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

October 27, 2014

Re: Docket No. 130223-EI, MARTIN, et al Post Hearing Statement of Positions and Post-Hearing Brief

Dear Ms. Stauffer,

Attached is the Petitioner's MARTIN, ET AL, Post Hearing Statement of Positions and Post Hearing Brief, in reference to Docket No. 130223-EI.

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

Sincerely,

/s/ Marilynne Martin

Attachments

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION (FPSC)

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

DOCKET NO. 130223-EI

FILED: October 27, 2014

**PETITIONERS MARTIN, ET AL POST-HEARING STATEMENT OF POSITIONS
AND POST-HEARING BRIEF**

Pursuant to Order No. PSC-14-0504-PHO-EI, the MARTIN, et al Petitioners, by and through their qualified representative, hereby submits their Post-Hearing Statement of Positions and Post-Hearing Brief.

PRELIMINARY STATEMENT

Florida Power and Light Company will be referred to as “FPL” or “Company”. The MARTIN, ET AL Petitioners will be shortened to “Petitioners”. Petitioners will refer to the Office of Public Counsel as “OPC” and the Florida Public Service Commission and its staff as “Commission” and “Staff” respectively. Petitioners will refer to FPL’s non-standard meter rider as “NSMR Tariff” and non-standard meter service as “NSMS”.

EXECUTIVE SUMMARY OF ARGUMENT

For the following reasons, the Commission should deny FPL’s NSMR Tariff request or at a minimum deny the NSMR Tariff and defer any decisions on incremental costs until such time that rates are reviewed and adjusted for all ratepayers to reflect the new cost of service savings that FPL purports to have achieved by completing their deployment of smart meters.

Imposing charges for optional meter services is inconsistent with FPL's past practices and actions and results in discriminatory rates for which the statutes prohibit.

FPL bases this tariff filing on the purported long-standing regulatory practice that customers choosing a non-standard service must pay the incremental costs associated with receiving that service. A review of FPL's current offerings of products and services tells a different story. History shows that FPL frequently has broken away from traditional standard services and created optional paths with non-standard services in order to provide high quality service and accommodate the unique needs of its customer base. Such examples can be found in their billing service options such as Budget Billing and 62 Plus, as well as, customer service options for Spanish speaking customers.

These other optional non-standard services also required some initial set up costs involving up-front capital and expenses to write new computer programs, develop marketing and communication materials, enroll customers, create new routines to check a new type of bill, develop new customer service scripts, etc. Each option has its share of on-going maintenance expenses to provide the service. All of which are similar to the costs FPL brings before the Commission in this NSMR Tariff. All of which such costs were brought to bear upon the general ratepayers, not the option chooser, at the discretion of FPL without a flick of the eye or concern for "cost causers" or cross-subsidies. Each is an option, which the customer chooses as an alternative to the traditional "standard" service.

FPL's witness Deason states both dual language service and budget billing are "efficient standard business practices" and provide a "high level of service of service to the general

body of customers”¹ but offers no evidence of how non-standard meters do not do the same. Witness Deason fails to mention how American businesses frequently consider unique individual needs of their customers in their service offerings. As an example, when airlines offered food, they also offered options at no cost for those with unique dietary needs. In addition, throughout this protest hearing and the original tariff hearing FPL avoids providing one single explanation for why this option is being offered to begin with. FPL’s witness Onsgard only states that the Company does not *doubt* the customer beliefs.²

To accept FPL’s logic in applying this “long-standing principle” for these circumstances is essentially saying that providing customers, whose doctors have advised them to avoid a product to maintain their health (whether it be for a diagnosis of Electromagnetic Hypersensitivity (EHS) or a medical implant such as pacemakers), is not good business practices nor would the avoidance of personal injury suits or, God forbid, wrongful death suits, as well as countless customer service complaints not benefit the general ratepayers. And then out of the other side of ones mouth state that customers unable to communicate in the Florida State constitutionally designated official language (English) and customers with troubles managing monthly finances must be accommodated in the name of “good business practices”. It defies logic!

FPL also asserts that providing a tariff for an alternative meter is consistent with dealing with cost of service load research, contribution-in-aid-of-construction for new or upgraded facilities or the installation of underground facilities. This simply is not supported by fact.

¹ Hearing Transcript page 251

² Hearing Transcript page 90

Non-standard meter service more aligns with other optional on-going services such as billing and customer service than the one-time, one-off construction requests.

A simple word search of “discretion” and “discretionary” on Witness Deason’s testimony and cross-examination³ reveals the real truth in this matter. Both FPL and the Commission have discretionary powers in rate development and these tariff charges are not mandatory under the normal and historical rate making practices in the State of Florida. It would be inconsistent with FPL’s past practices to charge for this option and as such, will result in discriminatory rates for NSMS customers which are expressly prohibited under Florida Statutes.

NSMR services are traditional recurring services historically paid for through base rates and existing tariffs. Developing incremental costs outside a general rate review, where adjustments to rates can be made for all customers affected by this new cost of service, can not achieve the stated goal of fair, reasonable and just rates as required by statutes.

FPL’s NSMR Tariff seeks revenue requirements for providing manual meter reading, meter testing, customer service, billing, accounting, collections and customer communication services. These services are **not** new or unique to NSMS customers but necessary and required services provided to **all** customers historically through the basic monthly and non-fuel charges as well as miscellaneous tariffs. What is new and being asserted by FPL is that their smart meter project has been fully deployed and such an event results in a lower cost of service to provide certain services.

³ Hearing Transcript pages 253, 256, 285, 286, 300, 301, 325, 326, 337

FPL's witness Deason erroneously states in his rebuttal testimony that "In reality, the costs of non-standard service are independent of rates for standard service in a rate case."⁴ This is *absurd*. What FPL and its witness wants the Commission to do is *ignore reality* and the assumptions FPL placed in their "snapshot" 2013 test year used to develop current rates. FPL wants the Commission to *ignore the reality* that customers' rates already **include** charges for these services. FPL wants the Commission to turn a blind eye to the fact that the rates *currently* paid by ALL customers do *not* reflect this new cost of service, but in fact reflect assumptions composed of heavy project deployment costs, as well as, a mixture of old and new cost of service models. They also want to *ignore the reality* of the existing cross-subsidies that were built into the rate development of current rates for many of the services included in this NSMR Tariff.

