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August 18, 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

HAND DELIVERY

RECEIVED-FPSC
AUG 18 PM 4:43
COMMISSION CLERK

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 an original and fifteen copies of FPL's Motion to Compel Answers to Florida Power & Light Company's First Set of Interrogatories Nos. 10, 11 and 12.

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,

[Handwritten signature of Kenneth A. Hoffman]

Kenneth A. Hoffman

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09045 AUG 18 04
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Complaints by Southeastern Utility Services,)
Inc. on behalf of various customers, against) **Docket No. 030623-EI**
Florida Power & Light Company concerning)
thermal demand meter error) **Dated: August 18, 2004**
_____)

**FLORIDA POWER & LIGHT COMPANY’S
MOTION TO COMPEL ANSWERS TO
FLORIDA POWER & LIGHT COMPANY’S
FIRST SET OF INTERROGATORIES NOS. 10, 11 AND 12**

Florida Power & Light Company (“FPL”), pursuant to Rules 28-106.206 and 28-106.303, Florida Administrative Code, and Florida Rules of Civil Procedure 1.280, 1.340, 1.350 and 1.380, moves to compel Ocean Properties, Ltd., J.C. Penney Corp., Dillard’s Department Stores, Inc. and Target Stores, Inc. (collectively referred to as “Petitioners”) to answer Interrogatories Nos. 10, 11 and 12 of FPL’s First Set of Interrogatories (Nos. 1-17) (“First Set of Interrogatories”), a copy of which is attached as Exhibit A to this Motion. The grounds for this motion are as follows:

1. On June 17, 2004, FPL served its First Set of Interrogatories on Petitioners. The purpose of the discovery was: 1) to obtain information that supports or contradicts positions Petitioners have taken in the present action; 2) to discover information and allegations upon which Petitioners intend to rely; and 3) to discover evidence and information that supports FPL’s positions in the present action.

2. On July 8, 2004, Petitioners served its Objections and Responses to FPL’s First Set of Interrogatories (attached as Exhibit B). Through such objections, Petitioners objected to responding to FPL’s interrogatories Nos. 10, 11 and 12. By this Motion, FPL respectfully requests the Commission to issue an order compelling Petitioners to respond.

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FPSC-COMMISSION CLERK

3. FPL's Interrogatory No. 10 seeks information about any meetings, communications, or discussions, George Brown, Bill Gilmore, or any other employee of Southeastern Utility Services, Inc. ("SUSI"), have had with FPL employees. Petitioners objected on grounds the interrogatory was "overbroad and unduly burdensome" and sought information that is in FPL's possession or under its control. Further, Petitioners objected on grounds the interrogatory requested information that cannot be publicly disclosed pursuant to a confidentiality agreement between FPL and SUSI. FPL respectfully requests that the Commission compel Petitioners to respond to this interrogatory to the extent the information is not covered by a confidentiality agreement between FPL and SUSI because the request is not overbroad and unduly burdensome and because the burden on FPL of compiling the data sought through this request is great, if not, impossible. FPL only knows of a few employees with whom contacts would be covered by a confidentiality agreement. If this request is "unduly burdensome" as Petitioners suggest, then FPL's need to have Petitioners' answer is underscored. Rule 1.280 of the Florida Rules of Civil Procedure permits discovery of the identity and location of persons having knowledge of any discoverable matter. Even though FPL's employees are "under its control" as Petitioners allege in their objections, FPL does not know and is not reasonably able to determine the identity of all of the FPL employees with whom representatives of SUSI, including George Brown and Bill Gilmore, may have spoken. FPL has thousands of employees. It is unreasonable to expect FPL to interrogate its employees to determine which ones had contacts with representatives of SUSI. This is especially true when, in certain instances, FPL employees may have been unaware that they were speaking to SUSI representatives when they were contacted or called by such representatives.

4. Further, it is possible that SUSI may have obtained data from FPL through improper means and FPL needs to know the identity of those employees with whom SUSI had meetings or communications, the subject matter of any meetings, communications, or discussions, the identity of the employee(s) from whom such data was obtained, and the content of the data obtained, to be able to defend this action. SUSI, which has far fewer representatives than FPL, has employees which would or should have records of its contacts with FPL. Petitioners should be compelled to answer FPL's First Set of Interrogatories, Number 10.

