

Timolyn Henry

ORIGINAL

From: Nanci_Nesmith@fpl.com
Sent: Tuesday, December 06, 2005 4:04 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. 050890-EI FPL's Response in opposition to Sears, Roebuck and Company's Renewal Motion

Attachments: 050890-FPL Response to Renewal Sears Motion.doc; 050890-Exhibit A.pdf



050890-FPL 050890-Exhibit
ponse to RenewA.pdf (112 KB)

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. 050890-EI re: Complaint of Sears, Roebuck and Company 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 Sears, Roebuck and Company'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: 050890-FPL Response to Renewal Sears Motion.doc) (See attached file: 050890-Exhibit A.pdf)

Thank you for your attention and cooperation to this request.

CMP Nanci_NeSmith
Florida Power & Light Company
COM 215 S. Monroe St., Suite 810
Tallahassee, FL 32301
CTE 850-521-3900

- ECR _____
- GCL _____
- OPC _____
- RCA _____
- SCR _____
- SGA _____
- SEC 1
- OTH _____

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, Sears' Motion.

2. On December 2, 2005, Sears, 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 Sears location pending the Commission's resolution of Docket No. 050890-EI.

3. FPL views Sears' Renewal Motion as premature and unripe inasmuch as the Commission has yet to rule on Sears' 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 Sears locations within its service territory pending resolution of Sears' 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 Sears' initial Motion and FPL's Response thereto, it provided, at the insistent request of Sears' Qualified Representative, an email communication confirming FPL's commitment not to terminate power service to Sears locations within FPL's service territory as a result of the filing of the Sears Complaint and initial Emergency Order. This communication, wherein Sears' 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

Sears' 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 Sears locations within its service territory pending Commission resolution of Sears' Complaint.

5. Regarding Sears' allegation contained in Paragraph 5 of its Renewal Motion that Sears 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 Sears that Sears 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 Sears 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, Sears' Renewal Motion. FPL further requests Sears' Renewal Motion be denied on the grounds that it is premature and without any reasonable basis in fact

Respectfully submitted,

By: s/Garson Knapp
GARSON KNAPP, ESQ.
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420
(561) 304-5720 (Telephone)
(561) 625-7504 (Telecopier)

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.



"Kershner, Rodger A."
<RKershner@HowardandHoward.com>

To: Garson_Knapp@fpl.com
cc:
Subject: RE: Shut Off Notice Received - Your Response Needed

11/29/2005 04:29 PM

Thank you.

Rodger A. Kershner
Howard & Howard Attorneys, P.C.
The Pinehurst Office Center, Suite 101
39400 Woodward Avenue
Bloomfield Hills, Michigan 48304-5151
248/723-0421
248/645-1568 (FAX)
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rkershner@howardandhoward.com

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-----Original Message-----

From: Garson_Knapp@fpl.com [mailto:Garson_Knapp@fpl.com]
Sent: Tuesday, November 29, 2005 4:21 PM
To: Kershner, Rodger A.
Cc: Wade_Litchfield@fpl.com; John_Hall@fpl.com; Ralph_Calleja@fpl.com; Damaris_Diaz@fpl.com
Subject: RE: Shut Off Notice Received - Your Response Needed

Rodger,

This will confirm, as was stated in FPL's responses to the Kmart/Sears Motions, that FPL, as a result of the filing of the Motions and Complaints will not terminate power service to Kmart/Sears locations within FPL's service territory.

Garson Knapp, Attorney
Florida Power and Light Company
700 Universe Boulevard
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Tel: (561) 304-5720
Fax: (561) 625-7504

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"Kershner, Rodger

A."

To:

sgree21@sears.com

<RKershner@Howardand
Michael@Sears Merchandise Group" <mmorrie@sears.com>, "Riecker,
Howard.com>
<rriECK1@searshc.com>, "Hatcher, Sharna" <shatcher@searshc.com>,

kzenkov@sears.com,

pfrale1@sears.com, Garson_Knapp@fpl.com, lmill64@sears.com, "ZZS
11/29/2005 04:16 PM
Clarence@Sears " <crobine@sears.com>

Robinett,

Subject: RE: Shut Off

Notice Received - Your Response Needed

Steve,

I just spoke to Garson Knapp, FP&L Senior Attorney in Juno Beach. While FP&L has committed to Sears and to the Florida Public Service Commission that there will be NO shutoffs while the formal Complaint filed last week remains pending before the Commission, he has agreed to take further steps to get that word out so that no person or machine inadvertently interrupts Sears' electric service in ignorance. He will confirm that he has done so by the end of the day. I am sure he understands that the damages to which Sears would be entitled for wrongful interruption of service during the holiday season would be very large. I also note that FP&L has added what appears to be a late charge or interest in the amount of an additional \$615, which is completely inappropriate and illegal. The million dollars, if paid, is a deposit, not a debt. Each day we do not pay saves them the interest that would otherwise be due to Sears. Because FP&L is represented by counsel, I am constrained by the rules of conduct from communicating directly with him, but you may want to share this information with Mr. Calleja, your service rep. Rodger Kershner

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