

Ruth Nettles

090505 - EI

From: WELLS, KATHY [Kathy.Wells@fpl.com]
Sent: Friday, February 26, 2010 4:49 PM
To: Filings@psc.state.fl.us
Cc: Lisa Bennett; 'Kelly.jr@leg.state.fl.us'; Charles Rehwinkel; Charles Beck; 'cecilia.bradley@myfloridalegal.com'; 'vkaufman@kagmlaw.com'; 'jmoyle@kagmlaw.com'
Subject: Electronic Filing / Docket 090505-EI / FPL's Notice of Taking Deposition of David Dismukes
Attachments: 2.26.10.Notice of Taking Dismukes Depo Duces Tecum.pdf

Electronic Filing

a. Person responsible for this electronic filing:

John T. Butler, Esq.
700 Universe Boulevard
Juno Beach, FL 33408
561-304-5639
John.Butler@fpl.com

b. Docket No. 090505-EI

In Re: Review of replacement costs associated with the February 26, 2008 outage on Florida Power & Light's electrical system

c. The document is being filed on behalf of Florida Power & Light Company.

d. There are a total of 6 pages.

e. The document attached for electronic filing is Florida Power & Light Company's Notice of Taking Telephonic Deposition, Duces Tecum of Dr. David Dismukes

John T. Butler
Managing Attorney
Florida Power & Light Company
(561) 304-5639
(561) 691-7135 Fax
John.Butler@fpl.com

DOCUMENT NUMBER-DATE

01326 FEB 26 2010

FPSC-COMMISSION OF ELECTRICITY

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Review of replacement fuel costs)
associated with the February 26, 2008 outage)
on Florida Power & Light's electrical system)

Docket No: 090505-EI

Served: February 26, 2010

NOTICE OF TAKING TELEPHONIC DEPOSITION DUCES TECUM

TO: Charles Beck, Esq.
Office of Public Counsel
c/o The Florida Legislature
111 West Madison St., Room 812
Tallahassee, FL 32399

FROM: John T. Butler, Esq.
Florida Power & Light Company
700 Universe Blvd.
Juno Beach, FL 33408

PLEASE TAKE NOTE THAT pursuant to Rule 1.310, Florida Rules of Civil Procedure, on **Monday, March 8, 2010, at 1:30 p.m.**, the undersigned will take the telephonic deposition of **Dr. David Dismukes** before a court reporter, notary public, or some other officer duly authorized to take depositions in the State of Florida. Since the deposition will be taken by telephone, please have a notary public available to administer the oath to the witness. Counsel wishing to appear by telephone may call 305-552-3000, participant's code 3045661. This deposition is being taken for such reasons as are permitted under the applicable and governing Florida Rules of Civil Procedure and Florida Statutes.

Individuals with disabilities needing a reasonable accommodation to participate in this proceeding should contact John T. Butler, Esquire, at (561) 304-5639. If hearing impaired, call 1-800-955-8771 (TDD) or 1-800-955-8770 (V) via Florida Relay Service for assistance.

The deponent(s) shall bring to this deposition and provide to Florida Power & Light Company's ("FPL's") counsel, John T. Butler, within a reasonable time prior to the deposition copies of documents as set forth below.

DEFINITIONS

1. “You” or “your” means and refers to Dr. David Dismukes, and any affiliated entities, employees, agents, officers and managers, including, but not limited to, the deponent(s).

“You” or “your” also means and refers to the Florida Office of Public Counsel.

2. “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 possession, custody, care or control, which pertain directly or indirectly, in whole or in part, to any of the subjects listed below, or which are themselves listed below as specific documents, including, but not limited to: correspondence, memoranda, notes, messages, e-mails, diaries, minutes, books, reports, charts, ledgers, invoices, computer printouts, computer discs, microfilms, video tapes, or tape recordings.

3. “FPSC” means Florida Public Service Commission.

4. “All” means all or any.

5. The singular of any word contained herein 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.”

INSTRUCTIONS

6. Scope of Deposition Duces Tecum. In appearing for this Deposition Duces Tecum, produce all responsive documents, including any and all non-identical copies of each such document.

