

Matilda Sanders

From: Olsen, Stephanie N. [SOlsen@HowardandHoward.com]
Sent: Tuesday, May 30, 2006 11:30 AM
To: Filings@psc.state.fl.us
Subject: Docket No. 050891-EI Petition for Formal Administrative Hearing

Attachments: petition.pdf



petition.pdf
(3 MB)

<<petition.pdf>>

Electronic Filing

A. The full name, address, telephone number, and email 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:
050891-EI

ECR _____

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

GCL _____

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

OPC _____

RCA _____

D. Total number of pages in each attached document
Petition for Formal Administrative Hearing on Proposed Agency Action = 49

SCR _____

E. The document attached for electronic filing is Kmart's Petition for Formal Administrative Hearing on Proposed Agency Action.

SGA _____

SEC 1

Thank you for your attention and assistance in this matter.

OTH KimP

Stephanie N. Olsen

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Stephanie N. Olsen

Howard & Howard Attorneys, P.C.

DOCUMENT NUMBER-DATE

04662 MAY 30 08

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May 30, 2006

VIA ELECTRONIC FILING

Blanca S. Bayo, Director
Division of the Commission Clerk and Administrative Services
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, FL 32399-0870

**Re: Docket Number 050891: In re: Complaint of Kmart Corporation
Against Florida Power & Light Company**

Dear Ms. Bayo:

On behalf of Kmart Corporation, attached for filing and distribution is the original electronic version of the following:

- Kmart's Petition for Formal Administrative Hearing on Proposed Agency Action

Thank you for your attention to this matter.

Very truly yours,

Howard & Howard Attorneys, P.C.

s/ Rodger A. Kershner

Rodger A. Kershner

c: Jennifer Brubaker, Esq.
Natalie F. Smith, Esq.
Bill Walker, Esq.
Sharna Hatcher, Esq.

DOCUMENT NUMBER - DATE

04662 MAY 30 '06

FPSC-COMMISSION CLERK

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 050891-EI

Filed: May 30, 2006

**PETITION FOR FORMAL ADMINISTRATIVE HEARING
ON PROPOSED AGENCY ACTION**

Kmart Corporation, ("Kmart") by and through its undersigned authorized representative, and pursuant to Sections 120.569 and 120.57, Florida Statutes, and Rules 25-22.029 and 28-106.201 of the Florida Administrative Code, hereby files this Petition for Formal Administrative Hearing on Proposed Agency Action, Order No. PSC-06-0383-PAA-EI, issued May 9, 2006 by the Florida Public Service Commission ("PAA Order") and in support thereof states as follows:

1. The name and address of the agency affected and the agency's file number are:

Florida Public Service Commission (herein the "Commission" or the "FPSC")
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
Docket Number: 050891-EI

2. The petitioner in this proceeding is:

Kmart Corporation
3100 Big Beaver Road
Troy, Michigan 48084
(248) 643-1000

and its authorized representatives are:

Rodger A. Kershner, Esq.
Howard & Howard Attorneys PC
39400 Woodward Avenue, Suite 101
Bloomfield Hills, Michigan 48304-5151
(248) 723-0421

DOCUMENT NUMBER-DATE

04662 MAY 30 06

FPSC-COMMISSION CLERK

Lori K. Miller, Esq.
Assistant General Counsel
3333 Beverly Road, B6-333A
Hoffman Estates, Illinois 60179
(847) 286-4482

3. Kmart received notice of the PAA Order by facsimile from the Commission on May 9, 2006

FACTUAL BACKGROUND

4. Kmart, the petitioner in this matter, is a Michigan corporation qualified to do business in the State of Florida since January 2, 1959 and doing business within the franchised service territory of Florida Power & Light Company ("FPL") as a multi-line retailer.
5. On or before August 16, 2004, on its monthly billing statement rendered to Kmart, FPL inserted an item denominated "deposit balances due...\$351,565." On the date of that statement FPL was holding approximately \$1,100,000 of Kmart's funds as a deposit against charges for electric service due.
6. On or about September 16, 2004, on its regular monthly billing statement, FPL included an unexplained "charge" of \$369,208.46, plus an additional amount denominated "load control credit" of \$5,273.48. Kmart's payment agents were led to believe that these two sums represented, respectively, the deposit amount requested in August 2004, increased for unexplained reasons, and an interest charge or penalty imposed upon Kmart for failure to increase its deposit from \$1.1 million to nearly \$1.5 million within FPL's time requirements.
7. On September 20, 2004, in a letter to Mr. Dennis E. Coyle, General Counsel of FPL, Ms. Sharna Hatcher, counsel to Kmart, requested that FPL comply with the order of the United States Bankruptcy Court for the Northern District of Illinois dated April 22, 2003, to return to Kmart approximately \$1.1 million originally paid to FPL pursuant to an earlier order of the Bankruptcy Court. FPL refused and continues to refuse to comply with the Federal Bankruptcy Court's order and Kmart's request.
8. On October 20, 2004, Kmart availed itself of the informal dispute resolution procedures established by this Commission in Rule 25-22.032. In its letter to the Division of Regulatory Compliance, Kmart requested the Commission's assistance in securing from FPL a refund of the \$1.1 million to which it was legally entitled and cessation of any further demands for an additional \$350,000 or more.

9. On November 10, 2004 FPL responded to Kmart's informal complaint with a purported explanation of and justification for FPL's insistence upon a deposit of nearly \$1.4 million from Kmart. (See FPL's response attached as **Exhibit A**). The entire substance of FPL's attempted justification is contained within these two sentences: "While FPL recognizes the progress Kmart has made since its emergence from bankruptcy, FPL is also cognizant, as a prudent electric utility ought to be, that there still remain areas of valid and reasonable concern with respect to Kmart. *These concerns, reflected in the Dun & Bradstreet Comprehensive Report run on Kmart on October 21, 2004, and earlier, reasonably justify FPL's position that its provision of electric service to Kmart's Florida stores requires a security deposit.*"
10. On September 28, 2005, in a letter to Kmart's Mr. Glen Staton, Ms. Damaris Diaz, Credit Risk Supervisor for FPL requested that Kmart deposit an additional \$299,320 and stated that "FPL believes this additional deposit request is appropriate in light of Kmart Corporation's parent company's current credit rating. (See September 28, 2005 demand letter attached as **Exhibit B**).
11. FPL does not require security deposits from all of its customers. For a number of years preceding September 2005, FPL did not require a security deposit from Kmart's sister retailer, Sears, Roebuck & Co. On information and belief, based in part upon FPL's description of its process for determining which of its customers are required to make deposits and in part upon FPL's latest public financial statements, FPL does in fact discriminate among its customers in demanding deposits and such discrimination is based on faulty, misleading data and invalid criteria.
12. The process by which FPL has stated it makes decisions about which of its customers should be required to pay deposits, and therefore be placed at a competitive disadvantage with respect to others in their industry, is unreliable, invalid, capricious and unduly discriminatory.
13. FPL has stated that it relies almost exclusively upon reports prepared by Dun & Bradstreet. The particular Dun & Bradstreet report cited by FPL as that on which it relied to decide what deposit should be required of Kmart is riddled with errors and unsupported conclusions and provides no objective basis for discriminating among FPL's customers.
14. **Exhibit C** to this Petition illustrates the kind of inaccuracy and conclusory language relied upon by FPL, which, if sanctioned by the state in the context of the restrictions placed by the state upon Kmart's right to obtain electricity from any source it chooses, operates to deprive Kmart of due process of law and equal protection of laws.
15. The fourth paragraph of the PAA Order purports to order Kmart to "pay an additional deposit in the amount of...in order to receive continuous service from Florida Power & Light Company." Kmart submits that such an order is improper and not within the Commission's authority to make. Under proper circumstances a deposit may be a condition precedent to continued service, but the authority granted FPL by the

Commission's rule 25-6.097 extends only to authorizing deposits but not to requiring deposits. Requiring a deposit, once authorized, is within the sole discretion of FPL.

SUBSTANTIAL INTEREST OF KMART

16. It is the position of FPL that it is entitled to payment by Kmart of nearly \$1.4 million in excess of its filed rates, and that if Kmart fails to pay FPL \$299,320 in addition to past payments, FPL can withhold electric service, and thereby, by virtue of its monopoly, make any legal purchases of electricity by Kmart impossible.
17. The funds held or demanded by FPL are denominated deposits, but because FPL has no legal obligation ever to return these funds until Kmart ceases to do business in FPL's service territory, the deposits are essentially charges. Whether Kmart's funds are ever returned to Kmart depends upon the willingness and ability of FPL to do so, precisely the concern which, when reversed, gives rise to this controversy. FPL is presently withholding more than \$1 million of Kmart's funds in clear violation of an order of the Federal Bankruptcy Court for the Northern District of Illinois. (See Bankruptcy Order attached as **Exhibit D**).
18. Any amount Kmart is required to pay FPL in excess of tariff rates for power has the potential to place Kmart at a competitive disadvantage as compared to other multi-line retailers.

DISPUTED ISSUES OF MATERIAL FACT

19. Subject to proper discovery, and refinement of the issues previous to formal hearing, the issues of material fact or mixed fact and law which have been expressly or by implication disputed by the parties, include:
 - a. Whether to provide Kmart with electric service without Kmart having first deposited approximately \$1.4 million to secure payment constitutes a substantial risk of payment default to FPL's shareholders or customers.
 - b. Whether the information relied upon by FPL, particularly the Dun & Bradstreet report of October 21, 2004, contains errors which render the information contained in that report unreliable.
 - c. Whether it was reasonable and lawful for FPL to rely exclusively upon a single, possibly inaccurate, source of information in deciding whether to require a deposit from, or to retain past deposits from, Kmart.
 - d. Whether FPL in considering whether to require a deposit from Kmart, notwithstanding any inaccuracy in the data it examined, applied tests or criteria reasonably calculated to properly identify customers who represent material risk of payment default.

- e. Whether, in considering the credit quality of all commercial customers, FPL employed the same sources of information and the same tests and criteria as used in considering Kmart's credit.
- f. Whether it is valid or lawful for FPL to assess the credit of Kmart based solely or substantially upon FPL's assessment of Kmart's "parent company's current credit ratings" when FPL's claims are by law superior to those of Kmart's shareholders and Kmart's parent company is not legally liable for its subsidiaries debts.
- g. Whether FPL's interpretation of FAC 25-6.097, as conferring upon FPL absolute discretion to demand deposits subject only to a limitation on amount, is correct.
- h. If FPL does not have absolute discretion in requiring deposits, whether FPL's methods of deciding how and on which customers to impose deposit requirements complies with FAC 25-6.097.
- i. Whether FPL's tariff conforms to the requirements of FAC 25.6.097(1) that "Each company's tariff shall contain their specific criteria for determining the amount of initial deposit."
- j. Whether FPL's practice and conduct in demanding from Kmart an increased deposit in August 2004 conformed to the requirements of FAC 25-6.097(3) that a utility's request for a new or additional deposit "shall be separate from and apart from any bill for service and shall explain the reason for such new or additional deposit...."
- k. Whether, following receipt of the explanation offered in justification for a new or additional deposit, as plainly required by FAC 25-6.097(3), a customer has the right to dispute the accuracy of the facts contained therein or the validity of the conclusion drawn from such facts by the utility and to review by the Commission.

**FACTS WARRANTING REVERSAL
OR MODIFICATION OF THE COMMISSION'S PROPOSED ACTION**

- 20. On or about August 16, 2004, on Kmart's monthly billing statement, FPL inserted an item denominated "deposit balances due \$351,565." At that time, FPL was also holding approximately \$1,100,000 of Kmart's funds as a deposit against charges for electrical services. On or about September 16, 2004, FPL included an unexplained charge of \$369,208.46, plus an additional amount for "load control credit" of \$5,273.48. FPL did not provide Kmart with *any* explanation for the new deposit demands.
- 21. It was not until November 10, 2004, after Kmart filed an informal complaint with the Florida Public Service Commission, that FPL gave any explanation for the deposit demands. FPL's explanation was vague, conclusory and inadequate as it failed to provide Kmart with any meaningful insight into why FPL demanded an additional

deposit and how FPL calculated the amount of deposit to demand, as required by FAC 25-6.097(3).

22. FPL based its determination on whether to demand a deposit solely on the credit rating of Kmart's parent company, and not on the credit rating of Kmart itself.
23. The process by which FPL has stated it uses to make decisions about which customers should be required to pay deposits is unreliable, invalid, arbitrary, capricious, and discriminatory.
24. FPL relies almost exclusively upon reports prepared by Dun & Bradstreet in deciding whether to demand an additional deposit from its customers. The Dun & Bradstreet report that FPL used to assess whether to demand an additional deposit from Kmart is riddled with errors and unfounded conclusions and provides no objective basis that would prevent FPL from discriminating amongst FPL's customers.
25. FPL did not provide Kmart with any opportunity to dispute the accuracy of the information relied upon by FPL in deciding to demand a deposit from Kmart, nor did FPL provide Kmart with the opportunity to dispute the conclusions drawn by FPL from the information it relied upon.
26. FPL's tariff does not provide any criteria for determining the amount of deposit FPL may demand, as required by FAC 25-6.097(1).

