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Matilda Sanders

CMP

From: Olsen, Stephanie N. [SOlsen@HowardandHoward.com]
Sent: Tuesday, May 30, 2006 11:45 AM
To: Filings@psc.state.fl.us
Subject: Docket No. 050890-EI Petition for Formal Administrative Hearing

Attachments: petition.pdf

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Electronic Filing

A. The full name, address, telephone number, and email 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
In re: Complaint of Sears, Roebuck, and Co. Against Florida Power & Light Company

C. The name of the party on whose behalf the document is filed
Sears, Roebuck, and Co.

D. Total number of pages in each attached document
Petition for Formal Administrative Hearing on Proposed Agency Action = 20

E. The document attached for electronic filing is Sears, Roebuck and Co.'s Petition for Formal Administrative Hearing on Proposed Agency Action.

Thank you for your attention and assistance in this matter.

Stephanie N. Olsen

DOCUMENT NUMBER-DATE
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FPSC-COMMISSION CLERK

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May 30, 2006

VIA ELECTRONIC FILING

Blanca S. Bayo, Director
Division of the Commission Clerk and Administrative Services
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, FL 32399-0870

Re: Docket Number 050890: In re: Complaint of Sears, Roebuck and Co. Against Florida Power & Light Company

Dear Ms. Bayo:

On behalf of Sears, Roebuck and Co., attached for filing and distribution is the original electronic version of the following:

- Sears' Petition for Formal Administrative Hearing on Proposed Agency Action

Thank you for your attention to this matter.

Very truly yours,

Howard & Howard Attorneys, P.C.

s/ Rodger A. Kershner

Rodger A. Kershner

c: Jennifer Brubaker, Esq.
Natalie F. Smith, Esq.
Bill Walker, Esq.
Sharna Hatcher, Esq.

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Sears, Roebuck and Co. Against Florida Power and Light Company	)	**Docket No. 050890-EI**
	)	**Filed: May 30, 2006**

PETITION FOR FORMAL ADMINISTRATIVE HEARING ON PROPOSED AGENCY ACTION

Sears, Roebuck and Co., ("Sears") by and through its undersigned authorized representative, and pursuant to Sections 120.569 and 120.57, Florida Statutes, and Rules 25-22.029 and 28-106.201 of the Florida Administrative Code, hereby files this Petition for Formal Administrative Hearing on Proposed Agency Action, Order No. PSC-06-0383-PAA-El, issued May 9, 2006 by the Florida Public Service Commission ("PAA Order") and in support thereof states as follows:

1. The name and address of the agency affected and the agency's file number are:

   Florida Public Service Commission (herein the "Commission" or the "FPSC")
   2540 Shumard Oak Boulevard
   Tallahassee, Florida 32399
   Docket Number: 050890-EI

2. The petitioner in this proceeding is:

   Sears, Roebuck and Co.
   3333 Beverly Rd.
   Hoffman Estates, IL 60179
   (847) 286-2500

   and its authorized representatives are:

   Rodger A. Kershner, Esq.
   Howard & Howard Attorneys PC
   39400 Woodward Avenue, Suite 101
   Bloomfield Hills, Michigan 48304-5151
   (248) 723-0421

Lori K. Miller, Esq.
Assistant General Counsel
Sears Holding Corporation
3333 Beverly Road, B6-333A
Hoffman Estates, Illinois 60179
(847) 286-4482

3. Sears received notice of the PAA Order by facsimile from the Commission on May 9, 2006

FACTUAL BACKGROUND

4. Sears, the petitioner in this matter, is a New York corporation qualified to conduct business in the State of Florida and conducting business within the franchised service territory of Florida Power & Light Company ("FPL") as a multi-line retailer.

5. On or about October 10, 2005, Sears received a "Notice of Deposit Requirement" (the "Notice") from FPL dated September 28, 2005, demanding that Sears provide a deposit to continue to receive from FPL the electric service which is vital to Sears' business operations. (See Notice, attached as **Exhibit A**). Sears has consistently maintained a history of full payment of FPL's bills when due and has never before been requested to pay a deposit as a condition precedent to continued electric service.

