

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Complaints by Southeastern Utility Services,
Inc. on behalf of various customers, against
Florida Power & Light Company concerning
thermal demand meter error)
_____)

Docket No. 030623-EI

**CUSTOMERS' OBJECTIONS AND RESPONSE TO
FLORIDA POWER AND LIGHT COMPANY'S
FIRST SET OF REQUESTS FOR PRODUCTION
OF DOCUMENTS TO CUSTOMERS (NOS. 1-12)**

Pursuant to Rule 28-106.206, Florida Administrative Code and Rule 1.350, Florida Rules of Civil Procedure, Customers hereby serve their responses to Florida Power & Light Company's ("FPL") First Set of Requests for Production of Documents pursuant to Rule 28-106.206, Florida Administrative Code, and Rule 1.350, Florida Rules of Civil Procedure, hereby serves the following First Set of Requests for Production of Documents upon Ocean Properties, Ltd., J. C. Penney Corp., Dillard's Department Stores, Inc. and Target Stores, Inc., and requests that responsive documents be produced within thirty days, pursuant to the time frames provided for in the Florida Rules of Civil Procedure.

GENERAL OBJECTIONS

1. Customers object to each request for production to the extent that it seeks to impose an obligation on Customers to respond on behalf of subsidiaries, affiliates, or other persons that are not parties to this case. Such requests, besides being overly broad, unduly burdensome, or oppressive, are not permitted by applicable discovery rules.

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2. Customers object to each request for production to the extent that it is intended to apply to matters other than Florida operations subject to the jurisdiction of the Commission as being irrelevant, overly broad, unduly burdensome, and oppressive.

3. Customers object to each request for production to the extent that it requests information that is exempt from discovery by virtue of the attorney-client privilege, work product privilege, or other applicable privilege.

4. Customers object to each request for production to the extent that it is vague, ambiguous, overly broad, imprecise, or to the extent that it utilizes terms that are subject to multiple interpretations and are not properly defined or explained for purposes of this discovery. Any documents provided by Customers in response to FPL's discovery will be provided subject to, and without waiver of, the foregoing objection.

5. Customers object to each request for production to the extent that it is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this proceeding.

6. Customers object to providing information in response to FPL's discovery requests to the extent that such information is already in the public record before the Commission or is otherwise public record available to FPL.

7. Customers object to FPL's discovery to the extent that it seeks to have Customers create documents not in existence at the time of the request.

8. Customers object to each request for production to the extent that it seeks to impose obligations on Customers that exceed the requirements of the Florida Rules of Civil Procedure or Florida Law.

9. Customers object to each request for production to the extent that responding to it would be unduly burdensome, expensive, oppressive, or excessively time consuming.

10. Customers object to each request for production to the extent that it is not limited to any stated period of time and, therefore, are overly broad and unduly burdensome.

11. Customers object to FPL's discovery to the extent that information requested constitutes "trade secrets" defined in Section 688.01(4), Florida Statutes, and which are privileged pursuant to Section 90.506, Florida Statutes. To the extent that FPL's requests seek proprietary confidential information which is not subject to the "trade secrets" privilege, Customers will make such information available to counsel for FPL pursuant to an appropriate Protective Agreement, subject to any other general or specific objections contained herein.

12. Customers generally are corporations with offices in different states. In conducting business, customers create numerous documents that may not be subject to the Florida Public Service Commission's jurisdiction. Such documents may be housed in different locations. Therefore, it is possible that not every document has been identified in response to these requests. Customers will perform a reasonable and diligent search of those files that are reasonable expected to contain requested information. To the extent that FPL's discovery seeks to require more, Customers object on the grounds that compliance would be unduly burdensome and expensive.

