

Matilda Sanders

From: Nanci_Nesmith@fpl.com
Sent: Tuesday, December 06, 2005 3:23 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 Renewal Motion

Attachments: 050891-FPL Response to Renewal Kmart Motion.doc



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a. Person responsible for this electronic filing:

Garson Knapp, Attorney
Florida Power & Light Company
700 Universe Boulevard
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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 Renewal Motion for an Order Compelling 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 Renewal Kmart Motion.doc)

Thank you for your attention and cooperation to this request.

Nanci NeSmith
Florida Power & Light Company
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DOCUMENT NUMBER-DATE

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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 6, 2005

RESPONSE IN OPPOSITION OF FLORIDA POWER & LIGHT COMPANY

TO

KMART CORPORATION'S RENEWAL 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

Florida Power & Light Company ("FPL"), pursuant to Rule 28-106.204(1), Florida Administrative Code ("FAC"), hereby files its Response in Opposition to the Renewal 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 23, 2005, FPL filed its Response to Kmart's initial Emergency Order, filed on November 21, 2005. In this Response, FPL stated its clear intention to comply with Rule 25-22.032(3), FAC, and would neither terminate electric service to Kmart pending resolution by the Commission of its Complaint nor would attempt to collect the deposit sought during same. In consequence, FPL, viewing the matter of the requested relief as moot, requested

the Commission to deny, as unnecessary as a matter of administrative regulation, Kmart's Motion.

2. On December 2, 2005, Kmart, through its qualified representative, Rodger A. Kershner, Esq., filed its Renewal Motion again requesting the Commission issue an Order prohibiting FPL from discontinuing electric service to any Kmart location pending the Commission's resolution of Docket No. 050891-EI.

3. FPL views Kmart's Renewal Motion as premature and unripe inasmuch as the Commission has yet to rule on Kmart's initial Emergency Motion. Further, in light of FPL's Response to the initial Emergency Order, the assurances set forth therein that FPL would not violate Rule 25-22.032(3), FAC, and discontinue electric service to Kmart locations within its service territory pending resolution of Kmart's Complaint, and given the absence of any compelling and demonstrable evidence that FPL would otherwise do so, FPL views the instant motion as superfluous. In this regard, particularly, FPL notes that subsequent to the filing of Kmart's initial Motion and FPL's Response thereto, it provided, at the insistent request of Kmart's Qualified Representative, an email communication confirming FPL's commitment not to terminate power service to Kmart locations within FPL's service territory as a result of the filing of the Kmart Complaint and initial Emergency Order. This communication, wherein Kmart's Qualified Representative expresses his appreciation for the said FPL commitment, is attached hereto as Exhibit "A."

4. Rule 28-106.107, FAC, requires Qualified Representatives to exercise due diligence to insure that any motion or pleading is filed and argued in good faith. In the case of the instant Renewal Motion and the complete absence of any compelling reasoning as grounds for its requested relief set forth therein, FPL is at a complete loss for an explanation as to why

Kmart's Qualified Representative continues to imply that FPL, notwithstanding its unambiguous assurances and stated commitment to comply with Rule 25-22.032(3), FAC, would discontinue electric service to Kmart locations within its service territory pending Commission resolution of Kmart Complaint.

5. Regarding Kmart's allegation contained in Paragraph 5 of its Renewal Motion that Kmart has conferred with FPL regarding this motion and FPL has declined to stipulate to an entry of the requested order, FPL observes such statement is accurate. Importantly, what is absent, however, is FPL reason for not agreeing to such stipulation. FPL, upon being informed by Kmart that Kmart would withdraw its original Emergency Motion on the condition that FPL enter into such stipulation, so declined noting that same was unnecessary in view of FPL's stated commitment in its Response to comply with Rule 25-22.023(3), and not disconnect electric service to Kmart locations.

Indeed, in light of Rule 25-22.023(3), Sears' initial Motion itself was completely unnecessary. The requirements of the Rule speak for themselves. Nothing further is required. The order or stipulation sought by Sears unreasonably assumes that a jurisdictional utility will not comply with a Commission rule. Such a request is neither warranted nor necessary. The Commission should not enter an order that assumes a jurisdictional utility will not comply with an existing Commission rule.

WHEREFORE, FPL respectfully, again, urges the Commission to deny, as unnecessary as a matter of administrative regulation, specifically Rule 25-22.032(3), FAC, Kmart's Renewal Motion. FPL further requests Kmart's Renewal Motion be denied on the grounds that it is premature and without any reasonable basis in fact

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 6th day of December, 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.