FPL argues that its NSMR Tariff represents incremental costs. But when you are dealing with historically cross-subsidized services and you compute a new cost and compare it with an existing tariff, which is not cost based, you cannot arrive at a true incremental cost. Computing incremental costs in such circumstances affords no mechanism to remove existing cross-subsidies from all ratepayers' rates and essentially provides a windfall to FPL.

As FPL witnesses Deason and Onsgard admit⁵, the Company did not distinguish between standard and non-standard services while developing their test year rates. Using the example of the collection reconnect service from the cross-examination with Witness Deason you uncover all the problems and inequities in this methodology. First, the 2013 test year

⁴ Hearing Transcript page 238

⁵ Hearing Transcript pages 284 and 309

included 490,000 transactions for this service at a cost of \$46.13 but the tariff was set at \$17.66, indicating a cross subsidy was placed in basic rates in the amount of \$28.47 or \$14 million for all ratepayers to bear. Second, FPL's purported NSMR Tariff incremental costs is developed by taking the new cost for NSMS customers of \$59.27 and subtracting the existing miscellaneous tariff rate of \$17.66 for an incremental cost of \$41.41⁶. FPL estimates 1,272 NSMS transactions and computes an incremental revenue requirement of \$52,928. If the 1,272 is a subset of the 490,000 as FPL witnesses suggests than the incremental cost would not be \$41.41 but \$13.14 (\$59.27-\$46.13) as the components of the \$46.13 is the same as the \$59.27. Third, the stated purpose of this tariff was to avoid cross-subsidies and make the "cost causer" pay for the costs they incur. FPL does not take the incremental rate and propose a new collection reconnect miscellaneous charge for NSMS customers of \$59.27. Instead, FPL develops a *new cross-subsidy* just for NSMS customers of \$.37/month! Fourth, although never computed separately or disclosed by FPL, one can derive from the details of the \$59.27 computation sheet⁷ that the new cost of service for smart meter customers is around \$7.12, or \$10.54 *below* the current tariff of \$17.66, as field disconnects and reconnects listed on the schedule are no longer required.

Each tariff approved by a Commission when added to the existing utility tariffs should result in combined tariffs that *taken as a whole* treat customers equally and fairly – that is what is meant by fair, reasonable and just rates. In addition the utility should be fairly compensated for the work it provides. The above illustration of just one component of the NSMR Tariff provides ample proof that this does not occur. The utility gets to retain and all customers must continue to pay the \$14 million cross subsidy until the next rate case, *although that*

⁶ Hearing Exhibit RAO-4 page 12 of 15

⁷ Hearing Exhibit No. 13, Staff First Data Request No. 26, Attachment No.1

cost is no longer being incurred. The smart meter customer that requires this service (490,000 less 1,272) will *overpay FPL* by \$5 million (\$10.54 per estimated transactions). The estimated 10,728 NSMS customers (12,000 – 1272) who do *not* require this service will pay an additional *cross subsidy* of \$5.40 a year each for a total of \$57,900 for a service *not* rendered. The NSMS customer who does require this service *will continue to be cross-subsidized* (\$59.27-17.66), but will pay an additional annual fee of \$5.40 for that benefit. **Not one customer** will pay cost-based rates, the purported goal. FPL will recover approximately \$19 million more than their costs. Is FPL being “fairly” compensated or is this not a windfall for FPL?

With the facts above, can any respectable Commission find that fair, reasonable and just rates will be established with the approval of this NSMR tariff in a vacuum? Can the Commission adjust for a subset of customers and turn a blind eye to the economic impacts this event (completion of the deployment with a new cost of service) has on all other customers? Are the current rates the utility receives for such services not compensatory enough? Or would it be more appropriate to make FPL wait until the next rate case, when all rates are readjusted for this new cost of service, so that rates can be formulated on a level playing field for all customers and FPL be properly compensated?

FPL makes unsubstantiated claims that not charging NSMS customers will result in general ratepayers cross-subsidizing the services. But as Witness Deason admits under cross examination by the OPC (TR 261), there is little chance of that occurring while FPL is under a rate freeze as a result of the rate settlement agreement. FPL is retaining approximately \$40 million in annual smart meter operational savings and the anticipated \$1-2 million in non-

standard meter costs will not put FPL in jeopardy of underperforming on its annual earnings surveillance report.

FPL, through a clever design of this tariff, is trying to circumvent its recent rate settlement agreement to keep rates stable through 2017. “Regulatory lag” is a two way street and prohibits FPL from seeking such a tariff at this time.

FPL argues this is a *new* optional service and this tariff is permitted under the rate settlement agreement. As was established above, these services are *normal recurring utility services* provided to all customers under *existing tariffs*. As Witness Onsgard testified, this option was provided to customers since as early as August-December 2010. **Substance Over Form** suggests that a postpone list is an *option*. And common sense tells us a service option offered since 2010 cannot be called “*new*” in August 2013 when FPL filed this tariff. These services existed at the time of the rate case filing and the signing of the rate settlement agreement and *if truly significant* and material as FPL suggests, they should have been included in that filing.

As Ms. Martin testified⁸ and Witness Onsgard affirmed⁹, FPL deployed smart meters by service area. Once the service area activation takes place, the smart meter becomes the standard service. If FPL is correct in its beliefs that NSMS customers should pay incremental costs then FPL had a *duty and obligation* to make a *timely* decision right after the first service area was activated with the first non-standard meter customer. The decision needed to be made by FPL management is not rocket science - either FPL exerts its rights and forces

⁸ Hearing Transcript page 356

⁹ Hearing Transcript page 100

acceptance of the smart meter as standard service or FPL develops and files a tariff to charge customers incremental costs. This is the point of time that the incremental costs and cross-subsidies begin. FPL presents no evidence which affords FPL the right to allow “cross-subsidies” to continue for over 3 years or up to a certain number of customers.

