

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: September 13, 2004**
_____)

FLORIDA POWER & LIGHT COMPANY'S OBJECTIONS AND RESPONSES TO OCEAN PROPERTIES, LTD.'S, FOURTH REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 44-46) AND SECOND SET OF INTERROGATORIES (NOS. 11-19)

Florida Power & Light Company ("FPL") submits the following Objections and Responses to Ocean Properties, Ltd.'s ("Ocean Properties") Fourth Request for Production of Documents (Nos. 44-46) and Second Set of Interrogatories (Nos. 11-19). All document requests that are not included under FPL's Specific Objections below will be made available by FPL for inspection and review by Ocean Properties, Ltd. at FPL's General Office at 9250 West Flagler Street, Miami, Florida during regular business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, upon reasonable notice to FPL's counsel.

I. 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

DOCUMENT NUMBER-DATE
09966 SEP 13 3
FPSC-COMMISSION CLERK

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' Request for Production of Documents 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' Fourth Request for Production of Documents 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.

II. 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' Fourth Request for Production of Documents

Request for Production No. 44: FPL objects to this Request as vague and ambiguous to the extent the phrase "customer inquiry responses" fails to convey with reasonable clarity what is being requested. FPL cannot reasonably determine the intended meaning, scope or limits of this Request. The request does not differentiate between a customer inquiry submitted to FPL or a complaint filed with the Florida Public Service Commission. To the extent the request relates to customer inquiries submitted to the PSC, the documents are public records equally available to Customers. To the extent the request relates to customer inquiries related to George Brown or SUSI clients, the documents are already in Customers' possession. 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. *See* R. 1.280(b)(1), Fla. R. Civ. P., *Alterra Healthcare Corp. v. Estate of Shelley*, 827 So. 2d 936, 944-45 (Fla. 2002), *Allstate Insurance Co. v. Langston*, 655 So. 2d 91 (Fla. 1995) ("Discovery in civil cases must be relevant to the subject matter of the case, and must be admissible or reasonably calculated to lead to admissible evidence"); *Krypton Broadcasting of Jacksonville, Inc. v. MGM-Pathe Communications Co.*, 629 So. 2d 852, 854 (Fla. 1st DCA 1993) ("It is axiomatic that information sought in discovery must relate to the issues involved in the litigation, as framed in all pleadings.").

FPL also objects to this Request to the extent it seeks documents that are protected by the attorney-client privilege or the work product privilege.

Request for Production No. 45: Request No. 45 seeks “any and all communications, including but not limited to letters, e-mails, faxes, and memorandums, regarding 1V thermal demand meters sent by FPL to Customers since January 1, 2000.” FPL objects to Request No. 45 to the extent it seeks documents previously provided in response to SUSI’s and Ocean Properties’ First Request for Production of Documents, Request No. 4. Also, to the extent the Request seeks documents that are already in Customers’ possession and readily available to Customers, FPL objects. Further, 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. *See* R. 1.280(b)(1), Fla. R. Civ. P., *Alterra Healthcare Corp. v. Estate of Shelley*, 827 So. 2d 936, 944-45 (Fla. 2002), *Allstate Insurance Co. v. Langston*, 655 So. 2d 91 (Fla. 1995) (“Discovery in civil cases must be relevant to the subject matter of the case, and must be admissible or reasonably calculated to lead to admissible evidence”); *Krypton Broadcasting of Jacksonville, Inc. v. MGM-Pathe Communications Co.*, 629 So. 2d 852, 854 (Fla. 1st DCA 1993) (“It is axiomatic that information sought in discovery must relate to the issues involved in the litigation, as framed in all pleadings.”).

Request for Production No. 46: FPL objects to Request No. 46 as overly broad and unduly burdensome. The Request is unduly burdensome in that providing the requested data (i) would require an unreasonable expenditure of time and resources to search for documents or information, and (ii) would result in only a limited likelihood of leading to the discovery of documents relevant

to the issues in this proceeding. The Request seeks a general category of information within which only certain portions of the information are reasonably related to the subject matter of this proceeding. FPL has already provided Customers the test records for the accounts at issue in this proceeding. For FPL to locate "all test records and summaries of these records" for the 257 accounts covered by Request No. 46, FPL would be forced to go through, one-by-one, thousands of 3x5 cards associated with IV meter accounts to attempt to locate the test records associated with the 257 accounts implicated by this request. FPL estimates that it would be required to devote more than one full business week of man hours to responding to this request. In light of the limited relevance of these documents, the value of providing these documents is far outweighed by the burden of production.

Ocean Properties' Second Set of Interrogatories

Interrogatory No. 14: FPL objects to Interrogatory No. 14 on grounds it is vague and ambiguous in that it fails to convey with reasonable clarity what is being asked. Notwithstanding and without waiving its objection, FPL will answer Interrogatory No. 14.

III. Responses

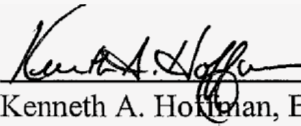
Pursuant to Rule 28-106.206, Florida Administrative Code and Rules 1.340 and 1.350, Florida Rules of Civil Procedure, Florida Power & Light Company ("FPL") responds to Ocean Properties, LTD.'s ("Ocean's") Fourth Request for Production of Documents (Nos. 44-46) as follows:

1. FPL incorporates its objections to Ocean's Fourth Request for Production of Documents (Nos. 44-46) above. FPL's responses included herein are without waiver of those prior objections.

2. FPL has objected to the production of documents pursuant to **Ocean's Request for Production Numbers 44 through 46.**

3. **Attached are FPL's answers to Ocean Properties' Interrogatories Numbers 11-19, together with the affidavits of the persons providing said answers.**

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 --

Natalie Smith, 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 & Light Company's Objections and Responses to Ocean Properties, Ltd.'s Fourth Request for Production of Documents (Nos. 44-46) and Second Set of Interrogatories (Nos. 11-19) has been furnished by Hand Delivery this 13th day of September, 2004, to the following:

Cochran Keating, Esq.
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 370
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