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

February 13, 2014

Re: Marilynne Martin, et al., Docket No. 130223-EI, Petition for a Formal Evidentiary Proceeding; Response to Request for Proposed Issues for informal meeting between Commission Staff and the parties on February 18, 2014

Dear Ms. Stauffer,

Attached for filing is Petitioner Marilynne Martin, et al., Proposed Issue List for presentation at the informal meeting called by Michael Lawson, Senior Attorney, Office of General Counsel, for February 18, 2014 that is being electronically filed today.

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

Sincerely,

/s/ Marilynne Martin

Attachment

Marilynne Martin, et al. - Response to Michael Lawson, February 7, 2014 Memo for list of proposed issues, Re: Docket No. 130223-EI – Petition for approval of optional non-standard meter rider, by Florida Power & Light Company

### **Marilynne Martin, et al. Proposed Issues List**

#### **Equipment Referred to as “Smart Meters”:**

Issue # 1 – Does FP&L’s “smart meter”, as currently equipped with optional additional components, comply with or exceed the definition of meter as per Florida Public Service Commission (“FPSC”) Rule 25.6-.003 (2) ( c ) ?

Issue # 2 – Did FP&L’s inclusion of additional communication network and other components, for its smart meter purchase, warrant additional investigation and hearings by the FPSC to ensure (i) known consumer issues (e.g. health, safety, security, privacy, trespass, constitutional rights) were properly addressed, (ii) the smart meter complied with established FPSC rules and (iii) the meter as equipped complied with all existing laws?

Issue # 3 – Should the FPSC have explored and evaluated all the relevant issues (cost/benefits, pro/cons) of each available communication delivery methods (e.g. – fiber optics, broadband over power lines, wireless mesh network) before approval of the project?

Issue # 4 – Did the FPSC satisfy its statutory responsibilities to ensure safe and cost efficient service, as well as, protect consumers US and Florida State constitutional rights when evaluating FP&L’s smart meter project in the 2009 Rate Case before approval of such project?

Issue # 5 - Should the FPSC have established hearings to (i) review and investigate the smart meter technology capabilities as it relates to data collection and (ii) establish privacy and ownership rules before approving deployment?

Issue # 6 - Upon presentment of deployment plans with equipment emitting radio frequency pulsed microwave non-ionizing radiation in the 2009 FP&L rate case should the FPSC have referred the equipment to the Florida State Health Department for review and opinion before its approval?

Issue # 7 - Does the smart meter with/without radio off produce increased “dirty electricity” on the customers electric lines? If so, should the system be tested and consumer health issues be evaluated prior to the establishment of such meter as the “standard meter”?

### **Rulemaking Procedures:**

Issue # 8 – Did the Undocketed Smart Meter Workshop conducted by FPSC Staff on September 20, 2012 adequately address and investigate consumer issues reported upon?

Issue # 9 – Did the Smart Meter Briefing Report prepared by FPSC Staff properly and adequately reflect consumer issues presented by the public at the September 20, 2012 Workshop and submitted by the public through written comments/calls for each included category?

Issue # 10 – Did the decision made at the February 19, 2013 FPSC Internal Affairs Meeting based on the Smart Meter Briefing Report (to let the utilities decide if an alternative meter should be offered at a fee) create a rule that “smart meters” would be standard service? If yes, was the Workshop/Briefing Report an appropriate forum for rulemaking? If not, should the FPSC have ordered a Notice of Proposed Rule Making be issued to conduct the appropriate process to establish that rule?

### **Jurisdiction:**

Issue # 11 – Does the FPSC’s jurisdiction allow the siting of a communication network in customer owned meter enclosures?

Issue # 12 – Does Section 501.122 (“Control of nonionizing radiations; lasers; penalties”) of the Florida State Statutes give the Florida State Health Department jurisdiction over meters that contain communication modules that emit pulsed microwave nonionizing radiation?

