

ORIGINAL

RUTLEDGE, ECENIA, PURNELL & HOFFMAN

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A. ECENIA
RICHARD M. ELLIS
KENNETH A. HOFFMAN
LORENA A. HOLLEY
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
MAGGIE M. SCHULTZ
GOVERNMENTAL CONSULTANTS
MARGARET A. MENDUNO
M. LANE STEPHENS

September 13, 2004

VIA HAND DELIVERY

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

RECEIVED-FPSC
SEP 13 PM 2:54
COMMISSION
CLERK

Re: Docket No. 030623-EI

Dear Ms. Bayó:

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 (1) Motion to Compel George Brown to Respond to Questions Posed at August 27, 2004 Deposition and Additional Questions Which Arise During the Continuation of the Deposition, (2) Motion for Sanctions, and (3) Request For Ruling on Claimed Confidential Portions of Deposition Transcript.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me. Please contact me if you have questions regarding this filing.

- CMP
COM 3
CTR
ECR
GCL
OPC
MMS
RCA KAH/rl
SCR Enclosures
SEC 1
OTH kimp

Sincerely,

[Handwritten signature of Kenneth A. Hoffman]

Kenneth A. Hoffman

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

09955 SEP 13 04

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: September 13, 2004

**FLORIDA POWER & LIGHT COMPANY'S  
(1) MOTION TO COMPEL GEORGE BROWN  
TO RESPOND TO QUESTIONS POSED AT  
AUGUST 27, 2004 DEPOSITION AND ADDITIONAL  
QUESTIONS WHICH ARISE DURING THE  
CONTINUATION OF THE DEPOSITION, (2)  
MOTION FOR SANCTIONS, AND (3) REQUEST FOR RULING ON  
CLAIMED CONFIDENTIAL PORTIONS OF DEPOSITION TRANSCRIPT**

Florida Power & Light Company ("FPL"), by and through its undersigned counsel, and pursuant to Rule 28-106.206, Florida Administrative Code, and Rules 1.310(c) and 1.380(a), Florida Rules of Civil Procedure, hereby requests the Prehearing Officer to enter an order compelling George Brown to respond to questions that Mr. Brown was instructed not to answer at his August 27, 2004 deposition, questions that arise concerning these subjects during the continuation of the deposition, and reasonable attorneys' fees and expenses incurred in securing the foregoing relief. In support of this Motion, FPL states as follows:

1. On August 27, 2004, pursuant to Notice, FPL took the deposition of George Brown, a witness who has filed prefiled direct and rebuttal testimony on behalf of Petitioners Ocean Properties, Ltd., J.C. Penney Corp., Dillard's Department Stores, Inc. and Target Stores, Inc. (the "Customers"). Prior to commencement of the deposition, counsel for the Customers requested counsel for FPL to reserve areas of inquiry that addressed subjects that Mr. Brown considered to be "confidential" for the end of the deposition. The purpose of that procedure was to attempt to consolidate all areas that Mr. Brown considered "confidential" into a separate deposition transcript

DOCUMENT NUMBER-DATE

09955 SEP 13 3

FPSC-COMMISSION CLERK

that would be sealed subject to FPL's right to challenge the claimed confidentiality of any of the responses consistent with the Protective Agreement entered into between FPL and the Customers (see Exhibit "A" hereto). Counsel for FPL agreed to this request. See excerpts (pp. 35-36) of transcript of August 27, 2004 deposition of George Brown, attached hereto as Exhibit "B."

2. At the latter stage of the deposition, counsel for FPL advised that he was prepared to address subjects that already had been claimed or would likely be claimed as confidential by Mr. Brown. Counsel for FPL asked numerous questions that counsel for Customers and Mr. Brown instructed Mr. Brown not to answer. The only basis for the instruction not to answer was that the information was allegedly confidential or not relevant. The questions posed by FPL's counsel and the instructions given to Mr. Brown by Customers' and Mr. Brown's counsel are set forth on pages 115, 118-120 of the transcript of Mr. Brown's August 27, 2004 deposition and are attached hereto as Exhibit "C."<sup>1</sup>

3. Rule 1.310(c), Florida Rules of Civil Procedure provides that:

A party may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, or to present a motion under subdivision (d).<sup>2</sup>

---

<sup>1</sup>Exhibit C contains the excerpts from the "Confidential" portion of Mr. Brown's deposition pertinent to this Motion. FPL has redacted answers to questions on these pages even though they clearly are not "confidential" and include subjects discussed in the "Non-Confidential" portion of the transcript, to avoid any debate over the use of the "Confidential" portion of the transcript for purposes of this Motion.