FPL incorrectly argues that a decision to charge for this service could not be made and costs could not be developed until the project was complete and the total number of customers was known. Ironically, however, when FPL gets to the end of deployment they purposely do not use the actual customer numbers. Instead FPL opts for an estimation method based on industry averages, which just happens to give them a \$105 entrance fee to “dis-incent” customers from taking the “choice”.

Since service areas started to activate as early as August 2010, FPL had the ability to estimate *every single one* of the cost elements in this tariff. Creating new billing codes is routine. Operational reviews could easily have been conducted with smart meter activated service area personnel in early 2011 in order to determine the system and/process changes needed to offer this service. Tariffs are routinely filed by utilities without certainty of the number of enrollees in new programs. Regulatory mechanisms also exist to correct for shortages/overages that may occur from faulty assumptions. In fact, FPL projections by waiting until the end of deployment and not performing customer specific surveys resulted in projections that were off by nearly 50%!

Witness Onsgard admitted FPL studied what other utilities were doing. Witness Martin’s Exhibit MM- 3, shows both industry & state regulators were in favor of opt outs as early as

July 2011. FPL started to gather costs in November 2011, long before the end of the deployment in April 2013 and *prior to* the rate case filing in March 2012. Staff Hearing Exhibit 18 (Bates No 002243) shows work to convert the customers was underway **PRIOR** to the Staff smart meter briefing report was issued in February 2013 & **BEFORE** the rate case settlement agreement was approved in January 2013. FPL internal presentations disclose (Hearing Exhibit No. 24, Bates No. FPL 004258) “extensive analysis has been done to identify all requirements for a framework to support an FPL non-standard meter option” on August 1, 2012 *prior* to the evidentiary hearings that were held on the rate case.

If FPL’s assertions in this NSMR Tariff are true, that incremental costs must be recovered from NSMS customers and such costs are indeed significant, then FPL had a legal duty to include such requests in its 2012 rate case filing or at a minimum a duty to disclose that a subsequent tariff would be forthcoming. But FPL made no mention or disclosure and now wants to claim that “substantial” costs, which existed at that time of the rate settlement agreement, must be recovered. The appropriate time for review and recovery of such costs was at the 2012 rate case proceeding.

FPL was clearly motivated to keep this **known** issue out of the rate case because of the obvious **missing savings** from the smart meter project in their 2013 test year. Witness Deason stated “the costs and savings associated with smart meters were identified as an issue” (TR 234). FPL clearly understood that no decent intervener would sign on to a rate settlement agreement which allowed a utility to retain purported savings and not share such with the entire general rate paying body for over 3 years but then 8 months later collect additional rate recovery from a segment of such population based on cost assumptions which

includes such savings.

Witness Deason speaks of “regulatory” lag in his rebuttal testimony but conveniently fails to make the connection that regulatory lag works both ways. Witness Deason is incorrect that the “costs of the non-standard services are independent of rates for standard services in a rate case” (TR238). He conveniently forgets the 2012 rate case set rates for meter reading, meter testing, initiation of services, re-connections for collection disconnects, and other services included in this NSMR tariff. He also overlooks that customers had non-standard meters when the 2012 rate case settlement agreement was made. He lamely argues that regulatory lag prevents a problem for the \$2 million purported incremental costs for servicing non-standard meters but does not apply that principle to the \$40 plus million in savings that are now being realized through the completion of the deployment.

An appropriate cost of service study review was not performed for the NSMR Tariff and hence the resulting charges are not cost based.

Unlike the examples of other non-standard services provided by Witness Deason in his testimony¹⁰, no formal rulemaking was initiated to review the non-standard meter services. This feeble attempt at a cost of service review can be likened to more of a “quick and dirty cost analysis” where one throws everything in but the kitchen sink and hopes no one asks any questions as opposed to a thorough thoughtful cost review.

¹⁰ Hearing Transcript 223-226

First, FPL has computed incremental costs for NSMS customers and we still do not know what the new cost of service is for the “standard service” and how that compares to current rates. Current rates paid by NSMS customers include some costs for meter readings and reconnections for collection disconnects¹¹, as examples, but those costs have been totally ignored (as well as any cross-subsidies) as if they do not exist. FPL wants us to pretend that current rates reflect the new way of providing services which is simply *not true*.

Second, although it is blatantly obvious that approved smart meter project money did not have to be expended for NSMS customers (avoided costs), FPL wants us to believe that over a 4 year period they had no way to adjust their purchases and that they do not employ any best practices processes, such as “just in time” inventory management, and they have to keep smart meters on hand for customers who **clearly** stated they did not want them. This defies logic and the Commission should reject these assumptions.

Third, although the new meters contain a separate communication network with its’ own set of new costs, FPL wants us to pretend that such a system has no variable costs which may not need to be incurred for NSMS customers and would offset some of the purported incremental costs. Although FPL originally stated there were no variable costs, Witness Onsgard did report in his rebuttal testimony that there were some communication repair costs¹². This amount has not been confirmed nor has a review been conducted to determine if there are other unreported variable costs. A proper side by side cost of service study is the only way to determine true incremental costs and flush out **all** appropriate offsets.

¹¹ Hearing Transcript 151-152

¹² Hearing Transcript page 70

Fourth, the Tariff is not cost based because it deliberately includes charges for cross-subsidies. The \$.45/month charge for collections is a cross subsidy. The one-time field service visit, based on an average, that may or may not occur for each customer, is not cost based. The fact that FPL Witness Onsgard stated that a customer could have many site visits and only be charged once further supports the fact that this charge is not cost based. When comparisons are made to other non-standard services such as the installation of underground facilities one does not find those customers being charged for trench digging based on the average number of feet needed to perform all installations. In that tariff each customer is charged based on the **actual work** that needs to be performed. Each customer is also given an option to mitigate or lower the costs by performing some work themselves. Cost mitigation alternatives such as self-meter reads or estimated billing would be examples of such items that should be considered and incorporated in this NSMR Tariff.

