

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

Dated: August 13, 2004

NOTICE OF TAKING CORPORATE DEPOSITION DUCES TECUM

TO: Jon C. Moyle, Jr., Esq.
Moyle Flanigan Katz Raymond &
Sheehan, P.A.
The Perkins House
118 North Gadsden Street
Tallahassee, FL 32301

FROM: Kenneth A. Hoffman, Esq.
J. Stephen Menton, Esq.
Rutledge, Ecenia, Purnell & Hoffman
215 S. Monroe St., Suite 420
Tallahassee, FL 32301

Natalie F. Smith, Esq.
Florida Power & Light Company
700 Universe Blvd.
Juno Beach, FL 33408

PLEASE TAKE NOTICE THAT pursuant to Rule 1.310, Florida Rules of Civil Procedure, on Wednesday, September 1, 2004, at 9:00 a.m., at the offices of Rutledge, Ecenia, Purnell & Hoffman, 215 S. Monroe Street, Suite 420, Tallahassee, FL 32301, the undersigned will take the deposition of

- (1) The officer(s) or other employee(s) of J.C. Penney Corp. ("J.C. Penney"), or any affiliated companies, with knowledge of and responsibilities regarding the payment of Florida Power & Light Company's electric bills by J.C. Penney;
- (2) The officer(s) or other employee(s) of J.C. Penney Corp., or any affiliated companies, with knowledge of and responsibilities regarding the energy conservation for J.C. Penney's premises or facilities;
- (3) The officer(s) or other employee(s) of J.C. Penney Corp., or any affiliated companies, with knowledge of and responsibilities regarding the monitoring or managing of J.C. Penney's electric usage or consumption;

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

- (4) The officer(s) or other employee(s) of J.C. Penney Corp., or any affiliated companies, with knowledge of and responsibilities regarding the interfacing with Southeastern Utilities Services, Inc. ("SUSI") in connection with or support of pursuing a refund claim before the Florida Public Service Commission ("FPSC"); and
- (5) The officer(s) or other employee(s) of J.C. Penney Corp., or any affiliated companies, with knowledge of and responsibilities regarding interfacing with SUSI with respect to the terms of the engagement or arrangement pursuant to which J.C. Penney's agreed to be represented by SUSI in pursuing a refund claim before the FPSC.

before a court reporter, notary public, or some other officer duly authorized to take depositions in the State of Florida. This deposition is being taken for such reasons as are permitted under the applicable and governing Rules of Civil Procedure and Florida Statutes, and will continue from day-to-day until complete.

Individuals with disabilities needing a reasonable accommodation to participate in this proceeding should contact Kenneth A. Hoffman, Esquire, at (850) 681-6788. If hearing impaired, call 1-800-955-8771 (TDD) or 1-800-955-8770 (V) via Florida Relay Service for assistance.

The deponent(s) shall bring to this deposition copies of documents as set forth below.

DEFINITIONS

1. "SUSI" shall mean or refer to Southeastern Utility Services, Inc., and its authorized representatives, officers, employees, or managing agents, including but not limited to George Brown and Bill Gilmore.

2. “You,” “yours” and/or “yourselves” means and refers to J.C. Penney Corp., and any affiliated entities, and their employees, agents, officers and managers, including, but not limited to, the deponent(s).

3. “Petitioner” or “Petitioners” shall mean Petitioners Ocean Properties, J.C. Penney, Dillard’s and Target, individually or collectively, and any attorney, employee, agent, representative, or other person acting or purporting to act on such Customer(s) behalf in Florida Public Service Commission Docket No. 030623-EI.

4. “Person” or “persons” means all natural persons and entities, including but not limited to: corporations, companies, partnerships, limited partnerships, joint ventures, trusts, estates, associations, public agencies, departments, bureaus, or boards.

5. “Document or documents” means “documents” as defined in Rule 1.350 of the Florida Rules of Civil Procedure. In addition, the words “document” or “documents” shall mean any writing, recording, computer-stored information, or photograph in your possession, custody, care or control, which pertain directly or indirectly, in whole or in part, to any of the subjects listed below, or which are themselves listed below as specific documents, including, but not limited to: correspondence, memoranda, notes, messages, e-mails, diaries, minutes, books, reports, charts, ledgers, invoices, computer printouts, computer discs, microfilms, video tapes, or tape recordings.

6. “FPSC” means Florida Public Service Commission.

7. “FPL” means Florida Power & Light Company.

8. "Petition" refers to the "Petition for Formal Administrative Hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes, filed by Petitioners on December 10, 2003, in Docket No. 030623-EI.

9. "Related to" shall mean contain, discuss, describe, address or refer to.

10. "All" means all or any.

11. The singular of any word contained herein shall include the plural and vice versa; the terms "and" and "or" shall be both conjunctive and disjunctive; and the term "including" means "including without limitation."