<sup>2</sup>The Committee Notes to Rule 1.310, 1996 Amendment, state "[s]ubdivision (c) is amended to state the existing law, which authorizes attorneys to instruct deponents not to answer questions only in specific situations." The reference to subdivision (d) of the Rule refers to provisions that allow a party or deponent to move to terminate or limit a deposition.

Under Rule 1.310(c), Mr. Brown was required to answer the questions posed by FPL's counsel. None of the exceptions which would authorize Mr. Brown to not answer these questions apply in this case. Indeed, none of the exceptions were even raised by counsel for Customers and Mr. Brown. Instead, opposing counsel instructed Mr. Brown not to answer the subject questions based on confidentiality and relevancy objections. This is improper. See Quantachrome Corporation v. Micromeritics Instrument Corporation, 189 F.R.D. 697 ( S.D. Fla. 1999) (under Fed.R. Civ. P. 30(d)(1) which mirrors Rule 1.310(c), Florida Rules of Civil Procedure, it was "improper to instruct a witness not to answer a question based on form and relevancy objections.").<sup>3</sup> Such improper instructions are clearly frowned upon as shown by the following admonition of the Fourth Circuit Court of Appeals:

The action of plaintiff's counsel in directing [deponent] not to answer the questions posed to him was indefensible and utterly at variance with the discovery provisions of the Federal Rules of Civil Procedure... The questions put to [deponent] were germane to the subject matter of the pending action and therefore properly within the scope of discovery. They should have been answered and, in any event, the action of plaintiff's counsel in directing the deponent not to answer was highly improper. The Rule itself says "Evidence objected to shall be taken subject to the objections," and Professor Wright says it means what it says, citing Shapiro v. Freeman, D.C.N.Y. 1965, 38 F.R.D. 308, for the doctrine: "Counsel for party had no right to impose silence or instruct witnesses not to answer and if he believed questions to be without scope of orders he should have done nothing more than state his objections." Wright & Miller, Federal Practice and procedure: Civil s. 2113 at 419, N. 22 (1970).

Ralston Purina Co. v. McFarland, 550 F.2d 967, 973 (4<sup>th</sup> Cir. 1977).

---

<sup>3</sup>Where federal civil procedure rule is nearly identical to Florida rule, federal case law in which the rule is interpreted is pertinent and highly persuasive. Smith v. Southern Baptist Hospital of Florida, 564 So.2d 1115, 1117 (Fla. 1<sup>st</sup> DCA 1990); City of Jacksonville v. Rodriguez, 850 So.2d 280, 283, fn. 3 (Fla. 1<sup>st</sup> DCA 2003).

4. Further, the questions are relevant and, at minimum, reasonably calculated to lead to the discovery of admissible evidence.<sup>4</sup> The relevance of these questions are demonstrated below:

a. Mr. Brown admitted in the non-confidential portion of his deposition that he has recommended methods or techniques (which he refused to disclose) to his clients (FPL customers) as to how to “spike” their meters and thereby adjust kW demand to “qualify” for a more favorable rate. Mr. Brown admitted that he has made such recommendations in the range of a hundred times or more. See page 37 of deposition transcript included in Exhibit “B”. When asked by counsel for FPL what different methods he uses to assist customers in spiking meters, Mr. Brown was instructed not to answer - - not because the information was not relevant but because the information purportedly concerns “proprietary processes used by Southeastern Utility Services (to spike meters)....” See page 119-120 of Exhibit “C.” To the extent the information is claimed to be confidential, and FPL disagrees that such information is confidential, the confidentiality can be protected through the confidential procedures approved for use in this proceeding.<sup>5</sup> FPL emphasizes that there was no objection raised as to the relevancy of this question. Indeed, Mr. Brown’s practice of “spiking” meters to enable customers to qualify for different rates for which they may not

---

<sup>4</sup>See Rule 1.280(b)(1), Florida Rules of Civil Procedure.

<sup>5</sup>See Order Establishing Procedure, Order No. PSC-0581-PCO-EI, at 10-11. Pursuant to the Order Establishing Procedure, FPL hereby provides notice of its intent to use this information at hearing. If the Prehearing Officer determines that this information at issue in the sealed portion of Mr. Brown’s August 27 deposition and in any subsequent deposition are confidential, FPL shall preserve the confidentiality of the information at hearing by following the procedures set forth in the Order Establishing Procedure for use of confidential information at hearing. FPL also notes that confidentiality objections it has raised in prior depositions to avoid the potential breach of a Confidentiality Agreement between FPL and SUSI are distinguishable in that a party to that Agreement cannot disclose specific matters such as a specific settlement offer, even to the Commission, unless an exception under the Agreement permits such disclosure.

