

050891 - EI

**Timolyn Henry**

**From:** Estes, Ron L [REstes@HowardandHoward.com]  
**Sent:** Monday, November 21, 2005 4:52 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** Kamrt New Complaint and Motion to Maintain Status Quo

**Attachments:** Emergency Motion Kmart.doc; Kmart\_Admin\_Complaint\_FPL\_FINAL.doc; EXHIBIT A.doc.Kmart.doc; EXHIBIT C(C1-C2).doc



Emergency Kmart\_Admin\_ EXHIBIT EXHIBIT  
on Kmart.doc (hplaint\_FPL\_FIN:Kmart.doc (59C1-C2).doc (1 M

This e-mail message to which the document is attached includes the following information, in the order listed:

a. The full name, address, telephone number, and e-mail address of the person responsible for the electronic filing,

Rodger A. Kershner  
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b. The docket number and title if filed in an existing docket, Request for new docket

c. The name of the party on whose behalf the document is filed, Kmart Corporation

d. The total number of pages in each attached document.,

1. Complaint - 15 pages
  2. Exhibit A - 1 page
  3. Exhibit B - 2 pages
  4. Exhibit C(C1-C2) - 5 pages
  5. Emergency Motion to Maintain Status Quo - 4 pages
- e. A brief but complete description of each attached document.
1. Complaint -
  2. Exhibit A - Notice of Demand for Deposit from Florida Power and Light to Sears, Roebuck and Company.
  3. Exhibit B - Critical Evaluation of Dun & Bradstreet Reports
  4. Exhibit C - Copies of Orders from this Commission regarding FAC 25-6.097(3)

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DOCUMENT NUMBER-DATE

11167 NOV 21 03

FPSC-COMMISSION CLERK

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11/21/2005 4:51 PM\*\*\*\*\*

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Timolyn Henry\*\*\*\*\*2

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Emergency Motion to Maintain Status Quo, was on this 21<sup>h</sup> day of November, 2005 served via U.S. Mail to the following:

Garson Knapp, Attorney  
FPL Energy Power Marketing, Inc.  
700 Universe Boulevard  
Juno Beach, FL 33408  
Tel: (561) 304-5720  
Fax: (561) 625-7504

Florida Power & Light Company  
P.O. Box 025576  
Miami, FL 33102

Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, FL 33408

Respectfully submitted,  
Kmart Corporation

s/ Rodger A. Kershner

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11167 NOV 21 05

FPSC-COMMISSION CLERK

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Kmart Corporation  
Against Florida Power and Light Company

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Docket No. 050891-ET  
Filed November 21, 2005

**MOTION TO COMPEL FLORIDA POWER AND LIGHT COMPANY TO CONTINUE  
ELECTRIC SERVICE AND TO CEASE AND DESIST DEMANDS FOR DEPOSIT  
PENDING THIS COMMISSION'S FINAL DECISION REGARDING KMART  
CORPORATION'S COMPLAINT AGAINST FLORIDA POWER AND LIGHT  
COMPANY**

1. Pursuant to Rule 28-106.204 of the Florida Administrative Code Kmart Corporation ("Kmart"), through its undersigned qualified representative, files this Motion and hereby requests this Commission to issue an Order to Florida Power and Light Company ("FP&L") that FP&L may not interrupt electric service to any Kmart location during resolution of the complaint for docket # \_\_\_\_\_, filed this day, November 21, 2005 with this Commission (the "Complaint").

2. Consistent with Rule 25-22.032 of the Florida Administrative Code, which requires a utility company to maintain electric service pending this Commission's final determination in informal proceedings, Kmart requests this Commission to maintain the status quo by ordering FP&L to cease and desist from taking any action to interrupt service to any Kmart facility within FP&L's service area while the Complaint is pending.

3. FP&L has informed Kmart that FP&L will discontinue all electric service to Kmart locations unless Kmart immediately provides FP&L with a deposit in the amount of \$299,320 in addition to the \$1,100,000 deposit Kmart provided in response to recent similar threats.

4. For the reasons set forth in the Complaint, FP&L's demand is unfair, unreasonable and illegal.

5. Electric service is vital to Kmart's ability to continue to conduct business in Florida as it has done for the past 90 years and Kmart will suffer irreparable harm to its business operations and reputation if FP&L is permitted to illegally discontinue electric service.

6. Kmart has conferred with FP&L regarding this motion and FP&L stated no objections to the motion and continues its unreasonable deposit demand.

7. Kmart has maintained a prompt payment record and FP&L's demand is based completely on objectively unreasonable opinions regarding the financial information of Kmart's shareholder, Sears Holding Company, an irrelevant third party. As such, Kmart requests this Commission to order FP&L to maintain the status quo while this Commission fully determines the scope of FP&L's violation of Kmart's legal right to be protected from unreasonable deposit demands.

WHEREFORE, Kmart respectfully requests the entry of an Order prohibiting FP&L from discontinuing electric service to any Kmart location pending this Commission's resolution of Docket No. \_\_\_\_\_.

Respectfully submitted,  
Kmart Corporation

s/ Rodger A. Kershner

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