

**Ruth Nettles**

080677-EI

090130-EI

**From:** Hayes, Annisha [AnnishaHayes@andrewskurth.com]  
**Sent:** Friday, August 14, 2009 4:18 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Anna Williams; Bethany Burgess; Brian Armstrong; Cecilia Bradley; Dan Moore; Griffiths, Meghan; Jack Leon; Jean Hartman; John McWhirter; John T. Butler; Jon Moyle; Joseph McGlothlin; Lisa Bennett; Marcus Braswell; Martha Brown; Mary Smallwood; Mendiola, Lino; Natalie Smith; Purdy, Lisa M.; Robert Scheffel Wright; Robert Sugarman; Shayla M. McNeill; Spina, Jennifer; Sundback, Mark F.; Tamela Perdue; Thomas Saporito; Vicki Kaufman; Wade Litchfield; Wiseman, Kenneth L.  
**Subject:** Docket No. 080677-EI and 090130-EI- CORRECTED SFHHA Response to FPL Motion to Compel Deposition of L. Quick  
**Attachments:** SFHHA Response to FPL Motion to Compel.pdf

Please note that in the previous filing at 3:25pm Attachment 1 contained an incorrect document. Please see attached corrected SFHHA Response to FPL Motion to Compel Deposition of L. Quick. Sorry for the inconvenience.

a. Person responsible for this electronic filing:

Kenneth L. Wiseman  
 Andrews Kurth LLP  
 1350 I Street, NW  
 Suite 1100  
 Washington, DC 20005  
 202-662-2715 (phone)  
 202-662-2739 (fax)

b. Docket No. 080677-EI and 090130-EI.

c. Document being filed on behalf of South Florida Hospital and Healthcare Association (SFHHA).

d. There is a total of 53 pages.

e. The document attached for electronic filing is: South Florida Hospital and Healthcare Association's Response to Florida Power & Light Motion to Compel Deposition of L. Quick, Motion to Quash and Motion for Protective Order.

(See attached SFHHA Response to FPL Motion to Compel.pdf)

Thank you for your attention and cooperation to this request.

Regards.  
 Annisha Hayes  
 AndrewsKurth, LLP  
 1350 I Street, NW  
 Suite 1100  
 Washington, DC 20005  
 202-662-2783  
 202-662-2739 (fax)  
 ahayes@andrewskurth.com  
 www.andrewskurth.com

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

8/14/2009

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida Power & Light Company ) Docket No. 080677-EI  
In re: 2009 depreciation and dismantlement study by Florida Power & Light Company ) Docket No. 090130-EI  
Dated: August 14, 2009

**SOUTH FLORIDA HOSPITAL AND HEALTHCARE ASSOCIATION'S  
RESPONSE TO FLORIDA POWER & LIGHT COMPANY'S  
MOTION TO COMPEL DEPOSITION OF LINDA QUICK,  
MOTION TO QUASH AND MOTION FOR PROTECTIVE ORDER**

Pursuant to Rules 28-106.204 and 28-106.212(3) of the Florida Administrative Code and Rule 1.280(c) of the Florida Rules of Civil Procedure, South Florida Hospital and Healthcare Association ("SFHHA") hereby files this response to Florida Power & Light Company's ("FPL") August 13, 2009 Motion to Compel Deposition of Linda Quick and respectfully requests that this Commission (1) deny FPL's Motion to Compel; (2) quash FPL's Notice of Taking Deposition directed to Ms. Quick; and (3) enter an order protecting Ms. Quick from the proposed deposition. In support hereof, SFHHA states as follows:

1. On August 7, 2009, FPL served SFHHA with a Notice of Taking Deposition ("Notice") of Linda Quick. Ms. Quick is the president of SFHHA. The Notice indicated that the deposition would take place on Wednesday, August 19, 2009.<sup>1</sup> FPL's Notice failed to provide any information on its face regarding the intended scope of the deposition.

2. SFHHA initiated a telephone call with FPL counsel on August 11, 2009 to determine the general areas of inquiry that FPL planned to pursue. A follow-up call concerning the same subject took place on August 12, 2009. As a result of the calls, SFHHA determined that the information FPL is seeking does not come within the scope of any issue in the issues list

<sup>1</sup> Although the Notice indicates "20089," SFHHA presumes this to mean "2009."

to which the parties have agreed in this proceeding. SFHHA also determined that the information FPL plans to seek through the proposed deposition is similar to information FPL sought from SFHHA through interrogatories regarding hospitals' electricity usage, programs to control electric costs, and health care costs. *See* FPL's First Set of Interrogatories to SFHHA, served April 24, 2009, in this docket, appended hereto as Attachment 1. SFHHA properly objected to those interrogatories on the grounds, *inter alia*, that FPL's requests sought irrelevant information and were not reasonably calculated to lead to the discovery of admissible evidence. *See* SFHHA's Objections to FPL's First Set of Interrogatories, served May 14, 2009, in this docket. FPL made no attempt to pursue the information it originally sought through the interrogatories until now, through the proposed deposition.. For these reasons, on August 12, 2009, SFHHA filed an objection to the Notice of Deposition. A copy of SFHHA's objection is appended hereto as Attachment 2.

3. On August 13, 2009, FPL filed a Motion to Compel the proposed deposition. Consistent with the information FPL provided to SFHHA in the telephone calls of August 11 and 12, in the Motion to Compel, FPL states that it seeks to explore the "alleged impacts of FPL's proposed rate increase on the SFHHA members, along with other matters related to the hospital and health care industry including costs, electric consumption, and the like." FPL's Motion to Compel at P. 5. FPL also seeks information regarding the "internal operations" of SFHHA. FPL's Motion to Compel at P. 6.