6. In the Notice, FPL demanded that Sears pay a deposit of $1,002,705 within 30 days as a condition of continued uninterrupted electric service. The Notice further stated that the deposit demand followed a review of Sears' and SHC's "current credit rating." The reviews were based on "internal and external sources, such as Dun & Bradstreet and Standard & Poor's."

7. On November 21, 2005, Sears availed itself of the informal dispute resolution procedures established by this Commission in Rule 25-22.032.

8. FPL does not require security deposits from all of its customers. Prior to sending the Notice, FPL had never required a security deposit from Sears. On information and belief, based in part upon FPL's description of its process for determining which of its customers are required to make deposits and in part upon FPL's latest public financial statements, FPL does in fact discriminate among its customers in demanding deposits and such discrimination is based on faulty, misleading data and invalid criteria.

9. The process by which FPL has stated it makes decisions about which of its customers should be required to pay deposits, and therefore be placed at a competitive disadvantage with respect to others in their industry, is unreliable, invalid, capricious and unduly discriminatory.

10. **Exhibit B** to this Petition illustrates the kind of inaccuracy and conclusory language relied upon by FPL, which, if sanctioned by the state in the context of the restrictions

placed by the state upon Sears' right to obtain electricity from any source it chooses, operates to deprive Sears of due process of law and equal protection of laws.

11. The fourth paragraph of the PAA Order purports to order Sears to "pay a deposit in the amount of $1,002,705...in order to receive continuous service from Florida Power & Light Company." Sears submits that such an order is improper and not within the Commission's authority to make. Under proper circumstances a deposit may be a condition precedent to continued service, but the authority granted FPL by the Commission's rule 25-6.097 extends only to authorizing deposits but not to requiring deposits. Enforcing a deposit request, once authorized, is within the sole discretion of FPL.

SUBSTANTIAL INTEREST OF SEARS

12. It is the position of FPL that it is entitled to payment by Sears of over $1 million in excess of its filed rates, and that if Sears fails to pay FPL over $1 million, FPL can withhold electric service, and thereby, by virtue of its monopoly, make any legal purchases of electricity by Sears impossible.

13. The funds held or demanded by FPL are denominated deposits, but because FPL has no legal obligation ever to return these funds until Sears ceases to require electricity in FPL's service territory, the deposits are essentially charges. Whether Sears' funds are ever returned to Sears depends upon the willingness and ability of FPL to do so, precisely the concern which, when reversed, gives rise to this controversy.

14. Any amount Sears is required to pay FPL in excess of tariff rates for power has the potential to place Sears at a competitive disadvantage as compared to other multi-line retailers.

DISPUTED ISSUES OF MATERIAL FACT

15. Subject to proper discovery, and refinement of the issues previous to formal hearing, the issues of material fact or mixed fact and law which have been expressly or by implication disputed by the parties, include:

    a. Whether to provide Sears with electric service without Sears having first deposited approximately $1 million to secure payment constitutes a substantial risk of payment default to FPL's shareholders or customers.

    b. Whether the information relied upon by FPL, particularly the Dun & Bradstreet report, contains errors which render the information relied upon by FPL unreliable.

    c. Whether it was reasonable and lawful for FPL to rely exclusively upon a single, possibly inaccurate, source of information in deciding whether to require a deposit from, or to retain past deposits from, Sears.

d. Whether FPL in considering whether to require a deposit from Sears, notwithstanding any inaccuracy in the data it examined, applied tests or criteria reasonably calculated to properly identify customers who represent material risk of payment default.

e. Whether, in considering the credit quality of all commercial customers, FPL employed the same sources of information and the same tests and criteria as used in considering Sears' credit.

f. Whether it is valid or lawful for FPL to assess the credit of Sears based, in part, upon FPL's assessment of Sears' "parent company's current credit ratings" when FPL's claims are by law superior to those of Sears' shareholders and Sears' parent company is not legally liable for its subsidiaries debts.

g. Whether FPL's interpretation of FAC 25-6.097, as conferring upon FPL absolute discretion to demand deposits subject only to a limitation on amount, is correct.