5. Additionally, FPL notes that counsel for Petitioners asserted in an e-mail sent to counsel for FPL on July 19, 2004 that because SUSI is no longer a party to this proceeding, "we will not be producing any documents from SUSI." Merely because SUSI is legally not a party to this action does not mean that discovery concerning SUSI and George Brown, Petitioners' primary fact witness, can be precluded. As George Brown asserted in his testimony, "SUSI has been fully authorized and empowered by Customers to negotiate and settle these refund claims." See Direct Testimony of George Brown filed on behalf of Petitioners on July 12, 2004, at page 1, lines 13-14. The notion that discovery may not be undertaken concerning a party's outside witness - - here, the Customers' primary witness - - is totally without merit. Indeed, that is precisely why Mr. Brown has been made available by Customers, without objection, for deposition.

6. Also, FPL respectfully requests that the Commission compel SUSI to respond to FPL's First Set of Interrogatories, Interrogatory No. 11. FPL's Interrogatory No. 11 requests that SUSI identify all FPL customers that have been contacted by SUSI and, for each customer contacted by SUSI, to: a) identify all documents sent or received by SUSI and/or exchanged between SUSI and such FPL customers; b) identify and state the date of each communication with such FPL customers;

c) describe the subject matters that were discussed between SUSI and such FPL customers; and d) describe in detail all claims and allegations made by SUSI regarding FPL's thermal demand meters, thermal demand meter testing and the provision of refunds for thermal demand meters. Petitioners object on grounds of relevance. Their objection is not well-taken. Interrogatory No. 11 seeks information that is related to the claims, issues and defenses in this action. FPL is entitled to discover the specifics of communications SUSI and its representatives have had with all FPL customers, the circumstances under which such contracts or communications were initiated, and the substance, content and dates of all such communications. This information goes directly to the credibility of Mr. Brown's testimony in this proceeding, the financial incentive that underlies positions he has taken in this proceeding, and the consistency and veracity of such positions. The information sought is clearly within the broad scope of discovery permitted under Rule 1.280(b), Florida Rules of Civil Procedure.

7. FPL requests that Petitioners be compelled to respond to FPL's Interrogatory No. 12. Interrogatory No. 12 requests that Petitioners describe the compensation arrangement between each Petitioner and SUSI. Petitioners object on grounds of relevance. This question seeks information that goes to the credibility of Petitioner's primary fact witness, George Brown, and his financial interest in this case.

8. FPL requires the discovery sought from Petitioners so that it may evaluate and test positions taken by Customers in this proceeding and so that it may support its own case. FPL is entitled to Petitioners' responses to FPL's written discovery, and requires it to prepare for the hearing in this case. Parties naturally need to know what information supports or contradicts their adversaries' position, background on their adversaries' witnesses, and what information their

adversaries will rely upon at trial. See generally, Elkins v. Syken, 672 So.2d 517, 522 (Fla. 1996). FPL is also entitled to documents or information upon which Customers intend to rely in the present action.

Conclusion

There is no reasonable basis for Petitioners' objections to FPL's First Set of Interrogatories Nos. 10, 11 and 12. Accordingly, FPL seeks an order compelling Customers to answer those interrogatories.

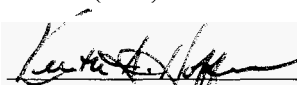
Certificate of Counsel

Counsel for FPL, Kenneth A. Hoffman, Esq., certifies that he has consulted with Counsel for Petitioners, William Hollimon, Esq., in an attempt to resolve the issues raised in this Motion to Compel and represents that Petitioners have indicated that they will provide their position concerning this Motion to Compel by the close of business on August 20, 2004. FPL believes it must file this Motion to Compel in the interest of time. Should FPL reach agreement with Petitioners resolving the issues raised and information requested through this Motion to Compel, FPL will promptly file a Notice of Withdrawal of this Motion.