4. The information sought by FPL is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence in contravention of Rule 1.280(b) of the Florida Rules of Civil Procedure. The issue in this case is whether the rates proposed by FPL are fair, just and reasonable. A determination of that issue will be made based upon the testimony and

cost support filed by FPL, and the testimony and exhibits of parties opposing FPL's proposed rate increase. Relevant information thus concerns FPL's costs; not the costs of parties that intervened in the case. Accordingly, information about the hospital and health care industry, and costs incurred by hospitals, is not relevant to determining whether the proposed rate increase by FPL is fair, just and reasonable. "The right to discovery... does not extend to matters which are not directly relevant and which cannot reasonably lead to relevant matters." *Manatee County v. Estech General Chems. Corp.*, 402 So. 2d 75, 76 (Fla. Dist. Ct. App. 2d Dist. 1981), citing *Miami v. Fraternal Order of Police*, 346 So.2d 100 (Fla.3d DCA 1977); *Hoogland v. Dollar Land Corporation, Ltd.*, 330 So.2d 509 (Fla. 4th DCA 1976). The information that FPL seeks regarding SFHHA's internal operations also is irrelevant to determining whether the rates proposed by FPL are fair, just and reasonable. The purpose of discovery is to "procure evidence pertinent to the issues" and "is in no sense designed to afford a litigant an avenue to pry into his adversary's business or go on a fishing expedition to uncover business methods, confidential relations, or other facts pertaining to the business." *Hollywood Beach Hotel & Golf Club, Inc. v. Gilliland*, 191 So. 30, 32 (Fla. 1939).

5. Moreover, to the extent that FPL seeks information about the rate impact on the individual hospitals, the costs incurred by the hospitals, and the electric consumption of the hospitals, FPL already possesses that information. FPL knows the rates it intends to charge each class of customers. It possesses the bills for each member of SFHHA that takes service from FPL. It knows the specific consumption of each of SFHHA's members. FPL also possesses the records of usage patterns by each of the hospitals. With that information, FPL easily can determine the impact of the proposed rate increase on the hospitals. FPL is far better situated to

perform the calculation than SFHHA, which does not possess the comprehensive records that FPL possesses regarding the electricity bills and usage of SFHHA's members.

6. Furthermore, neither SFHHA nor Ms. Quick have the expertise to undertake the analysis that FPL purports to want. Nor does Ms. Quick possess the information that FPL seeks. Ms. Quick is not the chief financial officer of any of the institutions that are members of SFHHA. Nor does she direct the operations of any hospital. Thus, she is not privy to the specific financial circumstances of the individual hospitals that are members of the association. Accordingly, in her role as president of SFHHA, Ms. Quick is not in a position to evaluate the specific impact FPL's rate proposal will have upon individual hospitals. Only the individual hospitals possess that information, and the hospitals did not individually intervene in this proceeding. Ms. Quick only would be in a position to testify that an increase of base rates of 50 percent or more, as proposed by FPL, represents an extraordinary proposal. FPL hardly needs a deposition to elicit that information.

7. The information sought through the proposed deposition also does not fall within the scope of any of the issues identified in the Issues List that was agreed to by the participants in this proceeding. *See, e.g.*, Prehearing Statement of SFHHA, filed August 6, 2009, in this docket. "To fall within the scope of discovery, there must be a logical connection between the information sought and the issues in the case." Order No. PSC-00-2035-PCO-TP, issued June 13, 2000, in Docket No. 991534-TP (citing Order No. PSC-98-0465-FOF-TL, issued March 31, 1998, in Docket No. 970808-TL); *see also* Rule 1.280(b). In no instance does information regarding the internal operations of SFHHA or the business activities of the individual hospitals relate to the issues that the parties have agreed should be explored at hearing. SFHHA stated this

fact in its objections to the proposed deposition. Notably, however, FPL has not identified in its Motion to Compel a single issue to which the information it seeks would properly relate.

8. FPL bears the burden to demonstrate the relevancy of the information it seeks; “[W]hen relevancy is not apparent, the burden is on the party *seeking* discovery to show the relevancy of the discovery request.” *Barrington v. Mortgage IT, Inc.*, 2007 U.S. Dist. LEXIS 90555, 10-11 (S.D. Fla. Dec. 10, 2007) (emphasis in original). The foregoing shows that FPL has failed to meet its burden.

9. In this circumstance, Commission precedent supports denial of FPL’s Motion. The Commission previously has granted a Motion to Quash when the Notice for Taking Deposition did not provide any information regarding the relevancy or intended scope of the proposed deposition. In Order No. PSC-95-1134-PCO-WS, issued September 11, 1995, in Docket No. 950495-WS, the Commission granted a Motion to Quash because it was “impossible to determine whether the area of inquiry would be relevant to the subject matter in the proceeding or could lead to the discovery of admissible evidence.”