h. If FPL does not have absolute discretion in requiring deposits, whether FPL's methods of deciding how and on which customers to impose deposit requirements complies with FAC 25-6.097.

i. Whether FPL's tariff conforms to the requirements of FAC 25.6.097(1) that "Each company's tariff shall contain their specific criteria for determining the amount of initial deposit."

j. Whether FPL's practice and conduct in demanding from Sears a deposit in September 2005 conformed to the requirements of FAC 25-6.097(3) that a utility's request for a new or additional deposit "shall be separate from and apart from any bill for service and shall explain the reason for such new or additional deposit...."

k. Whether, following receipt of the explanation offered in justification for a new or additional deposit, as plainly required by FAC 25-6.097(3), a customer has the right to dispute the accuracy of the facts contained therein or the validity of the conclusion drawn from such facts by the utility and to review by the Commission.

FACTS WARRANTING REVERSAL OR MODIFICATION OF THE COMMISSION'S PROPOSED ACTION

16. On or about October 10, 2005, Sears received the Notice from FPL insisting that Sears provide a deposit in the amount of $1,002,705 to continue to receive from FPL electric service. (**Exhibit A**). FPL did not provide Kmart with *any* explanation for the new deposit demands, but merely relied upon the conclusory statements that FPL had performed a review of Sears' financial status "using both internal and external sources, such as Dun & Bradstreet and Standard & Poor's" and that the demand "results from the current credit ratings of Sears, Roebuck & Co. and its parent company."

17. FPL's explanation was vague, conclusory and inadequate as it failed to provide Sears with any meaningful insight into why FPL demanded an additional deposit and how FPL calculated the amount of deposit, as required by FAC 25-6.097(3).

18. FPL based its determination on whether to demand a deposit on Sears' credit rating as well as the credit rating of its parent company.

19. The process by which FPL has stated it uses to make decisions about which customers should be required to pay deposits is unreliable, invalid, arbitrary, capricious, and discriminatory.

20. FPL relies almost exclusively upon reports prepared by Dun & Bradstreet in deciding whether to demand an additional deposit from its customers. The Dun & Bradstreet reports used by FPL to assess whether to demand an additional deposit were riddled with errors and unfounded conclusions and provided no objective basis that would prevent FPL from discriminating amongst FPL's customers.

21. FPL did not provide Sears with any opportunity to dispute the accuracy of the information relied upon by FPL in deciding to demand a deposit from Sears, nor did FPL provide Sears with the opportunity to dispute the conclusions drawn by FPL from the information it relied upon.

22. FPL's tariff does not provide any criteria for determining the amount of deposit FPL may demand, as required by FAC 25-6.097(1).

STATUTES AND RULES REQUIRING REVERSAL OF THE COMMISSION'S PROPOSED ACTION

23. The statutes and rules requiring reversal of the Commission's proposed action are as follows:

    a. FSA § 366.03. This statute provides the general duties of public utilities:

> [A]l rates and charges made, demanded or received by any public utility for any service rendered, or to be rendered by it, and each rule and regulation of such public utility, *shall be fair and reasonable*. No public utility shall make or give any undue or unreasonable preference or advantage to any person or locality, or subject the same to any undue or unreasonable prejudice or disadvantage in any respect. (emphasis added).

Petitioner contends, for the reasons stated above, that the regulations and practices FPL used to determine whether to demand a deposit from Sears and the regulations and practices FPL used to determine the amount of deposit to demand from Sears violates this statute, as FPL's practices and regulations are unreasonable, unfair, and discriminatory. Requiring deposits from Sears on unsupported and invalid grounds operates as a preference and advantage to all others.

b. FSA § 366.07. This statute requires the Commission to fix fair charges and practices by utilities under its jurisdiction:

> [W]henever the commission, after public hearing, either upon its own motion or upon complaint, shall find the rates, rentals, charges or classifications, or any of them, proposed, demanded, observed, charged or collected by any public utility for any service, or in connection therewith, or the rules, regulations measurements, practices or contracts, or any of them, relating thereto, are unjust, unreasonable, insufficient, excessive, or unjustly discriminatory or preferential, or in anyway in violation of law, or any service in adequate or cannot be obtained, the commission shall determine and by order fix the fair and reasonable rates, rentals charges or classifications, and reasonable rules, regulations, measurements, practices, contracts or services, to be imposed, observed, furnished, or followed in the future.

