

Ruth Nettles

080677-EI
090130-EI

From: WELLS, KATHY [Kathy.Wells@fpl.com] on behalf of Rubin, Ken [Ken.Rubin@fpl.com]
Sent: Thursday, August 13, 2009 12:06 PM
To: Filings@psc.state.fl.us
Cc: Butler, John; Cano, Jessica; Leon, Jack
Subject: FPL's Motion to Compel Deposition of Linda Quick / Docket No. 080677-EI
Attachments: FPL M Compel depo of Linda Quick.doc; FPL M Compel depo of Linda Quick.pdf

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 080677-EI
In re: Petition for rate increase by
Florida Power & Light Company

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

d. There are a total of 6 pages in the attached document.

e. The document attached for electronic filing is Florida Power & Light Company's Motion to Compel Deposition of Linda Quick

Thank you.

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DOCUMENT NUMBER-DATE

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8/13/2009

FPSC-COMMISSION CLERK

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
Filed: August 13, 2009

FLORIDA POWER & LIGHT COMPANY'S
MOTION TO COMPEL DEPOSITION OF LINDA QUICK

Florida Power & Light Company (FPL), pursuant to Rules 1.380(a) and 1.310 of the Florida Rules of Civil Procedure and Rule 28-106.206, Florida Administrative Code (F.A.C.), hereby moves to compel the deposition of Linda Quick and states as follows:

1. On August 7, 2009, FPL duly noticed Linda Quick as representative of the Intervenor South Florida Hospital & Healthcare Association (SFHHA) to appear for deposition on Wednesday, August 19, 2009, beginning at 10:00 a.m.
2. On August 12, 2009, following a series of conversations during which undersigned counsel and counsel for SFHHA discussed and attempted to resolve SFHHA's objections to the taking of this deposition, SFHHA served its formal objection in its pleading entitled "Objections of the South Florida Hospital and Healthcare Association to Florida Power & Light Company's Notice of Taking Deposition" (hereinafter "SFHHA's Objections").
3. Contrary to the assertions contained in SFHHA's Objections, the information sought to be obtained through the deposition of Linda Quick is relevant, admissible, reasonably calculated to lead to admissible evidence in this matter, and intended to assist FPL in the preparation of its case and for purposes of cross examination of SFHHA's outside consultants.

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FPSC-COMMISSION CLERK

4. SFHHA is an Intervenor in this action whose Petition to Intervene dated March 16, 2009 affirmatively asserts that SFHHA "...engages in cost-effective projects and programs that benefit, or add value to the services offered by, its member organizations."(See paragraph 4 of SFHHA's Petition to Intervene). The Petition and the literally hundreds of discovery requests served on FPL by SFHHA, together with the prefiled testimony of SFHHA's three outside consultants, question all aspects of FPL's method and manner of doing business, including but certainly not limited to operation and maintenance expenses, growth rates of expenses, staffing levels, productivity issues, training of employees, and many other issues too numerous to list in this Motion.

5. During the course of conversations with counsel for SFHHA, undersigned advised FPL scheduled this deposition to explore with the witness 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. These matters are relevant, material, and most certainly discoverable, and they are the appropriate subject of the aforementioned deposition. The deposition is not intended to elicit "irrelevant and immaterial information in contravention of Sections 120.569(2)(g) and 120.569(2)(k)(1)" as argued by SFHHA in its Motion.

6. Linda Quick is identified on SFHHA's publicly accessible website as the President of the organization. SFHHA, through counsel, has submitted the prefiled testimony of three outside paid consultants, but has offered no testimony of any SFHHA member. The outside consultants are not in a position to speak for the SFHHA regarding its internal operations, beyond the limited scope of their knowledge as consultants. FPL believes that it is only fair for it to have the opportunity to question an appropriate

representative of the actual Intervenor in order to better understand the true or perceived impacts on the member organizations, the manner in which they conduct their businesses, particularly in areas that parallel FPL, along with other matters that are particularly within the province of the actual Intervenor rather than its paid outside consultants.

7. SFHHA's Objections to the deposition are based upon a number of principles primarily including the following: attorney client privilege, work product, proprietary information, and relevance. While some of these objections might require counsel to give instructions to his witness during the course of the deposition or to work out a process for handling confidential information, they clearly do not justify blocking the deposition in its entirety. Counsel's arguments in fact appear to go to the weight that might be given to the evidence obtained at the deposition and the potential admissibility or use of that evidence at the hearing, but not to the propriety of taking the deposition. While these arguments may ultimately form the basis of evidentiary rulings at the hearing, they simply do not support SFHHA's position that the deposition should not be allowed.

8. SFHHA has also argued that FPL's effort to take the deposition of an SFHHA representative is oppressive, burdensome and is being done for purposes of annoyance and harassment, but that bare assertion is completely unsupported by the record in this case. This argument rings hollow when FPL offered SFHHA the opportunity to provide information in response to written discovery, to which SFHHA has been largely unresponsive. Further, after answering literally thousands of discovery requests and producing 9 FPL employees for lengthy depositions to be taken over a 2 week period, FPL should certainly have the right to take this single deposition of a

representative of one of the most active Intervenors in this case.

9. Finally, SFHHA has argued that the deposition notice is unreasonably broad in scope because it fails to describe or otherwise provide any detail about the proposed deposition. Neither the Florida Rules of Civil Procedure nor the Rules of this Commission include any requirement to so specify subject matter, as evidenced by the numerous Notices and Cross Notices of depositions of FPL employees filed in this case, including those filed by SFHHA.

WHEREFORE, Florida Power & Light Company respectfully requests that this commission enter its Order compelling Linda Quick to appear for her deposition on August 19, 2009.

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By: /s/ Kenneth M. Rubin
Kenneth M. Rubin
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically this 13th day of August, 2009, to the following:

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