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September 27, 2004

VIA HAND DELIVERY

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

RECEIVED-FPSC
04 SEP 27 PM 4:39
COMMISSION
CLERK

Re: Docket No. 030623-EI

Dear Ms. Bayó:

Enclosed for filing in the above-referenced docket on behalf of Florida Power & Light
Company ("FPL") are the original and 15 copies of FPL's Response to Customers' Motion for
Protective Order.

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

- CMP
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RCA Enclosures
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Sincerely,
[Signature]
Kenneth A. Hoffman

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
10443 SEP 27 04
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: September 27, 2004

**FLORIDA POWER & LIGHT COMPANY'S
RESPONSE TO CUSTOMERS' MOTION FOR PROTECTIVE ORDER**

Florida Power & Light Company ("FPL"), by and through its undersigned counsel, hereby files this Response to the Motion for Protective Order filed on September 20, 2004, by Ocean Properties, Target, J. C. Penney and Dillard's (the "Customers") and states as follows:

A. BACKGROUND

1. On September 13, 2004, FPL filed a Motion to Compel George Brown to respond to questions posed at his August 27, 2004 deposition and additional questions which arise during the continuation of the deposition; Motion for Sanctions; and, Request for Ruling on Claimed Confidential Portions of Deposition Transcript (hereinafter referred to collectively as "FPL's September 13 Motions").

2. On September 20, 2004, the Customers filed their Response to FPL's September 13 Motions and a Motion for Protective Order. The Customers' Motion for Protective Order seeks an order denying FPL the additional discovery requested in FPL's September 13 Motions.

B. RESPONSE TO CUSTOMERS' MOTION FOR PROTECTIVE ORDER

3. The factual and legal grounds supporting the granting of FPL's September 13 Motions and the denial of Customers' Motion for Protective Order are incorporated herein by

DOCUMENT NUMBER - DATE

10443 SEP 27 04

FPSC-COMMISSION CLERK

reference. Customers, for the most part, dedicate their Response to FPL's September 13 Motions and their Motion for Protective Order to ancillary issues and unsupported allegations that fail to directly confront the fact that Mr. Brown was improperly and unlawfully instructed not to answer questions during the course of his deposition. The absence of any argument or rebuttal on that central point is telling and dictates the denial of the Customers' Motion for Protective Order.

4. The remaining arguments offered by the Customers lend no support to a Protective Order. FPL will address these miscellaneous arguments in summary fashion below:

(a) Customers imply that FPL should not be able to compel testimony from Mr. Brown, the Customers' primary witness, because he is not a party to this proceeding.¹ There is no legal basis for that assertion and none is cited by Customers. Moreover, in describing the role of his consulting company, Southeastern Utility Services, Inc. ("SUSI") in this proceeding, Mr. Brown has stated "SUSI has been retained to act as the Customers' agent for purposes of determining if a Customer has been overcharged for electricity and, if so, negotiating an appropriate refund for that Customer."² Accordingly, by his own admission, Mr. Brown speaks for the Customers who are the parties in this proceeding and is testifying on their behalf in this proceeding.

(b) Customers argue that SUSI's so-called "proprietary business methods and processes" and "marketing techniques" are "proprietary, commercially sensitive information" that is "entirely irrelevant to any issue in this docket."³ The Prehearing Officer should reject the Customers' attempt to obscure the fact that Mr. Brown and SUSI spend significant time and resources on the

¹Customers' Response and Motion for Protective Order, at ¶ 10.

²Prefiled Direct Testimony of George Clinton Brown, at 1.

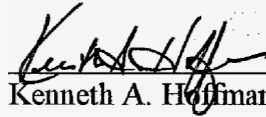
³Customers' Response and Motion for Protective Order, at ¶¶ 10 and 11.

hunt in FPL's territory for thermal demand meters to test -- without permission from FPL -- and making recommendations to FPL customers as to how to spike their meters. Customers offer no legal support for their conclusion that such activities are "proprietary, commercially sensitive information," and, even if that were the case, such information would still remain subject to discovery by FPL. Moreover, Customers' belief that a matter is entirely irrelevant provides no justification for an instruction not to answer a question. As previously argued by FPL in its September 13 Motions, FPL maintains that Mr. Brown and SUSI's hunger for contingency fee or success driven compensation arrangements with FPL's customers directly affects his credibility as a witness in this proceeding and directly affects the credibility of the billing data that he and Mr. Gilmore have presented on behalf of the Customers in this proceeding.

(c) Perhaps the best example of Customers' attempt at misdirection on the matters at issue is in their discussion of two related cases in paragraph 15 of their Response and Motion for Protective Order. There, Customers point to a question and an exchange between counsel during Mr. Brown's deposition regarding a related thermal demand meter refund claim that has been brought as a counterclaim by SUSI in Leon County Circuit Court. During the deposition, counsel for FPL asked Mr. Brown questions regarding related thermal demand meter proceedings and his involvement in these proceedings pending before the Miami-Dade and Leon County Circuit Courts. Such questions regarding related thermal demand meter cases and the participation of Mr. Brown and SUSI are clearly within the scope of discovery and these questions were answered by Mr. Brown during the course of his deposition until the question referenced in paragraph 15 of Customers' Response and Motion for Protection Order. *See* pp. 102-105 of Mr. Brown's deposition, attached hereto as Exhibit A. After that question was posed, counsel for Customers asked to go off of the record and advised

WHEREFORE, FPL respectfully requests that the Prehearing Officer enter an order denying Customers' Motion for Protective Order filed September 20, 2004.

