State of Florida

# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

## -M-E-M-O-R-A-N-D-U-M-

**DATE:** April 6, 2006

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bayó)

**FROM:** Office of the General Counsel (Brubaker)
Division of Economic Regulation (Draper, Maurey)

**RE:** Docket No. 050891-EI – 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.

**AGENDA:** 04/18/06 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Arriaga

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** Place next to Docket 050890-EI on the Agenda

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\050891.RCM.DOC

## Case Background

Kmart Corporation (Kmart) is a corporation doing business in Florida as a multi-line retailer. A number of Kmart's retail stores take electrical service from Florida Power & Light Company (FPL), an investor-owned electric utility. In October 2005, Kmart received a notice from FPL requiring an additional deposit in the amount of $299,320, stating that an annual review of Kmart's accounts showed a deposit requirement of $1,399,320, and a deposit on hand of $1,100,000. FPL stated in the notice that it believed that the additional deposit request was appropriate in light of Kmart Corporation's parent company's current credit ratings.

On November 21, 2005, Kmart filed a complaint against FPL for alleged violations of Rule 25-6.097, Florida Administrative Code. Kmart contends that "suddenly and without any reasonable basis," FPL demanded that Kmart provide the additional deposit to continue to receive electric service from FPL. Kmart states that FPL has failed to allege that Kmart is a new customer or that Kmart failed to maintain a prompt payment record, and that FPL has attempted to circumvent Rule 25-6.097, Florida Administrative Code, by claiming reliance upon "demonstrably arbitrary information."

Kmart also filed with its complaint a motion to compel FPL to continue electric service and to cease demands for the additional deposit pending the Commission's final decision regarding Kmart's complaint. On November 23, 2005, FPL filed a response in opposition to Kmart's motion to compel. On December 2, 2005, Kmart filed a "renewal" of its motion to compel, and on December 6, 2005, FPL filed a response in opposition to Kmart's renewal of its motion to compel. The motion to compel, response in opposition, renewed motion to compel, and response in opposition to the renewal, are addressed in Issue 1 of staff's recommendation.

On December 13, 2005, FPL filed a motion to dismiss Kmart's complaint, contending that, accepting all allegations in Kmart's complaint as true, Kmart's complaint must nevertheless be dismissed with prejudice for failure to provide a basis upon which the Commission can grant relief. On December 27, 2005, Kmart filed a response in opposition to FPL's motion to dismiss, stating that FPL's procedure for assessing new deposits is not authorized by Rule 25-6.097(3), Florida Administrative Code, and that Kmart's complaint does state a viable cause of action upon which the Commission may grant relief. Issue 2 addresses FPL's motion to dismiss, and Issue 3 discusses staff's recommendation as to the appropriate disposition of Kmart's complaint.

The Commission has jurisdiction over the matters addressed herein through the provisions of Chapter 366, Florida Statutes, including Sections 366.04, 366.041, and 366.05, Florida Statutes.

**Discussion of Issues**

**Issue 1:** Should Kmart's motion for an order compelling FPL to continue electric service and to cease demands for an additional deposit, or Kmart's renewal of its motion for an order to compel, be granted?

**Recommendation:** No. FPL has complied with the requirements of Rule 25-22.032, Florida Administrative Code. The Commission need not rule on Kmart's requests as they are moot. (Brubaker)

**Staff Analysis:** On November 21, 2005, Kmart filed with its complaint a motion to compel FPL to continue electric service, and to cease demands for the additional deposit pending the Commission's final decision regarding Kmart's complaint. In its motion, Kmart states that it had been informed that FPL would discontinue all electric service to Kmart locations unless Kmart provided FPL with the additional deposit amount of $299,320. Kmart cites to Rule 25-22.032, Florida Administrative Code, which provides that a company shall not discontinue service to a customer because of any unpaid disputed amount until the complaint is closed by Commission staff. Kmart contends that it would suffer irreparable harm to its business operations and reputation if FPL was "permitted to illegally discontinue electric service," and therefore requests that the Commission enter an Order prohibiting FPL from discontinuing service to any Kmart location pending resolution of Docket 050891-EI.