otherwise be eligible is relevant to his credibility as a witness for the Customers and to the credibility of the billing information of the Customers that he and Mr. Gilmore have presented to the Commission, subject to FPL's Motion to Strike filed August 23, 2004. Mr. Brown's refusal to answer questions concerning his different methods for assisting customers in altering or manipulating their kW demand consumption perpetuates a cloud of uncertainty over the kW demand billing testimony concerning the Customers in this docket presented by Mr. Brown and Mr. Gilmore. FPL is entitled to inquire on this relevant subject, including actions taken by Mr. Brown or other representatives of SUSI affecting, altering and/or manipulating the kW demand experienced by Customers before and/or after the thermal demand meters at issue were replaced with electronic meters and Mr. Brown should be ordered to respond to these questions and any questions concerning this general subject that arise during the continuation of the deposition.

b. Mr. Brown was asked "how much money roughly Southeastern Utility Services spends on marketing its services?" Mr. Brown's counsel instructed him not to answer "on the grounds that the question is not relevant to any issue raised in this proceeding." See page 115 of Exhibit "C." The subject raised in the foregoing question is relevant and, at minimum, reasonably calculated to lead to admissible evidence in this proceeding. Mr. Brown's consulting company, Southeastern Utility Services, Inc. ("SUSI"), has spent the better part of the last two years initiating contacts with FPL customers for the purposes of pursuing unjustified and unsupported refund claims before this Commission. Mr. Brown admitted in his deposition that he actually travels around looking for commercial customers of FPL with thermal demand meters and conducts stop watch tests on these meters for the purpose of initiating contacts with customers and potential representation. These type of actions, like Mr. Brown's incentive/contingency based fee arrangements with his

clients, go directly to the credibility of testimony and his desire to use the Commission as a platform for enhancing his own pocketbook. Mr. Brown should be ordered to answer this question and any questions concerning this general subject that arise in the continuation of the deposition.

c. Mr. Brown also admitted in his deposition that it is a standard practice for Mr. Brown to look for FPL's thermal demand meters and conduct a stop watch test on such meters, without contacting FPL. See pages 47-49 of Exhibit "B." When asked if this was a way in which Southeastern Utility Services generates business, Mr. Brown was instructed not to answer on the grounds that "[t]he methods by which Southeastern Utility Services acquires its customers are not relevant to any issue in this proceeding...." See page 118 of Exhibit "C." FPL maintains for the reasons stated in paragraph 4(b) that Mr. Brown should be ordered to respond to this question and any questions concerning this general subject that arise during the continuation of the deposition.

5. Under Rule 1.380(a)(2), Florida Rules of Civil Procedure, FPL's remedy is to file a motion to compel answers to the questions posed by FPL's counsel that Mr. Brown was unlawfully instructed not to answer. Further, under Rule 1.380(a)(4), Florida Rules of Civil Procedure, the Commission shall award the moving party (FPL) the reasonable expenses incurred in obtaining this order which "may include attorneys' fees, unless the (Commission) finds that the opposition to the Motion was justified or that other circumstances make an aware of expenses unjust."

6. FPL submits that there was absolutely no basis for instructing Mr. Brown not to answer the questions posed by FPL's counsel and requests that the Prehearing Officer enter an order compelling Mr. Brown to answer the questions posed at the August 27, 2004 deposition by FPL's counsel, order Mr. Brown to answer additional questions that arise in the continued deposition and award FPL reasonable attorneys' fees and expenses incurred in obtaining this order.

7. In addition, under the procedures set forth in the Protective Agreement between the parties (Exhibit "A"), FPL has filed the claimed confidential portion of the deposition transcript with a Notice of Intent to preserve Mr. Brown's claim of confidentiality.<sup>6</sup> FPL maintains that the information claimed to be confidential does not meet the criteria for confidential protection under the Protective Agreement. The information at issue relates to practices employed by Mr. Brown to "spike" meters of customers he represents, what advice or recommendations he may have given the Customers in this proceeding to adjust their kW consumption levels, and the marketing practices of Mr. Brown and SUSI. Such information does not constitute proprietary confidential business information under Section 366.093(3), Florida Statutes.

8. FPL has retained the undersigned attorneys and has agreed to pay said attorneys a reasonable fee for their services required in connection with this Motion.

9. Counsel for FPL has conferred with counsel for Customers and is authorized to represent that Customers oppose this Motion.

WHEREFORE, for the foregoing reasons, FPL respectfully requests that the Prehearing Officer enter an order:

- A. Granting this Motion;
- B. Ordering Mr. Brown to respond to questions posed at his August 27, 2004 deposition that he refused to answer based on improper instructions from counsel;

---

<sup>6</sup>FPL is not required to preserve claimed confidential information of Mr. Brown or his consulting company, SUSI, as neither Mr. Brown nor SUSI is a party to the Protective Agreement. However, to accommodate Mr. Brown's claims of confidentiality, FPL has agreed to follow the procedures set forth in the Protective Agreement which apply only to the parties to this proceeding.