And finally, the best evidence that an appropriate cost review was not performed in this tariff filing is an examination of the Staff adjustments. The Staff clearly misunderstood the underlying basis of FPL's calculations for customer care and meter reading operations charges. FPL, as Witness Onsgard testified¹³, calculated both charges on a per unit basis, not on fixed staffing levels. Yet the Staff stated their analysis showed that staffing levels will only be fully utilized for the initial set up period and defined that period incorrectly as two years. The initial enrollment period is **clearly** only 3 months and the charges are **clearly** a per unit cost. A thorough extensive review could not have resulted in such a blatant error.

¹³ Hearing Transcript page 56-57

To compound matters, FPL Witness Onsgard goes on to further the confusion by stating FPL's Petition exhibit B page 6 projected these incremental costs as a one-time enrollment costs that would be recovered over three years (TR56). This is simply **not true**. The projected enrollment costs of \$135,653, as presented by FPL in such exhibit would be recovered **UPFRONT** through the \$11.30 charge to all 12,000 customers, not over 3 years. Both FPL and Staff are utterly confused and sadly mistaken on their own cost calculations. A proper review was simply **not** performed. Without an appropriate review, fair reasonable and just rates cannot be determined.

FPL, through its imprudent project management, must bear some responsibility for the costs.

Proper project management requires that critical issues encountered during project deployments be addressed in a timely manner. The objections by FPL customers to the new smart meters is a critical issue as the operational problems FPL is now seeking cost recovery for began as far back as 2010. As the Petitioners witness Martin points out, waiting until the end to properly address these issues only adds to the costs. FPL witness Onsgard confirms such when he testified that over 4800 smart meters were installed and then had to be replaced due to customer objections and then many had to be re-installed when NSMR Tariff charges were instituted. This certainly is not an efficient process.

FPL witness Onsgard stated that their smart meter deployment had a "robust" communication program. An examination of the customer notification card for deployment, Hearing Exhibit No. 19, tells a different story. Two years **after** FPL encountered their first customer request

to not have a smart meter, FPL still thought it prudent to send small postcards that provided little information about the smart meters and no notification that there was a postpone list. FPL sent postcards to “current residents”, which in some cases did **not** even reach their **actual** customers. In July 2012 FPL had over 10,000 customers on the postpone list (Hearing Exhibit No. 13- 0123). Contrast the vague postcard to the material developed for the NSMR Tariff program which FPL expects NSMS customers to foot the bill for (Hearing Exhibit 23, - Exhibit B Page 5 of 15). FPL developed expensive brochures, conducted market research and even performed Spanish translations for total communication costs of \$368,000. And despite the auto-enrollment feature, they found it necessary to send multiple mailings and expensive certified mail! If FPL had provided customers with the proper detailed communication prior to the deployment, as part of the project costs, which also included the charges for the services, FPL would have incurred less customer advocacy costs as well as avoided significant unnecessary field visits. FPL witness Onsgard revealed over 4800 unnecessary installations. At \$77 a field visit, that amounts to \$369,600 wasted due to faulty project communications and untimely resolutions of project issues.

Certainly the NSMS customers should not bear the upfront communication and enrollment costs. These customers, having to do their **own** research due to FPL’s lack of appropriate communication before deployment, did not benefit from this material at this time as witness Martin testified. FPL must bear some responsibility for these and other costs expended due to improper project management.

ISSUES AND POSITIONS

ISSUE 1: Is it appropriate for customers who receive service through a non-standard meter to bear the cost of that service?

No. NSMS services are no different than other non-standard options that FPL routinely offers at no charge to its customers. Also, NSMS services existed at the time of the 2012 rate case settlement and it would be inappropriate to raise rates for such services at this time.

ARGUMENT:

FPL's proposal to charge customers for retaining their existing meters should be rejected. As Petitioners witness Martin points out (TR 366-367), FPL has many current non-standard service options that are offered without charge. These other non-standard service options also had upfront costs and on-going incremental costs that were paid for by the general body of ratepayers. FPL offered such optional services at their discretion, choosing to ignore the "long standing policy" of incremental costs being charged to the "cost causer". FPL witness Deason's only defense for not charging for special language customer service is that such services represent "good business practices" (TR 242) and he fails to provide any real evidence of how Spanish customer service keeps rates lower for all customers. In fact, witness Deason in stating "providing customer service in both Spanish and English is the best means of providing service to all of FPL's customers" (TR 242) seems to prove the Petitioners point. Providing choice of meters and avoiding unnecessary complaints and lawsuits will be the best means of service to all FPL customers. It is commonly known that "good business practices" encompasses not deliberately hurting one's customers with a

product that your customer's medical doctors recommend they avoid. As Petitioner's witness Martin points out the customer reasons for refusal of the smart meter are not frivolous (TR 367).

In addition, the services under review in this tariff are not by any means "**new**". Costs for reading meters, testing meters, initiating and disconnecting service and performing collection disconnects and reconnects were all just reviewed in the Company's recent 2012 rate case. These services are not independent of basic services as FPL's witness Deason and Onsgard suggest.

FPL as the initiator of the 2012 rate case, sitting in the driver's seat, had every opportunity to disclose and request rates for services it was *rendering at that time*. As FPL's witness Deason correctly describes in his rebuttal testimony "once rates are set, the amount of individual expenses (or savings) associated with one component of the regulated utility's overall operations, such as smart meters, is not as important as the overall result of operations." (TR 236) Evidence shows that FPL had intentions of continuing to offer this service option at both the time of the filing of their rate case in March 2012 and at the time of rate case settlement agreement. Evidence also shows that the rates agreed to, using a 2013 test year, where FPL includes net costs (\$3.7 million) not net savings (\$40 million) from smart meters, as compared to these NSMS costs of (\$1-2 million) provides certainty that FPL will not be in danger of earning below its authorized return due to these costs. FPL's witness Deason agreed to that fact (TR 261). In fact, FPL's current rates are more than "compensatory" for these services and with a rate freeze as imposed by the settlement agreement, there is no

cross-subsidization issues by other ratepayers *at this time*.

FPL's witness Onsgard is incorrect in his testimony that NSMR Tariff rates are not duplicative or included in current rates but incremental to current rates. FPL's witness Deason is also incorrect when he states that these services are independent of rates for standard service in a rate case (TR 238). The evidence that both claims are not factual can be found in the cross-examination of Witness Deason by Mr. Jacobs on the collection reconnection charge, where the many inequities and problems with costing outside a general rate review were clearly and eloquently demonstrated.

