BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for initiation of formal proceedings against Florida Power & Light Company and request for evidentiary hearing, by Rachel Renee Davis (Complaint No. 1494124E).	Docket No. 20260151-EI Dated: November 1, 2026

PETITIONER'S MOTION FOR SPOLIATION SANCTIONS REGARDING METER NO. 9137018

Petitioner Rachel Renee Davis, through her qualified representative, Brandon Zidzik (Order No. PSC-2026-0356-FOF-OT), moves under Rules 28-106.204 and 28-106.206, Florida Administrative Code, for sanctions against Florida Power & Light Company ("FPL") for disturbing Meter No. 9137018 after FPL had notice that a Commission-witnessed test of that meter had been requested. The exhibits cited are filed with this motion under a separate Notice of Filing.

Statement under Rule 28-106.204(3)

Statement under Rule 28-106.204(3), F.A.C. On October 31, 2026, Petitioner's representative emailed counsel for Florida Power & Light Company (Monica Barnes, Joel Baker, Kenneth Hoffman, and Christopher Wright) to confer regarding the relief requested in this Motion. The email requested a response by Monday, November 2, 2026, at 12:00 PM Central Time. As of the filing of this Motion, FPL has not provided a substantive response or stated whether it objects to the relief requested. Therefore, the Motion is presumed opposed.

I. SUMMARY

FPL removed Meter No. 9137018 from the service address on or about January 20–21, 2026 (FPL's records give January 20; the replacement meter was set January 21) and reported it in its meter shop. By February 10, FPL reported that the meter's inner seal was not intact. By 9:33 a.m. on February 17 (time as displayed in FPL's message), FPL had photographs of the meter with its cover off and its circuit board out of the housing, seated on a TESCO "CAT. 2100" test station. On February 18, FPL ran the meter on its TESCO system and emailed the result to the Commission engineer at 10:20 a.m. Central. Petitioner's representative, who had asked on February 16 for the location of the test of this meter, was first invited at 10:37 a.m. and given an address at 11:34 a.m. The meter's internal condition before FPL's personnel opened it can no longer be examined by Petitioner or the Commission.

II. FACTS

1. **The request.** Petitioner's complaint of February 2, 2026 asked for “an independent, commission-overseen test of the removed meter” to confirm internal hardware failure rather than tampering. The complaint was addressed to the Commission, and Commission staff transmitted it to FPL's complaints mailbox the same afternoon, delivered at 3:27 p.m. Central. (Ex. B.)
2. **FPL's custody.** On February 3, FPL's Angela Kirkendall wrote to Commission staff (John Plescow): “Location: Meter shop” (Ex. C.) On February 5, Commission engineer Vince Williams wrote to Petitioner's representative and Ms. Kirkendall: “In E-mailed correspondence, the customer requested a witnessed meter test.”, and “I have reserved 2/17/25 at 9:30 am to witness this Meter Test.” [sic]. His message recorded of the removed meter: “It is located in FPL's Meter shop.” (Ex. E, quoted chain.) On February 6, Ms. Kirkendall wrote: “The previous meter is at the meter shop, so I want to confirm the location of the meter test if we are only testing the previous meter.” (Ex. D.)
3. **February 11: the Commission confirms it will witness the test.** Mr. Williams replied to Ms. Kirkendall: “Yes, I will meet your team at the test location on Feb. 18th at 9:30 am.” (Ex. E-2.)
4. **February 10: FPL reports on the meter's seal.** Ms. Kirkendall wrote to Mr. Williams that “the meters team informed me that the previous meter: 9137018 is burned up to the point it likely will not test.” “The inner seal was not intact, so that usually points toward tampering.” She added: “I will make sure that they still bring the previous meter to the premise so you can see the condition of the meter and the test can be attempted.” (Ex. E.)
5. **February 16: Petitioner asks that the seal not be removed.** Petitioner wrote (from her representative's account) to Mr. Williams, copying Ms. Kirkendall and others, asking for the address of the meter shop and the time of the test of Meter No. 9137018, and stating: “We request that the PSC witness verify that the physical state of the meter at the shop matches these records before the seal is removed.” She attached a photograph she described as “taken at the time of the meter swap.” It shows the meter assembled in its socket, cover on, with the seal tab in place. (Ex. F, as quoted and attached in FPL's own forward.)
6. **February 17: FPL sends photographs of the opened meter.** In a message shown as sent February 17, 2026 at 9:33 a.m., Ms. Kirkendall wrote to Mr. Williams and Commission engineer Robert Simpson: “The previous meter is in very bad condition and will not power up for testing.” and “Below are photos of the condition of the

previous meter of record:” Four photographs are attached. They show the meter's circuit board out of its housing, with charred material at the display, seated on a TESCO bench test station whose panel label reads “CAT. 2100.” (Ex. F and its attachments.)