DEFINITIONS AS SET FORTH BY FPL

1. “Person” or “persons” means all natural persons and entities, including, but not limited to: corporations, companies, partnerships, limited partnerships, joint ventures, trusts, estates, associations, public agencies, departments, bureaus or boards.
2. “SUSI” shall mean Southeastern Utility Services, Inc., including its employees and authorized representatives.
3. “Customers” shall mean Petitioners Ocean Properties, Ltd., J. C. Penney Corp., Dillard’s Department Stores, Inc. and Target Stores, Inc., individually and collectively.
4. “Document” or “documents” means documents as defined in Rule 1.350, Fla.R.Civ.P. In addition, the words “document” or “documents” shall mean any writing, recording, computer-stored information or photograph in your possession, custody, care or control, which pertain directly or indirectly, in whole or in part, to any of the subjects listed below, or which are themselves listed below as specific documents, including, but not limited to, correspondence, memoranda, notes, messages, e-mails, diaries, minutes, books, reports, charts, ledgers, invoices, computer printouts, computer discs, microfilms, video tapes or tape recordings or any other medium in which information is stored, that are in the possession, custody or control of customers and/or, Customer’s representative, SUSI.
5. “FPL” means Florida Power & Light Company, its attorneys, employees, officers, directors, agents, representatives, affiliated corporate entities and persons acting on behalf of these entities.
6. “Related to” shall mean contain, discuss, describe or address.

7. “All” means all or any.

8. The singular of any word contained herein shall include the plural and vice versa; the terms “and” and “or” shall be both conjunctive and disjunctive; and the term “including” means “including without limitation”.

9. “Landis and Gyr” shall mean the corporate entity which sold or otherwise provided FPL 1-V thermal demand meters that are the subject of this docket, including any corporate affiliates, successors, or predecessors of Landis and Gyr that supplied FPL with thermal demand meters.

INSTRUCTIONS

10. **Scope of Production.** In responding to this request to produce, produce all responsive documents.

11. **Manner of Objections and Inability to Respond.** If you object to a part of a request and refuse to respond to that part, state your objection and answer the remaining portion of that request. If you object to the scope of a request and refuse to produce documents for that scope, state your objection and produce documents for the scope you believe is appropriate.

12. **Limited Response.** If any of the requests cannot be responded to in full after exercising due diligence to secure the requested documents, please so state and respond and produce documents to the extent possible, specifying your inability to respond further. If your response or production is qualified or limited in any particular way, please set forth the details and specifics of such qualification or limitation.

13. **Privileged Information or Documents.** In the event you wish to assert attorney/client privilege or work product doctrine, or both, any other claim of privilege,

then as to such documents allegedly subject to such asserted privileges, you are requested to supply a privilege log identifying such documents, in writing, with sufficient specificity to permit the Prehearing Officer or Commission to reach a determination in the event of a motion to compel as to the applicability of the asserted objection, together with an indication of the basis for the assertion of the claim of attorney/client privilege or work product doctrine, or any other claim of privilege. The identification called for by this instruction shall include the nature of the document (e.g., interoffice memoranda, correspondence, report, etc.), the sender or author, the recipient of each copy, the date of the document, the present custodian of the document, the name of each person to whom the original or any copy was circulated, the names appearing on any circulation list associated with such document, and a summary statement of the subject matter of the document in sufficient detail to permit the Court to reach a determination in the event of a motion to compel.

14. **Computer-Generated Documents.** If a requested document is on computer or word proceeding disc or tape, produce an electronic copy of the document and a printout of the document.

DOCUMENTS REQUESTED

1. All documents exchanged between SUSI and Landis & Gyr on or after July 1, 2002 that are related to the calibration or testing of thermal demand meters.

Subject to objections previously raised herein, Customers will produce any responsive documents as they relate to issues and meters in this case during normal business hours at their respective offices or at a location to be agreed upon by the parties upon reasonable notice being provided to Customers.

2. All documents which refer or relate to the possible effects that temperature, including but not limited to radiant heat, can have on thermal demand meters.

Subject to objections previously raised, and the objection raised herein, Customers will produce any responsive documents as they relate to issues and meters in this case during normal business hours at their respective offices or at a location to be agreed upon by the parties upon reasonable notice being provided to Customers.

3. All documents reflecting the results of 1-V thermal demand meter tests conducted by SUSI.

Subject to objections previously raised, Customers will produce any responsive documents as they relate to the issues and meters in this case during normal business hours at their respective offices or at a location to be agreed upon by the parties upon reasonable notice being provided to Customers.

4. All documents sent or received by SUSI and/or exchanged between SUSI and any customer of FPL (including but not limited to the Petitioner Customers) who receives or received electric service through thermal demand meters from the period of July 1, 2002 through January 14, 2004.