10. It also should be noted that Ms. Quick is not a witness in this proceeding. Nonetheless, FPL claims that the deposition is sought for the purposes of discovery and for use at trial. However, FPL failed to explain how the testimony of a non-witness would be moved into evidence and accepted into the record. Under Rule 1.330(a)(1) and (3) of the Florida Rules of Civil Procedure, a deposition may be used for the purpose of impeaching a witness or if the deponent is unavailable. However, neither of those provisions would apply to a deposition of Ms. Quick. Rule 1.330(a)(2) allows for the use of a deposition directed to a corporation, partnership or association but is subject, *inter alia*, to Rule 1.310(b)(6). Under Rule 1.310(b)(6), the party noticing the deposition must “designate with reasonable particularity the matters on

which examination is requested.” Under that rule, the corporation, partnership or association, as applicable, will designate a deponent to discuss the matters identified, and the deposition then can be introduced into evidence subject to applicable objections such as relevance. However, FPL failed to comply with Rule 1.310(b)(6) because it did not “designate with reasonable particularity the matters on which examination is requested.” Furthermore, it directed its notice of deposition to Ms. Quick, not to SFHHA. Thus, the use of a deposition under Rule 1.330(a)(2) does not apply in any event. *See Chiquita International Limited v. Fresh Del Monte Produce, N.V.*, 705 So. 2d 112 (Fla. 3rd DCA 1998). This provides an additional reason why a deposition of Ms. Quick is not only unnecessary, but also would produce irrelevant and immaterial information in contravention of Sections 120.569(2)(g) and 120.569(2)(k)(1) of the Florida Statutes.

11. According to its Motion to Compel, FPL believes that because it has been subject to “thousands of discovery requests” and because it will produce “9 FPL employees for lengthy depositions to be taken over a 2 week period,” it entitled to be granted the right to depose Ms. Quick. FPL’s Motion to Compel at P 8. The amount of discovery directed to FPL is irrelevant as to whether a deposition of Ms. Quick is appropriate.

12. SFHHA has filed both initial and rebuttal testimony in this proceeding through three expert witnesses, and has responded to interrogatories and requests for the production of documents. SFHHA is also in the process of preparing responses to approximately 22 interrogatories and 13 requests for production of document propounded by FPL regarding its testimony in this case. SFHHA’s expert witnesses will be available for cross-examination at the hearing scheduled to begin on August 24, 2009. These experts are fully competent and able to



provide information regarding the positions taken by SFHHA that are at issue in this rate proceeding.

13. Attempts to depose Ms. Quick for such information inflict annoyance, oppression, and undue burden on both Ms. Quick and SFHHA. FPL has waited until the last minute to attempt to conduct discovery upon Ms. Quick. Per the Order Establishing Procedure in this docket, Order No. PSC-09-0159-PCO-EI, issued March 20, 2009, all discovery shall be completed by August 21, 2009. The purported need for the information that FPL seeks has not recently come to light. FPL just as easily could have attempted to depose Ms. Quick in the previous weeks subsequent to the filing of SFHHA's testimony in mid-July. To time the deposition as proposed by FPL thus may be an attempt to interfere with the hearing preparations of SFHHA's attorneys. The Commission has noted that a discovery cut-off date is typically imposed approximately one week prior to hearing "to protect parties who are preparing for hearing from having to spend time responding to discovery in the days just before the hearing." Despite the cut-off in this proceeding, "the parties in this proceeding, who have long practiced before the Commission, should be aware of the Commission's desire to avoid the type of last minute discovery requests that are being pursued... and the disputes that can arise from them." See Order No. PSC-04-0546-PCO-EI, issued May 26, 2004, in Docket No. 031033-EI. FPL surely is aware of this admonition from the Commission. Thus, to the extent that FPL believed it had a legitimate purpose in deposing Ms. Quick, it should have sought to do so substantially in advance of the discovery cut-off date. Not only did FPL wait until the last minute to attempt to depose Ms. Quick, but Ms. Quick is also the only intervenor that FPL seeks to have deposed who is also not a witness in this proceeding. FPL Motion to Compel at P. 8.

14. Pursuant to Rule 1.280(c) under the Florida Rules of Civil Procedure, upon motion by a party or person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires. The prehearing officer in this proceeding has the discretion to weigh the competing interests of the parties and determine that the deposition of Ms. Quick is not necessary or warranted and protect her against oppressive discovery. See Rule 1.280 of the Florida Rules of Civil Procedure, Rule 28-106.206 of the Florida Administrative Code, and PSC-05-0231-CFO-WU, issued March 1, 2005, in Docket No. 010503-WU. SFHHA has demonstrated that the information sought on its face is not relevant to the scope of this proceeding and does not correlate to any of the issues identified by the parties in this proceeding. FPL has not provided any information to the contrary. SFHHA has also demonstrated that not only does FPL possess the information or possess the ability to obtain the information it allegedly seeks, but that Ms. Quick is not aware of the information. FPL has neither demonstrated that a deposition of Ms. Quick is necessary, nor provided evidence demonstrating that the information may not be gained by any other source without undue burden or undue hardship. The deposition will provide little to no benefit to FPL and there is no reason to believe that relevant information will be adduced. Instead, the deposition would cause harm to Ms. Quick by taking her away from other commitments and otherwise interfere with SFHHA's hearing preparations. The interests of SFHHA and Ms. Quick, and the burden that would be imposed upon Ms. Quick and SFHHA's counsel, thus clearly outweigh any interest FPL purports to have in the information it attempts to seek as discussed above.

15. For these reasons, SFHHA respectfully requests that the Commission: (1) deny FPL's Motion to Compel; (2) quash FPL's Notice of Deposition directed to Ms. Quick dated

August 7, 2009; and (3) enter an order protecting Ms. Quick from the harassment, annoyance, and oppression resulting from proposed deposition in this proceeding.

Respectfully submitted this 14<sup>th</sup> day of August, 2009.