**STATUTES AND RULES REQUIRING
REVERSAL OF THE COMMISSION'S PROPOSED ACTION**

27. The statutes and rules requiring reversal of the Commission's proposed action are as follows:
 - a. FSA § 366.03. This statute provides the general duties of public utilities:

[A] rates and charges made, demanded or received by any public utility for any service rendered, or to be rendered by it, and each rule and regulation of such public utility, *shall be fair and reasonable*. No public utility shall make or give any undue or unreasonable preference or advantage to any person or locality, or subject the same to any undue or unreasonable prejudice or disadvantage in any respect. (emphasis added).

Petitioner contends, for the reasons stated above, that the regulations and practices FPL used to determine whether to demand a deposit from Kmart and the regulations and practices FPL used to determine the amount of deposit to demand from Kmart violates this statute, as FPL's practices and regulations are unreasonable, unfair, and discriminatory. Requiring deposits from Kmart on unsupported and invalid grounds operates as a preference and advantage to all others.

- b. FSA § 366.07. This statute requires the Commission to fix fair charges and practices by utilities under its jurisdiction:

[W]henever the commission, after public hearing, either upon its own motion or upon complaint, shall find the rates, rentals, charges or classifications, or any of them, proposed, demanded, observed, charged or collected by any public utility for any service, or in connection therewith, or the rules, regulations measurements, practices or contracts, or any of them, relating thereto, are unjust, unreasonable, insufficient, excessive, or unjustly discriminatory or preferential, or in anyway in violation of law, or any service in adequate or cannot be obtained, the commission shall determine and by order fix the fair and reasonable rates, rentals charges or classifications, and reasonable rules, regulations, measurements, practices, contracts or services, to be imposed, observed, furnished, or followed in the future.

Petitioner contends, for the reasons stated above, that the regulations and practices FPL used to determine whether to demand a deposit from Kmart and the regulations and practices FPL used to determine the amount of deposit to demand from Kmart violates this statute, as FPL's practices and procedures are unjust, unreasonable, insufficient, and unjustly discriminatory.

- c. FSA §§ 120.52(8), 120.56. These rules define "invalid exercise of delegated legislative authority" and provide the procedure for challenging rules that constitute an invalid exercise of delegated legislative authority.

FSA § 120.52(8) provides in pertinent part:

Invalid exercise of delegated legislative authority means action which goes beyond the powers, functions, and duties delegated by the Legislature. A proposed or existing rule is an invalid exercise of delegated legislative authority if any one of the following applies: (d) the rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency; (e) the rule is arbitrary or capricious. A rule if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational.

FSA § 120.56 provides in pertinent part:

(1) General procedures for challenging the validity of a rule or a proposed rule –

- (a) Any person substantially affected by a rule or a proposed rule may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority.

Petitioner contends, for the reasons stated above, that the Commission's proposed action, permitting FPL to continue with its regulations and practices for determining whether to demand additional deposits, for determining the amount of deposit to demand, and permitting FPL to continue to hold Kmart's deposit and require that such deposit be enlarged is an invalid exercise of delegated authority and Petitioner has the right to challenge the rule on those grounds.

- d. Due Process Clause of the Fourteenth Amendment of the U.S. Constitution. Due Process Clause of the Florida Constitution, Article 1 § 9. Petitioner contends that FPL's practices and procedures for determining whether to demand additional deposits and for determining the amount of deposit to demand violates due process as the criteria used to make these determinations is not rationally related to a legitimate government interest. Because FPL is heavily regulated by the state, and there is a close nexus between the state and the FPL's practices and procedures for demanding a deposit, FPL's actions complained of in this matter may be fairly treated as that of the state itself, and thereby must comply with the requirements of due process. (*See Burton v. Wilmington Parking Authority*, 365 U.S. 715, 722; 81 S.Ct. 856 (1961)(stating that "only by sifting facts and weighing circumstances can the nonobvious involvement of the State in private conduct be attributed its true significance.") *See also Jeffries v. Georgia Residential Finance Authority*, 678 F.2d 919 (1982 11th Cir.)(finding that a private person's actions constituted state action for purposes of fourteenth amendment analysis and stating that "the relevant inquiry is 'whether there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself.'"))).
- e. FAC 25-6.097(1). This rule provides the rules utilities are to follow to demand deposits: "Each company's tariff shall contain their specific criteria for determining the amount of initial deposit." Petitioner contends that FPL has violated this rule since its tariff does not provide specific criteria for determining the amount of deposit.
- f. FAC 25-6.097(3). This subsection provides guidelines utilities are to follow to demand new or additional deposits. The rule states:

A utility may require, upon reasonable written notice of not less than thirty (30) days, a new deposit, where previously waived or returned, or additional deposit, in order to secure payment of current bills. Such request shall be separate and apart from any bill for service and shall explain the reason for such new or additional deposit.

Petitioner contends that FPL violated this rule when it billed Kmart for the additional deposit by failing to fulfill the requirements enumerated in this rule.¹

In addition, in the order proposing the rule amendment, the Commission stated "we recognize, of course, that circumstances may dictate the necessity of requiring new or additional deposits from a customer. Examples of such circumstances would be excessive slow payment, or a marked increase in consumption together with a slow payment record. Provision is made, therefore, in new proposed Subsection (3) for means by which the utility can obtain a new or additional deposit." (Commission order, **Exhibit E**). Implicit in the Commission's statement is the intent that those circumstances be present justifying the demand for additional deposits, and that FPL may not demand additional deposits without reason or the presence of those circumstances.

RELIEF SOUGHT BY PETITIONER

28. For the reasons stated above, Petitioner respectfully requests that the Commission issue a final order:

- a. Requiring that FPL explain to Petitioner why it demanded a new deposit, as FPL is already required pursuant to FAC 25-6.097(3), and affirming that the conclusory statements FPL gave to explain the reason for the new deposits are insufficient;
- b. Providing Petitioner with the opportunity to discover, challenge, test and rebut the facts, methods and conclusions that FPL used in deciding to demand a new deposit from Kmart, in order to give meaning to the notice requirements of FAC 25-6.097(3);
- c. Providing that the Commission will review the facts methods and conclusions FPL relied upon in making a decision to require an additional deposit from Kmart;
- d. Requiring that FPL provide in its tariff the specific criteria it uses for determining when to demand a deposit and the amount of deposit it demands, as required by FAC 25-6.097(1);

¹ Petitioner further contends that FPL's argument, that FPL may require an additional deposit so long as it is no greater than two times the amount of a customer's monthly bill, for whatever reason they choose, contradicts this rule, since the rule specifically requires that FPL explain the reason for the required additional deposit.

- e. Requiring that FPL return to Petitioner the amount Petitioner has already given to FPL as a deposit until the requirements enumerated in sections 3(a) through 3(c) above are satisfied; and
- f. Requiring that FPL provide Petitioner with uninterrupted electric service, without further demands for additional deposits, until the requirements enumerated in sections 3(a) through 3(c) above are satisfied.
- g. Should the Commission order Kmart to pay the deposit, providing that FPL may not demand a late fee from Kmart for the deposits for the time period that Kmart has been challenging the deposit demand.

Respectfully submitted this 30th day of May 2006.

Kmart Corporation,

s/ Rodger A. Kershner
Rodger A. Kershner,
Its Qualified Representative
Howard & Howard Attorneys, P.C.
39400 Woodward Ave., Ste. 101
Bloomfield Hills, MI 48304
(248) 723-0421 – Telephone
(248) 645-1568 – Facsimile

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was furnished by the United States Mail to the following this 30th day of May 2006.

Jennifer Brubaker, General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd
Tallahassee, FL 32399-0850

Natalie F. Smith, Esq.
Garson Knapp, Esq.
Florida Power & Light Company
700 Universe Blvd.
Juno Beach, Florida 33408

Bill Walker, Esq.
Florida Power & Light Company
215 South Monroe Street, Suite 810
Tallahassee, FL 32301-1859

s/ Rodger A. Kershner
Rodger A. Kershner

**In Re: Complaint of Kmart Corporation Against Florida
Power and Light Company
Docket No. 050891-EI**

Petition for Formal Administrative Hearing on Proposed Agency Action

**Exhibit A
Response from FPL dated November 10, 2004**



Florida Power & Light Company, P. O. Box 14000, Juno Beach, FL 33408-0420
Law Department

November 10, 2004

Rodger A. Kershner, Esq.
Howard & Howard Attorneys, P.C.
The Buhl Building, 11th Floor
535 Griswold Street
Detroit, Michigan 48226

OVERNIGHT MAIL

(313) 962-5508

Re: Complaint by Kmart Corporation against Florida Power and Light Company for Illegally, Unreasonably, Discriminatorily demanding and holding a Security Deposit from Kmart Corporation as a Condition to Providing Electric Service

Dear Mr. Kershner:

I am in receipt of your October 20, 2004 letter regarding the referenced complaint, filed with the Florida Public Service Commission ("PSC" or "Commission"), and offer the response of Florida Power and Light Company (FPL) herein.

In your client's complaint to the PSC, you request three (3) areas of specific relief; namely, that the Commission order FPL to:

- (1) Cease further threats to disconnect service to Kmart's stores to coerce any further deposit;
- (2) Order FPL to account for and return all of Kmart's funds presently on deposit with FPL; and
- (3) Conform its tariff to Rule 25-6.097(1).

Throughout the Kmart complaint, in addition to the issues raised which have a direct bearing upon these areas of requested relief, you also raise a number of tangential ones. All will be addressed in this response. I propose to begin first with a discussion regarding the propriety of FPL requiring a security deposit from Kmart in return for the provision of electric service. Inasmuch as nearly every other issue raised in Kmart's complaint flows from this matter, I believe this is, from a logical perspective, a good starting point for FPL's response.

At the outset, FPL applauds the strides Kmart has made since its emergence from Chapter 11 bankruptcy in May 2003. Its current high stock price, the fact that its has cash reserves and lines of credit equaling approximately 200 years worth of FPL's electric bills to Kmart as well as Kmart's superior debt-to-equity position in relation to FPL, all clearly pointed out by you, taken together appear to support your position that "Kmart's statistics are the envy of the business world." This may very well be true. However, Dun & Bradstreet financial stress and credit score classifications of Kmart, relied upon by FPL in part to establish appropriate levels of customer security deposits, paint a somewhat different picture.

In this regard, a Dun & Bradstreet comprehensive report on Kmart run on October 21, 2004, copy attached, placed Kmart in the Financial Stress Class of 3 and a Credit Score Class of 5. Briefly, the Financial Stress Score reflects the likelihood that a company will obtain legal relief from creditors or cease operations without paying all creditors in full over a future twelve month period of time. The Financial Stress Class of 3 for this company shows that during the previous year, firms with this classification had a failure rate of 3.73% which is 2.66 times higher than the national average. Furthermore, Dun & Bradstreet noted in this report that payment experiences exist for Kmart which are greater than 60 days past due and that 39% of trade experiences indicate slow payments are present.

Concerning Kmart's Dun & Bradstreet Credit Score Class, a predictive score of the likelihood of a company paying in a severely delinquent manner (90+ days past terms) over a future twelve month period of time, Kmart received a Credit Score Class of 5. The Credit Score Class of 5 for this company shows that during the previous year, 58.6% of the firms with this classification paid one or more bills severely delinquent, which is 3.43 time higher than the national average. With specific regard to Kmart, Dun & Bradstreet noted in its report that Kmart's Credit Score Class was, in part, based upon the fact that there were 874 payments experiences with payments beyond terms in the most recent 12 months with 839 experiences reported during the last three month period (preceding the report).

While FPL recognizes the progress Kmart has made since its emergence from bankruptcy, FPL also is cognizant, as a prudent electric utility ought to be, that there still remain areas of valid and reasonable concern with respect to Kmart. These concerns, reflected in the Dun & Bradstreet comprehensive report run on Kmart on October 21, 2004, and earlier, reasonably justify FPL's position that its provision of electric service to Kmart's Florida stores requires a security deposit. In consequence, FPL, while readily amenable to an accounting of all Kmart funds presently on deposit with FPL, does not believe it is appropriate, at this time, to refund to Kmart all of its funds on deposit with FPL. Furthermore, FPL believes the level of Kmart's present funds on deposit as security, approximately \$1.1 million, is in accord with both the FPL tariff set forth in Section 6.1(2) and the Commission's Rule 25-6.097.

