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September 13, 2004

**VIA HAND DELIVERY**

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

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SEP 13 PM 2:53  
COMMISSION  
CLERK

Re: Docket No. 030623-EI

Dear Ms. Bayó:

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 in Opposition to Target Stores, Inc.'s Motion to Amend Petition for Formal Administrative Hearing.


Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me. Please contact me if you have questions regarding this filing.

Sincerely,



Kenneth A. Hoffman

- CMP \_\_\_\_\_
- COM 3 \_\_\_\_\_
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
- GCL \_\_\_\_\_
- OPC \_\_\_\_\_
- MMS KAH/rl \_\_\_\_\_
- RCA Enclosures \_\_\_\_\_
- SCR \_\_\_\_\_
- SEC 1 \_\_\_\_\_
- OTH \_\_\_\_\_

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09954 SEP 13 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 )

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Docket No. 030623-EI

Filed: September 13, 2004

**FLORIDA POWER & LIGHT COMPANY'S  
RESPONSE IN OPPOSITION TO  
TARGET STORES, INC.'S  
MOTION TO AMEND PETITION FOR  
FORMAL ADMINISTRATIVE HEARING**

Florida Power & Light Company ("FPL"), by and through its undersigned counsel, hereby files this Response in Opposition to the Motion to Amend Petition for Formal Administrative Hearing filed by Target Stores, Inc. ("Target") and states as follows:

1. On December 10, 2003, Target, along with other customers of FPL and Southeastern Utility Services, Inc. ("SUSI") filed a Petition for Formal Administrative Hearing challenging certain preliminary decisions of the Commission set forth in Order No. PSC-03-1320-PAA-EI issued November 19, 2003 (the "PAA Order"). The PAA Order preliminarily resolved informal complaints for refunds filed by six FPL customers concerning a total of twenty-eight meters or accounts. Specifically, the PAA Order preliminarily resolved refund claims filed by: (a) Target - - fourteen accounts; (b) Dillard's Department Stores, Inc. ("Dillard's") - - two accounts; (c) J. C. Penney Corp. - - two accounts; (d) Best Buy - - three accounts; (e) Ocean Properties, Ltd. - - one account; and (f) Home Depot - - six accounts.

2. Pursuant to their Petition for Formal Administrative Hearing filed December 10, 2003, the PAA Order was challenged by: (a) SUSI; (b) Target, with respect to nine of the fourteen accounts addressed in the PAA Order; (c) Dillard's, with respect to the two accounts addressed in

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FPSC-COMMISSION CLERK

the PAA Order; (d) J. C. Penney Corp., with respect to the two accounts addressed in the PAA Order; and (e) Ocean Properties, Ltd., with respect to the one account addressed in the PAA Order.

3. Protests to the PAA Order were not filed by Best Buy, Home Depot or Target with respect to the remaining five Target accounts addressed in the PAA Order. One of the accounts that Target did not protest was the account and meter for the Target Boca Raton Store, Meter No. 1V5885D, located at 21637 State Road 7, Boca Raton, Florida.

4. In its Motion to Amend Petition, Target claims that it mistakenly protested the account at the Target Bonita Springs store and neglected to protest the meter at the Target Boca Raton store. Target requests the Prehearing Officer to allow it to amend its Petition to include a Target meter (the Target Boca Raton meter) that was not timely protested.

5. In its Motion, Target provides no legal support for the relief it seeks. Indeed, Target fails to bring to the Prehearing Officer's attention the applicable statute, Section 120.81(13)(b), Florida Statutes, which states as follows:

(b) Notwithstanding ss. 120.569 and 120.57, a hearing on an objection to proposed action of the Florida Public Service Commission may only address the issues in dispute. Issues in the proposed action which are not in dispute are deemed stipulated.

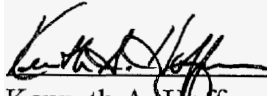
6. Target failed to timely place the Target Boca Raton meter, Meter No. 1V5885D, in dispute in its Petition for Formal Administrative Hearing. Having failed to do so, as a matter of law, the determinations in the Commission's PAA Order apply to the Target Boca Raton meter and are deemed final.

7. Target attempts to support its request by citing to Willard v. Willingham, 374 So.2d 556 (Fla. 4<sup>th</sup> DCA 1979). That decision is inapposite as the case did not involve the proposed agency

action of the Florida Public Service Commission subject to the provisions of Section 120.80(13)(b), Florida Statutes. Under Section 120.81(13)(b), Target's Motion to Amend Petition for Formal Administrative Hearing must be denied.

WHEREFORE, FPL respectfully requests that the Prehearing Officer enter an Order denying Target Stores, Inc.'s Motion to Amend Petition for Formal Administrative Hearing.

Respectfully submitted,



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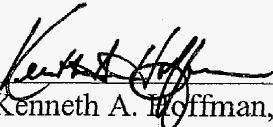
Attorneys for Florida Power & Light Company

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of Florida Power & Light Company's Response In Opposition to Target Stores, Inc.'s Motion to Amend Petition for Formal Administrative Hearing has been furnished by United States Mail this 13<sup>th</sup> day of September, 2004, to the following:

Cochran Keating, Esq.  
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Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Room 370  
Tallahassee, Florida 32399-0850

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William Hollimon, Esq.  
Moyle, Flanigan, Katz, Raymond & Sheehan, P.A.  
The Perkins House  
118 North Gadsden Street  
Tallahassee, FL 32301

By:   
Kenneth A. Hoffman, Esq.

FPL\petitiontoamendresponse