Lino Mendiola  
Meghan Griffiths  
111 Congress Avenue  
Suite 1700  
Austin, TX 78701  
Tel: (512) 320-9200  
Fax: (512) 320-9292

/s/ Kenneth L. Wiseman  
Kenneth L. Wiseman  
Mark F. Sundback  
Jennifer L. Spina  
Lisa M. Purdy  
Andrews Kurth LLP  
1350 I Street NW  
Suite 1100  
Washington, D.C. 20005  
Ph. (202) 662-2700  
Fax. (202) 662-2739

**Attorneys for the South Florida Hospital and Healthcare Association**

# **ATTACHMENT 1**

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by )  
Florida Power & Light Company. )  
\_\_\_\_\_ )

Docket No: 080677-EI  
Filed: April 24, 2009

**FLORIDA POWER & LIGHT COMPANY'S  
FIRST SET OF INTERROGATORIES TO SOUTH FLORIDA  
HOSPITAL AND HEALTHCARE ASSOCIATION (NOS. 1 - 29)**

Florida Power & Light Company ("FPL") pursuant to Rule 1.340, Florida Rules of Civil Procedure, hereby propounds the following interrogatories on the South Florida Hospital and Healthcare Association ("SFHHA"), and requests that they be answered separately, fully and under oath within thirty (30) days.

**DEFINITIONS**

1. "You," "yours" and/or "yourselves" mean SFHHA, and any attorney, employee, agent, representative or other person acting or purporting to act on the behalf of SFHHA including all persons who will offer testimony on SFHHA's behalf in this proceeding.
2. "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.
3. "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 actual or constructive possession, custody, care or control, which pertain directly or indirectly, in whole or in part, either to any of the subjects listed below or to any other matter relevant to the issues in this

action, or which are themselves listed below as specific documents, including, but not limited to: correspondence, memoranda, notes, messages, diaries, minutes, books, reports, charts, ledgers, invoices, computer printouts, computer discs, microfilms, video tapes or tape recordings.

4. "FPL" means Florida Power & Light Company.
5. "Identify" shall mean: (1) when used with respect to a person, to state the person's full name, present or last known business address; and present or last known employer and position; (2) when used in respect to a document, to describe the document by character (e.g., letter, report, memorandum, etc.), author, date, and to state its present location and custodian; (3) when used with respect to an oral communication, to identify the persons making and receiving the communication, the approximate date of and time of the communication, and a summary of its content or substance.
6. "Witness" means any person, including but not limited to expert witnesses, whom you intend to call to testify in this proceeding.

#### INSTRUCTIONS

7. If any of the following interrogatories cannot be answered in full after exercising due diligence to secure the information, please so state and answer to the extent possible, specifying your inability to answer the remainder, and state whatever information you have concerning the unanswered portion. If your answer is qualified in any respect, please set forth the details of such qualifications.

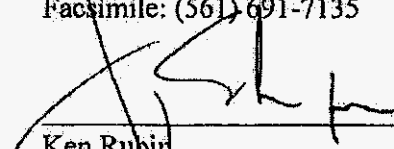
8. If you object to fully identifying a document or oral communication because of a privilege, you must nevertheless provide the following information, unless divulging the information would disclose the privileged information:
  - a. the nature of the privilege claimed (including work product);
  - b. the date of the document or oral communication;
  - c. if a document; its type (correspondence, memorandum, facsimile etc.), custodian, location, and such other information sufficient to identify the document for a subpoena duces tecum or a document request, including where appropriate the author, the addressee, and, if not apparent, the relationship between the author and addressee;
  - d. if an oral communication, the place where it was made, the names of the persons present while it was made, and, if not apparent, the relationship of the persons present to the declarant; and
  - e. the general subject matter of the document or the oral communication.
9. If you object to all or part of any interrogatory and refuse to answer that part, state your objection, identify the part to which you are objecting, and answer the remaining portion of the interrogatory.
10. Whenever an interrogatory calls for information which is not available to you in the form requested, but is available in another form, or can be obtained at least in part from other data in your possession, so state and either supply the information requested in the form in which it is available, or supply the data from which the information requested can be obtained.
11. The singular 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."

12. These interrogatories shall be answered under oath by you or through your agent who is qualified to answer and who shall be fully identified, with said answers being served as provided pursuant to the Florida Rules of Civil Procedure or order of the Commission.

Respectfully submitted this 24<sup>th</sup> day of April, 2009.

R. Wade Litchfield, Vice President of Regulatory  
Affairs and Chief Regulatory Counsel  
John T. Butler, Managing Attorney  
Ken Rubin, Senior Attorney  
Attorneys for Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, Florida 33408-0420  
Telephone: (561) 691-7101  
Facsimile: (561) 691-7135

By:

  
\_\_\_\_\_  
Ken Rubin  
Florida Bar No. 349038



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically and by United States Mail this 24th day of April, 2009, to the following:

Lisa Bennett, Esquire  
Anna Williams, Esquire  
Martha Brown, Esquire  
Jean Hartman, Esquire  
Office of the General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-1400  
[LBENNETT@PSC.STATE.FL.US](mailto:LBENNETT@PSC.STATE.FL.US)  
[ANWILLIA@PSC.STATE.FL.US](mailto:ANWILLIA@PSC.STATE.FL.US)  
[mbrown@psc.state.fl.us](mailto:mbrown@psc.state.fl.us)  
[JHARTMAN@PSC.STATE.FL.US](mailto:JHARTMAN@PSC.STATE.FL.US)

Robert A. Sugarman, Esquire  
D. Marcus Braswell, Jr., Esquire  
c/o Sugarman & Susskind, P.A.  
100 Miracle Mile, Suite 300  
Coral Gables, FL 33134  
Attorneys for I.B.E.W. System Council U-4  
[sugarman@sugarmansusskind.com](mailto:sugarman@sugarmansusskind.com)  
[mbraswell@sugarmansusskind.com](mailto:mbraswell@sugarmansusskind.com)

