

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power)
Recovery Clause and Generating)
Performance Incentive Factor)
_____)

DOCKET NO. 040001-EI

Filed: October 28, 2004

**FLORIDA POWER & LIGHT COMPANY'S OBJECTIONS
TO THOMAS K. CHURBUCK'S NOTICE AND RE-NOTICE OF
DEPOSITION DUCES TECUM OF TERRY MORRISON**

Pursuant to Rule 28-106.206, Florida Administrative Code, and Rules 1.310 and 1.350, Florida Rules of Civil Procedure, Florida Power & Light Company ("FPL") submits the following objections to Thomas K. Churbuck's ("Mr. Churbuck") Notice and Re-Notice of Deposition Duces Tecum of Terry Morrison.

Background

Terry Morrison is the Director of FPL's Energy Marketing and Trading Division. He has not pre-filed testimony in this docket and will not be a witness. Mr. Churbuck initially served a notice of deposition duces tecum of Mr. Morrison on FPL electronically on October 21, 2004 (the "Morrison Notice"). The original notice scheduled the deposition for November 1, 2004. Counsel for Mr. Churbuck had not checked with FPL regarding Mr. Morrison's availability. Alternate arrangements then were made and, on October 26, 2004, Mr. Churbuck re-noticed that deposition for October 29, 2004 (the "Morrison Re-Notice"). Both the original notice and the re-notice purport to direct Mr. Morrison to bring with him "all documents relied upon in executing on behalf of FPL, the Contract for Scherer Unit 3, the Contract for Harris Unit 1, and the Contract for Franklin Unit 1, that are at issue in this Docket."

1. The Request for Documents in the Morrison Notice is Untimely

Pursuant to Florida Rule of Civil Procedure 1.310(b)(5), a party may include within a notice of deposition a request that documents be produced at the taking of the deposition. However, such a request must be made in compliance with the procedures for document production requests set forth in Florida Rule of Civil Procedure 1.350. That rule ordinarily permits thirty days to respond to document production requests; this has been shortened to twenty days by the Commission's Order Establishing Procedure in this docket with respect to discovery directed to matters raised in a utility's projection filing. Order No. PSC-04-0161-PCO-EI, dated February 17, 2004. The Morrison Notice was served on FPL only eight days before the date on which the deposition of Mr. Morris is presently scheduled, well short of the twenty days that FPL has to respond to a document production request under the Order Establishing Procedure. The Morrison Notice is therefore untimely and fails to comply with the requirements of Rules 1.310 and 1.350 for the production of documents at a deposition.

2. The Request for Documents in the Morrison Notice is Motivated by Competitive Interests That Are Not the Subject of This Docket.

FPL submits that the real motivation for seeking the documents Mr. Morrison relied upon in signing the PPAs is to gather competitive intelligence for Calpine Corporation ("Calpine"), the true party in interest in this proceeding and a merchant power provider. Asserting customer interests as grounds for standing, Mr. Churbuck petitioned to intervene on behalf of Calpine, a merchant power producer whose standing in this docket would be questionable because its interest is merely competitive in nature. FPL incorporates by reference the arguments in its September 27, 2004, Response to the Petitions to Intervene filed September 17, 2004, by Power Systems, Mfg., LLC ("Power

Systems”) and September 21, 2004, by Mr. Churbuck, on the point that Mr. Churbuck is not the true party in interest in this docket.

3. The Request for Documents in the Morrison Notice Seeks Documents That Are Confidential and Proprietary.

Many of the documents Mr. Morrison relied upon in signing the PPAs are or contain FPL’s confidential and proprietary information, and FPL objects to their production at Mr. Morrison’s deposition on that ground. On October 26, 2004, FPL filed a motion for protective order concerning confidential and proprietary information that Mr. Churbuck has previously requested in written discovery. FPL incorporates herein by reference the arguments made in support of its motion for protective order.

4. FPL Objects to an Excessively Lengthy Deposition of Mr. Morrison.

The Morrison Notice states that the “deposition will continue from day-to-day until complete.” FPL recognizes that this wording often appears as a matter of course in deposition notices, but cautions counsel for Mr. Churbuck that FPL will not permit the deposition of Mr. Morrison to become excessively lengthy. Mr. Morrison signed the contracts to which the Morrison Notice refers but the decision that entering into them was in the best interests of FPL’s customers is discussed and supported in detail in the testimony of Tom Hartman, who is also being deposed in this proceeding. Mr. Morrison’s role, and hence the legitimate scope of his deposition, is narrowly defined. His deposition is scheduled to commence at 1:00 PM on October 29. FPL intends to allow the deposition to continue until 5:30 PM on that day if necessary, which will afford more than ample time to cover all relevant subjects with Mr. Morrison. Extending the deposition further that day or continuing it to another day would be unduly burdensome and harassing, which FPL will not permit.

Respectfully submitted this 28th day of October, 2004.

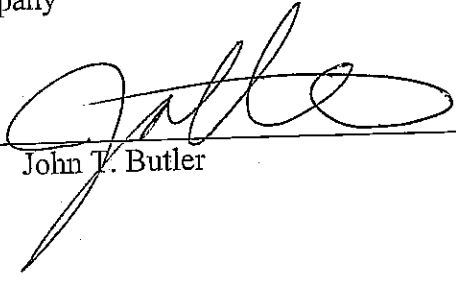
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CERTIFICATE OF SERVICE
Docket No. 040001-EI

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Objections and Responses to Thomas K. Churbuck's Notice and Re-Notice of Deposition Duces Tecum of Terry Morrison has been served by electronic delivery this 28th day of October, 2004, to the following:

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