians positively retain the right to refuse said meters. FPSC did not deny in any response to the Notice of Demand or otherwise that Floridians have the right to refuse AMI meters.

16. On August 21, 2013, FPL filed a tariff for additional fees for customers with analog or AMR meters, which they termed, inappropriately, “non-standard” meters, Docket # 130223.

17. On January 7, 2014 the Commission issued Order # PSC-14-0036-TRF-EI denying FPL’s proposed tariff, recommending changes and that FPL file a revised tariff.

18. On January 17, 2014 FPL filed a revised tariff, copies of which Petitioners were able to obtain at http://www.psc.state.fl.us/dockets/cms/docketFilings3.aspx?docket=130223, shortly thereafter.

19. FPL has thus acquired of FPSC approval to impose additional fees upon customers choosing to exercise their right to refuse AMI meters and to retain together 1) their truly *standard*, i.e. up to decades-long, utility contract limiting the Utilities solely to usage measurement activity, and 2) their truly *standard*, analog meter under said contract, i.e., the analog meter that had been in place for as long as decades. The analog meter, its measurement activity and the utility contract accompanying it are positively “standard” as proven by FPSC’s usage of the term in its Post-Workshop Comments.[9]

[9] Briefing on Smart Meters: Technical Information and Regulatory Issues, p.2

20. FPL has not cited any flaw with its customers' analog meters; so no reason exists to require, from the customers' extant contractual perspective, a different meter engaging in different activities than usage measurement. FPL wishes to impose additional fees for the stated purpose of pressuring customers into accepting undesirable and even horrific consequences of its AMI meters. With two-way, wireless meters in a vulnerable mesh network, with intrusive functions additional to measurement, and with data communications leakage risks, these AMI meters that deploy 24-7 pulsed RF radiation from off of and within human-occupied structures, irradiating human and other living bodies without consent, positively may be refused.

21. As of February 4, 2014, the FPSC, presiding over Florida utilities, has held not even one public hearing on AMI, despite the enormity of its impact, both actualized and potential, upon all Florida residents and businesses. This omission of public participation, while without State mandate for installation, demonstrates the depth of secrecy of this AMI project.

Forced Changes To Customers' Utility Contracts and A Priori Coercion

1. Forced or coercive imposition of AMI meters and systems represent very substantial changes to customers' utility contracts, producing de facto new contracts. A new or substantially different contract cannot be forced upon customers who simply choose to be left alone, i.e., to retain the status-quo contract with its status-quo, analog meter. The Florida State Constitution is one of the few to explicitly guarantee the right

to privacy, i.e., the right to be let alone, in Article 1, Section 23.[10]

2. The language of the Energy Act of 2005 provides only that AMI are to be "offered" to utility customers.(FN) The word "customers" in this context holds a meaning that varies from common usage; since no property owner or renter in Florida has the right to refuse an electrical power-grid connection. Thus, at least with regard to electricity, being a "customer" is a status coerced by State law.

3. Since Florida electric customers are already coerced into having electricity delivered from the power grid, whether or not they want or need it so delivered, the additional coercion that their household be attached to the AMI grid by way of an AMI meter is a violation and breech of the utility contract. There exists no authority under Florida State or other law for FPSC to coerce electric utility customers into accepting an AMI meter or network communications equipment against their will.

SUMMARY OF DISPUTED MATERIAL FACTS

The Petitioners assert and substantiate the following:

1. The FCC's regulation of RF emissions does not include non-thermal radiation, leaving a gap in jurisdiction, which should be, at least temporarily, filled by FPSC.

[10] The Right of Privacy in Florida in the Age of Technology and the Twenty-first Century: A Need for Protection from Private and Commercial Intrusion http://www.law.fsu.edu/journals/lawreview/downloads/251/overton.pdf.

2. FPL, FPSC and other parties with vested interests have downplayed the adverse health effects caused by smart meters.

3. The World Health Organization, International Agency for Research on Cancer, and American Academy of Environmental Medicine have all produced data on the health effects of RF emissions, including is classification as a carcinogen, but no such information was given serious consideration heretofore.

4. The calculation of the NSMR tariff is nebulous, as it is based largely upon projections and assumptions that will likely not adequately reflect the actual figures.

5. The NSMR is not cost-based, and exudes overtones of coercion to achieve assimilation.

6. There is no proof that AMI will reduce the costs incurred by FPL in the provision of utility services, or that continuing use of traditional meters will increase costs.

7. The NSMR is discriminatory as applied to those declining AMI, as there is no nexus between “opting-out” and increased costs to FPL.

8. The right to be free from RF emissions extends beyond that of contract and into fundamental Constitutional protections, none of which were addressed by FPCS or FPL.

9. FPL customers have not been given a *bona fide* alternative to AMI, and as a result, their rights to privacy have been infringed.

10. Neither FPSC nor FPL has addressed the NSMR tariff's compatibility with the Americans with Disabilities Act's prohibition on imposing a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures.

SUMMARY OF DISPUTED MATERIAL FACTS

Petitioners assert and substantiate the following:

1. If a fee is to be assessed to the cost causer, then FPL has no basis for the intended fees to be imposed upon analog meter customers without proof of the actual costs.

2. FPL has not provided any information that costs will be reduced by AMI, while Petitioners have produced ample support that AMI does not reduce costs in the provision of utility services. Thus, without support, there is no justification to charge customers disparate rates for what could be the same amount of service.

3. Without a transparent cost-benefit analysis of the AMI system, the suggestion that the retention of ANSMR creates an increased burden on FPL is purely speculation,

which does not justify the tariff.

4. Even if personal data are encrypted, such encryption can be decoded by various governmental agencies that have revealed their role in collecting personal data. Therefore these agencies are able to circumvent the 4th Amendment requirement of a warrant, and can search without restraint home and business electronic data.

5. Lack of FPSC oversight may expose customers to unnecessary loss of person information, due to the vulnerabilities of the AMI system, and the absence of clear privacy policy protections and objectives.

6. Contrary to FPL's statements, the sanctity of the home is violated where wireless communications can acquire data of various types without the occupants' data knowledge or consent, and often even in ways that are inconceivable to occupants.

7. The FCC is not a regulatory agency over RF radiation in the sense that, for example, the Nuclear Regulatory Commission is for the ionizing radiation portion of the electromagnetic spectrum, but rather is an industry-promoting agency akin to the Atomic Energy Commission.

8. FCC’s authority over RF radiation emissions does not extend to the primary biological effects of the radiation, but only to secondary effects, which are often misleadingly referred to as “thermal” or heating effects, leaving a gap in jurisdiction, which must be filled by FPSC.

9. FCC has issued no “standards” regulating RF radiation, only Guidelines, which do not pertain to human health but only to equipment functioning.

10. FCC has no authority or expertise in matters of human health. It is not a health agency.

11. AMI meters can and often do exceed FCC guidelines for RF public exposure emissions at locations where people live, work, study and play.

12. FPL, FPSC and other entities with vested interests have not only downplayed the adverse health effects caused by AMI radiation, but have refused to consider primary, Daubert-admissible evidence of said effects, including those that have provably manifested amongst Floridians in response to AMI deployment.

13. The World Health Organization, International Agency for Research on Cancer, and American Academy of Environmental Medicine are among the many professional organizations that confirm the adverse health and environmental effects of RF radiation, including classification as a carcinogen, but no such information was given serious consideration heretofore.

STATEMENT OF ULTIMATE FACTS

Evidence of AMI Inefficacy and Energy Inefficiency, with Voluminous Consumption and Waste

The America Recovery and Investment Act of 2009 allocated a Smart Grid Investment Grant of nearly $3.5 billion to 99 recipients nationwide, one of which was FPL. The subsequent Grid Modernization effort was to be

> the largest single grid modernization investment in U.S. history, funding a broad range of technologies to spur the nation's transition to a smarter, stronger, more efficient and reliable electric system. This will promote energy-saving choices for consumers, increase energy efficiency, and foster the growth of renewable energy sources like wind and solar power.[11]

[11] Recovery Act, Smart Grid Investment Grants, Office of Electricity Delivery and Energy Reliability, http://energy.gov/oe/technology-development/smart-grid/recovery-act-smart-grid-investment-grants

In 2011, however, Connecticut Attorney General George Jepsen conducted a study aimed at whether the replacement of existing electric meters with advanced technology would result in energy cost savings that would justify the expense. Connecticut Light & Power ("CLP"), analogous to FPL, sought to replace all existing meters with "advanced meter infrastructure," and requested that regulators guarantee the Company be afforded reimbursement of all installation costs before the Connecticut Department of Public Utility Control had ascertained what those costs would be, and whether said costs would be reasonable.