J.R. Kelly, Esquire  
Joseph A. McGlothlin, Esquire  
Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, Room 812  
Tallahassee, FL 32399-1400  
Attorneys for the Citizens of the State  
of Florida  
[Kelly.jr@leg.state.fl.us](mailto:Kelly.jr@leg.state.fl.us)  
[mcglothlin.joseph@leg.state.fl.us](mailto:mcglothlin.joseph@leg.state.fl.us)

Robert Scheffel Wright, Esquire  
John T. LaVia, III, Esquire  
Young van Assenderp, P.A.  
225 South Adams Street, Suite 200  
Tallahassee, Florida 32301  
Attorneys for the Florida Retail Federation  
[swright@yvvlaw.net](mailto:swright@yvvlaw.net)  
[jlavia@yvvlaw.net](mailto:jlavia@yvvlaw.net)

Kenneth L. Wiseman, Esquire  
Mark F. Sundback, Esquire  
Jennifer L. Spina, Esquire  
Lisa M. Purdy, Esquire  
Andrews Kurth LLP  
1350 I Street, NW, Suite 1100  
Washington, DC 20005  
Attorneys for South Florida Hospital and  
Healthcare Association ("SFHHA")  
[kwiseman@andrewskurth.com](mailto:kwiseman@andrewskurth.com)  
[msundback@andrewskurth.com](mailto:msundback@andrewskurth.com)  
[jspina@andrewskurth.com](mailto:jspina@andrewskurth.com)  
[lisapurdy@andrewskurth.com](mailto:lisapurdy@andrewskurth.com)

By: 

Ken Rubin

## INTERROGATORIES

1. Identify each consultant, expert, SFHHA member, witness, or other person, including but not limited to any person or entity not yet formally retained, who will provide testimony, documents, exhibits, or other materials and/or support on behalf of the SFHHA in this Docket. For each such person or entity, identify the date initially consulted, the date of formal retention (if any), and describe the terms of the financial arrangements or agreement pursuant to which that person or entity will be compensated for work and/or services provided in this case.

2. With respect to each and every witness you intend to have testify live or provide pre-filed testimony in this docket on behalf of the SFHHA, including but not limited to witnesses who will provide direct testimony, rebuttal testimony, testimony at service hearings, and otherwise, please state the following:

- a. The witness's business address;
- b. The witness's qualifications;
- c. The scope of the witness's employment or retention in the pending matter;
- d. The witness's general litigation experience, including the percentage of work performed for regulatory bodies or public counsel.
- e. Identify with specificity the witness's appearances before regulatory or administrative bodies or courts of law, specifying which regulatory or administrative body or court, the caption or style of each proceeding or case and the date of each appearance, where for purposes of this interrogatory the term "appearance" shall include the submittal of pre-filed testimony.

3. Identify each member of the SFHHA that owns or operates facilities in the FPL service territory and identify each such facility by name, street address, rate schedules and account numbers for all billing accounts at each facility.

4. Identify each supplier of electricity to facilities in Florida owned or operated by any member of the SFHHA, excluding those served by FPL, and identify each such facility by name, the name of the supplier, the street address of the facility and the rate schedule(s) pursuant to which the facility is served.

5. For each facility identified in Interrogatory No. 3, identify the facility manager or other person responsible for energy management at such facility during the past 5 years, together with his or her current business address.

6. Describe programs, policies, practices, controls and any and all other efforts that members of the SFHHA have taken to reduce the kWh consumption of electricity at each facility identified in answer to Interrogatory No. 3. Summarize the results of such efforts for the period 1999 through 2009 year to date, as well as projected results through 2012. Additionally, in the event any such program, policy, practice or control has been reduced to written form, please identify for each such document the title of the document, the author of the document, the date the document was produced or created, and the current custodian of the document or documents.

7. Describe programs, policies, practices, controls and any and all other efforts that members of the SFHHA have taken to reduce the kWh consumption of electricity at each facility identified in answer to Interrogatory No. 4. Summarize the results of such efforts for the period 1999 through 2009 year to date, as well as projected results through 2012. Additionally, in the event any such program, policy, practice or control has been reduced to written form, please identify for each such document the title of the document, the author of the document, the date the document was produced or created, and the current custodian of the document or documents.



8. Describe programs, policies, practices, controls and any and all other efforts that members of the SFHHA have taken to reduce the billed kW demand of electricity at each facility identified in answer to Interrogatory No. 3. Summarize the results of such efforts for the period 1999 through 2009 year to date, as well as projected results through 2012. Additionally, in the event any such program, policy, practice or control has been reduced to written form, please identify for each such document the title of the document, the author of the document, the date the document was produced or created, and the current custodian of the document or documents.

9. Describe programs, policies, practices, controls and any and all other efforts that members of the SFHHA have taken to reduce the billed kW demand of electricity at each facility identified in answer to Interrogatory No. 4. Summarize the results of such efforts for the period 1999 through 2009 year to date, as well as projected results through 2012. Additionally, in the event any such program, policy, practice or control has been reduced to written form, please identify for each such document the title of the document, the author of the document, the date the document was produced or created, and the current custodian of the document or documents.

