

1 Commission decide to hear oral argument, staff
2 recommends that it be limited to ten minutes per side.
3 And here with us today, Commissioners, is Ms. Martin and
4 Mr. Rubin.

5 **CHAIRMAN GRAHAM:** Commissioner Edgar.

6 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.
7 As our staff has described to us, and as I know you are
8 aware, what is before us is a request for
9 reconsideration on two orders that I issued in this
10 docket as Prehearing Officer. Those orders granted in
11 part and denied in part the motions to dismiss both the
12 Martin and the Ahn petitions.

13 I do want you to know that this is something I
14 spent a lot of time with both our technical and legal
15 staff going over before I issued these orders. I also
16 am not surprised that there is a request for
17 reconsideration before us. I truly felt like no matter
18 what I did that probably that next step in the process
19 would come forward, and that's absolutely fine. That is
20 the process.

21 So, Mr. Chairman, I would ask that we do grant
22 oral argument, whatever amount of time you would like to
23 give, and then after that I may have another comment or
24 question.

25 **CHAIRMAN GRAHAM:** Okay. Well, there's a

1 motion to grant oral argument. Is there a second?

2 **COMMISSIONER BRISÉ:** Second.

3 **CHAIRMAN GRAHAM:** It has been moved and
4 seconded. I guess hearing nothing else other than
5 staff's recommendation, I don't have a problem with
6 granting ten minutes each side. So let's do that.
7 Let's start with -- is it Ms. Martin?

8 **MS. MARTIN:** Yes.

9 **CHAIRMAN GRAHAM:** Ms. Martin, you have ten
10 minutes.

11 **MS. MARTIN:** Yes. My name is Marilynne
12 Martin. I am the qualified representative and also a
13 petitioner for the Martin petitioners. We have
14 20 people on our petition. And I want to thank you for
15 this time to give oral argument.

16 The order we are asking you to reconsider
17 limits the scope and jurisdiction of this proceeding to
18 be held in September to issues of cost and cost
19 allocation only. It denies all issues of health,
20 safety, and privacy, as well as other issues such as the
21 standard meter designation to be heard.

22 The denial comes with two parts. One, a lack
23 of jurisdiction by the Commission, and the second being
24 the concerns regarding the deployment should have been
25 raised in the 2008 rate case. And I'd like to focus

1 today on facts that I think that were overlooked as far
2 as law and facts, and that has to do with the
3 petitioners right to proper notice and due process as
4 well as some of the Commission powers that exist under
5 the current statutes.

6 A fundamental requirement of due process is
7 proper notice and adequate notice. Notice is knowledge
8 of facts which would naturally lead an honest and
9 prudent person to make an inquiry. We assert that
10 proper notice was not given to the petitioners in the
11 2008 rate case where the smart meters were approved.
12 The public was not told that the meters would be
13 mandatory, nor was the public told that an active
14 wireless neighborhood area network was to be constructed
15 and operated through these meters on their home.

16 We understand that both the Commission and its
17 staff as well as the utilities received about six to ten
18 years of training on the smart grid and smart meters.
19 So when FPL said at the service hearings introducing
20 smart meters, that had significant meaning to you. But
21 is it reasonable to expect the public to have knowledge;
22 that is, for them to know they must be mandatory,
23 because in order to work properly through a wireless
24 mesh network.

25 The fact is that no mention was made of

1 wireless nor mandatory and there doesn't appear to be
2 any news reported prior to the order on that also. So
3 we ask you how John Q. Public had notice to dispute this
4 action at the time. The fact is that the petitioners
5 received notice after that proceeding had concluded. I
6 went and got the deployment letters, and they brought
7 the issues to the service hearings being conducted in
8 the 2012 rate case.

9 The notice of that hearing for 2012 said that
10 the purpose was to take testimony from the public on the
11 quality and the adequacy of FPL's service and other
12 matters relating to the rate case. We ask you if it is
13 true that this March 2010 order made the smart meter the
14 standard meter, and it was mandatory, and all should
15 have known it, then why did the Commissioners shut down
16 the proper and legal testimony coming before them at
17 that time? Why didn't FPL and the Commissioner give
18 notice to the people at that time? Why wasn't the
19 public told in the 2012 service hearings that this was
20 standard service and they were to be charged or needed
21 to take it as a mandatory meter? Why was appropriate
22 and legal testimony denied and a separate track set up
23 with separate comment cards to be handled under separate
24 proceedings?