The pilot results of a nearly three-month, 10,000 advanced meter study conducted by CLP showed "no beneficial impact on total energy usage," according to Jepsen, who continued that the slight savings that were experienced "would be far outweighed by the cost of installing the new meter systems."

"CL&P's proposal would force the company's ratepayers to spend at least $500 million on new meters that are likely to provide few benefits in return," Jensen said, urging regulators to "continue to evaluate the emerging meter system technologies as well as other conservation programs," delaying approval only upon a showing of cost-effectiveness.

Likewise, Illinois Attorney General Lisa Madigan, who wrote an-opposite-the-editorial-page article in the Chicago Tribune, cited John Rowe, the Chief Executive Officer of Exelon, conceding, "it costs too much, and

we're not sure what good it will do. We have looked at most of the elements of smart grid for 20 years and we have never been able to come up with estimates that make it pay."[12]

Finally, Michigan Attorney General Bill Schuette questioned the smart meters' economic benefits to ratepayers, maintaining, "[a] net economic benefit to electric utility ratepayers from Detroit Edison's and Consumers smart meter programs has yet to be established."[13]

No Cost-Benefit Analysis has Been Completed or Required

The deployment of s-meters throughout Florida is a very expensive project that should have warranted its own docket and public proceedings; but this did not occur. FPSC was petitioned for "demonstration" projects early on, but there was no public review of the actual or potential harm to Floridians of a roll-out. FPSC and the utilities acted without authority.

Even within the context of this matter, the Office of Public Counsel, in his "Post-Workshop Comments" [cite memo] stated, "to OPC's knowledge, no studies, analyses, or quantification of the benefits or cost savings from the implementation of smart meters exist at this time. OPC is still waiting on the promised cost savings benefits of smart meters to be realized and shared with its customers."[14]

[12] Madigan, Lisa, ComEd Experiment Too Costly for Consumers, Chicago Tribune, June 21, 2011
[13] Attorney General's Comments Pursuant to the MPSC Order Dated January 12, 2012, http://media.mlive.com/business_impact/other/U-17000%20-%20AG%20Comments-Final.pdf
[14] The Briefing on Smart Meters: Technological Information and Regulatory Issues

Of course, a cost/benefit analysis is irrelevant where harm to the public is known to occur. But even if no harm were expected and had not already occurred, s-grid and s-meter deployment is untimely, since the people's representative has not seen a cost/benefit analysis. Connecticut's Attorney General argued against deployment in that state because pilot tests showed that any benefits do not justify the cost, and that there was no benefit to customers. Thus FPSC, in so far as it might admit to an approval of deployment, made it in advance of due diligence and public hearings.

In contrast to the FPSC, Clay Electric Co-op, serving 14 North Florida counties, did its own analysis. It found installing and maintaining the network to be of no economic benefit to their ratepayers. This company will not install any such equipment unless the Federal government mandates it to do so. It honors anyone's request to opt in, per the Energy Act of 2005. This info was relayed from the Head of Operations, Howard Mott, and Head of Engineering, Herman Dyal, and further confirmed by the CEO's Administrator Laurie Keaton.

Thus FPSC is quite ultra vires in supporting FPL. Furthermore, the FPL asserts it cannot be held liable for damages caused by s-meters.

The AMI meters' wireless mesh network is enormously energy-consumptive, as all wireless infrastructures are. (see, FN) By

contrast, no energy usage whatsoever is required for the analog meter system.

FPL in the past asserted it would need no meter readers for the AMI system. FPL has intended to use the federal stimulus funds it received ironically to terminate meter reader positions. However, frequent malfunctions of AMI meters through overheating and fires have resulted in the need to send not only lesser-skilled meter readers, but also more expert and costly electrical and electronic engineers to meter sites.

The end result is the justification of the adaptation to and universal implementation of a system that is no more efficient than the one it replaced, while leaving ratepayers with increased costs for commensurate service. This revelation necessitates the scrutiny of any notion that the NSMR tariff reimburses FPL for the increased costs of service by the so-called “cost-causers,” as there is a dearth of proof of both the savings to FPL produced by AMI, and costs to FPL for maintaining traditional metering systems.

S-meters do NOT save energy

A review of the literature makes it clear that s-meters do not save energy; and the s-grid rather taps considerable energy from the already strained power grid. To quote one industry professional: “Those of us in the business understand that smart meters will save customers money on their utility bill as the grid evolves to residential Time of Use

(TOU) electricity rates and Home Energy Management Systems (HEMS) are deployed."[15]

But this requires that customers have the ability to use, and will use, electrical appliances in the middle of the night and not at prime daylight hours. So without a home management system, TOU rates, and reversed cycle of home and office activity, the State's investment will not yield the required results. The public has not been informed of this fact. One of the most effective ways to reduce energy usage and bills is to turn off most or all circuits by night. The electric companies do not inform customers of this easy energy- and bill-reducing method. Their proposed system rather encourages energy usage at times when the usage is generally *not* needed. Worse, the 2005 Energy Act allows the expense of the s-grid, s-meters, associated equipment and its installation, to be passed along to the unwitting customers, who have been intentionally kept in the dark and see no acknowledgement in their bills that they are paying newly – and coercively – for infrastructure that was at once unnecessary and harmful to them.

A report entitled "*Getting Smarter About the Smart Grid"*, was published in November 2012 by the National Institute for Science, Law & Public Policy (NISLAPP) in Washington, D.C. It states that billions of dollars in federal subsidies for "smart" utility meters have been misspent on meter technology that will not lead to energy sustainability or contribute to the possibility of a more efficient and responsive electric grid. Much of the multi□billion dollar federal subsidy for s-meters in the name of stimulus funding does not benefit ratepayers, nor support economic growth, but

[15] http://www.smartgridlibrary.com/2010/01/04/connecting-the-smart-grid-dots-one-meter-at-a-time/

primarily benefits meter and meter networking manufacturers, while financially propping up unsustainable Investor□Owned Utilities (IOUs).

In Arizona it was disclosed that customers currently pay $1.23 monthly for the their meter reader. If this is comparable to Florida, then Petitioners assert that the purported rationale offered by Florida utilities for their AMI programs falls apart. For example, the average cost of an electrician to make a house-call is about $100; the cost of fixing a meter enclosure, which worked fine with the old analog meter, could be $200 or more. That amount represents 16 years of savings on meter reads.

FPL Ratepayers who have refused "smart" meters have already paid for the "smart" meters program, in the form of the federal taxes, which have subsidized the rollout of utilities' (including FPL's) smart meter installation programs in Florida. Therefore, the requested penalties to those who would continue to opt-out are unfair and a form of fraud.

FPSC Lacks Authority to establish wireless network with AMI devices.
AMI devices do not qualify as meters under Commission Rule # 25-6.0003.

Rule 25.-6.003 defines a meter as “used for the purpose of measuring the service rendered.” Petitioners dispute that the equipment currently being placed in customer-owned meter enclosures meets such definition. The AMI "meter" that FPL deploys is a complex, two-way RF radiation communications hub (network) and computing device. While it contains metrology to measure usage, it also contains components such as

transceivers, a service switch, computing and memory, a Switching Mode Power Supply (SMPS), and optionally, an electromagnetic switch for connecting/disconnecting electrical service.