Respectfully submitted,



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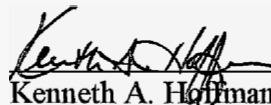
Attorneys for FPL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by United States Mail to the following this 27th day of September 2004.

Jon C. Moyle, Jr., Esq.
William Hollimon, Esq.
Moyle Law Firm
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118 North Gadsden Street
Tallahassee, FL 32301

Cochran Keating, Esq.
Division of Legal Services
Florida Public Service Commission
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Room 370
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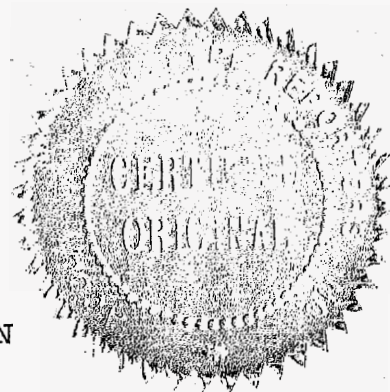


Kenneth A. Hoffman

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



DEPOSITION OF: GEORGE BROWN

TAKEN AT THE INSTANCE OF: Florida Power & Light Company

DATE: August 27, 2004

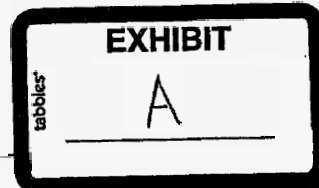
TIME: Commenced at 9:05 a.m.
Concluded at 2:40 p.m.

LOCATION: 118 North Gadsden Street
Tallahassee, Florida

REPORTED BY: MARY ALLEN NEEL, RPR
Notary Public, State
of Florida at Large

VOLUME 1
Pages 1 - 107

ACCURATE STENOGRAPHY REPORTERS, INC.
2894-A REMINGTON GREEN LANE
TALLAHASSEE, FLORIDA 32308
(850) 878-2221



1 that come up.

2 MR. HOLLIMON: We're fine if you terminate.

3 MR. HOFFMAN: Yes. If you would like to,
4 that's fine, Jennifer.

5 MS. BRUBAKER: Okay. Thanks very much,
6 gentlemen. Appreciate your help.

7 (Confidential portion of this transcript is
8 contained in Volume 2.)

9 MR. HOFFMAN: Let's go off the record for a
10 second.

11 (Discussion off the record.)

12 REDIRECT EXAMINATION

13 BY MR. HOFFMAN:

14 Q I think we've concluded what we're going to
15 designate as the confidential portion of the deposition.
16 I've got a couple more areas, Mr. Brown.

17 Have you communicated with any of the parties
18 or individuals who are litigating with Florida Power &
19 Light Company on a thermal demand issue in Miami-Dade
20 County?

21 A Have I communicated with them?

22 Q Yes.

23 A I talked to -- and I don't even know their
24 names, a couple of attorneys in Miami.

25 Q Do you recall when you talked to these

1 attorneys?

2 A It was on a day when we were going to have
3 depositions, and quite frankly, we've had so many
4 depositions, I don't recall the date, no, sir.

5 Q Were they depositions of FPL employees?

6 A Yes, yes.

7 Q Did you call them, or did they call you?

8 A As I recall, they inquired about me being
9 available.

10 Q For what?

11 A To talk to them about thermal demand meters.

12 Q Did you ever subsequently talk to them about
13 thermal demands meters?

14 A Yes, I did.

15 Q Where did that conversation take place?

16 A Downtown Miami.

17 Q Was at it at their law office?

18 A Yes, it was.

19 Q Do you recall when that happened?

20 A Like I say, it was when these depositions were
21 being taken, and I was in Miami at that time.

22 Q Do you recall who was being deposed that day?

23 A No, sir, I don't.

24 Q Was it Mr. Bromley?

25 A If you said any of them, I couldn't say yes or

1 no. I honestly do not recall who it was or the date.

2 Q Can you tell me the substance of what you
3 discussed with those attorneys that day?

4 A I believe I can pretty much, sir.

5 Q Please do so.

6 A If you recall, I have a little demo, a model of
7 the thermal unit.

8 Q Is that the one you bring to every --

9 A It's the one I bring to everything except this
10 one.

11 Q Go ahead.

A And I pretty much went over what my knowledge
of the thermal meter was and what the problems that I
14 experienced with the thermal meters were, demonstrated
15 it with that little component. And that was pretty much
16 it.

17 Q Have you talked to those attorneys since that
18 meeting?

19 A I have not.

20 Q Have you been coordinating with those attorneys
21 in the Miami-Dade litigation and this PSC case?

22 A I have not.

23 Q Can you tell me the circumstances under which
24 the Airport Regency Hotel made an assignment to
25 Southeastern Utility Services in this Leon County case?

1 MR. HOLLIMON: Object to the question. Let's
2 go off the record for a second.

3 (Discussion off the record and short recess.)

4 MR. HOFFMAN: Okay. No further questions.
5 Thank you, Mr. Brown.

6 MR. HOLLIMON: I don't have any questions.

7 (Deposition concluded at 2:40 p.m.)

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