

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
GOVERNMENTAL CONSULTANTS
MARGARET A. MENDUNI
M. LANE STEPHENS

February 27, 2004

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

HAND DELIVERY

COMMISSION
CLERK

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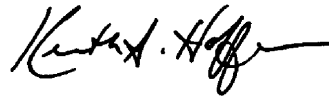
Re: Florida Power and Light Company's Motion to Compel Answers to First Set of Requests for Admissions and Responses to First Set of Requests for Production of Documents
Docket No. 030623-EI

Dear Ms. Bayo:

Enclosed please find the original and fifteen copies of Florida Power and Light Company's Motion to Compel Answers to First Set of Requests for Admissions and Responses to First Set of Requests for Production of Documents.

Please acknowledge receipt of these documents by date-stamping the enclosed copy of this letter and returning it to the undersigned.

Sincerely,



Kenneth A. Hoffman

RECEIVED & FILED



FPSC-BUREAU OF RECORDS

AUS _____
CAF _____
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Enclosures

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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 27, 2004

**FLORIDA POWER AND LIGHT COMPANY'S
MOTION TO COMPEL ANSWERS TO FIRST SET OF REQUESTS FOR
ADMISSIONS AND RESPONSES TO FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS**

Florida Power & Light Company ("FPL"), by and through its undersigned counsel, and pursuant to Rule 28-106.206, Florida Administrative Code, and Rule 1.380, Florida Rules of Civil Procedure, hereby files this Motion to Compel and requests that the Prehearing Officer enter an order compelling Ocean Properties, Ltd., J.C. Penney Corp., Dillard's Department Stores, Inc. and Target Stores, Inc. ("Customers") to respond to FPL's First Set of Requests for Admissions and First Set of Requests for Production of Documents. As grounds for this Motion to Compel, FPL states as follows:

On January 14, 2004, FPL propounded its First Set of Requests for Admissions (Nos. 1-8) and its First Set of Requests for Production of Documents (Nos. 1-12) to Customers. On February 13, 2004, Customers filed its Objections and Responses to both sets of FPL's Discovery Requests.

REQUESTS FOR ADMISSIONS

Set forth below are each of FPL's Request for Admissions, Customers' objections, and FPL's response thereto.

1. Request for Admission No. 1: Admit that under Rule 25-6.052(2)(a), Florida Administrative Code, a thermal demand meter test by FPL is not subject to a refund when the amount or level of over-registration does not exceed 4% in terms of full-scale value, when tested at

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

any point between 25% and 100% of full-scale value.

Customers' Response: Objection. This request is directed solely to a conclusion of law. Rule 25-6.052(2)(a), Florida Administrative Code speaks for itself.

FPL Response: Rule 1.370(a), Florida Rules of Civil Procedure, provides that a party may serve upon any other party a written request for the admission of truth of any matters within the scope of Rule 1.280(b), Florida Rules of Civil Procedure, that relate to statements or opinions of fact *or the application of law to fact* (emphasis added). The party who has requested the admissions may move to determine the sufficiency of the answers or objection, and unless the court determines that an objection is justified, it shall order that an answer be served. The Rule further states that a party who considers that a matter of which an admission has been requested presents a genuine issue for trial, may not object to the request on that ground alone. *See, Salazar v. Valle*, 360 So. 2d 132 (3 D.C.A. 1978), finding that requests for admissions asking defendants to admit allegations of negligence contained in plaintiff's complaint was not improper or objectionable and did call for a response. FPL's Request for Admission No. 1 properly requests Customers to admit or deny a specific statement as applied to the appropriate Commission Rule. The Request seeks Customers' position regarding the application of a Commission rule clearly at issue to the specific facts in this case. FPL requests that the Commission issue a ruling denying Customers' objection and compelling Customers to respond to FPL's Request for Admission No.1.

2. Request for Admission No. 2. Admit that under Rule 25-6.103(3), Florida Administrative Code, the average error that results from a test of a thermal demand meter is determined by the results of the meter test only.

Customers' Response: Objection. This request is directed solely to a conclusion of law. Rule 25-6.103(3), Florida Administrative Code speaks for itself.

FPL Response: FPL incorporates herein by reference its response to Customers' objection to Request for Admission No. 1.

3. Request for Admission No. 3. Admit that under Rule 25-6.103(1), Florida Administrative Code, a thermal demand meter that is tested and determined to have over-registered in excess of the tolerance allowed under Rule 25-6.052(2)(a), Florida Administrative Code, requires FPL to provide a refund to the customer of the amount billed in error as determined by Rule 25-6.058, Florida Administrative Code, for a period not to exceed twelve months unless the customer demonstrates that the error was due to some cause, the date of which can be fixed.

Customers' Response: Objection. This request is directed solely to a conclusion of law. Rules 25-6.103(1), 25-6.052(2)(a), and 26-6.058, Florida Administrative Code, speak for themselves.

FPL Response: FPL incorporates herein by reference its response to Customers' objection to Request for Admission No. 1.

4. Request for Admission No. 4. Admit that a thermal demand meter may over-register for a reason or reasons other than miscalibration of the meter when the meter is initially placed in or subsequently returned to service.

Customers' Response: Objection. The request is presented as a compound request.

FPL Response: Customers objection is improper and should be denied.

5. Request for Admission 5. Admit that Rule 25-6.109, Florida Administrative Code, applies to the calculation of interest on any refunds that may be ordered by the Commission in this proceeding.

