

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. MENDUNI
M. LANE STEPHENS

February 9, 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

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COMMISSION
CLERK

Re: Docket No. 030623-EI

Dear Ms. Bayo:

Enclosed herewith for filing 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. and Ocean Properties, Ltd.'s First Request for Production of Documents.

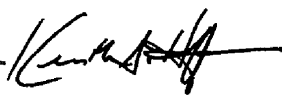
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Sincerely,

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FPSC-BUREAU OF RECORDS



Kenneth A. Hoffman

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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: February 9, 2004

**FLORIDA POWER & LIGHT COMPANY'S
RESPONSES AND OBJECTIONS TO
SOUTHEASTERN UTILITY SERVICES, INC.
AND OCEAN PROPERTIES, LTD.'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Florida Power & Light Company ("FPL"), by and through its undersigned counsel, hereby files the following Responses and Objections to Southeastern Utility Services, Inc. ("SUSI") and Ocean Properties, Ltd.'s First Request for Production of Documents. All document requests that are not included under FPL's Specific Objections below will be made available by FPL for inspection and review by Ocean Properties, Ltd. 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.

I. General Objections

1. FPL objects to all discovery propounded by SUSI 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 Procedures, limits requests for production of documents to "[a]ny party." FPL incorporates by reference its Motion to Dismiss SUSI as a Petitioner in this proceeding filed on January 5, 2004, in support of this Objection.

2. FPL will make a reasonable effort to respond to each and every individual Request for Production ("Request") that is not subject to a Specific Objection as FPL understands and

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FPSC-COMMISSION CLERK

interprets such Request. If Ocean Properties, Ltd. should assert an interpretation of any Request that differs from FPL's, FPL reserves the right to supplement or amend its Specific Objections.

3. 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.

4. 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.

5. 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.

6. 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.

7. FPL objects to the Instructions and to each Request to the extent that they purport to impose upon FPL obligations that FPL does not have under the law or applicable rules of procedure.

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

9. 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).

10. 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.

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

12. 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.

13. 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.

14. 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*.

15. 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.

16. 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

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

Request for Production of Documents

Request No. 4: All documents which refer or relate to customer complaints about thermal demand meters.

Objection: FPL objects to this Request on the grounds of *Relevance*, that it is *Unduly Burdensome*, *Overly Broad* and *Vague and Ambiguous*. In addition, there is no time frame associated with the Request and the Request does not differentiate between a complaint submitted to FPL and a complaint filed with the Florida Public Service Commission.

Request No. 5: All documents which refer or relate to the accuracy of thermal demand meters.

Objection: FPL objects to this Request on the grounds that it is *Unduly Burdensome, Overly Broad and Vague and Ambiguous*. The Request could conceivably include every test related document for or concerning thermal demand meters. In addition, there is no reasonable time frame associated with the Request.

Request No. 8: All documents reflecting settlements that you have entered into with customers whose thermal demand meters were in error in that the customers were charged more than they should have been charged.

Objection: FPL objects to this Request on the grounds of *Relevance*, and that it is *Overly Broad and Vague and Ambiguous*. In addition, to the extent the Request is directed to a settlement agreement or agreements concerning alleged overbilling for 1V thermal demand meters that over-registered in excess of the tolerance level authorized by Commission rule, such agreement(s) are confidential and may not be disclosed to a third party.

Request No. 9: All documents reflecting the test results of the 1-V thermal demand meters that were tested for accuracy since May, 2002.

Objection: FPL objects to this Request on the grounds of *Relevance*, that it is *Unduly Burdensome, Overly Broad and Vague and Ambiguous*. FPL objects to SUSI's attempt to engage in such "shot gun" open-ended fishing expeditions. This proceeding focuses only on a finite set of 1V meters that are the subject of the protest filed by Ocean Properties and other customers to the PAA Order. It is only the test results of said meters that are the proper subject and within the scope of discovery in this docket.

Request No. 10: All correspondence between you and any customer which refer to or relate to the accuracy of thermal demand meters.

Objection: FPL objects to this Request on the grounds of *Relevance*, that it is *Unduly Burdensome, Overly Broad, and Vague and Ambiguous*. See also FPL's Objections to Request No. 5 which are incorporated herein by reference.

Request No. 11: All Requests for Proposals or similar solicitations that you have issued within the last 12 months related to replacement of thermal demand meters.

Objection: FPL objects to this Request on the grounds of *Relevance* and that it is *Overly Broad*.

Request No. 12: The personnel file of former FPL employee George C. Brown.

Objection: FPL objects to this Request on the grounds of *Relevance*.

