

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of optional non-standard meter rider, by Florida Power & Light Company

Docket No. 130223-EI

Filed: April 17, 2014

**FLORIDA POWER & LIGHT COMPANY'S
RESPONSE TO PETITIONERS AHN'S AND
MARTIN'S MOTIONS FOR RECONSIDERATION AND
MOTION TO STRIKE REQUESTS FOR ORAL ARGUMENT**

Florida Power & Light Company ("FPL"), pursuant to Rule 25-22.0376, Florida Administrative Code (2013) ("F.A.C.") relating to Motions for Reconsideration of Non-Final Orders (or alternatively Rule 25-22.060, F.A.C., in the event the orders in question are ultimately determined to be Final Orders), hereby files this its response in opposition to Petitioner Ahn's and Petitioner Martin's Motions for Reconsideration. Additionally, FPL moves to strike the requests for oral argument based upon the failure of petitioners Ahn and Martin to comply with Rule 25-22.0022, F.A.C. In support of this response FPL states as follows:

1. On January 14, 2014, the Florida Public Service Commission ("FPSC" or "Commission") entered Order No. PSC-14-0036-TRF-EI ("Order 14-0036") denying FPL's Petition for Approval of Optional Non-Standard Meter Rider ("NSMR") but providing FPL with the option to file a revised non-standard meter rider tariff containing three adjustments. The net result of the three adjustments is a reduction of the Enrollment Fee from \$105 to \$95 and a reduction of the Monthly Surcharge from \$16 to \$13.

2. On January 17, 2014, FPL filed its revised NSMR tariff in accordance with the Commission's order. The revised tariff provides customers with the option of taking service through a non-standard meter at the rates approved by the Commission in Order No. PSC-14-0036. Pursuant to that order, the revised NSMR tariff shall become effective once FPL notifies Commission staff that the billing system changes have been implemented.

3. On February 4, 2014, two separate groups of FPL customers filed petitions (the “Ahn Petition” and the “Martin Petition”) seeking an evidentiary hearing on a wide range of issues. On February 21, 2014, FPL filed motions to dismiss both petitions, or alternatively for partial dismissal of all issues aside from the cost basis of the NSMR tariff and the allocation of those costs to the opt-out customers.

4. On February 28, 2014, counsel for the Ahn petitioners filed a response in opposition to FPL’s motion to dismiss. A complete reading of that response indicates that aside from addressing technical pleading arguments, Ahn primarily argued that the Commission should permit litigation of radio frequency (“RF”) emissions issues and other alleged health and safety issues.

5. On February 28, 2014, Marilynne Martin, as the Qualified Representative of the Martin petitioners, also filed a response in opposition to FPL’s Motion to Dismiss. In addition to the alleged health and safety issues, the Martin petitioners raised privacy issues along with FPL’s use of the smart meter as its standard equipment.

6. Both responses – consistent with the two requests for evidentiary hearings – were primarily inappropriate challenges to the overall use of smart meters. Both responses failed to recognize the limited scope of FPL’s petition and the order addressing that petition, i.e., allowing customers to make a choice to opt out of FPL’s already approved and deployed smart meters. The responses to FPL’s motions to dismiss only marginally addressed the actual issues before the Commission – a determination of the costs associated with the non-standard meter service and the assessment of those costs to the cost causers.

7. On April 1, 2014, the Prehearing Officer (“PHO”) entered two separate orders granting in part and denying in part FPL’s motions to dismiss the Ahn and Martin Petitions.

(Order Nos. PSC-14-0145-PCO-EI and PSC-14-0146-PCO-EI). Ahn and Martin seek reconsideration of these Orders.

STANDARD OF REVIEW FOR A MOTION FOR RECONSIDERATION

8. “The standard of review for a motion for reconsideration is whether the motion identifies a mistake of fact or law this Commission overlooked or failed to consider in rendering its order.¹ The overlooked point of fact or law must be such that if it were considered, this Commission would reach a different decision than the decision in the order.² In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered.³ Furthermore, it is not necessary to respond to every argument and fact raised by each party, and ‘[a]n opinion should never be prepared merely to refute the arguments advanced by the unsuccessful litigant.’”⁴ Order No. PSC-13-0675-FOF-EI, issued December 20, 2013 in Docket No. 120176-EI.