7. Manner of Objections and Inability to Respond. If you object to a part of a request and refuse to respond to that part, state your objection and answer the remaining portion

of that request. If you object to the scope of a request and refuse to produce documents for that scope, state your objection and produce documents for the scope you believe is appropriate.

8. If any of the requests cannot be responded to in full after exercising due diligence to secure the requested documents, please so state and respond and produce documents to the extent possible, specifying your inability to respond further. If your response or production is qualified or limited in any particular way, please set forth the details and specifics of such qualification or limitation.

9. Privileged Information or Documents. In the event you wish to assert attorney/client privilege or the work product doctrine, or both, or any other claim of privilege, then as to such documents allegedly subject to such asserted privileges, you are requested to supply an identification of such documents, in writing, with sufficient specificity to permit the Prehearing Officer or Commission to reach a determination in the event of a motion to compel as to the applicability of the asserted objection, together with an indication of the basis for the assertion of the claim of attorney/client privilege or the work product doctrine, or any other claim of privilege. The identification called for by this instruction shall include the nature of the document (e.g., interoffice memoranda, correspondence, report, etc.), the sender or author, the recipient of each copy, the date, the name of each person to whom the original or any copy was circulated, the names appearing on any circulation list associated with such document, and a summary statement of the subject matter of the document in sufficient detail to permit the Prehearing Officer or Commission to reach a determination in the event of a motion to compel.

10. Computer-Generated Documents. If a requested document is on computer or word processing disc or tape, produce an electronic copy of the document and a printout of the document.

11. Organization of Documents. With respect to the documents produced, you shall produce them as they are kept in the usual course of business, labeling them to correspond with each numbered paragraph of this Request in response to which such documents are produced. All pages now stapled or fastened together and all documents that cannot be copied legibly should be produced in their original form.

DOCUMENTS REQUESTED

1. Please provide and bring with you copies of all workpapers or other materials related to the preparation of the testimony and exhibits filed by you in FPSC Docket No. 090505-EI or used by you in the preparation of responses to any discovery requests in Docket No. 090505-EI.

2. Please provide and bring with you copies of any testimony Dr. Dismukes has filed or provided before any state utility regulatory body or court addressing the manner of calculating a utility's replacement power or replacement fuel costs.

3. Please provide and bring with you copies of any orders or opinions issued in any jurisdiction in which a regulatory body has concluded that a utility is responsible for replacement power costs associated with the full duration of an outage irrespective of whether imprudence on the part of the utility prompted the entire outage duration.

John T. Butler, Managing Attorney
Attorney for Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420
Telephone: (561) 304-5639
Facsimile: (561) 691-7135

By: s/ John T. Butler
John T. Butler
Florida Bar No. 283479

CERTIFICATE OF SERVICE

Docket No. 090505-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically and by United States Mail this 26th day of February 2010, to the following:

Lisa Bennett, Esquire
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-1400
LBENNETT@PSC.STATE.FL.US

Cecilia Bradley
Senior Assistant Attorney General
Office of the Attorney General
The Capitol - PL01
Tallahassee, FL 32399-1050
cecilia.bradley@myfloridalegal.com

J.R. Kelly, Esquire
Charles J. Rehwinkel, Esquire
Charles Beck, 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
Rehwinkel.charles@leg.state.fl.us
Beck.charles@leg.state.fl.us

Jon C. Moyle, Jr., Esquire
Vicki Gordon Kaufman, Esquire
Keefe Anchors Gordon & Moyle, PA
118 North Gadsden Street
Tallahassee, FL 32301
Attorneys for The Florida Industrial Power
Users Group (FIPUG)
jmoyle@kagmlaw.com
vkaufman@kagmlaw.com

By: s/ John T. Butler
John T. Butler
Florida Bar No. 283479

STATE OF _____

COUNTY OF _____

CERTIFICATE OF OATH

I, the undersigned authority, certify that _____ personally appeared before me at _____, and was duly sworn by me to tell the truth.

WITNESS my hand and official seal in the City of _____, County of _____, State of Florida, this ___ day of March, 2010.

Notary Public
State of Florida

My Commission Expires:

Personally known _____ or who has produced _____.
Type of identification produced _____