At page one of Kmart's complaint, you state that, "On or about October 11, 2004 Kmart was notified through its contract accounts payable service that FP&L had demanded that Kmart post an additional \$369,208.46 as a cash security for payment and that failure by Kmart to deposit the additional \$369,208.46 by October 21, 2004 would result in disconnection of electric service by FP&L to Kmart stores." FPL records indicate a notice was issued in October 2004 requesting the balance associated with the additional deposit be paid and, if not, informing Kmart that the account could be subject

to disconnection. The amount of the initial additional deposit set forth in FPL's August 16, 2006 bill date invoice was \$351,565.00. The sum of \$369,208.46 you cite appears in FPL's September 16, 2004 bill date invoice which includes the \$351,565.00 plus a regular billing for power consumption.

FPL had begun, commencing with its August 16, 2004 computerized billing statement to Avista Advantage, Kmart's third party billing administrator, to enter a dollar figure, \$351,565.00, in the line item labeled "Deposit Balances Due." The entry of a dollar figure in this instance was prompted by both an ongoing gap between the dollar amount reflected in two months of Kmart electrical usage¹ and its actual deposits and the Dun & Bradstreet Financial Stress and Credit Score classifications assigned to Kmart, discussed above, as well as earlier Dun & Bradstreet reports. Such an entry would have, in fact, occurred much earlier had FPL decided not to seek additional deposit sums until a surety bond dispute between FPL and Kmart had been resolved.

FPL regrets that Kmart has apparently construed the entry of a dollar figure in its computerized billing statement to Avista Advantage, reflective of a demand for additional security, as a threat to disconnect service to Kmart's Florida stores in its service territory to coerce further deposit sums. FPL quite agrees with the latter portion of your statement, at page 3 of Kmart's complaint, that "Although FPL's tariff at Section 6.1(2) purports to give FPL the right to require a deposit from its customers at will,² Kmart believes that provision must be read together with an implied limitation on FPL's conduct that it treat its customers in a fair, nondiscriminatory and objective fashion. In this instance, FPL believes that it has established for Kmart an appropriate level of deposit, fully compliant with FPL's tariff and the Commission's rules, and has not acted in an unfair, discriminatory and non-objective fashion in determining that an increase in that level of deposit was appropriate.

FPL further regrets that Kmart has construed the line item entries it received from Avista Advantage, regarding "Deposit Balances Due Charge zzzz \$351565," "Load Control Credit Charge E280 \$5273.48," and "Charge F690 \$369208.46," to be tantamount to "deceptive and confusing billing practices." Currently, Kmart is using Avista Advantage, an Electronic Data Interchange, to receive its billing information. FPL electronically sends a computerized billing statement to Avista Advantage which, in turn, then incorporates the information into a billing statement, generated by Avista Advantage, that is forwarded to Kmart. FPL has provided Avista Advantage with guidelines that break down the coded billing information FPL electronically sends to Avista Advantage on a monthly basis. While FPL cannot offer a precise explanation as to how the coded billing information it transmitted electronically to Avista Advantage relating to "Deposit Balances Due," the correct entry in the August 2004 invoice, transformed into "Load Control Credit Charge" and "Charge" entries, found in the

¹ Section 6.1(2) of FPL tariff allows it to determine a security deposit based upon estimated billings for a period of two average months. Additional security deposit adjustments may also be made.

² FPL would disagree with that portion of the statement which states that it has the right to require a deposit from its customers "at will." As set out in its tariff at Section 6.1(1), there are two instances in which a customer may avoid a security deposit altogether. One of these is when a guaranty satisfactory to FPL is provided. Commission Rule 25-6.097(1) is relevant in this respect. Under this Rule, electric utilities are required to develop minimum financial criteria that a proposed guarantor must meet to qualify as a satisfactory guarantor. There is no requirement that such criteria, as urged by Kmart in its complaint at page 3, be included in an electric utility's tariff.

September and October 2004 invoices, it believes such billing errors may have resulted when Avista Advantage converted the coded billing information from FPL into its own statement prepared for Kmart. FPL, as it has in the past, will work with Avista Advantage to ensure that it affords the proper treatment to coded billing information it receives from FPL.

Addressing a matter of tariff compliance, contrary to your assertion, at page 3 of Kmart's complaint, FPL believes its tariff conforms to the requirements of the Commission's Rule 25-6.097(1). Rule 25-6.097(1) requires electric utilities in Florida to develop minimum financial criteria that a proposed guarantor must meet to qualify as a satisfactory guarantor. As previously addressed in footnote 2 above, there is no requirement set out in this Rule that such "minimum financial criteria" be set forth in an electric utility's tariff. As such, FPL believes Kmart's request that the Commission order FPL to conform its tariff to Rule 25-6.097(1) is without merit. Further, FPL would point out that this Rule requires that "A copy of the criteria shall be made available to each new non-residential customer upon request by the customer." To the best of my knowledge, Kmart, when it initially became a customer of FPL in Florida, neither made this request nor requested consideration of FPL's acceptance of a guaranty in lieu of a cash security deposit. While not precisely provided for in the Commission's Rules, FPL nonetheless would invite Kmart, an existing customer, to engage in discussion about Kmart being able to furnish a guaranty in lieu of a cash security deposit.

In light of the foregoing, and for the reasons specifically offered therein, FPL believes:

- (1) It has not conveyed threats to either Kmart or its third-party billing administrator, Avista Advantage, to disconnect service to Kmart's stores to coerce any further deposit;
- (2) The present level of security deposit required of Kmart is appropriate and compliant with both its tariff and the Commission's Rules; and
- (3) Its tariff complies and conforms to the requirements of the Commission's Rule 25-6.097(1).

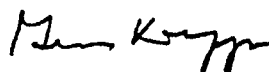
Notwithstanding, you have stated, at page 3 of Kmart's complaint, that its total consumption of power has decreased on average 11% per month. If true, this would perhaps obviate not only the need for an additional deposit amount, but could also operate to cause FPL to consider a decrease the deposit amount presently held by FPL. FPL is also aware that Kmart is looking at possible store closures in Florida and is engaged in negotiations to sell others. Any reduction in the number of stores Kmart owns and operates in Florida would likewise, perhaps, justify a decrease in the deposit amount presently held by FPL.

In a good faith effort to resolve the present dispute with Kmart, FPL proposes to rescind its requirement for any additional deposit, at the present time, while it examines whether or not Kmart's consumption of power in Florida has decreased as you have alleged as well as the cause or causes thereof. Further, FPL will remove the \$10,635.00 in late charges associated with the deposit balance. FPL also proposes that the parties engage in, at least, quarterly discussions to review the propriety of the level of the Kmart

deposit held by FPL. As noted above, should Kmart close or sell stores in Florida it is reasonable to conclude that its consumption of power will decrease, and this fact should be considered in setting an appropriate level of security deposit.

On a final note, please be advised that although FPL has agreed to not require any additional deposit of Kmart at this time, circumstances in the future may very well require same, and in this regard, FPL reserves the right to require an additional deposit in accordance with its tariff and the Commission's Rules. Within a day or so of your receipt of this letter, I intend to call you to discuss the matters addressed herein. I trust we will be able to resolve amicably the present dispute between Kmart and FPL. At any time, should you have any questions, please call me at (561) 304-5720.

Sincerely,



Garson Knapp
Attorney

Attachment: As Stated

cc: Florida Public Service Commission
Division of Consumer Affairs
Attn: Ruth McHargue
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

ATTN: DAWN RICHARDSON

COMPREHENSIVE REPORT

DUNS: 00-896-5873

KMART CORPORATION

(SUBSIDIARY OF KMART

HOLDING CORP, TROY, MI)

+KMART

BIG KMART

FINANCIAL STRESS CLASS: 3

CREDIT SCORE CLASS: 5

KEY

=====

LOWEST RISK		HIGHEST RISK		
1	2	3	4	5

=====

3100 WEST BIG BEAVER RD
AND BRANCH(ES) OR DIVISION(S)
TROY MI 48084
TEL: 248 643-1000

SIC: 53 11 54 11 87 41 56 32

LINE OF BUSINESS: DEPARTMENT STORE, RET GROCERIES, MANAGEMENT
SERVICES, RET WOMEN'S ACCESSORIES

YEAR STARTED: 1899

CONTROL DATE: 1899

DATE PRINTED: OCT 21 2004

CHIEF EXECUTIVE: JULIAN C DAY, PRES-CEO

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EXECUTIVE SUMMARY

- The Financial Stress Class of 3 for this company shows that during the previous year, firms with this classification had a failure rate of 3.73% (373 per 10,000), which is 2.66 times higher than the national average.
- The Credit Score Class of 5 for this company shows that during the previous year, 58.6% of the firms with this classification paid one or more bills severely delinquent, which is 3.43 times higher than the national average.
- Evidence of bankruptcy proceedings, receivership, settlement with creditors (composition or "workout"). See SPECIAL EVENTS, HISTORY or PUBLIC FILINGS section.
- Subject company pays its bills an average 6 days beyond terms.
- Subject company's industry pays its bills an average 14 days beyond terms.
- Subject company pays its bills more promptly than the average for its industry.
- Special events are reported for this business.
- UCC filing(s) are reported for this business.
- Financing is secured-unsecured.
- Under present management control 105 years.
- Evidence of open Suit(s), Lien(s) and Judgment(s) in the D&B database.
- History is business. See HISTORY, PUBLIC FILINGS or SPECIAL EVENTS section.

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CREDIT CAPACITY SUMMARY

D&B Rating: 1R4
(formerly --)

Payment Activity
(based on 874 experiences):

of Employees
Total: 158,000
(3,500 Here)

Average High Credit: \$516,033
Highest Credit: \$50,000,000
Total Highest Credits: \$448,876,350

Worth: -
Working Capital: -

=====

SPECIAL EVENTS

06/30/04 ANNOUNCED SALE OF ASSET: According to published reports, Kmart Corporation, a wholly-owned subsidiary of Kmart Holding Corporation, Troy, MI, announced that it has signed a definitive agreement with Sears, Roebuck and Co, Hoffman Estates, IL, to sell up to 54 of its stores for a maximum purchase price of \$621 million in cash. The exact number of stores, locations, and total purchase amount will be determined based upon the satisfaction of certain conditions which are to occur within 60 days for the majority of the stores and 75 days for the remainder. Kmart will continue to operate the stores that are to be sold until March or April 2005. Sears has agreed to consider offering employment to any Kmart employee who desires to be employed by Sears at the converted stores.

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FINANCIAL STRESS SUMMARY

The Financial Stress Model predicts the likelihood of a firm ceasing business without paying all creditors in full, or reorganizing or obtaining relief from creditors under state/federal law over the next 12 months. Scores were calculated using a statistically valid model derived from D&B's extensive data files.

Financial Stress Class: (Highest Risk: 5; Lowest Risk: 1)	3
Incidence of Financial Stress Among Companies with this Classification:	3.73% (373 per 10,000)
Incidence of Financial Stress: - National Average	1.40% (140 per 10,000)
Financial Stress National Percentile: (Highest Risk: 1; Lowest Risk: 100)	9
Financial Stress Score: (Highest Risk: 1,001; Lowest Risk: 1,850)	1342

The Financial Stress Class for this company is based on the following factors:

- Payment experiences exist for this firm which are greater than 60 days past due.
- 39% of trade experiences indicate slow payment(s) are present.
- Evidence of open suit(s), lien(s) and judgment(s) in D&B database.
- Business or Management history is present for this firm.
- Control age or date entered in D&B files indicates lower risk.
- Net Profit After Taxes suggests higher risk of financial stress.
- Business owns facilities.
- Change in Net Worth suggests higher risk of financial stress.
- Financial Statement is more than 12 months old.
- Quick Ratio suggests higher risk of financial stress.
- Change in Quick Ratio suggests higher risk of financial stress.
- Change in Current Ratio suggests higher risk of financial stress.

Notes:

- The Financial Stress Class indicates that this firm shares some of the same business and financial characteristics of other companies with this classification. It does not mean the firm will necessarily experience financial stress.

- The Incidence of Financial Stress shows the percentage of firms in a given Class that discontinued operations over the past year with loss to creditors. The Incidence of Financial Stress - National Average represents the national failure rate and is provided for comparative purposes.

- The Financial Stress National Percentile reflects the relative ranking of a company among all scorable companies in D&B's file.

- The Financial Stress Score offers a more precise measure of the level of risk than the Class and Percentile. It is especially helpful to customers using a scorecard approach to determining overall business performance.

- All Financial Stress Class, Percentile, Score and Incidence statistics are based on 2002.

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FINANCIAL STRESS NORMS

Norms for Companies in the Same ...	National Percentile
- Region (EAST NORTH CENTRAL)	57
- Industry: GENERAL RETAIL	45
- Employee Range (500+)	41
- Years in Business Range (26+)	82
- Subject Company	9

Key Comparisons

The subject company has a Financial Stress Percentile that shows:

- Higher risk than other companies in the same region.
- Higher risk than other companies in the same industry.
- Higher risk than other companies in the same employee size range.
- Higher risk than other companies with a comparable number of years in business.