Customers' Response: Objection. This request is directed solely to a conclusion of law. Rule 25-6.109, Florida Administrative Code, speaks for itself. This legal issue is presently

pending before the Commission.

FPL Response: FPL incorporates herein by reference its response to Customers' objection to Request for Admission No. 1.

6. Request for Admission No. 6. Admit that SUSI does not have standing to protest Order No. PSC-03-1320-PAA-EI issued in the above-numbered docket.

Customers' Response: Objection. This request is directed solely to a legal conclusion that is presently pending before the Commission.

FPL Response: FPL incorporates herein by reference its response to Customers' objection to Request for Admission No. 1.

7. Request for Admission No. 7. Admit that FPL tested all thermal demand meters of the Customers at issue in this docket in compliance with all applicable Florida Public Service Commission rules.

Customers' Response: Objection. This request calls for a legal conclusion to "all applicable Florida Public Service commission rules." Additionally, this request is overbroad in that it is not limited to specific tests of specific meters within a certain time frame.

FPL Response: FPL incorporates herein by reference its response to Customers' objection to Request for Admission No. 1. Customers' additional "overbroad" objection should also be denied. FPL's request is not overbroad; it goes to the heart of the issues raised in Customers' protest of Order No. PSC-03-1320-PAA-EI, and clearly requests Customers to admit that *their* thermal demand meters were tested in compliance with all applicable Commission rules. The Commission should deny Customers' objection and compel Customer to respond to FPL's Request for Admission No. 7.

REQUESTS FOR PRODUCTION OF DOCUMENTS

As stated previously, FPL propounded its First Set of Requests for Production of Documents (Nos. 1-12) to Customers. On February 13, 2004, Customers filed its Objections and Responses to FPL's First Set of Requests of Production, asserting numerous general objections. In its Response, Customers agree to produce responsive documents, subject to the objections raised, to FPL's Requests Nos. 1-3, 5, and 7-12. Customers assert specific objections to FPL's Requests for Production of Documents Nos. 4 and 6. Set forth below are FPL's Requests Nos. 4 and 6, Customers' objections, and FPL's response thereto.

8. Request for Production of Document No. 4: All documents sent or received by SUSI and/or exchanged between SUSI and any customer of FPL (including but not limited to the Petitioner Customers) who receives or received electric service through thermal demand meters from the period of July 1, 2002 through January 14, 2004.

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

FPL Response: Customers' objections that FPL's Request No. 4 is "overbroad, vague, and ambiguous," and that the request is "not limited to matters in dispute," are improper and should

be denied. Customers do not quantify how this request is overbroad, stating only that Customers are not in a position to know the identities of any customer of FPL who receives or received electric service through thermal demand meters. See, First City Developments of Florida, Inc. v. Hallmark of Hollywood Condominium Assoc., 545 So.2d 502, at 503 (Fla. 1st DCA 1989), which states that a party objecting to discovery as overbroad and burdensome is required to show that the volume of documents, number of man hours required in their production, or some other quantitative factor made it so. FPL's Request clearly specifies the nature of the documents sought and limits the Request to a specific time frame. Further, as FPL's Request is directed to customers who received electric service through thermal demand meters from FPL, the Request clearly goes to the matter in dispute between the parties. Rule 1.350(a), Florida Rules of Civil Procedure, provides that any party may request the production of documents that constitute or contain matters within the scope of Rule 1.280(b), Florida Rules of Civil Procedure, that are in the possession or control of the party to whom the request is directed. In this case, the Customers are represented by SUSI. FPL has the right to request documents exchanged between Customers' consultant, SUSI, and other FPL customers. FPL's request is well within the broad scope of discovery as mandated by Rule 1.280(b), Florida Rules of Civil Procedure. Accordingly, FPL requests that the Commission issue a ruling denying Customers' objection and compel Customers to respond to FPL's Request for Production of Documents.

9. Request for Production of Document No. 6: All documents referring or related to over-registration and calibration of thermal demand meters.

Customers' Response: In addition to the objections previously raised, Customers object to this request as being overbroad; upon refinement, Customers are willing to respond and will produce any responsive documents related to the issues and meters in this case at their respective

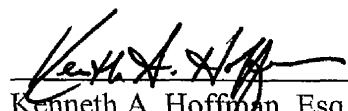
offices or at a location to be agreed upon by the parties upon reasonable notice being provided to the Customers.

FPL Response: Customers objection that FPL's Request No. 6 is overbroad is improper and should be denied. Once again, Customers fail to quantify exactly how this request is overbroad. Instead, Customers state a willingness to respond upon "refinement" of the Request. There is no need for refinement of the Request as it is straightforward and clear. The Commission should deny Customers' objection, and Customers should be compelled to respond to FPL's Request.

10. Pursuant to Rule 28-106.204(3), Florida Administrative Code, counsel for FPL has conferred with counsel for Customers, and is authorized to represent that Customers object to the relief sought in this Motion.

WHEREFORE, FPL respectfully requests that the Prehearing Officer issue an order compelling Customers to respond to FPL's First Set of Requests for Admissions Nos. 1-7, and FPL's First Set of Request for Production of Documents, Nos. 4 and 6.

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

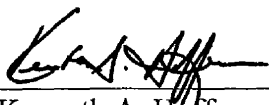
Attorneys for Florida Power & Light Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Florida Power and Light Company's Motion to Compel Answers to First Set of Requests for Admissions and Responses to First Set of Requests for Production of Documents of Documents has been furnished by U. S. Mail this 27th 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.

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