In addition to the objections raised above, this request is objected to as being overbroad, vague and ambiguous. The request is not limited to matters in dispute between the parties, but seeks “all documents sent or received by SUSI and/or exchanged between SUSI and any customer of FPL who receives or received electrical service through thermal demand meters from the period of July 1, 2002 through January 14, 2004.” Besides seeking documents that may have nothing to do with this case, Customers are not in a position to know the identities of “any customer of FPL who receives or received electric service through thermal demand meters.” Customers would need FPL to provide them with a list of all such customers, and seeks same in its Second Request for Production of Documents.

5. All documents that refer or relate to or reflect any studies and/or analyses performed by SUSI related to the accuracy of thermal demand meters.

Subject to objections previously raised, and the objection raised herein, Customers will produce any responsive documents as they relate to issues and meters in this case during normal business hours at their respective offices or at a location to be agreed upon by the parties upon reasonable notice being provided to Customers.

6. All documents referring or related to over-registration and calibration of thermal demand meters.

In addition to the objections previously raised, Customers object to this request as being overbroad; upon refinement, Customers are willing to respond and will

produce any responsive documents related to the issues and meters in this case at their respective offices or at a location to be agreed upon by the parties upon reasonable notice being provided to the Customers.

7. All notes and correspondence exchanged between SUSI and current and former FPL employees regarding thermal demand meters or thermal demand meter testing over the last five years.

Subject to objections previously raised, Customers will produce any responsive documents as they relate to issues and meters in this case during normal business hours at their respective offices or at a location to be agreed upon by the parties upon reasonable notice being provided to Customers.

8. All documents, including electronic mails, notes and correspondence, between SUSI and FPL customers (including but not limited to the Petitioner Customers) regarding thermal demand meters or thermal demand meter testing for the period of July 1, 2002 through January 14, 2004.

Subject to objections previously raised, Customers will produce any responsive documents as they relate to issues and meters in this case during normal business hours at their respective offices or at a location to be agreed upon by the parties upon reasonable notice being provided to Customers.

9. All documents supporting Customers' claims that the effects of sunlight can cause a thermal demand meter to over-register.

Subject to objections previously raised, Customers will produce any documents as they relate to issues and meters in this case during normal business hours at their respective offices or at a location to be agreed upon by the parties upon reasonable notice being provided to Customers.

10. All documents supporting the Customers' allegations in their Petition for Formal Administrative Hearing that:

- a. their 1-V thermal demand meter(s) malfunctioned when last calibrated.
- b. their 1-V thermal demand meter(s) over-registered due to radiant heat.
- c. FPL failed to meet all applicable requirements for the testing of their 1-V thermal demand meter(s).

Subject to objections previously raised, Customers will produce any responsive documents as they relate to issues and meters in this case during normal business hours at their respective offices or at a location to be agreed upon by the parties upon reasonable notice being provided to Customers.

11. All documents, correspondence and solicitations to FPL customers from SUSI to FPL Customers to represent such Customers in pursuing claims for thermal demand meter refunds from FPL.

An objection is put forward, in addition to the objections raised above, that certain documents responsive to this request are confidential or may contain business or trade secrets and will not be produced without an acceptable confidentiality agreement being in place. Thus, subject to objections previously raised, and the specific objection set forth herein, Customers will produce any responsive documents as they relate to issues and meters in this case during normal business hours at their respective offices or at a location to be agreed upon by the parties upon reasonable notice being provided to Customers.

12. All documents and correspondence exchanged between SUSI and potential witnesses for Customers in this proceeding.

An objection is put forward in that not all potential witnesses have been identified at this time, as discovery has just recently commenced and potential witnesses are likely to be identified during the course of additional discovery. To the extent that conclusive decisions have been made as to witnesses, subject to the objections raised above, Customers will produce any responsive documents as they relate to issues and meters in this case during normal business hours at their respective offices or at a location to be agreed upon by the parties upon reasonable notice being provided to Customers.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to those listed below with an asterisk and the remainder by U.S. Mail without an asterisk this day the 13th day of February, 2004.

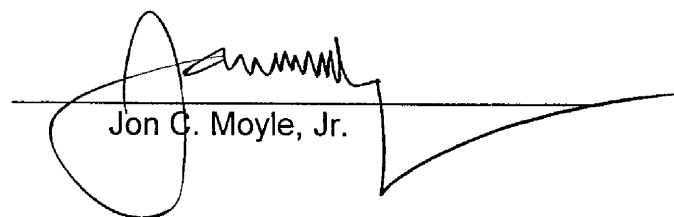
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