Petitioner contends, for the reasons stated above, that the regulations and practices FPL used to determine whether to demand a deposit from Sears and the regulations and practices FPL used to determine the amount of deposit to demand from Sears violates this statute, as FPL's practices and procedures are unjust, unreasonable, insufficient, and unjustly discriminatory.

c. FSA §§ 120.52(8), 120.56. These rules define "invalid exercise of delegated legislative authority" and provide the procedure for challenging rules that constitute an invalid exercise of delegated legislative authority.

FSA § 120.52(8) provides in pertinent part:

> Invalid exercise of delegated legislative authority means action which goes beyond the powers, functions, and duties delegated by the Legislature. A proposed or existing rule is an invalid exercise of delegated legislative authority if any one of the following applies: (d) the rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency; (e) the rule is arbitrary or capricious. A rule if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational.

FSA § 120.56 provides in pertinent part:

> (1) General procedures for challenging the validity of a rule or a proposed rule –

> (a) Any person substantially affected by a rule or a proposed rule may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority.

Petitioner contends, for the reasons stated above, that the Commission's proposed action, permitting FPL to continue with its regulations and practices for determining whether to demand deposits and for determining the amount of deposit to demand is an invalid exercise of delegated authority and Petitioner has the right to challenge the rule on those grounds.

d. Due Process Clause of the Fourteenth Amendment of the U.S. Constitution. Due Process Clause of the Florida Constitution, Article 1 § 9. Petitioner contends that FPL's practices and procedures for determining whether to demand additional deposits and for determining the amount of deposit to demand violates due process as the criteria used to make these determinations is not rationally related to a legitimate government interest. Because FPL is heavily regulated by the state, and there is a close nexus between the state and the FPL's practices and procedures for demanding a deposit, FPL's actions complained of in this matter may be fairly treated as that of the state itself, and thereby must comply with the requirements of due process. (*See Burton v. Wilmington Parking Authority*, 365 U.S. 715, 722; 81 S.Ct. 856 (1961)(stating that "only by sifting facts and weighing circumstances can the nonobvious involvement of the State in private conduct be attributed its true significance.") *See also Jeffries v. Georgia Residential Finance Authority*, 678 F.2d 919 (1982 11th Cir.)(finding that a private person's actions constituted state action for purposes of fourteenth amendment analysis and stating that "the relevant inquiry is 'whether there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself.'")).

e. FAC 25-6.097(1). This rule provides the rules utilities are to follow to demand deposits: "Each company's tariff shall contain their specific criteria for determining the amount of initial deposit." Petitioner contends that FPL has violated this rule since its tariff does not provide specific criteria for determining the amount of deposit.

f. FAC 25-6.097(3). This subsection provides guidelines utilities are to follow to demand new or additional deposits. The rule states:

> A utility may require, upon reasonable written notice of not less than thirty (30) days, a new deposit, where previously waived or returned, or additional deposit, in order to secure payment of current bills. Such request shall be separate and apart from any bill for service and shall explain the reason for such new or additional deposit.

Petitioner contends that FPL violated this rule when it billed Sears for the deposit by failing to fulfill the requirements enumerated in this rule.[1]

In addition, in the order proposing the rule amendment, the Commission stated "we recognize, of course, that circumstances may dictate the necessity of requiring new or additional deposits from a customer. Examples of such circumstances would be excessive slow payment, or a marked increase in consumption together with a slow payment record. Provision is made, therefore, in new proposed Subsection (3) for means by which the utility can obtain a new or additional deposit." (Commission order, **Exhibit C**). Implicit in the Commission's statement is the intent that those circumstances be present justifying the demand for additional deposits, and that FPL may not demand additional deposits without reason or the presence of those circumstances.