FPL's own description of its AMI program, proves that the AMI devices' technical capabilities vastly exceed the definition of a meter provided in Rule 25.-6.003:

> *[FPL] How do the smart meters transmit information? Could you explain how it works?*
>
> This technology is Internet Protocol (IP) based RF mesh. The RF capability means the meters communicate through radio frequency. Each meter is equipped with a full two-way 900 MHz radio transmitter that sends and receives information to an access point which is also radio-equipped. The access point is the collection point for the meter information that is sent back into an FPL system. Each access point, which is typically mounted on a power pole, is the size of a shoe box and can handle communications to thousands of meters. New RF mesh technology expands the ability of a meter to communicate to an access point by allowing the signal to be relayed off of other meters to find a path and maintain the connection required for communications.[16]

Indeed, the AMI device is a crucial component of FPL's "RF Mesh Network," (to use its own term) itself an expensive and energy consumptive, irradiating communications grid that FPL is deploying virtually "on top of" Petitioners' homes and businesses, without their consent, and without compensation for their loss in property, privacy, and health.

In false names, misrepresentation and fraud.

Manufacturers have the prerogative to name their equipment any name they choose, however, the FPSC has the fiduciary obligation to review, define, approve of, or reject

[16] http://www.fpl.com/ami/qa.shtml#2, accessed 2/2/14

the equipment by its true form and function. “Smart Meters” are clearly not smart or wise.

PSC’s decision to allow FPL to deploy this specific AMI device, as equipped, effectually gave approval for FPL to site its private, RF-deploying communications network on private homes and businesses. FPSC had no jurisdiction, nor authority, to do so. Neither the PSC nor FPL has cited any Florida Statute or rule that gives them such authority. Neither the Federal Energy laws nor Florida state laws mandate AMI. Moreover, no Federal or State law prevents an individual from refusing an AMI device on their home or business, or otherwise on their private property, including in the meter enclosures that are considered the customer's private property.

Florida property owners’ meter enclosures were and are designed for metrology-purposed meters, not for AMI devices

FPL has authority solely to place meters performing measurements in the customer-owned meter enclosures. Similarly, customers have responsibility to maintain meter enclosures in working order for metrology function in meters only, not for wireless communication networks such as AMI devices. FPSC Commission Order # 18893 confirms the above facts and states, “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.” The meter enclosure is the private

property of the property owner, and its purpose is to house the meter itself, not the utility's wireless communication network. FPSC cannot mandate the acceptance of an "RF MESH" wireless communication network on private property.

Manufacturer of FPL's AMI devices describes them as "communications technology."

In its promotional literature, General Electric — the manufacturer of the I-210+ model AMI device, which forms the core of FPL's AMI device deployment — boasts that the I-210+ has "smart grid functions in a value package":

> Designed to specifically accommodate the communications technology required to support the smart grid, the I-210+ has the same electrical and mechanical interface as our I-210+c platform, therefore making communications interchangeable and interoperable between these two residential metering platforms. Multiple RF Mesh and PLC communication technologies are supported with a newly updated power supply on the I-210+ platform.[17]

The AMI meter is a novel electrical device with vastly different functions, not a "meter" per Rule 25.-6.003.

As further evidence, California-licensed Electrical Contractor Lance Houston describes the so-called "smart meter" as being a "novel electrical device," which "incorporate[s] multiple new features into a single unit

1) electronics for actual metering of power consumption,

2) radio frequency transmitter(s) for sending data,

[17] http://www.gedigitalenergy.com/smartmetering/catalog/i210plus.htm

3) radio frequency receiver(s) for receiving data, and

4) an electromagnetic switch for connecting/disconnecting electrical service."

Houston, whose Electrical Contractor license is "current and active" at the time of this writing, states:

> One of the novel features in the new meters is the incorporation of an internal disconnect switch that the power company purports safely disconnects/reconnects power to the dwelling it supplies by remote control. This disconnect feature is a new and significant change to the old style analog meters. The safety of the new disconnect feature is in question. (Emphasis in original.)

Given its responsibility to ensure the safety, reliability, and efficiency of Florida utility provision, FPSC was negligent in allowing FPL and other utilities to install AMI devices under the rubric/auspices of "meters" and was also negligent in authorizing cost-recovery for AMI device programs. Petitioners assert that the AMI device FFPSC and FPL now refer to as a "meter" or a "smart meter" is, in fact, more appropriately called a "RF MESH Network Hub."

Apparent meter enclosure/AMI device incompatibility confirms that "AMI device" and "meter" are not one and the same

Further evidence that AMI devices fail to meet the Florida Statutory definition of a meter is contained in recent Docket # 130160-EI, "Petition for declaratory statement regarding the inspection, repair and replacement of meter enclosures for smart meter analytical tool, by Florida Power & Light Company," whereby FPL asks FPSC for permission to

> further validate and refine a predictive tool the Company is developing to identify probable future smart meter [sic] communications failures likely to be caused by conditions within the customer-owned enclosure. The meter enclosure-conditions referred to include but are not limited to corrosion, broken meter blocks and loose connections. FPL believes that the referenced Orders authorizes the Company to inspect, repair or replace a small number of customer owned enclosures on a one-time basis at no cost to the individually affected customers, when those enclosures are inspected, repaired or replaced in conjunction with the further validation and refinement of the predictive tool described herein.

FPL submission of the Docket indicates that FPL is fully aware of compatibility problems between its “smart meters” [sic] and the enclosures into which they have been installed. Meanwhile, FPL has publicly denied being aware of these problems. A “meter” meeting the definition as “used for the purpose of measuring the service rendered” would not cause the heat damage now coming to light in Docket 130160-EI. The AMI device/RF Mesh equipment is pushing the technical boundaries of enclosures that were designed only to accommodate an analog meter. AMI heating problems have produced in turn fires that have engulfed and destroyed whole homes, and in at least one case, killed a resident.

The Docket further states,

> The opportunity to undertake this project arose in conjunction with FPL’s smart meter [sic] deployment. The meters regularly transmit encrypted usage and equipment diagnostic data back to the Company, but during the deployment phase the Company determined that a number of installed meters [sic] stopped communicating. Upon inspection it was determined that several of these smart meters [sic] had experienced heat damage caused by problems within the customer-owned meter enclosure. The smart meter [sic] team ultimately identified a data pattern that was generally occurring in the pre-failure communications from the meter.

Paragraph 22 states,

> Successful development and validation of the tool may in many cases allow FPL to notify its customers of a prospective failure within the customers equipment. The customer would then have the opportunity to make repairs before there is an actual failure of the meter enclosures resulting in the loss of power and/or damage to other components or property of the customer, or to the meter itself. Those customers will have sole responsibility to take appropriate action to repair and/or replace their enclosures as necessary.

In summary, Florida utilities' AMI devices are network communication and management equipment, not "meters." Even after repeated requests by Florida, FPSC and its agents failed to cite any authority to allow utilities to place AMI devices on customer premises. Fires that begin at the AMI meter site and damaging overheating are documented in multiple countries as well as US states, including Florida, confirming that AMI devices are the culprit. And the constant communications may produce sufficient mechanical vibration within the meter box to loosen connections.

FPSC's permitting FPL to repair certain customers' meter enclosures - 400 of them - at the expense of all customers, per Order No. PSC-11-0194-DS-EI, demonstrates FPSC's bias toward FPL and generally against customers, whom FPSC is obliged to protect. It is an unfair and discriminatory policy for many Floridians ultimately to be required to pay to fix their own meter boxes, when they have been damaged by FPL's AMI device installation, especially where informed consent for AMI installation never existed.

Petitioners note that The Office of Public Counsel (OPC) recently failed to intercede in #130160-EI, to argue against the Declaratory Judgement Rule, even though a previous order (issued in PSC-11-0194-DS-EI) was intended to have fixed the meter-enclosure

problem. The OPC and FPSC must at last intervene on the people's behalf and stop supporting FPL's hazardous entrees into customers' lives.