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CREDIT SCORE SUMMARY

The Credit Score Class predicts the likelihood of a firm paying in a severely delinquent manner (90+ Days Past Terms) over the next twelve months. It was calculated using statistically valid models and the most recent payment information in D&B's files.

Credit score Class:	5
Incidence of Delinquent Payment Among Companies with this Classification:	58.60%
Percentile:	6

The Credit score Class for this company is based on the following factors:

- Payment experiences exist for this firm which are greater than 60 days past due.
- 39% of trade experiences indicate slow payment(s) are present.
- Control age or date entered in D&B files indicates lower risk.

Kmart.txt

- Evidence of open Suit(s), Lien(s) and Judgment(s) in the D&B database.
- Payment information indicates negative payment comments.
- Business or Management history is present for this firm.

Notes:

- The Incidence of Delinquent Payment is the percentage of companies with this classification that were reported 90 days past due or more by creditors. The calculation of this value is based on an inquiry weighted sample.
- The Percentile ranks this firm relative to other businesses. For example, a firm in the 80th percentile has a lower risk of paying in a severely delinquent manner than 79% of all scorable companies in D&B's files.

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CREDIT SCORE NORMS

Norms for Companies in the Same ...	National Percentile
- Region (EAST NORTH CENTRAL)	54
- Industry: GENERAL RETAIL	43
- Employee Range (500+)	26
- Years in Business Range (26+)	70
- Subject Company	6

Key Comparisons

The subject company has a Credit Score Percentile that shows:

- Higher risk than other companies in the same region.
- Higher risk than other companies in the same industry.
- Higher risk than other companies in the same employee size range.
- Higher risk than other companies with a comparable number of years in business.

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PAYMENT TRENDS

PAYDEX scores below are based on dollar weighted trade in most recent 12 mos.

	'02	'03	'03	'03	'03	'03	'04	'04	'04	'04	'04	'04	'04	'04	'04	'04
	DEC	MAR	JUN	SEP	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT
FIRM	63	66	71	74	75	77	75	75	75	75	75	75	76	76	77	76

Industry
Quartiles

Upper	75	75	76	76	76	75	76	76	76
Median	72	72	72	72	71	69	71	71	71
Lower	67	66	66	67	66	63	65	65	67

Industry PAYDEX based on:
 SIC: 5311
 121 Firms

KEY TO PAYDEX SCORES:
 77 5 Days Beyond Terms
 71 14 Days Beyond Terms
 63 20 Days Beyond Terms

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SUMMARY OF PAYMENT HABITS

Dollar Range Comparisons:

Suppliers That Extend Credit of...	Number of Experiences:	Total Amount	% of Dollars Within Terms
	#	\$	%
OVER \$100,000	161	418,400,000	81
\$50,000 - 99,999	48	3,200,000	61
\$15,000 - 49,999	128	3,230,000	80
\$ 5,000 - 14,999	83	585,000	77
\$ 1,000 - 4,999	128	222,500	72
Under 1,000	277	90,050	64

PAYMENT ANALYSIS BY INDUSTRY

There are 874 payment experiences in D&B's file for the most recent 12 months, with 839 experiences reported during the last three month period.

	Total Recd #	Dollar Amount \$	Highest Credit \$	Within Terms ---	slow 1-30 %	slow 31-60 %	slow 61-90 %	slow 91+ %
Total in D&B's File	874	448,876,350	50,000,000					
Industry								
Mfg soft drinks	46	2,293,500	1,000,000	65	9	1	0	25
Electric services	46	830,550	95,000	98	2	0	0	0
Trucking non-local	38	2,713,750	2,000,000	99	1	0	0	0
whol industrial equip	38	34,950	7,500	66	21	2	4	7
Nonclassified	32	2,385,000	700,000	88	9	3	0	0
whol chemicals	25	10,700	2,500	54	12	0	34	0
Mfg industrial gases	23	9,200	1,000	45	30	5	14	6
Newspaper-print/publ	22	2,152,950	600,000	36	36	6	6	16
whol industrial suppl	19	3,300	500	45	20	1	32	2
Help supply service	17	314,000	95,000	91	9	0	0	0
whol office equipment	15	10,044,500	5,000,000	25	25	0	0	50
Mfg refrig/heat equip	15	3,653,250	3,000,000	7	2	6	0	85
Telephone communicns	15	1,759,950	1,000,000	80	17	0	0	3
whol medical equip	15	257,700	250,000	100	0	0	0	0
short-trm busn credit	13	67,452,850	50,000,000	58	42	0	0	0
Mfg fluid milk	13	100,000	20,000	82	15	0	0	3
Misc business credit	12	242,500	200,000	87	11	2	0	0
Data processing svcs	11	6,371,600	5,000,000	95	3	0	2	0
Detective/guard svcs	11	443,500	200,000	68	30	2	0	0
whol office supplies	11	133,300	75,000	37	1	28	0	34
whol general grocery	11	29,500	5,000	99	1	0	0	0
Mfg sporting goods	10	9,150,400	4,000,000	91	6	3	0	0
Mfg cleaning products	10	52,450	50,000	99	1	0	0	0
Misc publishing	10	44,650	15,000	96	0	1	0	3
whol durable goods	9	306,350	300,000	100	0	0	0	0
Mfg photograph equip	8	5,051,250	3,000,000	100	0	0	0	0
Mfg drug preparations	8	3,163,000	2,000,000	86	14	0	0	0
Ret mail-order house	8	34,000	30,000	52	47	1	0	0
Natural gas distrib	8	155,000	30,000	84	16	0	0	0
Mfg misc products	7	2,462,500	2,000,000	58	41	0	0	1
whol service paper	7	251,600	250,000	100	0	0	0	0
Public finance	7	323,750	250,000	91	9	0	0	0
Executive office	7	230,200	100,000	100	0	0	0	0
Mfg signs/ad spectlys	7	1,450	250	84	9	7	0	0

Kmart.txt

Paper mill	6	980,000	600,000	85	5	5	4	1
whol groceries	6	180,500	40,000	100	0	0	0	0
Mfg paint/allied prdt	6	13,000	10,000	90	10	0	0	0
whol electrical equip	6	12,500	7,500	68	0	2	30	0
Ret paint/wallpaper	5	15,600,000	10,000,000	98	2	0	0	0
Misc services	5	5,550,000	4,000,000	98	2	0	0	0
Mfg canned fruit/veg	5	2,400,000	1,000,000	87	13	0	0	0
Mfg conveyors	5	1,081,000	600,000	54	46	0	0	0
Lcl truck-w/o storage	5	244,500	200,000	99	1	0	0	0
Sawmill/planing mill	5	260,000	95,000	83	17	0	0	0
Mfg frozen fruit/veg	5	270,000	60,000	0	100	0	0	0
Mfg service ind. mach	5	35,000	20,000	57	7	7	0	29
Gas transmission dist	5	37,500	15,000	100	0	0	0	0
Radiotelephone commun	5	15,050	7,500	59	33	8	0	0
Truck rental/leasing	5	6,100	5,000	49	50	1	0	0
Mfg manifold forms	5	2,350	1,000	96	0	0	4	0
Mfg animal/marine fat	5	1,750	750	79	21	0	0	0
Knit underwear mill	4	50,307,500	30,000,000	99	0	0	0	1
Cotton broadwvn mill	4	30,150,000	15,000,000	75	25	0	0	0
Mfg audio/video equip	4	16,600,000	15,000,000	100	0	0	0	0
Lithographic printing	4	7,400,000	6,000,000	93	7	0	0	0
Mfg misc plastic prdt	4	1,055,100	600,000	95	5	0	0	0
whol homefurnishings	4	752,750	500,000	83	17	0	0	0
whol nondurable goods	4	115,000	40,000	53	17	0	30	0
Arrange cargo transpt	4	36,750	30,000	48	7	41	4	0
whol lumber/millwork	4	60,000	25,000	83	0	0	0	17
whol const/mine equip	4	6,750	5,000	100	0	0	0	0
Mfg bread/products	4	3,750	1,000	73	27	0	0	0
Coating/engrave svcs	4	700	250	50	14	0	0	36
Mfg soap/detergents	3	53,015,000	50,000,000	100	0	0	0	0
Mfg confectionery	3	8,002,000	8,000,000	100	0	0	0	0
Mfg toiletries	3	9,035,000	7,000,000	100	0	0	0	0
whol appliances	3	4,200,050	4,000,000	48	52	0	0	0
Mfg sanitary paper	3	4,650,000	4,000,000	50	47	0	3	0
Gravure printing	3	3,300,000	3,000,000	94	0	0	0	6
Mfg hardware	3	2,215,000	2,000,000	49	50	1	0	0
Mfg home furnishings	3	1,000,500	700,000	100	0	0	0	0
Mfg games/toys	3	625,000	300,000	100	0	0	0	0
Misc coml printing	3	112,500	100,000	100	0	0	0	0
Mfg plastic sheet/flm	3	10,750	5,000	54	23	23	0	0
Misc equipment rental	3	3,000	1,000	50	50	0	0	0
Refuse system	3	1,600	750	53	47	0	0	0
whol petroleum prdts	3	1,250	500	30	20	20	0	30
Mfg pencils/art prdts	2	7,002,500	7,000,000	100	0	0	0	0
Mfg snacks/chips	2	7,050,000	7,000,000	100	0	0	0	0
Mfg elect housewares	2	8,000,000	5,000,000	81	19	0	0	0
Mfg lubricating oils	2	4,000,000	3,000,000	25	0	0	0	75
Mfg ophthalmic goods	2	2,015,000	2,000,000	50	50	0	0	0
Prepackaged software	2	2,000,000	1,000,000	75	25	0	0	0
whol flowers/supplies	2	700,000	500,000	50	14	36	0	0
Mfg medical instrmnt	2	505,000	500,000	0	100	0	0	0
Mfg misc office eqpt	2	302,500	300,000	0	100	0	0	0
Mfg wood products	2	201,000	200,000	50	0	50	0	0
whol drugs/sundries	2	102,500	100,000	51	49	0	0	0
whol sporting goods	2	85,000	80,000	6	94	0	0	0
whol computers/softwr	2	15,000	10,000	67	0	33	0	0
Ret misc merchandise	2	2,750	2,500	100	0	0	0	0
General warehousing	2	1,100	1,000	55	45	0	0	0
Mfg metal doors/trim	2	300	250	41	42	0	17	0
Misc business service	2	200	100	50	50	0	0	0
Mfg dog/cat food	1	9,000,000	9,000,000	50	50	0	0	0
Mfg hosiery	1	7,000,000	7,000,000	50	50	0	0	0
Mfg home cook equipt	1	6,000,000	6,000,000	100	0	0	0	0