First, the 2013 test year, for which current rates are based upon, included 490,000 transactions for this service at a cost of \$46.13 but the tariff was set at \$17.66, indicating a cross subsidy was placed in basic rates in the amount of \$28.47 or \$14 million for all ratepayers to bear. Second, FPL's purported NSMR Tariff incremental costs is developed by taking the new cost for NSMS customers of \$59.27 and subtracting the existing miscellaneous tariff rate of \$17.66 for an incremental cost of \$41.41¹⁴. FPL estimates 1,272 NSMS transactions and computes an incremental revenue requirement of \$52,928. If the 1,272 is a subset of the 490,000 as FPL witnesses suggests than the incremental cost would not be \$41.41 but \$13.14 (\$59.27-\$46.13) as the components of the \$46.13 is the same as the \$59.27. Third, the stated purpose of this tariff was to avoid cross-subsidies and make the "cost causer" pay for the costs they incur. FPL does not take the incremental rate and propose a new collection reconnect miscellaneous charge for NSMS customers of \$59.27. Instead, FPL develops a *new cross-subsidy* just for NSMS customers of \$.37/month! Fourth, although never computed separately or disclosed by FPL, one can derive from the details of the \$59.27

¹⁴ Hearing Exhibit RAO-4 page 12 of 15

computation¹⁵ sheet that the new cost of service for smart meter customers is around \$7.12, or \$10.54 *below* the current tariff of \$17.66, as field disconnects and reconnects listed on the schedule are no longer required.

FPL is retaining and all customers must continue to pay the \$14 million cross subsidy until the next rate case, *although that cost is no longer being incurred*. The smart meter customer that requires this service (490,000 less 1,272) will *overpay FPL* by \$5 million (\$10.54 per estimated transactions). The estimated 10,728 NSMS customers who do *not* require this service (12,000 – 1272) will pay an additional *cross subsidy* of \$5.40 a year each for a total of \$57.9K for a service *not* rendered. The NSMS customer who does require this service *will continue to be cross-subsidized* (\$59.27-17.66), but will pay an additional annual fee of \$5.40 for that benefit. Not *one* customer will pay cost-based rates, the purported goal. FPL will recover approximately \$19 million more than their costs. Is FPL being “fairly” compensated or is this not a windfall for FPL?

ISSUE 2: What are the appropriate staffing levels for the customer care employees and the meter reading lead position functions to enroll and serve customers on the NSMR tariff?

Staffing levels are irrelevant. FPL computed the enrollment costs for each of these functions on a per unit basis. Commission Staff misinterpreted FPL’s cost calculations and proposed an adjustment based on an erroneous assumption of an initial “enrollment period” of two years, indicating a thorough review did not occur.

¹⁵ Hearing Exhibit No. 13, Staff First Data Request No. 26, Attachment No.1

ARGUMENT:

FPL, in computing both customer care (\$11.30) and meter reading workflow (\$11.98) costs for the enrollment fee, *clearly* computed a **per unit cost**. FPL indicated in response to Staff's First Set of Interrogatories No. 1 (Hearing Exhibit No. 11 - 0002) that the **initial** enrollment period was **90 days**. Staff proposed and the Commission accepted in Order No. PSC-14-0036-TRF-EI, two adjustments to these costs based on the *faulty assumption* that FPL was proposing staffing levels and also the *faulty assumption* that the initial enrollment period would be **two years**.

There is *no stronger evidence* that a proper, thorough cost review was **NOT** performed by Staff then these two Staff adjustments. It is one thing to miss a problem with a cost calculation like Staff did with the advance recovery of the field visit fee and no discounting as Petitioners witness Martin points out in her testimony (TR 368). It is quite another to consciously review and erroneously adjust a cost calculation. It proves beyond a shadow of a doubt that a thorough review was not performed and a cost based tariff was not the real objective. FPL's lack of pointing out this error and correcting this adjustment during the conference agenda meeting also strengthens the argument that a cost based tariff was not the objective. A fee high enough to "dis-incent" appears to be the purpose but such objective is not consistent with Florida Statutes, which calls for fair, reasonable and just rates.

ISSUE 3: Are the various cost components and their amounts FPL included in developing the charges for the NSMR tariff appropriate? If not, what cost components and their associated amounts, if any, should be excluded from the calculations?

No. Until a proper cost study is performed the appropriate cost components cannot be determined. Upfront capital costs should be excluded as avoided project capital costs are sufficient to offset. Upfront communication & enrollment costs should be excluded as FPL is cost causer. Speculative and duplicative costs should be removed.

ARGUMENT:

FPL was the project manager and in such a role maintains certain duties and responsibilities to implement the project in an efficient, low cost manner. As it pertains to customers refusing a smart meter, for reasons FPL's witness Onsgard admits they "did not doubt their beliefs" (TR 251), FPL did not properly fulfill their obligations. FPL's delayed decisions on handling this conflict as well as their limited vague communications to customers before deployment contributed to unnecessary confusion and additional costs. FPL must bear some responsibilities for their inappropriate and inefficient project management.

A proper cost of service review has not been performed as evidenced by a) erroneous Staff adjustments (detailed under Issue 2), b) a lack of review for avoided project capital costs and new smart meter process variable costs, c) no discounting of field service visit costs being collected in advance (for initial customers), d) no adjustment credits for costs already included in current rates and e) no review of alternatives to mitigate costs. Until an appropriate review is performed, the cost components and the related amounts cannot be determined.

Additionally, until all rates for **all** customers are adjusted for the new cost of service

associated with the smart meter, cost-based and equitable rates for all customers will not be achieved. It is inappropriate to adjust rates for only a segment of the rate paying population when the “event” – a new cost of service – affects all customers. FPL witness Onsgard admits that FPL current rates include costs for these services (meter reading) and their test year included a mixture of smart and non-standard meters. He erroneously states that the FPL incremental costs are not duplicative.