Respectfully submitted this 18th day of August, 2004.

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Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408
Telephone: (561) 691-7207
Facsimile: (561) 691-7135

By: 
Kenneth A. Hoffman, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Motion to Compel Answers to Florida Power & Light Company's First Set of Interrogatories Nos. 10, 11 and 12 has been hand-delivered this 18th day of August, 2004, to the following:

Cochran Keating, Esq.
Senior Attorney
Florida Public Service Commission
Gerald L. Gunter Building
2540 Shumard Oak Boulevard
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. Holliman, Esq.

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

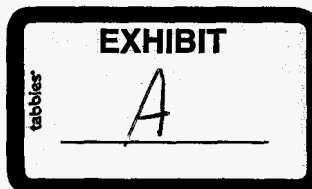
Date: June 17, 2004

**FLORIDA POWER & LIGHT COMPANY'S
FIRST SET OF INTERROGATORIES
TO OCEAN PROPERTIES, LTD., J. C. PENNEY CORP.
DILLARD'S DEPARTMENT STORES, INC. AND
TARGET STORES, INC. (NOS. 1-17)**

Florida Power & Light Company ("FPL") propounds the following interrogatories on Ocean Properties, Ltd., J.C. Penney Corp., Dillard's Department Stores, Inc. and Target Stores, Inc., and requests that they be answered separately, fully and under oath pursuant to the time frames established in the Commission's Order Establishing Procedure issued June 9, 2004 in the above-referenced docket.

DEFINITIONS

1. "SUST" shall mean Southeastern Utility Services, Inc., including its employees, and authorized representatives.
2. "You," "yours" and/or "yourselves" means and refers to each individual "Customer" as described in Definition No. 3 below.
3. "Customer" or "Customers" shall mean Petitioners Ocean Properties, Ltd., J.C. Penny Corp., Dillard's Department Stores, Inc. and Target Stores, Inc., individually or collectively, and any attorney, employee, agent, representative, or other person acting or purporting to act on such Customer(s)' behalf.



4. "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.

5. "Document or documents" means "documents" as defined in Rule 1.350 of the Florida Rules of Civil Procedure. 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.

6. "FPL" means Florida Power & Light Company.

7. "Identify" shall mean to denote, list, state, or respond in similar fashion.

"Identify" shall also mean: (1) when used with respect to a person, to state the person's full name, present or last known business address; and present or last known employer and position; (2) when used in respect to a document, to describe the document by character (e.g., letter, report, memorandum, etc.), author, date, and to state its present location and custodian; and (3) when used with respect to an oral communication, to identify the persons making and receiving the communication, the approximate date of and time of the communication, and a summary of its content or substance.

8. "Relate to" shall mean contain, discuss, describe or address.

9. "All" means all or any.

10. “Petition” refers to the “Petition for Formal Administrative Hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes” filed by Customers on December 10, 2003 in Docket No. 030623-EI.

INSTRUCTIONS

1. Each interrogatory shall be answered in full for each Customer.
2. If any of the following interrogatories cannot be answered in full after exercising due diligence to secure the information, please so state and answer to the extent possible, specifying your inability to answer the remainder, and state whatever information you have concerning the unanswered portion. If your answer is qualified or limited in any respect, please set forth the details of such qualifications and/or limitations.
 3. If you object to fully identifying a document or oral communication because of a privilege, you must nevertheless provide the following information, unless divulging the information would disclose the privileged information:
 - a. the nature of the privilege claimed (including work product);
 - b. the date of the document or oral communication;
 - c. if a document; its type (correspondence, memorandum, facsimile electronic mail, etc.), custodian, location, and such other information sufficient to identify the document for a subpoena duces tecum or a document request, including where appropriate the author, the addressee, and, if not apparent, the relationship between the author and addressee;
 - d. if an oral communication; the place where it was made, the names of the persons present while it was made, and, if not apparent, the relationship of the persons present to the declarant; and
 - e. the general subject matter of the document or the oral communication.
4. If you object to all or part of any interrogatory and refuse to answer that part, state your objection, identify the part to which you are objecting, and answer the remaining portion of the

interrogatory.