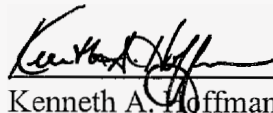


C. Ordering Mr. Brown to answer additional questions concerning the general subjects outlined in paragraph 4 that may arise from the answers ordered in subparagraph B above in the continued deposition;

D. Ordering payment of FPL's reasonable attorneys' fees and expenses incurred in securing this relief; and

E. Determining that the subjects raised in FPL counsel's questions claimed as confidential by Mr. Brown and/or SUSI in Exhibit "C" to this Motion are not proprietary confidential business information under Section 366.093(3), Florida Statutes, or otherwise subject to confidential protection.

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 --

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

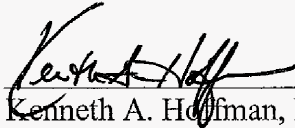
Attorneys for Florida Power & Light Company

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of Florida Power & Light Company's Florida Power & Light Company's Motion to Compel George Brown to Respond to Questions Posed at August 27, 2004 Deposition, Additional Questions Which Arise During The Continuation of The Deposition, And Motion For Sanctions has been furnished by Hand Delivery this 13<sup>th</sup> day of September, 2004, to the following:

Cochran Keating, Esq.  
Office of the General Counsel  
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\brownmotiontocompel

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: 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

**PROTECTIVE AGREEMENT**

This Protective Agreement (the "Agreement") is entered into by and between the undersigned parties (the "Parties") for the purpose of facilitating the exchange of documents and information designated confidential by the Parties during the discovery phase of Florida Public Service Commission (the "FPSC" or the "Commission") Docket No. 030623-EI and preserving the confidentiality of documents and information so designated.

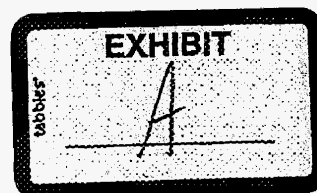
1. Applicability.

The terms of this Agreement shall apply to:

- (a) all information found to be confidential by the FPSC pursuant to Rule 25-22.006, Florida Administrative Code (the "Confidentiality Rule"), and Section 366.093(3), Florida Statutes ("Confidential Information"); and
- (b) all other information, regardless of format, that a Party to this Agreement designates confidential ("Designated Confidential Information"). This Agreement applies only to the Confidential Information and Designated Confidential Information disclosed between the Parties or filed with the FPSC in Docket No. 030623-EI.

2. Obligation to Act in Good Faith.

- (a) By signing this Agreement, no Party accepts the validity of, or waives the right to contest a claim of confidentiality on any grounds. However, in the event of a dispute



over a claim of confidentiality, Parties to this Agreement shall safeguard the confidentiality of the subject material pending a ruling on the matter by the Commission.

- (b) Any Party who believes information designated confidential by another Party would not be found to be confidential by the Commission because the information was a matter of public record, was otherwise in the public domain, or otherwise does not meet the requirements of Section 366.093, Florida Statutes, may so advise the Party designating the information as confidential. If such Party challenges the designation of confidentiality of any Designated Confidential Information, that Party shall provide the Designating Party written notice within seven days after receipt of the Designated Confidential Information and afford the Designating Party an opportunity to voluntarily remove such designation. The Designating Party shall, within seven days of the receipt of such notice, either voluntarily remove the designation or file a written motion for protective order (without any requirement for a line-by-line justification for confidential treatment) with the Commission for a ruling on the confidentiality of the Designated Confidential Information. The Party asserting the information is not confidential shall preserve the confidentiality of the Information as provided in this Agreement pending resolution of the matter by the FPSC. If the challenge is not resolved by agreement, or by voluntary removal, and if no motion for protective order is filed by the Designating Party within seven days of the receipt of written notice of challenge, then the confidential designation shall be removed and shall not thereafter apply to such document or information. The Parties understand invocation of this subsection may entail expenditures of time and resources and they will attempt to resolve any such

---

issues on an informal basis without resort to the provisions and procedures of Rule 25-22.006. All Parties agree to act reasonably and in good faith in claiming or questioning the claim of confidentiality of information provided pursuant to this Agreement.

3. Procedure for Production of Confidential Information or Designated Confidential Information.

- (a) All Confidential Information or Designated Confidential Information provided by a Party to this Agreement shall be identified as such. All Confidential Information or Designated Confidential Information provided in paper format shall be clearly marked by the Party claiming confidentiality as "Confidential" or otherwise clearly designated as such. Information provided in other formats, as for example, electronic format, shall be marked "Confidential" to the extent practicable.
- (b) Upon execution of this Agreement, all Confidential Information or Designated Confidential Information shall be furnished to each Party to this Agreement on the same time schedule and in the same manner as any non-confidential information.