10. Describe programs, policies, practices, controls and any and all other efforts that members of the SFHHA have taken to reduce or control other costs (aside from the costs of electricity) at each facility identified in answer to Interrogatory Nos. 3 and 4. Summarize the results of such efforts for the period 1999 through 2009 year to date, as well as projected results through 2012. Additionally, in the event any such program, policy, practice or control has been reduced to written form, please identify for each such document the title of the document, the author of the document, the date the document was produced or created, and the current custodian of the document or documents.

11. Identify any instance for the period from 1999 to the present in which a member of the SFHHA has increased or otherwise adjusted its billed kW demand in order to qualify for a specific rate in FPL service territory, the account(s) or premise(s) at which such action occurred, and the approximate time frame relating to such action.

12. Describe the efforts or activities undertaken by any member of the SFHHA or its agents from 2005 to the present to disseminate fliers, handouts, documents, materials, letters, and any and all other written or computer generated documents to members, prospective members and others that discuss, address, refer to or otherwise mention FPL including but not limited to the positions or issues that are the subject of this pending case.

13. List and describe each rate proceeding in which the SFHHA or any of its members, including parent corporations of members and otherwise affiliated corporations or business entities of members, have participated in Florida or elsewhere in the U.S. in last 10 years.

14. Assuming FPL is granted any level of rate relief in this Docket, explain in detail how the SFHHA would propose to allocate this increase among FPL's rate classes and any and all bases for such allocation. In your response, please identify with specificity the parity levels for all rate classes under the SFHHA approach.

15. Please provide the escalation rate or rates of health care costs experienced by the patients of SFHHA member facilities from 1999 to the present.



16. Please provide the escalation rate or rates of health care costs experienced throughout the United States from 1999 to the present. In your answer please provide the national figures, as well as a breakdown of said figures by state and by region.

17. Please identify any and all standards, measures, studies, surveys, publications, documents and any and all other materials that the SFHHA and/or the members of the SFHHA recognize or consider to be authoritative as an index for measuring the escalation of health care costs from 1999 to the present.

18. Please identify any and all standards, measures, studies, surveys, publications, documents and any and all other materials that the SFHHA and/or the members of the SFHHA utilize as indices or benchmarks for measuring the escalation of health care costs from 1999 to the present.

19. For each member of the SFHHA, please provide the following information by month and by year, from January 1, 2005 through the date of your answer to this interrogatory:

- a. The number of individual accounts for which a bill is rendered.
  
- b. The kWh sales.
  
- c. The billed monthly kW demand.
  
- d. The total customer charges paid.
  
- e. The total base customer, demand, energy and any other non-fuel charges billed.
  
- f. The kWh on peak.
  
- g. The kWh off-peak.

h. The maximum monthly kW demands.

i. The maximum monthly on-peak kW demands.

20. Please identify with specificity any and all documents, studies, analyses, exhibits, materials, and other written and/or computer generated materials that you intend to file as exhibits to testimony in this case, and for each, identify the author, the date the document was created or generated, the title of the document, and the current custodian of said exhibit.

21. If FPL rates are revised in this proceeding, do you contend that any adjustments should be made to the 12 CP and 1/13<sup>th</sup> cost of service methodology? If so, state and describe in detail the basis for your contention, including the methodology you would advocate.

22. If FPL's rates are revised in this proceeding, do you contend that the rate of return for each class should be the same (i.e., there should be rate parity)? If not, state and describe in detail your contention or position together with the basis for your contention. If you contend that the rate for a class should not be based on the cost of serving that class, please so state and describe what basis other than the cost of service should be used and the justification therefore.



23. Do you propose any adjustments to the structure, terms or conditions of any of FPL's rate classes? If so, state and describe in detail your proposal together with the basis for your proposal.

24. Identify each and every member of SFHHA and for each member provide the name and address of its officers, and other designated representatives, or contact person(s). If any SFHHA member identified in response to this interrogatory is a subsidiary of or is affiliated with any corporation or other business entity, please identify said parent corporation or other affiliated business entity and describe the legal relationship between the SFHHA member and the other corporation or related business entity.

25. Describe the process by which, and under what authority, the SFHHA obtained its members' approval to intervene in this proceeding.

26. Please identify:
- a) All board members and officers of the SFHHA from 2005 to the present;
  - b) The professional, employment and educational qualifications of all said board members and officers of the SFHHA identified in response to subsection 26(a) above;
  - c) If the board members identified in subsection 26(a) above represent only a segment of the members of the SFHHA, for each such board member please identify the specific segment of the membership that he or she represents;
  - d) For all board members and officers of the SFHHA identified in response to subsection 26(a) above, please identify for each his or her total compensation, together with all benefits provided to each board member and officer incident to his or her employment with the SFHHA member facility or the SFHHA organization, from 2005 to the present;
  - e) The membership fees, together with costs to or contributions by each member of the SFHHA, paid or payable by or on behalf of said individual members to become or remain a member of the SFHHA and to participate in SFHHA business and proceedings from 2005 to the present;
  - f) The projected membership fees, together with projected costs to or contributions by each member of the SFHHA, to become or remain a member of the SFHHA and to participate in SFHHA business and proceedings from 2009 through 2012;
  - g) All committees, subcommittees, teams, or other groups or associations, if any, within the SFHHA from 2005 to the present, by title, name, or other form of identification; and
  - h) For each such committee, subcommittee, team, or other group or association identified in subsection 26(g) above, please identify by name and SFHHA member organization any and all individuals serving on said committee, subcommittee, team, group or association.

27. For the period of 2005 through 2009, please provide a breakdown of all annual operating costs for each SFHHA member hospital by major cost component. For purposes of this interrogatory, "major cost component" is defined as any cost component representing a minimum of 2% of the SFHHA member hospital's operating budget. This breakdown should identify total dollars for each of the major cost components, and must specify as a separate and distinct line item entry (whether considered a "major cost component" or not under the definition provided) the total cost of electric service from FPL or other provider of electric service.

