

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. 050891-EI FPL's Response in opposition to Kmart Corporation's Motion to Compel

Attachments: 050891-FPL Response to Kmart Motion.doc



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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. 050891-EI re: Complaint of Kmart Corporation 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 Kmart Corporation'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: 050891-FPL Response to Kmart Motion.doc)

Thank you for your attention and cooperation to this request.

Nanci NeSmith
Florida Power & Light Company
215 S. Monroe St., Suite 810
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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In re: Complaint of Kmart Corporation)
Against Florida Power and Light)
Company)
)
)
)
_____)**

Docket No. 050891-EI

Filed: November 23, 2005

**RESPONSE IN OPPOSITION OF FLORIDA POWER & LIGHT COMPANY
TO KMART CORPORATION'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 KMART CORPORATION'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 Kmart Corporation ("Kmart") requesting the Commission issue an Order requiring FPL to continue electric service and desist its demands for a deposit pending final disposition of Kmart's complaint against FPL ("Motion"). In support of this Response , FPL states:

1. On November 21, 2005, Kmart, through its qualified representative, Rodger A. Kershner, Esq., filed its Motion alleging that FPL has threatened Kmart with disconnection of all electric service to Kmart locations unless Kmart immediately provides FPL with an additional deposit in the amount of \$299,320.00. This Motion is a companion filing to Kmart's Complaint filed against FPL on November 21, 2005, Docket No. 050891-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 Kmart on notice of its requirement for a security deposit.

2. The Notice of Deposit Requirement was sent to Kmart subsequent to an internal FPL review of the credit ratings of its parent company. In December 2001 Kmart Corporation 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 Kmart's present parent company, Sears Holdings Corporation resulted in the determination that the present ratings prudently warranted an increase in the amount of Kmart's 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 Kmart's qualified representative that the factual support for the allegation that FPL had threatened to disconnect electric service to all Kmart in Florida unless Kmart 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 Kmart a 2-week extension on November 2, 2005 to comply with the security deposit requirement. Kmart thereafter made no further requests for an extension. Consequently, FPL's electronic billing system automatically transmitted to Kmart 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, Kmart received the disconnect notices in the ordinary course of business.

4. That FPL, as suggested by Kmart 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 Kmart until such time as its Complaint, pending before the Commission, is resolved. In view of this Rule, the Motion of Kmart is moot. Further, since the issue of the propriety of FPL's security deposit

demand from Kmart 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, Kmart's 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.