

**ORIGINAL**  
**RUTLEDGE, ECENIA, PURNELL & HOFFMAN**

PROFESSIONAL ASSOCIATION  
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A. ECENIA  
RICHARD M. ELLIS  
KENNETH A. HOFFMAN  
THOMAS W. KONRAD  
MICHAEL G. MAIDA  
MARTIN P. McDONNELL  
J. STEPHEN MENTON

POST OFFICE BOX 551, 32302-0551  
215 SOUTH MONROE STREET, SUITE 420  
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788  
TELECOPIER (850) 681-6515

R. DAVID PRESCOTT  
HAROLD F. X. PURNELL  
MARSHA E. RULE  
GARY R. RUTLEDGE  
GOVERNMENTAL CONSULTANTS  
MARGARET A. MENDJINI  
M. LANE STEPHENS

June 14, 2004

Ms. Blanca S. Bayo, Director  
Commission Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Betty Easley Conference Center, Room 110  
Tallahassee, Florida 32399-0850

Re: Docket No. 030623-EI

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket on behalf of Florida Power & Light Company ("FPL") are the original and fifteen copies of FPL's Responses and Objections to Southeastern Utility Services, Inc.'s Notice of Taking Depositions Duces Tecum.

Please acknowledge receipt of these documents by stamping the extra copy of this letter filed and returning the copy to me.

Thank you for your assistance with this filing.

Sincerely,

Kenneth A. Hoffman

CMP \_\_\_\_\_  
COM 3  
CTR \_\_\_\_\_  
ECR \_\_\_\_\_  
GCL KAH/rl  
OPC Enclosures  
FPLbayo.614ltt  
MMS \_\_\_\_\_  
RCA \_\_\_\_\_  
SCR \_\_\_\_\_  
SEC 1  
OTH cover ltr.

**HAND DELIVERY**  
RECEIVED-FPSC  
04 JUN 14 PM 4:22  
COMMISSION  
CLERK

RECEIVED & FILED  
*jh*  
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE  
06575 JUN 14 03  
FPSC-COMMISSION CLERK

**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**

Filed: June 14, 2004

---

**FLORIDA POWER & LIGHT COMPANY'S  
RESPONSES AND OBJECTIONS TO  
SOUTHEASTERN UTILITY SERVICES, INC.'S  
NOTICE OF TAKING DEPOSITIONS DUCES TECUM**

Florida Power & Light Company ("FPL"), by and through its undersigned counsel, and pursuant to Rules 1.310(b)(5) and 1.350, Florida Rules of Civil Procedure, hereby files the following Responses and Objections to Southeastern Utility Services, Inc.'s ("SUSI") Notice of Taking Depositions Duces Tecum filed in this docket on May 14, 2004, a copy of which is attached hereto as Exhibit A. All document requests that are not subject to FPL's Specific Objections below will be made by available by FPL for inspection and review by SUSI at FPL's general office at 9250 West Flagler Street, Miami, Florida, during regular business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, upon reasonable notice to FPL's counsel, but only in the event that FPL's Motion to Dismiss SUSI as a petitioner, filed January 5, 2004 in this docket, is denied (see General Objection No. 1 below).

**I. General Objections**

1. FPL objects to all discovery propounded by SUSI, including the Notice of Taking Depositions Duces Tecum attached as Exhibit A, on the ground that SUSI lacks standing to participate as a party to this proceeding and that Rule 1.350(a), Florida Rules of Civil Procedure, limits requests for production of documents to "[a]ny party." FPL incorporates by reference its

DOCUMENT NUMBER-DATE  
06575 JUN 14 3  
FPSC-COMMISSION CLERK

Motion to Dismiss SUSI as a Petitioner in this proceeding filed on January 5, 2004, in support of this Objection.

2. FPL objects to each and every one of the requests for documents that calls for information protected by the attorney-client privilege, the work product doctrine, the accountant-client privilege, the trade secret privilege, or any other applicable privilege or protection afforded by law, whether such privilege or protection appears at the time response is first made or is later determined to be applicable for any reason. FPL in no way intends to waive such privilege or protection.