Kmart.txt

Mfg male work clothes	1	4,000,000	4,000,000	100	0	0	0	0
Mfg primary batteries	1	4,000,000	4,000,000	50	50	0	0	0
Mfg men's clothing	1	3,000,000	3,000,000	100	0	0	0	0
Mfg greeting cards	1	2,000,000	2,000,000	50	50	0	0	0
Mfg plastic foam prdt	1	2,000,000	2,000,000	50	50	0	0	0
Mfg food preparations	1	2,000,000	2,000,000	100	0	0	0	0
Mfg paper indus mach.	1	2,000,000	2,000,000	100	0	0	0	0
whol photo equipment	1	1,000,000	1,000,000	100	0	0	0	0
Mfg press/blown glass	1	1,000,000	1,000,000	50	50	0	0	0
Mfg nonwd office furn	1	1,000,000	1,000,000	50	50	0	0	0
Mfg broadcastng equip	1	900,000	900,000	100	0	0	0	0
Mfg small arms	1	800,000	800,000	50	50	0	0	0
Secondary smelt metal	1	750,000	750,000	100	0	0	0	0
Mfg car parts	1	700,000	700,000	100	0	0	0	0
Mfg cocoa products	1	600,000	600,000	50	50	0	0	0
Mfg mattress/bdspring	1	600,000	600,000	50	50	0	0	0
Mfg fabricated rubber	1	500,000	500,000	100	0	0	0	0
Mfg fabric gloves	1	500,000	500,000	50	50	0	0	0
Petroleum refining	1	500,000	500,000	50	50	0	0	0
Mfg china kitchenware	1	400,000	400,000	50	0	0	50	0
Mfg edible fats/oils	1	400,000	400,000	100	0	0	0	0
whol jewelry	1	300,000	300,000	50	50	0	0	0
Mfg plate work	1	200,000	200,000	100	0	0	0	0
Mfg pin/button/fasten	1	200,000	200,000	100	0	0	0	0
Natnl commercial bank	1	100,000	100,000	50	0	50	0	0
Nonferrous wiredrawing	1	100,000	100,000	100	0	0	0	0
Mfg surgical supplies	1	85,000	85,000	100	0	0	0	0
Mfg fabric textiles	1	70,000	70,000	50	0	0	0	50
Mfg die cut/paper brd	1	60,000	60,000	100	0	0	0	0
Mfg breakfast cereals	1	55,000	55,000	50	50	0	0	0
whol service equip	1	50,000	50,000	100	0	0	0	0
R.V./trailer rentals	1	15,000	15,000	100	0	0	0	0
Adjust/collect svcs	1	15,000	15,000	50	50	0	0	0
whol paints/varnishes	1	7,500	7,500	100	0	0	0	0
Mfg analytic instrmnt	1	2,500	2,500	0	100	0	0	0
Misc communictns svcs	1	2,500	2,500	50	0	0	50	0
whol frozen foods	1	2,500	2,500	50	50	0	0	0
Mfg prepared meats	1	2,500	2,500	100	0	0	0	0
Mfg environment cntrl	1	2,500	2,500	100	0	0	0	0
Regulate trnsprtation	1	2,500	2,500	100	0	0	0	0
Mfg frozen deserts	1	1,000	1,000	100	0	0	0	0
Mfg public bldg furn	1	1,000	1,000	50	0	50	0	0
whol hardware	1	1,000	1,000	100	0	0	0	0
whol misc profsn eqpt	1	1,000	1,000	50	50	0	0	0
Hotel/motel operation	1	1,000	1,000	100	0	0	0	0
whol metal	1	1,000	1,000	100	0	0	0	0
Railroad	1	750	750	0	100	0	0	0
Ret hardware	1	750	750	100	0	0	0	0
Ret furniture	1	750	750	0	100	0	0	0
Ret-direct selling	1	500	500	50	50	0	0	0
whol plastic material	1	250	250	0	0	0	100	0
Management services	1	250	250	100	0	0	0	0
Mfg scales/balances	1	250	250	50	50	0	0	0
Ret building material	1	250	250	0	0	0	0	100
Mfg electric wire dev	1	100	100	100	0	0	0	0

OTHER PAYMENT CATEGORIES:

Cash Experiences	14	17,300	
Paying Record Unknown	24	23,126,000	
Unfavorable Comments	6	5,500	
Placed for collection			
with D&B	0	0	
other	5	N/A	

Accounts are sometimes placed for collection even though the existence or amount of the debt is disputed. Indications of slowness can be the result of disputes over merchandise, skipped invoices, etc.

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PUBLIC FILINGS SUMMARY

The following data includes both open and closed filings found in D&B's database on the subject company.

Record Type	#	Most Recent Filing Date
Bankruptcy Proceedings	1	01/22/2002
Judgments	118	01/13/2004
Liens	12	11/20/2002
Suits	709	09/10/2004
UCC's	3,933	08/09/2004

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PUBLIC FILINGS DETAIL

The following data is for information purposes only and is not the official record. Certified copies can only be obtained from the official source.

* * * BANKRUPTCY * * *

STATUS: PLAN CONFIRMED	BANKRUPT SUBJECT: KMART CORPORATION
DATE STATUS ATTAINED: 04/22/2003	3100 West Big Beaver Rd
DATE BANKRUPTCY FILED: 01/22/2002	TROY, MI 48084
LATEST INFO COLLECTED: 04/23/2003	ATTORNEY: JOHN BUTLER JR
CHAPTER NO: 11	333 WEST WACKER DR
TYPE: VOLUNTARY	CHICAGO, IL 60606
WHERE FILED: US BANKRUPTCY COURT	JUDGE: SONDERBY
219 SOUTH DEARBORN ST	
CHICAGO, IL 60604	
DOCKET NO: 02-02474	

* * * JUDGMENT(S) * * *

CASE NO.: SC147379	STATUS: Unsatisfied
JDGMT AWARD: \$1,000	DATE STATUS ATTAINED: 01/13/2004
JDGMT TYPE: Judgment	DATE ENTERED: 01/13/2004
AGAINST: K-MART CORP.	LATEST INFO RECEIVED: 01/23/2004
IN FAVOR OF: CORMICK TRIMBLE	
WHERE FILED: SAN DIEGO COUNTY SMALL CLAIMS COURT/SAN DIEGO, SAN DIEGO, CA	

CASE NO.: LM 1959	STATUS: Unsatisfied
JDGMT AWARD: \$30,000	DATE STATUS ATTAINED: 12/17/2003
JDGMT TYPE: Judgment	DATE ENTERED: 12/17/2003
AGAINST: K-MART CORP, ROCKFORD, IL	LATEST INFO RECEIVED: 07/13/2004
IN FAVOR OF: ALLEN;LAWRENCE	
WHERE FILED: WINNEBAGO COUNTY CIRCUIT COURT, ROCKFORD, IL	

DOCKET NO.: SC148003	STATUS: Unsatisfied
JDGMT AWARD: \$242	DATE STATUS ATTAINED: 10/16/2003
JDGMT TYPE: Judgment	

Kmart.txt

AGAINST: K MART, STATEN ISLAND, NY DATE ENTERED: 10/16/2003
IN FAVOR OF: THOMAS M DOWD LATEST INFO RECEIVED: 10/31/2003
WHERE FILED: NEW YORK CITY CIVIL
COURT-RICHMOND COUNTY, STATEN
ISLAND, NY

DOCKET NO.: CV02489459
JDGMT AWARD: \$64,500 STATUS: Unsatisfied
JDGMT TYPE: Judgment DATE STATUS ATTAINED: 06/11/2003
AGAINST: KMART CORP, GROVEPORT, OH DATE ENTERED: 06/11/2003
and OTHERS LATEST INFO RECEIVED: 06/28/2004
IN FAVOR OF: DAWN KNEUSS
WHERE FILED: CUYAHOGA COUNTY COMMON PLEAS
COURT, CLEVELAND, OH

DOCKET NO.: 3328503
JDGMT AWARD: \$25,000 STATUS: Unsatisfied
JDGMT TYPE: Judgment DATE STATUS ATTAINED: 04/28/2003
AGAINST: K MART CORP, STATEN ISLAND, NY DATE ENTERED: 04/28/2003
IN FAVOR OF: JEANETTE RUSSO LATEST INFO RECEIVED: 06/06/2003
WHERE FILED: NEW YORK CITY CIVIL
COURT-RICHMOND COUNTY, STATEN
ISLAND, NY

CASE NO.: GC02121651
JDGMT AWARD: \$1,760 STATUS: Unsatisfied
JDGMT TYPE: Judgment DATE STATUS ATTAINED: 02/06/2003
AGAINST: K MART CORPORATION DATE ENTERED: 02/06/2003
IN FAVOR OF: DETROIT RECEIVING HOSP LATEST INFO RECEIVED: 05/27/2003
WHERE FILED: WAYNE COUNTY DISTRICT COURT
36TH, DETROIT, MI

CASE NO.: 02044859CZ
JDGMT TYPE: Judgment STATUS: Unsatisfied
AGAINST: KMART CORPORATION DATE STATUS ATTAINED: 01/29/2003
IN FAVOR OF: STEPHEN SLESINGER INCORPORATED DATE ENTERED: 01/29/2003
WHERE FILED: OAKLAND COUNTY CIRCUIT COURT, LATEST INFO RECEIVED: 01/13/2004
PONTIAC, MI

CASE NO.: 03S00069
JDGMT TYPE: Judgment STATUS: Unsatisfied
AGAINST: KMART CORPORATION DATE STATUS ATTAINED: 01/10/2003
and OTHERS DATE ENTERED: 01/10/2003
IN FAVOR OF: GONZALEZ, DIANA LATEST INFO RECEIVED: 10/14/2004
WHERE FILED: LOS ANGELES COUNTY SMALL CLAIMS
COURT/COMPTON, COMPTON, CA

CASE NO.: 02M21051
JDGMT TYPE: Judgment STATUS: Unsatisfied
AGAINST: K-MART CORPORATION STORE#7625, DATE STATUS ATTAINED: 10/24/2002
LOS ANGELES, CA DATE ENTERED: 10/24/2002
and OTHERS LATEST INFO RECEIVED: 06/25/2004
IN FAVOR OF: DIXON, DIANA
WHERE FILED: LOS ANGELES COUNTY SMALL CLAIMS
COURT/LOS ANGELES, LOS ANGELES,
CA

CASE NO.: 02SC71485
JDGMT TYPE: Judgment STATUS: Unsatisfied
AGAINST: \$271-KMART CORP DATE STATUS ATTAINED: 09/27/2002
IN FAVOR OF: ANTHONY CLARK DATE ENTERED: 09/27/2002
WHERE FILED: WAYNE COUNTY DISTRICT COURT 19, LATEST INFO RECEIVED: 10/08/2002
DEARBORN, MI

 If it is indicated that there are defendants other than the report subject, the lawsuit may be an action to clear title to property and does not necessarily imply a claim for money against the subject.

* * * SUIT(S) * * *

 CASE NO.: 04 CVM11566
 SUIT AMOUNT: \$3,500
 PLAINTIFF: ASZULLAYME
 DEFENDANT: K-MART STORE NO. 3428,
 WINSTON-SALEM, NC
 CAUSE: DAMAGES
 WHERE FILED: FORSYTH COUNTY MAGISTRATE COURT
 WINSTON SALEM, NC
 STATUS: Pending
 DATE STATUS ATTAINED: 09/10/2004
 DATE FILED: 09/10/2004
 LATEST INFO RECEIVED: 09/27/2004

 CASE NO.: 4L 976
 SUIT AMOUNT: \$50,000
 PLAINTIFF: SANCHEZ; ROBERTO
 DEFENDANT: K-MART CORPORATION,
 BLOOMINGDALE, IL
 WHERE FILED: DU PAGE COUNTY CIRCUIT COURT,
 WHEATON, IL
 STATUS: Pending
 DATE STATUS ATTAINED: 09/09/2004
 DATE FILED: 09/09/2004
 LATEST INFO RECEIVED: 10/05/2004

 CASE NO.: 4M1 303668
 SUIT AMOUNT: \$30,000
 PLAINTIFF: BECKER; MARLENE
 DEFENDANT: K-MART, CHICAGO, IL
 WHERE FILED: COOK COUNTY CIRCUIT COURT/1ST
 MUNICIPAL DIVISION, CHICAGO, IL
 STATUS: Pending
 DATE STATUS ATTAINED: 09/07/2004
 DATE FILED: 09/07/2004
 LATEST INFO RECEIVED: 09/15/2004

 DOCKET NO.: 04CV7024
 SUIT AMOUNT: \$ 0
 PLAINTIFF: ELIZABETH ACOBE
 DEFENDANT: KMART CORP
 and OTHERS
 WHERE FILED: U.S. FEDERAL DISTRICT COURT,
 NEW YORK, NY
 STATUS: Pending
 DATE STATUS ATTAINED: 08/31/2004
 DATE FILED: 08/31/2004
 LATEST INFO RECEIVED: 09/17/2004

 CASE NO.: 4M1 303523
 SUIT AMOUNT: \$30,000
 PLAINTIFF: GRANADE; WILLIAM
 DEFENDANT: K-MART CORPORATION, TINLEY PARK
 IL
 WHERE FILED: COOK COUNTY CIRCUIT COURT/1ST
 MUNICIPAL DIVISION, CHICAGO, IL
 STATUS: Pending
 DATE STATUS ATTAINED: 08/25/2004
 DATE FILED: 08/25/2004
 LATEST INFO RECEIVED: 08/31/2004

 DOCKET NO.: 5397 OF 2004
 PLAINTIFF: MARY PORVAZNIK ESTATE OF
 DEFENDANT: K-MART CORPORATION, MONROEVILLE
 PA
 CAUSE: COMPLAINT - CIVIL ACTION
 WHERE FILED: ALLEGHENY COUNTY PROTHONOTARY,
 PITTSBURGH, PA
 STATUS: Pending
 DATE STATUS ATTAINED: 08/24/2004
 DATE FILED: 08/24/2004
 LATEST INFO RECEIVED: 09/21/2004

 CASE NO.: 611124
 PLAINTIFF: ELIZABETH COLLINS
 DEFENDANT: KMART CORP, METAIRIE, LA
 WHERE FILED: JEFFERSON PARISH 24TH JUDICIAL
 COURT, GRETNA, LA
 STATUS: Pending
 DATE STATUS ATTAINED: 08/24/2004
 DATE FILED: 08/24/2004
 LATEST INFO RECEIVED: 09/17/2004

 CASE NO.: 05771 LACL096497

Kmart.txt

PLAINTIFF: HELEN MORELAND STATUS: Pending
DEFENDANT: K MART, DES MOINES, IA DATE STATUS ATTAINED: 08/23/2004
CAUSE: PI PREMISES LIABILITY DATE FILED: 08/23/2004
WHERE FILED: POLK COUNTY DISTRICT COURT, DES MOINES, IA LATEST INFO RECEIVED: 09/19/2004

DOCKET NO.: CV04539184
PLAINTIFF: VIVIAN JOHNSON STATUS: Pending
DEFENDANT: KMART CORP, GROVEPORT, OH DATE STATUS ATTAINED: 08/20/2004
and OTHERS DATE FILED: 08/20/2004
WHERE FILED: CUYAHOGA COUNTY COMMON PLEAS COURT, CLEVELAND, OH LATEST INFO RECEIVED: 09/22/2004

DOCKET NO.: DC-010852-2004
PLAINTIFF: CAMDEN CO WEIGHTS & MEASURES STATUS: Pending
DEFENDANT: K-MART, BERLIN, NJ DATE STATUS ATTAINED: 08/16/2004
CAUSE: PENALTY DATE FILED: 08/16/2004
WHERE FILED: CAMDEN COUNTY SPECIAL CIVIL COURT/SMALL CLAIMS COURT, CAMDEN, NJ LATEST INFO RECEIVED: 08/24/2004

* * * LIEN(S) * * *

A lienholder can file the same lien in more than one filing location. The appearance of multiple liens filed by the same lienholder against a debtor may be indicative of such an occurrence.