On November 23, 2005, FPL filed a response in opposition to Kmart's motion to compel, stating that K-mart's motion to compel was moot, since FPL was already required to provide uninterrupted service to Kmart while the complaint is pending under Rule 25-22.032(3), Florida Administrative Code, and that FPL has every intention of complying with the Rule.

On December 2, 2005, Kmart filed a "renewal" of its motion to compel, stating that the holiday shopping season is critical to Kmart's business, and that any disruption in electric service during this period would result in substantial damages and irreparable harm to Kmart's business.

On December 6, 2005, FPL filed a response in opposition to Kmart's renewal of its motion to compel, stating that neither the initial motion to compel nor its renewal are necessary under Rule 25-22.032(3), and in light of FPL's continued assurances that it intends to comply with the Rule.

FPL has complied with the requirements of Rule 25-22.032(3), Florida Administrative Code, which specifically sets forth measures for the protection of customers during the pendency of unpaid disputed amounts. As such, Kmart's motion for an order compelling FPL to continue electric service is unnecessary and moot, and staff recommends that the Commission need not rule upon the motion.

Furthermore, FPL correctly points out in its December 6th response that Kmart's "renewal" of its motion is premature, in that no disposition of its original motion has yet been made. Kmart's renewal of its original motion is also moot and unnecessary, and staff recommends that the Commission take no further action on the matter.

**Issue 2:** Should FPL's motion to dismiss Kmart's complaint be granted?

**Recommendation:** No. Kmart's complaint states a sufficient factual basis to survive a motion to dismiss, and FPL's motion should accordingly be denied. (Brubaker)

**Staff Analysis:** Rule 25-6.097(3), Florida Administrative Code, provides as follows:

> New or additional deposits. 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, provided, however, that the total amount of the required deposit shall not exceed an amount equal to twice the average charges for actual usage of electric service for the twelve month period immediately prior to the date of notice. In the event the customer has had service less than twelve months, then the utility shall base its new or additional deposit upon the average actual monthly usage available.

Section 6.1 of FPL's tariff addresses security deposits and guarantees, and provides that before FPL renders service, each applicant will be required to provide: a) information which satisfies the Company's application requirements for no deposit; or b) a Security Deposit consisting of cash, surety bond, or irrevocable bank letter of credit; or c) a guaranty satisfactory to the Company to secure payment of bills. In addition, the amount of the initial Security Deposit, if required, shall be based upon estimated billings for a period of two average months, but not less than $25.00. The tariff also provides that FPL "may require a subsequent Security Deposit from a Customer, including one whose initial Security Deposit was refunded/released. A Security Deposit/guaranty may be held by the Company until refunded or released under the terms of rule 6.3. [Refund of Cash Deposit/Release of Other Security or Guaranty]."

In October 2005, Kmart received a notice from FPL requiring an additional deposit. The September 28, 2005 letter to Kmart from FPL states:

> An annual review of your accounts shows a deposit requirement of $1,399,320 and a deposit on hand of $1,100,000.
>
> 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, Kmart Corporation's deposit requirement is $299,320 under the deposit requirement at this time. A bill for this amount will be issued within five business days for which payment will be expected to be made 30 days after the bill 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. FPL believes this additional deposit request is appropriate in light of Kmart Corporation's parent company's current credit ratings.

The letter further asks that Kmart contact FPL if it requires a payment extension, or the proper forms for an Irrevocable Letter of Credit or a Surety Bond.

In its Motion to Dismiss, FPL states that its request for an additional deposit of $299,320 arose after an annual review of Kmart and its parent company, Sears Holdings Corporation (SHC), indicated that FPL should be concerned about the creditworthiness of Kmart, a very large customer. According to the most recently filed Form 10-Q, Sears Holdings Corporation is a corporation formed for the purpose of consummating the business combination of Kmart Holding Corporation and Sears, Roebuck and Co., which was completed on March 24, 2005. FPL states that the triggering mechanisms for the additional deposit requirement were the financial stress scores and standard credit scores of Dun & Bradstreet, and the Standard and Poor's credit rating of Kmart's parent company (BB+, Negative Outlook), that raised concerns on FPL's part regarding Kmart's payment history and financial stress classification. FPL further states that it wishes to protect the entire body of customers from potential default or bankruptcy by Kmart.