3. FPL objects to providing information that is proprietary, confidential business information without provisions in place to protect the confidentiality of the information. FPL has not had sufficient time in every case to determine whether the discovery requests call for the disclosure of confidential information. However, if it so determines, it will either file a motion for protective order requesting confidential classification and procedures for protection or take other actions to protect the confidential information requested. FPL in no way intends to waive claims of confidentiality.

4. FPL is a large corporation with employees located in many different locations. In the course of its business, FPL creates numerous documents that are not subject to Commission's or other governmental record retention requirements. These documents are kept in numerous locations and frequently are moved from site to site as employees change jobs or as business is reorganized. Therefore, it is possible that not every relevant document may have been consulted in developing FPL's response. Rather, FPL's responses will provide all the information that FPL obtained after a reasonable and diligent search conducted in connection with this discovery request. To the extent

that the discovery requests propose to require more, FPL objects on the grounds that compliance would impose an undue burden or expense on FPL.

5. FPL objects to each Request to the extent that it seeks information that is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence.

6. FPL objects to each Request to the extent it requires FPL to create documents not already in existence.

7. FPL objects to each Request to the extent it seeks to impose an obligation on FPL to respond on behalf of subsidiaries, affiliates, or other persons that are not parties to this case on the grounds that such requests are overly broad, unduly burdensome, oppressive, and not permitted by applicable discovery rules. The jurisdiction of the Commission concerning the parent and affiliates of a utility is limited. See §§366.05(9) and 366.093(1), Fla. Stat. (2002). Moreover, the scope of discovery from a party is limited to documents within the possession, custody or control of that party. See, e.g., Southern Bell Telephone and Telegraph Co. v. Deason, 632 So.2d 1377 (Fla. 1994).

8. FPL objects to each and every Request to the extent it is vague, ambiguous, overly broad, imprecise, or utilize terms that are subject to multiple interpretations but are not properly defined or explained for purposes of such discovery requests. Any answers provided by FPL in response to these Requests for Production will be provided subject to, and without waiver of, the foregoing objection.

9. FPL objects to providing information to the extent such information is already in the public record before the Commission.

10. FPL objects to each and every Request to the extent that the information requested constitutes proprietary confidential business information under Section 366.093(3), Florida Statutes, and/or under rules promulgated by or orders issued by the Federal Energy Regulatory Commission. FPL will make such information available to Ocean Properties, Ltd. at a mutually agreeable time and place pursuant to a mutually agreed upon confidentiality and non-disclosure agreement.

11. FPL objects to each Request that seeks to obtain “all,” “each,” or “every” document to the extent that such discovery is *Overly Broad* and *Unduly Burdensome*. Any documents that FPL may provide in response to Requests will be provided subject to, and without waiver of, this objection.

12. FPL objects to each Request to the extent it is not limited to any stated period of time or a stated period of time that is longer than is relevant for purposes of the issues in this docket, as such discovery is *Overly Broad* and *Unduly Burdensome*.

13. FPL expressly reserves and does not waive any and all objections it may have to the admissibility, authenticity or relevancy of the documents produced pursuant to the Requests.

14. Many of the Specific Objections that FPL makes are applicable to several of the Requests. For this reason, FPL provides the following definitions of those objections and, where applicable, repeats only the defined term in stating its Specific Objections.

a. Relevance: the Request is not relevant to any specific claims, defenses, issues or questions presented in this proceeding and is not reasonably calculated to lead to the discovery of documents relevant to resolution of these issues.

b. Unduly Burdensome: the Request is unduly burdensome in that providing the requested data (i) would require an unreasonable expenditure of time and resources to search for

documents or information, (ii) is cumulative and/or has only a limited likelihood of leading to the discovery of documents relevant to resolution of the specific issue and either (a) the value of providing the document is outweighed by the burden of production or (b) Ocean Properties, Ltd. can obtain the document through publicly available information.

c. Overly Broad: the Request seeks a general category of information within which only certain portions of the information are reasonably related to the subject matter of this proceeding.

d. Vague and Ambiguous: the Request is vague and ambiguous in that it does not describe the documents sought with particularity or fails to convey with reasonable clarity what is being requested and, as such, FPL cannot reasonably determine the intended meaning, scope or limits of the Request.