5. Whenever an interrogatory calls for information that is not available to you in the form requested, but is available in another form, or can be obtained at least in part from other data in your possession, so state and either supply the information requested in the form in which it is available, or supply the data from which the information requested can be obtained.

6. The singular 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.”

7. If any interrogatory fails to specify a time period from which items should be listed, identified or described, your answer shall include information from the previous three years.

8. These interrogatories shall be answered under oath by you or through your agent who is qualified to answer and who shall be fully identified, with said answers being served as provided pursuant to the Florida Rules of Civil Procedure or order of the Commission.

INTERROGATORIES

1. Please state and describe in detail all facts purporting to support Customers' contention in paragraph 19(A) of their Petition that "... the meters were faulty and in error when they were last calibrated by FPL."

2. Please state and describe in detail all facts purporting to support Customers' contention in paragraph 19(B) of their Petition that "... a definite date on which the meters were faulty and in error can be fixed, and, further, contend that date is the date on which the meters were last calibrated by FPL."

3. Please state and describe in detail all facts purporting to support Customers' contention in paragraph 19(C) of their Petition that "... FPL's meters were faulty and in error when they were last calibrated by FPL and did not gradually become faulty and in error over a period of time."

4. Please state and describe in detail all facts purporting to support Customers' contention in paragraph 19(D) of their Petition that "... the sun influenced the performance of FPL's IV thermal meters and caused them to over-register Customers' energy demands."

5. Please state and describe in detail all facts purporting to support Customers' contention in paragraph 19(E) of their Petition that "... the sun's radiant heat caused the meters at issue in this case to record energy demand in the field at error rates greater than those recorded in laboratory testing."

6. Please state and describe in detail all facts purporting to support Customers' contention in paragraph 19(F) of their Petition that "... the test conditions for these meters did not simulate actual field conditions, rendering the test results unreliable for purposes of determining meter field accuracy and error.."

7. Please state and describe in detail all facts purporting to support Customers' contention in paragraph 19(G) of their Petition that "... a 12-month limitation on the refund period is not factually supportable."

8. Please state and describe in detail all facts purporting to support Customers' contention in paragraph 19(H) of their Petition that "... the only physical mechanism that could have caused the over-registration of energy demand by the Type IV meters in dispute is miscalibration by FPL."

9. Please state and describe in detail all facts purporting to support Customers' contention in paragraph 19(I) of their Petition that type IV meters cannot gradually over-register or under-register energy demand over an extended time period.

10. Please identify each FPL employee that has discussed any matter concerning thermal demand meters with George Brown, Bill Gilmore or any other employee of SUSI.

a. For each FPL employee identified in response to this Interrogatory, please describe the dates on which any meetings, communications or discussions were held and the subject matter of such meetings, communications or discussions.

11. Please identify all FPL customers, including the Customers who are Petitioners in this docket, that have been contacted by SUSI **and for each FPL customer contacted by SUSI:**

a. Identify all documents sent or received by SUSI and/or exchanged between SUSI and such FPL customers.

b. **Identify** and state the date of each communication with such FPL customers.

c. **Describe** the subject matters that were discussed between SUSI and such FPL customers.

d. Describe in detail all claims and allegations made by SUSI regarding FPL's thermal demand meters, thermal demand meter testing and the provision of refunds for thermal demand meters.

12. Please describe the compensation arrangement between each Customer and SUSI.

13. Has SUSI claimed that FPL has engaged in tampering with thermal demand meters?

a. If your answer is yes, please identify every person, including but not limited to members of the Florida Public Service Commission Staff and FPL customers, to whom such claims have been made and the date on which such claims were made.

b. If your answer is yes, please state and describe in detail the ground supporting your claim that FPL has tampered with thermal demand meters.

FPL\first interrogatoriesusi

14. Identify all documents that Customers intend to offer into evidence at the final hearing in this docket.

15. Please state and describe in detail the appropriate method for testing the accuracy of the Customers' thermal demand meters subject to this docket.