Potential for Infringement of Privacy of Customer Usage Information

According to FPL,

> Smart meter technology is Internet Protocol (IP) based RF mesh. The RF capability means the meters communicate through radio frequency. Each meter is equipped with a full two-way 900 MHz radio transmitter that sends and receives information to an access point, which is also radio-equipped. The access point is the collection point for the meter information that is sent back into an FPL system. Each access point, which is typically mounted on a power pole, is the size of a shoe box and can handle communications to thousands of meters. New RF mesh technology expands the ability of a meter to communicate to an access point by allowing the signal to be relayed off of other meters to find a path and maintain the connection required for communications.[18]

The smart meter being deployed by FPL contains metrology to measure energy consumption, but also contains optional components such as two transceivers, a service switch, computing and memory and a Switching Mode Power Supply (SMPS). (Citation needed).

The Briefing on Smart Meters: Technological Information and Regulatory Issues ("Briefing") included a section entitled "Privacy," which stated, "[t]he IOUs all hold customer data confidentially, except for release for regulated business purposes and to comply with court orders."[19] (Emphasis supplied.)

[18] http://www.fpl.com/ami/qa.shtml#1
[19] The Briefing on Smart Meters: Technological Information and Regulatory Issues, p.4

The subpoena of smart meter information is already occurring in California, where the American Civil Liberties Union ("ACLU") announced, "[i]n 2012, a single California utility company, San Diego Gas & Electric, disclosed the smart meter energy records of over 4,000 of its customers – and it's unclear whether this information was turned over in a private lawsuit, to local law enforcement, or even to the federal government. [20]

> Smart meters, the modern energy measurement devices now installed on most California homes, can collect up to 3,000 data points a month about energy usage, potentially exposing details about your private life including whether you are home or away, your sleep and work habits, and maybe even if you need to take hot baths or use specialized medical equipment. It's like someone being inside your house taking notes on the intimate details of your day-to-day life.[21]

Thus, where information regarding energy consumption was collected on analog meters once per month, smart meters greatly increase the scope of information that would be made available to the requesting party, and possibly and impermissibly, intrude upon a person's right to privacy.

While FPL's policy appears to be the nondisclosure of information absent a "court order," this policy does not define the term, or account for other quasi-judicial requests for customer information.

A subpoena is issued pursuant to the jurisdiction of the Court, though an attorney need not receive an "order" from a judicial officer prior to disbursement. Also, if smart meter

[20] Kaegle, Matthew, "Call Logs? Try Kilowatts: Report Reveals Demands for California Energy Data, American Civil Liberties Union, 18 June 2013, https://www.aclu.org/blog/technology-and-liberty-national-security/call-logs-try-kilowatts-reports-reveal-demands
[21] *Id.*

information is requested pursuant to civil discovery request, which, again, is conducted under the auspices of the court but does not require an order from a judicial officer, it is unclear whether FPL, by virtue of its apparent policy, would furnish this information.

FPL has not described, *inter alia*, the customer notification procedure when data records are requested, what steps it would take to contest its obligation to produce records when sought by subpoena or discovery, and who would bear these costs.

FPSC must take a proactive role to require strict rules regarding customer data protection. Florida's situation contrasts with that of Texas,

> where the customer owns his or her data, and there are specific consumer protections in place related to how the data is used. Usage data is transmitted to REPs so the customer can be properly billed. TNMP also is using very secure point-to-point communication technology, which means that each home talks directly to the utility company (as opposed to a "mesh" system where data is collected through a neighborhood hub and then sent to the utility).
>
> http://www.powerinyourhands.com/about_faqs.php

Until these matters are sufficiently addressed by FPL, the privacy and security of customers' usage information remains at risk.

** Fourth Amendment Violations, in View of Coercion to Accept Data Risks, and Such Risks without Informed Consent

Privacy Violations

Proof of the s-meter and s-grid data retrieving capabilities can be found in a Congressional Research Services Report dated February 3, 2012 entitled “Smart Meter Data: Privacy and CyberSecurity”, http://www.fas.org/sgp/crs/misc/R42338.pdf

The report states:

“Smart meters offer a significantly more detailed illustration of a consumer’s energy usage than regular meters. Traditional meters display data on a consumer’s total electricity usage and are typically read manually once per month. In contrast, smart meters can provide near real-time usage data by measuring usage electronically at a much greater frequency, such as once every 15 minutes. Current smart meter technology allows utilities to measure usage as frequently as once every minute. By examining smart meter data, it is possible to identify which appliances a consumer is using and at what times of the day, because each type of appliance generates a unique electric load “signature.” NIST wrote in 2010 that “research shows that analyzing 15-minute interval aggregate household energy consumption data can by itself pinpoint the use of most major home appliances.” A report for the Colorado Public Utilities Commission discussed an Italian study that used “artificial neural networks” to identify individual “heavy-load appliance uses” with 90% accuracy using 15-minute interval data from a smart meter. Similarly, software-based algorithms would likely allow a person to extract the unique signatures of individual appliances from meter data that has been

collected less frequently and is therefore less detailed."

By combining appliance usage patterns, an observer could discern the behavior of occupants in a home over a period of time. For example, the data could show whether a residence is occupied, how many people live in it, and whether it is "occupied by more people than usual." According to the Department of Energy, smart meters may be able to reveal occupants' "daily schedules (including times when they are at or away from home or asleep), whether their homes are equipped with alarm systems, whether they own expensive electronic equipment such as plasma TVs, and whether they use certain types of medical equipment." Figure 1, which appears in NIST's report on smart grid cybersecurity, shows how smart meter data could be used to decipher the activities of a home's occupants by matching data on their electricity usage with known appliance load signatures."

For Customers Retaining Analog Meters: Coercive, Punitive and Discriminatory Fees without Evidence of Calculation

By FPL's estimation, less than one-half of one percent of its 4.5 million customers, or approximately 24,000 households, will oppose the installation of smart meters at their residences. Petition for Approval, ¶ 1. But the opt-out figure is also based upon "data available from opt-out tariffs implemented by other utilities in the United States. FPL found that for other utilities throughout the United States, "0.02 to 0.5 percent of all customers have agreed to pay a fee to opt out." FPSC Memorandum, December 23, 2013, p. 3.

FPSC's Staff posed the following question to FPL: "Please refer to the Application provision of the proposed NSMR tariff and define 'non-communicating meter of the Company's choice.' Will customers under the NSMR tariff keep their current meter, or be given a new non-communicating meter?"[22] FPL responded, "[c]ustomers under the NSMR tariff will keep their current meters. (Emphasis supplied.) If the customer already has a smart meter and elects service under the NSMR, a non-communicating meter will be installed."[23]

Moreover, nothing provided projects the cost savings that will be enjoyed by FPL through the drastic reduction of its number of meter readers, and the increased efficiency of smart meters over the next five years. Assuming, *arguendo*, the same one-half of one percent of meter readers will remain employed to service the one-half of one percent of customers who object to smart meter installation, the resulting surplus could be used to offset, partially or completely, the effects of the NSMR. It also bears noting that while they may be read remotely, the maintenance and servicing requirements of the AMI meters is unknown, and does not preclude frequent on-site inspection. To the extent that meters readers are retained and retrained to service smart meters, this would not place an additional burden on FPL to also service non-communicating meters.

[22] Responses from Florida Power & Light Company to Staff's First Data Request in the Docket File, Request 10.
[23] *Id*.

As far as can be determined by counsel for Petitioners, there is no available data to support the actual number of customers who will choose the NSMR, nor is there data that state how many customers have retained their non-communicating meter. Eighty-one percent of the $95.00 "enrollment" fee is based upon FPL's assumption that there will be at least one on-site visit.[24] It stands to reason, however, that those customers who retained their non-communicating meter may not receive or require the single on-site visit. But, because those figures remain obscure, FPL, whose enrollment figures, again, are projections, has no incentive or reason to be forthcoming with this information prior to the institution of NSMR.

Obviously, the smaller the pool of individuals who choose the NSMR, the larger their fees will be. Conversely, the larger the number, the smaller the individual fee for each household. Thus, there is no incentive for FPL to investigate the actual number of customers who will opt-out, as the institution of higher fees from the outset of the NSMR will seek to force compliance upon a chosen few despite the actual number of objectors.

