

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Ocean Properties, Ltd., J.C. Penney Corp.,
Dillards Department Stores, Inc., Target
Stores, Inc., and Southeastern Utilities
Services, Inc.,

Petitioners,

vs.

PSC Docket No. 030623-EI
Filed March 29, 2004

Florida Public Service Commission,
Respondent,

and

Florida Power & Light Company, Inc.,
Respondent.

COMMUNICATIONS
SECTION
MARCH 29 11:11 AM
2004

**PETITIONERS' RESPONSE TO FLORIDA POWER & LIGHT
COMPANY'S MOTION TO STRIKE CUSTOMERS' RESPONSE
TO FPL'S MOTION TO COMPEL**

Petitioners, Ocean Properties, Ltd., J.C. Penney Corp., Dillards Department Stores, Inc., and Target Stores, Inc. (collectively referred to as "Customers") hereby file their Response to Florida Power & Light Company's (FPL) Motion to Strike Customers' Response to FPL's Motion to Compel and state:

1. Rule 28-106.206, Florida Administrative Code, applies to discovery in this proceeding. This Rule states in pertinent part, "parties may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure."

2. FPL, on February 27, 2004, served Customers by mail with FPL's Motion to Compel. In its Motion to Compel, FPL cites Rule 1.380, Florida Rules of Civil Procedure, as authority for its Motion to Compel.

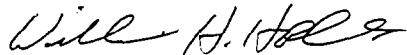
3. FPL cites Rule 28-106.204(1), Florida Administrative Code, as authority for its assertion that Customers' Response to FPL's Motion to Compel is untimely and should, therefore, be stricken.

4. Customers filed their response to FPL's Motion to Compel on Monday, March 15, 2004. This response was filed only three business days after the Wednesday, March 10, 2004, deadline asserted by FPL, and prior to the Commission's consideration of the underlying issues. The undersigned, as a relatively new PSC practitioner, assumed that a response was to be served in accordance with the Florida Rules of Civil Procedure governing discovery - rather than within the timeframe in Rule 28-106.204(1), Florida Administrative Code.

5. FPL will suffer no prejudice if the Commission considers Customers' Response to FPL's Motion to Compel as the delay in service (from Wednesday, March 10, 2004, to Monday, March 15, 2004) is not material because it has not caused this proceeding to be delayed or otherwise had any effect upon FPL's substantive rights.

WHEREFORE, Petitioners respectfully request that the Commission deny FPL's Motion to Strike Customers' Response to FPL's Motion to Compel.

Respectfully submitted this 29th day of March, 2004.



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CERTIFICATE OF SERVICE


I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to those listed below with an asterisk and the remainder by U.S. Mail without an asterisk this 29th day of March, 2004.

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