All upfront capital costs should be excluded. As Petitioner’s witness Martin points out in her testimony (TR 372-373) and illustrated with Exhibit MM-2, there were ample avoided project capital costs to cover the unanticipated system changes required to identify and handle the workflow for customers without a smart meter. FPL’s witness Onsgard’s lame excuses that the Company could not adjust its purchases over a 4 year period to reflect the need for a lower amount of smart meters or his claims that the Company needs to keep a smart meter on hand for each customer refusing a smart meter should be rejected as being without merit.

All Upfront Communication & Enrollment costs should be excluded as FPL is the cost causer and such material was not necessary and the number of communications was excessive. As Petitioner’s witness Martin spells out in her testimony (TR 371-372), NSMS customers did not require this material as they were self-educated. FPL Witness Onsgard stated that the Company did not doubt their beliefs (TR 251). Since all evidence points to the fact that FPL had every intention of offering this service and billing for it since 2011, FPL should have incorporated this feature into its deployment project earlier in the deployment to avoid unnecessary expenditures. Waiting until the end provided no benefits for the NSMR

customer, the general ratepayers or FPL operational employees as FPL asserts. The material sent to NSMR customers would have benefited the whole body of ratepayers versus the vague postcard used in the deployment that provided inadequate information and resulted in unnecessary expenditures.¹⁶ Customer service personnel could have easily absorbed 12,000 enrollees over the 4 years of deployment with existing staffing versus having to deal with them in 3 months. FPL conveniently forgets that customer service is paid for through basic rates, whether or not used by a customer, not through specific service offerings. The amounts are determined in general rate cases based on historic staffing levels and estimated call volumes. It is discriminatory to charge for access to such services when customers requesting other non-standard services such as budget billing are enrolled without charge.

Field visits should be excluded as they are speculative, provides advance recovery of costs and does not meet the objective of the “cost causer” paying for the services it receives. FPL’s petition, exhibit B page 5 of 15 specifically states that they are assuming one visit over three years for meter test sampling, installing meters for customers with smart meters, installing non-communicating meters for customers who relocate and additional visits for restoration/theft monitoring activities. FPL’s witness Onsgard verifies that not every NSMS customer will need a site visit (TR 140). FPL is stating out of one’s side of its mouth that it is performing an incremental costing exercise and then out of the other side wants to employ general rate case average costing principles to recover such costs. In addition, FPL develops a whole new “class” of customers outside the generally accepted classes of residential, commercial, and industrial to accomplish this.

¹⁶ Witness Onsgard testified on cross-examination that 4800 smart meters were installed and then removed during deployment (TR 186) , approximately 2000 smart meters that were installed needed to be removed during NSMR Tariff enrollment (TR 187), and in his rebuttal testimony stated that 6700 were currently enrolled in the NSMR program (TR 53) indicating that nearly 30,000 smart meters had to be installed outside the initial deployment.

NSMS customers that refused the smart meter initially do not require and should not pay for the installation of a smart meter. Tariffs already exist for initiation/relocation of service and FPL should request a change to these existing tariffs as opposed to burdening all NSMS customers with this cost which they may not be incurring.

In addition, FPL claims they will incur these field visit costs over 3 years but instead of including such in the monthly fee they have requested it all upfront (advance recovery) and have the audacity to provide no discounting to reflect the time value of money! To further complicate facts, FPL witness Onsgard argues under cross-examination by Intervener Skop that the \$77.06 field visit fee, which is included in the upfront fee of \$95, does not constitute advanced recovery charges because the upfront fee is designed to cover one-third of FPL's upfront costs (TR 182-186). It defies logic as well as the words written in FPL's petition and the Commission's Order. FPL's upfront systems and marketing & communication costs which make up the \$310 are **clearly** being recovered through the monthly \$4.65 charge with the required rate of return on rate base included. The components of the \$95 enrollment fee **CLEARLY** include a field visit charge, which for the initial set of enrollees is **not** being incurred upfront and may **never** be incurred by that customer (TR 140). For a customer electing to enroll in this program after the initial enrollment, they will definitely require a field visit for a meter swap out but apparently FPL does not believe these customers need to contribute to the costs of any meter testing or restoration/theft monitoring visits that they claim will need to be incurred. Simply stated – this portion of the fee is not cost-based for the NSMS customers and recovery in this manner should be denied because it is not equitable.

Meter sampling costs should be excluded as excessive and unnecessary. First, meter sampling costs in general are included in basic rates. Current rates have not been adjusted to reflect the fact that the project is complete and the new cost of service for this activity with 100% smart meters has not yet been determined. Second, FPL is a partial cost causer in this category. By delaying decision making on the NSMR offering and not handling upfront, FPL finds itself in a position with an excessive number of types of non-communicating meters left in the field by its own choice. FPL is stating they have no project savings to offset the NSMS costs even though they did not have to install a meter for initial NSMS customers. Had FPL offered the program in early deployment it could have installed one of its selected desired non-communicating meters and would not be in this position of having so many types of non-standard meters in the field that they claim they will need to remove in three years. Requiring NSMS customers to pay for a smart meter installation that did not occur and also pay for the change out in the meter testing phase is highway robbery and should be disallowed as double dipping.

Costs for field visits for collections and disconnects should be excluded. Existing tariffs already exist for these services and FPL should request a change to these existing tariffs. All NSMS customers do not incur these services and therefore are not the cost causer. In addition, this charge is a cross subsidy, for which this tariff is supposed to eliminate!

Billing and Project Support costs should be excluded. As Petitioner's witness Martin testified (TR 379), the initial enrollment should be considered project costs for which FPL bears some responsibility. Customers requesting NSMS thereafter will most likely do so due to a move and will be paying a initiation of service fee under other tariffs. FPL has not provided

evidence that such costs can't be absorbed through normal staffing levels already included in customer current rates.

The monthly fee for physical investigation of outages should be excluded because they are speculative and not cost based. As Witness Martin testified (TR 380), FPL could develop a separate fee, which would better match the charges with the cost-causer.

The project manager monthly fee should be excluded. As witness Martin testified (TR 381), absent the initial enrollment, the need for full time management of this program has not been substantiated by FPL and is excessive.