Issue # 13 – Assuming that the FPSC has no health expertise or jurisdiction over such matters, should the FPSC have referred the issue to the Florida State Health Department and a ruling been obtained from it prior to the FPSC mandating the smart meter as a standard meter?

Issue # 14 – Is there a State statute or State Health Department rule or policy that delegates authority for health/safety issues over pulsed microwave non-ionizing radiation for all products meeting Federal Communications Commission (“FCC”) Emissions Guidelines to the FCC?

Issues # 15 - Does the FCC have sole authority over health and safety issues for radio frequency non-ionizing radiation in Florida?

Issue # 16 - Do the FPSC rules permit a measuring device that allows utilities to collect data beyond what is needed for billing purposes?

Issue # 17 - Is there an FPSC rule that requires the customer to consent to information gathering beyond what is needed for billing?

### **Consistency of Application of Commission Practices**

Issue # 18 - Have both the FPSC and FP&L justified the use of the principle “that a customer requesting any available non-standard service should pay the incremental costs associated with that service” for this tariff?

Issue # 19 - Have both the FPSC and FP&L consistently applied the principle “that a customer requesting any available non-standard service should pay the incremental costs associated with that service”? Can the FPSC and FP&L adequately justify why (i) other non-standard services (e.g. customer service and budget billing) are exempt from this principle and (ii) this smart meter tariff is not being applied in a discriminatory manner?

### **Property Rights**

Issue # 20 – Will FP&L’s tariff as written, which allows a customer who is not the property owner to determine the meter service for that property, interfere and conflict with existing leases, condominium association documents, and other property documents and violate property laws?

Issue # 21 – Does the FPSC Order which approved and mandated the establishment of FP&L’s communication network in the customer owned meter enclosure, without customer consent, represent a partial “taking” of the customers property? If so, were proper procedures followed to enable such taking?

Issue # 22 – Does FP&L’s tariff provide adequate alternatives for those customers living in multifamily dwellings?

### **Privacy**

Issue # 23 - Does the mandatory collection of detailed usage data by the smart meter without the customer’s consent violate the 4<sup>th</sup> Amendment US Constitutional rights of the customer as an unlawful search and seizure?

Issue # 24 - Does the mandatory collection of detailed usage data by the smart meter without the customer's consent violate the customer's privacy rights under Article 1, Section 23 of the Florida State Constitution?

Issue # 25 – Should the FPSC develop and issue a rule on the determination on ownership of the detailed usage data being collected from the smart meter so that such rule is uniform across all utilities and protects all Florida consumers equally regardless of utility as well as complies with applicable federal laws (e.g. Federal Wiretap Act)?

Issue # 26 – Should the FPSC define “regulated business use” through formal rulemaking so that (i) there is clarity as to the scope of this phrase and (ii) limitations are placed on the use of the detailed data by the utilities prior to a customer's consent to have such data collected?

Issue # 27 – Has FP&L justified its business need for collection of detailed usage data through its smart meter beyond what is needed for billing purposes?

Issue # 28 – Do the FPSC's current rules require consumers to consent to the collection of data beyond what is needed for billing purposes?

Issue # 29 – Since the new technology is digital and software driven (as opposed to mechanical), and software changes can be made at any time, should the FPSC develop rules prior to approval of this tariff, which place limits and controls on what information can be collected and recorded by such software as well as requiring FPSC review and permission for all future software changes?

Issue # 30 - Should FP&L's smart meter software be subject to additional independent audit requirements to ensure compliance with newly established rules and ensure customers privacy is protected?

Issue # 31 - Should the FPSC establish rules that protect such data use from sharing with and/or improper use by third parties and establish penalties for violations as well as consumer restitution procedures for breaches?

### **Tariff - General**

Issue # 32 – Should the product being offered to the customer under this tariff (e.g.- “non-communicating meter”) be better defined with more specifics so that the customer understands the product they are contracting for and its functionality before enrollment?