**Kmart's Complaint**

In its complaint, Kmart contends that "suddenly and without any reasonable basis," FPL demanded that Kmart provide the additional deposit to continue to received electric service from FPL. Kmart states that FPL has failed to allege that Kmart is a new customer or that Kmart failed to maintain a prompt payment record, and that FPL has attempted to circumvent Rule 25-6.097, Florida Administrative Code, by claiming reliance upon "demonstrably arbitrary information."

Kmart states that "[i]t is an illegal delegation of authority for the State of Florida to allow a utility blindly to rely upon the unsupported opinions of third-parties who are not politically or legally accountable for their actions in setting the conditions upon which that utility would serve the public." Kmart contends that third-party evaluators such as Dun & Bradstreet and Standard and Poor's are free to base their results on inaccuracies, illogical criteria, and an opaque process. Further, the reliance on such information as a basis for demanding a deposit from a customer despite the customer's prompt payment record and other objective evidence of the customer's ability to pay the bills as they come due, denies due process.

Kmart argues that FPL must treat each customer who applies for electric service equally. Rule 25-6.097, Florida Administrative Code, recognizes the need for protection for all consumers by permitting a utility to require a deposit from its customers. However, Kmart contends that the Rule does not permit FPL to arbitrarily require a deposit or demand an additional deposit, from selected customers on any basis it chooses. Kmart states that the Commission is only authorized to enforce service rules [tariff provisions] which are on file with the Commission. Kmart contends that although the Commission's interpretation of a service rule is given considerable deference on review, the tariff provisions should provide sufficient detail as to allow this Commission to reasonably predict the utilities application of such a rule.

Kmart contends that a review of the history of Rule 25-6.097(3), Florida Administrative Code, demonstrates that new deposits from existing customers and additional deposits are only authorized under limited circumstances, and that the Commission and the Florida courts have not interpreted the Rule as authorizing FPL to require an additional deposit from an existing customer with a prompt payment record. FPL's tariff contains no specific guidelines regarding the criteria FPL may use as a basis for determining whether to request an additional deposit from an existing customer.

Kmart also contends that FPL's demand is illegally based on consideration of SHC's financial status, and that, as a mere shareholder of Kmart, SHC's credit rating is completely irrelevant to any appropriate determination by FPL of Kmart's creditworthiness and right to continue receiving electric service.

Kmart requests that the Commission find that FPL's tariff as applied is unfair, unreasonable, and unjustly discriminatory, to order FPL to immediately return Kmart's deposit in the amount of $1,100,000, and to cease and desist from further threats of disconnection to any Kmart location for failure of Kmart to comply with FPL's deposit demands in the amount of $299,320 or any other amount. Kmart also requests that the Commission issue an order establishing standards for determining the satisfactory credit rating of existing customers.

**FPL's Motion to Dismiss Kmart's Complaint**

On December 13, 2005, FPL filed a motion to dismiss Kmart's complaint, stating that the relief sought by Kmart in this proceeding is that the Commission adopt a new and different interpretation to an existing Commission rule, which interpretation contradicts the plain and unambiguous language of the rule. Specifically, Kmart requests that the Commission interpret its rule on customer deposits to, among other things, "require advance public disclosure of the criteria a utility uses for determination of satisfactory credit," in contrast to the plain and unambiguous language of the rule. FPL asserts that the Commission should reject Kmart's argument on legal grounds because the Commission lacks legislative authority to add new requirements to an existing rule without following the procedures established in the Florida Administrative Procedure Act, Chapter 120, Florida Statutes. Kmart also argues that the deposit rule constitutes an illegal delegation of authority; again, the relief requested conflicts with the procedures outlined in Chapter 120, and is not germane to this substantial interests proceeding. FPL contends that Kmart cites to no statute or rule that entitles it to the relief requested in the context of a substantial interest determination, and that there is not one.