At the January 7, 2014 Hearing on Petition for Approval of Optional Non-Standard Meter Rider, Ken Rubin, Esq., General Counsel for FPL, made the following remarks:

> [I]t is important that the enrollment fee remains high enough both to recover a substantial portion of the one-time costs, in this case about one-third of those costs, and also to encourage customers to make a choice that serves their best interests but also the best interests of the system operations and all other customers. (Emphasis supplied.) 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

[24] December 23, 2013 Florida Public Service Commission Memorandum, Attachment A, Description of Costs included in Enrollment Fee, p. 8.

> 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.[25] (Emphasis supplied.)

Mr. Rubin's comments are particularly striking. First, there is a presupposition that installation of smart meters is in the best interests of all customers. While that may be the case for FPL and the smart meter manufacturers, FPL customers were not involved in the decision to employ smart meters. Rather, the only choice they are able to make is whether to opt-out, which comes at significant costs, both financial and potentially physiological.

A second, unstated presupposition is that the smart meters pose no health risks. Because the FSPC has apparently delegated its safety jurisdiction to the nonparticipating FCC, the issue of the health risks posed by RF emissions has not received fair treatment throughout the course of this discussion. Again, the FCC does not regulate non-thermal RF emissions, and thus, any standards it sets with regard to RF emissions cannot be indicative of their relative safety. Rather than having their valid health concerns investigated, those who have voiced opposition to smart meter installation have been branded "cost-causers," and burdensome on all otherwise assimilating customers. By no means is it a foregone conclusion that smart meters are safe, but any evidence to the contrary has been summarily ignored. It is, thus, in the "best interests" of customers to protect their health by declining the installation of AMI meters until this matter has been sufficiently addressed.

[25] Transcript of Hearing on Petition for Approval of Optional Non-Standard Meter Rider, by Florida Power & Light Company, pp. 13 - 14

Third, the statement that the upfront fee will "provide a sufficient disincentive to opt out" is particularly telling. The stated basis for the fee is reimbursement of the cost to FPL to provide the additional service required by the NSMR, which is to be borne by those who have requested such service. If that were the case, then disincentivizing customers from opting out would have no place in the discussion, as there would be no additional cost to FPL, and the customers would be receiving the service they requested. But there hovers about the proceedings a now-tangible notion that there is a punitive element to the fees, which is only compounded by the fact that there are no hard figures to support initial enrollment. Compliance, thus, can be forced via a nebulous calculus that seems reasonable on its face, but can be manipulated to increase NSMR enrollment fees to coerce compliance. Additionally, FPL has yet to provide what the "real cost of providing" service to the traditional meters will be, and as long as that number is subject to speculation and manipulation, customers will never know, and are at the mercy of FPL.

Commissioner Ronald Brisé offered his thoughts on the tariff, expressing initial concerns over "the cost causer":

> And ultimately the risk is no longer borne by the individual customer. It's borne by the general body of those who are opted out. And for those reasons I think that the tariff makes sense. 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." (Emphasis supplied.)[26]

Again, Commissioner Brisé's comments acquiesce to the inevitability of smart meters, and portend that the tariff can incentivize objecting consumers to allow their installation despite their reservations. Those customers who raise no objections should not have to

[26] *Id.* at p. 30.

bear the costs for those that do, and those that do, with sufficient "incentive," will ultimately relent, and begin moving "in the right direction of smart meters."

Section 366.81, Fla. Stat. (2013) states,

> The Legislature directs the commission to develop and adopt overall goals and authorizes the commission to require each utility to develop plans and implement programs for increasing energy efficiency and conservation and demand-side renewable energy systems within its service area, subject to the approval of the commission. Since solutions to our energy problems are complex, the Legislature intends that the use of solar energy, renewable energy sources, highly efficient systems, cogeneration, and load-control systems be encouraged. Accordingly, in exercising its jurisdiction, the commission shall not approve any rate or rate structure which discriminates against any class of customers on account of the use of such facilities, systems, or devices. (Emphasis supplied.)

The Florida Supreme Court, in *C.F. Industries, Inc. v. Nichols*, 536 So.2d 234, 238 (Fla., 1988), stated, "[i]n setting rates, the PSC has a two-pronged responsibility: rates must not only be fair and reasonable to the parties before the PSC, they must also be fair and reasonable to other utility customers who are not directly involved in the proceedings at hand."

Regarding the scope of the word "discrimination" within the meaning of §366.81, the Florida Supreme Court found,

> Rates are not discriminatory simply because they are different for different classes of customers. *Tampa Electric Co. v. Cooper*, 153 Fla. 81, 14 So.2d 388 (1943). … Reading section 366.81 in pari materia with other provisions of chapter 366 which mandate that rates be fair and reasonable and reflect the cost of providing the service and load characteristics, we do not believe the legislature used "discriminates" in the sense which appellants urge. Our conclusion is reinforced by the provisions of section 210 of PURPA and FERC section 292.305 which also speak of

> "discriminate against" but make clear that discriminate does not mean rates based on cost-of-service principles.

Id. at 239.

A city may charge different rates to different classes of utility users so long as the classifications are not arbitrary, unreasonable or discriminatory. *See City of New Smyrna Beach v. Fish,* 384 So.2d 1272, 1274-76 (Fla.1980) (upholding solid waste ordinance against claim it discriminated against condominium dwellers); *State v. City of Miami Springs,* 245 So.2d 80 (Fla.1971) (upholding sewer ordinance setting a flat rate for single family residences and a variable rate based on use for all other users).

Turning to the facts at issue here, using the Florida Supreme Court's two-pronged test, there will likely be no objection from FPL as to the reasonableness of the NSMR enrollment fee it seeks to impose upon those who opt out of smart meter installation. The fee's arbitrariness can be found in the nondisclosure of key calculation data, in addition to the professed disincentivizing of customers to enroll in the NSMR by simply accepting the smart meter. The enrollment fee has primarily been tailored by FPL, and by extension FPSC, to discourage customers from rejecting, and encouraging them to "move in the direction" of the smart meter. These rates, thus, are not based on cost of service principles, and are discriminatorily aimed at coercing compliance from those customers who seek to opt out of the smart meter.

While FPL has provided financial documentation to the Staff of the FPSC that support its cost projections, those projections are subject to unilateral monitoring, reporting and

change.[27] Only after nearly one year of the imposition of the NSMR tariff will FPL be required to provide enrollment and revenue figures, which will almost necessarily vary wildly from their projections, which makes clear the NSMR tariff is not based upon cost of service principles.

Without a quantifiable basis from which to arrive at enrollment and service figures, the NSMR tariff is not cost-of-service-based. Furthermore, the overtones of coercion through financial incentives, or disincentives, pervades, and the tariff's coercive, punitive and discriminatory nature supplants its stated practical purpose. FPSC must reject the tariff, and instead require Florida utilities to allow their customers to retain their analog meters and request one upon initiation of service at no charge.

Constitutional Rights to Privacy And Freedom from Bodily Intrusion Have Not Been Considered

The Fourteenth Amendment to the United States Constitution provides that no State shall "deprive any person of life, liberty, or property, without due process of law." This clause "guarantees more than fair process, and the 'liberty' it protects includes more than the absence of physical restraint." *Washington v. Glucksberg*, 521 U.S. 702, 719 (1997).

[27] "Monitoring of Costs. FPL estimated the number of customers that will receive service under the NSMR tariff and developed incremental cost estimates accordingly. (Emphasis supplied.) Actual participation rates will likely vary. Thus, both the initial and recurring costs are set points for the purposes of establishing the NSMR charges. … FPL should also be required to include in its annual progress reports enrollment, revenues received from the enrollment fee and the monthly surcharge, and actual costs associated with the NSMR tariff, to ensure tariff remains cost-based or else be adjusted through a revised tariff filing." December 23, 2013 Florida Public Service Commission Memorandum, p. 5.