RELIEF SOUGHT BY PETITIONER

24. For the reasons stated above, Petitioner respectfully requests that the Commission issue a final order:

    a. Requiring that FPL explain to Petitioner why it demanded a deposit, as FPL is already required to do pursuant to FAC 25-6.097(3), and affirming that the conclusory statements FPL gave to explain the reason for the deposit are insufficient;

    b. Providing Petitioner with the opportunity to discover, challenge, test and rebut the facts, methods and conclusions that FPL used in deciding to demand a deposit from Sears, in order to give meaning to the notice requirements of FAC 25-6.097(3);

    c. Providing that the Commission will review the facts methods and conclusions FPL relied upon in making a decision to require a deposit from Sears;

    d. Requiring that FPL provide in its tariff the specific criteria it uses for determining when to demand a deposit and the amount of deposit it demands, as required by FAC 25-6.097(1);

    e. Requiring that FPL provide Petitioner with uninterrupted electric service, without further demands for deposits, until the requirements enumerated in sections 3(a) through 3(c) above are satisfied.

    f. Should the Commission order Sears to pay the deposit, providing that FPL may not demand a late fee from Sears for the deposits for the time period that Sears has been challenging the deposit demand.

---

[1] Petitioner further contends that FPL's argument, that FPL may require an additional deposit so long as it is no greater than two times the amount of a customer's monthly bill, for whatever reason they choose, contradicts this rule, since the rule specifically requires that FPL explain the reason for the required additional deposit.

Respectfully submitted this 30th day of May 2006.

Sears Roebuck and Co.,

s/ Rodger A. Kershner
Rodger A. Kershner,
Its Qualified Representative
Howard & Howard Attorneys, P.C.
39400 Woodward Ave., Ste. 101
Bloomfield Hills, MI 48304
(248) 723-0421 – Telephone
(248) 645-1568 – Facsimile

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was furnished by the United States Mail to the following this 30th day of May 2006.

Jennifer Brubaker, General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd
Tallahassee, FL 32399-0850

Natalie F. Smith, Esq.
Garson Knapp, Esq.
Florida Power & Light Company
700 Universe Blvd.
Juno Beach, Florida 33408

Bill Walker, Esq.
Florida Power & Light Company
215 South Monroe Street, Suite 810
Tallahassee, FL 32301-1859

s/ Rodger A. Kershner
Rodger A. Kershner

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

Petition for Formal Administrative Hearing on Proposed Agency Action

Exhibit A
Notice of Deposit Requirement from FPL dated September 28, 2005

Florida Power & Light Company, P. O. Box 025209, Miami, FL 33102-5209

FPL

CERTIFIED MAIL

September 28, 2005

Sears Roebuck and Co
Attn: Mr. Steven Greenblatt
Manager, Energy & Utilities
3333 Beverly Road, E3-153A
Hoffman Estates, Il 60179

Re: Notice of Deposit Requirement

Dear Mr. Greenblatt:

In 1997 Sears, Roebuck & Co.'s security deposit was waived as a result of its excellent credit worthiness.

FPL's credit evaluation processes include monitoring the financial status of customers to whom this courtesy has been extended. We perform these reviews using both internal and external sources, such as Dun & Bradstreet and Standard & Poor's. Results from the current credit ratings of Sears, Roebuck & Co. and its parent company, much less favorable than such results utilized in 1997, indicate that a deposit is necessary at this time.

FPL's deposit requirement is equal to two month's average billings as allowed by the Florida Public Service Commission. According to this standard formula, Sears, Roebuck & Co.'s deposit requirement is $1,002,705 at this time. A bill for this amount will be issued within the next five business days for which payment will be expected to be made 30 days after the bill issue date. This deposit may be satisfied in the form of an Irrevocable Letter of Credit, a Surety Bond, or cash. Six percent interest is paid on all cash deposits.

If you have any questions about this matter, or if you need the proper forms for an Irrevocable Letter of Credit or a Surety Bond, please call me at 305-552-4794.

