

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaints by Southeastern Utilities )  
Services, Inc., on behalf of various customers )  
against Florida Power and Light Company )  
concerning thermal demand meter error. )

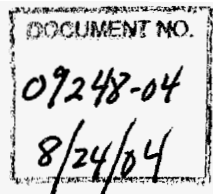
Docket no.: 030623

Filed: August 24, 2004

**MOTION FOR LEAVE TO INSPECT METERS**

Ocean Properties, Target, JC Penney, and Dillard's ("Customers") hereby file this motion for leave to inspect meters. As grounds for their motion, Customers state:

1. In early July 2004, Customers informally requested (through counsel for FPL) access to the meters in this docket to perform various tests and inspections on these meters.
2. By letter dated July 7, 2004 (attached as Exhibit "A"), counsel for FPL responded to this request, refusing to allow Customers access to these meters absent authorization from the Commission. Customers hereby request that the Commission authorize such access.
3. Customers believe that they are entitled to refunds that extend beyond 12 months in duration. This belief is based upon both what is known to be true, and what is believed to be true. Customers know that their meters, when tested, over-registered demand beyond allowable tolerance. Customers know that, upon 1V meter replacement, their demand registration dropped significantly when compared to all prior years in which the 1V meters were installed. Customers believe that none of the components in their meters have failed or degraded, and that none of these components have undergone physical changes that impact demand registration. However, Customers have been unable to confirm this belief because FPL has refused to allow Customers to have access to their meters.



4. Customers have advocated a failure theory consistent with this information. Customers' theory is that these meters do not come to gradually over-register demand over time, and that therefore, the most likely cause of demand over-registration is improper calibration. Customers contend that they are entitled to refunds for the entire period these meters were installed. Customers have filed direct and rebuttal testimony in support of their position.

5. FPL has taken a contrary position; namely, FPL's theory is that there are many components of these meters that are subject to gradual or sudden failure or degradation, and that the physical characteristics of these same components may change over time. FPL concludes that such effects on meter components may cause a gradual under or over-registration of demand, that a meter's demand registration may gradually change over time, and, therefore, that is impossible to fix a point in time at which a change in demand registration occurred so as to support refunds beyond 12 months. FPL has filed direct and rebuttal testimony in support of its position.

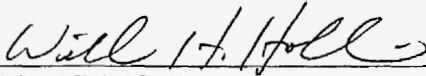
6. To date, Customers have not been allowed access to these meters, and have therefore been prevented, from determining if any cause (other than mis-calibration) exists that would explain the observed demand over-registration for these meters. FPL, which has sole access and control over these meters, has chosen not to conduct any investigation or analysis to actually determine if any of the meter components have experienced failure, degradation, or characteristic change that would validate its theory and explain the observed demand over-registration for these meters.

7. Customers seek to demonstrate entitlement to refunds longer than 12 months. In this fact-finding proceeding, Customers are entitled to obtain the evidence necessary to meet this burden. FPL has critical evidence that it has locked away in a storage room, and has refused to allow Customers access to this evidence. FPL should not be allowed to argue that Customers have failed

to meet their burden of proof, while also denying Customers access to critical evidence necessary to meet this burden. Such a situation works an obvious injustice and cannot be allowed by the Commission. Customers also seek to have FPL produce these meters at hearing. These meters are the key evidence in this proceeding and should be available to the Commission during hearing.

8. Attached hereto as Exhibit "B" is an inspection and test plan proposed by Customers for examining these meters. Customers submit, that should this motion be granted, they will work in good faith and in cooperation with FPL to accomplish this testing.

WHEREFORE, Customers respectfully request the Commission grant this motion and order FPL to provide customers with reasonable access to their meters for testing and inspection purposes and to order FPL to produce these meters at hearing.

  
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JON C. MOYLE, JR.  
Florida Bar No. 727016  
WILLIAM H. HOLLIMON  
Florida Bar No. 104868  
MOYLE, FLANIGAN, KATZ, RAYMOND  
& SHEEHAN, P.A.  
The Perkins House  
118 North Gadsden Street  
Tallahassee, Florida 32301  
(850) 681-3828 (telephone)  
(850) 681-8788 (facsimile)

Attorneys for Customers

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to those listed below with an asterisk and the remainder by U.S. Mail without an asterisk this day the 24<sup>th</sup> day of August, 2004.

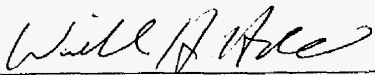
Cochran Keating  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Bill Walker  
Florida Power & Light Company  
215 South Monroe Street, Suite 810  
Tallahassee, FL 32301

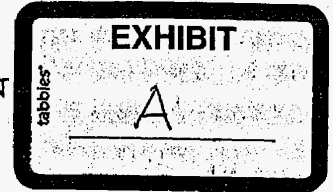
\*Kenneth A. Hoffman  
Rutledge, Ecenia, Purnell & Hoffman  
Post Office Box 551  
Tallahassee, FL 32302-0551

R. Wade Litchfield  
Natalie Smith  
Law Department  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, FL 33408-0420

Daniel Joy  
785 SunTrust Bank Plaza  
1800 Second Street  
Sarasota, FL 34236

  
\_\_\_\_\_  
William H. Hollimon

**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, 92302-0551  
 215 SOUTH MONROE STREET, SUITE 420  
 TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788  
 TELECOPIER (850) 681-5515