4. Procedure for Review of Confidential Information.

- (a) Each person acting on behalf of a Party to this Agreement who will have access to Confidential Information or Designated Confidential Information shall, before such access is granted, sign a written Acknowledgement, in the form attached as Exhibit A, that he or she has read this Agreement and agrees to abide by its terms. (Exhibit A, Non-Disclosure Acknowledgement). The Confidential Information or Designated Confidential Information may be disclosed to the Party's attorneys, outside consultants/expert witnesses, and employees and officers of the Party who have responsibility for formulating and/or presenting the Party's litigation position. The total number of persons who may be designated by a Party to have access to the Confidential

Information or Designated Confidential Information shall not exceed ten (10) without the express written permission of the Party providing the Confidential Information or Designated Confidential Information. Each person given access to Confidential Information or Designated Confidential Information shall sign the Acknowledgement attached to this Agreement as Exhibit A.

- (b) Each person who has signed the Acknowledgment on behalf of a Party to this Agreement may have access to Confidential Information or Designated Confidential Information for the sole purpose of the Party's participation in Docket No. 030623-EI. Each person who has been given access to the Confidential Information or Designated Confidential Information provided pursuant to this Agreement shall not disclose any Confidential Information or Designated Confidential Information to anyone other than a person who has been given access under the terms of this Agreement.
- (c) A Party may reproduce Confidential Information or Designated Confidential Information only to the extent necessary to provide a copy to persons who have executed the Acknowledgement appended to this Agreement as Exhibit A. Each Party will maintain a copy control log.
- (d) While any Confidential Information or Designated Confidential Information is in the possession of a Party to this Agreement, each person who has access to the information shall individually and collectively implement procedures that are adequate to ensure that Confidential Information or Designated Confidential Information shall not be disclosed to anyone other than those persons who have executed the Acknowledgement appended to this Agreement as Exhibit A. The Parties agree to use all reasonable

means to preserve confidentiality, including, but not limited to, measures customarily undertaken by each Party to prevent disclosure of its own confidential information.

- (e) The Confidential Information or Designated Confidential Information, provided by a Party pursuant to this Agreement shall remain the property of the Party who provided it. Confidential Information or Designated Confidential Information shall not be used for any purposes unrelated to Docket No. 030623-EI.
- (f) Any Party who includes Confidential Information or Designated Confidential Information supplied pursuant to this Agreement in prefiled testimony or exhibits or any other information or documents submitted to the Commission shall follow the procedure for use of such information prescribed by order of the prehearing officer and Rule 25-22.006, including providing notice to the other Part(y/ies) prior to submitting the information, filing a Notice of Intent to Request Confidential Classification and complying with the procedures of the Confidentiality Rule for the handling of information for which confidential classification will be sought. The Notice of Intent shall be provided by facsimile or e-mail to the Party who provided the Designated Confidential Information. The purpose of this requirement is to afford the Party asserting confidentiality an adequate opportunity to invoke the provisions of Rule 25-22.006, to protect the confidentiality of the information.

5. Terms and Termination.

The Agreement shall be effective from the date it is executed by the Parties until all Confidential Information or Designated Confidential Information has been destroyed by the Party to whom it is provided, or returned to the Party who provided it, or as to any information for which a determination of confidential status has been sought, until the FPSC

---

has made a final adjudication as to the confidential status of the information. Except for information for which the FPSC has issued a final order holding that the information is not granted confidential status, each Party's obligation not to disclose Confidential Information or Designated Confidential Information continues unless or until the information is otherwise publicly disclosed in a manner not in violation of this Agreement. The continuing obligation not to disclose of each Party and each person who has been granted access to Confidential Information or Designated Confidential Information under the terms of this Agreement, shall survive the expiration of this Agreement. All Confidential Information or Designated Confidential Information shall be returned to the Party who provided or it shall be certified to that Party that it has been destroyed no later than 45 days after the date the FPSC issues its final decision or order in the final phase of this proceeding, unless any decision of the FPSC in Docket Nos. 030623-EI is appealed, in which case the Agreement shall continue until all appellate review is completed. At the end of the term of the Agreement, or before, each Party shall either return all Confidential Information or Designated Confidential Information remaining in its possession to the Party from whom it was obtained or, alternatively, certify in writing to said Party that all Confidential Information and Designated Confidential Information has been destroyed.