7. **February 18: FPL runs the meter.** At 10:20 a.m. Central, Ms. Kirkendall emailed Mr. Williams two TESCO Meter Manager screenshots with the words “The results are attached.” (Ex. G.) The screens show: Test Type “F-X - FIELD - PSC COMPLAINT”; Tested by “Thurlow, Matthew”; Start “02/18/26 09:42:08,” End “09:55:25,” Board “W8458”; result “FAIL,” with each reading “0.00”; and the header “Inventory Location: METER SHOP.” The earlier screen (taskbar clock 9:53 a.m.) shows “Series Full — Done — 0.00 - Timeout expired” while the station read “Voltage A:240.0” and “Current A: 30.0.” The screens do not state the clock's time zone; FPL's 10:20 a.m. Central email shows the run was over before then. Ms. Kirkendall's February 17 message had also stated: “FPL's testing equipment is housed inside company vans and trucks.” (Ex. F.)
8. **The invitation came after the run.** At 10:37 a.m. Central, Mr. Williams asked Petitioner's representative to meet “at 11:30 this morning to witness the meter test.” No location was given. Petitioner's representative asked for the address; Mr. Williams sent it at 11:34 a.m.: “The address is 1230 East 15th Street Panama City Fl” (Exs. H, I.) The invitation and the address came from the Commission's engineer, not from FPL; Petitioner's point is that FPL handled, opened and ran the meter before any witness was available.
9. **FPL's report.** FPL's February 24, 2026 Final Report states that “an FPSC-witnessed meter test was scheduled for February 18, 2026 at 9:30 a.m.” and that “Due to the condition of the meter, the was not able to be tested.” [sic]. It also states that Mr. Zidzik “did not appear for the scheduled appointment.” The only location he was ever given arrived at 11:34 a.m., after FPL had emailed the result of its run. (Ex. J, pp. 3–4; Exs. G, I.)
10. **Authority.** Petitioner gave no written authority to open, examine or test the meter, and no Commission representative's presence when it was opened or photographed has been disclosed to her.

III. HOW A COMMISSION-WITNESSED TEST OF A REMOVED METER HAS BEEN CONDUCTED

The Commission's own file in the complaint of Belkys Armenteros (Docket No. 20190216-EI, Doc. No. 11281-2019) shows the procedure. The analyst offered the customer the “option of having a witnessed meter test” and wrote to a colleague: “see if the customer would like to

observe that test" (Ex. A, PDF pp. 16, 18.) Two Commission engineers attended at FPL's test center; the engineer reported that the meters were "removed from the lock-box in our presence" (Id. p. 21.) Before testing, FPL's chief meter electrician "provided those in attendance with" a copy of the "calibration report for the meter test board"; FPL's electrician performed and documented a visual inspection of the meter; FPL's test results were stated in percentages; the Commission ran its own test with its "Probewell MT-1 portable test standard"; and "A signed copy of the meter test was provided" (Id. p. 22.) The Commission's signed test-report form records where the test was held and whether "The Customer WAS/ WAS NOT present at this test" (Id. p. 60.) Petitioner cites Armenteros only for procedure. That case involved a different meter and a different finding.

The produced record does not show that any of those safeguards was offered to Petitioner for Meter No. 9137018 (Exs. C–J): the meter was opened and photographed before any witnessed test, and it was run on FPL's station before Petitioner's representative was invited or told where to go. Armenteros is cited for the Commission's practice of supervising the opening and testing of a removed meter, not as a binding rule.

IV. ARGUMENT

A. FPL had a duty not to disturb the meter.

Rule 25-6.060(1), F.A.C., provides: "In the event of a dispute, upon request to the Commission by any customer, a test of the customer's meter shall be made by the utility as soon as practicable. Said test shall be supervised and witnessed by a representative of the Commission." Rule 25-6.060(2) provides: "A meter shall in no way be disturbed after the utility has received notice that application has been made for such referee test unless a representative of the Commission is present or unless authority to do so is first given in writing by the Commission or by the customer." Petitioner's February 2 complaint was a request to the Commission for a Commission-overseen test of the disputed meter (Ex. B); the Commission's engineer treated it as one, recording that "the customer requested a witnessed meter test" and reserving a date to witness the test (Ex. E); and he confirmed to FPL that he would "meet your team at the test location on Feb. 18th at 9:30 am." (Ex. E-2). FPL's own Final Report calls the scheduled test "FPSC-witnessed meter test" (Ex. J, p. 3.) FPL also had Petitioner's February 16 request that the meter be verified "before the seal is removed." (Ex. F). In the alternative, Rule 25-6.059(3) gives the customer or her authorized representative "the privilege of witnessing the test", a privilege that means nothing if the utility may open and run the meter before the customer can attend.

