

**ORIGINAL**

**Timolyn Henry**

**From:** Estes, Ron L [REstes@HowardandHoward.com]  
**Sent:** Friday, December 02, 2005 4:51 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** Renewal of Motion - Docket No. 050891-EI  
  
**Attachments:** Renewal of Emergency Motion Kmart.doc



Renewal of  
rgency Motion k

This e-mail message to which the document is attached includes the following information, in the order listed:

a. The full name, address, telephone number, and e-mail address of the person responsible for the electronic filing,

Rodger A. Kershner  
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b. The docket number and title if filed in an existing docket,  
050890-EI

c. The name of the party on whose behalf the document is filed,  
  
Kmart Corporation

d. The total number of pages in each attached document.,  
1. Renewal of Motion - 4 pages

Ron L. Estes  
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recommending to another party any transaction or tax-related matter addressed herein.

ORIGINAL

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December 2, 2005

## VIA ELECTRONIC FILING

Bianca S. Bayo, Director  
Division of Records and Reporting  
Betty Easley Conference Center  
4075 Esplanade Way  
Tallahassee, Florida 32399-0870

Re: Renewal of Motion Docket No. 050891-EI

Dear Ms. Bayo:

On behalf of Kmart Corporation, I am enclosing for filing and distribution the original and 15 copies of the following:

- Renewal of Motion

Please acknowledge receipt of the above on the extra copy of each and return the stamped copies to me. Thank you for your assistance.

Very truly yours,

Howard & Howard Attorneys, PC

s/ Rodger A. Kershner

Rodger A. Kershner

Enclosures

DOCUMENT NUMBER-DATE

11408 DEC-2 05

FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Renewal of Motion for an Order Compelling Florida Power and Light Company to Continue Electric Service and to Cease and Desist Demands for Deposit Pending this Commission's Final Decision in the Matter of the Complaint by Kmart Corporation against Florida Power and Light, was on this 2<sup>nd</sup> day of December, 2005 served via U.S. Mail to the following:

Garson Knapp, Attorney  
FPL Energy Power Marketing, Inc.  
700 Universe Boulevard  
Juno Beach, FL 33408  
Tel: (561) 304-5720  
Fax: (561) 625-7504

Florida Power & Light Company  
P.O. Box 025576  
Miami, FL 33102

Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, FL 33408

Respectfully submitted,  
Kmart Corporation

s/ Rodger A. Kershner

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Rodger A. Kershner  
Its Qualified Representative  
Howard & Howard Attorneys, P.C.  
39400 Woodward Ave., Ste. 101  
Bloomfield Hills, MI 48304

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

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Docket No. 050891-EI  
Filed December 2, 2005

**RENEWAL OF MOTION FOR AN ORDER COMPELLING FLORIDA POWER AND  
LIGHT COMPANY TO CONTINUE ELECTRIC SERVICE AND TO CEASE AND  
DESIST DEMANDS FOR DEPOSIT PENDING THIS COMMISSION'S FINAL  
DECISION IN THE MATTER OF THE COMPLAINT BY KMART CORPORATION  
AGAINST FLORIDA POWER AND LIGHT COMPANY**

1. Pursuant to Rule 28-106.204 of the Florida Administrative Code, Kmart Corporation ("Kmart"), through its undersigned qualified representative, renews its 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.

2. On November 21, 2005, Kmart filed its complaint against Florida Power and Light Company ("FP&L") in Docket No. 050891-EI ("the Complaint"). Concurrent with the Complaint, Kmart filed an emergency motion requesting this Commission to issue an order providing that FP&L may not interrupt electric service to any Kmart location until this Commission's final resolution of the Complaint (the "Emergency Motion"). The Emergency Motion is still pending before this Commission as of December 2, 2005.

3. On November 23, 2005, FP&L filed its response to the Emergency Motion. In its response, FP&L substantially conceded that, pursuant to FAC 25-22.032(3), FP&L currently lacks legal authority to terminate electric service, and as such, FP&L "intends to provide uninterrupted electric service to Kmart until such time as its Complaint, pending before the

Commission, is resolved.” FP&L further stated, that it currently “has no intention of attempting to collect [a deposit] and thereby unduly complicate the proceeding.”

4. Kmart is a retailer with approximately 43 locations within FP&L’s service area. The holiday shopping season is critical to Kmart’s business operations and any interruption in electric service during this period would result in substantial damages and irreparable harm to Kmart’s business. In light of the critical nature of Kmart’s need for continued electric service, Kmart renews the Emergency Motion.

5. Kmart has conferred with FP&L regarding this motion and FP&L has declined to stipulate to an entry of the requested order.

WHEREFORE, Kmart renews the Emergency Motion and respectfully requests this Commission to enter an Order prohibiting FP&L from discontinuing electric service to any Kmart location pending this Commission’s resolution of Docket No. 050891-EI

Respectfully submitted,  
Kmart Corporation

s/ Rodger A. Kershner

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Rodger A. Kershner,  
Its Qualified Representative  
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