6. Remedies.

Each Party agrees that: (i) divulgence or unauthorized use of Confidential Information or Designated Confidential Information could damage the owner of the information; (ii) the amount of resulting damages could be difficult to ascertain; (iii) the owner of the information may not reasonably or adequately be compensated for the loss of such information in damages alone; and (iv) the owner of the information shall be entitled to injunctive or other



equitable relief to prevent or remedy a breach of this Agreement or any part of it. In any action to enforce the provisions of this Agreement, the prevailing Party shall be entitled to any and all costs and attorneys' fees incurred in that action. Each Party agrees to defend, indemnify, and hold the other harmless, for any claim or liability, civil or criminal, brought or imposed on such other Parties by any person caused by or resulting from breach of this Agreement by that Party, including any person to whom that Party granted access to Confidential Information or Designated Confidential Information under the terms of this Agreement. Furthermore, nothing herein is intended to restrict any remedies available to the owner of Confidential Information or Designated Confidential Information Party for the unauthorized disclosure, dissemination or release of proprietary information by any of the Parties to this Agreement. This Agreement shall be interpreted, governed, and construed under the laws of the State of Florida.

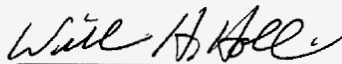
7. Authority.

The undersigned counsel acknowledge and represent that they have actual authority to enter into this Agreement on behalf of their respective clients.

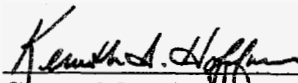
8. Modifications.

This Agreement may be modified only in writing and only upon the mutual consent of the Parties to the modification.

Dated this 8th day of July 2004.



\_\_\_\_\_  
Counsel for [insert company's name]



\_\_\_\_\_  
Counsel for Florida Power & Light Company

---

**EXHIBIT "A"**

**NON-DISCLOSURE ACKNOWLEDGEMENT**

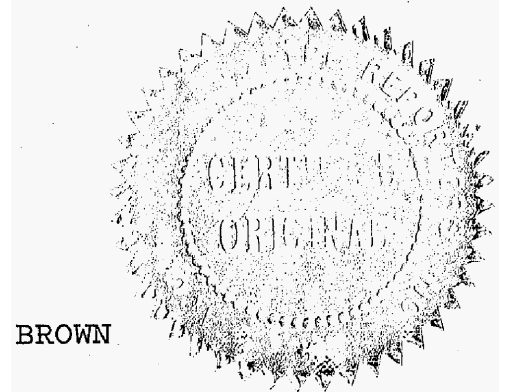
The undersigned hereby certifies that prior to the disclosure to him or her of certain information and documents belonging to, or in the possession of, or made available by a Party to this Agreement, which are Confidential Information or Designated Confidential Information as those terms are defined in the Agreement, the undersigned has read the Non-Disclosure Agreement for the purposes of Docket No. 030623-EI, and agrees to be bound by its terms.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

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



DEPOSITION OF:

GEORGE BROWN

TAKEN AT THE INSTANCE OF: Florida Power & Light Company

DATE:

August 27, 2004

TIME:

Commenced at 9:05 a.m.  
Concluded at 2:40 p.m.

LOCATION:

118 North Gadsden Street  
Tallahassee, Florida

REPORTED BY:

MARY ALLEN NEEL, RPR  
Notary Public, State  
of Florida at Large

VOLUME 1  
Pages 1 - 107

ACCURATE STENOGRAPHY REPORTERS, INC.  
2894-A REMINGTON GREEN LANE  
TALLAHASSEE, FLORIDA 32308  
(850) 878-2221



1 Southeastern Utility Services?

2 A Our services.

3 Q How does Southeastern Utility Services market  
4 its services?

5 A We primarily focus on a target type of  
6 customer, depending on where we're at in the country.

7 Q And how do you implement that? Do you send  
8 them a letter? Do you call them on the phone? What do  
9 you do? What does Southeastern Utility Services do?

10 A Generally we'll make a telephone contact.  
11 Sometimes folks will contact us from our website.  
12 Typically we're focused on looking for a candidate that  
13 we think we can help. There are certain industries that  
14 have been overlooked by utilities, and we feel like we  
15 can help them.

16 Q How much money would you say Southeastern  
17 Utility Services spends a year on marketing its  
18 services?

19 MR. HOLLIMON: I'm going to object. I think  
20 it's irrelevant, for one thing. But the other thing  
21 is, these internal practices are confidential to  
22 Southeastern Utility Services. Can we defer this  
23 until the portion of the deposition where we're  
24 going to deal with confidential information?

25 MR. HOFFMAN: Sure, sure. Can we go off the

1 record for a second, Bill?

2 MR. HOLLIMON: Sure.

3 (Discussion off the record and short recess.)

4 BY MR. HOFFMAN:

5 Q Mr. Brown, let's talk a little bit more about  
6 some of the services that Southeastern Utility Services  
7 provides, with the understanding that if my questions  
8 start to stray into information that you folks believe  
9 is confidential, your attorney will intervene, and we'll  
10 save that for later.