B. FPL disturbed the meter before any witnessed test.

By February 10, FPL reported that the meter was "burned up" and that "[t]he inner seal was not intact" (Ex. E), a report that required someone to look at the seal; when and by whom is not stated. By 9:33 a.m. on February 17 (time as displayed), FPL had photographs of the meter with the cover off and the circuit board out of the housing, seated on its test station, and reported that it "will not power up for testing." (Ex. F.) Petitioner's own photograph shows the same meter assembled in its socket at the swap (Ex. F). FPL reported the meter in its meter shop on February 3, 6 and 10 (Exs. C–E) and has never reported anyone else holding it. Petitioner gave no written authority, and no Commission representative's presence at the opening was disclosed to her. Who opened the meter, when, where and why is known to FPL and not to Petitioner.

C. The lost evidence is critical.

Spoliation includes the "alteration" of evidence, not only its destruction. *Golden Yachts, Inc. v. Hall*, 920 So. 2d 777 (Fla. 4th DCA 2006). Before applying a remedy, the tribunal asks "1) whether the evidence existed at one time, 2) whether the spoliator had a duty to preserve the evidence, and 3) whether the evidence was critical to an opposing party being able to prove its prima facie case or a defense." *Id.* (citing *Jordan ex rel. Shealey v. Masters*, 821 So. 2d 342, 347 (Fla. 4th DCA 2002)). The meter existed and was in FPL's custody. FPL had the duty described in Part A. And the condition of its internal components and seals before FPL's personnel handled it is critical to Petitioner's case and to her defense against any suggestion of tampering: FPL told the Commission that the seal condition "usually points toward tampering" (Ex. E) and told the Commission that "Due to the condition of the meter, the was not able to be tested." (Ex. J, p. 4), while Petitioner sought the test to confirm internal hardware failure (Ex. B). Once FPL opened the meter outside Petitioner's view, that condition could no longer be tested by her.

D. The remedy.

Rule 28-106.206 authorizes the presiding officer to issue "appropriate orders to effectuate the purposes of discovery and to prevent delay, including the imposition of sanctions in accordance with the Florida Rules of Civil Procedure, except contempt." For a first-party failure to preserve evidence, the Florida Supreme Court chose "the Valcin presumption and sanctions, if found to be necessary" over a separate cause of action. *Martino v. Wal-Mart Stores, Inc.*, 908 So. 2d 342 (Fla. 2005). The presumption shifts the burden of producing evidence and "is given life only to equalize the parties' respective positions in regard to the evidence and to allow the plaintiff to proceed." *Public Health Trust of Dade Cnty. v. Valcin*, 507 So. 2d 596, 599–600 (Fla. 1987). Here the duty comes from a Commission rule, Rule

25-6.060(2). FPL should not be permitted to offer evidence or argument about the meter's internal condition, including any suggestion of tampering, without first showing who opened the meter, when, and what was done to it. Petitioner does not ask to exclude the TESCO screens: FPL itself told the Commission the meter “was not able to be tested.” and its own screens show a completed run.

V. RELIEF REQUESTED

Petitioner asks the presiding officer to enter an order:

1. finding, for purposes of this motion, that FPL disturbed Meter No. 9137018 after receiving notice that a Commission-witnessed test had been requested, without written authority from Petitioner and without disclosing to her the presence of any Commission representative, contrary to Rule 25-6.060(2), F.A.C.;
2. applying a rebuttable presumption that the meter's internal condition before FPL disturbed it was not the result of tampering by Petitioner, and placing on FPL the burden of producing evidence to the contrary;
3. precluding FPL from offering evidence or argument that the meter's condition shows tampering, or otherwise relying on the meter's internal condition, unless FPL first establishes the meter's custody and handling from its removal on or about January 20, 2026 through February 18, 2026;
4. directing FPL, within ten days, to file and serve: the name of every person who examined, opened, photographed, powered or tested the meter from its removal through February 18, 2026, with the date, place and purpose of each act; all custody, transport and inventory records for the meter; the native files of all photographs of the meter, with their metadata; the complete TESCO Meter Manager record, audit and operator logs for every test or power-up of the meter; and the identity of any Commission representative present at any of those acts;
5. directing FPL to preserve Meter No. 9137018 in its present condition, with all removed parts and the records listed in item 4, as Petitioner asked in her earlier filing (Document No. 07266-2026); and
6. granting any other relief the presiding officer finds appropriate.

Respectfully submitted,

/s/ Brandon Zidzik
Brandon Zidzik
Qualified Representative for Rachel Renee Davis
(Order No. PSC-2026-0356-FOF-OT)
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished by electronic mail on November 1, 2026 to: Joel T. Baker (joel.baker@fpl.com), Monica Barnes (monica.barnes@fpl.com), Kenneth A. Hoffman (ken.hoffman@fpl.com) and Christopher T. Wright (christopher.wright@fpl.com), for Florida Power & Light Company; and Jacob Imig (jimig@psc.state.fl.us) and Shaw Stiller (sstiller@psc.state.fl.us), Commission staff.

/s/ Brandon Zidzik
Brandon Zidzik