R. DAVID PRÉSCOTT  
 HAROLD F. X. PURNELL  
 MARSHA E. RULE  
 GARY R. RUTLEDGE  
 GOVERNMENTAL CONSULTANTS  
 MARGARET A. MENDUNI  
 M. LANE STEPHENS

July 7, 2004

Jon C. Moyle, Jr., Esq.  
 Moyle Law Firm  
 The Perkins House  
 118 N. Gadsden St.  
 Tallahassee, FL 32301

VIA TELECOPIER AND U. S. MAIL

Re: Docket No. 030623-EI  
 Your Request for Access to Meters in Dispute

Dear Jon:

This letter will respond to your request today that I get back with you promptly on your request to disassemble and test the meters in dispute.

As you know, you initiated discovery in this proceeding more than six months ago. Recently, at the June 17, 2004 Issues Identification Meeting, you asked whether you (or someone on your clients' behalf) could "examine" the meters at issue. On July 1, 2004, you advised me that you needed to examine the meters before July 12 for the purpose of filing direct testimony. Over the course of the past week, I have repeatedly endeavored to get the details from you regarding your request to "examine" the meters. On July 6, by e-mail, you finally provided me with some level of detail that I could discuss with FPL. This letter sets forth FPL's position regarding your July 6 request.

In your July 6 request, you acknowledged that your two representatives wish to disassemble the FPL meters in dispute and that such process would consist of the following: "removal of the canopy cover to permit the inspection of all visible connections and components." You further stated that there is no request, at this time, to test the meters. On the other hand, you stated that "[t]he only test will be to check the continuity of various circuits within the meter using a multi-meter." You requested access to the meters on the morning of July 8, 2004.

The meters at issue are the property of FPL, subject to requirements set forth in Commission rules, and the subject of a pending Commission docket. The specific details of the "examination" and testing that your representatives wish to conduct with these meters remain ambiguous. For example, what visible connections and components to inspect; how will they inspect certain

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connections and components; what specific test is contemplated to check the continuity of various circuits; which circuits will be tested; what test points will be measured; what specific equipment is contemplated for use for the proposed test, etc.

FPL's initial and underlying concern is that it maintain custody, possession and control and thereby, the integrity, of these meters. Such integrity must be maintained through the course of this Commission docket and with respect to any future action that the Commission may direct with respect to these meters. Further, the description of the desired tests indicates your desire to subject the meters to tests or procedures that are not set forth in the Commission's rules.

In light of the above, FPL maintains that it is necessary and appropriate to secure authorization from the Commission regarding the requested disassembly and testing of the meters in dispute. The integrity of the meters, the process in the pending docket, and any future action that might be directed by the Commission is best preserved by Commission oversight of your request. FPL believes it of paramount importance that FPL maintain custody, control and possession of these meters. Accordingly, any examination and/or testing of the meters would be performed by FPL employees at the instruction and direction of your representatives. The specific details of precisely what actions, examinations and tests your representatives desire to conduct, including the specifics regarding any equipment to be used, should be set forth in a motion filed with the Prehearing Officer. FPL believes that such motion should outline all conditions relevant to the process including the preconditions: (a) that the disassembly and/or testing would be physically conducted by FPL at the direction of your clients' designated representatives; (b) that FPL equipment would be utilized for any testing; and (c) that any such testing would not, in FPL's view, alter, impair, damage or destroy the FPL meters. The Commission Staff, of course, would be welcome and encouraged to observe. FPL would file a response to such a motion and the Prehearing Officer would then be in a position to authorize FPL to conduct specific steps, examination and/or tests as ordered by the Prehearing Officer.

In view of the foregoing, the meters will not be made available on the morning of July 8, and will be made available pursuant only to terms and conditions ordered by the Prehearing Officer as set forth above.

Sincerely,



Kenneth A. Hoffman

KAH/rl

cc: Cochran Keating, Esq.  
Natalie Smith, Esq.

## Exhibit "B"

Our proposed inspection will include:

1. **Visual inspection for any signs of tampering, holes in canopy, foreign objects that may obstruct movement of the disk or demand needles, etc.**
2. **Check that the reset lever strikes the black maximum pointer properly.**
3. **Removal of the canopy to visually inspect, adjustment springs(zero & full-scale) for corrosion, distortion, connection to linkage chains, tracking on capstans, etc.**
4. **Check that capstans are securely in place and do not rotate with slight pressure.**
5. **Visual inspection of all solder joints and wires for shorting, opens, or broken joints.**
6. **Visual inspection of indicating demand needles (pointers red and black) for bends, clearance for free movement, contact point to one another.**
7. **Visual inspection of red indicating pointer bearing for bends, clearance for free movement. Move black maximum pointer across the scale to determine adequate friction. Place black maximum pointer at any point on the scale without contact of the red needle and tap for friction check.**
8. **With ohm meter check for continuity of circuits, solder joints, and resistance of heater circuits. Visually check for any signs of arching, burns, discoloration, melted components or other indications that lightning may have struck the meter or the meter may have experienced an extreme over load.**
9. **Visual inspection of front and rear bearings for foreign object contamination and signs of scoring or wear.**