11 A Okay.

12 Q In your direct testimony, at the bottom of page  
13 1, then moving on to lines 1 and 2 of page 2, you talk  
14 about providing specialized auditing of clients' utility  
15 needs, including rates, taxes, metering application, and  
16 accuracy of billing.

17 A Correct.

18 Q Now, this is something you've already  
19 mentioned. I would like to get into a little more  
20 detail with you, if we could. Tell me what type of  
21 specialized services Southeastern Utility Services  
22 provides concerning rates.

23 A We determine what rates are available, what  
24 rates are applicable, and what qualifying is necessary  
25 to be on that rate.

1 A Walsh.

2 Q What was your purpose in contacting Ocean  
3 Properties? If you want to save this for later -- I'm  
4 just not sure.

5 A I don't think it's -- I had identified that  
6 his meter was over-registering in the field.

7 Q And this is a meter at a certain location?

8 A Correct.

9 Q How had you identified that?

10 A Initially I did it with a stopwatch. And once  
11 I saw that there was a change, I recognized that there  
12 was likely a problem with that meter.

13 Q I guess what I'm asking is, what caused you to  
14 visit the Ocean Properties meter and run this stopwatch  
15 test?

16 A He had a 1V meter.

17 Q Were there any other reasons?

18 A (Shaking head negatively.)

19 Q Is it a standard practice of Southeastern  
20 Utility Services to conduct stopwatch tests of FPL's 1V  
21 meters?

22 A If they're on or at public property, yes.

23 Q And this has typically been done by  
24 Southeastern Utility Services without contacting FPL?

25 A Sometimes there has been a contact with Florida

1 Power & Light. Other times there has not been.

2 Q Did Ocean Properties request you or anyone from  
3 Southeastern Utility Services to stop by its IV meter  
4 and conduct this stopwatch test that you described?

5 A After I made a contact with them, yes.

6 Q Had you already conducted the test before you  
7 made the contact with them?

8 A I would not have done that, no.

9 Q Okay. I thought that you said before that you  
10 contacted Ocean Properties after you had conducted this  
11 stopwatch test. Am I incorrect on that?

12 A That's incorrect.

13 Q Okay.

14 A I went in and asked. I always ask permission  
15 if I can do such a test.

16 Q I see. So you asked permission from Ocean  
17 Properties?

18 A Correct, from the hotel manager.

19 Q I see. So is it fair to say then that it's a  
20 standard practice of Southeastern Utility Services to  
21 make contacts with potential clients who have thermal  
22 demand meters and request permission to conduct some  
23 type of informal or stopwatch test?

24 A Correct.

25 Q And it is a general practice of Southeastern

1 Utility Services to not contact FPL before conducting  
2 the stopwatch test; correct?

3 A I would have no reason to.

4 Q So the answer is no, you don't typically?

5 A (Shaking head negatively.)

6 Q I'm sorry?

7 A No.

8 Q Can you tell me what other FPL customers  
9 Southeastern Utility Services has conducted these types  
10 of stopwatch tests on?

11 MR. HOLLIMON: Let's move that to the end.

12 MR. HOFFMAN: Okay.

13 BY MR. HOFFMAN:

14 Q How did you know that Ocean Properties had a 1V  
15 thermal demand meter?

16 A Because it was out on the side of the building  
17 in their parking lot.

18 Q I see. Is Ocean Properties on public property?

19 A It's actually on leased property from the City  
20 of Bradenton.

21 Q Okay. Is it a standard practice for  
22 Southeastern Utility Services or for you to visually  
23 inspect 1V thermal demand meters that are situated on a  
24 customer's property?

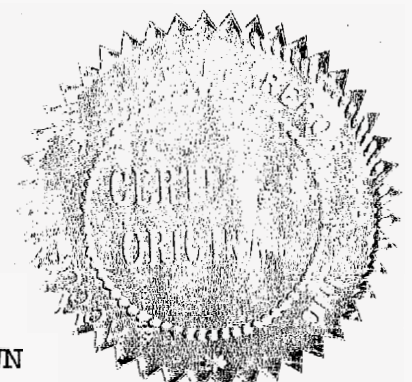
25 MR. HOLLIMON: I'm going to object. Let's move



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



CONFIDENTIAL

DEPOSITION OF:

GEORGE BROWN

TAKEN AT THE INSTANCE OF: Florida Power & Light Company

DATE:

August 27, 2004

TIME:

Commenced at 9:05 a.m.  
Concluded at 2:40 p.m.