## II. Specific Objections and Responses

FPL incorporates by reference all of the foregoing General Objections into each of its Specific Objections set forth below as though fully stated therein.

### **Documents Requested in Notice of Taking Depositions Duces Tecum attached as Exhibit "A"**

Request No. 1: All documents you relied upon when calibrating 1-V thermal demand meters.

Response: FPL has previously provided documents in response to this request pursuant to FPL's February 9, 2004 Response and Objections to SUSI and Ocean Properties, Ltd.'s ("Ocean Properties") First Request for Production of Documents, Document Request No. 2.

Request No. 2: All documents relating to 1-V thermal demand meters provided to you by Landis and Gyr.

**Response:** FPL has previously provided documents in response to this request pursuant to FPL's February 9, 2004 Response and Objections to SUSI and Ocean Properties' First Request for Production of Documents, Document Request No. 1. An additional document responsive to this request will be produced pursuant to the terms and conditions set forth on page 1 above.

**Request No. 3:** All documents relating to the accuracy of thermal demand meters including 1-V meters that are being reviewed by the Florida Public Service Commission.

**Response:** This request is substantially similar to Document Request No. 5 included in SUSI/Ocean Properties' First Request for Production of Documents. FPL objects to this Request on the grounds stated in FPL's February 9, 2004 Response and Objections to SUSI/Ocean Properties' First Request for Production of Documents (see Specific Objections to Document Request No. 5) which objections are incorporated herein by reference and remain pending.

**Request No. 4:** All correspondence you have received, including e-mails, relating 1-V thermal demand meters.

**Response:** FPL objects to this request on the grounds that it is *unduly burdensome, overly broad, and vague and ambiguous*. In addition, there is no reasonable time frame associated with the request.

**Request No. 5:** All documents you have sent, including e-mails, relating to thermal demand meters.

**Response:** FPL objects to this request on the grounds that it is *unduly burdensome, overly broad, and vague and ambiguous*. In addition, there is no reasonable time frame associated with the request.

**Request No. 6:** All documents regarding how 1-V thermal demand meters are to be maintained.

**Response:** Documents responsive to this request will be produced pursuant to the terms and conditions set forth on page 1 above.

**Request No. 7:** All documents regarding how 1-V thermal demand meters are to be tested for accuracy.

**Response:** FPL has previously provided documents in response to this request pursuant to FPL's February 9, 2004 Response and Objections to SUSI and Ocean Properties' First Request for Production of Documents, Document Request No. 26.

**Request No. 8:** All documents regarding the percent of scale that 1-V thermal demand are tested to determine accuracy.

**Response:** See above response to Request No. 7.

**Request No. 9:** All documents regarding temperature affects upon thermal demand meters.

**Response:** FPL has previously provided documents in response to this request pursuant to FPL's February 9, 2004 Response and Objections to SUSI and Ocean Properties' First Request for Production of Documents, Document Request No. 7.

**Request No. 10:** All documents, which discuss or are otherwise related problems or concerns involving 1-V thermal demand meters.

**Response:** FPL objects to this request on the grounds that it is *unduly burdensome, overly broad, and vague and ambiguous*. In addition, there is no reasonable time frame associated with the request.

**Request No. 11:** All documents you have regarding the accuracy of 1-V thermal demand meters.

**Response:** This request is substantially similar to Document Request No. 5 included in SUSI/Ocean Properties' First Request for Production of Documents. FPL objects to this Request



on the grounds stated in FPL's February 9, 2004 Response and Objections to SUSI/Ocean Properties' First Request for Production of Documents (see Specific Objections Document Request No. 5) which objections are incorporated herein by reference and remain pending.