FPL states that is responsible for managing its own debt and seeking additional deposits from customers as needed, which was essentially recognized in Order No. PSC-95-0500-FOF-EI, issued April 24, 2005, in Docket No. 950195-EI, In re: Petition for approval of tariff revisions regarding budget billing, bill proration, and deposit waiver by Florida Power Corporation [FPC]. That Order concerned a deposit waiver provision in a FPC tariff, in which the Commission recognized that "[t]he deposit requirement is discretionary to a utility, but the utility is responsible for managing bad debt." FPL argues that, in the act of managing bad debt, it is FPL's responsibility to take the action of requiring an additional deposit where, as here, the amount of the deposit does not exceed the exposure the Company would have if Kmart filed for bankruptcy. If Kmart disputes the credit-rating agency reports and predictive scorings, FPL contends that Kmart has the right to challenge the evaluation independently of the utility's right to seek an additional deposit. <u>See</u> Order No. PSC-95-0500-FOF-EI at p. 5 ("The credit rating agency will inform FPC whether the deposit can be waived or not. In the case of a negative evaluation, like with any application process for a credit card, the customer has the right to challenge the credit evaluation."). Furthermore, FPL states that if the creditworthiness concerns subside, then the deposit may be refunded to Kmart with interest, pursuant to Rule 25-6.097, Florida Administrative Code, and the provisions of FPL's tariff.

FPL also contends that Kmart's arguments that Rule 25-6.097(3), Florida Administrative Code, applies only to "new customers" and customers that do not have a "satisfactory payment record" are not supported by the plain language of the rule. Rather, the plain language of the rule provides that FPL may require "a new deposit … or additional deposit," and there is no waiver of the additional deposit requirement for customers with a "satisfactory payment record." Nor is there any prohibition against considering the financial status of a parent or holding company in assessing the financial viability of the corporate customer. FPL contends that Kmart would have the Commission apply a different interpretation to the plain language of the rule and add such requirements as specific advance notice and a satisfactory payment record in an attempt to circumvent FPL's request for an additional deposit. Therefore, Kmart's complaint amounts to an untimely and inappropriate request for rulemaking.

In conclusion, FPL contends that, accepting all allegations in Kmart's Complaint as true, and drawing all reasonable inferences in favor of Kmart, Kmart's Complaint must be dismissed with prejudice as a matter of law because Kmart has provided no basis upon which the Commission can grant the requested relief.

**<u>Kmart's Response in Opposition to FPL's Motion to Dismiss Kmart's Complaint</u>**

On December 27, 2005, Kmart filed a response in opposition to FPL's motion to dismiss, stating that FPL's procedure for assessing new deposits is not authorized by Rule 25-6.097(3), Florida Administrative Code, and that Kmart's complaint does state a viable cause of action upon which the Commission may grant relief.

Kmart argues that it seeks relief based on a reasonable and necessary interpretation of Rule 25-6.097(3), Florida Administrative Code, and does not seek to amend the rule. Further, FPL mischaracterizes the nature of Kmart's claims and misstates Kmart's request for relief as an untimely rulemaking challenge. Kmart asserts that (1) FPL's reason for demanding a new deposit is arbitrary, and that a deposit is not reasonably required to secure payment of current bills and thus is not authorized; and (2) that FPL's September 28, 2005, notice demanding the additional deposit fails to adequately explain the alleged reason for the demand and violates Rule 25-6.097(3).

Further, FPL's current tariff lacks the guidelines relied upon to support the reasonableness of FPL's deposit demands. Kmart therefore requests that the Commission order FPL to provide more specific and objective standards for determining the need to secure payment of current bills from existing customers.

**Staff Analysis**

Kmart's complaint essentially alleges that FPL's demand for an additional deposit contravenes the requirements of Rule 25-6.097, Florida Administrative Code. FPL contends that Kmart's complaint fails to state a cause of action upon which relief can be granted, and should therefore be dismissed.