25 At the Melbourne service meetings, Ms. Bulger

1 (phonetic), a customer, came forth and asked a very
2 simple question, and she said, "Can these meters shut
3 your electric off via an office without an employee
4 coming?" She was not given an answer. So it appears
5 people are confused as to what this equipment can and
6 cannot do two years after, but you're asking us to have
7 known to dispute it.

8 So did the public receive their due process
9 rights in the smart meter workshop that was set up, the
10 separate track that was set up? And we say no. The
11 public did not have the equal opportunity to present
12 their facts, respond to staff questions, refute the
13 facts, recommendations? The public's request for
14 presentations at that workshop were denied. There was
15 also no notice provided after you had your Internal
16 Affairs meeting on the briefing report, and no notice
17 came out after that meeting to tell us how to protest
18 that recommendation. No notice of rulemaking was even
19 set up.

20 So the petitioners assert the fact that they
21 were denied their due process rights to be heard. In
22 addition, since such meetings and decisions were
23 unreasonably delayed until February 29th, 2013, the
24 petitioners were further denied their due process rights
25 to protest the 2012 rate case settlement which was

1 issued on January 14th where the period has closed.

2 A comprehensive investigation into important
3 consumer issues did not occur on September 20th, 2012,
4 as promised, nor was due process allowed. There was no
5 notice of how to dispute those finding. And until FPL
6 filed this non-standard meter tariff today, in August,
7 the public had no avenue to appeal the recommendations
8 made in that briefing report. So we contend this is the
9 place for all disputes to finally be heard.

10 Administrative Procedures Act 120.57(e) (1)
11 says an agency or administrative law judge may not base
12 agency action that determines the substantial interest
13 of a party on an unadopted rule. We ask you to consider
14 whether the smart meter workshop briefing report, the
15 recommendation that the utilities decide for themselves
16 to offer an internal meter, and, if so, must present a
17 cost-based tariff, is that an unadopted rule?

18 And also, you know, we have Order Number 18893
19 which basically transferred the ownership of meter
20 enclosures to us, and the order simply states for a
21 meter. This equipment is not a meter. So the
22 petitioners believe their due process rights of law have
23 been denied.

24 So the order that you are opining on today
25 suggests also that the Commission has the power to

1 mandate a product to be placed directly on the home of
2 the customer, but the Commission has absolutely no
3 jurisdiction over the safety of that product, and we
4 respectfully disagree. The fact is that this Commission
5 has broad powers and also responsibility for public
6 safety. A smart meter is now part of your distribution
7 facilities. It wasn't prior, okay, the analog wasn't,
8 but this is. If you want to shut off service to
9 somebody five houses away from me, you have to bounce
10 that signal through my home. It is definitely part of
11 distribution facilities, and you definitely have
12 responsibility for that.

13 The Commission in this order has overlooked
14 Section 366.05, which give it power to prescribe
15 standards of quality and to require replacements when
16 necessary to promote the convenience and welfare of the
17 public. In addition, Section 366.06 gives it powers
18 that whenever the Commission finds, upon request made,
19 that practices of any public utility are unjust,
20 unjustly discriminatory, or in violation of law that
21 public hearings be held. Many of my petitioners avoid
22 all sources of wireless. It makes them ill. They have
23 doctors notes telling them to do so.

24 You were suggesting they have to accept as
25 standard service a product directly on their homes that

1 they have been instructed to avoid and is known to make
2 them ill, and that their only remedy is to sue, for
3 which the disabled cannot afford.

4 This approved fee also places an undue burden
5 on the poor. We say choice of meter. I certainly, in
6 my financial situation, have a choice. But if you are
7 living on a fixed income, that's no choice at all, and
8 you have gotten comment letters on that. So we ask you
9 to relook at our petition. We ask you to put the tariff
10 order -- that's what we ask, we ask you to kind of put
11 that order on hold, hold the proper hearings so we can
12 have due process. Then based on those hearings, then we
13 can make a proper decision on a non-standard tariff
14 meter and what needs to be included in there. But it is
15 time for the public, and petitioners very much request,
16 respectfully, that our rights under the law to be heard
17 be heard, and these are not frivolous issues.

18 Thank you.

19 **CHAIRMAN GRAHAM:** Thank you, Ms. Martin.

20 Mr. Rubin.

21 **MR. RUBIN:** Thank you, Chairman. Ken Rubin
22 for FPL.

23 Good afternoon, Commissioners. First of all,
24 FPL fully supports the staff recommendation on this
25 matter. As Commissioner Edgar indicated on April 1st of

1 this year, as the Prehearing Officer, Commissioner Edgar
2 entered two orders granting in part and denying in part
3 FPL's motions to dismiss the two petitions, really two
4 separate challenges to the Commission's January 14th
5 order that approved FPL's revised opt-out tariff.

