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July 12, 2004

**VIA OVERNIGHT MAIL**

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

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

Dear Ms. Bayó:

Enclosed for filing in the above-referenced docket are the original and fifteen (15) copies of Florida Power & Light Company's Objections to Ocean Properties, Ltd.'s First Set of Interrogatories (Nos. 1-10) and First Request for Production of Documents (Nos. 1 - 13).

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

Sincerely,

A handwritten signature in black ink that reads "Natalie F. Smith".

Natalie F. Smith

NFS:ec  
Enclosures

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 ) **Filed: July 12, 2004**  

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**FLORIDA POWER & LIGHT COMPANY'S OBJECTIONS TO  
OCEAN PROPERTIES, LTD.'S, FIRST SET OF INTERROGATORIES (NOS. 1-  
10) AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 1 - 13)<sup>1</sup>**

Florida Power & Light Company ("FPL") submits the following Objections to Ocean Properties, LTD.'s ("Ocean Properties") First Set of Interrogatories (Nos. 1-10), and First Request for Production of Documents (Nos. 1-13):

**I. Preliminary Nature of These Objections**

FPL's objections stated herein are preliminary in nature. FPL is furnishing its objections consistent with the time frames set forth in the Commission's Order Establishing Procedure, Order No. PSC-04-0581-PCO-EI, dated June 9, 2004 (the "Order Establishing Procedure"), and Rule 1.190(e), Florida Rules of Civil Procedure. Should additional grounds for objection be discovered as FPL develops its response, FPL reserves the right to supplement or modify its objections up to the time it serves its responses. Should FPL determine that a protective order is necessary regarding any of the information requested of FPL, FPL reserves the right to file a motion with the Commission seeking such an order at the time its response is due.

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<sup>1</sup> FPL notes that the title to Ocean Properties' discovery request is incorrect in that there are 13 (not 12) Requests for Production of Documents.

## II. General Objections.

FPL objects 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. FPL in no way intends to waive such privilege or protection.

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.

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 Florida Public Service Commission 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, these responses 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.

FPL objects to any production location other than FPL's General Offices at 9250 West Flagler Street, Miami, Florida.

FPL also objects to these discovery requests to the extent they call for FPL to prepare information in a particular format or perform calculations or analyses not previously prepared or performed as purporting to expand FPL's obligations under applicable law. Further, FPL objects to these discovery requests to the extent they purport to require FPL to conduct an analysis or create information not prepared by FPL in the normal course of business. FPL will comply with its obligations under the applicable rules of procedure.

FPL objects to providing information to the extent that such information is already in the public record before the Florida Public Service Commission and available to Ocean Properties through normal procedures.

FPL notes that the cumulative effect of the discovery requests in these proceedings make Ocean Properties' requests for irrelevant or marginally relevant information or documents overly burdensome. Even if an individual request on its own may not seem overly burdensome, the fact that FPL is responding to numerous requests with overlapping expedited deadlines creates a cumulative burden on FPL, which should be taken into account when looking at whether responding to a discovery request is overly burdensome.

FPL objects to each discovery request and any definitions and instructions that purport to expand FPL's obligations under applicable law. FPL objects to the definitions

set forth in Ocean Properties' First Request for Production of Documents and First Set of Interrogatories to the extent that they purport to impose upon FPL obligations that FPL does not have under the law. FPL objects 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.

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.

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).

FPL objects to each and every request to the extent it is vague, ambiguous, overly broad, imprecise, or utilizes terms that are subject to multiple interpretations but are not properly defined or explained for purposes of such discovery requests. Any responses provided by FPL to Ocean Properties' First Request for Production of Documents and First Set of Interrogatories will be provided subject to, and without waiver of, the foregoing objection.

In addition, FPL reserves its right to count interrogatories and their sub-parts (as permitted under the applicable rules of procedure) in determining whether it is obligated to respond to additional interrogatories served by any party.

