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May 10, 2004

Ms. Blanca S. Bayo, Director
Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

HAND DELIVERY

RECEIVED-FPSC
MAY 10 PM 4:37
COMMISSION
CLERK

Re: Docket No. 030623-EI

Dear Ms. Bayo:

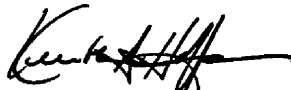
Enclosed for filing in the above-referenced docket on behalf of Florida Power & Light Company ("FPL") are the original and fifteen copies of FPL's Response and Objections to Southeastern Utility Services, Inc. and Ocean Properties, Ltd.'s Request for Entry Upon Land for Inspection and Other Purposes and Production of Documents.


Please acknowledge receipt of these documents by stamping the extra copy of this letter filed and returning the copy to me.

Thank you for your assistance with this filing.

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Sincerely,


Kenneth A. Hoffman

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
05435 MAY 10 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: May 10, 2004

**FLORIDA POWER AND LIGHT COMPANY'S
RESPONSE AND OBJECTION TO SOUTHEASTERN UTILITY
SERVICES, INC. AND OCEAN PROPERTIES, LTD.'S REQUEST FOR ENTRY
UPON LAND FOR INSPECTION AND OTHER PURPOSES AND
PRODUCTION OF DOCUMENTS**

Florida Power & Light Company ("FPL"), by and through its undersigned counsel, and pursuant to Rule 1.350(b), Florida Rules of Civil Procedure, and Rule 28-106.206, Florida Administrative Code, hereby files this Response and Objection to Southeastern Utility Services, Inc.'s ("SUSI") and Ocean Properties, LTD.'s ("Ocean Properties") Request to FPL for Entry Upon Land for Inspection and Other Purposes and Production of Documents ("Request for Inspection"). Rule 1.350(b), Florida Rules of Civil Procedure, states that the party to whom a request for inspection is directed shall serve a written response within 30 days after service of the request, and that for each item or category the response shall state that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for the objection shall be stated. FPL objects to the Request for Inspection in its entirety, and in support thereof states as follows:

I. SUSI Lacks Standing to Participate in this Proceeding

1. At the outset, FPL objects to any discovery propounded by SUSI on the ground that SUSI lacks standing to participate as a party to this proceeding. By its terms, Rule 1.350(a)(3), Florida Rules of Civil Procedure, is available to "[a]ny party." Accordingly, unless and until it is determined that SUSI is a proper party to this proceeding, FPL incorporates by reference its Motion

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

to Dismiss SUSI as a Petitioner in this proceeding filed on January 5, 2004, and its Objections to SUSI's First Request for Production of Documents filed on February 9, 2004, in support of this objection.

II. The Request goes Beyond the Scope of the Applicable Meter Testing Rules

2. With the exception of the document requests contained in Items 6-7 and 11-12 discussed below, the Request for Inspection seeks entry to FPL's property for the purpose of inspecting, testing, photographing and measuring FPL's meter testing board that is used for testing thermal demand meters. FPL objects to every aspect of the Request for Inspection to the extent that it seeks permission for entry to FPL's property located at 6001 NW 70th Avenue, Miami, FL 33166, for the purpose of inspecting, testing, photographing, or measuring FPL's meter testing board, or any piece of property or equipment related thereto, on the ground that the Request for Inspection goes beyond the scope of the requirements of the Florida Administrative Code Rules applicable to FPL and this proceeding.

3. By its own admission, Ocean Properties is a commercial retail electric service customer of FPL.¹ As a customer of FPL, Ocean Properties has been given a limited statutory right through provisions of Chapter 366, Florida Statutes to request that FPL conduct certain tests to its electric meter. In addition, Rule 25-6.059, Florida Administrative Code, provides guidelines and procedures for the utility and the customer to follow in the event that a request is made by a customer to a utility that its meter be tested.

¹ See paragraph 6 of Petition for Formal Administrative Hearing Pursuant to Sections 120.569 and 120.57(1), Florida Statutes, filed on December 10, 2003 in this proceeding, by Petitioners, Ocean Properties, Ltd., J.C. Penney Corporation, Dillards Department Stores, Inc., Target Stores, Inc., and Southeastern Utilities Services, Inc.

4. FPL objects to Ocean Properties' Request for Inspection to the extent that it exceeds the established parameters for meter testing set forth in Commission Rule 25-6.059, Florida Administrative Code. Ocean Properties' rights as a customer to request tests of FPL's meters and related equipment are established by Commission rule. Ocean Properties should not be permitted to utilize the discovery process to rewrite the inspection and testing provisions as established by Commission rules.

5. Rule 1.350(a)(3), Florida Rules Of Civil Procedure, which is the procedural rule under which Ocean Properties' Request for Inspection was filed, is not applicable to this proceeding because the Commission has promulgated its own rules pertaining to all aspects of customer-requested meter testing. The Florida Rules of Civil Procedure are made applicable to this proceeding by Rule 28-106.206, Florida Administrative Code. Rule 28-106.101, Florida Administrative Code, provides that Chapter 28-106, Florida Administrative Code, shall apply in all proceedings such as this one, in which the substantial interests of a party are determined by the agency, and shall be construed to secure the just, speedy, and inexpensive determination of every proceeding under Chapter 120 *except where the agency has adopted rules covering the subject matter pursuant to Section 120.54(5)(a)2, Florida Statutes.* (Emphasis supplied).