CASE NO.: 02-240306
AMOUNT: \$10,441 STATUS: Open
TYPE: County Tax DATE STATUS ATTAINED: 11/20/2002
FILED BY: TAX COLLECTOR DATE FILED: 11/20/2002
AGAINST: KMART CORPORATION, DALLAS, TX and OTHERS LATEST INFO RECEIVED: 12/16/2002
WHERE FILED: RECORDERS OFFICE, SAN MATEO COUNTY, REDWOOD CITY, CA

CASE NO.: 02-240307
AMOUNT: \$9,630 STATUS: Open
TYPE: County Tax DATE STATUS ATTAINED: 11/20/2002
FILED BY: TAX COLLECTOR DATE FILED: 11/20/2002
AGAINST: KMART CORPORATION, DALLAS, TX and OTHERS LATEST INFO RECEIVED: 12/16/2002
WHERE FILED: RECORDERS OFFICE, SAN MATEO COUNTY, REDWOOD CITY, CA

CASE NO.: 02-0932882
AMOUNT: \$5,141 STATUS: Open
TYPE: County Tax DATE STATUS ATTAINED: 10/24/2002
FILED BY: TAX COLLECTOR DATE FILED: 10/24/2002
AGAINST: KMART CORP LATEST INFO RECEIVED: 02/10/2003
WHERE FILED: SAN DIEGO COUNTY RECORDERS OFFICE, SAN DIEGO, CA

CASE NO.: 02-0932883
AMOUNT: \$4,433 STATUS: Open
TYPE: County Tax DATE STATUS ATTAINED: 10/24/2002
FILED BY: TAX COLLECTOR DATE FILED: 10/24/2002
AGAINST: KMART CORP LATEST INFO RECEIVED: 02/10/2003
WHERE FILED: SAN DIEGO COUNTY RECORDERS OFFICE, SAN DIEGO, CA

CASE NO.: 02-0932884

Kmart.txt

AMOUNT: \$8,074 STATUS: Open
TYPE: County Tax DATE STATUS ATTAINED: 10/24/2002
FILED BY: TAX COLLECTOR DATE FILED: 10/24/2002
AGAINST: KMART CORP LATEST INFO RECEIVED: 02/10/2003
WHERE FILED: SAN DIEGO COUNTY RECORDERS
OFFICE, SAN DIEGO, CA

CASE NO.: 01-1319926
AMOUNT: \$614 STATUS: Open
TYPE: County Tax DATE STATUS ATTAINED: 07/26/2001
FILED BY: TAX COLLECTOR DATE FILED: 07/26/2001
AGAINST: K-MART and OTHERS LATEST INFO RECEIVED: 09/16/2001
WHERE FILED: LOS ANGELES COUNTY RECORDER'S
OFFICE, NORWALK, CA

FILING NO.: 96 27054
AMOUNT: \$9,983 STATUS: Open
TYPE: Mechanics DATE STATUS ATTAINED: 05/06/1996
FILED BY: MARTINS IRRIGATION SUPPLY DATE FILED: 05/06/1996
AGAINST: K MART, SACRAMENTO, CA LATEST INFO RECEIVED: 06/25/2004
WHERE FILED: MONTEREY COUNTY RECORDER,
SALINAS, CA

BOOK/PAGE: 70/301
AMOUNT: \$943 STATUS: Open
TYPE: Judgment lien DATE STATUS ATTAINED: 02/19/1996
FILED BY: JOHN SHAW DATE FILED: 02/19/1996
AGAINST: K-MART, ROCKY MOUNT, NC LATEST INFO RECEIVED: 08/27/1996
WHERE FILED: NASH COUNTY SUPERIOR COURT,
NASHVILLE, NC

BOOK/PAGE: 3025/070
AMOUNT: \$23,072 Withholding STATUS: Open
TYPE: State Tax DATE STATUS ATTAINED: 02/02/1996
FILED BY: STATE OF GEORGIA, ATLANTA, GA DATE FILED: 02/02/1996
AGAINST: K MART CORP LATEST INFO COLLECTED: 04/01/1996
WHERE FILED: FULTON COUNTY RECORDERS OFFICE,
ATLANTA, GA

BOOK/PAGE: 583/33
AMOUNT: \$1,504 STATUS: Open
TYPE: Local Tax DATE STATUS ATTAINED: 06/22/1995
FILED BY: TOWN OF CROMWELL DATE FILED: 06/22/1995
AGAINST: KMART CORPORATION, CROMWELL, CT LATEST INFO RECEIVED: 09/25/1995
WHERE FILED: CROMWELL TOWN CLERK, CROMWELL,
CT

* * * UCC FILING(S) * * *

COLLATERAL: Negotiable instruments including proceeds and products - Account(s)
including proceeds and products - General intangibles(s) including
proceeds and products - Contract rights including proceeds and
products - and OTHERS
FILING NO: 2003172925-5 DATE FILED: 09/11/2003
TYPE: Original LATEST INFO RECEIVED: 12/03/2003
SEC. PARTY: STORAGETEK FINANCIAL SERVICES FILED WITH: SECRETARY OF
CORPORATION, SUPERIOR, CO STATE/UCC DIVISION,
DEBTOR: KMART CORPORATION MI

This data is for information purposes only. Certification can only be obtained
through the Michigan Department of Consumer and Industry Services, Bureau of
Commercial Services, Corporation Division.

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 COLLATERAL: Specified Negotiable instruments and proceeds - All Account(s) and proceeds - All Equipment and proceeds - All General intangibles(s) and proceeds - All Chattel paper and proceeds
 FILING NO: C810902 DATE FILED: 02/22/1994
 TYPE: Assignment LATEST INFO RECEIVED: 06/07/1994
 SEC. PARTY: MUTUAL OF OMAHA INSURANCE COMPANY, OMAHA, NE ORIG. FILING NO: C750121
 ASSIGNEE: UNITED OF OMAHA LIFE INSURANCE COMPANY, OMAHA, NE FILED WITH: SECRETARY OF STATE/UCC DIVISION, MI
 DEBTOR: KMART CORPORATION

This data is for information purposes only. Certification can only be obtained through the Michigan Department of Consumer and Industry Services, Bureau of Commercial Services, Corporation Division.

 FILING NO: 94888B DATE FILED: 06/08/1998
 TYPE: Continuation LATEST INFO RECEIVED: 08/03/1998
 SEC. PARTY: MUTUAL OF OMAHA INSURANCE COMPANY, OMAHA, NE ORIG. FILING NO: C750121
 DEBTOR: KMART CORPORATION FILED WITH: SECRETARY OF STATE/UCC DIVISION, MI

This data is for information purposes only. Certification can only be obtained through the Michigan Department of Consumer and Industry Services, Bureau of Commercial Services, Corporation Division.

 COLLATERAL: Leased Negotiable instruments and proceeds - Leased Assets and proceeds - Leased Fixtures and proceeds - Leased Equipment and proceeds
 FILING NO: 1481584 DATE FILED: 11/08/1992
 TYPE: Original LATEST INFO RECEIVED: 01/19/1993
 SEC. PARTY: ADVANTA LEASING CORP, VOORHEES, NJ FILED WITH: SECRETARY OF STATE/UCC DIVISION, NJ
 DEBTOR: K-MART, KEARNEY, NJ

 FILING NO: 1481584 DATE FILED: 01/08/1997
 TYPE: Termination LATEST INFO RECEIVED: 03/18/1997
 SEC. PARTY: ADVANTA LEASING CORP., VOORHEES, NJ ORIG. UCC FILED: 01/08/1997
 DEBTOR: K-MART, KEARNY, NJ ORIG. FILING NO: 1481584
 FILED WITH: SECRETARY OF STATE/UCC DIVISION, NJ

 COLLATERAL: Specified Negotiable instruments - Specified Account(s) - Specified Assets - Specified Partnership Interest
 FILING NO: C751909 DATE FILED: 08/27/1993
 TYPE: Original LATEST INFO RECEIVED: 09/27/1993
 SEC. PARTY: BOSTON FINANCIAL INSTITUTIONAL TAX CREDITS IV LP, BOSTON, MA FILED WITH: SECRETARY OF STATE/UCC DIVISION, MI
 ASSIGNEE: GREAT WEST LIFE & ANNUITY INSURANCE CO, ENGLEWOOD, CO
 DEBTOR: KMART CORPORATION

 COLLATERAL: Specified Negotiable instruments - Specified Assets - Specified Account(s)
 FILING NO: 33559B DATE FILED: 07/21/1993
 TYPE: Original LATEST INFO RECEIVED: 08/16/1993
 SEC. PARTY: CORPORATE CREDIT INC, NEW YORK, NY FILED WITH: SECRETARY OF STATE/UCC DIVISION, MI
 ASSIGNEE: JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, BOSTON, MA
 DEBTOR: KMART CORPORATION

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 COLLATERAL: Specified Negotiable instruments - Specified Account(s) - Specified Assets

FILING NO: 30876B DATE FILED: 05/05/1993
 TYPE: Original LATEST INFO RECEIVED: 06/22/1993
 SEC. PARTY: CORPORATE CREDIT INC, NEW YORK, NY FILED WITH: SECRETARY OF STATE/UCC DIVISION, MI
 DEBTOR: KMART CORPORATION

 COLLATERAL: All Inventory including proceeds and products - All Account(s) including proceeds and products - All General intangibles(s) including proceeds and products - Leased Equipment including proceeds and products

FILING NO: 1037246 1 DATE FILED: 04/23/2001
 TYPE: Original LATEST INFO RECEIVED: 05/22/2001
 SEC. PARTY: ERVIN LEASING CO, ANN ARBOR, MI FILED WITH: SECRETARY OF STATE/UCC DIVISION, DE
 WILMINGTON TRUST COMPANY, WILMINGTON, DE
 DEBTOR: KMART CORPORATION and OTHERS

 COLLATERAL: All Inventory including proceeds and products - All Account(s) including proceeds and products - All Fixtures including proceeds and products - All Machinery including proceeds and products - and OTHERS

FILING NO: 960000123643 DATE FILED: 06/17/1996
 TYPE: Original LATEST INFO RECEIVED: 07/25/1996
 SEC. PARTY: FIRST TRUST OF NEW YORK, NATIONAL ASSOCIATION, NEW YORK, NY FILED WITH: SECRETARY OF STATE/UCC DIVISION, FL
 FIRST TRUST OF NEW YORK, NATIONAL ASSOCIATION, NEW YORK, NY
 WARD A. SPOONER, AS TRUSTEE, NEW YORK, NY
 WARD A. SPOONER, AS TRUSTEE, NEW YORK, NY
 DEBTOR: KMART CORPORATION and OTHERS

 FILING NO: 980000085181 DATE FILED: 04/20/1998
 TYPE: Termination LATEST INFO RECEIVED: 09/30/1998
 SEC. PARTY: FIRST TRUST OF NEW YORK, NATIONAL ASSOCIATION AS TRUSTEE, NEW YORK, NY ORIG. UCC FILED: 06/17/1996
 WARD A. SPOONER AS TRUSTEE, NEW YORK, NY ORIG. FILING NO: 960000123643
 FILED WITH: SECRETARY OF STATE/UCC DIVISION, FL
 DEBTOR: KMART CORPORATION

 COLLATERAL: All Inventory including proceeds and products - All Account(s) including proceeds and products - All Fixtures including proceeds and products - All Machinery including proceeds and products - and OTHERS

FILING NO: 2676539 DATE FILED: 06/14/1996
 TYPE: Original LATEST INFO RECEIVED: 10/21/1996
 SEC. PARTY: FIRST TRUST OF NEW YORK NA, NEW YORK, NY FILED WITH: SECRETARY OF STATE/UCC DIVISION, MO
 DEBTOR: KMART CORPORATION

 FILING NO: 2904886 DATE FILED: 04/20/1998
 TYPE: Termination LATEST INFO RECEIVED: 04/27/1998
 SEC. PARTY: FIRST TRUST OF NEW YORK NA, NEW YORK, NY ORIG. UCC FILED: 06/14/1996
 ORIG. FILING NO: 2676539

DEBTOR: KMART CORPORATION
Kmart.txt
FILED WITH: SECRETARY OF
STATE/UCC DIVISION,
MO

COLLATERAL: All Inventory including proceeds and products - All Account(s)
including proceeds and products - All Machinery including proceeds
and products - All Fixtures including proceeds and products - and
OTHERS

FILING NO: 96119753
TYPE: Original
SEC. PART: FIRST TRUST OF NEW YORK,
NATIONAL ASSOCIATION, NEW YORK,
NY
WARD A. SPOONER, AS TRUSTEE, NEW
YORK, NY
DEBTOR: KMART CORPORATION

DATE FILED: 06/14/1996
LATEST INFO RECEIVED: 07/08/1996
FILED WITH: SECRETARY OF
STATE/UCC DIVISION,
NY

There are additional suits, liens, or judgments in D&B'S
file on this company available by contacting 1-800-234-3867.