6 Each of the two orders that Commissioner Edgar
7 entered as the Prehearing Officer completely and
8 thoroughly addressed the positions of the parties
9 point-by-point, and concluded by dismissing all claims
10 aside from the cost basis and the allocation of the cost
11 of the opt-out tariff. The orders that Commissioner
12 Edgar entered as the Prehearing Officer, which are being
13 challenged, also completely addressed all of the points
14 that are now raised in the two motions for
15 reconsideration that are pending today before the
16 Commission. The Ahn petitioners who are represented by
17 Attorney Jones, who I assumed would be here by
18 telephone, but I now assume is not participating today,
19 and by Ms. Martin as the qualified representative of the
20 remaining petitioners, have failed in all material
21 respects to meet the heavy burden that's required for
22 reconsideration of a Commission order.

23 I'd like to at least briefly address that
24 legal requirement. First, what is required for a valid
25 motion for reconsideration. A legally sufficient motion

1 for reconsideration must do two things. First, the
2 motion must identify a point of fact or a point of law
3 that the Prehearing Officer overlooked or failed to
4 consider in rendering the orders. And, secondly, they
5 must explain how consideration of the allegedly
6 overlooked fact or law would have led the Prehearing
7 Officer to a different decision.

8 The two motions for reconsideration before the
9 Commission today do neither of those two things. So to
10 be clear, the issue really that is being considered by
11 the Commission today is whether the petitioners have
12 sufficiently satisfied the threshold legal requirements
13 necessary for reconsideration of the two orders. In
14 other words, have they shown, have they pointed out a
15 point of law or fact that Commissioner Edgar overlooked
16 in entering the two orders, and have they shown or
17 explained how consideration of the points of law or fact
18 would mandate a different result, and they simply have
19 not met those burdens.

20 In response to the two motions for
21 reconsideration, FPL cited the well-established case law
22 that Florida courts and this Commission have followed
23 for years that lay out those requirements. Staff agrees
24 that those cases accurately outline the standard. And,
25 in fact, Ms. Martin in her motion and Attorney Jones in

1 his motion agree that that is the appropriate standard.
2 As staff has noted in its recommendation, neither one of
3 these two motions satisfy that legal requirement.

4 In its recommendation, staff has very
5 carefully outlined the issues that petitioners claim
6 were overlooked along with the support showing that
7 quite to the contrary, each and every one of those
8 issues was, in fact, directly addressed in the orders
9 that were entered by Commissioner Edgar that are now
10 under attack. Because staff has addressed these issues
11 in detail, I won't go into them in any more detail now.

12 I know that Ms. Martin in her remarks has
13 addressed some substantive issues that go well beyond
14 what the Commission should be considering here today,
15 but in your staff's recommendation the recommendation
16 goes point-by-point and identifies where the two motions
17 fail to meet those standards point-by-point.

18 Commissioners, the orders entered by the
19 Prehearing Officer in this case very carefully, very
20 analytically, and very clearly addressed the issues
21 which the petitioners now claim were overlooked or not
22 considered. In point of fact, the two arguments
23 really -- I'm sorry, the two motions are really nothing
24 more than reargument, and the law is clear that it's not
25 appropriate to use a motion for reconsideration as a

1 vehicle to either reargue matters or to express
2 disagreement with the Commission's decision.
3 Notwithstanding that law, that's precisely what these
4 two motions before the Commission today do.

5 To conclude, FPL urges the Commission to deny
6 the two motions for reconsideration for the reasons
7 expressed in our written response to the motions and for
8 the reasons addressed by staff in the April 24th
9 recommendation. Thank you.

10 Thank you, Mr. Rubin.

11 Commissioner Edgar.

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

13 Very briefly, I would like to say very much
14 and hopefully clearly on the record that I do agree with
15 Ms. Martin very strongly on two points, and maybe others
16 as well, but two that I want to point out right now.
17 And that is I do believe that concerns of consumers
18 should be heard and considered, and I also adamantly
19 state that I don't believe the concerns expressed in
20 this docket are frivolous. They are not frivolous.
21 However, what was before me as Prehearing Officer was
22 the scope of our jurisdiction as pertains to the tariff
23 before us and relevant case law.

24 Although I am the one that signed these
25 orders, they are orders of the Commission. And as such

1 it is very important to me that they be correct, that
2 they be right, and that each of my colleagues have
3 available to each of you as you make a decision on the
4 motions before us the opportunity to question the
5 representatives of the parties and our staff. If an err
6 of fact or law was made, or if any of you believes that
7 it was, then please note that it was completely
8 inadvertent and it should be corrected.