16. Please identify and describe in detail the appropriate method of calculating refunds for thermal demand meters which test outside the prescribed tolerance limits.

17. For each Customer meter at issue in this docket, please state and describe in detail:
 - a. The period for which refunds should apply.
 - b. All facts supporting the period for which refunds should apply.
 - c. Each and every ground supporting and basis for your position regarding the period for which refunds should apply.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Complaints by Southeastern Utility Services,)
Inc. on behalf of various customers, against) Docket No. 030623-EI
Florida Power & Light Company concerning)
thermal demand meter error) July 8, 2004

**CUSTOMERS' OBJECTIONS AND RESPONSES TO FLORIDA POWER AND LIGHT
COMPANY'S FIRST SET OF INTERROGATORIES TO OCEAN PROPERTIES, LTD.,
J. C. PENNEY CORP., DILLARD'S DEPARTMENT STORES, INC.
AND TARGET STORES, INC. (NOS. 1-17)**

Pursuant to Rule 28-106.206, Florida Administrative Code and Rule 1.340, Florida Rules of Civil Procedure, Customers hereby serve their responses to Florida Power & Light Company's ("FPL") First Set of Interrogatories to Ocean Properties, Ltd., J.C. Penney Corp., Dillard's Department Stores, Inc., and Target Stores Inc. (Nos. 1-17).

I. GENERAL OBJECTIONS

Customers object to each and every request for documents or interrogatory 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. Customers in no way intend to waive such privilege or protection.

Customers object to providing information that is proprietary, confidential business information without adequate provisions in place to protect the confidentiality of the information. Customers in no way intend to waive claims of confidentiality.

Customers also object to these discovery requests to the extent they call for Customers to prepare information in a particular format or perform calculations or analyses not previously prepared or performed as purporting to expand Customers' obligations under applicable law.

EXHIBIT
B
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Further, Customers object to these interrogatories to the extent they purport to require Customers to conduct an analysis or create information not prepared by Customers in the normal course of business.

Customers object to providing information to the extent that such information is already in the public record before the Florida Public Service Commission, the Securities and Exchange Commission or other entity and requested information is available to FPL through normal procedures.

Customers object to requests that are overbroad, or that seek information not relevant to the proceeding. Customers object to each discovery request and any definitions and instructions that purport to expand Customers' obligations under applicable law. Customers object to the definitions set forth in the FPL's First Set of Interrogatories to the extent that they purport to impose upon Customers obligations that Customers do not have under the law. Customers object to these "definitions" to the extent they do not comply with the Florida Rules of Civil Procedure regarding discovery or the Commission's Order Establishing Procedure.

Customers reserve their rights to count interrogatories and their sub-parts (as permitted under the applicable rules of procedure) in determining whether they are obligated to respond to additional interrogatories. Customers object to each discovery request to the extent that the information requested constitutes "trade secrets" which are privileged pursuant to Section 90.506, Florida Statutes. Customers also object to the extent that FPL's discovery 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, are unduly burdensome, oppressive or not permitted by applicable discovery rules.

OBJECTIONS AND REPSONSES TO INTERROGATORIES

Interrogatory No. 1

Please state and describe in detail all facts purporting to support Customers' contention in paragraph 19(a) of their Petition that "... the meters were faulty and in error when they were last calibrated by FPL."

Petitioners are unaware of any known failure mechanism whereby the thermal demand meters at issue in this docket slowly, over time, begin to over-register demand. Rather, the known failure mechanisms either result in an acute drop in registered demand, or a gradual under-registration of demand over time. FPL's stated calibration procedures do not comply with the manufacturer's recommendations for calibration. For example, no meter test cover is used, the recommended stabilization period after adjustment is not utilized, no backlash compensation is effected, testing is conducted at less than half of full scale, and test technicians often "tap" the reference standard thereby affecting the accuracy of the reference reading. Test results indicate a disturbing inability to produce repeatable test results and an inability to reconcile differences in reference standards used.