There are additional UCC's in D&B's file on this company
available by contacting 1-800-234-3867.

The public record items contained in this report may have been
paid, terminated, vacated or released prior to the date this
report was printed.

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BUSINESS BACKGROUND

HISTORY

CORPORATE AND BUSINESS REGISTRATIONS REPORTED BY THE SECRETARY
OF STATE OR OTHER OFFICIAL SOURCE AS OF 10/19/2004:

BUSINESS TYPE: CORPORATION - DATE INCORPORATED: 03/09/1916
PROFIT STATE OF INCORP: MICHIGAN

09/29/04

JULIAN C DAY, PRES-CEO
THE OFFICER(S)

AUTHORIZED CAPITAL STOCK: 1,500,000,000 shares common stock, \$1
par value and 10,000,000 shares preferred stock, no par value.

OUTSTANDING CAPITAL STOCK: As of Jan 30, 2002, there were
503,294,515 common shares issued.

Business started 1899.

BACKGROUND/OWNERSHIP: Business started 1899 by the late Sebastian
S Kresge. Prior to Dec 19, 2002, the company's shares were traded on
the New York, Pacific and Midwest Stock Exchanges under the symbol
"KM". On Dec 19, 2002, the company's shares began trading on the Pink
Sheets under the symbol "KMTPQ". In May 2003, upon emergence from
bankruptcy, the company completed a corporate restructuring plan
whereby a new holding company was formed. The new holding company,
Kmart Corp merged with Kmart Holding Corp (the new holding company)
and became a wholly owned subsidiary of Kmart Holding Corp. As of May
2003, the company's stock is solely held by the parent company.

RECENT EVENTS: In Jul 2001, the company completed the
acquisition of BlueLight.com LLC (San Francisco, CA).

In Nov 2002, the company completed the sale of the internet
access and email service assets of BlueLight.com to United Online
(Westlake Village, CA).

Kmart.txt

JULIAN C DAY born 1953. 1991-92 president and CEO of Bradley Printing Company. 1993-98 executive vice president and CFO of Safeway Inc. 1999-02 executive vice president of Sears Roebuck Inc. 2002-present active here.

BANKRUPTCY PROCEEDINGS: On Jan 22, 2002, the company filed a voluntary petition under Chapter 11 of the US Bankruptcy Act in US Bankruptcy Court, Chicago, IL. File #02-02474. On Apr 22, 2003, the Chapter 11 bankruptcy, file #02-02474, filed in the US Bankruptcy Court, Chicago, IL, plan was confirmed for Kmart Corporation. On April 22, 2003, the chapter Eleven bankruptcy, file number 02-02474, filed in the US BANKRUPTCY COURT, CHICAGO, IL, plan was confirmed for Kmart Corporation. On April 22, 2003, the chapter Eleven bankruptcy, file number 02-02474, filed in the US BANKRUPTCY COURT, CHICAGO, IL, plan was confirmed for Kmart Corporation.

OPERATIONS

09/29/04 Subsidiary of Kmart Holding Corp, Troy, MI started 2003 which operates as a holding company.

As noted, this company is a subsidiary of Kmart Holding Corp, DUNS #131978533, and reference is made to that report for background information on the parent company and its management.

Retail discount department store. Retailer groceries, specialized as a supermarket greater than 100,000 square feet (hypermarket). Provides management services. Retailer women's accessories.

Terms: 100% cash or through bank credit cards. Sells to general public. Territory : US, Puerto Rico, the US Virgin Islands & Guam. Season peaks spring months and prior to Christmas.

EMPLOYEES: 158,000. 3,500 employed here.

FACILITIES: Owns 850,000 sq. ft. in a four story concrete block building. The facilities house all corporate and administrative operations.

LOCATION: Suburban business section on well traveled street.

BRANCHES: This business has multiple branches, detailed branch/division information is available in D&B's linkage or family tree products.

SUBSIDIARIES: This business has multiple subsidiaries, detailed information is available in D&B's linkage or family tree products.

OTHER CORPORATE DETAILS

CORPORATE STATUS: ACTIVE
CORPORATE AGENT: THE CORPORATION COMPANY, 30600 TELEGRAPH ROAD, BINGHAM FARMS, MI
STATE ID NO: 142467

BANKING RELATIONSHIPS REPORTED

09/04 Account(s) averages moderate 7 figures. Account open over 10 years.

FINANCIAL SUMMARY

KEY BUSINESS RATIOS

NOTE:

D&B has been unable to obtain sufficient financial information from this company to calculate business ratios. Our check of additional outside sources also found no information available on its financial performance.

To help you in this instance, ratios for other firms in the same industry are

Kmart.txt

provided below to support your analysis of this business.

(Industry Norms Based on 12 Establishments)

	Profitability		Short-Term Solvency		Efficiency (%)		Utilization (%)	
	Return on Sales	Return on Net Worth	Curr Ratio	Quick Ratio	Assets/Sales	Sales/Net working Capital	Total Liabs/Net Worth	
Firm	UN	UN	UN	UN	UN	UN	UN	UN
Industry Median	2.9	14.2	1.8	0.5	67.2	8.3	155.9	
Industry Quartile	UN	UN	UN	UN	UN	UN	UN	UN

UN = Unavailable

FINANCIAL INFORMATION

06/24/04 In May 2003, the company restructured its legal structure and created a holding company. As a result of the new structure, financial statements, which are consolidated, are provided through the holding company's Business Information Report.

CUSTOMER SERVICE

If you need any additional information, or have any questions regarding this report, please call our Customer Service Center at (800) 234-3867 from anywhere within the U.S. From outside the U.S., please call your local D&B office.

END OF COMPREHENSIVE REPORT

**In Re: Complaint of Kmart Corporation Against Florida
Power and Light Company
Docket No. 050891-EI**

Petition for Formal Administrative Hearing on Proposed Agency Action

**Exhibit B
September 28, 2005 demand letter from FPL**

Florida Power & Light Company, P. O. Box 025209, Miami, FL 33102-5209



CERTIFIED MAIL

September 28, 2005

KMART CORPORATION
Attn: Mr. Glen Staton
National Utility Manager
3100 W Big Beaver
Troy, MI 48084

Re: Notice of Requirement of Additional Deposit

Dear Mr. Staton:

An annual review of your accounts shows a deposit requirement of \$1,399,320 and a deposit on hand of \$1,100,000.

FPL's deposit requirement is equal to two month's average billings as allowed by the Florida Public Service Commission. According to this standard formula, Kmart Corporation's deposit requirement is \$299,320 under the deposit requirement at this time. A bill for this amount will be issued within five business days for which payment will be expected to be made 30 days after the bill date. This deposit may be satisfied in the form of an Irrevocable Letter of Credit, a Surety Bond, or cash. Six percent interest is paid on all cash deposits. FPL believes this additional deposit request is appropriate in light of Kmart Corporation's parent company's current credit ratings.

If you require a payment extension, or if you need the proper forms for an Irrevocable Letter of Credit or a Surety Bond, please call me at 305-552-4794.

Sincerely,

A handwritten signature in cursive script that reads 'Damaris Diaz'.

Damaris Diaz
Credit Risk Supervisor

**In Re: Complaint of Kmart Corporation Against Florida
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**Exhibit C
Summary Description of Why FPL's Reliance Upon Dun & Bradstreet
is Misplaced, Unwise and Unfair**

EXHIBIT C

A SUMMARY DESCRIPTION OF WHY FLORIDA POWER & LIGHT COMPANY'S RELIANCE UPON DUN & BRADSTREET REPORTS IN MAKING CREDIT DECISIONS IS MISPLACED, UNWISE AND UNFAIR

Kmart Corporation, ("Kmart") is prepared to present testimony and other probative evidence to support and explain how reports prepared by Dun & Bradstreet ("D&B"), on which Florida Power & Light Company ("FP&L") has stated it relies, are inaccurate, ill-reasoned, carelessly prepared, irrelevant, and misleading. A review of D&B reports regarding Kmart's sister company Sears, Roebuck and Company ("Sears") is illustrative of the opaque and arbitrary methodology underlying such reports and their corresponding unreliability as a measurement of a commercial customer's credit status.

1. The D&B reports are summary in nature and lack in-depth analysis of the financial or credit position of a customer. D&B reports are superficial and attempt to reduce to a few pages an important, complicated and sophisticated analysis.

2. D&B financial and credit scores are assigned based on the median or average performance of a pool of "companies with similar business characteristics." Users of D&B reports rarely know or understand what exactly a company "with similar business characteristics" means. D&B does not provide a description of the industries, sectors and companies included with the subject company for analysis. In the case of D&B's analysis of Sears, a major flaw of the report is that D&B's peer pool, the companies to which Sears is purportedly compared, is analyzed based on data from 2002. There is no explanation or rationale presented why three year old data must be employed or whether three year old data continues to be relevant to the analysis.

3. Another monumental error in D&B's presentation of Sears' financial statistics is present in the report. D&B's report states that Sears' cash from operations in the year 2002 was a negative \$505 million, when in fact, as D&B could readily ascertain from Sears' 2004 Annual Report on Form 10-K, Sears' true cash flow from operations in 2002 was \$6,882,000,000, a net error detrimental to Sears of more than \$7.3 billion.

4. D&B's inclination to merely list negative sounding statistics about a subject company is irresponsible and misleading in the absence of any analysis or explanation of the value of those characteristics in analyzing credit quality. For example, D&B's recitation that Sears was involved in a modest number of lawsuits and had a modest and entirely expected number of liens and security interest filings present "in D&B's database" can be construed as a negative implication on Sears' credit when in fact the statistics are quite common and normal and expected in any business the size of Sears, and in fact may well reflect positively on Sears' financial condition and operations.

5. D&B's PAYDEX measure purports to inform the reader of the customer's payment habits. This statistic invites the reader of the report to substitute D&B's selective data

for the reader's own real-world credit experience with the customer. In the case of Sears, only one payment, on one individual account, in several years has ever been made to FP&L after its due date, an extraordinary record considering the amounts of money involved in the consolidated accounts indicated by the deposit demand.

6. D&B gives no weight whatever to the most important statistics of all, in analyzing its subjects' credit. Nowhere in the D&B report on Sears, will you find reported the amount of cash, cash equivalents and available credit lines upon which Sears is able to draw to pay its creditors including I P&L. If D&B had included cash and credit statistics it would have reported, from Sears' most recent Form 10-K that Sears had on hand at January 30, 2005 a total of \$4,165,000,000 in cash and had available to it in the form of lines of credit an additional \$2 billion for a total of \$6,165,000,000, sufficient, giving no credit to positive cash flow after December 31, 2005, more than one thousand times its annual payments to FP&L.

7. D&B report on Sears states: "D&B has been unable to obtain sufficient financial information from this company ... Our check of additional outside sources also found no information available on its financial performance". This statement either illustrates a lack of expertise or analytical negligence in the preparation of the report. Considerable detailed information about both Sears and its sister company, Kmart, is available to a knowledgeable researcher in the securities filings of Sears Holdings Corporation ("SHC"), specifically, for example, in the footnotes to the financial statements contained in SHC's second quarter 2005 form 10Q report.