28. For each consultant, expert, SFHHA member, witness, or other person, including but not limited to any person or entity not yet formally retained, who will provide testimony, documents, exhibits, or other materials and/or support on behalf of the SFHHA in this Docket, please identify by jurisdiction, docket number, and case name each and every case or matter in which said consultant, expert, SFHHA member, witness, or other person provided testimony on behalf of any hospital, healthcare provider, or association or group of hospitals and/or health care providers from 1999 to the present.

29. Please identify by jurisdiction, docket number and case number each and every case or regulatory matter from 1999 to the present in which your attorneys, Andrews Kurth LL P, have formally appeared on behalf of any hospital, healthcare provider, or association or group of hospitals and/or healthcare providers.

I HEREBY CERTIFY that I am an authorized representative of \_\_\_\_\_, and that the answers to these Interrogatories are true and correct.

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF FLORIDA            )  
  ) ss:  
COUNTY OF                    )

I HEREBY CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2009, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_ as identification and who did take an oath, and he/she acknowledged before me that he/she executed the foregoing answers to interrogatories as his/her free act and deed, that the statements contained therein are true and correct, and that said answers are given under oath.

IN WITNESS WHEREOF, I have hereunto set my hand and seal in the County and State aforesaid as of this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public, State of Florida



## **ATTACHMENT 2**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for rate increase by Florida Power & Light Company	) ) )	Docket No. 080677-EI
In re: 2009 depreciation and dismantlement study by Florida Power & Light Company	) )	Docket No. 090130-EI Dated: August 12, 2009

**OBJECTIONS OF THE SOUTH FLORIDA HOSPITAL AND  
HEALTHCARE ASSOCIATION TO  
FLORIDA POWER & LIGHT COMPANY'S  
NOTICE OF TAKING DEPOSITION**

South Florida Hospital and Healthcare Association ("SFHHA") submits the following Objections to Florida Power & Light Company's ("FPL") August 7, 2009 Notice of Taking Deposition ("Notice") regarding Ms. Linda Quick. SFHHA opposes the Notice and believes FPL has provided no support that would justify Ms. Quick's deposition.

**I. Preliminary Nature of These Objections**

SFHHA's objections stated herein are preliminary in nature. SFHHA is furnishing its objections consistent with the time frame set forth in the Commission's Order Establishing Procedure, Order No. PSC-09-0159-PDC-EI dated March 20, 2009 (the "Order Establishing Procedure") and Rule 1.410(d) of the Florida Rules of Civil Procedure. Should additional grounds for objection be discovered, SFHHA reserves the right to supplement or modify its objections prior to the date of the deposition proposed by FPL.

**II. General Objections**

SFHHA reasserts its general objections previously made with respect to FPL's First Set of Interrogatories and Request for Production of Documents propounded to SFHHA in the captioned proceeding. In particular, SFHHA objects to the Deposition to the extent it would require the disclosure of information protected by attorney-client privilege, the work product

doctrine, or any other applicable privilege or protection afforded by law. SFHHA also objects to providing information that is proprietary, confidential business information and objects to providing information to the extent that it is already in the public record before the Florida Public Service Commission and is available to FPL through other procedures.

### **III. Further Discussion of General Objections and Specific Objections**

The proposed deposition of Ms. Quick is not calculated to lead to the discovery of admissible evidence. It is unreasonable, oppressive and designed as a fishing expedition and for purposes of annoyance and harassment. The Notice fails to describe or otherwise provide any detail about the proposed deposition. As such, it is unreasonably broad in scope, particularly because Ms. Quick is not an expert witness, nor has she sponsored any testimony in this proceeding. Any information to be garnered from Ms. Quick is likely subject to attorney-client privilege or is protected under the work product doctrine. Additionally, to the extent that FPL seeks information regarding the activities and/or decisions of SFHHA members, the attempt to obtain such information is objectionable because the activities and/or decisions by SFHHA's members are not at issue in this proceeding. Information about such activities and/or decisions is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence in this rate proceeding. (*See, e.g.*, SFHHA's Objections to FPL's First Set of Interrogatories and Request for Production of Documents filed May 14, 2009.) Based upon SFHHA's understanding of the intended scope of the deposition as derived from telephone calls with counsel for FPL, none of the information sought from Ms. Quick would fall within the scope of any of the issues identified in the Issues List agreed to by the participants in this proceeding. *See, e.g.*, Prehearing Statement of SFHHA filed on August 6, 2009. Nor has FPL explained how it could move into evidence any information obtained during the deposition.

If the deposition were to go forward, it would cause harm by taking Ms. Quick away from otherwise commitments with no reason to believe that relevant information will be adduced. FPL has not shown why a deposition of Ms. Quick is necessary, nor has FPL provided any evidence showing that the information it seeks may not be gained by any other source without undue burden or undue hardship. In this regard, Ms. Quick is not the best source of evidence regarding SFHHA's positions in the FPL rate case. These positions and the basis for such positions are best explored through discovery directed to SFHHA's three expert witnesses.