Rights are protected under the Due Process Clause of the Fourteenth Amendment if they are “so rooted in the tradition and conscience of our people as to be ranked as fundamental” or if such rights reflect “basic values implicit in the concept of ordered liberty” such that “neither liberty nor justice would exist if they were sacrificed.” *See Moore v. City of East Cleveland Ohio*, 431 U.S. 494, 503 (1977); *Griswold v. Connecticut*, 381 U.S. 479, 500 (1965); *Palko v. Connecticut*, 302 U.S. 319, 325 (1937); *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934).

The right to bodily integrity has long been recognized as a fundamental right protected by the Constitution. *See Albright v. Oliver*, 510 U.S. 266 (1994) (due process accorded to matters involving marriage, family, procreation and the right to bodily integrity); *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), (Constitutional liberty interest includes right to bodily integrity, a right to control one’s person); *Schmerber v. California*, 384 U.S. 757 (1966) (integrity of an individual’s person is cherished value of our society); *Union Pacific R. Co. v. Botsford*, 141 U.S. 250 (1891) (no right held more sacred or more carefully guarded than right of every individual to be in possession and control of his own person, free from restraint or interference of others).

Courts have particularly recognized such Constitutional autonomy rights in the medical context. *See, e.g., Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261 (1990) (Constitution grants competent person right to refuse lifesaving hydration and nutrition); *Roe v Wade*, 410 U.S. 113 (1973) (women have Constitutional right to control

decision on whether to obtain an abortion); *Griswold v. Connecticut*, 381 U.S. 479 (1965) (restriction on citizens from receiving contraceptives from their physician an unconstitutional intrusion); *Rochin v. California*, 342 U.S. 165 (1952) (forcible stomach pumping of accused violates due process and is conduct which "shocks the conscience"); *Skinner v. State of Oklahoma*, 316 U.S. 535 (1942) (sterilization performed without consent deprives individual of basic liberty). As Justice Cardoza stated in *Schloendorff v. The Society of New York Hospital*, 211 N..Y. 125, 105 N.E. 92, 93 (1914), a case against a surgeon for performing an operation without consent: "Every human being of adult years and sound mind has a right to determine what shall be done with his own body." *Id.*, 211 N.Y. at 129-130.

It is well-settled in US Constitutional law that fundamental privacy rights exist not only in one's home, but also in one's bodily integrity.

Even where the FCC, FPL, or any other agency classifies the level of RF radiation coursing through Petitioners' homes as innocuous, the fact remains that *any* level of unwanted intrusion into their private lives is an invasion of their privacy.

Petitioners' well-founded objections to their homes' saturation by RF waves emitted by the smart meters are supported by scientific data that was conspicuously absent from the September 20, 2013 public workshop, and apparently any other documentation submitted to date.

It is uncontroverted that RF emissions will be passing through the homes of all smart meter users. It is uncontroverted that these RF will interact with the bodies if persons inside the home to which smart meters are attached. Petitioners, thus, have a fundamental Constitutional right to refuse this intrusion into their privacy.

The absence of any empirical nexus between the NSMR surcharge and implementation and maintenance costs to FPL deprives customers of any meaningful opportunity to avoid exposure to RT emissions. Further, because it appears the tariff is of a punitive, and not recuperative, nature, customers are being financially coerced into accepting AMI meters even after they have voiced valid concerns and objections.

Radiofrequency Radiation is an Established Hazard, Having Been Voluminously Researched in >20,000 Studies, Yet Has Not Been Considered by FPSC or FPL

Radiofrequency Radiation is an Established Hazard, Having Been Extensively Researched in >20,000 Studies over 8 Decades, Yet Has Not Apparently Been Considered by FPSC or FPL

According to the Florida Public Service Commission's ("FPSC") February 11, 2013 Memorandum, "Florida Power & Light Company (FPL) uses advanced metering infrastructure (AMI) that utilizes Radio Frequency (RF) Mesh technology that provides two-way communications infrastructure to and from the customer's meter."

FPL and FPSC appear satisfied with the participating utilities' representation that the Federal Communications Commission ("FCC") "has exclusive jurisdiction over the health effects of smart meters, "arising "from the Federal Communications Act of 1934," and continuing with the Telecommunications Act of 1996,[1] even though neither of these Acts speaks to or even conceives of the AMI system or any utility meters. Nor is there a word in either Act granting FCC any authority over health. While the FCC did receive an invitation to the September 20, 2012 public workshop, it declined to participate. The parties that participated as invited presenters all had vested interests in the deployment of AMI meters, with the exception of three minutes per person allotted for mere customer "concerns". There was no allowance of customer or independent expert facts, and no official public record. Indeed, because this was not a hearing, presenters were not under oath and could perjure themselves with impunity.

FPSC and FPL avoid confronting the fact of primary, direct, adverse human health effects, including impairments, injuries, diseases and early deaths from AMI's pulsed RF radiation. While declining to defend the AMI meters overtly as "safe", they attempt to duck behind FCC, which federal agency has no authority or expertise in health matters. Indeed, the Environmental Protection Agency ("EPA") has several times taken FCC to task over its lax exposure "guidelines", which do not qualify legally as human exposure standards.

When questioned on FCC guidelines in 2002, EPA responded:

- " The FCC's current exposure guidelines, as well as those of the Institute of

Electrical and Electronics Engineers (IEEE) and the International Commission on Non-ionizing Radiation Protection, are thermally based, and do not apply to chronic, non-thermal exposure situations."

- "The FCC's exposure guideline is considered protective of effects arising from thermal mechanism but not from all possible mechanism. Therefore the generalization by many that the guidelines protect human beings from harm by any or all mechanisms is not justified."

EPA has additionally expressed outrage at FCC's 1990s claim that there exist no vulnerable populations with regard to RF radiation bioeffects. (FN)

As admitted in public meetings by the Chair of the industry-based, ASTM/IEEE[2] Committee that set the FCC guidelines, John Osepchuk, PhD, a physicist who lacks expertise in public health science, confirmed that guidelines were based in 120 studies published prior to 1990. In fact, of those studies, 15 concluded adverse effects at exposure levels lower than the "Hazard Threshold" – the point beyond which no adverse effects could conceivably take place, in the ASTM/IEEE Committee's doctrine. Three of these 120 studies showed adverse effects at exposure levels more than 10x lower than the Hazard Threshold. Thus, the guideline-setting Committee's own chosen studies disproved its Hazard Threshold and proved fraud in the setting of the guidelines.[3]

FPL, FPSC and others persist not only in giving credence to these guidelines, but also in claiming falsely they are legal "standards", which they are not. The guidelines, issued

in 1991 and rubber-stamped thereafter, ignore tens of thousands of studies, most of them concluding adverse effects in humans, animals and/or plants. Some of these studies, from the 1920s to the present, observe harm at thousands and even millions of times lower intensities than FCC guidelines, especially where, as EPA has pointed out, there is constant, 24/7 exposure. FCC guidelines fail to consider accumulated exposure and vulnerable populations, such as infants and children, elders, as well as persons with prior impairments, illnesses and injuries.

At the request of US Rep. Dennis Kucinich, the US General Accounting Office (GAO) performed an audit of FCC's RF/MW radiation guidelines and in July 2012 issued a report stating, "The Federal Communications Commission's RF energy exposure limit may not reflect the latest research, and testing requirements may not identify maximum exposure in all possible usage conditions." The GAO directed FCC, which admitted it does not have health-safety expertise and relies on other agencies for advice, to review and update its guidelines.

In a letter of April 2012 to FPSC, the American Academy of Environmental Medicine stated regarding AMI deployment, "Current FCC guidelines are inadequate for use in establishing public health standards".

The American Academy of Pediatrics, in a December 12, 2012 letter of support to Rep. Kucinich's "Cell Phone Right-To-Know" Bill, stated, "It is essential that any new standards for cell phones or other wireless devices be based on protecting the youngest

and most vulnerable populations to ensure they are safeguarded through their lifetimes."