INSTRUCTIONS

12. **Scope of Deposition Duces Tecum.** In appearing for this Deposition Duces Tecum, produce all responsive documents, including any and all non-identical copies of each such document.

13. **Manner of Objections and Inability to Respond.** If you object to a part of a request and refuse to respond to that part, state your objection and answer the remaining portion of that request. If you object to the scope of a request and refuse to produce documents for that scope, state your objection and produce documents for the scope you believe is appropriate.

14. If any of the requests cannot be responded to in full after exercising due diligence to secure the requested documents, please so state and respond and produce documents to the extent possible, specifying your inability to respond further. If your response or production is qualified or limited in any particular way, please set forth the details and specifics of such qualification or limitation.

15. Privileged Information or Documents. In the event you wish to assert attorney/client privilege or the work product doctrine, or both, or any other claim of privilege, then as to such documents allegedly subject to such asserted privileges, you are requested to supply an identification of such documents, in writing, with sufficient specificity to permit the Prehearing Officer or Commission to reach a determination in the event of a motion to compel as to the applicability of the asserted objection, together with an indication of the basis for the assertion of the claim of attorney/client privilege or the work product doctrine, or any other claim of privilege. The identification called for by this instruction shall include the nature of the document (e.g., interoffice memoranda, correspondence, report, etc.), the sender or author, the recipient of each copy, the date, the name of each person to whom the original or any copy was circulated, the names appearing on any circulation list associated with such document, and a summary statement of the subject matter of the document in sufficient detail to permit the Court to reach a determination in the event of a motion to compel.

16. Computer-Generated Documents. If a requested document is on computer or word processing disc or tape, produce an electronic copy of the document and a printout of the document.

17. Organization of Documents. With respect to the documents produced, you shall produce them as they are kept in the usual course of business, labeling them to correspond with each numbered paragraph of this Request in response to which such documents are produced. All pages now stapled or fastened together and all documents that cannot be copied legibly should be produced in their original form.

DOCUMENTS REQUESTED

1. All documents related to SUSI for the years 2000, 2001, 2002, 2003 and 2004.
2. All documents related to the initial interaction or contacts between: (a) you and SUSI; and (b) you and Bill Smith.
3. All documents exchanged between: (a) you and SUSI related to methods or means of reducing the amount of FPL electric bills and (b) you and Bill Smith related to methods or means of reducing the amount of FPL electric bills.
4. All documents exchanged between: (a) you and SUSI related to your electric account, meter, electric consumption, or usage and (b) you and Bill Smith related to your electric account, meter, electric consumption, or usage.
5. All documents related to how SUSI is compensated or proposed to be compensated for any and all services performed or proposed to be performed by SUSI for you.
6. All documents related to how Bill Smith is compensated or proposed to be compensated for any and all services performed or proposed to be performed by Bill Smith for you.
7. All documents exchanged between you and SUSI related to any analyses of electric bills or electric usage performed, received, or otherwise in your possession, in which the impact on electric bill(s) of the practice of combining, manipulating, or placing additional electric load on any electric meter for any of your electric accounts to ensure that the registered peak kilowatt demand for a billing cycle reach or exceed a certain

threshold or level (a practice sometimes referred to as “spiking” of the electric meter) is referenced, described, or suggested.

8. All documents related to the arrangement or circumstances pursuant to which you agreed to be represented by SUSI in pursuing a refund claim against FPL before the FPSC.

9. All documents related to SUSI’s representation of you in pursuing refund claims against FPL for you.

10. All documents related to your agreement or consent to be part of the Petition filed in protest of the FPSC Notice of Proposed Agency Action Order Resolving Complaints, Order No. PSC-03-1320-PAA-EI, which is the subject of the current proceeding.

11. All documents related to any and all programs, equipment, replacements, operational changes, or other actions or initiatives taken with the intent to reduce or with the resultant effect of reducing kWh and/or kWd registration during the years 2000, 2001, 2002, 2003 and 2004.

12. All documents related to all tests attempted or actually performed by SUSI, Bill Smith or any other person on any electric meter serving any of your premises during the last five years.


13. All documents related to the thermal demand meters that are the subject of FPSC Docket No. 030623-EI.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by Hand Delivery to the above named addressees on August 13, 2004.

PLEASE GOVERN YOURSELVES ACCORDINGLY.

Kenneth A. Hoffman, Esq.
J. Stephen Menton, Esq.
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215 S. Monroe Street
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Tallahassee, Florida 32301
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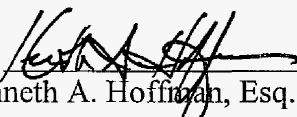
By: 
Kenneth A. Hoffman, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Notice of Taking Corporate Deposition has been hand-delivered this 13th day of August, 2004, to the following:

Cochran Keating, Esq.
Senior Attorney
Florida Public Service Commission
Gerald L. Gunter Building
2540 Shumard Oak Boulevard
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.