

Matilda Sanders

From: Nanci\_Nesmith@fpl.com  
Sent: Wednesday, November 23, 2005 12:40 PM  
To: Filings@psc.state.fl.us  
Cc: Wade\_Litchfield@fpl.com; Garson\_Knapp@fpl.com; Bert\_Gonzalez@fpl.com; Bill\_Feaster@fpl.com; Lynne\_Adams@fpl.com  
Subject: Electronic Filing for Docket No. 050890-EI FPL's Response in opposition to Sears, Roebuck and Company's Motion to Compel

Attachments: 050890-FPL Response to Sears Motion.doc



050890-FPL  
onse to Sear:

a. Person responsible for this electronic filing:

Garson Knapp, Attorney  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, FL 33408  
Tel: (561) 304-5720  
Garson\_Knapp@fpl.com

b. Docket No. 050890-EI re: Complaint of Sears, Roebuck and Company Against Florida Power & Light Company and Motion to Compel FPL to Continue Electric Service and to Cease and Desist Demands for Deposit Pending Final Decision Regarding Complaint.

c. Document being filed on behalf of Florida Power & Light Company.

d. There are a total of 4 pages.

e. The document attached for electronic filing is Florida Power & Light Company's Response in Opposition to Sears, Roebuck and Company's Motion to Compel Florida Power & Light Company to Continue Electric Service and to Cease and Desist Demands for Deposit Pending the Commission's Final Decision Regarding Complaint.

(See attached file: 050890-FPL Response to Sears Motion.doc)

Thank you for your attention and cooperation to this request.

Nanci NeSmith  
Florida Power & Light Company  
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Sears, Roebuck and Company Against Florida Power and Light Company )  
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Docket No. 050890-EI

Filed: November 23, 2005

**RESPONSE IN OPPOSITION OF FLORIDA POWER & LIGHT COMPANY TO SEARS, ROEBUCK AND COMPANY'S MOTION TO COMPEL FLORIDA POWER AND LIGHT COMPANY TO CONTINUE ELECTRIC SERVICE AND TO CEASE AND DESIST DEMANDS FOR DEPOSIT PENDING THIS COMMISSION'S FINAL DECISION REGARDING SEARS, ROEBUCK AND COMPANY'S COMPLAINT AGAINST FLORIDA POWER AND LIGHT COMPANY**

Florida Power & Light Company ("FPL"), pursuant to Rule 28-106.204(1), Florida Administrative Code ("FAC"), hereby files its Response in Opposition to the Motion of Sears, Roebuck and Company ("Sears") requesting the Commission issue an Order requiring FPL to continue electric service and desist its demands for a deposit pending final disposition of Sears' complaint against FPL ("Motion"). In support of this Response, FPL states:

1. On November 21, 2005, Sears, through its qualified representative, Rodger A. Kershner, Esq., filed its Motion alleging that FPL has threatened Sears with disconnection of all electric service to Sears locations unless Sears immediately provides FPL with a deposit in the amount of \$1,002,705.00. This Motion is a companion filing to Sears' Complaint filed against FPL on November 21, 2005, Docket No. 050890-EI, disputing the propriety of FPL's September 28, 2005 Notice of Deposit Requirement ("Notice"), attached as Exhibit A to the Complaint, in which FPL, pursuant to Rule 25-6.097, FAC, put Sears on notice of its requirement for a security deposit.

2. The Notice of Deposit Requirement was sent to Sears subsequent to an internal FPL review of the credit ratings of Sears and its parent company. In 1997, when Sears enjoyed excellent credit ratings, FPL agreed to waive its usual security deposit requirement. Since that time, Sears merged with Kmart Holding Corporation in 2005 creating Sears Holdings Corporation, the parent of retailers Sears, Roebuck and Company and Kmart Corporation. Prior to this merger, Kmart Corporation, in December 2001, had filed for reorganization under Chapter 11 of the Bankruptcy Code and emerged from Chapter 11 in May 2003. FPL, a creditor of Kmart in the bankruptcy proceeding, lost a substantial sum of money. FPL's evaluation of the creditworthiness of Sears in 1997 contrasted with its present credit ratings and those of its parent, Sears Holdings Corporation, resulted in the determination that the present ratings, significantly lower than in 1997, prudently warranted a security deposit; an action permissible under FPL's tariff and one designed to protect other customers of FPL.

3. On November 22, 2005, FPL was advised by an associate of Sears' qualified representative that the factual support for the allegation that FPL had threatened to disconnect electric service to all Sears locations in Florida unless Sears complies with FPL security deposit, was contained in the Notice. FPL's review of the Notice reveals no underlying factual basis whatsoever supporting this statement. In point of fact, FPL provided Sears a 2-week extension on November 2, 2005 to comply with the security deposit requirement. Sears, thereafter, made no further requests for an extension. Consequently, FPL's electronic billing system automatically transmitted to Sears disconnect notices on November 16, 2005 and November 21, 2005. Absent receipt of payment of the security deposit requested or a further request for an extension of time, Sears received the disconnect notices in the ordinary course of business.

4. That FPL, as suggested by Sears at page two of its Motion, would "...illegally interrupt electric service." is unwarranted and offensive. FPL, fully cognizant of the provisions of Rule 25-22.032(3), FAC, intends to provide uninterrupted electric service to Sears until such time as its Complaint, pending before the Commission, is resolved. In view of this Rule, the Motion of Sears is moot. Further, since the issue of the propriety of FPL's security deposit demand from Sears is presently before the Commission for disposition, FPL has no intention of attempting to collect same and thereby unduly complicate the proceeding.

WHEREFORE, FPL respectfully urges the Commission to deny, as unnecessary as a matter of administrative regulation, specifically Rule 25-22.032(3), FAC, Sears' Motion.

Respectfully submitted,

By: s/Garson Knapp

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Qualified Representative for Florida Power & Light  
Company

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was placed in the U.S. mail, postage paid, to the following this 23rd day of November, 2005:

Rodger A. Kershner, Esq.  
Howard & Carter, P.C.  
39400 Woodward Avenue, Suite 101  
Bloomfield Hills, Michigan 48304

By: s/Garson Knapp  
GARSON KNAPP, ESQ.