Various factors, including without limitation modulation, duration, wavelength, complexity of the radiation microenvironment, individual susceptibility of an exposed person, and whether exposure is voluntary, all increase the hazardous effects of RF radiation. The RF bioeffects scientific community considers Modulation a very powerful factor. Pulsed and pulse-modulated ("PM") radiation, both forms of amplitude modulation ("AM"), are particularly harmful by way of the spike in their signal, in this case beginning from zero amplitude, thus producing a complete and sudden off-on switch that interferes with cellular, especially neuronal, functioning. The whole-body effects of pulsed RF radiation related to PM were already well known by the mid-1960s, per this review by a leading researcher at the time:

The autonomic nervous system is affected by the microwaves of the centimeter wave *[1965 conclusions…]*

As a result of these causal relationships having been considered scientifically established, the US Congress passed the Public Health Service Act Amendment of 1968, requiring that "all… electronic product emissions…"

Indeed, Retired British MI6 Agent Barrie Trower has exposed how in the 1950s pulsed RF radiation in similar wavelengths and intensities was already so well understood in its

human neurologic effects by that time, that it was used for torture. (FN – Affidavit for Morrison v PPS)

Duration, according to some researchers, may be the most potent factor in intensifying adverse bioeffects. When exposure is chronic, i.e., around the clock, effects can be seen at intensities orders of magnitude lower.[4] Thus, the combined effects of AMI meters and their grid, operating night and day without the body's capacity to rest or adjust, can very powerfully influence health outcomes for the worse. RF radiation genotoxicology researcher Dimitri Panagopoulos PhD states,

> [S]tudies done on habitants living close to base stations are more consistent [than those of cell phone users] since the station emits a more constant radiation level on a daily basis, and therefore a person residing nearby receives a measurable radiation at least for several hours per day.

Thus, even if AMI meters in every situation were to fall within FCC guidelines, which they often do not at close range or when in banks of several meters, they would still likely produce adverse effects, especially in the more heavily exposed persons and in the more susceptible. Considerable evidence exists, too, that insects including bees are strongly affected by PM RF radiation; in so far as humans are dependent upon these other species for subsistence, this represents an indirect, but potent, threat to human life.

Very significantly, as a wavelength approaches body-part size, the absorption of the

radiation increases exponentially toward resonance. Where a body-part dimension is a half to two times the wavelength of the radiation in a microenvironment, absorption is maximized. This fact alone renders any exposure standards useless for protection; for actual[5] absorption is more relevant than exposure to bioeffects.

At 900 MHz, the wavelength is 13.12 inches, well within the range of maximized absorption. If the “900 MHz” figure is an estimate, then the wavelength would be in the range of ~12-14 inches: eminently absorbable by adult’s and children’s heads, torsos, heart, lungs, genitalia, and more.

Per the following graph by physicist William Curry PhD, the centimeter wavelengths chosen for AMI deployment, usually in the range of 900 MHz, maximize absorption-per-exposure in brain tissue; which is another reason FCC guidelines cannot protect against this radiation.

Absorption of RF fields in the tissues of the human body fosters the deposition of energy in these tissues, compounding that produced by metabolism. This energy saddles the body with an additional thermoregulatory burden, and body temperature can increase if the energy absorption rises above a certain level. Localized temperature increase can occur in response to localized absorption of energy and the core body temperature can rise in response to generalized absorption of energy throughout the body tissues.[6]

Not surprisingly, public health scientists and physicians have observed that vulnerable persons and some previously healthy persons have had extremely adverse reactions to the onset of AMI radiation in their homes and offices, forcing some to leave these locations. Their observations should alone suffice to produce a statewide moratorium. The addition of peer-reviewed scientific studies, such as were submitted onto the public record at the 2012 FPSC “workshop”, should ensure not only a moratorium, but a full and immediate removal of installed AMI equipment, as well.

The most immediate effects of RF radiation are neurologic, including melatonin suppression, sleep impairments, fatigue, inattention, lack of focus, learning and memory impairments, hyperactivity, headaches, migraines and seizures. Cardiac and blood pressure changes usually emerge within the short-term, as do cellular changes that begin the process of cancers, immune system dysfunction and other long-term effects. Genotoxic effects from RF radiation include chromosomal instability, altered gene expression, gene mutations, DNA fragmentation and DNA structural breaks.[7] The outcomes for future generations, which will have received the longest and most intense exposure, especially in their very crucial formative years, will likely be horrific.

The American Academy of Environmental Medicine (“AAEM”) states that even non-thermal exposure to RF can be linked to “[g]enetic damage, reproductive defects, cancer, neurological degeneration and nervous system dysfunction, immune system dysfunction, cognitive effects, protein and peptide damage, kidney damage, and developmental effects[, which] have all been reported in the peer-reviewed scientific

literature."[8]

The World Health Organization[9], has classified RF emissions as a group 2B carcinogen[10], which is the same class as DDT, lead, dioxin, chloroform, gasoline, diesel fuel, fuel oils, welding fumes, and ethylbenzine. The AAEM calls for "[a]n immediate caution on Smart Meter Installation due to potentially harmful RF exposure," as well as "[a]ccommodation for health considerations regarding EMF and RF exposure, including exposure to wireless Smart Meter technology."[11]

In an August 30, 2013 letter to the FCC, the AAEM urged the FCC to "recognize that non-thermal effects of RF exposure exist and cause symptoms and disease. (citation omitted) The AAEM also requests that the FCC base guidelines of RF exposure on measurements of non-thermal effects and lower the limits of RF exposure to protect the health of the public."

FSPC, on its website, professes its "authority does not extend to health issues related to meters,"[12] but then provides what can only be considered as health-related information about RF emissions are ostensibly misleading:

- "Smart meters periodically transmit a low power signal."
- "RF emissions from smart meters are well below the FCC standard."
- "Smart meter transmitters are certified for compliance with RF emission standards by the FCC."

- "The FCC deems that meters in compliance with these emission standards do not have adverse health impacts."[13]

As stated *supra*, there are documented, direct ("non-thermal") effects of RF emissions, and the FCC does not monitor these phenomena. Thus, stating matter-of-factly that the FCC "deems meters in compliance with these emission standards [to] not have adverse health impacts" is misleading to the public and contrary to available scientific conclusions, as the FCC's stated opinion is limited only to the secondary effects of heat deposition of RF radiation.

In providing false and misleading statements to the public with regard to AMI RF radiation and its adverse effects, FPSC is overstepping its jurisdictional bounds both by commission and omission.

Furthermore, while the FCC refuses to consider the non-thermal effects of RF radiation, a gap in jurisdiction over those health effects exists, and that void should be filled by the FPSC. Section 366.04(6), Fla. Stat. (2013) provides FPSC such jurisdiction, stating, "[t]he commission shall further have exclusive jurisdiction to prescribe and enforce safety standards for transmission and distribution facilities of all public electric utilities."

FPSC should have engaged, and should yet engage, the participation of the Florida Department of Health ("Department"), who, pursuant to §501.122, Fla. Stat. (2013), "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."[14][15]

In the execution of its duties, the Department may:

(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.[16]

FPSC's mission is "[t]o facilitate the efficient provision of safe and reliable utility services at fair prices." It lacks authority to let its regulated utilities run roughshod over people, coercing them into manifold, personal harm.

In July 2012, the Maine Supreme Court, following a challenge from customer of Central Maine Power ("CMP"), ordered that the Maine Public Utility Commission ("MPUC") to reconsider its dismissal of the petitioner's complaint that requested an evidentiary hearing into the health effects of RF emissions.[17] Ultimately, the Maine Supreme Court would not permit the MPUC to shirk its responsibilities to ensure that public utilities provide "safe, reasonable and adequate service" to customers. [18] In line with the reasoning of the Maine Supreme Court, the nonparticipation of the FCC in no way relieves FPL and FPSC of their responsibility for the health and welfare of the public through the "efficient provision of safe and reliable utility services at fair prices."

The Americans With Disabilities Act Prohibits a Government Agency from Imposing Surcharges on Individuals or Groups of Individuals to Cover Costs of Accommodation

The Americans with Disabilities Act ("ADA") generally prohibits discrimination on the basis of an individual's disability.