Overall, FPL's calibration program is substandard because its calibration procedures are defective, its test technicians are insufficiently trained and/or supervised, and its control over reference standards is inadequate. For these reasons, Petitioners contend that these meters were faulty and at error since their last calibrations.

Interrogatory No. 2

Please state and describe in detail all facts purporting to support Customers' contention in paragraph 19(b) of their Petition that "... a definite date on which the meters

were faulty and in error can be fixed, and, further, contend that date is the date on which the meters were last calibrated by FPL.”

See response to Interrogatory No. 1.

Interrogatory No. 3

Please state and describe in detail all facts purporting to support Customers’ contention in paragraph 19(C) of their Petition that “... FPL’s meters were faulty and in error when they were last calibrated by FPL and did not gradually become faulty and in error over a period of time.”

See response to Interrogatory No. 1.

Interrogatory No. 4

Please state and describe in detail all facts purporting to support Customers’ contention in paragraph 19(D) of their Petition that “... the sun influenced the performance of FPL’s IV thermal meters and caused them to over-register Customers’ energy demands.

Petitioner’s consultant, SUSI, has observed this phenomenon on multiple thermal demand meters. SUSI has conducted testing whereby the KWH registration is determined over a fixed time interval, then compared to the indicated demand. These tests indicate that some meters exposed to direct sunlight, then shaded, will significantly over-register demand. FPL has tested at least one thermal demand meter that also exhibited this characteristic.

Interrogatory No. 5

Please state and describe in detail all facts purporting to support Customers’ contention in paragraph 19(E) of their Petition that “... the sun’s radiant heat caused the

meters at issue in this case to record energy demand in the field at error rates greater than those recorded in laboratory testing.”

As discussed in response to Interrogatory No. 4, SUSI has observed that solar radiation and shading can affect the accuracy of thermal demand meter demand registration. Because the meters at issue in this docket were not field tested - but rather were tested in FPL’s meter test center - the resulting test results do not show any solar effects. These solar effects may explain some of the decline in demand registration experienced upon replacement of the thermal demand meters.

Interrogatory No. 6

Please state and describe in detail all facts purporting to support Customers’ contention in paragraph 19(F) of their Petition that “... the test conditions for these meters did not simulate actual field conditions, rendering the test results unreliable for purposes of determining meter field accuracy and error.”

These tests failed to replicate the solar radiation actually found at the meter locations in the field. In October of 2003, according to Dr. Ross McCluney, Principal Research Scientist, at the Florida Solar Energy Center it would be impossible to replicate the solar effect without an elaborate setup and specialized equipment.

Interrogatory No. 7

Please state and describe in detail all facts purporting to support Customers’ contention in paragraph 19(G) of their Petition that “... a 12-month limitation on the refund period is not factually supportable.”

Petitioners believe that the thermal demand meters at issue in this docket do not, over time, gradually begin to over-register demand. Upon removal of each of the meters at issue in

this docket, and replacement with an electronic demand meter, the registered demand decreased in relation to prior demand during the entire life of the replaced meters. Therefore, there is no factual basis to support a 12-month refund period.

Interrogatory No. 8

Please state and describe in detail all facts purporting to support Customers' contention in paragraph 19(H) of their Petition that "... the only physical mechanism that could have caused the over-registration of energy demand by the Type IV meters in dispute is miscalibration by FPL."

The thermal demand meters at issue in this docket have no known failure mechanisms that result in a gradual, over time, over-registration of demand. There are no components of these meters that gradually fail and produce over-registration. Due to the design of these meters, friction and other similar forces can only cause this type meter to under-register. Therefore, the only physical mechanism whereby KW demand can be overstated is if the meter is incorrectly calibrated.

Interrogatory No. 9

Please state and describe in detail all facts purporting to support Customers' contention in paragraph 19(I) of their Petition that type IV meters cannot gradually over-register or under-register energy demand over an extended time period.

As stated in response to Interrogatory No. 8, there is no mechanism whereby a gradual over-registration of demand may occur. However, it is possible, for gradual under-registration of demand to occur. For example, friction can cause such under-registration.