Request No. 12: All documents related to engineering characteristics of 1-V thermal demand meters.

**Response:** Documents responsive to this request will be produced pursuant to the terms and conditions set forth on page 1 above.

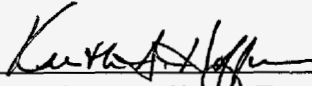
Request No. 13: All documents related to studies or analysis you have related to 1-V thermal demand meters.

**Response:** This request is substantially similar to Document Request No. 16 included in SUSI/Ocean Properties' First Request for Production of Documents. FPL objects to this Request on the grounds stated in FPL's February 9, 2004 Response and Objections to SUSI/Ocean Properties' First Request for Production of Documents (see Specific Objections to Document Request No. 16) which objections are incorporated herein by reference and remain pending.

Request No. 14: All documents related to persons you have contacted regarding 1-V thermal demand meters.

**Response:** Documents responsive to this request will be produced pursuant to the terms and conditions set forth on page 1 above. In addition, FPL objects to the production of certain other documents that could be construed to be within the scope of this request on the grounds of work product and/or attorney client privilege. All of such documents relate to communications with an individual who may be retained by FPL for the purpose of providing consultation on the issues in this case.

Respectfully submitted,



Kenneth A. Hoffman, Esq.  
J. Stephen Menton, Esq.  
Rutledge, Ecenia, Purnell & Hoffman, P.A.  
P. O. Box 551  
Tallahassee, Florida 32302  
Telephone: 850-681-6788

- - and - -

R. Wade Litchfield, Esq.  
Law Department  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, Florida 33408-0420  
Telephone: 561-691-7101

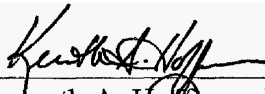
Attorneys for Florida Power & Light Company

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of Florida Power & Light Company's Responses and Objections to Southeastern Utility Services, Inc.'s Notice of Taking Depositions Duces Tecum has been furnished by U. S. Mail this 14th day of June, 2004, to the following:

Cochran Keating, Esq.  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Room 370  
Tallahassee, Florida 32399-0850

Jon C. Moyle, Jr., Esq.  
William Hollimon, Esq.  
Moyle, Flanigan, Katz, Raymond & Sheehan, P.A.  
The Perkins House  
118 North Gadsden Street  
Tallahassee, FL 32301

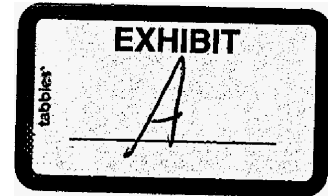
By:   
Kenneth A. Hoffman, Esq.

FPL\susiobject.2

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaints by Southeastern )  
Utilities Services, Inc. on behalf )  
of various customers against )  
Florida Power and Light )  
Company concerning thermal )  
demand meter error. )

Docket No.: 030623  
Filed: May 14, 2004



**SOUTHEASTERN UTILITIES SERVICES, INC.**  
**NOTICE OF TAKING DEPOSITIONS DUCES TECUM**

TO: Kenneth A. Hoffman, Esquire  
Rutledge, Ecenia, Purnell & Hoffman, P.A.  
215 South Monroe Street, Suite 420  
Tallahassee, Florida 32301

PLEASE TAKE NOTE, THAT PURSUANT TO Florida Rule of Civil Procedure 1.310,  
Southeastern Utilities Services, Inc. ("SUSI") will take the following depositions at the times and  
locations indicated:

Henry Hutchins Florida Power & Light Company 9250 West Flagler Street, Room 1606 Miami, Florida 33174 Tuesday, June 15, 2004 9:00 a.m.	Jim DeMar Florida Power & Light Company 9250 West Flagler Street, Room 1606 Miami, Florida 33174 Wednesday, June 16, 2004 9:00 a.m.
---	--