Sincerely,

Damaris Diaz
Credit Risk Supervisor

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

Petition for Formal Administrative Hearing on Proposed Agency Action

Exhibit B
Summary Description of Why FPL's Reliance Upon Dun & Bradstreet is Misplaced, Unwise, and Unfair

EXHIBIT B

A SUMMARY DESCRIPTION OF WHY FLORIDA POWER & LIGHT COMPANY'S RELIANCE UPON DUN & BRADSTREET REPORTS IN MAKING CREDIT DECISIONS IS MISPLACED, UNWISE AND UNFAIR

Kmart Corporation, ("Kmart") is prepared to present testimony and other probative evidence to support and explain how reports prepared by Dun & Bradstreet ("D&B"), on which Florida Power & Light Company ("FP&L") has stated it relies, are inaccurate, ill-reasoned, carelessly prepared, irrelevant, and misleading. A review of D&B reports regarding Kmart's sister company Sears, Roebuck and Company ("Sears") is illustrious of the opaque and arbitrary methodology underlying such reports and their corresponding unreliability as a measurement of a commercial customer's credit status.

1. The D&B reports are summary in nature and lack in-depth analysis of the financial or credit position of a customer. D&B reports are superficial and attempt to reduce to a few pages an important, complicated and sophisticated analysis.

2. D&B financial and credit scores are assigned based on the median or average performance of a pool of "companies with similar business characteristics." Users of D&B r orts rarely know or understand what exactly a company "with similar business characteristics" means. D&B does not provide a description of the industries, sectors and companies included with the subject company for analysis. In the case of D&B's analysis of Sears, a major flaw of the report is that D&B's peer pool, the companies to which Sears is purportedly compared, is analyzed based on data from 2002. There is no explanation or rational presented why three year old data must be employed or whether three year old data continues to be relevant to the analysis.

3. Another monumental error in D&B's presentation of Sears' financial statistics is present in the report. D&B's report states that Sears' cash from operations in the year 2002 was a negative $505 million, when in fact, as D&B could readily ascertain from Sears' 2004 Annual Report on Form 10-K, Sears' true cash flow from operations in 2002 was $6,882,000,000, a net error detrimental to Sears of more than $7.3 billion.

4. D&B's inclination to merely list negative sounding statistics about a subject company is irresponsible and misleading in the absence of any analysis or explanation of the value of those characteristics in analyzing credit quality. For example, D&B's recitation that Sears was involved in a modest number of lawsuits and had a modest and entirely expected number of liens and security interest filings present "in D&B's database" can be construed as a negative implication on Sears' credit when in fact the statistics are quite common and normal and expected in any business the size of Sears, and in fact may well reflect positively on Sears' financial condition and operations.

5. D&B's PAYDEX measure purports to inform the reader of the customer's payment habits. This statistic invites the reader of the report to substitute D&B's selective data

for the reader's own real-world credit experience with the customer. In the case of Sears, only one payment, on one individual account, in several years has ever been made to FP&L after its due date, an extraordinary record considering the amounts of money involved in the consolidated accounts indicated by the deposit demand.

6. D&B gives no weight whatever to the most important statistics of all, in analyzing its subjects' credit. Nowhere in the D&B report on Sears, will you find reported the amount of cash, cash equivalents and available credit lines upon which Sears is able to draw to pay its creditors including I P&L. If D&B had included cash and credit statistics it would have reported, from Sears' most recent Form 10-K that Sears had on hand at January 30, 2005 a total of $4,165,000,000 in cash and had available to it in the form of lines of credit an additional $2 billion for a total of $6,165,000,000, sufficient, giving no credit to positive cash flow after December 31, 2005, more than one thousand times its annual payments to FP&L.

7. D&B report on Sears states: "D&B has been unable to obtain sufficient financial information from this company ... Our check of additional outside sources also found no information available on its financial performance". This statement either illustrates a lack of expertise or analytical negligence in the preparation of the report. Considerable detailed information about both Sears and its sister company, Kmart, is available to a knowledgeable researcher in the securities fillings of Sears Holdings Corporation ("SHC"), specifically, for example, in the footnotes to the financial statements contained in SHC's second quarter 2005 form 10Q report.

