

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No.: 030623
Filed: October 4, 2004

**CUSTOMERS' MOTION FOR RECONSIDERATION
OF ORDER NO. PSC-04-0934-PCO-EI**

Customers, pursuant to Rule 25-22.0376, Florida Administrative Code, hereby request reconsideration of Order No. PSC-04-0934-PCO-EI (the "Order") issued on September 22, 2004, by the Prehearing Officer. The factual and legal grounds for this Motion are as follows:

1. On September 8, 2004, Target Stores, Inc. ("Target") filed its Motion for Leave to Amend their Petition for Administrative Hearing. Target sought leave to amend to correct a mis-identification of a meter in its Petition.
2. On September 22, 2004, the Prehearing Officer issued Order No. PSC-04-0934-PCO-EI denying Customers' Motion for Leave to Inspect Meters.
3. The purpose of a motion for reconsideration is to bring to the Commission's attention a point of fact or law which was misapprehended or overlooked by, in this case, the Prehearing Officer. Diamond Cab Company v. King, 146 So. 2d 889 (Fla. 1962).
4. In denying Target's Motion for Leave to Amend, the Prehearing Officer found, as the only basis for denying Target's Motion, that amending Target's Petition would "unduly prejudice[]" FPL. Target respectfully submits that the Prehearing Officer

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has overlooked the fact that FPL's Response to Target's Motion for Leave to Amend does not assert that FPL would be prejudiced, in any way, if Target's Motion were to be granted.


5. Target simply seeks to correct what amounts to a scrivener's error, whereby a meter was mis-identified in its Petition. All discovery in this docket propounded by FPL has been responded to by Target, and the other Customers, under the assumption that the Target meter for which substitution is sought was included in the Petition from the beginning. The only potential prejudice to FPL is that the prefiled testimony of Ms. Rosemary Morley does not include a refund calculation for the meter that Target seeks to substitute. Target would gladly stipulate to FPL's substitution of testimony to include this meter.

6. As stated in Newman v. State Farm Mutual Automobile Insurance Co., 858 So. 2d 1205, 1206 (Fla. 4th DCA 2003)

. . . leave to amend pleadings "shall be freely granted where justice so requires." Although the policy in Florida to liberally allow amendments where justice requires diminishes as the case progresses to trial, in exercising its discretion to allow the amendment, the trial court should weigh the amendment in terms of the prejudice to the opposing party in the preparation for trial. If the amendment simply restates an issue already present in the case of which the opposing party is aware and needs no extensive preparation for trial, then there may be no prejudice to the opposing party and great prejudice to the moving party to deny the amendment. (internal citations omitted)

Target respectfully submits that the Newman case describes the present situation. FPL is aware of that a meter was mis-identified due to the prefiled testimony of George Brown and Sidney Matlock which both are directed to the Target meter which Target now seeks to include. FPL has not argued that it will be prejudiced by the substitution of this meter. Conversely, Target will be greatly prejudiced if this substitution is not allowed.

WHEREFORE, for the foregoing reasons, Customers respectfully requests reconsideration of Order No. PSC-04-0934-PCO-EI, and that Customers' Motion for Leave to Amend be granted.



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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 day the 4th day of October, 2004.


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