9. Neither the Ahn nor the Martin request for reconsideration satisfies the well-established standard for reconsideration of a Commission order, which requires identification of a point of fact or law that the Commission overlooked or failed to consider in reaching its decision, and which would cause the Commission to reach a different decision.

¹ See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981).

² See Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962).

³ See Sherwood v. State, 111 So. 2d 96 (Fla. 3d DCA 1959), citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). See also Order No. PSC-07-0783-FOF-EI, issued September 26, 2007, in Docket No. 050958-EI, In re: Petition for approval of new environmental program for cost recovery through Environmental Cost Recovery Clause by Tampa Electric Company; Order No. PSC-07-0561-FOF-SU; issued July 5, 2007, in Docket No. 060285-SU, In re: Application for increase in wastewater rates in Charlotte County by Utilities, Inc. of Sandalhaven; and Order No. PSC-06-1028-FOF-EU, issued December 11, 2006, in Docket No. 060635-EU, In re: Petition for determination of need for electrical power plant in Taylor County by Florida Municipal Power Agency, JEA, Reedy Creek Improvement District, and City of Tallahassee.

⁴ See Jaytex Realty, 105 So. 2d at 818.

10. The orders from which Ahn and Martin seek reconsideration directly address and resolve each and every issue raised by the movants. The pending requests for reconsideration constitute nothing more than an effort to reargue all portions of the Ahn and Martin Petitions that were dismissed, notwithstanding the PHO's very clear discussion and resolution of these issues. The motions for reconsideration again essentially argue against the overall use of smart meters by FPL rather than addressing the actual matters at issue in this litigation.

11. Each of the orders questioned by Ahn and Martin includes a subsection identified as "Protestors' Response in Opposition to the Motion to Dismiss" which very carefully identifies the positions raised by each petitioner. Each order thoroughly addresses the positions of the parties and concludes with a well-reasoned legal basis for each aspect of the PHO's ruling.

12. Notwithstanding the foregoing, in their respective motions for reconsideration, Ahn and Martin essentially argue that the PHO "erred by overlooking, failing to consider, or both, specific points of fact and law" (see paragraph 12 of the Ahn Motion for Reconsideration) related to health, safety, privacy, the use of the smart meter as FPL's standard meter, and the reason that opt-out customers should pay a fee for the non-standard service. See also Martin Motion for Reconsideration at pp. 2-3.

13. There is absolutely no record, fact, evidence or credible argument to support the bare assertion that the PHO "erred by overlooking, failing to consider, or both, specific points of fact and law." In fact, the orders on their face completely contradict each and every argument asserted by the petitioners. Accordingly, Petitioner Ahn's and Petitioner Martin's Motions for Reconsideration should be denied.

REQUEST FOR ORAL ARGUMENT

14. Rule 25-22.0022 (1), F.A.C., reads as follows:

Oral argument must be sought by separate written request filed concurrently with the motion on which argument is requested, or no later than 10 days after exceptions to a recommended order are filed. Failure to timely file a request for oral argument shall constitute waiver thereof. Failure to timely file a response to the request for oral argument waives the opportunity to object to oral argument. The request for oral argument shall state with particularity why oral argument would aid the Commissioners, the Prehearing Officer, or the Commissioner appointed by the Chair to conduct a hearing in understanding and evaluating the issues to be decided, and the amount of time requested for oral argument.

15. Both Ahn and Martin have failed to comply with the clear, mandatory requirement of the Rule by failing to file a “separate written request.” Additionally, the Ahn motion fails to identify the amount of time requested for oral argument. Finally, the Ahn motion fails to “state with particularity why oral argument would aid the Commissioners, the Prehearing Officer, or the Commissioner appointed by the Chair to conduct a hearing in understanding and evaluating the issues to be decided.”

16. Because the Ahn and Martin petitions fail to comply with the Commission’s mandatory rules, the requests for oral argument should be denied.

WHEREFORE, FPL respectfully requests that the Commission deny Petitioner Ahn’s and Petitioner Martin’s Motions for Reconsideration and Requests for Oral Arguments.

Respectfully submitted this 17th day April 2014.

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

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic mail and/or U.S. Mail to the following parties on this 17th day of April 2014, to the following:

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