The deponents shall bring to this deposition copies of documents as set forth in Exhibit A.  
"Documents" means any written, recorded, filmed or graphic matter, whether produced, reproduced,  
or on paper, cards, tapes, film, electronic facsimile, electronic mail, computer storage device or any  
other media, including, but not limited to, memoranda, notes, minutes, records, photographs,  
correspondence, telegrams, diaries, bookkeeping entries, financial statements, tax returns, electronic  
mail transmissions, checks, check stubs, reports, studies, charts, graphs, statements, notebooks,  
handwritten notes, applications, agreements, books, pamphlets, periodicals, appointment calendars,  
records or recordings or oral conversations, work papers, and also including, but not limited to,

originals, whether by interlineation, receipt stamp, notation, indication of copies sent or received or otherwise, and drafts, which are in the possession, custody or control of FPL or in the possession, custody or control of the present or former agents, representatives or attorneys of FPL, or any and all persons acting on its behalf, including documents at any time in the possession, custody or control of such individuals or entities or known by FPL to exist.

“You”, “your”, “Company” or “FPL” refers to Florida Power and Light Company, its employees and authorized agents.

The foregoing will take place before a court reporter, notary public, or before some other officer authorized by law to take depositions. Said deposition is to be used for discovery purposes, for use at trial, or both, and will continue from day-to-day until complete.

Individuals with disabilities needing a reasonable accommodation to participate in this proceeding should contact Jon C. Moyle, Jr., Esquire at 850/681-3828. If hearing impaired, call 1/800-955-8771 (TDD) or 1/800/955-8770 (V) via Florida Relay Service for assistance.

PLEASE GOVERN YOURSELVES ACCORDINGLY.



JON C. MOYLE, JR.

Florida Bar No. 727016

WILLIAM H. HOLLIMON

Florida Bar No. 104868

MOYLE, FLANIGAN, KATZ, RAYMOND  
& SHEEHAN, P.A.

The Perkins House

118 North Gadsden Street

Tallahassee, Florida 32301

(850) 681-3828 (telephone)

(850) 681-8788 (facsimile)

[jmoylejr@moylelaw.com](mailto:jmoylejr@moylelaw.com)

[bhollimon@moylelaw.com](mailto:bhollimon@moylelaw.com)

Attorneys for Southeastern Utilities Services, Inc.

cc: Worldwide Reporting

**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 14<sup>th</sup> day of May, 2004.

Cochran Keating, Esquire  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Bill Walker  
Florida Power & Light Company  
215 South Monroe Street, Suite 810  
Tallahassee, FL 32301

\*Kenneth A. Hoffman  
Rutledge, Ecenia, Purnell & Hoffman  
Post Office Box 551  
Tallahassee, FL 32302-0551

R. Wade Litchfield  
Law Department  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, FL 33408-0420

Daniel Joy  
785 SunTrust Bank Plaza  
1800 Second Street  
Sarasota, FL 34236



Jon C. Moyle, Jr.

## **Exhibit A**

All documents you relied upon when calibrating 1-V thermal demand meters.

All documents relating to 1-V thermal demand meters provided to you by Landis and Gyr.

All documents relating to the accuracy of thermal demand meters including 1-V meters that are being reviewed by the Florida Public Service Commission.

All correspondence you have received, including e-mails, relating 1-V thermal demand meters.

All documents you have sent, including e-mails, relating to thermal demand meters.

All documents regarding how 1-V thermal demand meters are to be maintained.

All documents regarding how 1-V thermal demand meters are to be tested for accuracy.

All documents regarding the percent of scale that 1-V thermal demand are tested to determine accuracy.

All documents regarding temperature affects upon thermal demand meters.

All documents which discuss or are otherwise related problems or concerns involving 1-V thermal demand meters.

All documents you have regarding the accuracy of 1-V thermal demand meters.

All documents related to engineering characteristics of 1-V thermal demand meters.

All documents related to studies or analysis you have related to 1-V thermal demand meters.

All documents related to persons you have contacted regarding 1-V thermal demand meters.