9 Again, I spent a lot of time with our staff
10 preparing these orders and trying to best address the
11 issues that were before us and most appropriately. But
12 I am glad for any discussion, and would also just add
13 that I very specifically made these orders longer than
14 they often are so that the benefit of the rationale and
15 analysis would be in the document for all to consider.

16 Thank you.

17 **CHAIRMAN GRAHAM:** Thank you, Commissioner
18 Edgar. And I want to thank you for agreeing to be
19 Prehearing Officer on this. I knew that it was going
20 to take all your vast legal talents and organizational
21 skills and patience and everything else involved in
22 that, but I do want to thank you for stepping up to the
23 plate and taking this task on.

24 Commissioners, any questions or concerns?
25 Commissioner Balbis.

1 **COMMISSIONER BALBIS:** I don't --

2 **CHAIRMAN GRAHAM:** I'm sorry, Brisé.

3 (Laughter.)

4 **COMMISSIONER BRISÉ:** My brother from another
5 mother.

6 (Laughter.)

7 I think at the appropriate time we'll make a
8 motion, but when I reviewed the orders, I didn't find
9 any error of fact or law. And I recognize that there is
10 a lot of conversation around these issues, which is
11 appropriate, but pertaining to what our responsibilities
12 are and what the orders deal with, I think there is no
13 error of fact or law that I could find in them. So when
14 appropriate, I'll make a motion.

15 **CHAIRMAN GRAHAM:** Commissioner Balbis.

16 **COMMISSIONER BALBIS:** Now I do have a
17 comment. I just have a question for staff on this.
18 And I, too, went through both of the orders and I
19 thought that they adequately addressed the issues, but
20 I have a question on your recommendation for Issue 2.
21 On the Ahn motion, and you designated as their Issue 1,
22 on the AMI meter does not meet the definition of a
23 meter in the rule, et cetera. And you pointed out
24 correctly that Commissioner Edgar's order where it
25 talked about that the deployment of the AMI meters was

1 thoroughly litigated in the prior rate case, the
2 deployment covers that definition, as well, correct?

3 **MS. BROWNLESS:** I'm sorry, I don't understand
4 your question.

5 **COMMISSIONER BALBIS:** The Ahn motion states
6 that an AMI meter does not meet the definition of,
7 quote, meter in Rule 25-6.003, and then it goes on.

8 **MS. BROWNLESS:** Yes.

9 **COMMISSIONER BALBIS:** All of those issues
10 were litigated in the prior rate case, the 2009 rate
11 case that came out in the 2010 order, correct?

12 **MS. BROWNLESS:** My understanding is that
13 there was a thorough discussion in the rate case, and I
14 want to share with you that I was not at the Commission
15 at that time and I didn't litigate that rate case, but
16 my understanding is that all of the issues associated
17 with the AMI deployment program and what the meters
18 would do and not do was discussed at the previous rate
19 case.

20 **COMMISSIONER BALBIS:** Okay. Thank you.

21 **CHAIRMAN GRAHAM:** Commissioner Brown.

22 **COMMISSIONER BROWN:** Thank you.

23 And, you know, as a lawyer I have a great
24 appreciation for, when I read orders that are very well
25 analyzed and thorough, and I read both of them and

1 thought they were extremely thorough and analytical, as
2 well as the staff recommendation. And, you know, I
3 agree with everything that everyone has said. I think
4 the standard of review for a motion for reconsideration
5 is quite high. I couldn't find an error of fact or law.
6 I think, though, some of the arguments that the
7 petitioners did raise may be more appropriate for other
8 venues, as the Prehearing Officer alluded to in the
9 orders. So with that, I would be supportive of a
10 motion.

11 **CHAIRMAN GRAHAM:** Commissioner Brisé.

12 **COMMISSIONER BRISÉ:** Thank you, Mr. Chairman.

13 I move staff recommendation.

14 **CHAIRMAN GRAHAM:** It has been moved and
15 seconded, staff recommendation on Item Number 11.

16 Any further discussion?

17 Seeing none, all in favor say aye.

18 (Vote taken.)

19 **CHAIRMAN GRAHAM:** Any opposed?

20 By your action you have approved staff
21 recommendation on Item Number 11.

22 Okay. That concludes our agenda conference
23 today. We are going to have IA here in this room and
24 that will start in the next three to five minutes.
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STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

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

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

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

DATED THIS 16th day of May, 2014.



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