The manual monthly meter reading component should be excluded until a review is conducted to consider cost mitigating alternatives such as customer self reads or estimated billing processes and until the savings achieved by the smart meter deployment completion are shared with all ratepayers. FPL witness Onsgard admits that meter reading is included in rates. He also admits that the test year for which rates are based upon include a mixture of standard and non-standard meters. Then he absurdly states that the cost calculation FPL performed is purely incremental. This is not fact. All customers, including NSMS customers, are paying a monthly amount that was designated for manual meter reading. Under the new cost of service scenario, that amount should be eliminated or significantly reduced. FPL has not provided any credits to NSMS customers for amounts already being paid for this service.

ISSUE 4: Is the requirement for a manual monthly meter reading by FPL reasonable and justified or should customers be offered alternatives (e.g., self-read or estimated billing options) to ensure fair and reasonable rates are established and costs to FPL are minimized?

No. FPL has a duty to offer efficient and low cost options. Costs associated with manual monthly meter reading could easily be mitigated through other options such as customer self-reads or estimated billing.

ARGUMENT:

It is both the Company and Commission's duty to review alternatives that will mitigate incremental costs. FPL admits they did not perform any studies on this alternative (Hearing Exhibit No. 12, page 0066) A customer self-read program or estimated billing is a possible low cost alternative to mitigate any incremental costs involved with non-standard meters. Petitioner's Martin testified that a strong desire was expressed by NSMS customers for such a program (TR 379). FPL witness Onsgard claims the Commission rules disavow self-reads and estimated bills (TR 61). But his citations of rules provides no reference that self-reads are prohibited or that rules only prohibit estimated bills longer than 6 months. Considering FPL admits to nearly 10% of the NSMS customers receiving estimated bills since the program started in June 2014 (Hearing Exhibit No. 17, page 0220), the review of other alternatives needs consideration.

ISSUE 5: Should customers with several non-standard meters at the same property location pay multiple enrollment fees? If not, what is appropriate enrollment fee?

No. Customers with multiple non-standard meters at the same address should not have to pay multiple enrollment fees. A proper cost study should be performed to determine the costs, if any, to assess.

ARGUMENT:

The NSMR Tariff as currently constructed does not provide fair and equitable treatment for customers with multiple meters at the same address. The largest components of both the upfront enrollment fee (field visits) and the monthly fee (meter reading) are significantly lower for customers with multiple meters at the same service address. FPL claims that this could not be accomplished but that excuse is not consistent with how FPL tariffs handle other non-standard services with charges where they tailor the charges to the specific customer. This NSMR Tariff is not cost-based for these customers.

ISSUE 6: Are there any cost savings associated with the NSMR program that have not been used in accounting for the NMSR charges? If so, what are the sources of such savings, and what and how should the amounts be reflected in the NSMR calculations?

Yes. The avoided costs of not having to discard the existing meters and buy and install a smart meter and associated ROE and depreciation, as well as the incremental variable maintenance costs associated with smart meters. Amounts should be determined with a proper rate review.

ARGUMENT:

As discussed in Issue 3, witness Martin has outlined the avoided project capital costs which were overlooked in the initial tariff filing. Witness Martin also noted that review of all costs of the new smart meter processes was not performed to determine whether any variable costs exists which would offset the NSMR Tariff incremental costs. The review of these costs outside the general rate case and without requiring the submission of cost studies for both the standard and non-standard meters is problematic. Although FPL originally insisted there were no cost offsets, they later admitted there were some variable costs in the communications repair area (TR 70). The details and amount of this variable cost has not been verified by the Commission. A full cost review is required to identify whether there are additional variable costs that FPL failed to disclose. Discovery suggests there may be more variable costs as FPL has installed over 4.5 million smart meters and some contracts are based on the number of smart meters installed up to 4.5 million.

ISSUE 7: What is the appropriate projection of the number of FPL customers who may subscribe to the NSMR tariff for purposes of deriving the NSMR charges?

The appropriate number of customers was the 36,000 who had initially refused the smart meter. Utilizing a smaller number, as FPL did, resulted in an entry fee two-thirds greater and thus became more of a self-fulfilling prophecy than a cost calculation.

ARGUMENT:

FPL's utilization of an industry average as opposed to utilizing the number of customers who expressed their desire not to have a smart meter (36,000) artificially increased the cost of entry into this program. As FPL witness Onsgard stated. FPL intended its upfront enrollment fee to provide recovery of one-third the upfront costs of \$310. Those upfront costs as indicated in Petitioners Martin Exhibit MM-2 (Hearing Exhibit 9) utilizing 36,000 would have been \$93.12, and approximately \$30 if the goal was to recover one-third upfront, a significant difference.

FPL claims they needed to wait until the end of the project deployment in order to establish the costs and number of enrollees. But FPL did not provide evidence that the cost components could not be determined earlier and when having the actual number of interested parties (36,000), they purposely chose not to use that number in their calculations. The affordability at the \$30 entrance fee versus the \$95 fee imposed appears to have achieved the goal of dis-incenting the choice of meter. The actual results, 6700 customers able to afford a choice, was almost 50% off from their projections in this tariff. A self-fulfilling prophesy.

The question a Commission must ask itself, is whether this process provided fair pricing to all customers wanting this service. Or was affordability the real reason for the low enrollment and did that not constitute discrimination against the low and fixed income customers.

Witness Deason testified that the Commission should send "pricing signals" but conveniently did not offer any Statute which gives the Commission or the utility the authority to purposely dis-incent customers from making a choice through pricing design mechanisms.

ISSUE 8: How should the NSMR charges, if any, be designed?

The design should reflect true net incremental costs and should distinguish between initial enrollment during project phase and ongoing enrollments. Services already covered under miscellaneous tariffs should be removed and any incremental costs for such services should be reflected in the existing miscellaneous tariff charges.

ARGUMENT:

Due to project avoided costs as outlined by witness Martin’s testimony (TR 357, 372-373), there is a significant difference in costs between the initial customers who refused the installation as part of the deployment and the customers who will be choosing this service in the future. The design of this tariff does not reflect such differences and charges the initial enrollees with field visits that did not occur which is not fair and reasonable.