Request No. 13: The personnel file of former FPL employee William A. "Bill" Gilmore.

Objection: FPL objects to this Request on the grounds of *Relevance*.

Request No. 14: Documents that refer or relate to any FPL policy or practice of issuing refunds to customers whose thermal demand meters read in error.

Objection: FPL objects to this Request on the grounds that it is *Overly Broad and Vague and Ambiguous*. Subject to and without waiving this Objection, FPL will make documents responsive to this Request available for inspection and review by Ocean Properties, Ltd. 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; provided however, that FPL objects to producing and has withheld the documents listed in the Privilege Log that accompanies these Responses and Objections on the grounds that such documents are protected by the attorney-client and/or work product privileges.

Request No. 15: Documents provided to the FPL Board of Directors about thermal demand meters within the past two years.

Objection: FPL objects to this Request on the grounds of *Relevance* and that it is *Overly Broad*, and *Vague and Ambiguous*.

Request No. 16: Documents that refer or relate to reflecting any studies and/or tests performed by you, commissioned by you, or performed by others related to the accuracy of thermal demand meters.

Objection: FPL objects to this Request on the grounds of *Relevance*, that it is *Unduly Burdensome*, *Overly Broad*, and *Vague and Ambiguous*. See also FPL's Objections to Request No. 5 which are incorporated herein by reference.

Request No. 17: Documents exchanged between you and the Florida Public Service Commission related to thermal demand meters.

Objection: FPL objects to this Request on the grounds of *Relevance*, that it is *Unduly Burdensome*, *Overly Broad*, and *Vague and Ambiguous*. In addition, any documents provided by FPL to the Commission are public records equally available to Ocean Properties, Ltd.

Request No. 18: Documents, excluding the personnel file, that relate to George C. Brown.

Objection: FPL objects to this Request on the grounds of *Relevance*, that it is *Unduly Burdensome*, *Overly Broad*, and *Vague and Ambiguous*.

Request No. 19: Documents, excluding the personnel file, that relate to William A. "Bill" Gilmore.

Objection: FPL objects to this Request on the grounds of *Relevance*, that it is *Unduly Burdensome*, *Overly Broad*, and *Vague and Ambiguous*.

Request No. 20: Documents which project, estimate or forecast the amount of money you collected in error as a result of thermal demand meters registering demand greater than existed.

Objection: FPL objects to this Request on the grounds of *Relevance*, that it is *Unduly Burdensome, Overly Broad, and Vague and Ambiguous*. In addition, FPL would not be required to refund any monies to a customer whose 1-V thermal demand meter registered kw demand at or below 104% when tested at any point between 25% and 100% of full scale.

Request No. 21: Documents which project, estimate or forecast the amount of money you did not collect in error as a result of thermal demand meters registering demand less than existed.

Objection: FPL objects to this Request on the grounds of *Relevance*, that it is *Unduly Burdensome, Overly Broad, and Vague and Ambiguous*. In addition, FPL would not be authorized to backbill any customer whose 1-V thermal demand meter registered kw demand at or above 96% when tested at any point between 25% and 100% of full scale.

Request No. 22: Documents which reflect your plans to replace thermal demand meters.

Objection: FPL objects to this Request on the grounds of *Relevance* and that it is *Overly Broad*.

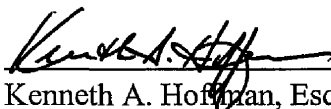
Request No. 23: Documents which reflect your plans to continue using thermal demand meters.

Objection: FPL objects to this Request on the grounds of *Relevance* and that it is *Overly Broad*.

Request No. 27: Documents related to the meters as set forth in Exhibit A.

Objection: FPL objects to this Request on the grounds of *Relevance*, that it is *Unduly Burdensome, Overly Broad, and Vague and Ambiguous*. In addition, this Request seeks open ended documentation regarding meters for customers who did not file protests to the PAA Order (Best Buy and Home Depot).

Respectfully submitted,



Kenneth A. Hoffman, 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

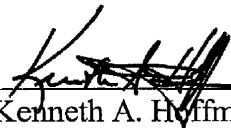
Attorneys for Florida Power & Light Company

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. and Ocean Properties, Ltd.'s First Request for Production of Documents has been furnished by U. S. Mail this 9th day of February, 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.
Diana K. Shuman, Esq.
Moyle, Flanigan, Katz, Raymond & Sheehan, P.A.
The Perkins House
118 North Gadsden Street
Tallahassee, FL 32301

By: 
Kenneth A. Hoffman, Esq.

FPL\susobjections