Interrogatory No. 10

Please identify each FPL employee that has discussed any matter concerning thermal demand meters with George Brown, Bill Gilmore or any other employee of SUSI.

a. For each FPL employee identified in response to this Interrogatory, please describe the dates on which any meetings, communications or discussions were held and the subject matter of such meetings, communications or discussions.

Objection. This interrogatory is overbroad and unduly burdensome. FPL already has the requested information in its possession or under its control. Further, it requests information that cannot be publicly disclosed pursuant to a confidentiality agreement between FPL and SUSI.

Interrogatory No. 11

Please identify all FPL customers, including the Customers who are Petitioners in this docket, that have been contacted by SUSI and for each FPL customer contacted by SUSI:

a. Identify all documents sent or received by SUSI and/or exchanged between SUSI and such FPL customers.

b. Identify and state the date of each communication with such FPL customers.

c. Describe the subject matters that were discussed between SUSI and such FPL customers.

d. Describe in detail all claims and allegations made by SUSI regarding FPL's thermal demand meters, thermal demand meter testing and the provision of refunds for thermal demand meters.

Objection. This interrogatory seeks information that is not relevant to any claim or defense raised in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 12

Please describe the compensation arrangement between each Customer and SUSI.

Objection. This interrogatory seeks information that is not relevant to any claim or defense raised in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. This interrogatory also seeks information that is confidential and proprietary.

Interrogatory No. 13

Has SUSI claimed that FPL has engaged in tampering with thermal demand meters?

a. If your answer is yes, please identify every person, including but not limited to members of the Florida Public Service Commission Staff and FPL customers, to whom such claims have been made and the date on which such claims were made.

b. If your answer is yes, please state and describe in detail the ground supporting your claim that FPL has tampered with thermal demand meters.

No.

Interrogatory No. 14

Identify all documents that Customers intend to offer into evidence at the final hearing in this docket.

Petitioners have not yet determined the documents to be offered into evidence.

Interrogatory No. 15

Please state and describe in detail the appropriate method for testing the accuracy of the Customers' thermal demand meters subject to this docket.

To maximize testing accuracy, testing should be conducted at full scale. Testing should never be conducted at less than 75% of full scale. All reference standards should be calibrated and traceable.

Interrogatory No. 16

Please identify and describe in detail the appropriate method of calculating refunds for thermal demand meters which test outside the prescribed tolerance limits.

The appropriate method of calculating refunds is one where a customer is made whole for the damages caused by an over-registering thermal demand meter. One such method includes the following steps:

1. **Selecting an appropriate averaging period prior to, and following, meter change-out.**
2. **Calculating the average demand pre meter change-out and post meter change-out.**
3. **Calculating the demand change percentage following meter change-out.**
4. **Reducing the billed demand** by the demand change percentage for all months in which the meter was installed.
5. **Calculating the refund by multiplying each month's demand reduction by the rate paid during that month for the demand.**
6. **Adding interest to each monthly refund amount (from the month the overcharge occurred to the present) based on the statutory interest rate (see sections 55.03 and 687.01, Florida Statutes).**

7. **Summing** each monthly refund amount (plus accrued interest) to determine the total refund due.

The tested, full scale “accuracy” of a thermal demand meter is not appropriate to determine a customer’s refund because it almost always understates the actual over charge to the customer (it always understates unless the meter is used at 100% of scale). Consider the following example: a meter has a full scale reading of 10 and reads 4.4 when the test standard reads 4.0. The “accuracy” of the meter is $(4.4 - 4.0) / 10$, or 0.04 or 4%. However, the instantaneous error of registration is significantly different. This instantaneous error is calculated as $(4.4 - 4.0) / 4.0$, or 0.10, or 10%. The customer is billed for 4.4 units of demand even though it only used 4.0 units of demand - in other words, the customer is billed for 110% of its actual demand. If each unit of demand is billed at \$100, the customer is charged \$440 instead of \$400, and overpays \$40. If the “accuracy” is used to calculate the customer’s refund, the customer’s \$440 bill is reduced by 4% and the customer receives a \$16.92 refund, leaving the customer paying \$423.08 for \$400 worth of demand. If the actual error is used to calculate the customer’s refund, then the \$440 bill is reduced by the actual \$40 overpayment and the customer pays \$400 for \$400 worth of demand. As this example illustrates, the meter “accuracy” does not accurately reflect the actual impact to customers from an over-registering demand meter.