6. Because the Commission has exercised its authority and has adopted extensive rules that govern the testing of electric meters, Rule 1.350, Rules of Civil Procedure is not applicable in this proceeding and can not be used to create new meter testing requirements.

III. The Request goes Outside of the Scope of this Proceeding

7. FPL objects to the Request for Inspection because it seeks to conduct testing that is outside the scope of this proceeding. In its Petition for Formal Administrative Hearing, Ocean

Properties, along with the other petitioners, state that the “dispute in this proceeding centers on the amount of refund FPL owes Customers for the overcharges due to the faulty meters.”² Furthermore, in the protested PAA Order issued by the Commission in this docket, the Commission stated that the purpose of this docket was to “address issues regarding the remaining dispute, which is the appropriate method to determine refunds for the those customers who used Type 1 V thermal demand meters that over-registered demand.”³

8. Although there has yet to be a procedural schedule or a list of issues established for this docket, from Ocean Properties’ petition, it is clear that the main issue in dispute in this docket is the methodology and amount of refunds, if any, owed to the individual petitioners who are customers of FPL. FPL objects to any attempt to expand the scope of this proceeding and to impose upon FPL obligations to perform testing that is beyond the scope of the Commission’s rules and that is not relevant to the methodology to determine refunds, if any, that are owed to customers.

IV. The Request for Inspection Seeks the Production of Documents Already Provided to Ocean Properties in this Proceeding, or that are Subject to Specific Objections

9. On January 9, 2004, SUSI and Ocean Properties served its First Request for Production of Documents on FPL (“First Document Request”). FPL filed its Responses and Objections to SUSI’s and Ocean Properties’ Request on February 9, 2004.

10. FPL objects to the Request for Inspection on the grounds that the document requests contained therein are duplicative of the document requests contained in SUSI and Ocean Properties’ First Document Request, and because FPL has either produced the documents in response to the First

² See, paragraph 13 of Petition.

³ See page 3 of Order No. PSC-03-1320-PAA-EI, issued November 19, 2003

Document Request, or the requests are subject to pending specific objections.

A. Item No. 7 of the Request for Inspection Seeks the Production of Documents Already Provided to Ocean Properties

11. FPL objects to Item No. 7 of the Request for Inspection which seeks to inspect and photograph any written directions, instructions, guidelines or other documents relied upon by FPL's meter testers when testing or calibrating thermal demand meters that are the subject of this docket.

12. Request No. 2 of SUSI and Ocean Properties' First Document Request sought "[a]ll documents you rely upon when providing instructions as to how to calibrate thermal demand meters." Request No. 3 of the First Document Request sought "[a]ll documents you provide or provided to those responsible for calibrating thermal demand meters which set forth instructions, guidelines or other directions as to how thermal demand meters should be calibrated."

13. Subject to general objections contained in FPL's Response, all documents responsive to these requests have been provided to Ocean Properties. FPL objects to Item No. 7 of the Request for Inspection on the grounds that it is a duplication of previous discovery requests, and because the documents in response to Item No. 7 of the Request for Inspection have been provided to Ocean Properties.

B. Items Nos. 6, 11, and 12 of the Request for Inspection Seek the Production of Documents that are the Subject of Pending Objections by FPL

14. Item Nos. 6, 11, and 12 of the Request for Inspection also seek the production of documents that were previously requested by Ocean Properties in its First Request for Production of Documents filed January 9, 2004. FPL raised specific objections to those requests in addition to raising numerous general objections, all of which remain pending.

15. Item Number 6 of the Request for Inspection seeks all documents related to the

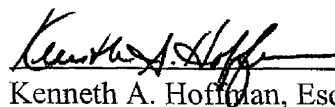
accuracy of FPL's thermal demand test boards. Item Nos. 11 and 12 of the Request for Inspection seek to inspect all records reflecting the maintenance of FPL's standards reference meter or meters for the last five years, and all documents related to the maintenance, repair, or upkeep of FPL's thermal demand test boards.

16. Request No. 5 of the First Document Request sought "[a]ll documents which refer or relate to the accuracy of thermal demand meters." Request Nos. 8 through 23 sought documents from FPL which covered a wide range of aspects relating to the thermal demand meters, including the results of tests of the thermal demand meters conducted by FPL, as well as all documents and correspondence related to the accuracy of the thermal demand meters.

17. In its Response to the First Document Request, FPL raised specific objections to these document requests, in addition to raising numerous general objections. To date, FPL's specific objections to the discovery requests remain pending. With respect to Item Nos. 6, 11, and 12 of the Request for Inspection, FPL hereby adopts and incorporates the objections previously raised.

WHEREFORE, for the above-stated reasons, FPL objects to Southeastern Utility Services, Inc.'s and Ocean Properties, LTD.'s Request to FPL for Entry Upon Land for Inspection and Other Purposes and Production of Documents.

Respectfully submitted,



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-- and --

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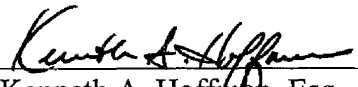
Attorneys for Florida Power & Light Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Florida Power and Light Company's Response and Objection to Southeastern Utility Services, Inc. and Ocean Properties, LTD.'s Request for Entry Upon Land for Inspection and other Purposes and Production of Documents has been furnished by U. S. Mail this 10th day of May, 2004, to the following:

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By: 
Kenneth A. Hoffman, Esq.

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