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

Petition for Formal Administrative Hearing on Proposed Agency Action

Exhibit C
Commission Order Proposing Rule Amendment

EXHIBIT C

LEXSEE 1973 FLA. PUC LEXIS 214

In re: Proposed amendment of Rule 25-6.97 relating to customer deposits of electric utilities

DOCKET NO. 73322-RULE; ORDER NO. 5778

Florida Public Service Commission

1973 Fla. PUC LEXIS 214

June 18, 1973

PANEL: [*1]

The following Commissioners participated in the disposition of this matter: WILLIAM H. BEVIS, Chairman; WILLIAM T. MAYO, PAULA F. HAWKINS

OPINION: ORDER PROPOSING RULE AMENDMENT

BY THE COMMISSION:

This docket is one of a series of proceedings initiated by the Commission on its own motion to revise the deposit practices of regulated utilities. The purposes are to provide uniformity within the electric industry as well as to place more specificity within the Rule itself to insure that both the customer and the utility are reasonably assured as to whicl criteria shall be used in administering the utility's deposit policy.

Present Rule 25-6.97 provides broad general guidelines to be followed by electric utilities with respect to custome deposits. Subsection (1) of said Rule permits a utility to require a deposit, in order to guarantee payment of bills, not tc exceed an amount approved by the Commission, or an amount necessary to cover charges for electric service for two average billing periods. We have approved specific amounts for Florida Power and Light Company ($20.00), Gulf Pow Company ($20.00), and Florida Power Corporation ($25.00). These amounts are generally applied to [*2] residential accounts while the alternative computation (two average billing periods) is generally applied to commercial accounts. There are, however, no specific minimum deposit amounts prescribed for Tampa Electric Company and Florida Public Utilities Company. It is our understanding, however, that the former utility requires a minimum deposit of $20.00. We propose to revise Subsection (1) to provide for a minimum deposit of $25.00, or an amount to cover two months averag billing, whichever is greater. In addition, we intend to provide alternative means for prospective customers to establisl credit, in lieu of a cash deposit, since the present Rule offers no specific means of obtaining service, except upon the posting of a cash deposit.

Present Subsection (3) of said Rule provides that the utility may provide for the return of a deposit after a reasonabl period of time. As a general rule, however, all electric utilities keep the deposit until service is terminated, despite the fa that the customer may have good payment habits. We propose to require in new Subsection (4) that the utility refund th deposit after twelve months if the customer has 12 consecutive months [*3] of prompt payment, which is construed t mean that he has not received two second notices within that preceding year.

In order to insure that excessive deposits are not initially required, and kept by the utility for the 12 month period, w also propose that if, after 90 days service, the actual deposit is found to be greater than an amount equal to the charges fc service for two actual average billing periods, the utility shall, upon demand of the customer, promptly refund on credi the difference.

Me recognize, of course, that circumstances may dictate the necessity of requiring new or additional deposits from a customer. Examples of such circumstances would be excessive slow payment, or a marked increase in consumption together with a slow payment record. Provision is made, therefore, in new proposed Subsection (3) for means by whicl the utility can obtain a new or additional deposit.

Present Subsection (2) provides that a deposit receipt be issued a customer and means provided so that the custome may claim his deposit if the certificate is lost. We intend to expand this section to require that certain information be placed upon the receipt, and to renumber said Subsection [*4] as Subsection (7).

EXHIBIT C

We also are proposing in new Subsection (6) that certain minimal information be maintained by the utility on those customers who are required to post deposits. We feel confident that this merely codifies the existing practices of the utilities, who presumedly maintain such information in the normal course of their business.

Present Subsection (4) requires that when service is terminated, the utility may apply the deposit to the final bill, and the balance shall be returned to the customer. However, no time limitation for return of the deposit is provided therein. We propose to renumber this section as Subsection (8) and prescribe a maximum sixty day period of time in which the deposit, or remainder thereof, must be returned to the customer.

Finally, we propose to repeal present Rule 25-6.98, which relates to interest on deposits, and consolidate the provisions thereof into amended Rule 25-6.97 as new Subsection (5).

Therefore, the Commission, on its own motion, pursuant to Section 356.06, Florida Statutes, proposes to repeal Rule 25-6.98 and to amend Rule 25-6.97 to read as follows:

"25-6.97 Customer deposits.