Other methodologies could also be used to determine the appropriate refund. However, any such method must include a refund based upon the change in demand that actually occurred, as opposed to the tested “accuracy” of a meter, in calculating the refund.

Interrogatory No. 17

For each Customer meter at issue in this docket, please state and describe in detail:

a. The period for which refunds should apply.

b. All facts supporting the period for which refunds should apply.

c. Each and every ground supporting and basis for your position regarding the period for which refunds should apply.

METER #	LAST TEST DATE PRIOR TO	INSTALLED PERIOD	REFUND PERIOD	% ERROR FULL-SCALE	% DIFFERENCE SINCE METER CHANGE
TARGET					
1V5885	10/30/1990	6/1/91 TO 11/6/2002	6/1/91 TO 11/6/2002	4.84%	-8.91%
1V7001D	10/12/1988	7/1/91 TO 11/6/2002	7/1/91 TO 11/6/2002	4.60%	-12.89%
1V5192D	4/13/1992	7/1/92 TO 11/11/2002	7/1/92 TO 11/11/2002	4.36%	-10.62%
1V5025D	6/24/1986	6/1/91 TO 11/6/2002	6/1/91 TO 11/6/2002	4.12%	-4.81%
1V7019D	1/8/1993	5/14/93 TO 11/12/2002	5/14/93 TO 11/12/2002	4.12%	-12.16%
1V7032D	1/7/1993	7/19/93 TO 11/5/02	8/9/93 TO 11/5/02	4.84%	-6.12%
1V5887D	10/29/1990	12/1/92 TO 11/11/2002	3/19/93 TO 11/11/2002	4.36%	-7.64%
1V5871D	1/24/1996	5/14/97 TO 8/10/2002	5/14/97 TO 8/10/2002	6.70%	-9.26%
1V5159D	10/26/1990	3/01/92 TO 11/11/2002	3/1/92 TO 11/11/2002	4.36%	-4.92%
JC PENNEY 1V7179D	1/14/1993	1/27/93 TO 1/7/2003	3/3/93 TO 1/7/2003	4.31%	-7.89%
1V52475	UNKNOWN	5/1/96 TO 11/4/2002	5/8/96 TO 11/4/2002	4.12%	-2.99%
OCEAN PROP 1V52093	6/10/1994	5/29/96 TO 8/10/2002	5/29/96 TO 8/10/2002	6.00%	-17.02%
DILLARD'S 1V7166D	UNKNOWN	10/1/90 TO 12/5/2002	10/1/90 TO 12/5/2002	+2.08% KWH	-1.63%
1V5216D	10/14/1990	11/1/97 TO 11/5/2002	11/20/97 TO 11/5/2002	4.84%	-5.273%

The test to determine meter accuracy is not appropriate for calculating refunds unless the meter operates at 100% of full scale. This is because "accuracy" is measured against the full-scale reading of a meter. For example, if a meter has a scale of 1 to 100, each unit equals 1% of the

scale. When a meter is tested at any point other than full-scale, the actual/real % of error is distorted by using the full-scale value to determine accuracy.

Examples:


Meter tested at 25% of full-scale. A meter tested at this point must exceed 4 units of 100(full-scale) to be considered out of tolerance. However, $4 \div 25 = 16\%$ of load.

Meter tested at 50% of full-scale. A meter tested at this point must exceed 4 units of 100(full-scale) to be considered out of tolerance. However, $4 \div 50 = 8\%$ of load.

Meter tested at 75% of full-scale. A meter tested at this point must exceed 4 units of 100(full-scale) to be considered out of tolerance. However, $4 \div 75 = 5.333\%$ of load.

Only at 100% scale will the test results and refund % be appropriate.

For the factual basis of why refunds should extend beyond 12 months, please see responses to previous interrogatories .



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