FPL objects to each discovery request to the extent that the information requested constitutes “trade secrets” which are privileged pursuant to Section 90.506, Florida Statutes.

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.

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.

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.

### **III. Specific Objections and Responses**

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

#### **Ocean Properties’ First Request for Production of Documents**

Request for Production No. 4: FPL objects to this Request to the extent it calls for FPL to disclose information that is protected by the work product doctrine or the attorney-client privilege. This Request seeks documents that would include materials

prepared in anticipation of litigation and subject to the attorney work product privilege against disclosure. FPL also objects to this Request because it is overly broad, unduly burdensome, seeking documents outside the scope of this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. To the extent the Request seeks documents that are not relevant to any specific claims, defenses, issues or questions presented in this proceeding and that are not reasonably calculated to lead to the discovery of documents relevant to resolution of such issues, FPL objects on grounds of relevance.

Ocean Properties' Request for Production No. 4 is unduly burdensome in that providing the requested data would require an unreasonable expenditure of time and resources to search for documents or information, involving multiple FPL business units and countless hours of work. The burdensome nature of this Request is especially true given that the Request seeks a general category of information within which only limited portions of the information may be reasonably related to the subject matter of this proceeding. FPL is concerned that if it produced all the documents that are arguably responsive to this Request it would be accused of attempting to bury Ocean Properties in largely irrelevant documents.

FPL further objects to this Request to the extent it calls for the disclosure of proprietary, confidential business information.

In light of the unduly burdensome nature of this Request and the fact that documents responsive to this Request bearing any relevance to this proceeding are protected by the attorney-client privilege or work product doctrine, FPL intends to take all measures necessary to protect itself from Request for Production No. 4

Request for Production Nos. 6 and 7: FPL objects to Request Nos. 6 and 7 on grounds of relevance. Request No. 6 asks for a copy of “‘Dacs,’ the meter shop database, including test results for all IV meters.” Request No. 7 seeks “[a]ll Form 134’s indicating test result for IV thermal demand meters.” FPL objects to these Requests from Ocean Properties as thinly veiled attempts to conduct a fishing expedition in FPL files in an effort to locate potential clients for bringing additional claims against FPL. FPL objects to the use of the discovery process as a subterfuge to search for additional potential claims to bring against FPL. To the extent the scope of these Requests include documents that are not limited to the issues, claims and defenses in Docket No. 030632-EI, FPL objects.

Further, the Requests are also unlimited in time, requiring FPL to produce data which could be more than a decade (and maybe two) old. This would require the retrieval of information from archives, a lengthy and time consuming process, especially given the corporate reorganizations the company has experienced. The breadth of the search necessary to respond to this request and the unlimited time frame for which the data is sought make the request unduly burdensome and unreasonable. Moreover, the relevance of such old and stale data is highly questionable. Such a request is unlikely to lead to the discovery of admissible evidence and, relative to the burden imposed, should not be permitted.

Further, documents responsive to these Requests contain confidential proprietary business information, including customer-specific account information. For privacy and other reasons, FPL has a policy against disclosure of such customer-specific account



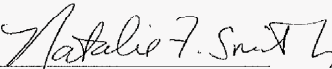
information to third parties, especially third parties seeking to obtain the information in an effort to locate potential clients to bring claims against FPL.

Given the unduly burdensome nature of Request Nos. 6 and 7 and the irrelevance of documents responsive to these Requests to the claims and issues in Docket No. 030623-EI, FPL intends to take all measures necessary to protect itself from Request Nos. 6 and 7.

Respectfully submitted,

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By:   
Natalie F. Smith


## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Objections to Ocean Properties, Ltd.'s First Set of Interrogatories (Nos. 1-10) and First Request for Production of Documents (Nos. 1-13) has been furnished by United States Mail this 12th day of July, 2004, to the following:

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Cochran Keating, Esq.  
Senior Attorney  
Florida Public Service Commission  
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By:   
Natalie F. Smith