**In Re: Complaint of Kmart Corporation Against Florida
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**Exhibit D
Excerpts from Bankruptcy Court's Order**

EOD APR 23 2003

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	Case No. 02-B02474
)	Jointly Administered
KMART CORPORATION, <i>et al.</i> ,)	Chapter 11
)	Hon. Susan Pierson Sonderby
)	
Debtors.)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
UNDER 11 U.S.C. §§ 1129(a) AND (b) AND FED. R. BANKR.
P. 3020 CONFIRMING THE FIRST AMENDED JOINT PLAN OF
REORGANIZATION OF KMART CORPORATION AND ITS AFFILIATED
DEBTORS AND DEBTORS-IN-POSSESSION, AS MODIFIED**

10827

capitalization, operation and reorganization; and (6) is consistent with sections 105, 1123, 1129 and other applicable provisions of the Bankruptcy Code.

AJ. Conditions To Confirmation. The conditions to Confirmation set forth in Article 13.1 of the Plan have been satisfied, waived or will be satisfied by entry of this Confirmation Order.

AK. Conditions To Consummation. Each of the conditions to the Effective Date, as set forth in Article 13.2 of the Plan, is reasonably likely to be satisfied. The conditions to the Effective Date, set forth in Article 13.2 of the Plan, shall be subject to waiver by the Debtors in their sole discretion, such waiver to be reasonably acceptable to the Plan Investors and the Statutory Committees, without any further notice to parties-in-interest or the Court and without a hearing.

AL. Retention Of Jurisdiction. The Court properly may retain jurisdiction over the matters set forth in Article XIV of the Plan.

AM. Agreements And Other Documents. The Debtors have made adequate and sufficient disclosure of: (1) the adoption of new or amended and restated certificates of incorporation and bylaws or similar constituent documents for the Reorganized Debtors; (2) the distributions to be made pursuant to the Plan; (3) the issuance for distribution, in accordance with the terms of the Plan, of the New Holding Company Common Stock; (4) the adoption, execution, delivery and implementation of all contracts, leases, instruments, releases and other agreements or

gages, deeds of trust, liens or other security interests against the property of any Estate are fully released and discharged (except to the extent Reinstated under the Plan), and all right, title and interest of any holder of such mortgages, deeds of trust, liens or other security interests, including any rights to any collateral thereunder, shall revert to the applicable Reorganized Debtor and its successors and assigns.

9. Retained Assets. To the extent the succession to assets of the Debtors by the Reorganized Debtors pursuant to the Plan are deemed to constitute "transfers" of property, such transfers of property to Reorganized Debtors and any transfers of property to the Kmart Creditor Trust (a) are or shall be legal, valid, and effective transfers of property, (b) vest or shall vest the Reorganized Debtors or the Kmart Creditor Trust, as applicable, with good title to such property, free and clear of all liens, charges, Claims, encumbrances, or interests, except as expressly provided in the Plan or this Confirmation Order, (c) do not and shall not constitute avoidable transfers under the Bankruptcy Code or under applicable nonbankruptcy law, and (d) do not and shall not subject the Reorganized Debtors or the Kmart Creditor Trust to any liability by reason of such transfer under the Bankruptcy Code or under applicable nonbankruptcy law, including, without limitation, any laws affecting successor or transferee liability.

10. Return of Deposits. All utilities, including any person that received a deposit or other form of adequate assurance of performance pursuant to

section 366 of the Bankruptcy Code during these Chapter 11 cases (collectively, the "Deposit"), including, without limitation, gas, electric, telephone, and sewer, shall return such Deposits to the Debtors and/or the Reorganized Debtors, as the case may be, either by setoff against postpetition indebtedness or by cash refund, within 45 days following the Effective Date.

11. Discharge, Releases, Limitations Of Liability And Indemnification. The discharge of the Debtors and any of their assets or properties provided in Article 12.2 of the Plan, the releases set forth in Articles 12.4 and 12.5 of the Plan, and the exculpation and limitation of liability provisions set forth in Article 12.8 of the Plan, are deemed incorporated in this Confirmation Order as if set forth in full herein and are hereby approved in their entirety.

12. Injunction. Except as otherwise specifically provided in the Plan and except as may be necessary to enforce or remedy a breach of the Plan, the Debtors, and all Persons who have held, hold or may hold Claims or Interests and any successors, assigns or representatives of the foregoing shall be precluded and permanently enjoined on and after the Effective Date from: (a) commencing or continuing in any manner any Claim, action or other proceeding of any kind with respect to any Claim, Interest or any other right or Claim against the Reorganized Debtors, which they possessed or may possess prior to the Effective Date, (b) the enforcement, attachment, collection or recovery by any manner or means of any

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**Exhibit E
Commission Order Proposing Rule Amendment**

EXHIBIT C

Page

LEXSEE 1973 FLA. PUC LEXIS 214

In re: Proposed amendment of Rule 25-6.97 relating to customer deposits of electric utilities

DOCKET NO. 73322-RULE; ORDER NO. 5778

Florida Public Service Commission

1973 Fla. PUC LEXIS 214

June 18, 1973

PANEL: [*1]

The following Commissioners participated in the disposition of this matter: WILLIAM H. BEVIS, Chairman; WILLIAM T. MAYO, PAULA F. HAWKINS

OPINION: ORDER PROPOSING RULE AMENDMENT

BY THE COMMISSION:

This docket is one of a series of proceedings initiated by the Commission on its own motion to revise the deposit practices of regulated utilities. The purposes are to provide uniformity within the electric industry as well as to place more specificity within the Rule itself to insure that both the customer and the utility are reasonably assured as to which criteria shall be used in administering the utility's deposit policy.

Present Rule 25-6.97 provides broad general guidelines to be followed by electric utilities with respect to customer deposits. Subsection (1) of said Rule permits a utility to require a deposit, in order to guarantee payment of bills, not to exceed an amount approved by the Commission, or an amount necessary to cover charges for electric service for two average billing periods. We have approved specific amounts for Florida Power and Light Company (\$20.00), Gulf Power Company (\$20.00), and Florida Power Corporation (\$25.00). These amounts are generally applied to [*2] residential accounts while the alternative computation (two average billing periods) is generally applied to commercial accounts. There are, however, no specific minimum deposit amounts prescribed for Tampa Electric Company and Florida Public Utilities Company. It is our understanding, however, that the former utility requires a minimum deposit of \$20.00. We propose to revise Subsection (1) to provide for a minimum deposit of \$25.00, or an amount to cover two months average billing, whichever is greater. In addition, we intend to provide alternative means for prospective customers to establish credit, in lieu of a cash deposit, since the present Rule offers no specific means of obtaining service, except upon the posting of a cash deposit.

Present Subsection (3) of said Rule provides that the utility may provide for the return of a deposit after a reasonable period of time. As a general rule, however, all electric utilities keep the deposit until service is terminated, despite the fact that the customer may have good payment habits. We propose to require in new Subsection (4) that the utility refund the deposit after twelve months if the customer has 12 consecutive months [*3] of prompt payment, which is construed to mean that he has not received two second notices within that preceding year.

In order to insure that excessive deposits are not initially required, and kept by the utility for the 12 month period, we also propose that if, after 90 days service, the actual deposit is found to be greater than an amount equal to the charges for service for two actual average billing periods, the utility shall, upon demand of the customer, promptly refund on credit the difference.

We recognize, of course, that circumstances may dictate the necessity of requiring new or additional deposits from a customer. Examples of such circumstances would be excessive slow payment, or a marked increase in consumption together with a slow payment record. Provision is made, therefore, in new proposed Subsection (3) for means by which the utility can obtain a new or additional deposit.

Present Subsection (2) provides that a deposit receipt be issued a customer and means provided so that the customer may claim his deposit if the certificate is lost. We intend to expand this section to require that certain information be placed upon the receipt, and to renumber said Subsection [*4] as Subsection (7).

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We also are proposing in new Subsection (6) that certain minimal information be maintained by the utility on those customers who are required to post deposits. We feel confident that this merely codifies the existing practices of the utilities, who presumably maintain such information in the normal course of their business.

Present Subsection (4) requires that when service is terminated, the utility may apply the deposit to the final bill, and the balance shall be returned to the customer. However, no time limitation for return of the deposit is provided therein. We propose to renumber this section as Subsection (8) and prescribe a maximum sixty day period of time in which the deposit, or remainder thereof, must be returned to the customer.

Finally, we propose to repeal present Rule 25-6.98, which relates to interest on deposits, and consolidate the provisions thereof into amended Rule 25-6.97 as new Subsection (5).

Therefore, the Commission, on its own motion, pursuant to Section 356.06, Florida Statutes, proposes to repeal Rule 25-6.98 and to amend Rule 25-6.97 to read as follows:

"25-6.97 Customer deposits.

(1) Deposit required; establishment of credit [*5] — Each utility may require an applicant for service to satisfactorily establish credit, but such establishment of credit shall not relieve the customer from complying with the electric company's rules for prompt payment of bills. Credit will be deemed so established if:

(a) The applicant for service has been a customer of any electric utility within the last two years and during the last 12 consecutive months of service did not have more than two occasions in which a bill was paid after becoming delinquent and never had service disconnected for nonpayment.

(b) The applicant for service furnishes a satisfactory guarantee of secure payment of bills for the service requested.

(c) The applicant pays a cash deposit subject to the further stipulations within this rule.

(d) The applicant demonstrates a satisfactory credit rating by appropriate means including but not limited to, the production of acceptable credit cards as defined by the Commission, letters of credit reference, or names of credit references which may be quickly and inexpensively contacted by the utility.

(2) Amount of deposit. — The amount of the initial required deposit shall be \$25.00 or an amount estimated to [*6] equal charges for electric service for two average billing periods, whichever is greater. If, after 90 days' service, the actual deposit is found to be greater than an amount equal to the charges for service for two actual average billing periods, the utility shall, upon demand of the customer to the company, promptly refund the difference.

(3) New or additional deposits. — A utility may require upon reasonable written notice of not less than 15 days, a new deposit, where previously waived or returned, or an additional deposit, in order to secure payment of current bills. Provided, however, that the total amount of the required deposit shall not exceed an amount equal to the actual average charges for electric service for two billing periods for the 90 day period immediately prior to the date of notice. In the event the customer has had service less than 90 days, then the utility shall base its new or additional deposit on the actual average monthly billing available.

(4) Refund of deposits. — The deposit shall be automatically refunded to the customer after 12 consecutive months of prompt payment. Prompt payment shall be construed to mean that a customer has not received two [*7] or more second notices within the preceding twelve month period. Nothing in this rule shall prohibit the company from returning a deposit in less than 12 months.

(5) Interest on deposit. — Each electric utility which requires deposits to be made by its customers shall pay a minimum interest on such deposits of six percent per annum. The deposit interest shall be simple interest in all cases and settlement shall be made annually, either in cash or by credit on the current bill. This does not prohibit any utility paying a higher rate of interest than six percent. No customer depositor shall be entitled to receive interest on his deposit until and unless a customer relationship and the deposit has been in existence for a continuous period of six months, then he shall be entitled to receive interest from the date of the commencement of the customer relationship and the placement of deposit.

(6) Record of deposit. — Each utility having on hand deposits from customers or hereafter receiving deposits from them shall keep records to show:

(a) The name of each customer making the deposit;

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- (b) The premises occupied by the customer when the deposit was made;
- (c) The date and amount [*8] of deposit;
- (d) Each transaction concerning the deposit such as interest payments, interest credited or similar transaction.

(7) Receipt for deposit. — A non-transferrable certificate of deposit shall be issued to each customer and means provided so that the customer may claim the deposit if the certificate is lost. The deposit receipt shall contain notice that after 90 days' service, the customer is entitled to refund of any deposit over and above an amount equal to the charges for two actual average billing periods.

(8) Refund of deposit when service discontinued. — Upon termination of service, the deposit and accrued interest may be credited against the current account and the balance, if any, shall be returned promptly to the customer, but in no event later than sixty (60) days after service is discontinued."

It is, therefore,

ORDERED by the Florida Public Service Commission that unless written objections with substantial ground for opposition are received within fifteen (15) days from the date hereof, the rules herein referred to will be adopted by formal order of the Commission (but without further notice), at the next public meeting of the Commission, such rules to [*9] become effective the day after they are filed in the Office of the Secretary of State, pursuant to the provisions of Section 120.041(4), Florida Statutes. It is further

ORDERED that if substantial objections are received which raise factual issues on which the taking of evidence is deemed necessary, notice of a public hearing for that purpose will be given, otherwise, the written objections may be set for oral argument if the Commission considers that argument will be helpful; or, they may be considered as submitted and proposed rules adopted, rejected, or adopted with modifications without further notice.

By order of Chairman WILLIAM H. BEVIS, Commissioner WILLIAM T. MAYO, and Commissioner PAULA F. HAWKINS, as and constituting the Florida Public Service Commission, this 18th day of June, 1973.