

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Complaints by Ocean Properties, Ltd., J.C. Penney Corp., Target Stores, Inc., and Dillard's Department Stores, Inc. against Florida Power & Light Company concerning thermal demand meter error.

DOCKET NO. 030623-EI  
ORDER NO. PSC-04-0934-PCO-EI  
ISSUED: September 22, 2004

ORDER DENYING MOTION TO AMEND PETITION FOR  
FORMAL ADMINISTRATIVE HEARING

By Order No. PSC-03-1320-PAA-EI, issued November 19, 2003, as proposed agency action ("PAA Order"), the Commission addressed several complaints by Southeastern Utility Services, Inc. ("SUSI") on behalf of various commercial customers against Florida Power & Light Company ("FPL") concerning alleged over-registration of demand by 1V thermal demand meters. On December 10, 2003, SUSI, along with Ocean Properties, Ltd., J.C. Penney Corporation, Dillard's Department Stores, and Target Stores, Inc. (collectively, "Customers") protested the PAA Order by filing a petition for a formal administrative hearing ("petition for hearing") on some of the complaints addressed in the PAA Order.<sup>1</sup> FPL filed a protest of the PAA Order on the same date.

On September 8, 2004, Target Stores, Inc. ("Target") filed a motion to amend that portion of Customers' petition for hearing that identified the Target stores whose electric meters were affected by the PAA Order. FPL filed a response in opposition on September 13, 2004.

Rule 28-106.211, Florida Administrative Code, grants broad authority to "issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case . . ." Based upon this authority, and having considered the motion and response, my findings are set forth below.

Target's Motion

In support of its motion, Target asserts that it recently became aware that it included one location in Customers' petition for hearing that it should not have, and omitted one store that should have been included in its petition for hearing. Specifically, Target asserts that its Bonita Springs store (meter number 1V5774D) was mistakenly included in the petition, while its Boca Raton store (meter number 1V5885D) should have been included in the petition. Target states

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<sup>1</sup> The Commission subsequently granted a motion by FPL to dismiss SUSI as a party from this proceeding for lack of standing. Order No. PSC-04-0591-PCO-EI, issued June 11, 2004 (reconsideration denied).

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that the meter at its Boca Raton store over-registered demand at 4.85% when tested by FPL on May 21, 2003.

Target asserts that this error was an oversight and requests permission to amend its petition for hearing to address this error. Target asserts that this type of amendment is expressly allowed by Rule 28-106.202, Florida Administrative Code. Further, Target cites Willard v. Willingham, 374 So. 2d 556 (Fla. 4th DCA 1979) for the proposition that leave to amend should be freely granted. Target asserts that because Customers and Commission staff have both filed testimony that address the Boca Raton store that Target wishes to include in this docket, neither would suffer prejudice.

#### FPL's Response

In response, FPL argues that Target's motion to amend should be denied. FPL states that Target provides no legal support for the relief it seeks. FPL asserts that the applicable law is found in Section 120.81(13)(b), Florida Statutes, which provides that a hearing on an objection to proposed agency action of the Commission may only address the issues in dispute and that issues in the proposed action not in dispute are deemed stipulated. FPL states that Target failed to timely place the Boca Raton meter in dispute in its petition for hearing, thus, as a matter of law, the determinations in the PAA Order apply to the Boca Raton store and are deemed final. FPL contends that the Willard case cited by target is inapposite because it did not involve proposed agency action of the Commission subject to the provisions of Section 120.81(13)(b), Florida Statutes.

#### Findings

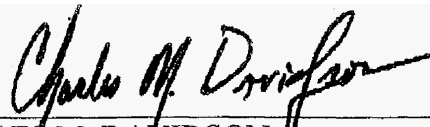
Upon review of the motion and response, Target's motion is hereby denied. Customers' petition for hearing was filed December 10, 2003, and a hearing was subsequently set for September 28, 2004. The hearing was later rescheduled for September 23, 2004. The parties commenced discovery in January 2004. Pursuant to the Order Establishing Procedure for this docket, issued June 9, 2003, controlling dates were established for the conduct of this proceeding. Pursuant to those controlling dates, parties' direct and rebuttal testimony and exhibits were filed July 12, 2004, and August 16, 2004, respectively. The last event scheduled prior to the hearing in this docket was the Prehearing Conference held August 30, 2004. Eight days after the Prehearing Conference and only fifteen days prior to the hearing, Target filed its motion to amend Customers' petition for hearing to substitute a meter previously not put at issue by the petition for a meter that was put at issue by the petition. At this very late stage in this proceeding, FPL would be unduly prejudiced if Target were permitted to remove and replace one of the meters that it specifically put at issue nine months ago and that FPL has prepared its case around. Under these circumstances, I decline to grant Target's leave to amend.

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Based on the foregoing, it is

ORDERED by Commissioner Charles M. Davidson, as Prehearing Officer, that Target's motion to amend Customers' petition for formal administrative hearing is denied.

By ORDER of Commissioner Charles M. Davidson, as Prehearing Officer, this 22nd day of September, 2004



CHARLES M. DAVIDSON  
Commissioner and Prehearing Officer

(SEAL)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule

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25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.