In addition to the ADA, which includes Title II[28] and Title III[29], the ADA is implemented through regulations promulgated by the United States Department of Justice ("DOJ"), and its interpretation is informed via DOJ-issued Technical Assistance Manuals, guidance letters, and other written statements. *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) established that publications are entitled to deference.

[28] Which requires public entities including states and state agencies to avoid discrimination based on disability
[29] Which requires public accommodations to avoid discrimination based on disability

The crux of the ADA that "discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services,"[30] and seeks to "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."[31]

Title II of the ADA applies to public entities, and prohibits discrimination by forbidding people with disabilities from being "excluded from participation in or be[ing] denied the benefits of the services, programs, or activities of a public entity." [32] Public accommodations are governed by Title II of the ADA, which proscribes activity that would deny "full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation" to people with disabilities.[33] The ADA is intended to be a floor, not a ceiling, on rights for people with disabilities, and states are free to provide greater protection for people with disabilities than is required by the federal statute.[34]

Generally, Title III of the ADA requires public accommodations to provide equal access to goods and services to people with disabilities as are provided to non-disabled

[30] 42 U.S.C. § 12101(a)(3).
[31] 42 U.S.C. § 12101(b)(1).
[32] 42 U.S.C. § 12132.
[33] 42 U.S.C. § 12182.
[34] 42 U.S.C. § 12182.

patrons.[35] This prohibition on discrimination specifically includes a requirement to modify standard practices and procedures when necessary to provide access,[36] and to provide auxiliary aids and services to the extent necessary to ensure that a person is not denied service due to a disability.[37] The federal regulations implementing Title II of the ADA unambiguously prohibit covered entities from assessing a surcharge to cover the costs of providing access, stating:

> A public accommodation may not impose a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids, barrier removal, alternatives to barrier removal, and reasonable modifications in policies, practices, or procedures, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.[38] (Emphasis supplied.)

In guidance issued by the DOJ, the requirement is equally clear: "Although compliance [with Title III] may result in some additional cost, a public accommodation may not place a surcharge only on particular individuals with disabilities or groups of individuals with disabilities to cover these expenses."[39] (Emphasis supplied.)

FPL s a public accommodation, as it provides services to the community at large, both at its facilities and through the provision of services, and thus, is falls under the purview of the ADA. Nonetheless, FPL appears to have made no concessions within the NSMR for those individuals with disabilities. The tariff will be imposed on anyone who chooses

[35] 42 U.S.C. §12201(b).
[36] The question of whether the IOUs whose programs are under review in this consolidated proceeding are
public accommodations subject to Title III of the ADA is discussed below.
[37] 42 U.S.C. §12182(b)(2)(A)(ii).
[38] 28 C.F.R. §36.301(c).
[39] Americans With Disabilities Act Title II Technical Assistance Manual, §III-4.1400 (Surcharges), available at http://www.ada.gov//taman3.html.

not to allow the installation of a smart meter. In violation of the ADA, FPL's tariff is exactly the type of surcharge that is outlawed by the Act, as FPL seeks to be reimbursed for the alleged costs of non-communicating meters.

FPL's flagrant violation of the ADA with regard to its implementation of smart meters cannot be excused in light of the fact that several of its customer have and could have severe, and sometimes life-threatening, reactions to RF emissions. Regardless of whose responsibility it is for the health effects of RF emissions, the spirit of the ADA cannot be so blatantly disregarded as to not only install these meters, but insist upon surcharges for their use by people with disabilities.

STATEMENT OF APPLICABLE RULES AND STATUTES

1. U.S. Const. Amend. XIV, §1: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law." FPL's failure to provide customers with a meaningful alternative to AMI will result in a violation of due process protections.

2. 42 USC §12101, Americans with Disabilities Act, which prohibits public accommodations from imposing surcharges on individuals with disabilities or any group of individuals with disabilities to cover the costs of measures. FPL and FPSC have ignored the adverse health effects of RF emissions, and made no

apparent concessions for those with complained-of and documents adverse reactions to RF emissions.

3. §366.81, Fla. Stat. (2013): “in exercising its jurisdiction, the commission shall not approve any rate or rate structure which discriminates against any class of customers on account of the use of such facilities, systems, or devices.” It is Petitioners’ position that the NSMR tariff is discriminatory for its lack of empirical data demonstrating that the fee is cost reimbursement to FPL, and not a coercive measure to force compliance.

4. §366.04(6), Fla. Stat. (2013): ”[t]he commission shall further have exclusive jurisdiction to prescribe and enforce safety standards for transmission and distribution facilities of all public electric utilities.” Section 366.04(6) is a basis for FPSC’s jurisdiction over the health effects of RF emissions.

5. §501.122, Fla. Stat. (2013): The Florida 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. … (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.

In the event FPSC declines jurisdiction RF emission-related health effects, it should alert and defer to the Florida Department of Health for further study, and liaise with the Department to facilitate a resolution of this issue.

RELIEF SOUGHT ~~BY PETITIONERS~~

1. Explicit acknowledgement by FPSC of customer's Right to Refuse without financial penalty or coercion.
2. For FPSC to take jurisdiction over the effects of RF emissions, and liaise with the Department on this matter**.**

3. The holding of a docketed evidentiary hearing where the adverse effects of RF emissions are presented and discussed by experts in the field of RT emissions and medicine, *inter alia*;

4. The removal of health-related RF emission information from FPSC's website, as it is an incomplete representation of the effects of RF radiation;

5. The denial of FPL's request for the NSMR tariff on the ground that it is does not provide a meaningful alternative where the tariff's calculation is dubious, and implementation coercive and punitive;

6. The denial of FPL's request for the NSMR tariff on the ground that it violative of the ADA.

Respectfully submitted,

Jones & Jones Law, P.L.

By: /s/ Nicholas Randall Jones
Nicholas Randall Jones, Esq.
FBN 84369
1006 Verona Street
Kissimmee, Florida 34741
(Telephone) (407) 796.1508
(Facsimile) (407) 288.8268
(Email) njones@jonesjustice.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic mail to the following parties on the 4th day of February 2014:

Kenneth M. Rubin
Senior Counsel
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408
Ken_rubin@fpl.com

Michael Lawson, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Blvd
Tallahassee, Florida 32399-0850
mike@thelawsonlawfirm.com

J.R. Kelly, Esq.
Charles Rehwinkel, Esq.
Patricia Christensen, Esq.
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399
rehwinkel.charles@leg.state.fl.us

By: s/ Nicholas Randall Jones
Fla. Bar No. 84369

BILL POSEY
15TH DISTRICT, FLORIDA

COMMITTEE:
FINANCIAL SERVICES
SUBCOMMITTEES:
CAPITAL MARKETS
OVERSIGHT AND INVESTIGATIONS

MEMBER OF:
HOUSE AEROSPACE CAUCUS
REPUBLICAN STUDY COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515

www.posey.house.gov

WASHINGTON OFFICE:
120 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3671
FAX: (202) 225-3516

DISTRICT OFFICE:
2725 JUDGE FRAN JAMIESON WAY, BLDG. C
MELBOURNE, FL 32940
(321) 632-1776
FAX: (321) 639-8595

December 6, 2011

[redacted]

Dear [redacted]

Thank you for contacting me to express your concerns about smart meters. I appreciate hearing from you.

As you may know, provisions within the 2005 Energy Policy Act allow for consumers to opt out of smart meter programs that are run at the state level. Florida consumers can opt out of these programs by contacting the appropriate authorities. As this is a state issue, I suggest that you contact Florida Power and Light at (305) 552-2950 and the Florida Public Service Commission at 1(800) 342-3552 and request that you be added to the smart meter opt out list.

Thank you again, [redacted], for contacting me. I appreciate having the benefit of your views. It is an honor to serve you in Congress. For more information on my work in Congress, to sign up to receive my E-newsletter, or to participate in telephone town hall meetings, please visit my website, http://www.posey.house.gov, or call my office at (321) 632-1776. If I may be of service to you in the future, please do not hesitate to contact me.

Sincerely,

Bill

Bill Posey
Member of Congress