Issue # 33 – Should the customer that enrolls in the nonstandard meter service be informed upfront that the tariff as written gives FP&L the authority to replace the analog meter with a non-communicating meter and such meter could be a

smart meter with the transmitter turned off or a digital meter to avoid future conflict and complaints?

Issue # 34 - Should the consumer be offered under this tariff an analog meter as a choice of nonstandard meter?

Issue # 35 – Should FP&L’s communication plan for this new non-standard service be directed towards all customers, not just those on their postpone list, in order to treat all customers equally? If so, should the Commission exclude communication plan costs from the non-standard meter fees?

Issue # 36 – Since all meters do not play the same role in FP&L’s Neighborhood Area Mesh Network, should FP&L be ordered to disclose to its customers, (i) whether they have a collector meter, (ii) the number of transmissions per day the customer’s meter is actually transmitting and (iii) the peak power levels so that the customer can make an informed decision on whether to enroll in the non-standard service?

Issue # 37 – Does the FPSC ruling of this smart meter as “standard meter service” create compliance issues under current laws, such as the Americans with Disability Act?

Issue # 38 - Does the tariff as written provide proper accommodation for those disabled and immediately experiencing health effects from the installation of the smart meter?

Issue # 39 – Should FP&L be required to provide a zone of safety for those consumers covered under the ADA?

Issue # 40 - Do smart meter provide benefits, in terms of cost or useful information, for the consumer?

### **Tariff – Specific Costs**

Issue # 41 – Did the FPSC and FP&L have knowledge of consumer issues prior to the Order approving the system-wide deployment of smart meters? If so, should the FPSC have established an alternative meter rule prior to the approval of FP&L’s system wide deployment in order to mitigate costs and meet its obligation to provide cost efficient service?

Issue # 42 – Are FP&L’s costs to provide non-standard meters inflated by its decision to use a postpone list and wait until the deployment was finished to offer the non-standard service meter?

Issue # 43 – Is FP&L’s use of other “selected” utilities opt-out program results appropriate for determining the estimated enrollees in the new tariff offering or should the actual number of customers refusing the smart meter installation be used to determine the fee to be applied in the tariff?

Issue # 44 – Were alternatives to actual manual monthly meter readings explored in order to mitigate costs involved and provide a more cost efficient nonstandard meter service?

Issue # 45 – Have FP&L and the FPSC justified their use of a 2-year initial enrollment period for its cost calculation? Does the use of such a long enrollment period inflate the costs?

Issue # 46 - Has FP&L justified the field visit fee for the initial enrollment period?

Issue # 47 - Has FP&L justified why, after the initial enrollment period, some meter change outs requiring a field service visit will not be subject to a field visit fee?

Issue # 48 - Has FP&L justified why after the initial enrollment period some enrollees will be required to pay for a field visit when such visit will not take place?

Issue # 49 - Will the tariff as written result in duplicative fixed cost charges being paid by customers enrolled in non-standard meter service upon moves?

Issue # 50 - Does the inclusion of collection costs in the non-standard service fee result in all non standard service customers subsidizing the costs of delinquent customers? If so, would a separate collection fee for delinquent non-standard meter service customers be more appropriate and ensure only the “cost causer” is paying such costs?

Issue # 51 – Should communication plan costs of this new service offering be born by all ratepayers as opposed to just nonstandard meter service customers?

Issue # 52 – Has FP&L justified the need for a full-time program manager?

Issue # 53 – Should system development costs be calculated using estimated hours times FP&L’s internal salary rate as opposed to outside contract fees assuming that FP&L should have included the needed changes in its program development plans upfront?

Issue # 54 - Does the use of incremental costs (as opposed to net incremental costs) place an undue cost burden on customers enrolling in the non-standard meter service effectually making them pay for services they will not be utilizing and subsequently subsidizing the standard meter service customers?

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

I HEREBY CERTIFY that a true copy of the foregoing Proposed Issues List has been furnished by electronic mail on this 13<sup>th</sup> day of February 2014, to the following:

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