

**RUTLEDGE, ECENIA, PURNELL & HOFFMAN**

PROFESSIONAL ASSOCIATION  
ATTORNEYS AND COUNSELORS AT LAW

**ORIGINAL**

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

July 1, 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  
JUL - 1 AM 11:06  
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 the original and fifteen copies of FPL's Response to Southeastern Utility Services, Inc.'s Motion for Reconsideration.

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

Thank you for your assistance with this filing.

Sincerely,



Kenneth A. Hoffman

CMP \_\_\_\_\_  
COM 3  
CTR \_\_\_\_\_  
ECR \_\_\_\_\_  
GCL KAH/rl  
OPC Enclosures  
#PL\bayo.701ltr  
MMS \_\_\_\_\_  
RCA \_\_\_\_\_  
SCR \_\_\_\_\_  
SEC 1  
OTH \_\_\_\_\_

RECEIVED & FILED

Mar  
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

07219 JUL-1 8

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: July 1, 2004

**FLORIDA POWER AND LIGHT COMPANY'S  
RESPONSE TO SOUTHEASTERN UTILITY  
SERVICES, INC.'S MOTION FOR RECONSIDERATION**

Florida Power & Light Company ("FPL"), by and through its undersigned counsel, and pursuant to Rule 25-22.0376(2), Florida Administrative Code, hereby files this Response to Southeastern Utility Services, Inc.'s ("SUSI") Motion for Reconsideration.' In support of its Response, FPL states as follows

1. On June 11, 2004, the Prehearing Officer assigned to this docket issued Order No. PSC-04-0591-PCO-EI dismissing SUSI as a Petitioner from this proceeding and Denying FPL's Motion to Strike ("Prehearing Officer's Order"). On June 21, 2004, SUSI filed its Motion for Reconsideration requesting that the Commission reconsider the portion of the Prehearing Officer's Order dismissing SUSI as a Petitioner.<sup>2</sup>

2. The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider

---

<sup>1</sup> Rule 25-22.037(2), Florida Administrative Code, allows a party to file a response to a motion for reconsideration within 7 days after service of the motion for reconsideration. Rule 28-106.103, Florida Administrative Code, allows for an additional 5 days to be added to the prescribed period of time to respond when service is made by mail.

<sup>2</sup> Although the date on the front of SUSI's Motion for Reconsideration shows that it was filed on June 18, 2004, page 3 of SUSI's Motion shows that the Motion was submitted to the Commission on June 21, 2004. In addition, the attached certificate of service shows that SUSI's Motion was served upon the parties via U.S. Mail on June 21, 2004. Accordingly, FPL must file a response to SUSI's Motion for Reconsideration within 12 days of June 21, 2004.

DOCUMENT NUMBER-DATE

07219 JUL-1 3

FPSC-COMMISSION CLERK

in rendering its Order. See, Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 3 15 (Fla. 1974); Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So.2d 161 (Fla. 1<sup>st</sup> DCA 1981).

3. The basis for the Prehearing Officer's Order dismissing SUSI from this proceeding was that SUSI, as a consulting company representing FPL customers, failed to meet the two-prong standing test set out in Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2d 478, 482 (Fla. 2<sup>nd</sup> DCA 1981).

4. Specifically, the Prehearing Officer's Order stated:

. . . I find that SUSI fails both prongs of the Agrico standing test. SUSI is a representative of the customers, who are the real parties of interest in this proceeding because their refunds are at issue. Since none of the meters in question measure electric service provided to SUSI, SUSI is not a potential candidate for a refund. SUSI can suffer no direct injury as a result of the Commission's decision. . . Moreover, this proceeding addresses the potential refunds to be made to the commercial customers who petitioned the Commission for a hearing. The purpose of the hearing is not to determine what recourse, if any, is available to SUSI who is simply acting as a consultant to the customers.<sup>3</sup>

5. SUSI's Motion fails to identify any relevant point of fact or law that the Prehearing Officer overlooked or failed to consider in dismissing SUSI as a Petitioner from this proceeding. Instead, SUSI refers to an informal meeting that was held between Commission staff and the parties six days after the issuance of the Prehearing Officer's Order. According to SUSI, as a result of this informal meeting, SUSI believes that certain generic issues will be addressed in this docket, the resolution of which would, "likely impact parties that are not parties to this docket."<sup>4</sup>

6. SUSI further states that it believes that certain issues will be decided that will have application beyond this docket, and as an example, points to an issue that was previously identified

---

<sup>3</sup> Prehearing Officer's Order at page 3-4.

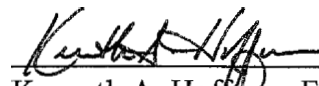
<sup>4</sup> Paragraph 3 of SUSI's Motion for Reconsideration.

in this docket regarding the appropriate method of calculating customer refunds for the thermal demand meters which test outside the prescribed tolerance limits.<sup>5</sup>

7. The Commission's decisions in its proceedings routinely have a precedential effect on similarly situated parties. SUSI's assertion that the Commission's decision in this docket could have precedential effect is both unremarkable and irrelevant to the true issue at hand — SUSI's lack of standing to participate as a Petitioner in this docket. SUSI's reference to both the "generic issues" and specific issues to be addressed in this docket, all of which were raised as far back as the Commission's PAA Order, is likewise irrelevant to whether SUSI has standing to participate in this docket.

Wherefore, as SUSI has failed to identify any point of fact or law that the Prehearing Officer overlooked or failed to consider in dismissing SUSI as Petitioner from this proceeding, FPL respectfully requests that the Prehearing Officer deny SUSI's Motion for Reconsideration of Order No. PSC-04-0591-PCO-EI.

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 - -

---

<sup>5</sup> Paragraph 5 of SUSI's Motion for Reconsideration.

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 Response to Southeastern Utility Services, Inc.'s Motion for Reconsideration has been furnished by U. S. Mail this 1<sup>st</sup> day of July, 2004, to the following:

Cochran Keating, Esq.  
Office of the General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
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.