(1) Deposit required; establishment of credit. [*5] — Each utility may require an applicant for service to satisfactorily establish credit, but such establishment of credit shall not relieve the customer from complying with the electric company's rules for prompt payment of bills. Credit will be deemed so established if:

(a) The applicant for service has been a customer of any electric utility within the last two years and during the last 12 consecutive months of service did not have more than two occasions in which a bill was paid after becoming delinquent and never had service disconnected for nonpayment.

(b) The applicant for service furnishes a satisfactory guarantee of secure payment of bills for the service requested.

(c) The applicant pays a cash deposit subject to the further stipulations within this rule.

(d) The applicant demonstrates a satisfactory credit rating by appropriate means including but not limited to, the production of acceptable credit cards as defined by the Commission, letters of credit reference, or names of credit references which may be quickly and inexpensively contacted by the utility.

(2) Amount of deposit. — The amount of the initial required deposit shall be $25.00 or an amount estimated to [*6] equal charges for electric service for two average billing periods, whichever is greater. If, after 90 days' service, the actual deposit is found to be greater than an amount equal to the charges for service for two actual average billing periods, the utility shall, upon demand of the customer to the company, promptly refund the difference.

(3) New or additional deposits. — A utility may require upon reasonable written notice of not less than 15 days, a new deposit, where previously waived or returned, or an additional deposit, in order to secure payment of current bills. Provided, however, that the total amount of the required deposit shall not exceed an amount equal to the actual average charges for electric service for two billing periods for the 90 day period immediately prior to the date of notice. In the event the customer has had service less than 90 days, then the utility shall base its new or additional deposit on the actual average monthly billing available.

(4) Refund of deposits. — The deposit shall be automatically refunded to the customer after 12 consecutive months of prompt payment. Prompt payment shall be construed to mean that a customer has not received two [*7] or more second notices within the preceding twelve month period. Nothing in this rule shall prohibit the company from returning a deposit in less than 12 months.

(5) Interest on deposit. — Each electric utility which requires deposits to be made by its customers shall pay a minimum interest on such deposits of six percent per annum. The deposit interest shall be simple interest in all cases and settlement shall be made annually, either in cash or by credit on the current bill. This does not prohibit any utility paying a higher rate of interest than six percent. No customer depositor shall be entitled to receive interest on his deposit until and unless a customer relationship and the deposit has been in existence for a continuous period of six months, then he shall be entitled to receive interest from the date of the commencement of the customer relationship and the placement of deposit.

(6) Record of deposit. — Each utility having on hand deposits from customers or hereafter receiving deposits from them shall keep records to show:

(a) The name of each customer making the deposit;

EXHIBIT C

(b) The premises occupied by the customer when the deposit was made;

(c) The date and amount [*8] of deposit;

(d) Each transaction concerning the deposit such as interest payments, interest credited or similar transaction.

(7) Receipt for deposit. — A non-transferrable certificate of deposit shall be issued to each customer and means provided so that the customer may claim the deposit if the certificate is lost. The deposit receipt shall contain notice that after 90 days' service, the customer is entitled to refund of any deposit over and above an amount equal to the charges for two actual average billing periods.

(8) Refund of deposit when service discontinued. — Upon termination of service, the deposit and accrued interest may be credited against the current account and the balance, if any, shall be returned promptly to the customer, but in no event later than sixty (60) days after service is discontinued."

It is, therefore,

ORDERED by the Florida Public Service Commission that unless written objections with substantial ground for opposition are received within fifteen (15) days from the date hereof, the rules herein referred to will be adopted by formal order of the Commission (but without further notice), at the next public meeting of the Commission, such rules to [*9] become effective the day after they are filed in the Office of the Secretary of State, pursuant to the provisions of Section 120.041(4), Florida Statutes. It is further

ORDERED that if substantial objections are received which raise factual issues on which the taking of evidence is deemed necessary, notice of a public hearing for that purpose will be given, otherwise, the written objections may be set for oral argument if the Commission considers that argument will be helpful; or, they may be considered as submitted and proposed rules adopted, rejected, or adopted with modifications without further notice.

By order of Chairman WILLIAM H. BEVIS, Commissioner WILLIAM T. MAYO, and Commissioner PAULA F. HAWKINS, as and constituting the Florida Public Service Commission, this 18th day of June, 1973.