SFHHA has filed initial and rebuttal testimony by three expert witnesses. SFHHA has also responded to 38 interrogatories and 22 requests for production of documents propounded by FPL. Furthermore, SFHHA is in the process of preparing responses to an additional 22 interrogatories and 13 requests for production of documents propounded by FPL. In addition, SFHHA's three expert witnesses will be available for cross-examination at the hearing scheduled to begin on August 24, 2009. SFHHA notes that the cumulative effect of the discovery sought by FPL upon SFHHA in this proceeding makes FPL's request for the deposition overly burdensome. Therefore, any deposition of Ms. Quick is not only unnecessary, but would also produce irrelevant and immaterial information in contravention of Sections 120.569(2)(g) and 120.569(2)(k)(1) of the Florida Statutes.

#### IV. CONCLUSION

For these reasons, SFHHA objects to and opposes FPL's Notice of Taking Deposition of Ms. Linda Quick.

Respectfully submitted this 12<sup>th</sup> day of August, 2009.

Lino Mendiola  
Meghan Griffiths  
111 Congress Avenue  
Suite 1700  
Austin, TX 78701  
Tel: (512) 320-9200  
Fax: (512) 320-9292

/s/ Kenneth L. Wiseman  
Kenneth L. Wiseman  
Mark F. Sundback  
Jennifer L. Spina  
Lisa M. Purdy  
Andrews Kurth LLP  
1350 I Street NW  
Suite 1100  
Washington, D.C. 20005  
Ph. (202) 662-2700  
Fax. (202) 662-2739

**Attorneys for the South Florida Hospital and Healthcare Association**

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic mail and U.S. mail to the following parties on this 12th day of August, 2009 to the following:

Robert A. Sugarman  
I.B.E.W. System Council U-4  
c/o Sugarman Law Firm  
100 Miracle Mile, Suite 300  
Coral Gables, FL 33134

Jean Hartman, Lisa Bennett  
Martha Brown, Anna Williams  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Jack Leon, Natalie Smith  
Senior Attorney  
Florida Power & Light Company  
9250 W. Flagler Street, Suite 6514  
Miami, Florida 33174

John T. Butler  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, FL 33408-0420

Robert Scheffel Wright  
John T. LaVia  
c/o Florida Retail Federation  
225 South Adams Street, Suite 200  
Tallahassee, FL 32301

Jon C. Moyle, Jr  
Vicki Gordon Kaufman  
Keefe Anchors Gordon & Moyle  
118 North Gadsden Street  
Tallahassee, FL 32301

Tamela Ivey Perdue  
Associated Industries of Florida  
516 North Adams Street  
Tallahassee, FL 32301  
Phone: 850-224-7173

J.R. Kelly, Joseph McGlothlin  
Office of Public Counsel  
c/o The Florida Legislature  
111 W. Madison Street, Room 812  
Tallahassee, FL 32399-1400

Thomas Saporito  
Saporito Energy Consultants  
Post Office Box 8413  
Jupiter, FL 33468-8413

Bethany Burgess, Brian P. Armstrong  
Nabors, Giblin & Nickerson, PA  
1500 Mahan Drive, Suite 200  
Tallahassee, FL 32308

Mr. Wade Litchfield  
Florida Power & Light Company  
215 South Monroe Street, Suite 810  
Tallahassee, FL 32301-1859

Bill McCollum, Cecilia Bradley  
Office of the Attorney General  
The Capitol - PL01  
Tallahassee, FL 32399-1050

John W. McWhirter, Jr  
c/o McWhirter Law Firm  
PO Box 3350  
Tampa, FL 33601

Dan Moore/Stephanie Alexander  
Association For Fairness In Rate Making  
316 Maxwell Road, Suite 400  
Alpharetta, GA 30009

Shayla L. McNeill, Capt, USAF  
Federal Executive Agencies  
c/o AFLSA/JACL-ULT  
139 Barnes Drive, Suite 1  
Tyndall AFB, FL 32403-5319

/s/ Kenneth L. Wiseman  
Kenneth L. Wiseman

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic mail and U.S. mail to the following parties on this 14th day of August, 2009 to the following:

Robert A. Sugarman  
I.B.E.W. System Council U-4  
c/o Sugarman Law Firm  
100 Miracle Mile, Suite 300  
Coral Gables, FL 33134

Jean Hartman, Lisa Bennett  
Martha Brown, Anna Williams  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Jack Leon, Natalie Smith  
Senior Attorney  
Florida Power & Light Company  
9250 W. Flagler Street, Suite 6514  
Miami, Florida 33174

John T. Butler  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, FL 33408-0420

Robert Scheffel Wright  
John T. LaVia  
c/o Florida Retail Federation  
225 South Adams Street, Suite 200  
Tallahassee, FL 32301

Jon C. Moyle, Jr  
Vicki Gordon Kaufman  
Keefe Anchors Gordon & Moyle  
118 North Gadsden Street  
Tallahassee, FL 32301

Tamela Ivey Perdue  
Associated Industries of Florida  
516 North Adams Street  
Tallahassee, FL 32301  
Phone: 850-224-7173

Mary F. Smallwood  
Ruden Law Firm  
215 South Monroe Street, Suite 815  
Tallahassee, FL 32301

J.R. Kelly, Joseph McGlothlin  
Office of Public Counsel  
c/o The Florida Legislature  
111 W. Madison Street, Room 812  
Tallahassee, FL 32399-1400

Thomas Saporito  
Saporito Energy Consultants  
Post Office Box 8413  
Jupiter, FL 33468-8413

Bethany Burgess, Brian P. Armstrong  
Nabors, Giblin & Nickerson, PA  
1500 Mahan Drive, Suite 200  
Tallahassee, FL 32308

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Florida Power & Light Company  
215 South Monroe Street, Suite 810  
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139 Barnes Drive, Suite 1  
Tyndall AFB, FL 32403-5319

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