LOCATION:

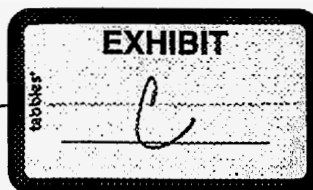
118 North Gadsden Street  
Tallahassee, Florida

REPORTED BY:

MARY ALLEN NEEL, RPR  
Notary Public, State  
of Florida at Large

VOLUME 2  
Pages 108 - 125

ACCURATE STENOGRAPHY REPORTERS, INC.  
2894-A REMINGTON GREEN LANE  
TALLAHASSEE, FLORIDA 32308  
(850) 878-2221



1           Q     Mr. Brown, I had asked you before, and we  
2     decided to wait on this one, how much money roughly  
3     Southeastern Utility Services spends on marketing its  
4     services.

5           MR. HOLLIMON: I'm going to object and instruct  
6     the witness not to answer on the grounds that the  
7     question is not relevant to any issue raised in this  
8     proceeding.

9           MR. HOFFMAN: And we will certify that question  
10    and just say on the record that we believe that that  
11    is an inappropriate and unlawful justification to  
12    instruct a witness not to answer a question, so we  
13    will preserve our right to continue the deposition  
14    and get into those matters.

15   BY MR. HOFFMAN:

16           Q     I believe earlier, Mr. Brown, I had asked you  
17    some questions about your initial contacts with the  
18    customers in this case, and we decided to wait on those  
19    until the conclusion of the deposition. So let me ask  
20    you again, when you initially contacted the  
21    representative who you have worked with for Dillard's,  
22    what was the reason for your contacting him?

23           A     

24           Q     What caused you to contact Dillard's?

25           A     

1 did some --

2 Q This was done while you --

3 A [REDACTED]

4 Q This was the meter you had discussed earlier in  
5 your deposition where you did a stopwatch test?

6 A [REDACTED]

7 Q I think I had asked you earlier, and I can't  
8 remember. We may or may not have gotten an answer, but  
9 we certainly wanted to wait until this portion. Is it a  
10 standard practice for you to look for FPL's thermal  
11 demand meters and conduct a stopwatch test on them?

12 A [REDACTED]

13 Q Is that a way in which Southeastern Utility  
14 Services generates business?

15 THE WITNESS: I think we need to take another  
16 little break.

17 MR. HOLLIMON: I'm going to object to the  
18 question. The methods by which Southeastern Utility  
19 Services acquires its customers are not relevant to  
20 any issue in the proceeding, and therefore I'm going  
21 to instruct the witness not to answer.

22 MR. HOFFMAN: Okay. Again, I don't think the  
23 fact that counsel has asserted that the issue is not  
24 relevant to the proceeding can provide a basis for  
25 instructing a witness not to answer, and we'll

1 reserve our objection to that, and we'll move on.

2 BY MR. HOFFMAN:

3 Q We had talked earlier this morning, Mr. Brown,  
4 about this matter of assisting customers in spiking  
5 meters or qualifying for a rate. Do you recall that  
6 discussion?

7 A [REDACTED]

8 Q And can you give me an estimate of how many  
9 times you've provided that type of assistance to  
10 Southeastern Utility Services' clients?

11 MR. HOLLIMON: Objection. Asked and answered,  
12 but you can answer.

13 A [REDACTED]

14 Q What different methods do you use to accomplish  
15 that?

16 MR. HOLLIMON: Objection. The question is not  
17 related to any issue at issue in this docket. It's  
18 confidential information regarding proprietary  
19 processes used by Southeastern Utility Services, and  
20 I'm instructing the witness not to answer.

21 MR. HOFFMAN: Well, again, I think the record  
22 will actually reflect that counsel and I had agreed  
23 that this matter would be inquired into during the  
24 latter part of this deposition, and there would not  
25 be an instruction not to answer, only that it would

1 be maintained as confidential. Having said that --

2 MR. HOLLIMON: Can we take a break for a  
3 second, because I want to -- off the record.

4 (Discussion off the record.)

5 BY MR. HOFFMAN:

6 Q Okay. I think the question that I had posed  
7 was, what ~~different~~ different methods do you use in assisting  
8 Southeastern Utility Services' customers in spiking  
9 meters or in assisting them in qualifying for a  
10 different rate? And your counsel has instructed you not  
11 to answer.

12 MR. HOLLIMON: That's correct. Same objection.

13 MR. HOFFMAN: And again, I just want to state  
14 for the record that the prospect that this may be  
15 proprietary or confidential or not relevant to the  
16 issues in the case provides no basis for instructing  
17 the witness not to answer. There is no protective  
18 order in place, and I believe that this issue is  
19 within the permissible scope of discovery, so we  
20 will reserve our right to continue the deposition to  
21 address that area.

22 MR. HOLLIMON: Ken, do you think it would be  
23 helpful if we could just -- if I just raise the same  
24 objection, and you can raise the same response,  
25 instead of having to state the same thing every