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September 8, 2004

VIA HAND DELIVERY

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

RECEIVED-PPSC
SEP - 8 PM 3:36
COMMISSION
CLERK

Re: Docket No. 030623-EI

Dear Ms. Bayó:

Enclosed for filing in the above-referenced docket on behalf of Florida Power & Light Company ("FPL") are the original and fifteen copies of FPL's Response to Customers' Cross-Motion for Partial Summary Final Order Regarding How Interest Should be Calculated on Refunds Due.


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

Sincerely,



Kenneth A. Hoffman

- CMP _____
- COM 3
- CTR _____
- ECR _____
- GCL _____
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- RCA Enclosures
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- OTH _____

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
09793 SEP-8 3
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Complaints by Southeastern Utility Services,
Inc. on behalf of various customers, against)
Florida Power & Light Company concerning)
thermal demand meter error)

Docket No. 030623-EI

Filed: September 8, 2004

**FLORIDA POWER & LIGHT COMPANY'S
RESPONSE TO CUSTOMERS' CROSS-MOTION
FOR PARTIAL SUMMARY FINAL ORDER
REGARDING HOW INTEREST SHOULD BE
CALCULATED ON REFUNDS DUE**

Florida Power & Light Company ("FPL"), by and through its undersigned counsel, hereby files the following Response to the Cross-Motion for Partial Summary Final Order Regarding How Interest Should be Calculated on Refunds Due filed by Ocean Properties, Ltd., J. C. Penney Corp., Dillard's Department Stores, Inc. and Target Stores, Inc. (collectively referred to as "Customers"), and states as follows:

1. The Customers' Cross-Motion for a Partial Summary Final Order on the interest rate issue confirms that there is no dispute between the parties that this issue is appropriate for summary final order. FPL would add that Staff's Prehearing Statement supports FPL's position that interest on any refunds ordered by the Commission should be calculated and added to such refunds in accordance with Rule 25-6.109(4), Florida Administrative Code.

2. FPL adopts and incorporates by reference its Motion for Partial Summary Final Order filed August 23, 2004 setting forth the legal grounds, arguments and authorities supporting a final order determining that interest on any refunds ordered by the Commission should be calculated and added to such refunds in accordance with Rule 25-6.109(4), Florida Administrative Code.

DOCUMENT NUMBER-DATE

09793 SEP-8 8

FPSC-COMMISSION CLERK

3. Customers' Cross-Motion offers no substantive legal argument in support of Customers' position that the Kissimmee Utility¹ decision applies in this proceeding. In Kissimmee Utility, the Supreme Court of Florida upheld the right of a customer properly suing a municipal electric utility in circuit court to prejudgment interest under the precedent established in the Argonaut² decision. The Kissimmee Utility decision did not address whether Rule 25-6.109, a rule not at issue in that case, applied to a refund ordered by the Florida Public Service Commission (not a circuit court) for payment by an electric utility like FPL that is subject to rate regulation by the Commission.

4. The Commission, of course, resolved any doubt about that issue in the Kelly Tractor Order³ discussed in FPL's Motion for Partial Summary Final Order. Kelly Tractor confirmed that the Commission's interest rate rules apply when the Commission orders an investor-owned utility subject to Commission rate regulation to provide a refund to a customer of such utility. Customers offer no substantive response to the Kelly Tractor order- - just a plea that Kissimmee Utility be followed.

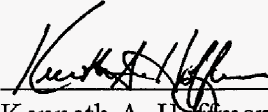
WHEREFORE, FPL respectfully requests that the Commission deny Customers' Cross-Motion for Partial Summary Final Order Regarding How Interest Should be Calculated on Refunds Due and grant FPL's Motion for Partial Summary Final Order filed August 23, 2004.

¹Kissimmee Utility Authority v. Better Plastics, Inc., 526 So.2d 46 (Fla. 1988).

²Argonaut Insurance Co. v. May Plumbing Co., 474 So.2d 212 (Fla. 1985).

³Order No. 20474 issued December 20, 1988.

Respectfully submitted,



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- - and - -

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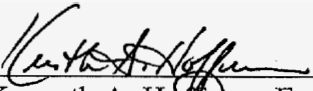
Attorneys for Florida Power & Light Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Response to Customers' Cross-Motion For Partial Summary Final Order Regarding How Interest Should Be Calculated on Refunds Due has been furnished by United States Mail this 8th day of September, 2004, to the following:

Cochran Keating, Esq.
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Florida Public Service Commission
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By: 
Kenneth A. Hoffman, Esq.

FPLcross-motionresponse