

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: October 11, 2004

**FLORIDA POWER & LIGHT COMPANY'S RESPONSE IN OPPOSITION TO
CUSTOMERS' MOTION FOR RECONSIDERATION OF
ORDER NO. PSC-04-0934-PCO-EI**

Florida Power and Light Company ("FPL"), by and through its undersigned counsel, and pursuant to Rule 25-22.0376(2), Florida Administrative Code, hereby files its Response in Opposition to Customers' Motion for Reconsideration of Order No. PSC-04-0934-PCO-EI (the "Order"), and states as follows:

1. The purpose of a motion for reconsideration is to identify a point of fact or law which was overlooked or which the Prehearing Officer failed to consider in rendering his order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So.2d 162 (Fla. 1st DCA 1981). A motion for reconsideration is not an appropriate vehicle to reargue matters that have already been considered by the Prehearing Officer. Sherwood v. State, 111 So.2d 96 (Fla. 3rd DCA 1959); citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Nor should a motion for reconsideration be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review". Stewart Bonded Warehouse, 294 So.2d at 317.

2. Customers' Motion for Reconsideration should be denied as it fails to meet the standard for reconsideration outlined under Florida law.

3. In its Motion to Amend Petition, Target argued that it mistakenly included the Target Bonita Springs Store, Meter No. 1V5774D, and mistakenly failed to protest the Target Boca Raton Store, Meter No. 1V5885D, in its Petition for Formal Administrative Hearing.¹ In addition, Target cited Willard v. Willingham, 374 So.2d 556 (Fla. 4th DCA 1979) for the proposition that “leave to amend should be freely granted.”² Target filed its Motion to Amend Petition on September 8, 2004. In the Order, the Prehearing Officer found that Target failed to justify its delay in waiting over nine months after the filing of its Petition for Formal Administrative Hearing to file its Motion for Leave to Amend Petition - - a mere 6 days before the discovery cut-off and just 15 days prior to the final hearing. The Prehearing Officer justifiably concluded that Target’s prolonged failure to take action on this issue unduly prejudiced FPL.

4. The Customers’ Motion for Reconsideration fails to point to any issue of fact or law raised by Target that the Prehearing Officer overlooked in denying the Motion to Amend Petition. Instead, Customers seek to expand Target’s Motion to Amend Petition by alleging new facts and adding new legal argument not previously raised in Target’s Motion.³ Such new arguments obviously could not have been overlooked by the Prehearing Officer as they were not raised in the initial Motion to Amend Petition. Further, as the Commission has previously held, it is inappropriate to raise new arguments on reconsideration.⁴

¹See Target’s Motion to Amend Petition for Formal Administrative Hearing, at paragraphs 3-4.

²See Target’s Motion to Amend Petition for Formal Administrative Hearing, at paragraph 7.

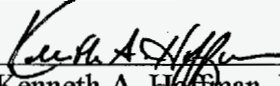
³See Customers’ Motion for Reconsideration of Order Number PSC-04-0934-PCO-EI, at paragraphs 5 and 6.

⁴See, e.g., Order No. PSC-92-0132-FOF-TL issued March 31, 1992.

5. Finally, although the Prehearing Officer found it unnecessary to reach this point, FPL pointed out in its Response to Target's Motion to Amend Petition that: (a) Target failed to timely place the Target Boca Raton meter, meter number 1V5885D, in dispute in its Petition for Formal Administrative Hearing; and (b) having failed to do so, under Section 120.81(13)(b), Florida Statutes, the determinations in the Commission's proposed Agency Action Order No. PSC-03-1320-PAA-EI apply to the Target Boca Raton meter and are deemed final. Accordingly, as previously noted by FPL, as a matter of law, Target has waived its opportunity to protest the Target Boca Raton meter.

WHEREFORE, for the foregoing reasons, FPL respectfully requests that the Commission deny Customers' Motion for Reconsideration of Order No. PSC-04-0934-PCO-EI.

Respectfully submitted,



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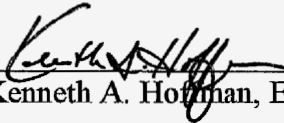
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Florida Power & Light Company's Response in Opposition to Customers' Motion for Reconsideration of Order No. PSC-04-0934-PCO-EI has been furnished by United States Mail this 11th day of October, 2004 to the following:

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