Many of the services for which FPL is asserting incremental costs already have an existing tariff associated with them, such as initiation of service and collections reconnections. FPL should remove any incremental costs associated with these existing tariffs and re-apply for changes to those tariffs at the appropriate time when rates are no longer frozen under the recent rate case settlement agreement. It is not equitable to design a tariff which burdens all NSMS with these costs for services they may not incur.

ISSUE 9: What additional information, if any, should FPL be required to file in its annual smart meter progress reports?

The Commission needs to totally revamp this monitoring control as it does not appear to be working properly.

ARGUMENT:

The purpose of any progress report to a Commission is to serve as a monitoring tool for important facets of the project. In the case of the smart meter progress report, history shows that this tool has failed to achieve that purpose. The Commission should conduct a review and develop more stringent requirements for the smart meter progress report in general, so important material facts are not left unreported.

First, as noted in the cross examination of witness Onsgard by Intervener Skop, FPL's project savings projections were significantly off target. FPL's progress report submissions for 2011 and 2012 provided no updated project costs and savings projections. It is only through an OPC interrogatory in the 2012 rate case that the Company discloses a cumulative 5 year 54% overrun in project O&M costs and a 43% underrun in project O&M savings!

Second, FPL failed to report in its 2011 and 2012 smart meter progress report that customers were posing objections to the installation of smart meters, that the Company developed a postpone list and also what the Company's future plans were to address this issue. FPL failed to report that they were activating service areas without all customers being installed with a smart meter thereby incurring what they now purport to be "significant" costs. One has to ask if such costs are significant as witness Onsgard claims, then why was disclosure to the Commission of this material fact omitted? Is the established monitoring tool working

appropriately if material items are not reported? FPL's assertions that NSMS costs are not de minimis (TR 56) but failure to report such costs to the Commission suggests the monitoring tool is not working and a review of the objectives of the report needs to be undertaken by the Commission immediately.

As it relates to the non-standard meters, the Commission should deny the tariff at this time but consider using the progress report to monitor the level of activity and costs associated with these NSMS customers, as well as, any cost mitigation programs (customer self-reads and/or estimated billing) put in place by the Company to determine if future action should be taken.

ISSUE 10: Are FPL's proposed terms and conditions of the NSMR tariff appropriate? If not, what changes should be made?

No. Non-standard meters should be offered at no-charge. Current terms have no provisions for providing credits for estimated bills or pro-rated credits for customers when installing smart meters in repair situations under 30 days and no consideration for customers with multiple meters or multi-family dwellings. Product contracted for not well-defined.

ARGUMENT:

NSMS should be provided to customers at no charge similar to other optional services provided currently to FPL customers. In addition, charges are not appropriate at this time since savings from smart meters are not fully reflected in current rates. If charges were to be appropriate, FPL terms and conditions are lacking in that they provide no requirements for

FPL to provide customers credits when they do not read a meter and issue an estimated bill. As FPL disclosed (Staff Hearing Exhibit #17, page 0220), nearly 10% of the NSMR Tariff program enrollees have received bills that were estimated since the program began in June 2014. FPL's claims of lack of access are unsubstantiated and the terms should include credits for work not performed. In addition, FPL's terms allow FPL to replace a non-standard meter with a smart meter in repair situations and do not provide credits if left in place for the first 30 days, even though average times to obtain a non-standard meter are reported as 10 days. Customers should not have to pay for a product they do not have installed for up to 30 days and the terms should be adjusted to provide pro-rated credits to the monthly NSMR Tariff charge for the time the smart meter is installed.

The current NSMR Tariff terms also discriminate against those NSMS customers with multiple meters and provide no relief for those customers in multi-family dwellings. The program needs to address these important issues. FPL's assertion that it is not possible to develop different charges, which more accurately reflects the costs, is not consistent with what they developed for other non-standard services for which charges apply. For example, the installation of underground facilities tariff sets very specific charges based on the size and amount of customers' requests in order to better reflect incremental costs.

And finally, the product being offered – a “non-communicating” meter is too vaguely defined in the tariff. Customers deserve to know exactly what product they are contracting and paying for. Although FPL has stated they intend to offer analogs and digitals in their responses to interrogatories, the definition in the NSMR Tariff could be interpreted to mean a smart meter with the transmitter turned off. This could pose problems for many customers

with EHS and is deceptive and should be better defined.

ISSUE 11: Based on the resolution of the previous issues, what are the appropriate NSMR charges?

* There should be no charges for a NSMS as it is consistent with other FPL optional services. Additionally, the calculation of fair and reasonable charges for the NSMR requires a complete and thorough analysis, which hasn't been performed, as well as accurate baseline costs which aren't yet known.*

ARGUMENT:

As outlined in Issue 1, it is not appropriate to charge customers with non-standard meters a fee for incremental costs while providing other non-standard services for no charge. Even if it was appropriate, it is unprecedented to allow FPL to charge for incremental costs for basic services, covered under general existing tariffs, based on savings which were not reflected in current rates (phantom savings) without appropriate detailed cost of service studies for both standard and non-standard services being prepared and the sharing of savings with all customers. As described in detail in Issue 1, many of the services included in the NSMR Tariff are services covered under general rate tariffs and have historically been cross-subsidized. Computing incremental costs outside a general rate case review, with current rates not yet reflective of the new cost of service, becomes problematic as a proper baseline amount has not been established and purported savings not reflective in rates for all customers. The Commission should deny the request and defer any decisions until the purported new cost of service is fully reflected in current rates.

ISSUE 12: Should this docket be closed?

No position.

CONCLUSION

For the reasons stated herein, the commission should deny FPL's request for a NSMR tariff as the offering of choice for this controversial product is good business practice similar to other non-standard options offered by FPL such as Spanish customer service and budget billing. Or at a minimum, the Commission should deny the charges at this time and defer any decisions on charges for the non-standard meter until the next general rate case where the new cost of service for standard meters will be fully reflected in rates for all ratepayers and proper cost of service studies can be appropriately developed and evaluated with accurate incremental costs for NSMS customers.

Dated October 27, 2014, at Venice, FL

Respectfully submitted,
/s/ Marilynne Martin

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

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by electronic mail on this 27th day of October 2014, to the following:

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