A motion to dismiss raises as a question of law the sufficiency of the facts alleged in a petition to state a cause of action upon which relief may be granted. See Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993). The standard to be applied in disposing of a motion to dismiss is whether, with all factual allegations in the petition taken as true and construed in the light most favorable to the petitioner, the petition states a cause of action upon which relief may be granted. See id. at 350. In determining the sufficiency of the petition, the Commission must confine its consideration to the petition and documents incorporated therein and the grounds asserted in the motion to dismiss. See Flye v. Jeffords, 106 So. 2d 229 (Fla. 1st DCA 1958); Rule 1.130, Florida Rules of Civil Procedure.

Under this standard, staff believes that, with all factual allegations in the petition taken as true and construed in the light most favorable to Kmart, the complaint states a cause of action over which the Commission has jurisdiction, and upon which relief may be granted. If one assumes as true the factual allegations that FPL's demand for an additional deposit violates Rule 25-6.097, Florida Administrative Code, then that is certainly a matter over which the Commission has jurisdiction, and may exercise its authority to grant such relief as may be appropriate, pursuant to provisions of Chapter 366, Florida Statutes, including Sections 366.04, 366.041, and 366.05, Florida Statutes. Kmart's complaint states a sufficient factual basis to survive a motion to dismiss, and FPL's motion should accordingly be denied.

**Issue 3**: What is the appropriate disposition of Kmart's complaint against FPL?

**Recommendation**: Kmart's complaint against FPL should be denied on its merits. FPL has complied with the requirements of Rule 25-6.097, Florida Administrative Code. Accordingly, within 30 days of the date of the order, Kmart should pay an additional deposit in the amount of $299,320 in order to receive continuous service from FPL. (Brubaker, Maurey)

**Staff Analysis**: Issue 2 sets out at length the arguments raised by the parties in support of and in opposition to Kmart's complaint against FPL, and are not repeated herein so as to avoid unnecessary repetition.

Kmart contends that the credit review performed by FPL was not set forth in sufficient detail in its tariff. Further, Kmart argues that it is not a new customer, and that it has a prompt payment record; therefore, FPL is not entitled to require an additional deposit amount. However, FPL correctly points out that the plain language of Rule 25-6.097(3), Florida Administrative Code, contemplates the assessment of an additional deposit from an existing customer: "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."[1]

Kmart cites to Order No. 10733, issued April 21, 1982, in Docket No. 810471-EU, In re: Complaint of Pan American World Airways, Inc. [Pan Am] v. Florida Power and Light[2], in support of its position. The complaint at issue in Order No. 10733 concerned a determination by FPL that Pan Am, newly merged with another corporation, constituted a new customer, and thus FPL assessed an additional deposit pursuant to Rule 25-6.97 [later renumbered to Rule 25-6.097], Florida Administrative Code. Staff believes that Order No. 10733 is not supportive of Kmart's position; rather, by that Order the Commission found that FPL's request for an additional deposit was correct under the Commission's rule and FPL's approved tariff, and ordered that Pan Am must post the additional deposit in order to receive continuous service from FPL. Notably, the Commission also found that:

> The confusion arose in the first place because neither the Commission rules nor FPL's tariff contain a definition of a new customer. Similar controversies may be averted if FPL revised their tariff to include a definition of a new customer. However, FPL took the position that "to specifically address deposit requirements for all possible situations such as mergers, acquisitions, business reorganizations, bankruptcies or any of a multitude of other related changes in customer status

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[1] In its complaint, Kmart cites to Order No. 5778, issued June 18, 1973, in Docket No. 73322-RULE, In re: Proposed Amendment of Rule 25-6.97 relating to customer deposits of electric utilities. In that Order, the Commission states: "We recognize, of course, that circumstances may dictate the necessity of requiring new or additional deposits from a customer." The Order provides examples (but not a definitive list) of such circumstances, such as excessive slow payment, or a marked increase in consumption together with a slow payment record.

[2] Order No. 10733 was affirmed in Pan American World Airways, Inc. v. Florida Public Service Commission, 427 So. 2d 716 (Fla. 1983), in which the Court found that Pan Am failed to demonstrate that the Order appealed from departs in any way from the essential requirements of law, nor was it shown to be unsupported by substantial, competent evidence.

> would be unreasonably lengthy and the effort could not possible cover all situations". We are inclined to defer to the Company's judgment on this point.

Id. at 7-8 (emphasis added).

While Order No. 10733 is distinguishable in that it involved the assessment of an additional deposit amount due to a customer's merger (and thus classification as a "new customer"), the Commission's comments above are instructive and applicable to this instance. Staff believes that Kmart has not set forth adequate justification as to why continued deference should not be given to FPL in regard to the specificity of its deposit standards. As mentioned in Order No. 10733, FPL may wish to consider revising its tariff to specifically address its deposit review process and standards, in order to avoid future confusion on this point. However, staff believes that a change in a customer's creditworthiness reasonably qualifies as a "change in customer status," such that may merit reevaluation of that customer's deposit requirements. Rule 25-6.097(3), Florida Administrative Code, plainly contemplates the possible assessment of an additional deposit from an existing customer. While it may be advisable that a utility specify in its tariff the circumstances under which it will assess an additional deposit, neither the Rule nor Commission precedent require that a tariff addressing additional deposits must necessarily be all-inclusive.

SHC is the sole shareholder of Kmart Corporation. As such, it does not appear to staff that FPL's concerns regarding the creditworthiness of SHC, and its potential impact on Kmart, is unreasonable or arbitrary in nature. SHC was formed for the purpose of consummating the business combination of the Kmart and Sears businesses on March 24, 2005. SHC's subsequent financial stress and credit scores were taken into account, together with concerns regarding potential default or bankruptcy, in whether Kmart's deposit should be re-evaluated.

Specifically, FPL's November 23rd response in opposition to Kmart's motion to compel states that Kmart Corporation filed for reorganization under Chapter 11 of the Bankruptcy Code in December 2001, and emerged from Chapter 11 in May 2003. FPL, a creditor of Kmart in the bankruptcy proceeding, lost a substantial sum of money. This, coupled with the viability concerns raised by the Dun & Bradstreet and Standard and Poor's information, appears to support FPL's re-evaluation of the adequacy of Kmart's security deposit. As stated in Order No. 10733, "the purpose of security deposits is to protect the general body of ratepayers in the event of default by one. When the assets and liabilities of a corporate entity change, the risk-of non-payment also changes (it may increase or decrease)." Staff also notes that the information provided by Dun & Bradstreet and Standard and Poor's is the type commonly reviewed and relied upon in the financial community; it appears to staff that it might reasonably be relied upon as a part of FPL's overall annual credit assessment of its large customers.

By e-mail correspondence dated February 6, 2006, counsel for FPL provided the following additional information to staff. The total number of customers billed an additional deposit in 2005 was 187,180. Of these, 12,432 were commercial customer accounts, and 174,748 were residential customer accounts. The total number of additional deposit complaints received in 2005 was 34 and of these, two were on a commercial revenue rate. None of the complaints related to major customer accounts. For large commercial accounts, the process to determine if a deposit needs to be billed is to conduct an annual credit review. Also, at any time during the year, if information becomes available that would present a concern, a review is conducted which entails credit risk scores or payment patterns.

Kmart's complaint contends that "this Commission has urged utilities to be consistent in their application of their deposit requirements," and "FPL must treat each customer who applies for electric service equally." This is what FPL has done. As noted above, FPL reviews large commercial accounts annually in order to determine if an additional deposit needs to be billed. If information becomes available that would present a concern, a review is conducted which entails credit risk scores or payment patterns, such as the one conducted with respect to Kmart. Having made a determination that an additional deposit should be assessed, FPL calculated the additional amount in accordance with Rule 25-6.097(3), Florida Administrative Code.

FPL's actions in this matter appear to be consistent with the requirements of Rule 25-6.097, Florida Administrative Code, and FPL's tariff. Accordingly, Kmart's complaint should be denied, and within 30 days of the date of the order, Kmart should pay an additional deposit in the amount of $299,320 in order to receive continuous service from FPL.

**Issue 4:** Should this docket be closed?

**Recommendation:** If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (Brubaker)

**Staff Analysis:** If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.